

By: Parker, Capriglione

H.B. No. 2493

Substitute the following for H.B. No. 2493:

By: Longoria

C.S.H.B. No. 2493

A BILL TO BE ENTITLED

AN ACT

relating to the self-directed and semi-independent status of the State Securities Board; authorizing fees.

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

SECTION 1. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Sections 44, 45, 46, 47, 48, 49, 50, 51, and 52 to read as follows:

Sec. 44. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. A.

Notwithstanding any other provision of law, the State Securities Board is self-directed and semi-independent as specified by this Act. Any Act of the 84th Legislature that relates to the Board and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the Commissioner only on authorization by the members of the Board.

B. Except as otherwise provided by this Act, the State Securities Board is subject to a provision of law that applies to state agencies, including:

(1) state purchasing requirements under Subtitle D, Title 10, Government Code;

(2) interagency transfer voucher requirements under Section 2155.327, Government Code;

(3) travel requirements under Chapters 2171 and 2205, Government Code, using amounts provided by the General Appropriations Act to guide travel reimbursement rates; and

1 (4) prompt payment requirements under Chapter 2251,
2 Government Code.

3 Sec. 45. BUDGET, REVENUES, AND EXPENSES. A. The
4 Commissioner shall submit to the members of the Board an annual
5 budget using generally accepted accounting principles.
6 Notwithstanding any other provision of law, including the General
7 Appropriations Act, the budget shall be adopted and approved only
8 by the members of the Board.

9 B. The State Securities Board is responsible for all direct
10 and indirect costs of the agency's existence and operation. The
11 agency may not directly or indirectly cause the general revenue
12 fund to incur any cost.

13 C. Subject to any limitations in this Act, the Board may set
14 the amounts of the respective fees, penalties, charges, and
15 revenues required or permitted by statute or rule as necessary to
16 carry out the agency's functions and to fund the budget adopted and
17 approved under Subsection A of this section.

18 D. Periodically, the Commissioner shall submit to the
19 members of the Board, as directed by the Board members, a report of
20 the receipts and expenditures of the agency.

21 E. The fiscal year for the agency begins on September 1 and
22 ends on August 31.

23 F. All fees and funds collected by the agency under
24 Subsection A, Section 35, of this Act and any funds appropriated to
25 the agency shall be deposited in interest-bearing deposit accounts
26 in the Texas Treasury Safekeeping Trust Company to be used
27 exclusively to pay costs incurred by the agency in administering

1 this Act. The comptroller shall contract with the agency for the
2 maintenance of the deposit accounts under terms comparable to a
3 contract between a commercial banking institution and the
4 institution's customers. The agency may not hold funds in an
5 account that is not under the control of the comptroller.

6 G. Except as provided by Subsection F of this section, all
7 other money collected by the Commissioner or Board and any other
8 funds belonging to or under the control of the Board shall be
9 deposited into the general revenue fund.

10 H. If the Commissioner or Board determines that all or part
11 of a registration fee should be refunded, the refund shall be made
12 by warrant on the state treasury from the fund into which the
13 registration fee was deposited.

14 I. The agency shall use the comptroller's uniform statewide
15 accounting system under Chapter 2101, Government Code, to make all
16 payments, other than direct payments from the agency's account to
17 the Texas Treasury Safekeeping Trust Company.

18 Sec. 46. RECORDS; REPORTING REQUIREMENTS. A. The
19 Commissioner shall keep financial and statistical information as
20 necessary to disclose completely and accurately the financial
21 condition and operations of the agency.

22 B. Before the beginning of each regular session of the
23 legislature, the Commissioner shall submit to the legislature and
24 the governor a report describing all of the agency's activities in
25 the previous biennium. The report must include:

26 (1) an audit;

27 (2) a financial report of the two preceding fiscal

1 years, including reports on financial condition and operations;

2 (3) a description of all changes in fees imposed on
3 regulated persons;

4 (4) a report on changes in the regulatory jurisdiction
5 of the Board; and

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

7 C. In addition to the reporting requirements of Subsection B
8 of this section, not later than November 1 of each year, the
9 Commissioner shall submit to the governor, the committee of each
10 house of the legislature that has jurisdiction over appropriations,
11 and the Legislative Budget Board a report that contains:

12 (1) the salary for Board employees and the total
13 amount of per diem expenses and travel expenses paid for all Board
14 employees, including trend performance data for the preceding five
15 fiscal years;

16 (2) the total amount of per diem expenses and travel
17 expenses paid for each member of the Board, including trend
18 performance data for the preceding five fiscal years;

19 (3) the agency's operating plan covering a period of
20 two fiscal years and operating budget, including revenues and a
21 breakdown of expenditures by program and administrative expenses,
22 showing:

23 (a) projected budget data for a period of two
24 fiscal years; and

25 (b) trend performance data for the preceding five
26 fiscal years regarding:

27 (i) the number of full-time equivalent

- 1 positions at the agency;
2 (ii) the number of complaints received from
3 the public and the number of complaints initiated by Board
4 employees;
5 (iii) the number of complaints dismissed
6 and the number of complaints resolved by enforcement action;
7 (iv) the number of enforcement actions by
8 sanction type;
9 (v) the number of enforcement cases closed
10 through voluntary compliance;
11 (vi) the amount of administrative penalties
12 assessed and the rate of collection of assessed administrative
13 penalties;
14 (vii) the number of enforcement cases that
15 allege a threat to public health, safety, or welfare or a violation
16 of professional standards of care and the disposition of those
17 cases;
18 (viii) the average time to resolve a
19 complaint;
20 (ix) the number of license holders or
21 regulated persons broken down by type of license and license
22 status, including inactive status or retired status;
23 (x) the fee charged to issue and renew each
24 type of license, certificate, permit, or other similar
25 authorization issued by the Commissioner under this Act;
26 (xi) the average time to issue a license;
27 (xii) litigation costs, broken down by

1 administrative hearings, judicial proceedings, and outside counsel
2 costs; and

3 (xiii) reserve fund balances; and

4 (4) a detailed report of all revenue received and all
5 expenses incurred by the agency in the preceding 12 months.

6 Sec. 47. ABILITY TO CONTRACT. A. To carry out and promote
7 the objectives of this Act, the Commissioner may enter into
8 contracts and do all other acts incidental to those contracts that
9 are necessary for the administration of the agency's affairs and
10 for the attainment of the agency's purposes, except as limited by
11 Subsection B of this section.

12 B. Any indebtedness, liability, or obligation of the agency
13 incurred under this section may not:

14 (1) create a debt or other liability of this state or
15 another entity other than the agency; or

16 (2) create any personal liability on the part of the
17 members of the Board or the Board's employees.

18 Sec. 48. PROPERTY. The Commissioner, on behalf of the
19 agency, may:

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

25 (2) sell or otherwise dispose of any real, personal,
26 or mixed property, or any interest in property, that the
27 Commissioner determines is not necessary or convenient to the

1 exercise of the agency's powers, rights, privileges, or functions;

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

7 (4) borrow money, as may be authorized from time to
8 time by an affirmative vote of a three-fifths majority of the Board,
9 for a period not to exceed five years if necessary or convenient to
10 the exercise of the agency's powers, rights, privileges, or
11 functions.

12 Sec. 49. POST-PARTICIPATION LIABILITY. A. If the State
13 Securities Board no longer has status under this Act as a
14 self-directed semi-independent agency for any reason, the agency
15 shall be liable for any expenses or debts incurred by the agency
16 during the time the agency was a self-directed semi-independent
17 agency. The agency's liability under this section includes
18 liability for any lease entered into by the agency. This state is
19 not liable for any expense or debt covered by this subsection, and
20 money from the general revenue fund may not be used to repay the
21 expense or debt.

22 B. If the Board no longer has status under this Act as a
23 self-directed semi-independent agency for any reason, ownership of
24 any property or other asset acquired by the agency during the time
25 the agency was a self-directed semi-independent agency, including
26 unexpended fees in a deposit account in the Texas Treasury
27 Safekeeping Trust Company, shall be transferred to this state.

1 Sec. 50. DUE PROCESS; OPEN GOVERNMENT. The State Securities

2 Board is:

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

5 (2) a state agency for purposes of Chapters 2001 and
6 2005, Government Code.

7 Sec. 51. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.

8 Employees of the State Securities Board are members of the
9 Employees Retirement System of Texas under Chapter 812, Government
10 Code, and the Board's transition to independent status as provided
11 by this Act has no effect on their membership or any benefits under
12 that system.

13 Sec. 52. GIFTS. A. Notwithstanding any other law, the
14 Commissioner may not accept a gift, grant, or donation on behalf of
15 the agency:

16 (1) from a party to an enforcement action; or
17 (2) to pursue a specific investigation or enforcement
18 action.

19 B. The Commissioner must:

20 (1) report each gift, grant, or donation that the
21 agency receives as a separate item in the agency's report required
22 under Subsection B, Section 46, of this Act; and

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

26 SECTION 2. Subsections D, G, K, and O, Section 2, The
27 Securities Act (Article 581-2, Vernon's Texas Civil Statutes), are

1 amended to read as follows:

2 D. Each member of the Board is entitled to reimbursement for
3 travel expenses incurred [~~per diem as set by legislative~~
4 ~~appropriation~~] for each day that the member engages in the business
5 of the Board.

6 The Governor shall designate a member of the Board as the
7 presiding officer of the Board to serve in that capacity at the will
8 of the Governor. A majority of the members shall constitute a quorum
9 for the transaction of any business.

10 G. The Board shall appoint a Securities Commissioner who
11 serves at the pleasure of the Board and who shall, under the
12 supervision of the Board, administer the provisions of this Act.
13 The Board shall determine the Commissioner's salary. Each member of
14 the Board shall have access to all offices and records under his
15 supervision, and the Board, or a majority thereof, may exercise any
16 power or perform any act authorized to the [~~Securities~~]
17 Commissioner by the provisions of this Act.

18 K. The Commissioner shall determine the number of Board
19 employees and the employees' salaries. The Commissioner or his
20 designee shall develop an intraagency career ladder program, one
21 part of which shall be the intraagency posting of all nonentry level
22 positions for at least ten (10) days before any public posting. The
23 Commissioner or his designee shall develop a system of annual
24 performance evaluations based on measurable job tasks. All merit
25 pay for Board employees must be based on the system established
26 under this section.

27 O. The Sunset Advisory Commission shall examine the State

1 Securities Board's performance as a self-directed and
2 semi-independent agency as part of the commission's periodic review
3 of the agency under [~~The State Securities Board is subject to~~]
4 Chapter 325, Government Code (Texas Sunset Act). The agency shall
5 pay the cost incurred by the commission in performing a review of
6 the agency. The commission shall determine the cost and submit to
7 the agency a statement detailing the cost. The agency shall pay the
8 amount promptly after receiving the statement. Unless continued in
9 existence as provided by that chapter, the State Securities Board
10 [~~board~~] is abolished and this Act expires September 1, 2019.

11 SECTION 3. Subsection C, Section 2-3, The Securities Act
12 (Article 581-2-3, Vernon's Texas Civil Statutes), is amended to
13 read as follows:

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

19 SECTION 4. Subsection A, Section 35, The Securities Act
20 (Article 581-35, Vernon's Texas Civil Statutes), is amended to read
21 as follows:

22 A. The Board shall establish the following fees to produce
23 [~~in amounts so that the aggregate amount that exceeds the amount of~~
24 ~~the fees on September 1, 2002, produces~~] sufficient revenue to
25 cover the costs of administering and enforcing this Act:

26 (1) for the filing of any original, amended, or
27 renewal application to sell or dispose of securities [~~, an amount~~

1 ~~not to exceed \$100];~~

2 (2) for the filing of any original application of a
3 dealer or investment adviser or for the submission of a notice
4 filing for a federal covered investment adviser [~~, an amount not to~~
5 ~~exceed \$100];~~

6 (3) for the filing of any renewal application of a
7 dealer or investment adviser or for the submission of a renewal
8 notice filing for a federal covered investment adviser [~~, an amount~~
9 ~~not to exceed \$100];~~

10 (4) for the filing of any original application for
11 each agent, officer, or investment adviser representative or for
12 the submission of a notice filing for each representative of a
13 federal covered investment adviser [~~, an amount not to exceed \$100];~~
14 and

15 (5) for the filing of any renewal application for each
16 agent, officer, or investment adviser representative or for the
17 submission of a renewal notice filing for each representative of a
18 federal covered investment adviser [~~, an amount not to exceed \$100].~~

19 SECTION 5. The following provisions of The Securities Act
20 (Article 581-1 et seq., Vernon's Texas Civil Statutes) are
21 repealed:

- 22 (1) Subsections J and N, Section 2;
23 (2) Subsections C and D, Section 35; and
24 (3) Section 36.

25 SECTION 6. Subject to Section 45, The Securities Act
26 (Article 581-45, Vernon's Texas Civil Statutes), as added by this
27 Act, the appropriations made by an Act of the 84th Legislature,

1 Regular Session, 2015, may be spent by the State Securities Board as
2 the Securities Commissioner directs. The board shall repay to the
3 general revenue fund the appropriation made to the agency for the
4 state fiscal year ending August 31, 2016, not later than that date
5 and as funds become available. The board shall repay to the general
6 revenue fund the appropriation made to the board for the state
7 fiscal year ending August 31, 2017, not later than that date and as
8 funds become available.

9 SECTION 7. The transfer of the State Securities Board to
10 self-directed and semi-independent status under this Act, and the
11 expiration of self-directed and semi-independent status may not act
12 to cancel, suspend, or prevent:

- 13 (1) any debt owed to or by the State Securities Board;
- 14 (2) any fine, tax, penalty, or obligation of any
15 party;
- 16 (3) any contract or other obligation of any party; or
- 17 (4) any action taken by the State Securities Board,
18 the Securities Commissioner, or the board's employees in the
19 administration or enforcement of the agency's duties.

20 SECTION 8. The State Securities Board shall continue to
21 have and exercise the powers and duties allocated to the board in
22 the board's enabling legislation, except as specifically amended by
23 this Act.

24 SECTION 9. Title to or ownership of all supplies,
25 materials, records, equipment, books, papers, and furniture used by
26 the State Securities Board is transferred to the State Securities
27 Board in fee simple. This Act does not affect any property owned by

1 the State Securities Board on or before the effective date of this
2 Act.

3 SECTION 10. Beginning September 1, 2015, the State
4 Securities Board shall pay rent to this state in a reasonable amount
5 to be determined by the Texas Facilities Commission for its use and
6 occupancy of state-owned office space.

7 SECTION 11. This Act takes effect September 1, 2015.