

BILL ANALYSIS

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S.B. 217
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Finance
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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.

This bill:

Requires LBB to develop and administer a clearly defined process for obtaining SDSI status and overseeing SDSI agencies.

- Requires the LBB to manage the SDSI process for the state, including developing and administering an application process for agencies requesting SDSI status in the future.
- Provides for consistent, ongoing oversight of all SDSI agencies, including regular monitoring by the LBB.
- Authorizes the LBB to develop a process and criteria for recommending revocation of an agency's SDSI status, and to facilitate the transition of an agency back to the appropriations process if needed.

Places all SDSI agencies under the SDSI Act to provide for more consistent administration and effective oversight of the agencies

- Makes all SDSI agencies, including the finance and real estate-related SDSI agencies, subject to the SDSI Act, updates provisions of the Act, and removes the individual SDSI provisions from the agencies' enabling statutes.
- Modifies SDSI Act requirements to appropriately apply to the finance-related SDSI agencies, including exempting them from transferring administrative penalties to the General Revenue Fund.

Expands the reporting and monitoring requirements of all SDSI agencies to improve oversight.

- Requires all SDSI agencies to provide more complete budget information, including reporting all nonoperational and pass-through revenues and expenditures in a consistent format prescribed by the LBB.
- Requires all SDSI agencies to undergo a State Auditor’s Office financial and performance audit every six years.

As proposed, S.B. 217 amends current law relating to the self-directed and 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 OF CERTAIN AGENCIES.** Provides that this chapter does not affect TACL B’s status as an independent subdivision of TREC as provided by Section 1103.051 (Texas Appraiser Licensing and Certification Board), Occupations Code.

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 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 staff to submit to the committee of each house of the legislature that has jurisdiction over appropriations the staff's recommendation as to whether the agency's application should be granted or denied. Authorizes the LBB to recommend 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. OVERSIGHT OF SELF-DIRECTED AND SEMI-INDEPENDENT AGENCIES. (a) Requires the LBB to review each agency's annual report submitted under Section 472.104(b) and any additional information received from the agency to determine the agency's compliance with this chapter.

(b) Authorizes the LBB to require an agency to submit additional information necessary to determine the agency's compliance with this chapter. Requires an agency to comply with LBB's request for additional information. Authorizes the LBB to prescribe the form in which the agency must submit the additional information.

(c) Authorizes LBB's staff to make a recommendation to the committee of each house of the legislature that has jurisdiction over appropriations and to the legislature based on the review conducted under this section. 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.

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).

(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 LBB's staff 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. 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 from the public and the number of complaints initiated by agency staff;

(C) the number of complaints dismissed and the number of complaints resolved by enforcement action;

(D) the number of enforcement actions by sanction type;

(E) the number of enforcement cases closed through voluntary compliance;

(F) the amount of administrative penalties assessed and the rate of collection of assessed administrative penalties;

(G) the number of entities regulated by the agency;

(H) the fee charged to issue and renew each type of license, certificate, permit, or other similar authorization issued by the agency;

(I) litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel costs;

(J) reserve fund balances; and

(K) 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 to require an agency to submit, at any time, information to the LBB demonstrating the agency's:

- (1) ability to perform the activities the agency is required by law to perform;
- (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. (a) Creates this subsection from existing text. Authorizes an agency other than a financial regulatory agency to acquire by lease, own and maintain, use, and operate, any real, personal, or mixed property necessary to the exercise of the powers, rights, privileges, and functions of the agency.

(b) Authorizes a financial regulatory 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 financial regulatory agency;
- (2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the financial regulatory 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 financial regulatory 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 financial regulatory agency, for a period not to exceed five years if necessary or convenient to the exercise of the financial regulatory 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, be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company.

(d) Requires an agency other than a financial regulatory 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.

SECTION 11. Repealer: Chapter 16 (Financial Regulatory Agencies: Self-Directed and Semi-Independent), Finance Code.

Repealer: Chapter 1105 (Self-Directed and Semi-Independent Status of Texas Real Estate Commission), Occupations Code.

SECTION 12. 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 13. 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 14. Effective date: September 1, 2015.