

By: King of Taylor

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 \$2 million to the general  
10 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. This chapter does not affect the duty  
17 of the state auditor to audit the board. The state auditor shall  
18 enter into a contract and schedule with the board to conduct audits,  
19 including financial reports and performance audits. The board  
20 shall reimburse the state auditor for all costs incurred in  
21 performing the audits and shall provide to the governor a copy of  
22 any audit performed.

23 Sec. 301.074. RECORDS; REPORTING REQUIREMENTS. (a) The  
24 board shall keep financial and statistical information as necessary  
25 to disclose completely and accurately the financial condition and  
26 results of operations of the board.

27 (b) Before the beginning of each regular session of the

1 legislature, the board shall submit to the legislature and the  
2 governor a report describing all of the board's activities in the  
3 previous biennium. The report must include:

- 4 (1) an audit as required by Section 301.073;
- 5 (2) a financial report of the previous fiscal year,  
6 including reports on financial condition and results of operations;
- 7 (3) a description of all changes in fees imposed by the  
8 board;
- 9 (4) a report on the number of examination candidates  
10 and license holders and the programs of study and enforcement  
11 activities of the board; and
- 12 (5) a list of all new rules adopted or repealed.

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

- 18 (1) the salary for all board personnel and the total  
19 amount of per diem expenses and travel expenses paid for all board  
20 employees;
- 21 (2) the total amount of per diem expenses and travel  
22 expenses paid for each member of the board;
- 23 (3) the board's operating plan and annual budget; and
- 24 (4) a detailed report of all revenue received and all  
25 expenses incurred by the board in the previous 12 months.

26 Sec. 301.075. ABILITY TO CONTRACT. (a) To carry out and  
27 promote the objectives of this chapter, the board may enter into

1 contracts and do all other acts incidental to those contracts that  
2 are necessary for the administration of the board's affairs and for  
3 the attainment of the board's purposes, except as limited by  
4 Subsection (b).

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

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

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

11 Sec. 301.076. PROPERTY. The board may:

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

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

21 (3) construct, extend, improve, maintain, and  
22 reconstruct, or cause to construct, extend, improve, maintain, and  
23 reconstruct, and use and operate all facilities necessary or  
24 convenient to the exercise of the powers, rights, privileges, or  
25 functions of the board; and

26 (4) borrow money, as may be authorized from time to  
27 time by an affirmative vote of a two-thirds majority of the board,

1 for a period not to exceed five years if necessary or convenient to  
2 the exercise of the board's powers, rights, privileges, or  
3 functions.

4 Sec. 301.077. SUITS. The office of the attorney general  
5 shall represent the board in any litigation. The attorney general  
6 may assess and collect from the board reasonable attorney's fees  
7 associated with any litigation under this section.

8 Sec. 301.078. 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. 301.079. 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. 301.080. 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. 301.081. 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 301.074(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 SECTION 2. Section 301.056, Occupations Code, is amended to  
21 read as follows:

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

26 (b) A board member is entitled to reimbursement for travel  
27 expenses incurred while conducting board business, including

1 expenses for transportation, meals, and lodging[~~, as provided by~~  
2 ~~the General Appropriations Act~~].

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

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

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

12 (a) The board by rule shall establish fees in amounts  
13 reasonable and necessary to cover the costs of administering this  
14 chapter. [~~The board may not set a fee that existed on September 1,~~  
15 ~~1993, in an amount less than the amount of that fee on that date.~~]

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

19 SUBCHAPTER A. BOARD

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

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

23 Sec. 552.051. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.

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

27 Sec. 552.052. BUDGET, REVENUES, AND EXPENSES. (a) The

1 executive director shall submit to the board a budget annually  
2 using generally accepted accounting principles. Notwithstanding  
3 any other provision of law, including the General Appropriations  
4 Act, the budget shall be adopted and approved only by the board.

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

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

14 (d) Except as provided by Subsection (e), all fees and funds  
15 collected by the board and any funds appropriated to the board shall  
16 be deposited in interest-bearing deposit accounts in the Texas  
17 Treasury Safekeeping Trust Company. The comptroller shall contract  
18 with the board for the maintenance of the deposit accounts under  
19 terms comparable to a contract between a commercial banking  
20 institution and the institution's customers.

21 (e) The board shall annually remit \$600,000 to the general  
22 revenue fund.

23 (f) Periodically, the executive director shall submit to  
24 the board, as directed by the board, a report of the receipts and  
25 expenditures of the board.

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



1       Sec. 552.053. AUDITS. This chapter does not affect the duty  
2 of the state auditor to audit the board. The state auditor shall  
3 enter into a contract and schedule with the board to conduct audits,  
4 including financial reports and performance audits. The board  
5 shall reimburse the state auditor for all costs incurred in  
6 performing the audits and shall provide to the governor a copy of  
7 any audit performed.

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

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

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

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

19               (3) a description of all changes in fees imposed by the  
20 board;

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

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

25       (c) In addition to the reporting requirements of Subsection  
26 (b), not later than November 1 of each year, the board shall submit  
27 to the governor, the committee of each house of the legislature that

1 has jurisdiction over appropriations, and the Legislative Budget  
2 Board a report that contains:

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

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

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

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

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

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

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

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

23 Sec. 552.056. PROPERTY. The board may:

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

1 functions of the board;

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

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

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

16 Sec. 552.057. SUITS. The office of the attorney general  
17 shall represent the board in any litigation. The attorney general  
18 may assess and collect from the board reasonable attorney's fees  
19 associated with any litigation under this section.

20 Sec. 552.058. POST-PARTICIPATION LIABILITY. (a) If the  
21 board no longer has status under this subchapter as a self-directed  
22 semi-independent agency for any reason, the board shall be liable  
23 for any expenses or debts incurred by the board during the time the  
24 board was a self-directed semi-independent agency. The board's  
25 liability under this section includes liability for any lease  
26 entered into by the board. This state is not liable for any expense  
27 or debt covered by this subsection, and money from the general

1 revenue fund may not be used to repay the expense or debt.

2 (b) If the board no longer has status under this chapter as a  
3 self-directed semi-independent agency for any reason, ownership of  
4 any property or other asset acquired by the board during the time  
5 the board was a self-directed semi-independent agency, including  
6 unexpended fees in a deposit account in the Texas Treasury  
7 Safekeeping Trust Company, shall be transferred to this state.

8 Sec. 552.059. DUE PROCESS; OPEN GOVERNMENT. The board is:

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

11 (2) a state agency for purposes of Chapters 2001 and  
12 2005, Government Code.

13 Sec. 552.060. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.

14 Employees of the board are members of the Employees Retirement  
15 System of Texas under Chapter 812, Government Code, and the board's  
16 transition to semi-independent status as provided by this chapter  
17 has no effect on the employees' membership or any benefits under  
18 that system.

19 Sec. 552.061. GIFTS. (a) Notwithstanding any other law,  
20 the board may not accept a gift, grant, or donation:

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

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

24 (b) The board must:

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

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

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

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

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

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

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

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

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

1 evaluation and referral.

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

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

10 (1) for the state fiscal year ending August 31, 2012,  
11 an amount equal to 50 percent of the amount of general revenue  
12 appropriated to the board for the state fiscal year ending August  
13 31, 2011; and

14 (2) for the state fiscal year ending August 31, 2013,  
15 an amount equal to 50 percent of the amount of general revenue  
16 appropriated to the board for the state fiscal year ending August  
17 31, 2011.

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

1 under this subsection is required in addition to the funds required  
2 to be remitted to the general revenue fund under Section 301.072(e)  
3 or 552.052(e), Occupations Code, as added by this Act.

4 (c) The transfer of the Texas Board of Nursing or the Texas  
5 State Board of Pharmacy to self-directed and semi-independent  
6 status under Subchapter B-1, Chapter 301, or Subchapter B, Chapter  
7 552, Occupations Code, as added by this Act, and the expiration of  
8 self-directed and semi-independent status of a board may not act to  
9 cancel, suspend, or prevent:

- 10 (1) any debt owed to or by the board;
- 11 (2) any fine, tax, penalty, or obligation of any  
12 party;
- 13 (3) any contract or other obligation of any party; or
- 14 (4) any action taken by the board in the  
15 administration or enforcement of the board's duties.

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

20 (e) Title to all supplies, materials, records, equipment,  
21 books, papers, and facilities used by the Texas Board of Nursing or  
22 the Texas State Board of Pharmacy is transferred to each respective  
23 board in fee simple. This Act does not affect any property owned by  
24 either board on or before the effective date of this Act.

25 (f) If a conflict exists between this Act and another Act of  
26 the 82nd Legislature, Regular Session, 2011, that relates to the  
27 self-directed and semi-independent status of the Texas Board of

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1 Nursing or the Texas State Board of Pharmacy, this Act controls  
2 without regard to the relative dates of enactment.

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