

By: Cain

H.B. No. 2953

A BILL TO BE ENTITLED

AN ACT

relating to the state agency concurrence required before certain federal regulatory action is imposed on regulated business entities in this state.

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

SECTION 1. Subtitle A, Title 10, Government Code, is amended by adding Chapter 2010 to read as follows:

CHAPTER 2010. STATE AGENCY CONCURRENCE

FOR CERTAIN FEDERAL REGULATORY ACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2010.001. DEFINITIONS. In this chapter:

(1) "Adversarial action" means any heavy-handed, over-burdensome, unilateral, arbitrary, capricious, manufactured, illegal, or other detrimental action of a federal agency against a regulated business entity that a state agency considers adversarial.

(2) "Federal agency" means an agency of the United States government that has jurisdiction over a regulated business entity in this state.

(3) "Regulated business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law that holds a license, certificate of registration, permit, or other regulatory approval issued by a

1 state agency or that is otherwise regulated by a state agency. The
2 term does not include an individual who is regulated by a state
3 agency.

4 (4) "State agency" means a board, commission,
5 department, office, or other agency in the executive branch of
6 state government that is created by the constitution or a statute of
7 this state.

8 [Sections 2010.002-2010.050 reserved for expansion]

9 SUBCHAPTER B. STATE AGENCY POWERS AND DUTIES

10 Sec. 2010.051. PROCEDURES REQUIRED. (a) Each state agency
11 that regulates a regulated business entity shall by rule establish
12 procedures that a federal agency must follow before taking an
13 adversarial action against the regulated business entity.

14 (b) The procedures established under Subsection (a) must
15 require the federal agency to:

16 (1) obtain the state agency's concurrence with any
17 proposed adversarial action before proceeding with the action
18 against the regulated business entity; or

19 (2) negotiate with the state agency to reach
20 concurrence on an alternative action against the regulated business
21 entity.

22 [Sections 2010.052-2010.100 reserved for expansion]

23 SUBCHAPTER C. DEFENSE AND RELIEF

24 Sec. 2010.101. DEFENSE. A regulated business entity may
25 assert as a defense in any administrative or judicial proceeding to
26 enforce a statute or administrative rule of a federal agency that
27 the federal agency failed to comply with the procedures adopted by

1 the state agency under Section 2010.051.

2 Sec. 2010.102. RELIEF. A regulated business entity may
3 bring an action for declaratory judgment or injunctive or other
4 equitable relief if a federal agency violates the procedures
5 adopted by a state agency under Section 2010.051.

6 Sec. 2010.103. INITIAL BURDEN OF PERSUASION. A regulated
7 business entity that brings an action or asserts a defense under
8 this subchapter has the initial burden of persuasion that the
9 federal agency failed to comply with the procedures adopted by a
10 state agency under Section 2010.051.

11 Sec. 2010.104. CLEAR AND CONVINCING EVIDENCE. If the
12 regulated business entity meets the burden of persuasion under
13 Section 2010.103, the federal agency must then demonstrate by clear
14 and convincing evidence that the federal agency complied with the
15 procedures adopted under Section 2010.051.

16 SECTION 2. Not later than December 1, 2011, each state
17 agency that regulates a regulated business entity shall adopt rules
18 to establish the procedures required by Chapter 2010, Government
19 Code, as added by this Act.

20 SECTION 3. Chapter 2010, Government Code, as added by this
21 Act, applies only to an adversarial action by a federal agency on or
22 after January 1, 2012.

23 SECTION 4. This Act takes effect September 1, 2011.