

BILL ANALYSIS

Senate Research Center
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S.B. 1375
By: Hinojosa
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1375 gives self-directed, semi-independent (SDSI) status to the Texas Medical Board, the Texas Board of Nursing, and the Texas State Board of Pharmacy. Since 2001, there have been nine state agencies granted SDSI status, all of whom have successfully implemented and maintained this system.

This will allow the medical, nursing, and pharmacy boards to collect revenue and set an annual budget on their own via their governor-appointed board, outside of the appropriations process. They will be responsible for all direct and indirect costs, such as rent, supplies, and benefits and retirement for all employees, who will remain part of the Employees Retirement System of Texas. No general revenue (GR) will be used to pay expenses for these agencies, which will rely solely on revenue from licenses and other fees to cover costs of operations; but their budget authority is limited to the costs of running agency programs. The boards will still have to comply with general laws applicable to state boards, such as the Open Meetings and Public Information Acts, as well as undergo Sunset Review.

The legislature retains jurisdiction of the Nursing Practice Act, Pharmacy Act, and Medical Practice Act, and can revise or rescind SDSI status at any time.

The agencies still must report to the legislature and the governor, submitting detailed annual financial reports. These three boards also will annually remit a legislatively-determined amount to the GR fund; all of these agencies currently contribute more to GR than what is appropriated back. All administrative penalties collected by the boards will be deposited to GR. The medical, nursing, and pharmacy boards will have to contract with the state auditor to conduct financial and performance audits, and pay for services they receive from other state agencies like the comptroller of public accounts of the State of Texas (comptroller), Attorney General, and State Office of Administrative Hearings, using either a retainer or paying for services as needed. The boards will be permitted to hold money only in an account controlled by the comptroller or the Texas Treasury Safekeeping Trust Company, ensuring oversight and transparency.

Regulatory authority and changes to the practice acts of these professions will remain in the sole jurisdiction of the legislature. Agency boards have that authority to take disciplinary action or revoke a license in cases that warrant it, just as they do now. The boards will have to submit a biennial report that includes data on enforcement activities.

As proposed, S.B. 1375 amends current law relating to self-directed and semi-independent status of certain health care regulatory agencies, makes an appropriation, and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 1 (Section 152.102, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Nursing (BON) in SECTION 10 (Section 301.072, Occupations Code) of this bill.

Rulemaking authority previously granted to BON is modified in SECTION 13 (Section 301.155, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTION 15 (Section 552.052, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 152, Occupations Code, by adding Subchapter C, as follows:

SUBCHAPTER C. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF BOARD

Sec. 152.101. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. (a) Provides that, notwithstanding any other provision of law, the Texas Medical Board (TMB) is self-directed and semi-independent as specified by this subchapter.

(b) Provides that, notwithstanding any other provision of law, each advisory committee, advisory board, and other board that is administratively attached to TMB is a subsidiary of TMB, and TMB's self-directed semi-independent status under Subsection (a) applies to the administratively attached entity.

Sec. 152.102. BUDGET, REVENUES, AND EXPENSES. (a) Requires the executive director of TMB (executive director) to submit to TMB annually a budget using generally accepted accounting principles. Requires that the budget, notwithstanding any other provision of law, including the General Appropriations Act, be adopted and approved only by TMB.

(b) Requires TMB to be responsible for all direct and indirect costs of TMB's existence and operation. Prohibits TMB from directly or indirectly causing the general revenue fund to incur any cost.

(c) Authorizes TMB, subject to any limitations in this subtitle (Physicians) or Subtitle C (Other Professions Performing Medical Procedures), to set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the functions of TMB and funding the budget adopted and approved under Subsection (a).

(d) Requires that all fees and funds collected by TMB and any funds appropriated to TMB be deposited with the comptroller of public accounts of the State of Texas (comptroller). Requires the comptroller to separately account for TMB's funds. Requires TMB and the comptroller by contract to determine the depository, investment, and other financial services the comptroller is required to provide to TMB.

(e) Requires TMB, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the comptroller in an amount not less than \$10,000. Requires TMB to reimburse the comptroller for all costs in excess of the nonrefundable retainer amounts paid each fiscal year incurred in providing financial services to TMB.

(f) Requires TMB, not later than August 31 of each fiscal year, to remit \$9.5 million to the comptroller for deposit in the general revenue fund.

(g) Requires TMB, not later than August 31 of each fiscal year, to remit to the comptroller for deposit in the general revenue fund all administrative penalties collected by TMB during the fiscal year, and requires that the amount of administrative penalties deposited count toward the amount TMB is required to remit under Subsection (f).

(h) Requires TMB to collect and deposit the surcharges as required by Section 153.053 (Surcharge for Certain Fees).

(i) Requires the executive director to submit to TMB, as directed by TMB, a report of the receipts and expenditures of TMB.

(j) Provides that the fiscal year for TMB begins on September 1 and ends on August 31.

Sec. 152.103. AUDITS. (a) Provides that this subchapter does not affect the duty of the state auditor to audit TMB. Requires the state auditor to enter into a contract and schedule with TMB to conduct audits, including financial reports and performance audits.

(b) Requires TMB, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the state auditor in an amount not less than \$25,000. Requires TMB to reimburse the state auditor for all costs in excess of the nonrefundable retainer amounts paid each fiscal year incurred in performing the audits, and requires TMB to provide to the governor a copy of any audit performed.

Sec. 152.104. RECORDS; REPORTING REQUIREMENTS. (a) Requires TMB to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of TMB.

(b) Requires TMB, before the beginning of each regular session of the legislature, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board (LBB) a report describing all of TMB's activities in the previous biennium. Requires that the report include:

(1) an audit as required by Section 152.103;

(2) a financial report of the previous fiscal biennium, including reports on financial condition and results of operations;

(3) a description of all changes in fees imposed by TMB;

(4) a report including five fiscal years of trend data on the number of examination candidates and license and registration permit holders and the enforcement activities of TMB;

(5) a list of all rules adopted or repealed since the date of the previous report; and

(6) the reports of any audits conducted by the State Office of Risk Management (SORM) or the Texas Workforce Commission (TWC) civil rights division.

(c) Requires TMB, in addition to the reporting requirements of Subsection (b), not later than November 1 of each year, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and LBB a report that contains:

(1) the salary for all TMB personnel and the total amount of per diem expenses and travel expenses paid for all TMB employees;

(2) the total amount of per diem expenses and travel expenses paid for each member of TMB;

(3) TMB's operating plan and annual budget; and

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

Sec. 152.105. ABILITY TO CONTRACT. (a) Authorizes TMB, to carry out and promote the objectives of this chapter (State Board of Medical Examiners), to enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of TMB's affairs and for the attainment of the TMB's purposes, except as limited by Subsection (b).

(b) Prohibits any indebtedness, liability, or obligation of TMB incurred under this section from:

(1) creating a debt or other liability of this state or another entity other than TMB; or

(2) creating any personal liability on the part of the members of TMB or TMB's employees.

Sec. 152.106. PROPERTY. Authorizes TMB to:

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

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

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

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

Sec. 152.107. ADMINISTRATIVE HEARINGS. (a) Requires TMB, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the State Office of Administrative Hearings (SOAH) in an amount not less than \$200,000 for hearings conducted under this subtitle or Subtitle C.

(b) Requires that the nonrefundable retainer be applied to the costs associated with conducting the hearings. Authorizes SOAH, if additional costs are incurred, to assess and collect from TMB reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing under this subtitle or Subtitle C.

Sec. 152.108. SUITS. (a) Requires the office of the attorney general (OAG) to represent TMB in any litigation.

(b) Requires TMB, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to OAG in an amount not less than \$50,000. Requires that the nonrefundable retainer be applied to any services provided to TMB. Authorizes the attorney general, if additional litigation services are required, to assess and collect from TMB reasonable attorney's fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Sec. 152.109. POST-PARTICIPATION LIABILITY. (a) Requires TMB, if TMB no longer has status under this subchapter as a self-directed semi-independent agency for

any reason, to be liable for any expenses or debts incurred by TMB during the time TMB was a self-directed semi-independent agency. Provides that TMB's liability under this section includes liability for any lease entered into by TMB. Provides that this state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) Requires that ownership of any property or other asset acquired by TMB during the time TMB was a self-directed semi-independent agency, including unexpended fees deposited with the comptroller, if TMB no longer has status under this subchapter as a self-directed semi-independent agency for any reason, be transferred to this state.

Sec. 152.110. DUE PROCESS; OPEN GOVERNMENT. Provides that TMB is:

(1) a governmental body for purposes of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code; and

(2) a state agency for purposes of Chapters 2001 (Administrative Procedure) and 2005 (Miscellaneous Provisions Relating to State Licenses and Permits), Government Code.

Sec. 152.111. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Provides that employees of TMB are members of the Employees Retirement System of Texas (ERS) under Chapter 812 (Membership), Government Code, and TMB's transition to semi-independent status as provided by this subchapter has no effect on the employees' membership or any benefits under that system.

Sec. 152.112. GIFTS. (a) Prohibits TMB, notwithstanding any other law, from accepting a gift, grant, or donation:

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

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

(b) Requires TMB to:

(1) report each gift, grant, or donation that TMB receives as a separate item in TMB's report required under Section 152.104(b); and

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

Sec. 152.113. HEALTH PROFESSIONS COUNCIL. Requires TMB, not later than September 30 of each fiscal year, to remit a nonrefundable prorated assessment to the Health Professions Council (HPC) under Section 101.006 (Budget) in an amount not less than \$28,000.

SECTION 2. Amends Section 152.007, Occupations Code, as follows:

Sec. 152.007. PER DIEM. (a) Entitles each TMB member to receive a per diem, rather than a per diem as set by legislative appropriation, for each day that the member engages in the business of TMB.

(b) Entitles a board member to reimbursement for travel expenses incurred while conducting TMB business, including expenses for meals, lodging, and transportation. Deletes existing text providing that, if the General Appropriations Act does not prescribe the amount of the per diem, the per diem consists of actual expenses for meals, lodging, and transportation, plus \$100.

SECTION 3. Amends Section 152.010(c), Occupations Code, to entitle a person appointed to TMB to reimbursement, rather than to reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 4. Amends Section 204.057, Occupations Code, as follows:

Sec. 204.057. PER DIEM. Entitles a member of the Texas Physician Assistant Board (PAB) to receive a per diem, rather than a per diem as set by legislative appropriation, for each day that the member engages in the business of PAB. Entitles a member of PAB to reimbursement for travel expenses incurred while conducting PAB business, including expenses for meals, lodging, and transportation. Deletes existing text providing that if the General Appropriations Act does not prescribe the amount of the per diem, the per diem is equal to a member's actual expenses for meals, lodging, and transportation plus \$100.

SECTION 5. Amends Section 204.059(c), Occupations Code, to entitle a person appointed to PAB to reimbursement, rather than to reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 6. Amends Section 205.053(b), Occupations Code, as follows:

(b) Prohibits an officer, board member, employee, or paid consultant of a Texas trade association in the field of health care from being a member of the Texas State Board of Acupuncture Examiners (acupuncture board) or an employee of TMB who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), rather than who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

SECTION 7. Amends Section 205.057(c), Occupations Code, to entitle a person appointed to the acupuncture board to reimbursement, rather than to reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 8. Amends Section 205.059, Occupations Code, as follows:

Sec. 205.059. New heading: COMPENSATION; TRAVEL EXPENSES. Prohibits an acupuncture board member from receiving compensation for service on the acupuncture board but is entitled to reimbursement for travel expenses incurred while conducting acupuncture board business, including expenses for transportation, meals, and lodging, rather than is entitled to receive a per diem as set by legislative appropriation for transportation and related expenses incurred for each day that the member engages in the acupuncture board's business.

SECTION 9. Amends Section 206.057, Occupations Code, as follows:

Sec. 206.057. New heading: TRAVEL EXPENSES. Provides that a member of the advisory committee created under this chapter (Surgical Assistants) (advisory committee) is not entitled to receive compensation for service on the advisory committee but is authorized to receive reimbursement for travel expenses incurred while conducting advisory committee business, including expenses for transportation, meals, and lodging, rather than is not entitled to reimbursement for travel expenses or compensation.

SECTION 10. Amends Chapter 301, Occupations Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF BOARD

Sec. 301.071. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. Provides that, notwithstanding any other provision of law, the Texas Board of Nursing (BON) is self-directed and semi-independent as specified by this subchapter.

Sec. 301.072. BUDGET, REVENUES, AND EXPENSES. (a) Requires the executive director of BON (executive director) to submit to BON annually a budget using generally accepted accounting principles. Requires that the budget, notwithstanding any other provision of law, including the General Appropriations Act, be adopted and approved only by BON.

(b) Requires BON to be responsible for all direct and indirect costs of BON's existence and operation. Prohibits BON from directly or indirectly causing the general revenue fund to incur any cost.

(c) Authorizes BON, subject to any limitations in this chapter (Nurses), to set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the functions of BON and funding the budget adopted and approved under Subsection (a).

(d) Requires that all fees and funds collected by BON and any funds appropriated to BON be deposited with the comptroller. Requires the comptroller to separately account for BON's funds. Requires BON and the comptroller by contract to determine the depository, investment, and other financial services the comptroller is required to provide to BON.

(e) Requires BON, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the comptroller in an amount not less than \$10,000. Requires BON to reimburse the comptroller for all costs in excess of the nonrefundable retainer amounts paid each fiscal year incurred in providing financial services to BON.

(f) Requires BON, not later than August 31 of each fiscal year, to remit \$3.75 million to the comptroller for deposit in the general revenue fund.

(g) Requires BON, not later than August 31 of each fiscal year, to remit to the comptroller for deposit in the general revenue fund all administrative penalties collected by BON during the fiscal year, and requires that the amount of administrative penalties deposited count toward the amount BON is required to remit under Subsection (f).

(h) Requires the executive director to submit to BON, as directed by BON, a report of the receipts and expenditures of BON.

(i) Provides that the fiscal year for BON begins on September 1 and ends on August 31.

Sec. 301.073. AUDITS. (a) Provides that this subchapter does not affect the duty of the state auditor to audit BON. Requires the state auditor to enter into a contract and schedule with BON to conduct audits, including financial reports and performance audits.

(b) Requires BON, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the state auditor in an amount not less than \$10,000. Requires BON to reimburse the state auditor for all costs in excess of the nonrefundable retainer amounts paid each fiscal year incurred in performing the audits, and requires BON to provide to the governor a copy of any audit performed.

Sec. 301.074. RECORDS; REPORTING REQUIREMENTS. (a) Requires BON to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of BON.

(b) Requires BON, before the beginning of each regular session of the legislature, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and LBB a report describing all of BON's activities in the previous biennium. Requires that the report include:

- (1) an audit as required by Section 301.073;
- (2) a financial report of the previous fiscal biennium, including reports on financial condition and results of operations;
- (3) a description of all changes in fees imposed by BON;
- (4) a report including five fiscal years of trend data on the number of examination candidates and license holders and the programs of study and enforcement activities of BON;
- (5) a list of all rules adopted or repealed since the date of the previous report; and
- (6) the reports of any audits conducted by the SORM or TWC civil rights division.

(c) Requires BON, in addition to the reporting requirements of Subsection (b), not later than November 1 of each year, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and LBB a report that contains:

- (1) the salary for all BON personnel and the total amount of per diem expenses and travel expenses paid for all BON employees;
- (2) the total amount of per diem expenses and travel expenses paid for each member of BON;
- (3) BON's operating plan and annual budget; and
- (4) a detailed report of all revenue received and all expenses incurred by BON in the previous 12 months.

Sec. 301.075. ABILITY TO CONTRACT. (a) Authorizes BON, to carry out and promote the objectives of this chapter, to enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of BON's affairs and for the attainment of BON's purposes, except as limited by Subsection (b).

(b) Prohibits any indebtedness, liability, or obligation of BON incurred under this section from:

- (1) creating a debt or other liability of this state or another entity other than BON; or
- (2) creating any personal liability on the part of the members of BON or BON's employees.

Sec. 301.076. PROPERTY. Authorizes BON to:

- (1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in

property, necessary or convenient to the exercise of the powers, rights, privileges, or functions of BON;

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

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

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

Sec. 301.077. ADMINISTRATIVE HEARINGS. (a) Requires BON, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to SOAH in an amount not less than \$25,000 for hearings conducted under this chapter.

(b) Requires that the nonrefundable retainer be applied to the costs associated with conducting the hearings. Authorizes SOAH, if additional costs are incurred, to assess and collect from BON reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing under this chapter.

Sec. 301.078. SUITS. (a) Requires OAG to represent BON in any litigation.

(b) Requires BON, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to OAG in an amount not less than \$10,000. Requires that the nonrefundable retainer be applied to any services provided to BON. Authorizes the attorney general, if additional litigation services are required, to assess and collect from BON reasonable attorney's fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Sec. 301.079. POST-PARTICIPATION LIABILITY. (a) Requires BON, if BON no longer has status under this subchapter as a self-directed semi-independent agency for any reason, to be liable for any expenses or debts incurred by BON during the time BON was a self-directed semi-independent agency. Provides that BON's liability under this section includes liability for any lease entered into by BON. Provides that this 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.

(b) Requires that ownership of any property or other asset acquired by BON during the time BON was a self-directed semi-independent agency, including unexpended fees deposited with the comptroller, if BON no longer has status under this subchapter as a self-directed semi-independent agency for any reason, be transferred to this state.

Sec. 301.080. DUE PROCESS; OPEN GOVERNMENT. Provides that BON is a governmental body for purposes of Chapters 551 and 552, Government Code, and a state agency for purposes of Chapters 2001 and 2005, Government Code.

Sec. 301.081. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Provides that employees of BON are members of the ERS under Chapter 812, Government Code, and BON's transition to semi-independent status as provided by this subchapter has no effect on the employees' membership or any benefits under that system.

Sec. 301.082. GIFTS. (a) Prohibits BON, notwithstanding any other law, from accepting a gift, grant, or donation:

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

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

(b) Requires BON to:

(1) report each gift, grant, or donation that the board receives as a separate item in BON's report required under Section 301.074(b); and

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

Sec. 301.083. HEALTH PROFESSIONS COUNCIL. Requires BON, not later than September 30 of each fiscal year, to remit a nonrefundable prorated assessment to HPC under Section 101.006 in an amount not less than \$29,000.

SECTION 11. Amends Section 301.056, Occupations Code, as follows:

Sec. 301.056. PER DIEM; REIMBURSEMENT. (a) Entitles each BON member to receive a per diem, rather than a per diem as set by the General Appropriations Act, for each day the member engages in the business of BON.

(b) Entitles a BON member to reimbursement for travel expenses incurred while conducting BON business, including expenses for transportation, meals, and lodging, rather than entitling a BON member to reimbursement for travel expenses incurred while conducting BON business, including expenses for transportation, meals, and lodging, as provided by the General Appropriations Act.

SECTION 12. Amends Section 301.059(c), Occupations Code, to entitle a person appointed to BON to reimbursement, rather than to reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 13. Amends Section 301.155(a), Occupations Code, as follows:

(a) Requires BON by rule to establish fees in amounts reasonable and necessary to cover the costs of administering this chapter. Deletes existing text prohibiting BON from setting set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

SECTION 14. Amends Chapter 552, Occupations Code, by designating Sections 552.001 through 552.012 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. ORGANIZATION OF BOARD

SECTION 15. Amends Chapter 552, Occupations Code, by adding Subchapter B, as follows:

SUBCHAPTER B. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF BOARD

Sec. 552.051. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. Provides that, notwithstanding any other provision of law, the Texas State Board of Pharmacy (TSBP) is self-directed and semi-independent as specified by this subchapter.

Sec. 552.052. BUDGET, REVENUES, AND EXPENSES. (a) Requires the executive director of TSBP (executive director) to submit to TSBP annually a budget using generally accepted accounting principles. Requires that the budget, notwithstanding any

other provision of law, including the General Appropriations Act, be adopted and approved only by TSBP.

(b) Requires TSBP to be responsible for all direct and indirect costs of TSBP's existence and operation. Prohibits TSBP from directly or indirectly causing the general revenue fund to incur any cost.

(c) Authorizes TSBP, subject to any limitations in this subtitle (Pharmacy and Pharmacists), to set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the functions of TSBP and funding the budget adopted and approved under Subsection (a).

(d) Requires that all fees and funds collected by TSBP and any funds appropriated to TSBP be deposited with the comptroller. Requires the comptroller to separately account for TSBP's funds. Requires TSBP and the comptroller by contract to determine the depository, investment, and other financial services the comptroller is required to provide to TSBP.

(e) Requires TSBP, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the comptroller in an amount not less than \$10,000. Requires TSBP to reimburse the comptroller for all costs in excess of the nonrefundable retainer amounts paid each fiscal year incurred in providing financial services to TSBP.

(f) Requires TSBP, not later than August 31 of each fiscal year, to remit to the comptroller \$800,000 to be deposited in the general revenue fund.

(g) Requires TSBP, not later than August 31 of each fiscal year, to remit to the comptroller for deposit in the general revenue fund all administrative penalties collected by TSBP during the fiscal year, and requires that the amount of administrative penalties deposited count toward the amount TSBP is required to remit under Subsection (f).

(h) Requires the executive director to submit to TSBP, as directed by TSBP, a report of the receipts and expenditures of TSBP.

(i) Provides that the fiscal year for TSBP begins on September 1 and ends on August 31.

Sec. 552.053. AUDITS. (a) Provides that this subchapter does not affect the duty of the state auditor to audit TSBP. Requires the state auditor to enter into a contract and schedule with TSBP to conduct audits, including financial reports and performance audits.

(b) Requires TSBP, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the state auditor in an amount not less than \$10,000. Requires TSBP to reimburse the state auditor for all costs in excess of the nonrefundable retainer amounts paid each fiscal year incurred in performing the audits, and requires TSBP to provide to the governor a copy of any audit performed.

Sec. 552.054. RECORDS; REPORTING REQUIREMENTS. (a) Requires TSBP to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of TSBP.

(b) Requires TSBP, before the beginning of each regular session of the legislature, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and LBB a report describing all of TSBP's activities in the previous biennium. Requires that the report include:

- (1) an audit as required by Section 552.053;
- (2) a financial report of the previous fiscal biennium, including reports on financial condition and results of operations;
- (3) a description of all changes in fees imposed by TSBP;
- (4) a report including five fiscal years of trend data on the number of examination candidates, license holders, and registrants and the enforcement activities of TSBP;
- (5) a list of all rules adopted or repealed since the date of the previous report; and
- (6) the reports of any audits conducted by SORM or TWC civil rights division.

(c) Requires TSBP, in addition to the reporting requirements of Subsection (b), not later than November 1 of each year, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and LBB a report that contains:

- (1) the salary for all TSBP personnel and the total amount of per diem expenses and travel expenses paid for all TSBP employees;
- (2) the total amount of per diem expenses and travel expenses paid for each member of TSBP;
- (3) TSBP's operating plan and annual budget; and
- (4) a detailed report of all revenue received and all expenses incurred by TSBP in the previous 12 months.

Sec. 552.055. ABILITY TO CONTRACT. (a) Authorizes TSBP, to carry out and promote the objectives of this chapter, to enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of TSBP's affairs and for the attainment of TSBP's purposes, except as limited by Subsection (b).

(b) Prohibits any indebtedness, liability, or obligation of TSBP incurred under this section from:

- (1) creating a debt or other liability of this state or another entity other than TSBP; or
- (2) creating any personal liability on the part of the members of TSBP or TSBP's employees.

Sec. 552.056. PROPERTY. Authorizes TSBP to:

- (1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary or convenient to the exercise of the powers, rights, privileges, or functions of TSBP;
- (2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that TSBP determines is not necessary or convenient to the exercise of TSBP's powers, rights, privileges, or functions;

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

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

Sec. 552.057. ADMINISTRATIVE HEARINGS. (a) Requires TSBP, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to SOAH in an amount not less than \$17,000 for hearings conducted under Chapter 565 (Disciplinary Actions and Procedures; Reinstatement of License).

(b) Requires that the nonrefundable retainer be applied to the costs associated with conducting the hearings. Authorizes SOAH, if additional costs are incurred, to assess and collect from TSBP reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing under Chapter 565.

Sec. 552.058. SUITS. (a) Requires OAG to represent TSBP in any litigation.

(b) Requires TSBP, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to OAG in an amount not less than \$10,000. Requires that the nonrefundable retainer be applied to any services provided to TSBP. Authorizes the attorney general, if additional litigation services are required, to assess and collect from TSBP reasonable attorney's fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Sec. 552.059. POST-PARTICIPATION LIABILITY. (a) Requires TSBP, if TSBP no longer has status under this subchapter as a self-directed semi-independent agency for any reason, to be liable for any expenses or debts incurred by TSBP during the time TSBP was a self-directed semi-independent agency. Provides that TSBP's liability under this section includes liability for any lease entered into by TSBP. Provides that this 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.

(b) Requires that ownership of any property or other asset acquired by TSBP during the time TSBP was a self-directed semi-independent agency, including unexpended fees deposited with the comptroller, if TSBP no longer has status under this subchapter as a self-directed semi-independent agency for any reason, be transferred to this state.

Sec. 552.060. DUE PROCESS; OPEN GOVERNMENT. Provides that TSBP is a governmental body for purposes of Chapters 551 and 552, Government Code, and a state agency for purposes of Chapters 2001 and 2005, Government Code.

Sec. 552.061. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Provides that employees of TSBP are members of ERS under Chapter 812, Government Code, and TSBP's transition to semi-independent status as provided by this subchapter has no effect on the employees' membership or any benefits under that system.

Sec. 552.062. GIFTS. (a) Prohibits TSBP, notwithstanding any other law, from accepting a gift, grant, or donation:

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

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

(b) Requires TSBP to:

(1) report each gift, grant, or donation that TSBP receives as a separate item in TSBP's report required under Section 552.054(b); and

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

Sec. 552.063. HEALTH PROFESSIONS COUNCIL. (a) Requires TSBP, not later than September 30 of each fiscal year, to remit a nonrefundable prorated assessment to HPC under Section 101.006 in an amount not less than \$26,000.

(b) Requires TSBP, not later than September 30 of each fiscal year in which TSBP uses HPC's shared regulatory database system, to remit an additional nonrefundable prorated assessment to HPC under Section 101.006 in an amount not less than \$262,000, except that for the fiscal year ending August 31, 2015, TSBP is required to remit not less than \$264,000 as the additional prorated assessment under this subsection.

SECTION 16. Amends Section 552.006(c), Occupations Code, to entitle a person appointed to TSBP to reimbursement, rather than to reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 17. Amends Section 552.009, Occupations Code, as follows:

Sec. 552.009. PER DIEM; REIMBURSEMENT. (a) Entitles each member of TSBP to a per diem, rather than a per diem set by legislative appropriation, for each day the member engages in TSBP business.

(b) Entitles a member to reimbursement for travel expenses, rather than to reimbursement for travel expenses as prescribed by the General Appropriations Act.

SECTION 18. Amends Section 564.051(c), Occupations Code, as follows:

(c) Authorizes funds and surcharges collected under this section (Program Authorization; Funding) to only be used by TSBP to administer the program authorized by this section, including providing for initial evaluation and referral of an impaired pharmacist or pharmacy student by a qualified health professional and paying the administrative costs incurred by TSBP in connection with that funding. Deletes existing text requiring funds and surcharges collected under this section to be deposited in the general revenue fund. Makes a nonsubstantive change.

SECTION 19. Repealers: Sections 153.051(b) (relating to prohibiting TMB from adjusting a fee established on or before September 1, 1993, to an amount less than the amount of the fee on September 1, 1993) and (d) (relating to prohibiting TMB from setting, charging, collecting, receiving, or depositing certain fees in excess of certain amounts), 153.052 (Deposit and Expenditure of Receipts), 153.0535(b) (relating to requiring TMB to deposit each surcharge collected to the credit of the public assurance account), and 554.007(a) (relating to requiring TSBP to deposit revenue collected under this subtitle to the credit of the general revenue fund), Occupations Code.

SECTION 20. (a) Provides that, to provide a reasonable period for TMB, BON, and TSBP to establish the boards as self-directed and semi-independent under Subchapter C, Chapter 152, Subchapter B-1, Chapter 301, and Subchapter B, Chapter 552, Occupations Code, as added by this Act, the following amounts are appropriated from the general revenue fund to each board:

(1) for the state fiscal year ending August 31, 2014, an amount equal to 50 percent of the amount of general revenue appropriated to the board for the state fiscal year ending August 31, 2013; and

(2) for the state fiscal year ending August 31, 2015, an amount equal to 50 percent of the amount of general revenue appropriated to the board for the state fiscal year ending August 31, 2013.

(b) Authorizes the appropriations made by Subsection (a) of this section, subject to Section 152.102, 301.072, or 552.052, Occupations Code, as added by this Act, to be spent by the board to which the appropriation is made as the board directs. Requires each board to repay to the general revenue fund the appropriation made to the board for the state fiscal year ending August 31, 2014, not later than that date and as funds become available. Requires each board to repay to the general revenue fund the appropriation made to the board for the state fiscal year ending August 31, 2015, not later than that date and as funds become available. Provides that the repayment of an appropriation under this subsection is required in addition to the funds required to be remitted to the general revenue fund under Section 152.102(f), 301.072(f), or 552.052(f), Occupations Code, as added by this Act.

(c) Prohibits the transfer of TMB, BON, or TSBP to self-directed and semi-independent status under Subchapter C, Chapter 152, Subchapter B-1, Chapter 301, or Subchapter B, Chapter 552, Occupations Code, as added by this Act, and the expiration of self-directed and semi-independent status of a board from acting to cancel, suspend, or prevent:

(1) any debt owed to or by the board;

(2) any fine, tax, penalty, or obligation of any party;

(3) any contract or other obligation of any party; or

(4) any action taken by the board in the administration or enforcement of the board's duties.

(d) Requires TMB, BON, and TSBP to continue to have and exercise the powers and duties allocated to each board under law, except as specifically provided by this Act.

(e) Provides that title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by TMB, BON, or TSBP is transferred to each respective board. Provides that this Act does not affect any property owned by any of the boards on or before the effective date of this Act.

(f) Requires TMB to pay rent to the state for the use and occupancy of state-owned office space for any period during which TMB occupies state-owned office space. Requires that reasonable rent be determined by the Texas Facilities Commission (TFC). Prohibits aggregate rental payments from being less than \$430,000 each fiscal year for any period during which TMB occupies state-owned office space. Authorizes TMB to pay a prorated amount of rent for any partial fiscal year during which TMB occupies state-owned office space if TFC allows TMB to lease the space for less than a full fiscal year.

(g) Requires BON to pay rent to the state for the use and occupancy of state-owned office space for any period during which BON occupies state-owned office space. Requires that reasonable rent be determined by TFC. Prohibits aggregate rental payments from being less than \$278,000 each fiscal year during which BON occupies state-owned office space. Authorizes BON to pay a prorated amount of rent for any partial fiscal year during which BON occupies state-owned office space if TFC allows BON to lease the space for less than a full fiscal year.

(h) Requires TSBP to pay rent to the state for the use and occupancy of state-owned office space for any period during which TSBP occupies state-owned office space.

Requires that reasonable rent be determined by TFC. Prohibits aggregate rental payments from being less than \$162,000 each fiscal year for any period during which TSBP occupies state-owned office space. Authorizes TSBP to pay a prorated amount of rent for any partial fiscal year during which TSBP occupies state-owned office space if TFC allows TSBP to lease the space for less than a full fiscal year.

(i) Provides that, if a conflict exists between this Act and another Act of the 83rd Legislature, Regular Session, 2013, that relates to the self-directed and semi-independent status of TMB, BON, or TSBP, this Act controls without regard to the relative dates of enactment.

SECTION 21. Requires TMB, BON, and TSBP to continue to be agencies of this state for all purposes, and prohibits any provision of this Act from being construed otherwise.

SECTION 22. Effective date: September 1, 2013.