

SELF-DIRECTED SEMI-INDEPENDENT AGENCY PROJECT ACT

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Act at a Glance

In fiscal year 2002, the Texas State Board of Public Accountancy, Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners began operating under the Self-Directed Semi-Independent (SDSI) Agency Project Act, allowing them to collect revenues and establish budgets outside of the appropriations process. The Legislature has since extended SDSI status to six additional agencies, but has done so through separate statutory provisions and not under the provisions of this Act. As such, these other agencies were not included as part of this Sunset review of the Act.

The SDSI Act authorizes the Accountancy, Engineers, and Architectural boards to:

- establish and collect licensing fees for deposit outside the State Treasury in the Texas Safekeeping Trust Company;
- adopt an annual budget based on their own projections of revenues approved by the agencies' governing boards;
- keep administrative penalties, capped at 20 percent of an agency's previous year's expenditures, not to exceed \$1 million; and
- enter into contracts and lease property.

The rush of agencies to gain SDSI status causes concern for the State's overall approach to SDSI.

Summary

The SDSI Act presented a unique set of challenges for the Sunset Commission to consider. First, the Act appears conceptually incongruous with basic legislative process. Removing state agencies from the appropriations process eliminates a standard tool for the Legislature to see how well these publicly funded entities exercise the power of the State. In addition, as a statute, the Act does not lend itself to the standard criteria for Sunset reviews tailored for evaluating state agencies. More challenging still was that the SDSI Act is but a piece of a larger arrangement with six other state agencies operating under SDSI provisions but not affected by this review. In addition, the waiting list for more agencies desiring SDSI status is expected to grow longer, causing concern for the State's overall approach to SDSI.

Despite these challenges, the Sunset Commission found that the three project agencies have operated appropriately under the SDSI Act and that the Act

should continue beyond its pilot project status with additional safeguards in place to ensure adequate controls and oversight. Separate review of the SDSI Act, however, would no longer be needed as SDSI provisions would be reviewed in conjunction with each agency's Sunset review.

Separate recommendations on the Board of Architectural Examiners and Board of Professional Engineers are laid out in other sections of this report. The Board of Public Accountancy did not undergo Sunset review and is currently scheduled for review during the 2015 legislative session. The following material summarizes the Sunset Commission's recommendations on the SDSI Act.

Issue 1

Despite Lack of a Comprehensive State Approach to SDSI, the SDSI Act Is Working as Intended and Should Be Continued.

By removing project agencies from the legislative appropriations process, the SDSI Act provides project agencies with flexibility to set their own budgets and to operate on the revenue generated from fees. The Sunset Commission found the agencies to be acting in the public interest and the Act to be working as intended. However, the Commission also found that the Act did not require the project agencies to provide the Legislature with enough detailed or historical context, especially with regard to trend data, to give the more complete picture needed for proper oversight.

Recommendations

Change in Statute

1.1 Continue the SDSI Act, but remove its separate Sunset date and pilot project status and provide for its future Sunset review with agencies subject to the Act.

This recommendation would remove the Sunset provision from the Act and would instead require that a Sunset review of an agency operating under the SDSI Act include a review of the agency's performance under the Act to ensure continued legislative oversight. In addition, the recommendation would remove references to project status from the Act since the agencies have completed the test period and the Sunset review of the performance of the pilot project during that time.

1.2 Expand the data in the current reports required by agencies subject to the SDSI Act to help improve oversight.

This recommendation would continue the reporting requirements in the Act and would require agencies operating under the SDSI Act to provide five years of trend performance data in the reports they are already required to submit to the Governor, Senate Finance and House Appropriations, and Legislative Budget Board each biennium. The report would include trend data on specific measures regarding agency budgets, staffing, administration, licensing complaints and enforcement.

Issue 2

The SDSI Act Does Not Provide Needed Safeguards to Ensure Oversight and Prevent Potential Abuse.

Although project agencies are not subject to the appropriations process, they remain state agencies, using state employees, and exercising the power of the State through their licensing and enforcement efforts. However, the SDSI Act does not clearly establish what provisions of general law applicable to all state agencies also apply to project agencies or clearly establish the Comptroller's role in managing the agencies' accounts. The SDSI Act also allows project agencies to keep revenue from administrative penalties, going against good government standards for state agencies and creating the potential for project agencies to use penalties to self-support operations or increase fund balances.

Recommendations

Change in Statute

2.1 Clarify that provisions of general law applicable to state agencies apply to the project agencies if not in conflict with their SDSI status.

This recommendation clarifies the project agencies' status as state agencies by identifying general law provisions applicable to state agencies that also apply to the project agencies. This change would not impose additional duties on the agencies.

2.2 Clarify that project agencies must use the Comptroller's Uniform Statewide Accounting System to make all payments.

By requiring project agencies to use the Uniform Statewide Accounting System to process payments, this recommendation would clarify that they cannot open accounts outside the control of the Comptroller's Office, ensuring ongoing oversight through the Comptroller's post-payment audits.

2.3 Require the project agencies to remit all administrative penalties to General Revenue.

This recommendation would delete language in the SDSI Act that allows project agencies to retain administrative penalties. Instead, agencies would deposit penalties in the General Revenue Fund as is common practice for state agencies to prevent the appearance that penalties are agency revenue generators.

Fiscal Implication Summary

These recommendations would result in an estimated gain of \$248,000 to the General Revenue Fund, as summarized below.

Issue 2 — Requiring all three agencies to remit collected administrative penalties to General Revenue would result in an annual gain to the General Revenue Fund in the amount of \$248,000. Conversely, the project agencies would experience annual revenue losses in the following amounts: \$129,000 for the Accountancy Board, \$71,000 for the Architectural Board, and \$48,000 for the Engineers Board.

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Fiscal Year	Gain to the General Revenue Fund
2014	\$248,000
2015	\$248,000
2016	\$248,000
2017	\$248,000
2018	\$248,000

