Sunset Advisory Commission

Special-Purpose Review Final Results

State Board of Veterinary Medical Examiners

2022-23
88th Legislature

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State Board of Veterinary Medical Examiners

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Final Results

Senate Bill 1414 Johnson (Holland)

Summary

The State Board of Veterinary Medical Examiners has undergone three Sunset reviews over the last six years. These reviews have repeatedly documented significant data collection, reliability, and analysis issues and poor enforcement procedures that have plagued the agency. In November 2022, a special-purpose Sunset review found the agency had improperly contracted for a new database it never received and indications the agency was continuing to struggle with data collection, tracking, reliability, and analysis. As a result of these and other findings, the Sunset Commission directed staff to identify options to address the systemic issues at the Veterinary Board and submit them to the commission.

In January 2023, Sunset staff proposed a series of options for the commission and ultimately, the Legislature, to consider. The Sunset Commission adopted Option 1, which recommends temporarily attaching the Veterinary Board to the Texas Department of Licensing and Regulation (TDLR) during which TDLR would provide the Veterinary Board with policymaking and administrative oversight, guidance, and support. As recommended by the Sunset Commission, Senate Bill 1414 temporarily attaches the Veterinary Board to TDLR for a four-year period. During this time, Senate Bill 1414 requires the Veterinary Board to serve as an advisory board while continuing to authorize the Veterinary Board to adopt rules relating to the scope of practice of or a health-related standard of care for the practice of veterinary medicine, subject to review by the Texas Commission of Licensing and Regulation (TCLR). Senate Bill 1414 also requires TDLR and the Department of Information Resources (DIR) to determine the Veterinary Board's database needs and help acquire and implement a suitable database.

The following material summarizes results of the Sunset review of State Board of Veterinary Medical Examiners, including management actions directed to the agency that do not require legislative action.

New Recommendations Added by the Sunset Commission

Option 1 — Adopted

Temporarily attach the State Board of Veterinary Medical Examiners to TDLR for four years

- Establish a temporary, four-year relationship between TDLR and the Veterinary Board to provide the Veterinary Board with policymaking and administrative oversight, guidance, and support.

- TDLR would temporarily receive the Veterinary Board for a four-year period ending September 1, 2027.

- The agency's governing board would become an advisory board to TDLR.

  - During the four-year temporary attachment, all current and any subsequent members of the governing board would serve as an advisory board to TDLR and the Texas Commission

of Licensing and Regulation (TCLR) would have final rulemaking authority except where specifically noted. TCLR would be responsible for ensuring compliance with all laws regarding the rulemaking process.

- Agency staff would shadow TDLR staff to be trained in licensing, inspection, and enforcement policies and procedures.

- The agency would work with both TDLR and DIR to determine its database needs, and to acquire and implement a suitable database.

- Prior to the 89th Legislative Session, TDLR would be required to provide statutory recommendations designed to improve the agency's operations to the Sunset Commission and the standing committees with jurisdiction over the Veterinary Board.

- The Sunset date for the State Board of Veterinary Medical Examiners would be changed from 2029 to 2027.

- The Sunset Commission would make a recommendation to the appropriative committees to request additional funding to support TDLR's expanded workload and authorize TDLR to pay an independent management consultant to assist in administering the Veterinary Board, at TDLR's discretion.

- Sunset Staff will work with the Texas Legislative Council, the Veterinary Board, and TDLR to ensure these changes are accurately included in the Sunset legislation.

Provisions Added by the Legislature

Scope of practice and health-related standard of care rulemaking — Continues to authorize the Veterinary Board to adopt rules relating to the scope of practice of or a health-related standard of care for the practice of veterinary medicine.

- Requires TCLR to review each rule related to the scope of practice of or a health-related standard of care for the practice of veterinary medicine adopted by the Veterinary Board.

- If TCLR determines the rule is not authorized under the law or is an unauthorized anticompetitive rule, requires TCLR to issue an order stating that determination and prohibits any rule for which TCLR issues such an order from taking effect or being enforced by the Veterinary Board.

TDLR authority over Veterinary Board — Establishes TDLR's authority over SBVME's governing board and executive leadership during the temporary attachment.

Separation of policymaking authority and administrative duties — Separates TDLR's policymaking authority from the continuing administrative duties of the Veterinary Board and requires the Veterinary Board to reimburse TDLR for any costs incurred in providing administrative services.

Expert witnesses — Allows TDLR to have a licensed veterinarian member of the Veterinary Board serve as an expert witness for any rulemaking or contested case for which an expert witness is necessary.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations on SBVME, as enacted in SB 1414, will result in improved efficiency and effectiveness of operations by ensuring the Veterinary Board has sufficient policymaking and operational support, as well as access to the expertise to procure a database that meets its current and future needs. According to the Legislative Budget Board's fiscal note assessment, the temporary administration of the Veterinary Board by TDLR will require 9.0 additional full-time equivalent (FTE) positions in fiscal years 2024 and 2025 and seven additional FTE positions in fiscal years 2026 and 2027.[1] For fiscal years 2024 and 2025, the annual cost of nine FTEs is $1,124,160 with one-time start-up costs of $35,600. For fiscal years 2026 and 2027, the annual costs of the FTEs is reduced to $988,338.

Contracting with an independent management consultant to assist in TDLR's administration of the SB 1414's provisions will result in a one-time cost of $90,000 in fiscal year 2024.

The legislature also provided funding to address the acquisition of a new database and improving core agency functions such as investigations, which Sunset has noted as deficient in each of its last three reviews.[2]

Fiscal Year	Cost to the General Revenue Fund	Gain to the General Revenue Fund	Net Impact to the General Revenue Fund	Change in Number of FTEs From FY 2023
2024	$1,249,760	$0	$0	9
2025	$1,177,564	$0	$0	9
2026	$988,338	$0	$0	7
2027	$988,968	$0	$0	7
2028	$0	$0	$0	0

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[1]   Fiscal Note, Tex. SB 1414, 88th Leg., R.S. (2023).

[2]   Conference Committee Report, Tex. HB 1, 88th Leg., R.S., General Appropriations Act, page VIII-56, Rider 3, Contingency of SB 1414.

Sunset Commission Decisions

Summary

The State Board of Veterinary Medical Examiners has undergone three Sunset reviews over the last six years. These reviews have repeatedly documented significant data collection, reliability, and analysis issues and poor enforcement procedures that have plagued the agency. In November 2022, a special-purpose Sunset review found the agency had improperly contracted for a new database it never received and indications the agency was continuing to struggle with data collection, tracking, reliability, and analysis. As a result of these and other findings, the Sunset Commission directed staff to identify options to address the systemic issues at the Veterinary Board and submit them to the commission.

In January 2023, Sunset staff proposed a series of options for the commission and ultimately, the Legislature, to consider. The Sunset Commission adopted Option 1, which recommends temporarily attaching the Veterinary Board to the Texas Department of Licensing and Regulation (TDLR) for a four-year period during which TDLR would provide the Veterinary Board with policymaking and administrative oversight, guidance, and support. The Veterinary Board would serve as an advisory board during this period, and at the end of the four-year attachment, the Veterinary Board would return to its independent agency status. In addition, TDLR and the Department of Information Resources (DIR) would determine the Veterinary Board's database needs and help acquire and implement a suitable database. The following material summarizes the Sunset Commission's decision.

Option 1

Temporarily attach the State Board of Veterinary Medical Examiners to TDLR for four years.

- Establish a temporary, four-year relationship between TDLR and the Veterinary Board to provide the Veterinary Board with policymaking and administrative oversight, guidance, and support.

- TDLR would temporarily receive the Veterinary Board for a four-year period ending September 1, 2027.

- The agency's governing board would become an advisory board to TDLR.

  - During the four-year temporary attachment, all current and any subsequent members of the governing board would serve as an advisory board to TDLR and the Texas Commission of Licensing and Regulation (TCLR) would have final rulemaking authority except where specifically noted. TCLR would be responsible for ensuring compliance with all laws regarding the rulemaking process.

  - TCLR would not be able to adopt a new rule relating to the scope of practice of, a health-related standard of care for, or the ethical practice of the profession of veterinary medicine unless the rule has been proposed by the advisory board. TCLR would adopt rules prescribing the procedure by which the advisory board may propose rules relating to the scope of practice

of, a health-related standard of care for, or the ethical practices of the profession of veterinary medicine. TCLR would either adopt such rule proposals relating to standard of care or return the rule to the advisory board for revision.

– TDLR would not be responsible for providing any administrative support to the Veterinary Board, including payroll, human resources, or IT support.

● Agency staff would shadow TDLR staff to be trained in licensing, inspection, and enforcement policies and procedures.

● The agency would work with both TDLR and DIR to determine its database needs, and to acquire and implement a suitable database.

● Prior to the 89th Legislative Session, TDLR would be required to provide statutory recommendations designed to improve the agency's operations to the Sunset Commission and the standing committees with jurisdiction over the Veterinary Board.

● The Sunset date for the State Board of Veterinary Medical Examiners would be changed from 2029 to 2027.

● The Sunset Commission would make a recommendation to the appropriative committees to request additional funding to support TDLR's expanded workload and authorize TDLR to pay an independent management consultant to assist in administering the Veterinary Board, at TDLR's discretion.

● Sunset Staff will work with the Texas Legislative Council, the Veterinary Board, and TDLR to ensure these changes are accurately included in the Sunset legislation.

Fiscal Implications Summary

Overall, the Sunset Commission's recommendation would provide the Veterinary Board with support to improve the efficiency and effectiveness of its operations, while also ensuring the agency has access to the expertise to procure a database that meets its current and future needs. However, the exact fiscal impact of these recommendations cannot be estimated at this time, as the Legislature would determine the amount of any funding provided for the attachment to TDLR through the appropriations process.

Agency at a Glance

The Legislature created the State Board of Veterinary Medical Examiners in 1911 to regulate the practice of veterinary medicine, surgery, and dentistry.[1] The agency's mission is to establish and enforce policies to ensure the best possible quality of veterinary services and equine dental care for the animals of Texas. To fulfill this mission, the agency carries out the following key activities:

- Licenses veterinarians, veterinary technicians, and equine dental providers.

- Sets standards for the practice of veterinary medicine and equine dental services.

- Enforces the Veterinary Licensing Act by investigating and resolving complaints against licensees and taking disciplinary action when necessary.
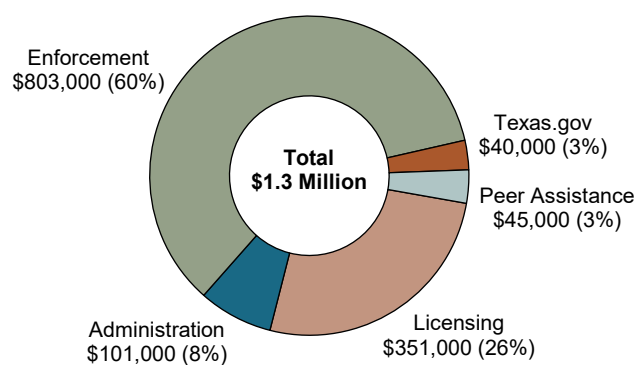
Key Facts

Governance. The board consists of nine members appointed by the governor and confirmed by the Senate — five veterinarians, one licensed veterinary technician, and three members of the public — who serve staggered six-year terms.[2] The governor designates the presiding officer.[3] Veterinarian members of the board must have resided and been practicing veterinary medicine in Texas for at least six years preceding their appointment.[4]

- **Funding.** In fiscal year 2021, the agency operated on a budget of about $1.3 million, with the majority of revenue coming from licensing fees. The pie chart, *State Board of Veterinary Medical Examiners Expenditures*, breaks out the agency's spending by major program areas.
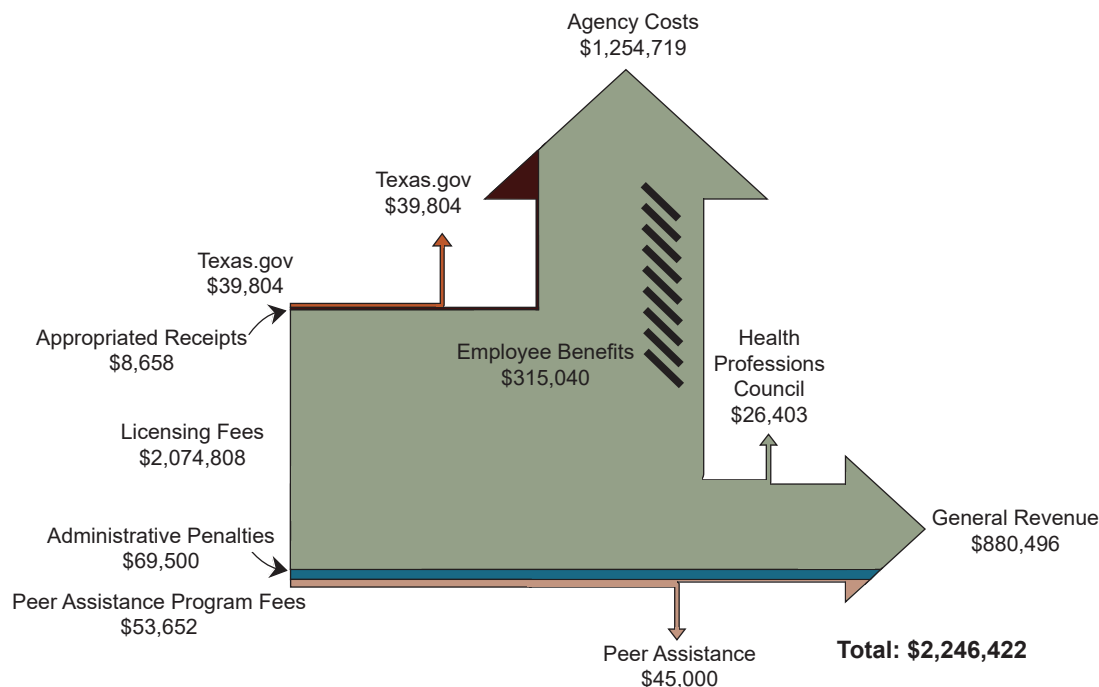
  The agency generates revenue in excess of what is needed for operations, transferring more than $880,000 in fees to the General Revenue Fund in fiscal year 2021. The chart on the following page, *Flow of State Board of Veterinary Medical Examiners Revenue and Expenditure*, shows the overall impact of board revenue and expenditures in fiscal year 2021.

State Board of Veterinary Medical Examiners Expenditures - FY 2021

Total $1.3 Million

Enforcement $803,000 (60%)
Texas.gov $40,000 (3%)
Peer Assistance $45,000 (3%)
Licensing $351,000 (26%)
Administration $101,000 (8%)

- **Staffing.** The agency, headquartered in Austin, employed 19 full-time employees in fiscal year 2021. Six investigative staff work in the field and are located in Allen, Austin, Corpus Christi, Houston, San Antonio, and Weatherford. Additionally, the agency is a member of the Health Professions Council, which provides supplementary information technology staffing for the agency and other health professions licensing agencies.

- **Licensing.** The agency determines eligibility, processes license applications and annual renewals, performs criminal history checks, and administers jurisprudence exams for three occupations.

**Flow of State Board of Veterinary Medical Examiners
Revenue and Expenditure - FY 2021**

Agency Costs
$1,254,719

Texas.gov
$39,804

Texas.gov
$39,804

Appropriated Receipts
$8,658

Employee Benefits
$315,040

Health
Professions
Council
$26,403

Licensing Fees
$2,074,808

General Revenue
$880,496

Administrative Penalties
$69,500

Peer Assistance Program Fees
$53,652

Peer Assistance
$45,000

Total: $2,246,422

Veterinarians. The Veterinary Licensing Act requires Doctors of Veterinary Medicine (DVM) to be licensed by the agency to practice veterinary medicine in Texas.[5] In addition to other requirements, applicants must graduate from an accredited school or college of veterinary medicine, or provide proof of equivalence; complete a fingerprint criminal history background check; and pass both the national licensing and state jurisprudence exams to qualify for licensure. The board also requires licensed veterinarians to comply with all requirements of the Drug Enforcement Administration (DEA), including registering with the DEA and complying with recordkeeping requirements.

Licensed Veterinary Technicians (LVTs). The state began licensing LVTs in 2013.[6] A license to work as a veterinary technician is not mandatory, but individuals cannot refer to themselves as LVTs without a license. LVTs assist veterinarians in animal care and veterinary tasks, such as taking basic vital information, suturing, and inducing anesthesia. By virtue of their license, LVTs may conduct these tasks with a lower level of veterinary supervision than unlicensed veterinary assistants or technicians. LVT applicants must graduate from an accredited veterinary technician program, and pass both the national licensing and state jurisprudence exams.

Equine Dental Providers (EDPs). The state began licensing EDPs in 2011.[7] EDPs may perform a statutorily defined set of dental procedures on equine animals under the general supervision of a licensed veterinarian. Applicants must complete an agency-approved equine dentistry certification program and pass the state jurisprudence exam. The board has a statutory equine dental provider advisory committee, consisting of two EDPs engaged in the practice for five years before appointment and a veterinarian in good standing who supervises an EDP, to advise and assist the board in adopting rules and determining disciplinary actions related to EDPs.[8]

The table, *State Board of Veterinary Medical Examiners Licensees and Fees*, shows the number of licensees and amounts of certain annual licensing fees at the end of fiscal year 2021.

- **Inspections and enforcement.** Enforcement staff conducts compliance inspections of licensees; investigates possible violations of the Texas Veterinary Licensing Act and related rules by licensed and unlicensed individuals; and enforces federal and state

State Board of Veterinary Medical Examiners Licensees and Fees - FY 2021

License Type	Number of Licensees	Initial Application Fee	Renewal Fee
DVM	10,209	$515[9]	$195
LVT	2,250	$50	$50
EDP	60	$100	$83
Total	**12,519**		

regulations regarding controlled substances. The agency receives complaints from licensees and members of the public, and initiates its own complaints from compliance inspection reports. If the agency finds a violation, it may impose a sanction or combination of sanctions.[10] In fiscal year 2021, standard of care and practicing without a license were the most common licensee violations. The agency received 451 complaints and averaged 464 days to resolve complaints in fiscal year 2021. The agency also conducted 56 inspections in the same fiscal year.

The board cooperates with the DEA and the Texas State Board of Pharmacy to track and monitor prescriptions of controlled substances by veterinarians. The textbox, *Texas Prescription Monitoring Program*, provides more information about controlled substances oversight by the program and other stakeholders.[11]

Texas Prescription Monitoring Program (PMP)

- The PMP collects and monitors prescription data for all Schedule II, III, IV, and V controlled substances dispensed in Texas.

- Statute allows prescribers, pharmacists, and related regulatory agencies to check a patient's information in the database to determine potential drug diversion or drug abuse.

- If the board determines a veterinarian has potentially harmful prescribing or dispensing patterns, the board may initiate a complaint using the information obtained through the PMP.

- **Peer assistance.** The agency contracts for peer assistance services for licensees who may be impaired by substance abuse or dependence, or mental illness. Through the peer assistance program, licensees are evaluated to determine if they are safe to practice and, if not, may be subject to treatment and monitoring before being allowed to practice. In fiscal year 2021, 24 licensed individuals participated in the peer assistance program.

1   Chapter 76 (HB 62), Acts of the 32nd Texas Legislature, Regular Session, 1911.

2   All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Sections 801.051, 801.052, and 801.054, Texas Occupations Code.

3   Section 801.055, Texas Occupations Code.

4   Section 801.052(a)(1), Texas Occupations Code.

5   Section 801.251, Texas Occupations Code.

6   Chapter 481 (SB 1312), Acts of the 83rd Texas Legislature, Regular Session, 2013.

7   Chapter 940 (HB 414), Acts of the 82nd Texas Legislature, Regular Session, 2011.

8   Section 801.551, Texas Occupations Code.

9   Fees listed for veterinarians apply to the regular veterinary license and not special, temporary, or inactive licenses.

10   22 Texas Administrative Code, Section 575.25.

11   Sections 481.076 and 481.0764, Texas Health and Safety Code; Section 801.5011, Texas Occupations Code.

Special-Purpose Review: State Board of Veterinary Medical Examiners

The Board Has Failed to Implement the Sunset Commission's Database Recommendations.

Introduction

The State Board of Veterinary Medical Examiners has undergone three Sunset reviews over the last six years. Following the board's Sunset review in 2017 that identified significant issues with data management, the 85th Legislature continued the agency for only four years and limited the scope of the subsequent Sunset review to evaluating the ongoing appropriateness of statutory recommendations previously adopted by the Sunset Commission.[1] In 2021, Sunset staff once again found the agency struggled to manage its data, particularly its enforcement data.[2] As a result, the 87th Legislature passed Senate Bill 713 requiring Sunset staff to perform a special-purpose review to evaluate the board's implementation of its database system and its processes and procedures for collecting and analyzing data.[3] The bill also requires the State Auditor to conduct an effectiveness audit after December 1, 2023, to evaluate the board's implementation of data-related recommendations previously adopted by the Sunset Commission as well as any recommendations resulting from this special-purpose review.[4]

Findings

The board failed to properly contract for a new database and continues to struggle with data collection, tracking, and analysis.

Consistent with the 2017 Sunset review, the board continues to demonstrate exceptionally poor contracting practices. When evaluating an agency's contracting operations, Sunset uses the general framework established in the *State of Texas Procurement and Contract Management Guide*, as well as documented standards and best practices compiled by Sunset staff.[5] Among these, an agency should formally document all of its contracts, including a well-defined Scope of Work. According to board staff, the agency entered into two separate contracts with vendors approved by the Department of Information Resources to procure a new database for its licensing and enforcement functions, but neither resulted in a useable database. In March 2018, the agency entered into the first contract, with GTS Technology Solutions, Inc. for the Nuvola database and spent $74,568.[6] However, this contract was cancelled when the primary subcontractor on the project went out of business, forcing the agency to start over and seek out a new vendor. Sunset staff was able to independently corroborate the documented expenditures for this contract.

The agency stated it entered into a second contract in January 2020 with SHI Government Solutions, Inc. for the InLumon database and paid $108,500.[7] Again, the database was never completed, but Sunset staff was unable to corroborate the expenditures for this second contract. After the agency's executive staff resigned in April 2022, the agency could not find and was unable to produce the second contract

or a documented Scope of Work for Sunset staff.[8] Without these, the agency is unable to determine what the agreed upon deliverables were and what would have constituted completion of the contract. More concerning is the failure to have a written, documented contract, which frustrates efforts to hold the agency accountable for the expenditures of public funds and raises questions of misuse. In total, the agency spent $183,095 attempting to purchase a new database and never received a final product. Currently, the agency is seeking both federal funding and an exceptional item request in its fiscal year 2024-25 Legislative Appropriations Request for $143,110 in one-time costs and $276,120 in ongoing expenses for a new database.[9]

The agency spent $183,095 to acquire a new database and never received a final product.

Without a new database, the agency has been unable to improve how it collects and makes use of data. The previous Sunset recommendations addressing the board's poor data collection, tracking, and analysis were ultimately supposed to improve the agency's internal processes, responsiveness to stakeholders, and enforcement efforts. Instead, the agency continues to rely on separate Excel spreadsheets to manage its data, which limits its ability to perform data analysis and is prone to input errors. Sunset staff also had difficulty obtaining reliable budget information and had concerns with the reliability of the agency's licensing and enforcement data.[10] While not applicable to this special-purpose review, Sunset staff continued to receive stakeholder input — including complaints — about the agency, raising significant concerns about its management, transparency, and responsiveness to the public. In addition, the board took an average of 464 days to resolve a complaint in fiscal year 2021 — up from 221 days in fiscal year 2015 — prompting an investigative report on long resolution times.[11] Additionally, as response times have risen, the board conducted only 56 inspections in fiscal year 2021, a steep decline from prior years in which the board routinely conducted more than 500 inspections. Without addressing basic, but important, state agency operations like contracting and data management, the board will continue to struggle to meet its important mission of establishing and enforcing policies to ensure the best quality of veterinary services and equine dental care for the animals of Texas.

[1]   Chapter 536 (SB 319), Acts of the 85th Texas Legislature, Regular Session, 2017.

[2]   Texas Sunset Advisory Commission, *State Board of Veterinary Medical Examiners Staff Report with Final Results*, Austin: Texas Sunset Advisory Commission, June 2021, pp. A3-4.

[3]   Chapter 850 (SB 713), Acts of the 87th Texas Legislature, Regular Session, 2021.

[4]   Chapter 850 (SB 713), Acts of the 87th Texas Legislature, Regular Session, 2021.

[5]   Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide*, accessed online March 5, 2020, https://comptroller.texas.gov/purchasing/docs/96-1809.pdf.

[6]   Department of Information Resources (DIR) Contract TSO-3655.

[7]   DIR Contract TSO-3984.

[8]   The executive director, the director of operations, and the executive assistant all resigned.

[9]   Texas Board of Veterinary Medical Examiners, "Legislative Appropriations Request For Fiscal Years 2024 and 2025," September 2022, pp. 4-6, accessed online October 26, 2022, http://docs.lbb.texas.gov/Main/DocDisplay.aspx.

[10]   With the agency's data management difficulties, concerns with consistency of data tracking, and the limited scope of Sunset staff's review, Sunset cannot verify the accuracy of the agency's data.

[11]   KXAN, "Is your pet's vet safe? Backlogged Texas cases may make it hard to know," news story last updated May 16, 2022, accessed online October 26, 2022, https://www.kxan.com/investigations/is-your-pets-vet-safe-backlogged-texas-cases-may-make-it-hard-to-know/?ipid=promo-link-block2.

Sunset Special-Purpose Review of the

State Board of Veterinary Medical Examiners

─── REPORT PREPARED BY ───

Steven Ogle, *Project Manager*

Trisha Linebarger

Brian Francis
Acting Director

Sunset Advisory Commission

Location	**Mail**
Robert E. Johnson Bldg., 6th Floor	PO Box 13066
1501 North Congress Avenue	Austin, TX 78711
Austin, TX 78701	

Website	**Email**
www.sunset.texas.gov	sunset@sunset.texas.gov

Phone
(512) 463-1300