

# SUNSET ADVISORY COMMISSION

*Final Results of Sunset Reviews  
2016–2017*



2016–2017  
85TH LEGISLATURE

# SUNSET ADVISORY COMMISSION

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**FINAL RESULTS OF SUNSET REVIEWS  
2016-2017**

**AUGUST 2017**



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## **SUMMARY**





# SUMMARY

Over the last two years, Sunset had a successful review cycle focused largely on agencies that license and regulate health professions, including reviews of the boards that regulate doctors, dentists, nurses, and pharmacists. Other significant reviews included the Texas Department of Transportation (TxDOT), Railroad Commission, State Bar, and Employees Retirement System. This review cycle also marked the beginning of Sunset's foray into reviewing all of the state's river authorities, starting with the four smallest river authorities in Texas.

Ultimately, the 85th Legislature adopted the vast majority of changes recommended by the Sunset Commission, enacting 17 Sunset bills, containing 80 percent of the commission's statutory recommendations to the Legislature. These 193 statutory changes, along with the commission's 147 management directives to the agencies, will result in approximately \$1.3 million in savings and revenue gains over the next two years and approximately \$5.8 million over the next five years by eliminating waste and inefficiency in state government.

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*The 85th Legislature enacted 80 percent of the Sunset Commission's 252 statutory recommendations, saving \$5.8 million over the next five years.*

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This report summarizes the actions taken by the Sunset Commission and the 85th Legislature on each of the 24 entities reviewed this biennium. The individual agency sections in this report list both statutory and management directives adopted for implementation by each agency. The table on page 3, *Sunset Legislation — 85th Legislature*, lists the Sunset bill number, authors, fiscal impact, and final action taken on each of the entities reviewed.

Major changes adopted through the Sunset process this biennium are highlighted below.

- Through the Sunset reviews of the health licensing agencies, the Legislature eliminated numerous unnecessary and burdensome regulations, a hallmark of the Sunset process, and standardized fair licensing practices across these agencies. The Sunset Commission also identified extensive operational problems in several small and struggling regulatory agencies. While the commission's recommended solution to consolidate the state's behavioral health licensing boards into a single agency did not pass, the Legislature did enact the recommendation to transfer the Texas State Board of Podiatric Medical Examiners to the Texas Department of Licensing and Regulation to ensure the agency's mission is carried out more effectively and efficiently. The Legislature also enacted the commission's recommendations to resolve failed governance at both the dental and veterinary boards that was putting the state at risk.
- The Sunset review of TxDOT occurred at another pivotal moment in the department's history, soon after voters and the Legislature had approved billions of dollars in newly dedicated transportation funding. The review

concluded that while TxDOT had made good-faith efforts to address previous concerns, such as a lack of public trust, other critical improvements needed to deliver projects effectively and transparently were far from complete. The TxDOT Sunset bill included several changes aimed at keeping pressure on the department to follow through on these critical improvements, including a continued push toward a more transparent, performance-based planning and project selection process; addressing inefficiencies in TxDOT's project development pipeline to improve on-time and on-budget performance; and providing the department with additional contract management tools to improve timeliness of frequently delayed construction projects.

- The Sunset Commission also evaluated the regulation of Texas attorneys through its review of the State Bar of Texas and Board of Law Examiners. While the state's approach to regulating attorneys — splitting licensing and enforcement between two agencies and combining oversight of the profession with associational activities — is a clear outlier when compared to other Texas occupations, the Legislature continued both agencies for 12 years following the Sunset Commission's conclusion that the structure is in line with most other states. The Legislature also adopted numerous Sunset recommendations to strengthen the State Bar's public protection mission and improve its slow and ineffective rulemaking process while preserving attorneys' unique authority to approve certain rule changes and membership fees through a referendum.
- In evaluating the state's four smallest river authorities, the Sunset Commission found that their size and limited resources directly affects their capacity to carry out their missions and raises questions about their ability to solve local water needs or make a real impact on their watersheds. The Legislature took significant action in response to problems identified by the Sunset Commission. The Sunset bills dissolve the Central Colorado River Authority; sweep the Sulphur River Basin Authority board; reclassify the Palo Duro River Authority as a local water district and allow its members to withdraw from or dissolve it; and direct the Upper Colorado River Authority to better identify local priorities to stay relevant in its watershed.
- A significant, overarching issue that surfaced during the reviews of the health licensing agencies is the opioid prescription drug abuse epidemic and the responsibility of Texas' health licensing boards to monitor practitioners' prescribing and dispensing of prescription drugs. In several Sunset bills, the Legislature requires practitioners to check the Prescription Monitoring Program, the state's key tool for tracking all controlled substance prescriptions, and review a patient's prescription history before prescribing certain controlled substances. In addition, several of the health licensing boards that regulate prescribers must develop guidelines for responsible prescribing of certain controlled substances and monitor prescribing patterns of licensees.

The Legislature did not pass two Sunset bills this session. Both the Sunset bill to consolidate and continue the four boards that license and regulate psychologists, marriage and family therapists, professional counselors, and social workers into a single agency, and the Texas Medical Board Sunset bill failed passage. However, the Legislature continued all of these boards as currently structured for two years in a separate bill, Senate Bill 20, during the First Called Session. While the Medical Board's Sunset bill did not pass, many of the Sunset Commission's recommendations passed in other legislation, including enabling the board to better regulate pain management clinics and authorizing the board to deny renewal applications from applicants who do not comply with disciplinary orders.

Over the next two years, the Sunset Commission will review and make recommendations on 32 entities. Upcoming reviews include the Texas Alcoholic Beverage Commission, Texas Department of Motor

Vehicles, Texas Department of Public Safety, and the Texas Veterans Commission, along with numerous financial licensing agencies and four river authorities, including the Lower Colorado River Authority. The appendix to this report provides a complete list of entities subject to Sunset review for the 86th Legislature.

### **Sunset Legislation — 85th Legislature**

Agency	Bill Number	Bill Author		FYs 2018–19 Fiscal Impact	FYs 2018–22 Fiscal Impact	Final Action
		House	Senate			
Bar of Texas, State <sup>1</sup>	S.B. 302	S. Thompson	Watson	No fiscal impact	No fiscal impact	Continued for 12 years
<b>Behavioral Health Boards</b> Counselors, Texas State Board of Examiners of Professional Marriage and Family Therapists, Texas State Board of Examiners of Social Worker Examiners, Texas State Board of	H.B. 2898	Gonzales	Hinojosa	No fiscal impact	No fiscal impact	Failed to pass, but continued for two years in S.B. 20(1)
Chiropractic Examiners, Texas Board of	S.B. 304	Raymond	V. Taylor	(\$600,000)	(\$1,500,000)	Continued for 12 years
Central Colorado River Authority	S.B. 2262	Burns	Perry	No fiscal impact	No fiscal impact	Abolished
Dental Examiners, State Board of	S.B. 313	Burkett	Schwertner	No fiscal impact	No fiscal impact	Continued for 12 years
Employees Retirement System of Texas, Board of Trustees of	S.B. 301	Flynn	Watson	No fiscal impact	No fiscal impact	Not subject to abolishment
Health Licensing Consolidation Project	H.B. 2898	Gonzales	Hinojosa	No fiscal impact	No fiscal impact	Failed to pass
Law Examiners, Board of	S.B. 303	S. Thompson	Watson	No fiscal impact	No fiscal impact	Continued for 12 years
Medical Board, Texas <sup>2</sup>	H.B. 3040	Burkett	Hinojosa	No fiscal impact	No fiscal impact	Failed to pass, but continued for two years in S.B. 20(1)
Nursing, Texas Board of	H.B. 2950	Burkett	Hinojosa	No fiscal impact	No fiscal impact	Continued for 12 years
Optometry Board, Texas	S.B. 314	Flynn	Schwertner	No fiscal impact	No fiscal impact	Continued for 12 years
Palo Duro River Authority of Texas	H.B. 1920	Flynn	Nichols	No fiscal impact	No fiscal impact	Removed from Sunset review
Pharmacy, Texas State Board of	H.B. 2561	S. Thompson	V. Taylor	No fiscal impact	No fiscal impact	Continued for 12 years
Physical Therapy and Occupational Therapy Examiners, Executive Council of Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, Texas Board of	S.B. 317	Burkett	Nichols	No fiscal impact	(\$3,189,000)	Continued for 12 years

Agency	Bill Number	Bill Author		FYs 2018–19 Fiscal Impact	FYs 2018–22 Fiscal Impact	Final Action
		House	Senate			
Podiatric Medical Examiners, Texas State Board of	H.B. 3078	S. Thompson	Schwertner	\$65,746	\$243,126 <sup>3</sup>	Transferred to TDLR
Psychologists, Texas State Board of Examiners of	H.B. 2898	Gonzales	Hinojosa	No fiscal impact	No fiscal impact	Failed to pass, but continued for two years in S.B. 20(1)
Railroad Commission of Texas	H.B. 1818	Gonzales	V. Taylor	\$1,739,130	\$6,956,520	Continued for 12 years
Sulphur River Basin Authority	H.B. 2180	Flynn	Nichols	No fiscal impact	No fiscal impact	Continued for 12 years
Transportation, Texas Department of <sup>4</sup>	S.B. 312	Gonzales	Nichols	\$92,000	\$3,305,000	Continued for 12 years
Upper Colorado River Authority	H.B. 1921	Flynn	Nichols	No fiscal impact	No fiscal impact	Continued for 12 years
Veterinary Medical Examiners, State Board of	S.B. 319	Raymond	Watson	No fiscal impact	No fiscal impact	Continued for four years
<b>Net Fiscal Impact</b>				<b>\$1,296,876</b>	<b>\$5,815,646</b>	

<sup>1</sup> Total does not include estimated costs for a new independent ombudsman's office and an improved dispute referral process, because the State Bar receives no state funds and operates outside of the appropriations process.

<sup>2</sup> Most Sunset recommendations were passed in separate legislation.

<sup>3</sup> The five-year fiscal impact assumes an additional \$61,030 in administrative savings in fiscal years 2020–2022 as reported by the Legislative Budget Board in the fiscal note for House Bill 3078.

<sup>4</sup> Senate Bill 312 contains a non-Sunset provision requiring the removal of tolls from a specific highway which originated in separate legislation, House Bill 141, and also passed the Senate as part of Senate Bill 812. The approximately \$2 million per year in reduced revenue to the State Highway Fund caused by this non-Sunset provision, as reported by the Legislative Budget Board in the fiscal note for Senate Bill 312, is not included in the chart.

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**AGENCIES**



# STATE BAR OF TEXAS

*S.B. 302 Watson (S. Thompson)*

*Staff Contact: Katharine Teleki*

## **Governance**

- Improve the State Bar's rulemaking process by requiring a new rules committee, clear timeframes, and opportunities for public input, while preserving the right for attorneys to vote to approve rules governing their conduct and discipline.
- Require State Bar members to vote to approve membership fee increases of more than 10 percent, or occurring more frequently than once every six years.
- Update a standard Sunset good government provision to ensure State Bar board members are adequately trained on their responsibilities and the limits of their authority.
- Prohibit rulemaking that would violate religious freedom protections in Chapter 110, Civil Practice and Remedies Code.

## **Attorney Discipline Process**

- Require the State Bar to obtain existing fingerprint-based criminal history information on licensed attorneys on file with the Board of Law Examiners, and allow sharing of criminal history information between the two agencies moving forward.
- Require licensed attorneys to self-report criminal activity and discipline imposed by other states, and the State Bar to regularly query a national disciplinary database to ensure access to complete information needed to protect Texans.
- Reinstate the chief disciplinary counsel's subpoena power during the investigative phase of the attorney discipline process, with approval and appeal safeguards, to ensure timely access to information needed to investigate allegations.
- Ensure the minimum standards and procedures for the attorney disciplinary system provide attorneys the opportunity to respond to all allegations of misconduct against them.
- Require a standard process and criteria for conducting investigatory hearings to attempt earlier resolution for certain cases and avoid costly litigation when possible.
- Require a re-evaluation and adjustment of time frames governing the grievance process to provide flexibility while also preserving timely resolution of cases.
- Clearly establish the Grievance Referral Program in rule, and expand its use to any point in the attorney discipline process to formalize the use of this non-disciplinary approach for case resolution.
- Require comprehensive sanction guidelines in the Texas Rules of Disciplinary Procedure to promote consistent statewide application of sanctions for similar types of misconduct and transparency into decision making.

## **Public Information and Consumer Assistance**

- Establish an independent ombudsman's office under the direct authority of the Supreme Court, but funded by the State Bar, to help people access the attorney discipline system and evaluate the effectiveness of the system overall.
- Require an earlier referral process to divert minor issues from the formal grievance system to the Client-Attorney Assistance Program to help resolve common client-attorney issues more quickly and improve overall public satisfaction.
- Require the chief disciplinary counsel to track and report detailed disciplinary case outcomes, including posting summary information to the website, to provide evaluative information about how the discipline system functions overall.
- Require the Commission for Lawyer Discipline's annual report to include detailed information about cases relating to barratry, such as improper solicitation of clients.
- Require the State Bar to post public information about individual disciplinary actions taken against attorneys on its website to make it easier for people to make informed decisions about attorneys they may hire.
- Direct the Office of the Chief Disciplinary Counsel to more proactively provide assistance to complainants in understanding reasons for complaint dismissal. (Management action – nonstatutory)

## **Continue**

- Continue the State Bar for 12 years.



# BEHAVIORAL HEALTH BOARDS

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

*S.B. 20 V. Taylor (Gonzales) — Continuation Bill, First Called Session*

*H.B. 2898 Gonzales (Hinojosa) — Sunset Bill (Not Enacted)*

*Staff Contact: Robert Romig*

House Bill 2898, the bill that contained the Sunset Commission's statutory recommendations for the marriage and family therapists, professional counselors, and social worker boards did not pass during the 85th Legislature, Regular Session. Instead, the Texas Legislature continued the regulation of these professions for two years in separate legislation during the 85th Legislature, First Called Session. In addition, the Sunset Commission adopted several nonstatutory management actions the boards must implement.

## Enforcement

- Ensure each board develops policies for prioritizing complaints and that staff prioritizes complaint investigations based on these policies. (Management action – nonstatutory)
- Direct each board to develop policies to settle cases informally. (Management action – nonstatutory)
- Ensure each board updates its enforcement plan, including appropriate penalty matrices. (Management action – nonstatutory)

## Licensing

- Direct the professional counselor board to remove unnecessary and restrictive education requirements for applicants for licensure. (Management action – nonstatutory)
- Direct each board to enhance the continuing education provider registry and comply with statute by approving continuing education courses. (Management action – nonstatutory)
- Direct each board to reduce the burden of supervision requirements on licensees, supervisors, and staff by setting clearer expectations for supervision and replacing the onerous verification process. (Management action – nonstatutory)
- Direct each board to fully implement expedited processing for military applications and renewals. (Management action – nonstatutory)
- Direct each board to standardize conditions for inactive licensees to reflect best practices. (Management action – nonstatutory)

**Continue**

- Continue the Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners for two years. (S.B. 20 – Enacted during First Called Session)

# TEXAS BOARD OF CHIROPRACTIC EXAMINERS

*S.B. 304 V. Taylor (Raymond)*

*Staff Contact: Carissa Nash*

## **Facility Registration**

- Discontinue the unnecessary registration of chiropractic facilities.

## **Enforcement**

- Require the board to develop an expert review process to ensure chiropractic expertise in its enforcement process and repeal unused peer review requirements.
- Prohibit the board from accepting anonymous complaints and require the board to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Direct the board to develop a plan to improve its investigative process and reduce complaint resolution timeframes. (Management action – nonstatutory)
- Direct the board to prioritize investigations based on risk to the public. (Management action – nonstatutory)
- Direct the board to revise its penalty matrix to more closely align the severity of penalties with the risk a violation poses to the public. (Management action – nonstatutory)
- Direct the board to clearly define grossly unprofessional conduct. (Management action – nonstatutory)
- Direct the board to develop a more user-friendly online complaint form. (Management action – nonstatutory)

## **Licensing**

- Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Remove unnecessary qualifications required of applicants for licensure.
- Authorize the board to check for disciplinary actions in other states or from other licensing boards for license applications and renewals, and to pursue any necessary enforcement action.
- Remove the limitation on the number of times an applicant can take the board's jurisprudence exam.
- Authorize the board, by rule, to establish license terms of two or more years.
- Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Direct the board to stop requiring letters of recommendation as part the initial application process. (Management action – nonstatutory)

- Direct the board to limit and better focus its continuing education audit process. (Management action – nonstatutory)

**Practice of Chiropractic**

- Add the word “diagnose” to the definition of the practice of chiropractic.

**Governance**

- Continue the state’s regulation of chiropractors and the Texas Board of Chiropractic Examiners as an independent agency for 12 years.
- Update the standard across-the-board requirement related to board member training.

# STATE BOARD OF DENTAL EXAMINERS

*S.B. 313 Schwertner (Burkett) — Sunset Bill*

*H.B. 2561 S. Thompson (V. Taylor) — Prescription Monitoring Program*

*Staff Contact: Sarah Kirkle*

## **Governance**

- Institute new leadership by sweeping the board and reduce the size of the board from 15 to 11 members to include six dentists, three hygienists, and two public members.
- Allow the board's statutory advisory groups to expire and direct the board to establish clearer processes for stakeholder input in rule.
- Update the standard Sunset across-the-board provisions regarding conflicts of interest and board member training and ensure board members are adequately trained on their responsibilities and the limits of their authority.

## **Dental Anesthesia**

- Authorize the board to conduct risk-based inspections of dentists administering parenteral anesthesia in office settings, including pre-permit, random, and compliance inspections, and require dentists who obtain a new anesthesia permit be inspected within one year of initial permit issuance.
- Establish permits for four levels of anesthesia and the administration of nitrous oxide, and require the board to establish corresponding minimum standards, education, and training.
- Define pediatric and high-risk patients and require additional training on anesthesia administration for those patients.
- Require the board to ensure dentists with an anesthesia permit maintain written emergency management plans and preparedness protocols, and to develop rules establishing minimum emergency preparedness standards and training necessary before administering anesthesia.
- Require the board to develop an online exam covering anesthesia rules and regulations and require dentists holding an anesthesia permit take the exam once every five years.
- Require the board to adopt rules requiring dentists to notify the board, upon issuance or renewal of an anesthesia permit, if they practice in more than one location.
- Require the board to establish rules providing the minimum components of a pre-operative checklist and for dentists to use that checklist before administering anesthesia.
- Require the use of capnography for level four deep sedation procedures.

- Create a standing advisory committee on dental anesthesia to review de-identified data, inform findings and trends related to dental anesthesia, and annually report any findings and recommended changes to board rules or statute.
- Direct the board to track and quarterly report anesthesia-related data and to make publicly available on its website aggregate enforcement data by fiscal year and type of license. (Management action – nonstatutory)
- The Sunset Commission requested the agency appoint an independent 5- to 10-member blue ribbon panel to review de-identified data, including confidential investigative information, related to dental anesthesia deaths and mishaps over the last five years, and to evaluate emergency protocols. The panel made recommendations to the Legislature and the Sunset Commission at its January 11, 2017 meeting and many of the recommendations were incorporated into S.B. 313. (Management action – nonstatutory)

### **Dental Assistants**

- Deregulate the dental assistant certificate programs for coronal polishing and pit and fissure sealants.
- Improve the administration of x-ray and nitrous oxide monitoring registration programs through efficiencies in licensing and renewal processes.

### **Prescription Monitoring Program**

- Beginning September 1, 2019, require dentists to check the Prescription Monitoring Program database before prescribing certain controlled substances, with certain exceptions. (H.B. 2561)
- Require the dental board to develop guidelines for responsible prescribing of certain controlled substances and to monitor prescribing patterns of licensees, and allow the board to open investigations based on information obtained from the Prescription Monitoring Program. (H.B. 2561)
- Require the dental board to provide licensee information to the pharmacy board, and require the pharmacy board to use this information to automatically register practitioners in the Prescription Monitoring Program. (H.B. 2561)

### **Licensing and Enforcement**

- Clarify the use and role of board members at informal settlement conferences and provide more detailed language on structure and conduct of informal proceedings.
- Create a state dental review committee consisting of nine governor-appointed members, including six dentists, two dental hygienists, and one registered dental assistant, to serve at informal settlement conferences on a rotating basis.
- Require the board to monitor licensees for adverse licensure actions in other states.
- Authorize the board to deny applications to renew a license if an applicant is not compliant with a board order.
- Authorize the board to require evaluations of licensees and applicants suspected of impairment and require confidentiality for information relating to the evaluation and participation in treatment programs.

- Clarify the board's authority to issue subpoenas and to deny or take disciplinary action against an authorization, permit, registration, or license issued by the board.
- Allow the board to deliberate initial licensure decisions in closed sessions to better protect confidential information.
- Prohibit anonymous complaints and ensure complainant confidentiality.
- Remove unnecessary qualifications required of applicants for licensure or registration.
- Authorize the board to renew licenses and permits on an annual or biennial basis.
- Allow the board to appoint a custodian of abandoned dental records.
- Direct the board to make data on the board's enforcement activity publicly available on its website. (Management action – nonstatutory)
- Direct the board to stagger registration and certificate renewals. (Management action – nonstatutory)

**Continue**

- Continue the State Board of Dental Examiners for 12 years.





# EMPLOYEES RETIREMENT SYSTEM OF TEXAS

*S.B. 301 Watson (Flynn)*

*Staff Contact: Emily Johnson*

## **Investments**

- Require the Employees Retirement System of Texas (ERS) to track and report profit shares received in connection with alternative investments.
- Require the ERS Board of Trustees to approve any individual alternative investment that exceeds 0.6 percent of the total market value of the trust fund. Authorize the board to meet in executive session and remotely to discuss these alternative investments.
- Require the ERS Board of Trustees to adopt its experience study and resulting actuarial assumptions once every four years instead of once every five years.
- Direct ERS, as part of its 2017 internal audit review of investment governance, to consider best practices in investment decision-making processes and report its findings to the Legislature. (Management action – nonstatutory)

## **Contracting**

- Direct ERS to provide its new Office of Procurement and Contract Oversight clear authority over all of the agency's procurement and contracting functions, including contract oversight and enforcement. (Management action – nonstatutory)
- Direct ERS to further centralize and consolidate its procurement and contracting staff into the new division. (Management action – nonstatutory)
- Direct ERS to implement contract term dates in agency contracts, except in limited circumstances. (Management action – nonstatutory)

## **Group Benefits Program**

- Expand ERS' existing annual report on the GBP to include more comprehensive information to help the Legislature evaluate the program's overall effectiveness and plan for its sustainability.
- ERS should establish an advisory committee to obtain regular stakeholder and expert input on benefits. (Management action – nonstatutory)
- Direct ERS to develop a process and clear criteria for evaluating changes to the GBP. (Management action – nonstatutory)

## **Insurance Benefits and Appeals**

- Require ERS to allow members to participate directly in the insurance appeal process.
- Require ERS to develop and maintain a precedent manual for the insurance appeal process.

- Direct ERS staff to comprehensively track and analyze benefit application decision and appeals data. (Management action – nonstatutory)
- Direct ERS to more effectively educate members about choices and decisions that can lead to unexpected health insurance charges. (Management action – nonstatutory)
- Direct ERS to ensure balanced representation on the Grievance Review Committee of customer service and other staff. (Management action – nonstatutory)
- Direct ERS to develop policies and procedures to govern reviews of benefit applications for survivors of certain law enforcement officers, fire fighters, and others killed in the line of duty. (Management action – nonstatutory)

### **Standard Review Elements**

- Apply standard across-the-board requirements to ERS related to board member training and alternative dispute resolution.
- Change the due date for the annual *Cost Management and Fraud Report* from January 1 to February 1 and continue the agency's other reports.

### **Sunset Review**

- Extend ERS' Sunset review date to 2029. As a constitutionally created agency, ERS is not subject to abolishment under the Sunset Act.

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# HEALTH LICENSING CONSOLIDATION PROJECT

*H.B. 2898 Gonzales (Hinojosa) — Sunset Bill (Not Enacted)*

*Staff Contact: Robert Romig*

House Bill 2898, which contained the Sunset Commission's recommendation to create the Texas Behavioral Health Executive Council (BHEC), did not pass. This bill would have continued and merged the licensing and regulation of psychologists, marriage and family therapists, professional counselors, and social workers into a single agency — BHEC. The bill would have also transferred the Council on Sex Offender Treatment and the licensing of chemical dependency counselors from the Department of State Health Services to BHEC.



# BOARD OF LAW EXAMINERS

*S.B. 303 Watson (S. Thompson)*

*Staff Contact: Kay Hricik*

## **Licensing**

- Require the board to develop guidelines to assist decision making for character and fitness determinations, probationary licenses, and waiver requests to promote fairness in decisions impacting a person's ability to practice law.
- Remove specific licensing and examination deadlines from statute and require the Supreme Court to adopt deadlines and a schedule of late fees in rule to allow flexibility to make needed adjustments to benefit both applicants and the board.
- Remove an outdated requirement for applicants to attest they do not have a mental health diagnosis to ensure licensing decisions are based on present conditions and conduct and are in line with the Americans with Disabilities Act.
- Authorize the board to use a licensed mental health professional to evaluate an applicant who may suffer from chemical dependency instead of a treatment facility.
- Remove the unnecessary requirement that applicants submit a notarized, verified affidavit form, allowing for online application submittal while still giving the board access to information needed to properly investigate applicants.
- Clearly authorize the board to delegate routine matters to the executive director to allow the board to focus on higher-priority issues and reduce application processing time.

## **Governance**

- To align with board members' bar exam duties, amend statute to change the end date of board member terms from August 31 to May 31.
- Update a standard Sunset good government provision to ensure board members are adequately trained on their responsibilities.

## **Rulemaking**

- Prohibit rulemaking action that would violate religious freedom protections in Chapter 110, Civil Practice and Remedies Code.

## **Continue**

- Continue the Board of Law Examiners for 12 years.



# TEXAS MEDICAL BOARD

*S.B. 20 V. Taylor (Gonzales) — Continuation Bill, First Called Session*

*H.B. 3040 Burkett (Hinojosa) — Sunset Bill (Not Enacted)*

*H.B. 2561 S. Thompson (Taylor) — Prescription Monitoring Program*

*S.B. 315 Hinojosa (Burkett) — Subpoena Authority and Pain Clinic Regulation*

*S.B. 674 Schwertner (S. Davis) — Licensing Provisions and Elimination of Dual Registration*

*S.B. 1625 Uresti (Cortez) — Physician Assistant Licensing and Board Provisions*

*Staff Contact: Erick Fajardo*

House Bill 3040, the bill that contained the Sunset Commission's statutory recommendations for the Texas Medical Board, including continuing the regulation of medicine, did not pass. Instead, the Texas Legislature continued the Medical Board and the regulation of the professions under its jurisdiction for two years in separate legislation during the 85th Legislature, First Called Session. While the Senate passed the companion to House Bill 3040, Senate Bill 315, this bill had a far more narrow scope, retaining only the recommendations on the Medical Board's subpoena authority and its regulation of pain management clinics. However, several of the Sunset Commission's other Medical Board recommendations passed in separate bills, and the Commission also adopted five nonstatutory management actions the board must implement.

## **Prescription Monitoring Program**

- Beginning September 1, 2019, require physicians and physician assistants to check the Prescription Monitoring Program database before prescribing certain controlled substances, with certain exemptions. (H.B. 2561)
- Require the Texas Medical Board and Texas Physician Assistant Board to develop guidelines for responsible prescribing of certain controlled substances and to monitor prescribing patterns of licensees, and allow the boards to open investigations based on information obtained from the Prescription Monitoring Program. (H.B. 2561)
- Require the medical and physician assistant boards to provide licensee information to the Pharmacy Board, and require the Pharmacy Board to use this information to automatically register practitioners to use the Prescription Monitoring Program. (H.B. 2561)

### **Pain Management Clinic Regulation**

- Authorize the Medical Board to seek court enforcement of its administrative subpoenas for pain management clinic records. (S.B. 315)
- Amend the pain management clinic statute to clarify the definition of “inappropriate prescribing” to include nontherapeutic prescribing. (S.B. 315)
- Clarify statute to authorize the Medical Board to inspect an unregistered pain management clinic. (S.B. 315)
- Direct the Medical Board to use Prescription Monitoring Program data, along with other factors, to establish a risk-based approach to scheduling pain management clinic inspections. (Management action – nonstatutory)

### **Enforcement**

- Require at least one of the physician assistant board members participating in an informal settlement conference as a panelist to be a board member who is a licensed physician assistant. (S.B. 1625)

### **Licensing**

- Clarify statute to authorize the physician assistant board to conduct fingerprint-based criminal background checks of physician assistant licensure applicants. (S.B. 1625)
- Remove needless qualifications for physician assistant licensure applicants that restrict entry to practice. (S.B. 1625)
- Remove the limitation on the number of times an applicant can take the Medical Board’s jurisprudence exam. (S.B. 674)
- Remove the unnecessary affidavit requirement for individuals applying for perfusionist licensure. (S.B. 674)
- Authorize biennial license renewal for physician assistant and acupuncturist licensees. (S.B. 1625 and S.B. 674)
- Authorize the medical, physician assistant, acupuncture, medical radiologic technology, and respiratory care boards to deny renewal applications from noncompliant applicants. (S.B. 1625 and S.B. 674)
- Direct the Medical Board to process and issue physician assistant licenses within the same amount of time that it takes to issue a physician license. (Management action – nonstatutory)
- Direct the Medical Board to develop rules that provide a concise application for a temporary license to a sports physician traveling to Texas with athletic competitors or a team of athletic competitors. (Management action – nonstatutory)

### **Medical Radiologic Technology**

- Eliminate duplication by removing requirements for non-certified technicians to register with two agencies. (S.B. 674)



- For providers of medical radiologic technology services located in urban areas, remove the exemption that allows providers to employ non-licensed individuals to perform radiologic procedures if unable to attract and retain licensed individuals for employment. (S.B. 674)

### **Administration**

- Authorize the physician assistant board, after hearing all evidence and arguments in an open meeting, to conduct deliberations relating to license applications and disciplinary actions in executive sessions. (S.B. 1625)
- Direct the Medical Board to dedicate one page of its quarterly newsletter bulletin to three topics in continuing medical education that the board considers relevant; at least one of the annual 12 continuing medical education topics must be related to tick-borne diseases, including Lyme disease. (Management action – nonstatutory)
- Direct the Medical Board to make consumer information about the various professions within the agency available to the public on its website. (Management action – nonstatutory)

### **Continue**

- Continue the Texas Medical Board for two years. (S.B. 20 – Enacted during First Called Session)
- Apply the standard Sunset across-the-board recommendation regarding board member training to the physician assistant board. (S.B. 1625)



# TEXAS BOARD OF NURSING

*H.B. 2950 Burkett (Hinojosa) — Sunset Bill*

*H.B. 2561 S. Thompson (V. Taylor) — Prescription Monitoring Program*

*Staff Contact: Skylar Wilk*

## **Excelsior College Exception**

- Remove the December 31, 2017 expiration date for Excelsior College's exception to initial licensure requirements and create a process, similar to steps for an in-state nursing program, for program improvement or expiration of the exception if Excelsior's national exam passage rate falls below the board's standard.
- Require the board to develop a path to initial licensure for graduates of out-of-state nursing programs that are determined not to be substantially equivalent to Texas programs.

## **Enforcement**

- Limit the use of subjective standards for licensure decisions by requiring the board to demonstrate a connection between a nurse's conduct and the practice of nursing.
- Require the board to remove a nurse's disciplinary action from the board's website and the public coordinated licensure information system if the nurse and action meet certain criteria.
- Direct the board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing. (Management action – nonstatutory)

## **Peer Assistance Program**

- Require the board's peer assistance program to develop and use flexible program requirements in line with impaired nurses' needs and diagnoses.
- Require the board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.
- Require the board to adequately measure the effectiveness of its peer assistance program.
- Direct the board to designate a contract manager assigned to the peer assistance program. (Management action – nonstatutory)
- Direct the board to require its peer assistance program to publicly post information about the various program tracks and requirements. (Management action – nonstatutory)

**Prescription Monitoring Program**

- Beginning September 1, 2019, require advanced practice registered nurses to check the Prescription Monitoring Program database before prescribing certain controlled substances, with certain exemptions. (H.B. 2561)
- Require the board to develop guidelines for responsible prescribing of certain controlled substances and to monitor prescribing patterns of licensees, and allow the board to open investigations based on information obtained from the Prescription Monitoring Program. (H.B. 2561)
- Require the board to provide licensee information to the pharmacy Board, and require the pharmacy Board to use this information to automatically register practitioners to use the Prescription Monitoring Program. (H.B. 2561)

**Nurse Licensure Compact**

- Adopt the new Nurse Licensure Compact to ensure continued nurse mobility.

**Administrative Hearings**

- Prohibit the board from charging a nurse for the administrative costs of conducting an administrative hearing.
- Prohibit the board from changing an administrative law judge's findings of fact or conclusions of law in issuing a disciplinary order.

**Religious Freedom Protections**

- Prohibit rulemaking action that would violate religious freedom protections in Chapter 110, Civil Practice and Remedies Code.

**Certification for Death Certificates**

- Allow an advanced practice registered nurse to sign a medical certification for a death certificate if the patient received hospice or palliative care.

**Continue**

- Continue the Texas Board of Nursing for 12 years.

**Standard Review Elements**

- Update the standard across-the-board requirement related to board member training.
- Discontinue the board's two reporting requirements and eliminate associated, but duplicative, authority for nurse competency pilot programs.

# TEXAS OPTOMETRY BOARD

*S.B. 314 Schwertner (Flynn) — Sunset Bill*

*H.B. 2561 S. Thompson (V. Taylor) — Prescription Monitoring Program*

*Staff Contact: Kay Hricik*

## **Prescription Monitoring Program**

- Beginning September 1, 2019, require optometrists to check the Prescription Monitoring Program database before prescribing certain controlled substances, with certain exemptions. (H.B. 2561)
- Require the optometry board to develop guidelines for responsible prescribing of certain controlled substances and to monitor prescribing patterns of licensees, and allow the board to open investigations based on information obtained from the Prescription Monitoring Program. (H.B. 2561)
- Require the optometry board to provide licensee information to the pharmacy board, and require the pharmacy board to use this information to automatically register practitioners to use the Prescription Monitoring Program. (H.B. 2561)

## **Licensing**

- Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and licensees to ensure the agency can effectively monitor licensees for criminal conduct and take disciplinary action when warranted.
- Require the agency to check for disciplinary or other legal actions in other states for license applications and renewals, and authorize the agency to pursue any necessary enforcement action.
- Authorize the agency to provide biennial license renewal.
- Remove subjective licensure qualifications that could unreasonably restrict entry into practice.
- Remove the unnecessary notarization requirement for individuals applying for licensure, an obstacle to putting applications online.
- Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Direct the agency to update its website to make it more user-friendly for the public and licensees. (Management action – nonstatutory)

## **Enforcement**

- Eliminate the provision requiring five affirmative votes of the nine-member board to take an enforcement action, removing a regulatory bias favoring the licensee.

- Prohibit the agency from accepting anonymous complaints and require the board to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Replace archaic and subjective disciplinary provisions such as “habitual drunkard” with more specific disciplinary criteria, and authorize the agency to order physical and mental examinations if probable cause exists to do so.
- Direct the agency to accept all license applications and fee payments online. (Management action – nonstatutory)
- Direct the agency to make all formal disciplinary orders easily accessible and readily available on its website to improve the transparency of the board’s operations and give the public more access to information on health providers. (Management action – nonstatutory)
- Direct the agency to report all letters of formal agreement to the National Practitioner Data Bank unless discussions with agency counsel and the federal administrator indicate otherwise. (Management action – nonstatutory)

### **Governance**

- Update the standard across-the-board requirement related to board member training.

### **Continue**

- Continue the state’s regulation of optometrists and the Texas Optometry Board as an independent agency for 12 years.

# TEXAS STATE BOARD OF PHARMACY

*H.B. 2561 S. Thompson (V. Taylor)*

*Staff Contact: Steven Ogle*

## **Continue**

- Continue the Texas State Board of Pharmacy for 12 years.

## **Prescription Monitoring Program**

- Beginning September 1, 2017, require pharmacists or their delegates to enter dispensing information in the Prescription Monitoring Program database within one business day of dispensing controlled substances to ensure timely, complete data.
- Require the pharmacy board to develop red flag indicators for potentially harmful prescribing patterns or patient activity, and beginning January 1, 2018, require pharmacists to check the Prescription Monitoring Program database before dispensing when these red flag circumstances exist.
- Beginning September 1, 2019, require pharmacists to check the Prescription Monitoring Program database before dispensing certain controlled substances, with certain exemptions.
- Require prescriber licensing boards to provide licensee information to the pharmacy board, and require the pharmacy board to use this information to automatically register practitioners to use the Prescription Monitoring Program.
- Authorize the pharmacy board to send push notifications and to set related thresholds to proactively notify prescribers of suspicious activity and require the pharmacy board to copy licensing agencies on practitioner push notifications.
- Require wholesale pharmaceutical distributors to report their sales of controlled substances to the pharmacy board to provide a more complete picture of controlled substance inventory within the state.
- Require a joint interim study of changes to the Prescription Monitoring Program and the extent of drug diversion by animal owners by January 1, 2019 to understand the impacts of the database on controlled substance abuse and guide potential future changes.
- Direct the pharmacy board to create delegate accounts for pharmacy technicians to minimize the impact of new Prescription Monitoring Program requirements on pharmacists. (Management action – nonstatutory)
- Direct the board to work with vendors and stakeholders to integrate the Prescription Monitoring Program with pharmacy dispensing software to make checking the system easier in the future. (Management action – nonstatutory)
- Direct the board to make trend data about controlled substance prescriptions in Texas publicly available to assist future evaluations of prescribing and dispensing. (Management action – nonstatutory)

## Licensing and Enforcement

- Remove unnecessary qualifications required of applicants for licensure or registration that could unreasonably restrict entry into practice.
- Require the board to create a system of graduated penalties for late renewal of pharmacy technician registration to incentivize timely renewals.
- Clarify statute to authorize the board to delegate tasks to the executive director to increase the board's efficiency and ensure consistency between statutory authority and agency practices.
- Clarify statute to require the board to develop continuing education standards for pharmacy technicians to ensure technicians remain educated on changing developments in their field.
- Authorize the board to deny renewal applications from noncompliant applicants, a standard tool to better protect the public.
- Prohibit rulemaking action that would violate religious freedom protections in Chapter 110, Civil Practice and Remedies Code.
- Require the pharmacy board to create a remote dispensing site license for pharmacies in rural or medically underserved areas to provide telepharmacy services.
- Clarify statute that only a pharmacist has the exclusive authority to determine whether or not to dispense a drug.
- Direct the board to remove requirements that renewal forms be notarized, an unnecessary and burdensome requirement for applicants. (Management action – nonstatutory)
- Direct the board to query a national disciplinary database before license renewal to ensure licensees meet requirements for continued licensure. (Management action – nonstatutory)
- Direct the board to study the potential benefits of recognizing all nationally accredited pharmacy technician certifications. (Management action – nonstatutory)

## Governance

- Update standard Sunset good government provisions for negotiated rulemaking, alternative dispute resolution, and board member training.
- Direct the board to develop and implement a succession plan to prepare for impending retirements. (Management action – nonstatutory)

## Prescription Drug Donation Program

- Require the Executive Commissioner of the Health and Human Services Commission to adopt standards for a donation and redistribution program for unused prescription drugs.

## College of Pharmacy

- Require that the Texas A&M College of Pharmacy be located in Kleburg county and include “Irma Rangel” in its official name.



# EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

## TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

## TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

*S.B. 317 Nichols (Burkett)*

*Staff Contact: Erick Fajardo*

### **Facility Registration**

- Starting in September 2019, discontinue the unnecessary registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.

### **License Mobility**

- Adopt the Physical Therapy Licensure Compact to streamline the licensing of physical therapy professionals and enhance their mobility.
- Provide clear statutory authority for licensure by endorsement.
- Clarify that occupational therapy assistants licensed in other states may practice in this state temporarily under the same conditions as occupational therapists.
- Remove outdated provisions prescribing educational requirements to ensure such requirements remain relevant and reflect maturing standards of education and practice.

### **Licensing and Enforcement**

- Require physical therapist and physical therapist assistant licenses to expire at least every two years, as determined by physical therapy (PT) board rule.
- Update statutes to reflect current standards, terms, and conditions.
- Continue the authority of the occupational therapy (OT) board and PT board to delegate to other entities the responsibility of approving continuing education courses and providers, but require the boards to adopt rules relating to continuing education approval, including a request for proposal and bid process.

- Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.
- Require the boards to develop a disciplinary matrix to ensure consistency.
- Remove unnecessary qualifications for foreign-trained licensure applicants that restrict entry to practice.
- Direct the OT board to adopt rules to specify the types of criminal activities that may result in denial, suspension, or revocation of a license. (Management action – nonstatutory)
- Direct the OT board to delegate administrative dismissal to staff for low-level misdemeanor offenses. (Management action – nonstatutory)
- Direct the agency to develop a formal process to refer non-jurisdictional complaints to the appropriate agency. (Management action – nonstatutory)

### **Continue**

- Continue the executive council, PT board, and OT board for 12 years.
- Apply the standard Sunset across-the-board requirements to the executive council, PT board, and OT board for
  - board member training;
  - conflicts of interest;
  - governor designation of the presiding officer;
  - grounds for removal of members from policymaking bodies;
  - policies to separate policymaking and staff functions; and
  - alternative rulemaking and dispute resolution.

# TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

*H.B. 3078 S. Thompson (Schwertner) — Sunset Bill*

*H.B. 2561 S. Thompson (V. Taylor) — Prescription Monitoring Program*

*Staff Contact: Kay Hricik*

## **Abolish and Transfer**

- Abolish the Texas State Board of Podiatric Medical Examiners on September 1, 2017 and transfer all its functions and activities to the Texas Department of Licensing and Regulation (TDLR).
- Reconstitute the current board as a governor-appointed advisory board responsible for the development of all practice-related rules for approval by the TDLR commission.
- Update the standard across-the-board requirement related to board member training for the advisory board.
- Subject the regulation of podiatry to Sunset review at the same time as TDLR. Change the TDLR Sunset date from September 1, 2019 to September 1, 2021, to allow for the completion of the transfer prior to the review.

## **Prescription Monitoring Program**

- Beginning September 1, 2019, require podiatrists to check the Prescription Monitoring Program database before prescribing certain controlled substances, with certain exemptions. (H.B. 2561)
- Require the podiatry board to develop guidelines for responsible prescribing of certain controlled substances and to monitor prescribing patterns of licensees, and allow the agency to open investigations based on information obtained from the Prescription Monitoring Program. (H.B. 2561)
- Require the agency to provide licensee information to the pharmacy board, and require the pharmacy board to use this information to automatically register practitioners to use the Prescription Monitoring Program. (H.B. 2561)

## **Licensing**

- Require the agency to conduct fingerprint-based criminal background checks of licensure applicants and licensees to ensure effective monitoring of licensees for criminal conduct and take disciplinary action when warranted.
- Remove the unnecessary notarization requirement for individuals applying for licensure, an obstacle to putting applications online.

- Remove subjective licensure qualifications that could unreasonably restrict entry into practice.
- Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Authorize the agency to provide biennial license renewal.
- Direct the agency to accept all license and registration applications, renewals, and fee payments online. (Management action – nonstatutory)
- Direct the agency to administer the Texas podiatric jurisprudence exam online. (Management action – nonstatutory)

### **Enforcement**

- Require the agency to establish written policies to guide the prioritization of complaints to ensure the agency uses its resources to address complaints in order of importance.
- Require the agency to adopt penalty amounts in rule for the categories in its penalty schedule to guide consistent application of penalties.
- Prohibit the agency from accepting anonymous complaints.
- Require the agency to notify a licensee who is the subject of a complaint only about the nature of the complaint to protect the identity of the complainant.
- Direct the agency to maintain complainants' confidentiality when possible. (Management action – nonstatutory)
- Direct the board to eliminate the rule allowing the use of notarized complaints to remove a barrier to filing a complaint. (Management action – nonstatutory)
- Direct the agency to establish a schedule for conducting each phase of the complaint resolution process to resolve complaints more quickly and help reduce complaint backlogs. (Management action – nonstatutory)
- Eliminate the use of the Texas Podiatric Medical Association's peer review process for resolving minor jurisdictional complaints to bring the agency in line with standard licensing practices. (Management action – nonstatutory)
- Direct the agency to prohibit a board member who investigates a complaint from participating in any resulting disciplinary proceeding, including an informal settlement conference, to promote impartiality and a fair enforcement process. (Management action – nonstatutory)
- Direct the agency to incorporate the State Office of Administrative Hearings into its complaint resolution process when needed to enhance due process in the agency's disciplinary proceedings. (Management action – nonstatutory)

# TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

*S.B. 20 V. Taylor (Gonzales) — Continuation Bill, First Called Session*

*H.B. 2898 Gonzales (Hinojosa) — Sunset Bill (Not Enacted)*

*Staff Contact: Robert Romig*

House Bill 2898, the bill that contained the Sunset Commission's statutory recommendations for the psychology board, did not pass during the 85th Legislature, Regular Session. Instead, the Texas Legislature continued the regulation of this profession for two years in separate legislation during the 85th Legislature, First Called Session. In addition, the Sunset Commission adopted several nonstatutory management actions the psychology board must implement.

## **Licensing**

- Direct the psychology board to amend its rules to allow Licensed Specialists in School Psychology to practice in both public and private schools to increase access to psychological services. (Management action – nonstatutory)
- Direct the board to remove the burdensome and useless requirement for licensure applicants to submit letters of reference. (Management action – nonstatutory)

## **Enforcement**

- Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint to promote impartiality and a fair enforcement process. (Management action – nonstatutory)

## **Practice of Psychology**

- Direct the board to appoint a working group of stakeholders to develop at least three proposed definitions of the practice of psychology and provide them to the Legislature for consideration to address a recent court decision. The working group reported its proposed definitions to the Legislature in January 2017. (Management action – nonstatutory)
- Direct the Texas State Board of Examiners of Psychologists to evaluate all rules for potential anti-competitive effects and repeal rules susceptible to legal challenge. (Management action – nonstatutory)

## **Continue**

- Continue the Texas State Board of Examiners of Psychologists for two years. (S.B. 20 – Enacted during First Called Session)



# RAILROAD COMMISSION OF TEXAS

*H.B. 1818 Gonzales (V. Taylor)*

*Staff Contact: Amy Trost*

## **Continue**

- Continue the Railroad Commission of Texas for 12 years, retaining the agency's name.

## **Oil and Gas Monitoring and Enforcement**

- Require the commission to develop and implement a strategic plan for the Oil and Gas Division that tracks and measures the monitoring and enforcement program.
- Direct the commission to accurately track the number of unique oil and gas violations to address repeated inaccuracies in their annual reports. (Management action – nonstatutory)
- Direct the commission to systematically track major violations cited by field inspectors. (Management action – nonstatutory)
- Direct the commission to develop a definition of repeat violations in rule and report the number of all repeat violations on its website. (Management action – nonstatutory)
- Direct the commission to audit a sample of oil and natural gas production reports and transportation reports and ensure compliance with lease severance orders. (Management action – nonstatutory)
- Direct the commission to develop a policy to require production reports to be filed electronically, and also direct the agency to provide oil and gas production information on its website in a format that is easier for royalty owners to use and understand. (Management action – nonstatutory)
- Direct the commission to expand its risk matrix for oil and gas inspections to include a more appropriate array of factors. (Management action – nonstatutory)

## **Pipeline Safety and Damage Prevention**

- Authorize the commission to enforce damage prevention requirements for interstate pipelines.
- Authorize the commission to create a pipeline permit fee to offset the costs of administering the permit.
- Modify language in the General Appropriations Act to further ensure that the commission collects, and is appropriated back, fee amounts to offset the costs of administering its Pipeline Safety program, including administration costs. (Change in Senate Bill 1, 2018–2019 State Budget)

## **Seismicity Data in Railroad Commission Rules**

- Direct the commission to incorporate findings from the TexNet Seismic Monitoring Program at UT's Bureau of Economic Geology as they become available into its oil and gas disposal well rules or guidance, as applicable. The rules should seek to prevent any induced seismicity caused by disposal wells. (Management action – nonstatutory)

**Contracting**

- Prohibit the commission from awarding a contract unless the contractor and any subcontractors use the E-verify program to verify employee information.
- Direct the commission to complete centralization of all contract administration functions by September 1, 2016. (Management action – nonstatutory)
- Direct the commission to implement and keep updated contracting best practices as outlined by recent legislation and the comptroller. (Management action – nonstatutory)
- Direct the commission's executive director to report quarterly to the commissioners at their open meetings regarding the status of contracting improvements. (Management action – nonstatutory)

**Alternative Fuels Promotion Program**

- Repeal the alternative fuels promotion program.

**Standard Review Elements**

- Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the commission.
- Allow the inactive Oil and Gas Regulation and Cleanup Fund Advisory Committee to expire.
- Continue requiring the commission to submit its report on the Oil and Gas Regulation and Cleanup Fund to the Legislature.



# RIVER AUTHORITIES

*Sulphur River Basin Authority — H.B. 2180 Flynn (Nichols)*

*Central Colorado River Authority — S.B. 2262 Perry (Burns)*

*Upper Colorado River Authority — H.B. 1921 Flynn (Nichols)*

*Palo Duro River Authority of Texas — H.B. 1920 Flynn (Nichols)*

*Staff Contact: Sarah Kirkle*

## **Sulphur River Basin Authority (SRBA)**

- Institute new leadership at SRBA by requiring the terms of all SRBA board members to expire on September 1, 2017.
- Direct the SRBA board to hire an executive director. (Management action – nonstatutory)
- Require SRBA to seek advice from affected county judges on potential water development projects.
- Direct SRBA to seek local financial investment in its water development projects. (Management action – nonstatutory)
- Direct SRBA to seek bids for the next phase of its feasibility study. (Management action – nonstatutory)
- Direct SRBA to implement best practices to improve transparency and openness in its operations. (Management action – nonstatutory)
- Repeal SRBA's unused authority to provide hydroelectric power, parks and recreation facilities, solid waste service, and forestation services.
- Extend SRBA's Sunset review date to 2029. River authorities are subject to review, but not abolishment under the Sunset Act.

## **Central Colorado River Authority (CCRA)**

- Abolish CCRA on January 1, 2019 and transfer the proceeds of its assets to Coleman County.
- Direct the Texas Commission on Environmental Quality (TCEQ) to inspect each of CCRA's three lakes and determine the condition and any repair needs of the dams. TCEQ reported the results of these inspections in December 2016. (Management action – nonstatutory)

## **Upper Colorado River Authority (UCRA)**

- Clarify UCRA's territory, boundaries, and board makeup to accurately reflect its jurisdiction.
- Extend UCRA's Sunset review date to 2029. River authorities are subject to review, but not abolishment under the Sunset Act.

- Direct UCRA to work with local partners to identify priorities and develop strategies to meet changing watershed needs. (Management action – nonstatutory)

### **Palo Duro River Authority (PDRA)**

- Reclassify PDRA as a local water district and remove it from Sunset review.
- Authorize one or more members to withdraw from or dissolve PDRA, but only if its members agree and ongoing obligations are met.
- Repeal PDRA's unused authority to imprison people for violating its regulations.
- Authorize PDRA to lease land for hunting, recreation, or renewable energy purposes.

### **Standard Review Elements Applied to All River Authorities**

- **Transparency.** Require opportunities for public testimony at board meetings and direct river authorities to implement additional best practices to improve openness and transparency.
- **Good Government Standards.** Apply good government standards to river authorities' governing laws to promote accountability, clarity, and best practices.
- **Compliance with TCEQ Rules.** Direct SRBA and UCRA to comply with TCEQ rules by adopting required administrative policies.

<b>Recommendation</b>	<b>SRBA</b>	<b>UCRA</b>	<b>PDRA</b>
<b><i>Transparency</i></b>			
a. Formal public testimony	*	H.B. 1921	H.B. 1920
b. Establish a website	*	*	MA
c. File and comply with records retention plan	MA	MA	MA
d. Track Public Information Act requests	MA	MA	MA
e. Written reports at board meetings	MA	*	MA
f. Update governing laws	H.B. 2180	*	H.B. 1920
<b><i>Good Government Standards</i></b>			
a. Conflict of interest	*	*	H.B. 1920
b. Designation of presiding officer	H.B. 2180	H.B. 1921	N/A
c. Grounds for removal	*	*	H.B. 1920
d. Board member training	H.B. 2180	H.B. 1921	H.B. 1920
e. Separation of duties	H.B. 2180	H.B. 1921	H.B. 1920
f. Complaint information	H.B. 2180	H.B. 1921	H.B. 1920
g. Alternative dispute resolution	H.B. 2180	H.B. 1921	H.B. 1920
<b><i>Compliance with TCEQ Rules</i></b>	MA	MA	N/A

\* Currently in place or required by river authority's governing law.

MA = Management action – nonstatutory

# TEXAS DEPARTMENT OF TRANSPORTATION

*S.B. 312 Nichols (Gonzales)*

*Staff Contact: Amy Tripp*

## **Continue**

- Continue the Texas Department of Transportation (TxDOT) for 12 years to allow the department to stabilize and focus on successfully implementing major ongoing improvement efforts.

## **Transportation Planning**

- Require TxDOT to adopt one clear set of overall transportation system goals and measures to consistently carry through all planning documents to clearly articulate its vision for the future, measure progress, and be held accountable.
- Require TxDOT to publish an analysis illustrating the link between funding decisions in the Unified Transportation Program and progress toward overall transportation goals to fill an important information gap needed to understand the impact of the commission's funding decisions.
- Require TxDOT to create a prominently displayed online dashboard report clearly communicating the adopted goals for Texas' transportation system and regularly updating progress toward meeting them.
- Require TxDOT to evaluate a project's strategic need before and separately from other factors when selecting and prioritizing projects to ensure focus on projects with the greatest potential impact on transportation goals.
- Require TxDOT to clarify roles and responsibilities of the department and planning organizations through a rulemaking process to ensure effective collaboration in using significant new funding.
- Require TxDOT to adopt rules streamlining and clarifying public information requirements relating to changes to the Unified Transportation Program to promote more meaningful public engagement.
- Require a public hearing for projects that substantially change the layout or function of a connecting roadway or existing facility, including the addition of managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes.
- Require TxDOT to regularly evaluate and make improvements to the online project tracker system and adopt related rules to improve the quality of the system and ensure full transparency.
- Direct TxDOT to develop materials to increase awareness and use of the online project tracker tool for local elected officials. (Management action – nonstatutory)
- Request the House Committee on Transportation and the Senate Committee on Transportation to provide necessary oversight of the state's significant transportation investment and TxDOT's progress toward performance-based planning, with detailed status reports and information provided by TxDOT as needed. (Request to Legislative Committees – nonstatutory)

## Project Development

- Require TxDOT to finalize implementation of its new project portfolio review process and publicly share resulting performance information to ensure TxDOT completes new efforts to monitor project development and improves communication with diverse stakeholders.
- Direct TxDOT to provide regular analysis and monitoring reports to the Transportation Commission about the department's efforts to correct past issues with underperformance in key budget measures, letting controls, and right-of-way backlogs to resolve past issues and prepare for the future. (Management action – nonstatutory)
- Direct TxDOT to develop a more risk-based, cross-functional focus to its internal project development activities to mitigate potential problems with the department's most complex projects. (Management action – nonstatutory)
- Direct TxDOT to regularly report on its progress implementing the Modernize Portfolio and Project Management system to ensure visibility and oversight of this important but high-risk project. (Management action – nonstatutory)
- TxDOT should make efforts to improve proactive external stakeholder outreach to avoid conflicts with future planned transportation projects. (Management action – nonstatutory)

## Contracting

### Traditional Low-Bid Highway Contracts

- Require TxDOT to include a range of contract remedies in its traditional low-bid highway contracts to address contractor performance problems more quickly instead of allowing delays to escalate.
- Require TxDOT to adopt rules implementing the existing statutory requirement to reflect accurate costs of project delays in liquidated damages to ensure TxDOT and taxpayers are fully compensated.
- Require TxDOT to conduct contractor evaluations and consider past performance in determining bid capacity to allow TxDOT to encourage project awards to contractors with proven ability to complete quality, timely work.
- Direct TxDOT to develop clear criteria for applying sanctions to improve its currently subjective process. (Management action – nonstatutory)
- Direct TxDOT to develop and implement a process for regular, centralized monitoring of construction contract delays to allow department management to identify trends and more effectively address contractor performance. (Management action – nonstatutory)
- Require TxDOT to semiannually publish a report on all completed highway construction projects by department district, and include on-time, on-budget performance and change order information.
- Direct TxDOT to develop criteria for applying project incentives such as milestone incentives and A+B bidding to ensure optimal use of these tools to deliver projects faster. (Management action – nonstatutory)
- Direct TxDOT to update production rate information for estimating project timelines and establish a schedule for regular revisions to allow for accurate estimates of project time and help determine appropriate use of incentive tools. (Management action – nonstatutory)

- Prohibit TxDOT from awarding a highway contract to any contractor or subcontractor that does not participate in the federal E-verify program to confirm employment eligibility.

### Professional Engineering Contracts

- Direct TxDOT to provide guidance for district management of construction engineering inspectors to efficiently use resources and ensure effective oversight of these expanding contracts. (Management action – nonstatutory)
- Direct TxDOT to better monitor and enforce the existing requirement to complete engineering contractor evaluations so that past performance can inform future procurements. (Management action – nonstatutory)
- Direct TxDOT to improve the availability of comparative information needed for districts to effectively negotiate the scope of work for professional engineering contracts. (Management action – nonstatutory)

### Oversight and Support of Newly Decentralized Functions

- Direct TxDOT to develop additional training and monitoring processes to ensure districts effectively oversee large, complex contracts, such as design-build. (Management action – nonstatutory)
- Direct TxDOT to provide comprehensive guidance and monitoring for decentralized procurement of professional engineering services contracts to ensure effective oversight. (Management action – nonstatutory)

### Contract Review and Monitoring

- Direct TxDOT to develop a risk-based approach to centrally reviewing contracts, freeing staff time to focus on the most high-risk contracts and address process bottlenecks. (Management action – nonstatutory)
- Direct TxDOT to update its signature authority based on risk, eliminating unnecessary delays while preserving the appropriate level of review. (Management action – nonstatutory)
- Direct TxDOT to develop and monitor performance measures for contract procurement to identify problem areas and inform process improvements. (Management action – nonstatutory)

### Coordination of Highway Closures

- Require TxDOT to coordinate highway closures with local officials before entering into highway contracts, identify days a highway must not be closed in the contract, and provide an annual report of all closures and their economic impact.

### **Business Opportunity Programs**

- Direct TxDOT to align its business opportunity goal setting with state and federal guidelines to more actively promote higher participation. (Management action – nonstatutory)
- Direct TxDOT to develop a standard process for addressing failure to meet business opportunity program goals and more actively improve future performance. (Management action – nonstatutory)

- Direct TxDOT to actively recruit new businesses for certification and provide training on contracting with TxDOT to improve overall participation. (Management action – nonstatutory)
- Direct TxDOT to improve central monitoring and support for its business opportunity programs to ensure more effective program oversight across the department. (Management action – nonstatutory)
- Direct TxDOT to evaluate the small business enterprise program and develop policies and rules to provide meaningful opportunities for small businesses. (Management action – nonstatutory)
- TxDOT should streamline certification to actively certify Small Business Enterprise-eligible businesses and increase participation of businesses eligible for multiple programs. (Management action – nonstatutory)
- Require TxDOT to implement the Sunset Commission’s management directives relating to the department’s business eligibility programs by March 1, 2018.

### **Business Process Improvement**

- Direct TxDOT to centrally coordinate and track results of business process improvement efforts, including the use of private management consultant contracts, to ensure these often expensive efforts result in performance improvements. (Management action – nonstatutory)
- Direct TxDOT to consider implementing a rapid process improvement program similar to the Texas Workforce Commission model to improve the department’s ability to make meaningful, lasting operational improvements at a lower cost. (Management action – nonstatutory)

### **District Oversight and Support**

- Direct TxDOT to actively and consistently monitor, evaluate, and report district performance to ensure visibility into district operations and effective performance evaluation. (Management action – nonstatutory)
- Direct TxDOT to improve communication and support functions to ensure districts’ needs are met. (Management action – nonstatutory)

### **State Aircraft Fleet**

- Require TxDOT to provide a thorough range of analyses and options within its long-range fleet plan to help the Legislature make informed decisions about the future of the state aircraft fleet.
- Clarify TxDOT’s authority to include capital costs in flight services rates charged to customers if practicable, and create a subaccount within the State Highway Fund to set aside funds for future aircraft replacement.
- Tighten statutory criteria for use of state aircraft to prioritize cost effectiveness and need over convenience.
- Clarify statute to specify state agency heads are responsible for ensuring their employees’ use of state aircraft meets statutory criteria to provide clear accountability.
- Direct TxDOT to track specific statutory justifications for state aircraft use to allow better monitoring of overall compliance with the law. (Management action – nonstatutory)

- Direct TxDOT to adopt a clear internal policy governing the appropriate use of the state aircraft fleet by department staff and regularly monitor usage to ensure cost effectiveness. (Management action – nonstatutory)

### **Crash Reports**

- Require law enforcement agencies to submit crash reports electronically to TxDOT by September 1, 2019 to save data entry resources TxDOT could use for other traffic safety efforts.
- Eliminate the wasteful administrative requirement to submit drivers' crash report forms to TxDOT, which serve no government purpose

### **Standard Review Elements**

- Update the standard across-the-board requirement related to board member training.
- Discontinue two of TxDOT's reporting requirements and modify four others to improve efficiency.
- Require TxDOT to include analysis about the impacts of proposed passenger rail lines to the existing Long-Term Plan for Statewide Passenger Rail to provide additional information to decision makers.
- Direct TxDOT to more proactively implement and monitor its efforts to increase workforce diversity, including in management and executive levels where TxDOT particularly struggles. (Management action – nonstatutory)

### **Toll Roads**

- Cap administrative fines for nonpayment of tolls on TxDOT-operated toll roads at \$6 per transaction and \$48 per year, and makes various changes intended to improve TxDOT's toll billing process by March 1, 2018.
- Require toll project entities to repay certain funds provided by TxDOT, with exceptions for existing toll project subaccounts and projects whose environmental review process began on or before January 1, 2014.
- Prohibit TxDOT from converting non-tolled high-occupancy vehicle lanes to toll lanes, with exceptions for projects already being operated as a toll project or already included as part of the state's air quality implementation plan on September 1, 2017.
- When complying with existing law limiting toll facility designations, require TxDOT to consider only general purpose lanes and not frontage roads in determining the number of non-tolled lanes of a highway or highway segment.
- Prohibit TxDOT from operating State Highway 255 as a toll road.
- If the Camino Real Regional Mobility Authority approves, convert the tolled portion of the Cesar Chavez Freeway to a non-tolled state highway, and advance any unexpended TxDOT funds from that project to the construction of the Loop 375 Border Highway West project in El Paso County.

**Outdoor Advertising Sign Regulation**

- Create a grandfathering provision to allow outdoor advertising signs existing on March 1, 2017 to reach up to 85 feet, and allow sign owners to rebuild grandfathered signs in the same location in the future as long as the new sign does not exceed the height of the previous sign.
- Prohibit TxDOT from requiring an electronic sign owned by the City of Laredo to be more than 500 feet from another sign.

**Highway Designations and Aesthetic Decorations**

- Designate 10 specific memorial highways and one bridge, and require TxDOT to design, construct, and erect highway markers only if the department receives private grants or donations to pay for them.
- Authorize TxDOT to enter into agreements with local governments, convention and visitors bureaus, chambers of commerce, and other entities to purchase supplies and materials for aesthetic entrances or ornamental decorations, and prohibit TxDOT from expending appropriated funds for these purposes.



# STATE BOARD OF VETERINARY MEDICAL EXAMINERS

*S.B. 319 Watson (Raymond) — Sunset Bill*

*H.B. 2561 S. Thompson (V. Taylor) — Prescription Monitoring Program*

*Staff Contact: Danielle Nasr*

## **Continue**

- Due to serious concerns with the oversight and agency operations, continue the State Board of Veterinary Medical Examiners for only four years, subject to Sunset review in 2021.
- Direct the agency to provide written quarterly reports to the Sunset Commission regarding the implementation of the recommendations adopted by the commission, beginning January 31, 2017. (Management action – nonstatutory)

## **Governance**

- Restructure the nine-member board composition from six veterinarians and three public members to five veterinarians, one veterinary technician, and three public members. One veterinarian must be associated with an animal shelter and one must have at least three years of large animal practice experience.
- Update the standard Sunset across-the-board requirement related to board member training.
- Direct the agency to improve its board member training to include the agency's statute and rules, programs, functions, budget, oversight of the executive director, and involvement in large agency contracts, reports, and strategic plans. (Management action – nonstatutory)
- Direct the veterinary board to develop, adopt, and publish conflict of interest policies regarding board member involvement in the agency's complaint investigation and enforcement processes. (Management action – nonstatutory)
- Direct the agency to solicit and consider input from licensed veterinary technicians and equine dental providers on all rule changes and policy decisions affecting these license types. (Management action – nonstatutory)

## **Prescription Monitoring Program and Controlled Substances**

- Require the veterinary board to provide licensee information to the pharmacy board, and require the pharmacy board to use this information to automatically register practitioners to use the Prescription Monitoring Program. (H.B. 2561)

- Require the veterinary board and pharmacy board to develop guidelines for and determine the conduct that constitutes responsible prescribing and dispensing of certain controlled substances, and allow the agency to open investigations based on information obtained from the Prescription Monitoring Program. (S.B. 319 and H.B. 2561).
- Require the board to periodically check the prescribing and dispensing information to determine whether a veterinarian is engaging in potentially harmful prescribing or dispensing patterns or practices, and allow the board to open a complaint against a veterinarian based on the information. (S.B. 319 and H.B. 2561)
- Authorize the board to conduct a risk-based inspection of a veterinarian's practice based on the use, handling, prescribing, dispensing, or delivery of controlled substances.
- Create and implement inspection guidelines with aggravating and mitigating factors to evaluate controlled substances deficiencies recorded during onsite inspections. (Management action – nonstatutory)
- Direct the veterinary board and the pharmacy board to enter into a memorandum of understanding to develop standard data elements for veterinarians and pharmacists entering dispensing information for animals into the Prescription Monitoring Program database and to develop standard querying practices for requesting animal-specific reports from the Prescription Monitoring Program database. The boards developed and reported the data elements and querying practices in February 2017, and developed additional data elements relating to dispensing for herds in April 2017. (Management action – nonstatutory)
- Require a joint interim study of changes to the Prescription Monitoring Program and the extent of drug diversion by animal owners by January 1, 2019 to understand the impacts of the database on controlled substance abuse and guide potential future changes. (H.B. 2561)
- Direct the agency to develop a robust educational process to regularly educate licensees about controlled substances laws, rules, and inspection standards. (Management action – nonstatutory)
- The Legislature, through H.B. 2561, requires wholesale pharmaceutical distributors to report their sales of certain controlled substances to the pharmacy board. As such, the veterinary board and the pharmacy board must enter into a memorandum of understanding to ensure the veterinary board has access to this information. (Management action – nonstatutory)

## Enforcement

- Require the board to develop and adopt a schedule of sanctions in rule, and to use it in determining disciplinary actions.
- Exempt licensed health care professionals who provide treatment or care to zoo and aquarium animals under direct supervision of a veterinarian from the Veterinary Licensing Act in limited circumstances.
- Direct the agency to clearly define and consistently implement its enforcement procedures and to develop and publish policies governing a complainant's access to information regarding his or her complaint. (Management action – nonstatutory)
- Direct the agency to improve enforcement data tracking systems and processes. (Management action – nonstatutory)

- Direct the board to develop and implement a strategic inspection plan to improve and prioritize licensee inspections; the plan should aim to inspect all licensees at least once every eight years. (Management action – nonstatutory)
- Direct the agency to ensure its website accurately reflects the disciplinary status of its licensees and make all approved disciplinary orders easily accessible and readily available on its website. (Management action – nonstatutory)
- Direct the agency to follow the State Office of Administrative Hearing’s current guidance on the scope of the owner and designated caretaker exemptions in its enforcement processes. (Management action – nonstatutory)

### **Complaints**

- Prohibit the board from accepting anonymous complaints and require the board to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Prohibit a board member who reviews a standard of care investigation from participating in any resulting disciplinary proceeding, and allow the board to delegate medical reviews to licensed veterinarians who are not board members.
- Require the agency to provide a clear and easily understood summary of the outcome of a complaint investigation to the complainant.
- Direct the board to modify existing rules to allow a complainant to receive all of the licensee’s responses to the complaint during an investigation. (Management action – nonstatutory)
- Direct the agency to provide sufficient information on the reasons for a complaint dismissal. (Management action – nonstatutory)
- Direct the agency to improve tracking of non-jurisdictional complaints. (Management action – nonstatutory)

### **Licensing**

- Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and existing licensees.
- Authorize the agency to provide staggered biennial license renewals for all license types.
- Remove the statutory limitation currently restricting the agency’s authority to lower fees.
- Prohibit the agency from limiting the amount of time a licensee can remain on inactive license status.
- Direct the agency to conduct continuing education audits as part of the license renewal process. (Management action – nonstatutory)
- Direct the agency to evaluate jurisprudence exam questions for each license type and create question banks for its jurisprudence exams. (Management action – nonstatutory)
- Direct the agency to remove the notarization requirement for temporary license applications and evaluate other application requirements to streamline temporary license processing. (Management action – nonstatutory)

**Agency Management**

- Review and update the current job description for the Chief Fiscal Officer position, and direct the executive director to ensure the agency hires a qualified and properly trained applicant. (Management action – nonstatutory)
- Develop and implement a career ladder program as required by statute, and make it available to staff. (Management action – nonstatutory)

**Rabies Quarantine**

- Require veterinarians and local rabies control authorities to provide certain notifications to owners of animals submitted for quarantine and to uniquely identify any animal under quarantine.

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# APPENDIX



# APPENDIX

## *Sunset Review Schedule – 2019*

### **32 Reviews**

Accountancy, Texas State Board of Public

Alcoholic Beverage Commission, Texas

Appraiser Licensing and Certification Board, Texas

Banking Commissioner, Office of

Consumer Credit Commissioner, Office of

Counselors, Texas State Board of Examiners of Professional

Finance Commission of Texas

Funeral Service Commission, Texas

Geoscientists, Texas Board of Professional

Historical Commission, Texas

Land Surveying, Texas Board of Professional

Library and Archives Commission, Texas State

Marriage and Family Therapists, Texas State Board of Examiners of

Medical Board, Texas

Military Department, Texas

Motor Vehicles, Texas Department of

Plumbing Examiners, Texas State Board of

Psychologists, Texas State Board of Examiners of

Public Safety, Texas Department of

Real Estate Commission, Texas

Risk Management and Risk Management Board, State Office of

River Authorities

– Guadalupe-Blanco River Authority

– Lower Colorado River Authority

– Nueces River Authority

– Red River Authority of Texas

Savings and Mortgage Lending, Office of Commissioner and Department of

## ***Appendix***

School Land Board

Securities Board, State

Social Worker Examiners, Texas State Board of

Veterans Commission, Texas

Veterans' Land Board

Windstorm Insurance Association, Texas