

SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS



Anatomical Board of
the State of Texas

2020–2021

87TH LEGISLATURE

SUNSET ADVISORY COMMISSION



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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood

ANATOMICAL BOARD OF THE STATE OF TEXAS

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HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at sunset.texas.gov/how-sunset-works. The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at sunset.texas.gov.

Sunset Staff Report

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

Sunset Staff Report with Commission Decisions

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

CURRENT VERSION: Sunset Staff Report with Final Results

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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FINAL RESULTS

Senate Bill 713 Buckingham (Cyrier) – Sunset Schedule Bill

House Bill 1565 Paddie (Buckingham) – SAB Sunset Bill (Not Enacted)

Summary

Willed body programs (WBPs) allow adults to donate their deceased bodies to further education and research, and serve as a primary resource for higher education institutions and other health professions by ensuring affordable access to cadavers, which are essential for teaching and training. The Anatomical Board of the State of Texas (SAB) oversees the distribution of these donated or unclaimed deceased bodies to board-approved higher education institutions for use in medical or forensic science education and research. Today, Texas has 13 WBPs subject to board oversight, including periodic inspections. Additionally, statute allows these programs to transfer donated bodies to other board inspected and approved facilities, including medical training facilities, medical device companies, search and rescue organizations, and other higher educational institutions that do not operate their own WBPs.

In the first Sunset review of SAB since 1984, the Sunset Commission voted to abolish SAB as a standalone board, reconstitute it as an advisory committee, and transfer its functions to the Texas Funeral Service Commission (TFSC). However, House Bill 1565, the SAB Sunset bill did not pass during the 87th Legislature. Instead, the Legislature passed Senate Bill 713, which continues SAB as a standalone board for two years and places it under Sunset review again in the 2022–23 biennium.

The following material summarizes results of the Sunset review of SAB.

ISSUE 1 — Continue

Recommendation 1.1, Not Adopted — Abolish SAB and transfer its functions to TFSC. TFSC members would appoint an advisory committee composed of higher education institutions with willed body programs to provide expert advice to the agency. Administrative provisions in TFSC's statute would replace similar provisions in SAB's statute, including TFSC's full range of enforcement authority, and TFSC's statute would clearly authorize fees for anatomical facility inspections. TFSC would be prohibited from adopting rules relating to standards of practice, ethics, license qualifications, and disciplinary sanctions, unless the rule is proposed by the advisory committee. TFSC could only adopt these rules as proposed, or return the rule to the advisory committee for revision and provide an explanation of why it rejected the rule in its current form.

Recommendation 1.2, Not Adopted — Authorize Texas colleges and universities with WBPs to form a consortium.

Recommendation 1.3, Not Adopted — Direct Texas colleges and universities with WBPs to consider adopting certain best practices. (Management action – nonstatutory)

Provision Added by the Legislature

Continue, Adopted— Continue SAB for two years and place it under Sunset review again in 2022–23. (S.B. 713)

Fiscal Implication Summary

The provision in S.B. 713 to continue SAB for two years will not result in a fiscal impact to the state.

SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Anatomical Board of the State of Texas (SAB), as well as a modification raised during the public hearing.

Willed body programs (WBPs) allow adults to donate their deceased bodies to further education and research, and serve as a primary resource for higher education institutions and other health professions by ensuring affordable access to cadavers, which are essential for teaching and training. SAB oversees the distribution of these donated or unclaimed deceased bodies to board-approved higher education institutions for use in medical or forensic science education and research. Today, Texas has 13 WBPs subject to board oversight, including periodic inspections. Additionally, statute allows these programs to transfer donated bodies to other board inspected and approved facilities, including medical training facilities, medical device companies, search and rescue organizations, and other higher educational institutions that do not operate their own WBPs.

In the first Sunset review of SAB since 1984, staff found Texas' higher education institutions could operate WBPs without the board and recommended abolishing SAB. However, the Sunset Commission instead voted to abolish SAB as a standalone board and transfer its functions to the Texas Funeral Service Commission (TFSC). The board would be reconstituted as an advisory committee composed of higher education institutions with WBPs, which would provide expertise to TFSC and have direct input on TFSC rulemaking that affects WBPs and other anatomical facilities. TFSC staff would carry out SAB functions, including inspections and administrative work previously performed by board members.

ISSUE 1

Texas' Higher Education Institutions Could Continue to Effectively Operate Willed Body Programs Without the State Anatomical Board.

Recommendation 1.1, Adopted as Modified — Replace the original staff recommendation with the following. Abolish SAB and transfer its functions to TFSC. As part of this modification, TFSC members would appoint an advisory committee composed of higher education institutions with willed body programs to provide expert advice to the agency. Administrative provisions in TFSC's statute would replace similar provisions in SAB's statute, including TFSC's full range of enforcement authority, and TFSC's statute would clearly authorize fees for anatomical facility inspections. As part of this modification, TFSC would be prohibited from adopting rules relating to standards of practice, ethics, license qualifications, and disciplinary sanctions, unless the rule is proposed by the advisory committee. TFSC could only adopt these rules as proposed, or return the rule to the advisory committee for revision and provide an explanation of why it rejected the rule in its current form.

Recommendation 1.2, Not Adopted — Authorize Texas colleges and universities with WBPs to form a consortium.

Recommendation 1.3, Not Adopted — Direct Texas colleges and universities with WBPs to consider adopting certain best practices. (Management action – nonstatutory)

Fiscal Implication Summary

Overall, the recommendation to abolish SAB as a standalone board and transfer its functions to TFSC would not have a fiscal impact to the state. While the board has no staff and does not receive state appropriations, TFSC could charge WBPs a small fee to cover the cost of its staff time to take on the board's workload, formerly carried out by board members, if necessary.

SUMMARY OF SUNSET STAFF REPORT

While cadavers have been used to teach anatomy and dissection in the U.S. since at least 1745, willed body programs (WBPs) provide a more recent source of deceased human bodies for use in medical education. These programs allow adults to donate their deceased bodies to further education and research, and serve as a primary resource for higher education institutions and other health professions by ensuring affordable access to cadavers, which are essential for teaching and training. The Anatomical Board of the State of Texas, established in 1907, oversees the distribution of these donated or unclaimed deceased bodies to board-approved higher education institutions for use in medical or forensic science education and research. Today, Texas has 13 WBPs subject to board oversight, including periodic inspections. Additionally, statute allows these programs to transfer donated bodies to other board inspected and approved facilities, including medical training facilities, medical device companies, search and rescue organizations, and other higher educational institutions that do not operate their own WBPs.

The last Sunset review of the board occurred in 1984, more than 35 years ago. Since then, the board has received little attention or interest, particularly from the Legislature, which has made very few statutory changes to the board or its operations. A primary reason for this is that the Legislature did not structure the board to operate like most other regulatory boards and state agencies. The board does not receive any state appropriations, and while it does have limited fee authority, the fees collected totaled only \$48,700 in 2019. The board also does not have authority to hire staff; instead, the board members, representatives from 16 Texas colleges and universities, must perform the board's limited functions.

The board cannot provide effective oversight or adhere to regulatory best practices in its current form.

As required by the Sunset Act, the review questioned the need for and effectiveness of the board's regulation, and considered if alternative methods of performing its regulatory functions could still adequately protect and provide services to the public. The review found Texas continues to have an interest in whole body donations, and allowing for the use of deceased bodies to further medical or forensic science education, while also ensuring the bodies are treated respectfully and ethically. However, Sunset staff ultimately determined without staff or appropriations, the board cannot provide effective oversight or adhere to regulatory best practices. More importantly, the board's actual regulatory role is minimal and is effectively being performed by the higher education institutions and anatomical facilities it regulates, negating the need for the board.

While the board's mission is to facilitate the distribution of deceased human remains for teaching and research, it is the institutions and their WBPs that actually receive and distribute the deceased bodies with minimal board involvement. The board's main regulatory activity is inspecting and approving WBPs and other anatomical facilities that use cadavers and anatomical specimens

transferred from WBPs. However, the inspection process is nominal and infrequent, occurring once every five years, and the board takes few enforcement actions otherwise. Also, board members cannot provide fully objective and comprehensive regulation since they are inspecting other members' facilities, placing them at risk of potentially making anticompetitive and unfair decisions. While Sunset staff found no evidence of this happening, board members performing these inspections creates the appearance of potential conflicts of interest. With all of this in mind, Sunset staff determined Texas' higher education institutions could continue to effectively operate the state's WBPs without the board's oversight or involvement.

However, the review also acknowledges the board's statute and other state regulations have not kept up with the changing nature of the whole body donation industry, resulting in significant regulatory gaps. Currently, statute does not authorize the board to fully regulate the whole body donation industry in Texas, specifically commercial, for-profit body donation companies, including Science Care, that have come into existence since the board's last Sunset review. Currently, Texas law does not clearly consider or provide for regulation of these companies. While relevant to this review, recommending regulation of this relatively new business model clearly falls outside the scope of a Sunset staff review, and is a policy decision best left to the Legislature as a whole, as is recommending additional staffing and funding for boards and agencies to perform their statutory duties.

The following material highlights Sunset staff's recommendations for the Anatomical Board of the State of Texas.

Sunset Staff Issue and Recommendations

ISSUE 1

Texas' Higher Education Institutions Could Continue to Effectively Operate Willied Body Programs Without the State Anatomical Board.

Key Recommendations

- Abolish the Anatomical Board of the State of Texas.
- Authorize colleges and universities with WBPs to form a consortium, and direct them to consider adopting best practices to maintain effective and ethical WBPs in Texas.

Fiscal Implication Summary

Overall, the recommendations would not have a fiscal impact to the state because the board has no staff and does not receive state appropriations. Colleges and universities would continue to operate their WBPs with their existing resources.

BOARD AT A GLANCE

Since 1907, the Anatomical Board of the State of Texas has facilitated the distribution of cadavers for the advancement of medical science.¹ Today, the board oversees the distribution of donated or unclaimed deceased bodies and anatomical specimens to board-approved medical institutions and forensic science programs, and search and rescue training organizations for use in medical or health sciences education and research. The textbox, *Key Terms*, provides several definitions relevant to the board and this review. To fulfill its mission, the board carries out the following key activities:

- Inspects and approves facilities that request donated cadavers or anatomical specimens to ensure compliance with board standards.
- Collects fees for and records the receipt of whole body donations to willed body programs (WBPs) within the state, and approves transfers of donations to approved facilities both within and outside of Texas.
- Collects data from WBPs to ensure they meet education and research needs.
- Adopts rules regarding donations of whole bodies and anatomical specimens.²

Key Facts

- **Governance.** The chief executive officer of each school or college of chiropractic, dentistry, medicine, or osteopathy incorporated in Texas appoints a professor of surgery or basic anatomical sciences to represent the institution on the board for a two-year term.³ Members often serve multiple consecutive terms, as statute does not set term limits. Currently the board members represent 16 Texas colleges and universities, referred to as “member institutions,” listed in Appendix A. The board typically meets annually and the members elect a chair, vice chair, and secretary-treasurer who serve two-year terms.⁴
- **Funding.** The board receives no state appropriations. Instead, the board collects fees from the registration of each body donated to WBPs and the transfer of those bodies and anatomical specimens to approved facilities. The textbox, *Anatomical Board Fees*, provides more information. Statute authorizes the board to manage its funds through a local

Key Terms

Anatomical specimen – part of a human corpse

Approved facility – a facility approved by the board to hold and use bodies transferred from willed body programs for education, medical research, or training; includes graduate medical institutions, forensic science programs, search and rescue organizations, medical training facilities, and other anatomical facilities

Body or cadaver – human corpse

Final disposition – upon completion of use, the willed body program cremates the body and either returns the cremated remains to the donor’s family if requested, or appropriately buries or scatters them

Member institution – a college or university with representation on the board

Willed body program – a program operated by a college or university that allows adults living in Texas, upon death, to donate their bodies to the college or university for use in medical education and research. Appendix A includes a list of these programs in Texas.

Anatomical Board Fees

Registration Fee

- Identification tag: \$16 per tag, per body, sold in sets of 100

Transfer Fees

- In-state: \$16 per transfer, per body
- Out-of-state: \$80 per transfer

bank, and any excess revenue accrues year to year.⁵ In 2019, the board collected \$48,700 from registration and transfer fees, and spent \$19,250 on its website, records storage fees, and reimbursement for board member travel to inspections and board meetings. The board's ending fund balance for 2019 was \$290,784.

- **Staffing.** The board has no staff. Instead, the board members conduct all of the board's activities. For example, one board member issues reimbursement checks and reconciles the board's financial reports, while another coordinates facility inspections.
- **Willed body programs.** The board approves certain institutions to operate WBPs in Texas that allow an adult living in Texas, upon death, to donate their whole body to help advance medical research and education.⁶ WBPs cannot accept organs or tissue for living transplant recipients; the U.S. federal government regulates these donations.⁷ Texas has 13 WBPs, 11 of which are operated by colleges and universities represented on the board. WBPs help ensure teaching institutions have adequate access to affordable cadavers and anatomical specimens to train students across several health professions.

The board establishes standards for WBPs and approved facilities to ensure donated bodies are treated respectfully, safely transported, and appropriately disposed of or returned to family members after cremation.⁸ In particular, the board establishes health, safety, and privacy standards for any facility requesting to use whole body donations or anatomical specimens.⁹ For example, the board requires embalming formula to be appropriate for the long-term preservation of bodies and not present a health hazard to those dissecting.¹⁰ The board may investigate WBPs and approved facilities for improper use of a body or anatomical specimen, and can also suspend or revoke authority to receive bodies or specimens if it determines an approved WBP or facility has improperly used them.¹¹ Over the past three years, the board has conducted no formal investigations and has taken no enforcement action.

Each WBP may also set its own specific requirements for donations, including various legal disclosures, as well as terms and fees for transporting donated bodies to the WBP facility. WBPs also arrange for the cremation of the donor's body upon completion of use, and either return the cremated remains to the donor's family if requested or appropriately bury or scatter them. WBPs typically charge a fee to return cremated remains to cover costs. The textbox, *Whole Body Donation Options*, explains two ways WBPs accept donations.

Whole Body Donation Options

- **Pre-registration.** A person can pre-register with one of the 13 WBPs in Texas by completing a bequest form with two witnesses, along with any other WBP-specific paperwork. Pre-registered donors are encouraged to share the documents with their families, doctors, and funeral home so the donor's preference upon death is clear. Upon death, the family, doctor, or funeral home contacts the WBP and arranges for transport.
 - **Post-death.** A family member or otherwise designated person, within the hierarchy laid out in the Revised Uniform Anatomical Gift Act, can elect to donate the deceased's body by contacting the board or one of the WBPs directly. The board will direct the person wishing to make the donation to the WBP geographically closest to the deceased to obtain the necessary paperwork and arrange for the transport of the body to the WBP.
- **Inspection and approval of facilities.** The board must inspect any facility or member institution that makes a written request to receive, hold, dissect, or perform research on any human body or anatomical specimen.¹² Two board members perform the initial inspection within 60 days of the request. If a facility meets all of the board's requirements, the board grants approval to receive donated bodies from an approved WBP. Approved facilities include medical training facilities, medical device

companies, search and rescue organizations, and other educational institutions without WBPs. The textbox, *Inspection Criteria Examples*, illustrates some of the board's considerations during inspections. The board's approval lasts five years for all facilities except those operated by search and rescue organizations, which lasts three years. Only one board member performs renewal inspections, and member institutions must provide the board an audit every five years, coinciding with the inspection.¹³ Currently, 85 facilities have been approved by the board, including the 16 member institutions and 69 other facilities. In 2019, board members conducted 21 inspections and approved all 21 facilities.

Inspection Criteria Examples

- Appropriate supervision of students by trained personnel
- Security to ensure only authorized access to facility and bodies
- Proper storage of hazardous chemicals
- Minimum of seven air exchanges per hour, with actual measurements of air exchanges

- **Registration and distribution of cadavers.** Upon receiving a donated body, the WBP registers the body with the board using a unique number and tag that stays attached to the body until final disposition. Since WBPs can transfer anatomical specimens and whole bodies only to board-approved facilities, including other educational institutions, the registration number helps track their location until final disposition. Individual WBPs can charge fees to recoup the costs of storage, embalming, transport, and cremation, but cannot directly profit from donations.¹⁴ The board collects data from each of the 13 WBPs for its annual use and procurement report, which helps ensure each of the member institutions have enough cadavers to meet the needs of their programs. In 2019, WBPs registered 3,319 bodies.

¹ Section 1, Chapter 53 (H.B. 264), Acts of the 30th Texas Legislature, Regular Session, 1907.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Chapters 691 and 692A, Texas Health and Safety Code.

³ Section 691.002, Texas Health and Safety Code.

⁴ 25 T.A.C. Chapter 471.

⁵ Section 691.008(b), Texas Health and Safety Code.

⁶ Section 691.028, Texas Health and Safety Code.

⁷ "Tissue and Tissue Product Questions and Answers," U.S. Food and Drug Administration, last modified May 7, 2019, <https://www.fda.gov/vaccines-blood-biologics/tissue-tissue-products/tissue-and-tissue-product-questions-and-answers#:~:text=Does%20FDA%20regulate%20Organ%20donation,hearts%2C%20kidneys%2C%20and%20livers.>

⁸ Section 691.022(b), Texas Health and Safety Code.

⁹ 25 T.A.C. Section 479.3.

¹⁰ 25 T.A.C. Section 479.3(a)(4).

¹¹ Section 691.034(b) and (c), Texas Health and Safety Code.

¹² Section 691.034(a), Texas Health and Safety Code.

¹³ 25 T.A.C. Section 485.1.

¹⁴ Section 692A.016, Texas Health and Safety Code.

ISSUE 1

Texas' Higher Education Institutions Could Continue to Effectively Operate Willied Body Programs Without the State Anatomical Board.

Background

The Legislature established the Anatomical Board of the State of Texas in 1907. The board's mission is to facilitate the distribution of deceased human remains for the purposes of education and research. The board inspects and approves Texas' willied body programs (WBPs) and other anatomical facilities that use deceased bodies and anatomical specimens for these purposes. The WBPs are operated by a college or university and allow adults to donate their deceased bodies for use in medical education and research. The board has no authority to hire staff; instead, the board members, representatives from 16 Texas colleges and universities, carry out all the board's functions. The board also does not receive any state appropriations and only has authority to collect registration and transfer fees for donated bodies and anatomical specimens, which totaled \$48,700 in 2019.

The Sunset Commission last reviewed the board in 1984, and the Legislature reauthorized the board in 1985 with several changes, including giving the board fee collection authority, reducing its size, and clarifying its authority to inspect and approve facilities. Since then, the board has received little legislative attention until 2019, when the 86th Legislature once again placed the board under Sunset review. Sunset reviews are guided by standards and criteria set in the Sunset Act that require the Sunset Commission and its staff to consider if a need exists for the continuation of an agency and its functions, and if alternative methods of performing those functions could still adequately protect and provide services to the public.¹ As a result, the burden on Sunset staff has always been to prove the ongoing need for an agency and the regulation it provides. This review assessed the continuing need for the board to regulate the use of donated cadavers for teaching and research.

In the 35 years since the Sunset Commission last reviewed the board, its outdated statute and lack of staff and funding have prevented it from performing comprehensive and objective regulation in accordance with best practices. Instead, the member colleges and universities take on most of the substantive responsibility in this area. With this in mind, Sunset staff concluded Texas' higher education institutions could continue to effectively operate the state's WBPs without the board's involvement.

Findings

Texas has a continuing need to oversee the donation of human remains for teaching and research.

The use of cadavers for medical education in the United States dates back to at least 1745, and medical schools increasingly needed bodies in the 18th and 19th centuries for teaching and training.² With this need came the practice of graves being robbed of recently deceased persons and the sale of those bodies for use in teaching anatomy and dissection. By the beginning of the 20th century, bodies used for teaching and research mostly came from unclaimed bodies as states prohibited body snatching.³ In 1968, Congress approved the Uniform Anatomical Gift Act (UAGA) to provide a consistent national framework

Whole body donations are essential for medical and forensic science education and research.

governing organ donations for transplantation. All 50 states have since adopted some form of UAGA, with more recent revisions to clearly account for the use of donated whole bodies in medical education and research.⁴

Texas laws generally prohibit the abuse of a corpse, classifying activities such as disturbing, damaging, dissecting, and trafficking deceased humans or cremated remains as felonies.⁵ However, statute recognizes legitimate purposes exist for the use of all or part of a deceased human body by authorizing the use and dissection of a whole body or anatomical specimen to further medical or forensic science.⁶ Statute permits the donation of all or part of a human body after death for transplant, therapy, research, or education.⁷ The U.S. federal government has jurisdiction over parts of human bodies used for transplantation or other medical therapy, while the board has jurisdiction over whole bodies donated in Texas.⁸

Texas continues to have an interest in whole body donations and allowing for the use of bodies to further medical or forensic science, while also ensuring the bodies are treated respectfully and ethically. Whole body donations are essential for the education of students at schools and colleges of chiropractic, dentistry, medicine, and osteopathy in Texas, and for forensic science programs and search and rescue organizations. Whole body donations allow students, medical professionals, and researchers to study and further understand the complex nature of the human body in a way that no other method can replicate, and WBPs help ensure access to affordable cadavers and anatomical specimens. However, the board's regulatory role is minimal. As a board without staff or appropriations, and one that inspects facilities only once every five years, the board lacks important characteristics and capabilities of most other regulatory agencies and boards in this state.

The board's lack of staff and adequate funding, composition, and outdated statute prevent objective and comprehensive regulation.

The board lacks common traits of most other regulatory boards and agencies.

Since the board has no staff or adequate funding, the board has no choice but to rely upon its members, who are dedicated volunteers, to carry out all its duties. However, as the whole body donation field has grown and changed, the board's lack of staff prevents it from separating policymaking and staff duties. The board's composition and statute also act as a barrier to fully informed decision making and comprehensive regulation of whole body donations.

- **Unavoidable board member involvement in inspections.** Without staff, board members carry out the board's primary duty of inspecting facilities that use donated bodies or anatomical specimens, including facilities at institutions they represent as board members. Having board members perform inspections places the board at risk of making potentially anticompetitive and unfair decisions, as board members inspect facilities and then make decisions that could directly benefit or harm programs led by fellow board members, or entire medical schools and other facilities. In addition, the number of facilities subject to board inspection increased from

35 in 2015 to 85 in 2020. This increasing workload will be challenging for the all-volunteer board members to handle going forward. While Sunset staff found no evidence of unfair decisions and a board rule prevents board members from inspecting their own facilities without another board member also conducting the inspection, board members performing inspections inherently carries risk and can create the appearance of potential conflicts of interest.⁹

The board's inspection process is consequential in that passing the inspection is necessary for an eligible facility to receive donated or transferred whole bodies and anatomical specimens. However, the inspection process is missing important elements that would better ensure fair and objective treatment, and mitigate the risk of board members making unfair or inconsistent decisions when conducting inspections. The board has no manual to train members how to conduct inspections or guide the process, which is not typical for a board with a regulatory function. Instead, the board relies on observation and shadowing as a training method, which allows for potential inconsistencies or unfair treatment if the member performing this informal training does not fully or correctly cover all aspects of an inspection. A manual would provide clear and consistent guidance on the standards subject to inspection and the reasons for passing or failing to both inspectors and the facilities subject to inspection.

Additionally, while board rule requires a majority of board members to accept approval of inspected facilities, the board has not voted on any inspection reports in its previous three meetings.¹⁰ By deviating from the rule and not ensuring all board members weigh in on these inspection reports, the board leaves its inspections up to the small number of members who conduct them.

- **Imbalanced and improper board composition.** The statutory composition of the board is outdated and no longer representative of the whole body donation field in Texas. In 2015, the Legislature authorized forensic science programs to receive whole bodies, meaning they can operate a WBP, but did not add positions on the board for these programs.¹¹ As a result, Sam Houston State University and Texas State University operate WBPs for their forensic science programs, but lack board representation. Additionally, operating a WBP is not a statutory requirement for board membership. Currently five of the 16 institutions represented on the board do not have an active WBP, yet retain rulemaking and inspection authority over those that do. Appendix A lists the board-represented institutions and shows which ones do and do not currently operate WBPs.

The statute guiding the board's structure also does not fully account for the advent of health science centers, which can include multiple component institutions that meet board eligibility requirements. Statute requires the board representative from the member institution to be a professor of surgery or basic anatomical sciences associated with the institution, but in some cases, board members represent an entire health science center, some of

Board members inspecting other members' facilities can create the appearance of potential conflicts of interest.

The board's structure has not kept up with changes in the whole body donation field.

The Texas Constitution directs state boards to have an odd number of members, but the board currently has 16.

Out-of-state cadavers can be transferred into Texas without any oversight from the board.

which have component institutions that also meet eligibility requirements.¹² For example, the Texas A&M Dental School, which is part of a health science center, has a board representative, but the University of Texas Health Science Center has one board member for the entire institution despite having eight facilities subject to board inspection, including a dental school.

Furthermore, under the Texas Constitution, state boards must be composed of an odd number of three or more members, and the Anatomical Board currently has 16 members.¹³ Statutorily, the composition of the board is a non-fixed number made up of a representative from each school or college of chiropractic, dentistry, medicine, or osteopathy in the state.¹⁴ Because statute dictates board membership based on the number of eligible schools in the state, the board grew from 11 to 16 members since its last Sunset review. An even number of board members can result in split votes and hinder decision making, as the board’s rules require a majority of institutions to be present for a quorum, a majority vote for final approval of facilities to accept donated or transferred bodies, and a majority vote for denial or withdrawal of approval of facilities.¹⁵

- **Statutory inability to fully regulate the whole body donation industry.** The board’s statute has not kept up with the changing nature of the whole body donation industry in Texas, resulting in regulatory and inspection authority gaps. The board coordinates whole body donations under Chapter 691 of the Texas Health and Safety Code, but its inspection authority is limited to facilities that receive and use whole body donations and anatomical specimens under this chapter.¹⁶ No federal regulation of interstate whole body donation exists, so an entity can transfer a whole cadaver or anatomical specimen from out of state to a facility in Texas without any oversight from the board. During the review, board members and stakeholders reported these types of facilities are operating in Texas, but the board does not have clear statutory authority to inspect or approve them. Even if the board had this authority, its ability to conduct inspections would be severely limited by its lack of staff and funding. Board members also reported at least one instance in which a facility canceled a scheduled board inspection in favor of obtaining anatomical specimens from a commercial vendor not regulated by the board. In the absence of more comprehensive whole body donation regulation in Texas, bypassing the board’s inspection and facility requirements is legal.

The board has limited enforcement authority it seldom uses or needs.

Overall, the review found the board’s enforcement activity does not support a need for more robust enforcement tools to bring the currently regulated programs and facilities into compliance. Unlike more typical state regulatory boards, statute does not authorize the board to use a full range of enforcement actions. For example, the board does not have statutory authority to assess fines, issue reprimands, or take other, more intermediary, administrative enforcement

actions. While statute allows the board to investigate if it suspects a donated body or anatomical specimen has been used or treated improperly, it can only suspend or revoke a facility's authorization to receive and use donated bodies.¹⁷ However, the board has rarely used this authority, reporting no revocations or suspensions in the past three years. Additionally, while violations of the board's statute can result in limited criminal penalties, statute is silent as to how the board should pursue such violations.¹⁸

Conversely, the board has erroneously taken enforcement actions it does not have authority to take. At its annual board meeting in April 2020, the board reported issuing reprimands to two EMS departments for posting unauthorized filmed training sessions on the internet that used donated bodies from Texas WBPs. The board also issued a cease-and-desist letter in 2019, but has no statutory cease-and-desist authority, unlike many other regulatory boards.

While the board's enforcement activity is minimal, it has been successful bringing programs and facilities into compliance. The board's main enforcement tool is its inspection process, which it uses to identify deficient facilities. The board typically allows facilities to fix these deficiencies while still operating to obtain compliance more efficiently. Additionally, the public does not file complaints with the board, nor does the board initiate complaints against noncompliant facilities, indicating no known or proven problems that the board's regulation prevents. In fact, the most significant scandal involving whole body donation in Texas in the past 20 years occurred at the University of Texas Medical Branch (UTMB) in 2002, and available evidence, including board notes and meeting minutes, indicates the board did not play a role in preventing or discovering the problems.¹⁹ The textbox on the following page, *UTMB Scandal 2002 to Present*, provides additional detail. In 2003, shortly after the UTMB scandal, the board adopted a rule that requires member institutions to submit an internal or external audit that coincides with their renewal inspections every five years.²⁰ Since then, the board has not taken any formal enforcement action based on audit findings, with individual institutions routinely correcting problems identified in their own audits.

The Anatomical Board of the State of Texas is unnecessary to effectively oversee WBPs in Texas.

Texas' higher education institutions are already operating all of the state's willed body donation programs with limited board involvement, and could continue to effectively operate them without the board. The board's lack of staff, funding, and facilities prevent it from fulfilling some statutory directives, and the higher education institutions currently perform much of the board's substantive activities.

Statute authorizes an adult living in Texas to donate their body to the board, a medical or dental school, or another donee authorized by the board.²¹ However, because the board lacks staff to process the donation and lacks a facility in which donations could be stored, board members refer potential donors to the higher education institution within closest proximity to the donor to discuss

The board has taken enforcement actions it does not have clear authority to take.

Higher education institutions currently perform most of the board's substantive activities.

a donation directly. Statute also requires political subdivisions to notify the board when in possession of an unclaimed body or a body that will be buried at public expense.²² Again, because the board lacks staff and facilities, it must instruct political subdivisions to work directly with WBPs at higher education institutions to handle such situations.

UTMB Scandal 2002 to Present

In 2002, during a routine internal management audit after changing program directors, UTMB administrators discovered significant recordkeeping issues within its WBP. These issues revealed the supervisor of the program was potentially forging death reports, illegally harvesting anatomical specimens from donated bodies, and embezzling payments for anatomical specimens, across state lines, for personal profit, as well as failing to return cremated remains to family members. After firing the employee responsible, UTMB requested an investigation by the FBI. Also at this time, UTMB ceased accepting new donations and transferring existing donations to other institutions and research facilities. Donor families brought legal proceedings against UTMB, as well as the school's WBP and the Anatomical Board, that were ultimately dismissed on the grounds of sovereign immunity from contract claims.

Between 2004 and 2017, UTMB could only receive donated bodies and anatomical specimens from other WBPs throughout the state. However, between 2017 and 2018, the board and UTMB did not agree on the school's ability to reopen, and the board believed UTMB was still on probation, though no records exist showing the board put UTMB on probation. Since 2018, the board has been working with UTMB to reopen its willed body program, setting up a committee to oversee the transition off probation. In April 2020, the board formally removed UTMB from probation, after performing at least three inspections and reviewing UTMB's updated policies and procedures.

Higher education institutions already perform substantive oversight of their own WBPs, and are positioned to make needed corrections without the board's involvement. As noted above, each member institution audits its own WBP once every five years using an internal auditor or outside professional auditing firm, and audits often find substantive issues of concern to both the program and the institution, as shown in the textbox, *Examples of Audit Findings*. While performing this audit is necessary to comply with a board rule, colleges and universities can correct problems on their own, and the board has never initiated an enforcement action in response to an audit finding. Institutions also often set their own facility standards in addition to board standards and inspect their own facilities to ensure safe working environments for employees. Sunset staff heard throughout the review how individual programs conduct inspections of anatomy labs to ensure safe handling of hazardous materials and how individual institutions ensure safe working environments and mitigate potential hazards with policies that go beyond the board's facility standards in rule.

Examples of Audit Findings

- List of authorized personnel not kept up to date for ensuring proper access to anatomy lab
- Untagged anatomical specimens in a facility
- Fees from anatomical facility not remitted to willed body program for transferred bodies
- Anatomy lab lacking written operating procedures
- Donor checklist forms not always fully completed

In Texas, WBPs have largely operated well with minimal oversight by the board, particularly given its limited enforcement authority and lack of staff and funding. Higher education institutions and WBPs have an unusually strong incentive to

follow state law and operate appropriately, as there is no substitution for using whole body donations and anatomical specimens when performing training and research. Noncompliance with statute and best practices would likely result in significant monetary and other costs to the institutions of higher education, including the felony criminal penalty associated with abuse of a corpse, and the reputational cost and potential decrease in donations associated with a willed body program scandal.

Higher education institutions have an unusually strong incentive to operate their WBPs appropriately.

Most other states do not regulate WBPs or anatomical facilities through a state board.

In most other states, higher education institutions with WBPs work together, through consortiums or otherwise, to coordinate donations among various schools and private companies. Currently, 38 states do not have anatomical boards, as listed in the chart, *Anatomical Boards in the United States*, and rely on guidance from state-specific versions of the Revised UAGA. In these states, medical schools often set policies and standards for their own WBPs, as well as any other school or private company they agree to lend body donations to. Medical schools in some larger states have formed formal and informal consortia to help facilitate distribution of whole body donations. In the 12 states that have boards, including Texas, the degree of regulation and actual oversight — including regular inspections or audit requirements — varies, with boards sometimes simply providing a tracking system for the donor’s body and anatomical specimens. A very small number of states do not have a medical school, reducing the importance of an anatomical board.

Anatomical Boards in the United States

States With Anatomical Boards	AL, CO, FL, LA, MD, MO, NE, NV, OK, TX, VA, WV	12
States Without Anatomical Boards	AK, AR, AZ, CA, CT, DE, GA, HI, IA, ID, IL, IN, KS, KY, MA, ME, MI, MN, MS, MT, NC, ND, NH, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TN, UT, VT, WA, WI, WY	38

Sunset Staff Recommendations

Change in Statute

1.1 Abolish the Anatomical Board of the State of Texas.

This recommendation would eliminate the board and statutory provisions associated with the board’s functions. As part of this recommendation, an adult of sound mind would still be able to donate their body directly to a college or university with a medical school, dental school, or forensic science program, as currently authorized in law. Colleges and universities eligible to receive willed bodies would coordinate these donations instead of the board, and would continue to distribute donations to a school or college of chiropractic, dentistry, medicine, or osteopathy incorporated in Texas, a forensic science program,

or to a search and rescue organization affiliated with law enforcement, as they do currently.²³ Political subdivisions would work directly with a WBP to account for a body not claimed for burial or a body required to be buried at public expense.

This recommendation would not repeal any criminal penalties associated with abuse of a corpse or an offense under Chapter 691 of the Texas Health and Safety Code.²⁴ Additionally, statute would continue to prohibit the sale or purchase of body parts and organs, and only allow a person or program to charge a reasonable amount to cover activities associated with the processing and storage of the donation.²⁵

As part of this recommendation, the board would continue operations until August 1, 2022, to complete its business as part of a wind-down period, allowing the colleges and universities to complete the academic year with the current board in place. On that date, all adopted board rules would expire. Before August 1, 2022, as part of the wind-down process, the board should:

- Reconcile transfer records to ensure individual WBPs at colleges and universities have accurately recorded the final disposition of donors.
- Return the remaining fund balance, which totaled \$290,784 at the end of 2019, to institutions in a manner proportional to the amount of funds paid by each institution, and close the bank account the board uses outside of the state treasury.

Under this recommendation, all property and other records in the board's custody will transfer to the Comptroller of Public Accounts by August 1, 2022, unless the governor designates another agency.

This recommendation would also update Chapters 691 and 692A, Texas Health and Safety Code to ensure WBPs can continue to operate without the board. Sunset staff would work with staff from the Texas Legislative Council in the drafting of bill language to accurately account for elimination of the board without impeding the programs.

1.2 Authorize Texas colleges and universities with WBPs to form a consortium.

This recommendation would statutorily authorize the colleges and universities that operate WBPs in Texas to form a consortium to share best practices and manage the receipt and distribution of donated bodies and anatomical specimens to ensure each institution has an adequate supply.

Management Action

1.3 Direct Texas colleges and universities with WBPs to consider adopting certain best practices.

To help maintain effective and ethical WBPs, colleges and universities should consider adopting the following best practices:

- Maintain records of the chain of custody and the final disposition of all WBP donations.
- Ensure each body and anatomical specimen received, handled, and transferred is treated with respect and is not kept or transported in a manner visible to the public.
- Enter into contractual agreements with anatomical facilities before distributing whole bodies or anatomical specimens for furthering medical or forensic science education and research.

- Perform an audit of the WBP at least once every five years, and present the audit findings to the institution's board of regents or trustees. The audit should at a minimum review procedures and methods for receiving, storing, using, and transporting donated bodies or anatomical specimens, and the disposal of remains, to ensure WBPs follow statute and best practices.

Fiscal Implication

Abolishing the board would not have a fiscal impact to the state because the board has no staff and does not receive appropriations. Colleges and universities would continue to operate their WBPs with their existing resources.

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- ¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011, Texas Government Code.
- ² Aaron D. Tward and Hugh A. Patterson, “From Grave Robbing to Gifting: Cadaver Supply in the United States,” *The Journal of the American Medical Association* 287, No. 9 (March 2002): 1,183, <https://jamanetwork.com/journals/jama/fullarticle/1845037>.
- ³ Ibid.
- ⁴ Denay L. Wilding Knope, “Over My Dead Body: How the Albrecht Decisions Complicate the Constitutional Dilemma of Due Process and the Dead,” *University of Toledo Law Review* 41, No. 1 (2009): 169–211, <https://heinonline.org/HOL/P?h=hein.journals/utol41&i=186>.
- ⁵ Section 42.08, Texas Penal Code.
- ⁶ Section 691.033(a), Texas Health and Safety Code.
- ⁷ Section 692A.011, Texas Health and Safety Code.
- ⁸ “Tissue and Tissue Product Questions and Answers,” U.S. Food and Drug Administration, last modified May 7, 2019, [https://www.fda.gov/vaccines-blood-biologics/tissue-tissue-products/tissue-and-tissue-product-questions-and-answers#:~:text=Does%20FDA%20regulate%20Organ%20donation,hearts%2C%20kidneys%2C%20and%20livers;Section%20692A.011\(b\),Texas%20Health%20and%20Safety%20Code.](https://www.fda.gov/vaccines-blood-biologics/tissue-tissue-products/tissue-and-tissue-product-questions-and-answers#:~:text=Does%20FDA%20regulate%20Organ%20donation,hearts%2C%20kidneys%2C%20and%20livers;Section%20692A.011(b),Texas%20Health%20and%20Safety%20Code.)
- ⁹ 25 T.A.C. Section 479.2(c)(1).
- ¹⁰ 25 T.A.C. Section 479.2(c)(2)(A).
- ¹¹ S.B. 1214, 84th Texas Legislature, Regular Session, 2015.
- ¹² Section 691.002(a), Texas Health and Safety Code.
- ¹³ Section 30a, Article XVI, Texas Constitution.
- ¹⁴ Section 691.002(a), Texas Health and Safety Code.
- ¹⁵ 25 T.A.C. Sections 475.4(b) and 479.2.
- ¹⁶ Section 691.034(a), Texas Health and Safety Code.
- ¹⁷ Section 691.034(b) and (c), Texas Health and Safety Code.
- ¹⁸ Section 691.035, Texas Health and Safety Code.
- ¹⁹ Katy Vine, “Little Shop of Horrors,” *Texas Monthly*, August 2003, <https://www.texasmonthly.com/articles/little-shop-of-horrors>.
- ²⁰ 25 T.A.C. Section 485.1.
- ²¹ Section 691.028(a), Texas Health and Safety Code.
- ²² Section 691.023(a), Texas Health and Safety Code.
- ²³ Chapter 691, Texas Health and Safety Code.
- ²⁴ Section 42.08, Texas Penal Code.
- ²⁵ Section 692A.016, Texas Health and Safety Code.

APPENDIX A

Anatomical Board Member Institutions

The following institutions are members of the Anatomical Board of the State of Texas. Most of the member institutions operate willed body programs (WBPs), meaning they may accept donations of whole bodies. Institutions marked with an asterisk have chosen not to operate a WBP. Statute also authorizes Texas State University's Forensic Anthropology Center and Sam Houston State University's Applied Anatomical Research Center to operate WBPs, even though they are not member institutions.

Dental Schools	Medical Schools	Osteopathic Schools	Chiropractic Schools
Texas A&M College of Dentistry	Baylor College of Medicine Texas A&M College of Medicine Texas Tech University Health Sciences Center (TTUHSC) TTUHSC Paul Foster School of Medicine University of Houston College of Medicine* University of Texas (UT) Austin Dell School of Medicine* UTHealth – San Antonio School of Medicine UT Health Science Center – Houston UT Medical Branch School of Medicine UT Southwestern School of Medicine	Sam Houston State University College of Osteopathic Medicine* University of North Texas Health Science Center College of Osteopathic Medicine University of the Incarnate Word School of Osteopathic Medicine*	Parker University Texas Chiropractic College*

APPENDIX B | Staff Review Activities

During the review of the Anatomical Board of the State of Texas, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with board members; attended the annual board meeting; met with staff from a legislative office; conducted interviews and solicited written comments from interest groups and the public; reviewed board documents and reports, state statutes, previous legislation, and literature; researched the organization and functions of similar agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this board:

- Interviewed staff from various government agencies, including the Department of Information Resources and Texas Funeral Service Commission.
- Interviewed staff from several higher education institutions in Texas and other states.
- Conducted an online survey of stakeholders and evaluated responses from Texas colleges, universities, and facilities approved to receive donated deceased bodies.

Sunset Staff Review of the
Anatomical Board of the State of Texas

————— REPORT PREPARED BY —————

Darren McDivitt, *Project Manager*

Morgan Constantino

Trisha Linebarger

Amy Trost, *Project Supervisor*

—————
Jennifer Jones
Executive Director

Sunset Advisory Commission

Location

Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail

PO Box 13066
Austin, TX 78711

Website

www.sunset.texas.gov

Email

sunset@sunset.texas.gov

Phone

(512) 463-1300