

By: Parker

H.B. No. 2493

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.1. 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 The Securities Act. Any Act of the 84th Legislature that relates to the agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the Commissioner only on authorization by 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.

4 (a) The Commissioner shall submit to the Board a budget
5 annually 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 Board.

9 (b) The State Securities Board shall be responsible for all
10 direct and indirect costs of the agency's existence and operation.
11 The 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
14 set the amounts of the respective fees, penalties, charges, and
15 revenues required or permitted by statute or rule as necessary for
16 the purpose of carrying out the functions of the agency and funding
17 the budget adopted and approved under Subsection (a).

18 (d) Periodically, the Commissioner shall submit to the
19 Board, as directed by the Board, a report of the receipts and
20 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 Section
24 35.A and any funds appropriated to the agency shall be deposited in
25 interest-bearing deposit accounts in the Texas Treasury
26 Safekeeping Trust Company to be used exclusively to pay costs
27 incurred by the State Securities Board in administering The

1 Securities Act. The comptroller shall contract with the agency for
2 the 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 in subsection (f) of this section,
7 all other monies collected by the State Securities Board and any
8 other funds belonging to or under the control of the State
9 Securities Board shall be 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
15 statewide accounting system under Chapter 2101 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.

19 (a) The Commissioner shall keep financial and statistical
20 information as necessary to disclose completely and accurately the
21 financial condition and results of 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 previous fiscal year,

1 including reports on financial condition and results of 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 agency; and

6 (5) a list of all new rules adopted or repealed.

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

12 (1) the salary for agency personnel and the total
13 amount of per diem expenses and travel expenses paid for all agency
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 (1) the number of full-time equivalent

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

1 costs; and

2 (13) reserve fund balances; and

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

5 Sec. 47. ABILITY TO CONTRACT.

6 (a) To carry out and promote the objectives of this Act, the
7 Commissioner may enter into contracts and do all other acts
8 incidental to those contracts that are necessary for the
9 administration of the agency's affairs and for the attainment of
10 the agency's purposes, except as limited by Subsection (b).

11 (b) Any indebtedness, liability, or obligation of the
12 agency incurred under this section may not:

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

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

17 Sec. 48. PROPERTY. The agency may:

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

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

27 (3) construct, extend, improve, maintain, and

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

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

10 Sec. 49. POST-PARTICIPATION LIABILITY.

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

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

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

1 Board is:

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

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

6 Sec. 51. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.

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

12 Sec. 52. GIFTS.

13 (a) Notwithstanding any other law, the Commissioner may not
14 accept a gift, grant, or donation on behalf of the agency:

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

16 (2) to pursue a specific investigation or enforcement
17 action.

18 (b) The Commissioner must:

19 (1) report each gift, grant, or donation that the
20 agency receives as a separate item in the agency's report required
21 under Section 47(b); and

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

25 SECTION 1.2. Section 2, The Securities Act (Article 581-2,
26 Vernon's Texas Civil Statutes), is amended by amending Subsections
27 D, G, K, and O to read as follows:

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

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

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

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

27 O. The State Securities Board is subject to Chapter 325,

1 Government Code (Texas Sunset Act). Unless continued in existence
2 as provided by that chapter, the board is abolished and this Act
3 expires September 1, 2019. The Sunset Advisory Commission shall
4 examine the agency's performance as a self-directed and
5 semi-independent agency as part of the commission's periodic review
6 of the agency under Chapter 325, Government Code (Texas Sunset
7 Act). The agency shall pay the cost incurred by the Sunset Advisory
8 Commission in performing a review of the agency under the agency's
9 enabling legislation. The Sunset Advisory Commission shall
10 determine the cost, and the agency shall pay the amount promptly on
11 receipt of a statement from the Sunset Advisory Commission
12 detailing the cost.

13 SECTION 1.3. Subsection C of Section 2-3, The Securities Act
14 (Article 581-2-3, Vernon's Texas Civil Statutes), is amended to
15 read as follows:

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

21 SECTION 1.4. Subsection A of Section 35, The Securities Act
22 (Article 581-35, Vernon's Texas Civil Statutes), is amended to read
23 as follows:

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

1 (1) for the filing of any original, amended, or
2 renewal application to sell or dispose of securities, ~~an amount not~~
3 ~~to exceed \$100;~~

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

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

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

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

21 SECTION 1.5. Subsections J and N of Section 2, The Securities Act
22 (Article 581-2, Vernon's Texas Civil Statutes), Subsections C and D
23 of Section 35, The Securities Act (Article 581-35, Vernon's Texas
24 Civil Statutes), and Section 36, The Securities Act (Article
25 581-36, Vernon's Texas Civil Statutes) are repealed.

26 SECTION 2.1. To provide a reasonable period for the State
27 Securities Board to establish itself as a self-directed and

1 semi-independent agency, the following amounts are appropriated
2 from the general revenue fund to the State Securities Board:

3 (1) for the state fiscal year ending August 31, 2016,
4 an amount equal to 50% of the amount of general revenue appropriated
5 to the agency for the state fiscal year ending August 31, 2015; and

6 (2) for the state fiscal year ending August 31, 2017,
7 an amount equal to 50% of the amount of general revenue appropriated
8 to the agency for the state fiscal year ending August 31, 2015.

9 SECTION 2.2. Subject to Section 45, as added by this Act, the
10 appropriations made in this Act may be spent by the State Securities
11 Board to which they are made as the Commissioner directs. The agency
12 shall repay to the general revenue fund the appropriation made to
13 the agency for the state fiscal year ending August 31, 2016, not
14 later than that date and as funds become available. The agency shall
15 repay to the general revenue fund the appropriation made to the
16 agency for the state fiscal year ending August 31, 2017, not later
17 than that date and as funds become available.

18 SECTION 3.1. The transfer of the State Securities Board to
19 self-directed and semi-independent status under this Act, and the
20 expiration of self-directed and semi-independent status may not act
21 to cancel, suspend, or prevent:

- 22 (1) any debt owed to or by the State Securities Board;
23 (2) any fine, tax, penalty, or obligation of any party;
24 (3) any contract or other obligation of any party; or
25 (4) any action taken by the State Securities Board,
26 Commissioner, or agency in the administration or enforcement of the
27 agency's duties.

1 SECTION 3.2. The State Securities Board shall continue to have and
2 exercise the powers and duties allocated to the agency in the
3 agency's enabling legislation, except as specifically amended by
4 this Act.

5 SECTION 4.1. Title to or ownership of all supplies, materials,
6 records, equipment, books, papers, and furniture used by the State
7 Securities Board is transferred to the State Securities Board in
8 fee simple. This Act does not affect any property owned by the State
9 Securities Board on or before the effective date of this section.

10 SECTION 4.2. Beginning September 1, 2015, the State Securities
11 Board shall pay rent to this state in a reasonable amount to be
12 determined by the Texas Facilities Commission for its use and
13 occupancy of state-owned office space.

14 SECTION 5. This Act takes effect September 1, 2015.