

A BILL TO BE ENTITLED

AN ACT

relating to the self-directed and semi-independent status of certain agencies and to the requirements applicable to, and the oversight of, those agencies.

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

SECTION 1. Sections 472.001 and 472.002, Government Code, are amended to read as follows:

Sec. 472.001. APPLICABILITY OF CHAPTER. This chapter applies to:

- (1) the Texas State Board of Public Accountancy;
- (2) the Texas Board of Professional Engineers; ~~and~~
- (3) the Texas Board of Architectural Examiners;
- (4) the Texas Real Estate Commission;
- (5) the Texas Appraiser Licensing and Certification Board;
- (6) the Texas Department of Banking;
- (7) the Department of Savings and Mortgage Lending;
- (8) the Office of Consumer Credit Commissioner; and
- (9) the Credit Union Department.

Sec. 472.002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

- (1) "Agency" [~~,"agency"~~] means an agency listed in Section 472.001.
- (2) "Board" means the Legislative Budget Board.
- (3) "Financial regulatory agency" means an agency

1 described by Sections 472.001(6)-(9).

2 SECTION 2. Subchapter A, Chapter 472, Government Code, is
3 amended by adding Sections 472.003, 472.004, 472.005, and 472.006
4 to read as follows:

5 Sec. 472.003. STATUS AND OVERSIGHT OF CERTAIN AGENCIES.

6 This chapter does not affect:

7 (1) the Texas Appraiser Licensing and Certification
8 Board's status as an independent subdivision of the Texas Real
9 Estate Commission as provided by Section 1103.051, Occupations
10 Code; or

11 (2) the oversight of a financial regulatory agency by
12 that agency's governing body or the agency's accountability to, and
13 relationship with, that governing body.

14 Sec. 472.004. ROLE OF BOARD; RECOVERY OF COSTS. (a) The
15 board has responsibility under this chapter for developing and
16 administering the application process, monitoring agencies, and
17 performing other duties provided under this chapter.

18 (b) The board may recover from an agency the costs
19 associated with administering the application process for the
20 agency and the board's monitoring of the agency.

21 Sec. 472.005. APPLICATION FOR SELF-DIRECTED AND
22 SEMI-INDEPENDENT AGENCY STATUS; AUDIT REQUIRED. (a) Before a
23 state agency may be granted self-directed and semi-independent
24 status, the agency must:

25 (1) submit an application to the board; and

26 (2) undergo a financial audit and an effectiveness
27 audit as required under Subsection (e).

1 (b) A state agency may not submit the application required
2 under Subsection (a) until the agency's governing body:

3 (1) provides notice and holds a public hearing on the
4 application; and

5 (2) approves, by majority vote, the submission of the
6 application.

7 (c) The application must be submitted to the board as part
8 of the agency's legislative appropriations request.

9 (d) The application shall be in the form prescribed by the
10 board, which must require the agency applying for self-directed and
11 semi-independent status to:

12 (1) state the reasons for which the agency is seeking
13 self-directed and semi-independent status and address any
14 potential problems that may result from granting that status; and

15 (2) include, as relevant to the agency's application:

16 (A) information demonstrating the agency's
17 history of efficient operation and continuing ability to operate
18 efficiently and in a manner that protects the public interest;

19 (B) documentation of adequate budgetary
20 processes and controls; and

21 (C) an analysis of the fiscal effect on state
22 revenue and other state agencies demonstrating that the agency's
23 status as self-directed and semi-independent would be revenue
24 neutral.

25 (e) A state agency must undergo a financial audit and an
26 effectiveness audit by the state auditor during the four-year
27 period preceding the date the agency submits an application under

1 Subsection (a). The state auditor shall conduct the financial
2 audit and effectiveness audit and make the findings of the
3 completed audits available to the board.

4 (f) The board may require an agency to submit additional
5 information necessary to evaluate the agency's ability to operate
6 effectively as a self-directed and semi-independent agency.

7 Sec. 472.006. REVIEW OF APPLICATION AND RECOMMENDATION.

8 (a) The board's staff shall promptly review an application
9 submitted under Section 472.005. The staff review shall determine
10 whether the agency's application is sufficient and whether the
11 agency's application should be granted or denied.

12 (b) The board's staff shall submit the staff's
13 recommendation as to whether the agency's application should be
14 granted or denied to the board. The board may recommend to the
15 committee of each house of the legislature that has jurisdiction
16 over appropriations that legislation be introduced to grant
17 self-directed and semi-independent status to the agency.

18 SECTION 3. Section 472.051(c), Government Code, is amended
19 to read as follows:

20 (c) The Sunset Advisory Commission shall examine each
21 agency's status and performance as a self-directed and
22 semi-independent agency and the agency's compliance with this
23 chapter as part of the commission's periodic review of the agency
24 under Chapter 325 (Texas Sunset Act).

25 SECTION 4. Subchapter B, Chapter 472, Government Code, is
26 amended by adding Sections 472.052 and 472.053 to read as follows:

27 Sec. 472.052. REVIEW OF SELF-DIRECTED AND SEMI-INDEPENDENT

1 AGENCIES. (a) The board's staff and the board shall review each
2 agency's annual report submitted under Section 472.104(b) and any
3 additional information requested by the board and received from the
4 agency to determine the agency's compliance with this chapter.

5 (b) The board's staff may make a recommendation to the
6 committee of each house of the legislature that has jurisdiction
7 over appropriations and to the legislature to address issues
8 identified during a review conducted under this section, except
9 that the staff may not recommend the revocation of an agency's
10 self-directed and semi-independent status.

11 (c) The board may recommend that legislation be introduced
12 to revoke an agency's self-directed and semi-independent status or
13 otherwise address issues raised by the board. A recommendation to
14 revoke an agency's self-directed and semi-independent status may be
15 based on the agency's conduct, including:

16 (1) material abuse by the agency of its self-directed
17 and semi-independent status; or

18 (2) fiscal mismanagement.

19 Sec. 472.053. REVOCATION OF SELF-DIRECTED AND
20 SEMI-INDEPENDENT STATUS. (a) The board may develop criteria for
21 determining when a recommendation for the revocation of an agency's
22 self-directed and semi-independent status is appropriate. The
23 board may recommend the revocation of an agency's self-directed and
24 semi-independent status to the legislature as provided by Section
25 472.052(c). If the board recommends revocation of an agency's
26 self-directed and semi-independent status, the agency shall have
27 the opportunity to respond in writing to that recommendation.

1 (b) The Sunset Advisory Commission may recommend revocation
2 of an agency's self-directed and semi-independent status to the
3 legislature as part of the commission's periodic review of the
4 agency under Chapter 325 (Texas Sunset Act).

5 (c) The legislature may consider legislation to revoke an
6 agency's self-directed and semi-independent status regardless of
7 whether the revocation is recommended by the board or the Sunset
8 Advisory Commission.

9 (d) The board shall assist an agency in transitioning from
10 self-directed and semi-independent status if the agency's status is
11 revoked. The board may consider issues relating to appropriations
12 and financial planning for the agency, and an evaluation of the
13 status and disposition of agency contracts, facilities,
14 properties, and leases when assisting an agency under this
15 subsection.

16 SECTION 5. Section 472.102, Government Code, is amended by
17 adding Subsection (d) to read as follows:

18 (d) Not later than August 31 of each state fiscal year, the
19 Texas Real Estate Commission and the Texas Appraiser Licensing and
20 Certification Board together shall remit \$750,000 to the general
21 revenue fund.

22 SECTION 6. Section 472.103, Government Code, is amended to
23 read as follows:

24 Sec. 472.103. AUDITS. Nothing in this chapter shall affect
25 the duty of the state auditor to audit an agency. The state auditor
26 shall enter into a contract and schedule with each agency to conduct
27 audits, including financial audits [~~reports~~] and effectiveness

1 ~~[performance]~~ audits. The schedule must require an agency to
2 undergo a financial audit and an effectiveness audit at least once
3 every six years, unless the state auditor determines that the
4 auditor may rely on an independent audit of the agency conducted
5 during the same period. The state auditor may conduct a risk-based
6 audit of an agency at any time. Costs incurred in performing such
7 audits shall be reimbursed by the agency.

8 SECTION 7. Section 472.104, Government Code, is amended by
9 amending Subsection (b) and adding Subsection (c) to read as
10 follows:

11 (b) In addition to the reporting requirements of Subsection
12 (a), each agency shall, in the form prescribed by the board, report
13 annually, not later than November 20 [~~±~~], to the governor, to the
14 committee of each house of the legislature that has jurisdiction
15 over appropriations, and to the board [~~Legislative Budget Board~~]
16 the following:

17 (1) the salary for all agency personnel and the total
18 amount of per diem expenses and travel expenses paid for all agency
19 employees, including trend performance data for the preceding five
20 fiscal years;

21 (2) the total amount of per diem expenses and travel
22 expenses paid for each member of the governing body of each agency,
23 including trend performance data for the preceding five fiscal
24 years;

25 (3) each agency's operating plan covering a period of
26 two fiscal years;

27 (4) each agency's operating budget, including revenues

1 from all sources, an accounting of all expenditures, and a
2 breakdown of expenditures by program and administrative expenses,
3 showing:

4 (A) projected budget data for a period of two
5 fiscal years; and

6 (B) trend performance data for the preceding five
7 fiscal years; ~~and~~

8 (5) the purchase or sale of any real property during
9 the year;

10 (6) any lease and maintenance costs associated with
11 real property owned or leased by the agency;

12 (7) for an agency other than a financial regulatory
13 agency, trend performance data for the preceding five fiscal years
14 regarding:

15 (A) the number of full-time equivalent positions
16 at the agency;

17 (B) the number of complaints received from the
18 public and the number of complaints initiated by agency staff;

19 (C) the number of complaints dismissed and the
20 number of complaints resolved by enforcement action;

21 (D) the number of enforcement actions by sanction
22 type;

23 (E) the number of enforcement cases closed
24 through voluntary compliance;

25 (F) the amount of administrative penalties
26 assessed and the rate of collection of assessed administrative
27 penalties;

1 (G) the number of enforcement cases that allege a
2 threat to public health, safety, or welfare or a violation of
3 professional standards of care and the disposition of those cases;

4 (H) the average time to resolve a complaint;

5 (I) the number of license holders or regulated
6 persons broken down by type of license and license status,
7 including inactive status or retired status;

8 (J) the fee charged to issue and renew each type
9 of license, certificate, permit, or other similar authorization
10 issued by the agency;

11 (K) the average time to issue a license;

12 (L) litigation costs, broken down by
13 administrative hearings, judicial proceedings, and outside counsel
14 costs; and

15 (M) reserve fund balances; and

16 (8) for a financial regulatory agency, trend
17 performance data for the preceding five fiscal years regarding:

18 (A) the number of full-time equivalent positions
19 at the agency;

20 (B) the number of complaints received;

21 (C) the number of complaints dismissed or
22 resolved and, of those complaints, the number resolved by
23 enforcement action;

24 (D) the number of enforcement actions by type;

25 (E) the amount of administrative penalties
26 assessed and the amount of administrative penalties collected;

27 (F) the number of entities regulated by the

1 agency;

2 (G) the fee charged to issue and renew each type
3 of license, certificate, permit, or other similar authorization
4 issued by the agency, or any assessments paid to the agency by the
5 holder of a license, certificate, permit, or other similar
6 authorization issued by the agency;

7 (H) litigation costs, broken down by
8 administrative hearings, judicial proceedings, and outside counsel
9 costs;

10 (I) reserve fund balances; and

11 (J) the key performance measures approved by the
12 governing board of the agency during the fiscal year for which the
13 report is due.

14 (c) If, based on a review of an agency's annual report
15 submitted as required under Subsection (b), the board determines
16 that additional information is necessary to address an issue
17 identified during the review, the board may require an agency to
18 submit information to the board demonstrating the agency's:

19 (1) ability to perform those duties that are required
20 of the agency by its enabling statute or a related duty contained in
21 another law;

22 (2) financial soundness, including the agency's
23 ability to raise sufficient revenue, maintain sufficient operating
24 reserves, and meet all of the agency's financial obligations;

25 (3) compliance with the provisions of this chapter;
26 and

27 (4) satisfactory audit history, including a summary of

1 any corrective action taken by the agency in response to an audit.

2 SECTION 8. Section 472.105, Government Code, is amended to
3 read as follows:

4 Sec. 472.105. DISPOSITION OF CERTAIN FEES COLLECTED.

5 (a) Subject to Subsection (b), if [~~If~~] provided in an agency's
6 enabling legislation, the agency shall collect annually from its
7 license holders:

8 (1) a professional fee of \$200 [~~from its license~~
9 ~~holders annually~~], which shall be remitted to the state; and

10 (2) [~~. If provided in an agency's enabling legislation,~~
11 ~~the agency shall collect~~] a scholarship fee of \$10 [~~annually from~~
12 ~~its license holders~~].

13 (b) A fee increase described by Section 1101.153,
14 Occupations Code, shall be deposited as provided by Subsection (b)
15 of that section.

16 SECTION 9. Section 472.108, Government Code, is amended to
17 read as follows:

18 Sec. 472.108. PROPERTY. An agency may:

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

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

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

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

11 SECTION 10. Sections [472.110](#)(b) and (d), Government Code,
12 are amended to read as follows:

13 (b) Except as provided by Section [472.105](#) and this
14 subsection, all [~~All~~] fees and funds collected by an agency, any
15 funds appropriated to the agency, and any other funds belonging to
16 or under the control of an agency shall be deposited in
17 interest-bearing deposit accounts in the Texas Treasury
18 Safekeeping Trust Company. The comptroller shall contract with the
19 agency for the maintenance of the deposit accounts under terms
20 comparable to a contract between a commercial banking institution
21 and its customers. An agency may not hold funds in an account that
22 is not under the control of the comptroller. This subsection does
23 not apply to funds held by an agency under Section [13.016](#), [154.351](#),
24 [154.353](#), [154.412](#), [156.501](#), [157.0201](#), [341.602](#), or [393.628](#), Finance
25 Code.

26 (d) An agency shall remit all administrative penalties
27 collected by the agency to the comptroller for deposit in the

1 general revenue fund. This subsection does not apply to the Texas
2 Real Estate Commission, the Texas Appraiser Licensing and
3 Certification Board, or a financial regulatory agency.

4 SECTION 11. Section 16.001, Finance Code, is amended to
5 read as follows:

6 Sec. 16.001. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF
7 FINANCIAL REGULATORY AGENCIES [~~DEFINITIONS~~]. (a) A financial
8 regulatory agency has self-directed and semi-independent status as
9 provided under Chapter 472, Government Code.

10 (b) For purposes of [~~In~~] this chapter and Chapter 472,
11 Government Code:

12 (1) "Financial regulatory agency" means:
13 (A) the Texas Department of Banking;
14 (B) the Department of Savings and Mortgage
15 Lending;
16 (C) the Office of Consumer Credit Commissioner;
17 and
18 (D) the Credit Union Department.

19 (2) "Policy-making body" means:
20 (A) the Finance Commission of Texas for:
21 (i) the Texas Department of Banking;
22 (ii) the Department of Savings and Mortgage
23 Lending; and
24 (iii) the Office of Consumer Credit
25 Commissioner; and
26 (B) the Credit Union Commission for the Credit
27 Union Department.

1 SECTION 12. Sections 1105.001 and 1105.002, Occupations
2 Code, are amended to read as follows:

3 Sec. 1105.001. DEFINITIONS. In this chapter [~~section~~]:

4 (1) "Agency" means the commission and the board.

5 (2) "Board" means the Texas Appraiser Licensing and
6 Certification Board.

7 (3) "Commission" means the Texas Real Estate
8 Commission.

9 Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.

10 (a) Notwithstanding any other provision of law, the agency is
11 self-directed and semi-independent as specified by Chapter 472,
12 Government Code. [~~this chapter. Any Act of the 82nd Legislature~~
13 ~~that relates to the agency and that is inconsistent with the agency~~
14 ~~being self-directed and semi-independent may be implemented by the~~
15 ~~administrator of the agency only on authorization by the agency.~~]

16 (b) Chapter 472, Government Code, [~~This chapter~~] does not
17 affect the board's status as an independent subdivision of the
18 commission as provided by Section 1103.051.

19 SECTION 13. The following are repealed:

20 (1) Sections 16.002, 16.003, 16.004, 16.005, 16.006,
21 16.007, 16.008, 16.009, 16.010, 16.011, and 16.012, Finance Code;
22 and

23 (2) Sections 1105.003, 1105.004, 1105.005, 1105.006,
24 1105.007, 1105.008, 1105.009, 1105.010, 1105.011, and 1105.012,
25 Occupations Code.

26 SECTION 14. Section 472.104, Government Code, as amended by
27 this Act, applies only to a report originally due on or after the

1 effective date of this Act. A report originally due before the
2 effective date of this Act is governed by the law in effect on the
3 date the report was originally due, and the former law is continued
4 in effect for that purpose.

5 SECTION 15. The repeal by this Act of Section 16.006,
6 Finance Code, and Section 1105.006, Occupations Code, does not
7 affect the validity of a contract entered into under those sections
8 before the effective date of this Act.

9 SECTION 16. This Act takes effect September 1, 2015.