

By: Hinojosa

S.B. No. 1875

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the self-directed and semi-independent status of
3 certain agencies and the requirements applicable to, and the
4 oversight of, those agencies.

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

6 SECTION 1. Section 472.104(b), Government Code, is amended
7 to read as follows:

8 (b) In addition to the reporting requirements of Subsection
9 (a), ~~[each agency shall report annually,]~~ not later than November 1
10 of each year, each agency shall submit the report required under
11 Section 473.101 ~~[, to the governor, to the committee of each house~~
12 ~~of the legislature that has jurisdiction over appropriations, and~~
13 ~~to the Legislative Budget Board the following:~~

14 ~~[(1) the salary for all agency personnel and the total~~
15 ~~amount of per diem expenses and travel expenses paid for all agency~~
16 ~~employees, including trend performance data for the preceding five~~
17 ~~fiscal years,~~

18 ~~[(2) the total amount of per diem expenses and travel~~
19 ~~expenses paid for each member of the governing body of each agency,~~
20 ~~including trend performance data for the preceding five fiscal~~
21 ~~years,~~

22 ~~[(3) each agency's operating plan covering a period of~~
23 ~~two fiscal years,~~

24 ~~[(4) each agency's operating budget, including~~

1 ~~revenues and a breakdown of expenditures by program and~~
2 ~~administrative expenses, showing:~~

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

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

7 ~~[(5) trend performance data for the preceding five~~
8 ~~fiscal years regarding:~~

9 ~~[(A) the number of full-time equivalent~~
10 ~~positions at the agency;~~

11 ~~[(B) the number of complaints received from the~~
12 ~~public and the number of complaints initiated by agency staff;~~

13 ~~[(C) the number of complaints dismissed and the~~
14 ~~number of complaints resolved by enforcement action;~~

15 ~~[(D) the number of enforcement actions by~~
16 ~~sanction type;~~

17 ~~[(E) the number of enforcement cases closed~~
18 ~~through voluntary compliance;~~

19 ~~[(F) the amount of administrative penalties~~
20 ~~assessed and the rate of collection of assessed administrative~~
21 ~~penalties;~~

22 ~~[(G) the number of enforcement cases that allege~~
23 ~~a threat to public health, safety, or welfare or a violation of~~
24 ~~professional standards of care and the disposition of those cases;~~

25 ~~[(H) the average time to resolve a complaint;~~

26 ~~[(I) the number of license holders or regulated~~
27 ~~persons broken down by type of license and license status;~~

1 ~~including inactive status or retired status;~~

2 ~~[(J) the fee charged to issue and renew each type~~
3 ~~of license, certificate, permit, or other similar authorization~~
4 ~~issued by the agency;~~

5 ~~[(K) the average time to issue a license;~~

6 ~~[(L) litigation costs, broken down by~~
7 ~~administrative hearings, judicial proceedings, and outside counsel~~
8 ~~costs; and~~

9 ~~[(M) reserve fund balances].~~

10 SECTION 2. Subtitle E, Title 4, Government Code, is amended
11 by adding Chapter 473 to read as follows:

12 CHAPTER 473. PROVISIONS GENERALLY APPLICABLE TO SELF-DIRECTED AND
13 SEMI-INDEPENDENT AGENCIES

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 473.001. DEFINITIONS. In this chapter:

16 (1) "Agency" means a state agency that:

17 (A) is self-directed and semi-independent under
18 the laws of this state; or

19 (B) is seeking self-directed and
20 semi-independent agency status.

21 (2) "Board" means the Legislative Budget Board.

22 Sec. 473.002. ROLE OF BOARD; RECOVERY OF COSTS. (a) The
23 board has responsibility under this chapter for developing and
24 administering the application process, monitoring agencies, and
25 performing other duties provided under this chapter.

26 (b) The board may recover from an agency the costs
27 associated with administering the application process for the

1 agency and the board's monitoring of the agency.

2 Sec. 473.003. REVIEW OF LEGISLATION; REPORT. (a) The
3 board's staff shall review legislation passed in each regular or
4 special legislative session that:

5 (1) grants a state agency self-directed and
6 semi-independent status; or

7 (2) amends a provision of this chapter or any other law
8 that relates to a state agency's self-directed and semi-independent
9 status.

10 (b) Not later than December 1 of each even-numbered year,
11 the board's staff shall submit a report to the committee of each
12 house of the legislature that has jurisdiction over appropriations
13 that includes:

14 (1) a list of all state agencies granted self-directed
15 and semi-independent status during the preceding regular or special
16 session of the legislature; and

17 (2) recommendations by the board's staff to address
18 potential problems identified by the staff during the review
19 prescribed by Subsection (a).

20 SUBCHAPTER B. APPLICATION FOR SELF-DIRECTED AND SEMI-INDEPENDENT
21 AGENCY STATUS

22 Sec. 473.051. APPLICATION; AUDIT REQUIRED. (a) Before an
23 agency may be granted self-directed and semi-independent status,
24 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 board shall prescribe an application form that
10 requires 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
24 revenue-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. 473.052. REVIEW OF APPLICATION; RECOMMENDATION. (a)
8 The board's staff shall promptly review an application submitted
9 under Section 473.051. The staff review shall determine whether
10 the agency's application is sufficient and whether the agency's
11 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 SUBCHAPTER C. REPORTING REQUIREMENTS; AUDITS

19 Sec. 473.101. ANNUAL REPORT. (a) In addition to any other
20 report required by law, not later than November 1 of each year, each
21 self-directed and semi-independent agency shall report in the form
22 prescribed by the board to the governor, the committee of each house
23 of the legislature that has jurisdiction over appropriations, and
24 the board the following:

25 (1) the salary for all agency personnel and the total
26 amount of per diem expenses and travel expenses paid for all agency
27 employees, including trend performance data for the preceding five

1 fiscal years;

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

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

8 (4) each agency's operating budget, including revenues
9 from all sources, an accounting of all expenditures, and a
10 breakdown of expenditures by program and administrative expenses,
11 showing:

12 (A) projected budget data for a period of two
13 fiscal years; and

14 (B) trend performance data for the preceding five
15 fiscal years;

16 (5) the purchase or sale of any real property during
17 the preceding year;

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

20 (7) for an agency other than a financial regulatory
21 agency as defined by Section 16.001, Finance Code, trend
22 performance data for the preceding five fiscal years regarding:

23 (A) the number of full-time equivalent positions
24 at the agency;

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

27 (C) the number of complaints dismissed and the

- 1 number of complaints resolved by enforcement action;
2 (D) the number of enforcement actions, by
3 sanction type;
4 (E) the number of enforcement cases closed
5 through voluntary compliance;
6 (F) the amount of administrative penalties
7 assessed and the rate of collection of assessed administrative
8 penalties;
9 (G) the number of enforcement cases that allege a
10 threat to public health, safety, or welfare or a violation of
11 professional standards of care and the disposition of those cases;
12 (H) the average time to resolve a complaint;
13 (I) the number of license holders or regulated
14 persons, broken down by type of license and license status,
15 including inactive status or retired status;
16 (J) the fee charged to issue and renew each type
17 of license, certificate, permit, or other similar authorization
18 issued by the agency;
19 (K) the average time to issue a license;
20 (L) litigation costs, broken down by
21 administrative hearings, judicial proceedings, and outside counsel
22 costs; and
23 (M) reserve fund balances; and
24 (8) for a financial regulatory agency as defined by
25 Section 16.001, Finance Code, trend performance data for the
26 preceding five fiscal years regarding:
27 (A) the number of full-time equivalent positions

1 at the agency;
2 (B) the number of complaints received;
3 (C) the number of complaints dismissed or
4 resolved and, of those complaints, the number resolved by
5 enforcement action;
6 (D) the number of enforcement actions, by type;
7 (E) the amount of administrative penalties
8 assessed and the amount of administrative penalties collected;
9 (F) the number of entities regulated by the
10 agency;
11 (G) the fee charged to issue and renew each type
12 of license, certificate, permit, or other similar authorization
13 issued by the agency, or any assessments paid to the agency by the
14 holder of a license, certificate, permit, or other similar
15 authorization issued by the agency;
16 (H) litigation costs, broken down by
17 administrative hearings, judicial proceedings, and outside counsel
18 costs;
19 (I) reserve fund balances; and
20 (J) the key performance measures approved by the
21 governing board of the agency during the fiscal year for which the
22 report is due.
23 (b) If, based on a review of an agency's annual report
24 submitted as required under Subsection (a), the board determines
25 that additional information is necessary to address an issue
26 identified during the review, the board may require an agency to
27 submit information to the board demonstrating the agency's:

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

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

7 (3) compliance with the provisions of this chapter;
8 and

9 (4) satisfactory audit history, including a summary of
10 any corrective action taken by the agency in response to an audit.

11 Sec. 473.102. AUDITS. (a) In addition to any other audit
12 required by law, the state auditor shall conduct a financial audit
13 and an effectiveness audit of a self-directed and semi-independent
14 agency at least once every six years, unless the state auditor
15 determines that the auditor may rely on an independent audit of the
16 agency conducted during the same period. The state auditor may
17 conduct a risk-based audit of a self-directed and semi-independent
18 agency at any time.

19 (b) The agency shall reimburse the state auditor for costs
20 incurred in performing an audit under this section.

21 SUBCHAPTER D. REVIEW OF SELF-DIRECTED AND SEMI-INDEPENDENT
22 AGENCIES; REVOCATION OF STATUS

23 Sec. 473.151. REVIEW OF AGENCIES. (a) The board's staff
24 and the board shall review each agency's annual report submitted
25 under Section 473.101 and any additional information requested by
26 the board and received from the agency to determine the agency's
27 compliance with this chapter.

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

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

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

14 (2) fiscal mismanagement.

15 Sec. 473.152. REVOCATION OF STATUS. (a) The board may
16 develop criteria for determining when a recommendation for the
17 revocation of an agency's self-directed and semi-independent
18 status is appropriate. The board may recommend the revocation of an
19 agency's self-directed and semi-independent status to the
20 legislature as provided by Section 473.151(c). If the board
21 recommends revocation of an agency's self-directed and
22 semi-independent status, the agency shall have the opportunity to
23 respond in writing to that recommendation.

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

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

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

12 SECTION 3. Section 16.005(c), Finance Code, is amended to
13 read as follows:

14 (c) In addition to the reporting requirements of Subsection
15 (b), not later than November 1 of each year, each financial
16 regulatory agency shall submit the report required under Section
17 473.101, Government Code [~~to the governor, the committee of each~~
18 ~~house of the legislature that has jurisdiction over appropriations,~~
19 ~~and the Legislative Budget Board a report that contains:~~

20 [~~(1) the salary for all financial regulatory agency~~
21 ~~personnel and the total amount of per diem expenses and travel~~
22 ~~expenses paid for all agency employees,~~

23 [~~(2) the total amount of per diem expenses and travel~~
24 ~~expenses paid for each member of the agency's policy-making body,~~
25 ~~provided that only one report must be submitted regarding the~~
26 ~~Finance Commission of Texas,~~

27 [~~(3) the agency's operating plan and annual budget,~~

1 and

2 ~~[(4) a detailed report of all revenue received and all~~
3 ~~expenses incurred by the financial regulatory agency in the~~
4 ~~previous 12 months].~~

5 SECTION 4. Section 1105.001, Occupations Code, is amended
6 to read as follows:

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

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

9 (2) "Board" means the Texas Appraiser Licensing and
10 Certification Board.

11 (3) "Commission" means the Texas Real Estate
12 Commission.

13 SECTION 5. Section 1105.005(c), Occupations Code, is
14 amended to read as follows:

15 (c) In addition to the reporting requirements of Subsection
16 (b), not later than November 1 of each year, the agency shall submit
17 the report required under Section 473.101, Government Code ~~[to the~~
18 ~~governor, the committee of each house of the legislature that has~~
19 ~~jurisdiction over appropriations, and the Legislative Budget Board~~
20 ~~a report that contains:~~

21 ~~[(1) the salary for all agency personnel and the total~~
22 ~~amount of per diem expenses and travel expenses paid for all agency~~
23 ~~employees,~~

24 ~~[(2) the total amount of per diem expenses and travel~~
25 ~~expenses paid for each member of the agency,~~

26 ~~[(3) the agency's operating plan and the annual~~
27 ~~budgets of the commission and the board, and~~

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

3 SECTION 6. Section 16.005, Finance Code, Section 472.104,
4 Government Code, and Section 1105.005, Occupations Code, as amended
5 by this Act, and Section 473.101, Government Code, as added by this
6 Act, apply only to a report originally due on or after the effective
7 date of this Act. A report originally due before the effective date
8 of this Act is governed by the law in effect on the date the report
9 was originally due, and the former law is continued in effect for
10 that purpose.

11 SECTION 7. Section 473.051, Government Code, as added by
12 this Act, does not require a state agency that, on the effective
13 date of this Act, is self-directed and semi-independent to submit
14 an application to the Legislative Budget Board seeking
15 self-directed and semi-independent agency status.

16 SECTION 8. This Act takes effect September 1, 2017.