

BILL ANALYSIS

Senate Research Center
84R17749 CJC-D

C.S.S.B. 217
By: Hinojosa et al.
Finance
4/8/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legislature enacted the Self-Directed Semi-Independent (SDSI) Act in 2001, which exempts agencies with SDSI status from the General Appropriations Act and process. SDSI agencies set their own fees and operate on the revenue collected, and are responsible for all direct and indirect costs. Having this status is meant to improve agency operations by providing greater budget flexibility, including allowing for higher salaries to recruit and retain staff and address capital improvement needs, like information technology.

Since 2001, the legislature has granted SDSI status to eight state agencies: the Texas State Board of Public Accountancy, Texas Board of Professional Engineers, and Texas Board of Architectural Examiners under the SDSI Act and the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, Credit Union Department, and Texas Real Estate Commission, which includes the Texas Appraiser Licensing and Certification Board, under their individual enabling statutes.

The 83rd Legislature required the Sunset Advisory Commission, in consultation with the Legislative Budget Board (LBB), to study the state's approach to the SDSI process, specifically the criteria for granting and revoking SDSI status and requirements to ensure adequate oversight of SDSI agencies. Overall, the Sunset Advisory Commission found that the state's undefined and inconsistent approach to managing the SDSI process exposes the state to unnecessary risk.

Comparison of Introduced Version to Substitute

- Defines "board" as the Legislative Budget Board to clarify that it is separate and distinct from LBB staff.
- Clarifies that the governing bodies of the financial regulatory agencies maintain their oversight and accountability of, and relationship with, their respective agencies under the Self-Directed Semi-Independent Act.
- Clarifies that LBB staff shall submit a recommendation to approve or deny an agency's SDSI application to the board, and that the board may recommend whether or not to grant an agency SDSI status to the appropriations committees.
- Clarifies that both LBB and LBB staff review, rather than oversee, the SDSI agencies.
- Clarifies that LBB and LBB staff shall review annual reports and other information that LBB may request, and removes the provision that granted LBB the authority to require information *at any time*.
- Establishes that LBB staff may submit recommendations to the appropriations committees and the legislature to address issues identified during the staff's review of the annual reports, but may not recommend revocation of an agency's SDSI status.
- Establishes that only LBB may recommend that legislation be introduced to revoke an agency's SDSI status based on agency conduct, including material abuse of the agency's SDSI status or fiscal mismanagement.
- Provides that if LBB recommends revocation, an agency has the right to respond in writing to the recommendation.
- Authorizes the Office of the State Auditor to rely on other independent audits that may have been conducted during the statutorily required six-year audit period.
- Modifies the reporting requirements that apply to the financial regulatory agencies to better apply to their operations.

- Authorizes LBB, based on issues identified during its review of an SDSI agency’s annual report, to require an agency to submit additional information demonstrating its ability to perform duties required by its enabling statute or a related duty contained in another law.
- Applies the property ownership provisions for the financial regulatory agencies to all SDSI agencies.
- Exempts certain funds held by the financial regulatory agencies from the SDSI Act’s requirement that all funds be deposited with the Texas Treasury Safekeeping Trust Company.
- Exempts the Texas Real Estate Commission and Texas Appraiser and Licensing Certification Board from the SDSI Act’s requirement to remit all administrative penalties to the General Revenue Fund.
- Provides a cross reference to the SDSI Act in Finance Code Chapter 16 and Occupations Code Chapter 1105 to inform the reader that the financial regulatory agencies and the Texas Real Estate Commission and Texas Appraiser and Licensing Certification Board, respectively, are SDSI agencies under Government Code Chapter 472, the SDSI Act.

C.S.S.B. 217 amends current law relating to the self-directed semi-independent status of certain agencies and to the requirements applicable to, and the oversight of, those agencies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 472.001 and 472.002, Government Code, as follows:

Sec. 472.001. **APPLICABILITY OF CHAPTER.** Provides that this chapter applies to:

- (1) Makes no change to this subdivision;
- (2) and (3) Makes nonsubstantive changes;
- (4) the Texas Real Estate Commission (TREC);
- (5) the Texas Appraiser Licensing and Certification Board (TALCB);
- (6) the Texas Department of Banking;
- (7) the Department of Savings and Mortgage Lending;
- (8) the Office of Consumer Credit Commissioner; and
- (9) the Credit Union Department.

Sec. 472.002. **DEFINITIONS.** Provides that in this chapter:

- (1) Creates this subdivision from existing text.
- (2) Defines “board.”
- (3) Defines “financial regulatory agency.”

SECTION 2. Amends Subchapter A, Chapter 472, Government Code, by adding Sections 472.003, 472.004, 472.005, and 472.006, as follows:

Sec. 472.003. **STATUS AND OVERSIGHT OF CERTAIN AGENCIES.** Provides that this chapter does not affect:

(1) TACLB's status as an independent subdivision of TREC as provided by Section 1103.051 (Texas Appraiser Licensing and Certification Board), Occupations Code; or

(2) the oversight of a financial regulatory agency by that agency's governing body or the agency's accountability to, and relationship with, that governing body.

Sec. 472.004. **ROLE OF BOARD; RECOVERY OF COSTS.** (a) Provides that the Legislative Budget Board (LBB) has responsibility under this chapter for developing and administering the application process, monitoring agencies, and performing other duties provided under this chapter.

(b) Authorizes the LBB to recover from an agency the costs associated with administering the application process for the agency and LBB's monitoring of the agency.

Sec. 472.005. **APPLICATION FOR SELF-DIRECTED AND SEMI-INDEPENDENT AGENCY STATUS; AUDIT REQUIRED.** (a) Requires an agency, before a state agency may be granted self-directed and semi-independent status, to:

(1) submit an application to LBB; and

(2) undergo a financial audit and an effectiveness audit as required under Subsection (e).

(b) Prohibits a state agency from submitting the application required under Subsection (a) until the agency's governing body:

(1) provides notice and holds a public hearing on the application; and

(2) approves, by majority vote, the submission of the application.

(c) Requires that the application be submitted to the LBB as part of the agency's legislative appropriations request.

(d) Requires that the application be in the form prescribed by the LBB, which must require the agency applying for self-directed and semi-independent status to:

(1) state the reasons for which the agency is seeking self-directed and semi-independent status and address any potential problems that may result from granting that status; and

(2) include, as relevant to the agency's application:

(A) information demonstrating the agency's history of efficient operation and continuing ability to operate efficiently and in a manner that protects the public interest;

(B) documentation of adequate budgetary processes and controls; and

(C) an analysis of the fiscal effect on state revenue and other state agencies demonstrating that the agency's status as self-directed and semi-independent would be revenue neutral.

(e) Requires a state agency to undergo a financial audit and an effectiveness audit by the state auditor during the four-year period preceding the date the agency submits an application under Subsection (a). Requires the state auditor to conduct

the financial audit and effectiveness audit and make the findings of the completed audits available to the LBB.

(f) Authorizes the LBB to require an agency to submit additional information necessary to evaluate the agency's ability to operate effectively as a self-directed and semi-independent agency.

Sec. 472.006. REVIEW OF APPLICATION AND RECOMMENDATION. (a) Requires the LBB's staff to promptly review an application submitted under Section 472.005. Requires the staff review to determine whether the agency's application is sufficient and whether the agency's application should be granted or denied.

(b) Requires the board's staff to submit the staff's recommendation as to whether the agency's application should be granted or denied to the LBB. Authorizes the LBB to recommend to the committee of each house of the legislature that has jurisdiction over appropriations that legislation be introduced to grant self-directed and semi-independent status to the agency.

SECTION 3. Amends Section 472.051(c), Government Code, to require the Sunset Advisory Commission to examine each agency's status and performance as a self-directed and semi-independent agency and the agency's compliance with this chapter as part of the commission's periodic review of the agency under Chapter 325 (Texas Sunset Act).

SECTION 4. Amends Subchapter B, Chapter 472, Government Code, by adding Sections 472.052 and 472.053, as follows:

Sec. 472.052. REVIEW OF SELF-DIRECTED AND SEMI-INDEPENDENT AGENCIES. (a) Requires LBB staff and the LBB to review each agency's annual report submitted under Section 472.104(b) and any additional information requested by the LBB and received from the agency to determine the agency's compliance with this chapter.

(b) Authorizes LBB staff to make a recommendation to the committee of each house of the legislature that has jurisdiction over appropriations and to the legislature to address issues identified during a review conducted under this section, except that the staff may not recommend the revocation of an agency's self-directed and semi-independent status.

(c) Authorizes the LBB to recommend that legislation be introduced to revoke an agency's self-directed and semi-independent status or otherwise address issues raised by the LBB. Provides that a recommendation to revoke an agency's self-directed and semi-independent status may be based on the agency's conduct, including:

(1) material abuse by the agency of its self-directed and semi-independent status; or

(2) fiscal management.

Sec. 472.053. REVOCATION OF SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. (a) Authorizes the LBB to develop criteria for determining when a recommendation for the revocation of an agency's self-directed and semi-independent status is appropriate. Authorizes the LBB to recommend the revocation of an agency's self-directed and semi-independent status to the legislature as provided by Section 472.052(c). Requires the agency, if the LBB recommends revocation of an agency's self-directed and semi-independent status, to have the opportunity to respond in writing to that recommendation.

(b) Authorizes the Sunset Advisory Commission to recommend revocation of an agency's self-directed and semi-independent status to the legislature as part of the

commission's periodic review of the agency under Chapter 325 (Texas Sunset Act).

(c) Authorizes the legislature to consider legislation to revoke an agency's self-directed and semi-independent status regardless of whether the revocation is recommended by the LBB or the Sunset Advisory Commission.

(d) Requires the LBB to assist an agency in transitioning from self-directed and semi-independent status if the agency's status is revoked. Provides that the LBB may consider issues relating to appropriations and financial planning for the agency, and an evaluation of the status and disposition of agency contracts, facilities, properties, and leases when assisting an agency under this subsection.

SECTION 5. Amends Section 472.102, Government Code, by adding Subsection (d), to require TREC and TALCB together, not later than August 31 of each state fiscal year, to remit \$750,000 to the general revenue fund.

SECTION 6. Amends Section 472.103, Government Code, as follows:

Sec. 472.103. AUDITS. Requires the state auditor to enter into a contract and schedule with each agency to conduct audits, including financial audits and effectiveness audits, rather than financial reports and performance audits. Requires that the schedule require an agency to undergo a financial audit and an effectiveness audit at least once every six years, unless the state auditor determines that the auditor may rely on an independent audit of the agency conducted during the same period.. Authorizes the state auditor to conduct a risk-based audit of an agency at any time.

SECTION 7. Amends Section 472.104, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires each agency, in addition to the reporting requirements of Subsection (a) (requiring an agency to submit to the legislature and the governor by the first day of the regular session of the legislature a report describing all of the agency's activities in the previous biennium), to, in the form prescribed by the LBB, report annually, not later than November 20, rather than November 1, to the governor, to the committee of each house of the legislature that has jurisdiction over appropriations, and to the LBB the following:

(1)-(3) Makes no change to these subdivisions;

(4) each agency's operating budget, including revenues from all sources, an accounting of all expenditures, and a breakdown of expenditures by program and administrative expenses, showing:

(A) Makes no change to this paragraph; and

(B) Makes a nonsubstantive change to this paragraph;

(5) the purchase or sale of any real property during the year;

(6) any lease and maintenance costs associated with real property owned or leased by the agency;

(7) for an agency other than a financial regulatory agency, trend performance data for the preceding five fiscal years regarding:

(A)-(L) Makes no change to these paragraphs; and

(M) Makes a nonsubstantive change; and

(8) for a financial regulatory agency, trend performance data for the preceding five fiscal years regarding:

- (A) the number of full-time equivalent positions at the agency;
- (B) the number of complaints received;
- (C) the number of complaints dismissed or resolved, and, of those complaints, the number resolved by enforcement action;
- (D) the number of enforcement actions by type;
- (E) the amount of administrative penalties assessed and the amount of administrative penalties collected;
- (F) the number of entities regulated by the agency;
- (G) the fee charged to issue and renew each type of license, certificate, permit, or other similar authorization issued by the agency, or any assessments paid to the agency by the holder of a license, certificate, permit, or other similar authorization issued by the agency;
- (G) litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel costs;
- (I) reserve fund balances; and
- (J) the key performance measures approved by the governing board of the agency during the fiscal year for which the report is due.

(c) Authorizes the LBB, if, based on a review of an agency's annual report submitted as required under Subsection (b), the LBB determines that additional information is necessary to address an issue identified during the review, to require an agency to submit information to the LBB demonstrating the agency's:

- (1) ability to perform those duties that are required of the agency by its enabling statute or a related duty contained in another law;
- (2) financial soundness, including the agency's ability to raise sufficient revenue, maintain sufficient operating reserves, and meet all of the agency's financial obligations;
- (3) compliance with the provisions of this chapter; and
- (4) satisfactory audit history, including a summary of any corrective action taken by the agency in response to an audit.

SECTION 8. Amends Section 472.105, Government Code, as follows:

Sec. 472.105. New heading: DISPOSITION OF CERTAIN FEES COLLECTED. (a) Requires an agency, subject to Subsection (b), if provided in the agency's enabling legislation, to collect annually from its license holders:

- (1) a professional fee of \$200, rather than a professional fee of \$200 from its license holders annually, which shall be remitted to the state; and
- (2) a scholarship fee of \$10.

Deletes existing text requiring the agency, if provided in an agency's enabling legislation, to collect a scholarship fee of \$10 annually from its license holders.

(b) Requires that a fee increase described by Section 1101.153 (Fee Increase), Occupations Code, be deposited as provided by Subsection (b) of that section.

SECTION 9. Amends Section 472.108, Government Code, as follows:

Sec. 472.108. PROPERTY. Authorizes an agency to:

(1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary or convenient to the exercise of the powers, rights, privileges, or functions of the agency;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the agency determines is not necessary or convenient to the exercise of the agency's powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the powers, rights, privileges, or functions of the agency; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the policy-making body of the agency, for a period not to exceed five years if necessary or convenient to the exercise of the agency's powers, rights, privileges, or functions.

SECTION 10. Amends Sections 472.110(b) and (d), Government Code, as follows:

(b) Requires that all fees and funds collected by an agency, any funds appropriated to the agency, and any other funds belonging to or under the control of an agency, except as provided by Section 472.105 and this subsection, be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. Provides that this subsection does not apply to funds held by an agency under Section 13.016 (Recovery Fund), 154.351 (Maintenance of Guaranty Fund), 154.353 (Deposit of Fund or Portion of Fund), 154.412 (Seizure of Prepaid Funeral Accounts and Records), 156.501 (Recovery Fund), 157.0201 (Recovery Fund), 341.602 (State-Licensed Residential Mortgage Loan Originator Recovery Fund), or 393.628 (Texas Financial Education Endowment), Finance Code.

(d) Requires an agency to remit all administrative penalties collected by the agency to the comptroller of public accounts of the State of Texas for deposit in the general revenue fund. Provides that this subsection does not apply to TREC, TALC, or a financial regulatory agency.

SECTION 11. Amends Section 16.001, Finance Code, as follows:

Sec. 16.001. New heading: SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF FINANCIAL REGULATORY AGENCIES. (a) Provides that a financial regulatory agency has self-directed and semi-independent status as provided under Chapter 472, Government Code.

(b) Provides that for purposes of this chapter and Chapter 472, Government Code:

(1) and (2) Makes no change to these subdivisions defining "financial regulatory" and "policy-making body."

SECTION 12. Amends Sections 1105.001 and 1105.002, Occupations Code, as follows:

Sec. 1105.001. DEFINITIONS. Provides that in this chapter, rather than section:

(1)-(3) Makes no change to these subdivisions, defining “agency,” “board,” and “commission.”

Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. (a) Provides that TALCB, notwithstanding any other provision of law, is self-directed and semi-independent as specified by Chapter 472, Government Code, rather than as specified by this chapter (Self-Directed and Semi-Independent Status of Texas Real Estate Commission). Deletes existing text providing that any Act of the 82nd Legislature that relates to TALCB and that is inconsistent with TALCB being self-directed and semi-independent may be implemented by the administrator of TALCB only on authorization by TALCB.

(b) Provides that Chapter 472, Government Code, rather than this chapter, does not affect TALCB’s status as an independent subdivision of TREC as provided by Section 1103.051.

SECTION 13. Repealers: Sections 16.002 (Self-Directed and Semi-Independent Status of Financial Regulatory Agencies), 16.003 (Budget, Revenues, and Expenses), 16.004 (Audits), 16.005 (Records; Reporting Requirements), 16.006 (Ability to Contract), 16.007 (Property), 16.008 (Suits), 16.009 (Post-Participation Liability), 16.010 (Due Process; Open Government), 16.011 (Membership in Employee Retirement System), and 16.012 (Gifts), Finance Code.

Repealers: Sections 1105.003 (Budget, Revenues, and Expenses), 1105.004 (Audits), 1105.005 (Records; Reporting Requirements), 1105.006 (Ability to Contract), 1105.007 (Property), 1105.008 (Suits), 1105.009 (Administrative Hearings), 1105.010 (Post-Participation Liability), 1105.011 (Due Process; Open Government), and 1105.012 (Membership in Employees Retirement System), Occupations Code.

SECTION 14. Provides that Section 472.104, Government Code, as amended by this Act, applies only to a report originally due on or after the effective date of this Act. Provides that a report originally due before the effective date of this Act is governed by the law in effect on the date the report was originally due, and the former law is continued in effect for that purpose.

SECTION 15. Provides that the repeal by this Act of Section 16.006 (Ability to Contract), Finance Code, and Section 1105.006 (Ability to Contract), Occupations Code, does not affect the validity of a contract entered into under those sections before the effective date of this Act.

SECTION 16. Effective date: September 1, 2015.