

- SUBJECT:** Continuing and adjusting Self-Directed Semi-Independent agencies
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 5 ayes — Smith, Kuempel, Geren, Guillen, Price  
0 nays  
4 absent — Gooden, Gutierrez, Miles, S. Thompson
- WITNESSES:** For — Wilfred Navarro, Texas Association of Certified Public Accountants; Marcia Van Norman, Texas Association of CPAs; (*Registered, but did not testify:* Bob Owen, Texas Society of CPAs; Steve Stagner, American Council of Engineering Companies of Texas; Emily Williams, Freedom of Information Foundation of Texas)  
  
Against — None  
  
On — (*Registered, but did not testify:* Scott Gibson, Texas Board of Architectural Examiners; Cathy Hendricks, Texas Board of Architectural Examiners; Lance Kinney, Texas Board of Professional Engineers; Sonia Odell, Texas Board of Architectural Examiners; Steven Ogle and Joe Walraven, Sunset Advisory Commission; William Treacy, Texas State Board of Public Accountancy)
- BACKGROUND:** The Texas Legislature created the Self-Directed Semi-Independent (SDSI) Agency Project Act to allow more fiscal autonomy for the Texas State Board of Public Accountancy, the Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners. In fiscal 2002, these boards began operating outside of the appropriations process, prohibiting them from using general revenue to pay for operations and requiring them to collect fees and establish their own budgets.
- These agencies are authorized to:
- set and collect their own administrative fees for deposit in the Texas Safekeeping Trust Co.;
  - adopt a budget based on projections of revenue;
  - set administrative penalties, capped at 20 percent of their previous

- annual expenditures, not to exceed \$1 million; and
- enter into contracts and lease property.

These agencies must still comply with many other general laws governing state agencies, report biennially to the governor and the Legislature about their licensing and enforcement efforts, and annually report financial data to the governor, the House Appropriations Committee, the Senate Finance Committee, and the Legislative Budget Board. Each agency is governed by a governor-appointed board of directors. Collectively, the agencies employed 91 employees and spent \$9.9 million on operations in fiscal 2011.

Each fiscal year the agencies are required to remit a specific amount to the general revenue fund: the Texas State Board of Accountancy, \$703,344; the Texas Board of Professional Engineers, \$373,900; and the Texas Board of Architectural Engineers, \$510,000.

The duties of the public accountancy, professional engineers, and architectural examiners boards include licensing professionals within the jurisdiction of their acts, investigating and resolving complaints of illegal or incompetent practice of professionals, enforcing mandates and prohibitions of their acts, and taking disciplinary action.

Several other agencies, including the Real Estate Commission and some divisions of the Texas Department of Insurance, have SDSI status but do not fall under this act.

Occupations Code, sec. 1001.507 allows the Texas Board of Professional Engineers to receive in appropriations a portion of the amount of administrative penalties needed to cover the costs of investigating and prosecuting a violation.

The SDSI Act would expire September 1, 2013, unless continued by the Legislature.

**DIGEST:**

CSHB 1685 would discontinue Sunset review of the Self-Directed Semi-Independent Agency Project Act and establish review of the SDSI status of the public accountancy, professional engineers, and architectural examiners boards as part of these agencies' periodic Sunset reviews. Each agency would be required to pay for its own Sunset review process. The bill would move the SDSI Act from Vernon's Civil Statutes to the

Government Code and remove all references to “pilot project.”

Under the bill, agencies could not hold funds in accounts outside the comptroller’s control starting October 1, 2013. The accounts would have to use the comptroller’s uniform statewide accounting system (USAS) to make payments, other than those from the agency’s account to the Texas Treasury Safekeeping Trust Co.

The agencies would remit all collected administrative penalties to the general revenue fund, rather than retaining some of those funds. The bill would repeal Occupations Code, sec. 1001.507, which currently allows the Board of Professional Engineers to keep some administrative penalties to cover costs of investigating and prosecuting violations. Restrictions on retaining administrative penalties would apply only to penalties collected on or after the effective date of the bill.

The bill would make SDSI agencies subject to laws that apply to state agencies on purchasing requirements, interagency transfer vouchers, prompt payment compliance, and travel expense reimbursement rates.

CSHB 1685 would impose on the agencies additional requirements for reports to the Legislature and governor. Each agency would be required to report its two-year operating plan and projected budget data for two fiscal years, as well as trend performance data for the preceding five fiscal years on:

- the number of full-time-equivalent employees, personnel salaries, and total per diem and travel expenses paid to employees and each member of its governing body;
- its operating budget, including revenues and a breakdown of expenditures by program and administrative expenses;
- the number of complaints received, dismissed, and resolved by enforcement;
- the number of enforcement actions by type, how many cases were closed through voluntary compliance, and the average time to resolve a complaint;
- the number of cases alleging a threat to public health, safety, and welfare or professional standards of care;
- the amount of administrative penalties assessed and the rate of collection;
- the number of licensees by type of license and license status,

- license fees, and the average time to issue a license;
- litigation costs; and
- reserve fund balances.

The bill would remove a requirement to remit to the state a \$10 annual scholarship fee provided in an agency's enabling legislation and collected from license holders.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 1685 would finally and appropriately move the Board of Public Accountancy, the Board of Professional Engineers, and the Board of Architectural Examiners from the pilot project phase and clarify their permanent SDSI status. Sunset staff would review the SDSI status of these agencies at the same time it reviews the operations of the agencies, enabling a more holistic evaluation process.

The SDSI pilot project has worked as intended, giving regulatory agencies flexibility and allowing them to operate outside the appropriations process. Moving the governing law for the SDSI Act from Vernon's Civil Statutes to the Government Code would further solidify their status as SDSI agencies.

CSHB 1685 would improve these agencies' accountability and enable the state to exercise greater oversight over their activities. This would be accomplished through additional reporting requirements on agency operations. The bill also would set out best practices and create a uniform approach to SDSI agencies for purchasing and payment procedures that mirrored the rules in place for other state agencies.

Requiring agencies to remit administrative penalties to general revenue would avoid the appearance of impropriety of agencies leveraging penalties to support the costs of their operations. The bill also would close a loophole that allows SDSI agencies to keep outside accounts by requiring them to use accounts within the Office of the Comptroller of Public Accounts and make payments through the USAS. This would strengthen the state's oversight of the agencies' activities and improve transparency.

**OPPONENTS  
SAY:**

CSHB 1685 would perpetuate the potential for inadequate oversight of the public accountancy, professional engineers, and architectural examiners

boards resulting from their operating as part of the SDSI pilot project. SDSI status should be discontinued and the governance of these agencies reverted back to the state.

Taking these agencies out of the appropriations process that covers most other agencies has undermined an important tool the Legislature has to hold them accountable. Even with the increased reporting requirements proposed in CSHB 1685, adequate state oversight would be difficult. The SDSI Act does not follow principles of good governance, leaving too much room for the agencies to act outside the state's control.

Moreover, the state's approach to SDSI agencies is disjointed. While the public accountancy, professional engineers, and architectural examiners boards fall under the SDSI Act and would be subject to the new reporting requirements and rules in CSHB 1685, other SDSI agencies are not included in the act, including the Real Estate Commission and some divisions within the Texas Department of Insurance. Separate statutes for different SDSI agencies create incoherence and inconsistency in the state's approach to this type of regulatory agency model.

OTHER  
OPPONENTS  
SAY:

The agencies should not be required to remit their administrative penalties to the state's general revenue fund. These amounts are relatively small and volatile and go to useful agency purposes. For example, the Board of Public Accountancy dedicates the money it collects in administrative penalties to the fifth-year scholarship funds for disadvantaged accounting students. Remitting the administrative penalty may not eliminate the appearance of impropriety, as regulated groups may not make a distinction about whether penalties go to the SDSI agency's accounts or to the state's general revenue fund.

NOTES:

The committee substitute differs from the original bill by:

- requiring the SDSI agencies to pay the cost incurred by the Sunset review to the Sunset Advisory Commission;
- deleting the requirement for SDSI agencies, if enabled by legislation, to remit to the state the \$10 annual scholarship fee charged license holders;
- adding an exception to the requirement that the SDSI agencies use USAS for payments; and
- allowing SDSI agencies to accept gifts, grants, and donations;

The companion bill, SB 208 by Whitmire, which is identical to the HB 1685 as filed, was referred to the Business and Commerce Committee on April 5.

The Legislative Budget Board estimated CSHB 1685 would result in a net gain of \$461,270 to general revenue-related funds through the end of fiscal 2014-15 from the administrative penalty revenue.