



SUNSET ADVISORY COMMISSION

Report to the
78th Legislature



February 2003



SUNSET ADVISORY COMMISSION

P.O. Box 13066 ❖ Austin Texas 78711-3066

Senate Members

Chair

Sen. Jane Nelson
Flower Mound

Sen. Mike Jackson
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Sen. Eliot Shapleigh
El Paso

Dr. Tim Roth
El Paso

February 10, 2003

The Honorable Rick Perry
Governor of Texas

The Honorable David Dewhurst
Lieutenant Governor of Texas

The Honorable Tom Craddick
Speaker, Texas House of Representatives

Honorable Members of the 78th Legislature
Assembled in Regular Session


Ladies and Gentlemen:

The Sunset Advisory Commission, established by the Legislature in 1977, is directed by statute to review and evaluate the performance of specified agencies; recommend the abolition or continuation of these agencies; propose needed statutory changes or management improvements to the operations of the agencies; and develop legislation necessary to implement any proposed changes.

Between September 2001 and January 2003, the Sunset Commission has worked to develop recommendations for the 29 agencies scheduled for Sunset review. During this 17-month period, the Commission held numerous public meetings to hear presentations of its staff's reviews, heard testimony on the results of those reviews and other issues raised, and made decisions on recommendations regarding the agencies reviewed. These recommendations will improve agency operations, save tax dollars, and make government more accessible to the people of Texas.

The Sunset Advisory Commission is pleased to forward to you its findings and recommendations with this report. We hope you will find this report informative and useful when making the final decisions concerning the agencies subject to Sunset review this cycle.

Respectfully submitted,


Senator Jane Nelson
Chair
Sunset Advisory Commission

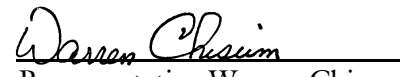

Representative Warren Chisum
Vice Chair
Sunset Advisory Commission

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INTRODUCTION



Sunset reviewed 26 agencies, 3 statutory provisions, and produced 4 informational items.

Sunset recommendations to the Legislature will save more than \$7 million annually.

The Sunset law in Texas, enacted 25 years ago, provides for the periodic review of the efficiency and effectiveness of state agency operations and policies. The Sunset process works by imposing a date on which an agency is abolished if the Legislature does not pass a bill to continue its operations. An agency under review must first prove to the Legislature that it is still needed. Then, legislation reauthorizing the agency and its functions must be passed and signed by the Governor. Unless all of these things occur, the agency is automatically abolished and the “sun sets” on its operations.

The 78th Legislative Session

For the 78th Session, 26 agencies and three statutory provisions were up for Sunset review. Among the agencies to be considered by the Legislature in this session are the majority of the Business and Economic Development agencies, such as the Texas Workforce Commission, the Texas Lottery Commission, and the Texas Department of Economic Development. Other notable agencies reviewed include the Texas Ethics Commission, the State Bar of Texas, the State Board of Educator Certification, and several regulatory agencies, such as the Texas Department of Licensing and Regulation, the State Board of Dental Examiners, and the State Board of Public Accountancy.

Sunset Commission Action

As a result of its deliberations, the Sunset Commission recommends that the 78th Legislature pass legislation continuing 23 of the agencies under review, with significant improvements to each agency continued. The Commission also recommends abolishing one agency, the Texas Department of Economic Development and transferring its remaining programs to the Governor’s Office. The Commission also recommends abolishing two of the three statutory provisions reviewed. Two of the agencies reviewed were not subject to termination, but were follow-up reviews. Overall, the Sunset Commission’s recommendations would result in savings to the State of more than \$7 million annually, and a reduction of 19 full-time equivalent employees for the upcoming biennium.

Altogether, the Sunset Commission adopted 700 recommendations to improve agency operations, use available funds more efficiently, and make government more accessible to Texans. The chart on page 3 summarizes the Sunset Commission’s decisions regarding the continuation of the agencies under review, provides the estimated two-year fiscal impact of recommended changes, and lists the members of the Sunset Commission sponsoring each Sunset bill. Also included in this report are four information items. These are the results of special requests for studies and information by members of the Sunset Commission.

The Sunset Recommendations section describes the recommendations for each agency under Sunset review in more detail.

Guide to this Report

The main body of this report, the *Sunset Commission Recommendations* section describes the recommendations for each agency under Sunset review, including information on the fiscal implications of each recommendation. More detailed information on many of these recommended changes can be found in the original Sunset staff report on a particular agency, by visiting the Commission's Web site, or by contacting Sunset Commission staff directly.

In addition to the agency specific recommendations, the Sunset Commission applied its across-the-board recommendations to each of the agencies reviewed. These recommendations are a set of standard provisions that have been developed by the Commission over time as it has identified common problems during reviews of agencies. The section on the across-the-board recommendations briefly explains each of these provisions, followed by a chart detailing how they were applied to the agencies.

**SUMMARY OF SUNSET RECOMMENDATIONS
TO THE 78TH LEGISLATURE**

Summary of Sunset Recommendations

Accountancy, Texas State Board of Public	11
1. Grant the Board Additional Enforcement Powers.	
2. Authorize the Board’s Use of Non-Board Members, Who Meet Certain Statutory Qualifications, on Enforcement Committees and Prohibit this Practice for Policymaking Committees.	
3. Apply Provisions of the Sunset Licensing Model to the Public Accountancy Act.	
4. Protect From Prosecution Individuals Who Report Fraudulent Accounting Practices to the Board.	
5. Require the Board to Study and Report on Changes in Federal Accountancy Law.	
6. Continue the Texas State Board of Public Accountancy for 12 Years.	
Administrative Hearings, State Office of	21
1. Continue the State Office of Administrative Hearings for 12 Years.	
2. Simplify SOAH’s Funding By Requiring Agencies to Pay for Hearings Up Front Instead of Being Billed for Those Costs.	
3. Transfer the Hearings Function at the Texas Department of Licensing and Regulation to SOAH.	
4. Exempt SOAH Administrative Law Judges’ Working Notes and Draft Proposals for Decision From the Public Information Act.	
5. Allow Witnesses of SOAH Hearings to Testify Over the Telephone.	
Aerospace Commission, Texas	29
1. Continue the Commission for 12 Years, and Clarify Its Mission as Fostering the Development of Both the Aerospace and Aviation Industries.	
Architectural Examiners, Texas Board of	33
1. Improve the Board’s Enforcement Program By Expanding Its Authority.	
2. Clarify That the Board Does Not Have Authority to Require Firms to Register.	
3. Conform Key Elements of the Board’s Licensing and Regulatory Functions to Commonly Applied Licensing Practices.	
4. Require Architects to Design Commercial Buildings Larger than 5,000 Square Feet or Two Stories In Height.	
5. Continue the Board for 12 Years, and Require It to Form a Joint Practice Committee With the Texas Board of Professional Engineers.	
Bar of Texas, State	45
1. Continue the State Bar, but Require Increased Accountability Through Strategic Planning and Performance-Based Budgeting.	
2. Streamline the State Bar’s Unnecessarily Complex Committee Structure to Make it More Responsive to the Bar’s Needs.	
3. Establish a Framework for the State Bar’s Grievance System in Statute and Simplify the Process to Promote Consistency and Reduce Resolution Time.	
4. Require the State Bar to Maximize Services Offered Through its Client-Attorney Assistance	

- Program Through Increased Coordination with the Grievance System and Other Bar Programs.
- 5. Provide for More Efficient Rulemaking by Repealing the 51 Percent Participation Requirement in Rulemaking and Dues Referenda.
- 6. The State Bar Should More Rigorously Pursue Disciplinary Action Against Lawyers Engaging in Frivolous Lawsuits.

Correctional or Rehabilitation Facility Subchapter 57

- 1. Address Problems Associated With the Notice and Public Meeting Requirements Under the Correctional or Rehabilitation Facility Subchapter, and Re-Evaluate it as Part of the Texas Department of Criminal Justice Sunset Review in 2009.

Court Reporters Certification Board 61

- 1. Continue the Court Reporters Certification Board for 12 Years.
- 2. Conform Key Elements of the Board’s Programs to Commonly Applied Occupational Licensing Practices.

Dental Examiners, State Board of 67

- 1. Continue the Board for 12 Years, and Eliminate the Separate Sunset Date for the Dental Hygiene Advisory Committee.
- 2. Reduce the Size of the Board From 18 to 15 Members, Consisting of Eight Dentists, Two Dental Hygienists, and Five Public Members.
- 3. Revamp the Board’s Enforcement Process to Enable It to Take Faster, More Forceful Disciplinary Action.
- 4. Improve Coordination Between the Board and the Health and Human Services Commission on Medicaid-Related Issues.
- 5. Expand the Board’s Existing Regulation of Dental Assistants to Require Greater Competence by Those Who Take X-Rays.
- 6. Provide for Licensing Dental Educators Who Provide Dental Services at Accredited Dental or Dental Hygiene Schools in Texas.
- 7. Relax the Experience Requirement for Dental Licensure by Credentials.
- 8. Require the Board to Establish a System for Expunging Groundless, Dismissed Complaints From Its Records.
- 9. Require the Board to Act on Recommendations Proposed by the Dental Hygiene Advisory Committee Within a Specified Time.
- 10. Establish a Process for Debt Forgiveness for Services by Dental Professionals in Rural or Underserved Areas.

Economic Development, Texas Department of 83

- 1. Abolish the Texas Department of Economic Development and Transfer Its Functions to a Newly Created Office Within the Office of the Governor.
- 2. Reduce the Number of State Entities Involved in Tourism Activities from Eleven to Five.
- 3. Exempt Tourism Advertising and Placement Expenditures from State HUB Subcontracting Requirements.

Educator Certification, State Board for 89

- 1. Expand SBOE’s Oversight of SBEC Rules, and Improve Stakeholder Involvement In the Rulemaking Process.

2. Require Fingerprint-Based National Criminal History Checks of New Educators.
3. Require the Board to Adopt Rules Ensuring Comprehensive Disciplinary Investigations.
4. Place Responsibility for Temporary Teacher Certifications at SBEC.
5. Accelerate the Expansion of Alternative Educator Certification Programs.
6. Explore Establishing a “Master Teacher” Program.
7. Require Educational Diagnosticians to Hold an SBEC-Issued Certificate.
8. Authorize SBEC to Accept Gifts, Donations, and Non-Federal Grants.
9. Continue the State Board for Educator Certification for 12 Years.

Engineers, Texas Board of Professional 99

1. Require the Board to Establish Its Enforcement Process in Rule, Prioritize Complaints, and Track and Report Complaint Information Annually.
2. Conform Key Elements of the Texas Professional Land Surveying Act to Commonly Applied Licensing Practices.
3. Clarify the Board’s Authority to Regulate Nonlicensees and Use of the Title “Engineer.”
4. Continue the Board for 12 Years and Require It to Form a Joint Practice Committee With the Texas Board of Architectural Examiners.

Ethics Commission, Texas 109

1. Grant the Commission Additional Authority to Conduct Investigations.
2. Remove Unnecessary Steps in the Commission’s Complaint Process.
3. Require the Commission to Set Timelines for Resolving Complaints.
4. Make Improvements to the Commission’s Electronic Filing System to Expand Its Use.
5. Improve the Clarity and Consistency of Public Information Provided by the Agency.
6. Allow the Commission to Terminate the Campaign Treasurer Appointments of Inactive Candidates.

Funeral Service Commission, Texas 121

1. Continue the Commission for 12 Years, and Require Earlier Consumer and Industry Input on Rules.
2. Give the Commission Greater Regulatory and Enforcement Authority Over Cemeteries and Crematories.
3. Consolidate the Authority to Address Consumer Complaints About Cemeteries Into TFSC.
4. Clarify TFSC’s Authority to Fully Define Standards of Professional and Ethical Conduct.
5. Prohibit Certain Funeral Vendors or Service Providers from Making Misleading Statements.

Health, Texas Department of 127

1. Continue Efforts to Monitor TDH Implementation of Business Process Improvements.

Higher Education Coordinating Board, Texas 131

1. Focus the Coordinating Board on Assessing the Most Effective Activities and Strategies to Achieve the Goals of *Closing the Gaps*.
2. Identify Changes to the Higher Education Funding System that Best Support the Higher Education Plan.
3. Repeal the Statutory Requirement for the Joint Advisory Committee and Establish the State P-16 Council in Statute.

4. Restructure Loan Forgiveness Programs into Loan Repayment Programs.	
5. Distribute All Hinson-Hazlewood College Student Loan Funds Through the Texas Guaranteed Student Loan Corporation's Electronic Funds Transfer System.	
6. Reduce the Coordinating Board's Size from 18 to 15 Members.	
7. Evaluate the Reporting Requirements for Texas' Public Institutions of Higher Education.	
8. Repeal Obsolete Statutory Language Relating to the State Post Secondary Review Program.	
9. Establish Uniform Standards for Course Numbering and Data Transfer Among Public Institutions of Higher Education.	
10. Improve Promotion of the Texas Financial Aid Information Center's Toll-Free Number.	
11. Continue the Texas Higher Education Coordinating Board for 12 Years.	
Housing and Community Affairs, Texas Department of	145
1. Continue the Texas Department of Housing and Community Affairs for 12 Years.	
Housing Corporation, Texas State Affordable	149
1. Continue the Corporation for Six Years, With Changes to Ensure the Use of Abated Tax Dollars for Public Benefit.	
Human Services, Texas Department of	155
1. Target Comprehensive Assessment Services to Families At Risk of Exhausting TANF Benefits.	
2. Quicken the Eligibility Determination Process for Community Care Programs.	
3. Develop Regional Business Plans That Address Statewide Goals and Contain Key Client-Centered Outcome Measures.	
Land Surveying, Texas Board of Professional	161
1. Authorize the Board to Create Exam Advisory Committees.	
2. Require the Board to Establish Its Enforcement Process in Rule.	
3. Conform Key Elements of the Texas Professional Land Surveying Act to Commonly Applied Licensing Practices.	
4. Authorize the Board to Keep Dismissed Complaints From Being Disclosed to the Public.	
5. Direct the Board to Work With the General Land Office to Increase the Number of Licensed State Land Surveyors.	
6. Continue the Texas Board of Professional Land Surveying for 12 Years.	
Law Examiners, Board of	171
1. Balance the Need to Protect the Public With the Need to Safeguard Prospective Attorneys.	
2. Direct the Board to Develop Guidelines Under Its Existing Authority to Assist Board Decisions on Character and Fitness Determinations, Probationary Licenses, and Waiver Requests.	
3. Lengthen the Board Members' Terms to Six Years and Place Them on a Staggered Schedule.	
4. Deposit Board of Law Examiners' Funds In the State Treasury Subject to the Legislative Appropriations Process.	
5. Clarify the Supreme Court's Authority to Establish Later Deadlines for Filing Applications to the Bar Exam.	
6. Continue the Board of Law Examiners for 12 Years.	
Licensing Agency Pilot Project	179
1. Abolish the Self-Directed, Semi-Independent Licensing Agency Pilot Project.	

Licensing and Regulation, Texas Department of 183

1. Give TDLR's Commission Rulemaking Authority and Advisory Committee Appointment Authority Common to Other Agency Policy Bodies.
2. Reduce the Commission's Size from Six Members to Five Members.
3. Conform Key Elements of the Department's Programs to Commonly Applied Occupational Licensing Practices.
4. Require Elevator Certificates of Compliance to Be Posted in Publicly Visible Areas.
5. Coordinate Oversight of Abandoned and Unplugged Water Wells Among TDLR, Local Groundwater Conservation Districts, and the Texas Commission on Environmental Quality.
6. Abolish the Registration of Transportation Service Providers.
7. Transfer Certain Occupational Licensing Programs from the Texas Commission of Environmental Quality to TDLR.
8. Require TDLR to Act as an Information Resource for Consumers on All State Licensing Agencies.
9. Require TDLR to License and Regulate Mobile Amusement Park Rides and Require Annual Inspections.
10. Continue the Texas Department of Licensing and Regulation (TDLR) for 12 Years.

Lottery Commission, Texas 197

1. Continue the Texas Lottery Commission for 12 Years.
2. Increase the Commission's Size from Three to Five Members.
3. Require the Commission to Approve All Major Financial Decisions and Develop a Comprehensive Business Plan.
4. Restructure the Charitable Distribution Requirements for Bingo Profits.
5. Abolish the Tiered Bingo Lessor License Structure.
6. Require the Bingo Division to Establish Its Compliance and Enforcement Procedures in Rule and Expand the Division's Enforcement Powers.
7. Require the Bingo Advisory Committee to Develop a Work Plan to Effectively Advise the Commission.
8. Conform Key Elements of the State Lottery Act to Commonly Applied Licensing Practices.
9. Conform Key Elements of the Bingo Enabling Act to Commonly Applied Licensing Practices.
10. The Commission Should Study the Concept of Unit Accounting for Bingo Games.

Plumbing Examiners, Texas State Board of 213

1. Continue the Board for 12 Years, and Increase Collaboration Between the Board and the Texas Department of Licensing and Regulation.
2. Specify That the Board's Committees Be Composed of Board Members Only.
3. Enable the Board to Provide for the Training of Apprentices and Address the Need for Licensed Plumbers.
4. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
5. Direct the Board to Investigate and Eliminate, as Appropriate, Potential Barriers to Licensure.

Purchasing from People with Disabilities, Texas Council on	223
1. Continue the Texas Council on Purchasing from People with Disabilities for 12 Years.	
2. Require the Council and the Texas Building and Procurement Commission to Promote the State Use Program and Enhance Agency Compliance.	
3. Increase State Use Program Accountability Through Increased Oversight and Enhanced Performance Measures.	
Riding Stables Chapter	229
1. Repeal the Riding Stables Chapter, Effective September 1, 2003.	
Tax Professional Examiners, Board of.....	233
1. Continue the Board for 12 Years and Strengthen Its Ties With the Comptroller of Public Accounts.	
2. Decrease the Board’s Size from Six to Five Members and Include Public Representation.	
3. Conform Key Elements of the Board’s Licensing and Regulatory Functions to Commonly Applied Licensing Practices.	
Workforce Commission, Texas	239
1. Ensure Clear Separation of the Powers and Duties of the Commissioners in Setting Policy for the Agency, and the Executive Director in Running the Operations of the Agency.	
2. Clarify That Employers Are a Key Customer of TWC, and Require the Agency to Evaluate Employer Engagement.	
3. Require TEA and TWC to Improve the Accountability and Coordination of Adult Education and Literacy Services.	
4. Require TWC to Assess, and Make Public, Local Workforce Development Boards’ Overall Capacity to Oversee Local Funds and Services.	
5. Require TWC to Phase in the Integration of Workforce Programs and Associated Case Worker Functions.	
6. Require an Annual Evaluation of Child Care Allocation Formulas.	
7. Track Employment-Related Outcomes of Parents Receiving Subsidized Child Care.	
8. Authorize TWC to Prohibit Certain Unfair Partial Transfers of Unemployment Compensation Experience Rates.	
9. Authorize TWC to Issue Cease and Desist Order to Bring Unlicensed Proprietary Schools Into Compliance With State Law.	
10. Remove Restrictions on the Tuition Protection Fund That Limit TWC’s Ability to Safeguard Students if a Proprietary School Closes.	
11. Continue the Texas Workforce Commission for Six Years.	
Workforce and Economic Competitiveness, Texas Council on	255
1. Continue the Council for 12 Years, With Changes to Improve Its Focus on Resolving Problems That Hamper the Integrated and Seamless Delivery of Workforce Services in Texas.	

78th Session Sunset Summary Information				
Agency or Statutory Provision	Action	Two-Year Net Fiscal Impact	Bill Author	
			Senate	House
Accountancy, Texas State Board of Public	Continue	No Impact	Nelson	Chisum
Administrative Hearings, State Office of	Continue	\$100,000	Shapleigh	Dunnam
Aerospace Commission, Texas	Continue	No Impact	Jackson	Chisum
Architectural Examiners, Texas Board of	Continue	\$21,800	Jackson	Chisum
Bar of Texas, State	Continue	No Impact	Jackson	Chisum
Correctional or Rehabilitation Facility Subchapter	Continue	No Impact	Lucio	Solomons
Court Reporters Certification Board	Continue	No Impact	Shapleigh	Dunnam
Dental Examiners, State Board of	Continue	\$12,000	Nelson	Gallego
Economic Development, Texas Department of	Abolish	\$2,800,000	Nelson	Solomons
Educator Certification, State Board for	Continue	No Impact	Lucio	Gallego
Engineers, Texas Board of Professional	Continue	No Impact	Shapleigh	Chisum
Ethics Commission, Texas	No Sunset Date	No Impact	Lucio	Solomons
Funeral Service Commission, Texas	Continue	No Impact	Shapleigh	Chisum
Health, Texas Department of	No Action	No Impact	No Legislation	
Higher Education Coordinating Board, Texas	Continue	\$3,469,280	Shapleigh	Gallego
Housing and Community Affairs, Texas Department of	Continue	No Impact	Lucio	Dunnam
Housing Corporation, Texas State Affordable	Continue	No Impact	Lucio	Dunnam
Human Services, Texas Department of	No Sunset Date	No Impact	Nelson	Chisum
Land Surveying, Texas Board of Professional	Continue	No Impact	Shapleigh	Solomons
Law Examiners, Board of	Continue	No Impact	Lucio	Gallego
Licensing Agency Pilot Project	Abolish	No Impact	No Legislation	
Licensing and Regulation, Texas Department of	Continue	No Impact	Jackson	Solomons
Lottery Commission, Texas	Continue	No Impact	Jackson	Solomons
Plumbing Examiners, Texas State Board of	Continue	\$168,000	Jackson	Dunnam
Purchasing from People with Disabilities, Texas Council on	Continue	No Impact	Shapleigh	Dunnam
Riding Stables Chapter	Abolish	No Impact	Jackson	Dunnam
Tax Professional Examiners, Board of	Continue	\$2,000	Lucio	Gallego/Solomons
Workforce Commission, Texas	Continue	(\$24,000)*	Nelson	Solomons
Workforce and Economic Competitiveness, Texas Council on	Continue	No Impact	Nelson	Solomons
Fiscal Impact Total		\$6,549,080		

* TWC recommendations will also result in savings in state and federal funds of \$4.2 million annually in fiscal years 2006 to 2008, that would need to be re-directed into services to avoid the loss of federal funds.

**SUNSET COMMISSION
RECOMMENDATIONS**

Texas State Board of Public Accountancy

Agency at a Glance

The Texas State Board of Public Accountancy (Board) regulates the accounting profession in an effort to provide competent, objective accountants and auditors for Texas' financial markets, banking systems, and businesses. The Board's major functions include:

- administering the Uniform Certified Public Accountant (CPA) Examination;
- certifying and licensing accountants who have passed the Exam and met all requirements;
- registering firms engaged in the practice of public accountancy; and
- enforcing provisions of the Public Accountancy Act, and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2002, the Board operated with an annual budget of \$3.98 million, most of which was derived from examination and licensing fees collected from the accounting profession.
- **Staffing.** The Board has 43.5 full-time positions, all based in Austin.
- **Licensing.** The Board regulates 57,642 CPAs and 10,292 accounting firms. In fiscal year 2002, about 6,017 applicants took the CPA exam and 1,410 passed the exam and were eligible to apply for a license.
- **Enforcement.** The Board opened 4,049 complaints in fiscal year 2002. In that same year, the Board closed 3,698 complaints with an average processing time of 4.82 months.
- **Pilot Project.** The Legislature included the Board, along with the Texas Board of Professional Engineers and the Texas Board of Architectural Examiners, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project (Pilot Project). Beginning in September 2001, as part of the Pilot Project, the Board was removed from the legislative appropriations process. The Board now collects its revenues directly from licensing fees. In addition, spending limitations in the General Appropriations Act, such as caps on agency full-time equivalent positions and travel expenditures, do not apply to the Board.

Board Members (15)

Billy M. Atkinson, CPA Presiding Officer (Sugarland)	Rebecca B. Junker, CPA (Richmond)
April L. Eyeington, CPA Assistant Presiding Officer (College Station)	Carlos Madrid, Jr. (San Antonio)
J. Coalter Baker, CPA (Austin)	Robert C. Mann, CPA (Ft. Worth)
Marcela E. Donadio, CPA (Houston)	Reagan S. McCoy, Esq. (San Antonio)
Kimberly M. Dryden (Amarillo)	Catherine J. Rodewald (Frisco)
Edwardo B. Franco (Houston)	Edward L. Summers, Ph.D., CPA (Austin)
Gwen B. Gilbert, CPA (Dallas)	Melanie G. Thompson, CPA (Canyon Lake)
	Vacant

Agency Head

William Treacy, Executive Director
(512) 305-7801

Recommendations

1. Grant the Board Additional Enforcement Powers.
2. Authorize the Board's Use of Non-Board Members, Who Meet Certain Statutory Qualifications, on Enforcement Committees and Prohibit This Practice for Policymaking Committees.
3. Apply Provisions of the Sunset Licensing Model to the Public Accountancy Act.
4. Protect From Prosecution Individuals Who Report Fraudulent Accounting Practices to the Board.
5. Require the Board to Study and Report on Changes in Federal Accountancy Law.
6. Continue the Texas State Board of Public Accountancy for 12 Years.

Issue 1 | The Public Accountancy Act Lacks Key Provisions Needed to Protect the Public.

Key Findings

- The Board of Public Accountancy regulates the accounting industry by enforcing the Public Accountancy Act and taking enforcement actions against violators.
- The current range of criminal and administrative penalties allowed by the Act is an insufficient deterrent to the types of violations occurring in today's business environment.
- The Board does not have the authority to order licensees to pay restitution to victims.
- The Board's enforcement efforts are hampered by confidentiality provisions in the Act, lack of subpoena power, and summary suspension authority.

The Board seeks to protect the public through its enforcement of the Accountancy Act. Recent accounting scandals have heightened interest in ensuring that the Act contains the full range of enforcement tools necessary to adequately deter and redress violations. By increasing the criminal penalties in the Public Accountancy Act, local district attorney's would be able to take effective action against major violations of the Act. The Board needs additional authority to be able to bring more significant administrative penalties, order licensees to pay restitution to victims, and compel the production of witnesses and records in investigations. In addition, the Board lacks the authority to share information with other regulatory agencies, which hampers multijurisdictional investigations.

Recommendations

Change in Statute

1.1 Expand the range of criminal penalties in the Public Accountancy Act.

This recommendation would increase the penalty for violating the Public Accountancy Act to a felony offense. The class of felony would depend upon the amount of monetary loss: less than \$10,000, the maximum penalty would be two to 10 years of imprisonment; if the offense involved between \$10,000 and \$99,999, the maximum penalty would be two to 20 years; \$100,000 or more, the penalty would be five to 99 years. This would allow the district attorneys to pursue criminal penalties that directly relate to the severity of the offense. The prosecutions would be brought by local district attorneys, while the Board's role would be limited to assisting in prosecutions.

1.2 Increase administrative penalties to a maximum of \$100,000.

This change would increase the statutory cap on administrative penalties from \$1,000 per violation to \$100,000 per violation. With this broader range of monetary penalties, the Board can impose penalties which are more appropriate to the nature of the violations committed. The Board would pass rules to establish a matrix to identify which offenses merit higher penalties.

1.3 Authorize the Board to order licensees to pay restitution to consumers as a part of enforcement actions.

This change would authorize the Board to order the payment of restitution to victims. Refunds would be limited to actual amounts paid by consumers to licensees.

1.4 Authorize the Board to issue summary suspension orders.

This change would authorize the Board to summarily suspend the license of any person or firm that is committing fraud, violating the Public Accountancy Act, or is about to engage in fraudulent activity or violations. Summary suspension authority would be limited to situations presenting an immediate threat to the public welfare, and would be subject to appeal. A summary suspension order would continue to be in effect until the order is stayed by the Board.

1.5 Grant the Board authority to issue subpoena orders.

This recommendation would grant the Board the authority to require, by subpoena or summons issued, the attendance and testimony of witnesses and the production of all records relating to matters for which the Board has authority in the Public Accountancy Act to investigate. The production of records would include records maintained by electronic or other means. Further, this recommendation would grant the Board the authority to sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence, provided that such information is treated confidentially under terms of the Public Accountancy Act.

1.6 Grant the Board the authority to share confidential information with governmental agencies and law enforcement officials.

This recommendation would allow the Board to disclose confidential information in the Board's possession to any governmental, regulatory, or law enforcement authority without violating the Public Accountancy Act or Chapter 552, Government Code relating to public information. The Board would create rules to guide the agency when sharing this information with other jurisdictions pursuing enforcement actions.

1.7 Grant the Board authority to issue cease and desist orders to individuals who are practicing public accountancy without a license.

This recommendation would authorize the Board to issue cease and desist orders to individuals who are practicing public accountancy without a license. The cease and desist order would be an administrative action by the Board, unlike injunctive relief which involves the court system. Cease and desist authority would replace the Board's current authority to seek an injunction. The Board would be granted the Authority to levy administrative fines up to \$25,000 to individuals who violate the cease and desist order.

Issue 2 | The Board Benefits From the Service of Non-Board Members on Its Committees, but This Practice Is Not Authorized.

Key Findings

- Although the Board has benefitted from the use of non-Board members in working committees, the statute does not specifically allow this practice for enforcement committees.
- Non-Board members serving on working committees may have undisclosed interests in matters before the committees.
- The Board's Rules committee represents an inappropriate delegation of policymaking authority to non-Board members.

The Board has created 11 Board committees to assist in administering the Public Accountancy Act. These committees can be divided into two categories: working committees that carry out the functions of the Board, such as considering enforcement actions or overseeing the peer review process, and policymaking committees that set the direction of the Board and write rules. Because the committees are composed of both Board members and industry representatives, they are neither true advisory committees nor Board committees.

The Board's committee structure allows the Board to access needed technical assistance in its working committees, but the statute does not authorize the Board to use non-Board members in enforcement committees. In addition, this technical expertise may be provided by individuals who may have an undisclosed interest in matters coming before them because of their close ties to the accounting profession. The Board has also delegated policymaking authority to nonmembers serving on the Rules committee in a way that the Legislature has generally acted to avoid. Changing the way the Board may use nonmembers on its committees would help ensure that the Board continues to receive needed expertise and that nonmembers have the proper qualifications to serve.

Recommendations**Change in Statute****2.1 Authorize the appointment of non-Board members to Board enforcement committees.**

This recommendation would repeal the current statutory language requiring the Board to make appointments to the enforcement committees from its membership and specifically authorize the Board to seek technical assistance from nonmembers. This change recognizes and continues the benefit of the technical expertise that the Board has been able to gain from these volunteers. These non-Board members would serve as full, voting members. The Board would check the compliance history of all appointees to ensure that CPAs with past enforcement actions are not evaluating enforcement cases of others.

2.2 Require non-Board members appointed to Board committees to meet the statutory qualifications of Board members and to file financial disclosure statements.

This recommendation would ensure that the non-Board members appointed to serve on Board committees meet the same qualifications as Board members, thereby reducing the possibility of nonmembers helping shape decision on a matter in which they have a direct interest. These qualifications would apply the statutory test that excludes officers and employees of Texas trade associations in the field of public accountancy from serving on the Board. To ensure that personal interests in the work of the committees is fully disclosed, the financial disclosure standards in the Ethics Code would apply to the non-Board members in the same way as it does to Board members who have been confirmed by the Senate. The Board would create rules requiring non-Board committee members to recuse themselves from discussing or voting on matters where they have a personal interest.

2.3 Prohibit the Board from appointing non-Board members to Board policymaking committees.

This recommendation would ensure that the Board does not permit non-Board members to perform its key policymaking functions, to limit the influence of the accounting profession over the policymaking work of the state agency regulating accountancy. The Board would remain free to establish its committee structure as needed, with the provision that committees performing policymaking functions, such as writing rules and formulating the direction of the agency, must only contain Board members. The Board is currently composed of 15 members, which is an adequate number to perform the policymaking work.

Issue 3 | Key Elements of the Public Accountancy Act Do Not Conform to Commonly Applied Occupational Licensing Practice.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could negatively affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.
- Certain administrative practices could reduce the Board's protection of the public or its ability to adapt to major change.

Various licensing and enforcement processes set up in the Board's statute and in its management practices do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 70 occupational licensing reviews in 25 years. In some cases, statutory vagueness could mislead certificate applicants or fail to prevent a conflict of interest in processing disciplinary actions. Other problems could prevent the proper allocation of exam fees, or

inhibit the public's ability to learn more about disciplinary actions or the accountancy profession in general. A comparison of the Board's statute, rules, and practice with model licensing standards identified variations from these standards and needed changes to bring the Board in line with other licensing agencies.

Recommendations

Change in Statute

3.1 Require the Board to define which misdemeanor convictions disqualify an applicant from certification in the standard manner defined in the Occupations Code.

This recommendation would require the Board to apply the process in Occupations Code, Chapter 53, to define which criminal convictions disqualify an applicant from licensure as a public accountant. Current statutory provisions on good moral character demonstrated by a lack of dishonest or felonious acts would be replaced with a reference to Chapter 53 and a clear statement excluding felons from licensure. Based on the process required in this Chapter, the Board would create a list of misdemeanors with explanations on how a particular crime relates to the CPA license. In addition, the Board would publish a statement explaining the process it would use to determine which misdemeanors committed in other states would prevent licensing in Texas.

3.2 Authorize the Board to delegate the collection of Uniform CPA Examination fees.

Under this recommendation, the current statutory language requiring the Board to collect examination fees would be modified to include specific authority allowing third parties to collect exam fees on behalf of the Board.

3.3 Require Board members to recuse themselves from voting on disciplinary actions when they serve on the respective enforcement committees.

This recommendation would create a clear separation between the Board's investigative and final disciplinary action functions. Board members would be required to clearly announce their recusal from specific votes. Requiring the Board to adopt ethical rules and ex parte communications rules would ensure that future boards continue to abide by these policies.

Management Action

3.4 The Board should make detailed information about disciplinary actions available to the public.

Under this recommendation, the Board would give consumers full and easy access to public information on disciplinary rulings and licensees' disciplinary histories on its Web site. The Board would also compile detailed statistics about complaints received and resolved each year and provide this information in its annual report, including the number, type, and age of all open cases as of the end of each fiscal year.

Issue 4 | The Threat of Prosecution May Deter Individuals From Reporting Fraudulent Accounting Practices to the Board.

The Board occasionally receives voluntary reports of wrongdoings from employees of public accountancy firms. These employees are currently faced with the choice of facing prosecution for their own involvement or having to quit their jobs – a choice that may prevent individuals from providing needed information to the Board to better regulate public accountancy.

Recommendation**Change in Statute****4.1 Create protections for individuals who voluntarily report violations by public accountancy firms.**

This recommendation would establish a ‘safe-harbor’ to protect these employees from prosecution or administrative actions by the Board.

Issue 5 | Recent Changes in Federal Public Accountancy Law May Require Additional Changes to Texas Laws.

With the recent passage of the federal Sarbanes-Oxley Act, public accountancy regulation is undergoing significant change nationally. To ensure that Texas statutes stay consistent with national requirements, the Board should study the national reforms and report to the Legislature on any needed changes.

Recommendation**Change in Statute****5.1 Require the Board to Study and Report on Changes in Federal Accountancy Law.**

This recommendation would require the Board to report to the Governor, Lieutenant Governor, and Speaker of the House by December 31, 2005 regarding its review of Sarbanes-Oxley type restrictions on “Public Interest Entities,” the GAO study on audit firm rotation, and the Board’s implementation of rules consistent with these national standards. This report would enable the Legislature to keep Texas public accountancy laws current with national requirement.

Issue 6 | **Texas Has a Continuing Need for the Texas State Board of Public Accountancy.**

Key Findings

- Texas has a continuing interest in regulating the practice of public accountancy.
- The Board functions effectively in its role of regulating public accountancy.
- No benefit would result from changing the agency structure or having any other federal or state agency perform the Board's functions.
- Most other states use a separate licensing agency to oversee the practice of public accountancy.

The Board licenses individual Certified Public Accountants and accounting firms. While the accounting standards by which CPAs and firms must operate are established by national accounting organizations, the Board acts to license CPAs and firms and enforce the Public Accountancy Act in Texas. Because the practice of accountancy affects the business climate in the state, and members of the public are unable to independently determine the competency of an accountant, the Board's regulatory functions continue to be needed.

The Sunset Commission concluded that the Board should continue as currently organized. Although the Board needs improvements that are discussed elsewhere in this report, the Board should be continued for the standard 12 years.

Recommendation**Change in Statute****6.1 Continue the Texas State Board of Public Accountancy for 12 years.**

This recommendation continues the Texas State Board of Public Accountancy for the standard 12-year period until 2015.

Fiscal Implication Summary

These recommendations will not result in a fiscal impact to the State. The Board may incur some additional costs as a result of increased enforcement efforts, but these costs would be recovered as increased penalty payments. Under current law, the Board is permitted to retain these penalties as part of the Licensing Agency Pilot Project. However, the Sunset Commission is recommending the abolishment of the Pilot Project. Under this recommendation, administrative penalties would be returned to the General Revenue Fund, as is the practice with other licensing agencies. The Legislature may appropriate these funds to the Board to offset any increased costs.

State Office of Administrative Hearings

Agency at a Glance

The State Office of Administrative Hearings (SOAH) was created in 1991 to conduct administrative law hearings and alternative dispute resolution proceedings involving Texas state agencies, and other governmental entities, private citizens, and corporations doing business within the state.

Key Facts

- **Funding.** SOAH operates with an annual budget of about \$8.5 million. The Office's primary funding sources include General Revenue, State Highway Fund 006, and interagency contracts.
- **Staffing.** In fiscal year 2002, the Office had a staff of 118 employees, of which 59 are administrative law judges. The majority of the agency's staff works in Austin, while others are located in eight field offices.
- **Hearings.** More than 70 state agencies and local political subdivisions refer cases to SOAH. In fiscal year 2001, the Office spent the majority of its time on cases from the Texas Department of Public Safety, Texas Commission on Environmental Quality, and Public Utility Commission.
- **Alternative Dispute Resolution**

Each year more contested cases are referred to mediation. In fiscal year 2001, 80 cases were mediated. The Office also began conducting arbitrations in 1997.

Agency Head

Shelia Bailey Taylor, Chief Administrative Law Judge
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Recommendations

1. Continue the State Office of Administrative Hearings for 12 Years.
2. Simplify SOAH's Funding By Requiring Agencies to Pay for Hearings Up Front Instead of Being Billed for Those Costs.
3. Transfer the Hearings Function at the Texas Department of Licensing and Regulation to SOAH.
4. Exempt SOAH Administrative Law Judges' Working Notes and Draft Proposals for Decision From the Public Information Act.
5. Allow Witnesses of SOAH Hearings to Testify Over the Telephone.

Issue 1 | Texas Has a Continuing Need for an Independent Office of Administrative Hearings.

Key Findings

- Maintaining the administrative hearings function at SOAH allows neutral parties to hear contested cases.
- To the general satisfaction of other state agencies, centralizing Texas' administrative hearings functions creates better economies for conducting hearings, and provides for better administrative law judges.
- Texas, along with other states, has endorsed the concept of a central, independent administrative hearings office.
- While SOAH's hearings are generally well received, internal management issues could affect future performance.

The State Office of Administrative Hearings offers quality, impartial hearings for Texas agencies. Created 11 years ago, the Office has successfully administered the centralization of the administrative hearings function. This centralization has accrued greater economies for the State, particularly with regard to the use of judges' time and the ability of these judges to hear cases from multiple agencies. Despite the overall success at SOAH, certain managerial issues, including administrative staffing levels and a hearings management structure, could affect the Office's future performance.

Recommendations

Change in Statute

1.1 Continue the State Office of Administrative Hearings for 12 years.

This recommendation continues SOAH as an independent agency responsible for conducting independent administrative hearings for certain state agencies. Under this recommendation, SOAH should be subject to Sunset review again in 2015. As is currently the case, the agency will be subject to review but not automatic termination.

Management Action

1.2 The State Office of Administrative Hearings should contract for a third party review of certain staffing levels and workloads, and to assess the agency's hearings management structure.

The Office should contract with an independent third party to review the agency's non-hearings staff functions and duties. The review should also examine the Office's hearings management structure to determine if the current structure is appropriate and how well it supports the agency's mission while providing for quality control. SOAH implemented this recommendation in November 2002.

Issue 2 | The Current Billing Process for Hearings Causes Problems for Both the Referring Agencies and SOAH.

Key Findings

- SOAH receives a diminishing portion of its funding through interagency funding arrangements.
- Conducting contested case hearings based on agencies' ability to pay can affect their enforcement efforts.
- Funding SOAH operations by billing agencies may cause problems for the Office.
- The Legislature has sought to provide more direct funding to SOAH, just as other states have done for their administrative hearing offices.

Several state agencies pay the cost of conducting administrative hearings through interagency contracts with SOAH, based on an hourly charge for hearing time required. Other agencies have their hearings costs covered by a direct General Revenue appropriation to SOAH, but are billed individually for usage that exceeds predicted workload.

Linking an agency's decision to go to a hearing with its available funding may make the agency reluctant to refer cases to SOAH, which may harm the performance of the agency's mission. This relationship between hearings and funding can also contribute to an appearance that SOAH favors agencies based on their ability to pay, and ultimately threatens the fairness that the Office was established to provide. It also presents a cumbersome, time-consuming process that impairs SOAH's ability to efficiently process these hearings.

Providing SOAH with more direct funding would ensure greater certainty in its funding levels, and would allow the referring agencies and SOAH to focus more on the hearings themselves, and less on funding concerns.

Recommendations

Change in Agency Appropriation/Change in Statute

2.1 Provide for the State Office of Administrative Hearings to receive a lump sum payment from all agencies currently using hourly contracts to pay for their SOAH hearing.

Agencies that currently pay for their SOAH hearings through an hourly contract should pay the Office a lump sum at the start of each biennium, based on the agency's average costs over the three years preceding the beginning of a new biennium. SOAH should calculate the amount of casework required for each agency for the preceding three years to each biennium, which should provide the basis for that agency's payment to SOAH in the next biennium. Should an agency disagree with the Office's calculation of usage for the three-year period, the Office should make arrangements to resolve the differences with the agency. SOAH should provide its usage calculations to the Legislature as part of its appropriations request. SOAH should be authorized to spend the funds, and the respective agencies would be directed by rider to transfer the amounts, at the beginning of each fiscal year of the upcoming biennium.

SOAH should use the funds received to pay overall hearings costs for these agencies, without regard to the level of usage of individual agencies. In other words, SOAH should address whatever the hearing needs of these agencies may be, without imposing a cap on their usage. At the same time, the Office would be able to keep any excess funds from agencies not meeting their anticipated level of hearings use. As a result, SOAH would not need to separately bill for each agency's hearings use within the year.

This recommendation would keep agencies accountable for their hearings use by having their current level of usage provide the basis for their future hearings payments. The Office's calculation of each agency's use at the end of each fiscal year would help ensure that the next fiscal year's charge reflects actual usage. In addition, SOAH would be responsible for forecasting overall usage within the year to ensure that it has adequate funding to cover needs. This recommendation would not affect the non-state entities or voluntary requests for hearings currently using hourly contracts for SOAH hearings.

2.2 Eliminate the billing process for direct-funded agencies that exceed their predicted workload.

This recommendation would slightly change the funding process for agencies that only pay hearings costs above an established hourly cap. These agencies, whose hearings costs are already directly funded by General Revenue appropriation, would continue to be direct-funded. However, the process for billing these agencies for their excess hearings workload at SOAH would be eliminated. Agencies would have their hearings conducted without regard to a cap, but SOAH would continue to calculate each agency's usage at the end of the fiscal year to help ensure that its General Revenue appropriation reflects actual usage. Agencies that exceed their predicted usage by the ten percent allowance currently specified in the Appropriations Act would be subject to a future transfer of money to SOAH. As discussed in Recommendation 2.1, the Office would add the amount to the agency's assessment for the next biennium, based on approval through the appropriations process.

This funding method would provide a greater level of funding certainty to both the referring agencies and to SOAH, enabling hearings to be conducted without the concern of each individual agency's ability to pay. As a result, these recommendations should remove some of the current disincentives for agencies to refer cases to SOAH, and also strengthen the appearance of the Office's impartial role in conducting hearings. These recommendations would also increase the likelihood of agencies pursuing cases at SOAH based on their merits and not on funding considerations. In addition, by receiving funds at the beginning of the fiscal year, SOAH would be better able to cover its general hearings costs without lapsing funds at the end of the fiscal year. This would improve the Office's efficiency in using available funds for their intended use. It also makes the Office's overall task simpler so it can focus more on conducting hearings and less on accounting.

Issue 3 | **Maintaining an Administrative Hearings Function at the Texas Department of Licensing and Regulation Detracts from the State's Objective of Centralized, Independent Administrative Hearings.**

Key Findings

- Conducting administrative hearings in-house at the Texas Department of Licensing and Regulation (TDLR) cannot ensure the level of independence that SOAH can.
- SOAH has the expertise to conduct quality administrative hearings, and can conduct administrative hearings as efficiently as TDLR.

The Texas Department of Licensing and Regulation, one of the state's umbrella licensing agencies, is also one of the few state agencies that conducts its own administrative hearings. While no specific problems were identified regarding TDLR's hearings, the Department cannot intrinsically ensure the independence of hearings it conducts in house. The Department is no different from the 70 other state agencies that have benefitted by having their hearings conducted at SOAH.

Recommendation**Change in Statute****3.1 Transfer the administrative hearings function at the Texas Department of Licensing and Regulation to the State Office of Administrative Hearings.**

In conducting hearings, SOAH should consider the Board's applicable substantive rules or policies. In this way, the agency would still determine how broader policy matters or recurring issues would be treated by administrative law judges. Like other agencies that have hearings conducted by SOAH, the TDLR Commission would maintain final authority to accept, reverse, or modify a proposal for a decision made by a SOAH judge. The Commission may reverse or modify the decision only if the judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions; the judge relied on a prior administrative decision that is incorrect or should be changed; or the Commission finds a technical error in a finding of fact that should be changed. The agency must state in writing the specific reason and legal basis for a change.

As evidenced by the vast array of issues that SOAH judges must already deal with, SOAH would be able to provide the needed expertise to conduct hearings in each of TDLR's 20 licensing programs. It would also be able to conduct these hearings at a cost that is comparable to the Department's without harming TDLR's time frames or performance in its enforcement program.

Issue 4 | **SOAH Working Records May Be Too Accessible to the Public, While Proposals for Decisions and Final Orders Are Not Accessible Enough.**

Key Findings

- The Texas Public Information Act does not have an explicit exception for SOAH judges' working notes and drafts of proposals for decisions and orders.
- Disclosure of SOAH judges' working notes and drafts of proposals for decisions and orders could harm these judges' deliberations and reduce hearings efficiency.
- Entities with comparable functions to SOAH are not subject to disclosure of their working papers and draft documents.
- While the disclosure of working papers and draft documents may adversely affect hearings, SOAH could do more to make its proposals for decision and final orders accessible to the public.

The working notes and drafts of proposals for decisions and orders of administrative law judges at the State Office of Administrative Hearings are not exempted from public disclosure under the Texas Public Information Act. Disclosure of these materials could potentially harm judges' deliberations while reducing the agency's capacity to conduct hearings. Given these problems, judges' working notes and drafts of proposals for decisions and orders should be exempted from public disclosure under the Public Information Act. Furthermore, the public's access to SOAH's proposals for decision and final orders would be improved by posting such documents on the agency's Web site.

Recommendations**Change in Statute****4.1 Create an exception in the Texas Public Information Act for SOAH judges' working notes and drafts of proposals for decisions and orders.**

SOAH judges' working notes and drafts of proposals for decisions and orders for contested case hearings and alternative dispute resolutions should not be subject to disclosure under the Texas Public Information Act. This recommendation would not except other SOAH records from release under the Act.

Management Action**4.2 The agency should post proposals for decision and final orders on its Web site.**

Making proposals for decision and final orders available on SOAH's Web site is the most efficient way to share this information with the public. SOAH should also consider the utility to the public and parties in contested cases in posting other public information such as final orders on its Web site.

Issue 5 | SOAH Does Not Have Needed Flexibility for How it May Receive Testimony at its Hearings.

SOAH's statute does not allow the Office to have witnesses testify at hearings over the telephone. Allowing witnesses to testify over the phone would expand the number of witnesses available to testify at hearings and help to improve hearings efficiency.

Recommendation

Change in Statute

5.1 Allow witnesses to testify over the phone at all SOAH hearings.

SOAH should allow witnesses at all hearings, including Administrative License Revocation hearings, to testify over the telephone provided that the parties to a hearing consent to such testimony. SOAH should implement appropriate measures to verify the identity of witnesses testifying over the telephone.

Fiscal Implication Summary

Issue 2 would result in savings to the State, as summarized in the chart below.

- *Issue 2* – Replacing the use of the current funding contracts would decrease the amount of time that the agency dedicates to accounting for its billing, resulting in a reduction to the agency of one full time equivalent and a savings to the General Revenue Fund of \$50,000 per year.

Fiscal Year	Savings to General Revenue	Change in FTEs from FY 2003
2004	\$50,000	-1
2005	\$50,000	-1
2006	\$50,000	-1
2007	\$50,000	-1
2008	\$50,000	-1

Texas Aerospace Commission

Agency at a Glance

The Legislature created the Texas Space Commission in 1987 to encourage economic development of industries related to the commercialization of space, later renaming it the Texas Aerospace Commission in 1993.

The Commission performs the following functions:

- helps recruit and expand aerospace industries in Texas by promoting working relationships among governmental agencies, academic and other research institutions, and industry;
- administers state grant funds to assist with the establishment of reusable launch facilities, or spaceports; and
- helps promote space-related research.

Key Facts

- **Funding.** The agency operates with an annual appropriation of about \$213,000, composed entirely of General Revenue Funds. The agency receives some revenue from the sale of its speciality license plates.
- **Staffing.** The agency has three employees, including an Executive Director and two staff that are responsible for planning and agency operations.
- **Spaceport Initiatives.** The Commission received an additional \$1.57 million in General Revenue for the 2002-2003 biennium for grants to local spaceport authorities to support initial planning and development costs for commercial spaceports.

Board Members (9)

Norma Webb, Chair (Midland)
 Larry Griffin, Vice Chair (Hunt)
 Richard Azar (El Paso)
 Gale Burkett (Houston)
 J. Jan Collmer (Carrollton)

Arthur Rojas Emerson (San Antonio)
 Bryon Schlke (Austin)
 Holly Stevens (Georgetown)
 Vacant

Agency Head

Bill Looke, Executive Director
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Recommendation

1. Continue the Commission for 12 Years, and Clarify Its Mission as Fostering the Development of Both the Aerospace and Aviation Industries.

Issue 1 | Texas Has A Continuing Need for the Aerospace Commission.

Key Findings

- The statute does not clearly reflect the Commission's mission regarding both space and aviation.
- The Commission lacks the necessary controls to operate efficiently as a state agency.

The Commission's statutory duties have never been updated to include both space and aviation, even though the agency's budget pattern and performance measures include enhancing the awareness of and attracting both space and aviation industries. The Commission has also not clearly defined how to effectively accomplish these broad duties within its limited resources. In addition, the Commission, with its small staff, has difficulty performing basic functions required of all state agencies including having documented policies, procedures, and controls over key agency processes related to fiscal management, human resources, and overall agency operations. The Sunset Commission determined that, with needed changes, the Texas Aerospace Commission could serve a needed function and should be continued.

Recommendations

Change in Statute

1.1 Continue the Texas Aerospace Commission for 12 years, and clarify its mission as fostering the development of both aerospace and aviation industries.

This recommendation would continue the Texas Aerospace Commission for the standard 12-year period until 2015. The Commission would be required to perform the following duties.

- Analyze the State of Texas' economic position within the aerospace and aviation industries.
- Develop short and long-term business strategies for the state designed to promote the retention, development, and expansion of aerospace and aviation industry facilities, including specific recommendations to the Legislature and Governor.
- Liaison with other state and federal entities with related economic, educational, and defense responsibilities to support marketing Texas' aerospace and aviation capabilities.
- Provide technical support and expertise to the state and local spaceport authorities regarding aerospace and aviation business matters.

Management Action

1.2 The Commission should develop and implement necessary management and oversight controls.

The Commission should develop and implement the following controls.

- A Strategic Plan that ensures a clear focus and direction for the agency, includes reasonable goals and strategies that are achievable with the agency's resources, and details the methodology of how the Commission plans to implement the strategies.

- Consistent agency-wide policies, procedures, and controls over day-to-day operations including fiscal management and budgeting, contracting, human resources, and travel.
- Criteria to evaluate and prioritize which projects to pursue, and the amount of time and resources to allocate for each project.
- Financial and operational controls over the Commission's non-profit foundation.

1.3 The Commission should submit regular reports to the Sunset Commission detailing the agency's progress on implementation of these recommendations.

The Commission would submit quarterly reports, beginning in January 2003, on the status of all of the Sunset Commission recommendations, and a report to the Sunset Commission detailing any progress that has been made to address these recommendations in December 2004, prior to the 79th legislative session.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State. The Commission should carry out these duties with its current funding and staffing levels.

Texas Board of Architectural Examiners

Agency at a Glance

The Texas Board of Architectural Examiners (the Board) protects the public by regulating architects, landscape architects, and interior designers. The Board traces its beginning to 1937, when the Legislature recognized the need to regulate architects after a catastrophic school fire claimed hundreds of lives. In 1969, the Legislature began the regulation of landscape architects and, ten years later, gave this responsibility to the Board. In 1991, the Legislature added interior designers to the list of design professionals regulated by the Board.

To accomplish its mission, the Board:

- licenses qualified architectural, landscape architectural, and interior designer applicants;
- ensures compliance with the Architecture, Landscape Architecture, and Interior Design Acts and Board rules by investigating and resolving complaints against persons or businesses; and
- provides information to licensees and the public.

Key Facts

- **Funding.** The Board operates with an annual budget of \$2.3 million, all of which comes from licensing fees.
- **Staffing.** The Board has 22 full-time employees, all based in Austin.
- **Registration and Examinations.** In fiscal year 2002, the Board regulated about 20,000 design professionals – 11,000 architects, 1,300 landscape architects, and 7,500 interior designers. That year, the Board processed 16,214 license renewals, and helped administer 3,220 exam sections.
- **Enforcement.** The Board received 410 complaints in fiscal year 2002. The Board resolved 340 complaints, referred one case to the State Office of Administrative Hearings, and issued 55 orders.
- **Public Information.** The Board annually provides information regarding agency programs to more than 25,000 entities, including licensees, applicants, building officials, schools of architecture, landscape architecture, and interior design, and the general public.
- **Pilot Project.** In 2001, the Legislature included the Board, along with the Texas State Board of Public Accountancy and the Texas Board of Professional Engineers, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Beginning in fiscal year 2002, the Pilot Project removed the Board from the legislative appropriations process, allowing the Board to operate under its own discretion, outside the spending limitations set in the General Appropriations Act.

Board Members (9)

Steven Ellinger, Chair (Abilene)
Gordon Landreth,
Vice Chair (Corpus Christi)
Alan Lauck (Dallas)
Chao-Chiung Lee (Houston)

Janet Parnell (Canadian)
Diane Steinbrueck (Austin)
Anthony Trevino (Laredo)
R. Nolen Willis (Bellaire)
Vacant

Agency Head

Cathy L. Hendricks, Executive Director
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Recommendations

1. Improve the Board's Enforcement Program By Expanding Its Authority.
2. Clarify That the Board Does Not Have Authority to Require Firms to Register.
3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
4. Require Architects to Design Commercial Buildings Larger than 5,000 Square Feet or Two Stories In Height.
5. Continue the Board for 12 Years, and Require It to Form a Joint Practice Committee With the Texas Board of Professional Engineers.

Issue 1 | The Board's Enforcement Process Does Not Adequately Protect the Public.

Key Findings

- The Board lacks the tools necessary to enforce the laws under its jurisdiction.
- The Board's current use of its resources limits the effectiveness of enforcement efforts and results in a backlog of cases.
- The Board has had difficulty determining penalties and sanctions.
- The Board has not taken advantage of opportunities to augment its enforcement program.

The enforcement of the Architecture, Landscape Architecture, and Interior Design Acts is a significant responsibility of the Board. However, a backlog of cases, a focus on minor infractions of law and rule, lack of follow-up activity on disciplinary actions, inconsistent application of administrative penalties and sanctions, and limited informational outreach to licensees and the public reveal a lack of effectiveness of the Board's enforcement activities.

Recommendations

Change in Statute

1.1 Authorize the Board to issue cease-and-desist orders.

This recommendation would provide the Board with an additional tool to stop unlicensed individuals from violating the architecture, landscape architecture, and interior design statutes. A cease-and-desist order would not be effective for 21 days, during which time the individual could request a hearing. If no hearing is requested, the order is effective at the end of 21 days.

1.2 Authorize the Board to levy administrative penalties for each of its statutes up to \$5,000 per violation.

This recommendation would standardize the maximum administrative penalty in each of the agency's statutes – architecture, landscape architecture, and interior design – while allowing the Board to raise the penalty amount to help ensure that fines provide adequate deterrence to violation of the agency's statutes and rules.

1.3 Direct the Board to include fine amounts in its administrative penalty matrix.

This recommendation would require the Board to update its administrative penalty matrix to include recommended fines to help ensure the fair and consistent application of administrative fines.

1.4 Authorize the Board to require restitution as part of Board orders.

This recommendation would authorize the Board to order payment of restitution to consumers as a part of enforcement actions. Refunds would be limited to actual amounts paid by consumers to licensees.

Management Action

1.5 The Board should direct additional resources toward enforcement activities.

This recommendation would help the Board improve its enforcement efforts without incurring extra costs. Directing more resources to enforcement could be accomplished by activities such as prioritizing travel for enforcement purposes and reviewing enforcement staff tasks to determine which tasks would be more effectively performed by other agency staff.

1.6 The Board should establish time lines for enforcement processes and a plan to resolve older cases.

This recommendation would direct the Board to resolve enforcement cases more quickly. Determining time limits for each step in the enforcement process – with the exception of the legal process – will help streamline the process and encourage better prioritization of cases. The Board would be required to devise a plan to resolve all cases older than one year by January 1, 2004.

1.7 The Board should consult with design professionals in technically complex complaint investigations.

This recommendation would help the Board to conduct investigations of technically complex enforcement cases. Any candidate chosen would be screened to ensure professional knowledge, lack of agency disciplinary actions, and a clean background check. Consultants would be immune from lawsuits and liability for services rendered to the Board in good faith.

1.8 The Board should develop a system of compliance checks of Board disciplinary orders.

This recommendation would strengthen the Board's enforcement program by ensuring that individuals comply with Board orders. Staff would adopt a schedule to follow-up on compliance with all orders – from payment of penalties to removing advertisements from the Internet.

1.9 The Board should increase outreach to licensees, the public, and individuals required to follow agency statutes and rules.

Under this recommendation, the Board would engage in more frequent communication with licensees and others who have a need for agency information. Use of an e-mail network would provide an inexpensive and efficient way to communicate important information to many individuals.

1.10 The Board should provide for an enforcement grace period after the establishment of new rules and laws.

This recommendation would have the Board focus on education for licensees, instead of enforcement, when new laws and rules are adopted. A six-month to one-year grace period would be determined after adoption of new rules and policies, during which time the agency would mail affected parties information detailing the changes, prominently display rule changes on its Web site, and make use of an e-mail network to publicize changes.

1.11 The Board should improve coordination with building officials.

This recommendation would help keep building officials better informed of agency rules and laws. Improved coordination could be accomplished by activities such as developing a document that details important agency rules and laws, answers to frequently asked questions, and illustrations of authorized seals, and more frequent rule and enforcement updates through use of an e-mail network.

1.12 The Board should provide information about state and federal accessibility laws on the Board's Web site.

This recommendation would improve licensees' access to information about the Texas Accessibility Standards and TDLR's architectural barrier program. Information could include links to both state and federal accessibility laws, TDLR's Web site, and the laws and rules pertaining to TDLR's architectural barriers program.

Issue 2 | The Board's Registration of Firms Is Not the Best Use of Limited Agency Resources.

Key Findings

- The Board lacks clear statutory authority to register firms.
- Firm registration is not a valuable enforcement tool for the Board.
- Pursuing firm registration wastes the Board's limited enforcement resources.
- No national consensus exists on the value of firm registration for design firms.

As a part of its enforcement program, the Board currently registers about 1,200 architecture, landscape architecture, and interior design firms. While the Board believes it has authority to require these firms to register, it has taken no disciplinary action when firms fail to register. The Board's firm registration program provides little enforcement value, unnecessarily burdens design firms, and diverts the agency's limited resources away from important enforcement issues.

Recommendations

Change in Statute

2.1 Clarify that the Board does not have authority to require firms to register.

This recommendation would remove questions about the Board's authority to register firms by explicitly stating that the Board cannot require firms to register. The resources saved from the elimination of firm registration would allow the Board to continue to improve its enforcement functions. The recommendations would also remove an unnecessary requirement the Board has placed on businesses.

Management Action

2.2 The Board should reallocate firm registration resources to actual enforcement tasks.

This recommendation would ensure that the Board used its enforcement resources on actual enforcement, rather than on firm registration tasks. These resources currently total 10 percent of the Board's enforcement efforts, or about \$16,500 per year.

Issue 3	Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.
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Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.
- Certain administrative provisions of the Board's statute could reduce the Board's efficiency and flexibility to adapt to changing circumstances.

Various licensing, enforcement, and administrative processes in the Texas Board of Architectural Examiners Act do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 70 occupational licensing reviews in 25 years. For example, some licensing requirements are unclear or overly burdensome, such as application notarization. Lack of guidelines in some areas, such as the application of penalties, increases the opportunity for inconsistent decisions. Administrative processes such as statutory fee caps reduce the Board's administrative efficiency and flexibility. A comparison of the Board's statute, rules, and practice with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other licensing agencies.

Recommendations

Licensing

Change in Statute

3.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the Board's authority to adopt rules that follow the general guidelines in Chapter 53 of the Texas Occupations Code for dealing with criminal convictions by specifically referencing the Chapter in the Board's enabling statutes.

3.2 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

The Board's statutes would reference the Americans with Disabilities Act. The Board would need to adopt new rules regarding accessibility accommodations, but could model the rules after current policies that meet the standard of the Americans with Disabilities Act.

3.3 Require the Board to adopt, by rule, comprehensive refund policies for its examinations.

This recommendation would ensure that the agency treats all applicants fairly and that the agency is able to cover the costs associated with its examinations.

3.4 Eliminate the requirement that the Board must collect all examination fees.

This recommendation would streamline the exam process by eliminating the Board's complex payment system and allowing applicants to pay the national testing providers directly. Direct payment would create better service for applicants and would give the agency greater flexibility and efficiency.

Management Action

3.5 The Board should eliminate the application notarization requirement on individuals who apply for licensure.

Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to license applications.

3.6 The Board should consider switching to a continuous license renewal system.

The Board would eliminate the six bottleneck periods of license renewals and create a system in which licenses expired on a licensee's birthday. The current statutory provisions requiring the Board to prorate renewal fees on a monthly basis during a one-year transition to new expiration dates would be preserved.

Enforcement

Change in Statute

3.7 Require the Board to adopt clear standards of conduct for all of the professions that it regulates.

This recommendation would ensure adequate consumer protection and fairness to licensees by extending the current requirement in the interior design statute to both the architecture and landscape architecture statutes.

3.8 Require the Board to adopt comprehensive rules outlining all phases of the complaint process.

Consumers and licensees would have an enhanced understanding of the complaint process under this recommendation. Comprehensive rules should include all phases of the process, including complaint intake, preliminary evaluation, investigation, adjudication, sanctions, and public disclosure.

3.9 Standardize statutory grounds for disciplinary action in the Board's three statutes.

This recommendation would make the Board's enforcement authority clear and consistent by ensuring that all three statutes address the same grounds for disciplinary action. The change would increase agency efficiency and flexibility, strengthen consumer protection, and make the enforcement process less confusing for licensees, complainants, and agency staff.

3.10 Conform the Board statutes concerning hearings and appeals to the Administrative Procedure Act and the enabling statute of the State Office of Administrative Hearings.

This recommendation would rewrite the sections of Board statutes dealing with hearing and appeals processes. The new language should clearly state that the procedures for contested cases are to be conducted in accordance with the Administrative Procedure Act and the enabling statute and rules of the State Office of Administrative Hearings.

3.11 Require the Board to make public all disciplinary orders and sanctions.

The Board would be required under this recommendation to pass rules ensuring that all disciplinary orders and sanctions are treated in the same manner. Licensees would no longer be able to negotiate unpublished settlements. This change would ensure procedural fairness to licensees and greater protection to consumers.

Management Action

3.12 The Board should make available all disciplinary orders and sanctions on the Board Web site in a format that consumers may access easily.

Under this recommendation consumers would have easy access to disciplinary information. Increasing accessibility could include creating a searchable database of disciplinary information or making an up-to-date listing of all enforcement orders and sanctions arranged alphabetically by licensee name.

3.13 The Board should clearly delineate standards of probation.

This recommendation would direct the Board to include in its administrative penalty matrix when probation is an appropriate punishment, and develop guidelines for the duties and obligations of probationers.

3.14 The Board should eliminate the complaint notarization requirement on individuals who file complaints.

This recommendation would eliminate the Board's onerous requirement that complainants must notarize complaints. Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to filed complaints.

3.15 The Board should develop a system for complaint trend analysis.

The Board would need to develop a system for analyzing the sources and types of complaints. Such a system should lead to stronger enforcement and greater administrative efficiency.

3.16 The Board should develop a system for tracking nonjurisdictional complaints.

This recommendation would direct the Board to keep track of complaints it receives that fall outside of its jurisdiction. This will give the agency and the Legislature a fuller picture of the public's problems and concerns in this regulatory area.

Administration

Change in Statute

3.17 Eliminate the statutory language that sets and caps fees.

The Board would have the flexibility to set fees at the level necessary to recover program costs as conditions change. Statutory language would be added to clarify that the Board's fee should be set to cover costs and not to earn additional revenue for the agency.

3.18 Require the Board to adopt, by rule, uniform standards pertaining to consumer notification of the Board's jurisdiction.

This recommendation would allow the Board to require all three professions to notify their consumers of the Board's regulation of the industry through standard notification procedures.

3.19 Standardize the three Board statutes with respect to Board powers, duties, and processes.

This recommendation would eliminate inconsistencies in the Board's statutes with respect to Board powers, duties, and procedures. Nonstandard statutory provisions should be allowed to remain, provided that a reasonable basis exists for differences among the statutes.

Issue 4 | The State Has Minimal Oversight of the Design of Buildings Smaller Than 20,000 Square Feet.

Texas is one of the few states that does not require builders to use an architect to design buildings for public use smaller than 20,000 square feet. The Board has received numerous comments about buildings designed by nonarchitects that have required costly changes because they did not meet code requirements.

Recommendation

Change in Statute

4.1 Require architects to design commercial buildings larger than 5,000 square feet or two stories in height.

This recommendation would prohibit nonarchitects from preparing the architectural plans and specifications for new construction or modification of privately owned commercial buildings exceeding 5,000 square feet in size or two stories in height, and used as a public accommodation as defined by the Americans with Disabilities Act, or used for education, assembly, or office occupancy. It would specifically exclude structures built for warehouse purposes whose primary use does not include public access. This recommendation would increase protection for consumers, and ensure that Texas is consistent with national standards.

Issue 5 | Texas Has a Continuing Need for the Texas Board of Architectural Examiners, but Could Benefit From Greater Coordination With the Texas Board of Professional Engineers.

Key Findings

- Texas has a continuing interest in licensing and regulating architects, landscape architects, and interior designers.

- No significant benefit would result from changing the agency structure or having any other state or federal agency perform the Board's functions.
- Although no significant benefit would result from consolidation, coordination with the Texas Board of Professional Engineers could achieve greater operational efficiency.
- While organizational structures vary, most other states regulate architects and landscape architects, and many regulate interior designers.

The Texas Board of Architectural Examiners regulates architects, landscape architects and interior designers through its licensing and enforcement programs. Its regulatory functions are needed to protect the public by ensuring that only qualified individuals become licensed design professionals, and the Board generally performs its functions well. An assessment of regulatory programs in Texas and other states concluded that the Board should be continued as an independent agency for 12 years.

Recommendations

Change in Statute

5.1 Continue the Texas Board of Architectural Examiners for 12 years.

This recommendation would continue the Texas Board of Architectural Examiners as an independent agency responsible for overseeing architects, landscape architects, and interior designers for the standard 12-year period.

5.2 Require the Board to form a joint practice committee with the Texas Board of Professional Engineers.

The committee's guiding principle should be to improve the agencies' protection of the public, and this principle should take precedence over the interests of the respective Boards. The committee should work to resolve issues stemming from the overlap among the professions overseen by the agencies.

Fiscal Implication Summary

Four recommendations regarding the Texas Board of Architectural Examiners would have a fiscal impact to the State. They are discussed below, followed by a five-year summary chart.

- **Issue 1** – Requiring the Board to conduct compliance checks of Board disciplinary orders would cost the agency an estimated \$5,000 annually.
- **Issue 2** – Eliminating the Board’s firm registration program would save the agency an estimated \$16,500 annually.
- **Issue 4** – This recommendation would not result in a significant fiscal impact to the State. While the Board may see a small increase in its enforcement workload, any additional costs associated with reducing the square footage threshold of projects requiring an architect would be offset by license fees paid.
- **Issue 5** – The joint practice committee with the Texas Board of Professional Engineers would cost the agency an estimated \$600 annually in travel expenses.

Fiscal Year	Savings to the General Revenue Fund	Cost to the General Revenue Fund
2004	\$16,500	\$5,600
2005	\$16,500	\$5,600
2006	\$16,500	\$5,600
2007	\$16,500	\$5,600
2008	\$16,500	\$5,600

State Bar of Texas

Agency at a Glance

Dating back to 1882, the State Bar has evolved from a voluntary association of lawyers to a quasi-governmental, administrative agency of the judicial branch. Operating as both a regulatory agency and a professional association, the State Bar currently exercises jurisdiction over more than 70,000 Texas attorneys who are required to be members of the Bar.

Focusing its efforts on enhancing member professionalism, public protection and service, the State Bar's major functions include:

- assisting the courts in improving the administration of justice;
- advancing the quality of legal services to the public through various professional development programs including continuing legal education programs;
- protecting the public by maintaining professional rules of conduct and administering the Bar's attorney disciplinary and disability system;
- serving the public by providing law-related educational programs and lawyer referral services and promoting equal access to justice for all citizens; and
- assisting local bar associations.

Key Facts

- **Funding.** The State Bar operates with an annual budget of about \$27 million. The State Bar receives no state appropriations, but is a public corporation funded primarily by membership dues and professional development program fees. The State Bar's budget is subject to the approval of the State Bar's Board of Directors and the Supreme Court.
- **Staffing.** The State Bar employs a staff of almost 300, two-thirds of which work in Austin and the rest in regional and field offices located throughout the state. State Bar employees are not employees of the State of Texas.
- **Complaints.** In the 2001-2002 fiscal year, the agency received 9,027 grievances. Sixty-two percent were dismissed, while 35 percent were pursued as complaints. Investigation of these complaints led to 482 sanctions against attorneys; 29 percent of which were private reprimands, and 33 percent of which were suspensions.

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Recommendations

1. Continue the State Bar, but Require Increased Accountability Through Strategic Planning and Performance-Based Budgeting.
2. Streamline the State Bar's Unnecessarily Complex Committee Structure to Make it More Responsive to the Bar's Needs.
3. Establish a Framework for the State Bar's Grievance System in Statute and Simplify the Process to Promote Consistency and Reduce Resolution Time.
4. Require the State Bar to Maximize Services Offered Through its Client-Attorney Assistance Program Through Increased Coordination with the Grievance System and Other Bar Programs.
5. Provide for More Efficient Rulemaking by Repealing the 51 Percent Participation Requirement in Rulemaking and Dues Referenda.
6. The State Bar Should More Rigorously Pursue Disciplinary Action Against Lawyers Engaging in Frivolous Lawsuits.

Issue 1 | **While the State Bar Should Be Continued, Its Uniqueness Makes It Susceptible to Problems With Oversight and Accountability.**

Key Findings

- The State Bar is a quasi-governmental agency subject to dual oversight by the Supreme Court and the Legislature.
- Texas has a continuing need to maintain the State Bar.
- Despite dual oversight by the Supreme Court and the Legislature, the State Bar lacks sufficient accountability to the public.
- The State Bar has difficulty focusing on core functions.

The State Bar functions as both a professional association and a regulatory agency, with required membership of all lawyers in Texas. As with many other unified bars, the Supreme Court and the Legislature share oversight. This unique arrangement has allowed the Bar to operate without many of the standard government accountability mechanisms that are required of other state agencies. These mechanisms contribute to the Bar's inability to focus on core functions and resolve internal inefficiencies.

Standard state agency oversight controls, such as strategic planning and performance budgeting, serve as tools to increase program effectiveness and ensure public accountability. These recommendations seek to provide the Bar and Supreme Court with these tools to improve oversight and management. Specifically, strategic planning would enable the Bar to concentrate on its core functions and maximize its resources. Rather than administering various isolated programs and functions, the Bar would be able to coordinate programs to achieve broader goals. Additionally, a long range planning instrument would help achieve some continuity within the Bar's inordinately large, and changing leadership structure. Performance reporting and implementing a performance-based budgeting process would further assist the Bar in being responsive to its members and the public.

Recommendations**Change in Statute****1.1 Continue the State Bar for 12 years.**

This recommendation continues the State Bar for the standard 12-year period until 2015.

1.2 Require the State Bar to develop a strategic plan that includes goals and a performance measurement system.

Similar to executive branch state agencies, the State Bar would develop a formal strategic plan each even-numbered year covering a period of five years, beginning with the next odd-numbered year.

The plan should include goals and a system for measuring performance, concentrating on results and outcomes of Bar operations and services. By developing a strategic plan with goals, the Bar would be more focused on its core mission, and better able to maximize its resources and the effectiveness of its programs. For increased accountability, the Bar should annually report its performance measures to the Supreme Court and in the *Texas Bar Journal*.

1.3 Require the State Bar to adopt a performance-based form of budgeting, subject to Supreme Court approval.

This recommendation would require the State Bar to do more comprehensive, long-range planning in conjunction with its budgeting effort. The Bar and the Supreme Court should develop measurable goals and consider performance in the development and approval of the Bar's annual budget. After implementation of the budget, the Bar should report on its performance to facilitate the revision of performance projections when needed, and inform the Supreme Court.

Issue 2 | The State Bar's Committee Structure is Unnecessarily Complicated to Serve the Bar's Needs.

Key Findings

- The State Bar's committee structure is cumbersome and may impair the Bar's ability to get things done.
- Recent actions by the State Bar demonstrate its understanding of the need to streamline its oversight structure.

The State Bar of Texas is unique in its reliance on a multiplicity of committees, comprised of members of the Board of Directors and volunteer attorneys, to help carry out Bar functions. In all, the State Bar has 59 committees that develop and implement Bar policies. One of these, the Executive Committee, assists the Board in carrying out its responsibilities.

The State Bar's committee structure is unwieldy, plagued by overlapping responsibilities and rising costs. The Bar would benefit from clarifying the responsibilities of the Executive Committee to assess the need for Bar committees, directing a comprehensive review of standing and special committees on a more frequent basis, developing more meaningful reporting requirements to assess the accomplishments of standing and special committees, and structuring the Board committees around its core functions.

Recommendations

Change in Statute

2.1 Place the Executive Committee in statute and clarify its authority regarding the State Bar's committee structure.

The Executive Committee would approve the creation of any new standing and special committees, upon recommendations by the President-Elect. Before approval, the Executive Committee would require a fiscal impact study, a poll of each chair of an existing committee, and a review to determine if the matter can be undertaken by an existing committee. The Executive Committee would also oversee or direct a comprehensive review of standing or special committees at least biennially to examine the continued necessity of each existing committee and determine any overlap of activities among the committees. The State Bar Board may assign other responsibilities to the Executive Committee, as it determines appropriate.

Management Action

2.2 The Bar should develop reporting requirements for its standing and special committees.

The Bar should develop reporting requirements for use by the standing and special committees to reflect the productivity of the committees. Committees would have to develop goals and objectives reflecting their responsibilities and outline activities to accomplish their objectives. At the end of the Bar's fiscal year, committees would use this information to assess how well they met their objectives and stayed within budget. The committees would submit their findings to the President, incoming President, and the Executive Director.

2.3 The State Bar's Board of Directors should decrease the number of Board committees.

The Board should decrease the number of Board committees to correspond with the functions, activities, and entities of the Bar. Decreasing the number of committees would help better focus the efforts of the Board of Directors in overseeing the activities of the State Bar.

Issue 3 | The Current Grievance System is Unnecessarily Complex, Lacks Consistency, and Lengthens Resolution Time.

Key Findings

- Complaint classification and lack of administrative dismissal power result in unnecessary hearings.
- The redundancy and complexity of the current system increase complaint resolution time.

- The application of attorney's fees is arbitrary and inconsistent.
- The State Bar cannot ensure consideration or implementation of needed changes to the grievance system.

Texas attorneys must adhere to the Texas Disciplinary Rules of Professional Conduct. Failure to comply with these rules may result in disciplinary action prescribed in the Texas Rules of Disciplinary Procedure. The grievance process begins when a written statement intending to allege professional misconduct is submitted to the Chief Disciplinary Counsel (CDC). If determined to allege misconduct, the matter may proceed through multiple stages of review. Ultimately, an attorney may face disciplinary sanctions that range from a private reprimand to disbarment. These sanctions often include attorney's fees, which serve to recover CDC costs incurred in disciplinary proceedings.

The State Bar's grievance system is designed to protect the public from attorney misconduct, but the process may create unrealistic expectations on the part of complainants just as it significantly increases time to resolve complaints. Improving the accountability of the system by providing a framework for the grievance system in statute would improve effectiveness in resolving grievance issues. Streamlining the grievance process would reduce redundancies that serve to delay the resolution of complaints, and providing a greater level of public assistance would help solve the problems that give rise to grievances.

Recommendations

Change in Statute

3.1 Establish a framework for the State Bar's grievance system in statute.

This recommendation would revise the State Bar's grievance system and establish the major elements of this system in statute. Specific implementation provisions, including time limits, for the grievance process would remain in rules, promulgated by the Supreme Court.

- **Provide a process for classifying grievances and referring dismissals for alternative resolution.**

At intake, an investigator of the CDC would classify the grievance as either a complaint or an inquiry. Client-filed grievances classified as an inquiry would be dismissed and referred to the Client-Attorney Assistance Program (CAAP) to attempt resolution, on a voluntary basis, outside the grievance system. The complainant would be able to appeal the classification of the grievance as an inquiry to the Board of Disciplinary Appeals, and may amend and resubmit the grievance to the CDC. The respondent would not be able to appeal classification decisions since, unlike the current process, more thorough investigation would occur before a hearing takes place.

- **Simplify the hearings process by reducing the number of hearings.**

Grievances classified as a complaint would be thoroughly investigated by the local CDC to determine if the complaint should be dismissed or if just cause exists to believe that misconduct occurred. CDC recommendations for dismissal and findings of just cause would go to a grievance committee panel in either a dismissal docket or a hearing docket. In the dismissal docket, the grievance committee panel would consider denying the dismissal and setting the case for a hearing, or approving the dismissal and possibly referring the matter to CAAP.

In the hearing docket, the panel would review cases found to have just cause to believe misconduct occurred. At this stage, the Commission for Lawyer Discipline would act on behalf of the complainant. The panel may dismiss the matter and refer it to CAAP, find a disability and refer it to a district disability committee, or issue sanctions. The panel hearing would be closed to the public to allow the grievance committee panel to address confidential matters and issue private reprimands. However, if any sanction other than a private reprimand is issued, all hearing documentation shall be made public upon request.

- **Streamline the hearings process by eliminating the option of district court.**

Appeals of panel decisions would only be made to the Board of Disciplinary Appeals (BODA), eliminating the option of district court. Both the respondent and the Commission for Lawyer Discipline, acting on behalf of the complainant, could appeal the case to BODA and then to the Supreme Court.

Management Action

3.2 The State Bar should devise specific guidelines for awarding attorney's fees.

The State Bar, with approval of the Supreme Court, should create and implement guidelines for awarding attorney's fees in grievance cases, addressing amount, applicability, validity and documentation. The State Bar should review these fees periodically to ensure adherence and consistency.

3.3 The State Bar should establish appointment qualifications for grievance committee members.

The State Bar should establish appointment qualifications for grievance committee members and provide a review process to ensure that qualifications are met. This review process should include a criminal background check.

Issue 4 | The State Bar Does Not Maximize Services Offered Through Its Client-Attorney Assistance Program.

Key Findings

- Poor coordination with State Bar programs limits CAAP's ability to address non-disciplinary issues.
- The State Bar does not adequately promote CAAP to attorneys and clients, and does not have a strategy to guide the program.

CAAP operates as a voluntary mediation and dispute resolution program for non-disciplinary offenses. With narrowly defined objectives and little coordination with other State Bar programs, CAAP has had limited success. For example, CAAP is poorly positioned to reduce the number of grievances that enter the disciplinary system and to help resolve problems that do not rise to the level of a

grievance. In addition, attorneys and clients are not aware of the remedies available through CAAP and other State Bar programs.

These recommendations would strengthen CAAP by establishing clear goals and enabling increased coordination between programs, reducing the number and enhancing the validity of filed grievances. In addition, linking the program to the disciplinary system would expand the role of CAAP and allow it to handle problems that cannot be addressed by the disciplinary system.

Recommendations

Change in Statute

4.1 Directly link CAAP with the disciplinary system and require coordination with other State Bar programs.

All dismissals of client-filed grievances would be referred to CAAP as a voluntary alternative for further resolution. Addressing non-disciplinary issues, CAAP would remain separate from the CDC, yet would maintain the confidentiality of the disciplinary system to allow full cooperation of the client and the attorney in resolving non-grievable issues. By referring all client-filed classification and case dismissals to CAAP, the grievance system can concentrate on actionable complaints and the others can be addressed by CAAP. Clients would benefit by receiving an immediate response, speedy resolution, and appropriate information and referrals. Attorneys would also benefit from services resulting in prevention of future grievances and improved client satisfaction and service.

Management Action

4.2 The State Bar should institute clearly defined goals and outcome measures for CAAP to track its performance and effect on the grievance system.

The State Bar should define clear goals and outcome measures for CAAP to ensure that the program's efforts are maximized through increased coordination with other Bar programs. CAAP's main objective should be to address the number of inactionable complaints. CAAP should attempt to facilitate the resolution of minor problems informally or direct the caller to the proper channels, including State Bar programs specifically designed to address these issues. If instituted properly, CAAP should have a significant effect on the grievance system.

4.3 The State Bar should increase attorney and public awareness of CAAP by expanding program outreach and accessibility.

This recommendation directs the State Bar to make use of various media, including the Internet, Bar publications, and telephone to promote awareness by members and the public of CAAP as an alternative to the grievance system.

Issue 5 | Requiring 51 Percent of State Bar Members to Vote in a Referendum Prevents Needed Changes to Rules and Ignores the Clear Majority in an Election.

Key Findings

- Requiring a majority of members to vote in State Bar referenda impedes the Supreme Court's ability to make needed changes in rules.
- Because the majority decision in a referendum is irrelevant without 51 percent participation, opponents may gain an unfair advantage by not voting, thwarting the will of a greater number of Bar members.
- Referenda require the expense of significant State Bar resources.

The Supreme Court and the State Bar Act require members of the Bar to vote on proposed changes to rules governing the operations of the State Bar, and the conduct and discipline of its members. However, this ability to self-regulate is hindered by a statutory provision that requires at least 51 percent of the Bar's registered members to vote in an election. The Bar has difficulty achieving this turnout and referenda sometimes fail – even when a clear majority of the votes support proposed changes. The 51 percent requirement allows opponents of proposed measures to defeat a referendum by encouraging a few lawyers not to vote rather than attempting to shift many lawyers' votes.

Because the 51 percent requirement affects the Bar's ability to implement needed changes, such as in its disciplinary rules and Bar operations, it directly affects lawyers and the public. Eliminating the 51 percent requirement and allowing a simple majority of those voting to determine the outcome of the election would allow the Supreme Court and the State Bar to more quickly implement needed changes in rules. Increased efficiencies may also be gained through additional recommendations that would authorize use of electronic balloting, and require the State Bar to track referendum expenses.

Recommendations

Change in Statute

5.1 Repeal the 51 percent participation requirement in rulemaking and dues referenda.

This recommendation would allow Bar members to continue voting in referenda concerning proposed rule changes and dues increases, but would eliminate the requirement for 51 percent of registered Bar members to vote, for a referendum to be considered valid. Instead, a simple majority would determine the outcome of a referendum. Under Supreme Court direction, the State Bar should continue to promote and track member participation in elections, and should report participation levels to the Supreme Court and in the *Texas Bar Journal*.

5.2 Authorize the State Bar to administer referenda electronically.

Advances in technology and use of the Internet provide increasing opportunities for the State Bar to conduct more efficient and cost effective referenda. This recommendation would authorize the State Bar, with Supreme Court approval, to distribute and receive referendum ballots and related materials electronically, if the Bar can provide assurance that members have secure access to information and voting.

Management Action

5.3 The State Bar should track all costs associated with administering referenda.

The State Bar should develop a standard approach, subject to Supreme Court approval, for determining actual costs, including staff time, travel, publications, mailing, and other related costs incurred in the administration of referenda. The State Bar should report these costs to the Supreme Court and in the *Texas Bar Journal*, to notify all members. With a standard approach for reflecting direct and indirect expenses, the State Bar would be able to more accurately budget for referenda and administer them more efficiently.

Issue 6 | Frivolous Lawsuits Require More of the State Bar's Attention.

Despite legislative tort reform in the early and mid-1990s, frivolous lawsuits continue to be a focus of controversy. For example, frivolous lawsuits are associated with rising employer health care costs and doctors' medical malpractice insurance rates, and ultimately limited public access to affordable health care.

The State Bar rules prohibit a lawyer from bringing or defending a proceeding that the lawyer believes is frivolous. The courts are required by statute to report attorneys engaged in frivolous lawsuits to an appropriate State Bar grievance committee. Despite these avenues for holding lawyers engaged in frivolous lawsuits accountable, the State Bar can more aggressively pursue disciplinary action to discourage frivolous lawsuits.

Recommendation

Management Action

6.1 The State Bar should more rigorously pursue disciplinary action against lawyers engaging in filing frivolous lawsuits.

Fiscal Implication Summary

Because the State Bar does not receive General Revenue appropriations, no recommendations would have a fiscal impact to the State. Some recommendations offered in Issues 1, 2, and 5 would result in savings to the State Bar, but these could not be estimated. Specific fiscal impact to the Bar in the remaining issues are summarized below.

- *Issue 3* – Recommendations would generate savings from the elimination of unnecessary disciplinary hearings totaling \$600,800 annually. Reduced revenue may result from the standardization of attorney’s fees, but this could not be estimated.
- *Issue 4* – The requirement for all client-driven complaints dismissed in the grievance system to be referred to the Client-Attorney Assistance program would result in an increase in program costs of \$365,650 annually.

Correctional or Rehabilitation Facility Subchapter

Subchapter at a Glance

In 1997, the Legislature enacted the Correctional or Rehabilitation Facility Subchapter and gave local officials (county and city governing bodies) authority to deny consent for the location of certain correctional or rehabilitation facilities proposed to be built or operated within 1,000 feet of a residential area, school, public park, or place of worship. The Subchapter applies to correctional facilities, such as state jails, halfway houses, probation and parole offices, and residential facilities operated, or contracted for, by the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission (TYC), or other political subdivisions of the state. These provisions have only been used on a few occasions due to the slowdown in the expansion of Texas' correctional system. This Subchapter provides for the Sunset Commission to review these provisions before their expiration on September 1, 2003.

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Recommendation

1. Address Problems Associated With the Notice and Public Meeting Requirements Under the Correctional or Rehabilitation Facility Subchapter, and Re-Evaluate it as Part of the Texas Department of Criminal Justice Sunset Review in 2009.

Issue 1 | **While the Correctional or Rehabilitation Facility Subchapter Should be Continued, Its Notice Requirements Need to Change.**

Key Findings

- Limited use of the Subchapter made evaluating its need and effectiveness difficult.
- The Subchapter does not provide an effective mechanism to inform county and city governing bodies that the State is proposing to construct or operate a correctional or rehabilitation facility in their area.
- In some instances, the Subchapter requirement for a separate public meeting for the review process may duplicate other statutory requirements for similar public meetings.

The Subchapter provides the opportunity for local officials to participate in decisions to locate certain correctional or rehabilitation facilities in their communities. In practice, however, this provision has rarely been used due to the recent slow-down in the expansion of the Texas correctional system. Despite this lack of experience, problems have been found with the public notice, timing, and hearing requirements of the Subchapter. Continuing the Subchapter would ensure local officials are provided notice pro-actively by the State in order to better participate in decisions affecting local communities, and would provide a better basis for judging the effect of the Subchapter on the State's ability to locate these facilities, should construction increase in the future.

Recommendations**Change in Statute****1.1 Continue the Correctional or Rehabilitation Facility Subchapter and re-evaluate it as part of the Sunset review of the Texas Department of Criminal Justice in 2009.**

By continuing the Subchapter and removing its Sunset date, the Subchapter could be incorporated as part of the next Sunset review of TDCJ, scheduled for 2009. Reviewing the Subchapter in six years would provide another look at the impact of the local veto authority to determine if any further problems arise, particularly if significant expansion or relocation of correctional or rehabilitation facilities occurs.

1.2 Require the State, political subdivisions of the state, or their contractors, to provide county and city governing bodies notice of the intent to construct or operate a correctional or rehabilitation facility regulated by the Subchapter.

The State and its political subdivisions should mail notice to local governing bodies in the area when the State is proposing to locate a correctional or rehabilitation facility. The 60-day period for local review would begin automatically on receipt of this notice. By requiring notice to local governing bodies, these officials would not risk losing the opportunity to evaluate if a facility is in the community's best interest.

1.3 Allow a public meeting held by the State under the Government Code to satisfy the meeting required under the Subchapter.

This recommendation would allow the requirement for TDCJ to hold a public meeting under Government Code to satisfy the public meeting provisions under the Subchapter. As a result, TDCJ could better coordinate public meetings with county and city governing bodies and reduce duplication of those meetings.

Fiscal Implication Summary _____

These recommendations would have no fiscal impact to the State.

Court Reporters Certification Board

Agency At a Glance

Since 1914, the courts of Texas have identified the obligation to “preserve the record” in court proceedings, and have considered court reporters to be officers of the court. In 1977, the Legislature created an independent agency to regulate the court reporter profession.

The Board’s major functions include:

- administering the quarterly court reporter examination and certifying court reporters;
- registering court reporting firms; and
- processing complaints and taking disciplinary action against certified court reporters and court reporting firms.

Key Facts

- **Funding.** In fiscal year 2002, the Board was appropriated \$156,525. Agency appropriations were offset by \$303,873 in fees paid into the General Revenue Fund from licensees.
- **Staffing.** The Board had three full-time equivalent (FTE) positions in fiscal year 2002, all located in Austin.
- **Examination and Certification.** In fiscal year 2002, the Board had 2,322 active court reporter certifications and 283 court reporter firm registrations. That same year, 299 applicants took the oral exam and 153 took the written court reporter exam.
- **Enforcement.** Of the 17 complaints filed in fiscal year 2002, the Board determined one to be nonjurisdictional; dismissed 12 during preliminary review; and set three for formal hearing. One of the complaints resulted in disciplinary action.
- **Policy Body.** The Supreme Court has rulemaking authority for court reporting and appoints members to the Board. Board members perform some agency functions, but are unpaid.

Board Members (13)

The Honorable Frank Montalvo,
Chair (San Antonio)

Albert Alvarez, Vice Chair (Austin)

Michael Cohen (San Antonio)

Barbara Chumley (Houston)

Sara Dolph (Austin)

Michelle Herrera (San Antonio)

Judy Miller (Ft. Worth)

Lou O'Hanlon (Austin)

Molly L. Pela (San Antonio)

Anna Renken (San Antonio)

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Monica Seeley (Dallas)

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Agency Head

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Recommendations

1. Continue the Court Reporters Certification Board for 12 Years.
2. Conform Key Elements of the Board's Programs to Commonly Applied Occupational Licensing Practices.

Issue 1 | Texas Has a Continuing Need for the Court Reporters Certification Board.

Key Findings

- Texas has a continuing need for regulating the court reporting industry to ensure high standards for court transcripts and protect the public.
- No significant benefit would result from transferring the Board's functions to another agency.
- While organizational structures vary, many states use a state agency to regulate the court reporting industry.

The regulation of the court reporting industry is needed to ensure that only qualified individuals and firms provide court transcripts in Texas, thereby ensuring the quality of the record in court proceedings. As a judicial branch agency, the Board regulates court reporting under the oversight of the Supreme Court through a cooperative arrangement with the Office of Court Administration, which provides some administrative support. The Board generally does a good job of regulating court reporting, and transferring its functions to another state agency would not result in significant savings.

Recommendation**Change in Statute****1.1 Continue the Court Reporters Certification Board for 12 years.**

This recommendation would continue the Court Reporters Certification Board as an independent agency responsible for certifying court reporters and registering court reporting firms.

Issue 2 | Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could negatively affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the consumer.
- A nonstandard administrative practice could reduce the Board's protection of the public and licensees.

Various licensing and enforcement processes set up in the agency's statute do not match model licensing standards developed from experience gained from more than 70 Sunset reviews of occupational licensing agencies in 25 years. Comparing the Board's programs and statutes against these licensing standards identified unwarranted variations and needed changes to bring the agency in line with the model standards.

Some of the agency's enforcement activities, such as Board members participating in all elements of the complaint process from preliminary review to sanctioning a licensee, introduce too much possibility for bias. Unclear guidelines such as lack of definition of ethical professional practices or the inability to levy fines, reduce the Board's enforcement effectiveness and flexibility.

Recommendations

Licensing

Change in Statute

2.1 Require the Board to define which convictions disqualify an applicant from certification.

This recommendation would require the Board to create a process, modeled after the guidelines in Occupations Code, Chapter 53, for dealing with criminal convictions, in place of the current statutory provision on moral turpitude. The recommendation would also require the Board to propose rules to the Supreme Court defining the misdemeanors most reasonably related to the court reporter profession that would disqualify an individual from being certified as a court reporter

2.2 Require the Board to adopt a Court Reporter's Code of Ethics.

This recommendation would enable the Board to discipline court reporters for practices that do not violate statutes or current rules, but compromise the ethical practice of court reporting.

Enforcement

Change in Statute

2.3 Remove the requirement that complainants file notarized complaint forms.

This recommendation would eliminate onerous requirements on individuals wanting to file complaints. The form and content of the complaint forms would be left to the discretion of the Board.

2.4 Authorize the Board to adopt a policy allowing staff to dismiss baseless cases without Board approval.

The recommendation would provide a means for Board staff to dismiss cases that do not violate the statute. In addition, the recommendation would provide for the right of the person who filed the complaint to request reconsideration by the Board.

2.5 Authorize the Board to levy administrative penalties, and adopt an administrative penalty matrix in agency procedures or rules.

This recommendation would give the Board authority to fine licensees for violations of the statute. The Board would have the flexibility of an additional enforcement means and be able to apply penalty amounts that reflect the severity of the violation. All administrative penalties collected would be deposited into General Revenue.

Administrative

Management Action

2.6 The Board should make consumer information available to the public on its Web site or through email.

This recommendation would ensure that complaint forms and information on the court reporting profession and on the compliance history of individual licensees are more readily available to the public.

2.7 The Board should post information on its Web site regarding conditions that may negatively affect certification.

This recommendation would ensure that the agency to disclose criminal history circumstances that could affect eligibility for certification in a manner readily available to court reporter students. The Board should also include the Code of Ethics on the Web site.

Fiscal Implication Summary _____

These recommendations would not have a fiscal impact to the State.

State Board of Dental Examiners

Agency at a Glance

To ensure the dental health of Texans, the State Board of Dental Examiners (the Board) regulates the state's dental industry. To meet its mission, the Board:

- licenses dentists and dental hygienists and registers qualified dental laboratories in Texas;
- investigates and resolves complaints received about dental practitioners;
- enforces the Dental Practice Act and takes disciplinary action when necessary;
- monitors ongoing compliance of disciplined licensees and registrants; and
- provides peer assistance for impaired licensees.

Key Facts

- **Funding.** The Board operated on a \$1.87 million budget and collected about \$2.2 million in revenue in fiscal year 2002. All costs are recovered by collecting fees from the industry.
- **Staffing.** The Board had a staff of 29 in fiscal year 2002. Employees work in the agency's Austin headquarters, with the exception of one field investigator each in Dallas, Houston, and San Antonio.
- **Licensing and Registration.** In fiscal year 2002, the Board had 11,479 active dental licenses and 8,334 active hygienist licenses, and 977 registered dental laboratories. The Board also processed 1,311 nitrous oxide monitoring exams, 978 jurisprudence exams, and 2,743 radiology exams.
- **Enforcement.** The Board received 881 complaints in fiscal year 2002, 793 of which were jurisdictional. The Board completed 735 investigations, closed 750 cases, sent 227 cases to settlement conference, referred 32 cases to the State Office of Administrative Hearings, and issued 98 Board orders.
- **Peer Assistance Program.** The Board contracts with a nonprofit corporation to provide assistance for chemically dependent and mentally impaired licensees. Sixty-four people participated in the program in fiscal year 2002.

Board Members (18)

Michael D. Plunk, D.D.S., M.S.D.

President (Dallas)

Nathaniel Tippit, D.D.S., Secretary (Houston)

Tammy L. Allen, R.D.H. (Fort Worth)

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Amy Landess Juba (Amarillo)

James Kennedy, D.D.S. (Sugarland)

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Marti Morgan (Fort Worth)

Kent T. Starr, D.D.S. (Waco)

Phyllis Stine (Midland)

Paul E. Stubbs, D.D.S. (Georgetown)

Juan D. Villarreal, D.D.S (Harlingen)

Marcia G. Waugh (El Paso)

Gail Wilks, R.D.H. (Longview)

Agency Head

Bobby D. Schmidt, Executive Director

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Recommendations

1. Continue the Board for 12 Years, and Eliminate the Separate Sunset Date for the Dental Hygiene Advisory Committee.
2. Reduce the Size of the Board From 18 to 15 Members, Consisting of Eight Dentists, Two Dental Hygienists, and Five Public Members.
3. Revamp the Board's Enforcement Process to Enable It to Take Faster, More Forceful Disciplinary Action.
4. Improve Coordination Between the Board and the Health and Human Services Commission on Medicaid-Related Issues.
5. Expand the Board's Existing Regulation of Dental Assistants to Require Greater Competence by Those Who Take X-Rays.
6. Provide for Licensing Dental Educators Who Provide Dental Services at Accredited Dental or Dental Hygiene Schools in Texas.
7. Relax the Experience Requirement for Dental Licensure by Credentials.
8. Require the Board to Establish a System for Expunging Groundless, Dismissed Complaints From Its Records.
9. Require the Board to Act on Recommendations Proposed by the Dental Hygiene Advisory Committee Within a Specified Time.
10. Establish a Process for Debt Forgiveness for Services by Dental Professionals in Rural or Underserved Areas.

Issue 1 | Texas Has a Continuing Need for the State Board of Dental Examiners.

Key Findings

- The State Board of Dental Examiners' mission is to safeguard the dental health of Texans.
- Texas has a continuing interest in regulating the dental profession to safeguard the dental health of Texans.
- No significant benefits would result from changing the agency structure or having any other federal or state agency perform the Board's functions.
- While organizational structures vary, all 50 states use a state agency to regulate the dental industry.

The State Board of Dental Examiners performs an important mission, to regulate the dental industry and ensure that safe practices exist. Concerns raised in the last legislative session caused the Board to be brought up for Sunset review out of its scheduled order. While changes to the Board could improve the agency's operations, the State has benefitted from its regulatory programs, and no other federal or state agency has the means to provide these functions. Therefore, the Board should be continued as an independent agency for 12 years, and the Dental Hygiene Advisory Committee should also be continued, without a separate Sunset date.

Recommendations**Change in Statute****1.1 Continue the State Board of Dental Examiners for 12 years.**

This recommendation would continue the State Board of Dental Examiners as an independent agency responsible for regulating the dental industry for the standard 12-year period.

1.2 Eliminate the separate Sunset date for the Dental Hygiene Advisory Committee.

This recommendation would maintain the Dental Hygiene Advisory Committee, but eliminate its Sunset date. It would have no impact on the operation or structure of the Advisory Committee, but would simplify future Sunset reviews by ensuring that the Advisory Committee is reviewed each time the Board of Dental Examiners is reviewed by the Sunset Commission.

Management Action**1.3 The Board should provide an action plan for addressing enforcement issues to the Sunset Commission.**

Under this recommendation, the Sunset Commission requested the Board to provide a plan by December 1, 2002, detailing the actions it would take immediately to address concerns raised about

its enforcement program. The Board submitted its plan by the due date and addressed each of the required elements. In addition, the Board would be required to report quarterly to the Sunset Commission on its progress in implementing each of the components of the plan and any new statutory provisions relating to the Board's enforcement program.

The plan and quarterly reports would include information on the following actions.

- Elimination of the backlog of enforcement cases.
- Effective enforcement action against violators of the Dental Practice Act. The Board should demonstrate a greater commitment to taking strong enforcement action according to the following factors:
 - meeting its performance measure for the percentage of complaints resolved resulting in disciplinary action;
 - fully implementing its penalty schedule; and
 - reporting on actions taken against people who practice dentistry without a license.
- Effective implementation of the management recommendations of the Sunset Commission relating to the Board's enforcement program, including the adoption of:
 - a tracking system for complaints and a process for ensuring appropriate documentation on all complaint files (see Issue 3.6); and
 - a formal training program for staff complaint investigators (see Issue 3.7).

The plan and the subsequent quarterly reports would prioritize the tasks, identify "quick fixes," estimate costs, update the status of implementation, and include other matters pertinent to the implementation of these provisions. The quarterly reports would continue for two years until December 2004, and the Sunset Commission would consider these progress reports in its compliance efforts during the next Sunset review cycle.

Issue 2 | The Board's Size and Involvement in Agency Activities Limit Its Effectiveness.

Key Findings

- The size of the 18-member State Board of Dental Examiners does not comply with the Texas Constitution.
- While the Board's responsibilities have decreased, its size and activities have not.
- The Board is too involved in activities traditionally delegated to staff.
- Other Texas licensing agencies, including health profession agencies, as well as dental boards in other states, operate successfully with smaller boards.

Over the past decade, dental licensing and testing processes have become more streamlined in Texas and across the country. Because of such changes, the Board's workload has decreased, particularly regarding examination of dental and dental hygiene students. As a result, the Board's duties no longer warrant 18 members. The Board's size also has not been updated to reflect the recent Constitutional requirement that agency boards consist of an odd number of members. Finally, in addition to its decreasing duties, the Board has not delegated many day-to-day operational functions to staff.

Recommendations

Change in Statute

- 2.1 Reduce the size of the Board from 18 to 15 members, consisting of eight dentists, two dental hygienists, and five public members.**
- 2.2 Require that at least one Board member be an oral surgeon.**

This recommendation would bring the State Board of Dental Examiners into compliance with constitutional requirements for odd-numbered boards. Specifically, it would reduce the number of dentists from 10 to eight and the number of public members from six to five, while maintaining the same number of hygienists as under the current Board structure. In addition, at least one of the eight dentist members of the Board must be an oral surgeon.

With eight dentists and two hygienists on the Board, the industry maintains a majority and can provide necessary expertise. A 15-member Board is large enough to provide policy direction and handle the responsibilities required of the Board and would allow Board members to handle its appropriate workload. The reduction in the Board's size would be effective January 1, 2004, and would be accomplished by abolishing existing positions and providing a balanced representation of the remaining members for six-year, staggered terms. The Board would not be swept under this change.

Management Action

- 2.3 The Board should clearly define the roles of its members versus agency staff.**

The Board should explicitly outline in rule the purpose and functions of the Board and the authority and responsibilities of the Executive Director and staff. The Board should use the Board of Nurse Examiners' rules as a guide in developing its own rules.

Issue 3 | **The Board's Enforcement Efforts Have Not Met Expectations, and Complaint and Investigation Procedures Have Caused Delays In Case Resolution.**

Key Findings

- The Board takes too long to resolve complaints.
- The Board does not appear to address violations of the Dental Practice Act adequately.
- Some of the Board's enforcement procedures, and available remedies, may affect its ability to resolve complaints.
- Other state agencies use staff or experts to perform enforcement functions, and some have stronger enforcement authority.

In April 2002, the Board had a backlog of 921 open cases, with one case dating back to 1994. This inefficiency and lack of accountability in dealing with complaints when combined with ineffective complaint procedures, may lead to infrequent and weak disciplinary action. The Board has failed to meet its performance targets for bringing enforcement action; it has not actively dealt with persons practicing dentistry without a license; and it has had difficulty developing a system for tracking complaints and ensuring consistency of investigations and disciplinary actions.

Recommendations**Change in Statute****3.1 Allow staff to dismiss enforcement cases under certain circumstances.**

Under this recommendation, staff would have the ability to dismiss baseless cases, such as those relating to advertising, dental laboratories, unauthorized practice of dentistry, and sanitation. Staff would be required to seek input from dentist Board members in cases of patient morbidity, professional conduct, or quality of care.

When dismissing complaints, staff should ensure that such decisions are made with the appropriate level of review and necessary expertise and experience. Staff dismissals would also be reported to the Board at each of its public meetings.

3.2 Allow staff to conduct settlement conferences under conditions specified by Board rule.

Authorizing staff to conduct informal settlement conferences would enable more conferences to be held, and would expedite cases through the system. Staff would have authority to conduct informal settlement conferences under conditions specified by Board rule, while maintaining a process for Board member involvement, which would also be specified in rule. Staff conducting settlement conferences would need to have the necessary expertise and experience, and would use the Board's penalty schedule to determine the appropriate disciplinary action to recommend to the full Board. If

the licensee agrees with a recommendation resulting from an informal conference conducted by staff, the Board would vote to ratify, modify, or reject the recommendation. Staff would also have the authority to refer cases for formal hearing before the State Office of Administrative Hearings, and would report this information to the Board. Greater staff involvement, where appropriate, in enforcement cases would remove Board members from day-to-day responsibilities, and facilitate faster action without a loss of accountability by the Board.

3.3 Authorize the Board to use cease-and-desist orders with regard to practicing dentistry without a license.

The Board could issue cease-and-desist letters when it receives a complaint or otherwise hears of an individual or entity practicing dentistry without a license. This would apply to unregistered dental labs as well. The Board would still be authorized to refer these cases to local law enforcement agencies for prosecution. However, the Board should count unauthorized practice cases as jurisdictional, and direct investigators to pursue and follow up with the unlicensed individual to ensure compliance.

3.4 Give the Board authority to provide for restitution as a part of the settlement conference process.

This recommendation would allow the Board to include restitution as part of an informal settlement conference. Authority should be limited to ordering a refund not to exceed the amount the patient paid to the dentist. Any restitution ordered would not require payment of other damages or estimate harm. This restitution may be in lieu of or in addition to a separate Board order for administrative penalties.

Management Action

3.5 The Board should obtain dental expertise to review standard-of-care complaints and to dispose of old complaints.

The Board should have a dentist on staff to review complaints. It could also consult with dentists in specialty areas as needed, and attempt to hire other dental professionals for added expertise. This recommendation would allow for the removal of Board members from the process of reviewing complaints and making determinations that may bias them when voting on the case at a subsequent Board meeting.

Also, to address the Board's backlog of complaint cases, the Board should set up a voluntary, two-year task force of dentists to review and dispose of old complaints. Participation on the task force should be a request by the dentist, subject to the Board's assessment of the dentist's suitability to serve on the task force, including the dentist's experience and compliance history and other factors the Board determines appropriate.

3.6 The Board should develop a tracking system, including proper documentation, for complaints.

The agency's Internal Auditor should work with Board staff on developing a system that allows accurate tracking of all complaints' status. Staff should also ensure appropriate documentation on

all complaint files, from the investigative process to the Board order. All allegations should be accounted for in an investigation, so the Board has a record of information from which to base decisions. Proper documentation would provide a permanent record and compliance history that would be helpful if future complaints arise.

3.7 Staff investigators should have formal training.

Investigators should be initially trained to better understand investigative techniques, the Dental Practice Act, and other dental issues, such as standard of care. While investigators should not be expected to have the knowledge of a dentist, they should know more about dentistry issues to help in investigations before a dentist is able to review the file. Formal training should lead to higher quality investigations, and may reduce the turnover rate in this area.

3.8 The Board should adopt rules that allow for the acceptance of anonymous complaints, and it should communicate this policy to the affected public.

This would ensure clarity on the Board's current practice of allowing anonymous complaints. Board staff should accept and investigate anonymous complaints when it feels it has ample information to process the complaint. The Board should notify licensees and the affected public regarding anonymous complaints through telephone inquiries and through the Board's newsletter.

3.9 The Professional Evaluation Committee should review only dismissed complaints on the request of the complainant.

This recommendation would eliminate the Committee's review of cases with an unclear disposition, which is the majority of those pending before the Committee. Eliminating the Committee's review of pending enforcement matters would result under Recommendations 3.1 and 3.2 that seek to minimize Board member involvement in complaint investigation to preserve their role as judge in these matters. The Board would also receive needed dental expertise to help with special cases from the dental task force covered in Recommendation 3.5. The Committee would, however, continue to review dismissed complaints on the request of the complainant.

Under current Board rules, if a complainant objects to dismissal and provides new information to support the allegations, or shows that reasons given for the dismissal do not adequately address the allegations, the Committee reviews the case. The Board should develop additional rules that specify a reasonable time frame for the Committee to review these complaints, and should direct Committee members to recuse themselves from a full Board vote should it occur on a complaint that they reviewed.

Issue 4 | **The Board Does Not Coordinate Effectively With the Health and Human Services Commission to Address Medicaid-Related Issues.**

Key Findings

- The Board and HHSC have concurrent jurisdiction in cases of Medicaid fraud by dentists.
- Some fraud cases are not adequately enforced because of the lack of coordination between the two agencies.
- Poor communication on policy and complaints may result in a lower level of public protection.

Medicaid fraud has become the subject of increasing scrutiny by the Legislature. Despite this interest, the Dental Board and the Health and Human Services Commission have not been able to work and act together when concerns about Medicaid fraud relate to the Board's enforcement and, conversely, when a Board enforcement matter points to possible Medicaid fraud. The two agencies do not have a clear process for referring cases between each other, threatening the completeness and consistency of disciplinary actions.

Recommendation**Change in Statute****4.1 Create an interagency agreement between the Board and HHSC to improve coordination on Medicaid-related issues.**

This recommendation would require the two agencies to enter into the agreement by January 1, 2004. The agreement should require the Board and HHSC to refer cases to each other involving Medicaid fraud and standard-of-care issues involving Medicaid, when appropriate. The agreement also should require each agency to keep a log of referrals. The Board and HHSC should share information, but maintain confidentiality, on items such as investigative reports on common cases, and investigate cases together and collaborate on appropriate disciplinary action whenever possible. The Board should also include information on its Medicaid-related cases, such as the number received and disposition of cases, in its annual report. While the two agencies do not always need to investigate cases together, both agencies should share information that would ultimately lead to more complete findings, appropriate sanctions, and better public protection.

Issue 5 | Regulatory Controls Over Dental Assistants Are Not Adequate Given Their Patient Care Responsibilities.

Key Findings

- Dental assistants play a significant role in providing dental healthcare to Texans.
- The State has recognized the need to regulate certain activities of dental assistants.
- Dental assistants may perform procedures that put patients at risk.
- Some dentists and dental assistants are unclear on what duties an assistant is allowed to perform.
- Leaving responsibility for the knowledge, training, and actions of dental assistants to dentists is not adequate.

Dental assistants work in dental offices in a variety of capacities, from serving as business manager to working chairside with a dentist. Assistants' education and training varies, too, from those who have graduated from a dental assisting school to those who have never worked in the dental profession. Dentists hire, train, and supervise assistants on the job, and under Board policies, the dentist is responsible for assistants' actions. Because the Board has no enforcement authority over assistants, sanctions can only apply to the dentist for improper delegation.

Currently, the Board requires assistants to pass an X-ray exam and register one time before receiving a permit to take X-rays. Because of the potential harm that can result from their direct contact with patients, the State should ensure that these dental assistants are fully aware of and qualified for their responsibilities.

Recommendations

Change in Statute

5.1 Expand the Board's existing regulation of dental assistants to require dental assistants who take X-rays to also demonstrate knowledge of state dental laws and infection control issues.

This recommendation builds upon the existing registration requirements for dental assistants who take X-rays by requiring these assistants to pass an exam administered by the Board instead of the employing dentist. In addition to X-ray techniques, which assistants already are tested on, the exam would test assistants' knowledge of the Texas Dental Practice Act and infection control. The component of the exam dealing with state dental laws should be tailored to a dental assistant's responsibilities and role in a dental office. Dental assistants also would be required to renew the registration certificate annually.

The Board should develop the exam and begin registering assistants by September 1, 2004. Dental assistants who hold current certification by the Dental Assistant National Board should register with the Board by supplying proof of certified dental assistant status and passing the component of the dental assistants exam dealing with state dental laws. Dental assistants who received their X-ray

certificate before September 1, 2004, would have two years, until September 1, 2006, to pass the components of the exam covering infection control and state dental laws. These dental assistants would not have to be retested on the X-ray portion of the exam, and would thus pay a lesser fee for certification as determined by the Board.

The Board should seek the assistance of an advisory panel consisting of dental industry professionals and educators when developing the exam, or should explore the possibility of having the exam developed by other organizations with the expertise and resources to do so. The Board should administer the exam or enter into a contract or agreement with a testing service to administer the exam. This recommendation would not affect the certification process for dental assistants to monitor nitrous oxide or to apply pit-and-fissure sealants. Dental assistants would have to separately satisfy the existing education and testing requirements to perform these duties.

5.2 Require the Board to establish a mandatory continuing education program for dental assistants.

Under this recommendation, the Board would establish in rule a continuing education program, not to exceed 12 hours annually, for those dental assistants who hold an X-ray certificate issued by the Board. The curriculum should cover standards of care, procedures for infectious disease control, and the Dental Practice Act.

Issue 6 | Educators Who Provide Dental Services Are Not Subject to Adequate Board Oversight.

Key Findings

- Dental and dental hygiene educators in Texas may provide dental healthcare in the state.
- Educators are exempt from the Dental Practice Act, including its licensing and enforcement provisions.
- Because the Board has no jurisdiction over dental and dental hygiene educators, it cannot ensure safe practices or discipline an educator if a patient is harmed.
- Other notable healthcare professions, in Texas and other states, require educators to hold a license.

Dental and dental hygiene educators offer valuable services, not only to the students they teach, but also to Texans who visit school-run clinics for their dental healthcare needs. Yet, because the Dental Practice Act exempts educators from state licensing requirements and enforcement provisions, the Board has no authority over these dental professionals, and patients cannot file a complaint with the Board regarding the care they received.

Recommendation

Change in Statute

6.1 Provide for licensing dental educators who provide dental services at accredited dental or dental hygiene schools in Texas.

This recommendation would establish a faculty license for dental and dental hygiene educators who:

- hold a degree from a dental or dental hygiene school;
- hold a full- or part-time salaried faculty position at a Commission on Dental Accreditation-approved dental or dental hygiene school in Texas;
- submit an application for a faculty license to the Board that is endorsed by the dean, department chair, or program director of the employing school; and
- pass the Board's jurisprudence exam.

Only educators who have direct patient contact must hold a faculty license; these license requirements do not apply to educators already licensed as dentists or dental hygienists, or those who solely conduct lectures or research or do not work directly with patients. The Board should begin issuing faculty licenses by March 1, 2004. Educators hired before September 1, 2003, who have direct patient contact should have one year, until September 1, 2004, to pass the jurisprudence exam and receive a faculty license.

A faculty license does not authorize a license holder to enter into private practice. Holding a faculty license does not alter the activities and services educators currently are authorized to perform. The Board would assess a fee to cover the costs of licensing these educators. Dental and dental hygiene educators should be exempt from the State's annual professional fee. Faculty licenses should be renewed annually, and are void if the educator leaves the endorsing school. However, if a faculty member reapplies for a faculty license, either at the same school or a different one, the applicant should not be required to retake the jurisprudence exam.

Issue 7 | Some of the Board's Licensing Requirements Restrict Dentists From Entering Into Practice in Texas.

Key Findings

- The Board sets policies regarding licensing and credentialing requirements for dental healthcare professionals in Texas.
- Some of the Board's licensing requirements create barriers for dentists wanting to practice in Texas.
- Recent changes in the Dental Practice Act, as well as licensing requirements for other Texas health professions and dentists in other states, point to a less restrictive form of regulation.

During the 77th legislative session in 2001, the Legislature recognized the importance of access to dental healthcare by addressing such issues as expanded roles for dental assistants, alternative training programs for dental hygienists, and relaxed licensing by credentials requirements for dentists working for nonprofit Medicaid providers.

As the agency responsible for licensure of dentists in the state, the Dental Board plays a role in addressing Texans' dental healthcare needs through its licensing and examination policies. Currently, some of the Board's policies may be unnecessarily burdensome on dental professionals and may discourage or even prevent dentists from moving to Texas to practice. By removing some of the barriers to licensure in the state, the Board can be more active in dealing with a shortage of dental professionals in Texas, which should help ensure that Texans have better access to dental healthcare.

Recommendations

Change in Statute

7.1 Reduce the years of practice required for dental licensure by credentials from five to three years.

This recommendation relaxes the licensure by credentials requirements for dentists wanting to practice in Texas, yet maintains standards stringent enough to ensure that only qualified dentists receive a Texas license. The recommendation is intended to mirror recent actions by the Legislature to ease licensure requirements to increase Texans' access to dental healthcare, and is consistent with other health professions.

7.2 Authorize the Board to grant waivers, for certain circumstances, to the continuous practice requirements for licensure by credentials.

The Board should develop rules that outline circumstances in which an applicant for dental or dental hygiene licensure by credentials could receive a waiver from the continuous practice requirements. For example, such circumstances could include maternity leave or illness. This recommendation provides the Board some flexibility in granting licenses by credentials and changes current practice that may unfairly restrict applicants.

Management Action

7.3 The Board should consider accepting the results of other regional examining boards, and provide justification for not accepting results from any of the boards.

The Board should review the Northeast Regional Board of Dental Examiners and the Southern Regional Testing Agency, the two examining agencies whose results the Board does not accept. If the Board concludes that either of these examining boards does not have adequate exam criteria and chooses not to accept the exam results, the Board should publicly state the reasons that led to the decisions.

Issue 8 | Maintaining Records of Groundless Complaints Filed With the Board May Harm a Dental Professional.

The Board may receive complaints against a licensed dental professional that are groundless. Although the Board would dismiss such a complaint, records from the complaint case are kept in the licensee's file. Maintaining records of groundless, dismissed complaints could damage a licensee's credibility, should the information be made public. While records of some previously dismissed complaints may prove useful for future investigations, information regarding baseless complaints should not be maintained in the Board's records.

Recommendation**Change in Statute****8.1 Require the Board to establish a system for expunging groundless, dismissed complaints from its records.**

Under this recommendation, the Board would develop, in rule, procedures for allowing for the expunction of groundless, dismissed complaints from the Board's records. Board rule would specify that staff has authority to expunge records from certain cases, such as those relating to advertising, dental laboratories, unauthorized practice of dentistry, and sanitation. Staff would report each recommended expunction to the full Board in its public hearings. Staff would be required to seek input from dentist Board members in cases of patient morbidity, professional conduct, or quality of care.

Issue 9 | Recommendations of the Dental Hygiene Advisory Committee May Not Receive Full Consideration by the State Board of Dental Examiners.

The Dental Hygiene Advisory Committee provides advice to the Board on dental hygiene regulation. The Board may not adopt a rule relating to the practice of dental hygiene for 30 days after the proposed rule is submitted to the Advisory Committee for its review. In addition, the Advisory Committee may propose new rules and language. However, the Board is not required to respond to or act on the Advisory Committee's proposals. As a result, the Advisory Committee's role in the regulation of dental hygiene issues is limited.

Recommendation

Change in Statute

9.1 Require the Board to act on recommendations proposed by the Dental Hygiene Advisory Committee within a specified time.

The Dental Hygiene Advisory Committee would have the authority to make recommendations regarding the regulation of dental hygienists and dental hygiene issues to the Board. The Board would be required to either deny or ratify and enforce the Advisory Committee's recommendations within 90 days. Should the Dental Board not take action within the specified time, the recommendation would automatically become effective.

Issue 10 | The State Does Not Adequately Address Concerns About Access to Dental Professionals in Rural and Underserved Areas.

Texas, like most other states, is concerned about access to dental healthcare in rural and underserved areas. In addition, dental industry experts predict a nationwide shortage of dentists in the future. Offering incentives to dental professionals who commit to work in rural and underserved areas could help attract dentists and dental hygienists to parts of the state most in need of increased access to dental healthcare.

Recommendation

Change in Statute

10.1 Provide a process for the State to provide debt forgiveness for service by dental professionals in rural or underserved areas.

This recommendation would require the Board to study the issue of forgiveness of student loans for dental professionals who commit to work in underserved areas of the state. The Board would define rural or underserved as those areas identified by the Texas Department of Health as rural health professional shortage areas and medically underserved areas. The Board would fund the program through its annual licensing fees.

Fiscal Implication Summary

The recommendations regarding the State Board of Dental Examiners would result in a small net savings to the State. These recommendations are discussed below, followed by a five-year summary chart.

- *Issue 2* – Reducing the number of Board members from 18 to 15 would save about \$6,000 annually, resulting from the smaller travel budget needed to accommodate fewer Board members.
- *Issue 3* – The management action for the Board to hire or contract with a dentist as a consultant would require the Board to request an additional appropriation of \$75,000 to hire a dentist for 20 to 30 hours per week. Such appropriation would be funded by fees paid by dental professionals.
- *Issue 5* – Expanding the Board’s existing regulation of dental assistants would not have a significant fiscal impact because any additional costs would be covered by fees paid by the 15,000 dental assistants expected to be certified by take X-rays. This certification would generate approximately \$275,000 in revenue the first year after it becomes effective in fiscal year 2005 and \$312,500 annually thereafter. This revenue would cover the additional costs of the program, including one additional employee.
- *Issue 6* – Licensing dental and dental hygiene educators would not have a fiscal impact because any additional costs would be covered by licensing fees. Because fewer than 100 dental educators and 50 dental hygiene educators would need to be licensed under this recommendation, the revenue and costs would be minimal.
- *Issue 10* – The loan forgiveness program for dental professionals agreeing to locate in rural or underserved areas would have no cost to the State, but would be funded by fees paid by dentists and dental hygienists.

Fiscal Year	Gains to the General Revenue Fund	Savings to the General Revenue Fund	Cost to the General Revenue Fund	Change in FTEs from 2003
2004	\$0	\$6,000	\$0	0
2005	\$275,000	\$6,000	\$275,000	+1
2006	\$312,500	\$6,000	\$312,500	+1
2007	\$312,500	\$6,000	\$312,500	+1
2008	\$312,500	\$6,000	\$312,500	+1

Texas Department of Economic Development

Agency at a Glance

The Texas Department of Economic Development helps develop and promote the Texas economy by:

- marketing Texas as a premier business location and tourist destination;
- providing financial, location, and export assistance to Texas businesses and communities; and
- serving as a source of economic development information.

Key Facts

- **Funding.** The Department's budget for fiscal year 2002 totaled \$32.4 million. Almost 60 percent of the agency's revenue comes from the hotel/motel occupancy tax for tourism (\$19.2 million). The remaining 41 percent comes from state General Revenue (\$5.2 million), federal funds (\$3.6 million), and other sources of revenue (\$4.4 million).
- **Staffing.** The agency currently operates with 127 full-time equivalent employees – all in the agency's Austin headquarters, except for one employee in the agency's Mexico City office.
- **Tourism.** The agency advertises and markets Texas as a top tourist destination, both domestically and internationally. The Department received over 1.9 million consumer inquiries about travel in Texas in fiscal year 2002.
- **Market Texas Business.** The Department markets Texas as a premier business location and provides location and export assistance to Texas businesses and communities. Of the 391 businesses assisted in fiscal year 2002, 19 relocated or expanded to Texas. The agency organized 17 international trade events in fiscal year 2002 and generated 7,417 international trade leads.
- **Business Incentives.** The agency assists Texas businesses and communities in obtaining capital for business expansion and growth through a variety of programs, including the Capital Access Program and Texas Enterprise Zones. In fiscal year 2002, the agency's business incentives programs reported creating 3,638 jobs and retaining 3,150 jobs.
- **Economic Information Clearinghouse.** The Department's Clearinghouse provides businesses and communities with access to state and local economic and demographic data, as well as information on a broad range of economic development programs. In fiscal year 2002, the Clearinghouse reported nearly 1.4 million users on its four key Web sites.

Board Members (9)

'Massey' Villarreal, Chairman (Missouri City)	Rance G. Sweeten (McAllen)
Hector Delgado (El Paso)	Marion Szurek (San Angelo)
Limas Jefferson (Houston)	Tommy Whaley (Marshall)
Mark Langdale (Dallas)	Vacant
George T. Richardson (Littlefield)	

Agency Head

Jeff Mosley, Executive Director
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Recommendations

1. Abolish the Texas Department of Economic Development and Transfer Its Functions to a Newly Created Office Within the Office of the Governor.
2. Reduce the Number of State Entities Involved in Tourism Activities from Eleven to Five.
3. Exempt Tourism Advertising and Placement Expenditures from State HUB Subcontracting Requirements.

Issue 1 | **The Lack of a Direct Link to the Governor's Office Limits Effective Coordination and Administration of the State's Economic Development Efforts.**

Key Findings

- While the State has a continuing need to market and promote the state to ensure Texas remains competitive in today's economy, the Texas Department of Economic Development does not have the ability to effectively coordinate state economic development programs and services across agencies to meet the demands of prospective companies.
- Having a separate state agency to administer and coordinate state economic development functions results in unnecessary administrative cost.
- Other states' economic development functions are generally more directly linked with the Governor.

Although limited, the State's role in economic development is necessary to ensure the state remains economically competitive both nationally and internationally. Promoting and marketing the state helps define the state's overall benefits to companies considering locating in Texas and differentiates Texas from its competitors. However, repeated reorganizations have diluted the Texas Department of Economic Development's primary role of marketing and promoting the state. In addition, without an entity to facilitate access to all of the State's economic development programs and services among various state and local entities, the State cannot meet the demands of businesses in today's economy. As currently structured, the Department is unlikely to effectively fulfill this role of facilitator.

Recommendation**Change in Statute****1.1 Abolish the Texas Department of Economic Development and transfer its primary economic development functions to the Office of the Governor.**

The Department would be abolished and its primary functions transferred to the newly-created Texas Economic Development Office within the Office of the Governor, headed by an Executive Director appointed by the Governor. The primary functions of the Office would include:

- marketing and promoting the state as a premier business location and tourist destination;
- facilitating the location, expansion, and retention of domestic and international business investment to the state;
- promoting and administering business and community economic development programs and services in the state, including business incentives programs;
- providing Texas businesses and communities assistance with exporting products and services to international markets; and
- serving as a central source of economic research and information.

This recommendation would establish a new structure and clear focus for the State's economic development efforts. Placing the State's key economic development activities within the Office of the Governor would better enable the state to develop and administer a coordinated economic development system to ensure Texas remains competitive. Additionally, this structure would help facilitate timely access to and coordinate the State's economic development information, programs, and services across agencies; and encourage more direct accountability of the State's economic development activities to the Governor.

The Office of the Governor and the Department would formulate a transition plan, including a reasonable timetable for the effective reconstitution of the Department's mission, strategies, performance measures, functions, and staff, as they relate to key economic development clusters in the state of Texas. The Governor would be authorized to have a final audit conducted of the Department's programs, finances, and management.

Abolishing the Department and transferring its primary economic development functions would result in an estimated annual savings of at least \$1.4 million and a reduction of 23 employees. These savings would result from abolishing the Department's Governing Board and reducing administrative costs by 50 percent, since the Governor's Office already provides administrative support to other programs. The Governor would also be authorized to determine and address the potential need for reorganization of the Department's programs, priorities, staff, and advisory committees. Additional administrative and programmatic savings could be realized once the State's economic development functions are transferred and reorganized.

Issue 2 | Fragmentation of the State's Tourism Activities Results in Poor Coordination and Other Inefficiencies.

Key Finding

- Eleven state entities play a role in promoting or assisting travel and tourism in Texas.

In 2002, the State spent more than \$38 million on tourism-related programs within 11 different state entities. The 11 state entities engaged in tourism activities do not always work together to maximize the State's investment in promoting and developing tourism. The Legislature has repeatedly mandated better coordination among the agencies involved in tourism; however, despite some improvements, the fragmentation of tourism efforts among these 11 entities continues, resulting in an inefficient use of state resources.

Recommendation

Change in Statute

2.1 Reduce the number of state entities involved in tourism activities from eleven to five.

Although 11 state entities conduct tourism activities, the State's primary tourism functions are carried out by the following five state agencies.

- Texas Department of Economic Development
- Texas Department of Transportation
- Texas Parks and Wildlife Department
- Texas Historical Commission
- Texas Commission on the Arts

This recommendation would consolidate the tourism staff and functions from the remaining six entities – the Texas Department of Agriculture; Texas A&M University; Office of Music, Film, Television and Multimedia; Texas General Land Office; Texas Department of Public Safety; and Texas State Preservation Board – into the five main tourism agencies listed above.

Issue 3 | The Department's Tourism Mandate to Advertise Out-of-State Conflicts with State HUB Requirements.

The Department is required to advertise and promote the state as a tourist destination to non-Texans. To comply with this mandate, tourism advertising and marketing must be conducted outside of the state. This requires the purchase of advertising placements and marketing services from out-of-state vendors who cannot qualify as Historically Underutilized Business (HUB) vendors because, by statutory definition, HUB vendors must be Texas residents.

Recommendation

Change in Statute

3.1 Exempt tourism advertising and placement services expenditures from state HUB subcontracting requirements.

Exempting the Department's tourism advertising and placement services expenditures from HUB subcontracting requirements would allow the Department to comply with its statutory mandate to advertise the state as a tourist destination to non-Texans without violating the state's HUB requirements.

Fiscal Implication Summary

This report contains recommendations that would have annual savings of \$1.4 million and a reduction of 23 full-time equivalent employees (FTEs). These recommendations are discussed below, followed by a five-year summary chart.

- **Issue 1** – Abolishing the Department and transferring its primary economic development functions to the Governor’s Office should result in annual savings of at least \$1.4 million and a reduction of 23 FTEs. These initial savings would result from abolishing the Department’s Governing Board and reducing administration costs by 50 percent. Additional savings should be realized once the functions are transferred and reorganized.
- **Issue 2** – Reducing the number of state entities involved in tourism activities from 11 to five would result in a fiscal impact to the State. While savings may occur through administrative efficiencies, the amount of potential savings could not be estimated .

Fiscal Year	Savings to the General Revenue Fund	Change in FTEs from 2003
2004	\$1,400,000	-23
2005	\$1,400,000	-23
2006	\$1,400,000	-23
2007	\$1,400,000	-23
2008	\$1,400,000	-23

State Board for Educator Certification

Agency At a Glance

The State Board for Educator Certification (SBEC) oversees the preparation and regulation of public school educators. The Legislature created SBEC in 1995 in a rewrite of the Texas Education Code. Before 1995, the Texas Education Agency was responsible for teacher certification. The State Board of Education retains a 90-day veto authority over SBEC's rule proposals. SBEC's major functions include:

- ensuring the quality of educators upon entry into the teaching profession through testing, certification, and the accreditation of educator preparation programs;
- enforcing the professional standards of conduct;
- creating and promoting strategies for the recruitment and retention of educators in the public school system; and
- promoting continuous professional development of educators.

Key Facts

- **Funding.** In fiscal year 2002, SBEC operated with an annual budget of \$21 million, including approximately \$3.9 million from a Department of Education reimbursement grant. SBEC received more than \$14 million in licensing fees, most of which went into General Revenue.
- **Staffing.** SBEC has 52 staff, all located in Austin.
- **Accountability.** For the 2002-2003 school year, SBEC accredited 110 Texas educator preparation programs. Sixteen of these were new programs and rated accredited – preliminary status, meaning the programs were approved to offer educator preparation but could not be evaluated until candidates completed the programs.
- **Certifications.** In fiscal year 2002, SBEC certified 299,804 individuals as Texas educators; approximately 14,000 of those were new teachers. Of this number, 264,868 were employed as teachers and 34,936 were employed in other types of positions.
- **Professional Discipline.** In fiscal year 2002, SBEC received a total of 1,463 jurisdictional complaints and issued disciplinary action in 21 percent of the cases. Of those, SBEC revoked 157 certifications. The recidivism rate of sanctioned educators was zero.

Board Members (15)

James D. Harris, Hum.D.

Chair (Lubbock)

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Cecilia Phalen Abbott (Austin)

John J. Beck, Jr., Ph.D. (San Marcos)

Carlen Pool Floyd (Austin)

Annette T. Griffin, Ed.D. (Carrollton)

Arthur Lacy (McKinney)

Adele Quintana (Dumas)

Mary Margaret Rucker (Nassau Bay)

Antonio (Tony) Sanchez (Mission)

Troy Simmons (Longview)

Keith Sockwell (Trophy Club)

James Windham (Houston)

Felipe T. Alanis,

Commissioner of Education,

Texas Education Agency

Leticia C. Hinojosa,

Higher Education Coordination Board

Agency Head

William M. Franz, Director

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Recommendations

1. Expand SBOE's Oversight of SBEC Rules, and Improve Stakeholder Involvement In the Rulemaking Process.
2. Require Fingerprint-Based National Criminal History Checks of New Educators.
3. Require the Board to Adopt Rules Ensuring Comprehensive Disciplinary Investigations.
4. Place Responsibility for Temporary Teacher Certifications at SBEC.
5. Accelerate the Expansion of Alternative Educator Certification Programs.
6. Explore Establishing a "Master Teacher" Program.
7. Require Educational Diagnosticians to Hold an SBEC-Issued Certificate.
8. Authorize SBEC to Accept Gifts, Donations, and Non-Federal Grants.
9. Continue the State Board for Educator Certification for 12 Years.

Issue 1 | SBEC's Rulemaking Process Delays Implementation of Rules and Does Not Ensure the Input of Stakeholders.

Key Findings

- The State Board of Education (SBOE) has the authority to reject only entire rules proposed by SBEC.
- SBEC does not have a regular process for obtaining early stakeholder involvement in rule development.

Authorizing SBOE to reject rules only in their entirety has delayed the approval, adoption, and implementation of key rules surrounding educator certification. SBOE should have a better means, other than outright veto authority, to provide input on rules governing the certification of educators.

Lack of early input on rule development has led to contentious issues raised when SBEC has published proposed rules for public comment. Better methods are available to obtain early input and negotiated agreements on rules.

Recommendations**Change in Statute****1.1 Expand SBOE's authority to allow it to accept or reject only portions of proposed SBEC rules.**

This recommendation would authorize SBOE to accept or reject portions of each SBEC rule, rather than simply rejecting rules in their entirety, as the statute currently requires. Authorizing SBOE to both accept and reject portions of SBEC-proposed rules within the 90-day review period should help to ensure more efficient rulemaking. As in current law, SBOE must pass each acceptance or rejection by a two-thirds majority vote.

1.2 Require SBEC to develop guidelines for the early involvement of stakeholders in its rulemaking process.

SBEC should develop a process that ensures all interested parties have an opportunity to participate in the development of rules. The process should include methods SBEC will follow to obtain the early advice and opinions of interest groups affected by a proposed rule, before it is published. At minimum, the guidelines must include appropriate TEA staff and establish a means of identifying persons affected, including educators, other state agency personnel, school district administrators, and, if applicable, parents.

Issue 2 | **SBEC's Limited Background Searches May Allow Unsuitable Individuals to Teach Texas Schoolchildren.**

Key Findings

- SBEC conducts limited criminal history background checks on educators.
- Limited criminal history checks do not prevent Texas from certifying educators with criminal records.
- SBEC has begun to effectively use other tools to identify educators with hidden criminal histories, but these also have weaknesses.
- Most other states fingerprint applicants for educator certification.

While most applicants for educator certification have an unquestionable background, weaknesses in the methods SBEC currently uses to check criminal histories have led to situations in which the safety of children has been compromised. These situations may have been prevented had SBEC used more thorough methods of checking backgrounds.

Recommendations

Change in Statute

2.1 Require SBEC to collect fingerprints and conduct national criminal history checks of all applicants for educator certification, and all individuals teaching under temporary certifications and permits.

This recommendation will ensure that SBEC is specifically required to collect fingerprints at the time of application, and that all new and out-of-state applicants wishing to be certified as educators must consent to fingerprinting or be denied certification. SBEC would use the fingerprints to access state and national criminal history databases to fully determine the suitability of applicants for educator certification. This recommendation also ensures that SBEC fingerprints all individuals who are teaching under temporary certifications and permits.

2.2 Require SBEC to adopt rules setting fees for fingerprinting and national criminal history background checks.

This recommendation would ensure that the costs of fingerprint-based criminal history checks for all out-of-state and first-time, in-state applicants for educator certification are paid by the applicant. This includes the costs of submitting the fingerprints to DPS and the FBI. Though the costs of instituting a fingerprint check program are higher than the current method SBEC uses, fingerprinting provides the most effective and thorough means of searching criminal histories.

2.3 Authorize SBEC to retain educators' fingerprints at the Department of Public Safety.

This recommendation would provide that arrests and convictions made after certification could be easily matched to a database, allowing the Department of Public Safety to notify SBEC of an educator's possible criminal activity. Upon notification, SBEC should immediately open an investigation into that educator's continued suitability for certification.

Management Action

2.4 SBEC should develop information on situations that may prevent certification for distribution to all students in preparation programs.

This recommendation would ensure that students working towards a degree and certification are aware of SBEC's standards for entering the profession. SBEC should assist educator preparation programs in providing standard information to students to help ensure that someone who has a criminal history, which may prevent certification, does not expend unnecessary time and expense towards a certificate.

2.5 SBEC should extend background checks to all currently certified or credentialed educators by using social security numbers to search all available criminal conviction databases.

Under this recommendation, SBEC would extend its methods of conducting background checks on current educators, to use social security numbers to search all state and federal criminal conviction databases.

Issue 3 | SBEC's Disciplinary Rules Do Not Ensure Consistent Investigation of Complaints Against Educators.

Key Findings

- SBEC uses two separate processes to investigate complaints against educators.
- SBEC's process and procedural rules for investigation of traditional disciplinary violations are incomplete.
- Incomplete procedural rules have led to misperceptions, lack of confidence in the disciplinary process, and frustration for educators.

SBEC rules are missing several standard elements of a licensing agency's investigation process. While SBEC has included standard elements in the disciplinary rules governing violations of the Educators' Code of Ethics, the process the agency uses to investigate traditional statutory violations – approximately 90 percent of complaints against educators – does not include several important elements.

Also, while SBEC has made efforts to include the education community, the agency has not established a formal means to consistently include stakeholders in complaint rule development.

Recommendations

Change in Statute

3.1 Require the Board to adopt rules comprehensively outlining the process for investigating disciplinary violations.

This recommendation requires SBEC to adopt rules for a complete investigation process for complaints alleging traditional violations, also known as violations of the education statutes. The rules should define time frames for all actions, notification requirements, and case severity to allow consistent prioritizing of caseload management.

Management Action

3.2 SBEC should include educators in development of the new disciplinary process rules.

As discussed in Issue 1 of this report, SBEC should provide stakeholders an early opportunity to participate in the development of all rulemaking affecting the profession. Given the present misperceptions regarding the investigation process, SBEC should fully include the education community in the early development of rules regarding the disciplinary process. This approach would provide stakeholders with a strong role in determining how complaints against their peers will be handled.

Issue 4 | Educator Certification and Permitting is Inconsistent and Split Between Two Separate Agencies.

Currently, some educators do not hold an SBEC certification. SBEC's statute allows a school district to hire a degreed, but uncertified individual, provided the school district notifies the TEA Commissioner. Unless the Commissioner rejects the notification, the permit is valid only in the issuing school district until revoked by that district. School districts issued 753 permits in 2001.

In addition, some school districts allow certified teachers to teach classes outside of their certification area to address a teacher shortage. The school district may apply to the TEA Commissioner for waivers of any requirement, restriction, or prohibition imposed by the Education Code, including those in SBEC's statute. Waivers are valid for three years. TEA issued 111 certification waivers in 2001.

Allowing another agency to authorize an educator to teach without a certification or to teach outside their area of certification prevents SBEC from fully carrying out its responsibility of ensuring that only competent, quality educators are teaching in our classrooms.

Recommendations

Change in Statute

4.1 Transfer responsibility for approving school district teaching permits that allow non-certified individuals to be hired by a school district, from the Commissioner of Education to SBEC.

This recommendation would ensure that SBEC has oversight and responsibility for permitting or certifying all individuals teaching in Texas public schools.

4.2 Transfer responsibility for issuing certification waivers that allow a certified teacher to teach outside his or her area of certification, from the Commissioner of Education to SBEC.

This recommendation would ensure that SBEC has responsibility for allowing educators to teach outside their certification areas. SBEC would also have the authority to disallow a waiver if it was not in the best interests of the students.

Issue 5 | Alternative Educator Certification Programs May Not Ensure That Texas Has Enough Educators to Teach Future Student Populations.

SBEC is responsible for ensuring that Texas schools have adequate access to well educated teachers. However, the student population is expected to more than double in the next 30 years. As a result, Texas schools may not have enough individuals entering traditional teacher certification programs. Alternative certification programs provide the state with an option for increasing the numbers of available teachers by training already-degreed individuals in the principles of pedagogy.

Recommendation

Management Action

5.1 The Board should accelerate the expansion of alternative educator certification programs.

This recommendation directs SBEC to take action to expand alternative certification programs and increase the availability of teachers to help address potential teacher shortages.

Issue 6 | Some Experienced Professionals Cannot Easily Obtain a Teaching Certificate.

Experienced professionals may be able to offer their expertise to Texas schools without needing to be trained in pedagogy. An individual who has been employed in a particular profession for a substantial amount of time could teach a class in a subject matter related to that profession. However, current regulations prevent use of such expertise in Texas classrooms.

Recommendation**Management Action****6.1 The Board should explore establishing a “Master Teacher” program.**

This recommendation directs SBEC examine ways to facilitate employment of professionals and other individuals with subject matter expertise who have not been trained in pedagogy. For example, a health care professional could be hired to teach a biology class or an elected official could be hired to teach an American government class. SBEC should examine ways to accomplish this use of experienced talent in Texas schools.

Issue 7 | Texas Statutes Do Not Require That Educational Diagnosticians Be Certified.

Educational diagnosticians already hold a Master’s degree as well as an educator certification. However, SBEC’s statute does not specifically require that educational diagnosticians be certified before diagnosing the learning capabilities of Texas’ school children.

Recommendation**Change in Statute****7.1 Add educational diagnosticians to the statutory list of educators required to hold an SBEC-issued certificate in that speciality to be employed in public schools.**

This recommendation would ensure that all individuals providing educational diagnostics are certified by SBEC to provide these services.

Issue 8 | **SBEC Does Not Have the Authority to Accept Gifts, Donations, and Non-Federal Grants.**

Currently, SBEC is able to accept federal grants for purposes related to the agency's functions and mission. The Appropriations Act allows agencies, with the specific statutory authority to do so, to also accept gifts of money and non-federal grants. SBEC's statute does not give the agency this specific authority.

Recommendation**Change in Statute****8.1 Authorize SBEC to accept gifts, donations, and non-federal grants.**

This recommendation would allow SBEC to accept all gifts, grants and non-federal grants to use to further the agencies programs and functions.

Issue 9 | **Texas Has a Continuing Need for the State Board for Educator Certification.**

Key Findings

- Texas has a continuing interest in preparing and certifying educators.
- SBEC has generally accomplished its mission of ensuring Texas has suitable, well prepared individuals to teach Texas children.
- No substantial benefits would result from transferring the Board's functions to another agency.

The State Board of Educator Certification's mission – to ensure the highest level of educator preparation and practice – is important to Texans. SBEC has generally been successful at ensuring that the majority of educators are either fully certified or working towards certification. SBEC has also been successful at initiating new methods of attracting and retaining educators. With a credible track record, and no substantial advantages to consolidation with another agency, SBEC should remain an independent agency.

Recommendation**Change in Statute****9.1 Continue the State Board for Educator Certification for 12 years.**

This recommendation continues the State Board for Educator Certification for the standard 12-year period until 2015.

Fiscal Implication Summary

These recommendations would result in no net fiscal impact to the State. However, Issue 2 requires SBEC to conduct approximately 22,400 national criminal history searches, which would result in a cost of approximately \$940,800 in the first year. The agency would recoup all costs by charging an approximate \$40 fee to the applicants in addition to their current certification fees. To conduct the criminal history checks using fingerprints, SBEC would need one additional full-time equivalent employee (FTE) to investigate an expected increase in cases likely to arise from more thorough criminal history checks. In addition, the Department of Public Safety, the agency responsible for maintaining criminal records, would need four additional FTEs, such as clerks, technicians, and film operators.

Fiscal Year	Cost to the General Revenue	Revenue Generated by New Fees	Change in FTEs from FY 2003
2004	\$940,800	\$940,800	+5
2005	\$940,800	\$940,800	+5
2006	\$940,800	\$940,800	+5
2007	\$940,800	\$940,800	+5
2008	\$940,800	\$940,800	+5

Texas Board of Professional Engineers

Agency at a Glance

The Texas Board of Professional Engineers (Board) protects public health, safety, and welfare by ensuring that only qualified individuals provide engineering services to the public in Texas. The Board traces its roots to 1937, when the Legislature created the State Board of Registration for Professional Engineers in the aftermath of the New London School explosion, which killed nearly 300 students and teachers.

To accomplish its goal, the Board licenses engineers, and regulates their activities through enforcement. The Board's main functions include:

- licensing Professional Engineers and certifying Engineers-in-Training;
- registering engineering firms, sole proprietorships, partnerships, corporations, and joint stock associations;
- investigating and resolving complaints alleging illegal or incompetent practice of engineering by both licensed and unlicensed persons; and
- enforcing the Texas Engineering Practice Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** The Board operates with an annual budget of about \$1.5 million. All costs are covered by licensing fees collected from the industry.
- **Staffing.** The agency has 25 full-time employees, based in Austin.
- **Licensing.** The Board regulates 48,793 Professional Engineers. In fiscal year 2002, the Board issued 1,666 new licenses.
- **Firm Registration.** Since 2000, the Board has registered engineering firms, including sole proprietorships. Currently, 5,449 firms are registered.
- **Enforcement.** In fiscal year 2002, the Board received 370 complaints from the public. That same year, Board staff also initiated 553 complaints. Of the 916 complaints resolved in fiscal year 2002, 61 resulted in sanctions against a licensee.
- **Pilot Project.** In 2001, the Legislature included the Board, along with the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Beginning in fiscal year 2002, the Pilot Project removed the Board from the legislative appropriations process, allowing the Board to operate under its own discretion, outside the spending limitations set in the General Appropriations Act.

Board Members (9)

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Chair (Houston)

Bob Sweazy, P.E., Vice Chair (Lubbock)

Roland Haden, P.E. (College Station)

William Lawrence (Highland Village)

Shannon McClendon (Dripping Springs)

Govind Nadkarni, P.E. (Corpus Christi)

James Nichols, P.E. (Fort Worth)

Gerry Pate, P.E. (Magnolia)

Vicki Ravenburg, CPA (San Antonio)

Agency Head

Victoria J.L. Hsu, P.E., Executive Director

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Recommendations

1. Require the Board to Establish Its Enforcement Process in Rule, Prioritize Complaints, and Track and Report Complaint Information Annually.
2. Conform Key Elements of the Texas Professional Land Surveying Act to Commonly Applied Licensing Practices.
3. Clarify the Board's Authority to Regulate Nonlicensees and Use of the Title "Engineer."
4. Continue the Board for 12 Years and Require It to Form a Joint Practice Committee With the Texas Board of Architectural Examiners.

Issue 1 | The Board's Enforcement Activities Create a Burden on Complainants, Focus on Minor Infractions, and Provide Little Tracking Capabilities.

Key Findings

- The Board processes, investigates, and prosecutes complaints filed against both licensed engineers and nonlicensed individuals.
- Complaint processes create a burden on the complainant, limit public access, and are not reliably tracked by the Board.
- The Board cannot adequately address technical issues that arise during the enforcement process.
- Enforcement efforts appear to focus on minor violations of the Act.

The Texas Board of Professional Engineering's enforcement process hinders the public's ability to conveniently file complaints with the Board. As a result, the majority of complaints prosecuted by the Board are initiated by staff and focus on minor infractions of the Texas Engineering Practice Act. Also, because engineering disciplines vary greatly, the Board lacks needed expertise to adequately address complaints that relate to technical engineering issues. Finally, poor tracking capabilities limit the Board's ability to provide reliable data on its enforcement process. The following recommendations should afford the public more convenient access to the Board's enforcement process, focus the Board on significant violations of the Act, facilitate the Board's access to industry experts, and enhance the Board's accountability.

Recommendations**Change in Statute****1.1 Require the Board to establish a simple, accessible process for accepting, opening, and investigating complaints.**

This recommendation would streamline the Board's complaint process by requiring the Board to open an enforcement action upon receipt of a complaint from the public or a licensee, or a referral from another agency. The Board would consider any written grievance as a complaint instead of requiring proof to justify disciplinary action before opening an official complaint case. In addition, the Board would maintain confidentiality from the time the complaint is initially filed with the Board until formal charges have been filed. This recommendation also would clarify that complainants only need to provide enough information for the Board to determine jurisdiction, and that Board staff must conduct all phases of complaint investigations.

1.2 Require the Board to establish the process for filing a complaint in rule and to make this information available to the public via the Board's Web site.

This recommendation would ensure that the Board clearly defines the method for filing a complaint in rule, and that the Board accepts public input in determining this method. The Board would be

required to put the process for filing a complaint, as well as the complaint form, on the Board's Web site, making the Board's enforcement process more accessible to the public. The public should be able to easily and conveniently access the Board's complaint process without having to first be screened by staff investigators. Complainants who want to speak with an investigator before filing a complaint should be able to do so, but this should not be a requirement.

1.3 Require the Board to prioritize complaints and focus its efforts on those complaints that could harm the public.

While title issues, firm registration cases, and other minor infractions are violations of the Act and Board rules, the Board should develop a method to prioritize complaints. Complaints alleging actions that could potentially harm the public and complaints received by the public should take precedence over staff-initiated complaints and minor infractions.

1.4 Authorize the Board to employ advisors and consultants to provide technical assistance on enforcement cases.

This recommendation would authorize the Board to seek advice of technical experts in enforcement cases that involve expertise beyond the Board's in-house resources. These persons would be immune from civil liability for any damage caused in the performance of their official duties, in the absence of fraud, conspiracy, or malice. This provision would help protect persons who contract with the Board, witnesses called to testify by the Board, and consultants appointed by the Board from being harassed and threatened with legal action while performing official duties.

1.5 Require the Board to track complaint information and report this information annually.

This recommendation would require the Board to compile detailed statistics about complaints received and resolved each year and provide this information in its annual report. The Board would provide a separate breakdown of cases resolved each year, classified either as administrative violations that generally originate with the staff, or as disciplinary cases that generally originate as a complaint by the public or other source outside the agency. Keeping track of nonjurisdictional complaints received by the Board would give the agency and the Legislature a fuller picture of the public's problems and concerns in this regulatory area. Specifically, the information the Board should track and report includes the following.

- The reason or basis for the complaint, such as professional misconduct or failure to register a firm.
- The origin of the complaint, such as the public, the Board's staff, referral from another agency, or another source outside the agency.
- The average time to resolve the case from the date the Board initially received the complaint.
- The outcome of the cases, including the number of cases dismissed and the reason for the dismissal, and the number of cases resulting in disciplinary action and the action taken. Cases resulting in enforcement action should also show how the action is imposed, such as by consent order, agreed order approved by the Board, or Board order resulting from a contested case.

- The number of complaints received that fall outside of the Board's jurisdiction, the nature of the complaint, and the action taken.
- The agency should provide the number, type, and age of all open cases as of the end of each fiscal year and any other information required by the Texas Engineering Practice Act relating to statistical analysis of complaints.

1.6 Authorize the Board to establish a 30-day grace period for firms to register with the Board.

Firms registering with the Board for the first time would be granted 30 days after written notification from the Board to comply with registration requirements. Firms that comply within the 30-day period would have no record of enforcement action taken against them, otherwise the Board would begin enforcement. Firms failing to renew their registration would be subject to enforcement action when their registration expires.

Management Action

1.7 The Board should provide formal training for all investigative staff.

Investigators should be initially trained to ensure that they understand investigative techniques, the Texas Engineering Practice Act, and other engineering issues. While investigators should not be expected to have the knowledge of an engineer, formal training should lead to higher quality investigations and cases that can be resolved more quickly.

Issue 2 | Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the consumer.
- Certain administrative provisions of the Board's statute could reduce the Board's efficiency and flexibility to adapt to changing circumstances.

Various licensing, enforcement, and administrative processes in the Texas Engineering Practice Act do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 70 occupational licensing reviews in 25 years. For example, some licensing requirements are unclear or overburdensome, such as application notarization and separate character references. Lack of guidelines in some areas, such as the use of probation as a sanction, increases the opportunity for inconsistent decisions. Administrative processes such as statutory fee caps reduce

the Board's administrative efficiency and flexibility. A comparison of the Board's statute, rules, and practices with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other licensing agencies.

Recommendations

Licensing

Change in Statute

2.1 Eliminate the requirement that applicants must submit separate character references as a qualification for licensure.

Under this recommendation, an applicant would still need to supply three references from licensed Professional Engineers that address the applicant's engineering experience and general suitability for licensure, which could include character. Removing the requirement for separate character references would help ensure fairness in the application process and focus on more measurable characteristics of applicants.

2.2 Eliminate the application notarization requirement on individuals who apply for licensure with the Board.

This recommendation would remove the statutory requirement that applicants submit applications for licensure under oath and would require the Board to accept applications that are not notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to license applications.

2.3 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

The Board's authority to adopt rules that follow general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions would be clarified by specifically referencing the chapter in the Board's enabling statute.

2.4 Require the Board to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

The Board would adopt rules to ensure that testing accommodations are in accordance with the Americans with Disabilities Act, and would work with the national testing organization used by the Board to ensure that these rules are followed.

Management Action

2.5 The Board should explore switching to a continuous license renewal system.

The Board should create a renewal system in which licenses expire on a licensee's birthday to eliminate backlogs, improve efficiency, and provide more convenient service to licensees. Under a continuous license renewal system, the Board would prorate fees on a monthly basis during any transition period.

Enforcement

Change in Statute

2.6 Require Board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations or informal hearings.

Board members would be required to recuse themselves from voting on disciplinary actions in cases in which they played a role at the investigatory or informal hearing level, which would promote objective decision making and ensure that the respondent receives a fair hearing.

2.7 Require agency staff to report administratively dismissed complaints to the Board.

Staff would regularly report administratively dismissed complaints to Board members. When reporting dismissals, staff should include the complainant, respondent, nature of the complaint, and reason for the dismissal.

2.8 Require the Board to adopt a probation guide.

The Board would adopt guidelines in rule for probating license suspensions and develop a system for tracking compliance with probation, ensuring that the Board uses the probation sanction consistently and that licensees meet the terms of probation.

2.9 Authorize the Board to require restitution as part of the settlement conference process.

The Board would be allowed to include restitution as a part of an agreed order reached in an informal conference. Authority would be limited to ordering a refund not to exceed the amount the complainant paid. Any restitution order would not include an estimation of other damages or harm. The restitution may be in lieu of or in addition to a separate Board order assessing an administrative penalty.

Administration

Change in Statute

2.10 Eliminate the statutory language that sets and caps fees.

The Board would have the flexibility to set fees at the level necessary to recover program costs as conditions change.

Management Action

2.11 The Board should increase coordination efforts with other state agencies to address overlapping responsibilities and interests.

This recommendation would encourage the Board to actively seek memoranda of understanding or other methods of coordinating with other state agencies to address areas of overlap that may exist.

Issue 3 | Restricting the Use of the Title “Engineer” to Licensed Individuals Creates a Burden on the Engineering Profession.

Statute currently restricts use of the title “engineer” to only those Professional Engineers licensed by the Board. However, the Texas Engineering Practice Act exempts several groups of individuals, including employees working for private manufacturers, from the requirements to have a license to perform engineering services as long as they do not use the title “engineer” in correspondence, on business cards, or in other ways. Approximately 80 percent of engineering school graduates do not become licensed because they work in industry-exempt fields; however, under current statute, they may not call themselves “engineers.”

Recommendation

Change in Statute

3.1 Clarify the Board’s authority to regulate nonlicensees and use of the title “engineer.”

This recommendation would allow use of the terms “engineer” and “engineering” by individuals other than licensed Professional Engineers, as long as those individuals are operating within the scope of their duties for their employer and do not perform or offer to perform engineering services to the public. The recommendation also would direct the Board’s enforcement authority to ensure that only licensed individuals use the Professional Engineer designation when offering or performing services for the public. This change would update the Texas Engineering Practice Act to reflect the needs of the engineering industry today, yet maintains protection for the public by requiring those engineers who perform engineering services directly to the public to be licensed as Professional Engineers.

Issue 4 | Texas Has a Continuing Need for the Texas Board of Professional Engineers, but Could Benefit From Greater Coordination With the Texas Board of Architectural Examiners.

Key Findings

- The Texas Board of Professional Engineers protects the public by ensuring that only qualified engineers offer services to the public.
- The State has a continuing interest in regulating engineers to protect the safety of Texans.
- While no significant benefit would result from changing the agency structure or transferring the Board's functions to other agencies, greater coordination with the Texas Board of Architectural Examiners could improve operational efficiencies.

To protect public safety and welfare, a need exists for the continued licensing and regulation of Professional Engineers in Texas, and the Texas Board of Professional Engineers should be continued for 12 years. However, establishing a joint practice committee of the Board and the Texas Board of Architectural Examiners would ensure coordination between the agencies to resolve ambiguities among the professions overseen by the two agencies.

Recommendations**Change in Statute****4.1 Continue the Texas Board of Professional Engineers for 12 years.**

This recommendation would continue the Engineers Board as an independent agency responsible for overseeing professional engineering in Texas for the standard 12-year period.

4.2 Require the Board to form a joint practice committee with the Texas Board of Architectural Examiners.

Improving the agencies' protection of the public should be the committee's guiding principle, and this should take precedence over the interests of each Board. The committee should work to resolve issues stemming from the overlap among professions overseen by the agencies. The committee would issue advisory opinions to both Boards regarding matters such as specific enforcement cases, the definitions of architecture and engineering, and requirements relating to the need for professionals licensed by the two Boards on specific projects. The committee would thus develop a body of information that could help resolve future issues and further clarify the respective practice of the professions. The committee should consist of three members from each Board, and should meet at least twice a year. Both Boards should adopt resolutions regarding the committee, its composition, and its purpose.

Fiscal Implication Summary

These recommendations would not result in a significant fiscal impact to the State.

Texas Ethics Commission

Agency at a Glance

The Texas Ethics Commission (the Commission) administers and enforces the state's ethics laws which govern the conduct of state officers and employees, candidates for state and local offices, political committees, lobbyists, and certain district and county judicial officers. Created by a constitutional amendment adopted by the voters in 1991, the Commission's major functions include:

- maintaining financial disclosure reports and making them available to the public;
- enforcing compliance with ethics laws by investigating complaints and assessing penalties;
- issuing advisory opinions interpreting laws under the Commission's jurisdiction; and
- providing ethics training and producing educational materials for state officers, employees, and other groups.

Key Facts

- **Funding.** The Commission operates with an annual budget of about \$2 million. Approximately 98 percent of the agency's budget is supported by General Revenue with the remainder supported by miscellaneous charges, such as copying fees.
- **Staffing.** The Commission has a staff of 35 full-time equivalent employees.
- **Information Filing.** In 2001, 3,806 individuals or groups filed campaign finance reports with the Commission, 1,612 lobbyists filed lobby activity reports, and 2,451 state officials filed personal finance reports. Less than half of all campaign finance reports are filed electronically, while all other reports are filed on paper.
- **Complaints.** More than 880 complaints have been filed with the Commission during its existence. Most of the complaints regard violations of campaign finance and political advertising laws. Any individual may file a sworn complaint of an alleged violation with the Commission. The Commission may also initiate a complaint with an affirmative record vote of at least six Commissioners.
- **Enforcement.** The Commission may enforce all laws under its jurisdiction except laws in the Penal Code, such as bribery, improper influence, and abuse of office. It is authorized to investigate complaints, hold enforcement hearings, issue orders, impose civil penalties, refer issues for criminal prosecution, and take action against a lobbyist's registration.
- **Advisory Opinions.** The Commission issues advisory opinions about relevant laws, including campaign finance, political advertising, lobbyist activities, financial disclosure, standards of conduct of government officials, bribery of public servants, and the misuse of public resources. Since 1992, the Commission has issued approximately 445 advisory opinions.

- **Training.** The Commission provides ethics training for state officials and employees upon request, and for new members of the Legislature in January of odd-numbered years. The Commission produces educational materials and provides ethics training, upon request, for groups affected by the laws under its jurisdiction.

Board Members (8)

Wales Madden III, Chair (Amarillo)
Francisco Hernandez, Jr.
Vice Chair (Fort Worth)
Scott Fisher (Bedford)
Ernestine Glossbrenner (Alice)

Jerome W. Johnson (Amarillo)
Mickey Jo Lawrence (Houston)
D.R. "Tom" Uher (Bay City)
Ralph E. Wayne (Austin)

Agency Head

Karen Lundquist, Executive Director
(512) 463-5800

Recommendations

1. Grant the Commission Additional Authority to Conduct Investigations.
2. Remove Unnecessary Steps in the Commission's Complaint Process.
3. Require the Commission to Set Timelines for Resolving Complaints.
4. Make Improvements to the Commission's Electronic Filing System to Expand Its Use.
5. Improve the Clarity and Consistency of Public Information Provided by the Agency.
6. Allow the Commission to Terminate the Campaign Treasurer Appointments of Inactive Candidates.

Issue 1 | The Commission Lacks Adequate Authority to Conduct Investigations.

Key Findings

- The severity of the penalties for breach of confidentiality impairs the agency's ability to properly investigate complaints and differs from common state practices.
- Lack of subpoena power impairs early investigation of complaints.
- Inadequate complaint investigations reduce the public's confidence in the Commission's enforcement of ethics laws.

Severe penalties for breach of confidentiality and lack of appropriate investigatory tools prohibit the agency from performing adequate investigations of complaints of ethics violations. For example, staff cannot interview witnesses or subpoena documents to determine the validity of a complaint. The following recommendations would help the Commission to better protect the public and enforce ethics laws by more thoroughly investigating complaints.

Recommendations

Change in Statute

1.1 Maintain the Commission's confidentiality provisions, but clarify them to allow staff to conduct investigations.

This recommendation would allow the agency to investigate complaints while still maintaining confidentiality of all information related to the complaint. Staff would be able to talk to third parties, such as witnesses, without breaching confidentiality, as long as they make a good faith effort to appropriately investigate a complaint and maintain confidentiality. The confidentiality provisions would explicitly provide an exception allowing investigative work properly conducted by staff acting in good faith while performing Commission duties. Current confidentiality penalties would remain in place.

1.2 Grant subpoena power for documents and other materials at the preliminary review stage.

This change would authorize the Commission to issue subpoenas for materials and documents earlier in the complaint process. As a result, the staff could conduct more thorough investigations toward the beginning of the complaint process. Issuance of subpoenas for witness testimony would still only occur at the formal hearing stage. A vote of six Commissioners would still be required to issue a subpoena. The Commission would only issue subpoenas with good cause and would establish guidelines for when and how to issue subpoenas.

1.3 Allow the Commission to share confidential investigatory information with the State Commission on Judicial Conduct, the State Bar of Texas, and appropriate law enforcement agencies.

This recommendation would enable the Commission to assist in protecting the public by reporting to the appropriate law enforcement authority information alleging that a possible criminal violation of ethics laws has been committed. The Commission would also be allowed to release information to the State Commission on Judicial Conduct and the State Bar regarding persons under investigation who are also judicial officers or attorneys. Information could be shared with the appropriate entities at the Ethics Commission's own motion or at the request of the other agency. The confidentiality restrictions currently governing ethics complaints would transfer to the entity receiving the information.

1.4 Allow the Executive Director, after an investigation, to refer allegations of Penal Code violations to the prosecuting attorney.

If after an investigation, the Executive Director believes an allegation of a Penal Code violation to be valid, the Executive Director would be allowed to refer the case to the appropriate prosecuting attorney.

Issue 2 | Remove Unnecessary Steps in the Commission's Complaint Process.

Key Findings

- The complaint process requires Commission involvement in preliminary reviews of complaints and includes three separate hearings.
- Requiring the Commission, rather than the staff, to formally accept jurisdiction is inefficient and differs from common state practices.
- The informal hearing stage is redundant, wasting both time and money.

The ethics complaint process is a multi-layered, multi-step procedure, constructed as a result of efforts to ensure overall fairness and to prevent misuse of the process. However, some steps of the process are unnecessary and result in wasted resources. The Sunset Commission identified ways to streamline the complaint process while fully maintaining the due process rights of the respondents. Streamlining the process will also reduce the time and expense required to resolve complaints.

Recommendations

Change in Statute

2.1 Remove the requirement that the Commission must vote to accept jurisdiction of a complaint.

This recommendation would allow the staff to determine jurisdiction, and would therefore expedite the process at the outset. The Commission's staff should send one letter to a complainant and respondent about compliance with form requirements and jurisdiction. At this point, the staff would begin an investigation of a jurisdictional complaint. Complainants would be allowed to appeal to the Commission if the staff does not accept jurisdiction for a complaint.

2.2 Remove the extra informal hearing stage from the complaint process.

This recommendation would streamline the complaint process by removing a superfluous step. The preliminary review hearing stage would act as the only informal hearing. All powers and duties authorized at the informal hearing would be transferred to the preliminary review hearing. However the authority to subpoena documents and materials would be transferred to the preliminary review stage as discussed in Issue 1. The simplified complaint process would still allow the respondent due process because of the opportunities that remain, at the preliminary review hearing and formal hearing, to present a case before the Commission and to respond to evidence collected by the staff.

Issue 3 | Lack of Complaint Deadlines and Incomplete Review of Filings Prevent the Commission from Fully Carrying Out Its Duties.

Key Findings

- The administration of complaints allows for extensive time delays.
- The administration of the financial disclosure filing process does not help prevent incomplete filings.

The Commission's statutes and rules do not provide proper guidelines for timely resolution of complaints, or for ensuring complete and accurate financial reporting. An analysis of the agency's files showed that some complaints linger for over a year, and that campaign reports receive little review for completeness or accuracy.

Recommendations

Change in Statute

3.1 Require the Commission to set timelines for resolving complaints.

This recommendation would require the Commission to adopt rules governing how and when it will enforce timely resolution of complaints. These rules should set the maximum time allowed for a respondent to reply to correspondence from the Commission. These rules should also set forth a process to guide Commission action to resolve complaints based on the seriousness of the violation and whether the respondent had violated previous ethics laws. By setting deadlines for a response, the Commission would prevent the delay of complaint resolution by the respondent, and thus help ensure a more efficient and timely administration of justice for the public.

Management Action

3.2 The Commission should establish a system to randomly check reports.

The staff should phase in a system of randomly checking incoming paper disclosure reports that takes into account the greatest risk to the public's interest. For example, the eight day before election report is considered to be the most crucial for disclosure accountability, therefore the first phase of a random facial compliance checking system could consider only these reports. Once that system is in place, the staff could randomly check 30 day before election reports and, eventually, non-election year reports. The Commission should determine what percentage of reports should be checked at regular intervals. Discovery and enforcement of incomplete reports by the staff at the initial receipt of the report would encourage filers to file complete and accurate reports the first time, and would ensure better disclosure of financial information to the public. The Commission is only required to implement this recommendation if it receives appropriations to do so.

Issue 4 | Exemptions from the Electronic Filing System Limit Public Access to Campaign Finance Information.

Key Findings

- The exemptions from the electronic filing requirement result in inconsistency of information available to the public, encourage paper filing, and create an administrative burden for the agency.
- Specific software requirements could result in needless expense on future system updates.
- Certain local judicial candidates and officeholders and lobbyists are not required to use the electronic filing system.

The State made a large investment in the Commission's electronic filing system to increase public access to campaign finance information and to make filing easier. Yet, due to exemptions, more than half of all potential electronic filers still do not use the system. Further, requirements in statute limit

the agency's flexibility in upgrading the system. The Sunset Commission identified ways to increase electronic filing of campaign finance information, and to allow the agency to efficiently update the system.

Recommendations

Change in Statute

4.1 Allow the Commission, by rule, to limit the no-computer electronic filing exemption.

This recommendation would provide statutory authority for the Ethics Commission to establish, by rule, a dollar limit of contributions or expenditures that a filer could not exceed and still claim the no-computer exemption from electronic filing. To develop these rules, the Commission would consider trends in the amounts of contributions and expenditures on the reports filed using the no-computer exemption. As a result, more filers would use the electronic filing system while still allowing filers with few contributions or expenditures to claim the exemption.

4.2 Remove the exemption from electronic filing for district judges and district attorneys.

This recommendation would expand the use of the electronic filing system to certain local judicial candidates and officeholders who already file on paper with the Ethics Commission. These filers may access the same electronic filing exemptions discussed above. This recommendation will also increase information available to the public on the Internet, and expand the use of the electronic filing system.

4.3 Remove the specific software requirements for the electronic filing system.

By removing the requirements that the agency distribute software to users and accommodate multiple operating systems, the electronic filing system would be easier to update in the future. The Commission would be allowed to consider a completely online electronic filing system, and not be statutorily required to distribute software to filers. The agency would also be allowed to create a more efficient system while still accommodating various operating systems. This flexibility will help the system become more efficient and less expensive to administer and update.

4.4 Require the Commission to develop an electronic filing system for lobbyists.

This recommendation requires the Commission to develop and implement a system to allow lobbyists to file electronically. Allowing lobbyists to file electronically will not only make filing easier for lobbyists, it will also allow greater public access to lobby information. To cover the costs of developing and implementing the system, the Commission will be allowed to assess an additional, temporary fee on lobbyists' registrations.

4.5 Require the Commission to develop a confirmation mechanism for the electronic filing system.

This recommendation requires the Commission to develop a confirmation mechanism for the electronic filing system to ensure that filers know whether their information has been properly received by the agency.

Management Action

4.6 The Commission should display all information, which is not prohibited by law, from paper filed campaign finance reports on its Web site.

The Commission should examine ways to block out donor address information on the scanned images of campaign finance reports that are filed on paper so that it can post these reports to its Web site. This recommendation would ensure an equitable display of campaign finance information to the public and remove a disincentive to file electronically. While these scanned documents would not be searchable, as electronically filed documents are, they would be visible to the public.

Issue 5 | Improve the Clarity and Consistency of Public Information Provided by the Agency.

Key Findings

- Limited information results in a lack of public understanding about how the agency handles complaints.
- Limited information also results in a lack of public knowledge about what the Commission accomplishes through its enforcement activities.
- The agency's legal staff spends a substantial portion of its time answering telephone inquiries.
- The agency does not use an established precedents manual to provide informal advice like other entities.

Without clear and simple published information about the Commission's processes and activities, the general public is left to interpret ethics laws itself or make numerous calls to the agency for personalized informal advice. Information about the Commission is not easy for the average person to understand and is not widely available. The Sunset Commission identified ways for the agency to provide clearer and more consistent information to the public. These recommendations should help the public better understand ethics laws and how the agency administers them.

Recommendations

Change in Statute

5.1 Require the Commission to improve the quality and accessibility of public information about its enforcement process and activities.

This recommendation will improve the quality and accessibility of public information through the following changes.

- Require the Commission to put the complaint form on its Web site.

- Require the Commission to develop plain-language materials describing what to expect during the complaint and enforcement process.
- Require the Commission to inform the public of all enforcement orders that are not confidential through its Web site.

The recommendations to put the complaint form on the Commission's Web site and to require plain-language descriptions of the enforcement process will assist complaint filers to more easily and properly prepare complaints. The information should include, at a minimum, a description of the complainant's responsibilities, the agency's duties, the types of sanctions issued by the Commission, and a basic flowchart of the process.

The recommendation to publish enforcement orders that are not confidential on its Web site as soon as possible after resolution would give filers and the public a clearer understanding of the penalties for ethics violations. The Commission should decide if the actual orders or summaries of the orders will be posted.

Management Action

5.2 The Commission should develop and update lists of frequently asked questions.

The Commission should create and update lists of frequently asked questions about the complaint process, financial disclosure reporting, campaign finance laws, and other standard questions. The Commission should answer specific questions and provide examples of common situations, such as circumstances when expense-paid trips to conferences are appropriate, or how to report mortgage or stock information on personal financial statements. This information should be posted on the agency's Web site.

5.3 The Commission should create a precedents manual.

The Commission should create a resource for the legal staff in answering telephone, e-mail, and other informal inquiries. The agency may use the frequently asked questions documents as a starting point, and consider how other organizations create this tool to assist legal staff in answering questions quickly and consistently.

Issue 6 | Certain Requirements of the Financial Disclosure Program Waste Limited Resources.

Key Findings

- The agency has extensive notice and process requirements for financial disclosure reporting.
- Continuing to notify inactive candidates of filing deadlines and assessing late fines wastes resources.

Ethics statutes place wasteful administrative requirements on the Commission's financial disclosure program. The cost of these requirements outweighs the benefit they provide to those who must file financial information with the agency, and the public who uses that information. These administrative burdens can be eliminated without sacrificing customer service. The money saved could be put to better use within the agency.

Recommendations

Change in Statute

6.1 Allow the Commission to terminate the campaign treasurer appointments of inactive candidates.

This recommendation will allow the Commission to stop tracking candidates who are no longer politically active, but who have not filed the necessary final report. The Commission should adopt rules governing how and when it will terminate the campaign treasurer appointments of inactive candidates. These rules should define what constitutes an inactive candidate. The rules would also include provisions for the Commission to make its termination decisions during its regularly scheduled public meetings, and to notify candidates when considering their cases for termination.

Management Action

6.2 The Commission should allow all filers to choose whether to receive notification of filing deadlines by regular mail, by e-mail, or both.

Under this recommendation, the agency would give filers the option of receiving deadline notices by regular mail, by e-mail, or both. To implement this recommendation, the Commission should create a step that allows filers to state their preferred method of notification. Filers who do not state a preference would continue to receive notifications by regular mail.

Fiscal Implication Summary

This report contains recommendations that will have a fiscal impact to the State. These recommendations are discussed below, followed by a five-year summary chart.

- *Issue 2* – Allowing the staff to determine whether complaints are within the Commission's jurisdiction and eliminating the informal hearing stage from the complaint process will result in cost savings. The agency could save an estimated \$1,350 per year by sending fewer expensive, restricted delivery letters, and could save a portion of the \$7,000 cost per case referred to the State Office of Administrative Hearings.
- *Issue 3* – As a result of the management recommendation to perform completeness checks on incoming reports, the Commission may need to request additional funds of \$33,500 for salary and benefits to hire a full-time clerical person. The Commission is only required to randomly check reports if it receives appropriations to do so.

- **Issue 4** – Requiring the Commission to develop an electronic filing system for lobbyists would not initially result in additional costs to the State, but would be funded by a temporary fee increase to cover the costs in the first two years. According to the agency’s preliminary estimate, the filing system will cost \$240,500 to develop and \$20,245 per year to maintain. However, the Commission will be allowed to assess an additional, temporary fee on lobbyists’ registrations to fund the development and implementation of the system. The agency estimates an increase of \$100 to \$300 per lobbyist registration during the 2004 - 2005 biennium. Subsequent costs can be off set by savings resulting from other recommendations.
- **Issue 6** – Allowing the Commission to terminate campaign treasurer appointments of inactive candidates will result in a small cost savings. This savings could be put to better use within the agency.

Fiscal Year	Gains to the General Revenue Fund	Cost to the General Revenue Fund
2004	\$240,500	\$240,500
2005	\$20,245	\$20,245
2006	\$0	\$0
2007	\$0	\$0
2008	\$0	\$0

Texas Funeral Service Commission

Agency at a Glance

The Texas Funeral Service Commission (TFSC) regulates the funeral industry to protect the public from deceptive funeral practices. To accomplish its mission, the Commission:

- licenses funeral directors and embalmers, and ensures compliance with continuing education requirements;
- inspects and licenses funeral homes and commercial embalming establishments;
- registers cemeteries and crematories; and
- investigates and resolves complaints regarding the industry from consumers or initiated by the agency.

Key Facts

- **Funding.** In fiscal year 2002, TFSC operated on a \$1 million budget and collected \$1.2 million in revenue from industry fees.
- **Staffing.** The Commission has 12 employees, all of whom work in Austin.
- **Licensing and Registration.** The Commission licenses about 5,000 funeral directors or embalmers, and 1,280 funeral homes or embalming establishments. As of September 2002, the agency had also registered 178 cemeteries and crematories.
- **Complaints.** In fiscal year 2002, the agency reviewed 580 complaints. Of these complaints, 141 were carried over from fiscal year 2001 and 439 were filed in fiscal year 2002. Consumers generated about 70 percent of these complaints, with the remainder initiated by the agency.
- **Investigations.** Of the 580 complaints reviewed in fiscal year 2002, the staff administratively dismissed 128 after finding no fault, transferred 21 non-jurisdictional complaints to other agencies, and investigated the remaining 431.
- **Inspections.** In fiscal year 2002, the agency inspected approximately 962 funeral establishments. Inspections of funeral homes and embalming establishments must occur at least once every two years. Inspections of cemeteries and crematories occur only upon receipt of a complaint.
- **Sanctions.** In fiscal year 2002, the Commission took disciplinary action in 129 cases. Of those cases, sanctions included 12 losses of license and 24 administrative penalties. The rest of the sanctions were letters of warning or probated administrative penalties. The Commission collected \$54,766 in administrative penalties, all of which was transferred to General Revenue.

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Recommendations

1. Continue the Commission for 12 Years, and Require Earlier Consumer and Industry Input on Rules.
2. Give the Commission Greater Regulatory and Enforcement Authority Over Cemeteries and Crematories.
3. Consolidate the Authority to Address Consumer Complaints About Cemeteries Into TFSC.
4. Clarify TFSC's Authority to Fully Define Standards of Professional and Ethical Conduct.
5. Prohibit Certain Funeral Vendors or Service Providers from Making Misleading Statements.

Issue 1 | **Texas Has a Continuing Need for the Texas Funeral Service Commission, but the Agency Could Benefit From Earlier Input On Its Rules.**

Key Findings

- In 2001, the Legislature continued TFSC for a two-year “probationary” period and directed the Sunset Commission to evaluate the agency’s implementation of needed changes.
- The Commission has contracted for new information technology resources, improved its understanding and interpretation of its statute, and implemented most of the 2001 Sunset recommendations to improve its regulation of the funeral industry.

The Commission has made a commendable effort to comply with the legislative recommendations passed by the Legislature in 2001, as well as management actions adopted by the Sunset Commission. However, TFSC could further improve regulatory efforts by working earlier with both consumers and the funeral industry during development of its rules.

Recommendations**Change in Statute****1.1 Continue the Texas Funeral Service Commission for 12 years.**

This recommendation continues the Texas Funeral Service Commission (TFSC) for the standard 12-year period until 2015.

1.2 Require TFSC to develop guidelines for the early involvement of consumer and industry stakeholders in its rulemaking process.

This recommendation would require the Commission to develop guidelines for identifying persons affected by a proposed rule and for ensuring input from those persons before a proposed rule is published in the Texas Register. The Commission should use the Texas Department of Health’s stakeholder development process as a general model, and should consider establishing a special subcommittee of the full committee to handle rulemaking.

Issue 2 | **The Commission Lacks Needed Authority to Ensure That Cemeteries and Crematories Conduct Their Business in a Professional and Ethical Manner.**

The Commission registers cemeteries and crematories for the purpose of investigating consumer complaints about the delivery of services and treatment of a body up to and including final burial.

TFSC has no authority to regularly inspect cemeteries and crematories. In addition, the statute limits the Commission's authority regarding unethical behavior to such things as making a fraudulent statement or not providing a price list. Finally, crematory operators are not required to be trained in the ethics of the profession or how to operate a crematory. As a result, TFSC's authority to sanction unethical behavior of cemetery and crematory operators is restricted. For example, should a cemetery operator improperly cremate a body or provide the wrong ashes to a family, the Commission has no authority to take action.

Recommendation

Change in Statute

2.1 Give TFSC greater regulatory and enforcement authority over the practices of cemeteries and crematories, including regular inspections, broader authority over unethical conduct, and certification of crematory operators.

These changes would allow the Commission to more fully regulate cemeteries and crematories. TFSC would inspect cemeteries and crematories at regular intervals, based upon a risk assessment tool, just as TFSC currently inspects funeral and embalming establishments. Authorizing the inspections on a regular basis would help to ensure that consumers do not encounter unethical or inappropriate treatment at any point during their relationship with a cemetery or a crematory. In addition, requiring professional standards and training for crematory operators would help to ensure that Texas consumers have access to ethical cremation services and assure them that the body has been treated respectfully.

Issue 3 | State Law Splits Cemetery Regulation Between Three Separate Agencies Causing Confusion Regarding the Filing of Complaints, and Fails to Address Unethical Behavior After Burial.

Currently, three state agencies are responsible for regulating cemeteries in Texas. TFSC regulates funeral directors, embalmers, and funeral establishments. The agency also registers cemeteries and crematories, and investigates complaints against those facilities should they arise. The Texas Department of Banking (DOB) regulates the financial management of trust funds used to pay for perpetual care of cemeteries. Perpetual care contracts address maintenance of grave sites and cemetery property. A consumer has the right to complain to DOB, but only about the maintenance of the grave as specified in the contract. The Texas Department of Health (TDH) oversees, among other things, cemetery location, depth of graves, and paperwork retention requirements for cemeteries. This separation of cemetery regulation can confuse consumers about which agency to call to address their concerns and complaints about cemetery practices.

However, despite the fact that three separate agencies have varying regulatory responsibilities over cemeteries, no agency has the authority to investigate complaints and sanction unethical behavior, or

unauthorized handling of a body that results in damage to a casket or body after final burial. As a result, consumers have no recourse regarding complaints about unethical or unprofessional treatment after the funeral is completed.

Recommendations

Change in Statute

3.1 Transfer the authority over cemeteries found in Chapters 711, 714, and 715, Health and Safety Code from the Texas Department of Health to TFSC.

This recommendation would authorize the Commission to make and enforce rules previously promulgated by TDH, including regulations on where cemeteries may be located and authority over interment, disinterment, disposal, and transportation of bodies. TFSC would also have the authority to address and sanction consumer complaints related to provisions in these sections.

3.2 Extend TFSC's authority over cemeteries to include the proper treatment of the body or grave after final burial services have been completed, while leaving the financial oversight of perpetual care contracts with the Department of Banking.

This recommendation clarifies TFSC's authority to address consumer complaints regarding the treatment and handling of bodies and caskets after burial services have been completed, including graves in all types of cemeteries. However, this recommendation allows DOB to retain the authority to regulate the financial aspects of perpetual care contracts. Authorizing the Commission to investigate consumer complaints resulting from post-burial events further ensures that the State protects the rights of funeral industry consumers.

These recommendations would consolidate cemetery regulation into the state agency responsible for regulation of the funeral and cemetery industry, and remove from the consumer the burden of determining the state agency responsible for their complaints about cemetery practices.

Issue 4	The Commission's Ability to Ensure Ethical and Professional Conduct Among the Funeral Industry Has Been Hindered by Concerns That the Commission Does Not Have the Authority to Set Standards for Such Conduct in its Rules.
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Currently, TFSC's statute authorizes the Commission to establish proficiency, professionalism, and qualifications standards for funeral directors and embalmers. However, when the Commission attempted to promulgate rules on professionalism and ethics, the funeral industry expressed concern the Commission with overstepping its authority. As a result, the Commission has yet to adopt comprehensive rules to provide guidance on the ethical and professional behavior of its licensees.

Recommendation

Change in Statute

4.1 Clarify the Commission's authority to fully define in rules standards of professional and ethical conduct for the funeral industry.

This recommendation would clarify the Commission's authority to make rules setting standards of professionalism and ethical behavior for all funeral directors, embalmers, crematory operators, funeral and embalming establishments, cemeteries, and crematories. The new rules should include prohibitions of behavior that exhibit disrespect for a body, attempts by a licensee to coerce, harass, or threaten a complainant or witness in a complaint case, or unethical behavior such as forgery of a doctor's signatures on a death certificate.

Issue 5 | TFSC's Statute Does Not Clearly State Which Individuals Are Prohibited From Making Fraudulent Statements as Part of the Sale of Funeral Goods and Services.

Currently, the Occupations Code prohibits a person from making misleading or deceitful statements about funeral merchandise, or funeral, cemetery, and crematory services. Prohibited statements include making false claims about legal, religious, or cemetery requirements for burial; the preservative qualities of funeral merchandise or embalming services; and falsely claiming a license to practice. However, the statute does not specifically list all of the categories of licensed individuals governed under this prohibition. As a result, the Sunset Commission was concerned that TFSC may not have authority to enforce incidences of fraud by all vendors of goods and services.

Recommendation

Change in Statute

5.1 Prohibit all vendors of funeral goods and services that are regulated by TFSC from making fraudulent statements and false claims to consumers.

This recommendation would clarify the statute to specifically prohibit all licensed funeral industry professionals – funeral directors, embalmers, cemetery and crematory operators – from making fraudulent statements. However, individuals who sell caskets, gravestones, or other funeral merchandise, but are not regulated by the Commission, would not be subject to this prohibition.

Fiscal Implication Summary

Overall, these changes would have no fiscal impact on the State. Issue 2, which requires increased regulation of cemeteries and crematories, could result in increased inspection and investigation costs. However, increased licensing fees would cover these costs.

Texas Department of Health

Agency at a Glance

The Texas Department of Health (TDH) is charged with protecting and promoting the health of Texans. In pursuit of its mission, TDH administers approximately 130 programs, functioning to address health care needs of the individual and the population as a whole through direct and indirect services, and professional and facility licensing. The Department's five priorities are improving immunization rates, promoting fitness, eliminating health disparities across populations, improving its ability to respond to disasters, and improving its business practices.

Key Facts

- **Funding.** TDH operates on a \$1.7 billion annual budget. Of that amount, \$890 million comes from federal funds, some of which is drawn down as a result of state matching contributions. The majority of the Department's funds, \$1.2 billion, is paid to contractors for client services and grants.
- **Staffing.** The Department has more than 5,100 employees. About half work in the Austin central office, with the remainder working in the eight health regions across the state. These employees include doctors, nurses, sanitarians, laboratory technicians, health physicists, epidemiologists, and statisticians, to name a few.
- **Regional Services.** Of the 254 counties in Texas, approximately 200 do not have a local health department. The Department serves these areas through its regional offices.
- **Advisory Committees.** In addition to the Board of Health, TDH has 25 advisory committees to assist in the policymaking process. The committees provide the Board with guidance on issues such as children with special health care needs, asbestos abatement, indigent health, poison control, school health, and radiation control.
- **Related Boards.** TDH also provides support to 21 administratively attached boards, such as the Interagency Council for Genetic Services and the Statewide Health Coordinating Council.

Board Members (6)

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Margo S. Scholin, B.S.N., M.S., J.D. (Houston)

Agency Head

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Recommendation

1. Continue Efforts to Monitor TDH Implementation of Business Process Improvements.

Issue 1 | The Department of Health Has Made Progress, But Much Work is Left to be Done to Improve Its Business Practices.

Special Purpose Review

The 77th Legislature directed the Sunset Advisory Commission to conduct a special purpose review to follow up on the implementation status of recommendations made in recent years. Specifically, the Legislature directed the Commission to evaluate the extent to which the Department implemented recommendations and directives from:

- House Bill 2085, the TDH Sunset bill from the 76th Legislature;
- Sunset Advisory Commission management recommendations;
- Office of the State Auditor Reports since January 1, 1999; and
- consultant reports issued after January 1, 2001 (i.e., *Business Practices Evaluation* by consultant, Elton Bomer).

Key Findings

- Despite repeated recommendations on streamlining agency operations, funds management, contract administration, and assessing and reporting agency information, the agency has yet to significantly improve its business operations.
- The Department has not fully implemented recommendations to improve administrative funds management.
- Key recommendations to standardize Department contacting policies remain to be implemented.

Over the past four years since the Sunset review of the Texas Department of Health (TDH), little has changed to actually reduce duplication in programs and business operations. In these times of limited resources, TDH cannot afford to continue without making and carrying out hard decisions to structurally improve its operations. To its credit, in response to legislative direction, TDH has done extensive evaluation and planning to seek out improvements and has implemented new financial management software. At the same time, TDH has dealt with issues such as preparedness for the threat of bioterrorism and the management of the outbreak of West Nile virus.

However, TDH has only fully implemented slightly more than forty percent of recommended actions. Of note, about 60 percent of the recommendations to streamline agency functions have not been fully implemented. The Department continues to operate with programs in organizational silos, often not effectively communicating or sharing resources. Plans to resolve some of the administrative inefficiencies are in the works, but the Department has a long way to go to eliminate years of culture, practice, and bureaucratic inertia that inhibit its effectiveness.

Recommendations

Legislative Action

- 1.1 The Legislature should include a rider in the General Appropriations Act that requires TDH to continue to report implementation status quarterly for the next two years.**

Under this approach, the Legislature would create a rider in the agency's appropriations bill pattern continuing the existing directive that requires TDH to report on the status of the business implementation plan quarterly. The report should include specific information demonstrating the Department's progress on the recommendations for improvements in business practices. In addition, the Office of the State Auditor should continue to monitor the agency's progress toward completing implementation for two more years.

As the Department moves to improve its business practices, two recommendations in the *Business Practices Evaluation* need particular attention: completing a comprehensive functional assessment of the agency, and reassessing its cost allocation methodologies to allow for greater administrative flexibility. Implementation of these recommendations is key to achieving the administrative efficiencies envisioned in the consultants' evaluation.

Sunset Commission Action

- 1.2 The Sunset Advisory Commission should report to the 79th Legislature on the status of the Department's efforts to improve its business operations.**

This recommendation would require the Sunset Commission to follow up on agency implementation of business practice recommendations as part of its compliance review during the next Sunset cycle.

Fiscal Implication Summary

This recommendation would not have a direct fiscal impact to the State.

Texas Higher Education Coordinating Board

Agency at a Glance

The Legislature created the Texas Higher Education Coordinating Board (the Coordinating Board) in 1965 to ensure quality and efficiency as the state's public higher education system expands to meet the needs of a growing and changing population and work force.

The Coordinating Board's major functions are as follows.

- Establishes state higher education plans, and gathers, analyzes, and provides information and data on higher education.
- Reviews and recommends changes in formulas for allocation of state funds to public institutions.
- Approves and coordinates degree programs at higher education institutions and the construction of major facilities at public higher education institutions, except community colleges.
- Administers state and federal programs to expand access, raise quality, improve efficiency, and increase research in higher education.
- Administers the state's student financial aid programs.

Key Facts

- **Funding.** The Coordinating Board operates with an annual budget of about \$489.8 million. Most of the agency's appropriation is trusted to the agency through special item appropriations that the agency ultimately allocates to higher education institutions and students throughout the state. About four percent of the fiscal year 2002 appropriation, or about \$17.4 million, was used for the agency's operating budget. General Revenue supports approximately 75 percent of the agency's budget with the remainder supported by a variety of funding sources including interagency contracts, appropriated receipts, and proceeds from student loan repayments.
- **Staffing.** The Coordinating Board has a staff of 288 full-time employees, all in Austin. More than a third of the agency's staff support the student financial aid programs administered by the agency.
- **Strategic Planning.** The Coordinating Board establishes a master plan for higher education in Texas. Titled *Closing the Gaps by 2015*, higher education, business, and community leaders from throughout the state developed the plan. The plan outlines the goals of closing the gaps in higher education participation and success, in educational excellence, and in funded research over the next 15 years – the four challenges that are the most critical to overcome for the future social and economic health of the state.

- **Formula Funding Review and Calculations.** The Coordinating Board conducts a biennial review and recommends changes to the formulas the Legislature uses to allocate a major portion of funding among institutions. The agency also provides the Legislative Budget Board with calculated formula amounts for institutions before and during the Legislative session to assist in preparation of the budget.
- **Institutional Construction Approval.** The Coordinating Board must approve most large construction projects and property acquisitions at universities, health-related institutions, and the Texas State Technical Colleges. This activity reviews about 100 projects per year involving about \$1 billion per year.
- **Administration of the Advanced Research and Advanced Technology Programs.** These peer-reviewed competitive grants programs provide approximately \$60 million in grants to faculty researchers in Texas universities and health-related institutions. The Coordinating Board solicits proposals and manages a competitive peer-review process for approximately 3,000 science and engineering proposals each biennium and oversees between 450 and 900 active grants.
- **Community and Technical Colleges.** The Coordinating Board is responsible for coordinating general oversight of Texas public two-year institutions including 50 community/junior college districts with 68 separate campuses, four colleges in the Texas State Technical College System, and three state colleges, for a total of 75 two-year institutions. In addition, the Coordinating Board has general oversight of associate degree approval for 24 private proprietary institutions of higher education.
- **Student Financial Aid.** The Coordinating Board administers state-funded financial assistance programs that provide \$756.6 million biennially in scholarships or other types of financial aid to Texas students.

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Recommendations

1. Focus the Coordinating Board on Assessing the Most Effective Activities and Strategies to Achieve the Goals of *Closing the Gaps*.
2. Identify Changes to the Higher Education Funding System that Best Support the Higher Education Plan.
3. Repeal the Statutory Requirement for the Joint Advisory Committee and Establish the State P-16 Council in Statute.
4. Restructure Loan Forgiveness Programs into Loan Repayment Programs.
5. Distribute All Hinson-Hazlewood College Student Loan Funds Through the Texas Guaranteed Student Loan Corporation's Electronic Funds Transfer System.
6. Reduce the Coordinating Board's Size from 18 to 15 Members.
7. Evaluate the Reporting Requirements for Texas' Public Institutions of Higher Education.
8. Repeal Obsolete Statutory Language Relating to the State Post Secondary Review Program.
9. Establish Uniform Standards for Course Numbering and Data Transfer Among Public Institutions of Higher Education.
10. Improve Promotion of the Texas Financial Aid Information Center's Toll-Free Number.
11. Continue the Texas Higher Education Coordinating Board for 12 Years.

Issue 1 | **The Coordinating Board Should Continue to Assess Its Focus On the Most Effective Activities and Strategies to Achieve the Goals of *Closing the Gaps*.**

Key Findings

- While the Coordinating Board has been effective in developing a strategic plan for higher education in Texas (*Closing the Gaps*), the plan lacks key implementation details.
- Statutory constraints do not allow effective implementation of *Closing the Gaps*.

Texas has an institution-driven and not a statewide approach to higher education. The result is little mission differentiation between the institutions, overlapping degree programs, and no integrated system providing students with a continuum of options. While the Coordinating Board has made considerable progress in focusing the efforts of higher education on the key goals for success, the agency has yet to clearly articulate the action steps or propose the fundamental policy shifts necessary to meet the goals of *Closing the Gaps*.

Recommendations**Change in Statute****1.1. Require the Coordinating Board to articulate implementation strategies for the higher education plan, and report biennially to the Legislature on statutory changes that would allow the agency to better support the plan.**

The Coordinating Board should develop and better communicate to institutions the most desirable implementation strategies to support the State's higher education plan. When clarifying the actions needed to support the plan, the Coordinating Board should focus on the key policy shifts required and detail the fiscal impacts of the proposed changes. The agency's analysis should also address higher education needs and implementation strategies by region.

The agency should refocus its biennial higher education status report to the Legislature to be a report on the State's progress toward meeting the goals of the higher education plan, and the statutory changes necessary to assist this effort. The biennial report should address higher education needs and implementation strategies by geographic regions. The Coordinating Board should deliver the status report before the Legislature convenes its regular session.

1.2 Require the Coordinating Board to annually assess its current activities and how well they support *Closing the Gaps*.

The Coordinating Board should set up an internal process to continually monitor opportunities to streamline its policies and operating procedures. The agency should communicate any solutions that require statutory remedies to the Legislature in its biennial status report, as enhanced in Recommendation 1.1.

Issue 2 | The Coordinating Board Is Not Well Positioned to Provide Strategic Input Regarding Higher Education Finance.

Key Finding

- The financing system for higher education does not effectively align with all the goals in the State's higher education plan.

The Coordinating Board's limited role advising the Legislature on funding for higher education impairs its ability to strategically guide the funding of Texas' higher education institutions. Although current statute requires the agency to establish a statewide higher education plan, the Coordinating Board is not positioned to help link the State's funding process with the priorities defined in the plan.

Recommendation**Change in Statute**

- 2.1 Require the Coordinating Board to report biennially to the Legislature on changes to the higher education funding system that best support the higher education plan.**

The Coordinating Board should examine, beyond its current review of the funding formulas, the adequacy of the current higher education funding system in supporting the state's higher education plan. The Coordinating Board should focus on incentives that can be used within the funding system to encourage institutions to meet the goals of the plan. The review should also consider how well the funding system holds institutions accountable for the funding they are currently receiving.

Issue 3 | The Informal P-16 Council Is a More Effective Means of Interagency Coordination Than the Statutory Joint Advisory Committee.

Key Findings

- Two parallel efforts currently exist to improve coordination among all state agencies with oversight responsibilities for public and higher education, the statutory Joint Advisory Committee (JAC) at the policy body level, and the non-statutory P-16 Council at the staff level.
- Despite its effectiveness, the P-16 Council is not statutorily required, and thus has no guarantee of being continued.
- JAC has not been as effective in carrying out its statutory duties, and has become duplicative of efforts better achieved through the P-16 Council.

The statutory Joint Advisory Committee at the policy body level and the non-statutory P-16 Council at the staff level both exist to coordinate on the entire public education system. Although the P-16 Council has been more effective than JAC in achieving this purpose, the Council has no formal charge and statutory basis ensuring it to continue. Abolishing the JAC and establishing the P-16 Council in statute would eliminate the current redundancies between the policy bodies and better position the P-16 Council to coordinate Texas' public education system.

Recommendations

Change in Statute

3.1 Establish the State P-16 Council in statute.

This recommendation would formally create the State P-16 Council in the Education Code. The Council duties should encompass those of the current Joint Advisory Committee, including coordination on teacher recruitment and retention, adult education, and career and technology education. The Council would also be responsible for the coordination of the distribution of Carl D. Perkins funds between the State Board of Education and the Coordinating Board. In addition, the P-16 Council would examine and make recommendations to align curriculum and testing between secondary and post-secondary education. The Council would be composed of the Commissioner of Education, the Commissioner of Higher Education, the Executive Director of the Texas Workforce Commission, and the Executive Director of the State Board for Educator Certification.

3.2 Repeal the statutory requirement for the Joint Advisory Committee.

This recommendation would remove the requirement for the Joint Advisory Committee to exist.

Issue 4 | **Certain Financial Aid Programs Are Administratively Burdensome and Do Not Effectively Achieve Their Goals.**

Key Findings

- Loan forgiveness programs create lost opportunity costs for the State and students, and unnecessary administrative costs for the Coordinating Board and universities.
- Rigid and burdensome requirements inhibit student and university participation in the Teach for Texas Conditional Grant program.
- Statutory eligibility and reporting requirements are unnecessarily complicated, cumbersome, and confusing.

The Coordinating Board administers many financial aid programs, each with varying eligibility and reporting requirements. The Legislature has created these programs largely on a special-purpose basis to meet specific needs over time, and thus they do not mesh into an overall financial aid strategy. The results are barriers to students with financial need and unnecessary administrative

costs. Some of these programs are service obligation loan forgiveness programs, which are costly and do not effectively meet their intended goals. Such special-purpose financial aid programs could be streamlined to promote greater student participation in higher education and cut costs. By giving the Legislature a detailed study of the current laws relating to student financial aid, grant, scholarship and tuition exemption programs, the Coordinating Board could provide the leadership needed to improve these programs.

Recommendations

Change in Statute

4.1 Restructure the Teach for Texas Conditional Grant program and hybrid programs into loan repayment programs.

This recommendation would restructure the programs as follows.

- **Teach for Texas Conditional Grant Program**

This recommendation would change the Teach for Texas Conditional Grant program into a loan repayment program. The program would provide repayment of traditional student loans for participants who teach in communities or subjects with an acute shortage of teachers. The Coordinating Board would set the structure of repayments by rule. This recommendation does not apply to students currently funded by the Teach for Texas Conditional Grant program and would only affect new applicants graduating in fiscal year 2004, the potential implementation year of this recommendation. The Classroom Teacher Loan Repayment program, currently unfunded, would be discontinued.

- **Early Childhood Childcare Provider Student Loan Repayment Program, Part III of the Physician Education Loan Repayment Program, and the Conditional Loan Repayment Program for Attorney Employed by the Office of the Attorney General.**

This recommendation would restructure the Coordinating Board's hybrid service obligation loan programs into repayment programs. The Coordinating Board would repay student loans at the end of each year of service that meets program requirements.

4.2 Require the Coordinating Board to conduct a study of the laws relating to student financial aid programs and report to the Legislature on needed changes.

The Coordinating Board's study should evaluate improvements that the Legislature could make to existing programs to maximize the benefits of the programs to the State by reducing administrative burdens and increasing student access. The report should include recommendations for legislative action necessary to consolidate, expand, or otherwise modify existing programs. As part of its review, the Coordinating Board should include the Texas Association of Student Financial Aid Administrators and the Texas Guaranteed Student Loan Corporation as resources. The Board should present this report to the legislative committees with jurisdiction over education in November 2004.

Issue 5 | The Hinson-Hazlewood College Student Loan Program Does Not Maximize the Use of State Resources.

Key Findings

- The Coordinating Board's funds disbursement process for Hinson-Hazlewood loans discourages state higher education institutions' use of a state resource in favor of private lenders.
- The Hinson-Hazlewood FFELP portfolio is an inefficient use of state resources.
- The Coordinating Board does not strategically allocate Hinson-Hazlewood loan funds to reflect the State's higher education priorities.

The Hinson-Hazlewood program is very similar to the private student loan market. Scores of lenders offer Federal Family Education Loans (FFELP), and many more are aggressively entering the alternative loan market. This situation is aggravated by the fact that institutions prefer lenders using Texas Guaranteed Student Loan Corporation's (TGSLC) electronic funds transfer system over the Hinson-Hazlewood program. While these factors could justify the program's discontinuation, Texas students could be better served if Hinson-Hazlewood funds were strategically allocated and the program's administration was made contemporary with the private sector.

Recommendations**Change in Statute****5.1 Require the Coordinating Board to distribute all Hinson-Hazlewood College Student Loan funds through the Texas Guaranteed Student Loan Corporation's EFT system.**

The Coordinating Board should allocate Hinson-Hazlewood funds through TGSLC's electronic funds transfer system to better serve Texas students. The Coordinating Board would establish an account at the Comptroller's Office that provides TGSLC direct debit access. TGSLC would then disburse funds from that account to institutions through its EFT process. The amount of funds disbursed to each institution would still be determined by the Coordinating Board's allocation process.

5.2 Preclude the Coordinating Board from originating any new, independent FFELP loans through the Hinson-Hazlewood program.

The Coordinating Board should not issue new FFELP loans, except to students already participating in the Hinson-Hazlewood program. The Coordinating Board could, for example, continue to issue new FFELP loans to students who are also receiving College Access Loans or Health Education Loan Program loans. This recommendation does not affect outstanding FFELP loans; the loans will still be serviced by the Coordinating Board.

Management Action

5.3 The Coordinating Board should, where possible, allocate Hinson-Hazlewood funds in a manner more reflective of higher education priorities.

The coordinating Board should consider targeting Hinson-Hazelwood funds towards students in a more strategic manner. For example, the agency could develop a marketing program oriented towards students in programs that incur large debt-burdens. Examples of such programs include medical school, pharmacy school, law school, and nursing school. Such a campaign could also be directed towards students participating in programs identified as being of strategic importance to the state by the Legislature and the Coordinating Board. Examples of these programs include nursing and teaching degrees for rural teachers. Consideration should also be given to achieving the goals of the State's higher education plan. As part of this recommendation, the Coordinating Board should routinely solicit institutional input to assist in defining strategies and goals for the Hinson-Hazlewood program.

Issue 6 | The Current Size of the Higher Education Coordinating Board Does Not Comply With Recent Changes to the Constitution.

Key Findings

- The composition of the Higher Education Coordinating Board does not comply with the terms of a recently adopted constitutional amendment.
- Reducing the size of the Board will not harm its policymaking functions.

The primary duties of the Higher Education Coordinating Board are to provide leadership and coordination for the state's higher education system, institutions, and governing boards. In 1965, the Legislature created an eighteen-member public Board allowing appointments to represent all areas of the state. In 1999 Texas voters approved a constitutional amendment requiring state agency boards to be composed of an odd number of members. Reducing the Board by three members would bring the Board into compliance with the Constitution, while maintaining its geographic and institutional diversity. Reducing the size of the Board will not harm its policymaking functions and will have a small positive fiscal impact.

Recommendation

Change in Statute

6.1 Reduce the size of the Higher Education Coordinating Board from 18 to 15 members.

This recommendation would reduce the Higher Education Coordinating Board to 15 members. The Governor would appoint one-third of the members every two years and the Board would continue to be composed entirely of public members.

Issue 7 | The Coordinating Board Should Evaluate the Reporting Requirements for Texas' Public Institutions of Higher Education.

The Coordinating Board requires many different reports from public higher education institutions. The compilation of these reports alone cost institutions considerable amounts of staff time and effort. A comprehensive review of these reports by the Coordinating Board could result in a savings to institutions through the possible consolidation or elimination of certain reporting requirements.

Recommendation**Management Action****7.1 The Coordinating Board should conduct a comprehensive review of the reports required of colleges and universities to look for redundancies, efficiencies, and potential deletions.**

The Coordinating Board should review all reports required of public higher education institutions, and determine if any reporting requirements may be consolidated or eliminated.

Issue 8 | Lack of Federal Support has Rendered Subchapter Q of the Education Code Unnecessary.

Subchapter Q of the Texas Education Code was passed by the Legislature in 1995. The Subchapter authorizes the Governor to enter into an agreement with the U.S. Secretary of Education to participate in the federal State Postsecondary Review Program. Federal support for the program was discontinued shortly thereafter, making Subchapter Q unnecessary.

Recommendation**Change in Statute****8.1 Repeal Education Code Subchapter Q relating to the State Postsecondary Review Program.**

Removing Subchapter Q from the Education Code would clean up the existing statute.

Issue 9 | Public Institutions of Higher Education Do Not Use Uniform Standards for Course Numbering and Data Transfer.

The Common Course Numbering System is currently used by most public higher education institutions in Texas. The Common Course Numbering System provides a uniform set of course designations for students and their advisors to use in determining course equivalency for the transfer of credit between Texas institutions. Requiring the uniform use of the Numbering System would ease students' transfers between Texas public institutions. In addition, community colleges receive data from other institutions on transfer students on a sporadic basis. This data is useful in evaluating the effectiveness and success of the community college.

Recommendations

Change in Statute

9.1 Require the use of the Common Course Numbering System by all institutions of higher education under the direction of the Coordinating Board.

All public institutions of higher education should use the Common Course Numbering System to number and label courses taught at those institutions. The Coordinating Board should adopt rules governing the Numbering System's administration, applicability, and changes to course classification.

9.2 Require that all shared data regarding student transfers be in a uniform format established by the Coordinating Board.

The Coordinating Board should also develop rules governing the format of shared student transfer information to ensure uniformity of data.

Issue 10 | The Coordinating Board Needs to Include the Texas Financial Aid Information Center's Toll-Free Number as Part of its Public Outreach Campaign.

In 1999, the Texas Legislature created the Texas Financial Aid Information Center for the distribution of student financial aid information. Since August 1999, the Texas Guaranteed Student Loan Corporation has maintained the toll-free call center, receiving roughly 500 calls per month despite a lack of any organized, coordinated campaign to promote the center's availability. Although the call center serves as a useful resource to students seeking financial aid, the Coordinating Board does not include the center's toll-free telephone number as part of its public outreach campaign.

Recommendation

Management Action

10.1 The Coordinating Board Should better promote the Texas Financial Aid Information Center's toll-free number.

Under this recommendation, the Coordinating Board would include the toll-free call center number on any promotional materials developed and included as a part of the public awareness and motivational higher education campaign. The Coordinating Board would also assess the effectiveness of the call center along with other "Closing the Gaps" activities. This recommendation will ensure better use and coordination of information on financial aid available to the public.

Issue 11 | Texas Has a Continuing Need for the Higher Education Coordinating Board.

Key Findings

- Texas has a continued need to coordinate the efforts of its higher education institutions.
- The Coordinating Board has generally accomplished its mission of providing a comprehensive planning entity and coordinating the effective delivery of higher education.
- The Coordinating Board has taken significant steps to refocus its mission and streamline its regulatory activities.
- No substantial benefits would result from transferring the Coordinating Board's functions to another agency.

The State has several primary goals for higher education – making an affordable college education available to a broader percentage of the population, successfully preparing a well-educated workforce, and ensuring institutions use taxpayers dollars wisely as they provide higher education services. Texas needs an organization such as the Coordinating Board to meet these goals. Given that independent boards of regents govern institutions of higher education, the State needs an entity that takes a statewide perspective on the higher education system, balancing institutional and local intentions with statewide needs.

Recommendation

Change in Statute

11.1 Continue the Texas Higher Education Coordinating Board for 12 years.

This recommendation would continue the Coordinating Board as an independent agency responsible for coordinating the State's system of higher education.

Fiscal Implication Summary

Four issues will have a fiscal impact to the State. They are discussed below, followed by a five-year summary chart.

- **Issue 3** – Eliminating the Joint Advisory Committee would result in a total annual savings of \$1,600 in reduced costs for travel and per diem of eight Board members.
- **Issue 4** – Restructuring the Teach for Texas Conditional Grant program and hybrid programs into loan repayment programs will save \$1.25 million in fiscal year 2004 and \$2.5 million in fiscal year 2005. The savings is lower in the first year of implementation since the agency would not accept new grant applications and students who received the grant in 2003 would continue to receive it in 2004. Continued annual savings of \$1.5 million would accrue in subsequent years as the State begins to repay loans in fiscal year 2006 for students who begin their service obligation in 2005. If the Legislature chooses to maintain the current funding level for the program, at least two and a half times the number of current recipients could receive loan repayments as compared with those receiving grants under the current system. The restructuring would have an administrative cost of approximately \$138,000 in the first two years due to conversion costs, but subsequent yearly savings of about \$47,000 would offset these costs.
- **Issue 5** – Allocating Hinson-Hazlewood funds through TGSLC's electronic funds transfer process will slightly increase the cost of loan disbursements by a total \$55,200. Most of this cost would be offset by a savings of \$45,244 per year through the discontinuation of the issuance of paper checks.
- **Issue 6** – Reducing the size of the Board would result in an annual reduction of approximately \$6,000 for Board member travel expenses.

Fiscal Year	Savings to the General Revenue Fund	Cost to the General Revenue Fund
2004	\$1,302,840	\$193,200
2005	\$2,552,840	\$193,200
2006	\$1,599,840	\$55,200
2007	\$1,599,840	\$55,200
2008	\$1,599,840	\$55,200

Texas Department of Housing and Community Affairs

Agency at a Glance

The Texas Department of Housing and Community Affairs (Department) awards funds to acquire, build and maintain affordable housing, provides community assistance, and regulates the manufactured housing industry. The Legislature created the Department in 1991 by merging the Texas Housing Agency, the Texas Department of Community Affairs, and the Community Development Block Grant Program from the Department of Commerce.

The Department's major functions include:

- assisting low income individuals and families to obtain affordable housing by allocating tax credits or awarding funds to for-profit and non-profit organizations, local governments, lenders, and developers;
- funding homeless shelters, community action agencies, and other organizations to weatherize homes, pay utility bills, and provide other services to address poverty issues among low income people; and
- regulating the manufactured housing industry.

Key Facts

- **Funding.** The Department operated on a budget of \$158 million in fiscal year 2002 – \$127 in federal funds, \$9 million in General Revenue funds, and \$22 million of appropriated receipts and other funds.
- **Staffing.** In fiscal year 2002, the Department had 323 full time employees, including 278 employees at its Austin headquarters.
- **Affordable Housing.** The Department helped 2,233 families purchase single-family homes through mortgage loans and down-payment assistance; and funded the construction of 16,156 affordable housing units in multifamily developments through tax credits, mortgage revenue bonds, and state and federal funds.
- **Border Housing and Community Services.** The Department provided contract-for-deed conversions and other forms of technical assistance to 4,800 colonia residents through its field offices in Edinburg, Laredo, Eagle Pass, and El Paso.

Board Members (7)

Michael Jones, Chair (Tyler)

C. Kent Conine, Vice Chair (Frisco)

Elizabeth Anderson (Dallas)

Shadrick Bogany (Houston)

Vidal González (Del Rio)

Norberto Salinas (Mission)

Vacant

Agency Head

Edwina Carrington, Executive Director

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Recommendation

1. Continue the Texas Department of Housing and Community Affairs for 12 Years.

Issue 1 | Texas Has a Continuing Need for the Texas Department of Housing and Community Affairs.

Key Findings

- The 77th Legislature continued the Department of Housing and Community Affairs for a two-year probationary period, requiring the Sunset Commission to evaluate the agency's implementation of certain changes.
- The Department's Governing Board has improved its responsiveness to public input, improving its capacity to make informed decisions and enhance the Department's accountability.
- The Department is undergoing structural and procedural changes to better align its housing finance programs with strategic planning and customer service needs.
- The Department has adopted compliance review procedures and rules to better ensure fair access to housing.
- Overall, the Department of Housing and Community Affairs has implemented 86 percent of the changes imposed by SB 322.

The Texas Department of Housing and Community Affairs was a troubled agency during its Sunset review before the last Session. Despite the significant problems affecting the agency at that time, the Sunset Commission found a strong need for the housing finance programs administered by the agency. Since its last review, the Department has significantly improved its performance, and has displayed a commendable effort to implement the changes adopted by the Legislature. The magnitude of the changes within the Department over the past year should position the agency well to advance in its mission to serve Texas' low-income families.

Recommendation**Change in Statute****1.1 Continue the Texas Department of Housing and Community Affairs for 12 years.**

This recommendation would continue the Texas Department of Housing and Community Affairs until 2015. The Department would continue as the state agency responsible for the distribution of Texas' affordable housing funds.

Fiscal Implication Summary

This recommendation would have no additional fiscal impact to the State.

Texas State Affordable Housing Corporation

Corporation at a Glance

The Legislature established the Texas State Affordable Housing Corporation (Corporation) in 1995 as a self-sustaining non-profit entity to facilitate the provision of affordable housing for low income Texans. To achieve its mission, the Corporation:

- issues tax-exempt mortgage revenue bonds to finance the creation of affordable multifamily housing units by non-profit organizations;
- issues taxable mortgage revenue bonds to finance the purchase of single-family homes by Texas educators under the Teacher Home Loan Program; and
- engages in loan servicing, asset oversight, and other housing-related activities.

Key Facts

- **Funding.** In fiscal year 2002, the Corporation generated \$3.3 million in operating revenues and spent \$2.59 million in operating expenses. The Corporation is a self-sustaining entity that does not receive any State funding, and is not subject to the legislative appropriations process.
- **Staffing.** While the Corporation is budgeted for 18 staff, as of January 2003, six of these positions were vacant.
- **501(c)(3) Bond Program.** Since April 2001, the Corporation has issued \$487 million in tax-exempt mortgage revenue bonds to finance more than 7,700 multifamily affordable housing units. The bonds are payable solely from the rental income of the property, without any obligation on behalf of the State to repay the bonds.
- **Teacher Home Loan Program.** The Corporation offers grants for down payment and closing cost assistance to eligible Texas educators. To date, the Corporation has helped 60 teachers purchase a home, with an average of \$4,730 in assistance per teacher.

Board Members (5)

Dawn Enoch Moore, Chair (Dallas)
Jerry Romero, Vice Chair (El Paso)
Jeffrey Baloutine (Austin)

Donald Currie (Brownsville)
Karen S. Lugar (San Antonio)

Corporation Head

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Recommendation

1. Continue the Corporation for Six Years, With Changes to Ensure the Use of Abated Tax Dollars for Public Benefit.

Issue 1 | **The Texas State Affordable Housing Corporation Effectively Creates Affordable Housing, But Changes Are Needed to Maximize the Public Benefits of Its Programs.**

Key Findings

- The Corporation has effectively used its new business focus to create affordable housing.
- The Corporation's statute does not have terms of service for Board members, which limits their accountability.
- Concerns about the loss of tax revenue may create opposition to the Corporation's multifamily affordable housing projects.
- The Corporation has no statutory requirement to ensure that projects it funds use the abated tax revenues for public benefit.

Since April 2001, the Texas State Affordable Housing Corporation has created more than 7,700 affordable housing units by issuing nearly \$500 million in multifamily 501(c)(3) mortgage revenue bonds. However, the Corporation may face opposition to its affordable housing activities due to concerns about the loss of property tax revenue from projects funded using Corporation bonds, and a perceived lack of public benefit in return for the abated revenue. In addition, the lack of coordination between the Corporation and the Department of Housing and Community Affairs limits the State's ability to improve its affordable housing resource allocation and compliance monitoring.

Recommendations**Change in Statute****1.1 Continue the Texas State Affordable Housing Corporation for six years.**

The Corporation has effectively created affordable housing by issuing multifamily and single-family mortgage revenue bonds, and should be continued. However, the Corporation has significant flexibility in its governing statute to modify its structure, organization, programs, and activities, and is not subject to regular review and analysis through the appropriations process. A six-year Sunset date would give the Legislature the timely oversight necessary to ensure the need for and proper functioning of the Corporation.

1.2 Create six-year terms for Corporation Board members.

This recommendation would replace the current unlimited terms with standard terms for board members. Appointments would be staggered so that the terms of one or two board members expire on January 31 of each odd-numbered year.

1.3 Require the Corporation to adopt a minimum dollar-for-dollar public benefit requirement for recipients of 501(c)(3) bonds.

The Corporation should require borrowers to provide at least one dollar of public benefit for every dollar of abated property tax revenue that they receive. The Corporation and the borrowers could determine the specific forms of public benefit, such as rent reductions, resident services, or Payments in Lieu of Taxes, on a case-by-case basis. A clear statutory standard would assure local communities that tax abatements for Corporation projects must be matched in full by public benefits provided through the creation of affordable housing and related services.

1.4 Require the Corporation to annually review policies for awarding 501(c)(3) bonds, specifically addressing public benefit requirements.

The Corporation should annually review its multifamily bond policies. The review should include a posting of any proposed policy revisions in the Texas Register, an adequate public comment period, and formal Board approval of changes to the policies. The policies should specify reasonable expectations for rent reductions, rehabilitation, and resident service activities for low-income tenants.

1.5 Require the Corporation to contribute information to the State Low Income Housing Plan.

The Board of the Corporation should review the needs assessment information compiled for the State Low Income Housing Plan and provide the Department of Housing and Community Affairs with information on the Corporation's plans for meeting the most pressing needs identified in the assessment. The Corporation's plans should include specific proposals to help serve rural and underserved areas of the state, and to provide affordable housing through methods that do not duplicate the efforts of the Department or local housing finance organizations. The Department should include the corporation's existing projects and future plans in the final version of State Low Income Housing Plan. This recommendation would ensure that the Corporation, with its flexible structure, is helping to fill the most pressing gaps in housing needs.

1.6 Require the Corporation and the Department of Housing and Community Affairs to share compliance information on funding applicants.

Requiring the Corporation and the Department to electronically share compliance information from all applicants for state housing funds should ensure that an applicant's overall compliance history with both entities is fully evaluated before either entity awards funds to the applicant.

Management Action

1.7 The Corporation should provide information to be presented at the unified public hearings conducted by the Department of Housing and Community Affairs.

The Corporation should provide a full description of its programs and funding opportunities for affordable housing to Department staff, who would share the information with the public at the hearings. This information would increase public awareness of the Corporation's activities and clarify the public benefits required from its 501(c)(3) bond projects.

1.8 The Corporation should identify and encourage the use of alternative funding sources to improve the public benefits of its programs.

The Corporation should use its 501(c)(3) non-profit status to seek grants and donations to further its affordable housing mission, and should encourage its borrowers to seek alternative funding sources to improve the public benefit ratio of its 501(c)(3) bond projects. The Corporation should also adopt best practice regulations to ensure that any private donations raised are managed responsibly and used to maximize the public benefits provided by Corporation activities.

Fiscal Implication Summary _____

These recommendations would have no fiscal impact to the State.

Texas Department of Human Services

Agency at a Glance

The Department of Human Services (DHS) administers social service programs that assist low-income families, individuals who are elderly or have disabilities, refugees, and victims of family violence to lead safer, more independent lives in their communities.

The Department's major functions include:

- determining eligibility for federal and state social service programs including temporary cash assistance, Food Stamps, Medicaid, children's health insurance, and long-term care nursing home and community-based services;
- regulating providers of long-term care services, and related occupations, to ensure the health and safety of individuals in nursing homes or in community-based settings; and
- overseeing more than \$3 billion in contracts for agency services.

Key Facts

- **Funding.** The Department had a budget of approximately \$4.7 billion, of which 62 percent (\$2.9 billion) was federal funds, in fiscal year 2002. Other sources make up the balance, including the State's contribution of \$1.7 billion. Federally funded Food Stamp benefits, totaling \$1.5 billion, are not included in the agency's budget.
- **Staffing.** The Department had 14,543 employees for fiscal year 2002, of which 1,864 work out of the agency's headquarters in Austin. The remaining employees work in field offices located in eleven regions.
- **Long-Term Care.** In fiscal year 2002, the Legislature dedicated over 75 percent, or \$3.6 billion, of the agency's budget to its long-term care strategy, which includes nursing facility care, community care services, and long-term care regulation and quality monitoring. In fiscal year 2002, 138,847 individuals received community care services, while the number of residents in nursing facilities remains stable at about 64,000 annually.
- **Family Services.** The Temporary Assistance for Needy Families (TANF), Medicaid, and Food Stamp programs helped nearly 1.3 million low-income families meet their basic financial, health, and nutrition needs in fiscal year 2002. About 8,800 Texas Works staff determine eligibility for all three programs, with TANF cases making up about 15 percent of the caseload.

Board Members (6)

Jon M. Bradley, Chair (Dallas)
Jerry Kane, Vice Chair (Corpus Christi)
Abigail Rios Barrera, M.D. (San Antonio)

John A. Cuellar (Dallas)
Manson B. Johnson (Houston)
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Jim Hine, Commissioner
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Special Purpose Review

The Department underwent Sunset review in 1998, and the Sunset Commission forwarded 24 recommendations to improve the agency to the Legislature in 1999. However, the Sunset legislation including those recommendations did not pass during the legislative session. In 2001, the Legislature passed Senate Bill 309, continuing DHS until 2011, and requiring Sunset to conduct a special purpose review limited to assessing the continuing appropriateness of the 1999 recommendations. Of 24 statutory and management recommendations intended to address specific issues found at the agency, the Department has voluntarily resolved, or otherwise addressed 96 percent of those recommendations since 1999. This report contains the remaining recommendations, in alternative forms, that the Sunset Commission found are still appropriate for DHS to implement.

Recommendations

1. Target Comprehensive Assessment Services to Families At Risk of Exhausting TANF Benefits.
2. Quicken the Eligibility Determination Process for Community Care Programs.
3. Develop Regional Business Plans That Address Statewide Goals and Contain Key Client-Centered Outcome Measures.

Issue 1 | Families At Risk of Exhausting Their Benefits are Not Getting Needed Services to Help Achieve Independence from TANF.

Key Findings

- The Temporary Assistance for Needy Families (TANF) system provides inadequate assessments and service planning for families experiencing multiple barriers to self-sufficiency.
- A growing number of families are not leaving the TANF program successfully, and are at risk of using higher-cost state services.
- The Sunset Commission's previous recommendation to the Legislature in 1999 requiring assessments of TANF families is still appropriate, however it should be implemented on a more limited basis.

While TANF enrollment has decreased by about 50 percent since 1995, and a majority of families leaving found work, many of the remaining families have difficulty obtaining or maintaining employment. These families experience multiple barriers to independence and are more likely to cycle on and off TANF repeatedly, eventually lose all cash assistance, and potentially use more expensive state intervention services. However, DHS does not provide comprehensive assessment and service planning to help ensure these families become independent from cash assistance.

Recommendations**Change in Statute****1.1 Require the Department of Human Services to target comprehensive assessment services to families at risk of exhausting time limited TANF benefits, and assist them to access needed services.**

DHS should implement the assessment and service planning in coordination with eligibility determination, and would first target areas of the state with higher numbers of at-risk families. The agency would be required to adopt rules to implement the following process.

- Identify families at risk of exhausting their benefits, targeting families returning to TANF or individuals exempted from employment services, such as those who are caring for a disabled child or family member.
- Assess the needs of each at-risk family and identify those with higher levels of barriers and service needs, other than employment-related needs, that, if addressed, would help the family achieve independence from cash assistance.
- Plan and coordinate referrals to preventive and supportive services to help those at-risk families achieve independence from cash assistance, or more fully participate in employment services.

Ensuring that at-risk families receive an assessment by DHS, and appropriate referral to supportive services, will help those families avoid cycling back onto cash assistance, and improve their ability to become independent.

1.2 Require the Department and the Texas Workforce Commission to assess and implement best practices to improve client transitions between the agencies.

The Department, TWC, and local workforce boards should assess and compile a report of best practices used to transition clients between DHS offices and local workforce centers. Based on this information, the agencies should formalize specific strategies to improve interagency coordination of TANF services. While the Department would produce the report, DHS and local workforce boards should implement appropriate best practices in DHS regional offices and local workforce centers. The current Memorandum of Understanding between the agencies should be updated to reflect changes resulting from this effort.

Management Action

1.3 The Department should improve the quality, and technological delivery, of information provided to TANF clients on program requirements and services.

The Department should provide plain language information to ensure these families are informed of program requirements, benefit time limits, client rights and responsibilities, and available TANF-related services. The Department should also include information on transitional child care and Medicaid, Children's Health Insurance, food stamps, and the Earned Income Tax Credit. The Department should also improve the use of technology, including the Internet and recorded materials, to deliver this information to clients. Information should be provided in a language appropriate to the client.

Issue 2 | Community Care Eligibility Processes Result in Service Delivery Delays for the Elderly and Persons with Disabilities.

Key Findings

- While the Department has taken some steps to streamline the intake and eligibility process, it could still do more to improve access to community care programs.
- A more limited approach to the 1999 Sunset recommendations to improve DHS's intake and eligibility processes for community care services is appropriate.

The State spends approximately \$1.1 billion annually to provide community care services to help about 140,000 low-income individuals who are elderly or have disabilities remain independent in their homes or communities. While DHS regions are starting to implement policies that reduce the time needed to get individuals into these services, statewide, the Department still struggles with moving individuals into open service slots. The agency does not begin to determine whether individuals on interest lists are eligible for services until program slots open, resulting in slots going unfilled for 45 to 65 days during the lengthy eligibility process.

Recommendation

Change in Statute

2.1 Require the Department to begin the eligibility determination process for community care programs before individuals are released from interest lists.

This recommendation would require the Department to implement the following measures.

- Identify community care slots that will come available during the following quarter due to program expansion, or case closures.
- Begin contacting individuals on interest lists, and start the eligibility determination process at least 30 days before the forecasted program slots become open.
- Ensure that individuals determined eligible begin receiving services only after a slot actually becomes available.

This recommendation would apply, at a minimum, to community care programs authorized under a Medicaid waiver, or programs that have a specified number of program slots allocated each biennium by the Legislature. Starting the eligibility determination process earlier will allow eligible persons to begin services almost immediately, and reduce, by a month or more, the amount of time individuals must wait for services to start.

Issue 3 | DHS Regional Planning Efforts Do Not Adequately Ensure That Local Regions Are Held Accountable for Performance.

Key Findings

- While the Department has implemented regional business planning, it can make these plans a more effective management tool.
- The 1999 Sunset recommendations to the Legislature regarding the performance and accountability of DHS regional offices are still appropriate.

The Department delegates responsibility for service delivery to eleven large regions that operate with a considerable degree of autonomy from the state office. The Department has made efforts to improve its ability to hold DHS regions accountable for efficiency, program performance, and public input by developing regional business plans. However, these plans do not consistently address statewide goals, do not include client-centered performance measures, and do not always take public input into consideration.

Recommendation

Change in Statute

3.1 Require DHS to develop regional business plans that address statewide goals and contain key client-centered outcome measures.

This recommendation would require regional business plans to address all DHS statewide goals, and include region-specific objectives and strategies to meet these goals. In addition, the Department would include key client-centered outcome measures in these plans. Recognizing regional differences, DHS and regional administrators would set region-specific targets for these measures. DHS should also seek public input into the development of the regional business plans and regional strategies. Regional administrators would report at least annually to the state office on progress towards goals and objectives contained in the plan. DHS would report on the client-centered outcome measures to the Legislature annually.

This recommendation would allow DHS to more effectively assess how the agency is improving outcomes for clients receiving services, and increase regional accountability for achieving results. DHS would also be able to better hold regional administrators accountable for performance, track regional progress towards statewide goals, and target assistance to low performing regions.

Fiscal Implication Summary

The recommendations in this report would have no direct fiscal impact to the State, and can be implemented using existing resources.

Texas Board of Professional Land Surveying

Agency at a Glance

The Texas Board of Professional Land Surveying (Board) protects the public by ensuring that qualified surveyors prepare accurate surveys, which result in the orderly use of Texas' land. The Board traces its history to 1919, when the Legislature, recognizing that land surveys affect the property and economy of the state, established the Board of Examiners of Licensed State Land Surveyors for surveyors of state-owned lands. In 1955, the Legislature created a separate board, the State Board of Registration for Public Surveyors, for surveyors who worked on private lands. The Legislature merged the two agencies in 1979, later renaming it the Texas Board of Professional Land Surveying.

To accomplish its goal, the Board licenses land surveyors, and regulates their activities through enforcement. The Board's main functions include:

- certifying Surveyors-In-Training, and licensing Registered Professional Land Surveyors and Licensed State Land Surveyors;
- developing and administering state land surveying exams;
- investigating and resolving complaints against land surveyors; and
- enforcing the Professional Land Surveying Practices Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** The Board operates with an annual budget of about \$379,000. All costs are covered by licensing fees collected from the industry.
- **Staffing.** The Board has four full-time employees and one part-time employee, based in Austin.
- **Licensing.** The Board regulates about 3,000 surveyors. In fiscal year 2002, about 411 individuals took the state licensing exams and 105 received a license.
- **Enforcement.** The Board received 36 complaints in fiscal year 2002. Of the 51 complaints resolved in fiscal year 2002, 30 were found to be without merit and dismissed, and 21 complaints resulted in sanctions against a licensee.

Board Members (10)

Raul Wong, Jr., RPLS, Chair (Dallas)
Steven Hofer, Vice Chair (Midland)
Daniel Martinez, RPLS (Lubbock)
Kelley Neuman (San Antonio)
Art Osborn, RPLS (Tyler)
Honorable Jerry Patterson,
Commissioner of the General Land Office
Ben Thomson, RPLS, LSLS, Designee

Robert Pounds, RPLS, LSLS (El Paso)
D. G. "Greg" Smyth, RPLS, LSLS (Devine)
Douglas Turner, RPLS (Houston)
Joan White (Brownsville)

Agency Head

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Recommendations

1. Authorize the Board to Create Exam Advisory Committees.
2. Require the Board to Establish Its Enforcement Process in Rule.
3. Conform Key Elements of the Texas Professional Land Surveying Act to Commonly Applied Licensing Practices.
4. Authorize the Board to Keep Dismissed Complaints From Being Disclosed to the Public.
5. Direct the Board to Work With the General Land Office to Increase the Number of Licensed State Land Surveyors.
6. Continue the Texas Board of Professional Land Surveying for 12 Years.

Issue 1 | The Board's Unstructured Method of Developing and Approving Exams Could Result in Unfair or Inconsistent Exams.

Key Findings

- The Board develops and administers land surveyor exams through the use of committees.
- Exam advisory committees are not properly constructed, and are not complying with state law regarding reimbursement and meeting postings.
- The Board's approval process for the exams uses unstructured Board subcommittees and lacks the perspective of public members.
- The Legislature has consistently shown interest in proper construction and structure of advisory committees.

The Board gives licensing exams to applicants who wish to become Registered Professional Land Surveyors (RPLS). The Board prepares its exams using advisory committees composed of volunteer licensees, but these committees have no formal guidelines and the Board's interaction with the advisory committees is unstructured, which could lead to questions as to whether the process is fairly administered. Because the Board has never adopted a written policy for the exam-creation process, it does not provide sufficient controls to ensure that exams are consistent or fair.

Recommendations**Change in Statute****1.1 Authorize the Board to create and maintain exam advisory committees and require the Board to adopt rules regarding the form and use of those committees.**

This recommendation would clarify the Board's authority to create advisory committees to help the Board develop the RPLS and reciprocal exams. The Board should adopt rules regarding these committees, including:

- the purpose, role, responsibility, and goals of the committees;
- the size and quorum requirements of the committees;
- the qualifications of the members, such as experience or geographic location;
- the appointment procedures for the committees;
- the terms of service;
- training requirements; and
- the requirement that the committees comply with the Open Meetings Act.

Because of the technical nature of creating exams, members would continue to be surveying industry representatives, so state law requiring advisory committees to include consumers, or public members, would not apply to these specific committees. Board members would not be eligible to sit on the committees as working, voting members, but could attend committee meetings as liaisons to the full Board. To ensure the exam process is clear and consistently followed, the Board would define the process, including the Board's interaction with the advisory committees, in rule. Requiring the Board to formally structure exam advisory committees and using the Board to formally review and approve exams will help guarantee exams are created in a consistent, unbiased, and independent manner.

Requiring the Board to adopt rules directing the exam advisory committees to comply with the Open Meetings Act addresses questions about the applicability of the Act. The Act has a provision that allows committees to meet in closed session to discuss material related to test items. However, under this exception, the Board still must comply with the applicable posting and record keeping requirements of the Act. Accordingly, the Board would be able to hold advisory committees meetings in closed sessions, which would reduce the risk of exam applicants attending meetings or requesting the exam information through an open records request.

Management Action

1.2 The Board should seek approval through the appropriations process for future advisory committee travel reimbursements and comply with the other statutory requirements for advisory committees.

This recommendation would require the Board to request approval through the appropriations process of any future reimbursements to committee members. Additionally, the Board should comply with the other reporting and evaluation requirements in Chapter 2110, Government Code.

1.3 The Board should formally review and approve the exams.

Requiring the Board to formally review and approve exams, a function currently performed by an informal group of Board members, would ensure that public members of the Board are included in the process. Board subcommittees could evaluate the exam, but should make recommendations to the full Board for final exam approval to ensure public members of the Board have input.

1.4 The Board should conduct its Board exam meetings in executive session and comply with the requirements of the Open Meetings Act.

This recommendation would direct the Board to conduct its Board or subcommittee meetings in closed session, when deliberating on test material. Though the agency must still comply with the Open Meetings Act in posting and notification requirements, the Act permits boards to discuss licensing examinations in closed sessions. This provision eliminates the opportunity for exam applicants to either attend the committee meetings or request exam information through an open records request.

Issue 2 | Involvement of Board Members in Enforcement Activities Causes Inefficiencies and Potential Conflicts of Interest.

Key Findings

- The Board prosecutes complaints filed against regulated land surveyors.
- The Board's involvement in enforcement is time-consuming, limits use of staff resources, and results in inefficiencies.
- The Board's role in complaint investigation and enforcement creates the appearance of a conflict of interest.
- The Board inappropriately considers previously dismissed complaints during enforcement proceedings.
- The Board's complaint and enforcement process is not established in statute or rule, thereby allowing it to change at any time.
- Staff at other regulatory agencies take a more active role in enforcement, including dismissing baseless cases, conducting investigations, and recommending action.

In enforcing the Professional Land Surveying Practices Act and Board rules, the Board sits in judgment of accused violators. However, its practice of having a single Board member conducting investigations, determining violations, and recommending sanctions gives the appearance of conflict of interest, limits use of staff resources, and results in inefficiencies. Further, the Board's enforcement procedures are not defined in statute or rule, limiting the public's input to and knowledge of the process. Reducing the Board's role in daily enforcement activities by allowing staff to conduct investigations, dismiss complaints, conduct settlement conferences, and recommend penalties will allow the Board to focus on providing policy direction concerning the practice of land surveying in Texas.

Recommendations

Change in Statute

2.1 Require the Board to establish its enforcement process in rule.

The process should require that:

- staff, or contract investigators, conduct investigations;
- staff are authorized to dismiss baseless complaints;
- staff determine violations and recommend sanctions; and
- the Board approves final sanctions.

This recommendation ensures that the Board has a clearly defined enforcement process in rule, and that the Board accepts public input in determining its enforcement process. Board members would be removed from the day-to-day enforcement functions, such as conducting investigations. Instead,

staff, or investigators contracted by the Board, would investigate complaints, determine if violations occurred, and either dismiss a complaint or recommend sanctions to the Board. Staff would report dismissals to the Board at each of the Board's public meetings or as directed by the Board. The person who filed the complaint would have the right to request reconsideration. Final approval of violations and penalties would remain under the Board's authority.

In cases where circumstances necessitate Board involvement, the Board would appoint a subcommittee, consisting of at least one public member. All subcommittee members would recuse themselves from voting on violations and sanctions. Also, should a Board member act as a consultant to staff on a complaint case, the Board member would be required to recuse himself from disciplinary hearings related to the case.

2.2 Prohibit use of previously dismissed complaints in the enforcement process.

Although previously dismissed complaints are maintained in a licensee's record, the Board should not consider such dismissed complaints when deliberating on a current complaint. However, Board members would be able to consider a licensee's previous history of violations when determining sanctions for a current violation.

Issue 3 | Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the consumer.
- Certain administrative provisions of the Board's statute could reduce the Board's efficiency and flexibility to adapt to changing circumstances.

Various licensing, enforcement, and administrative processes in the Texas Professional Land Surveying Act do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 70 occupational licensing reviews in 25 years. For example, some licensing requirements are unclear or overly burdensome, such as application notarization. Lack of guidelines in some areas, such as the application of penalties, increases the opportunity for inconsistent decisions. Administrative processes such as statutory fee caps reduce the Board's administrative efficiency and flexibility. A comparison of the Board's statute, rules, and practice with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other licensing agencies.

Recommendations

Licensing

Change in Statute

3.1 Eliminate the application notarization requirement on individuals who apply for licensure with the Board.

This recommendation would eliminate the statutory requirement that applicants submit applications for licensure under oath and would require the Board to accept applications that are not notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to license applications.

3.2 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the Board's authority to adopt rules that follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by specifically referencing the Chapter in the Board's enabling statute. The Board would not need to adopt new rules defining which crimes relate to the land surveying license because its current rules meet the standards of this statute.

Enforcement

Change in Statute

3.3 Eliminate the requirement that complaints submitted to the Board be notarized.

The current statutory requirement that complaints be accompanied by sworn affidavits would be eliminated under this recommendation and the Board would be required to accept complaints that are not notarized, but signed as true and correct.

3.4 Require the Board to adopt, by rule, guidelines for informal settlement conferences.

This recommendation would ensure that the Board develops guidelines for informal settlement conferences and adopts them by rule, which would allow the public the opportunity to comment.

3.5 Require the Board to adopt a probation guide.

Under this recommendation, the Board would adopt a written probation guide in rule to ensure that the probation sanction is used consistently.

3.6 Authorize the Board to require restitution as part of the settlement conference process.

The Board would be allowed under this recommendation to include restitution as part of an informal settlement conference. Authority would be limited to ordering a refund not to exceed the amount the consumer paid to the surveyor. Any restitution order would not include an estimation of other damages or harm. The restitution may be in lieu of or in addition to a separate Board order assessing an administrative penalty.

3.7 Require the Board to adopt an administrative penalty matrix in agency procedures or rules.

This recommendation would ensure that the Board develops administrative penalty sanctions that appropriately relate to different violations of the Board's Act or rules. By requiring the Board to adopt the matrix in rule, the public would have the opportunity to comment.

Administration

Change in Statute

3.8 Eliminate statutory language that sets and caps fees.

Under this recommendation the Board would have the flexibility to set fees at the level necessary to recover program costs as conditions change. Statutory language would be added to clarify that the Board's fees should be set to cover costs and not to earn additional revenue for the agency.

Issue 4 | Public Disclosure of Dismissed Complaints May Harm Licensees.

The Board may receive complaints against a Registered Professional Land Surveyor or Licensed State Land Surveyor that are unwarranted or frivolous. Revealing the existence of a complaint before investigating the validity of that complaint may damage a licensee's credibility. While records of previously dismissed complaints may prove useful for future investigations, unfounded information contained in dismissal complaints about a licensee should not be released to the public.

Recommendation

Change in Statute

4.1 Authorize the Board to Keep Dismissed Complaints From Being Disclosed to the Public.

To protect licensees who were the subject of unwarranted complaints, the Board would be allowed to keep dismissed complaints from being disclosed to the public. The Board would maintain dismissed

and unfounded complaints in a licensee's file, but such complaints would not be available for release to the public or subject to open records requests.

Issue 5 | The State Has a Declining Number of Licensed State Land Surveyors.

Licensed State Land Surveyors (LSLS) conduct surveys on land under the jurisdiction of the General Land Office (GLO), such as Gulf Coast beaches and Permanent School Fund lands, and operate as agents of the State when conducting such surveys. However, Texas has a limited number of LSLSs, and the number of this type of surveyor has declined over time. The General Land Office has determined that steps are needed to maintain the continued availability of qualified LSLSs to help ensure that accurate surveys are filed with GLO. As the agency that licenses and regulates surveyors, the Board can play a pivotal role in finding ways to assist applicants in preparing for the LSLS exam and become licensed.

Recommendation

Management Action

5.1 The Board Should Coordinate With the General Land Office in Efforts to Increase the Number of Licensed State Land Surveyors.

The Board should work with the General Land Office to jointly sponsor educational seminars for Licensed State Land Surveyor applicants and to develop study guides for the Licensed State Land Surveyor exam.

Issue 6 | Texas Has a Continuing Need for the Texas Board of Professional Land Surveying.

Key Findings

- The Texas Board of Professional Land Surveying protects the public by ensuring that qualified surveyors prepare accurate surveys, resulting in the orderly use of Texas' land.
- Texas has a continuing need for regulating land surveyors to protect the economic welfare of Texans.
- No significant benefit would result from changing the agency's structure or having any other state agency perform the Board's functions.
- All 50 states regulate land surveyors, although organizational structures vary.

Land surveys, which define property boundaries and are required in most property transactions, play a vital part in Texas' multibillion-dollar real estate market. The Texas Board of Professional Land Surveying performs an important mission, as regulation of land surveyors helps protect the public's economic welfare by ensuring that only qualified land surveyors practice in Texas and by sanctioning those practitioners who violate the law. The Sunset Commission concluded that regulation of land surveyors is needed to protect the economic welfare of Texans, and that the Board is the proper place for that regulation.

Recommendation

Change in Statute

6.1 Continue the Texas Board of Professional Land Surveying for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary _____

These recommendations would not have a fiscal impact to the State.

Board of Law Examiners

Agency at a Glance

The Board of Law Examiners (the Board) is a judicial agency created by the Legislature in 1919 to examine eligible candidates' qualifications to practice law, and to determine the eligibility of candidates for examination for a law license. The Board's activities are governed by rules adopted by the Supreme Court and include:

- considering moral character and fitness of examinees and out-of-state attorneys seeking admission to the State Bar;
- ensuring that applicants to the State Bar have adequate legal study;
- examining eligible candidates and providing analyses to persons failing the examination; and
- ensuring that out-of-state attorneys meet the eligibility requirements necessary to obtain a law license in Texas.

Key Facts

- **Funding.** The Board is not subject to legislative appropriations. Instead, the Supreme Court sets fees and approves the annual budget of the Board, which totaled \$2.24 million in fiscal year 2002.
- **Staffing.** In fiscal year 2002, the Board employed 19 people, all of whom work in its Austin headquarters.
- **Bar Examination.** The Board conducts the bar examination over two-and-a-half days, twice a year, in cities where law schools are located – Austin, Dallas, Houston, Lubbock, San Antonio, and Waco.
- **Applicants.** In fiscal year 2002, the Board certified 2,552 applicants to receive a law license after having passed the bar exam. The Board also certified 284 attorney applicants for admission without examination.
- **Character and Fitness Hearings.** In fiscal year 2002, three-member panels of the Board adjudicated 100 character and fitness cases, certifying good character and fitness for 38 individuals, declining to certify 22 individuals, and recommending 37 individuals for probationary or conditional status, and reaching three other decisions involving probationary status.

Board Members (9)

Robert Valdez, Chair (San Antonio)
Jack Strickland, Vice Chair (Fort Worth)
U. Lawrence Bozé (Houston)
Albert Witcher (Waco)
Jerry Grissom (Dallas)

Jerry Nugent (Austin)
Cynthia Olsen (Houston)
Jorge Rangel (Corpus Christi)
Vacant

Agency Head

Julia Vaughan, Executive Director
(512) 463-1621

Recommendations

1. Balance the Need to Protect the Public With the Need to Safeguard Prospective Attorneys.
2. Direct the Board to Develop Guidelines Under Its Existing Authority to Assist Board Decisions on Character and Fitness Determinations, Probationary Licenses, and Waiver Requests.
3. Lengthen the Board Members' Terms to Six Years and Place Them on a Staggered Schedule.
4. Deposit Board of Law Examiners' Funds In the State Treasury Subject to the Legislative Appropriations Process.
5. Clarify the Supreme Court's Authority to Establish Later Deadlines for Filing Applications to the Bar Exam.
6. Continue the Board of Law Examiners for 12 Years.

Issue 1 | **The Board's Character and Fitness Process Does Not Adequately Balance the Need to Protect the Public With the Need to Safeguard the Prospective Attorney.**

Key Findings

- Character and fitness proceedings allow the disclosure of confidential information unnecessary to protect the public.
- Probationary license status is not subject to disclosure, depriving the public of information it has a valid need to know.
- District committees no longer serve a meaningful purpose in character and fitness investigations.
- The statutory definition of chemical dependency is ambiguous, allowing possibly chemically dependent applicants to receive law licenses.

The Board of Law Examiners assesses the character and fitness of persons seeking to practice law, protecting the public and the integrity of the profession by ensuring that these people will be able to meet their obligations and responsibilities as lawyers. By its nature, a character and fitness assessment considers private, personal issues that may not need to be disclosed publicly. One of these issues, chemical dependency, is governed by statutory language that may not allow the Board to take necessary action to protect the public. The Board considers these issues after a staff investigation that has become increasingly sophisticated, shifting from its historic reliance on volunteer committees.

Recommendations**Change in Statute****1.1 Clarify existing protections to prevent the release of confidential information in character and fitness hearings and in deliberations on requests for testing accommodations.**

This recommendation would amend current statutory language to close all character and fitness records, including hearings where such matters are discussed. This would allow medical and psychiatric records of persons seeking to enter law school and seeking admission to the Bar to remain confidential. Hearing determinations would also be confidential. Individuals would have the option to have their character and fitness hearings open to the public if they submit a written request to the agency before the hearing. Protection from disclosure would also extend to medical and psychological records discussed during deliberations on requests for testing accommodations on the bar exam. Preventing the disclosure of this confidential information would protect the personal records of applicants without unreasonably harming the public's need to know.

1.2 Make probationary license status subject to disclosure.

This recommendation would help inform and protect the public by allowing access to information concerning the probationary status of a newly-licensed attorney. Any information which formed the

basis for the issuance of the probationary license would remain confidential. The Board would make this information available only upon request, in coordination with the State Bar. The recommendation would be prospective, maintaining the confidentiality of past probationary license orders.

1.3 Eliminate the role of district committees in character and fitness investigations.

This recommendation would eliminate an unnecessary and obsolete stage in the character and fitness investigation process. Elimination of district committees would allow staff to solely conduct the character and fitness investigations, ensuring greater consistency and improved investigative methods.

1.4 Eliminate the current statutory definition of chemical dependency, and require the Board to develop a new definition by rule.

Requiring the Board to develop a new definition by rule, subject to Supreme Court approval, would result in application of a widely accepted clinical definition of chemical dependency, and enable the Board to effectively address possible chemical dependency issues of license candidates. The Board should consider the elements contained in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*, when developing the required rules.

Issue 2 | The Board Makes Decisions on Character and Fitness Issues and Waiver Requests Without the Benefit of Guidelines Based on Its Past Decisions.

Key Findings

- The Board makes fundamental decisions affecting an individual's ability to practice law.
- Without guidelines, the Board cannot ensure fairness and consistency in deciding character and fitness issues, and waiver requests.
- Decisionmakers – especially in the Judicial branch – commonly rely on guidance to assist in their work.

While the Board has a process in place for judging the character and fitness of persons seeking to practice law, and for granting waiver requests for various fees and deadlines, the Board does not have guidelines in making decisions on these cases. Without guidelines, Board members cannot ensure the consistency of their own rulings over time or the consistency of their actions with those of other members. They also cannot ensure that external considerations will not slip into the process, potentially affecting the fairness of decisions.

By developing guidelines, based largely on past Board decisions, Board members would have additional information to help them make decisions. Further, basing these guidelines largely on precedents is a natural approach for a judicial agency making such important decisions affecting who practices law in the state.

Recommendation

Management Action

2.1 The Board should develop guidelines to assist its decisionmaking on character and fitness determinations, probationary licenses, and waiver requests.

This recommendation encourages the Board to develop guidelines, based on its past decisions to guide consideration of comparable cases. The guidance could also include other criteria, such as factors to help the Board evaluate the seriousness of different issues and steps taken by the person to mitigate the issue. This recommendation would not require specific action by Board members on the basis of these guidelines, but would simply serve as a tool to assist in fair, consistent decisionmaking.

The Board would need to determine how far back in time this record should go in reflecting Board action, and would need to update this record and guidelines as the Board's view of issues changes based on subsequent information, or changing conditions or philosophy. Because guidelines on character and fitness would need to be based largely on precedent from specific cases in the past, of necessity, these guidelines would fall under the existing statutory provision exempting character and fitness records from public disclosure.

Issue 3 | Board Members' Term Length, and a Lack of Staggered Terms, Hinders Continuity on the Board.

Key Findings

- The Board of Law Examiners is a judicial body with unique responsibilities regarding admission to the State Bar.
- The short term length for its members hinders continuity on the Board, and could potentially impair the Board's ability to do its job.
- Staggered, six-year terms are standard for state officials.

Board member duties involve developing bar exam questions, administering the exam, supervising the grading of exams, providing analyses to failing exam applicants, and conducting character and fitness hearings. A great deal of time and effort is invested in and by Board members. A two-year term is too short to participate meaningfully in Board activities. Without a staggered schedule for the expiration of terms, the Board is susceptible to uncontrolled turnover. Lengthening a member's term, and placing members' term expirations on a staggered schedule, would ensure continuity of experience and expertise on the Board.

Recommendations

Change in Statute

- 3.1 Lengthen the Board members' terms to six years.**
- 3.2 Place the Board members' terms on a staggered schedule, with one-third of the Board's membership to be appointed every two years.**

These recommendations would require members of the Board to hold office for staggered terms of six years, with the terms of three members expiring every two years. Each member would hold office until a successor is appointed and has qualified for office. The terms would expire on August 31 of odd-numbered years. The staggered terms would help preclude too many new members joining the Board at the same time, and help maintain a level of experience at all times. The extended term would allow members to gain a level of knowledge and experience to better perform their job of determining admission to the State Bar of Texas.

Issue 4 | The Board is Not Subject to the Legislative Appropriations Process.

Unlike typical state agencies, the Board is not subject to the appropriations process. Instead, the Board's funding is maintained outside the State Treasury, with revenue from application, examination, and investigation fees set by the Supreme Court. The Supreme Court also approves the agency's annual operating budget.

Recommendation

Change in Statute

- 4.1 Require the Board of Law Examiners to deposit its funds in the State Treasury subject to the legislative appropriations process.**

This recommendation requires the Board to deposit its funds in the State Treasury subject to the legislative appropriations process with oversight of expenditures by the Comptroller of Public Accounts. The recommendation requires repealing a provision requiring fees received by the Board to be deposited in a fund established by the Texas Supreme Court.

Issue 5 | Statutory Filing Deadlines For the Bar Exam Conflict With Deadlines Set In the Board's Rules.

Currently, a conflict exists between the statute which requires applications for the bar exam to be filed with the Board 180 days before the exam, and a Supreme Court rule which allows for later filing for good cause or to prevent hardship. In addition, a Supreme Court rule allows for even later filings for persons who failed the prior exam and who could have not predicted the need to file an application until notice of failure.

Recommendation**Change in Statute****5.1 Clarify the Supreme Court's authority, in statute, to establish later deadlines for filing applications to take the bar exam.**

This recommendation would amend the statute to permit application filing deadlines for the bar exam to be consistent with those found in the Board's rules. The Board would permit an applicant to file an application with the Board 60 days later than the standard filing deadline upon showing of good cause or to prevent hardship and the payment of late fees. In addition, a person who failed the immediately preceding bar exam and therefore could not have met the deadline would be able to take the next bar exam upon filing a re-application and paying the required fees, without regard to filing deadlines or late fees.

Issue 6 | Texas Has a Continuing Need for the Board of Law Examiners.

Key Findings

- The Board regulates admission to practice law under the auspices of both the Texas Supreme Court and the Texas Legislature.
- The State has a continuing interest in determining eligibility to practice law in Texas.
- The Board's unique structure, as an independent agency under the dual oversight of the Supreme Court and the Legislature, is an accepted approach to the regulation of the legal profession.

The Board of Law Examiners' main responsibility – to determine individuals' eligibility for admission to practice law – is important to citizens in Texas. The Board ensures individuals seeking a law license are able to serve the public in a competent and ethical manner. It accomplishes the task under the oversight of the Texas Supreme Court and the Texas Legislature. The Sunset Commission concluded that the Board should be continued for 12 years and remain under dual oversight.

Recommendation

Change in Statute

6.1 Continue the Board of Law Examiners for 12 years.

This recommendation continues the Board of Law Examiners for the standard 12-year period until 2015.

Fiscal Implication Summary _____

The recommendations in this report would not have a fiscal impact to the State, as discussed below.

- **Issue 4** – Requiring the Board to be funded through the appropriations process would not have a fiscal impact to the State. This change would place approximately \$2.24 million in fee revenue each year in the General Revenue Fund, which would be subject to appropriation to cover the agency’s operating costs.

Licensing Agency Pilot Project

Pilot Project at a Glance

In 1999, the Legislature established the Self-Directed, Semi-Independent Licensing Agency Pilot Project Act to test whether certain agencies could effectively operate outside of the legislative appropriations process. Three agencies were selected to participate in the Pilot Project – Texas State Board of Public Accountancy, Texas Board of Architectural Examiners, and Texas Board of Professional Engineers.

Under terms of the Act, Pilot Project agencies are not required to participate in the legislative budgeting process or adhere to the spending limits and General Appropriations Act provisions that affect most other state agencies. The semi-independent agency status is intended to allow the agencies greater budget flexibility to raise and spend their own funds.

Because the 1999 Pilot Project bill did not provide for agency funds to be held outside the State Treasury, agencies were still bound by appropriations limits and the project did not fully take effect. In 2001, the Legislature provided that Pilot Project funds were to be deposited into the Texas Treasury Safekeeping Trust Company, clearing the way for the three agencies to commence participation in the Pilot Project.

Key Facts

- **Revenue and Expenses.** Each project agency must raise its own revenue to support agency functions and pay other agencies that provide services, such as rent and utilities provided by the Texas Building and Procurement Commission, and employee health and retirement benefits provided by the Employees Retirement System. Licensing fees and other agency funds are deposited into the Texas Treasury Safekeeping Trust Company.
- **Appropriations Act Riders.** Pilot Project agencies are not required to adhere to provisions in the General Appropriations Act that limit state agencies' travel spending, control the number of employees, and provide other limitations. In addition, funds remaining at the end of each fiscal year are available for use in future years.
- **Administrative Fines.** Like licensing fees, the Pilot Project Act permits each project agency to receive and control any administrative fines it collects.
- **Professional Licensing Fees.** The boards continue to collect and remit to the General Revenue Fund the \$200 annual professional fee paid by most licensed professionals. The professional fees collected by the boards totaled about \$19 million during fiscal year 2002.
- **Payments to General Revenue.** To ensure the revenue-neutral nature of the Pilot Project Act, the three project agencies are required to make payments to the General Revenue Fund equal to the amount of excess revenue generated at the time of the Act's passage.

- **Staff.** The imposition of the Pilot Project did not change the status of agency employees as members of the Employee Retirement System; project agency employees remain eligible for State health and retirement benefits.
- **Reporting.** Each project agency must submit an annual report to the Legislature that provides information on staff salary and travel expenses, board member travel expenses, agency revenue and expenses, and an operating plan and budget. Before each legislative session, the agencies must also provide additional information on financial and performance audit results, enforcement activities, and rules adopted or repealed.

Recommendation

1. Abolish the Self-Directed, Semi-Independent Licensing Agency Pilot Project.

Issue 1 | The Self-Directed, Semi-Independent Licensing Agency Pilot Project Should Not Be Continued.

The Legislature created the Self-Directed, Semi-Independent Licensing Agency Pilot Project Act to test whether certain agencies could operate effectively outside of the normal legislative appropriations process. However, the Sunset Commission concluded that permitting project agencies to operate without legislative oversight of their appropriations could pose dangers to the State that outweighed the potential benefits of the Pilot Project.

Recommendation**Change in Statute****1.1 Discontinue the Self-Directed, Semi-Independent Licensing Agency Pilot Project.**

This recommendation will discontinue the statutory authority of pilot project agencies to operate without legislative appropriations. Because, under terms of the Pilot Project Act, the authority for the three project agencies to raise and spend funds outside of the legislative appropriations process expires at the end of the current biennium, no legislation is needed to abolish the Pilot Project.

Fiscal Implication Summary

This recommendation would have a positive fiscal impact to the State. Because the agencies in the Pilot Project currently operate outside of the appropriations process and do not receive funds from the General Revenue Fund, returning the agencies to the General Appropriations Act will require additional appropriations. However, these appropriations would be offset by the revenue currently collected by the project agencies. Returning the project agencies to the appropriations process would result in enforcement funds being remitted to the State, but because these funds vary greatly from year to year, this gain to the State was not estimated for this report.

Texas Department of Licensing and Regulation

Agency at a Glance

The Texas Department of Licensing and Regulation (TDLR) serves as an umbrella licensing agency for 20 regulatory programs. Currently, TDLR administers the following regulatory programs.

- Air Conditioning Contractors
- Architectural Barriers
- Auctioneers
- Boilers
- Career Counseling Services
- Combative Sports
- Court Interpreters
- Elevators, Escalators, and Related Equipment
- Industrialized Housing and Buildings
- Personnel Employment Services
- Property Tax Consultants
- Service Contract Providers
- Staff Leasing Services
- Talent Agencies
- Temporary Common Worker Employers
- Transportation Service Providers
- Vehicle Protection Product Warrantors
- Water Well Drillers
- Water Well Pump Installers
- Weather Modification

The Department traces its history to 1909 when the Legislature created the Bureau of Labor Statistics. Over time the agency's purpose broadened to include a number of labor-related regulatory functions and, in 1989, Sunset legislation established TDLR as an umbrella licensing agency for non-health related professions.

To oversee the regulated industries and professions, TDLR:

- licenses, certifies, and registers qualified professional applicants;
- inspects equipment, facilities and buildings, including boilers, elevators, industrialized buildings, for safety and accessibility; and
- ensures compliance by investigating and resolving complaints against persons or businesses.

Key Facts

- **Funding.** The Department operates with an annual budget of \$6.9 million – 99 percent of which comes from licensing fees paid into the General Revenue Fund.
- **Staffing.** TDLR has 145 employees, with 113 in Austin, and 32 in regional and field offices in Dallas, Houston, San Antonio, Wichita Falls, Midland/Odessa, and Lubbock.
- **Architectural Barriers.** The Department reviews construction plans and inspects buildings to help ensure that buildings are accessible to persons with disabilities.
- **Boilers.** TDLR certifies and inspects 60,000 boilers in Texas for safe operation. The agency also commissions 300 boiler inspectors to aid in the inspection workload.

- **Air Conditioning Contractors.** The Department licenses 12,000 air conditioning and refrigeration contractors and oversees 10,000 freon registrants.
- **Elevators and Escalators.** TDLR issues certificates of compliance for 30,000 inspected elevators and escalators that meet minimum standards. The Department has about 110 certified Qualified Elevator Inspectors to inspect elevators and escalators for building owners.

Commission Members (6)

Leo Vasquez, Presiding Officer (Houston)	Gina Parker (Waco)
Mickey Christakos (Allen)	Patricia Stout (San Antonio)
Frank Denton (Conroe)	Vacant

Agency Head

William H. Kuntz, (512) 463-6599

Recommendations

1. Give TDLR's Commission Rulemaking Authority and Advisory Committee Appointment Authority Common to Other Agency Policy Bodies.
2. Reduce the Commission's Size from Six Members to Five Members.
3. Conform Key Elements of the Department's Programs to Commonly Applied Occupational Licensing Practices.
4. Require Elevator Certificates of Compliance to Be Posted in Publicly Visible Areas.
5. Coordinate Oversight of Abandoned and Unplugged Water Wells Among TDLR, Local Groundwater Conservation Districts, and the Texas Commission on Environmental Quality.
6. Abolish the Registration of Transportation Service Providers.
7. Transfer Certain Occupational Licensing Programs from the Texas Commission of Environmental Quality to TDLR.
8. Require TDLR to Act as an Information Resource for Consumers on All State Licensing Agencies.
9. Require TDLR to License and Regulate Mobile Amusement Park Rides and Require Annual Inspections.
10. Continue the Texas Department of Licensing and Regulation (TDLR) for 12 Years.

Issue 1 | **The Commission on Licensing and Regulation Lacks Oversight Powers Common to Agency Policy Bodies.**

Key Findings

- The Commission's ability to fully oversee the Department is hampered by a lack of direct rulemaking authority.
- Vesting rulemaking authority in the Executive Director eliminates the standard forum for public deliberations.
- The Commission's ability to oversee the Department's licensing functions is hindered because it does not receive needed advice directly from its advisory committees.
- Most other agency boards and commissions exercise authority for rulemaking and advisory committee appointments.

The Commission on Licensing and Regulation oversees 20 professions and industries yet the rulemaking authority for most of these licensing functions is not vested in the Commission but in the Executive Director. While the Executive Director must conform to all the public input requirements of the Administrative Procedure Act, removing the Commission from the rulemaking process deprives the State of the input and discussion of the agency's policymaking body, and limits the Commission's ability to oversee TDLR's regulatory programs.

To assist the Department in oversight for its 20 regulatory functions, the Legislature has established 11 advisory committees that recommend rules, licensing requirements, fees, continuing education, and other issues. However, these advisory committees do not report directly to the Commission, but exist primarily to advise the Executive Director. This disconnect between the advisory committees and the policymaking body limits the assistance the Legislature created these committees to provide. This lack of Commission involvement with the appointment of advisory committees and in the rulemaking process is unusual among Texas state agencies.

Recommendations**Change in Statute****1.1 Vest all rulemaking authority for the licensing and regulatory programs of TDLR in the Commission.**

This recommendation would give the Commission the important tool of rulemaking for the programs that it oversees by giving it authority currently vested with the Executive Director. To ensure continuity and to prevent the Commission's workload from increasing, all rules existing on the effective date of this recommendation would remain in effect unless rewritten by the Commission. This change would conform the Commission's powers for rulemaking with those of other boards and commissions. It would also permit greater public deliberations during the rulemaking process and would afford the public the opportunity to address the Commission concerning these rules.

1.2 Grant the Presiding Officer of the Commission, with approval of the Commission, the authority to make all appointments to advisory committees under the Commission's jurisdiction.

This recommendation would clarify that the advisory committees exist to serve the Commission. The statutes would expressly provide that the work of the advisory committees is to assist the Commission in creating rules and regulating the professions and industries under its jurisdiction. By creating stronger ties between the Commission and the advisory committees, the Commission would be able to take greater advantage of the assistance these committees were created to provide.

The Presiding Officer would appoint members of all advisory committees, with the Commission's approval. The Presiding Officer would also select the chairs of each advisory committee to serve a two-year term. Current Advisory Board Chairs would remain until the Presiding Officer appoints a new chair. This recommendation would not affect the Industrialized Building Code Committee as its members would continue to be appointed by the Governor.

Issue 2 | The Current Size of the Commission Does Not Comply With the Constitution.

Key Finding

- The size of the Commission does not comply with the Texas Constitution.

The primary duties of the Commission on Licensing and Regulation, which is composed of six public members, are to approve fees for the Department's licensing programs, to hear appeals of administrative cases brought by the Department, and to oversee the operation of the agency. In 1999, Texas voters approved a constitutional amendment requiring state agency boards to be composed of an odd number of members. Removing one member would bring the Commission into compliance with the Constitution and maintain a sufficient number of members to handle the Commission's workload.

Recommendation

Change in Statute

2.1 Change the size of the Texas Commission on Licensing and Regulation from six to five members.

This recommendation would reduce the Commission to five members. The Commission would continue to be composed of all public members. The workload of the Commission does not appear to be so great that a decrease in its membership by one would constitute a burden on the remaining members. In addition, transferring rulemaking authority for the Department's programs from the Executive Director to the Commission would not significantly add to the Commission's workload.

Issue 3 | Key Elements of the Programs Administered by the Department Do Not Conform to Commonly Applied Occupational Licensing Practices.

Key Findings

- Licensing provisions of several of the Department's program statutes do not follow model licensing practices and could potentially affect the equal treatment of licensees and consumer protection.
- Non-standard enforcement provisions of several TDLR program statutes potentially reduce the agency's effectiveness in protecting the consumer.
- Inconsistent administrative provisions of several Department programs reduce the agency's efficiency and flexibility to adapt to changing circumstances.

The Department operates 20 diverse occupational or industry related licensing programs created over the last 70 years. Various licensing, enforcement, and administrative processes set up in agency and program statutes do not match model licensing standards developed from experience gained through more than 70 Sunset reviews of occupational licensing agencies in 25 years. Conforming TDLR's processes to the model standards results in efficiency and consistency from standardization, additional administrative flexibility, fairer processes for the licensee, and additional protection for consumers.

Recommendations

Licensing

Change in Statute

3.1 Require agency programs to deal with felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would require the Department to follow the general guidelines set up in Chapter 53 for dealing with criminal convictions. Conflicting language found in Auctioneers, Staff Leasing Services, and Licensed Court Interpreter statutes would be removed, and new language would be added to reference Chapter 53 for all agency programs. Based on the requirements of this Chapter, the Department would develop guidelines explaining how a particular crime relates to a particular license. These guidelines would be published in the Texas Register.

3.2 Eliminate the involvement of the Water Well Drillers Advisory Council in making recommendations on specific licensure and enforcement actions.

No other TDLR advisory committee performs these occupational licensing and enforcement functions, which puts the six water well drillers on this nine-member advisory council in the position of making recommendations on entry to the profession, validity of complaints against drillers, and sanctions that should be applied. This recommendation requires that the statute be amended to

eliminate these functions. The change would not affect the ability of the Council to provide technical advice on issues that may be the subject of enforcement cases.

Enforcement

Change in Statute

3.3 Eliminate onerous requirements on individuals to file complaints with the agency.

Specifically, this recommendation would eliminate the \$50 filing fee and notarized complaint required to make a claim against the Auctioneers Education and Recovery Fund. It would also eliminate the requirement that complaints be notarized in the Career Counselors and Personnel Employment Services programs.

3.4 Provide statutory language authorizing routine inspections for the Combative Sports and Weather Modification programs.

Routine inspections are conducted in these two programs. This recommendation adds statutory language that provides the Department with clear authority to perform inspections.

3.5 Require the Department to develop comprehensive complaint procedures that are adopted by the Commission and published in the Texas Register.

This recommendation requires that the agency document its complaint process from submission of the complaint to its final disposition. The procedures would not require formal adoption as rules, but would be finally adopted by the Commission and published in the Texas Register after giving the public opportunity for comment.

3.6 Set administrative penalties for all Department programs not to exceed \$5,000 per day per violation.

Four agency programs have set amounts that differ from this standard: Service Contract Providers, Water Well Drillers, Staff Leasing Services, and Vehicle Protection Product Warrantors. This recommendation removes these non-standard amounts and replaces them with the cap of \$5,000 per day per violation used for all other Department programs.

3.7 Require the agency to adopt an administrative penalty matrix for each program in agency procedures or rules.

This recommendation would ensure that the Department develops administrative penalty amounts that relate appropriately to different violations for each program. The agency may develop these amounts in procedures and not in formal rules; however, the procedures should be adopted by the Commission and published in the Texas Register, after giving the public the opportunity to comment.

3.8 Eliminate hearing and decision timelines that vary from the standard approach in the Administrative Procedure Act.

The statutes for the Career Counselors and Personnel Employment Services programs require that various hearings occur not later than the 45th day after the date on which a complaint is filed with the Commissioner. These acts further provide that the Commissioner must enter a decision on the possible violation not later than eight days after the hearing ends. This recommendation removes these non-standard time periods and returns the programs to the standards set out in the Administrative Procedure Act.

Administration

Change in Statute

3.9 Eliminate the fee caps in the Elevator, Service Contract Providers, Staff Leasing Services, and Talent Agencies programs.

This recommendation would give TDLR the flexibility to set fees in these four programs, as it has in its other programs, at the level necessary to recover program costs as conditions change. Statutory language would be added as necessary to clarify that the programs' fees be designed to cover costs and not to earn additional revenues for the agency.

3.10 Change licensing renewal periods from two years to one year for the Property Tax Consultant and Staff Leasing Services Programs.

This recommendation would standardize all agency renewal periods to one year. The Commission would adjust renewal fees as necessary to recover program costs and to prevent over-collection of funds because of the shorter renewal period.

3.11 Provide renewal provisions for Service Contract Providers and Vehicle Protection Product Warrantors.

These two programs do not have renewal provisions, requiring registrants to resubmit registration information annually. Under this recommendation, the Department would need to inform registrants of new renewal requirements which, typically, are less burdensome on both the licensee and the agency than having to re-register.

3.12 Require the Department to establish a policy for refunding examination fees under certain circumstances.

The Department follows differing exam refund policies. These policies should be standardized to allow refunds only to applicants who provide reasonable advance notification of their inability to sit for the exam or who miss the exam because of emergency circumstances.

Issue 4 | Current Elevator Inspection Requirements Do Not Take Full Advantage of Reporting by the Elevator-Riding Public.

Key Findings

- To the extent that elevators are not being inspected, the State and the public cannot be ensured of their safe operation.
- Most statewide elevator inspection programs in other states require conspicuous posting of certificates of compliance.
- Other Texas regulatory programs also require conspicuous posting of certificates of compliance or seals.

The elevator inspection program at TDLR intends to protect the safety of individuals who use elevators and escalators but is hampered by the number of uninspected, and possibly unsafe, elevators and escalators that the public is using across the state. TDLR's statute prohibits TDLR from requiring such posting in the elevator car, immediately outside the car, or in the lobby or hallways of the building. Without more conspicuous posting of these certificates, the public is unlikely to know of the inspection status of elevators, and TDLR misses an opportunity to find uninspected elevators and bring more elevators into compliance with state standards.

Recommendation**Change in Statute****4.1 Require elevator certificates of compliance to be posted in publicly visible areas.**

This recommendation would repeal the prohibition against TDLR requiring building owners to post certificates of compliance in or near elevators, or in other public places within the building. Instead, certificates of compliance would be required to be posted in a publicly accessible area within the building. The certificate should include information showing the date of the inspection and the due date of the next one, and contact information for the consumer to report violations to TDLR. The Commission would be granted rulemaking authority to determine the location of the certificates and the information required to be included.

By publicly posting certificates of compliance, the public will know of the compliance status of elevators on which they ride, providing a source of information to TDLR to know about the compliance status of a greater number of elevators. This recommendation is the least restrictive regulatory approach that will bring more elevators into compliance through the increased likelihood of consumer reporting.

Issue 5 | TDLR is Not Suited to Oversee the Environmental Responsibility of Plugging Abandoned Water Wells.

Key Findings

- Abandoned water wells contribute to groundwater contamination.
- As a licensing agency, the Department is inappropriately charged with sole responsibility for dealing with abandoned water wells.

An estimated 150,000 abandoned and unplugged water wells in Texas pose a danger of contaminating groundwater supplies. Currently TDLR is responsible for licensing water well drillers and taking enforcement action against landowners who fail to plug abandoned wells, but local Groundwater Conservation Districts and the Texas Commission on Environmental Quality (TCEQ) are charged with protecting groundwater in the state. Requiring local Groundwater Conservation Districts, where available, to enforce against unplugged abandoned wells could decrease the likelihood of groundwater contamination stemming from unplugged water wells. Additionally, requiring TDLR, Conservation Districts, and TCEQ to work together to use the State's investigative and enforcement tools may also decrease groundwater contamination.

Recommendations**Change in Statute****5.1 Transfer the enforcement of plugging of abandoned water wells to local Groundwater Conservation Districts, where they exist, and keep TDLR responsible for enforcement in other areas of the state.**

This recommendation would transfer the responsibility for taking enforcement actions against individuals with unplugged abandoned water wells from TDLR to local Groundwater Conservation Districts where they exist. The Department will maintain responsibility for enforcing against landowners with unplugged water wells in areas of the state with no local Conservation District. The Department will also maintain responsibility for creating well plugging standards. Landowners must still have their wells plugged according to those standards. This recommendation would reduce groundwater contamination through unplugged wells by better using the State's existing tools of water quality enforcement.

5.2 Require the Texas Commission on Environmental Quality, TDLR, and Groundwater Conservation Districts to enter into Memoranda of Understanding to better use the Commission's regional field office investigative system, and implement procedures for referral of abandoned well complaints.

Texas Commission on Environmental Quality has the tools in place to investigate individuals who cause groundwater contamination. To better take advantage of these tools, TDLR, TCEQ, and the local Groundwater Conservation Districts would be required to enter into memoranda of understanding to use TCEQ's field offices better and to refer cases of groundwater contamination stemming from abandoned and unplugged water wells.

Issue 6 | **State Oversight of Transportation Service Providers Is No Longer Needed.**

Key Finding

- Registration of transportation service providers offers little benefit to the state and is unnecessarily burdensome on the industry.

Current law requiring the registration of transportation service providers does not provide protections to the state. Only 77 companies are licensed and no consumer has ever filed a complaint against one. Although the original intent of the law is to collect additional information on companies that may be used by drug smugglers, this information has not proven useful to law enforcement agencies. The Department's program for transportation service providers does not provide additional public protections and is burdensome on the industry.

Recommendation**Change in Statute****6.1 Abolish the registration of transportation service providers.**

This recommendation would repeal requirements that transportation service providers register with TDLR. To preserve evidence that may be useful to law enforcement agencies in the future, the statute requiring companies to keep transaction records would remain. The provision permitting TDLR to audit these records would transfer to the Department of Public Safety, as the state's primary law enforcement agency. Because the records are of the type kept by most companies, maintaining the record keeping and audit requirements would not be a burden on the industry.

Issue 7 | **Regulating Certain Occupations at the State's Environmental Quality Agency Conflicts with TDLR's Role as an Umbrella Licensing Agency.**

The Texas Commission on Environmental Quality (TCEQ) is currently responsible for issuing occupational licenses, certifications, and registrations for 14 types of environmental occupations, as well as taking enforcement action against those licensees as appropriate. Certain of these licensing programs differ from TCEQ's primary regulatory function – the protection of Texas' environment through permitting and enforcement of facilities. These programs are Backflow Prevention Assembly Testers, Customer Service Inspectors, Water Treatment Specialists, Landscape Irrigators, and Underground Storage Operators. TDLR, as the state's umbrella licensing agency, is equipped to effectively license and regulate these occupations.

Recommendation

Change in Statute

7.1 Transfer Certain Occupational Licensing Programs from the Texas Commission on Environmental Quality to TDLR.

Responsibility for the licensure, regulation, and enforcement activities of five environmental occupational licensing programs, including Backflow Prevention Assembly Testers, Customer Service Inspectors, Water Treatment Specialists, Landscape Irrigators, and Underground Storage Tank Operators, would transfer from the Texas Commission on Environmental Quality to TDLR. This recommendation would better consolidate the State's occupational licensing functions.

Issue 8 | Without a Central Source of Information, Consumers May Have Difficulty Accessing Information About State-Regulated Occupations.

Texas regulates many different types of individuals, from air conditioning contractors to doctors. Though TDLR acts as the State's umbrella licensing agency for occupational licenses, many other state agencies regulate individuals, making it difficult for consumers to access information about who is regulated. This recommendation would create a telephone information center for all licensing agencies to be housed at the Department. Additionally, TDLR would identify licensing agencies that currently do not use Texas Online and offer services to develop Web sites and assist those agencies in converting to Texas Online.

Recommendations

Change in Statute

8.1 Create a toll-free consumer information line for all state licensing agencies to be administered by TDLR.

This recommendation would allow consumers to call one number to find out information about any state-issued license. To provide this information, TDLR would maintain a licensing information database and other licensing agencies would contract with TDLR to use this service.

8.2 Require TDLR to identify licensing agencies that do not use Texas Online and to offer services to assist those agencies.

This recommendation would increase the opportunity for both consumers and licensees to have easy access to occupational licensing information on the Internet. The Department would offer its services, on a cost-recovery basis, to develop those agencies' Web sites and to assist those agencies in making the conversion to Texas Online.

Issue 9 | The Current Regulation of Mobile Amusement Park Rides by the State Does Not Adequately Protect the Public.

Currently, the Texas Department of Insurance requires the owners of mobile amusement park rides to provide proof of insurance and inspection for those rides, but no state agency currently has the authority to license and regulate rides.

Recommendation**Change in Statute****9.1 Require TDLR to license and regulate mobile amusement park rides.**

This recommendation would transfer the insurance and inspection requirements for mobile amusement park rides from the Department of Insurance to TDLR. The recommendation would also require TDLR to license and regulate the rides, including administering annual inspections.

Issue 10 | Texas Has a Continuing Need for the Texas Department of Licensing and Regulation.

Key Findings

- Texas has a continuing interest in licensing and regulating certain occupations, businesses, and professions.
- TDLR functions efficiently in its role of licensing a variety of occupations.
- The Legislature has demonstrated its confidence in TDLR through recent enactments, signaling the agency's readiness to expand its role as an umbrella licensing agency.
- Most other states use a central licensing agency to regulate a variety of professions.

The Department of Licensing and Regulation oversees 20 professions and industries through its licensing, inspection and enforcement functions. Its regulatory functions are needed for consumer safety and protection in the state, and the Department should be continued for 12 years. The Department's organization and use of technology enables it to operate efficiently as the State's umbrella licensing agency.

Recommendation

Change in Statute

10.1 Continue the Texas Department of Licensing and Regulation for 12 years.

This recommendation continues the agency for the standard 12-year period, until 2015.

Fiscal Implication Summary

These recommendations in this report would not have a significant fiscal impact to the State, as discussed below.

- *Issue 1 and Issue 2* – Granting the Commission rulemaking authority would require the Commission to meet approximately two additional times per year to ensure timely adoption of rules, increasing travel and per diem expenses. However, reducing the size of the Commission by two members, as recommended in Issue 2, would lower travel and per diem expenses. Consequently, these recommendations would have not have a net fiscal impact to the State.
- *Issue 6* – Abolishing oversight of Transportation Service Providers would result in a savings of approximately \$8,000 in funds used for these oversight activities. However, no net savings would accrue to the State because the licensing revenue funding these activities would no longer be collected.
- *Issue 9* – Requiring TDLR to license and regulate amusement park rides would not have a net fiscal impact to the State, as costs associated with regulatory activities would be offset by licensing revenues collected by the Department.

Texas Lottery Commission

Agency at a Glance

In 1991, Texas voters approved a constitutional amendment authorizing a state lottery. In 1993, the Legislature created the Texas Lottery Commission (the Commission) to assume the administration of the lottery and also transferred the administration of the Bingo Enabling Act to the new agency. Today, the Commission administers and markets the state lottery and regulates the charitable bingo industry through licensing and enforcement.

Key Facts

- **Funding.** The Commission operates with an annual budget of \$196.7 million – all of which comes from lottery proceeds and bingo licensing fees.
- **Lottery Revenue.** In fiscal year 2002, the lottery generated about \$2.97 billion in revenue, of which \$859.3 million was transferred to the Foundation School Fund. During that same year, the agency transferred unclaimed prize money totaling \$40 million to the Multicategorical Teaching Hospital Account and \$29.6 million to the Tertiary Care Facility Account. The remainder of the proceeds pay for prizes, the agency's administrative costs, and retailer commissions. To date, the Texas Lottery has transferred more than \$10 billion dollars to the State.
- **Bingo Revenue.** In calendar year 2001, charitable bingo generated \$567 million in revenue, of which \$34.4 million was distributed for charitable purposes. Also in that year, the Commission collected about \$24.2 million in prize fees, licensing fees, and rental taxes from the conduct of bingo.
- **Staffing.** The Commission has 335 full-time equivalent employees. Approximately two-thirds of the positions are located in the Austin headquarters and the rest are in the Commission's 22 claim centers and five regional offices.
- **Licensing.** The Commission regulates approximately 16,672 lottery retailers, 1,451 bingo conductors, 468 bingo lessors, 14 bingo equipment manufacturers, 16 bingo equipment distributors, and two bingo system service providers.
- **Enforcement.** In fiscal year 2002, the agency received 892 complaints for both lottery and bingo, resolved 629 complaints, inspected 524 licensed lottery retailers, and inspected and audited 1,337 bingo licensees and applicants. Additionally, the Commission issued 404 agency orders resulting in sanctions.
- **Contracts.** The Commission outsources many key lottery functions including lottery games operation. The contracted lottery operator, GTECH Corporation, is responsible for providing lottery information technology systems, equipment, and sales staffing. In fiscal year 2002, the Commission spent about \$90.2 million on this contract. The Commission's other major contracts include advertising services and instant ticket manufacturing.

Board Members (3)

C. Tom Clowe, Jr., Chair (Waco)
Elizabeth D. Whitaker (Dallas)
James A. Cox, Jr. (Austin)

Agency Head

Gary Grief, Acting Executive Director
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Recommendations

1. Continue the Texas Lottery Commission for 12 Years.
2. Increase the Commission's Size from Three to Five Members.
3. Require the Commission to Approve All Major Financial Decisions and Develop a Comprehensive Business Plan.
4. Restructure the Charitable Distribution Requirements for Bingo Profits.
5. Abolish the Tiered Bingo Lessor License Structure.
6. Require the Bingo Division to Establish Its Compliance and Enforcement Procedures in Rule and Expand the Division's Enforcement Powers.
7. Require the Bingo Advisory Committee to Develop a Work Plan to Effectively Advise the Commission.
8. Conform Key Elements of the State Lottery Act to Commonly Applied Licensing Practices.
9. Conform Key Elements of the Bingo Enabling Act to Commonly Applied Licensing Practices.
10. The Commission Should Study the Concept of Unit Accounting for Bingo Games.

Issue 1 | Texas Has a Continuing Need for the Texas Lottery Commission.

Key Findings

- Lottery and bingo revenue continue to be important sources of funds for Texas.
- Texas has a continuing need to effectively operate the lottery and regulate bingo.
- While other organizational structures have been tried in the past and continue to be a possibility, the lottery and bingo are effectively administered by the Lottery Commission.
- Many other states operate lotteries and regulate bingo under organizational structures similar to Texas.

Texas has a continuing need to ensure the effective administration and operation of the lottery and regulation of bingo. These games constitute gambling and require close supervision by the State. The games also are an important source of revenue for the State, local jurisdictions, and local charities. The Lottery Commission is responsible for maximizing lottery revenue and ensuring bingo revenue is spent on charitable purposes. While other existing agencies or a new gaming or bingo regulatory agency may be able to conduct the functions, no significant savings or improvements would result from an organizational change. The Lottery Commission has generally been successful in accomplishing its mission and should be continued.

Recommendation**Change in Statute****1.1 Continue the Texas Lottery Commission for 12 years.**

This recommendation would continue the Texas Lottery Commission as the agency responsible for administering and marketing the State lottery and regulating charitable bingo until 2015.

Issue 2 | The Small Size of the Texas Lottery Commission Limits Its Effectiveness and Communication Among Its Members.

Key Findings

- The small size of the Commission limits its effectiveness and internal communication.
- The Legislature has generally created larger state agency governing bodies to properly carry out agency policymaking and oversight.
- The governing boards of most other states' lotteries are larger than the Texas Lottery Commission.

The work of the Texas Lottery Commission in operating the lottery and regulating charitable bingo is hampered by its small size. As a three-member, part-time policy body, members of the Commission cannot informally discuss the work of the agency without violating the Open Meetings Act. The Commission also cannot form subcommittees to help it oversee the agency. In view of these problems, the Legislature has acted to form larger policy bodies for the majority of state agencies and has recently increased the size of other three-member boards. Expanding the Commission would allow it to operate more effectively.

Recommendation

Change in Statute

2.1 Expand the Texas Lottery Commission from three to five public members.

This recommendation would increase the size of the Lottery Commission by two members. Commissioners would continue to serve on a part-time basis and one member would still be required to have experience in the bingo industry. With more members, the Commission should consider creating subcommittees to oversee bingo regulation, procurement practices, and any other functional areas needing greater oversight.

Issue 3 | The Lottery Commission Is Not Performing Sufficient Analyses to Guide Major Financial Decisions.

Key Findings

- The agency does not conduct a cost-benefit analysis for proposed expenditures, or routinely evaluate the effectiveness of current major program expenditures.
- The Lottery Commission lacks the information and authority to effectively evaluate significant agency expenditures.
- The agency does not have an agency-wide business plan to guide major financial decisions.

The funding process for the Texas Lottery Commission is unique among state agencies, as the Legislature appropriates a certain percentage of lottery sales for administration each fiscal year, and the agency is exempt from standard state procurement requirements. This arrangement, though common in other state lotteries, does not require the level of budgetary analysis performed by other state agencies. A review of the agency's expenditures found several new expenditures that were not thoroughly analyzed before approval, and that the agency lacks standard mechanisms to ensure current programs are operating in a cost-effective manner. Further, the State Lottery Act does not grant the Commission specific approval authority for contracts. These recommendations are intended to ensure the agency adequately evaluates and plans for its expenditures. They would also create a higher level of oversight by providing the Commission with detailed information about significant procurements and programs, in the interest of limiting administrative costs.

Recommendations

Change in Statute

3.1 Require the Commission to review and approve all major expenditures.

This recommendation would give procurement authority to the Commission, who could delegate certain procurement duties to the Executive Director. All major procurements would require Commission review and approval. To support expenditure decisions, the agency would conduct cost-benefit analyses for all new large expenditures and periodic justification reviews of current major expenditures, and present these findings to the Commission. Greater Commission involvement will increase accountability and result in more informed policy decisions.

3.2 Require the agency to develop a comprehensive business plan.

The Lottery Commission's major initiatives should be guided by a comprehensive business plan to ensure their cost effectiveness. The business plan should include a specific description of each program, key management information, accurate financial data, and a detailed financial management plan. The Commission should review the business plan at least annually to assess the overall performance and value of each project. Projects that fail to meet financial objectives should be adjusted or terminated.

Management Action

3.3 The agency should conduct a thorough cost-benefit analysis before approving new programs or expenditures.

Before approval of major programs and expenditures, the agency should conduct a thorough cost-benefit analysis, including supporting documentation and accurate cost projections. All major expenditures would require the Commission's review to ensure administrative spending is justified before initiating the procurement process.

3.4 The agency should evaluate the effectiveness of current program expenditures through program-specific performance measures or periodic justification reviews.

A key component of agency-wide planning should be evaluation of existing programs and activities. This recommendation would require the agency to periodically review current programs to evaluate the cost-effectiveness and necessity of the program.

Issue 4 | Charities Are Not Making Maximum Charitable Distributions of Bingo Profits.

Key Findings

- State law requires that charities conducting bingo make a minimum quarterly charitable distribution of bingo profits.
- Texas' charitable bingo formula allows some charities to make no minimum distribution.
- The current formula that determines the minimum amount of bingo proceeds to be used for charitable purposes is confusing and burdensome for charities and the agency.

The Commission regulates charitable bingo and is charged with ensuring that bingo profits are used for charitable purposes in Texas. State law requires charities that conduct bingo to spend proceeds each quarter for charitable purposes, and supplies a specific formula to calculate the minimum amount. The formula not only prevents charities from receiving as much money as possible for charitable purposes – the goal of bingo regulation – but it also hampers the Commission from fulfilling its statutory duty to regulate bingo for charitable purposes. These recommendations would simplify the distribution formula while allowing charities to make more substantial charitable expenditures. At the same time, the recommendations would help the Commission fulfill its mission to regulate bingo for charity.

Recommendations

Change in Statute

4.1 Require charities to distribute all bingo proceeds remaining after prizes and authorized expenses have been paid.

This recommendation would change the statutory charitable distribution formula to require charities to distribute all bingo proceeds remaining after total prizes and all authorized expenses have been deducted from gross receipts. The agency would identify, through rule, what would be considered reasonable and necessary expenses. The agency would adopt rules to allow charities to retain a certain percentage of their gross receipts in their bingo accounts for operating capital and would set a cap on this amount. The agency would also clarify, through rule, what would constitute a proper use of proceeds for a charitable activity using guidelines already established by the Internal Revenue Service.

4.2 Authorize the Lottery Commission to take enforcement action against charities that do not make a charitable distribution.

This recommendation would allow the agency to establish sanctions for charities that fail to distribute any of their bingo proceeds or fail to maintain a positive cash flow. These sanctions will help the agency hold charities accountable for their responsibility of conducting bingo for charitable purposes.

Management Action

4.3 The Commission should clarify the definition of charitable purpose and authorized expense.

Charitable distribution regulation is confusing not only because of the current complexity of the formula, but also because of the confusion about how charities can spend bingo proceeds. This recommendation would direct the Commission to use its existing authority to pass rules clarifying and providing examples of what are acceptable distributions and expenses within the scope of the statute.

4.4 The Commission should work with the Legislative Budget Board to set performance measures for charitable distributions from bingo.

These performance measures should attempt to maximize charitable distributions and increase the number of charities that meet the distribution requirement. The performance measures will also help the Legislature hold the Lottery Commission accountable for ensuring that bingo proceeds are being used for their intended charitable purpose.

Issue 5 | Current Law Requires the Commission to Regulate Two Different Lessor License Systems.

Key Findings

- The Legislature has amended the lessor license law several times to allow grandfathering and transferability of licenses.
- The Commission is unable to phase out grandfathered lessor licenses, as originally intended.

The Commission regulates commercial interests that lease space to charities for the conduct of bingo. Currently, to be licensed under the Bingo Enabling Act, commercial lessors can only rent to one charity, and that charity can in turn be licensed as a conductor/lessor and rent to up to six other charities. However, many commercial lessors still hold licenses issued before 1989, when the Legislature created the new licensing structure, because those licenses were grandfathered and are transferrable under the law. These grandfathered licenses allow lessors to lease to up to seven charities. As a result, the Lottery Commission must regulate commercial lessors under two separate licensing structures. This recommendation will eliminate the dual licensing system, thus reducing confusion among licensees and increasing the agency's administrative efficiency.

Recommendation

Change in Statute

5.1 Abolish the tiered lessor license structure and allow all commercial lessors to lease to up to seven charities.

This recommendation would abolish the tiered lessor license structure, which allows a commercial lessor to lease to only one charity. Instead, commercial lessors will be able to apply to the Commission for licenses to lease to up to seven charities, which returns the licensing system to its pre-1989 structure.

Issue 6 | The Bingo Division Has Not Adequately Structured and Applied Its Enforcement Process.

Key Findings

- The Bingo Division's compliance and enforcement processes are not defined in rule.
- The Bingo Division's ability to use its temporary suspension authority to enforce bingo regulations is limited by its own interpretation of the law and by current statutory language.
- The Lottery Commission does not centrally track the resolution of complaints and audit cases.
- Other state agencies have broader suspension authority and rules governing enforcement procedures.

The Lottery Commission's enforcement of bingo regulations needs improvement. An analysis of bingo enforcement activities discovered that the agency lacks comprehensive rules governing its compliance and enforcement efforts, does not use its temporary suspension authority, and does not centrally track enforcement information. The recommendations would require the Lottery Commission to develop needed rules to ensure consistency in its compliance and enforcement efforts, provide the agency with greater enforcement authority when State revenue is at stake, and direct the agency to develop a coordinated approach to information tracking so as to better evaluate its effectiveness in this area.

Recommendations

Change in Statute

6.1 Require the Lottery Commission to adopt rules governing all compliance monitoring and enforcement procedures.

This recommendation would require the Lottery Commission to develop rules that provide a framework for its compliance monitoring efforts, such as audits and inspections, and enforcement

activities. These rules will provide licensees with a better understanding of the processes in place for regulation and how to stay in compliance, and will help to ensure appropriate and consistent application of the law. For example, the agency should develop a penalty structure, by rule, to guide the application of administrative penalties against licensees for failing to comply with the statute and rules. The recommendation would also require the Commission to develop, by rule, timelines for the resolution of violations.

6.2 Expand the Lottery Commission's authority to temporarily suspend bingo licenses to prevent financial losses to the State.

This recommendation would grant the Lottery Commission authority to temporarily suspend a bingo license in instances where action is necessary to prevent financial loss to the State. For example, the Bingo Division Director could issue a temporary suspension order if a licensee fails to remit quarterly taxes or prize fee payments to the agency. The Commission would be required to adopt rules governing the use of its new authority.

Management Action

6.3 The Lottery Commission should better coordinate the tracking of enforcement information.

The Lottery Commission should develop a system to centrally track complaints received and audits conducted, and their resolutions as they move through the process from one division to another. This endeavor will require a coordinated effort by the Charitable Bingo Operations Division, Security Division, and Legal Division.

6.4 The Bingo Division should consider using its existing temporary suspension power.

The Bingo Division should be encouraged to use its temporary suspension authority when the welfare of the public may be threatened, such as if a bingo hall is conducting the game in such a way as to cheat players.

Issue 7 | The Bingo Advisory Committee Does Not Effectively Advise the Commission on the Needs of the Bingo Industry in Texas.

Key Findings

- The Committee does not effectively carry out its duties to advise the Commission.
- The Committee's ability to be effective is limited by its membership structure.
- The Committee's meetings are ineffective and often disorganized.

The purpose of the Bingo Advisory Committee (BAC) is to advise the Commission on the needs and problems of the charitable bingo industry. An analysis of the Committee's effectiveness showed that its reports to the Commission lack useful feedback, and its membership structure and the conduct of its meetings limit its ability to address significant bingo issues. The Sunset Commission made recommendations to improve the Committee's effectiveness and ability to serve as a useful resource to the Commission.

Recommendations

Change in Statute

7.1 Require the Bingo Advisory Committee to develop an annual work plan and make recommendations to the Commission that identify specific issues that need addressing.

This recommendation requires the Committee to develop a yearly work plan that would detail the Committee's objectives and issues it would like to address during the year. At year's end, BAC should assess its accomplishments, identify opportunities to improve the way the agency regulates charitable bingo, and develop specific recommendations for Commission action.

7.2 Eliminate the statutory designation of a slot for a system service provider on BAC.

Since the agency only licenses two system service providers and no system service provider is used in Texas, this recommendation would eliminate an unjustified designation on the Committee.

Management Action

7.3 The Commission should evaluate the necessity of the Committee.

The Commission should comply with Chapter 2110, Texas Government Code that require agencies to annually evaluate a committee's work, usefulness, and costs related to its existence. Before taking action, the Commission should request recommendations from agency staff on ways to improve BAC's effectiveness and usefulness to the Commission. The Commission should also request input from the Committee and the public. An annual evaluation would help determine whether the Committee still meets its intended purpose and that its work is still useful and beneficial.

7.4 The Commission should ensure a greater balance between public and industry members on BAC.

The Commission should provide for a balanced representation of interests on its advisory committee to comply with Chapter 2110, Texas Government Code and the Bingo Enabling Act. The Lottery Commission should consider increasing the number of general public members to include the perspective of persons with no ties to the bingo industry.

7.5 The Commission should lengthen Committee members' terms to three years and stagger the appointments.

The Lottery Commission should lengthen members' terms from one year to three years and place those terms on a staggered schedule, with one-third of the Committee's membership to be appointed every year. Extending the term length and staggering the members' terms would provide continuity and maintain a level of experience on the Committee.

7.6 The Commission should develop membership requirements for BAC.

This recommendation directs the Commission, by rule, to establish membership requirements that members must maintain to serve on the Bingo Advisory Committee. Requirements should include circumstances that would disqualify members from serving the remainder of their terms, such as if a member's license renewal is denied or subject to disciplinary action. These requirements will ensure that members with disciplinary problems have no involvement in shaping the regulation of the bingo industry.

7.7 The agency should assign an attorney to monitor BAC meetings.

The General Counsel should assign an attorney to be present at BAC meetings. The attorney would be responsible for ensuring Committee members comply with Commission rule relating to compliance with the Open Meetings Act, answering certain legal questions posed by members, and providing guidance to the Committee on the procedures to follow in conducting a meeting.

Issue 8 | Key Elements of the State Lottery Act Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions in the State Lottery Act do not follow model licensing practices, affecting the fair treatment of licensees and limiting public protection.
- Nonstandard enforcement provisions of the State Lottery Act potentially reduce the agency's effectiveness regarding public protection and the safeguarding of state revenue.
- Lack of formal complaint procedures limits public notice and accountability.

The Texas Lottery Commission regulates nearly 17,000 licensed lottery retailers. Various licensing, enforcement, and administrative provisions in the State Lottery Act do not coincide with model licensing standards that have been developed from experience gained through more than 70 Sunset reviews of licensing agencies. By bringing the State Lottery Act into conformity with model licensing standards, the Lottery Commission will be better able to ensure the fair treatment of licensees, protect the public from unscrupulous lottery retailers, safeguard state revenue resulting from lottery sales, and effectively manage its administrative workload.

Recommendations

Licensing

Change in Statute

8.1 Provide statutory language authorizing staggered license renewals.

Staggered licensing will allow the agency to maintain a consistent workload throughout the year and prevent backlogs during peak months.

8.2 Provide statutory language requiring the agency to review compliance history before renewing licenses.

The agency should review compliance history before all license renewals, and have statutory authority to deny renewals based on a licensee's track record. Reviewing compliance history will ensure timely resolution of any compliance issues and increase accountability before granting license renewals.

Enforcement

Change in Statute

8.3 Require the agency to analyze sources and types of complaints to identify and address problem areas and trends.

This recommendation would require the agency to analyze its reported complaint activity to identify any trends or issues concerning certain violations. The agency could use this information to educate its licensees, focus on common problems, and possibly change regulatory language to address new concerns.

8.4 Provide statutory language to ensure complaints are investigated in a reasonable amount of time.

The Commission should define, in rule, a reasonable amount of time for completing investigations to help ensure speedy resolution of complaints.

Administration

Change in Statute

8.5 Require the agency to provide public notice of its standard complaint process.

Requiring the agency to publish common complaint procedures covering the entire process, from submission to final disposition, would provide sufficient notice to both the complainant and licensee of the standard complaint process.

Issue 9 | Key Elements of the Bingo Enabling Act Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions in the Bingo Enabling Act do not follow model licensing practices, affecting the fair treatment of licensees and limiting public protection.
- Nonstandard enforcement provisions of the Bingo Enabling Act do not provide effective public protection or safeguard charitable revenue.

The Lottery Commission currently regulates nearly 2,000 bingo-related entities. Various licensing and enforcement processes in the Bingo Enabling Act do not coincide with model licensing standards that have been developed from experience gained through more than 70 Sunset reviews of licensing agencies. By bringing the Bingo Enabling Act into conformity with model licensing standards, the Lottery Commission will be better able to ensure the fair treatment of licensees, protect the public, and safeguard charitable revenue.

Recommendations**Licensing****Change in Statute****9.1 Require the agency to adopt clear qualifications for bingo licensure.**

Requiring the agency to develop, through rule, comprehensive licensing qualifications will provide a sound basis for license denials and other enforcement matters.

9.2 Eliminate statutory requirements governing the length of time conductors must be in existence to be eligible for a license.

The Commission should adopt rules establishing standard time periods for the existence of all types of conductors. This change would ensure organizations are legitimate and established, and eliminate arbitrary or inconsistent standards for different types of organizations.

9.3 Subject temporary licenses to standard oversight.

This recommendation would subject temporary licenses to the same oversight requirements provided in statute for standard licenses. Temporary licenses would still remain available for special events.

9.4 Require the agency to create a standard license renewal process.

This recommendation would require the Commission, through rule, to document its renewal process from submission to completion. The Commission would adopt provisions addressing license renewals for lessors, manufacturers, distributors, and system service providers to ensure continued competency of the licensee.

9.5 Require the agency to review compliance history before renewing licenses.

The agency should have statutory authority to deny renewals based on the licensee's track record to ensure timely resolution of any compliance issues. Reviewing compliance history before license renewals will also increase accountability.

Enforcement

Change in Statute

9.6 Require the agency to adopt clear standards of conduct for licensees.

This recommendation would give notice to both the public and licensees of appropriate standards of practice, and provide greater enforcement authority for the agency to act on various complaints. Comprehensive standards of conduct would include ethical standards and appropriate behavior for bingo licensees.

9.7 Provide statutory language requiring the agency to maintain complaint information.

Sufficient complaint information reinforces the existing policy for retention of records and provides fully accessible complaint information to the public and historical data to the agency.

9.8 Provide statutory language to ensure complaints are investigated in a reasonable amount of time.

Requiring investigations to be completed in a reasonable amount of time helps ensure swift resolution of complaints.

Issue 10 | Certain Accounting Requirements for Bingo Conductors May Cause Inefficiency.

The Commission licenses individual charities to conduct bingo. Often, as many as seven charities may share lease space in one building. By law, charities must keep separate bank accounts and calculate their quarterly charitable distribution on an individual basis. Under a unit accounting system, charities would no longer maintain separate bingo accounts, but would share one account. Charities would be able to share profits and costs, with each licensed charity receiving an equal share of the revenues. Although this system of accounting is not permitted under current law, this recommendation directs the Commission to study the benefits, drawbacks, and implications involved in unit accounting.

Recommendation

Management Action

10.1 The Lottery Commission should study the concept of unit accounting.

The Commission should conduct a study on unit-based accounting and its effect on charitable bingo in Texas. If the study shows the concept has merit and can be implemented without legislation, the agency should attempt to implement the concept through its existing statutory authority by adopting rules. If the study shows that statutory changes are necessary for unit accounting, the agency should recommend specific changes.

Fiscal Implication Summary

This report contains recommendations that will have a fiscal impact to the State. These recommendations are discussed below.

- *Issue 2* – Expanding the Commission would result in additional travel expenses for two new members. The agency should use its existing administrative resources to pay the estimated \$3,200 per year in travel expenses for the new Commission members.
- *Issue 3* – Requiring the agency to develop a comprehensive business plan and requiring the Commission to review and approve all major expenditures could have a positive fiscal impact to the State by better ensuring all costs are reasonable and necessary. However, the amount of potential savings could not be estimated.
- *Issue 6* – Allowing the Commission to temporarily suspend a bingo license when tax revenue is at stake may result in fewer losses to the State. However, the number of suspensions is not known and the savings could not be estimated.

Texas State Board of Plumbing Examiners

Agency at a Glance

The Texas State Board of Plumbing Examiners (the Board) regulates plumbers in the state to ensure that plumbing systems are installed by qualified individuals. To accomplish its mission, the Board:

- licenses and registers plumbing professionals, and approves continuing professional education programs;
- monitors plumbing job sites;
- investigates and resolves complaints, taking disciplinary action when necessary to enforce the Plumbing License Law and Board rules; and
- conducts public and industry awareness seminars.

Key Facts

- **Funding.** The Board operates on a \$1.5 million annual budget from collections of about \$2.4 million each year from industry fees.
- **Staffing.** The Board had 24 full time employees in fiscal year 2002, working in the agency's Austin headquarters and in field offices located in their homes in Houston, Dallas, Fort Worth, San Antonio, El Paso, Lubbock, and Harlingen.
- **Licensing and Registration.** In fiscal year 2002, the Board issued a total of 22,901 licenses, including 8,842 master plumber, 12,803 journeyman plumber, 204 tradesman plumber-limited, and 1,052 plumbing inspector licenses. That year, about 1,617 plumbers held an endorsement for medical gas piping installations, and 298 for water supply protection specialists.
- **Enforcement.** The Board received 722 jurisdictional complaints in fiscal year 2002, for which it conducted 420 field investigations and issued 433 citations in local justice of the peace courts. In 2002, field representatives also monitored 9,225 job sites.

Board Members (9)

Walter I. Borgfeld, Jr., Chair (Lufkin)
Michael Thamm, Vice Chair (Cuero)
Lawrence Lemon, Jr. (Slaton)
Al Tarver (Nederland)
John Hatchel (Woodway)

Art Cuevas (Lubbock)
Min Chu, P.E (Houston)
Carol McLemore (La Marque)
Terry Wayne Moore (Sachse)

Agency Head

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Recommendations

1. Continue the Board for 12 Years, and Increase Collaboration Between the Board and the Texas Department of Licensing and Regulation.
2. Specify That the Board's Committees Be Composed of Board Members Only.
3. Enable the Board to Provide for the Training of Apprentices and Address the Need for Licensed Plumbers.
4. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
5. Direct the Board to Investigate and Eliminate, as Appropriate, Potential Barriers to Licensure.

Issue 1 | Texas Has a Continuing Need for the State Board of Plumbing Examiners.

Key Findings

- The Board is generally effective at regulating plumbing as a stand-alone agency.
- The Board misses opportunities for improving its operations by not partnering with a larger agency.
- An analysis of other states' practices and recent actions in Texas show broad interest in improving coordination in the regulation of plumbing and other occupations.

Texas has a continuing need to regulate plumbing at the statewide level to protect its residents from the dangers of improperly installed plumbing systems, and to provide mobility in the industry through uniform licensing standards. No specific problems exist with the agency's core functions of licensing and enforcement that justify consolidating the Board under a larger agency, such as the Texas Department of Licensing and Regulation (TDLR) or the Texas Commission on Environmental Quality. Although the Plumbing Board should continue to regulate plumbers as a separate agency, requiring it to enter into an inter-agency agreement with TDLR to share resources, enhance coordination, and improve services when needed would allow the Board to maintain its expertise, independence, and accessibility, while reaping some of the desirable benefits of consolidation.

Recommendations**Change in Statute****1.1 Continue the Texas State Board of Plumbing Examiners for 12 years.**

This recommendation would continue the Plumbing Board as an independent agency responsible for overseeing the plumbing industry in Texas for the standard 12-year period.

1.2 Establish a formal mechanism for the Plumbing Board and TDLR to work more closely to improve the regulation of plumbing in Texas.

This recommendation would require the Board and TDLR enter into an inter-agency agreement under which the two agencies would share resources, enhance coordination, and improve services, when needed. Specifically, the two agencies should share information technology to support the regulation and enforcement of occupational licenses, and share information on regulatory practices for licensing occupations, including policy issues that affect the regulation of licensed occupations, standardization of complaint and enforcement techniques, and model licensing techniques.

1.3 Authorize field enforcement officers from the Plumbing Board and TDLR, in the performance of their duties, to check proper identification of occupations regulated by the partner agency, and report non-compliance to that agency.

This recommendation would require the Plumbing Board and TDLR to enter into a reciprocal agreement under which enforcement officers from both agencies would, in the performance of their respective duties, be authorized to check licenses held by occupations regulated by the partner agency, and report non-compliance to that agency. Plumbing Board and TDLR enforcement staff should also conduct joint investigations as circumstances dictate. Increased coordination and sharing of resources between TDLR and the Plumbing Board would provide many of the benefits of consolidating the two agencies without harming the level of expertise or the current focus that the Board of Plumbing Examiners brings to the regulation of plumbing.

Issue 2 | The Plumbing Board's Committee Structure Inappropriately Delegates the Board's Policymaking Responsibility to Its Staff.

Key Finding

- Having non-Board members participate in the Board's committees creates an improper delegation of authority and does not necessarily provide the Board with advice and expertise on issues.

The Board uses committees to divide its workload among members. These committees are composed of Board members and voting staff, thereby blurring the lines of responsibility between the Board's role to make policies and the staff's responsibility to implement them. The presence of staff on committees is an improper delegation of policymaking authority that should be the sole responsibility of the Board.

Recommendation

Change in Statute

2.1 Require the Board's committees to be composed of Board members only.

This recommendation would specify that each of the Board's committees be composed solely of Board members, appointed by the Chair. This change would not apply to the Board's current enforcement committee which reviews complaints and applicants with criminal convictions. Issue 4 would leave these functions entirely to staff with final approval from the Board. Leaving committee responsibilities to the Board would ensure accountability to the Governor, and prevent staff from making decisions on matters in which it has a direct interest.

Issue 3 | The Board is Not Well Positioned to Address the Shortage of Licensed Plumbers in the State.

Key Findings

- New legislative requirements mean that the state will need more licensed plumbers, and the industry is experiencing some growing pains trying to keep up with the demand.
- The Board's statutory authority over apprentices is inconsistent with that of other registration categories, and does not ensure that apprentices receive the training needed to become licensed plumbers.
- Several opportunities are available to help address the training needs of plumber's apprentices, and the shortage of licensed plumbers in Texas.

At the same time that population growth in Texas has stretched the ability of licensed plumbers to meet the demand for plumbing work, the Legislature, in 2001, extended the reach of the Plumbing License Law to require most plumbing work statewide to be performed or supervised by a licensed plumber. In response to these pressures, the Legislature created a new plumber's license and registration categories, and required the registration of plumber's apprentices. The Board, however, is not able to ensure that plumber's apprentices receive the training and expertise they need to become successful plumbers, as it does for other licensees and registrants.

Recommendations**Change in Statute****3.1 Provide the Board with the same statutory authority to set additional requirements for apprentices as it has for all other registrants and licensees.**

This recommendation would provide consistency in the Board's authority over licensees and registrants, by providing the Board with the authority to set additional requirements for the registration of apprentices. This would allow the Board to develop rules defining the type of training and education requirements that are best suited for apprentices. This would position the Board so it can help ensure that plumber's apprentices receive the training and expertise needed to become licensed plumbers, and thus help the State meet the demand for licensed plumbers.

3.2 Require the Board and the Texas Workforce Commission on coordinate on addressing the shortage of licensed plumbers in Texas.

The Plumbing Board and the Texas Workforce Commission (TWC) would coordinate to raise awareness of the plumbing profession to the public, and of resources available to employers to recruit plumbers. TWC's local workforce development boards would provide the bulk of this effort. The Board and TWC would supplement this effort by providing needed information, such as licensing requirements or statistical data, and developing brochures. The two agencies should also provide links to each other's Web site and to those of local workforce boards.

Issue 4 | Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing Provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statutes could reduce the agency's consistency and its effectiveness in protecting the consumer.
- Certain administrative practices could reduce the flow of needed information to the public, and affect the Board's ability to manage its affairs.

Various licensing and enforcement processes in the Plumbing License Law and in the Texas State Board of Plumbing Examiners' Board rules do not match model licensing standards that Sunset staff have developed from experience gained through more than 70 Sunset reviews of occupational licensing agencies in 25 years. For example, the lack of enforcement tools and guidelines for using them may affect the agency's ability to protect the public from substandard or unlicensed practitioners. Comparing the Board's programs and statute to these licensing standards identified unwarranted variations and to needed changes to bring them in line with the model standards.

Recommendations

Licensing

Change in Statute

4.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code, and authorize staff to review criminal convictions based on guidelines developed by the Board.

This recommendation would reference Chapter 53 of the Occupations Code in the Plumbing License Law to clarify the Board's authority to adopt rules for dealing with criminal convictions that follow the general guidelines in the Chapter. In addition, it would require the Board to adopt a system to track and assess how the agency follows its criminal conviction guidelines. This recommendation would also authorize agency staff to perform criminal conviction reviews, eliminating the need for Board member involvement in the approval process of applications for licensure and registrations. The staff enforcement committee would retain its authority to approve applicants with certain criminal convictions without the need for full Board approval, based on guidelines for approval of convictions that should be developed and adopted by the Board. The staff committee would also retain its authority to deny applicants subject to hearing before the State Office of Administrative Hearings and final approval by the Board. In addition, staff should maintain current procedures allowing applicants to appear and present information during criminal conviction reviews. The staff's criminal conviction review committee should be appointed by the Board.

4.2 Require the Board to adopt, by rule, a separate code of conduct for licensed plumbing inspectors.

This recommendation would require the Board to adopt a separate code of conduct for plumbing inspectors similar to that of other licensees and registrants. These rules should specify that licensed plumbing inspectors shall enforce the Plumbing License Law and Board rules in a consistent manner across job sites.

Enforcement

Change in Statute

4.3 Require the Board to investigate complaints according to risk.

This recommendation would require the Board to place complaints in priority order so that the agency handles the most serious problems first.

4.4 Require the Board to track complaints according to sources, types, and geographical areas.

This recommendation would require the Board to maintain information about complaints it receives, including sources, types, and geographical areas. This change would ensure that the Board is able to identify and address regulatory problem areas, and better focus its enforcement in those areas of the state.

4.5 Authorize staff to settle complaints, subject to the Board's final approval.

This recommendation would largely eliminate the need for Board member involvement in the agency's investigation and review activities, which are more appropriately handled by staff. The Board would, however, retain final decisionmaking authority over the staff's recommendations. Staff should maintain current procedures allowing complainants and respondents to appear and present information during enforcement meetings. The Board should appoint the staff's enforcement committee.

4.6 Provide the agency with a full range of sanctions.

This recommendation would grant the Board the full range of sanctions common to most regulatory agencies to enforce the Plumbing License Law and Board rules. Specific elements include the following.

- **Administrative Penalties.** This recommendation would authorize the Board to levy administrative fines not to exceed \$5,000 per day per violation as an additional enforcement tool. Using administrative fines rather than criminal citations would streamline the agency's enforcement process and help the State recover enforcement costs, since all administrative fines collected would be deposited in General Revenue. While this recommendation provides a new enforcement tool, it would not remove the criminal penalties currently in statute. The Board may continue to pursue criminal penalties, but it should do so only on an exception basis, and it should clearly define in rule the circumstances that would guide such a decision.

This recommendation would also require the Board to establish a matrix to use in determining the amount of penalties assessed against violators and to ensure that these amounts relate appropriately to different violations of the Plumbing License Law or Board rules. In developing this matrix, the Board should take into account factors including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The agency may develop this matrix in procedures and not in formal rules; however, the procedures should be adopted by the Board and published in the Texas Register, after giving the public the opportunity to comment.

- **Probation.** This recommendation would require the Board to adopt guidelines in rule for probating license suspensions and to develop a system for tracking compliance with the probation. These changes would ensure that the probation sanction is consistently used and that licensees actually meet the terms of their probation.
- **Cease and Desist.** Providing the Board with the authority to issue cease and desist orders would enable it to move more quickly to stop work that is unsafe or performed by unlicensed persons. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease and desist orders.
- **Restitution.** The Board would be allowed to include restitution as part of an informal settlement conference. Authority would be limited to ordering a refund not to exceed the amount the consumer paid to the plumber or other licensee. Any restitution order would not include an estimation of other damages or harm. The restitution may be in lieu of or in addition to a separate Board order assessing an administrative penalty.

Administration

Change in Statute

4.7 Require the Board to establish a policy for refunding examination fees under certain circumstances.

This recommendation would standardize the Board's exam refund policy to allow refunds only to applicants who provide reasonable advance notification of their inability to sit for the exam, or who miss the exam because of emergency circumstances. The Board would need to develop a rule to define the reasonable notification period and the emergency situations that would warrant a refund.

Management Action

4.8 The Board should explore ways to provide better information to consumers.

Under this recommendation, the Board would promote greater consumer awareness about the plumbing profession and the operations of the agency through the Internet and brochures. For example, the Board's Web site and brochures could provide a checklist of what consumers should look for when searching for a plumber, including a valid plumber's license, necessary permits, and a written estimate. The Board should also expand efforts to provide public information on how to file a complaint with the Board, including providing its toll-free number on certificates of licensure. In addition, the Board would be required to explore the possibility of developing an online system allowing consumers to check disciplinary orders and sanctions against the Board's licensees. This information helps the public make informed choices when obtaining plumbing services.

Issue 5 | The Board Does Not Do All It Can to Eliminate Potential Barriers to Licensure.

Failure by the majority of applicants to pass the Tradesman license exam indicate that many apprentices are not adequately prepared for the exam. In addition, Spanish-speaking plumbers may encounter language barriers, including difficulty finding training in their native language, and concerns with the Spanish translation used on the Plumbing Board's examination forms. Greater action by the Board could help applicants better prepare for the exams, and help eliminate potential barriers to licensure among Spanish-speaking plumbers.

Recommendations**Change in Statute****5.1 Require the Board to establish a standardized review course to prepare for the plumbing license exams.**

This recommendation would require the Board to develop a standard review course, in English and Spanish, for each of the Board's licensing exams. The Board would not be required to teach the course itself, but would use third party providers to help plumbers prepare for exams. This recommendation would authorize the Board to charge a fee for dispensing the course, and for allowing third party providers to use the review course.

Management Action**5.2 The Board should explore whether plumbing-related training is available in Spanish to help Spanish-speaking plumbers prepare for licensing exams.**

Under this recommendation, the Board would study the availability of plumbing-related training in Spanish in Texas.

5.3 The Board should revisit language used on the current Spanish translation of the plumbing license exam.

Under this recommendation, the Board would investigate the appropriateness and accuracy of the Spanish translations used on the Board's examination forms. The Board would be required to make adequate modifications to the examination forms based on its findings. The Board has taken steps to comply with this recommendation by internally reviewing the exams and contracting with a third party to provide input on needed changes to the exam forms provided in Spanish.

5.4 The Board should explore the possibility of offering the plumbing license exam in an oral format.

Under this recommendation, the Board would study the appropriateness of changing the written portion of the exam into an oral examination. The Board would change the exam format, based on its findings.

Fiscal Implication Summary

Two recommendations would have a fiscal impact to the State resulting in an overall net gain to General Revenue of \$82,500 in fiscal year 2004, and \$85,500 each year thereafter. The recommendations are discussed below, followed by a five-year summary chart.

- **Issue 2** – Specifying that the Plumbing Board’s committees be composed solely of Board members would have a negative annual fiscal impact of \$1,500, associated with additional travel costs for Board members needed to serve in place of staff on Board committees.
- **Issue 4** – Authorizing the Board to levy administrative fines would result in an annual gain to General Revenue of approximately \$87,000. In addition, authorizing staff to review the criminal histories of applicants with convictions and to settle complaints, subject to the Board’s final approval, would save the State approximately \$1,500 annually in travel costs for Board members. The printing of consumer-oriented brochures may cost the State approximately \$1,500 annually. The initial set up cost of an online system for consumers to check disciplinary orders against licensees may cost approximately \$3,000.

Fiscal Year	Gains to the General Revenue Fund	Savings to the General Revenue Fund	Cost to the General Revenue Fund
2004	\$87,000	\$1,500	\$6,000
2005	\$87,000	\$1,500	\$3,000
2006	\$87,000	\$1,500	\$3,000
2007	\$87,000	\$1,500	\$3,000
2008	\$87,000	\$1,500	\$3,000

Texas Council on Purchasing from People with Disabilities

Agency at a Glance

The Texas Council on Purchasing from People with Disabilities (Council) encourages employment opportunities for Texans with disabilities through a set-aside purchasing program, called the State Use Program. Under this Program, state agencies and other political subdivisions give purchasing preference to goods and services offered by community rehabilitation facilities that employ persons with disabilities.

The Council's major functions include:

- approving community rehabilitation programs for participation in the State Use Program;
- setting fair market prices of products and services offered for sale through the State Use Program; and
- contracting with a central nonprofit agency to carry out the day-to-day functions of the State Use Program.

Key Facts

- **Funding.** In fiscal year 2002, the Council's operating budget was \$54,800. Funding comes from a portion of the sales revenue generated by the State Use Program. For the 2002-2003 biennium, the Legislature authorized \$225,000 to carry out the Council's duties, allow the Council to establish an advisory committee, and hire staff.
- **Staffing.** The Council has one employee and receives legal assistance from the Texas Building and Procurement Commission (TBPC). The Council contracts with a central nonprofit agency, TIBH Industries, to administer the State Use Program.
- **Products and Services.** The Council offers about 100 different products and 25 types of services for sale under the State Use Program, generating more than \$68.5 million in total sales revenue. Council rules require that at least 75 percent of the labor for those products and services be performed by persons with disabilities.
- **Persons served.** In 2002, more than 7,000 persons with disabilities were employed under the State Use Program. Approximately two-thirds of these individuals cope with mental retardation, mental health issues, and chemical disorders.

Board Members (9)

Margaret “Meg” Pfluger, Chair (Lubbock)
Cathy J. Williams, Vice Chair (Austin)
Chuck Brewton (San Antonio)
J. Terry Boyd (Fort Worth)
Paul J. Calapa (Brownsville)

David W. Franklin (Dallas)
Byron E. Johnson (El Paso)
John W. Luna (Euless)
Bobbie F. Templeton (Driftwood)

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Recommendations

1. Continue the Texas Council on Purchasing from People with Disabilities for 12 Years.
2. Require the Council and the Texas Building and Procurement Commission to Promote the State Use Program and Enhance Agency Compliance.
3. Increase State Use Program Accountability Through Increased Oversight and Enhanced Performance Measures.

Issue 1 | **The State Has a Continuing Interest In Promoting Employment of Persons With Disabilities.**

Key Findings

- The State combines two distinct objectives within the Council's State Use Program.
- The State has a continuing interest in supporting the development of employment opportunities for persons with disabilities, and procuring quality goods and services at fair prices.
- The Council is appropriately situated with the Texas Building and Procurement Commission.

In overseeing the State Use Program, the Council serves to promote the employment of persons with disabilities while providing reasonably priced, quality goods and services for agency procurement. In 2001, community rehabilitation programs participating in the Program employed almost 7,000 persons with disabilities in the provision of goods and services through contracts set aside for state use. Through the redirection of necessary state purchasing dollars toward set-aside contracts, the State Use Program enables individuals with disabilities to achieve greater levels of personal independence.

In support of this objective, the Council contracts with a central nonprofit agency to administer the Program, approves set-aside contracts, sets fair market prices, and generally maintains responsibility for Program oversight. Based on the continuing need for these functions as well as the infeasibility of assigning them to another agency, the Council should be continued for 12 years and should remain administratively linked to the Texas Building and Procurement Commission. The Council is well positioned to provide necessary oversight of the State Use Program and to increase employment opportunities for persons with disabilities.

Recommendation**Change in Statute****1.1 Continue the Texas Council on Purchasing from People with Disabilities for 12 years.**

The Council would continue to oversee the State Use Program and provide for the State's interests in employing persons with disabilities while procuring quality goods and services at fair prices.

Issue 2 | Agency Noncompliance Limits the Success of the State Use Program in Employing People with Disabilities.

Key Findings

- State agencies are not consistently purchasing goods and services from the State Use Program, limiting job opportunities for people with disabilities.
- The Council and the Texas Building and Procurement Commission (TBPC) fail to use existing compliance methods to achieve greater purchasing from the State Use Program.
- Neither the Council nor TBPC adequately promotes the State Use Program.

More than four million Texans live with disabilities. In establishing the mandatory State Use Program, the Legislature has demonstrated its intent to provide employment opportunities for these individuals. However, many state agencies do not comply with state use laws that require them to purchase through the Program. Without consistent agency procurement, the Program cannot reach its full potential in employing people with disabilities.

Inaction of the Council and TBPC in educating agencies about the Program contributes to agencies' consistent failure to purchase goods and services through the Program. Also, a lack of information and analysis about purchasing trends and the specific reasons that agencies choose not to use the Program result in an inability of the Council to make needed improvements. These recommendations seek to enable the Council, with assistance from TBPC and the State Auditor's Office, to strengthen the Program by increasing agency awareness of Program requirements and benefits, and by imposing additional compliance measures.

Recommendations

Change in Statute

2.1 Require the Council to promote the State Use Program among state agencies.

This recommendation would require the Council and its central nonprofit agency to more effectively educate state agencies about the State Use Program and its requirements and benefits. Currently, the Council has no direction in statute to promote the use of the Program, and has taken little initiative on its own. As a result, many state agencies are unaware of the Program and its requirements.

2.2 Require TBPC to report, and the Council to evaluate, agency compliance with state use laws.

TBPC should assist the Council in collecting and reviewing agency compliance information and analyzing data for trends in Program use. This recommendation would require TBPC to report to the Council any failures to comply with set-aside requirements found in TBPC's annual random audit of agency purchasing. Given compliance information, the Council should attempt to identify and address problems in the State Use Program to increase agency participation. The Council should also assess information collected in the agency exception reports and TBPC should post those exception reports on its Web site, as is currently required in statute.

2.3 Require the State Auditor's Office to consider agency compliance with state use laws as part of its Historically Underutilized Business (HUB) compliance audits.

This recommendation would provide a systematic method for agency accountability regarding the State Use Program. If SAO finds that an agency is not in compliance, the Council would assist the agency in complying.

Management Action

2.4 TBPC should expand training to include information on procuring goods and services through the State Use Program.

TBPC currently includes limited information regarding the State Use Program in its procurement manual. This recommendation would direct TBPC to include a distinct training module on the State Use Program as part of its statutorily required certification training for procurement personnel.

Issue 3 | The Council Does Not Provide Adequate Oversight of the State Use Program.

Key Findings

- The Legislature has increased the Council's authority to oversee the State Use Program, including the central nonprofit agency.
- Despite legislative directives, the Council has not increased its oversight of the State Use Program.
- Program objectives and measures are inadequate to guide the Program or evaluate the effectiveness of the central nonprofit agency.

The Legislature requires the Council on Purchasing from People with Disabilities to oversee the State Use Program. The goods and services provided through the Program are exempt from competitive bidding requirements, creating an incentive for ineligible parties to attempt to benefit from the Program. Past concerns about the misuse of the Program by for-profit entities led the Legislature to grant the Council additional oversight authority in 2001.

However, the Council's failure to comply with specific legislative directives, and its reluctance to exercise its full authority in overseeing the Program, place the Program in jeopardy. These recommendations provide specific provisions to assist the Council in implementing existing legislative directives and identify sources of support for the Council.

Recommendations

Change in Statute

3.1 Require the Council to develop a formal process for the annual review of the central nonprofit agency's (CNA) management fee.

While the Legislature required the Council to conduct an annual review of the CNA's management fee last session, the Council has not adopted rules nor developed an ad hoc process. This recommendation would place specific requirements for reviewing the management fee in statute.

3.2 Establish a committee to provide greater assurance of community rehabilitation program (CRP) compliance with Program eligibility requirements.

While the Council has developed eligibility guidelines for CRP participation in the State Use Program, this recommendation would require the Council to develop a formal certification procedure in which a committee (either one specifically created for this purpose or one already in existence), composed of three council members appointed by the Council Chair, would review CRP certification applications and issue recommendations to the full Council concerning approval.

Consistent with existing statutory authority giving the Council access to CRP information and records, this recommendation would authorize the Council, Council staff, or the CNA at the Council's direction, to inspect any CRP for compliance with certification requirements. The committee would review all inspection results and recommend appropriate action to the full Council.

Management Action

3.3 The Council should consult with the State Auditor's Office to create appropriate performance measures for the State Use Program.

The Council contracts with a CNA for administration of the State Use Program, but lacks objective criteria for monitoring the CNA's performance. This recommendation would direct the Council to seek assistance from the State Auditor's Office, Management Assessment Services Division, in developing appropriate performance measures to better assess the effectiveness of Program functions, including those assigned to the CNA.

3.4 The Council should provide for increased stakeholder input on the effectiveness of the State Use Program.

This recommendation would provide for increased accountability by requiring the Council to place greater emphasis on gathering input from interested or affected parties.

Fiscal Implication Summary

These recommendations would have no fiscal impact to the State. All expenses incurred by the Council or the Texas Building and Procurement Commission in support of the Council are paid by the central nonprofit agency which is funded by a percentage of Program sales in the form of a management fee.

Riding Stables Chapter

Program at a Glance

The Legislature created the Riding Stables Chapter (the Chapter) in 1989 to promote humane treatment and conditions for horses the public used in riding and carriage stables. Initially, the Texas Department of Health (TDH) administered the Chapter. Due to concerns that the protection of animals was not within the public health mission of TDH, the Legislature transferred the program to the Texas Animal Health Commission (TAHC) in 2001.

TAHC acquired regulatory responsibility on September 1, 2001 and adopted rules governing the Riding Stable Registration Program. The program's major functions include:

- registration of all stables renting one or more equines, defined as horses, donkeys, and mules, for riding or carriage purposes;
- biennial inspections of the condition of facilities and the health of equines; and
- denial, revocation, or suspension of certificates of registration if TAHC finds violations of care and treatment standards.

Key Facts

The information in the text below reflects the resources and operation of the riding stable program only, not the Texas Animal Health Commission as a whole.

- **Funding and Fees.** State law authorizes TAHC to collect fees from registered stables to cover the costs of this program. In fiscal year 2002, the Legislature appropriated approximately \$30,000 to TAHC to regulate stables. TAHC collected \$21,200 in fees during that year.
- **Staffing.** TAHC uses the equivalent of about two full time employees, including staff in both the Austin and the eight field operations offices, to administer the program.
- **Registrations and Inspections.** In fiscal year 2002, TAHC registered 143 riding stables. During the years that TDH administered the Chapter, the Department registered 45 stables.
- **Complaints and Enforcement.** TAHC received two complaints against a riding stable in fiscal year 2002. Thus far, TAHC has not denied, suspended, or revoked any certificates of registration. Previously TDH received approximately one complaint a year.

Texas Animal Health Commission Members (12)

Richard C. Traylor, Chair (Carrizo Springs)	Rogelio (Roy) Martinez (McAllen)
James Quincy Barnes, Jr. (San Antonio)	Romulo Rangel, Jr. D.V.M. (Harlingen)
Tommy Bozka (Shiner)	Charles Real (Marion)
Ron Davenport (Frion)	Charles R. "Dick" Sherron, M.D. (Beaumont)
Reta K. Dyess (Jacksonville)	Jerry P. Windham (College Station)
William Edminston, Jr., D.V.M. (Eldorado)	Jill Bryar Wood (Wimberley)

Agency Head

James B. Lenarduzzi, D.V.M.
Acting Executive Director (512) 719-0719

Recommendation

1. Repeal the Riding Stables Chapter, Effective September 1, 2003.

Issue 1 | The State Has No Clear Public Need to Regulate Riding Stables.

Key Findings

- No clear public need could be found for continuing the regulation of riding stables.
- Limitations of the current regulatory framework further contribute to the lack of need for this oversight.

The intent of the Riding Stables Chapter was to help prevent situations that expose horses used recreationally to unnecessary health and safety risks. However, the State has neither uncovered nor addressed any significant problems during 13 years of inspections and investigations of complaints. In addition, problems with the Chapter's scope, enforcement authority, and funding further contribute to the limited need for continuing this oversight. The ability to respond to the one to two complaints a year, none of which have resulted in any type of enforcement action, fails to justify the ongoing cost and burden this regulation places on stable owners.

Recommendation**Change in Statute****1.1 Repeal the Riding Stables Chapter, effective September 1, 2003.**

This recommendation would end the state regulation of riding stables in Texas. If repealed by the 78th Legislature, the regulation would end September 1, 2003. The Texas Animal Health Commission would continue to protect and promote health among Texas' animal populations but would no longer specifically oversee the care and treatment of recreational horses housed in riding stables.

Fiscal Implication Summary _____

This recommendation would result in no net fiscal impact to the State.

Board of Tax Professional Examiners

Agency at a Glance

The Board of Tax Professional Examiners (Board) regulates tax professionals in Texas to ensure that those who appraise real property and assess and collect property taxes are knowledgeable, competent, and ethical. The Board registers both elected assessor-collectors and employees of appraisal districts, counties, cities, school districts, and other special taxing districts. To accomplish its mission, the Board:

- registers tax appraisers, assessor-collectors, and collectors, and approves continuing professional education programs;
- develops and administers tax professional certification exams and issues certificates upon passage; and
- enforces the Property Taxation Professional Certification Act and Board rules by investigating complaints against tax professionals and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2002, the Board operated with an appropriation of about \$156,000. Registration and exam fees paid by tax professionals cover all administrative costs.
- **Staffing.** The Board has a staff of four, all based in Austin.
- **Registration.** In fiscal year 2002, the Board regulated 4,095 tax professionals, including 2,307 appraisers, 1,263 assessor-collectors, and 525 collectors.
- **Enforcement.** The Board received 13 complaints in fiscal year 2002, with the Board issuing a letter of reprimand in one case and dismissing 11 others due to lack of jurisdiction, and one case being withdrawn.

Board Members (6)

Foy Mitchell, Chair (Plano)

Mike Amezquita, Vice Chair (San Benito)

Deborah Hunt (Austin)

Linda Jaynes (Waco)

Stanton Brown (Benjamin)

D. Kristeen Roe (Bryan)

Agency Head

David Montoya, Executive Director

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Recommendations

1. Continue the Board for 12 Years and Strengthen Its Ties With the Comptroller of Public Accounts.
2. Decrease the Board's Size from Six to Five Members and Include Public Representation.
3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Issue 1 | **Texas Has a Continuing Need for the Board of Tax Professional Examiners, But Could Benefit From a Stronger Administrative Link to the Comptroller's Office.**

Key Findings

- The State has a continuing interest in registering and certifying tax professionals.
- Small agencies like the Board typically have difficulty fulfilling their requirements because of limited resources.
- The Legislature has seen the advantages of strengthening administrative links between small and large agencies to improve operations.

The Board of Tax Professional Examiners (Board) regulates property tax professionals to ensure that only qualified individuals may assess and collect the estimated \$25 billion each year in property taxes statewide that fund local services from education to police and fire protection to criminal justice systems. While the Board meets its responsibility to register and certify individuals and ensure that they comply with professional and ethical standards, it has had to rely on the Comptroller of Public Accounts to help it comply with the standard administrative requirements placed on all state agencies.

Recommendations**Change in Statute****1.1 Continue the Board of Tax Professional Examiners for 12 years.**

This recommendation would continue the Board of Tax Professional Examiners for 12 years as an independent agency responsible for regulating property tax professionals.

1.2 Strengthen the Board's ties with the Comptroller of Public Accounts.

This recommendation would require the Board to expand the scope of its contract with the Comptroller to perform additional administrative functions, including payroll, budgeting, information technology support, human resources, and other services as needed by the Board. This recommendation would require the Board to pay for the services it receives. As part of the arrangement, the agency would continue to be overseen by its governing body, which would have the final authority for regulating tax professionals.

The Board would be able to take advantage of the Comptroller's specific activities regarding property taxes to improve the Board's oversight of tax professionals. The Comptroller's experience in property tax matters would provide a valuable perspective on educational needs and its existing outreach efforts would greatly extend the Board's efforts to inform taxpayers of their rights and remedies regarding tax professionals. The Comptroller's work with appraisal districts would help benefit the Board's enforcement efforts by improving the link between the evaluation of these districts' performance and the oversight of the individuals in these districts who do the work. Finally, the recommendation would require the Board to explore moving out of its current office space in the Hobby Building and collocating with the Comptroller.

Issue 2 | **The Board's Structure Does Not Include Public Representation and Its Size Does Not Comply With the Constitution.**

Key Findings

- The Board lacks public representation as is standard for state licensing agencies.
- The size of the Board does not comply with the Texas Constitution.
- The Board is capable of operating with a decrease in membership.

The primary duties of the Board include overseeing the certification and education program, adopting rules, establishing standards of conduct, and taking disciplinary action against registrants when necessary. With six members, the Board is not in compliance with a constitutional provision that requires odd-numbered boards. In addition, the Board does not have a public member to ensure public perspective in decisionmaking and responsiveness to the general public.

Recommendation**Change in Statute****2.1 Decrease the size of the Board from six to five members and include public representation.**

This recommendation would change the size of the Board from six to five members. Four members would represent the tax professional industry and one member would represent the general public. The public member would have to meet the standard Sunset across-the-board language prohibiting this person from being regulated by the agency or otherwise having financial ties to the agency or regulated profession.

Issue 3 | **Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.**

Key Findings

- Lack of defined duties for the Board's informal education advisory committee limits the Board's accountability for the committee and its role.
- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and public protection.

- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the public.

Various licensing and enforcement processes used by the Board of Tax Professional Examiners do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 70 occupational licensing reviews over the last 25 years. For example, some licensing requirements are unclear or overly burdensome, such as application or complaint notarization. Lack of guidelines in some areas, such as the issuance of lighter sanctions, increases the opportunity for inconsistent decisions. A comparison of the Board's statute, rules, and practices with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other licensing agencies.

Recommendations

Policy Body

Management Action

3.1 The Board should clearly define the role of the Property Tax Education Coalition.

This recommendation would encourage the Board to adopt a resolution regarding the use of the Coalition as an advisory committee. The resolution should define the role, including membership and functions, of the Property Tax Education Coalition in providing educational courses and materials for tax professionals.

Licensing

Change in Statute

3.2 Repeal the exemption from registration for tax assessor-collectors in large counties.

This recommendation would repeal the exemption from registration for assessor-collectors in counties with a population of more than one million. This recommendation would also repeal the special continuing education requirements that were put into law for those exempted from registration. As a result, all of the state's assessor-collectors would be required to register with the Board and comply with the Board's certification and continuing education requirements.

3.3 Eliminate the requirement for license applications to be notarized.

This recommendation would eliminate the statutory requirement that applicants notarize applications. Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to license applications.

3.4 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

Under this recommendation, the Board's statute would be amended to ensure that testing accommodations for tax professional certification exams are in accordance with the Americans with Disabilities Act. The Board would need to adopt rules regarding accessibility accommodations and ensure its testing policies and procedures comply with the Americans with Disabilities Act.

Enforcement

Change in Statute

3.5 Provide the Board with a full range of sanctions and require the Board to adopt, by rule, standard procedures governing its use of lighter sanctions.

This recommendation would grant the Board the full range of sanctions common to most regulatory agencies to enforce the Property Taxation Professional Certification Act and Board rules. The Board would also be required to adopt guidelines in rule for lighter sanctions, including letters of reprimand and probation orders, thus ensuring that the Board uses these sanctions consistently.

Management Action

3.6 The Board should eliminate its requirement for complaints to be notarized.

This recommendation would eliminate the Board's informal policy that requires complaints to be notarized. Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to filed complaints.

3.7 The Board should provide explanations of its complaint dismissals to complainants and respondents.

Under this recommendation, the Board would provide sufficient information to a complainant and respondent as to why it decided to dismiss a complaint. Rather than simply stating that it found no violation, the Board should provide an explanation of its decision, including a summary of its findings.

Fiscal Implication Summary

Two recommendations regarding the Board of Tax Professional Examiners would result in savings to the State, as discussed below.

- *Issue 1* – Strengthening the Board's link with the Comptroller's Office would result in both direct and indirect cost savings to the Board resulting from increased administrative efficiency. Any savings, however, would likely be offset by increased costs to the Comptroller and the reallocation of resources to address other Board functions.
- *Issue 2* – Reducing the size of the Board to five members would result in reduced travel expenses, saving the State about \$1,000 a year.

Texas Workforce Commission

Agency at a Glance

The Texas Workforce Commission (TWC) plans, delivers, and oversees workforce services to meet the needs of Texas businesses, workers, and communities through a locally controlled delivery system. The Legislature created the Commission in 1995 by merging 28 individual workforce programs from 10 different state agencies.

The Commission's major functions include:

- overseeing the locally controlled workforce development system, consisting of 28 Local Workforce Development Boards (local boards) and more than 260 one-stop workforce centers and satellite offices statewide, that provide employment services and job training for employers and job seekers;
- operating the State's unemployment insurance system by collecting unemployment insurance taxes, processing claims, and determining claimant eligibility and employer liability; and
- administering a variety of other workforce-related programs ranging from the enforcement of pay day and child labor laws to the regulation of proprietary schools.

Key Facts

- **Funding.** The Commission operates with an annual budget of about \$1 billion. Federal funds make up about 87 percent of the agency's budget (\$922.6 million in fiscal year 2002). Other sources provide the remaining 13 percent of revenue, including the State's contribution of \$116 million.
- **Staffing.** The Commission was budgeted for 3,913.5 full-time equivalents for fiscal year 2002. Approximately 1,730 people work in the agency's headquarters located in Austin. Most of the other employees work in unemployment insurance tele-centers, tax offices, and local workforce centers, located throughout the state.
- **Unemployment Insurance.** In fiscal year 2002, TWC received more than 1.1 million initial unemployment claims and paid out approximately \$2.2 billion in benefits from the Unemployment Compensation Fund. These benefits were paid from the more than \$1.2 billion in unemployment insurance (UI) taxes collected from Texas employers in fiscal year 2002, in addition to the balance in the Fund on December 31, 2001.
- **Local Workforce Development Boards.** The state is divided into 28 local workforce development areas for the provision of workforce services. Local boards oversee these areas. The local boards are certified by the Governor to administer the majority of workforce services locally through contracted service providers. TWC allocates almost \$800 million each year for local boards to plan and implement workforce services for employers, workers, and communities. These services are delivered to about 2 million clients annually through more than 260 workforce centers and satellite offices throughout the state.

- **Child Care.** Of the almost \$800 million allocated by TWC in fiscal year 2002 for local workforce services, nearly \$403 million was devoted to child care services. More than 110,000 children per day received subsidized child care services to enable their parents to work or attend education or training activities.

Commission Members (3)

Diane D. Rath, Chair (San Antonio)

Ron Lehman (Round Rock)

Terrence P. O'Mahoney (Dallas)

Agency Head

Cassie Carlson Reed, Executive Director

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Recommendations

1. Ensure Clear Separation of the Powers and Duties of the Commissioners in Setting Policy for the Agency, and the Executive Director in Running the Operations of the Agency.
2. Clarify That Employers Are a Key Customer of TWC, and Require the Agency to Evaluate Employer Engagement.
3. Require TEA and TWC to Improve the Accountability and Coordination of Adult Education and Literacy Services.
4. Require TWC to Assess, and Make Public, Local Workforce Development Boards' Overall Capacity to Oversee Local Funds and Services.
5. Require TWC to Phase in the Integration of Workforce Programs and Associated Case Worker Functions.
6. Require an Annual Evaluation of Child Care Allocation Formulas.
7. Track Employment-Related Outcomes of Parents Receiving Subsidized Child Care.
8. Authorize TWC to Prohibit Certain Unfair Partial Transfers of Unemployment Compensation Experience Rates.
9. Authorize TWC to Issue Cease and Desist Orders to Bring Unlicensed Proprietary Schools Into Compliance With State Law.
10. Remove Restrictions on the Tuition Protection Fund That Limit TWC's Ability to Safeguard Students if a Proprietary School Closes.
11. Continue the Texas Workforce Commission for Six Years.

Issue 1 | TWC Lacks Clear Lines of Authority Between Its Commissioners and Executive Director.

Key Findings

- Having three, full-time Commissioners, as well as an Executive Director, creates confusion among TWC staff, and others, as to who is responsible for agency operations.
- Other states' workforce agencies, and other Texas agencies generally provide clearer separation between a board's role in setting policy and the staff's role in implementing that policy.
- TWC does not have a formal mechanism for receiving input from the local workforce development boards.

Commission members are regularly involved in agency operations and in directing agency staff. This involvement has blurred the lines of authority between the Commission's role in setting policy and the staff's role in running the agency. Also, local boards do not have a formal way to provide input directly to the Commissioners on policies that affect the boards and local services.

Recommendations**Change in Statute****1.1 Ensure clear separation and understanding of the powers and duties of the Commissioners in setting policy for the agency and the Executive Director in running the operations of the agency.**

The following requirements would ensure clear separation between the three, full-time Commissioners and the Executive Director of the Texas Workforce Commission.

- Require the Commissioners to set, not implement or direct the implementation of, agency policy.
- Require the Executive Director, not the Commissioners, to be responsible for overseeing the implementation of policies set by the Commissioners.
- Require the Executive Director to administer the day-to-day operations of the agency and all agency staff.
- Specify that directives from the Commissioners to staff be agreed to by a majority of the Commission in an open meeting, and conveyed through the Executive Director.
- Clarify that in performing agency operations and duties, agency staff shall be directly accountable to the Executive Director.
- Clarify the agency's enabling statutes to ensure a clear distinction between the use of commission, meaning the agency as a whole, and the commission, meaning the governing body of the agency.

1.2 Require the Commission to clearly define the roles of Commission members and agency staff.

The Commission would be required to develop and adopt rules, in compliance with the statutory changes above, that further define the purpose and functions of the three-member Commission and the responsibilities of the Executive Director and agency staff. These rules would establish clear lines of authority, responsibility, and accountability among all parties, and would help eliminate confusion regarding responsibility for running the agency.

1.3 Establish a Local Workforce Board Advisory Committee to advise TWC on the programs, policies, and rules that affect the boards and local workforce operations.

The advisory committee, appointed by the Workforce Leadership of Texas (WLT) Executive Committee, should consist of nine representatives from WLT. The advisory committee would be responsible for providing input, advising the Commission, and commenting on proposed rules and policies that affect the boards and local operations. This recommendation would improve the state-local partnership for workforce services by ensuring that boards have formal input on Commission decisions affecting local services.

Issue 2 | TWC Has Yet to Fully Engage Its Primary Customer, Employers, In the Development of Workforce Policies and Services.

Key Findings

- Many employers do not perceive TWC as a resource for finding qualified workers.
- Employers have limited input into the development of workforce policies and services at the state level.
- TWC lacks performance measures that evaluate the workforce system's role in employer engagement.

Since the creation of TWC in 1995, the agency has focused on setting up the local boards, devolving workforce programs, ensuring appropriate oversight, and implementing both welfare and workforce reforms. TWC recognizes the need for a focus on employers, but because of these other priorities, TWC has yet to focus fully on employer engagement. However, TWC can only meet the needs of job seekers by understanding and better meeting the needs of employers.

Recommendations

Change in Statute

2.1 Clarify that employers, as well as workers, are key customers of TWC, and that better satisfying employer needs is critical to the agency's ability to effectively serve the needs of workers and job seekers.

As part of this recommendation, TWC's enabling law would be amended to require the agency to:

- partner with the business community to identify key industries, skills needs, and employment opportunities;
- partner with the business community to develop services and programs that promote the development and advancement of skills in job seekers and workers; and
- support the business and community economic development activities of the local boards, and the State.

Placing increased focus on employers' needs would help result in resources being directed toward better training, job opportunities, career advancement for job seekers, and more qualified, skilled workers for employers.

Management Action

2.2 TWC should develop performance measures, in collaboration with local workforce boards, to track employer use of the agency's services, and employee hiring and retention as a result of the agency's services.

This recommendation would support TWC's efforts to prioritize employers' needs. Suggested measures could include the percentage of employers who list jobs with TWC, the length of time it takes to find an employer a qualified worker, the number of employers that TWC retains as repeat customers, and hiring and retention that results from agency services. Local workforce development boards should be benchmarked against their starting point for these measures; the goal is improvement over that benchmark. Benchmarks should be set in collaboration with the local boards.

Issue 3 | Adult Education and Literacy Programs Are Fragmented and Fail to Ensure That Texans Get the Basic Skills Needed to Succeed in the Workforce.

Key Findings

- Many Texans lack the basic education and literacy skills needed to compete in today's economy.
- Fragmentation of adult education and workforce development programs between the Texas Education Agency (TEA) and TWC cause potential problems for both customers and providers at the local level.

- TEA's failure to track customer outcomes prevents the State from assessing the impact and cost effectiveness of its investment in adult education and literacy programs.
- Texas lacks an adult education and literacy curriculum that ensures that adult education students obtain the basic skills necessary to succeed in the workplace.

The State spends almost \$50 million across TEA and TWC for adult basic education and literacy programs that serve less than four percent of Texans in need. However, lack of coordination, fragmented planning, and clear disconnect between TEA and TWC make service delivery of adult education and workforce development services difficult for providers, and burdensome for mutual customers. In addition, the lack of outcome information means the State cannot assess the effectiveness of this funding in helping adult Texans gain the basic education needed to be successful in today's economy.

Recommendations

Change in Statute

- 3.1 Require the Texas Education Agency and TWC to improve the accountability, coordination, and implementation of adult education and literacy services to mutual clients.**
- 3.2 Require the Texas Council on Workforce and Economic Competitiveness to identify specific strategies, to be implemented by TEA and TWC, to resolve ongoing problems between the two agencies that hamper the delivery and accountability of adult education and literacy services to meet the workforce, as well as educational, needs of Texans.**

These recommendations would improve TEA and TWC's accountability to the Legislature for adult education services. In addition, these recommendations would help streamline services through improved coordination of adult education services with workforce development services. The result of these efforts would help ensure that adult Texans get both the education and workforce services needed to get good jobs, earn more money, and support their families.

These recommendations would require TEA and TWC to work together, through the Texas Council on Workforce and Economic Competitiveness (the Council), to identify, evaluate, and develop strategies for improving, at a minimum, problems with seamless service delivery, adequate client information sharing, and duplication of planning at the state and local level between the two agencies. In addition, the Council should address the lack of performance information data to evaluate adult education and literacy services. The Council is charged with strategic planning and evaluation across agencies, including TWC and TEA adult literacy and education activities. These strategies should be included in the Council's strategic plan and implemented by TEA and TWC no later than December 2003.

3.3 Require the Texas Education Agency to use existing funds to contract with TWC to develop a workplace literacy and basic skills curriculum based on the needs of both employers and adult workers.

This recommendation would require TWC to partner with employers and local workforce boards to develop a curriculum, and appropriate credentials, to increase workers' ability to compete for jobs through basic literacy skill training. This recommendation would help Texas in bridging the gap between skills being taught and the skills employers need for current and emerging jobs.

Issue 4 | TWC's Oversight of Local Boards Fails to Focus on Developing Local Capacity to Oversee Workforce Funds and Services.

Key Findings

- The capacity of local boards to maintain adequate financial controls and monitor contracted providers varies widely.
- TWC oversight ensures program compliance, but is not focused on assessing and improving local boards' capacity to administer and oversee workforce funds and services.
- TWC oversight and monitoring activities often duplicate those of the local boards.
- TWC's establishment of local board teams to coordinate oversight is a positive step, but fragmented oversight activities continue to cause confusion among local boards.

The oversight roles of TWC versus that of local boards is often not clear, and fails to distinguish respective monitoring activities. As a result, TWC often duplicates local oversight functions, including detailed monitoring of case files, to ensure compliance with fiscal and program requirements. Local boards also vary considerably in their capacity to adequately oversee funds and contracted services. However, TWC lacks criteria for assessing the overall oversight capacity of local boards to better ensure the effective administration of workforce funds and programs. Once properly established, local boards should be held accountable for performing the more detailed monitoring of contractors, with the State focusing on ensuring the effectiveness of the local boards' oversight.

Recommendations

Change in Statute

4.1 Require TWC to develop criteria to assess local workforce development boards' overall capacity to administer and oversee local funds and services.

Clear oversight criteria would provide boards with a better understanding of what is expected, reduce any unnecessary duplication of monitoring activities, and help TWC better ensure local boards with poor oversight capacity are improved over time. TWC should develop these criteria in rule no

later than May 2004, and implement the rules no later than September 2004. In addition, TWC should publish these criteria, and the results of how well each board is doing in meeting these criteria, on the agency's web site.

4.2 Require TWC to develop indicators to critically evaluate local workforce boards and one-stop centers, and make the results of these evaluations public.

This recommendation would require TWC to develop a set of performance measures to use as indicators of how well local boards, and individual local workforce centers, are performing. TWC would also be required to make this information available to the public by publishing it on their Web site. These efforts would help to ensure that the public is given simple, clear and usable information on the performance of local boards and individual centers responsible for delivery of workforce services.

Management Action

4.3 TWC should build on current efforts to ensure local boards have a single point of contact in the agency, and improve coordination of oversight activities between the agency and local board staff.

TWC should appoint a lead contract manager to coordinate oversight activities such as technical assistance, monitoring, and sanctions. In addition, TWC should improve coordination of oversight activities with local boards by planning monitoring visits to avoid duplication where local boards have the demonstrated capacity to carry out these activities. These changes would help ensure that TWC's oversight efforts result in greater benefits to the local boards and the State.

Issue 5 | Siloed Workforce Programs Make It Difficult for Many Texans to Receive Effective Services.

Key Findings

- TWC struggles to fully support the integration of workforce programs at the local level.
- Lack of integration results in duplication and inefficiencies that make effective delivery of services to customers difficult.

Despite positive steps to consolidate employment and training programs into a single agency and to co-locate services, TWC and local boards struggle to streamline services and actually integrate these programs. Program services are still delivered in "silos," even though the programs use common front-line case worker functions to provide services to many of the same customers. Local staff must expend time and resources coordinating across these programs, which diverts attention from helping Texans get jobs, maintain those jobs, and earn more money for their families. Customers end up working with multiple program-specific case workers, making it more difficult for customers to get the help needed.

Recommendation

Change in Statute

5.1 Require TWC, in partnership with local workforce development boards, to phase in the integration of workforce programs and associated case worker functions.

This recommendation would help the State streamline the delivery of intensive workforce services by breaking down the program “silos,” and integrating case worker functions. Customers would work with a single case worker, who would be responsible for helping them obtain the needed services, regardless of which program funded those services. To ensure a smooth transition, this recommendation would be phased in over four years and would require the following steps.

- A review and modification of state level policies, procedures, and organizational structure to support the integration of local workforce programs and case worker functions.
- Completion of several pilot projects, within selected local board areas, to identify the best methods to integrate these functions.
- Request by TWC for federal waivers, as needed, to demonstrate the effectiveness of streamlining and integration of functions.
- A report to the Legislature, in 2005, on the results of these pilots and any statutory changes needed to facilitate the integration of these functions.
- Full implementation of integrated case worker functions statewide no later than September 1, 2007.

At a minimum, the workforce center service delivery system should include an integrated case management function, and an integrated eligibility determination function for intensive workforce development services for the programs TWC already block grants to local boards, including child care.

Issue 6 | Child Care Allocation Formulas and Performance Targets May Not Adequately Reflect Local Need and Costs.

Key Findings

- Child care allocation formulas may not adequately reflect local need and costs.
- TWC does not adequately engage local boards when setting targets for the number of children to be served.

TWC makes key statewide policy decisions that affect local boards’ ability to implement the \$425 million child care program. Despite the significance of these decisions, the Commission lacks adequate

formal outside input on the child care program. In addition, child care allocation formulas and performance measure targets may not adequately reflect local need and costs, preventing low-income parents from receiving child care services to which they are entitled.

Recommendations

Change in Statute

6.1 Require TWC to conduct an annual evaluation of child care allocation formulas.

This recommendation would require TWC to review allocation formulas to ensure that local needs and costs are reflected in the formulas. Factors to be considered for each local workforce board area during this evaluation should include use of current allocations, ability to meet performance measures, general cost of child care in the area, poverty rate relative to state poverty rate, number of children on a waiting list for care, and overall capacity. An annual evaluation would help ensure that TWC allocates funds in an equitable manner.

Management Action

6.2 TWC should develop formal methods for developing the recommended state target for the number of children served, to be provided to the Legislative Budget Board; and for assigning local targets, to be adopted as rules.

TWC should use the rulemaking process to develop formal methods for determining statewide and local performance targets for children provided with child care services. TWC should take into consideration the cost of more than one month of care, including summer child care. TWC should also use a more consistent methodology for determining administration and operations expenses that takes into account board budget size. Setting these formal methods in rule would give local child care representatives and advocates greater input on the important child care policy decisions made at the state level, thus continuing to improve the performance of the child care program.

Issue 7	TWC Is Not Taking Advantage of an Opportunity to Track the Impact of Subsidized Child Care in Helping Families Get Off, and Stay Off, Welfare.
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Key Findings

- TWC tracks several child care performance measures, but does not track the program's success in helping keep parents employed.
- Without better information on parents' employment-related outcomes, TWC cannot measure, or tailor, its programs to ensure the most effective use of child care subsidies.

Along with providing quality care, one of the main goals of TWC's child care program is to help families remain independent from welfare. However, the Commission does not track employment outcomes tied to achieving this goal of independence, even though TWC could collect this data with its existing follow-up capabilities. In addition, TWC does not examine if eligible parents keep subsidized child care when they transition to work, how long families continue to need this assistance, or how many return to welfare, even after a significant investment in child care assistance. As a result, TWC misses an opportunity to examine whether the child care program effectively supports low-income parents' ability to work and stay off welfare.

Recommendation

Change in Statute

7.1 Require TWC to track employment-related outcomes of parents receiving subsidized child care.

This recommendation would require TWC to begin tracking these outcomes and report its findings to the Legislature in 2005. The agency should use employee wage records to obtain outcome information such as whether parents receiving both welfare and child care subsidies get jobs, and whether transitional and at-risk parents keep their jobs and increase their earnings. TWC should also track how long families receive care, whether families keep their care as they transition to work, the reasons they leave the program, and if families that leave are returning to welfare. Clearer outcome data on subsidizing child care would help to facilitate lawmakers' evaluation of TWC's effectiveness in supporting low-income parents' ability to work.

Issue 8 | Partial Transfers of Unemployment Compensation Experience Rates Unfairly Cost Texas Employers Millions Each Year.

Key Findings

- Some employers use partial transfers to unfairly lower their experience tax rate and unemployment insurance taxes.
- Partial transfers also allow some employers to leave behind chargebacks, the costs of which all experienced-rated employers in Texas must share.
- Other states have clear statutory provisions limiting the transfer of employers' experience tax rates.

Some employers use partial transfers to unfairly reduce their unemployment insurance taxes and to leave behind costs of unemployment benefits paid to employees they have laid off. These transfers ultimately result in a temporary depletion of the Unemployment Compensation Fund and unfairly increase costs to other employers.

Recommendations

Change in Statute

8.1 Authorize TWC to deny a partial transfer of unemployment compensation experience if TWC determines the acquisition or reorganization was done solely to qualify for a reduced tax rate by circumventing the experience rating system or eliminating chargebacks.

This recommendation would provide TWC with clear statutory authority to deny partial transfers if the agency determines that an acquisition or reorganization is done to circumvent the experience rating system or eliminate chargebacks. This authority would help deter employers applying for partial transfers just to reduce the amount of unemployment insurance taxes they owe, and help ensure that approved partial transfers are legitimate transfers.

8.2 Establish a one-year time limit for employers to file an application for a partial transfer due to an acquisition or reorganization.

Requiring employers to file within one year would help prevent employers from filing partial transfers based on reorganizations or acquisitions that may have occurred several years ago. TWC does not have the staff, time, or resources to verify reorganizations or acquisitions that employers claim had occurred several years ago. This recommendation would also deter employers from leaving chargebacks behind in inactive accounts.

8.3 Prohibit partial transfers for part of an organization, trade, or business that cannot operate independently.

This recommendation would prevent businesses from simply splitting off a few employees or division as a new business to gain a more favorable experience tax rate. The part of the business being transferred would have to be a stand alone part of the business, able to operate on its own, and not be just a few select employees or a particular division of the business.

Issue 9	TWC Lacks the Authority Necessary to Protect Students From Unlicensed Proprietary Schools.
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Key Findings

- Seeking injunctions against unlicensed proprietary schools through the court system has not been an effective or timely option.
- The continued operation of unlicensed schools places students at risk.
- Other state agencies, in Texas and other states, use cease and desist authority to successfully bring unlicensed proprietary schools and businesses into compliance.

TWC licenses proprietary schools in Texas to protect students from fraud and poor quality training. It has limited authority to ensure the compliance of uncooperative unlicensed proprietary schools. Students attending proprietary schools operating without a license are at risk because checks are not conducted to ensure that the schools offer quality instruction, train for jobs locally in demand, or are financially sound.

Recommendation

Change in Statute

9.1 Authorize TWC to issue a cease and desist order to bring an unlicensed proprietary school into compliance with state law.

This recommendation would provide TWC with an additional tool to bring uncooperative unlicensed schools into compliance in a timely manner. For schools that fail to come into compliance after being contacted on multiple occasions, TWC could issue a cease and desist order with a pre-determined hearing date. Only schools that fail to respond to the cease and desist order would be referred to the Consumer Protection Division of the Office of the Attorney General for further action.

Issue 10 | Restrictions on the Tuition Protection Fund Limit TWC's Ability to Safeguard Students If a Proprietary School Closes.

Key Findings

- Historically, the Tuition Protection Fund's structure has not allowed full refunds to students of closed proprietary schools.
- The limit on refunds of \$50,000 per school fails to cover students of large or high tuition schools that close.
- The current Fund appropriation of \$75,000 per year is proving to be inadequate to cover annual expenses and tuition from school closures.

The Legislature set up the Tuition Protection Fund (TPF) to help protect students, with the cost fully covered by fees paid for by regulated proprietary schools. Changes over time have resulted in student refunds representing only a fraction of the amount actually due upon closure of a school. Raising the Tuition Protection Fund cap and removing spending caps would improve TWC's ability to protect students from tuition losses due to school closures.

Recommendations

Change in Statute

10.1 Increase the ceiling on the proprietary school Tuition Protection Fund from \$250,000 to \$500,000.

This recommendation would allow TWC to more fully protect students of closed proprietary schools. The Fund increase would be graduated over a two-year time frame. Once the Fund reaches a \$500,000 cap, the Fund could be replenished in January of any year that the fund dips below \$400,000. This could be done either through an assessment of proprietary schools or a transfer of fees collected in excess of administration costs of the proprietary school program.

10.2 Increase from \$50,000 to \$150,000 the amount that can be spent per school closure from the Tuition Protection Fund.

This recommendation would help TWC to better protect students, especially those in large or higher cost schools. The increased cap would make more money available to students in the event of a school closure, resulting in better, but not full, refunds. Refunds would be improved without depleting the Fund balance with the closure of a single school.

10.3 Clarify that the closing proprietary school has statutory responsibility to make full refunds to students, and that refunds from the Tuition Protection Fund depend on the amount of funds available.

This recommendation would clarify that the shareholders of a closing proprietary school have the statutory responsibility to make full refunds to students. In addition, the recommendation would also clarify that refunds from the TPF depend on available funding, and that students might not receive a full refund of prepaid tuition from TWC if a proprietary school closes. The statute would outline the factors TWC can take into consideration, if paying full student refunds is not possible. Factors would include the amount available in the TPF, the size and number of claims caused by a school closure, the amounts of claims paid in the past, and the availability of other schools to allow students to complete their programs. Clarification of refund policies would help ensure students are aware of the risk of tuition loss in the event of a school closure.

10.4 Change the name of the Proprietary School Act to the “Career Schools and Colleges Act.”

This recommendation would update state law to better reflect the current terminology used for describing these educational entities. In addition to changing the name of the Act, the recommendation would change all instances of the words “proprietary schools” to “career schools and colleges.”

Change in Appropriations

10.5 The Sunset Commission requests that the Senate Finance Committee and the House Appropriations Committee consider giving TWC access to the full Tuition Protection Fund, by removing the \$75,000 limit on the total amount that can be paid out from the Fund in any single year.

This recommendation would provide better protection of student tuition in the event of school closures. Rider language could be changed to specify that TWC has access to the full balance of the Fund for the purpose of tuition refunds, and that all new TPF fees collected are appropriated to the agency for that purpose.

Management Action

10.6 TWC should add consumer protection information to its Web site.

This recommendation would ensure that students have easy access to information about the consumer protections available through state and federal law, with regard to proprietary schools. TWC should make the proprietary school Web site more user-friendly to students with the addition of information on students' rights regarding school closures, the tuition protection fund, federal and private loan forgiveness, and complaint and refund processes.

Issue 11 | Texas Has A Continuing Need for the Texas Workforce Commission.

Key Findings

- While improvement is still needed, Texas has a clear and continuing need for the employment services, job training, and unemployment benefits provided through the Commission.
- TWC generally accomplishes its mission overall, with the State benefitting from the consolidation of workforce functions, more locally controlled workforce service delivery, and the shift of unemployment insurance to tele-centers.

Recommendation

Change in Statute

11.1 Continue the Texas Workforce Commission for six years.

This recommendation would continue the Texas Workforce Commission as the agency responsible for administering the State's workforce and unemployment insurance programs until 2009.

Fiscal Implication Summary

This report contains several recommendations that would have a fiscal impact to the State. Overall, these recommendations would have a minimal fiscal impact to the State for each of the first two years, but a net savings of about \$4.2 million in each subsequent year. To avoid the loss of federal funds, the majority of these funds must be redirected from administrative support to direct customer services. These recommendations are discussed below, followed by a five-year summary chart.

- **Issue 1** – Establishing the Local Workforce Board Advisory Committee would have a minimal fiscal impact to the State. Travel costs for the committee to meet quarterly are estimated to be \$12,000 annually.
- **Issue 3** – Developing a demand driven workplace literacy and basic skills curriculum would have no fiscal impact to the State. The recommendation would require TEA to use existing resources to contract with TWC for the curriculum's development.
- **Issue 5** – Streamlining workforce programs to support integrated services would result in administrative savings to state and federal funds of \$4.2 million and a reduction of 35 FTEs, starting in fiscal year 2006. To avoid the loss of federal funds, these savings would need to be redirected into workforce services.
- **Issue 8** – Reducing the unfair use of partial transfers relating to unemployment insurance taxes would prevent losses to the Unemployment Compensation Fund and indirectly reduce experience-related employers' UI tax rates. However, the actual reduction in employer taxes could not be estimated because TWC does not currently know how many businesses may be unfairly using partial transfers.
- **Issue 10** – Removing restrictions to, and increasing the balance of, the Proprietary School Tuition Protection Fund would have no net fiscal impact to the State. The associated costs of \$125,000 per year for fiscal years 2004-2005 would be covered by fees paid by licensed proprietary schools.

Fiscal Year	Administrative Savings to State and Federal Funds*	Gains to the Tuition Protection Fund	Cost to the Tuition Protection Fund	Cost to State Funds	Change in FTEs from 2003
2004	\$0	\$125,000	\$125,000	\$12,000	0
2005	\$0	\$125,000	\$125,000	\$12,000	0
2006	\$4,200,000	\$0	\$0	\$12,000	-35
2007	\$4,200,000	\$0	\$0	\$12,000	-35
2008	\$4,200,000	\$0	\$0	\$12,000	-35

* Savings to state and federal funds would need to be re-directed into services to avoid the loss of federal funds.

Texas Council on Workforce and Economic Competitiveness

Council at a Glance

The Texas Council on Workforce and Economic Competitiveness (the Council) was established in 1993 to carry out strategic planning and evaluation activities for the Texas workforce development system. The system is made up of workforce programs and activities within the Texas Workforce Commission, Department of Human Services, Higher Education Coordinating Board, Department of Economic Development, and State Board of Education. The Council also serves as the State Workforce Investment Board under the federal Workforce Investment Act (WIA) of 1998.

The Council's key duties include:

- strategic planning for the integration of system-wide workforce development services in Texas and reviewing the plans of member agencies and local boards to ensure consistency with the statewide plan;
- evaluating the workforce development system by collecting and reporting performance measure data from agencies and employers to identify how well the state's workforce system is meeting the needs of employers and job seekers; and
- producing research reports for the Office of the Governor, the Legislature, and others, on topics such as Smart Jobs and welfare reform.

Key Facts

- **Composition.** The Council is made up of 20 members representing business, labor, education, community-based organizations, and key workforce-related state agencies.
- **Funding.** The Council operates on an annual budget of approximately \$1 million in funding from the Office of the Governor and four of the Council's member agencies: the Texas Workforce Commission, Texas Education Agency, Department of Human Services, and Higher Education Coordinating Board.
- **Staffing.** The Council has 12 full-time employees and is administratively attached to the Governor's Office in Austin. Two of the employees staff the Texas Skill Standards Board, a related, but independent advisory board.
- **Strategic Planning.** The Council's strategic plan covers fiscal years 1999-2004 and includes goals, objectives, and performance measures for the programs and functions of the state agencies represented on the Council. The Council reports annually to the Governor and Legislature on the implementation of the plan.
- **Performance Measures.** The Council reports data on 25 performance measures that aim to assess the effectiveness of workforce activities in the state.

Council Members (20)

Ann Hodge, Chair (Katy)
John Sylvester, Vice Chair (Houston)
Frank Acosta (New Caney)
Edward Adams, Sr. (Austin)
Angela Blanchard (Houston)
James Brookes (Amarillo)
Steve Dement (Houston)
Rowland Funderberg (Irving)
John Paul Gable (El Paso)
Robert Hawkins (Bellmead)
Harold Jenkins (Irving)
David Mooney (Gilmer)
Lonnie R. Morgan (Arlington)
Mario Salinas (Edinburg)
John Wroten (Plano)

Jon M. Bradley, ex officio
Department of Human Services
Diane Rath, ex officio
Texas Workforce Commission
Grace Shore, ex officio
State Board of Education
Macedonio "Massey" Villareal, ex officio
Texas Department of Economic Development
Pam Willeford, ex officio
Higher Education Coordinating Board

Agency Head

Cheryl Fuller, Executive Director
(512) 936-8100

Recommendation

1. Continue the Council for 12 Years, With Changes to Improve Its Focus on Resolving Problems That Hamper the Integrated and Seamless Delivery of Workforce Services in Texas.

Issue 1 | **While Needed, the Council Has Had Difficulty Resolving Problems Across Member Agencies and Evaluating the Workforce System.**

Key Findings

- Texas must maintain the Council to meet federal Workforce Investment Act requirements.
- Lack of participation by state agency members seriously impedes the Council's ability to ensure coordinated workforce development efforts.
- The Council's strategic plan does not clearly define member agencies' responsibilities for implementing the plan.
- The Council does not have the resources or the staff expertise to establish and maintain an effective automated follow-up system for evaluating the workforce development system.

While needed to avoid the potential loss of \$229 million in federal funds, the Council lacks a clear focus on resolving ongoing problems in the delivery of workforce services across its member agencies. Many member agencies simply do not participate and are not held responsible for implementing needed changes. In addition, the Council lacks the expertise for maintaining an automated follow-up system for tracking outcomes of workforce training and education programs.

Recommendations**Change in Statute****1.1 Continue the Council on Workforce and Economic Competitiveness for 12 years, renamed as the Texas Workforce Investment Council.**

This recommendation would continue the Council to meet federal requirements under the Workforce Investment Act. The Council would continue to be administratively attached to the Office of the Governor. Renaming the Council would simplify its name and clearly link it to its federal mandate.

1.2 Designate the Executive Director, rather than the Board Chair, of each of the five member state agencies to represent their agency as an ex officio member of the Council.

This change is intended to increase state agency participation in the activities of the Council. The executive directors are well-positioned to facilitate the resolution of critical interagency differences; and to ensure that performance data is reported to the Council, as required by law.

1.3 Require the Council to focus on resolving problems that cut across member state agencies, and hamper the integrated and seamless delivery of workforce services in Texas.

This recommendation would require the Council to identify and address problems that hinder the successful development of integrated workforce services. The Council should include a list of cross-agency issues to be resolved each year, and report on the results of such efforts in its annual report to the Governor and the Legislature. This recommendation would better ensure the coordination of education, economic development, and human services functions with the Texas Workforce Commission TWC, the State's consolidated workforce agency.

1.4 Require the Council to clearly identify the duties of each of the member agencies in implementing specific strategies of the Council's long-range strategic plan.

The Council should modify its long-term strategic plan to include the identification of agency-level coordination problems. Each of the strategies in the Council's plan should clearly identify the member agencies responsible for implementing the strategy, along with the time frame anticipated for these changes to be accomplished.

1.5 Transfer the responsibility for establishing and maintaining an automated follow-up and evaluation system from the Council to the Texas Workforce Commission.

The automated follow-up system tracks the outcomes of education and employment related programs. While the Council has a statutory requirement to maintain the system, historically TWC has performed this function. Having TWC, rather than the Council, responsible for maintaining the automated follow-up system would place this duty at an agency with the expertise to carry it out, with the Council using the resulting information for its system evaluation. The Council, through its member agencies, would continue to fund the operating costs of the automated follow up system.

Fiscal Implication Summary

These recommendations would have no net fiscal impact to the State.

ACROSS-THE-BOARD RECOMMENDATIONS

Across-the-Board Recommendations

This section of the report briefly describes each of the Sunset across-the-board recommendations, with a chart detailing the application the ATBs to each of the agencies currently under review for the 78th Legislature.

Across-the-board recommendations (ATBs) are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards for state agencies. These policies are an outgrowth of the Sunset review criteria as set out in the Sunset Act and have resulted from recurring problem areas identified through almost 300 Sunset reviews. The ATBs are designed to ensure open, responsive, and effective government.

The across-the-board recommendations are applied to every state agency reviewed by the Sunset Commission, unless a clear reason to exempt the agency is identified. Some Sunset ATBs address policy issues related to an agency’s policymaking body, such as requiring public membership on boards or allowing the Governor to designate the chair of a board. Other Sunset ATBs require agencies to set consistent policies in areas such as how to handle complaints and how to ensure public input. Another set of ATBs deals exclusively with licensing standards and are applied only to agencies with regulatory functions.

General Across-the-Board Recommendations

- 1. Public Membership** – Require at least one-third public membership on state agency policymaking bodies.

The purpose of government is to protect the health, welfare and safety of the public. However, some agencies do not have public members on their boards. Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This potential problem can be addressed by giving the general public a direct voice in the activities of the agency through representation on the Board. The requirement that at least one-third of the members be representatives of the general public ensures appropriate representation.

- 2. Conflicts of Interest** – Require specific provisions relating to conflicts of interest.

An agency may develop close ties with professional trade organizations and other groups that may not be in the public interest. Conflicts of interest can also result when board or commission members or an agency’s general counsel are involved in lobbying. This guideline reduces the possibility of such a conflict. These provisions are necessary to prevent these kinds of relationships from developing.

- 3. Nondiscriminatory Appointments** – Require that appointment to the policymaking body be made without regard to the appointee’s race, color, disability, sex, religion, age, or national origin.

State agencies must be fair and impartial in their operations. The achievement of this goal is aided by the existence of policymaking bodies whose appointees have been chosen on an impartial and unbiased basis.

- 4. Governor Designates Presiding Officer** – Provide for the governor to designate the presiding officer of a state agency’s policymaking body.

Presiding officers of state commissions and boards in Texas have traditionally been elected by their fellow members. In an effort to increase state agencies’ accountability, the legislature has routinely authorized the Governor to appoint the presiding officer of state policymaking bodies.

- 5. Grounds for Removal** – Specify grounds for removal of a member of the policymaking body.

Several of the preceding across-the-board provisions set out appointment requirements for board or commission members (e.g., conflict-of-interest requirements). This provision directly specifies that grounds for removal of a board or commission member exist if these requirements are not met. In addition, the provision clarifies that if grounds for removal exist, actions taken by the board or commission during the existence of these grounds are still valid.

- 6. Standards of Conduct** – Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.

This recommendation ensures that an agency’s policymaking body and employees are informed of provisions in state law concerning standards of conduct for state officers and employees.

- 7. Board Member Training** – Require training for members of policymaking bodies.

Members of state boards and commissions should be provided with adequate information and training to allow them to properly and effectively discharge their duties. This provision ensures that appropriate training is provided before an appointee actively begins serving on a board or commission.

- 8. Separation of Functions** – Require the agency’s policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.

This recommendation establishes the executive director/administrator as the individual in charge of managing the agency’s day-to-day activities. It removes the possibility of the policymaking body administering the agency in addition to setting agency policy.

- 9. Public Input** – Provide for public testimony at meetings of the policymaking body.

This requirement ensures the opportunity for public input to the policymaking body on issues under its jurisdiction.

10. Complaint Information – Require information to be maintained on complaints.

The sunset review process has shown that complete and adequate information about complaints is maintained by some agencies. This recommendation ensures that, at a minimum, files are developed and maintained on all complaints. This provision would also ensure that all parties to a complaint are made aware of the status of the complaint and agency policies and procedures pertaining to complaint investigation and resolution.

11. Equal Employment – Require development of an equal employment opportunity policy.

This recommendation ensures that each agency develops a written, comprehensive equal employment opportunity plan that is filed with the Governor's Office and updated annually. Agency efforts in this area are further enhanced by requiring the agency to file annual progress reports with the Governor's Office.

12. State Employee Incentive Program – Require training on participation in the State Employee Incentive Program.

This recommendation ensures that an agency's employees are educated on the State's program to reward innovative and cost-saving measures, which can improve the agency's operations and reward the employee(s) involved.

13. Technology Use – Require agencies to make effective use of technology.

This recommendation requires agency policymaking bodies to ensure the effective use of technology in its delivery of services and provision of information to the public.

14. Alternative Dispute Resolution – Develop and use appropriate alternative rulemaking and dispute resolution procedures.

In 1997, the Legislature enacted two statutes relating to the use of alternative procedures for rulemaking and dispute resolution by government agencies: the Negotiated Rulemaking Act (Ch. 2008, Government Code) and the Governmental Dispute Resolution Act (Ch. 2009, Government Code). The purpose of these statutes is to provide clear authority to government agencies to develop and use these types of procedures. This recommendation requires agency policymaking bodies to develop a written, comprehensive plan that encourages the use of the alternative procedures for the agency's rulemaking and for internal employee grievances, inter-agency conflicts, contract disputes, actual or potential contested matters, and any other appropriate potential conflict area.

Licensing Across-the-Board Recommendations**1. Renewal Time Frames** – Require standard time frames for licensees who are delinquent in renewal of licenses.

Variations occur among licensing agencies in requirements concerning the number of days a license renewal may be delinquent before penalties are brought into effect. This provision is aimed at ensuring comparable treatment for all licensees, regardless of their regulated profession. This provision also clarifies that a person whose license has expired may not engage in activities that require a license until the license has been renewed.

- 2. Notification of Exam Results** – Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.

This provision ensures the timely reporting of examination results. The timely notification is important to those persons whose future plans are contingent on their examination scores. This provision also ensures that examinees are informed of the reasons for failing the examination. Such knowledge serves to protect the examinee from arbitrary restrictions, as well as assisting the examinee to acquire the skills and knowledge to pass the exam and provide the public with quality services.

- 3. Endorsement and Reciprocity** – Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.

Agencies should be allowed to establish a procedure to license out-of-state applicants without examination if the applicant is currently licensed by another state. This policy protects the public interest, imposes uniform requirements on all applicants, and spares the already-licensed practitioner the cost and time required in “retaking” an examination previously passed in another state.

Two approaches to licensing out-of-state applicants are endorsement and reciprocity. Licensure by endorsement requires the licensing agency to review each applicant’s credentials before issuing a license to determine if the applicant was required to meet substantially equivalent requirements in another state. Licensure by reciprocity allows the licensing agency to enter into a reciprocal agreement with another state under which each state will accept the other state’s licensees. These licensing approaches are not mutually exclusive and, if appropriate, agencies could be authorized to use both approaches.

- 4. Provisional Licenses** – Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.

Provisional licenses allow license applicants who hold a license in another state to practice in Texas while their credentials are being evaluated. Provisional licenses can be issued only if the individuals meet certain requirements such as passing a recognized examination and being sponsored by a Texas licensee.

- 5. Staggered Renewal of Licenses** – Authorize the staggered renewal of licenses.

This type of provision encourages the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. The staggering procedure improves the efficient utilization of agency personnel by establishing a uniform workload throughout the year and eliminating backlogs in licensing efforts and the need for seasonal employees.

- 6. Full Range of Penalties** – Authorize agencies to use a full range of penalties.

As a general principle, an agency’s range of penalties should conform to the seriousness of the offenses presented to the agency. However, in many cases licensing agencies are not given a sufficient range of penalties. This provision is intended to ensure that the appropriate sanctions for offenses are available to the agency. The general range of sanctions are: revocation of a license, suspension of a license, refusal to renew a license, probation of a person whose license has been suspended, or reprimand of a licensee.

7. Advertising and Competition – Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.

The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such a restriction limits public access to information regarding professional services and hampers the consumer's efforts to shop for "a best buy." Elimination of these rules or statutes restores a degree of free competition to the regulated area to the benefit of the consumer.

8. Continuing Education – Require the policymaking body to adopt a system of continuing education.

Proper protection of the public is dependent on practitioners having a working knowledge of recent developments and techniques used in their trades. The continuing education requirement provides one proven means of ensuring such upgrading.

Application of ATBs to Agencies Currently Under Review

For the agencies currently under Sunset review for the 78th legislative session, each of the ATBs was evaluated and applied where appropriate. If the standard approach did not fit, the language was modified to fit the precise circumstances of an individual agency's operations. In addition, some of the agencies under review this session had been previously reviewed and the ATB language was already in law or simply had to be updated. The following chart details the application of ATBs to agencies currently under review.

Sunset Across-the-Board Recommendations – 2003						
	Accountancy, Texas State Board of Public Administrative Hearings, State Office of	Aerospace Commission, Texas	Architectural Examiners, Texas Board of (Architecture Statute)	Architectural Examiners, Texas Board of (Interior Design Statute)	Architectural Examiners, Texas Board of (Landscape Architecture Statute)	
General						
1. Public Membership	S	N/A	A	S		
2. Conflicts of Interest	M	A	U	U		
3. Nondiscriminatory Appointments	S	A	U	S		
4. Governor Designates Presiding Officer	S	N/A	A	S		
5. Grounds for Removal	U	M	A	U		
6. Standards of Conduct	S	A	A	U		
7. Board Member Training	A	N	A	A		
8. Separation of Functions	U	N/A	A	U		
9. Public Input	S	S	A	U		
10. Complaint Information	U	A	A	M		
11. Equal Employment	U	A	A	U		
12. Employee Incentive Program	A	A	A	A		
13. Technology Use	A	A	A	A		
14. Alternative Dispute Resolution	A	M	M	A		
Licensing						
1. Time Frames	U	N/A	N/A	M	M	M
2. Notification of Exam Results	S	N/A	N/A	U	U	U
3. Endorsement and Reciprocity	S	N/A	N/A	U	U	U
4. Provisional Licenses	N	N/A	N/A	N	N	N
5. Staggered Renewal of Licenses	A	N/A	N/A	U	U	U
6. Full Range of Penalties	M	N/A	N/A	U	U	U
7. Advertising and Competition	S	N/A	N/A	M	A	M
8. Continuing Education	S	N/A	N/A	M	M	M
A=apply; U=update; M=modify; S=already in statute; N=do not apply; N/A=not applicable						

Sunset Across-the-Board Recommendations – 2003					
	Bar of Texas, State	Court Reporters Certification Board	Dental Examiners, State Board of	Economic Development, Texas Department of	Educator Certification, State Board for
General					
1. Public Membership	N/A	U	M	N/A	S
2. Conflicts of Interest	U	U	S ¹	U	A
3. Nondiscriminatory Appointments	U	U	U	N/A	S
4. Governor Designates Presiding Officer	N/A	N	A	N/A	A
5. Grounds for Removal	U	M	U ¹	N/A	M
6. Standards of Conduct	U	A	S	U	S
7. Board Member Training	M	A	U	N/A	A
8. Separation of Functions	U	N	S	N/A	S
9. Public Input	S	A	S	N/A	A
10. Complaint Information	M	A	U	U	A
11. Equal Employment	U	A	S	S	A
12. Employee Incentive Program	A	A	A	A	A
13. Technology Use	A	A	A	A	A
14. Alternative Dispute Resolution	N/A	A	A	A	A
Licensing					
1. Time Frames	M	M	A	N/A	A
2. Notification of Exam Results	N/A	M	S	N/A	A
3. Endorsement and Reciprocity	N/A	M	S	N/A	S
4. Provisional Licenses	N/A	N	A	N/A	M
5. Staggered Renewal of Licenses	U	A	S	N/A	A
6. Full Range of Penalties	N/A	A	M	N/A	M
7. Advertising and Competition	M	A	S	N/A	N
8. Continuing Education	A	S	M	N/A	S
A=apply; U=update; M=modify; S=already in statute; N=do not apply; N/A=not applicable					
¹ ATBs 2 and 5 were also applied to the Dental Hygiene Advisory Committee					

Sunset Across-the-Board Recommendations – 2003					
	Engineers, Texas Board of Professional	Ethics Commission, Texas	Funeral Service Commission, Texas	Higher Education Coordinating Board, Texas	Housing Corporation, Texas State Affordable
General					
1. Public Membership	U	N	S	S	N
2. Conflicts of Interest	U	M	S	U	A
3. Nondiscriminatory Appointments	U	U	S	S	A
4. Governor Designates Presiding Officer	A	N	S	S	S
5. Grounds for Removal	U	A	S	U	A
6. Standards of Conduct	A	A	S	S	A
7. Board Member Training	A	A	S	A	A
8. Separation of Functions	A	A	S	S	A
9. Public Input	A	S	S	S	S
10. Complaint Information	U	U	S	U	A
11. Equal Employment	A	A	S	U	M
12. Employee Incentive Program	A	A	S	A	N/A
13. Technology Use	A	A	A	A	A
14. Alternative Dispute Resolution	A	A	A	A	N
Licensing					
1. Time Frames	M	N/A	S	N/A	N/A
2. Notification of Exam Results	U	N/A	S	N/A	N/A
3. Endorsement and Reciprocity	A	N/A	N/A	N/A	N/A
4. Provisional Licenses	A	N/A	S	N/A	N/A
5. Staggered Renewal of Licenses	U	N/A	S	N/A	N/A
6. Full Range of Penalties	U	N/A	S	N/A	N/A
7. Advertising and Competition	M	N/A	S	N/A	N/A
8. Continuing Education	A	N/A	S	N/A	N/A
A=apply; U=update; M=modify; S=already in statute; N=do not apply; N/A=not applicable					

Sunset Across-the-Board Recommendations – 2003					
	Human Services, Texas Department of	Land Surveying, Texas Board of Professional	Law Examiners, Board of	Licensing and Regulation, Texas Department of	Lottery Commission, Texas
General					
1. Public Membership	M	U	N/A	S	S
2. Conflicts of Interest	M	U	U	A	U
3. Nondiscriminatory Appointments	S	U	U	S	U
4. Governor Designates Presiding Officer	A	S	N/A	A	S
5. Grounds for Removal	U	U	U	U	U
6. Standards of Conduct	S	U	S	A	A
7. Board Member Training	S	A	A	A	A
8. Separation of Functions	U	S	U	U	A
9. Public Input	U	S	S	S	A
10. Complaint Information	M	U	A	U	A
11. Equal Employment	U	U	U	U	A
12. Employee Incentive Program	A	A	A	A	A
13. Technology Use	A	A	A	A	A
14. Alternative Dispute Resolution	A	A	N/A	A	A
Licensing					
1. Time Frames	A ¹	U	N/A	see pages 269-270	N
2. Notification of Exam Results	A	U	N/A		N/A
3. Endorsement and Reciprocity	N/A	S	N/A		N/A
4. Provisional Licenses	N/A	N	N/A		N/A
5. Staggered Renewal of Licenses	A	U	N/A		①
6. Full Range of Penalties	U	U	N/A		②
7. Advertising and Competition	N/A	S	N/A		N/A
8. Continuing Education	S	S	N/A		③
A=apply; U=update; M=modify; S=already in statute; N=do not apply; N/A=not applicable					
¹ Licensing ATBs for Medication Aides only.					
① See Recommendation 8.1 regarding Lottery Licensing in the Texas Lottery Commission Report.					
② See Recommendation 6.1 regarding Bingo Licensing in the Texas Lottery Commission Report.					
③ Licensing ATB 8 was not applied to Bingo Licensing and was not applicable to Lottery Licensing.					

Sunset Across-the-Board Recommendations – 2003					
	Plumbing Examiners, Texas State Board of	Purchasing from People with Disabilities, Texas Council on	Tax Professional Examiners, Board of	Workforce Commission, Texas	Workforce and Economic Competitiveness, Texas Council on
General					
1. Public Membership	N	A	①	U	N
2. Conflicts of Interest	U	S	A	U	N
3. Nondiscriminatory Appointments	U	S	A	S	A
4. Governor Designates Presiding Officer	A	S	A	U	U
5. Grounds for Removal	U	S	A	U	U
6. Standards of Conduct	A	U	A	U	A
7. Board Member Training	A	U	A	A	M
8. Separation of Functions	A	A	A	A	A
9. Public Input	A	S	A	A	A
10. Complaint Information	M	A	A	U	A
11. Equal Employment	A	N/A	A	U	N
12. Employee Incentive Program	A	N/A	A	A	A
13. Technology Use	A	A	A	A	A
14. Alternative Dispute Resolution	A	A	A	M	N/A
Licensing					
1. Time Frames	M	N/A	S	N ¹	N/A
2. Notification of Exam Results	S	N/A	A	N/A	N/A
3. Endorsement and Reciprocity	U	N/A	A	N	N/A
4. Provisional Licenses	A	N/A	N	N	N/A
5. Staggered Renewal of Licenses	S	N/A	N	S	N/A
6. Full Range of Penalties	M	N/A	②	N	N/A
7. Advertising and Competition	S	N/A	N	S	N/A
8. Continuing Education	S	N/A	A	N/A	N/A
A=apply; U=update; M=modify; S=already in statute; N=do not apply; N/A=not applicable					
¹ Licensing ATBs for Proprietary Schools only.					
① See Recommendation 2.1 in the Board of Tax Professional Examiners Report.					
② See Recommendation 3.5 in the Board of Tax Professional Examiners Report.					

Texas Department of Licensing and Regulation									
	Air Conditioning Contractors	Architectural Barriers	Auctioneers	Boilers	Career Counseling Services	Combative Sports	Court Interpreters	Elevators and Escalators	Industrialized Housing and Buildings
Licensing									
1. Time Frames	A	N	A	A	A	N	A	N	N
2. Notification of Exam Results	U	U	U	U	N	N	A	N	N
3. Endorsement and Reciprocity	S	N	S	S	N	S	A	N	S
4. Provisional Licenses	N	N	N	N	N	N	N	N	N
5. Staggered Renewal of Licenses	S	S	S	S	S	S	S	S	S
6. Full Range of Penalties	U	S	U	S	S	U	U	U	U
7. Advertising and Competition	S	S	S	S	S	S	S	S	S
8. Continuing Education	U	U	A	U	A	N	A	A	U
A=apply; U=update; M=modify; S=already in statute; N=do not apply; N/A=not applicable									

Texas Department of Licensing and Regulation¹										
	Personnel Employment Services	Property Tax Consultants	Service Contract Providers	Staff Leasing Providers	Talent Agencies	Temporary Common Worker Employers	Vehicle Protection Product Warrantors	Water Well Drillers	Water Well Pump Installers	Weather Modification
Licensing										
1. Time Frames	A	U	A	A	A	A	A	U	U	A
2. Notification of Exam Results	N	U	N	N	N	N	N	U	A	N
3. Endorsement and Reciprocity	A	S	A	A	A	N	A	S	S	N
4. Provisional Licenses	N	N	N	N	N	N	N	N	N	N
5. Staggered Renewal of Licenses	S	S	S	S	S	S	S	U	U	A
6. Full Range of Penalties	S	U	U	U	U	S	U	S	S	S
7. Advertising and Competition	S	S	S	S	S	S	S	S	S	S
8. Continuing Education	A	S	A	N	N	N	N	U	U	N
<p>A=apply; U=update; M=modify; S=already in statute; N=do not apply; N/A=not applicable</p> <p>1. Since the regulation of Transportation Service Providers was abolished in Recommendation 6.1 of the TDLR report, no licensing ATBs were applied to that program.</p>										

**IMPLEMENTATION OF 2001
SUNSET LEGISLATION**

**IMPLEMENTATION OF 2001
SUNSET LEGISLATION**

Implementation of 2001 Sunset Legislation

Summary

The Sunset Act requires the Sunset Commission to review the implementation of Sunset bill provisions from the preceding legislative session. This report section looks at the progress agencies have made in implementing changes required by the 2001 Sunset bills.

In January 2001, the Sunset Commission presented the results of its review of 25 state agencies to the 77th Legislature. The Commission recommended:

- abolishing two agencies, the Texas Energy Coordination Council and the Texas Interagency Council for the Homeless;
- taking no action on two agencies, the Children's Trust Fund of Texas Council and the Child Support Division of the Office of the Attorney General, after special purpose reviews ordered in the previous session; and
- continuing the other 21 agencies.

The Legislature enacted bills containing most of these recommendations during the 2001 legislative session. However, the Legislature merged, rather than abolished, the Texas Interagency Council for the Homeless with the Texas Department of Housing and Community Affairs. Further, the Legislature continued the Texas Department of Housing and Community Affairs, the Texas State Affordable Housing Corporation, the Texas Department of Economic Development, and the Texas Funeral Service Commission, but only for a two-year probationary period. No implementation analysis for these agencies is included in this report, but is addressed instead in the agencies' respective staff reports from this review period.

The 2001 Sunset bills required 308 separate changes by the agencies continued through the Sunset process. During the interim, each agency affected by Sunset legislation submitted a report detailing its efforts to implement each of the required changes. Sunset staff also followed up with the agencies on any incomplete or questionable items. These efforts resulted in the following status report on the agencies' implementation of the Sunset legislation from the 77th Session.

Overall, agencies have implemented more than 93 percent of the changes included in the 2001 Sunset legislation. Key changes included the following.

- Rename the Texas Natural Resource Conservation Commission as the Texas Commission on Environmental Quality. Establish a performance regulatory structure based on compliance history and provide for the permitting of "grandfathered" facilities.
- Require the Texas Parks and Wildlife Department to assess the state's natural, cultural, and recreational resource, and to base all acquisition, divestiture, and major operation decisions on this assessment.

- Require the Railroad Commission of Texas to increase revenues to the Oil Field Cleanup Fund to meet the State's current and anticipated liability.
- Rename the General Services Commission as the Texas Building and Procurement Commission, with a seven-member Board. Transfer responsibility for technology functions, including the State's telecommunications operations, to the Department of Information Resources.
- Strengthen the Department of Banking's authority to effectively enforce prepaid funeral contract and perpetual care cemetery statutes, and improve consumer protections for purchasers of prepaid funeral contracts.
- Define a sale-leaseback transaction as a loan, to be regulated by the Office of Consumer Credit Commissioner, and clarify the Office's current regulatory authority over pay day loans.
- Require the Texas Water Development Board to create a capital spending plan and to explore ways to better address small community water needs and emerging water issues.

Only five changes are identified as not implemented. The current status of these recommended changes, and those that are partially implemented, are detailed in the following materials. In addition to statutory changes, the Sunset Commission adopted a number of management recommendations for improvements to agency operations. The State Auditor is responsible for evaluating the implementation of management recommendations adopted by the Sunset Commission. The Auditor's findings are contained in SAO No. 02-366, *Review of Implementation of Sunset Recommendations*, available by contacting the State Auditor's Office. This report indicates general compliance with the Commission's management recommendations. An abbreviated version of this report can be obtained on the Auditor's Web site, www.sao.state.tx.us, under the title, *A Review of Implementation of Sunset Advisory Commission Management Actions at 13 State Agencies*, SAO No. 02-067.

Agency Implementation of 2001 Sunset Legislation

Agency	Changes Required	Completed	In Progress	Not Implemented
Agencies in Full Compliance				
Aircraft Pooling Board (S.B. 304)	6	6		
Office of Banking Commissioner (S.B. 314)	12	12		
Coastal Coordination Council (H.B. 906)	7	7		
Office of Consumer Credit Commissioner (H.B. 1816)	14	14		
Finance Commission of Texas (H.B. 1763)	9	9		
Office of Fire Fighters' Pension Commissioner (H.B. 1747)	3	3		
State Commission on Judicial Conduct (S.B. 303)	22	22		
Texas Parks and Wildlife Department (S.B. 305)	29	29		
Office for the Prevention of Developmental Disabilities (H.B. 1151)	0	-		
State Securities Board (H.B. 2255)	12	12		
State Soil and Water Conservation Board (H.B. 2310)	13	13		
Agencies Not In Full Compliance				
Texas Building and Procurement Commission (Formerly General Services Commission) (S.B. 311)	46	39	5	2
Texas Commission on Environmental Quality (Formerly Texas Natural Resource Conservation Commission) (H.B. 2912)	72	69	2	1

Agency	Changes Required	Completed	In Progress	Not Implemented
Agencies Not In Full Compliance (cont.)				
State Pension Review Board (S.B. 302)	5	2	3	
Railroad Commission of Texas (S.B. 310)	31	26	5	
Office of Savings and Loan Commissioner (H.B. 1636)	7	6		1
Texas Water Development Board (S.B. 312)	20	18	1	1

**Texas Building and Procurement Commission
(Formerly General Services Commission)
S.B. 311**

S.B. 311, as adopted by the 77th Legislature, renamed the General Services Commission as the Texas Building and Procurement Commission (TBPC) and transferred telecommunications and other technology functions to the Department of Information Resources (DIR). This change served to allow TBPC to focus more directly on its primary building and procurement functions. The bill also directed the Office of the Attorney General, in consultation with several other agencies, to develop a contract management guide for use by all state agencies. The bill required that the State Auditor's Office (SAO) provide training on the guide. In total, the bill contained 46 provisions requiring action by TBPC, DIR, SAO, or the Attorney General's Office. The following chart reflects the efforts of each of these agencies in implementing provisions.

Bill Provision	Implementation Status
<p>Requires the Office of the Attorney General (OAG), with the assistance of SAO, DIR and TBPC, to develop a contract management guide for use by state agencies by March 1, 2002. Outlines the contents of the guide and requires state agency compliance with the guide by January 1, 2003. Requires SAO to monitor and report agency compliance.</p>	<p><i>Not Implemented</i> - The provision for agency compliance with the contract management guide becomes effective January 1, 2003. However, the guide has not been released.</p> <p>Staff of OAG report that the contract management guide is in development. Representatives from TBPC, SAO, DIR and the Comptroller's Office have all been designated to comprise a contract advisory team to work on the guide. However, despite fairly prescriptive statutory language concerning the content of the guide, the agencies are still working to resolve questions regarding how, and for what specific audience the guide should be structured. Despite a March 1, 2002 statutory deadline, agencies could not provide an exact date for completion of the guide.</p>
<p>Authorizes OAG to establish rules requiring each agency to invite public comment on contract specifications on the Internet through the Texas Marketplace or its successor.</p>	<p><i>Not Implemented</i> - As the agency is authorized, rather than required, no rules are in place.</p>

Bill Provision	Implementation Status
<p>Requires TBPC to develop a systematic review process to identify its commercially available services for outsourcing. Requires TBPC to review each commercially available service at least once every six years. Allows TBPC to consult the Council on Competitive Government (CCG) if needed when conducting the reviews.</p> <p>Authorizes TBPC to contract with another state agency or private source if TBPC determines one of those sources can provide the service at a comparable or better level of service at a savings to the State of at least 10 percent.</p>	<p><i>In Progress</i> - TBPC has not developed a systematic review process or plan to identify outsourcing opportunities and has not formally charged staff with this responsibility. However, TBPC has outsourced its mechanics shop, allowing the University of Texas System to absorb those services. Additionally, TBPC worked with CCG to analyze the Business Machine Repair function, resulting in a decision to outsource those services. Currently, TBPC is working with CCG in considering TBPC's central supply store for outsourcing.</p> <p>TBPC has not contracted with another state agency or private source to provide services at this time. (Although, the agency is outsourcing Business Machine Repair services, it has not found it necessary to contract with a vendor for these services.)</p>
<p>Authorizes TBPC to contract with real estate firms to assist state agencies in locating and leasing space. Provides for the Commission to approve leases negotiated by private realtors.</p>	<p><i>In Progress</i> - TBPC issued a Request for Proposal (RFP) to solicit tenant representation services from real estate firms. The Commission has authorized staff to begin negotiation and contract development with the highest ranked vendor and expects to consider approving a contract in February 2003.</p>
<p>Directs TBPC to evaluate the first four leased warehouses in Austin eligible for renewal after October 1, 2001. Requires TBPC to help agencies develop a plan to reduce warehouse space by reducing inventory, selling surplus property, and managing warehouse operations.</p>	<p><i>In Progress</i> - TBPC developed a questionnaire to collect the information required by statute. One of the first four leased warehouses eligible for renewal after October 1, 2002 has consolidated its leased warehouse space into existing state owned space. TBPC is in the process of collecting and evaluating the information on the other leased warehouses as required by statute.</p>

Bill Provision	Implementation Status
<p>Requires DIR to develop and operate an e-procurement system, although TBPC will provide content. Authorizes DIR to adopt rules relating to design and use of the e-procurement system. Requires an assessment of the potential to interface the e-procurement system with the TexasOnline Internet portal by DIR, with assistance from TBPC. Clarifies that DIR should assess whether to interface rather than integrate with TexasOnline. Clarifies that DIR's rulemaking authority relates to development of the e-procurement system, and TBPC's authority relates to its use.</p>	<p><i>In Progress</i> - DIR and TBPC are working together on an ongoing basis to develop and implement the permanent e-procurement system. All of the statutory requirements are addressed in the Request For Offer (RFO) released in September 2002. The RFO specifies the awarded solution will be operated on TexasOnline. The detailed specifications for operating the awarded vendor's solution on TexasOnline will be defined during the RFO evaluation process. DIR expects vendor demonstrations to begin in January 2003 with contract negotiations beginning in the spring. DIR expects negotiations to last through July. September 1, 2003 is the scheduled launch date for the project.</p>
<p>Requires TBPC to consult quarterly with DIR, the Comptroller, SAO, advisory councils, agency representatives and local governments about responsiveness of the e-procurement system to users' needs. Clarifies statutory language that agencies must use the e-procurement marketplace and e-commerce network. Requires TBPC and DIR to ensure HUBs have access to e-commerce opportunities.</p>	<p>HUB access to the e-procurement system is contemplated in the RFO, released in September 2002.</p>
<p>Requires DIR, working with TBPC, to combine the centralized master bidders list and the business daily into the e-procurement marketplace. Clarifies that TBPC may use a paper-based bidders list in addition to an electronic bidders list that is integrated into the e-procurement marketplace.</p>	<p>The RFO, advertised by DIR and TBPC, addresses the need for integration to or replacement of the Centralized Master Bidders List and the Electronic State Business Daily.</p>
<p>Authorizes the electronic procurement marketplace to contain information about recycled, remanufactured, or environmentally sensitive commodities and services.</p>	<p>The RFO, advertised by DIR and TBPC, includes this requirement. Until the e-procurement system becomes operational, TBPC has upgraded its Web site to include a search capability that enables users to identify recycled, remanufactured and environmentally sensitive commodities and services provided on TBPC term contracts.</p>

Bill Provision	Implementation Status
<p>Requires DIR, in consultation with TBPC, to establish and manage the electronic infrastructure of an online travel reservation and ticketing capability for state agencies to use to book employee travel by September 1, 2002. Requires TBPC to manage and administer the content. Clarifies that the e-travel capability should attempt to connect to travel providers' existing online reservation or ticketing systems. Requires online reservations be made with a state credit card or form of payment authorized by TBPC.</p> <p>Requires TBPC to continue to contract with at least one travel agency that provides services via phone or in person.</p>	<p><i>In Progress</i> - TBPC currently maintains a contract for an online travel system. However, this system is dependent on an airline's continued practice of paying commission fees. To achieve a more reliable system, DIR issued the eTravel Request for Offer (RFO) in July 2002. In August 2002, the RFO was withdrawn without an award because the proposals received did not meet minimum requirements.</p> <p>TBPC has indicated that changes in the travel industry, such as a decline in airline commissions, may require additional clarification in statute as to the structure of an online travel system as well as funding of transaction fees. DIR has recommended to TBPC that they collaborate to obtain cost information for a transaction-based, full service, single source travel management solution in a jointly issued Request for Information. Both agencies are discussing additional options.</p> <p>TBPC currently has more than one contract travel agency that provides services via phone and in person.</p>

Texas Commission on Environmental Quality
(Formerly Texas Natural Resource Conservation Commission)
H.B. 2912

H.B. 2912, as adopted by the 77th Legislature, continued the Texas Natural Resource Conservation Commission for 12 years, but renamed it as the Texas Commission on Environmental Quality (TCEQ). The legislation included a total of 72 changes requiring action. The following chart summarizes the three provisions that have not been fully implemented and provides the status of each.

Bill Provision	Implementation Status
Require the agency to develop and implement policies to protect the public from cumulative risks, especially in communities in which regulated facilities are located.	<i>In Progress</i> - An agency-wide team was formed to identify existing agency practices and options to address cumulative risk and to describe the steps toward documenting and enhancing applicable policies. At a work session on November 8, 2002, the Commission directed staff to expand the description of the existing practices that address cumulative risk in various Commission programs and to develop characteristics of geographic areas where the agency has responded to concentrated operations. The staff will provide an update with this information by May 2003.
Strengthen the Office of Public Interest Counsel by authorizing it to use technical support outside of the agency. Authorize the Counsel to recommend needed legislative and regulatory changes.	<i>Not Implemented</i> - The Office of Public Interest Counsel has not used outside technical support due to funding limitations.
Require solid waste permits issued under Chapter 361 of the Texas Health and Safety Code to be reviewed every five years to assess the permit holder's compliance history.	<i>In Progress</i> - The automated compliance history database is expected to be operational as early as March 2003, but no later than September 2003. As amendments to these permits are processed, the facilities' compliance history will be assessed consistent with the provisions of the compliance history reviews. Those that result in a ranking of poor will be given priority for review. Rankings of average or high will be set on a schedule for their five year review.

**State Pension Review Board
S.B. 302**

S.B. 302, as adopted by the 77th Legislature, continued the Texas Pension Review Board for 12 years. The legislation included a total of five changes requiring action. The following chart summarizes the status of three provisions that have not been fully implemented.

Bill Provision	Implementation Status
Updates standard Sunset language requiring the agency to develop an equal employment opportunity program.	<i>In Progress</i> - The Board completed a workforce analysis in fiscal year 2002, but has yet to perform an annual review of its EEO policy. The Board anticipates that the review will occur some time after a new Executive Director is hired. Completion of the review may not occur until the end of the 78th Session.
Requires the Board to adopt a standard form for reporting information about the actuarial soundness and financial condition of public retirement systems, and require these systems to include the form with their standard reporting submissions.	<i>In Progress</i> - Standardized forms, including online versions of the forms, have been developed and are currently being tested by a selected test group of pension funds. The forms can be accessed, printed, and filled in, but the system is not yet capable of allowing online completion of the forms. The Board plans to post proposed rules on the system in the Texas Register in February 2003. After rules have been adopted, the Board anticipates that pension funds will file their reports electronically, or access forms, fill them in, and mail them to the Board.
Adds standard Sunset language requiring the Board to maintain a file on each written complaint filed with the Board, and provide information to a person who files a complaint and to a person who is the subject of a complaint.	<i>In Progress</i> - While an informal process is currently in place that satisfies the concerns of this law, a formal, written policy will be completed during fiscal year 2003. The Board anticipates that drafting of the policy will begin after a new Executive Director is hired. However, the Board does not anticipate completion of the policy until after the 78th Session.

Railroad Commission of Texas S.B. 310

S.B. 310, as adopted by the 77th Legislature, continued the Railroad Commission of Texas for 12 years. The legislation included a total of 31 changes requiring action. The following chart summarizes the five provisions that have not been fully implemented and provides the status of each.

Bill Provision	Implementation Status
Applies standard Sunset language for licensing and continuing education for activities related to compressed and liquid natural gas.	<i>In Progress</i> - The Commission is developing rules that will include these provisions, to be published in February 2003. The licensing elements have been in place since September 2001.
Requires the Commission to notify the public and local officials of pipeline construction before granting a permit, and to consider public comments.	<i>In Progress</i> - The Commission is developing rules that will include these provisions, to be published in February 2003. Such pipelines have been required to conform with notice requirements since September 2001.
Requires operators of hazardous, carbon dioxide, and natural gas pipelines to communicate with emergency response officials. In addition, for these pipelines within 1000 feet of a public school, operators must develop emergency response plans.	<i>In Progress</i> - The Commission has published rules that include these provisions, to be considered for final adoption in February 2003.
Requires well operators to verify the placement of plugs if useable quality water zones are present.	<i>In Progress</i> - The Commission is developing a well plugging rule that will include these provisions, to be published in February 2003. Procedures have been in place to require verification since September 2001.
Requires the Commission to set the amounts of bonds for operators of bay or offshore wells.	<i>In Progress</i> - The Commission is developing a bay and offshore rule that will include these provisions, to be published in March 2003.

**Texas Savings and Loan Commission
H.B. 1636**

H.B. 1636, adopted by the 77th Legislature, continued the Texas Savings and Loan Commission for 12 years. The bill included seven provisions requiring action by the Department. The following chart summarizes the status of the one provision that the Department has not implemented.

Bill Provision	Implementation Status
<p>Requires the Department to obtain FBI background checks on all mortgage broker license applicants.</p> <p>Requires the Department to issue a provisional license to an applicant if an FBI background check has not been obtained within 30 days. Requires the Department to make the provisional license a regular license if the background check is not obtained within 90 days.</p>	<p><i>Not Implemented</i> - The language of H.B. 1636 did not meet the FBI's requirements to participate in the background check program. Consequently, the FBI background check program has not been implemented. The Department intends to recommend legislation for the next session to revise the language to comply with FBI requirements.</p> <p>Currently, applicants that do not receive an FBI background check are licensed provided that they obtain a background check from the Texas Department of Public Safety.</p>

Texas Water Development Board
S.B. 312

S.B. 312, as adopted by the 77th Legislature, addressed the functions of the Texas Water Development Board. The legislation included a total of 20 changes requiring action. The following chart summarizes the status of two provisions that have not been fully implemented.

Bill Provision	Implementation Status
<p>Establishes the Colonia Initiatives Advisory Committee composed of seven members appointed by the Governor with the Secretary of State's Office serving as an ex officio member. Requires the Committee to review the progress of water and wastewater infrastructure projects affecting colonias. Requires the Committee to review public comments regarding the colonia needs assessment incorporated into the state low income housing plan and to make recommendations.</p> <p>Requires the Board to meet annually with the governing board of the Office of Rural Community Affairs to assess the agencies' progress in meeting the needs of colonia residents, and receive an update from the Colonia Initiatives Advisory Committee.</p>	<p><i>Not Implemented</i> - As of January 2003, the Governor has not appointed members to the Colonia Initiatives Advisory Committee.</p> <p>The Board has not met with the Office of Rural Community Affairs because the Advisory Committee has not been established. When the Committee is formed, the Board will make plans to meet with the Office shortly thereafter.</p>
<p>Establishes a Colonia Self-Help Program to reimburse nonprofit organizations for expenses incurred in self-help projects that result in the provision of adequate water or wastewater services to colonias. Provides that the Board is required to implement the program only if the Legislature appropriates money specifically for that purpose.</p>	<p><i>In Progress</i> - During the 77th Session, the Legislature did not appropriate money for the Colonia Self-Help Program. However, the Board has adopted rules governing the program and has approved three applications for the funding, totaling \$49,539, which are pending until money is appropriated.</p>

INFORMATION ITEMS

Boards and Commissions Project

Introduction

In 1999, voters approved House Joint Resolution 29, an amendment to the Texas Constitution proposed by the 76th Legislature, which affects appointments to executive branch boards and commissions. Before the 1999 amendment, Section 30a, Article XVI of the Constitution allowed members of a state board or commission to exceed the general two-year limitation on the length of a term of office if one-third of the members' terms expired every two years. This had the practical effect of requiring that the number of members on a state board or commission be divisible by three if the members were serving six-year terms under Section 30a. Under the 1999 amendment, the new condition for having six-year terms on a state board or commission is that the board or commission must be composed of an odd number of three or more members, with one-third or as near one-third as possible of the members' terms expiring every two years. Boards that are required by the Constitution are one exception to this new rule and may still be composed under the old divisible-by-three rule. HJR 29 requires that the transition in state agency composition from the old divisible-by-three rule to the new rule of an odd number of three or more members be accomplished not later than September 1, 2003.

Current Situation

The Legislature addressed this issue regarding several boards and commissions during the 2001 legislative session. The remainder must be addressed during the upcoming session. To assist with bringing numerous state board and commission sizes in compliance with the new constitutional amendment, the legislative Leadership requested that the Sunset Advisory Commission propose the necessary changes. As a result, Sunset staff developed a process to consistently apply the constitutional requirement to each agency's governing body. To date, staff has developed recommendations on more than 30 boards and commissions. The table on the following page, *Proposed Board or Commission Size Adjustments*, shows the boards and commissions already addressed by Sunset staff.

Staff determined, with assistance from the Legislative Council, that the constitutional amendment clearly applied to the governing body of 32 state entities. Staff evaluated each board or commission independently, examining its composition and size. In an effort to avoid making policy changes in board or commission composition, staff did not alter the specific composition when possible, but rather made recommendations that generally alter the size by increasing or decreasing public membership by one. Where possible, staff attempted to decrease the membership size, but again, attempted not to alter the specific statutory composition.

Proposed Board or Commission Size Adjustments		
Board or Commission	Current Size	Proposed Size
Alcohol and Drug Abuse, Texas Commission on	6	5
Animal Health Commission, Texas	12	13
Arts, Texas Commission on the	18	17
Barber Examiners, State Board of	6	7
Dental Examiners, State Board of ¹	18	15
Developmental Disabilities, Texas Council for	statute does not specify Council size, currently the Council consists of 20 members	statutorily specify an odd-number Council membership
Distinguished Service Awards Committee, Texas	6	5
Fire Protection, Texas Commission on	12	13
Health Benefits Purchasing Cooperative, Texas	6	5
Health, Texas Board of	6	7
Higher Education Coordinating Board, Texas ²	18	15
Historical Commission, Texas	18	17
Human Rights, Commission on	6	5
Human Services, Texas Board of	6	5
Library and Archives Commission, Texas State	6	5
Licensing and Regulation, Texas Commission of ³	6	5
Medical Examiners, Texas State Board of	18	17
Operation Game Thief Committee	9; and may appoint chairman emeritus (voting)	9; removed the chairman emeritus positions
Orthotics and Prosthetics, Texas Board of	6	7
Polygraph Examiners Board	6	5
Produce Recovery Fund Board	6	5
Protective and Regulatory Services, Board of	6	5
Rehabilitation Commission, Texas	6	5
Retirement System of Texas, Employees	6	7
Retirement System, Texas Municipal	6	7
Risk Management Board	6	5
Rural Health Care System, Statewide	18	17
Sex Offender Treatment, Council on	6	7
Tax Professional Examiners, Board of ⁴	6	5
Veterans Commission, Texas	6	5
Workers' Compensation Commission, Texas	6	7
Youth Commission, Texas	6	5

However, for at least 45 boards or commissions, staff cannot yet make a recommendation until the Attorney General rules on whether the constitutional amendment applies to these governing bodies. On August 1, 2002, the Sunset Advisory Commission requested that the Attorney General rule on four questions that will determine whether the remaining boards or commissions should be adjusted. These four questions include:

- 1) Should advisory board and committee sizes be adjusted to an odd number?
- 2) Should ex-officio, whether voting or nonvoting, be included in the total count of members?
- 3) What constitutes whether a board or commission is composed in the Constitution? and
- 4) Are the governing bodies of military facilities, such as the Texas National Guard Armory Board, subject to this provision?

Next Steps

Sunset staff will develop recommendations on the remaining boards and commissions once the Attorney General has returned an Opinion determining the applicability of the amendment to these bodies. The Opinion is anticipated before the end of February 2003. Meanwhile, Sunset staff is working with the Legislative Council to draft legislation to accomplish the recommendations included in this report. The Sunset Commission did not vote on each proposed change as a recommendation, per se. Rather, the information is intended as a starting point for the Legislature's deliberations on the matter.

¹ Reflects Sunset Advisory Commission decision on Issue 2.1 of the State Board of Dental Examiners.

² Reflects Sunset Advisory Commission decision on Issue 6.1 of the Texas Higher Education Coordinating Board.

³ Reflects Sunset Advisory Commission decision on Issue 2.1 of the Texas Department of Licensing and Regulation.

⁴ Reflects Sunset Advisory Commission decision on Issue 2.1 of the Board of Tax Professional Examiners.

Health Care Information Council

Introduction

In conjunction with the Texas Department of Health review, the Sunset Advisory Commission requested that staff also develop an informational item on the Health Care Information Council (Council). Although not part of the Texas Department of Health, the Council relies on the Department for much of its administrative support. In addition, its data collection and analysis is closely associated with data collection and analysis at the Department.

As the Council is not statutorily under Sunset review, staff did not evaluate the functions of the Council as it would on agencies actually under review. Instead, the work focused on providing the Sunset Commission with an informational summary of the history and functions of the Council. This information is included in this final report to the Legislature, to be used as it deems necessary.

Agency at a Glance

In 1995, the Legislature created the Health Care Information Council, establishing a statewide health care data collection system to provide Texas consumers and health care professionals with quality of care data, with which to make informed health care decisions. The Council collects quality of care data and reports on the performance of both Texas health maintenance organizations (HMOs) and hospitals.

Information about the Council and published reports are available on the Internet at www.thcic.state.tx.us.

Key Facts

- **Funding.** In fiscal year 2002, the Council operated with a budget of about \$1.25 million.
- **Staffing.** The Council has 10 employees and one contract employee, all based in Austin.
- **Hospital Reports.** The Council released its first hospital-specific report, *Indicators of Inpatient Care in Texas Hospitals, 2000*, in October 2002.
- **HMO Reports.** The Council has released annual HMO reports since 1998. The latest, *Guide to Texas HMO Quality: 2002*, was released in September 2002.

Organization and Funding

The 19-member Council operates under the umbrella of the Texas Health and Human Services Commission, comprising 15 members appointed by the Governor and four ex officio state agency members. The 15 appointed members must include three business community representatives (employers), two representatives of the labor community, two consumer representatives, two representatives of hospitals, one HMO representative, three physician representatives; and two members not professionally involved with the purchase, provision, administration or review of health care or health care insurance. The four ex officio voting members include the Commissioner of

Health, the Commissioner of Health and Human Services, the Commissioner of Insurance, and the Public Insurance Counsel, or their designees. Current Council membership is shown in the chart, *Health Care Information Council*.

Health Care Information Council			
Name	City	Qualification	Term Expires
Lewis E. Foxhall, M.D., Chair	Houston	Hospital	2005
Robert W. Gracy, Ph.D., Vice Chair	Fort Worth	Researcher	2003
Kathleen O. Angel	Austin	Employer	2007
Candus Ater	Salado	HMO	2005
Steve M. Berkowitz, M.D.	Austin	Physician	2005
Billy Davis	Houston	Employer	2003
Bobby S. DeRossett	Flint	Labor	2003
Gene Freeland	Dallas	Labor	2007
Woody Gilliland	Abilene	Hospital	2003
Jacinto P. Juarez, Ph.D.	Laredo	Consumer	2005
Verna Melton	Garland	Employer	2005
Peter Chukwuemeka Okose, M.D.	Friendswood	Physician	2007
Imogen S. Papadopoulos, J.D.	Houston	Consumer	2007
Jean L. Freeman, Ph.D.	Galveston	Researcher	2007
Karl W. Swann, M.D.	San Antonio	Physician	2003
Eduardo Sanchez, M.D. Gary Rutenberg, Ph.D., Designee	Austin	Commissioner of Health	N/A
Albert Hawkins Greg Morrow, Designee	Austin	Commissioner of Health and Human Services	N/A
Jose Montemayor Dianne Longley, Designee	Austin	Commissioner of Insurance	N/A
Rod Bordelon, J.D.	Austin	Public Insurance Counsel	N/A

Recognizing the sensitivity of reporting and evaluating hospital and HMO performance data and the need for a balance of industry and consumer perspectives in health care reporting, the Legislature created five technical advisory committees to assist the Council. These advisory committees, appointed by the Council, consult with the Council on rules or other formal action and help the Council fulfill its statutory charge. Most importantly, the advisory committees work with the Council to determine the content, depth, and form of the reports. Because of the importance of the committees' work, all committee meetings must adhere to the Open Meetings Act to ensure that the public has the opportunity to access these discussions. The chart, *Technical Advisory Committees*, shows the purpose of each of these committees.

Technical Advisory Committees	
Committee	Purpose
Consumer Education	Advises the Council about the development and dissemination of reports and data.
Health Information Systems	Advises the Council on the development of methods for data collection, data warehousing, and linking databases.
Health Maintenance Organizations	Assists the Council in the development of data collection requirements, methods, standards, and formats for health maintenance organization reports.
Provider Quality	Advises the Council in determining quality inpatient care, developing data elements necessary to determine quality inpatient care, and developing the format of reports and information relating to provider quality.
Quality Methods	Advises the Council on the design of objective scientific data analyses and the production of meaningful statistical reports.

To fulfill its charge, the Council employs an Executive Director to manage the day-to-day operations of the agency, nine technical and administrative employees, and one contract employee.

The Council is funded through a \$1.25 million line item in Texas Department of Health's (TDH) budget requiring the study of health care outcomes in Texas, plus approximately \$125,000 per year earned from data sales. The Council and TDH have a memorandum of understanding (MOU) under which TDH supplies the Council with payroll, travel, information technology support, contract administration, and accounting services. The Council's enabling statute does not contain a Sunset date, and is therefore not subject to Sunset evaluation of its continued need.

Operations

Council staff collects data from both HMOs and hospitals and translates it into consumer reports. The Council verifies information submitted by HMOs and hospitals, drafts the reports, and allows the hospitals to review the report prior to publication for the correction and certification of data, and to add comments to both the raw data and reports. The following sections describe these operations in more detail.

HMO Reports

The Council began releasing annual HMO reports in 1998. These reports focus on HMO performance on quality of care measures to allow employers, consumers, and health care researchers to make informed decisions when choosing an HMO. For example, the Council reports on patient satisfaction and quality of care indicators, such as the rate of childhood immunization under each Texas HMO plan.

HMOs providing basic health services, with 5,000 or more members are required to submit data to the Council for inclusion in the HMO report. HMOs that do not submit the required information are subject to civil penalties, although timely submission has not been problematic. The Council collects information on quality of care performance data by HMOs using the Health Plan Employer Data and Information Set (HEDIS), which are standardized performance measures developed by the National Committee for Quality Assurance (NCQA).¹ The measures are designed to enable health care purchasers and consumers to reliably compare the performance of managed health care and are also used by NCQA to publish a national report card on managed care.

The Council does not require HMOs to report on all 53 of HEDIS performance measures. Instead the Council, working with the HMO technical advisory committee, chooses a subset of HEDIS measures for HMOs to submit information on each year. For 2003, the Council has chosen 32 HEDIS measures that HMOs must submit. The textbox, *HEDIS Measures*, shows the type of measures the Council will require HMOs to submit data on for next year's report.

The Council also collects customer satisfaction information using the Consumer Assessment of Health Plans Survey, developed by both NCQA and the Agency for Healthcare Research and Quality (AHRQ), a federal health care scientific research agency. Although collected by the Council, this information is primarily reported to the public by Texas' Office of Public Insurance Council in its HMO report.

Initially, the Council reported on both public and private HMO performance, including reports on Medicaid and Medicare HMO performance.

The public and private HMO performance reports were similar, with the Medicaid and CHIP HMO reports focusing more on expectations of the HMO to meet State contract requirements. However, in 2001, the Health and Human Services Commissioner ceased requiring reports on Medicaid and Medicare HMO contractors from the Council.

Hospital Reports

In October 2002, the Council released its first Texas hospital-specific report. Regional reports using data aggregated across multiple hospitals were released previously. This comprehensive report is intended to help consumers make an informed hospital selection by showing how hospitals perform based on indicators of hospital quality, such as mortality rates for specific diagnoses and procedures.

HEDIS Measures Texas HMO Subset 2003

- Effectiveness of Care
example: breast cancer screening
- Access and Availability of Care
example: prenatal and postpartum care
- Satisfaction with the Experience of Care
- Health Plan Stability
example: practitioner turnover
- Use of Services
example: cesarean section rate
- Health Plan Descriptive Information
example: Board certification and residency completion

All hospitals in the State of Texas, except those owned by the federal government and statutorily exempt rural providers, are required to submit information to the Council for inclusion in the hospital report. For these reports, the Council collects data from hospitals' billing records. Billing records show information about diagnoses, procedures, the patient's age, gender, other medical conditions and discharge status. All data available from the Council must be free of individual patient and physician identifiers. Any effort to determine the identity of any person or to use the information for any purpose other than for analysis and aggregate statistical reports violates the Council's statute, and is subject to criminal and civil penalties under state law.

All in all, the Council analyzes data from 411 hospitals. Most hospitals submit the required data in a timely fashion. However, for the roughly 18 percent who have not submitted their data on time or at all, the Council has the authority to impose fines of between \$1,000 and \$10,000 for each violation. So far, the State has collected approximately \$300,000 from hospitals late in submitting data. Fines usually range from about \$1,000 to \$2,500 per hospital.

The Council takes raw hospital claims data and analyzes it using the Health Care Cost Utilization Process (HCUP-2) inpatient quality indicators, a federal methodology developed by AHRQ.² This program analyzes administrative data, including risk and severity adjustments, and assesses performance on indicators that have shown to relate to quality. AHRQ developed the methodology to compare states' quality of care on a national level using claims data. Texas is the first state to use this methodology to assess quality of care in hospitals statewide in a published public report. The Council, working with its technical advisory committees, determined that this methodology was appropriate to fulfill the Council's statutory mandate. The textbox, *HCUP Indicators of Inpatient Care in Texas Hospitals*, shows the categories of quality of care indicators and give examples of the measures used.

HCUP Indicators of Inpatient Care in Texas Hospitals

- Volume Indicators
example: number of pediatric heart surgeries per hospital
- Mortality Indicators for Inpatient Procedures
example: coronary artery bypass graft mortality rate
- Mortality Indicators for Inpatient Condition
example: acute stroke mortality rate
- Utilization Indicators
example: cesarean section delivery rate

Agency History in Brief

The Council's beginnings were slow at first. Created by the 74th Legislature in 1995, the Governor appointed the Council in December 1995, and they held their first meeting in February the following year. Almost from its beginning the Council experienced difficulties in agreeing on how it should conduct its business of collecting health outcomes data from Texas hospitals and how the information should be reported. Before all the Council members could be confirmed by the 76th legislative Senate, the Council experienced major internal disagreements. These differences led to staffing changes and two Council members not being confirmed.

As a result of the initial operational difficulties and delays in replacing Council member appointments, three years passed before the Council released a report. At that point, the report focused on HMO performance and did not address specific hospital or provider performance. In December 2000, the Council released its hospital report on the top 25 diagnoses statewide. Regional reports of utilization rates on selected indicators were released in 2001, followed by the initial hospital-specific reports in

2002. Although limited reports analyzing this data were published by the Council and made available for free, the information was primarily available in the form of raw data, purchasable for \$4,000. In this form, the data did not provide an effective means for Texans to evaluate hospital performance. However, organizations with the means to purchase and analyze the data, gained the first glimpse of Texas' hospital-based health outcomes information.

Although continuing to publish annual reports on HMO performance, the Council struggled with the format and scope of releasing hospital-specific data. The Council relied heavily on the technical advisory committees to suggest what data could be reliably reported and released to the public. Disagreements about the reliability and relevance of the data further delayed a consumer-friendly report on hospital performance. In July 2002, the *Fort Worth Star Telegram* obtained the Council's data set and released its own regionally oriented hospital performance data, the first of its kind in Texas.

In October 2002, seven years after its creation, the Council released its first hospital specific report in a format accessible to the general public. Although the Council was a long time in releasing the hospital based reports, stakeholders told Sunset staff that the reports are useful tools for consumers seeking health care services, insurers contracting with hospitals, and employers purchasing insurance plans.

Additional Reports

Although the Council is not the only entity in Texas to analyze hospital health outcome data, it is the only organization with State authority to require all hospitals to participate in the reporting process. As a result, the Council issues the most comprehensive report in the state. However, at least one other report of a similar nature exists. The Texas Business Group on Health, a statewide business coalition, issued the *Texas Hospital Checkup* in October of 2002, based on the Council's data. This report is available to employees of the numerous businesses in the state that are members of the Coalition. These select individuals receive Internet access to report card information on hospitals' performance in two areas, heart bypass surgery and childbirth.

To date, Texas is one of 37 states that require hospitals to report health outcomes data to a state health data clearinghouse. Nine others have voluntary hospital data collection programs. Only Alabama, Idaho, Michigan, and Mississippi do not have any formal means of analyzing hospital health outcomes data on a statewide level. Most states use a method of analyzing hospital data that was developed within the state. Texas is the first state to adopt the federally developed HCUP-2 indicators as the means for analyzing its data, although other states, such as New York, are considering adopting the federal and Texas methods.

Council Timeline

- 1995 – 74th Legislature creates Council and Governor Bush appoints Council members.
- 1996 – Executive Director leaves.
- 1997 – Organizational differences result in two Council members not being confirmed by the Senate, including the Chair.
- 1998 – Council releases first report on HMO performance in Texas.
- 2000 – Council releases first hospital-based data, unanalyzed.
- 2001 – Council releases first regional utilization report.
- 2002 – Council releases first consumer-friendly hospital-specific report on quality of care.

Next Steps

While the Council, has released useful reports to guide Texans in purchasing health services, its next steps involve analyzing trends over time, including a three-year retrospective analysis of Texas hospital outcomes. However, stakeholders indicated to Sunset staff concerns that the Council has a large task for an agency of its size and may not have the resources to expand its current analysis and reporting. In addition, newly implemented Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements will alter data processing for the Council. The Act imposes increased security measures necessary to protect the privacy of patients. New standardization requirements for hospital data reporting will also require the Council to alter some of its data processing systems, but should improve its ease of analysis in the long-run.

¹ More information about the National Committee for Quality Assurance can be found on its Web site: www.ncqa.org.

² More information about the Agency for Healthcare Research and Quality can be found on its Web site: www.ahrq.gov.

Position Papers by Tim Roth, Ph.D.

Introduction

During the Sunset Commission's deliberations this interim, Dr. Tim Roth, the Senate public member, raised two issues for the Commission's consideration: the election of state judges, and the formation of a cabinet-style government. Deemed to be outside the scope of the Commission's work, Dr. Roth was granted permission to include these issues in the Commission's report to the 78th Legislature. This material provides information on these topics and recommendations for action by the Legislature.

Note:

These suggestions are the personal opinions of Dr. Roth and were not formally considered or adopted by the Sunset Commission.

Summary

Efforts to reform the Texas Constitution are not new to the Texas political scene. Despite the best efforts of public interest groups, legislators and others, the framework of the Constitution remains very similar to the original draft of 1876. Two areas of controversy which have repeatedly been raised about the Texas Constitution surround the election of judges, and the current board and commission structure of the executive branch.

The issue of judicial selection gained nationwide attention in the late 1980s, when the television show *60 Minutes* aired "Justice for Sale," a story depicting how Texas Supreme Court justices raised large sums of campaign money from parties with cases before the court. More than 10 years later, the judicial election process remains intact, as do the questions about the propriety of the current campaign contribution system. Other less visible problems center around voter unfamiliarity with judicial candidates, and the one-party sweeps which occur in certain parts of the state.

The current board and commission structure for executive branch agencies also dates to the Constitution of 1876, when convention delegates purposely set out to construct a Constitution which weakened the role of the Governor. As a result, the Governor's Office wields little control or authority over state agency policies and activities.

The solutions proposed in these papers include judicial appointments by the Governor with the advice and consent of the Senate, and the establishment of an executive department to streamline government operations, and to improve accountability and long-term planning. The 21st century finds Texas state government employing systems created over a century ago. Given the problems, reform in both the executive and judicial branches is warranted, and deserving of action by the 78th Legislature.

Cabinet-Style Government

The Governor has a limited role in Texas' board and commission structure of government.

- The Texas Constitution requires the majority of offices in the Executive Department to be elected.¹ This requirement emerged, in part, after the delegates to the 1875 constitutional convention set out to frame a constitution in reaction to the recently defeated reconstructionist Governor. The delegates felt that the Governor wielded too much power, and they sought to limit the Office's powers. The resulting Constitution reduced the Governor's salary and powers, and made all executive offices, except the Secretary of State, elective.²
- Today's Texas government is largely based on a board and commission structure. Board or commission members are appointed by the Governor to serve part-time or, in some cases, full-time, to set policies and supervise the activities of their respective agencies. The day-to-day operations of most state agencies are managed by an executive director who reports to the board or commission about the agency's activities, including enforcement and regulatory activities.
- Texas has some important exceptions to the appointed board and commission structure. The Secretary of State and the Commissioner of Insurance are appointed by the Governor and approved by the Senate.³ Other gubernatorial appointments to head state agencies include the Adjutant General, the head of the Texas Education Agency, and the Health and Human Services Commissioner. In addition, the Railroad Commission is headed by three elected Commissioners, and the Department of Agriculture is headed by an elected Commissioner.

Boards and commissions are often run by part-time members who are not sufficiently accountable for the operations of the agency.

- Because of the structure of the Executive Branch in Texas, political power and control are divided among many players. Coordination between these different actors is minimal, and accountability to the public is greatly reduced. Because the Governor is several steps removed from the policymaking process, accountability is diffused. For example, an executive director carries out the day-to-day functions of an agency and reports to the board or commission of the agency once a month, or possibly once every two months. These boards or commissions are the ultimate authority within the agency, but their part-time status effectively removes them from the operations function, and weakens their accountability.

The board and commission structure weakens the Governor's role in state government.

- The Texas Governor is often ranked among the weakest governors in the country in terms of formal power.⁴ The Governor's only significant formal power is the ability to veto. Formal powers were severely limited by the 1876 Texas Constitution, and the Office remains relatively weak today. The board and commission structure, and the requirement of so many elective executive offices, divide the executive power and effectively fragment the Governor's control over policymaking and implementation.

- The board and commission structure diffuses power away from the Governor. Since the passage of the 1876 Constitution, Texas has created a large number of boards and commissions, with 163 in current operation. With boards and commissions formally overseeing the functions of an agency, and no established regular means of communication between them and the Governor, the Governor's role in oversight is extremely limited.
- The Governor lacks the authority to develop budget or policy priorities to address important statewide concerns. Because of the expansive nature of the board and commission structure, the Governor cannot adequately ensure that appointed members are responsive and accountable. In addition, having statewide elected officials heading some state agencies adds to the Governor's inability to exercise guidance over the Executive Branch. According to Alexander Hamilton in the Federalist Papers, "the true test of a good government is its aptitude and tendency to produce a good administration."⁵ A good administration must include clear lines of authority and a system for policy coordination. However, in the current structure, the Governor does not have adequate authority or power to ensure an effective, coordinated Executive Branch.

The current structure does not separate the policymaking body from the service delivery functions of state agencies.

- The current board and commission structure of Texas' Executive Branch does not appropriately divide the policymaking function from the service delivery function of an executive state agency, blurring the lines between the functions. Perhaps the most extreme example in Texas is the Texas Workforce Commission (TWC). TWC's three full-time Commissioners exercise direct authority over staff, and often do not work through the agency's Executive Director. The result is unclear accountability. The staff is accountable to four bosses, and the lines of responsibility are so blurred that the public has difficulty discerning who is ultimately accountable to the citizens of Texas.
- To further the goal of separating policymaking from the service delivery function, a Sunset across-the-board recommendation requires that an agency must establish the executive director or administrator as the person in charge of day to day operations, thus mitigating the potential for commission members who set policy to engage in agency administration.

Most other states use a cabinet form of government, and some Texas legislators have proposed a cabinet-style of government for Texas.

- In 1998, Senator William Ratliff and Representative Robert Junell proposed a new constitution, which they hoped would serve as an updated, streamlined document to help improve Texas government. The proposed constitution included provisions that proffered a restructured version of the executive branch. These provisions included establishing a Governor's executive department consisting of a cabinet of major executive state agency directors who would be appointed by the Governor and confirmed by the Senate. The proposal also eliminated some statewide elected officials.
- According to a 1993 survey by the National Governors Association, Texas was one of only eight states, among the 45 respondents, that reported it had no executive cabinet. The other states were Georgia, Iowa, Mississippi, New Hampshire, Oregon, South Carolina, and Wyoming.
- In Maryland, the Governor's Executive Council is made up of the Governor, Lieutenant Governor, and 21 cabinet officers. The cabinet officers are appointed by the Governor and confirmed by the Senate. The cabinet meets weekly and coordinates, directs, and supervises state government.

- In California, the Governor's Cabinet is composed of the secretaries of 13 cabinet departments. The cabinet serves as the Governor's chief policy advisory body, and each cabinet member implements and coordinates the Governor's policies. The cabinet also provides the Governor with a comprehensive view of state operations and helps to establish long-term state goals.
- In Virginia, the Governor's Cabinet consists of 10 cabinet members. The members assist the Governor in managing state agency operations, and provide policy direction to their respective agencies.

Recommendation

Request that the Legislature pass a constitutional amendment, subject to voter approval, to establish a cabinet-style form of government in Texas.

This recommendation would change the essential structure of the Executive Branch of government in Texas. A constitutional amendment must be presented to Texas voters, who would vote on passage of the amendment. The amendment would restructure most Texas executive agencies that operate with a board or commission, replacing them with a cabinet-level office. Certain constitutional offices, such as the Attorney General and the Comptroller, would remain elective.

Impact

Restructuring Texas' Executive Branch into a cabinet-style government would streamline government operations, improve public accountability, and create a stronger chief state executive. Cabinet members' performance would be based on gubernatorial goals, and cabinet members would provide regular progress reports on specific gubernatorial assignments. This, in turn, would improve governmental accountability. Also, the cabinet could give advice to the Governor about policy issues while retaining full decisionmaking power with the Governor. The cabinet would convey information from the Governor to key state officials, providing for more effective communication across the entire executive branch. The Governor would use cabinet meetings to instruct cabinet members on his or her policy and management expectations. Finally, the cabinet would help the Governor solve specific problems that implicate more than one agency and are a priority concern for the state.

¹ The Executive Department in Texas consists of the Governor, Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Commissioner of the General Land Office, and Attorney General. (Texas Constitution, Art. IV §1).

² Eugene W. Jones, et al, *Practicing Texas Politics*, 8th ed. (Boston: Houghton Mifflin Company, 1992), p. 59.

³ Texas Constitution, Art. IV §21; and Texas Insurance Code §31.022.

⁴ Kim Quaile Hill and Kenneth R. Mladenka, *Texas Politics and Government*, 2nd ed. (Boston: Allyn and Bacon, 1997), p. 49.

⁵ Alexander Hamilton, *Federalist No. 68*, New York (1788).

Judicial Selection

The Texas judicial system is unique, both in its structure and selection.

- Judicial structure and selection varies from state to state. Texas is one of only two states with two courts of last resort – the Supreme Court, which hears only civil matters, and the Court of Criminal Appeals. The 14 courts of appeal are the intermediate appellate courts, and 418 district courts act as trial courts of general jurisdiction. Unlike most states, Texas elects its entire state judiciary. The Supreme Court and Court of Criminal Appeals justices and judges serve six-year terms, while district court judges serve four-year terms. The Governor fills unexpected vacancies on both trial and appellate benches by appointment, with advice and consent of the Senate. After the initial appointment, a successor elected in the next general election serves the remainder of the term. Therefore, when the Legislature creates new courts, the date of establishment usually enables the Governor to appoint the first incumbent.¹
- The debate regarding the independence of the judiciary goes back to 1801, when John Adams declared, “Decisions on the highest court of our system of government should not be tainted with politics if there is to be true justice and due process for all citizens, without regard to any kind of favoritism, perceived or otherwise.”² In fact, in the original Texas Constitution, judges were appointed by the Governor with Senate consent.³ Texas adopted the current judicial election system in 1876, and is one of only nine states which has partisan judicial elections.⁴
- Judicial elections are subject to general election procedures. To address the perceived impropriety of judges soliciting and accepting large campaign contributions from attorneys and parties who appear before them, the Legislature passed the Judicial Campaign Fairness Act in 1995. Under the Act, limits on contributions to candidates in statewide races range from \$5,000 from individual donors to \$30,000 from law firms.⁵ However, each stage of the campaign process – primary, runoff, and general election – is defined as an election, effectively tripling these amounts. As a result, Texas has the highest contribution limits in judicial elections of any state in the nation.⁶
- State judicial canons attempted to address the political problems inherent in judicial elections by limiting candidates’ speech. Canon 5 of the Texas Code of Judicial Conduct states, “A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held.” However, this year, the U.S. Supreme Court found that a Minnesota canon of judicial conduct which prohibited a candidate for judicial office from announcing his or her views on disputed legal or political issues violated the First Amendment.⁷ In response to this ruling, Texas Chief Justice Tom Phillips said the court will have to “repeal or radically change” sections of the Texas Code of Judicial Conduct which limit what judicial candidates may tell voters during their campaigns.⁸ In fact, late this year, a federal district court held that the Texas Code of Judicial Conduct provision was an unconstitutional violation of the First Amendment, and enjoined the State Bar of Texas and the Texas Supreme Court from enforcing the canon.⁹

Voter unfamiliarity with candidates may undermine the validity of judicial elections.

- In Harris County alone, 50 different contested judicial races were held in the 2002 general election.¹⁰ The majority of the candidates were virtually unknown, and the only way to familiarize the public with the candidates was through costly fundraising efforts. Before passage of the Judicial Campaign Fairness Act, the 1988 Supreme Court elections were the most expensive in Texas history, with 12 candidates for six seats raising \$12 million.¹¹ Though the Judicial Campaign Fairness Act now limits total campaign expenditures to \$2 million for statewide judicial office, Texas continues to have the highest judicial contribution limits in the nation.

Elections may affect a judge's ability to render decisions free from political or popular influence.

- Allowing the judiciary to accept campaign contributions from parties with cases before the courts creates the appearance of impropriety. For example, between 1992 and 1997, the seven winning candidates for the Supreme Court raised nearly \$9.2 million, of which more than 40 percent was contributed by parties or lawyers with cases before the court or from contributors linked to those parties.¹² A 1999 survey by the State Bar of Texas demonstrated the effect of this perceived influence. Eighty-three percent of the general public surveyed believed that campaign contributions to judges have a significant influence on courtroom decisions.¹³
- The Texas Code of Judicial Conduct states, "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for public office, except that either may indicate support for a political party."¹⁴ In certain regions of the state, however, one party sweeps unopposed, effectively disenfranchising minority party voters. For example, in the 2002 El Paso County general election, every county and district judge ran unopposed, and every judge was from the same political party. The 1999 State Bar survey also revealed that only 11 percent of attorneys and 21 percent of judges preferred the present system of partisan judicial elections.¹⁵

Varying methods of judicial selection have been proposed in recent legislation.

- Motivated in part by judicial election concerns, in 1998 Senator William Ratliff and Representative Robert Junell proposed a new Texas Constitution. The proposal would have reformed judicial selection by establishing gubernatorial appointment of justices of the Supreme Court and judges of appellate and district courts. The appointed judiciary would have been subject to a nonpartisan retention election at the end of each term. The sole purpose of the election would be for voters to determine whether or not to retain the appointed judge, and the appointed judge would have run unopposed. The Ratliff-Junell proposal also would have authorized the Legislature to establish nominating committees, restricting the Governor's appointments to committee nominees.
- Judicial selection reform has also been proposed repeatedly in recent legislative initiatives. In 1995, legislation was introduced which called for gubernatorial appointments with Senate confirmation, for retention elections for all appellate judges, and for nonpartisan judicial elections.¹⁶ Legislation calling for nonpartisan election of appellate judges passed the House in 1997, and three proposals relating to the appointment of appellate judges, nonpartisan election of judges, and elimination of straight-party voting in judicial elections, were reported favorably out of committee in the Senate, but then stalled.¹⁷ Additionally, a bill introduced in 1999 called for an appointment-retention system for appellate judges.¹⁸ The bill passed the Senate but died in committee in the House. Finally, in 2001, legislation called for gubernatorial appointment of justices and judges of the Supreme Court and Court of Criminal Appeals.¹⁹ The bill was approved by the Senate and the House Judicial Affairs Committee, but the session ended before the House

took further action. These legislative efforts clearly demonstrate the desire for judicial selection reform in Texas.

The U.S. Constitution advocates judicial appointment in favor of election.

- The separation of powers described in the U.S. Constitution envisioned three distinct functions of creating, enforcing, and interpreting laws among the three branches of government. A fundamental part of this system is an independent judiciary. Without the conflicts of interest inherent in a popular election, judges are able to follow the rule of law without concern for politics or public opinion.
- The U.S. Constitution promotes judicial independence in two ways. First, federal judges can be removed from office only through impeachment and conviction by Congress of “Treason, Bribery, or other high Crimes and Misdemeanors.”²⁰ The process of removing judges from office is intentionally difficult, promoting impartial courts that are free to make unpopular decisions. To date, only 13 formal impeachment attempts have been made, and only seven judges have been convicted and removed from office. Second, the Constitution provides that the compensation of federal judges “shall not be diminished during their Continuance in Office.”²¹ The effect of this language ensures that neither the President nor Congress can retaliate by reducing the salary of a federal judge. These two protections ensure the independence of the judiciary, freeing them from both political and monetary influence.

Recommendation

Institute a judicial selection process similar to the federal appointment system.

Justices of the U.S. Supreme Court and judges of the U.S. Courts of Appeal are appointed under Article III of the Constitution by the President, with the advice and consent of the Senate. Texas should adopt a similar system, with gubernatorial appointment of Supreme Court justices, and appellate and district court judges. A judicial appointment system in Texas could be phased in as elected terms expire, with six-year terms incongruent with the term of office of the Governor.

Impact

A system similar to federal judicial selection would allow executive influence through gubernatorial appointment, and legislative influence through the exercise of the Senate’s power to confirm the nomination. Appointed judiciary would promote impartiality, decrease partisanship, minimize costly fundraising, and insulate courts from the political process as intended in our original state and federal constitutions.

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- ¹ Richard H. Kraemer, Philip W. Barnes, *Texas Readings in Politics, Government, and Public Policy* (1971), p. 167.
 - ² President John Adams, Speech for the Appointment of Chief Justice John Marshall (Washington, DC, 1801).
 - ³ Texas Constitution, Art. IV, §5 (repealed 1876, Art. IV, §2).
 - ⁴ American Judicature Society, *Judicial Selection in the States: Appellate and General Jurisdiction Courts* (October 2002). States having similar partisan elections include Alabama, Illinois, Louisiana, Michigan, Ohio, Pennsylvania, and West Virginia.
 - ⁵ Texas Election Code §253.155(b), §253.157.
 - ⁶ Texas Election Code §§253.151-176. States with contribution limits specifically applicable to judicial campaigns include Alaska, Idaho, Kansas, Missouri, Ohio, Texas, and Wisconsin.
 - ⁷ *Republican Party of Minnesota, et al. v. White, Chairperson, Minnesota Board of Judicial Standards, et al.*, 247 F.3d 854 (8th Cir. 2001), *cert. granted*, 534 U.S. 1054 (U.S. June 27, 2002) (No. 01-521).
 - ⁸ Max B. Baker, "Tenor of Texas Judicial Elections Could Get Nastier," *Fort Worth Star-Telegram* (June 28, 2002).
 - ⁹ *Smith v. Phillips, et al.*, No. A-02 CV 111 JRN, U.S. Dist. (W.D. Tex. Aug. 6, 2002).
 - ¹⁰ Harris County Clerk, *Sample 2002 Ballots*, www.cclerk.hctx.net/elect/sample_ballots/English/html. Accessed: November 20, 2002.
 - ¹¹ American Judicature Society, *Judicial Selection in the States: Appellate and General Jurisdiction Courts* (October 2002).
 - ¹² *Ibid.*
 - ¹³ Office of Court Administration and State Bar of Texas Department of Research and Analysis, *The Courts and the Legal Profession in Texas - The Insider's Perspective: A Survey of Judges, Court Personnel, and Attorneys* (1999).
 - ¹⁴ Texas Government Code §§34.001-004.
 - ¹⁵ Office of Court Administration and State Bar of Texas Department of Research and Analysis, *The Courts and the Legal Profession in Texas - The Insider's Perspective: A Survey of Judges, Court Personnel, and Attorneys* (1999).
 - ¹⁶ Texas Senate, Joint Resolution 26/Texas Senate Bill 313, 74th Legislature (1995).
 - ¹⁷ Texas House, Joint Resolution 69/Texas House Bill 1175, Texas Senate, Joint Resolution 23/Texas Senate Bill 409, Texas Senate, Joint Resolution 25/Texas Senate Bill 621, and Texas Senate, Joint Resolution 26/Texas Senate Bill 628, 75th Legislature (1997).
 - ¹⁸ Texas Senate, Joint Resolution 9/Texas Senate Bill 59, 76th Legislature (1999).
 - ¹⁹ Texas Senate, Joint Resolution 3/Texas Senate Bill 129, 77th Legislature (2001).
 - ²⁰ U.S. Constitution, Art. II, §4.
 - ²¹ U.S. Constitution, Art. III, §1.
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Sunset Process Report Card

Introduction

As the Sunset Commission neared completion of its work for the 2003 Session of the Legislature, it began to assess the impact of its deliberations. Reflecting the results of this interim, the Commission also wanted to assess the impact of the Sunset process overall. In December 2002, it discussed the basic question of how can the Legislature review and measure the impact of the Sunset process. The Commission asked the Sunset staff to prepare a “self-assessment” of the process. The following is a discussion of what Sunset is, what it does, what it has done, what it has become, and how it is periodically assessed. The report concludes with highlights from the current review cycle.

What is Sunset?

Sunset is part of the Legislature’s oversight of state government. It asks the basic question of whether an agency continues to be needed. It also looks at ways to make government simpler and better meet the needs of Texans. Sunset works by setting a date for an agency to be reviewed, thus giving the Legislature a chance to look closely at an agency and keep it, usually with improvements, or get rid of it. In most cases, legislation must pass to continue the agency reviewed. This strengthens the accountability of state agencies to the Legislature and provides a forum to set the mission of those agencies.

Sunset asks the basic question: Does an agency continue to be needed?

One key to Sunset’s effectiveness is public input. The process has several opportunities, which add value to the outcome. Sunset staff seeks public input as it does its work. More importantly, the Sunset Commission also seeks public input and uses the results in its deliberations. Public debate of issues is a cornerstone of the process, and, in effect, sets it apart from the efforts of other legislative oversight agencies.

Public debate is a cornerstone of the Sunset process.

What Sunset Does

The Sunset process is guided by a 10-member body appointed by the Lieutenant Governor and the Speaker of the House. Assisting the Commission is a staff whose reports assess an agency’s need, and suggest improvements to the way it operates. Through public deliberation, the Commission develops a record of the perspectives of the agency involved, the interested stakeholders, and the general public, as to the potential future of the agency and what changes should be made if the agency is to be continued. The Commission reports its

recommendations to the Legislature, which passes legislation to implement its decisions on an agency. As with all legislation, Sunset bills must also be approved by the Governor.

What Has Sunset Done?

Sunset has led to 44 agencies abolished and 11 consolidated.

Since its inception in 1977, the Legislature has recognized the Sunset process as an important tool for overseeing state agencies and bringing needed change to state government. Originally established to look at the need for agencies and evaluate their efficiency and effectiveness, Sunset's mission has matured over time to also serve the Legislature's need to analyze state policies and, as needed, address special concerns regarding certain state agencies. Ultimately, Sunset has institutionalized a way for the Legislature to make state government smaller and smarter.

Direct Impact

Sunset is a structured way to make government smaller and smarter.

The Sunset process has worked to streamline and change state government. Although its impact is broad, the key indicators of Sunset's success have always centered on the number of agencies abolished and the savings generated from its work. Since Sunset's inception, the Legislature has used the process to abolish 44 agencies and consolidate the functions of 11 others. The chart, *History of Sunset Commission Action*, details the results of Sunset reviews from 1979 through 2003. In terms of savings, the Sunset process has generated \$720 million, at a cost of \$17 million. That is a return of \$42.50 for every dollar spent.

History of Sunset Commission Action - 1979 to 2003															
Legislative Session	1979 66th	1981 67th	1983 68th	1985 69th	1987 70th	1989 71st	1991 72nd	1993 73rd	1995 74th	1997 75th	1999 76th	2001 77th	2003 ² 78th	Total	Percent
Agencies Continued	12	22	29	24	18	25	23	27	16	19	22	21	24	282	81%
Agencies Abolished Outright	8	2	3	6	1	3	3	1	0	0	1	1	2 ³	31	9%
Agencies Abolished & Functions Transferred	1	3	0	0	1	2	3	1	2	2	0	0	1	16	5%
Agencies Combined	4	1	0	0	0	0	1	2	0	0	2	1	0	11	3%
Agencies Separated	1	0	0	1	0	0	0	0	0	0	0	0	0	2	1%
Agencies Reviewed	26	28	32	31	20	30	30	31	18	21	25	25 ¹	29 ¹	346	

¹ Some agencies reviewed were not subject to continuation or abolishment.

² Based on Sunset Commission recommendations.

³ Two statutes.

Other Impact

Aside from the more obvious indicators of success, the Sunset process has had many other positive impacts on state government. These impacts are grounded in the goals on which the process was originally created – efficient, effective agency operations; open government; public participation; protections against conflicts of interest; and responsiveness to and protection of the citizens of Texas.

*Each dollar spent on
Sunset has returned
\$42.50.*

The Legislature has used the Sunset process to create the standard of how state agencies should be structured and operate through a template of good government principles. These “across-the-board recommendations” are applied, as appropriate, to all agencies as they go through Sunset review. They have also become the standard used by the Legislature when it proposes to create a new agency or program.

The Sunset process has also established an operating model for occupational licensing agencies. This template covers all aspects of the structure and operation of a licensing agency, including the agency’s policy body, administration, examinations, licensing, enforcement, and penalty authority. The model has been well received and should become the standard for state licensing.

The Sunset process also acts as a catalyst for agencies to get their “ship in order.” As agencies near their scheduled Sunset review, an amazing amount of improvement is often observed. Backlogs of complaints disappear, languishing projects often get finished, and much attention is given to meeting performance measures. At times, the Legislature even uses the threat of a Sunset review to get an agency to improve its performance.

*Direct changes number
in the thousands, with
untold indirect benefits.*

Overall, the Legislature has used the Sunset process to change the face of state government. Direct changes through Sunset legislation number in the thousands, and the unmeasurable indirect changes all point to the success of the process.

What Sunset Has Become

The Sunset process has become a forum for discussion of policy issues that surround an agency. This has been the age-old debate concerning Sunset, as to whether the review and resulting legislation should be confined to the agency and its operation, or should bigger policy issues also be considered. While the debate continues, it is, for now, a reality. An agency’s Sunset review is often the only time that some issues see the light of day. This may be because an issue is “under the radar screen,” except during a Sunset review. In other cases, the proponents of the status quo can sometimes keep a bill on the subject from passage. A Sunset bill must pass so the playing field is leveled. Sunset staff do not take a position on this matter, but simply report that changes in state policy are not uncommon in Sunset bills.

*Though controversial,
Sunset is a forum for
policy debate.*

The Sunset process has also become a method used by the Legislature to deal with problem agencies. Almost every Session, some agency's Sunset date is changed to move up its review date. This brings an agency under increased scrutiny to hopefully allow for persistent problems to be addressed. In addition, some agencies are given short Sunset dates so the Legislature can revisit issues sooner than the standard 12 years. In extreme cases, an agency is given a two-year "probationary" period, to allow continued oversight until problems are resolved. All these tactics point to the Legislature's use of the Sunset process as a problem solver.

Finally, the Legislature uses the Sunset Commission as a resource for special projects. Sunset staff have assisted in a number of projects over the years, assisting interim committees and task forces, working on the first Texas Performance Review, evaluating Requests for Proposals, and participation in joint projects with other oversight agencies. Most recently, the Leadership asked the Sunset Commission to develop the approach needed to make sure all agency boards and commissions comply with a 1999 constitutional amendment regarding membership structure.

How Is Sunset Assessed?

The Legislature itself "sunssets" the Sunset process.

The question often asked is, "Who sunsets Sunset?" The answer is the Legislature itself. As a legislative agency, the Sunset Commission is directly accountable to the Legislature. The results of the Sunset process are directly reported to and acted on by the Legislature. Historically, 90 percent of the Sunset Commission's recommendations have been approved, in some form, by the Legislature. This acid test points to the acceptance of the process and its results.

The Legislature has openly debated the continuing value of Sunset. During the 1993 Session, it debated a bill that would have abolished the process. This difficult but necessary dialogue resulted in the Sunset process being continued but with some beneficial changes. This new approach centered around communication, between the staff and the Commission members, and with the legislative Leadership. This has strengthened the process and its impact. The Legislature should continue its critical evaluation of Sunset, assessing its value and demanding results.

Sunset staff also take a critical look at how Sunset does its business. Staff completed an internal assessment and produced a business plan to deal with needed improvements. While much of the effort involved internal operations, Staff also went outside the agency to seek input from its customers. Talking with legislators, legislative staff, staff of agencies reviewed, and other stakeholders, Staff have made several adjustments in the way it does business. Staff constantly strives to

provide a quality product that meets the needs of the Legislature and its secondary audiences.

Sunset This Cycle

During the current interim, the Sunset Commission has carried on a tradition of excellence. The Commission met six times, conducted public hearings on the 29 reviews scheduled for this Sunset cycle, and made decisions on recommendations that resulted from its Staff's work and testimony raised during its hearings. The Commission adopted almost 700 recommendations, continuing 24 of the agencies reviewed, abolishing the Texas Department of Economic Development and transferring its functions, abolishing the Riding Stables Chapter and the Licensing Agency Pilot Project, and making numerous improvements to the agencies continued. The fiscal impact of these decisions is estimated at \$6.5 million the next two years, and \$7.3 million annually thereafter.

Sunset's current work will save the State more than \$7 million annually.

Key recommendations from this cycle include:

- creating a streamlined, focused economic development and tourism function within the Governor's Office;
- simplifying the formula for distributions from charitable bingo;
- providing for a clear separation of the duties of the full-time Workforce Commission and its agency staff;
- reining in the transfers of unemployment compensation experience that cost employers millions of dollars each year;
- providing the Ethics Commission with the ability to adequately conduct investigations;
- improving the accountability of the State Bar, and simplifying the attorney grievance procedure;
- positioning the Higher Education Coordinating Board to better implement the strategic plan for higher education; and
- strengthening the enforcement capability of a number of licensing agencies, most notably for the Board of Accountancy.

Conclusion

The Sunset process recently celebrated its silver anniversary. It has many supporters, and some opponents. Its impact is widespread. The results are well-documented. Its reputation is strong, both in Texas and around the nation. Sunset's future is, as it should be, up to the Legislature.

Sunset's future is up to the Legislature, as it should be.

APPENDICES

Appendix 1

Sunset Review Schedule – 2005

General Government	Electronic Government Program Management Office ¹ Texas Online Division ² Veterans Commission, Texas Workers' Compensation Commission, Texas
Health and Human Services	Aging, Texas Department on ³
Education	Education Agency, Texas Guaranteed Student Loan Corporation, Texas Telecommunications Infrastructure Fund Board
Public Safety and Criminal Justice	Correctional Managed Health Care Committee
Natural Resources	Edwards Aquifer Authority, Board of Directors of the Food for Health Advisory Council, Texas On-Site Wastewater Treatment Research Council Veterans Land Board, Texas
Business and Economic Development	Film Industry Development Loan Guarantee Program, Texas
Regulatory	Acupuncture Examiners, Texas State Board of Alcoholic Beverage Commission, Texas Barber Examiners, State Board of Chiropractic Examiners, Texas Board of Cosmetology Commission, Texas Counselors, Texas State Board of Examiners of Professional Dental Hygiene Advisory Committee Dietitians, Texas State Board of Examiners of Electric Utility Restructuring Legislative Oversight Committee Equine Research Account Advisory Committee Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of Insurance, Texas Department of

Regulatory (cont.)

Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of
 Insurance, Texas Department of
 Insurance Counsel, Office of Public
 Marriage and Family Therapists, Texas State Board of Examiners of
 Medical Examiners, Texas State Board of
 Midwifery Board
 Nurse Examiners, Board of
 Occupational Therapy Examiners, Texas Board of
 Optometry Board, Texas
 Perfusionists, Texas State Board of Examiners of
 Pharmacy, Texas State Board of
 Physical Therapy and Occupational Therapy Examiners, Executive Council of
 Physical Therapy Examiners, Texas Board of
 Physician Assistant Examiners, Texas State Board of
 Podiatric Medical Examiners, Texas State Board of
 Psychologists, Texas State Board of Examiners of
 Public Utility Commission of Texas
 Public Utility Counsel, Office of
 Racing Commission, Texas
 Social Worker Examiners, Texas State Board of
 Speech-Language Pathology and Audiology, State Board of Examiners for
 Veterinary Medical Examiners, State Board of
 Vocational Nurse Examiners, Board of

¹ The Office is located in the Department of Information Resources.

² The Division is located in the Department of Information Resources.

³ The Sunset date for Texas Department on Aging is 2006. The agency continues to exist until September 1, 2005, at which time it will be merged with the Texas Department of Human Services to form the Texas Department of Aging and Disability Services.

Appendix 2

Summary of the Texas Sunset Act

Sunset Act

The Texas Sunset Act (Chapter 325, Government Code) went into effect in August 1977. It provides for automatic termination of most agencies under Sunset review, although a few agencies under review are exempt from automatic termination.

Sunset Advisory Commission

The 10-member Sunset Advisory Commission has four members of the Senate, four members of the House, and two public members, appointed by the Lieutenant Governor, and the Speaker of the House, respectively. The chairmanship rotates between the Senate and the House every two years.

Reviewing an Agency

When reviewing an agency, the Commission's staff must consider statutory criteria as shown in the chart, *Sunset Review Questions*. The Commission's report on an agency must include a recommendation to abolish or continue the agency, and may contain recommendations to correct problems identified during the review. These problems may include other agencies not under review that overlap or duplicate, or otherwise relate to the agency under review.

Continuing an Agency

If the Commission recommends that an agency be continued, it has legislation drafted for that purpose, and to correct the problems found during the Sunset review. Sunset legislation usually continues an agency for 12 years.

Terminating an Agency

If the Commission recommends abolishment of an agency, the agency generally has a one-year period in which to wind down its operations. The agency retains full authority and responsibility until the end of that year, at which time its property and records are transferred to the appropriate state agency.

Compliance Reviews

The Commission is required to examine an agency's actions after a Sunset bill is passed to determine if the agency has implemented the new statutory requirements. The State Auditor is required to evaluate the agency's compliance with non-statutory management changes recommended by the Commission.

Sunset Review Questions

1. How efficiently does the agency operate?
2. How successful has the agency been in achieving its statutory objectives?
3. In what ways could the agency's operations be less burdensome or restrictive and still adequately protect the public?
4. To what degree are the agency's advisory committees needed and used?
5. How much do the agency's programs and jurisdiction duplicate those of other agencies? Could the agency's programs be consolidated in another agency?
6. To what extent has the agency recommended statutory changes that benefit the public rather than regulated businesses?
7. Does the agency promptly and effectively handle complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions? How compatible are the agency's rules with its objectives?
9. How has the agency complied with requirements for equal employment opportunity, rights and privacy of individuals, and purchasing products from Historically Underutilized Businesses?
10. Are changes needed in the agency's enabling statute to comply with these Sunset criteria?
11. How effectively does the agency enforce rules on employee conflicts of interest?
12. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
13. Would abolishing the agency cause federal government intervention or a loss of federal funds?

