

1-1 By: Hinojosa, et al. S.B. No. 217  
 1-2 (In the Senate - Filed March 5, 2015; March 10, 2015, read  
 1-3 first time and referred to Committee on Business and Commerce;  
 1-4 March 30, 2015, rereferred to Committee on Finance; April 13, 2015,  
 1-5 reported adversely, with favorable Committee Substitute by the  
 1-6 following vote: Yeas 14, Nays 0; April 13, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23	X			

1-24 COMMITTEE SUBSTITUTE FOR S.B. No. 217 By: Hinojosa

1-25 A BILL TO BE ENTITLED  
 1-26 AN ACT

1-27 relating to the self-directed and semi-independent status of  
 1-28 certain agencies and to the requirements applicable to, and the  
 1-29 oversight of, those agencies.

1-30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-31 SECTION 1. Sections 472.001 and 472.002, Government Code,  
 1-32 are amended to read as follows:

1-33 Sec. 472.001. APPLICABILITY OF CHAPTER. This chapter  
 1-34 applies to:

- 1-35 (1) the Texas State Board of Public Accountancy;
- 1-36 (2) the Texas Board of Professional Engineers; ~~and~~
- 1-37 (3) the Texas Board of Architectural Examiners;
- 1-38 (4) the Texas Real Estate Commission;
- 1-39 (5) the Texas Appraiser Licensing and Certification

1-40 Board;

- 1-41 (6) the Texas Department of Banking;
- 1-42 (7) the Department of Savings and Mortgage Lending;
- 1-43 (8) the Office of Consumer Credit Commissioner; and
- 1-44 (9) the Credit Union Department.

1-45 Sec. 472.002. DEFINITIONS [DEFINITION]. In this chapter:

1-46 (1) "Agency" [,"agency"] means an agency listed in  
 1-47 Section 472.001.

1-48 (2) "Board" means the Legislative Budget Board.

1-49 (3) "Financial regulatory agency" means an agency  
 1-50 described by Sections 472.001(6)-(9).

1-51 SECTION 2. Subchapter A, Chapter 472, Government Code, is  
 1-52 amended by adding Sections 472.003, 472.004, 472.005, and 472.006  
 1-53 to read as follows:

1-54 Sec. 472.003. STATUS AND OVERSIGHT OF CERTAIN AGENCIES.  
 1-55 This chapter does not affect:

1-56 (1) the Texas Appraiser Licensing and Certification  
 1-57 Board's status as an independent subdivision of the Texas Real  
 1-58 Estate Commission as provided by Section 1103.051, Occupations  
 1-59 Code; or

1-60 (2) the oversight of a financial regulatory agency by

2-1 that agency's governing body or the agency's accountability to, and  
 2-2 relationship with, that governing body.

2-3 Sec. 472.004. ROLE OF BOARD; RECOVERY OF COSTS. (a) The  
 2-4 board has responsibility under this chapter for developing and  
 2-5 administering the application process, monitoring agencies, and  
 2-6 performing other duties provided under this chapter.

2-7 (b) The board may recover from an agency the costs  
 2-8 associated with administering the application process for the  
 2-9 agency and the board's monitoring of the agency.

2-10 Sec. 472.005. APPLICATION FOR SELF-DIRECTED AND  
 2-11 SEMI-INDEPENDENT AGENCY STATUS; AUDIT REQUIRED. (a) Before a  
 2-12 state agency may be granted self-directed and semi-independent  
 2-13 status, the agency must:

2-14 (1) submit an application to the board; and  
 2-15 (2) undergo a financial audit and an effectiveness  
 2-16 audit as required under Subsection (e).

2-17 (b) A state agency may not submit the application required  
 2-18 under Subsection (a) until the agency's governing body:

2-19 (1) provides notice and holds a public hearing on the  
 2-20 application; and

2-21 (2) approves, by majority vote, the submission of the  
 2-22 application.

2-23 (c) The application must be submitted to the board as part  
 2-24 of the agency's legislative appropriations request.

2-25 (d) The application shall be in the form prescribed by the  
 2-26 board, which must require the agency applying for self-directed and  
 2-27 semi-independent status to:

2-28 (1) state the reasons for which the agency is seeking  
 2-29 self-directed and semi-independent status and address any  
 2-30 potential problems that may result from granting that status; and

2-31 (2) include, as relevant to the agency's application:

2-32 (A) information demonstrating the agency's  
 2-33 history of efficient operation and continuing ability to operate  
 2-34 efficiently and in a manner that protects the public interest;

2-35 (B) documentation of adequate budgetary  
 2-36 processes and controls; and

2-37 (C) an analysis of the fiscal effect on state  
 2-38 revenue and other state agencies demonstrating that the agency's  
 2-39 status as self-directed and semi-independent would be revenue  
 2-40 neutral.

2-41 (e) A state agency must undergo a financial audit and an  
 2-42 effectiveness audit by the state auditor during the four-year  
 2-43 period preceding the date the agency submits an application under  
 2-44 Subsection (a). The state auditor shall conduct the financial  
 2-45 audit and effectiveness audit and make the findings of the  
 2-46 completed audits available to the board.

2-47 (f) The board may require an agency to submit additional  
 2-48 information necessary to evaluate the agency's ability to operate  
 2-49 effectively as a self-directed and semi-independent agency.

2-50 Sec. 472.006. REVIEW OF APPLICATION AND RECOMMENDATION.

2-51 (a) The board's staff shall promptly review an application  
 2-52 submitted under Section 472.005. The staff review shall determine  
 2-53 whether the agency's application is sufficient and whether the  
 2-54 agency's application should be granted or denied.

2-55 (b) The board's staff shall submit the staff's  
 2-56 recommendation as to whether the agency's application should be  
 2-57 granted or denied to the board. The board may recommend to the  
 2-58 committee of each house of the legislature that has jurisdiction  
 2-59 over appropriations that legislation be introduced to grant  
 2-60 self-directed and semi-independent status to the agency.

2-61 SECTION 3. Section 472.051(c), Government Code, is amended  
 2-62 to read as follows:

2-63 (c) The Sunset Advisory Commission shall examine each  
 2-64 agency's status and performance as a self-directed and  
 2-65 semi-independent agency and the agency's compliance with this  
 2-66 chapter as part of the commission's periodic review of the agency  
 2-67 under Chapter 325 (Texas Sunset Act).

2-68 SECTION 4. Subchapter B, Chapter 472, Government Code, is  
 2-69 amended by adding Sections 472.052 and 472.053 to read as follows:

3-1 Sec. 472.052. REVIEW OF SELF-DIRECTED AND SEMI-INDEPENDENT  
 3-2 AGENCIES. (a) The board's staff and the board shall review each  
 3-3 agency's annual report submitted under Section 472.104(b) and any  
 3-4 additional information requested by the board and received from the  
 3-5 agency to determine the agency's compliance with this chapter.

3-6 (b) The board's staff may make a recommendation to the  
 3-7 committee of each house of the legislature that has jurisdiction  
 3-8 over appropriations and to the legislature to address issues  
 3-9 identified during a review conducted under this section, except  
 3-10 that the staff may not recommend the revocation of an agency's  
 3-11 self-directed and semi-independent status.

3-12 (c) The board may recommend that legislation be introduced  
 3-13 to revoke an agency's self-directed and semi-independent status or  
 3-14 otherwise address issues raised by the board. A recommendation to  
 3-15 revoke an agency's self-directed and semi-independent status may be  
 3-16 based on the agency's conduct, including:

3-17 (1) material abuse by the agency of its self-directed  
 3-18 and semi-independent status; or

3-19 (2) fiscal mismanagement.

3-20 Sec. 472.053. REVOCATION OF SELF-DIRECTED AND  
 3-21 SEMI-INDEPENDENT STATUS. (a) The board may develop criteria for  
 3-22 determining when a recommendation for the revocation of an agency's  
 3-23 self-directed and semi-independent status is appropriate. The  
 3-24 board may recommend the revocation of an agency's self-directed and  
 3-25 semi-independent status to the legislature as provided by Section  
 3-26 472.052(c). If the board recommends revocation of an agency's  
 3-27 self-directed and semi-independent status, the agency shall have  
 3-28 the opportunity to respond in writing to that recommendation.

3-29 (b) The Sunset Advisory Commission may recommend revocation  
 3-30 of an agency's self-directed and semi-independent status to the  
 3-31 legislature as part of the commission's periodic review of the  
 3-32 agency under Chapter 325 (Texas Sunset Act).

3-33 (c) The legislature may consider legislation to revoke an  
 3-34 agency's self-directed and semi-independent status regardless of  
 3-35 whether the revocation is recommended by the board or the Sunset  
 3-36 Advisory Commission.

3-37 (d) The board shall assist an agency in transitioning from  
 3-38 self-directed and semi-independent status if the agency's status is  
 3-39 revoked. The board may consider issues relating to appropriations  
 3-40 and financial planning for the agency, and an evaluation of the  
 3-41 status and disposition of agency contracts, facilities,  
 3-42 properties, and leases when assisting an agency under this  
 3-43 subsection.

3-44 SECTION 5. Section 472.102, Government Code, is amended by  
 3-45 adding Subsection (d) to read as follows:

3-46 (d) Not later than August 31 of each state fiscal year, the  
 3-47 Texas Real Estate Commission and the Texas Appraiser Licensing and  
 3-48 Certification Board together shall remit \$750,000 to the general  
 3-49 revenue fund.

3-50 SECTION 6. Section 472.103, Government Code, is amended to  
 3-51 read as follows:

3-52 Sec. 472.103. AUDITS. Nothing in this chapter shall affect  
 3-53 the duty of the state auditor to audit an agency. The state auditor  
 3-54 shall enter into a contract and schedule with each agency to conduct  
 3-55 audits, including financial audits [~~reports~~] and effectiveness  
 3-56 [~~performance~~] audits. The schedule must require an agency to  
 3-57 undergo a financial audit and an effectiveness audit at least once  
 3-58 every six years, unless the state auditor determines that the  
 3-59 auditor may rely on an independent audit of the agency conducted  
 3-60 during the same period. The state auditor may conduct a risk-based  
 3-61 audit of an agency at any time. Costs incurred in performing such  
 3-62 audits shall be reimbursed by the agency.

3-63 SECTION 7. Section 472.104, Government Code, is amended by  
 3-64 amending Subsection (b) and adding Subsection (c) to read as  
 3-65 follows:

3-66 (b) In addition to the reporting requirements of Subsection  
 3-67 (a), each agency shall, in the form prescribed by the board, report  
 3-68 annually, not later than November 20 [~~1~~], to the governor, to the  
 3-69 committee of each house of the legislature that has jurisdiction

4-1 over appropriations, and to the board [~~Legislative Budget Board~~]  
4-2 the following:

4-3 (1) the salary for all agency personnel and the total  
4-4 amount of per diem expenses and travel expenses paid for all agency  
4-5 employees, including trend performance data for the preceding five  
4-6 fiscal years;

4-7 (2) the total amount of per diem expenses and travel  
4-8 expenses paid for each member of the governing body of each agency,  
4-9 including trend performance data for the preceding five fiscal  
4-10 years;

4-11 (3) each agency's operating plan covering a period of  
4-12 two fiscal years;

4-13 (4) each agency's operating budget, including revenues  
4-14 from all sources, an accounting of all expenditures, and a  
4-15 breakdown of expenditures by program and administrative expenses,  
4-16 showing:

4-17 (A) projected budget data for a period of two  
4-18 fiscal years; and

4-19 (B) trend performance data for the preceding five  
4-20 fiscal years; ~~and~~

4-21 (5) the purchase or sale of any real property during  
4-22 the year;

4-23 (6) any lease and maintenance costs associated with  
4-24 real property owned or leased by the agency;

4-25 (7) for an agency other than a financial regulatory  
4-26 agency, trend performance data for the preceding five fiscal years  
4-27 regarding:

4-28 (A) the number of full-time equivalent positions  
4-29 at the agency;

4-30 (B) the number of complaints received from the  
4-31 public and the number of complaints initiated by agency staff;

4-32 (C) the number of complaints dismissed and the  
4-33 number of complaints resolved by enforcement action;

4-34 (D) the number of enforcement actions by sanction  
4-35 type;

4-36 (E) the number of enforcement cases closed  
4-37 through voluntary compliance;

4-38 (F) the amount of administrative penalties  
4-39 assessed and the rate of collection of assessed administrative  
4-40 penalties;

4-41 (G) the number of enforcement cases that allege a  
4-42 threat to public health, safety, or welfare or a violation of  
4-43 professional standards of care and the disposition of those cases;

4-44 (H) the average time to resolve a complaint;

4-45 (I) the number of license holders or regulated  
4-46 persons broken down by type of license and license status,  
4-47 including inactive status or retired status;

4-48 (J) the fee charged to issue and renew each type  
4-49 of license, certificate, permit, or other similar authorization  
4-50 issued by the agency;

4-51 (K) the average time to issue a license;

4-52 (L) litigation costs, broken down by  
4-53 administrative hearings, judicial proceedings, and outside counsel  
4-54 costs; and

4-55 (M) reserve fund balances; and

4-56 (8) for a financial regulatory agency, trend  
4-57 performance data for the preceding five fiscal years regarding:

4-58 (A) the number of full-time equivalent positions  
4-59 at the agency;

4-60 (B) the number of complaints received;

4-61 (C) the number of complaints dismissed or  
4-62 resolved and, of those complaints, the number resolved by  
4-63 enforcement action;

4-64 (D) the number of enforcement actions by type;

4-65 (E) the amount of administrative penalties  
4-66 assessed and the amount of administrative penalties collected;

4-67 (F) the number of entities regulated by the  
4-68 agency;

4-69 (G) the fee charged to issue and renew each type

5-1 of license, certificate, permit, or other similar authorization  
 5-2 issued by the agency, or any assessments paid to the agency by the  
 5-3 holder of a license, certificate, permit, or other similar  
 5-4 authorization issued by the agency;

5-5 (H) litigation costs, broken down by  
 5-6 administrative hearings, judicial proceedings, and outside counsel  
 5-7 costs;

5-8 (I) reserve fund balances; and

5-9 (J) the key performance measures approved by the  
 5-10 governing board of the agency during the fiscal year for which the  
 5-11 report is due.

5-12 (c) If, based on a review of an agency's annual report  
 5-13 submitted as required under Subsection (b), the board determines  
 5-14 that additional information is necessary to address an issue  
 5-15 identified during the review, the board may require an agency to  
 5-16 submit information to the board demonstrating the agency's:

5-17 (1) ability to perform those duties that are required  
 5-18 of the agency by its enabling statute or a related duty contained in  
 5-19 another law;

5-20 (2) financial soundness, including the agency's  
 5-21 ability to raise sufficient revenue, maintain sufficient operating  
 5-22 reserves, and meet all of the agency's financial obligations;

5-23 (3) compliance with the provisions of this chapter;  
 5-24 and

5-25 (4) satisfactory audit history, including a summary of  
 5-26 any corrective action taken by the agency in response to an audit.

5-27 SECTION 8. Section 472.105, Government Code, is amended to  
 5-28 read as follows:

5-29 Sec. 472.105. DISPOSITION OF CERTAIN FEES COLLECTED.

5-30 (a) Subject to Subsection (b), if ~~[if]~~ provided in an agency's  
 5-31 enabling legislation, the agency shall collect annually from its  
 5-32 license holders:

5-33 (1) a professional fee of \$200 ~~[from its license~~  
 5-34 ~~holders annually]~~, which shall be remitted to the state; and

5-35 (2) ~~[. If provided in an agency's enabling legislation,~~  
 5-36 ~~the agency shall collect]~~ a scholarship fee of \$10 ~~[annually from~~  
 5-37 ~~its license holders].~~

5-38 (b) A fee increase described by Section 1101.153,  
 5-39 Occupations Code, shall be deposited as provided by Subsection (b)  
 5-40 of that section.

5-41 SECTION 9. Section 472.108, Government Code, is amended to  
 5-42 read as follows:

5-43 Sec. 472.108. PROPERTY. An agency may:

5-44 (1) acquire by purchase, lease, gift, or any other  
 5-45 manner provided by law and maintain, use, and operate~~[r]~~ any real,  
 5-46 personal, or mixed property, or any interest in property, necessary  
 5-47 or convenient to the exercise of the powers, rights, privileges, or  
 5-48 ~~[and]~~ functions of the agency;

5-49 (2) sell or otherwise dispose of any real, personal,  
 5-50 or mixed property, or any interest in property, that the agency  
 5-51 determines is not necessary or convenient to the exercise of the  
 5-52 agency's powers, rights, privileges, or functions;

5-53 (3) construct, extend, improve, maintain, and  
 5-54 reconstruct, or cause to construct, extend, improve, maintain, and  
 5-55 reconstruct, and use and operate all facilities necessary or  
 5-56 convenient to the exercise of the powers, rights, privileges, or  
 5-57 functions of the agency; and

5-58 (4) borrow money, as may be authorized from time to  
 5-59 time by an affirmative vote of a two-thirds majority of the  
 5-60 policy-making body of the agency, for a period not to exceed five  
 5-61 years if necessary or convenient to the exercise of the agency's  
 5-62 powers, rights, privileges, or functions.

5-63 SECTION 10. Sections 472.110(b) and (d), Government Code,  
 5-64 are amended to read as follows:

5-65 (b) Except as provided by Section 472.105 and this  
 5-66 subsection, all ~~[All]~~ fees and funds collected by an agency, any  
 5-67 funds appropriated to the agency, and any other funds belonging to  
 5-68 or under the control of an agency shall be deposited in  
 5-69 interest-bearing deposit accounts in the Texas Treasury

6-1 Safekeeping Trust Company. The comptroller shall contract with the  
6-2 agency for the maintenance of the deposit accounts under terms  
6-3 comparable to a contract between a commercial banking institution  
6-4 and its customers. An agency may not hold funds in an account that  
6-5 is not under the control of the comptroller. This subsection does  
6-6 not apply to funds held by an agency under Section 13.016, 154.351,  
6-7 154.353, 154.412, 156.501, 157.0201, 341.602, or 393.628, Finance  
6-8 Code.

6-9 (d) An agency shall remit all administrative penalties  
6-10 collected by the agency to the comptroller for deposit in the  
6-11 general revenue fund. This subsection does not apply to the Texas  
6-12 Real Estate Commission, the Texas Appraiser Licensing and  
6-13 Certification Board, or a financial regulatory agency.

6-14 SECTION 11. Section 16.001, Finance Code, is amended to  
6-15 read as follows:

6-16 Sec. 16.001. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF  
6-17 FINANCIAL REGULATORY AGENCIES [DEFINITIONS]. (a) A financial  
6-18 regulatory agency has self-directed and semi-independent status as  
6-19 provided under Chapter 472, Government Code.

6-20 (b) For purposes of [In] this chapter and Chapter 472,  
6-21 Government Code:

6-22 (1) "Financial regulatory agency" means:  
6-23 (A) the Texas Department of Banking;  
6-24 (B) the Department of Savings and Mortgage  
6-25 Lending;  
6-26 (C) the Office of Consumer Credit Commissioner;  
6-27 and  
6-28 (D) the Credit Union Department.

6-29 (2) "Policy-making body" means:  
6-30 (A) the Finance Commission of Texas for:  
6-31 (i) the Texas Department of Banking;  
6-32 (ii) the Department of Savings and Mortgage  
6-33 Lending; and  
6-34 (iii) the Office of Consumer Credit  
6-35 Commissioner; and  
6-36 (B) the Credit Union Commission for the Credit  
6-37 Union Department.

6-38 SECTION 12. Sections 1105.001 and 1105.002, Occupations  
6-39 Code, are amended to read as follows:

6-40 Sec. 1105.001. DEFINITIONS. In this chapter [~~section~~]:

6-41 (1) "Agency" means the commission and the board.  
6-42 (2) "Board" means the Texas Appraiser Licensing and  
6-43 Certification Board.  
6-44 (3) "Commission" means the Texas Real Estate  
6-45 Commission.

6-46 Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.  
6-47 (a) Notwithstanding any other provision of law, the agency is  
6-48 self-directed and semi-independent as specified by Chapter 472,  
6-49 Government Code. [~~this chapter. Any Act of the 82nd Legislature~~  
6-50 ~~that relates to the agency and that is inconsistent with the agency~~  
6-51 ~~being self-directed and semi-independent may be implemented by the~~  
6-52 ~~administrator of the agency only on authorization by the agency.]~~

6-53 (b) Chapter 472, Government Code, [This chapter] does not  
6-54 affect the board's status as an independent subdivision of the  
6-55 commission as provided by Section 1103.051.

6-56 SECTION 13. The following are repealed:

6-57 (1) Sections 16.002, 16.003, 16.004, 16.005, 16.006,  
6-58 16.007, 16.008, 16.009, 16.010, 16.011, and 16.012, Finance Code;  
6-59 and

6-60 (2) Sections 1105.003, 1105.004, 1105.005, 1105.006,  
6-61 1105.007, 1105.008, 1105.009, 1105.010, 1105.011, and 1105.012,  
6-62 Occupations Code.

6-63 SECTION 14. Section 472.104, Government Code, as amended by  
6-64 this Act, applies only to a report originally due on or after the  
6-65 effective date of this Act. A report originally due before the  
6-66 effective date of this Act is governed by the law in effect on the  
6-67 date the report was originally due, and the former law is continued  
6-68 in effect for that purpose.

6-69 SECTION 15. The repeal by this Act of Section 16.006,

7-1 Finance Code, and Section 1105.006, Occupations Code, does not  
7-2 affect the validity of a contract entered into under those sections  
7-3 before the effective date of this Act.  
7-4 SECTION 16. This Act takes effect September 1, 2015.

7-5

\* \* \* \* \*