

Suspending limitations on conference committee
jurisdiction, H.B. No. 2774

By: Wentworth

S.R. No. 1075

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 81st Legislature, Regular Session, 2009, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill No. 2774 (self-directed and semi-independent status of state financial regulatory agencies and the licensing and regulation of certain persons involved in residential mortgage lending; making an appropriation; providing a penalty) to consider and take action on the following matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed SECTION 2 of the bill, in added Subsection (b-1), Section 156.102, Finance Code, so that it reads as follows:

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

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

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text not included in either the house or senate version of the bill by adding the following SECTION to the bill:

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

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

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Financial regulatory agency" means:

(A) the Texas Department of Banking;

(B) the Department of Savings and Mortgage
Lending;

(C) the Office of Consumer Credit
Commissioner; and

(D) the Credit Union Department.

(2) "Policy-making body" means:

(A) the Finance Commission of Texas for:

(i) the Texas Department of Banking;

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

(iii) the Office of Consumer Credit
Commissioner; and

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

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

policy-making body of the financial regulatory agency.

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

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

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

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

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

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

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

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

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

- (1) an audit as required by Section 16.004;
- (2) a financial report of the previous fiscal year, including reports on financial condition and results of operations;

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

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

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

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

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

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

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

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

Sec. 16.006. ABILITY TO CONTRACT. (a) To carry out and

promote the objectives of this chapter, a financial regulatory agency may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the agency's affairs and for the attainment of the agency's purposes, except as limited by Subsection (b).

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

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

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

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

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

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

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or

convenient to the exercise of the powers, rights, privileges, or functions of the financial regulatory agency; and

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

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

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

(b) If a financial regulatory agency no longer has status under this chapter as a self-directed semi-independent financial regulatory agency for any reason, ownership of any property or

other asset acquired by the agency during the time the agency was a self-directed semi-independent financial regulatory agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

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

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

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

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

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

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

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

(b) A financial regulatory agency must:

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

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

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

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

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

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

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

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

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

(c) The finance commission shall have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. The

Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

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

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

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

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

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

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

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

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

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

(2) military facilities;

(3) facilities owned or operated by the Texas Department of Criminal Justice;

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

(5) facilities owned or operated by the Texas Department of Transportation;

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

(7) a facility determined by the commission to be completely residential;

(8) a regional or field office of a state agency;
[~~or~~]

(9) a facility located within or on state park

property;

(10) the property known as the Finance Commission Building described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas; or

(11) the property known as the Credit Union Department Building described by deed recorded in Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

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

(j)(1) To provide a reasonable period for each financial regulatory agency, as defined by Section 16.001, Finance Code, as added by this section, to establish itself as a self-directed and semi-independent agency, the following amounts are appropriated from the general revenue fund to each of those financial regulatory agencies:

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

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

(2) Subject to Section 16.003, Finance Code, as added by this section, the appropriations made by Subdivision (1) of this subsection may be spent by the financial regulatory

agency to which they are made as the financial regulatory agency directs. The financial regulatory agency shall repay to the general revenue fund the appropriation made to the agency for the state fiscal year ending August 31, 2010, not later than that date and as funds become available. The financial regulatory agency shall repay to the general revenue fund the appropriation made to the agency for the state fiscal year ending August 31, 2011, not later than that date and as funds become available.

(k) The transfer of a financial regulatory agency, as defined by Section 16.001, Finance Code, as added by this section, to self-directed and semi-independent status under Chapter 16, Finance Code, as added by this section, and the expiration of self-directed and semi-independent status may not act to cancel, suspend, or prevent:

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

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

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

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

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

specifically amended by this section.

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

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

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

(3) Senate Rules 12.03(1) and (3) are suspended to permit the committee to change the text of, and add text to, proposed SECTION 30 of the bill, so that it reads as follows:

SECTION 30. The provisions of this Act or the applications of those provisions are severable as provided by Section 311.032(c), Government Code. If the Secretary of Housing and Urban Development determines that any provision of Sections 1-27 and 29 of this Act fails to meet the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289), that provision of this Act shall be

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held invalid; however, the remainder of this Act or the application of the provision to other persons or circumstances is not affected.

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

President of the Senate

I hereby certify that the
above Resolution was adopted by
the Senate on June 1, 2009.

Secretary of the Senate