

1-1 By: Zaffirini S.B. No. 2238  
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 May 18, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; May 18, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2238 By: Lucio

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to self-directed and semi-independent status of state  
1-11 financial regulatory agencies; making an appropriation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 2, Finance Code, is amended by adding  
1-14 Chapter 16 to read as follows:

1-15 CHAPTER 16. FINANCIAL REGULATORY AGENCIES: SELF-DIRECTED AND  
1-16 SEMI-INDEPENDENT

1-17 Sec. 16.001. DEFINITIONS. In this chapter:

1-18 (1) "Financial regulatory agency" means:

1-19 (A) the Texas Department of Banking;

1-20 (B) the Department of Savings and Mortgage  
1-21 Lending;

1-22 (C) the Office of Consumer Credit Commissioner;

1-23 and

1-24 (D) the credit union department.

1-25 (2) "Policy-making body" means:

1-26 (A) the Finance Commission of Texas for:

1-27 (i) the Texas Department of Banking;

1-28 (ii) the Department of Savings and Mortgage

1-29 Lending; and

1-30 (iii) the Office of Consumer Credit

1-31 Commissioner; and

1-32 (B) the Credit Union Commission for the credit  
1-33 union department.

1-34 Sec. 16.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF  
1-35 FINANCIAL REGULATORY AGENCIES. Notwithstanding any other  
1-36 provision of law, a financial regulatory agency is self-directed  
1-37 and semi-independent as specified by this chapter. Any Act of the  
1-38 81st Legislature that relates to a financial regulatory agency and  
1-39 that is inconsistent with the agency being self-directed and  
1-40 semi-independent may be implemented by the financial regulatory  
1-41 agency only on authorization by the policy-making body of the  
1-42 financial regulatory agency.

1-43 Sec. 16.003. BUDGET, REVENUES, AND EXPENSES. (a) A  
1-44 financial regulatory agency shall submit to the policy-making body  
1-45 of the financial regulatory agency a budget annually using  
1-46 generally accepted accounting principles. Notwithstanding any  
1-47 other provision of law, including the General Appropriations Act,  
1-48 the budget shall be adopted and approved only by the policy-making  
1-49 body of the financial regulatory agency.

1-50 (b) A financial regulatory agency shall be responsible for  
1-51 all direct and indirect costs of the agency's existence and  
1-52 operation. The financial regulatory agency may not directly or  
1-53 indirectly cause the general revenue fund to incur any cost.

1-54 (c) Subject to any limitations in a financial regulatory  
1-55 agency's enabling legislation, a financial regulatory agency may  
1-56 set the amounts of fees, penalties, charges, and revenues required  
1-57 or permitted by statute or rule as necessary for the purpose of  
1-58 carrying out the functions of the financial regulatory agency and  
1-59 funding the budget adopted and approved under Subsection (a).

1-60 (d) All fees and funds collected by a financial regulatory  
1-61 agency and any funds appropriated to the financial regulatory  
1-62 agency shall be deposited in interest-bearing deposit accounts in  
1-63 the Texas Treasury Safekeeping Trust Company. The comptroller

2-1 shall contract with the financial regulatory agency for the  
 2-2 maintenance of the deposit accounts under terms comparable to a  
 2-3 contract between a commercial banking institution and the  
 2-4 institution's customers.

2-5 (e) Periodically, each financial regulatory agency shall  
 2-6 submit to the agency's policy-making body, as directed by the  
 2-7 policy-making body, a report of the receipts and expenditures of  
 2-8 the financial regulatory agency.

2-9 (f) The fiscal year for a financial regulatory agency begins  
 2-10 on September 1 and ends on August 31.

2-11 Sec. 16.004. AUDITS. This chapter does not affect the duty  
 2-12 of the state auditor to audit a financial regulatory agency. The  
 2-13 state auditor shall enter into a contract and schedule with each  
 2-14 financial regulatory agency to conduct audits, including financial  
 2-15 reports and performance audits. The financial regulatory agency  
 2-16 shall reimburse the state auditor for all costs incurred in  
 2-17 performing the audits and shall provide to the governor a copy of  
 2-18 any audit performed.

2-19 Sec. 16.005. RECORDS; REPORTING REQUIREMENTS. (a) A  
 2-20 financial regulatory agency shall keep financial and statistical  
 2-21 information as necessary to disclose completely and accurately the  
 2-22 financial condition and results of operations of the agency.

2-23 (b) Before the beginning of each regular session of the  
 2-24 legislature, each financial regulatory agency shall submit to the  
 2-25 legislature and the governor a report describing all of the  
 2-26 agency's activities in the previous biennium. The report must  
 2-27 include:

2-28 (1) an audit as required by Section 16.004;

2-29 (2) a financial report of the previous fiscal year,  
 2-30 including reports on financial condition and results of operations;

2-31 (3) a description of all changes in fees imposed on  
 2-32 regulated industries;

2-33 (4) a report on changes in the regulatory jurisdiction  
 2-34 of the agency, including the number of chartered financial  
 2-35 institutions, license holders, and registrants subject to the  
 2-36 agency's jurisdiction and any changes in those figures; and

2-37 (5) a list of all new rules adopted or repealed.

2-38 (c) In addition to the reporting requirements of Subsection  
 2-39 (b), not later than November 1 of each year, each financial  
 2-40 regulatory agency shall submit to the governor, the committee of  
 2-41 each house of the legislature that has jurisdiction over  
 2-42 appropriations, and the Legislative Budget Board a report that  
 2-43 contains:

2-44 (1) the salary for all financial regulatory agency  
 2-45 personnel and the total amount of per diem expenses and travel  
 2-46 expenses paid for all agency employees;

2-47 (2) the total amount of per diem expenses and travel  
 2-48 expenses paid for each member of the agency's policy-making body,  
 2-49 provided that only one report must be submitted regarding the  
 2-50 Finance Commission of Texas;

2-51 (3) the agency's operating plan and annual budget; and

2-52 (4) a detailed report of all revenue received and all  
 2-53 expenses incurred by the financial regulatory agency in the  
 2-54 previous 12 months.

2-55 Sec. 16.006. ABILITY TO CONTRACT. (a) To carry out and  
 2-56 promote the objectives of this chapter, a financial regulatory  
 2-57 agency may enter into contracts and do all other acts incidental to  
 2-58 those contracts that are necessary for the administration of the  
 2-59 agency's affairs and for the attainment of the agency's purposes,  
 2-60 except as limited by Subsection (b).

2-61 (b) Any indebtedness, liability, or obligation of the  
 2-62 financial regulatory agency incurred under this section may not:

2-63 (1) create a debt or other liability of this state or  
 2-64 another entity other than the financial regulatory agency; or

2-65 (2) create any personal liability on the part of the  
 2-66 members of the policy-making body or the body's or agency's  
 2-67 employees.

2-68 Sec. 16.007. PROPERTY. A financial regulatory agency may:

2-69 (1) acquire by purchase, lease, gift, or any other

3-1 manner provided by law and maintain, use, and operate any real,  
 3-2 personal, or mixed property, or any interest in property, necessary  
 3-3 or convenient to the exercise of the powers, rights, privileges, or  
 3-4 functions of the financial regulatory agency;

3-5 (2) sell or otherwise dispose of any real, personal,  
 3-6 or mixed property, or any interest in property, that the financial  
 3-7 regulatory agency determines is not necessary or convenient to the  
 3-8 exercise of the agency's powers, rights, privileges, or functions;

3-9 (3) construct, extend, improve, maintain, and  
 3-10 reconstruct, or cause to construct, extend, improve, maintain, and  
 3-11 reconstruct, and use and operate all facilities necessary or  
 3-12 convenient to the exercise of the powers, rights, privileges, or  
 3-13 functions of the financial regulatory agency; and

3-14 (4) borrow money, as may be authorized from time to  
 3-15 time by an affirmative vote of a two-thirds majority of the  
 3-16 policy-making body of the financial regulatory agency, for a period  
 3-17 not to exceed five years if necessary or convenient to the exercise  
 3-18 of the financial regulatory agency's powers, rights, privileges, or  
 3-19 functions.

3-20 Sec. 16.008. SUITS. The office of the attorney general  
 3-21 shall represent a financial regulatory agency in any litigation.  
 3-22 The attorney general may assess and collect from the financial  
 3-23 regulatory agency reasonable attorney's fees associated with any  
 3-24 litigation under this section.

3-25 Sec. 16.009. POST-PARTICIPATION LIABILITY. (a) If a  
 3-26 financial regulatory agency no longer has status under this chapter  
 3-27 as a self-directed, semi-independent financial regulatory agency  
 3-28 for any reason, the agency shall be liable for any expenses or debts  
 3-29 incurred by the agency during the time the agency was a  
 3-30 self-directed, semi-independent financial regulatory agency. The  
 3-31 agency's liability under this section includes liability for any  
 3-32 lease entered into by the agency. This state is not liable for any  
 3-33 expense or debt covered by this subsection, and money from the  
 3-34 general revenue fund may not be used to repay the expense or debt.

3-35 (b) If a financial regulatory agency no longer has status  
 3-36 under this chapter as a self-directed, semi-independent financial  
 3-37 regulatory agency for any reason, ownership of any property or  
 3-38 other asset acquired by the agency during the time the agency was a  
 3-39 self-directed, semi-independent financial regulatory agency,  
 3-40 including unexpended fees in a deposit account in the Texas  
 3-41 Treasury Safekeeping Trust Company, shall be transferred to this  
 3-42 state.

3-43 Sec. 16.010. DUE PROCESS; OPEN GOVERNMENT. A financial  
 3-44 regulatory agency is:

3-45 (1) a governmental body for purposes of Chapters 551  
 3-46 and 552, Government Code; and

3-47 (2) a state agency for purposes of Chapters 2001 and  
 3-48 2005, Government Code.

3-49 Sec. 16.011. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.  
 3-50 Employees of the financial regulatory agencies are members of the  
 3-51 Employees Retirement System of Texas under Chapter 812, Government  
 3-52 Code, and the agencies' transition to independent status as  
 3-53 provided by this chapter has no effect on their membership or any  
 3-54 benefits under that system.

3-55 Sec. 16.012. GIFTS. (a) Notwithstanding any other law, a  
 3-56 financial regulatory agency may not accept a gift, grant, or  
 3-57 donation:

3-58 (1) from a party to an enforcement action; or

3-59 (2) to pursue a specific investigation or enforcement  
 3-60 action.

3-61 (b) A financial regulatory agency must:

3-62 (1) report each gift, grant, or donation that the  
 3-63 agency receives as a separate item in the agency's report required  
 3-64 under Section 16.005(b); and

3-65 (2) include with the report a statement indicating the  
 3-66 purpose for which each gift, grant, or donation was donated and  
 3-67 used.

3-68 SECTION 2. Section 11.104, Finance Code, is amended to read  
 3-69 as follows:

4-1 Sec. 11.104. EXPENSES AND COMPENSATION OF MEMBERS. A  
4-2 member of the finance commission is entitled to:

4-3 (1) the reimbursement for reasonable and necessary  
4-4 expenses incidental to travel incurred in connection with the  
4-5 performance of official duties; and

4-6 (2) a per diem [~~as set by legislative appropriation~~]  
4-7 for each day that the member engages in the business of the finance  
4-8 commission.

4-9 SECTION 3. Subsection (c), Section 11.110, Finance Code, is  
4-10 amended to read as follows:

4-11 (c) A person appointed to the finance commission is entitled  
4-12 to reimbursement under Section 11.104, as if the person were a  
4-13 member of the finance commission, [~~as provided by the General~~  
4-14 Appropriations Act,] for the travel expenses incurred in attending  
4-15 the training program regardless of whether the attendance at the  
4-16 program occurs before or after the person qualifies for office.

4-17 SECTION 4. Section 11.204, Finance Code, is amended by  
4-18 adding Subsection (c) to read as follows:

4-19 (c) The finance commission shall have charge and control of  
4-20 the property known as the Finance Commission Building and use of  
4-21 staff, equipment, and facilities of the finance agencies. The  
4-22 Finance Commission Building refers to the property located in the  
4-23 city of Austin and titled in the name of the Banking Section of the  
4-24 Finance Commission of Texas, as described by deed recorded in  
4-25 Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

4-26 SECTION 5. Subsection (c), Section 15.2041, Finance Code,  
4-27 is amended to read as follows:

4-28 (c) A person appointed to the commission is entitled to  
4-29 reimbursement under Section 15.207, as if the person were a member  
4-30 of the commission, for travel expenses incurred in attending the  
4-31 training program, regardless of whether the attendance at the  
4-32 program occurs before or after the person qualifies for office[~~, as~~  
4-33 ~~provided by the General Appropriations Act and as if the person were~~  
4-34 ~~a member of the commission)].~~

4-35 SECTION 6. Subchapter E, Chapter 15, Finance Code, is  
4-36 amended by adding Section 15.4011 to read as follows:

4-37 Sec. 15.4011. CREDIT UNION DEPARTMENT BUILDING. The  
4-38 commission shall have charge and control of the property known as  
4-39 the Credit Union Department Building and use of staff, equipment,  
4-40 and facilities of the department. The Credit Union Department  
4-41 Building refers to the property located in the city of Austin and  
4-42 titled in the name of the State of Texas for the use and benefit of  
4-43 the credit union department, as described by deed recorded in  
4-44 Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

4-45 SECTION 7. Subsection (a), Section 156.101, Finance Code,  
4-46 is amended to read as follows:

4-47 (a) The commissioner shall administer and enforce this  
4-48 chapter.

4-49 SECTION 8. Subsection (b), Section 2165.007, Government  
4-50 Code, is amended to read as follows:

4-51 (b) Notwithstanding any other law, the commission shall  
4-52 provide facilities management services in relation to all state  
4-53 agency facilities in Travis County or a county adjacent to Travis  
4-54 County. The commission's duty does not apply to:

4-55 (1) a facility owned or operated by an institution of  
4-56 higher education;

4-57 (2) military facilities;

4-58 (3) facilities owned or operated by the Texas  
4-59 Department of Criminal Justice;

4-60 (4) facilities owned or operated by the Texas Youth  
4-61 Commission;

4-62 (5) facilities owned or operated by the Texas  
4-63 Department of Transportation;

4-64 (6) the Capitol, including the Capitol Extension, the  
4-65 General Land Office building, the Bob Bullock Texas State History  
4-66 Museum, any museum located on the Capitol grounds, the Governor's  
4-67 Mansion, and any property maintained by the Texas Historical  
4-68 Commission under Sections 442.0072 and 442.0073;

4-69 (7) a facility determined by the commission to be

- 5-1 completely residential;
- 5-2 (8) a regional or field office of a state agency; [~~or~~]
- 5-3 (9) a facility located within or on state park
- 5-4 property;
- 5-5 (10) the property known as the Finance Commission
- 5-6 Building described by deed recorded in Volume 5080, Page 1099, of
- 5-7 the Deed Records of Travis County, Texas; or
- 5-8 (11) the property known as the Credit Union Department
- 5-9 Building described by deed recorded in Volume 6126, Page 27, of the
- 5-10 Deed Records of Travis County, Texas.

5-11 SECTION 9. The following provisions of the Finance Code are

5-12 repealed:

- 5-13 (1) Sections 12.103, 13.005, 13.008, 14.053, 14.060,
- 5-14 and 15.104;
- 5-15 (2) Subsection (c), Section 15.207;
- 5-16 (3) Sections 15.308 and 15.408; and
- 5-17 (4) Subsections (b) and (c), Section 156.101.

5-18 SECTION 10. To provide a reasonable period for each  
5-19 financial regulatory agency, as defined by Section 16.001, Finance  
5-20 Code, as added by this Act, to establish itself as a self-directed  
5-21 and semi-independent agency, for the two-year period following the  
5-22 effective date of this Act, each financial regulatory agency is  
5-23 appropriated out of the general revenue fund an amount equal to 50  
5-24 percent of the amount of general revenue appropriated to that  
5-25 agency for the state fiscal year ending August 31, 2009. Subject to  
5-26 Section 16.003, Finance Code, as added by this Act, this  
5-27 appropriation may be spent as the financial regulatory agency  
5-28 directs and shall be repaid to the general revenue fund by the  
5-29 agency as funds become available.

5-30 SECTION 11. The transfer of a financial regulatory agency,  
5-31 as defined by Section 16.001, Finance Code, as added by this Act, to  
5-32 self-directed and semi-independent status under Chapter 16,  
5-33 Finance Code, as added by this Act, and the expiration of  
5-34 self-directed and semi-independent status may not act to cancel,  
5-35 suspend, or prevent:

- 5-36 (1) any debt owed to or by the financial regulatory
- 5-37 agency;
- 5-38 (2) any fine, tax, penalty, or obligation of any
- 5-39 party;
- 5-40 (3) any contract or other obligation of any party; or
- 5-41 (4) any action taken by the financial regulatory
- 5-42 agency in the administration or enforcement of the agency's duties.

5-43 SECTION 12. Each financial regulatory agency, as defined by  
5-44 Section 16.001, Finance Code, as added by this Act, shall continue  
5-45 to have and exercise the powers and duties allocated to the agency  
5-46 in the agency's enabling legislation, except as specifically  
5-47 amended by this Act.

5-48 SECTION 13. Title to all supplies, materials, records,  
5-49 equipment, books, papers, and facilities used by each financial  
5-50 regulatory agency, as defined by Section 16.001, Finance Code, as  
5-51 added by this Act, is transferred to each respective financial  
5-52 regulatory agency in fee simple. Nothing in this Act shall have an  
5-53 effect on property owned by a financial regulatory agency on or  
5-54 before the effective date of this Act.

5-55 SECTION 14. If a conflict exists between this Act and  
5-56 another Act of the 81st Legislature, Regular Session, 2009, that  
5-57 relates to the self-directed and semi-independent status of a state  
5-58 financial regulatory agency, this Act controls without regard to  
5-59 the relative dates of the enactment.

5-60 SECTION 15. This Act takes effect September 1, 2009.

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