



Charles G. Cooper  
Commissioner

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## **TEXAS DEPARTMENT OF BANKING**

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October 17, 2014

Mr. Ken Levine, Director  
Sunset Advisory Commission  
P. O. Box 13066  
Austin, Texas 78711-3066

RE: Self-Directed Semi-Independent (SDSI) Status of State Agencies Study (Study)

Dear Mr. Levine:

This is in response to your letter of October 3, 2014, requesting our comments on the Study. The Department of Banking (DOB) has long been a self-leveling, self-funding agency and an SDSI agency since 2009. The SDSI status has functioned effectively for our agency and has enabled us to operate efficiently and productively. Further, the flexibility allowed with the SDSI status has proven to be a valuable tool in managing the agency and fulfilling our statutory mandates. We offer the following comments related to the Study.

### **Study Overall**

The Study suggests that there is a lack of oversight of the SDSI agencies, specifically noting the limited oversight of the Legislative Budget Board (LBB), State Auditor's Office (SAO), Sunset, and Comptroller of Public Accounts (CPA). With the exception of appropriation-related and performance measure reporting, we receive the same oversight as we did pre-SDSI from the SAO, CPA, and will undergo the sunset process as usual.

While we agree that the legislative appropriation process is a powerful tool, it is not the only tool to evaluate performance and compliance. For example, in addition to the required state reporting, in our letter to your agency dated June 30, 2014, we provided samples of the periodic reports we provide to our oversight board, the Finance Commission. Also, in response to the inference that SDSI status may cause regulatory programs to be overly influenced by the regulated community, we point out that our 11 member Finance Commission requires a majority of six public members. The Study further generalizes that small agencies have inadequate accounting expertise and budgetary controls which is not true with respect to our agency.

Being SDSI has enhanced and heightened our reporting, interaction and transparency with our oversight board. This interaction provides a thorough and ongoing evaluation of the agency's financial and operational performance and allows the DOB to function in a more business-like manner. In addition, we continue to have close communication with our oversight legislative committees, Senate Business and Commerce and House Investments and Financial Services.

### **Recommendations 1.1, 1.2 and 1.3**

The gestation period of four years for the application process should be reduced to no more than one year.

Transparency, accountability and accurate reporting are essential but should be relevant and tailored to the operations of each agency. A benefit of our specific SDSI statute is the elimination of standardized reports that have no relevance or bearing on the agency. We are not opposed to reporting, but reports for the sake of reporting are not the best use of agency resources.

The costs of ongoing LBB oversight that may be recovered from SDSI agencies could be a significant expense that would be passed on to our licensees. We believe the Legislature has set sufficient safeguards that prevent exposing the State of Texas to unnecessary risk.

The scheduling and frequency of audits should be directed by the SAO after it performs the annual risk assessment for the state. Periodically, other state agencies including the CPA, Texas Workforce Commission, Department of Information Resources and the State Office of Risk Management, as well as external CPA firms performing the internal audit function, perform audits on the DOB and other SDSI agencies that can be reviewed by the SAO in their risk assessment process. The frequency of SAO audits should be driven by the risk assessment.

Our Annual Financial Report is due September 30<sup>th</sup> each year. Moving the date of SDSI reporting to November 20<sup>th</sup> serves no purpose for us.

The SDSI Act includes several valuable provisions which the DOB currently follows and believes should apply to all SDSI agencies. However, the SDSI Act is written for professional licensing agencies not financial regulatory agencies. A one-size fits all regulatory SDSI scheme is not the best solution. Problematic provisions for our agency include:

- 472.102(c) – The DOB does not have an annual remittance to General Revenue, by design. Because a bank can elect to operate under a state or federal charter, an annual remittance to General Revenue from DOB would in effect be a hidden tax on state banks that national banks are not required to pay, and could adversely affect the competitive position of state banks with respect to national banks and other depository institutions.
- 472.104(a)(4) – This section refers to reporting the number of examination candidates and appears to be more relevant for agencies issuing individual occupational licenses.
- 472.104(b)(4)(A) – An advantage of SDSI is an annual budget. This section requires a two year budget projection and is not in harmony with 472.101(a) which requires an annual budget.
- 472.104(b)(5)(B)(C) and (H) – DOB complaint activity is minimal and has never been a key reporting measure. This appears to be more relevant for agencies issuing individual occupational licenses.

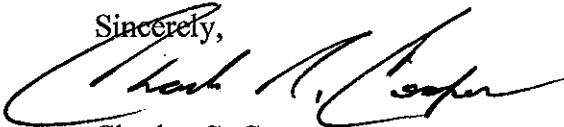
- 472.104(b)(5)(J) – This information appears redundant as it is submitted annually to the LBB in the Revenue Survey.
- 472.110(d) – The mandatory transfer of administrative fines and penalties to the General Revenue contradicts the manner in which the DOB is statutorily directed to use and apply collected fines and penalties. The current process does not create inappropriate incentives for our agency. As a self-leveling agency, we are directed to allocate and recover the cost of regulation and maintenance of the agency by imposing and collecting ratable and equitable fees from our regulated industries. If we receive a penalty or fine, the amount received is offset first against the cost of the investigation and litigation and secondly against future assessments to compliant licensees in the affected regulated area. This provision would penalize compliant licensees who would be forced to pay for the cost of noncompliance.
- 472.108 – This section does not allow for property ownership. The Finance Commission agencies own our building. Our enabling SDSI legislation allows the Finance Commission agencies to purchase, own, dispose of, construct and improve our facilities. This authority continues to be necessary.

Our enabling SDSI legislation is tailored to the specific characteristics of financial regulatory agencies. We recognize the value of baseline standards but would prefer to see alignment by agency type instead of attempting to force all SDSI agencies to comply with a broad-based SDSI statute.

As noted in our letter of June 30, 2014, being an SDSI agency has enabled the DOB to strategically respond to dynamic regulatory needs. For example, it has allowed us to (1) employ limited-term loan review financial examiners during the economic crisis, (2) increase our staff when a large national bank converted to a state charter, and (3) provide our financial examiners a salary program competitive with the FDIC effectively curbing our turnover, increasing our financial examiner tenure and experience, and reducing training costs for replacement examiners.

We appreciate the opportunity to provide comments on the Study. Please feel free to call Stephanie Newberg of my staff at (512) 475-1280 or me at (512) 475-1325 with any questions.

Sincerely,



Charles G. Cooper  
Banking Commissioner