

**SUBJECT:** Continuing the Self-Directed Semi-Independent agency project

**COMMITTEE:** Appropriations — favorable, without amendment

**VOTE:** 19 ayes — Heflin, Luna, Berman, Branch, B. Brown, F. Brown, Crownover, J. Davis, Deshotel, Ellis, Hamric, Hope, Hupp, Isett, Pickett, Pitts, Stick, Truitt, Wohlgemuth

0 nays

10 absent — Dukes, Eiland, Gutierrez, E. Jones, Kolkhorst, McClendon, Menendez, Raymond, Solis, Turner

**WITNESSES:** For — None

Against — None

On — Edward L. Summers and William Treacy, Board of Public Accountancy

**BACKGROUND:** The 76th and 77th Legislatures created the Self-Directed Semi-Independent (SDSI) pilot project, effective September 1, 2001, allowing more fiscal autonomy for the State Board of Public Accountancy, Board of Professional Engineers, and Board of Architectural Examiners. These boards deposit their collected fees, fines, and other money into a trust fund in the treasury and withdraw funds as needed to meet their budgets, which they adopt independent of legislative appropriation and oversight. The boards may not charge any cost, including salaries, to general revenue. Accordingly, the boards employed no state workers and spent no state money in fiscal 2003. Collectively, in fiscal 2001, the boards were supported by more than 80 full-time equivalent employees (FTEs) and had a collective annual state budget of more than \$5.5 million.

Under the SDSI project, the Board of Public Accountancy annually must remit \$500,000 to the general revenue fund, the Board of Professional Engineers must remit \$50,000, and the Board of Architectural Examiners must remit \$700,000.

SDSI agency boards must report annually to the governor, legislative appropriations committees, and Legislative Budget Board:

- salaries for all agency personnel and the total amount of per-diem and travel expenses paid for all agency employees;
- per-diem and travel expenses paid for each member of the governing body of each agency;
- each agency's operating plan and budget covering a two-year period; and
- all revenue received and all expenses incurred by the agency in the previous 12 months.

SDSI agencies also must submit biennially a report to the Legislature and the governor that includes a state audit, financial report, description of any changes in licensing fees, statement of the number of examination candidates and enforcement activities, and a description of all new rules the board adopted or repealed.

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 the professions they regulate; enforcing the mandates and prohibitions of their acts; and taking disciplinary action and making criminal referrals when necessary.

The Self-Directed Semi-Independent pilot project will expire September 1, 2003, unless continued by the Legislature.

**DIGEST:**

HB 1947 would continue the SDSI program for the Board of Public Accountancy, Board of Professional Engineers, and Board of Architectural Examiners until September 1, 2009.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 1947 properly would grant the public accountancy, architectural examiners, and professional engineers boards time to establish a longer record in exercising self-governance. In less than two years, the boards already have achieved a primary goal of the Legislature by removing more than 80 FTE positions from the state's payroll and by easing the state's affiliated administrative burdens.

The bill would enable the agencies to continue to speed their enforcement of statutes governing the professionals they regulate. In the event of a spike in unauthorized practice, for example, the SDSI agencies could adjust their spending quickly, without the need for legislative intervention or an unusual appropriations rider, to contract investigators for temporary work, hire personnel, or take other action as needed. The boards deserve time to establish a longer record before the Legislature evaluates the SDSI project.

HB 1947 would preserve the reasonable safeguards already part of the SDSI project statute. The three agencies chosen for the program possess records of self-reliance and professional conduct and employ staffs with educations comparable to those of the professionals they regulate. Also, the bill would subject the SDSI agencies to many reporting requirements and specifically to ongoing state audits. It would subject the SDSI project to sunset review in a relatively short time — six years after renewal — but the Legislature could modify or cancel the project at its discretion before then, if it so chose. State executives already owe a fiduciary duty to the public. Improper practices in accepting gifts would violate this duty, subjecting them to personal liability or even criminal sanction.

HB 1947 would ensure that the state continued to benefit from certain excess collections achieved by the SDSI agency boards. From fiscal 2003 to 2009, the remission required of the boards would total \$7.5 million.

**OPPONENTS  
SAY:**

HB 1947 would renew a faulty statute that removed the state's primary oversight tool — the biennial appropriations process — for SDSI agencies without adding adequate protections. The appropriations process is the most efficient means of ensuring accountability of agency boards and commissions, executives, and staffs. It allows the Legislature to direct spending and to scrutinize biennially the outcomes of agency expenditures and other initiatives. Unforeseen occurrences, such as the accounting scandals of recent

years, necessitate regular legislative reviews of the functions of the state regulatory agencies responsible. The appropriations process serves this purpose.

The Legislature does not benefit from the services of a potent organization such as the U.S. General Accounting Office to assist it in continuously evaluating the programs, policies, operations, and performance of regulatory agencies. Without appropriations as a means of monitoring the agencies, the Legislature would have to rely on an inadequate patchwork of intermittent and independent initiatives, including interim reports, sunset reviews, and auditor investigations. Unlike the appropriations process, these tools do not provide needed leverage to help determine how SDSI agencies use the authority the state grants them.

The SDSI statute, unlike statutes governing all other regulatory agencies, allows member agencies to keep and spend their enforcement revenue without approval through the appropriations process. Unfettered collection and spending of fine revenue may lead to the perception that the agencies pursue enforcement action to generate revenue. Moreover, the SDSI statute does not restrict the boards' ability to accept gifts, grants, or donations. State laws prohibit all other agencies from doing so, preventing conflicts of interest between regulatory agencies and the regulated professions.

HB 1947 would extend SDSI at a time when closer legislative monitoring may be needed most. The Board of Public Accountancy would receive important new authorities under HB 1218 by Chisum, et al., passed by the House on April 24, including the power to suspend a license without a hearing, assess fines of \$100,000, order restitution, and issue cease-and-desist orders. HB 1947 would diminish the Legislature's ability to influence implementation and early use of these and other authorities.

**NOTES:**

The bill's fiscal note projects a net cost of about \$1.6 million per year in general revenue from fiscal 2004 through 2008.

Separate bills have been introduced this session to continue the three SDSI agencies individually. SB 277 by Ellis, which would continue the Board of Professional Engineers, passed the Senate by voice vote on April 22 and passed the House as amended on May 8. SB 283 by Jackson, which would

continue the Board of Architectural Examiners, passed the Senate on the Local and Uncontested Calendar on April 25 and was reported favorably, as substituted, by the House Licensing and Administrative Procedures Committee on May 6. HB 1218 by Chisum, et al., which would continue to State Board of Public Accountancy, passed the House as amended on April 24 and is scheduled for a public hearing in the Senate Government Organization Committee on May 14.