

By: Hinojosa

S.B. No. 1375

A BILL TO BE ENTITLED

AN ACT

1
2 relating to self-directed and semi-independent status of certain
3 health care regulatory agencies; making an appropriation;
4 authorizing fees.

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

6 SECTION 1. Chapter 152, Occupations Code, is amended by
7 adding Subchapter C to read as follows:

8 SUBCHAPTER C. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF BOARD

9 Sec. 152.101. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.

10 (a) Notwithstanding any other provision of law, the board is
11 self-directed and semi-independent as specified by this
12 subchapter.

13 (b) Notwithstanding any other provision of law, each
14 advisory committee, advisory board, and other board that is
15 administratively attached to the board is a subsidiary of the
16 board, and the board's self-directed semi-independent status under
17 Subsection (a) applies to the administratively attached entity.

18 Sec. 152.102. BUDGET, REVENUES, AND EXPENSES. (a) The
19 executive director shall submit to the board annually a budget
20 using generally accepted accounting principles. Notwithstanding
21 any other provision of law, including the General Appropriations
22 Act, the budget shall be adopted and approved only by the board.

23 (b) The board shall be responsible for all direct and
24 indirect costs of the board's existence and operation. The board

1 may not directly or indirectly cause the general revenue fund to
2 incur any cost.

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

8 (d) All fees and funds collected by the board and any funds
9 appropriated to the board shall be deposited with the comptroller.
10 The comptroller shall separately account for the board's funds.
11 The board and the comptroller by contract shall determine the
12 depository, investment, and other financial services the
13 comptroller shall provide to the board.

14 (e) Not later than August 31 of each fiscal year, the board
15 shall remit a nonrefundable retainer to the comptroller in an
16 amount not less than \$10,000. The board shall reimburse the
17 comptroller for all costs in excess of the nonrefundable retainer
18 amounts paid each fiscal year incurred in providing financial
19 services to the board.

20 (f) Not later than August 31 of each fiscal year, the board
21 shall remit \$9.5 million to the comptroller for deposit in the
22 general revenue fund.

23 (g) Not later than August 31 of each fiscal year, the board
24 shall remit to the comptroller for deposit in the general revenue
25 fund all administrative penalties collected by the board during the
26 fiscal year, and the amount of administrative penalties deposited
27 shall count toward the amount the board is required to remit under

1 Subsection (f).

2 (h) The board shall collect and deposit the surcharges as
3 required by Section 153.053.

4 (i) The executive director shall submit to the board, as
5 directed by the board, a report of the receipts and expenditures of
6 the board.

7 (j) The fiscal year for the board begins on September 1 and
8 ends on August 31.

9 Sec. 152.103. AUDITS. (a) This subchapter does not affect
10 the duty of the state auditor to audit the board. The state auditor
11 shall enter into a contract and schedule with the board to conduct
12 audits, including financial reports and performance audits.

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

19 Sec. 152.104. RECORDS; REPORTING REQUIREMENTS. (a) The
20 board shall keep financial and statistical information as necessary
21 to disclose completely and accurately the financial condition and
22 results of operations of the board.

23 (b) Before the beginning of each regular session of the
24 legislature, the board shall submit to the governor, the committee
25 of each house of the legislature that has jurisdiction over
26 appropriations, and the Legislative Budget Board a report
27 describing all of the board's activities in the previous biennium.

1 The report must include:

2 (1) an audit as required by Section 152.103;

3 (2) a financial report of the previous fiscal
4 biennium, including reports on financial condition and results of
5 operations;

6 (3) a description of all changes in fees imposed by the
7 board;

8 (4) a report including five fiscal years of trend data
9 on the number of examination candidates and license and
10 registration permit holders and the enforcement activities of the
11 board;

12 (5) a list of all rules adopted or repealed since the
13 date of the previous report; and

14 (6) the reports of any audits conducted by the State
15 Office of Risk Management or the Texas Workforce Commission civil
16 rights division.

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

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

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

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

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

3 Sec. 152.105. ABILITY TO CONTRACT. (a) To carry out and
4 promote the objectives of this chapter, the board may enter into
5 contracts and do all other acts incidental to those contracts that
6 are necessary for the administration of the board's affairs and for
7 the attainment of the board's purposes, except as limited by
8 Subsection (b).

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

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

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

15 Sec. 152.106. PROPERTY. The board may:

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

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

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

1 convenient to the exercise of the powers, rights, privileges, or
2 functions of the board; and

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

8 Sec. 152.107. ADMINISTRATIVE HEARINGS. (a) Not later than
9 August 31 of each fiscal year, the board shall remit a nonrefundable
10 retainer to the State Office of Administrative Hearings in an
11 amount not less than \$200,000 for hearings conducted under this
12 subtitle or Subtitle C.

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

19 Sec. 152.108. SUITS. (a) The office of the attorney
20 general shall represent the board in any litigation.

21 (b) Not later than August 31 of each fiscal year, the board
22 shall remit a nonrefundable retainer to the office of the attorney
23 general in an amount not less than \$50,000. The nonrefundable
24 retainer shall be applied to any services provided to the board. If
25 additional litigation services are required, the attorney general
26 may assess and collect from the board reasonable attorney's fees,
27 in excess of the nonrefundable retainer amount paid each fiscal

1 year, associated with any litigation under this section.

2 Sec. 152.109. POST-PARTICIPATION LIABILITY. (a) If the
3 board no longer has status under this subchapter as a self-directed
4 semi-independent agency for any reason, the board shall be liable
5 for any expenses or debts incurred by the board during the time the
6 board was a self-directed semi-independent agency. The board's
7 liability under this section includes liability for any lease
8 entered into by the board. This state is not liable for any expense
9 or debt covered by this subsection, and money from the general
10 revenue fund may not be used to repay the expense or debt.

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

17 Sec. 152.110. 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. 152.111. 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. 152.112. 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 152.104(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 Sec. 152.113. HEALTH PROFESSIONS COUNCIL. Not later than
14 September 30 of each fiscal year, the board shall remit a
15 nonrefundable prorated assessment to the Health Professions
16 Council under Section 101.006 in an amount not less than \$28,000.

17 SECTION 2. Section 152.007, Occupations Code, is amended to
18 read as follows:

19 Sec. 152.007. PER DIEM. (a) Each board member is entitled
20 to receive a per diem [~~as set by legislative appropriation~~] for each
21 day that the member engages in the business of the board.

22 (b) A board member is entitled to reimbursement for travel
23 expenses incurred while conducting board business, including [~~If~~
24 ~~the General Appropriations Act does not prescribe the amount of the~~
25 ~~per diem, the per diem consists of actual~~] expenses for meals,
26 lodging, and transportation[~~, plus \$100~~].

27 SECTION 3. Section 152.010(c), Occupations Code, is amended

1 to read as follows:

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

7 SECTION 4. Section 204.057, Occupations Code, is amended
8 to read as follows:

9 Sec. 204.057. PER DIEM. A member of the physician assistant
10 board is entitled to receive a per diem [~~as set by legislative~~
11 ~~appropriation~~] for each day that the member engages in the business
12 of the board. A member of the physician assistant board is entitled
13 to reimbursement for travel expenses incurred while conducting
14 physician assistant board business, including [~~If the General~~
15 ~~Appropriations Act does not prescribe the amount of the per diem,~~
16 ~~the per diem is equal to a member's actual~~] expenses for meals,
17 lodging, and transportation [~~plus \$100~~].

18 SECTION 5. Section 204.059(c), Occupations Code, is amended
19 to read as follows:

20 (c) A person appointed to the physician assistant board is
21 entitled to reimbursement [~~, as provided by the General~~
22 ~~Appropriations Act,~~] for the travel expenses incurred in attending
23 the training program regardless of whether the attendance at the
24 program occurs before or after the person qualifies for office.

25 SECTION 6. Section 205.053(b), Occupations Code, is amended
26 to read as follows:

27 (b) An officer, board member, employee, or paid consultant

1 of a Texas trade association in the field of health care may not be a
2 member of the acupuncture board or an employee of the medical board
3 who is employed in a "bona fide executive, administrative, or
4 professional capacity," as that phrase is used for purposes of
5 establishing an exemption to the overtime provisions of the federal
6 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.)
7 ~~[exempt from the state's position classification plan or is~~
8 ~~compensated at or above the amount prescribed by the General~~
9 ~~Appropriations Act for step 1, salary group A17, of the position~~
10 ~~classification salary schedule].~~

11 SECTION 7. Section 205.057(c), Occupations Code, is amended
12 to read as follows:

13 (c) A person appointed to the acupuncture board is entitled
14 to reimbursement~~[, as provided by the General Appropriations Act,]~~
15 for the travel expenses incurred in attending the training program
16 regardless of whether the attendance at the program occurs before
17 or after the person qualifies for office.

18 SECTION 8. Section 205.059, Occupations Code, is amended to
19 read as follows:

20 Sec. 205.059. COMPENSATION; TRAVEL EXPENSES ~~[PER DIEM]~~. An
21 acupuncture board member may not receive compensation for service
22 on the acupuncture board but is entitled to reimbursement for
23 travel expenses incurred while conducting acupuncture board
24 business, including expenses for transportation, meals, and
25 lodging ~~[receive a per diem as set by legislative appropriation for~~
26 ~~transportation and related expenses incurred for each day that the~~
27 ~~member engages in the acupuncture board's business].~~

1 SECTION 9. Section 206.057, Occupations Code, is amended to
2 read as follows:

3 Sec. 206.057. TRAVEL EXPENSES [~~PER DIEM~~]. An advisory
4 committee member is not entitled to receive compensation for
5 service on the advisory committee but may receive reimbursement for
6 travel expenses incurred while conducting advisory committee
7 business, including expenses for transportation, meals, and
8 lodging [~~or compensation~~].

9 SECTION 10. Chapter 301, Occupations Code, is amended by
10 adding Subchapter B-1 to read as follows:

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

12 Sec. 301.071. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.
13 Notwithstanding any other provision of law, the board is
14 self-directed and semi-independent as specified by this
15 subchapter.

16 Sec. 301.072. BUDGET, REVENUES, AND EXPENSES. (a) The
17 executive director shall submit to the board annually a budget
18 using generally accepted accounting principles. Notwithstanding
19 any other provision of law, including the General Appropriations
20 Act, the budget shall be adopted and approved only by the board.

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

25 (c) Subject to any limitations in this chapter, the board
26 may set the amounts of fees, penalties, charges, and revenues
27 required or permitted by statute or rule as necessary for the

1 purpose of carrying out the functions of the board and funding the
2 budget adopted and approved under Subsection (a).

3 (d) All fees and funds collected by the board and any funds
4 appropriated to the board shall be deposited with the comptroller.
5 The comptroller shall separately account for the board's funds.
6 The board and the comptroller by contract shall determine the
7 depository, investment, and other financial services the
8 comptroller shall provide to the board.

9 (e) Not later than August 31 of each fiscal year, the board
10 shall remit a nonrefundable retainer to the comptroller in an
11 amount not less than \$10,000. The board shall reimburse the
12 comptroller for all costs in excess of the nonrefundable retainer
13 amounts paid each fiscal year incurred in providing financial
14 services to the board.

15 (f) Not later than August 31 of each fiscal year, the board
16 shall remit \$3.75 million to the comptroller for deposit in the
17 general revenue fund.

18 (g) Not later than August 31 of each fiscal year, the board
19 shall remit to the comptroller for deposit in the general revenue
20 fund all administrative penalties collected by the board during the
21 fiscal year, and the amount of administrative penalties deposited
22 shall count toward the amount the board is required to remit under
23 Subsection (f).

24 (h) The executive director shall submit to the board, as
25 directed by the board, a report of the receipts and expenditures of
26 the board.

27 (i) The fiscal year for the board begins on September 1 and

1 ends on August 31.

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

6 (b) Not later than August 31 of each fiscal year, the board
7 shall remit a nonrefundable retainer to the state auditor in an
8 amount not less than \$10,000. The board shall reimburse the state
9 auditor for all costs in excess of the nonrefundable retainer
10 amounts paid each fiscal year incurred in performing the audits and
11 shall provide to the governor a copy of any audit performed.

12 Sec. 301.074. RECORDS; REPORTING REQUIREMENTS. (a) The
13 board shall keep financial and statistical information as necessary
14 to disclose completely and accurately the financial condition and
15 results of operations of the board.

16 (b) Before the beginning of each regular session of the
17 legislature, the board shall submit to the governor, the committee
18 of each house of the legislature that has jurisdiction over
19 appropriations, and the Legislative Budget Board a report
20 describing all of the board's activities in the previous biennium.
21 The report must include:

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

23 (2) a financial report of the previous fiscal
24 biennium, including reports on financial condition and results of
25 operations;

26 (3) a description of all changes in fees imposed by the
27 board;

1 (4) a report including five fiscal years of trend data
2 on the number of examination candidates and license holders and the
3 programs of study and enforcement activities of the board;

4 (5) a list of all rules adopted or repealed since the
5 date of the previous report; and

6 (6) the reports of any audits conducted by the State
7 Office of Risk Management or the Texas Workforce Commission civil
8 rights division.

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

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

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

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

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

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

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

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

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

7 Sec. 301.076. PROPERTY. The board may:

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

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

17 (3) construct, extend, improve, maintain, and
18 reconstruct, or cause to construct, extend, improve, maintain, and
19 reconstruct, and use and operate all facilities necessary or
20 convenient to the exercise of the powers, rights, privileges, or
21 functions of the board; and

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

27 Sec. 301.077. ADMINISTRATIVE HEARINGS. (a) Not later than

1 August 31 of each fiscal year, the board shall remit a nonrefundable
2 retainer to the State Office of Administrative Hearings in an
3 amount not less than \$25,000 for hearings conducted under this
4 chapter.

5 (b) The nonrefundable retainer shall be applied to the costs
6 associated with conducting the hearings. If additional costs are
7 incurred, the State Office of Administrative Hearings may assess
8 and collect from the board reasonable fees, in excess of the
9 nonrefundable retainer amount paid each fiscal year, associated
10 with conducting a hearing under this chapter.

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

13 (b) Not later than August 31 of each fiscal year, the board
14 shall remit a nonrefundable retainer to the office of the attorney
15 general in an amount not less than \$10,000. The nonrefundable
16 retainer shall be applied to any services provided to the board. If
17 additional litigation services are required, the attorney general
18 may assess and collect from the board reasonable attorney's fees,
19 in excess of the nonrefundable retainer amount paid each fiscal
20 year, associated with any litigation under this section.

21 Sec. 301.079. POST-PARTICIPATION LIABILITY. (a) If the
22 board no longer has status under this subchapter as a self-directed
23 semi-independent agency for any reason, the board shall be liable
24 for any expenses or debts incurred by the board during the time the
25 board was a self-directed semi-independent agency. The board's
26 liability under this section includes liability for any lease
27 entered into by the board. This state is not liable for any expense

1 or debt covered by this subsection, and money from the general
2 revenue fund may not be used to repay the expense or debt.

3 (b) If the board no longer has status under this subchapter
4 as a self-directed semi-independent agency for any reason,
5 ownership of any property or other asset acquired by the board
6 during the time the board was a self-directed semi-independent
7 agency, including unexpended fees deposited with the comptroller,
8 shall be transferred to this state.

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

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

12 (2) a state agency for purposes of Chapters 2001 and
13 2005, Government Code.

14 Sec. 301.081. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.

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

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

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

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

25 (b) The board must:

26 (1) report each gift, grant, or donation that the
27 board receives as a separate item in the board's report required

1 under Section 301.074(b); and

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

5 Sec. 301.083. HEALTH PROFESSIONS COUNCIL. Not later than
6 September 30 of each fiscal year, the board shall remit a
7 nonrefundable prorated assessment to the Health Professions
8 Council under Section 101.006 in an amount not less than \$29,000.

9 SECTION 11. Section 301.056, Occupations Code, is amended
10 to read as follows:

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

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

19 SECTION 12. Section 301.059(c), Occupations Code, is
20 amended to read as follows:

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

26 SECTION 13. Section 301.155(a), Occupations Code, is
27 amended to read as follows:

1 (a) The board by rule shall establish fees in amounts
2 reasonable and necessary to cover the costs of administering this
3 chapter. [~~The board may not set a fee that existed on September 1,~~
4 ~~1993, in an amount less than the amount of that fee on that date.~~]

5 SECTION 14. Chapter 552, Occupations Code, is amended by
6 designating Sections 552.001 through 552.012 as Subchapter A and
7 adding a subchapter heading to read as follows:

8 SUBCHAPTER A. ORGANIZATION OF BOARD

9 SECTION 15. Chapter 552, Occupations Code, is amended by
10 adding Subchapter B to read as follows:

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

12 Sec. 552.051. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.
13 Notwithstanding any other provision of law, the board is
14 self-directed and semi-independent as specified by this
15 subchapter.

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

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

25 (c) Subject to any limitations in this subtitle, the board
26 may set the amounts of fees, penalties, charges, and revenues
27 required or permitted by statute or rule as necessary for the

1 purpose of carrying out the functions of the board and funding the
2 budget adopted and approved under Subsection (a).

3 (d) All fees and funds collected by the board and any funds
4 appropriated to the board shall be deposited with the comptroller.
5 The comptroller shall separately account for the board's funds.
6 The board and the comptroller by contract shall determine the
7 depository, investment, and other financial services the
8 comptroller shall provide to the board.

9 (e) Not later than August 31 of each fiscal year, the board
10 shall remit a nonrefundable retainer to the comptroller in an
11 amount not less than \$10,000. The board shall reimburse the
12 comptroller for all costs in excess of the nonrefundable retainer
13 amounts paid each fiscal year incurred in providing financial
14 services to the board.

15 (f) Not later than August 31 of each fiscal year, the board
16 shall remit to the comptroller \$800,000 to be deposited in the
17 general revenue fund.

18 (g) Not later than August 31 of each fiscal year, the board
19 shall remit to the comptroller for deposit in the general revenue
20 fund all administrative penalties collected by the board during the
21 fiscal year, and the amount of administrative penalties deposited
22 shall count toward the amount the board is required to remit under
23 Subsection (f).

24 (h) The executive director shall submit to the board, as
25 directed by the board, a report of the receipts and expenditures of
26 the board.

27 (i) The fiscal year for the board begins on September 1 and

1 ends on August 31.

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

6 (b) Not later than August 31 of each fiscal year, the board
7 shall remit a nonrefundable retainer to the state auditor in an
8 amount not less than \$10,000. The board shall reimburse the state
9 auditor for all costs in excess of the nonrefundable retainer
10 amounts paid each fiscal year incurred in performing the audits and
11 shall provide to the governor a copy of any audit performed.

12 Sec. 552.054. RECORDS; REPORTING REQUIREMENTS. (a) The
13 board shall keep financial and statistical information as necessary
14 to disclose completely and accurately the financial condition and
15 results of operations of the board.

16 (b) Before the beginning of each regular session of the
17 legislature, the board shall submit to the governor, the committee
18 of each house of the legislature that has jurisdiction over
19 appropriations, and the Legislative Budget Board a report
20 describing all of the board's activities in the previous biennium.

21 The report must include:

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

23 (2) a financial report of the previous fiscal
24 biennium, including reports on financial condition and results of
25 operations;

26 (3) a description of all changes in fees imposed by the
27 board;

1 (4) a report including five fiscal years of trend data
2 on the number of examination candidates, license holders, and
3 registrants and the enforcement activities of the board;

4 (5) a list of all rules adopted or repealed since the
5 date of the previous report; and

6 (6) the reports of any audits conducted by the State
7 Office of Risk Management or the Texas Workforce Commission civil
8 rights division.

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

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

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

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

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

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

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

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

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

7 Sec. 552.056. PROPERTY. The board may:

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

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

17 (3) construct, extend, improve, maintain, and
18 reconstruct, or cause to construct, extend, improve, maintain, and
19 reconstruct, and use and operate all facilities necessary or
20 convenient to the exercise of the powers, rights, privileges, or
21 functions of the board; and

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

27 Sec. 552.057. ADMINISTRATIVE HEARINGS. (a) Not later than

1 August 31 of each fiscal year, the board shall remit a nonrefundable
2 retainer to the State Office of Administrative Hearings in an
3 amount not less than \$17,000 for hearings conducted under Chapter
4 565.

5 (b) The nonrefundable retainer shall be applied to the costs
6 associated with conducting the hearings. If additional costs are
7 incurred, the State Office of Administrative Hearings may assess
8 and collect from the board reasonable fees, in excess of the
9 nonrefundable retainer amount paid each fiscal year, associated
10 with conducting a hearing under Chapter 565.

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

13 (b) Not later than August 31 of each fiscal year, the board
14 shall remit a nonrefundable retainer to the office of the attorney
15 general in an amount not less than \$10,000. The nonrefundable
16 retainer shall be applied to any services provided to the board. If
17 additional litigation services are required, the attorney general
18 may assess and collect from the board reasonable attorney's fees,
19 in excess of the nonrefundable retainer amount paid each fiscal
20 year, associated with any litigation under this section.

21 Sec. 552.059. POST-PARTICIPATION LIABILITY. (a) If the
22 board no longer has status under this subchapter as a self-directed
23 semi-independent agency for any reason, the board shall be liable
24 for any expenses or debts incurred by the board during the time the
25 board was a self-directed semi-independent agency. The board's
26 liability under this section includes liability for any lease
27 entered into by the board. This state is not liable for any expense

1 or debt covered by this subsection, and money from the general
2 revenue fund may not be used to repay the expense or debt.

3 (b) If the board no longer has status under this subchapter
4 as a self-directed semi-independent agency for any reason,
5 ownership of any property or other asset acquired by the board
6 during the time the board was a self-directed semi-independent
7 agency, including unexpended fees deposited with the comptroller,
8 shall be transferred to this state.

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

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

12 (2) a state agency for purposes of Chapters 2001 and
13 2005, Government Code.

14 Sec. 552.061. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.

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

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

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

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

25 (b) The board must:

26 (1) report each gift, grant, or donation that the
27 board receives as a separate item in the board's report required

1 under Section 552.054(b); and

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

5 Sec. 552.063. HEALTH PROFESSIONS COUNCIL. (a) Not later
6 than September 30 of each fiscal year, the board shall remit a
7 nonrefundable prorated assessment to the Health Professions
8 Council under Section 101.006 in an amount not less than \$26,000.

9 (b) Not later than September 30 of each fiscal year in which
10 the board uses the Health Professions Council's shared regulatory
11 database system, the board shall remit an additional nonrefundable
12 prorated assessment to the Health Professions Council under Section
13 101.006 in an amount not less than \$262,000, except that for the
14 fiscal year ending August 31, 2015, the board shall remit not less
15 than \$264,000 as the additional prorated assessment under this
16 subsection.

17 SECTION 16. Section 552.006(c), Occupations Code, is
18 amended to read as follows:

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

24 SECTION 17. Section 552.009, Occupations Code, is amended
25 to read as follows:

26 Sec. 552.009. PER DIEM; REIMBURSEMENT. (a) Each member of
27 the board is entitled to a per diem [~~set by legislative~~

1 ~~appropriation~~] for each day the member engages in board business.

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

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

6 (c) Funds and surcharges collected under this section
7 [~~shall be deposited in the general revenue fund and~~] may only be
8 used by the board to administer the program authorized by this
9 section, including providing for initial evaluation and referral of
10 an impaired pharmacist or pharmacy student by a qualified health
11 professional and paying the administrative costs incurred by the
12 board in connection with that funding. The money may not be used
13 for costs incurred for treatment or rehabilitation after initial
14 evaluation and referral.

15 SECTION 19. Sections 153.051(b) and (d), 153.052,
16 153.0535(b), and 554.007(a), Occupations Code, are repealed.

17 SECTION 20. (a) To provide a reasonable period for the
18 Texas Medical Board, Texas Board of Nursing, and Texas State Board
19 of Pharmacy to establish the boards as self-directed and
20 semi-independent under Subchapter C, Chapter 152, Subchapter B-1,
21 Chapter 301, and Subchapter B, Chapter 552, Occupations Code, as
22 added by this Act, the following amounts are appropriated from the
23 general revenue fund to each board:

24 (1) for the state fiscal year ending August 31, 2014,
25 an amount equal to 50 percent of the amount of general revenue
26 appropriated to the board for the state fiscal year ending August
27 31, 2013; and

1 (2) for the state fiscal year ending August 31, 2015,
2 an amount equal to 50 percent of the amount of general revenue
3 appropriated to the board for the state fiscal year ending August
4 31, 2013.

5 (b) Subject to Section 152.102, 301.072, or 552.052,
6 Occupations Code, as added by this Act, the appropriations made by
7 Subsection (a) of this section may be spent by the board to which
8 the appropriation is made as the board directs. Each board shall
9 repay to the general revenue fund the appropriation made to the
10 board for the state fiscal year ending August 31, 2014, not later
11 than that date and as funds become available. Each board shall
12 repay to the general revenue fund the appropriation made to the
13 board for the state fiscal year ending August 31, 2015, not later
14 than that date and as funds become available. The repayment of an
15 appropriation under this subsection is required in addition to the
16 funds required to be remitted to the general revenue fund under
17 Section 152.102(f), 301.072(f), or 552.052(f), Occupations Code,
18 as added by this Act.

19 (c) The transfer of the Texas Medical Board, Texas Board of
20 Nursing, or Texas State Board of Pharmacy to self-directed and
21 semi-independent status under Subchapter C, Chapter 152,
22 Subchapter B-1, Chapter 301, or Subchapter B, Chapter 552,
23 Occupations Code, as added by this Act, and the expiration of
24 self-directed and semi-independent status of a board may not act to
25 cancel, suspend, or prevent:

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

27 (2) any fine, tax, penalty, or obligation of any

1 party;

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

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

5 (d) The Texas Medical Board, Texas Board of Nursing, and
6 Texas State Board of Pharmacy shall continue to have and exercise
7 the powers and duties allocated to each board under law, except as
8 specifically provided by this Act.

9 (e) Title to or ownership of all supplies, materials,
10 records, equipment, books, papers, and furniture used by the Texas
11 Medical Board, Texas Board of Nursing, or Texas State Board of
12 Pharmacy is transferred to each respective board. This Act does not
13 affect any property owned by any of the boards on or before the
14 effective date of this Act.

15 (f) The Texas Medical Board shall pay rent to the state for
16 the use and occupancy of state-owned office space for any period
17 during which the board occupies state-owned office space.
18 Reasonable rent shall be determined by the Texas Facilities
19 Commission. Aggregate rental payments may not be less than \$430,000
20 each fiscal year for any period during which the board occupies
21 state-owned office space. The board may pay a prorated amount of
22 rent for any partial fiscal year during which the board occupies
23 state-owned office space if the Texas Facilities Commission allows
24 the board to lease the space for less than a full fiscal year.

25 (g) The Texas Board of Nursing shall pay rent to the state
26 for the use and occupancy of state-owned office space for any period
27 during which the board occupies state-owned office space.

1 Reasonable rent shall be determined by the Texas Facilities
2 Commission. Aggregate rental payments may not be less than \$278,000
3 each fiscal year during which the board occupies state-owned office
4 space. The board may pay a prorated amount of rent for any partial
5 fiscal year during which the board occupies state-owned office
6 space if the Texas Facilities Commission allows the board to lease
7 the space for less than a full fiscal year.

8 (h) The Texas State Board of Pharmacy shall pay rent to the
9 state for the use and occupancy of state-owned office space for any
10 period during which the board occupies state-owned office space.
11 Reasonable rent shall be determined by the Texas Facilities
12 Commission. Aggregate rental payments may not be less than \$162,000
13 each fiscal year for any period during which the board occupies
14 state-owned office space. The board may pay a prorated amount of
15 rent for any partial fiscal year during which the board occupies
16 state-owned office space if the Texas Facilities Commission allows
17 the board to lease the space for less than a full fiscal year.

18 (i) If a conflict exists between this Act and another Act of
19 the 83rd Legislature, Regular Session, 2013, that relates to the
20 self-directed and semi-independent status of the Texas Medical
21 Board, the Texas Board of Nursing, or the Texas State Board of
22 Pharmacy, this Act controls without regard to the relative dates of
23 enactment.

24 SECTION 21. The Texas Medical Board, Texas Board of
25 Nursing, and Texas State Board of Pharmacy shall continue to be
26 agencies of this state for all purposes, and no provision of this
27 Act may be construed otherwise.

1 SECTION 22. This Act takes effect September 1, 2013.