

SUBJECT: Establishing the State Securities Board as an SDSI

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Stephenson
0 nays
1 absent — Pickett

WITNESSES: For — (*Registered, but did not testify:* Jay Propes, FMR Corp, Fidelity Investments)
Against — None
On — John Morgan, State Securities Board

BACKGROUND: The State Securities Board regulates the financial securities market in Texas. It registers securities, oversees firms and individuals who sell securities or provide investment advice, and enforces the provisions of the Securities Act under Vernon’s Texas Civil Statutes, art. 581. The State Securities Board is subject to the Texas Sunset Act and is scheduled to undergo review during 2018-19.

Self-directed and semi-independent agencies (SDSIs) are state agencies that are supported by various fines, fees, and other money and are exempt from the appropriations process. These agencies manage and approve their own budgets and can set their own fees.

The SDSI Act, Government Code, ch. 472, established and governs three SDSIs: the Board of Public Accountancy, the Board of Professional Engineers, and the Board of Architectural Examiners. Finance Code, ch. 16 established and governs four SDSIs: the Department of Banking, the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Credit Union Department. The Texas Real Estate Commission is authorized to be an SDSI under Occupations Code,

ch. 1105.

A 2014 report from the Sunset Advisory Commission on its review of SDSIs recommended that the agencies be authorized under the same uniform code. It also suggested that review processes for SDSIs be established before new agencies become SDSIs.

DIGEST:

CSHB 2493 would amend the Securities Act to establish the State Securities Board as a self-directed and semi-independent (SDSI) agency. Under this status, the board would be responsible for covering its own operational costs through fees and other revenue and would not be subject to the legislative appropriations process.

The State Securities Board's budget would be adopted and approved by its board members. The agency would be authorized to set its fees, penalties, charges, and revenues. The bill would remove from statute the amounts of fees currently assessed under subsection A, sec. 35 of the Securities Act and would direct the board to establish those fees in amounts that would generate revenue sufficient to cover the costs of administering and enforcing the act.

Funds collected by the State Securities Board would be deposited in interest-bearing accounts in the Texas Treasury Safekeeping Trust Company. Any of these funds beyond the operational costs would be deposited in general revenue. The board would not be able to hold funds in an account that is not controlled by the state comptroller.

The State Securities Board would continue to function as a state agency in many respects. It would be required to follow requirements with regard to state purchasing, interagency vouchers, prompt payment, and travel reimbursement. Its employees would continue to be members of the Employees Retirement System. For the purposes of open meetings and public information requirements, the board would be considered a government body. It also would be considered a state agency for the purposes of administrative procedure and rules related to licenses and permits.

CSHB 2493 would establish certain requirements regarding disclosure and reporting of financial and statistical information for the State Securities Board. The commissioner would have to submit a report to the Legislature and the governor before each regular legislative session describing the agency's activities in the previous biennium. The commissioner also would be required to submit an annual report to the governor, the Legislative Budget Board, the House Appropriations Committee, and the Senate Finance Committee. The report would be required to contain:

- salaries of board employees and their travel and per diem expenses and trend performance data for the previous five years;
- the travel and per diem expenses of each member of the board and trend performance data for the previous five years;
- a detailed report of all revenue received and all expenses incurred from the previous year; and
- the agency's operating plan, including expected revenue and expenses for the next two years and trend performance data in several operational categories for the preceding five years.

The commissioner would be required to disclose any gifts received by the agency and the purpose of each gift. The commissioner would be forbidden from accepting gifts from parties to an enforcement action and gifts from actors encouraging a specific investigation or enforcement action.

CSHB 2493 would allow the commissioner, on behalf of the board, to buy and sell property, as well as construct facilities for its operations. The securities commissioner could borrow money for up to five years with a three-fifth's majority of the board's membership. The commissioner could enter into contracts, so long as any resulting debt, liability, or obligation did not create:

- a debt or liability to the state or for any entity other than the agency; or
- a personal liability for board members or employees.

The Sunset Advisory Commission would examine the board's performance as an SDSI in advance of the board's existing Sunset date of September 1, 2019. The board would pay the commission's costs in performing the review.

If the board ceased at any time to function as an SDSI, it would continue to be liable for any obligations, but any property or asset it had acquired during that period would transfer to the state.

The State Securities Board would be required to repay appropriations for fiscal 2016-17 to the general revenue fund as soon as the funds became available and before the end of each fiscal year.

CSHB 2493 would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 2493 would allow the State Securities Board to operate more like a business by authorizing it to become a self-directed and semi-independent (SDSI) agency. The board needs SDSI status to cope with the changing regulatory climate. The appropriations process is too slow for it to adjust to changes in the industry and from the federal government.

In particular, the board needs the ability to set salaries in order to retain veteran staff. In addition to losing personnel to private industry, the federal Securities and Exchange Commission (SEC) frequently recruits among board staff. The board cannot compete with the salaries of the SEC while it is subject to the appropriations process. The time to grant SDSI status to the board is now because the SEC recently announced an increased hiring budget. The agency expects the SEC will hire from its ranks to fill these new positions.

Moreover, the State Securities Board has been unable to create a meaningful career ladder for its employees under the appropriations process. To advance their careers, employees look to the SEC and other agencies. Turnover at the board has been significant in recent years among staff in inspection, enforcement, and registration. The turnover of so many employees makes it difficult for the agency to effectively regulate the

industry.

Granting SDSI status to the State Securities Board would save the Legislature time in the appropriations process and would allow the state to continue receiving some general revenue funds from the fees collected by the agency. Because of the increasing volume of licensees, the board expects that it would lower its license costs as an SDSI because it would continue to take in more money than it needs to operate. Furthermore, any excess money generated would be deposited into the general revenue fund, benefiting the state budget.

The financial services market is unique and should not be regulated under the Government Code, which contains the SDSI Act governing the state's first three SDSIs. The State Securities Board also is fundamentally different from boards that grant occupational licenses and are authorized by the Government Code. Unlike these agencies, which are engaged in certifying professional competence, the State Securities Board oversees \$22 billion in investments in Texas. A different section of code would be necessary to address the needs of this agency as an SDSI.

CSHB 2493 appropriately would apply extensive reporting and transparency requirements to the State Securities Board. For instance, the agency would be required to use the comptroller's uniform accounting practices. In addition, submitting annual reports to the governor, the Legislature, and the Legislative Budget Board (LBB), would ensure that the board conducted its business with considerable transparency. The provisions of the bill requiring disclosure of gifts and forbidding gifts related to enforcement actions also would ensure that the agency did not become too close to industry.

Even as an SDSI, the State Securities Board would be held accountable and would receive sufficient oversight. The State Securities Board must comply with federal law related to securities in addition to state law. As a result, it receives oversight at both the state and federal level, unlike some of the existing SDSIs.

The SDSI model has worked successfully for eight different agencies, including financial agencies such as the Department of Banking, the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Credit Union Department. This bill would allow the State Securities Board to benefit from this model and operate more autonomously.

OPPONENTS
SAY:

CSHB 2493 would create another SDSI despite concerns about these entities. Before the State Securities Board becomes an SDSI, the Legislature should create a uniform process in law for granting this status to agencies. One problem with SDSIs is that there is no consistent code for governing these agencies and no vetting process to review them before they become semi-independent. Uniform code governing SDSIs should be established before the Securities Board or any other agency receives this status.

CSHB 2493 would continue the trend of creating new code for a particular SDSI, rather than bringing all of these agencies under the same enabling code. The Securities Board should be authorized as an SDSI under the SDSI Act in Government Code, ch. 472.

The bill includes no review provisions that would require Sunset or LBB review of the agency before it becomes an SDSI. The Sunset review process has extended beyond the usual 12 years for other agencies that became SDSIs because the clock was reset when they attained this status. The result is that these agencies have operated under less oversight for too long. The board should undergo Sunset review before it becomes an SDSI.

Reporting and transparency have been lacking among SDSIs, particularly among the finance-related SDSIs such as the Banking Commission and the Consumer Finance Commission. Making a similar agency an SDSI could create similar problems related to reporting.

Instead of being industry watchdogs, SDSIs can become too close to the industries they regulate. Underwriting operations with industry fees could

lead to situations in which industry gained excessive influence on an agency.

OTHER
OPPONENTS
SAY:

Oversight of SDSIs should be returned to the appropriations process. These agencies lack meaningful oversight and tend to become too close to the industries they regulate. Only legislative oversight can ensure that these agencies serve the best interests of Texans.

NOTES:

According to the LBB's fiscal note, the bill would result in an estimated negative net impact to general revenue related funds of \$38.4 million through fiscal 2016-17. This would reflect a probable annual loss of \$27.1 million in fees and other funds currently going into general revenue, partially offset by probable annual savings of nearly \$7 million in general revenue and probable annual gains to the general revenue fund of \$870,000. The LBB analysis also estimates a reduction of 104 full-time employees from the state payroll once the agency became an SDSI.

Unlike CSHB 2493, the bill as filed would have directed that an amount equal to half of the general revenue appropriated to the agency for fiscal 2015 be appropriated for each year of fiscal 2016-17. The committee substitute also includes various technical and conforming changes that were not in the filed bill.