

BILL ANALYSIS

Senate Research Center
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H.B. 1685
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Self-Directed Semi-Independent Agency Project Act (Act) allows the Texas State Board of Public Accountancy, Texas Board of Professional Engineers, and Texas Board of Architectural Examiners to collect revenues and set budgets outside of the appropriations process. The Act makes these boards responsible for all direct and indirect costs, and specifically provides that money from the general revenue fund may not be used to pay expenses or debt of project agencies. Each agency must maintain information regarding its financial condition and operation and must remit a fixed sum annually to the general revenue fund. Each agency maintains a reserve fund balance to allow them to cover future costs and to plan for future expenditures.

These agencies are exempt from any state laws inconsistent with self-directed semi-independent status, but are still required to comply with other general laws such as the Public Information and Open Meetings Acts and meet provisions generally applicable to state agencies, such as audits by the state auditor's office. The agencies must also biennially report statistical information reflecting their licensing and enforcement efforts to the governor, House Appropriations and Senate Finance Committees, and the Legislative Budget Board.

The Act is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the legislature. The Sunset Advisory Commission concluded that the Act is working as intended and should be continued, with future Sunset review happening as part of the review of the agencies.

H.B. 1685 amends current law relating to the continuation of the self-directed and semi-independent status of the Texas State Board of Public Accountancy, the Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Transfers the Self-Directed Semi-Independent Agency Project Act (Article 8930, V.T.C.S.) to Subtitle E, Title 4, Government Code, redesignates it as Chapter 472, Government Code, and amends it as follows:

CHAPTER 472. SELF-DIRECTED SEMI-INDEPENDENT AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS.

Deletes existing Section 1 title.

Sec. 472.001. APPLICABILITY OF CHAPTER. Redesignates existing Section 2 as Section 472.001. Provides that this chapter applies to the Texas State Board of Public Accountancy, the Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners. Deletes existing Section 2 title.

Sec. 472.002. DEFINITION. Redesignates existing Section 3 as Section 472.002. Redefines, in this chapter, "agency" to mean any agency listed in Section 472.001, rather than redefining a "project agency" listed in Section 2 of this Act.

SUBCHAPTER B. STATUS OF AGENCIES

Sec. 472.051. New heading: SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF AGENCIES. Redesignates existing Section 4 as Section 472.051. (a) Provides that each agency is self-directed and semi-independent as specified in this chapter. Deletes existing text requiring each project agency, notwithstanding any other provision of law, to become self-directed and semi-independent as specified in this Act. Deletes existing text authorizing any Act of the 78th Legislature that relates to an agency in Section 2 of this Act and that is inconsistent with being self-directed and semi-independent, to allow the pilot project the opportunity to test the effectiveness of operating under the provision of this Act, to be implemented on authorization by the governing board of the agency.

(b) Provides that each agency is a state agency, as that term is defined in Section 2001.003(7) (defining "state agency"), rather than requires that each project agency continue to be a state agency, as the term is defined in Section 2001.003(7), Government Code.

(b-1) Provides that, except as otherwise provided by this chapter, each agency is subject to a provision of law that applies to state agencies, including:

(1) state purchasing requirements under Subtitle D (State Purchasing and General Services), Title 10;

(2) interagency transfer voucher requirements under Section 2155.327 (Interagency Purchases and Transactions);

(3) travel requirements under Chapters 2171 (Travel and Vehicle Fleet Services) and 2205 (Aircraft Pooling), using amounts provided by the General Appropriations Act to guide travel reimbursement rates; and

(4) prompt payment requirements under Chapter 2251 (Payment for Goods and Services).

(c) Requires the Texas Sunset Advisory Commission (sunset) to examine each agency's performance as a self-directed and semi-independent agency and the agency's compliance with this chapter as part of sunset's periodic review of the agency under Chapter 325 (Texas Sunset Act). Deletes existing text providing that this Act is subject to Chapter 325, Government Code. Deletes existing text providing that, unless continued in existence as provided by that chapter, this Act expires September 1, 2013.

(d) Requires each agency to pay the cost incurred by sunset in performing a review of the agency under the agency's enabling legislation. Requires sunset to determine the cost, and requires the agency to pay the amount promptly on the receipt of a statement from sunset detailing the cost.

SUBCHAPTER C. POWERS AND DUTIES OF AGENCIES

Sec. 472.101. GENERAL DUTIES OF ALL AGENCIES. Redesignates existing Section 5 as Section 472.101. Requires each agency in addition to the duties enumerated in the enabling legislation specifically applicable to each agency, to have the duties prescribed by Sections 472.102 through 472.105, rather than that requires each project agency, in addition to the certain such duties, to have the duties prescribed by Sections 6 through 9 of this Act.

Sec. 472.102. BUDGET. Redesignates existing Section 6 as Section 472.102. (a)-(b) Changes references to a project agency to agency.

(c) Makes no changes to this subsection.

Sec. 472.103. AUDITS. Redesignates existing Section 7 as Section 472.103. Provides that nothing in this chapter, rather than in this Act, is required to offset the duty of the state auditor to audit an agency. Makes conforming and nonsubstantive changes.

Sec. 472.104. REPORTING REQUIREMENTS. Redesignates existing Section 8 as Section 472.104. (a) Makes conforming changes.

(b) Requires each agency, in addition to the reporting requirements of Subsection (a), to report annually, not later than November 1, to the governor, to the committee of each house of the legislature that has jurisdiction over appropriations, and to the Legislative Budget Board (LBB) the following:

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

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

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

(4) each agency's operating budget, including revenues and a breakdown of expenditures by program and administrative expenses, showing projected budget data for a period of two fiscal years and trend performance data for the preceding five fiscal years; and

(5) trend performance data for the preceding five fiscal years regarding:

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

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

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

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

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

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

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

(H) the average time to resolve a complaint;

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

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

(K) the average time to issue a license;

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

(M) reserve fund balances.

Deletes existing text requiring each project agency to report annually, not later than November 1 and in addition to certain reporting requirements, to certain entities the salary for all project agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees; the total amount of per diem expenses and travel expenses paid for each member of the governing body of each project agency; each project agency's operating plan and budget covering a two-year period; and a detailed report of all revenue received and all expenses incurred by the project agency in the previous 12 months.

Sec. 472.105. DISPOSITION OF FEES COLLECTED. Redesignates existing Section 9 as Section 472.105. Requires the agency, if provided in an agency's enabling legislation, to collect a professional fee of \$200 from its license holders, rather than licensees, annually, which is required to be remitted to the state. Requires the agency, if provided in an agency's enabling legislation, to collect a scholarship fee of \$10 annually from its license holders, rather than from its licensees and is required to remit it to the state. Makes conforming changes.

Sec. 472.106. New heading: GENERAL POWERS OF ALL AGENCIES. Redesignates existing Section 10 as Section 472.106. Requires each agency, in addition to the powers enumerated in each agency's enabling legislation, to have the powers described in Sections 472.107 through 472.110. Makes conforming and nonsubstantive changes.

Sec. 472.107. ABILITY TO CONTRACT. Redesignates existing Section 11 as Section 472.107. Makes conforming and nonsubstantive changes.

Sec. 472.108. PROPERTY. Redesignates existing Section 12 as Section 472.108 and makes a conforming change.

Sec. 472.109. SUITS. Redesignates existing Section 13 as Section 472.109 and makes conforming changes.

Sec. 472.110. FEES AND DISPOSITION OF FUNDS. Redesignates existing Section 14 as Section 472.110. (a) Authorizes each agency, subject to the limitations, if any, in the applicable enabling legislation, to set the amount of fees by statute or rule as necessary for the purpose of carrying out the functions of the agency. Makes conforming changes.

(b) Requires that all fees and funds collected by an agency, rather than collected by a project agency during the pilot project, and any funds appropriated to the agency, and any other funds belonging to or under the control of an agency be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. Requires the comptroller of public accounts of the State of Texas (comptroller) to contract with the agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and its customers. Prohibits an agency from holding funds in an account that is not under the control of the comptroller. Makes conforming changes.

(c) Requires an agency to use the comptroller's uniform statewide accounting system under Chapter 2101 (Accounting Procedures) to make all payments, other

than direct payments from an agency's account to the Texas Treasury Safekeeping Trust Company. Deletes existing text authorizing a project agency to retain each fiscal year an amount of fines and other revenue the project agency receives during the fiscal year as a result of enforcement actions that is equal to 20 percent of the total amount expended by the project agency during the previous fiscal year, not to exceed \$1 million.

(d) Requires an agency to remit all administrative penalties collected by the agency to the comptroller for deposit in the general revenue fund. Deletes existing text requiring 50 percent of the unexpected balance of the amount retained in Subsection (c) of this section, at the end of each fiscal year, to be deposited to the credit of the general revenue fund.

Sec. 472.111. POST-PARTICIPATION LIABILITY. Redesignates existing Section 15 as Section 472.111. (a) Requires a state agency, if the state agency no longer has status under this chapter as a self-directed semi-independent agency for any reason to be liable for any expenses or debts incurred by the state agency during the time the state agency had status as a self-directed semi-independent agency, rather than the time the agency participated in the pilot project. Provides that the state agency's liability under this section includes liability for any lease entered into by the state agency. Provides that the state is not liable for any expense or debt covered by this subsection, and prohibits money from the general revenue fund from being used to repay the expense or debt. Makes conforming changes.

(b) Makes conforming changes.

Sec. 472.112. OPEN GOVERNMENT. Redesignates existing Section 16 as Section 472.112 and makes conforming and nonsubstantive changes.

Sec. 472.113. New heading: MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Redesignates existing Section 17 as Section 472.113 and makes conforming and nonsubstantive changes.

Sec. 472.114. GIFTS. Redesignates existing Section 18 as Section 472.114. (a) Makes conforming changes.

(b) Requires an agency to report each gift, grant, or donation that the agency receives as a separate item in the agency's detailed report under Section 472.104(b).

SECTION 2. Amends Section 901.658, Occupations Code, as follows:

Sec. 901.658. FUNDING. Authorizes the Texas State Board of Public Accountancy to:

(1) use without appropriation, in accordance with this subchapter and Section 901.155, rather than in accordance with Article 8930, V.T.C.S., this subchapter, and Section 901.155 (Scholarship Trust Fund for Fifth-Year Accounting Students), any money from the trust fund established under Section 901.155; and

(2) accept gifts, grants, and donations of real or personal property from any entity, subject to limitations or conditions set by law, for the purposes of this subchapter.

SECTION 3. Repealer: Section 1001.507 (Disposition of Penalty), Occupations Code.

SECTION 4. Provides that Section 472.104(b), Government Code, as redesignated and amended by this Act, applies only to a report originally due on or after the effective date of this Act. Provides that a report originally due before the effective date of this Act is governed by the law in effect on the date the report was originally due, and the former law is continued in effect for that purpose.

SECTION 5. Requires each agency, not later than October 1, 2013, as that term is defined by Section 472.002, Government Code, as redesignated and amended by this Act, to transfer any funds held in an account not under the control of the comptroller to an account that is under the control of the comptroller, as provided by Section 472.110(b), Government Code, as redesignated and amended by this Act.

SECTION 6. Provides that Sections 472.110(c) and (d), Government Code, as redesignated and amended by this Act, and the repeal by this Act of Section 1001.507, Occupations Code, apply only to an administrative penalty that is collected on or after the effective date of this Act. Provides that an administrative penalty that is collected before the effective date of this Act is governed by the law in effect on the date the administrative penalty was collected, and the former law is continued in effect for that purpose.

SECTION 7. Effective date: September 1, 2013.