

BILL ANALYSIS

C.S.H.B. 2092
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Board of Nursing and Texas State Board of Pharmacy regulate individuals and entities and assess licensing and registration fees. Such fees allow the agencies to protect the public by licensing qualified nurses and pharmacists in a timely manner. However, some of the funds generated by the two boards are deposited in the general revenue fund, rather than being used to fund the boards' respective operations. C.S.H.B. 2092 seeks to grant the Texas Board of Nursing and the Texas State Board of Pharmacy self-directed and semi-independent status, allowing each agency to establish a budget, use generated fees, and add or reduce staff as needed in a shorter time than is currently possible.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2092 amends the Occupations Code to grant the Texas Board of Nursing, notwithstanding any other provision of law, self-directed and semi-independent status. The bill requires the executive director of the board to submit to the board a budget annually using generally accepted accounting principles. The bill requires the budget, notwithstanding any other provision of law, including the General Appropriations Act, to be adopted and approved only by the board. The bill requires the board to be responsible for all direct and indirect costs of the board's existence and operation and makes conforming changes. The bill prohibits the board from directly or indirectly causing the general revenue fund to incur any cost and requires the board to annually remit \$5.75 million to the general revenue fund.

C.S.H.B. 2092 authorizes the board to 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 board and funding the adopted and approved budget and requires all fees and funds collected by the board and any funds appropriated to the board to be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The bill requires the comptroller of public accounts to contract with the board for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers. The bill requires the executive director to submit periodically to the board, as directed by the board, a report of the board's receipts and expenditures. The bill establishes that the fiscal year for the board begins on September 1 and ends on August 31.

C.S.H.B. 2092 provides that the bill's provisions relating to the self-directed and semi-independent status of the board do not affect the duty of the state auditor to audit the board. The bill requires the state auditor to enter into a contract and schedule with the board to conduct audits, including financial reports and performance audits. The bill requires the board to remit a nonrefundable retainer to the state auditor in an amount not less than \$25,000 not later than August 31 of each fiscal year, and to reimburse the state auditor for all costs, in excess of the

nonrefundable retainer amounts paid each fiscal year, incurred in performing the audits and to provide to the governor a copy of any audit performed.

C.S.H.B. 2092 requires the board to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the board. The bill requires the board to submit to the legislature and the governor a report describing all of the board's activities in the previous biennium before the beginning of each regular session of the legislature and sets out the required content of the report. The bill requires the board, in addition to those reporting requirements, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board, not later than November 1 of each year, a report that contains the salary for all board personnel and the total amount of per diem expenses and travel expenses paid for all board employees and for each member of the board, the board's operating plan and annual budget, and a detailed report of all revenue received and all expenses incurred by the board in the previous 12 months.

C.S.H.B. 2092 authorizes the board to enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the board's affairs and for the attainment of the board's purposes. The bill prohibits any indebtedness, liability, or obligation of the board from creating a debt or other liability of the state or another entity other than the board or creating any personal liability on the part of the members of the board or the board's employees.

C.S.H.B. 2092 authorizes the board to 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 board; sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the board determines is not necessary or convenient to the exercise of the board's powers, rights, privileges, or functions; 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 board; and borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the board, for a period not to exceed five years if necessary or convenient to the exercise of the board's powers, rights, privileges, or functions.

C.S.H.B. 2092 requires the board to remit a nonrefundable retainer to the State Office of Administrative Hearings, not later than August 31 of each fiscal year, in an amount not less than \$50,000 for hearings conducted. The bill requires the nonrefundable retainer to be applied to the costs associated with conducting the hearings, and authorizes the State Office of Administrative Hearings to assess and collect from the board reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing if additional costs are incurred.

C.S.H.B. 2092 requires the office of the attorney general to represent the board in any litigation. The bill requires the board to remit a nonrefundable retainer to the office of the attorney general, not later than August 31 of each fiscal year, in an amount not less than \$25,000 to be applied to any services provided to the board and authorizes the attorney general to assess and collect from the board reasonable attorney's fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with additional litigation services required.

C.S.H.B. 2092 requires the board, if the board no longer has status as a self-directed semi-independent agency for any reason, to be liable for any expenses or debts incurred by the board during the time the board is a self-directed semi-independent agency and includes any lease entered into by the board in that liability. The bill establishes that the state is not liable for any expense or debt covered by that liability requirement and prohibits money from the general revenue fund from being used to repay the expense or debt. The bill requires ownership of any property or other asset acquired by the board during the time the board is a self-directed semi-

independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, to be transferred to the state if the board no longer has status as a self-directed semi-independent agency for any reason.

C.S.H.B. 2092 provides that the board is a governmental body for purposes of open meetings requirements and public information laws and a state agency for purposes of the Administrative Procedure Act and provisions of law relating to state licenses and permits. The bill provides that employees of the board are members of the Employees Retirement System of Texas and that the board's transition to semi-independent status has no effect on the employees' membership or any benefits under that system. The bill prohibits the board from accepting a gift, grant, or donation from a party to an enforcement action or to pursue a specific investigation or enforcement action and requires the board to report each gift, grant, or donation that the board receives as a separate item in the board's required report of activity to the legislature and the governor and to include with the report a statement indicating the purpose for which each gift, grant, or donation was donated and used.

C.S.H.B. 2092 grants the Texas State Board of Pharmacy, notwithstanding any other provision of law, self-directed and semi-independent status and confers on that board the same powers, rights, privileges, duties, and responsibilities as to the Texas Board of Nursing with respect to the board's budget, reporting requirements, ability to contract, property, post-participation liability, open government, employee membership in the employees retirement system, and gifts.

C.S.H.B. 2092 requires the Texas State Board of Pharmacy to remit, not later than August 31, 2012, \$1.15 million to the general revenue fund and, not later than August 31 of each subsequent fiscal year, \$800,000 to the general revenue fund. The bill requires the board to remit a nonrefundable retainer to the state auditor, not later than August 31 of each fiscal year, in an amount not less than \$10,000 and to reimburse the state auditor for all costs, in excess of the nonrefundable retainer amounts paid each fiscal year, incurred in performing the audits and to provide to the governor a copy of any audit performed. The bill requires the board to remit a nonrefundable retainer to the State Office of Administrative Hearings, not later than August 31 of each fiscal year, in an amount not less than \$55,000 for hearings conducted. The bill requires the nonrefundable retainer to be applied to the costs associated with conducting the hearings, and authorizes the State Office of Administrative Hearings to assess and collect from the board reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing if additional costs are incurred.

C.S.H.B. 2092 requires the office of the attorney general to represent the board in any litigation. The bill requires the board to remit a nonrefundable retainer to the office of the attorney general, not later than August 31 of each fiscal year, in an amount not less than \$40,000 to be applied to any services provided to the board and authorizes the attorney general to assess and collect from the board reasonable attorney's fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with additional litigation services required. The bill requires the board to remit a nonrefundable prorated assessment to the Health Professions Council, not later than August 31 of each fiscal year, in an amount not less than \$81,848 for fiscal year 2012, \$79,406 for fiscal year 2013, and \$79,000 for each subsequent fiscal year, to be applied to the board's prorated assessment for the operation and maintenance of the shared regulatory database system.

C.S.H.B. 2092 removes language prohibiting the Texas Board of Nursing from setting a fee that existed on September 1, 1993, in an amount less than the amount of the fee on that date from provisions of law requiring the board to establish fees for the purpose of administering the Nursing Practice Act.

C.S.H.B. 2092 repeals provisions of law requiring the Texas Board of Nursing and the Texas State Board of Pharmacy to file annual reports with the governor and the presiding officer of each house of the legislature accounting for funds received and disbursed by each board during the preceding year and requiring the Texas State Board of Pharmacy to deposit certain revenue

to the credit of the general revenue fund.

C.S.H.B. 2092 appropriates the following amounts from the general revenue fund to the Texas Board of Nursing and the Texas State Board of Pharmacy to provide a reasonable period for each board to be established as self-directed and semi-independent: for the state fiscal year ending August 31, 2012, an amount equal to 50 percent of the amount of general revenue appropriated to the board for the state fiscal year ending August 31, 2011; and for the state fiscal year ending August 31, 2013, an amount equal to 50 percent of the amount of general revenue appropriated to the board for the state fiscal year ending August 31, 2011. The bill authorizes the appropriations to be spent by the board to which the appropriation is made as the board directs and requires each board to repay to the general revenue fund the appropriation made to the board for the state fiscal years ending August 31, 2012, and August 31, 2013, not later than the date on which each fiscal year ends and as funds become available. The bill specifies that the repayment of an appropriation is required in addition to the funds required to be remitted to the general revenue fund by each board under the bill's provisions.

C.S.H.B. 2092 prohibits the transfer of each board to self-directed and semi-independent status and the expiration of self-directed and semi-independent status from acting to cancel, suspend, or prevent any debt owed to or by the board; any fine, tax, penalty, or obligation of any party; any contract or other obligation of any party; or any action taken by the board in the administration or enforcement of the board's duties. The bill requires each board to continue to have and exercise the powers and duties allocated under law, except as specifically provided by the bill. The bill transfers title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by each respective board, and establishes that the bill does not affect any property owned by either board on or before the effective date of the bill.

C.S.H.B. 2092 requires the Texas Board of Nursing and the Texas State Board of Pharmacy to pay rent to the state for the use and occupancy of state-owned office space and requires reasonable rent to be determined by the Texas Facilities Commission. The bill prohibits aggregate rental payments from being less than \$278,000 each fiscal year for the Texas Board of Nursing and \$162,000 each fiscal year for the Texas State Board of Pharmacy. The bill provides that if a conflict exists between the bill and another act of the 82nd Legislature, Regular Session, 2011, that relates to the self-directed and semi-independent status of each board, the bill's provisions prevail without regard to the relative dates of enactment.

C.S.H.B. 2092 repeals the following provisions of the Occupations Code:

- Section 301.165
- Section 554.007(a)
- Section 554.013

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2092 differs from the original by requiring the Texas Board of Nursing to annually remit \$5.75 million to the general revenue fund, rather than \$2 million, as in the original. The substitute differs from the original by requiring the board to remit a nonrefundable retainer to the state auditor, not later than August 31 of each fiscal year, in an amount not less than \$25,000 and to reimburse the state auditor for all costs, in excess of the nonrefundable retainer amounts paid each fiscal year, incurred in performing the audits, whereas the original requires the board to reimburse the state auditor for all costs incurred in performing the audits.

C.S.H.B. 2092 contains provisions not included in the original requiring the Texas Board of

Nursing to remit a nonrefundable retainer to the State Office of Administrative Hearings, not later than August 31 of each fiscal year, in an amount not less than \$50,000 for hearings conducted to be applied to the costs associated with conducting the hearings and authorizing the State Office of Administrative Hearings to assess and collect from the board reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing if additional costs are incurred.

C.S.H.B. 2092 differs from the original by requiring the Texas Board of Nursing to remit a nonrefundable retainer to the office of the attorney general, not later than August 31 of each fiscal year, in an amount not less than \$25,000 to be applied to any litigation services provided to the board and authorizing the attorney general to assess and collect from the board reasonable attorney's fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with additional litigation services required, whereas the original authorizes the attorney general to assess and collect from the board reasonable attorney's fees associated with any litigation.

C.S.H.B. 2092 differs from the original by requiring the Texas State Board of Pharmacy, not later than August 31, 2012, to remit \$1.15 million to the general revenue fund and, not later than August 31 of each subsequent fiscal year, to remit \$800,000 to the general revenue fund, whereas the original requires the board to annually remit \$600,000 to the general revenue fund. The substitute differs from the original by requiring the board to remit a nonrefundable retainer to the state auditor, not later than August 31 of each fiscal year, in an amount not less than \$10,000 and to reimburse the state auditor for all costs, in excess of the nonrefundable retainer amounts paid each fiscal year, incurred in performing the audits, whereas the original requires the board to reimburse the state auditor for all cost incurred in performing the audits.

C.S.H.B. 2092 contains provisions not included in the original requiring the Texas State Board of Pharmacy to remit a nonrefundable retainer to the State Office of Administrative Hearings, not later than August 31 of each fiscal year, in an amount not less than \$55,000 for hearings conducted, to be applied to the costs associated with conducting the hearings, and authorizing the State Office of Administrative Hearings to assess and collect from the board reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing if additional costs are incurred.

C.S.H.B. 2092 differs from the original by requiring the Texas State Board of Pharmacy to remit a nonrefundable retainer to the office of the attorney general, not later than August 31 of each fiscal year, in an amount not less than \$40,000 to be applied to any litigation services provided to the board and authorizing the attorney general to assess and collect from the board reasonable attorney's fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with additional litigation services required, whereas the original authorizes the attorney general to assess and collect from the board reasonable attorney's fees associated with any litigation.

C.S.H.B. 2092 contains provisions not included in the original requiring the Texas State Board of Pharmacy to remit a nonrefundable prorated assessment to the Health Professions Council, not later than August 31 of each fiscal year, in an amount not less than \$81,848 for fiscal year 2012, \$79,406 for fiscal year 2013, and \$79,000 for each subsequent fiscal year, to be applied to the board's prorated assessment for the operation and maintenance of the shared regulatory database system.

C.S.H.B. 2092 differs from the original by transferring title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by the Texas Board of Nursing and the Texas State Board of Pharmacy to each respective board, whereas the original transfers title to all supplies, materials, records, equipment, books, papers, and facilities used by the Texas Board of Nursing and the Texas State Board of Pharmacy to each respective board in fee simple.

C.S.H.B. 2092 contains provisions not included in the original requiring the Texas Board of Nursing and the Texas State Board of Pharmacy to pay rent to the state for the use and

occupancy of state-owned office space, requiring reasonable rent to be determined by the Texas Facilities Commission, and prohibiting aggregate rental payments from being less than \$278,000 each fiscal year for the Texas Board of Nursing and \$162,000 each fiscal year for the Texas State Board of Pharmacy.

C.S.H.B. 2092 differs from the original in nonsubstantive ways by making clarifying changes.