

Suspending limitations on conference committee jurisdiction, H.B. No. 2774 (Truitt/Wentworth)

By: Darby

H.R. No. 2900

R E S O L U T I O N

1 BE IT RESOLVED by the House of Representatives of the State of
2 Texas, 81st Legislature, Regular Session, 2009, That House Rule 13,
3 Section 9(a), be suspended in part as provided by House Rule 13,
4 Section 9(f), to enable the conference committee appointed to
5 resolve the differences on House Bill 2774 (self-directed and
6 semi-independent status of state financial regulatory agencies and
7 the licensing and regulation of certain persons involved in
8 residential mortgage lending; making an appropriation; providing a
9 penalty) to consider and take action on the following matters:

10 (1) House Rule 13, Section 9(a)(1), is suspended to permit
11 the committee to change text not in disagreement in proposed
12 SECTION 2 of the bill, in added Section 156.102(b-1), Finance Code,
13 so that it reads as follows:

14 (b-1) The finance commission on the commissioner's
15 recommendation may adopt rules to promote a fair and orderly
16 administration of the fund consistent with the purposes of
17 Subchapter F.

18 Explanation: The change is necessary to correct an error in a
19 cross-reference.

20 (2) House Rule 13, Section 9(a)(4), is suspended to permit
21 the committee to add text not included in either the house or senate
22 version of the bill by adding the following SECTION to the bill:

23 SECTION 28. (a) Title 2, Finance Code, is amended by adding
24 Chapter 16 to read as follows:

1 CHAPTER 16. FINANCIAL REGULATORY AGENCIES: SELF-DIRECTED AND
2 SEMI-INDEPENDENT

3 Sec. 16.001. DEFINITIONS. In this chapter:

4 (1) "Financial regulatory agency" means:

5 (A) the Texas Department of Banking;

6 (B) the Department of Savings and Mortgage
7 Lending;

8 (C) the Office of Consumer Credit Commissioner;

9 and

10 (D) the Credit Union Department.

11 (2) "Policy-making body" means:

12 (A) the Finance Commission of Texas for:

13 (i) the Texas Department of Banking;

14 (ii) the Department of Savings and Mortgage
15 Lending; and

16 (iii) the Office of Consumer Credit

17 Commissioner; and

18 (B) the Credit Union Commission for the Credit
19 Union Department.

20 Sec. 16.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF
21 FINANCIAL REGULATORY AGENCIES. Notwithstanding any other
22 provision of law, a financial regulatory agency is self-directed
23 and semi-independent as specified by this chapter. Any Act of the
24 81st Legislature that relates to a financial regulatory agency and
25 that is inconsistent with the agency being self-directed and
26 semi-independent may be implemented by the financial regulatory
27 agency only on authorization by the policy-making body of the

1 financial regulatory agency.

2 Sec. 16.003. BUDGET, REVENUES, AND EXPENSES. (a) A
3 financial regulatory agency shall submit to the policy-making body
4 of the financial regulatory agency a budget annually using
5 generally accepted accounting principles. Notwithstanding any
6 other provision of law, including the General Appropriations Act,
7 the budget shall be adopted and approved only by the policy-making
8 body of the financial regulatory agency.

9 (b) A financial regulatory agency shall be responsible for
10 all direct and indirect costs of the agency's existence and
11 operation. The financial regulatory agency may not directly or
12 indirectly cause the general revenue fund to incur any cost.

13 (c) Subject to any limitations in a financial regulatory
14 agency's enabling legislation, a financial regulatory agency may
15 set the amounts of fees, penalties, charges, and revenues required
16 or permitted by statute or rule as necessary for the purpose of
17 carrying out the functions of the financial regulatory agency and
18 funding the budget adopted and approved under Subsection (a).

19 (d) All fees and funds collected by a financial regulatory
20 agency and any funds appropriated to the financial regulatory
21 agency shall be deposited in interest-bearing deposit accounts in
22 the Texas Treasury Safekeeping Trust Company. The comptroller
23 shall contract with the financial regulatory agency for the
24 maintenance of the deposit accounts under terms comparable to a
25 contract between a commercial banking institution and the
26 institution's customers.

27 (e) Periodically, each financial regulatory agency shall

1 submit to the agency's policy-making body, as directed by the
2 policy-making body, a report of the receipts and expenditures of
3 the financial regulatory agency.

4 (f) The fiscal year for a financial regulatory agency begins
5 on September 1 and ends on August 31.

6 Sec. 16.004. AUDITS. This chapter does not affect the duty
7 of the state auditor to audit a financial regulatory agency. The
8 state auditor shall enter into a contract and schedule with each
9 financial regulatory agency to conduct audits, including financial
10 reports and performance audits. The financial regulatory agency
11 shall reimburse the state auditor for all costs incurred in
12 performing the audits and shall provide to the governor a copy of
13 any audit performed.

14 Sec. 16.005. RECORDS; REPORTING REQUIREMENTS. (a) A
15 financial regulatory agency shall keep financial and statistical
16 information as necessary to disclose completely and accurately the
17 financial condition and results of operations of the agency.

18 (b) Before the beginning of each regular session of the
19 legislature, each financial regulatory agency shall submit to the
20 legislature and the governor a report describing all of the
21 agency's activities in the previous biennium. The report must
22 include:

23 (1) an audit as required by Section 16.004;

24 (2) a financial report of the previous fiscal year,
25 including reports on financial condition and results of operations;

26 (3) a description of all changes in fees imposed on
27 regulated industries;

1 (4) a report on changes in the regulatory jurisdiction
2 of the agency, including the number of chartered financial
3 institutions, license holders, and registrants subject to the
4 agency's jurisdiction and any changes in those figures; and

5 (5) a list of all new rules adopted or repealed.

6 (c) In addition to the reporting requirements of Subsection
7 (b), not later than November 1 of each year, each financial
8 regulatory agency shall submit to the governor, the committee of
9 each house of the legislature that has jurisdiction over
10 appropriations, and the Legislative Budget Board a report that
11 contains:

12 (1) the salary for all financial regulatory agency
13 personnel and the total amount of per diem expenses and travel
14 expenses paid for all agency employees;

15 (2) the total amount of per diem expenses and travel
16 expenses paid for each member of the agency's policy-making body,
17 provided that only one report must be submitted regarding the
18 Finance Commission of Texas;

19 (3) the agency's operating plan and annual budget; and

20 (4) a detailed report of all revenue received and all
21 expenses incurred by the financial regulatory agency in the
22 previous 12 months.

23 Sec. 16.006. ABILITY TO CONTRACT. (a) To carry out and
24 promote the objectives of this chapter, a financial regulatory
25 agency may enter into contracts and do all other acts incidental to
26 those contracts that are necessary for the administration of the
27 agency's affairs and for the attainment of the agency's purposes,

1 except as limited by Subsection (b).

2 (b) Any indebtedness, liability, or obligation of the
3 financial regulatory agency incurred under this section may not:

4 (1) create a debt or other liability of this state or
5 another entity other than the financial regulatory agency; or

6 (2) create any personal liability on the part of the
7 members of the policy-making body or the body's or agency's
8 employees.

9 Sec. 16.007. PROPERTY. A financial regulatory agency may:

10 (1) acquire by purchase, lease, gift, or any other
11 manner provided by law and maintain, use, and operate any real,
12 personal, or mixed property, or any interest in property, necessary
13 or convenient to the exercise of the powers, rights, privileges, or
14 functions of the financial regulatory agency;

15 (2) sell or otherwise dispose of any real, personal,
16 or mixed property, or any interest in property, that the financial
17 regulatory agency determines is not necessary or convenient to the
18 exercise of the agency's powers, rights, privileges, or functions;

19 (3) construct, extend, improve, maintain, and
20 reconstruct, or cause to construct, extend, improve, maintain, and
21 reconstruct, and use and operate all facilities necessary or
22 convenient to the exercise of the powers, rights, privileges, or
23 functions of the financial regulatory agency; and

24 (4) borrow money, as may be authorized from time to
25 time by an affirmative vote of a two-thirds majority of the
26 policy-making body of the financial regulatory agency, for a period
27 not to exceed five years if necessary or convenient to the exercise

1 of the financial regulatory agency's powers, rights, privileges, or
2 functions.

3 Sec. 16.008. SUITS. The office of the attorney general
4 shall represent a financial regulatory agency in any litigation.
5 The attorney general may assess and collect from the financial
6 regulatory agency reasonable attorney's fees associated with any
7 litigation under this section.

8 Sec. 16.009. POST-PARTICIPATION LIABILITY. (a) If a
9 financial regulatory agency no longer has status under this chapter
10 as a self-directed semi-independent financial regulatory agency
11 for any reason, the agency shall be liable for any expenses or debts
12 incurred by the agency during the time the agency was a
13 self-directed semi-independent financial regulatory agency. The
14 agency's liability under this section includes liability for any
15 lease entered into by the agency. This state is not liable for any
16 expense or debt covered by this subsection, and money from the
17 general revenue fund may not be used to repay the expense or debt.

18 (b) If a financial regulatory agency no longer has status
19 under this chapter as a self-directed semi-independent financial
20 regulatory agency for any reason, ownership of any property or
21 other asset acquired by the agency during the time the agency was a
22 self-directed semi-independent financial regulatory agency,
23 including unexpended fees in a deposit account in the Texas
24 Treasury Safekeeping Trust Company, shall be transferred to this
25 state.

26 Sec. 16.010. DUE PROCESS; OPEN GOVERNMENT. A financial
27 regulatory agency is:

1 (1) a governmental body for purposes of Chapters 551
2 and 552, Government Code; and

3 (2) a state agency for purposes of Chapters 2001 and
4 2005, Government Code.

5 Sec. 16.011. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.

6 Employees of the financial regulatory agencies are members of the
7 Employees Retirement System of Texas under Chapter 812, Government
8 Code, and the agencies' transition to independent status as
9 provided by this chapter has no effect on their membership or any
10 benefits under that system.

11 Sec. 16.012. GIFTS. (a) Notwithstanding any other law, a
12 financial regulatory agency may not accept a gift, grant, or
13 donation:

14 (1) from a party to an enforcement action; or

15 (2) to pursue a specific investigation or enforcement
16 action.

17 (b) A financial regulatory agency must:

18 (1) report each gift, grant, or donation that the
19 agency receives as a separate item in the agency's report required
20 under Section 16.005(b); and

21 (2) include with the report a statement indicating the
22 purpose for which each gift, grant, or donation was donated and
23 used.

24 (b) Section 11.104, Finance Code, is amended to read as
25 follows:

26 Sec. 11.104. EXPENSES AND COMPENSATION OF MEMBERS. A
27 member of the finance commission is entitled to:

1 (1) the reimbursement for reasonable and necessary
2 expenses incidental to travel incurred in connection with the
3 performance of official duties; and

4 (2) a per diem [~~as set by legislative appropriation~~]
5 for each day that the member engages in the business of the finance
6 commission.

7 (c) Section 11.110(c), Finance Code, is amended to read as
8 follows:

9 (c) A person appointed to the finance commission is entitled
10 to reimbursement under Section 11.104, as if the person were a
11 member of the finance commission, [~~as provided by the General~~
12 Appropriations Act,] for the travel expenses incurred in attending
13 the training program regardless of whether the attendance at the
14 program occurs before or after the person qualifies for office.

15 (d) Section 11.204, Finance Code, is amended by adding
16 Subsection (c) to read as follows:

17 (c) The finance commission shall have charge and control of
18 the property known as the Finance Commission Building and use of
19 staff, equipment, and facilities of the finance agencies. The
20 Finance Commission Building refers to the property located in the
21 city of Austin and titled in the name of the Banking Section of the
22 Finance Commission of Texas, as described by deed recorded in
23 Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

24 (e) Section 15.2041(c), Finance Code, is amended to read as
25 follows:

26 (c) A person appointed to the commission is entitled to
27 reimbursement under Section 15.207, as if the person were a member

1 of the commission, for travel expenses incurred in attending the
2 training program, regardless of whether the attendance at the
3 program occurs before or after the person qualifies for office~~[, as~~
4 ~~provided by the General Appropriations Act and as if the person were~~
5 ~~a member of the commission].~~

6 (f) Subchapter E, Chapter 15, Finance Code, is amended by
7 adding Section 15.4011 to read as follows:

8 Sec. 15.4011. CREDIT UNION DEPARTMENT BUILDING. The
9 commission shall have charge and control of the property known as
10 the Credit Union Department Building and use of staff, equipment,
11 and facilities of the department. The Credit Union Department
12 Building refers to the property located in the city of Austin and
13 titled in the name of the State of Texas for the use and benefit of
14 the Credit Union Department, as described by deed recorded in
15 Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

16 (g) Section 156.101(a), Finance Code, is amended to read as
17 follows:

18 (a) The commissioner shall administer and enforce this
19 chapter.

20 (h) Section 2165.007(b), Government Code, is amended to
21 read as follows:

22 (b) Notwithstanding any other law, the commission shall
23 provide facilities management services in relation to all state
24 agency facilities in Travis County or a county adjacent to Travis
25 County. The commission's duty does not apply to:

26 (1) a facility owned or operated by an institution of
27 higher education;

- 1 (2) military facilities;
- 2 (3) facilities owned or operated by the Texas
3 Department of Criminal Justice;
- 4 (4) facilities owned or operated by the Texas Youth
5 Commission;
- 6 (5) facilities owned or operated by the Texas
7 Department of Transportation;
- 8 (6) the Capitol, including the Capitol Extension, the
9 General Land Office building, the Bob Bullock Texas State History
10 Museum, any museum located on the Capitol grounds, the Governor's
11 Mansion, and any property maintained by the Texas Historical
12 Commission under Sections 442.0072 and 442.0073;
- 13 (7) a facility determined by the commission to be
14 completely residential;
- 15 (8) a regional or field office of a state agency; [~~or~~]
- 16 (9) a facility located within or on state park
17 property;
- 18 (10) the property known as the Finance Commission
19 Building described by deed recorded in Volume 5080, Page 1099, of
20 the Deed Records of Travis County, Texas; or
- 21 (11) the property known as the Credit Union Department
22 Building described by deed recorded in Volume 6126, Page 27, of the
23 Deed Records of Travis County, Texas.

24 (i) Sections 12.103, 13.005, 13.008, 14.053, 14.060,
25 15.104, 15.207(c), 15.308, 15.408, and 156.101(b) and (c), Finance
26 Code, are repealed.

27 (j)(1) To provide a reasonable period for each financial

1 regulatory agency, as defined by Section 16.001, Finance Code, as
2 added by this section, to establish itself as a self-directed and
3 semi-independent agency, the following amounts are appropriated
4 from the general revenue fund to each of those financial regulatory
5 agencies:

6 (A) for the state fiscal year ending August 31,
7 2010, an amount equal to 50 percent of the amount of general revenue
8 appropriated to the agency for the state fiscal year ending August
9 31, 2009; and

10 (B) for the state fiscal year ending August 31,
11 2011, an amount equal to 50 percent of the amount of general revenue
12 appropriated to the agency for the state fiscal year ending August
13 31, 2009.

14 (2) Subject to Section 16.003, Finance Code, as added
15 by this section, the appropriations made by Subdivision (1) of this
16 subsection may be spent by the financial regulatory agency to which
17 they are made as the financial regulatory agency directs. The
18 financial regulatory agency shall repay to the general revenue fund
19 the appropriation made to the agency for the state fiscal year
20 ending August 31, 2010, not later than that date and as funds become
21 available. The financial regulatory agency shall repay to the
22 general revenue fund the appropriation made to the agency for the
23 state fiscal year ending August 31, 2011, not later than that date
24 and as funds become available.

25 (k) The transfer of a financial regulatory agency, as
26 defined by Section 16.001, Finance Code, as added by this section,
27 to self-directed and semi-independent status under Chapter 16,

1 Finance Code, as added by this section, and the expiration of
2 self-directed and semi-independent status may not act to cancel,
3 suspend, or prevent:

4 (1) any debt owed to or by the financial regulatory
5 agency;

6 (2) any fine, tax, penalty, or obligation of any
7 party;

8 (3) any contract or other obligation of any party; or

9 (4) any action taken by the financial regulatory
10 agency in the administration or enforcement of the agency's duties.

11 (1) Each financial regulatory agency, as defined by Section
12 16.001, Finance Code, as added by this section, shall continue to
13 have and exercise the powers and duties allocated to the agency in
14 the agency's enabling legislation, except as specifically amended
15 by this section.

16 (m) Title to all supplies, materials, records, equipment,
17 books, papers, and facilities used by each financial regulatory
18 agency, as defined by Section 16.001, Finance Code, as added by this
19 section, is transferred to each respective financial regulatory
20 agency in fee simple. Nothing in this section shall have an effect
21 on property owned by a financial regulatory agency on or before the
22 effective date of this section.

23 (n) If a conflict exists between this section and another
24 Act of the 81st Legislature, Regular Session, 2009, that relates to
25 the self-directed and semi-independent status of a state financial
26 regulatory agency, this section controls without regard to the
27 relative dates of the enactment.

1 Explanation: The added language is necessary to improve the
2 operations of state financial regulatory agencies that are
3 self-directed and semi-independent.

4 (3) House Rule 13, Sections 9(a)(1) and (3), are suspended
5 to permit the committee to change the text of, and add text to,
6 proposed SECTION 30 of the bill, so that it reads as follows:

7 SECTION 30. The provisions of this Act or the applications
8 of those provisions are severable as provided by Section
9 311.032(c), Government Code. If the Secretary of Housing and Urban
10 Development determines that any provision of Sections 1-27 and 29
11 of this Act fails to meet the requirements of the federal Secure and
12 Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
13 110-289), that provision of this Act shall be held invalid;
14 however, the remainder of this Act or the application of the
15 provision to other persons or circumstances is not affected.

16 Explanation: The change is a conforming change to the bill
17 made necessary because of the addition of text to the bill under
18 Item (2) of this resolution.