

SELF-DIRECTED SEMI-INDEPENDENT STATUS OF STATE AGENCIES

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Summary

In 2001, the Legislature enacted the Self-Directed Semi-Independent (SDSI) Project Act and granted the Accountancy, Architecture, and Engineers boards SDSI status. Having SDSI status gives an agency the authority to operate outside of the appropriations process by making the agency entirely responsible for its own operations and expenses, including establishing its own budget and setting its fees accordingly. Since 2001, five other agencies gained SDSI status through provisions added to their own individual agency statutes, not through the SDSI Act (the Texas Department of Banking, Texas Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, Credit Union Department, and Texas Real Estate Commission, including the Texas Appraiser Licensing and Certification Board).

The State's inconsistent approach to granting SDSI status to state agencies limits needed and consistent oversight.

From the beginning, oversight agencies and the Legislature had questions and concerns about the soundness of the policy decision to give state agencies so much independence, and whether the SDSI concept would prove effective. Sunset's 2012 evaluation of the SDSI Act found that the three original SDSI agencies were operating appropriately and that the SDSI Act was working as intended. As such, the Sunset Commission recommended continuing the SDSI Act and the Legislature agreed. However, the Sunset evaluation also found that the SDSI Act did not provide needed safeguards to ensure ongoing oversight and prevent potential abuse. In response, the Legislature enacted several additional requirements to address these concerns, but they only applied to the three original agencies under the SDSI Act. To address concerns with the inconsistent approach to granting SDSI status and oversight provisions, the 83rd Legislature directed the Sunset Commission to conduct an SDSI study and report its results and recommendations to the Legislature prior to the 84th Legislative Session.

Overall, the Sunset Commission found that the State's undefined and inconsistent approach to managing the SDSI process exposes the State to unnecessary risk. Without a single entity responsible for overseeing the SDSI process, the Legislature has inconsistently granted SDSI status through various statutes, which significantly limits needed and consistent oversight. The Sunset Commission determined that without a single process for an agency to gain SDSI status, agencies will continue to ask for and potentially gain unique SDSI provisions within their own statutes that undermine effective oversight. These

concerns would be magnified if considering granting SDSI status to health-related and larger licensing agencies, where fiscal mismanagement and lax regulation can directly affect the lives of thousands of Texans. The following material summarizes the Sunset Commission's recommendations on SDSI.

Issues and Recommendations

Issue 1

The Lack of a Comprehensive and Consistent Approach to Self-Directed Semi-Independent State Agency Oversight Creates Risks for the State.

The State does not have a comprehensive process with clearly defined requirements for obtaining and retaining SDSI status. Instead, the Legislature's piecemeal approach to granting SDSI status through various statutes has resulted in agencies receiving SDSI status without thorough vetting, and operating with different reporting requirements and inconsistent oversight.

Recommendations

Change in Statute

1.1 Require the Legislative Budget Board to develop and administer a process for obtaining SDSI status and overseeing SDSI agencies.

The process would include developing and administering an application process that any state agency requesting SDSI status would be required to complete. The Legislative Budget Board (LBB) would have substantial flexibility to develop the application and review process. Agencies that currently have SDSI status would be exempt from the application process. The process would also provide for ongoing oversight of all SDSI agencies and a consistent way to revoke SDSI status and transition agencies back to the appropriations process if needed.

1.2 Expand reporting and monitoring requirements of agencies subject to the SDSI Act to help improve oversight.

This recommendation would require all agencies operating under the SDSI Act to provide more complete budget information, including reporting all nonoperational and pass-through revenues and expenditures in a consistent format prescribed by LBB. The SDSI agencies would also be required to undergo a State Auditor's Office (SAO) financial and performance audit every six years to ensure more consistent and ongoing oversight.

1.3 Place all current SDSI agencies under the SDSI Act.

To provide for more consistent administration and effective oversight of all SDSI agencies, the finance and real estate-related SDSI agencies would be made subject to the SDSI Act and the separate SDSI provisions would be removed from their individual statutes. Each agency's SDSI status would be evaluated as part of the agency's regular Sunset review.

The reporting requirements in the SDSI Act would be modified to appropriately apply to the finance-related SDSI agencies and these agencies would be exempt from the Act's requirement to deposit administrative penalty revenue to the General Revenue Fund. The finance-related SDSI agencies would

also continue to operate under their current property provisions, which would be incorporated into the SDSI Act. The Act would be clarified to ensure that all SDSI agencies are able to own and maintain property, and would require the agencies to report on the purchase or sale of any real property and ongoing lease and maintenance costs associated with real property.

In addition, the Texas Real Estate Commission (TREC) would no longer pay annual retainers to SAO, Office of the Attorney General, and the State Office of Administrative Hearings. Instead, TREC would reimburse these agencies for any services rendered. Also, as part of the SDSI Act, TREC would be subject to the requirement to deposit administrative penalty revenues into general revenue.

Change in Appropriation

1.4 The Senate Finance and House Appropriations committees should consider establishing a moratorium on expanding SDSI status during the 84th Legislative Session.

This recommendation expresses the intent of the Sunset Commission that the Senate Finance and House Appropriations committees temporarily suspend granting SDSI status to any other state agencies until the Legislature is able to adopt a more comprehensive and consistent approach for managing the SDSI process.

Fiscal Implication Summary

Having the administrative penalty revenues from TREC be deposited to the General Revenue Fund, as proposed in Recommendation 1.3, would result in a slight positive fiscal impact to the State. In fiscal year 2013, TREC collected about \$200,000 in administrative penalties. However, since the amount of administrative penalties collected can vary significantly year to year, the overall fiscal impact could not be estimated.

