

By: King of Taylor, Hopson

H.B. No. 2092

Substitute the following for H.B. No. 2092:

By: Naishtat

C.S.H.B. No. 2092

A BILL TO BE ENTITLED

AN ACT

relating to self-directed and semi-independent status of certain health care regulatory agencies; making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 301, Occupations Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF BOARD

Sec. 301.071. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.

Notwithstanding any other provision of law, the board is self-directed and semi-independent as specified by this subchapter.

Sec. 301.072. BUDGET, REVENUES, AND EXPENSES. (a) The executive director shall submit to the board 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 board.

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

(c) Subject to any limitations in this chapter, the board 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 board and funding the

1 budget adopted and approved under Subsection (a).

2 (d) Except as provided by Subsection (e), all fees and funds
3 collected by the board and any funds appropriated to the board shall
4 be deposited in interest-bearing deposit accounts in the Texas
5 Treasury Safekeeping Trust Company. The comptroller shall contract
6 with the board for the maintenance of the deposit accounts under
7 terms comparable to a contract between a commercial banking
8 institution and the institution's customers.

9 (e) The board shall annually remit \$5.75 million to the
10 general revenue fund.

11 (f) Periodically, the executive director shall submit to
12 the board, as directed by the board, a report of the receipts and
13 expenditures of the board.

14 (g) The fiscal year for the board begins on September 1 and
15 ends on August 31.

16 Sec. 301.073. AUDITS. (a) This subchapter does not affect
17 the duty of the state auditor to audit the board. The state auditor
18 shall enter into a contract and schedule with the board to conduct
19 audits, including financial reports and performance audits.

20 (b) Not later than August 31 of each fiscal year, the board
21 shall remit a nonrefundable retainer to the state auditor in an
22 amount not less than \$25,000. The board shall reimburse the state
23 auditor for all costs, in excess of the nonrefundable retainer
24 amounts paid each fiscal year, incurred in performing the audits
25 and shall provide to the governor a copy of any audit performed.

26 Sec. 301.074. RECORDS; REPORTING REQUIREMENTS. (a) The
27 board shall keep financial and statistical information as necessary

1 to disclose completely and accurately the financial condition and
2 results of operations of the board.

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

7 (1) an audit as required by Section 301.073;

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

10 (3) a description of all changes in fees imposed by the
11 board;

12 (4) a report on the number of examination candidates
13 and license holders and the programs of study and enforcement
14 activities of the board; and

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

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

21 (1) the salary for all board personnel and the total
22 amount of per diem expenses and travel expenses paid for all board
23 employees;

24 (2) the total amount of per diem expenses and travel
25 expenses paid for each member of the board;

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

27 (4) a detailed report of all revenue received and all

1 expenses incurred by the board in the previous 12 months.

2 Sec. 301.075. ABILITY TO CONTRACT. (a) To carry out and
3 promote the objectives of this chapter, the board may enter into
4 contracts and do all other acts incidental to those contracts that
5 are necessary for the administration of the board's affairs and for
6 the attainment of the board's purposes, except as limited by
7 Subsection (b).

8 (b) Any indebtedness, liability, or obligation of the board
9 incurred under this section may not:

10 (1) create a debt or other liability of this state or
11 another entity other than the board; or

12 (2) create any personal liability on the part of the
13 members of the board or the board's employees.

14 Sec. 301.076. PROPERTY. The board may:

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

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

24 (3) construct, extend, improve, maintain, and
25 reconstruct, or cause to construct, extend, improve, maintain, and
26 reconstruct, and use and operate all facilities necessary or
27 convenient to the exercise of the powers, rights, privileges, or

1 functions of the board; and

2 (4) borrow money, as may be authorized from time to
3 time by an affirmative vote of a two-thirds majority of the board,
4 for a period not to exceed five years if necessary or convenient to
5 the exercise of the board's powers, rights, privileges, or
6 functions.

7 Sec. 301.077. ADMINISTRATIVE HEARINGS. (a) Not later than
8 August 31 of each fiscal year, the board shall remit a nonrefundable
9 retainer to the State Office of Administrative Hearings in an
10 amount not less than \$50,000 for hearings conducted under this
11 chapter.

12 (b) The nonrefundable retainer shall be applied to the costs
13 associated with conducting the hearings. If additional costs are
14 incurred, the State Office of Administrative Hearings may assess
15 and collect from the board reasonable fees, in excess of the
16 nonrefundable retainer amount paid each fiscal year, associated
17 with conducting a hearing under this chapter.

18 Sec. 301.078. SUITS. (a) The office of the attorney
19 general shall represent the board in any litigation.

20 (b) Not later than August 31 of each fiscal year, the board
21 shall remit a nonrefundable retainer to the office of the attorney
22 general in an amount not less than \$25,000. The nonrefundable
23 retainer shall be applied to any services provided to the board. If
24 additional litigation services are required, the attorney general
25 may assess and collect from the board reasonable attorney's fees,
26 in excess of the nonrefundable retainer amount paid each fiscal
27 year, associated with any litigation under this section.

1 Sec. 301.079. POST-PARTICIPATION LIABILITY. (a) If the
2 board no longer has status under this subchapter as a self-directed
3 semi-independent agency for any reason, the board shall be liable
4 for any expenses or debts incurred by the board during the time the
5 board was a self-directed semi-independent agency. The board's
6 liability under this section includes liability for any lease
7 entered into by the board. This state is not liable for any expense
8 or debt covered by this subsection, and money from the general
9 revenue fund may not be used to repay the expense or debt.

10 (b) If the board no longer has status under this subchapter
11 as a self-directed semi-independent agency for any reason,
12 ownership of any property or other asset acquired by the board
13 during the time the board was a self-directed semi-independent
14 agency, including unexpended fees in a deposit account in the Texas
15 Treasury Safekeeping Trust Company, shall be transferred to this
16 state.

17 Sec. 301.080. DUE PROCESS; OPEN GOVERNMENT. The board is:

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

20 (2) a state agency for purposes of Chapters 2001 and
21 2005, Government Code.

22 Sec. 301.081. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.

23 Employees of the board are members of the Employees Retirement
24 System of Texas under Chapter 812, Government Code, and the board's
25 transition to semi-independent status as provided by this
26 subchapter has no effect on the employees' membership or any
27 benefits under that system.

1 Sec. 301.082. GIFTS. (a) Notwithstanding any other law,
2 the board may not accept a gift, grant, or donation:

- 3 (1) from a party to an enforcement action; or
4 (2) to pursue a specific investigation or enforcement
5 action.

6 (b) The board must:

7 (1) report each gift, grant, or donation that the
8 board receives as a separate item in the board's report required
9 under Section 301.074(b); and

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

13 SECTION 2. Section 301.056, Occupations Code, is amended to
14 read as follows:

15 Sec. 301.056. PER DIEM; REIMBURSEMENT. (a) Each board
16 member is entitled to receive a per diem [~~as set by the General~~
17 ~~Appropriations Act~~] for each day the member engages in the business
18 of the board.

19 (b) A board member is entitled to reimbursement for travel
20 expenses incurred while conducting board business, including
21 expenses for transportation, meals, and lodging[~~, as provided by~~
22 ~~the General Appropriations Act~~].

23 SECTION 3. Section 301.059(c), Occupations Code, is amended
24 to read as follows:

25 (c) A person appointed to the board is entitled to
26 reimbursement[~~, as provided by the General Appropriations Act,~~] for
27 the travel expenses incurred in attending the training program

1 regardless of whether the attendance at the program occurs before
2 or after the person qualifies for office.

3 SECTION 4. Section 301.155(a), Occupations Code, is amended
4 to read as follows:

5 (a) The board by rule shall establish fees in amounts
6 reasonable and necessary to cover the costs of administering this
7 chapter. [~~The board may not set a fee that existed on September 1,
8 1993, in an amount less than the amount of that fee on that date.~~]

9 SECTION 5. Chapter 552, Occupations Code, is amended by
10 designating Sections 552.001 through 552.012 as Subchapter A and
11 adding a subchapter heading to read as follows:

12 SUBCHAPTER A. BOARD

13 SECTION 6. Chapter 552, Occupations Code, is amended by
14 adding Subchapter B to read as follows:

15 SUBCHAPTER B. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF BOARD

16 Sec. 552.051. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.
17 Notwithstanding any other provision of law, the board is
18 self-directed and semi-independent as specified by this
19 subchapter.

20 Sec. 552.052. BUDGET, REVENUES, AND EXPENSES. (a) The
21 executive director shall submit to the board a budget annually
22 using generally accepted accounting principles. Notwithstanding
23 any other provision of law, including the General Appropriations
24 Act, the budget shall be adopted and approved only by the board.

25 (b) The board shall be responsible for all direct and
26 indirect costs of the board's existence and operation. The board
27 may not directly or indirectly cause the general revenue fund to

1 incur any cost.

2 (c) Subject to any limitations in this subtitle, the board
3 may set the amounts of fees, penalties, charges, and revenues
4 required or permitted by statute or rule as necessary for the
5 purpose of carrying out the functions of the board and funding the
6 budget adopted and approved under Subsection (a).

7 (d) Except as provided by Subsection (e), all fees and funds
8 collected by the board and any funds appropriated to the board shall
9 be deposited in interest-bearing deposit accounts in the Texas
10 Treasury Safekeeping Trust Company. The comptroller shall contract
11 with the board for the maintenance of the deposit accounts under
12 terms comparable to a contract between a commercial banking
13 institution and the institution's customers.

14 (e) Not later than August 31, 2012, the board shall remit
15 \$1.15 million to the general revenue fund, and not later than August
16 31 of each subsequent fiscal year, the board shall remit \$800,000 to
17 the general revenue fund.

18 (f) Periodically, the executive director shall submit to
19 the board, as directed by the board, a report of the receipts and
20 expenditures of the board.

21 (g) The fiscal year for the board begins on September 1 and
22 ends on August 31.

23 Sec. 552.053. AUDITS. (a) This subchapter does not affect
24 the duty of the state auditor to audit the board. The state auditor
25 shall enter into a contract and schedule with the board to conduct
26 audits, including financial reports and performance audits.

27 (b) Not later than August 31 of each fiscal year, the board

1 shall remit a nonrefundable retainer to the state auditor in an
2 amount not less than \$10,000. The board shall reimburse the state
3 auditor for all costs, in excess of the nonrefundable retainer
4 amounts paid each fiscal year, incurred in performing the audits
5 and shall provide to the governor a copy of any audit performed.

6 Sec. 552.054. RECORDS; REPORTING REQUIREMENTS. (a) The
7 board shall keep financial and statistical information as necessary
8 to disclose completely and accurately the financial condition and
9 results of operations of the board.

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

14 (1) an audit as required by Section 552.053;

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

17 (3) a description of all changes in fees imposed by the
18 board;

19 (4) a report on the number of examination candidates,
20 license holders, and registrants and the enforcement activities of
21 the board; and

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

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

1 (1) the salary for all board personnel and the total
2 amount of per diem expenses and travel expenses paid for all board
3 employees;

4 (2) the total amount of per diem expenses and travel
5 expenses paid for each member of the board;

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

7 (4) a detailed report of all revenue received and all
8 expenses incurred by the board in the previous 12 months.

9 Sec. 552.055. ABILITY TO CONTRACT. (a) To carry out and
10 promote the objectives of this chapter, the board may enter into
11 contracts and do all other acts incidental to those contracts that
12 are necessary for the administration of the board's affairs and for
13 the attainment of the board's purposes, except as limited by
14 Subsection (b).

15 (b) Any indebtedness, liability, or obligation of the board
16 incurred under this section may not:

17 (1) create a debt or other liability of this state or
18 another entity other than the board; or

19 (2) create any personal liability on the part of the
20 members of the board or the board's employees.

21 Sec. 552.056. PROPERTY. The board may:

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

27 (2) sell or otherwise dispose of any real, personal,

1 or mixed property, or any interest in property, that the board
2 determines is not necessary or convenient to the exercise of the
3 board's powers, rights, privileges, or functions;

4 (3) construct, extend, improve, maintain, and
5 reconstruct, or cause to construct, extend, improve, maintain, and
6 reconstruct, and use and operate all facilities necessary or
7 convenient to the exercise of the powers, rights, privileges, or
8 functions of the board; and

9 (4) borrow money, as may be authorized from time to
10 time by an affirmative vote of a two-thirds majority of the board,
11 for a period not to exceed five years if necessary or convenient to
12 the exercise of the board's powers, rights, privileges, or
13 functions.

14 Sec. 552.057. ADMINISTRATIVE HEARINGS. (a) Not later than
15 August 31 of each fiscal year, the board shall remit a nonrefundable
16 retainer to the State Office of Administrative Hearings in an
17 amount not less than \$55,000 for hearings conducted under Chapter
18 565.

19 (b) The nonrefundable retainer shall be applied to the costs
20 associated with conducting the hearings. If additional costs are
21 incurred, the State Office of Administrative Hearings may assess
22 and collect from the board reasonable fees, in excess of the
23 nonrefundable retainer amount paid each fiscal year, associated
24 with conducting a hearing under Chapter 565.

25 Sec. 552.058. SUITS. (a) The office of the attorney
26 general shall represent the board in any litigation.

27 (b) Not later than August 31 of each fiscal year, the board

1 shall remit a nonrefundable retainer to the office of the attorney
2 general in an amount not less than \$40,000. The nonrefundable
3 retainer shall be applied to any services provided to the board. If
4 additional litigation services are required, the attorney general
5 may assess and collect from the board reasonable attorney's fees,
6 in excess of the nonrefundable retainer amount paid each fiscal
7 year, associated with any litigation under this section.

8 Sec. 552.059. POST-PARTICIPATION LIABILITY. (a) If the
9 board no longer has status under this subchapter as a self-directed
10 semi-independent agency for any reason, the board shall be liable
11 for any expenses or debts incurred by the board during the time the
12 board was a self-directed semi-independent agency. The board's
13 liability under this section includes liability for any lease
14 entered into by the board. This state is not liable for any expense
15 or debt covered by this subsection, and money from the general
16 revenue fund may not be used to repay the expense or debt.

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

24 Sec. 552.060. DUE PROCESS; OPEN GOVERNMENT. The board is:

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

27 (2) a state agency for purposes of Chapters 2001 and

1 2005, Government Code.

2 Sec. 552.061. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.
3 Employees of the board are members of the Employees Retirement
4 System of Texas under Chapter 812, Government Code, and the board's
5 transition to semi-independent status as provided by this
6 subchapter has no effect on the employees' membership or any
7 benefits under that system.

8 Sec. 552.062. GIFTS. (a) Notwithstanding any other law,
9 the board may not accept a gift, grant, or donation:

- 10 (1) from a party to an enforcement action; or
11 (2) to pursue a specific investigation or enforcement
12 action.

13 (b) The board must:

14 (1) report each gift, grant, or donation that the
15 board receives as a separate item in the board's report required
16 under Section 552.054(b); and

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

20 Sec. 552.063. HEALTH PROFESSIONS COUNCIL. Not later than
21 August 31 of each fiscal year, the board shall remit a nonrefundable
22 prorated assessment to the Health Professions Council in an amount
23 not less than \$81,848 for fiscal year 2012, \$79,406 for fiscal year
24 2013, and \$79,000 for each subsequent fiscal year. The amount
25 remitted shall be applied to the board's prorated assessment for
26 the operation and maintenance of the shared regulatory database
27 system.

1 SECTION 7. Section 552.006(c), Occupations Code, is amended
2 to read as follows:

3 (c) A person appointed to the board is entitled to
4 reimbursement [~~as provided by the General Appropriations Act,~~] for
5 the travel expenses incurred in attending the training program
6 regardless of whether the attendance at the program occurs before
7 or after the person qualifies for office.

8 SECTION 8. Section 552.009, Occupations Code, is amended to
9 read as follows:

10 Sec. 552.009. PER DIEM; REIMBURSEMENT. (a) Each member of
11 the board is entitled to a per diem [~~set by legislative~~
12 ~~appropriation~~] for each day the member engages in board business.

13 (b) A member is entitled to reimbursement for travel
14 expenses [~~as prescribed by the General Appropriations Act~~].

15 SECTION 9. Section 564.051(c), Occupations Code, is amended
16 to read as follows:

17 (c) Funds and surcharges collected under this section
18 [~~shall be deposited in the general revenue fund and~~] may only be
19 used by the board to administer the program authorized by this
20 section, including providing for initial evaluation and referral of
21 an impaired pharmacist or pharmacy student by a qualified health
22 professional and paying the administrative costs incurred by the
23 board in connection with that funding. The money may not be used
24 for costs incurred for treatment or rehabilitation after initial
25 evaluation and referral.

26 SECTION 10. Sections 301.165, 554.007(a), and 554.013,
27 Occupations Code, are repealed.

1 SECTION 11. (a) To provide a reasonable period for the
2 Texas Board of Nursing and the Texas State Board of Pharmacy to
3 establish the boards as self-directed and semi-independent under
4 Subchapter B-1, Chapter 301, and Subchapter B, Chapter 552,
5 Occupations Code, as added by this Act, the following amounts are
6 appropriated from the general revenue fund to each board:

7 (1) for the state fiscal year ending August 31, 2012,
8 an amount equal to 50 percent of the amount of general revenue
9 appropriated to the board for the state fiscal year ending August
10 31, 2011; and

11 (2) for the state fiscal year ending August 31, 2013,
12 an amount equal to 50 percent of the amount of general revenue
13 appropriated to the board for the state fiscal year ending August
14 31, 2011.

15 (b) Subject to Section 301.072 or 552.052, Occupations
16 Code, as added by this Act, the appropriations made by Subsection
17 (a) of this section may be spent by the board to which the
18 appropriation is made as the board directs. Each board shall repay
19 to the general revenue fund the appropriation made to the board for
20 the state fiscal year ending August 31, 2012, not later than that
21 date and as funds become available. Each board shall repay to the
22 general revenue fund the appropriation made to the board for the
23 state fiscal year ending August 31, 2013, not later than that date
24 and as funds become available. The repayment of an appropriation
25 under this subsection is required in addition to the funds required
26 to be remitted to the general revenue fund under Section 301.072(e)
27 or 552.052(e), Occupations Code, as added by this Act.

1 (c) The transfer of the Texas Board of Nursing or the Texas
2 State Board of Pharmacy to self-directed and semi-independent
3 status under Subchapter B-1, Chapter 301, or Subchapter B, Chapter
4 552, Occupations Code, as added by this Act, and the expiration of
5 self-directed and semi-independent status of a board may not act to
6 cancel, suspend, or prevent:

7 (1) any debt owed to or by the board;

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

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

11 (4) any action taken by the board in the
12 administration or enforcement of the board's duties.

13 (d) The Texas Board of Nursing and the Texas State Board of
14 Pharmacy shall continue to have and exercise the powers and duties
15 allocated to each board under law, except as specifically provided
16 by this Act.

17 (e) Title to or ownership of all supplies, materials,
18 records, equipment, books, papers, and furniture used by the Texas
19 Board of Nursing or the Texas State Board of Pharmacy is transferred
20 to each respective board. This Act does not affect any property
21 owned by either board on or before the effective date of this Act.

22 (f) The Texas Board of Nursing shall pay rent to the state
23 for the use and occupancy of state-owned office space. Reasonable
24 rent shall be determined by the Texas Facilities Commission.
25 Aggregate rental payments may not be less than \$278,000 each fiscal
26 year.

27 (g) The Texas State Board of Pharmacy shall pay rent to the

1 state for the use and occupancy of state-owned office space.
2 Reasonable rent shall be determined by the Texas Facilities
3 Commission. Aggregate rental payments may not be less than \$162,000
4 each fiscal year.

5 (h) If a conflict exists between this Act and another Act of
6 the 82nd Legislature, Regular Session, 2011, that relates to the
7 self-directed and semi-independent status of the Texas Board of
8 Nursing or the Texas State Board of Pharmacy, this Act controls
9 without regard to the relative dates of enactment.

10 SECTION 12. This Act takes effect September 1, 2011.