Sunset Advisory Commission

Report to the 82nd Legislature

February 2011

Sunset Advisory Commission

Senator Glenn Hegar, Jr., Chair

Representative Dennis Bonnen, Vice Chair

Senator Juan "Chuy" Hinojosa	Representative Rafael Anchia
Senator Joan Huffman	Representative Byron Cook
Senator Robert Nichols	Representative Linda Harper-Brown
Senator John Whitmire	Representative Larry Taylor
Charles McMahen, Public Member	Lamont Jefferson, Public Member

Ken Levine
Director

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 state agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

SUNSET ADVISORY COMMISSION

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

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Ken Levine

February 17, 2011

The Honorable Rick Perry
Governor of Texas

The Honorable David Dewhurst
Lieutenant Governor of Texas

The Honorable Joe Straus
Speaker, Texas House of Representatives

Honorable Members of the 82nd Legislature
Assembled in Regular Session

Ladies and Gentlemen:

The Sunset Advisory Commission is directed by statute to periodically 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 2009 and January 2011, the Sunset Commission has worked to develop recommendations resulting from the 28 entities scheduled for Sunset review. During the 16-month period, the Commission held numerous public meetings to hear presentations of its staff's recommendations, hear public testimony, and make decisions on recommendations regarding the agencies reviewed. These recommendations will streamline state government, abolish four entities, improves agencies' operations, and position these agencies to better serve the people of Texas. Of particular note in these difficult budgetary times, the Commission's recommendations have and estimated positive fiscal impact in excess of $170 million.

The Sunset Advisory Commission is pleased to forward to you its findings and recommendations with this report.

Respectfully Submitted,

Senator Glenn Hegar, Jr.
Chair
Sunset Advisory Commission

Dennis Bonnen

Representative Dennis Bonnen
Vice Chair
Sunset Advisory Commission

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Introduction

Introduction

The Sunset law in Texas, enacted more than 34 years ago, provides for the periodic review of the need for and the efficiency and effectiveness of state agency operations and policies. The Sunset process works by imposing a date upon which an agency is abolished, unless the Legislature passes 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 after a one-year wind down period.

Sunset for the 82nd Legislative Session

The Sunset reviews for the 2010-2011 biennium were particularly interesting and challenging. A total of 28 agencies were under Sunset review. Several of these were large and complicated agencies, including the Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Railroad Commission of Texas. Six other agencies, including the Departments of Transportation and Insurance, were added back into our schedule for re-review when their Sunset legislation failed to pass during the 81st Legislative session. Other reviews covered topics ranging from housing to hearing instruments, and from juvenile justice to workers' compensation insurance. While not subject to abolishment, the Legislature also directed Sunset to review two quasi-governmental entities – the Electric Reliability Council of Texas and Austin's transit system, Capital Metro.

Overall, in fiscal years 2012 and 2013, the Sunset Commission's recommendations would result in a positive fiscal impact to the State of about $174 million.

Results

Following extensive analysis, testimony, and deliberations, the Sunset Commission recommends that the 82nd Legislature pass legislation continuing 20 of 28 agencies under review, with significant improvements to each agency continued. The Commission recommends abolishing four agencies: the Coastal Coordination Council, Equine Research Account Advisory Committee, On-site Wastewater Treatment Council, and Electronic Government Program Management Office. Two other agencies – the Texas Juvenile Probation Commission and Texas Youth Commission – are recommended for merger into a newly created Texas Juvenile Justice Department. Finally, while the two quasi-governmental entities did not have a Sunset expiration clause, the Commission recommended numerous enhancements to their operations and oversight.

Altogether, the Sunset Commission adopted 330 recommendations to improve agency operations, use available funds more efficiently, and position these agencies to better serve the people of Texas. The chart on page 3

summarizes the Sunset Commission's decisions regarding the continuation of the agencies under review and provides the estimated two-year fiscal impact of recommended changes. Overall, in fiscal years 2012 and 2013, the Sunset Commission's recommendations would result in a positive fiscal impact to the State of about $174 million. The Sunset Commission also recommends four changes relating to the appropriations process for the Departments of Transportation and Information Resources. Since these recommendations are suggestions to the Legislature through the appropriations process, they will not be contained in the Sunset bills for those agencies.

Guide to This Report

The following material details the Sunset Commission recommendations, including information on the fiscal implications of each recommendation. Most of these recommendations are for statutory changes that require consideration and action by the full Legislature. These changes are being drafted into Sunset legislation on each of the agencies. This report also includes management recommendations adopted by the Sunset Commission directing the agencies to implement changes that do not require legislative action. The agencies will be implementing these changes over the next two years.

More detailed information on these recommended changes can be found in the original Sunset staff report on a particular agency, available on the Commission's website, or by contacting Sunset staff directly.

This report also includes an update on the status of agencies' implementation of Sunset legislation from 2009. The Sunset Act requires the Commission to review the way each agency implements the provisions of its Sunset bill. In 2009, the 81st Legislature passed 13 bills containing 196 changes recommended by the Sunset Commission. Overall, state agencies have implemented 91 percent of these changes.

Finally, this report includes a list of agencies scheduled for Sunset review in 2013, and a summary of the Texas Sunset Act.

82nd Session Sunset Summary Information

Agency	Action	Two-Year Net Fiscal Impact
Capital Metropolitan Transportation Authority	N/A	No Impact[1]
Coastal Coordination Council	Abolish	No Impact
Electric Reliability Council of Texas	N/A	No Impact
Electronic Government Program Management Office[2]	Abolish	No Impact
Emergency Communications, Commission on State	Continue	No Impact
Environmental Quality, Texas Commission on	Continue	$70,122,000
Equine Research Account Advisory Committee	Abolish	No Impact
Forest Service, Texas	Continue	No Impact
Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of	Continue	No Impact
Housing and Community Affairs, Texas Department of	Continue	No Impact
Housing Corporation, Texas State Affordable	Continue	No Impact
Information Resources, Department of	Continue	$9,700,000
Injured Employee Counsel, Office of	Continue	No Impact
Insurance, Texas Department of	Continue	No Impact
Insurance Counsel, Office of Public	Continue	No Impact
Juvenile Justice: Youth Commission, Texas Juvenile Probation Commission, Texas	Merge	$2,922,819
On-site Wastewater Treatment Research Council	Abolish	No Impact
Public Finance Authority, Texas	Continue	$31,034,191
Public Utility Commission of Texas	Continue	No Impact
Public Utility Counsel, Office of	Continue	No Impact
Racing Commission, Texas	Continue	No Impact
Railroad Commission of Texas	Transfer	$55,371,084
Soil and Water Conservation Board, Texas State	Continue	No Impact
Speech-Language Pathology and Audiology, State Board of Examiners for	Continue	No Impact
Transportation, Texas Department of	Continue	$3,257,342
Water Development Board, Texas	Continue	($109,907)
Workers' Compensation – Texas Department of Insurance, Division of	Continue	$2,000,000
Net Positive Fiscal Impact		***$174,297,529***

[1] Total does not include Capital Metro savings of $11,800,000 as Capital Metro is not a state-funded agency.

[2] The Electronic Government Program Management Office has been inactive for more than two years. Under Section 325.0125 of the Sunset Act, the Sunset Commission voted to abolish the Office without the need for an evaluation.

Sunset Commission Recommendations

Capital Metropolitan Transportation Authority

Project Manager: Christian Ninaud

Capital Metro at a Glance

Created in 1985, the mission of the Capital Metropolitan Transportation Authority (Capital Metro) is to provide quality public transportation choices that meet the needs of its growing region. To carry out its mission, Capital Metro provides the following key services:

- bus services on regular routes, express bus services, park and ride services, and shuttle services for the University of Texas-Austin;
- door-to-door paratransit service for people with disabilities who cannot use regular bus service;
- commuter rail, including the construction and operation of the first line running from Austin to Leander that started service in March 2010; and
- freight rail operations, including the maintenance of 162 miles of rail that Capital Metro owns, running from Giddings to Llano.

Unlike state agencies, Capital Metro is not subject to abolishment under the Sunset Act. The legislation that placed Capital Metro under Sunset review, Senate Bill 1263 by Senator Kirk Watson, 81st Legislative Session, also provides for a second Sunset review of Capital Metro in 2017.

Summary

Capital Metro faces a financial crisis that could threaten its ability to maintain current services. In anticipation of building commuter rail, Capital Metro accumulated more than $200 million in reserves, but did not responsibly manage these funds. The Board took on financial liabilities without setting aside money to pay these ongoing commitments. The Board also did little to rein in the high cost of its services, maintaining a costly labor structure rooted in decades-old labor law, and greatly underestimating the cost of developing and maintaining a safe commuter rail system.

The Board must embrace fiscal constraint and open accountability.

The Sunset Commission found that Capital Metro's overspending cannot be sustained. The Board must embrace fiscal constraint and open accountability for its expenditure of public funds. Capital Metro needs to improve its budgeting processes and provide the public with greater transparency regarding its financial decisions. The Board must make many

difficult decisions to lower costs and increase revenues that will require effective engagement with all stakeholders including the local transit union and the disability community. While the Board and its newly-hired General Manager have voiced a clear intent to follow through on the Sunset Commission's recommendations, the Commission concluded that placing many of these changes in law would ensure compliance into the future. The following material summarizes the Sunset Commission's recommendations on Capital Metro.

Issue 1

Capital Metro Has Failed to Responsibly Manage Its Finances.

Spending decisions over the last several years have led Capital Metro on a risky financial path. First, Capital Metro has obligated itself to significant future financial liabilities without setting aside funds to pay for its commitments. Second, it has failed to maintain an operating reserve to ensure the Authority could weather economic downturns and other variables such as high fuel costs or unanticipated health claims. In addition, Capital Metro pays significantly higher costs than its peers for most transit services and has done little to control these costs. The Authority also has a long history of subsidizing fares at levels far in excess of its transit peers.

The Sunset Commission concluded that Capital Metro's lack of adequate financial planning, combined with its high cost of services, places its long-term financial viability at risk. Turning the Authority's finances around will mean taking ownership of previous mistakes and implementing new basic budgeting procedures, including a more robust capital planning process.

Recommendations

Change in Statute

1.1 Require the Board to maintain a reserve equal to at least two months of operating expenses, and define criteria for its use.

This recommendation would require the Board to maintain a minimum reserve equal to at least two months of operating expenses, or currently about $27.5 million. Under this recommendation, the Board would have three years to initially establish this reserve. While a two-month operating reserve is the minimum, the Board should strive to establish a three-month reserve if possible. In re-building the reserves, the Board should also:

- establish criteria for spending any amount in the core balance of the reserve fund, limited to emergency circumstances that could not have been planned for or anticipated;
- plan to replenish reserve amounts as quickly as possible should any of the core balance be spent;
- maintain reserves in a segregated account; and
- account for, and post on its website, annual year-end reserve balances, deposits, expenditures, and interest income.

1.2 Require the Board to adopt, and annually re-evaluate, a five-year strategic plan that clearly links to, and drives, the budget.

This recommendation would require Capital Metro to develop a new strategic plan that establishes its mission and goals, and the business activities that support achieving this mission. The strategic plan would set policy and service priorities that drive development of the operating and capital budgets, and allocate resources based on strategic priorities. The strategic plan should align with, and support, the regional metropolitan planning organization's long-range transportation plan where appropriate. Capital Metro departments should develop business plans, with performance measures, that support the strategic plan.

1.3 Require the Board to annually adopt a balanced budget that includes operating and capital spending.

The current statutory requirement to adopt an annual balanced operating budget would be modified to include capital spending planned for that year. The budget should clearly account for amounts budgeted for each of Capital Metro's major departments, including sources of funding. Each department, in addition to detailed information on budget needs, should provide information on any proposed capital project for the year, including purpose, benefits, funding sources, implementation costs, and any resulting operational costs.

As part of this recommendation, staff would provide the Board with quarterly status reports on actual operations and capital expenditures, in comparison to amounts budgeted. These reports should include updates on all key capital projects, including information on project completion, work completed compared to budget spent, and any contract management concerns. To assist with reporting on capital projects, Capital Metro should also develop a consistent method for tracking capital project costs, to include, at a minimum, tracking the baseline budget, contract awards, contract changes, and expenditures to date.

1.4 Require the Board to adopt an ongoing five-year capital improvement plan.

This recommendation would require the Board to develop and annually approve a five-year capital improvement plan that links to Capital Metro's strategic goals. The Board should base the plan on transit industry best practices, and consider recommendations included in the Authority's recent capital planning audit. Capital Metro should give the public the opportunity to review and comment on the capital plan before the Board adopts it. The plan should align with, and support, the regional metropolitan planning organization's long-range transportation plan where appropriate. The capital plan should include, at a minimum, the following elements:

- prioritization of capital projects anticipated over a five-year period;
- description of planned capital projects, including project category and scope;
- financing of capital projects, including implications for ongoing operational costs;
- sources of funding for projects including local and federal funds; and
- policies for capital planning, estimating costs, tracking spending, approving capital projects, and reporting on projects.

1.5 Require the Board to adopt a clear and open policy for evaluating and compensating its General Manager.

This recommendation would require the Board to conduct regular performance evaluations of the General Manager, holding this top official accountable for the overall efficiency and effectiveness of the Authority and its staff. While the Board could discuss the details of the General Manager's performance in executive session, under this recommendation any raises, bonuses, or other compensation would need to be granted in public by Board vote.

Management Action

1.6 The Board should evaluate, and take action on, measures to reduce costs and increase revenues.

To help attain a baseline operating reserve, the Sunset Commission identified a number of areas the Board should review to reduce costs and increase revenues. The chart, *Recommendations for Savings, Revenue Increases, and Cost Avoidance*, shows areas the Board could act on to help Capital Metro rebuild its reserves.

Recommendations for Savings, Revenue Increases, and Cost Avoidance

Recommendation	Fiscal Estimate
1. Adopt a 5-percent across-the-board reduction in costs, based on the fiscal year 2010 operating and capital budget of $206.2 million.	$10.3 million in annual savings
2. Require Capital Metro and StarTran administrative employees to contribute 4 percent of wages to their pension plan.	$770,000 in annual savings
3. Increase paratransit productivity to achieve a 10-percent reduction in costs by revising policies that exceed Americans with Disabilities Act requirements, including taxi vouchers, open returns, door-to-door services, and reservations.	$3 million in annual savings
4. Charge a bus fare of 50 cents for groups currently riding free ($1.7 million in revenues) and charge $2 for paratransit rides ($155,600 in revenues).	$1.8 million in annual revenue gains
5. Renegotiate the UT-Austin contract to cover 65 percent of Capital Metro's fully allocated costs of providing shuttle services.	$3.3 million in annual revenue gains
6. Freeze capital spending on expansions of commuter rail that use tax revenues as a source of funding, including extra sidings ($5 million) or double-tracking ($48 million), as long as safety is not compromised.	$53 million in one-time avoided costs
7. Review all capital spending projects and put on hold any not immediately needed to ensure public safety or that would not jeopardize federal funding if not completed. For example, discontinue bus stop upgrades not required by the Americans with Disabilities Act.	$1.5 million in one-time avoided costs

1.7 Capital Metro should post detailed financial information on its website to help ensure accountability and transparency when spending public funds.

Capital Metro should post on its website financial information, to be updated annually, and to include at a minimum:

- departmental financial statements including budgeted and actual expenditures;
- information on all contracts, including amounts and expenditures;
- a five-year archive of past budgets;
- long term financial plans; and
- executive management salaries.

Issue 2

Costs for Capital Metro's In-house Transit Services Are Excessive and Not Sustainable.

Housed within Capital Metro, a private nonprofit corporation known as StarTran provides the vast majority of the Authority's transit services, but at a high cost that Capital Metro cannot effectively control nor sustain. Essentially, Capital Metro pays the bills for StarTran, but with no performance-based contract in place. Thus, StarTran exists as a perpetual sole-source provider that offers no better performance for its higher costs than Capital Metro's two other contracted transit providers.

Originally created to resolve a conflict between federal and state labor laws, the Sunset Commission concluded that maintaining StarTran as a transit provider is increasingly untenable for Capital Metro in these financial times. Competitively contracting out for these services would require major changes to the Authority's organization and would not come without some disruption and dissention. However, competitively procuring these transit services would provide taxpayers and transit users with the best value for their dollars, and provide Capital Metro with the tools needed to hold all providers equally accountable for performance.

Recommendations

Change in Statute

2.1 Require Capital Metro to competitively bid all transit services not directly provided by its own employees.

Capital Metro would be required to use a competitive bidding process to contract out for any transit services not provided directly by Capital Metro employees, including bus and paratransit services currently provided by StarTran. Under this recommendation, StarTran would be dissolved as part of any plan to competitively contract out for these services. Capital Metro should ensure these contracts include performance and cost control measures, incentives for performance, penalties for non-compliance, contract end dates, and consideration for hiring current StarTran employees.

This recommendation would allow for Capital Metro to directly provide transit services should it work out an agreement with union employees that does not include collective bargaining or the right to strike.

Because this recommendation involves significant changes to Capital Metro's business operations, this requirement would not go into effect until September 1, 2012.

Management Action

2.2 Capital Metro should develop a competitive procurement plan for transit services.

Under this recommendation, Capital Metro should identify organizational efficiencies and cost savings resulting from competitively procuring these services, as well as any potential costs. In particular, the plan should address how to effectively resolve any issues tied to the unfunded liability of the pension plan for StarTran's bargaining workers.

The plan should include a target date for having competitive contracts in place, and procedures for overseeing these contracts, including clear expectations for monitoring activities, procedures for holding contractors accountable for performance and contract terms, and a division of monitoring responsibilities between Capital Metro's contract administration and program management staff. Capital Metro should develop and begin to implement this plan by June 30, 2011, the date that StarTran's current labor agreement with the union expires.

Issue 3

Capital Metro Must Enhance Commuter Rail Safety Before Expanding Its Rail System.

While the Federal Railroad Administration approved Capital Metro's commuter line for service in March 2010, many of the Authority's railroad bridges, including some on the corridor shared by commuter and freight operations, need major repair or replacement to remain safe. However, in its push to start commuter rail service, Capital Metro has yet to budget for, or complete a cost estimate and prioritization of, all necessary bridge work.

Capital Metro encountered numerous stumbling blocks in developing its commuter rail line. These problems stemmed from unreliable tracking of commuter rail expenses, insufficient planning, persistent technical problems, poor contract oversight, fragmented project management, and a lack of accountability for results across departments. As a result, the Authority launched the rail line significantly over budget and two years later than planned. The Sunset Commission concluded that Capital Metro should take steps to ensure that these problems do not occur again on any future rail project, but more importantly, that these problems do not impact the ongoing safe operation of its current rail service.

Recommendations

Change in Statute

3.1 Require Capital Metro to maintain a comprehensive rail safety plan and to regularly report on the ongoing safety of the system.

This recommendation would require a comprehensive rail safety plan, in accordance with federal and industry standards, that covers all aspects of the Authority's rail activities, including both commuter and freight. The plan should address specifics, such as hazard analyses, risk assessments, and audits

to ensure rail contractors are fulfilling their safety obligations. Capital Metro should also place particular focus on ensuring the ongoing safety and maintenance of its railroad bridges. As part of this recommendation, Capital Metro would report on the safety of its system to the Board and to the Texas Department of Transportation's Rail Division on a quarterly basis or upon request.

3.2 Require Capital Metro to employ a Rail Director to oversee and be accountable for all rail system development, operations, maintenance, and safety.

This recommendation would create a single top-level position dedicated exclusively to and accountable for overseeing rail development, operations, maintenance, and safety. The Rail Director would be authorized to halt rail operations at any time based on the need to protect public safety. The Rail Director would be responsible for, at a minimum, the following activities.

- Overseeing all personnel and contractors responsible for operating and maintaining the commuter and freight rail systems and equipment.
- Overseeing rail safety activities, including testing needed to ensure a safe signal system and effective operations control center.
- Developing a plan specifying a division of responsibilities between maintenance and capital projects activities, including ensuring the safety of railroad bridges.
- Acting as the key point of contact for ensuring compliance with any applicable federal, state, and local regulations or requirements.
- Coordinating with Capital Metro's engineering and construction department on the design and construction of any new rail projects.
- Reporting to the General Manager and Board on the safety, performance, and financial status of the rail system.

Management Action

3.3 Capital Metro's Board should take immediate action to prioritize needed replacement, repair, and maintenance of its railroad bridges.

Capital Metro's Board should prioritize needed bridge replacements and repairs, with a focus on those with the most potential for risks to public safety, such as those on the commuter rail corridor. Any critical repairs should take clear precedence over other projects to expand the system, such as improvements or upgrades for the rail line currently in operation. Capital Metro should include bridge-related capital projects in its five-year capital improvement plan and accurately identify costs, timelines, and divisions of responsibilities for needed replacement and rehabilitation of bridges. The plan should also take into consideration any federal railroad bridge guidelines and regulations.

3.4 Capital Metro should develop a contract monitoring plan for major rail projects to ensure accountability for the cost-effective delivery of services.

Capital Metro should develop plans for overseeing and monitoring major rail contracts to ensure the Authority receives what it pays for, and that contractors comply with their contracts. The plans should cover contracts for operations and maintenance, and engineering and construction. For each of its major rail contracts, Capital Metro should tailor a plan to include items such as the following.

- Establish a clear division of monitoring responsibilities and tasks for contract administration and program management staff, including how program staff will report monitoring activities and coordinate with contract administration for any needed remedies.
- Set clear expectations for monitoring activities, including items such as developing a risk assessment, conducting desk audits and site visits, reviewing expenditures, tracking deliverables, and reviewing status reports from the contractor.
- Monitor contract changes, including full documentation, analysis, and written approval of changes. Capital Metro staff should evaluate contract changes to determine their impact on deliverables, costs, and the overall progress of the project.

3.5 Capital Metro should develop a clear approach for planning, developing, and implementing any future rail-related projects.

To ensure against a recurrence of problems encountered with its first commuter rail line, for any rail-related capital project development and implementation, Capital Metro should formulate a clear approach that addresses the following components.

- Develop more accurate and conservative timelines, including appropriate time for front-end planning.
- Acquire experts with knowledge of, and experience with, all aspects of the project, including federal rail standards and processes, to ensure safety.
- Determine any applicable regulatory structure in the preliminary phases of project development and properly engage with regulators early on and throughout the process.
- Ensure frequent communication among Board members, staff, contractors, and the public throughout all phases of the capital project, from initial design to final construction.
- Use established project management techniques, such as those FTA recommends, and controls for tracking the project's completion costs and timeliness.
- Develop more accurate and conservative capital and operating budgets that adequately account for all costs, including any cost allocations between commuter and freight operations.

Issue 4

The Board Has Not Effectively Engaged Stakeholders, Eroding Public Trust in Its Decisions.

Capital Metro's Board faces a significant challenge in overcoming the Authority's long legacy of appearing "tone deaf" to public concerns. While Capital Metro invests significant time in efforts to interact with stakeholders and collect public input, this overall perception persists. The Board also obtains advisory committee input, but key stakeholders continue to feel disenfranchised. In particular, Capital Metro's working relationship with the disability community is in serious disarray, which has left critical decisions on paratransit services unresolved for years.

Recommendations

Change in Statute

4.1 Require Capital Metro to develop and implement a policy that guides and encourages more meaningful public involvement efforts.

This recommendation would require Capital Metro to develop a public involvement policy that ensures the public has the full opportunity to help shape decisions on Capital Metro's plans and transportation projects. The policy would include, at a minimum, the following elements:

- assurance that the public has the opportunity to comment on issues in advance of Board decisions, and that the consent agenda is used for routine, non-controversial items only;
- time frames and an approach for obtaining input throughout the year, particularly in regards to strategic planning, budgeting, capital planning, transit initiatives, and service changes; and
- information on how the public can be involved, including attending Board meetings and neighborhood meetings, participating in surveys, submitting comments by Internet, and joining an email contact list to receive information on upcoming meetings and discussion topics.

Management Action

4.2 Capital Metro should provide sufficiently developed materials to Board members well in advance of meetings.

Capital Metro staff should work with the Board to ensure that materials meet the needs of Board members and support informed decision making. These materials should include, at a minimum, the proposed motion, short- and long-range budgetary impacts, summary of the issue, summary of any public or advisory committee input, and any alternative proposals for consideration.

4.3 The Board should develop a policy for advisory committee reporting to ensure consideration of committee input in advance of Board decisions.

This policy should address, at a minimum, the following:

- providing advisory committees specific charges;
- seeking advisory committee comments and recommendations in advance of Board decisions; and
- tracking Board adoption, rejection, or modification of advisory committee recommendations.

4.4 The Board should assess its overall process for receiving input on paratransit issues, including evaluating the size and composition of the Access Advisory Committee.

The Board should evaluate all of its procedures for taking public input on paratransit issues to determine how these could be restructured to most effectively receive, and consider, input on paratransit service and policy issues. The Board should take this opportunity to be actively involved and assess if the current size and composition of the Access Advisory Committee is adequate or if another approach is warranted.

Fiscal Implication Summary

These recommendations would not have fiscal implications for the State, because Capital Metro does not receive state appropriations. However, these changes overall, if adopted, could result in significant savings to Capital Metro, as summarized below.

- ***Issue 1*** – Based on a series of Sunset management recommendations, Capital Metro could realize annual savings of up to $14 million, annual revenue gains of up to $5.1 million, and one-time avoided costs of about $54.5 million. However, these amounts are not in the chart below as the actual fiscal impact will depend on specific actions of the Capital Metro Board.

- ***Issue 2*** – Requiring Capital Metro to competitively contract out transit services would result in a net estimated savings of $11.8 million initially and up to $22.2 million once some initial costs have been covered. While Capital Metro may take action sooner, this estimate conservatively provides a year to implement these changes. In addition, the exact amount of these savings would depend on contract negotiations. These savings take into account costs to Capital Metro related to converting StarTran's pension plan into a private plan, and paying out vacation and sick leave for StarTran employees.

- ***Issue 3*** – Requiring Capital Metro to create a new Rail Director position would have a cost of about $195,000 annually; however, Capital Metro can cover these costs using currently budgeted and unfilled executive positions.

Fiscal Year	Savings to Capital Metro	Costs to Capital Metro	Net Savings to Capital Metro
2012	$0	$0	$0
2013	$22,200,000	$10,400,000	$11,800,000
2014	$22,200,000	$6,000,000	$16,200,000
2015	$22,200,000	$6,000,000	$16,200,000
2016	$22,200,000	$0	$22,200,000

Coastal Coordination Council

Project Manager: Amy Tripp

Council at a Glance

The Coastal Coordination Council (Council) is a 12-member interagency board that administers Texas' federally approved Coastal Management Program (CMP). The Council's mission is to coordinate Texas' approach to managing its coastal resources and responding to coastal issues. The Council, housed within and staffed by the General Land Office (GLO), achieves its mission by carrying out the following key activities.

- Awards competitive grants to local governments and other entities for coastal improvement projects, such as erosion control and habitat restoration.
- Reviews state and federal agency decisions that affect the Texas coast to certify they are consistent with the State's CMP goals and policies.
- Provides information and assistance to individuals and small businesses regarding permits in the coastal region.

Summary

Texas benefits from having a federally approved Coastal Management Program in two primary ways. First, Texas receives about $2.5 million per year in federal funding for coastal projects. Second, the State has authority to review and provide input on federal actions, activities, and decisions that affect the coastal zone. The Council must agree federal actions or activities are consistent with the CMP before federal agencies can proceed on projects affecting the coastal zone.

A separate Council is no longer needed to administer the State's Coastal Management Program.

Since its creation in 1991, the Council's role has transitioned from developing and implementing the Coastal Management Program to simply administering it, which is done mainly through its individual member agencies. The Sunset Commission found that while the Council's functions continue to be needed to ensure Texas maintains federal approval of its CMP and receives federal funding for coastal projects, the Council is no longer needed to facilitate coordination and oversee ongoing CMP administration. Additionally, the Council has neglected its coordination function. The following material summarizes the Sunset Commission's recommendations on the Council.

Issue 1

While Texas Has a Continuing Need to Maintain Its Coastal Management Program, the Council Structure Is No Longer Needed to Administer It.

Although the Council played a significant role during the development and implementation of the CMP, the Council's responsibilities now consist primarily of approving staff recommendations for approximately $2.5 million in annual grant awards, and helping maintain interagency coordination on coastal issues. However, the Council has failed to ensure the best use of its interagency coordination functions, allowing the Permitting Assistance Group (PAG) to become inactive without re-evaluating its continuing need or making efforts to identify additional initiatives to guide its activities. Also, by not requiring consistent data reporting from its member agencies, the Council does not allow for effective information sharing, such as identifying trends and emerging issues for effective coastal planning. Given the Council's limited purpose and lack of effectiveness, the General Land Office, which has primary administrative responsibility for the CMP, could more efficiently perform the Council's duties.

Recommendations

Change in Statute

1.1 Abolish the Coastal Coordination Council and transfer its functions to the General Land Office.

Under this recommendation, the Council would be abolished on September 1, 2011 and its functions and existing authority would be transferred to GLO. The General Land Office would be required to consult with the National Oceanic and Atmospheric Administration during the Council's one-year wind-down process to ensure continued compliance with federal requirements and to maintain federal approval of the Texas Coastal Management Program.

1.2 Require the General Land Office to establish, by rule, a Coastal Coordination Advisory Committee.

This recommendation would require GLO to establish, by rule, a Coastal Coordination Advisory Committee to comply with federal requirements for interagency coordination. Members of the Coastal Coordination Advisory Committee would include a representative from each of the current Coastal Coordination Council member agencies, and the following four members appointed by the Land Commissioner:

- a city or county elected official who resides in the coastal area;
- an owner of a business located in the coastal area who resides in the coastal area;
- a resident from the coastal area; and
- a representative of agriculture.

The following agencies would be represented on the Coastal Coordination Advisory Committee:

- General Land Office;
- Texas Commission on Environmental Quality;
- Railroad Commission of Texas;

- Texas Parks and Wildlife Department;
- Texas Department of Transportation;
- Texas Water Development Board;
- Texas State Soil and Water Conservation Board; and
- Texas Sea Grant College Program at Texas A&M University.

1.3 Require the General Land Office to evaluate the need for the Permitting Assistance Group in its current form, and statutorily authorize the General Land Office to assign it additional duties and add members if needed.

Under this recommendation, GLO would evaluate the Permitting Assistance Group's functions, membership, and usefulness. This evaluation would include soliciting input from all members of PAG and assessing any pending PAG initiatives. GLO would adopt rules to restructure PAG based on the results of the evaluation to ensure the best use of this interagency coordination mechanism. This recommendation would also allow GLO to expand the functions and add members to PAG based on its evaluation.

Management Action

1.4 The General Land Office should establish standard types of data networked agencies must include in their quarterly reports.

The General Land Office should adopt rules delineating the types of information networked agencies must provide to GLO on a regular basis, including agency actions, enforcement actions, and rulemakings. The rules should require Coastal Management Program networked agencies to submit the same types of information, as applicable, containing a similar level of detail. The General Land Office should determine this level of detail based on the kinds of information it deems most useful for evaluating coastal development impacts. For example, information requirements could include permit identification number, applicant name, and county. These requirements should take the limits of the agencies' current technological capabilities into account.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State. Costs associated with holding the two yearly Council meetings, such as travel costs, are paid using federal coastal management funds. Federal law requires these funds be spent on the Texas Coastal Management Program, so GLO would be required to use any savings for other program purposes, such as administrative costs or coastal grants.

Electric Reliability Council of Texas

Project Manager: Karl Spock

Agency at a Glance

The Electric Reliability Council of Texas (ERCOT) manages the electric grid for most of Texas, ensuring the reliable delivery of electricity by coordinating the flow of power on and off the grid. The ERCOT region in Texas accounts for 85 percent of Texas' electric consumption and 75 percent of the Texas land area. In the last 15 years, the Legislature has restructured the generation and retail sale of electricity in the ERCOT region to be competitive.

Because Texas' electric grid is not directly connected to grids in other states, ERCOT is primarily regulated by the Public Utility Commission (PUC), not federal authorities. ERCOT is managed by a Board of Directors as a nonprofit corporation and carries out the following key duties.

- Ensures reliability by directing the transmission of electricity by scheduling power through a grid that connects 550 generation units to 22 million Texans through 40,000 miles of transmission lines.
- Settles financial transactions among electric market participants using the detailed information it maintains about participants' production and consumption of electricity.
- Operates a wholesale power market to meet power needs of retail electric providers not covered through established agreements between such providers and generators.
- Records in its databases when consumers in competitive retail areas switch retail electric providers.

Summary

State law and PUC action have transformed ERCOT into a much more important participant in the Texas electric marketplace from its conception by Texas' electric utilities to manage transmission of electricity between service areas. ERCOT is the Independent System Operator in Texas' restructured electric market, a role that gives it responsibility to ensure the reliable delivery of electricity, oversee the electric grid, and operate the wholesale marketplace for electricity. ERCOT plays a large and important role in the health and safety of Texans by ensuring the reliable transmission of electricity. Since electric market restructuring and the break-up of monopoly electric companies, ERCOT has assumed the important economic role of operating key components of the wholesale electric market for much of Texas.

Because of its importance in the restructured electric market, ERCOT needs more accountability and objectivity in how it works.

Because of its importance in the lives of Texans, ERCOT needs more accountability and objectivity in how it operates. Although ERCOT derives its authority as an independent system operator from statute and is regulated by PUC, it lacks the ongoing legislative and financial oversight needed to ensure accountability for its important responsibilities. In addition, ERCOT's Board and advisory committee structure do not provide needed objectivity for conducting ERCOT's business.

Issue 1

The Electric Reliability Council of Texas Needs Better Oversight to Address High Risk in Its Operations.

In performing its job of ensuring the reliable distribution of electricity and coordinating the operation of the competitive electric market, ERCOT spent $267 million in 2010 in funds derived from statutorily permitted charges on electricity. Because of ERCOT's public purposes, PUC oversees ERCOT's collection of fee revenue.

Oversight of an entity like ERCOT needs to be scaled to the risk and public importance of its functions. However, PUC's oversight of ERCOT is incomplete, given this level of risk. PUC only reviews requests for increases in ERCOT's fee authority and does not review spending in years in which ERCOT does not request an increase. In fact, PUC has not reviewed ERCOT's budget since 2006, over which time its operating expenses have increased 62 percent. PUC also does not review ERCOT's use of debt financing, an important point given ERCOT's accumulated debt of $365 million. As a public-purpose, nonprofit corporation, ERCOT also does not receive routine legislative oversight. Although the corporation is under Sunset review this legislative cycle, the Sunset review is a one-time requirement.

Recommendations

Change in Statute

1.1 Require PUC to exercise additional oversight authority of the Electric Reliability Council of Texas by:

- annual review and approval of ERCOT's entire budget;
- prior review and approval of all uses of debt financing; and
- annual review of PUC-approved performance measures tracking ERCOT's operations.

Statute would require PUC to take an active role in reviewing ERCOT's spending by focusing on the agency's entire budget, not just requests for additional fee authority. The statute would require PUC to review and approve ERCOT's budget annually, with the explicit authority to approve, disapprove, or modify each item in ERCOT's budget. These reviews would be exempt from requirements to conduct proceedings as a contested case and PUC would be granted authority to determine the most appropriate process for allowing public participation in conducting the reviews. PUC would be granted rulemaking authority to establish reasonable dates for submission of all necessary budget documents and the necessary level of detail contained within the documents. Statute also would require PUC to review and approve each request for use of debt funding or refinancing of existing debt

Statute would require ERCOT to develop measures for tracking its performance. PUC would approve these measures and review the organization's performance as part of the budget review process. PUC

would report these measures annually to the substantive committees of the Legislature that oversee electric utility regulation, Speaker of the House, and the Lieutenant Governor.

1.2 Establish that the System Administration Fee vary according to the revenues needed to fund the budget approved by PUC, and require reporting by ERCOT to ensure that budget projections are met.

PUC would approve the appropriate level of funding for ERCOT's annual budget. ERCOT would then set the System Administration Fee, within a range set by PUC, to raise the projected amount of budgeted funds. The ERCOT Board would adjust the fee on a quarterly basis as more accurate information is known about the revenues that the fee is actually producing. To ensure that ERCOT closely matches the fee to the budget to avoid ending a year with extra or inadequate funds, ERCOT would submit quarterly reports to PUC comparing actual expenditures with budgeted amounts.

1.3 Create a Sunset clause providing for future Sunset reviews of ERCOT, concurrent with reviews of the Public Utility Commission.

This recommendation would require the Sunset Commission to review ERCOT, but would not include an automatic termination clause. Future Sunset reviews would occur in the same legislative cycle that the Commission reviews PUC. As a public-purpose, nonprofit corporation not receiving state appropriations, ERCOT would continue to pay the cost of its Sunset reviews.

Issue 2

The Dominance of Electric Market Stakeholders on the ERCOT Board Potentially Reduces its Objectivity.

The Legislature has restructured ERCOT from an industry group that managed the exchange of power among monopoly electric companies into a public-purpose agency. Today ERCOT serves as Texas' Independent System Operator, a role that gives it responsibility to ensure reliable transmission of electricity and to operate the electric market. ERCOT is governed by a 16-member Board of Directors composed of directors, a large majority of whom represent stakeholders in the electric market, as well as directors who are unaffiliated with the market, having no financial stake in its operation, as shown in the chart on the following page.

Although the Board makes critical decisions affecting Texas' $34 billion competitive electric market, industry stakeholders with direct and significant financial interests in these decisions hold eight of 15 votes (the PUC Chair is a non-voting member). ERCOT is unique as being the only transmission system operator in North America structured in this manner.

Most issues going to the ERCOT Board begin with discussions in ERCOT's Technical Advisory Committee. This committee is composed of 30 stakeholders primarily representing industry interests, and essentially guides the process for revising policies and protocols, which are requests to change the rules and procedures governing market operations. The committee's role as a frequent initiator of protocol and policy changes does not follow the advisory committee pattern typically seen in state agencies in which advisory committees assist boards that initiate policy changes and staff that develops them.

ERCOT Board of Directors

16 Total Members	Represents	Method of Selection	Term
8 Electric Market Stakeholders	Electric cooperatives	Elected by respective market segment	1 Year
	Independent generators		
	Independent power marketers		
	Investor-owned utilities		
	Municipally owned utilities		
	Retail electric providers		
	Industrial consumers		
	Large commercial consumers		
5 Unaffiliated Directors	Unaffiliated with any market segment	ERCOT Membership	3 Years
PUC Chair (non-voting)	Public Utility Commission	Ex Officio	N/A
ERCOT CEO	ERCOT	Ex Officio	N/A
Public Counsel of the Office of Public Utility Counsel	Residential and small commercial consumers	Ex Officio	N/A

Recommendations

Change in Statute

2.1 Change the makeup of the ERCOT Board of Directors to promote greater objectivity and financial expertise.

Under this recommendation, the ERCOT Board would be increased from 16 to 17 members, adding representation by unaffiliated members and changing the ex officio representation by PUC and the Office of Public Utility Counsel (OPUC). Specifically the Board structure would be changed as follows.

- Increase the number of directors unaffiliated with the electric market from five to six, and require that one of these directors have financial expertise.
- Replace the PUC Chair with a PUC-appointed unaffiliated, voting member who is either a former PUC Commissioner or another appropriate appointment selected by PUC.
- Replace the Public Utility Counsel with a voting member appointed by OPUC to represent residential and small commercial consumers.

Under this recommendation, the existing eight positions for electric market stakeholders would be retained, as would the position for the ERCOT Chief Executive Officer as an ex officio voting member.

With the change, the ERCOT Board would have seven unaffiliated members, eight electric market stakeholders, one representative of residential and small commercial consumers, and the ERCOT Chief Executive Officer. The effect of the change is to better balance the interests of the electric market stakeholders currently on the Board to improve objectivity in its decision making without sacrificing expertise.

2.2 Revise ERCOT's protocol process to have the ERCOT Board of Directors drive protocol development and revisions.

This recommendation would require the newly structured ERCOT Board to initiate new policies or revisions to policies. Staff would develop these new or revised policies for Board approval. The ERCOT Board would be charged by statute with developing a new representative advisory committee structure to provide technical support, and not drive, Board initiatives or staff work. This structure would be reflected in ERCOT bylaws and subject to PUC approval.

Fiscal Implication Summary

Issue 2 has a fiscal impact but would not result in an additional cost to the State.

- ***Issue 2*** – Requirements to add an ERCOT-appointed unaffiliated director, a PUC-appointed unaffiliated director, and a director appointed by the Public Utility Counsel would increase ERCOT costs up to $270,000 for the new directors' salaries. This cost would be borne by the System Administration Fee and not a state fund.

Commission on State Emergency Communications

Project Manager: Faye Rencher

Agency at a Glance

The mission of the Commission on State Emergency Communications (Commission) is to preserve and enhance public safety and health in Texas through reliable access to emergency telecommunications services, including 911 service, and poison prevention, treatment, and education services. The Commission's role in providing 911 service is limited to the delivery of calls to public safety answering centers and does not include the answering of the call or dispatch of emergency services. To achieve its mission, the Commission carries out the following two key activities.

- Contracts with the 24 Regional Planning Commissions (RPCs) to provide 911 service to about one-third of the population in Texas in mostly rural areas. Emergency Communications Districts and Municipal Emergency Communications Districts provide 911 service to the rest of the state.
- Administers the Texas Poison Control Network (TPCN), including funding and overseeing the activities of the State's six regional poison control centers that provide treatment information through a toll-free number to anyone suspecting a poisoning or toxic exposure.

Summary

The State's current 911 system, designed to support home-based, analog phones, is not keeping pace with evolving digital communication technologies used by the public. Today, the public expects, but is unable to reach a 911 operator by sending a text, video, or instant message. In response to these needs, a new 911 system, called Next Generation 911 (NG911), is evolving in Texas and throughout the country. In Texas, local emergency communications entities are beginning to develop and implement regional digital 911 networks, but a state-level NG911 network is needed to provide secure and reliable interconnectivity among all the networks. The Sunset Commission identified the need for the development of a state-level NG911 network, but found the Commission lacks clear authority and direction to coordinate, as well as access to the technical expertise to execute and manage the network.

The Commission lacks clear authority to coordinate the development of a statewide digital Emergency Communications System.

The Sunset Commission also considered the State's poison control network, but at the time of the review, administration of the network had not fully

transferred from the Department of State Health Services to the Commission. The Sunset Commission recognized that with the State's need for agencies to reduce costs, the transfer presented an opportunity to evaluate and determine the most cost-effective and efficient structure for the network and report these findings to the 82nd Legislature.

Issue 1

Texas Has a Continuing Need for the Commission on State Emergency Communications, Although the Commission Lacks Adequate Tools to Oversee an Evolving Emergency Communications System.

The State's 911 system provides a critical, life-saving function in times of individual crisis or major disaster. The Commission's role in the provision of 911 service is limited to rural areas of the state not covered by Emergency Communications Districts or Municipal Emergency Communications Districts. While this mix of state and local 911 service provision works well for the state, evolving digital technology necessitates the creation of a statewide, interconnected Emergency Communications System, sometimes called NG911. Although the Commission has started planning for the establishment of and transition to this System, it does not currently have the authority or the expertise available to fully implement it.

Recommendations

Change in Statute

1.1 Continue the Commission on State Emergency Communications for 12 years.

This recommendation would continue the Commission as an independent agency responsible for the provision of 911 and poison control services statewide for 12 years.

1.2 Authorize the Commission to coordinate the development and implementation, and provide ongoing management of an interconnected state-level internet protocol-based emergency communications network.

This recommendation would clarify the Commission's authority to coordinate and lead the development and implementation of a state-level internet protocol-based emergency communications network, including facilitating the migration to an internet protocol-enabled network for emergency communications and ensuring interconnectivity among the various 911 providers. The Commission's 12-member policy body, which includes representation from each of the three types of emergency communications entities in Texas, as well as ex officio representatives from the Department of Information Resources and the Public Utility Commission of Texas, would be responsible for setting policy and overseeing agency involvement in the development and implementation of the network.

1.3 Require the Commission to establish an advisory committee for the development, implementation, and management of the various aspects of the State's Next Generation Emergency Communications System.

Establishing this advisory committee in statute would ensure its continued use and operations as the State's Next Generation Emergency Communications System evolves. To ensure adequate expertise and a cross-section of stakeholders, the advisory committee would include, at a minimum,

technical representation from each of the three types of 911 entities in the state, including RPCs, Emergency Communications Districts, and Municipal Emergency Communications Districts. To ensure appropriate accountability and operations, the advisory committee would be appointed by the Commission's policy body with input from appropriate groups.

1.4 Apply the standard Sunset across-the-board requirement for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that the Commission develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. The Commission would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the Commission to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Issue 2

The Commission Lacks Clear Direction and Sufficient Measures Necessary to Evaluate and Best Structure the Texas Poison Control Network.

The Texas Poison Control Network consists of six regional poison control call centers that provide poison information to the public and healthcare professionals through a toll-free number. At the time of the Sunset review, administration of TPCN was transferring from the Department of State Health Services to the Commission on State Emergency Communications. The Sunset Commission determined the Commission lacked clear direction to evaluate and determine the most cost-effective and efficient structure for the network, and that the current key performance measures are not adequate to fully evaluate TPCN's operations.

Recommendations

Management Action

2.1 Direct the Commission to evaluate TPCN's current structure, determine any necessary changes, and report its findings to the Legislature.

Once the Commission assumes full responsibility for administration of TPCN, it should evaluate the network's structure to determine the number and location of centers that would most cost-effectively meet the State's needs, and to report its findings to the Legislature by February 7, 2011. As part of its evaluation, the Commission should seek advice and recommendations from the Poison Control Coordinating Committee since the committee members have extensive experience working with TPCN staff and host institutions, and can provide valuable expertise regarding the network's operations. The Commission should consider all costs related to restructuring TPCN, staffing needs, and regional differences across the state. The Commission should also consider the following factors when evaluating TPCN.

- The American Association of Poison Control Centers certification and accreditation requirements and staffing guidelines.

- The support and resources the host institutions provide, including indirect costs, staff training and education, and other in-kind contributions.
- Costs related to consolidating centers, such as the possible need for larger facilities to accommodate additional call takers and operational expenses the host institutions may not provide.
- Regional differences throughout the state, including available resources, and varying populations and potential hazards.
- The needs of all entities using poison center services, including corporations, emergency medical services, state universities, and state and federal agencies.
- Staffing needs for the network, including the number of, need for, and availability of qualified staff.
- Other analyses of the structure and functions of poison centers, both in Texas and throughout the country.

2.2 The Commission should maintain internal program-related performance measures for TPCN.

The Commission should work with the Poison Control Coordinating Committee to maintain performance measures that reflect key aspects of the poison centers' services. In addition to its current two key performance measures related to the network, the time the network is operational and total calls received, the Commission should maintain, at minimum, the following measures:

- call type;
- number and location of public education activities;
- number of professional education presentations; and
- number of completed research projects.

Additionally, the Commission should work with the Legislative Budget Board to ensure its key performance measures accurately reflect not only call volume, but other key aspects of TPCN.

Fiscal Implication Summary

Two of the recommendations could have a fiscal impact to the State, but the amount of the impact would depend on how the recommendations are implemented as discussed below.

- ***Issue 1*** – While the recommendations clarify the Commission's authority to coordinate the development and management of the State's Next Generation Emergency Communications System, the Commission, through its legislative appropriations request, and the Legislature, through appropriations decisions, will set the pace for actual development and implementation of the System.
- ***Issue 2*** – The State could realize cost savings if the Legislature decides to restructure the Texas Poison Control Network as a result of the Commission's evaluation results.

Texas Commission on Environmental Quality On-site Wastewater Treatment Research Council

Project Manager: Chloe Lieberknecht

Agency at a Glance

The Texas Commission on Environmental Quality (TCEQ) serves as the State's umbrella agency to regulate environmental quality. TCEQ's mission is to protect Texas' human and natural resources consistent with sustainable economic development, and its goals are clean air, clean water, and safe management of waste. TCEQ has regulatory oversight over air emissions, water use, wastewater discharges, and radioactive and solid waste disposal. To fulfill its mission, TCEQ:

- issues permits, registrations, licenses, and other authorizations to entities or individuals whose actions potentially affect Texas' environment or human health, including facilities that release contaminants into Texas' air, water, or land;
- monitors and assesses air and water in Texas, and develops plans to maintain and improve quality, in accordance with state and federal law;
- oversees the remediation of sites contaminated by toxic releases;
- ensures compliance with environmental laws and rules by inspecting regulated entities and taking enforcement action when necessary; and
- helps entities avoid polluting through technical assistance and grant programs, such as the Texas Emissions Reduction Plan.

Amid ongoing challenges, TCEQ needs additional structure and tools to better oversee Texas' environment.

Council at a Glance

In 1987, the Legislature established the On-site Wastewater Treatment Research Council (Council) to award competitive research grants to:

- improve the quality and affordability of on-site wastewater treatment systems; and
- enhance technology transfer of on-site wastewater treatment through educational courses, seminars, symposia, publications, and other forms of information dissemination.

The Council also hosts an on-site sewage conference to present its research and help educate industry participants. Although the Council receives administrative support from the Texas Commission on Environmental Quality, it operates as an independent entity and has a separate 2011 Sunset date.

Summary

TCEQ has a large, complex, and difficult job and is no stranger to controversy. TCEQ must implement state environmental law while satisfying federal requirements in all major program areas, including air, water, and waste. At the time of the Sunset review of the agency, TCEQ was facing several challenges in implementing its many programs. The most serious of these challenges involve issues with the Environmental Protection Agency's (EPA) requirements for approval of federal programs, most notably TCEQ's air permitting program. Another challenge for TCEQ is the changing landscape of the industries that affect the environment, as seen in technological advances making natural gas drilling so widespread in the urban areas of North Central Texas in developing the Barnett Shale.

Amid these ongoing and substantial challenges to overseeing Texas' environment, the Sunset Commission's recommendations for TCEQ put structures in place to focus the agency on more effectively performing its core duties. The recommendations seek to ensure TCEQ has a more robust and focused public assistance function, can effectively identify and take action against regulated entities as appropriate, be better able to address water quantity issues as they become increasingly critical to the State, and has proper funding mechanisms to meet its regulatory responsibilities and be compliant with federal law.

The On-site Wastewater Treatment Research Council, which was subject to a separate Sunset review, receives administrative support from TCEQ and issues research grants for improving on-site wastewater treatment processes. While the Sunset Commission found that Texas can still benefit from the grants the Council gives, it did not find a continuing need for an independent structure to do so. The following material summarizes the Sunset Commission's recommendations on TCEQ and the Council.

Issue 1

Texas Has a Continuing Need for the Texas Commission on Environmental Quality.

The State needs regulation to protect Texas' environment. Texas' citizens and the economy benefit from having a state agency working to protect air and water quality, manage water quantity, ensure proper disposal of waste, and clean up contaminated sites. Moreover, although the federal government requires states to regulate the environment according to federal standards, Texas' state-specific approach to regulation – through TCEQ – allows it to tailor its efforts to the State's specific circumstances. The Sunset Commission examined whether structural changes could help focus TCEQ's work.

Recommendations

Change in Statute

1.1 Continue the Texas Commission on Environmental Quality for 12 years.

This recommendation would continue TCEQ for the standard 12-year period.

1.2 Transfer the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission.

This recommendation would remove the existing fee provision in TCEQ's statute regarding surface casing recommendations required for certain permits from the Railroad Commission. Instead, it would add language to the Railroad Commission's statute to provide clear authority to determine the depth of surface casing needed during the drilling of certain oil and gas wells to protect usable groundwater in the State. In addition to this basic authority, the provision would provide for the same expedited letter process at the Railroad Commission as currently exists at TCEQ, subject to the same expedited letter fee not to exceed $75. The recommendation would also give the Railroad Commission the authority to set a fee in rule to recover the cost of processing non-expedited letters. As part of this recommendation, responsibility for digitizing drilling well maps would also transfer from TCEQ to the Railroad Commission with clear authority added to the Railroad Commission's statute for this activity.

1.3 Apply the standard Sunset across-the-board requirement for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that the Commission continues to have a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the agency largely already has processes for this alternative approach to solving problems, this change would not require additional staffing or other expenses.

Management Action

1.4 Direct TCEQ to amend its mission statement to include the concept of protecting public health.

This recommendation would direct TCEQ to amend its mission statement to read: "The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." In effect, this change would replace the language in the agency's current mission statement relating to protecting the state's "human resources" with protecting the "public health."

Issue 2

TCEQ's Public Assistance Efforts Lack Coordination and Focus.

TCEQ's public assistance functions occur among several different agency programs with overlapping duties and without specific statutory direction, contributing to a lack of focus and prioritization. In addition, having the Office of Public Interest Counsel (OPIC) involved in providing assistance to individual members of the public dilutes its primary duty to represent the public interest in proceedings before the Commission and can put it in potentially conflicting positions. OPIC also has little guidance in determining what the public interest is in deciding whether to participate in a contested or rulemaking matter.

Recommendations

Change in Statute

2.1 Charge the Executive Director with providing assistance and education to the public on environmental matters under the agency's jurisdiction.

This recommendation would shift OPIC's current statutory charge regarding responsiveness to environmental and citizen's concerns, including environmental quality and consumer protection, to the Executive Director. Statutorily, these duties would be expanded to include a requirement that the Executive Director assist and educate the public on environmental matters under TCEQ's jurisdiction.

TCEQ would assess the public assistance functions that currently exist within the Office of Public Assistance, OPIC, and other programs within the agency, and reorganize as appropriate. However, any coordinated effort would include initiatives related to all of the agency's responsibilities, not just to matters before the Commission. The agency would, at a minimum, create a structure to provide the public a centralized access point to the agency, and to ensure that the agency is able to strategically assess the public's concerns, and respond as necessary. Any centralized assistance program would not prevent public assistance from continuing to occur throughout agency programs, such as regional offices or specific programs, as is currently the case. This centralized effort also would not include that agency's process for investigating environmental complaints, which is appropriately centralized in the Office of Compliance and Enforcement.

2.2 Focus OPIC's efforts on representing the public interest in matters before the Commission.

In conjunction with Recommendation 2.1, this recommendation would focus OPIC on its primary duty to represent the public interest in matters before the Commission. OPIC would focus on the public interest in contested permitting matters, rulemakings, and enforcement proceedings as necessary.

To resolve any potential conflicts, OPIC's other assistance functions would transfer to the agency's new public assistance program. In addition, OPIC would no longer assist regulated respondents through the agency's enforcement proceedings. As the program within the agency charged with assisting small businesses and regulated entities with achieving compliance, the Small Business and Environmental Assistance program could serve as a resource for a regulated entity, of any size, that needs assistance in enforcement proceedings.

2.3 Require the Commission to generally define, by rule, factors OPIC will consider in representing the public interest and establish OPIC's priorities in case involvement.

Under this recommendation, the Commission would adopt rules to outline the factors OPIC should consider in determining whether it should participate as a party representing the public interest in proceedings before the Commission. The rules would include, but not be limited to, factors to be considered in determining the public interest in a case, as well as any other considerations OPIC must assess to prioritize its workload. Recognizing the need for flexibility and that the public interest may change depending on the facts of an individual case, this recommendation is not intended to specifically define the public interest, but rather to identify the factors OPIC must use in determining what the public interest is on a case-by-case basis. OPIC would make recommendations to the Commission in developing the rules.

2.4 Require OPIC to annually report to the Commission on the Office's performance, budget needs, and legislative and regulatory recommendations.

This recommendation would require OPIC to formally report to the Commission, as a public meeting agenda item, the Office's performance in representing the public interest, its budget needs, and any legislative and regulatory recommendations. This information should be included in the Commission's annual report. OPIC should work with the Commission to identify internal performance measures to best assess the Office's effectiveness. In addition, OPIC should assess its budget needs, including the need to contract for outside expertise, as currently authorized by statute, for the Commission's consideration in TCEQ's biennial Legislative Appropriations Request. Finally, this annual report should also include OPIC's legislative and regulatory recommendations, as it is currently statutorily authorized to make, which TCEQ would include in its statutorily required biennial report to the Legislature.

Management Action

2.5 Direct TCEQ, in pursuing changes to its website, to provide easy access to information on agency policy and environmental regulatory efforts in plain language.

In pursuing changes to its website as part of implementing its Information Strategic Plan, TCEQ should incorporate comments and information received from public stakeholders, agency staff, and other state agency websites to develop an approach that quickly delivers current and useable information. The agency should also consider ways to better communicate the policies the Commission uses to make its decisions, including referencing its policies on its website and providing a searchable docket system. Recognizing that these efforts can take significant resources, this recommendation intends to minimize costs by encouraging TCEQ to continue to improve information access as it moves forward in upgrading its information technology in the future.

Issue 3

TCEQ's Approach to Compliance History Fails to Accurately Measure Entities' Performance, Negating Its Use as an Effective Regulatory Tool.

As part of the agency's last Sunset review, the Legislature created a structure for TCEQ to measure regulated entities' compliance history, to use in tailoring permitting and enforcement decisions and determining eligibility for voluntary incentive programs. As part of these provisions, statute requires TCEQ to develop a uniform standard to evaluate compliance history. Nine years later, the agency has implemented a system in which it uses an identical, objective formula in classifying all entities' compliance history performance.

However, this rigid, one-size-fits-all approach has resulted in a system that does not accurately measure performance, stripping compliance history classifications of meaning. Without a good, working standard that can truly identify good and bad actors, TCEQ cannot use compliance history to effectively target regulation.

Recommendations

Change in Statute

3.1 Remove the uniform standard from statute and require the Commission to develop a compliance history method to be applied consistently.

This recommendation would replace the uniform standard requirement in statute with authority for TCEQ to develop a method for evaluating compliance history. Under the recommendation, TCEQ would apply this method consistently in its decisions on permitting, enforcement, and voluntary incentive programs. In implementing consistency, TCEQ would not be required to compare all entities using the same standard, but could tailor the method to differentiate by type of entity and make comparisons among similar type entities, as statute allows. Under this recommendation, TCEQ would maintain the existing compliance history system until the transition to the new method is complete.

3.2 Remove the requirement to assess the compliance history of entities for which TCEQ does not have adequate compliance information.

This recommendation would remove the requirement to classify entities with no compliance information to evaluate. The agency would also eliminate the average-by-default classification, but as statute specifies now, could require a compliance inspection to determine eligibility for programs that require a high level of performance.

3.3 Expand the statutory components to allow TCEQ to consider other factors in evaluating compliance history.

This recommendation would expand the factors TCEQ may use in determining compliance history to include, but not be limited to, positive compliance factors, complexity, and enforcement orders without punitive sanctions. In considering what other factors to consider in compliance history calculations, and how they will affect entities' overall scores, TCEQ would be required to adopt its approach in its compliance history rules.

The recommendation would specifically provide for the agency to consider positive indicators that affect compliance history, such as voluntary efforts to do more than the law requires. In conjunction with Recommendation 3.1, expanding the list of components to include complexity would allow TCEQ the flexibility to evaluate compliance history based on relative performance among similar type facilities, rather than on one standard formula for all entities. In determining how to account for complexity, TCEQ could consider entities' regulatory requirements and the severity of potential violations.

In addition, TCEQ would be authorized to differentiate between enforcement orders with punitive sanctions, and those without. Punitive sanctions would include penalties, shutdown orders, and other punitive emergency orders entered into by the Commission. By allowing TCEQ to differentiate among the type of enforcement orders, the agency would be able to use its current statutory authority to enter into enforcement orders requiring more meaningful corrective action than punitive sanctions, without having those enforcement orders penalize the respondents' compliance history score.

Management Action

3.4 Direct TCEQ to revise its rules on compliance history.

This recommendation directs TCEQ to develop a new compliance history method by rule and make necessary changes to the current points system and formula. TCEQ should redefine the poor, average, and high classifications in such a way as to be responsive to changes in entities' actual performance.

TCEQ should continue to assess compliance history annually. Also, TCEQ would be directed to reassess the effectiveness of the compliance history method on a regular basis, and within the parameters of statute, make changes to the rules as appropriate.

Issue 4

TCEQ's Enforcement Process Lacks Public Visibility and Statutory Authority.

TCEQ takes enforcement actions against those who violate federal or state environmental laws and rules to sanction violators and deter future noncompliance. However, many of TCEQ's enforcement policies, including how it assesses penalties, are unclear, limiting the enforcement program's transparency, a key characteristic of an enforcement program that affects such diverse and important violations as those under TCEQ's jurisdiction. Moreover, statutory limits on the agency's administrative penalty amounts and restrictions on the use of Supplemental Environmental Projects prevent TCEQ from taking effective enforcement action, and appropriately sanctioning the most severe environmental violations.

Recommendations

Change in Statute

4.1 Require the Commission to structure its general enforcement policy in rule and publicly adopt its resulting enforcement policies.

Under this recommendation, the Commission would lay out its approach to enforcement and adopt it in rule. TCEQ's enforcement program involves many different, detailed operational policies that interact together, ranging from its enforcement initiation criteria to its penalty policy. Recognizing these many facets, and TCEQ's need to be able to adjust policies as needed, this recommendation would require the Commission to adopt its enforcement policies in rule, but not the actual penalty methodology. Instead, the recommendation would require the Commission to regularly assess, update, and adopt its enforcement policies, including its penalty policy. In doing so, the Commission would make the updated policies public, including putting them on its website, so people can easily understand how the agency calculates assessed penalties.

In adopting these rules and policies, the Commission would consider and make clear its approach to and use of its statutory enforcement tools including, but not limited to, its approach to speciation and economic benefit in calculating penalties, as well as when it will use some of its other tools, such as emergency shut-down authority.

4.2 Increase TCEQ's administrative penalty caps.

This recommendation would increase 20 of TCEQ's administrative penalty caps to match the cap levels in statute for civil penalties for the individual programs. The table on the following page, *Recommended Penalty Cap Level*, shows what each of the new penalty caps would be under this recommendation. For the sake of consistency, this recommendation would increase the penalty for violations of the used oil filter program to the same level as violations of the used oil program, despite its lower statutory civil penalty cap.

Recommended Penalty Cap Level

Program Violation	Recommended Cap	Program Violation	Recommended Cap
Air Quality	$50 – $25,000	Underground Water	$50 – $25,000
Edwards Aquifer	$50 – $25,000	Waste Tires	$50 – $25,000
Industrial and Hazardous Waste	$50 – $25,000	Water Quality	$50 – $25,000
Land over Municipal Solid Waste Landfills	$50 – $25,000	Occupational Licenses	$50 – $5,000
Medical Waste	$50 – $25,000	On-Site Sewage Disposal	$50 – $5,000
Municipal Solid Waste	$50 – $25,000	Used Oil	$50 – $5,000
Petroleum Storage Tanks	$50 – $25,000	Used Oil Filter	$50 – $5,000
Radioactive Substances	$50 – $25,000	Water Saving Performance Standards	$50 – $5,000
Subsurface Excavation	$50 – $25,000	Weather Modification	$50 – $5,000
Toxic Chemical Release Reporting	$50 – $25,000	Public Water Utilities	$100 – $5,000
Underground Injection Control	$50 – $25,000		

4.3 Authorize TCEQ to consider Supplemental Environmental Projects for local governments that would improve the environment.

This recommendation would remove statutory provisions that prohibit TCEQ from approving Supplemental Environmental Projects (SEPs) that will bring a facility into compliance with law or remediate harm from violations. These statutory prohibitions would only be removed for local governments, which have limited resources and can put penalty dollars to better use in correcting the potential or actual environmental harm resulting from violations. In implementing this change, TCEQ would formulate a policy to clearly define when it would allow the use of SEPs for this purpose, to prevent regulated entities from systematically avoiding compliance. This policy would include an assessment of the entity's financial ability to pay administrative penalties and the ability to come into compliance or remediate harm, and the need for corrective action.

Issue 5

TCEQ Does Not Have the Tools Necessary to Effectively Protect Surface Water Availability During Drought or Emergency Conditions.

Texas' population is projected to more than double by 2060 and water demand is expected to increase by 27 percent – making TCEQ's responsibility to manage state surface water quantity a key duty in coming years. TCEQ issues and enforces water rights permits, which are generally allocated by the "first in time, first in right" doctrine, creating senior and junior rights. Although statute is clear about TCEQ's authority to manage water rights, the law is less clear about circumstances in which TCEQ can actively curtail the right to divert state water to protect senior rights and ensure adequate water supplies are available during water shortages and emergencies.

In addition, while statute provides TCEQ with other water management tools, such as requiring water use data recordkeeping by water rights holders, the law stops short of allowing TCEQ to meaningfully

use this tool before requiring more drastic and disruptive restrictions that come with severe droughts or other emergencies. Statute also gives the agency authority to create waterwaster programs for managing water rights in river basins. The agency, however, has not regularly assessed the need for such programs, which could benefit additional river basins that may be susceptible to water shortages.

Recommendations

Change in Statute

5.1 Clarify the Executive Director's authority to curtail water use in water shortages and times of drought.

This recommendation would clarify that, only during a water shortage or other emergency, the Executive Director may curtail a water right holder's water use or otherwise allocate water to maximize the beneficial use of state water. In allocating state water during an emergency, the Executive Director would minimize impacts to water rights holders and prevent waste or use in excess of a water right holder's permitted water amount. Under the recommendation, TCEQ would be required to adopt rules outlining how it will use the Executive Director's authority to curtail water usage during a water shortage, including criteria that would trigger curtailment.

5.2 Require water rights holders to maintain monthly water-use information and allow the Commission to access that information upon request.

This recommendation would require water rights permit holders to maintain water-use data on at least a monthly basis, and to make that information available to TCEQ staff upon request. Under the recommendation, water rights holders would not be required to submit monthly water-use reports to TCEQ, but only to maintain the information for the months that the water rights holder actually uses water under the permit. TCEQ would be able to request this information as needed in drought or other emergencies, but the water rights holder would not be required to regularly submit it any more frequently than annually, as is currently required by statute.

5.3 Require TCEQ to evaluate the need for additional watermaster programs.

This recommendation would require TCEQ's Executive Director to assess whether a watermaster program is needed in river basins not in a program and report findings and recommendations to the Commission. TCEQ would determine criteria or risk factors to be used in its evaluation, such as past or potential senior calls on water rights, potential water shortages, water needs, or whether all water is fully appropriated in the basin. Because water needs and planning will continue to shift, TCEQ would be required to evaluate the need for additional watermaster programs at least once every five years. TCEQ would include the Commission's findings relating to this evaluation in its subsequent biennial report to the Legislature.

Issue 6

Gaps in Petroleum Storage Tank Regulation and Remediation Fee Expiration Threaten the State's Ability to Clean Up Contaminated Sites.

Leaking underground petroleum storage tanks (PSTs) are the biggest source of groundwater contamination in the state. TCEQ regulates and remediates PSTs, holding owners and operators responsible for proper installation and financial assurance, overseeing the cleanup of contaminated

sites, and administering the PST remediation trust fund to clean up PST sites in situations in which the owner or operator cannot be found or is unwilling or unable to pay.

Statutory gaps result in TCEQ's inability to hold common carriers of fuel responsible for delivering fuel to an uncertified tank, threatening TCEQ's federally delegated authority over PSTs. Compounding this problem, the fee that funds the State's remediation fund is set to expire in 2011, before TCEQ has completed its work in remediating sites statutorily eligible under the program. Finally, although statute provides a structure for TCEQ to remediate sites in which contamination has already occurred, TCEQ is limited in its ability to effectively act to prevent contamination from PST sites it identifies as non-compliant and potentially harmful.

Recommendations

Change in Statute

6.1 Prohibit delivery of certain petroleum products to uncertified tanks and provide for administrative penalties.

Under this recommendation, common fuel carriers would be prohibited from delivering to uncertified underground tanks, according to the requirements of federal law. TCEQ would be authorized to enforce this law and impose administrative penalties against violations, with penalties deposited into General Revenue. The recommendation would require TCEQ to adopt rules as necessary to implement and enforce this prohibition.

6.2 Reauthorize the PST remediation fee, change the current fee levels to caps, and authorize the Commission to set fees in rule.

This recommendation would remove the expiration date for the PST fee from statute and change the current fixed fee levels to caps. The recommendation would require TCEQ to set the fee levels by rule, up to the cap in statute, at a level necessary to cover PST regulation and remediation costs as appropriated by the Legislature. In setting the fee in rule, the recommendation requires TCEQ to reduce the fee levels as appropriate to cover the costs of the program as appropriated by the Legislature, and as the cost of the PST program declines over time.

6.3 Expand use of the remediation fee to allow TCEQ to remove non-compliant PSTs that pose a contamination risk.

This recommendation would allow the use of PST remediation funds to remove non-compliant, out-of-service PSTs when the owner is financially unable. The recommendation would require TCEQ to put protections in place to prevent PST owners from abusing the system in ways that would force the State to pay for PST remediation when the owner should be responsible. TCEQ would assess the potential risk of contamination from the identified site and require owners wanting to participate to prove financial inability to pay.

Issue 7

TCEQ Lacks Guidance on How to Fund the Texas Low-Level Radioactive Waste Disposal Compact Commission.

TCEQ is involved in funding the Low-Level Radioactive Waste Disposal Compact Commission, which is a separate legal entity from the State. The Compact Commission is responsible for establishing the

volume of compact waste to be disposed of in the low-level radioactive waste compact facility licensed by TCEQ to be built in Andrews County. Once this disposal facility is operating, as is expected within the next biennium, statute provides that the Compact Commission is funded by a portion of a disposal fee, to be adopted by TCEQ rule.

However, statute does not specify how this funding will flow to the Compact Commission. Since Texas ultimately holds the liability for compact waste brought into the state, the Compact Commission's decisions related to the volume of waste to be accepted into the compact site will be important to the State's long-term environmental and financial health. Given the ambiguity of TCEQ's and the Compact Commission's current funding arrangement and statute, time is ripe for the Legislature to consider how the funding mechanism between the State and the Compact Commission will be structured.

Recommendation

Change in Statute

7.1 Clarify the Compact Commission's funding mechanism.

Under this recommendation, revenue allocated by TCEQ's rule-based compact waste disposal fee to the Compact Commission's operation would be remitted to a newly created General Revenue dedicated account. The dedicated fund would receive only the portion of the compact waste disposal fee allocated to cover the costs of the Compact Commission's operations from the licensed disposal facility, as defined by TCEQ's adopted rule. The Legislature would then appropriate funds to the Compact Commission from this account through the Compact Commission's rider in TCEQ's appropriations pattern. Since state and federal law both provide that this allocation go toward reasonably supporting the operations of the Compact Commission, this recommendation would provide that the funds deposited into this new account only be used for that purpose.

This recommendation does not intend to make the Compact Commission a state agency, and it does not provide for full-time equivalent positions for the Compact Commission in TCEQ's appropriations. Rather, legislative appropriations would be made in either a lump sum or up to a limit, and the Compact Commission would have control over expenditures according to its adopted budget. The Compact Commission would continue to submit funding requests to the Legislature through TCEQ's Legislative Appropriations Request. However, moving forward, TCEQ would simply transfer the money to the Compact Commission, and not be in the position of overseeing or controlling reimbursements.

Issue 8

The State Could Benefit From Combining Regulatory Functions Related to Water Utilities in the Public Utility Commission.

While TCEQ's regulation of water and wastewater utilities is working in its current structure, the Sunset Commission found that significant opportunities could be realized from realigning the regulation of these utilities at the Public Utility Commission (PUC). Such a change would offer benefits from PUC's expertise in utility regulation and allow TCEQ to focus on its core mission of environmental regulation. Additional opportunities exist for improving consumer assistance and funding utility regulation at PUC.

Recommendations

Change in Statute

8.1 Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC.

This recommendation would transfer TCEQ's existing authority for water and wastewater utilities regarding retail, wholesale, and submetering rates; Certificates of Convenience and Necessity (CCNs); reporting requirements; and consumer assistance and complaints to PUC. TCEQ would continue to have responsibility for ensuring that utilities meet drinking water standards, sewage treatment requirements, and review of investor-owned utilities' Drought Contingency Plans.

Regarding rates, PUC would assume the same original and appellate jurisdiction as it currently exists at TCEQ to ensure that retail public utility rates, operations, and services are just and reasonable. To administer these regulations, PUC would have the same reporting requirements as TCEQ for these utilities, including annual service and financial reports and tariff filings, as well as information about affiliate interests. PUC would have responsibility for providing consumer assistance and resolving complaints regarding regulated water and wastewater services.

This recommendation would provide for the transfer to be completed by March 1, 2012, and for planning and coordination to occur between TCEQ and PUC to implement the transfer. A transition team would be established with high-level employees of both agencies to develop plans regarding the transfer to PUC of obligations, property, personnel, powers, and duties for water and wastewater utility functions and sharing of records and information. The recommendation would also require the agencies to develop memoranda of understanding, as needed, to implement the plans developed by the transition team. Statute would require the memoranda to be completed by February 1, 2012.

The transition team would develop ways to coordinate on areas of interrelated responsibilities between the two agencies, especially regarding meeting federal drinking water standards and maintaining adequate supplies of water; meeting established design criteria for wastewater treatment plants; demonstrating the economical feasibility of regionalization; and serving the needs of economically distressed areas. Ongoing efforts would also be needed to coordinate responsibilities for service standards and the sharing of information and utility data between the two agencies.

PUC would have responsibility for ensuring accuracy of meters, instruments, and equipment for measuring the utility service. TCEQ would need to maintain responsibility for quantity, quality, pressure and other conditions relating to the supply of the service. TCEQ should also continue to have the authority to appoint temporary managers for abandoned water and wastewater utilities under its responsibility to ensure adequate capacity of public water systems, but should coordinate with PUC regarding the financial aspects of these appointments. Emergency operations would need to be shared by both PUC and TCEQ to ensure adequate utility oversight and maintenance of drinking water and wastewater discharge requirements, and emergency and temporary rates for nonfunctioning systems.

8.2 Eliminate the existing water and wastewater utility application fees and adjust the Water Utility Regulatory Assessment Fee to pay for utility regulation at PUC.

Under this recommendation, filing fees that currently reside at TCEQ for applications for rate changes, CCNs, and the sale, transfer, or merger of a CCN would be repealed. These fees cannot adequately cover the costs associated with these regulatory actions, and statute provides that the Utility Regulatory Assessment Fee cover regulatory costs associated with utilities and districts. To ensure the fee covers all regulatory costs, the recommendation would equalize the 0.5 percent customer assessment for

nonprofit utilities and utility districts at 1 percent – the same level as for public utilities. The increased revenue would cover the cost of utility rate regulation at PUC while also paying TCEQ's ongoing costs associated with its water resource management responsibilities.

The recommendation would provide for the Legislature to appropriate revenues from the Utility Regulatory Assessment Fee collections to PUC to cover its costs for the transferred utility regulations. The Legislature would make these appropriations from the Water Resource Management Account, but only from the amounts collected from the utility regulatory assessment. Statute would continue to require TCEQ to collect the fee from water utilities. Under this recommendation, TCEQ would be required to remit funding for utility regulation to PUC, based on the level of the legislative appropriation. The transfer of funds could occur by interagency contract, and TCEQ would not be responsible for PUC's use of the funds. The recommendation would not change the existing mechanism for TCEQ to collect the fee from water and wastewater utilities, providing an administrative efficiency that could be jeopardized if another fee or collection process were established.

8.3 Require the Office of Public Utility Counsel to represent residential and small commercial interests relating to water and wastewater utilities.

This recommendation would expand the role of the Office of Public Utility Counsel to represent the interests of residential and small commercial consumers in water and wastewater utilities matters. Under this recommendation, the Office of Public Interest Counsel at TCEQ would not be involved in water and wastewater utility matters at PUC.

8.4 Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority to determine opportunities for standardization.

This recommendation would require PUC to make a comparative analysis of its own authority and new water and wastewater ratemaking or other authority transferred to it from TCEQ. PUC would report to the Legislature any recommendations about opportunities to standardize these ratemaking requirements in time for consideration in the 2013 legislative session.

8.5 Require PUC to analyze the staffing requirements and report potential changes in staffing needs to the Legislative Budget Board and the Governor's budget office.

This recommendation would require a report to the Legislative Budget Board and the Governor's budget office at the same time PUC submits its Legislative Appropriations Request for the 2014-2015 biennium. The report should detail any staffing changes, including reductions that the agency recommends related to savings from consolidated functions. This recommendation gives PUC the opportunity to gain first-hand knowledge about water and wastewater utility regulation and the staffing required to meet program needs.

8.6 Require the regulatory agency overseeing water and wastewater utility rates to provide certain information about rate cases to rate payers.

This recommendation would require the regulatory agency with jurisdiction over water and wastewater utility rates to provide electronic copies, when available, of water rate cases obtained from the utility, and make them available at a reasonable cost to rate payers. This recommendation would be effective whether or not the Legislature ultimately decides to transfer water and wastewater utility regulation to PUC as envisioned in the recommendations above. If utility regulation were to remain at TCEQ, then TCEQ would be responsible for providing this information.

Issue 9

TCEQ's Dam Safety Program Focuses Too Much Effort and Resources on Oversight of Low-hazard Dams.

State law requires TCEQ to provide for the safe construction, maintenance, repair, and removal of dams. To do this, TCEQ has created a regulatory system in rule that classifies dams as low-, significant-, or high-hazard, which are measures of the potential for loss of life, property damage, or economic impact in the area downstream of the dam in the event of a failure. By definition, dams that are classified as low-hazard are dams in which no loss of life and minimal economic loss is expected in the event of failure, while dams that are classified as significant- or high-hazard have a greater impact on public safety or the economy. However, TCEQ requires low-hazard dams to adhere to regulatory requirements even though they pose little threat. Focusing TCEQ's regulation of dam safety on dams that have hazard level of significant and high, which are the dams that are of public safety concern, and whose failure could result in loss of life, would provide a more strategic approach to dam regulation.

Recommendations

Change in Statute

9.1 Provide that in implementing its dam safety regulations, TCEQ focus its efforts on the most hazardous dams in the state.

This recommendation would instruct TCEQ, in implementing its statutory duty to regulate dams, to focus its regulatory efforts on the most hazardous dams in the state, which pose public safety and economic threats. This recommendation would not remove dams that are classified as low-hazard from TCEQ's jurisdiction, rather it would focus the agency's efforts on the more significant dams.

Management Action

9.2 Direct TCEQ to exempt dams that are classified as low-hazard by TCEQ from adhering to TCEQ's hydrologic and hydraulic criteria.

This recommendation instructs TCEQ to exempt dams that it has classified as low-hazard from adhering to technical requirements as laid out in current TCEQ rule. This recommendation would not affect the technical criteria significant- or high-hazard dams are required to meet. The recommendation would not prevent TCEQ from reclassifying dams' hazard levels if necessary and requiring dams that were previously classified as low-hazard to meet technical criteria if they have been reclassified.

Issue 10

TCEQ Commission Members May Create an Appearance of Conflict if They Run for Elected Office While Sitting on the Commission.

The Texas Commission on Environmental Quality comprises three full-time Governor-appointed Commission members, who serve staggered, six-year terms. The Commission sets policy and adopts rules for the agency; and makes final decisions on permitting, enforcement, and other regulatory matters. Currently, if members of the Commission were to decide to run for elected offices, they would be able to maintain their position on the Commission. This would enable the member to make regulatory decisions related to Texas industry, and accept campaign contributions from persons with an interest in these decisions at the same time, creating the appearance of conflict.

Recommendation

Change in Statute

10.1 Require appointed officials serving as a member of the Texas Commission on Environmental Quality to resign from office before accepting any campaign contributions if running for elected office.

This recommendation would require a member of the Texas Commission on Environmental Quality running for elected office to resign from office before accepting any campaign contributions.

Issue 11

Texas Does Not Need a Separate, Stand-Alone Council to Fund On-site Sewage Research.

The On-site Wastewater Treatment Research Council is an independent entity, with a separate Sunset date of 2011, that provides grants for on-site sewage research in Texas. The State continues to benefit from this research and the Council has provided a valuable service to Texas in volunteering its time and expertise to guide the grant process.

However, the Council, without a staff of its own, already receives all of its administrative support from TCEQ through interagency contract. TCEQ administers other, similar, grant programs, with structures in place to assume this grant program with appropriate stakeholder input. Given this, the Sunset Commission did not find a continuing need to have an independent entity to administer this relatively small grant program.

Recommendations

Change in Statute

11.1 Abolish the On-site Wastewater Treatment Research Council and transfer authority to award grants for on-site sewage research to the Texas Commission on Environmental Quality.

This recommendation would remove the On-site Wastewater Treatment Research Council and its Sunset date from statute, and transfer its grantmaking functions to TCEQ. The statute would authorize the Commission to administer and award grants for the same purposes currently allowed under the Council, and assume all existing Council grants, contracts, and projects. TCEQ would choose research topics, request and evaluate applications, and approve grant awards. To maintain the expertise currently provided by the Council, this recommendation would require TCEQ to seek input from stakeholder experts when choosing research topics, awarding grants, and holding the conference. The recommendation would move the Council's future fee revenue from undedicated general revenue to the Water Resource Management Account, a dedicated account within general revenue, to be appropriated by the Legislature. This would allow funding for the grant program to come out of the same account as TCEQ's other water quality programs, ensuring consistency and clarity in how the agency funds this function.

Management Action

11.2 Direct TCEQ to evaluate the benefits of on-site sewage research and clearly communicate them to the public.

This recommendation directs TCEQ to conduct evaluations of past or current projects routinely to determine if the results of that research have been useful to the public and the State's on-site sewage industry. The agency should also write brief descriptions of the purpose and potential benefits of the research projects it funds and post this and other information about the program on its website.

11.3 Direct TCEQ to form a working group to consider stakeholder input when issuing grants.

Under this recommendation, TCEQ should form a working group that would be active when the agency is performing this grantmaking function and needs technical expertise on the subject of on-site sewage facilities. The working group should be composed of a diverse group of stakeholders representing different geographical areas and technical expertise.

Fiscal Implication Summary

These recommendations will result in an overall revenue gain to the State of approximately $35 million annually. Specifically, they result in a gain to general revenue of about $560,000 per year, a gain to General Revenue Dedicated Account 153 – Water Resource Management Account – of about $5.6 million per year, and a gain to General Revenue Dedicated Account 655 – the Petroleum Storage Tank Remediation Account – of about $29 million per year. Other recommendations increase fee revenue or transfer funds, but will ultimately result in no net fiscal impact, based on expected appropriations to cover operational costs contemplated in the recommendations. The overall fiscal impact of these recommendations are summarized below.

- ***Issue 1*** – The recommendation to transfer responsibility for groundwater protection recommendations for oil and gas drilling from TCEQ to the Railroad Commission would require the transfer of approximately $765,000 to the Railroad Commission to cover the costs of making these recommendations and to pay for the digital mapping project. In addition, nine full-time equivalent employees would need to transfer from TCEQ to the Railroad Commission.

- ***Issue 4*** – The recommendations regarding TCEQ enforcement tools will likely result in a small revenue gain to the State, but a precise estimate cannot be determined. While the recommendation to increase administrative penalty caps could increase penalties assessed and deposited into General Revenue, the amount would depend on specific violations and actual enforcement orders, which fluctuate from year to year and could not be estimated. The recommendation to allow TCEQ to approve Supplemental Environmental Projects for local governments to correct or remediate environmental harm may result in fewer administrative penalties deposited into General Revenue, but this reduction would be minimal.

- ***Issue 6*** – Overall, these recommendations pertaining to Petroleum Storage Tank regulations would have a positive fiscal impact to the State. Reinstating common carrier liability would add an estimated $560,000 annually to General Revenue from administrative penalties for violating the law. Extending the PST remediation fee would add an estimated $28.8 million to the PST

Remediation Fund in fiscal year 2012, up to $29.5 million in fiscal year 2016, assuming the fees were charged at the current statutory caps. This change would prevent the Legislature from having to deplete the current fund balance of $140 million.

- ***Issue 8*** – The recommendation transferring regulation of water and wastewater utilities from TCEQ to PUC would require the transfer of about $1.5 million and 20 employees from TCEQ to PUC to conduct rate and CCN regulation and to provide needed consumer assistance. To cover these costs at PUC without relying on general revenue funding, a separate recommendation provides for equalizing the utility regulatory assessment for water supply corporations and districts at 1 percent. Beyond covering the costs of utility regulation at both TCEQ and PUC, ensuring all water and wastewater utilities pay the same assessment rate would increase revenue by about $5.6 million annually.

  The recommendation to transfer responsibility for representing consumer interests in water and wastewater utility matters from OPIC to OPUC would require the transfer of one employee and approximately $81,000.

- ***Issue 11*** – This recommendation would not have a fiscal impact to the State, but assumes that TCEQ would receive the current level of appropriations of $330,000 annually for on-site sewage research, and would use a portion of appropriations for administrative costs as is current practice.

Fiscal Year	Gain to the General Revenue Fund	Gain to General Revenue Dedicated – Water Resource Management Account No. 153	Gain to General Revenue Dedicated – PST Remediation Fund No. 655
2012	$560,000	$5,600,000	$28,827,000
2013	$560,000	$5,600,000	$28,975,000
2014	$560,000	$5,600,000	$29,152,000
2015	$560,000	$5,600,000	$29,310,000
2016	$560,000	$5,600,000	$29,486,000

Texas Forest Service

Project Manager: Amy Trost

Agency at a Glance

Created in 1915 as part of the Texas A&M University System, the Texas Forest Service (TFS) assists landowners and communities with the management and protection of forests and trees. Originally focusing on the forests of East Texas, TFS has established a statewide presence over the last 20 years. TFS' mission is to ensure the State's forests, trees, and related resources are sustained for the benefit of all. To accomplish this mission TFS carries out the following activities:

- offers technical assistance and grants to landowners and communities to help with sustainable forestry practices and to ensure the overall health of forests and trees;
- provides personnel and grant funding to help volunteer firefighters suppress wildland fires and fires occurring where communities interface with wildlands; and
- responds to incidents such as hurricanes and floods and trains teams of local emergency response staff.

Summary

The demands and expectations placed on the Texas Forest Service have grown enormously since its establishment within the Texas A&M University System almost 100 years ago. The agency has always been responsible for forest resource management and wildland firefighting, but possible duplication of many of the agency's forestry activities with other agencies raises questions about the need for these forestry activities, at least under the current organizational structure. Also, in the last 20 years TFS has been directed to perform its duties statewide, not just in East Texas. The additional duty of responding to other disasters such as hurricanes and floods has tested the agency's ability to continue delivering high quality services with its relatively small staff. While some variation in service delivery makes sense given the diversity of the Texas landscape from East Texas pine plantations to West Texas ranchland, the agency's current organizational structure affects its ability to successfully expand statewide.

The Texas Forest Service has grown from its East Texas roots into a statewide agency.

Other aspects of TFS' operations may affect its overall ability to prevent and respond to wildland fires across the state. Differences in the agency's authority to take action needed to respond to fires, depending on where in

the state they occur, affect TFS' ability to develop a more seamless approach to wildland fires. Likewise, the lack of a detailed wildfire protection plan impedes the Legislature's efforts to budget and plan for protecting Texans from wildland fires. Also, the inability to more fully integrate the volunteer fire service in TFS' fire response efforts may continue the need for costly out-of-state firefighters during severe fire seasons that exceed local or regional capacity.

Issue 1

Texas Has a Continuing Need for the Texas Forest Service.

The State has a continuing need for statewide forestry, wildland firefighting support, and all-hazard emergency response programs provided by TFS. However, the Sunset Commission questioned the appropriateness of TFS' ownership and management of state forest lands and its West Texas Nursery. The Commission also expressed concern about possible overlap of TFS forestry-related services with other agencies' services and the need for TFS to continue performing these functions. The Commission concluded that more analysis is needed to help the 82nd Legislature decide what, if anything, should be done to relocate these programs.

Recommendations

Change in Statute

1.1 Continue the Texas Forest Service at Texas A&M University System for 12 years.

This recommendation would continue TFS as an agency at Texas A&M University System for the standard 12-year period and provide for continuing Sunset review of the agency. TFS' statute would clearly authorize the agency's all-hazard emergency management functions of training regional response teams and maintaining a response team composed of its own staff.

Management Action

1.2 Direct TFS to participate in studies of the feasibility and fiscal impact of changing TFS' ownership of state forest lands and the West Texas Nursery.

In response to this recommendation, the Forest Service will be working with the Texas Parks and Wildlife Department to determine the impact of transferring state forests. The Forest Service will also be working with the Council on Competitive Government to determine the impact of selling the West Texas Nursery. The agencies must report the results of their studies to the Sunset Commission by March 2011 so that the Legislature can make any needed changes to the agencies' statutes or appropriations during the 2011 session.

1.3 Direct the Texas Department of Agriculture (TDA) to study the feasibility and fiscal impact of transferring TFS' forestry programs to TDA.

This recommendation directs the Texas Department of Agriculture to study the feasibility of transferring TFS' forest inventory analysis, forest economics and resource analysis, forest pest management programs, and any other appropriate forestry programs to TDA. In addition, TFS should study and report on any overlap between TFS and county extension agents in providing forestry-related services. The results of these studies must be reported to the Sunset Commission by March 1, 2011 so that the Legislature can make any needed changes to the agencies' statutes or appropriations during the 2011 session.

Issue 2

The Texas Forest Service Struggles to Organize Itself Effectively as a Statewide Agency.

The Texas Forest Service's statutory responsibilities require it to balance responding to wildfires and managing forest resources. Although it has met these responsibilities, TFS has struggled over the last decade to organize itself effectively as it establishes itself as a statewide presence. In many respects, this struggle is reflected in problems with TFS' division of the delivery of its programs between forestry and firefighting, and between East Texas and Central/West Texas. Also, with 52 field offices, TFS appears to have an unwieldy field structure that may be more than what is needed to support its operations.

Recommendations

Management Action

2.1 TFS should evaluate its organizational structure to develop a more comprehensive statewide approach to delivering its services.

This recommendation directs the agency to evaluate its organizational structure, including delivery of programs, lines of supervision, and the location of programs. This evaluation should account for the agency's future statewide growth and the delivery of both forestry and firefighting programs to maximize efficient use of staff. In conjunction with Recommendation 2.2, this evaluation should also consider the appropriate location of field offices statewide to support the agency's operations. TFS could also consider establishing a common set of regional boundaries for its programs across the state. TFS should report the results of this evaluation to its governing body, the A&M University System Board of Regents, along with proposed alternative organizational structures to improve the agency's effectiveness. Any organizational changes should include consideration of mobilization of staff and assets during wildfires and other emergency responses.

2.2 Direct TFS to reduce the current number of its field offices, collocating staff with other public agencies when possible.

As a management action, TFS should assess its current field office structure and reduce its current number of field offices. The recommendation does not require TFS to reduce its personnel, but directs the agency to collocate its staff with those of other public agencies when possible.

2.3 Direct the agency to cross-train program delivery staff in both firefighting and forestry programs, as appropriate.

The agency should emphasize cross-training for more staff across the state, making more efficient use of limited staff. This cross-training should account for seasonal changes in both firefighting and forestry programs to maximize the availability of staff during important periods in each program. TFS should consider assigning staff primary designations in firefighting or forestry programs, with secondary support designations in the other division.

Issue 3

The Texas Forest Service Lacks Clear Authority for Its Wildfire Response and Planning Role.

The Texas Forest Service is the State's lead agency for helping communities prevent wildfires and for assisting local fire departments with protecting Texans and their property when fires break out. Wildfires are a significant threat beyond East Texas, but statute authorizing TFS to respond to these fires has not kept pace with change. In addition, during severe fire seasons, TFS has, at times, brought in costly out-of-state firefighters when in-state volunteer firefighters could potentially have been used, if given appropriate incentives and training. Finally, while TFS has developed a Texas Wildfire Protection Plan, the plan is not formalized and lacks needed detail.

Recommendations

Change in Statute

3.1 Authorize TFS to take all necessary actions to respond to wildfires to help best protect communities.

This recommendation would clarify the agency's authority to take all needed actions to respond to wildfires as it currently does for forest fires. TFS would not be required to be the first and only responder to wildfires statewide, but would instead have the flexibility to develop and use the most appropriate protocols to ensure effective, unified state-local responses to wildfires.

3.2 Authorize TFS to involve the volunteer fire service in statewide wildfire response, and ensure these personnel have needed qualifications.

Under this recommendation, TFS would be authorized to develop a method for allowing volunteer firefighters to assist TFS with wildfire response when demands on local resources are exceeded, as determined by the agency. As part of the Texas Wildfire Protection Plan, the agency would work with stakeholders to determine the appropriate method for engaging the volunteer fire service as a resource, which could supplement resources available through the Texas Intrastate Fire Mutual Aid System. Similar to its practice of hiring seasonal employees, TFS would be authorized to reimburse volunteer personnel for their assistance at a rate the agency determines appropriate.

Under this recommendation, TFS would be directed to use the most cost-effective resource when considering using volunteer firefighters, seasonal, or out-of-state resources. Only trained, qualified volunteer personnel that choose to participate in a statewide pool would be eligible to be paid. TFS would also be authorized to issue National Wildfire Coordinating Group certifications to volunteer personnel receiving TFS training, and TFS could also recognize equivalent certifications issued by the State Firemen's and Fire Marshals' Association of Texas.

3.3 Require TFS to develop a Texas Wildfire Protection Plan to be reported to the Legislature.

Under this recommendation, TFS would be required to develop its existing conceptual plan into a more robust Plan with a sufficient level of detail to guide the State's approach towards managing wildfires. TFS should develop the Plan, and regularly update it, by holding public meetings to ensure stakeholders have the opportunity to participate in the Plan's development and adoption. The Plan should include elements such as a clear description of TFS' role in managing wildfires and supporting local fire department responses, and the role of the volunteer fire service; a full description of all expected sources

of revenues, expenditures, and staffing that support implementation of the Plan, and anticipated future funding needs; and the agency's role in conducting prescribed burning and an assessment of statewide efforts to conduct these burns.

As part of this recommendation, TFS would also be required to provide the Plan to the Lieutenant Governor, the Speaker of the House, and appropriate legislative oversight committees, to coincide with submittal of its Legislative Appropriations Request.

Issue 4

The Volunteer Fire Department Assistance Program Is Not Positioned to Best Serve the Texas Forest Service's Strategic Wildfire Protection Goals.

The Volunteer Fire Department (VFD) Assistance Program provides grant funds to the volunteer fire service to help ensure they have the training and equipment needed to safely respond to emergencies, which include the vast majority of wildfires in Texas. TFS has recently developed a risk assessment that pinpoints communities most at risk for wildfires and heavy losses, but the agency does not factor this information into funding decisions to more effectively target grant funds towards high risk communities. TFS also misses an opportunity to help smaller VFDs meet cost-share requirements for federal grants, and increase Texas' chances of drawing down more federal funds.

Recommendations

Change in Statute

4.1 Require TFS to include a criterion regarding wildfire risk and threat of loss to communities when awarding Volunteer Fire Department Assistance Program grants.

This recommendation would require TFS to account for risk factors such as wildfire occurrence, size, severity, and potential for loss when awarding assistance grants to eligible volunteer fire departments. This change would only add a criterion regarding wildfire risk to the criteria that TFS already considers when making assistance grant decisions. The added criterion is intended to shift the agency's consideration and not to change the focus or the purpose of the program from continuing to serve the general needs of volunteer fire departments. In implementing this recommendation, TFS should review all program policies, allocation formulas, and scoring criteria and modify as needed. As part of this process, TFS would work closely with stakeholders to help maintain an appropriate balance of funding between higher and lower risk areas of the state, but still meet the overall needs of Texas' volunteer fire departments, who also respond to non-wildfire incidents.

4.2 Authorize TFS to allocate a portion of its VFD Assistance Program funding to help volunteer fire departments meet cost-sharing requirements for federal grants.

Under this recommendation, TFS could make a small portion of VFD Assistance Program funding available to volunteer fire departments to meet Federal Emergency Management Agency and any other federal cost-share requirements. TFS would develop needs-based criteria such as department size, annual budget, and sources of revenues to determine which fire departments would benefit the most from this funding and qualify to apply. In implementing this recommendation, TFS would also provide information and guidance to fire departments to assist them with applying for federal grants.

4.3 Require TFS to adopt VFD Assistance Program rules and hold public meetings when making program decisions.

This recommendation would require the agency to develop and adopt a set of program policies and procedures through the rulemaking process. In addition, TFS would be required to hold public meetings when making decisions related to program administration, such as awarding grant funds and considering program changes. TFS would not, however, have to take public testimony with regard to the award of individual grants.

Management Action

4.4 TFS should make VFD Assistance Program information readily available to the public.

TFS should make available on its website program information such as the annual report, program changes suggested and adopted, waiting lists showing applicant status, updated funding lists, scoring criteria, and program rules.

4.5 TFS should streamline VFD Assistance Program administration by making better use of electronic communication.

This recommendation directs TFS to make the program more efficient by improving the use of electronic communication with VFDs to reduce paperwork, such as providing notice of grant receipt and approval by email, and creating an electronic application form.

Fiscal Implication Summary

None of these recommendations would have a fiscal impact, except one recommendation from Issue 4, as described below.

- ***Issue 4*** – Authorizing TFS to allocate a portion of its VFD Assistance Program grant funds to help smaller departments meet cost-share requirements for federal firefighter grants could potentially increase these federal funds drawn down for Texas by as much as $4.5 million annually.

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Project Manager: Erick Fajardo

Committee at a Glance

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) licenses and regulates individuals practicing this trade. Hearing instrument fitters and dispensers measure human hearing for the purpose of selecting, adapting, or selling hearing instruments. The Committee's mission is to protect and promote public health and welfare by developing and enforcing licensure rules and regulations for hearing instrument fitters and dispensers. To achieve this mission, the Committee carries out the following key activities.

- Develops and updates standards of practice for the fitting and dispensing of hearing instruments.
- Administers a written and practical exam for hearing instrument fitter and dispenser licensure three times per year.
- Issues and renews hearing instrument fitter and dispenser licenses and permits.
- Enforces regulation of hearing instrument fitters and dispensers by receiving and investigating complaints, and issuing sanctions to individuals who violate the Committee's statute or rules.

The Committee is administratively attached to the Texas Department of State Health Services (DSHS), housed within its Professional Licensing and Certification Unit. DSHS provides staff, facilities, and infrastructure necessary to execute the Committee's duties. DSHS also houses a related regulatory program, the State Board of Examiners for Speech-Language Pathology and Audiology (the Board) that regulates speech-language pathologists and audiologists in Texas.

Summary

As part of this review, the Sunset Commission considered both the Committee and the Board, since both are housed within and administered by DSHS' Professional Licensing and Certification Unit and both license and regulate individuals who fit and dispense hearing instruments. The Sunset Commission considered the need to regulate these professions jointly, but concluded that they should be continued separately since the practice of fitting

The Committee's education and residency requirements are unnecessarily restrictive.

and dispensing hearing instruments is focused more on providing a product to consumers, while the practice of speech-language pathology and audiology is focused on providing a healthcare service to consumers. Additionally, the same DSHS staff administers both the Committee and the Board, so consolidation would not yield any significant efficiencies or cost savings.

However, the Sunset Commission found several inconsistencies in the Committee and Board's regulation of hearing instrument sales, particularly with respect to written contracts, recordkeeping, and the 30-day trial period. The Commission also concluded that several of the Committee's practices seem focused more on protecting current practitioners in the industry than consumers, and found the Committee's continuing education and residency requirements to be unnecessarily restrictive. Finally, the Commission compared the Committee's statute against standard licensing practices and identified several changes that would enhance efficiency, fairness, and public protection, and improve the consistency of the Committee's operations. The following material summarizes the Sunset Advisory Commission's recommendations on the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments. Material on the State Board of Examiners for Speech-Language Pathology and Audiology can be found can be found in a separate section of this report.

Issue 1

Texas Has a Continuing Need for the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

The Committee regulates hearing instrument fitters and dispensers who measure human hearing for the purpose of selling devices for hearing loss treatment. The Sunset Commission found that the State has a continuing need to license and regulate hearing instrument fitters and dispensers to protect Texas consumers and to maintain standards for this occupation to ensure these practitioners are trained, competent, and ethical.

However, the Sunset Commission concluded the Committee should only be continued for six years so that its next Sunset review would coincide with the review of several other licensing programs within DSHS' Professional Licensing and Certification Unit. Performing these reviews at the same time would allow their structure and administration to be evaluated together, and would provide sufficient time for the Committee to implement any changes resulting from this review as well as the upcoming Sunset review of DSHS in 2013.

Recommendations

Change in Statute

1.1 Continue the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years.

This recommendation would continue the Committee for six years, administratively attached to DSHS. This shorter Sunset date would enable the Sunset Commission to evaluate the Committee together with the six other licensing programs administered by DSHS' Professional Licensing and Certification Unit that are scheduled for Sunset review in 2017.

1.2 Apply the standard Sunset across-the-board requirements to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

- **Public membership**. This recommendation would prohibit a person from serving as a public member of the Committee if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Committee other than compensation or reimbursement authorized by law for Committee membership, attendance, or expenses. In addition, this recommendation would prohibit a person employed by or participating in the management of a business entity or other organization regulated by or receiving money from the Committee from being a public member on the Committee.

- **Conflict of interest**. This recommendation would define "Texas trade association" and prohibit an individual from serving as a member of the Committee if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of fitting and dispensing hearing instruments.

- **Presiding officer designation**. This recommendation would require the Governor to designate a member of the Committee as the presiding officer to serve in that capacity at the pleasure of the Governor, rather than the Committee members electing a president and vice president.

- **Grounds for removal**. This recommendation would specify the grounds for removal for Committee members and the notification procedure for when a potential ground for removal exists.

- **Board member training**. This recommendation would clearly establish the type of information to be included in the Committee member training. The training would need to provide Committee members with information regarding the legislation that created the Committee; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

- **Separation of duties**. Under this recommendation, the Committee would be required to adopt policies clearly defining its role of setting policy separate from staff responsibilities. Where statute delegates a duty to DSHS staff, the Committee would retain final authority to administer the licensing Act and direct the actions of staff.

- **Public testimony**. This recommendation would ensure the opportunity for public input to the Committee on issues under its jurisdiction.

Issue 2

The Committee's Continuing Education Requirements Are Unnecessarily Restrictive for Both Licensees and Sponsors.

Texas hearing instrument fitters and dispensers must complete 20 hours of continuing education annually to ensure licensees stay current on practices and advancements within the profession. The Sunset Commission found the Committee's annual continuing education requirements and lack of online course opportunities place an undue burden on licensees. Additionally, the Committee's process for approving continuing education sponsors and courses is unduly burdensome, benefiting only a small number of existing sponsors and potentially limiting entry to other qualified providers.

Authorizing licensees to obtain more of their continuing education online and removing the 20-hour annual requirement would bring the Committee's continuing education requirements more in line with the other licensing programs administered by DSHS. Also, establishing clear requirements for continuing education sponsors and courses would improve the consistency and fairness of the approval process.

Recommendations

Change in Statute

2.1 Authorize hearing instrument fitters and dispensers to obtain at least half of their continuing education online.

This recommendation would allow licensed hearing instrument fitters and dispensers to obtain more of their continuing education through online courses. The Committee would be authorized to allow more than half of continuing education to be provided by online sponsors. As a result of this recommendation, the Committee would adopt rules to establish clear and fair requirements for online continuing education sponsors and courses. Once requirements are established, staff would be responsible for reviewing and approving online continuing education sponsor and course applications.

2.2 Require licensees to complete 20 hours of continuing education every two years.

Effective May 1, 2012, this recommendation would change the current 20-hour continuing education requirement from an annual requirement to a biennial requirement.

2.3 Require the Committee to establish, by rule, clear requirements for continuing education sponsors and courses, and require staff, rather than the Committee, to review and approve sponsors and courses.

Under this recommendation, the Committee would be required to adopt rules to establish clear and fair requirements for continuing education sponsors and courses, including providing a clear definition for both manufacturer and non-manufacturer sponsors. This recommendation would also require staff, rather than the Committee, to review continuing education sponsors and courses to help reduce the time it takes to receive approval. Staff would base their review on the Committee's requirements and either approve or deny the sponsor and course applications. Staff would obtain expertise from licensed Committee members where necessary to assist in a decision.

Management Action

2.4 The Committee should reassess its $500 annual continuing education sponsor fee.

This recommendation directs the Committee to review its annual fee for continuing education sponsors to ensure it generates sufficient revenue without creating a barrier to entry as a continuing education sponsor. As part of this review, the Committee should work with DSHS staff to gauge the appropriateness of the fee, particularly in comparison to the other licensing programs in the Unit, and to determine what fee level is needed to generate a sufficient amount of revenue to adequately administer the program. The Committee should also solicit input from appropriate stakeholders to provide transparency and fairness to the process.

Issue 3

The Committee's Residency Requirement Is Unnecessary and Needlessly Restricts Entry of Out-of-State Hearing Instrument Fitters and Dispensers to Texas.

The Committee provides an abridged path to licensure for hearing instrument fitters and dispensers licensed in other states applying for a Texas license. However, the Committee requires out-of-state applicants to establish Texas residency before applying for a license. The Sunset Commission found this residency requirement creates an unnecessary barrier to entry, as the Committee already has sufficient requirements to ensure out-of-state applicants are qualified. Also, having the Committee, rather than staff, review and approve out-of-state licensure applications is inefficient, potentially taking several months for an out-of-state practitioner to become licensed.

Recommendations

Change in Statute

3.1 Remove the statutory provision requiring out-of-state hearing instrument fitters and dispensers to establish Texas residency before applying for Texas licensure.

This recommendation would remove the statutory requirement that hearing instrument fitters and dispensers licensed in other states establish Texas residency before applying for a Texas license.

3.2 Require DSHS staff, not the Committee, to review and approve all out-of-state applications for licensure.

Under this recommendation, DSHS staff would review and approve all licensure applications from licensed hearing instrument fitters and dispensers from other states. Statute specifically defines the criteria hearing instrument fitters and dispensers licensed in other states must meet to become licensed in Texas, which staff would use when approving or denying these applications. In addition, the Professional Licensing and Certification Unit staff at DSHS already has an established process for the intake, review, and approval of applications for licensing and certification.

Issue 4

The Committee's Examination Practices Do Not Adequately Ensure Fairness and Objectivity.

Candidates for hearing instrument fitter and dispenser licenses must pass both a written exam and a practical exam. Committee members and other licensed hearing instrument fitters and dispensers proctor the practical exam. The Committee and DSHS staff have not created formal policies to ensure proctor qualifications and proper conduct during the practicum, raising concerns regarding proctor objectivity, particularly in this competitive business.

Recommendations

Change in Statute

4.1 Require the Committee to adopt rules establishing qualifications for practical exam proctors, and require staff to select and assign proctors based on these qualifications.

Under this recommendation, the Committee would establish formal qualifications for proctors to help ensure their professionalism and objectivity in administering the practical exam. The qualifications should, at a minimum, specify the number of years a proctor must be licensed as a hearing instrument fitter and dispenser, and the type of disciplinary actions that would disqualify a licensee from serving as a proctor. DSHS staff would select licensees to serve as non-member proctors based on these qualifications. Additionally, staff would be responsible for pairing the proctors by assigning them to specific candidates to administer the practicum.

Management Action

4.2 Direct staff to develop and consistently enforce formal policies and procedures for administration of the practical exam.

DSHS staff should formally establish and enforce written policies and procedures for the administration of the practical exam to better ensure candidates receive consistent and fair evaluations. While the Committee currently uses instructions and procedures developed by staff to administer the practical exam, these need to be formalized and expanded upon to include training requirements for new proctors. These policies and procedures should also attempt to protect the candidate's identity throughout the examination process to the extent practicable. Staff should provide copies of these policies and procedures to the proctors, volunteers, and candidates to ensure all of the parties are informed of their rights and responsibilities during the exam process. Finally, staff should ensure the policies and procedures are followed by having a staff person observe or listen to the recording of at least 25 percent of exams selected at random.

Issue 5

Key Elements of the Committee's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.

Over the past 32 years, the Sunset Commission has reviewed more than 98 occupational licensing agencies. In doing so, the Sunset Commission has identified standards that are common practices throughout the agencies' statues, rules, and procedures. In reviewing licensing functions of the Committee, the Sunset Commission found that certain licensing and enforcement processes in the Committee's statute do not match these model standards. Based on these variations, the Sunset Commission identified changes needed to bring the Committee in line with model standards to more fairly treat licensees and better protect the public.

Recommendations

Change in Statute

5.1 Require the Committee to conduct a fingerprint-based criminal background check of all hearing instrument fitter and dispenser licensees.

This recommendation would require the Committee to conduct fingerprint criminal background checks, through the Department of Public Safety (DPS), on all licensees to review complete federal and state criminal histories of applicants. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks when investigating a complaint or conducting an audit. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants would pay the one-time, approximate $45 cost.

5.2 Authorize the Committee to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.

This recommendation would authorize the Committee to mandate that a licensee issue a refund to a consumer who is entitled to it according to the terms of the 30-day trial period policy for hearing instruments.

5.3 Require Committee members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.

This recommendation would require Committee members to recuse themselves from voting on disciplinary actions in cases in which they played a role at the investigatory level. Recusing Committee members who have a prior interest in a case would promote objective decision making and ensure that the respondent receives a fair hearing.

5.4 Require the Committee to include at least one of its public members on its subcommittees.

This recommendation would ensure the Committee appoints at least one public member to each of its subcommittees, including the complaints subcommittee. This subcommittee assists the Committee in determining whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process.

5.5 Require the Committee to approve informal agreements made by agency staff with licensees through the informal settlement conference process.

Having staff, instead of Committee members, conduct informal settlement conferences would enable more conferences to be held, and would expedite cases through the system. Staff would use the Committee's penalty schedule to determine the appropriate disciplinary action to recommend to the full Committee. If the licensee agrees with the staff's informal settlement recommendation, the Committee would vote to ratify, modify, or reject the recommendation.

5.6 Grant cease-and-desist authority to the Committee for unlicensed practice of hearing instrument fitting and dispensing.

This recommendation would authorize the Committee to assess administrative penalties against individuals who violate cease-and-desist orders. This authority would help the Committee better protect the public from unlicensed fitters and dispensers of hearing instruments and standardize its procedures with commonly applied licensing practices.

Issue 6

Having Different Rules Governing the Sale of Hearing Instruments Treats Customers Inequitably and Causes Confusion.

Both the Committee and the Board have authority to adopt rules regarding the sale of hearing instruments. The Sunset Commission found several inconsistencies in the Committee's and the Board's rules relating to the standards for hearing instrument sales, including different requirements for the written purchase contract, recordkeeping, and 30-day trial period. Having inconsistent rules regarding hearing instrument sales is unfair to consumers and creates confusion for both consumers and licensees. Requiring the Committee and the Board to jointly adopt rules for hearing instrument sales would ensure consumers who purchase hearing instruments from audiologists receive the same information about their purchase as consumers who purchase hearing instruments from hearing instrument fitters and dispensers.

Recommendation

Change in Statute

6.1 Require the Committee and the State Board of Examiners for Speech-Language Pathology and Audiology to jointly develop and adopt rules for hearing instrument sales.

Under this recommendation, the Committee and the Board would be statutorily required to work together to develop and adopt common rules for hearing instrument sales, including the written contract, recordkeeping, and 30-day trial period for hearing instrument sales. The written contract and 30-day trial period policy for hearing instruments would be required to be written in clear, plain language. To help ensure fairness and consistency, DSHS staff should facilitate this process, bringing together the expertise of the professional members of both the Committee and Board. The Committee and Board should adopt the common rules by May 1, 2012.

Fiscal Implication Summary

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

Texas Department of Housing and Community Affairs

Project Manager: Leah Daly

Agency at a Glance

The Texas Department of Housing and Community Affairs (TDHCA) works to ensure the availability of affordable housing, provides funding for community assistance, and regulates the manufactured housing industry. The Department's functions include the following activities.

- Assisting low-income individuals and families to obtain affordable rental housing by awarding federal and state funds, as well as federal tax credits, to nonprofit and for-profit organizations and local governments.
- Assisting low- and moderate-income families with home rehabilitation, reconstruction, or first-time home purchase.
- Assisting low-income individuals and families, through a network of public and private service providers, to obtain community-based support services, including services to address homelessness, foreclosure, high utility costs, home weatherization, and other concerns.
- Acting as an information clearinghouse on affordable housing resources in Texas.
- Regulating the manufactured housing industry and maintaining official records of manufactured home ownership, location, and status, including liens.

Summary

For the last several years, the Department has undergone a prolonged stress test as the federal government funneled billions of dollars through the agency to help Texas recover from hurricanes and the economic downturn. The agency has successfully met many of these new challenges but, even with additional temporary staff, the extra workload has taxed the Department's overall capacity, and taken a toll on the agency's ability to deliver its regular programs.

TDHCA has met new federal funding challenges, but could improve its management of key areas.

The Sunset Commission found that TDHCA administers its single- and multifamily housing programs well, but would benefit from certain statutory and management changes to its disaster recovery, housing tax credit, and contract-for-deed programs, as well as its processing of single-family loans.

The Commission also identified changes needed within the Manufactured Housing Division, which operates largely independently from the Department. The Division needs to improve its manufactured housing installation inspections process, and make adjustments to certain education, licensing, and enforcement practices that do not conform to common licensing standards. The following material summarizes Sunset Commission recommendations on the Department, including the Manufactured Housing Division.

Issue 1

Lack of State Planning Delays Funding to Hard Hit Texas Communities Recovering From Major Disasters.

Texas has faced major hurricanes in recent years and will face them again. The federal government has responded to recent storms with about $3.5 billion in long-term disaster recovery funding to help rebuild infrastructure and housing on the Texas Coast. The State has jointly administered these disaster recovery programs through the Texas Department of Housing and Community Affairs and Texas Department of Rural Affairs (TDRA), under the guidance of the Office of the Governor. To date, the State and some local areas have not effectively planned for long-term recovery or the use of these funds, increasing the amount of time it takes to rebuild Texas communities, and increasing the harms suffered by communities.

Recommendations

Change in Statute

1.1 Require TDHCA, in consultation with TDRA and the Governor's Office, to develop a comprehensive long-term disaster recovery plan.

This recommendation would require TDHCA, in consultation with TDRA and the Office of the Governor, to develop a clear and consistent long-term disaster recovery plan based on the knowledge gained administering four rounds of recent federal Community Development Block Grant (CDBG) funding. This recommendation would designate TDHCA as the agency responsible for ensuring development of the plan. Consistent with current responsibilities, TDHCA would develop housing components of the plan and TDRA would be responsible for developing plan components related to infrastructure. The agencies should seek stakeholder input from past local administrators, contractors, community advocates, businesses, and nonprofits. To the extent possible, THDCA should work with the U.S. Department of Housing and Urban Development to ensure elements of the plan comply with federal rules and requirements.

This recommendation would require TDHCA and TDRA to develop the plan and update it biennially, and obtain the approval of the Governor. The agencies would develop the initial plan by March 1, 2012, and obtain the approval of the Governor by May 1, 2012, in advance of hurricane season, which begins June 1. The plan would coordinate with the existing disaster plans and manuals administered by the Department of Public Safety's (DPS) Division of Emergency Management.

The plan should establish the following:

- unambiguous methods of program administration;
- clear outreach, eligibility, and program guidelines;
- clear-cut lines of communication;
- timely training programs;
- standard forms and checklists;
- explicit monitoring and reporting requirements; and
- up-front coordination with other state agencies.

1.2 Require the Governor to designate the State's lead agency for administration of any potential long-term disaster recovery funding by May 1 of every even-numbered year.

This recommendation would require the Governor to designate one lead agency to administer long-term disaster recovery funds, in accordance with federal requirements, by May 1, consistent with approval of the long-term disaster recovery plan. The Governor would make the first designation in 2012 and every two years thereafter. Both TDHCA and TDRA could continue to oversee their respective areas of recovery, but they would know, going into hurricane season, which agency would be responsible for overseeing the State's program.

1.3 Require communities to add a long-term recovery component to existing emergency management plans.

This recommendation would require communities to identify local resources and assets needed for long-term recovery activity as part of their existing local emergency plans.

Issue 2

Certain Statutory Requirements Impede Texas' Administration of the Housing Tax Credit Program.

The TDHCA-administered federal tax credit program provides incentives for private investment in affordable multifamily rental housing, creating more affordable housing in Texas than any other program. The Sunset Commission found several statutory requirements that impede the effective administration of this key housing program. First, state law requires TDHCA to measure community support for tax credit developments based on neighborhood organization letters and letters from state senators and representatives. Neighborhood organization letters do not always reflect local interests and are regularly contested. Nowhere else in state law are state elected officials required to provide support letters of this nature. In addition, fixed statutory deadlines could restrict the State's ability to distribute federal tax credit assistance in emergency circumstances. Finally, the statutory requirement to annually update the State's tax credit allocation plan is unnecessary and burdensome to program participants and agency staff.

Recommendations

Change in Statute

2.1 Replace neighborhood organization letters with voted resolutions from local city council or county commissioners courts as a principle tax credit scoring item, but continue to consider neighborhood organization letters as a lesser scoring item.

Under this recommendation, voted resolutions would replace neighborhood organizations letters as the second highest scoring criterion required by statute for tax credit applications. The Department would award points to applications for supportive voted resolutions from a city council, or if none exists, the county commissioners court in the area of the proposed development. The Department would continue to score letters from neighborhood organizations as the last statutorily required item in the tax credit scoring process. This recommendation would adjust the tax credit scoring process to give greater weight to voted resolutions and reduce the number of points available for neighborhood organization letters.

2.2 Eliminate the requirement for letters of support from state senators and representatives.

This recommendation would change the application scoring process by removing the statutory requirement for support letters from state-level elected officials. State senators and representatives could still provide input in the tax credit awards process, but their participation would not be a required scoring item.

2.3 Allow TDHCA to create additional tax credit allocation cycles to take advantage of non-standard federal assistance opportunities.

In the event the State receives emergency credits or related funding, this recommendation would allow the Department to release credits or funds for development outside of the regular application cycle by creating a new application cycle as needed. The recommendation would essentially make the temporary statutory authorization, which expires in 2011, permanent, and would also clarify the emergency authority applies to any federal programs related to tax credits.

2.4 Allow TDHCA's Board to update the qualified allocation plan biennially instead of annually.

This recommendation would allow the agency to update the qualified allocation plan (QAP) every two years. The Board would continue to approve, and the Governor sign, each revised QAP. Awards would still be made annually. The recommendation would not restrict the Department's ability to update the QAP more frequently if the Board felt it was necessary.

Issue 3

The Department's Processing of Single-Family Loans Is Slow and Inefficient, Causing Families to Wait for Needed Assistance.

Many of TDHCA's single-family housing assistance programs require the Department to provide loans directly to families for the rehabilitation of existing homes, or the purchase or construction of new

homes. However, the agency has not taken adequate steps to ensure that loans are processed quickly, that key tasks are prioritized to avoid unnecessary delays, or that program participants can easily find information on an application's status. The Sunset Commission concluded that the Department's internal procedures for processing loans are inefficient and in need of significant improvement.

Recommendation

Management Action

3.1 Direct the Department to overhaul its single-family loan review processes to create a faster and more efficient system.

This recommendation would direct the Department to redesign its loan processes, creating policies and procedures to ensure consistency, efficiency, and transparency, including:

- setting and meeting performance targets for loan processing times;
- clearly communicating application review criteria across reviewing divisions;
- prioritizing loan processes to minimize delays;
- taking better advantage of existing technology to automate loan processes, and looking for additional opportunities to provide clear, real-time information online to program participants;
- assigning one clear owner to each loan to ensure the application moves efficiently through department review;
- tracking loan processing times and reporting the results, at least quarterly, to the Board to make sure the Department is meeting its targets; and
- assigning a single point of contact for service providers and loan applicants seeking information on an application's status.

The Board should adopt the policies to implement these changes no later than September 1, 2011.

Issue 4

The Department Has Not Used Funds Designated by the Legislature to Address Contract for Deed Problems.

A contract for deed is a vehicle through which property is purchased without the transfer of legal title until full payment of the purchase price. Over the past 15 years, the Legislature has made substantial efforts to curb consumer harms caused by contracts for deed in colonias, particularly along the Texas-Mexico border. Specifically, the Legislature has tasked TDHCA with assisting colonia residents in converting contracts for deed into traditional mortgages, allowing residents to gain legal title to the property. However, the Sunset Commission found that the Department has consistently failed to make the required number of conversions, instead diverting these funds to other statewide housing programs. The Sunset Commission also found that the Department's choice of the federal HOME program as a funding source was not a good fit for contract for deed conversions and related activities.

Recommendations

Management Action

4.1 Direct the Department to identify, through the legislative appropriations process, a more flexible source of funds for the contract for deed conversion program.

Under this recommendation the Department would analyze, in collaboration with the legislative appropriations committees, which available funding sources would best fit the program. The funding source should allow for both actual conversions and related activities including outreach, education, surveying, re-platting, and legal services. The Department should consider federal and state funds, including federal CDBG funds, state housing trust funds, and other sources of income including appropriated receipts.

4.2 Direct the Department to consider using its existing Colonia Self-Help Centers to help administer the contract for deed conversion program.

The Department should consider taking advantage of existing infrastructure in counties with colonias by using its Colonia Self-Help Centers in Cameron/Willacy, Hidalgo, Starr, Webb, El Paso, Maverick, and Val Verde Counties to help administer the contract for deed conversion program.

4.3 Direct the Department to study the prevalence of contracts for deed in colonias, and report the results to the Legislature.

This recommendation would direct the Department to conduct a one-time study of the prevalence of contracts for deed in Texas colonias and to report the results to the Legislature by December 1, 2012, just prior to the legislative session in 2013. This reporting requirement would add to, and not eliminate, the quarterly reporting requirement on the number and cost of completed conversions.

Issue 5

Inconsistencies in the Department's Enforcement Process Waste Resources and Contribute to Lingering Compliance Problems.

The Department monitors TDHCA-sponsored affordable multifamily developments to ensure properties are suitable for tenants, perform well, and comply with contract terms for the 30- to 40-year life of most TDHCA rental housing contracts. Properties that do not comply with requirements can face fines and can appeal those fines. The Sunset Commission found that the Department's current appeals process is not consistent with most state agencies and wastes agency resources. In addition, statute unnecessarily limits the agency's ability to prevent bad actors from applying to TDHCA programs to just one program. Finally, the agency does not have a clear process to ensure that all noncompliant properties are referred for additional enforcement action in a timely manner.

Recommendations

Change in Statute

5.1 Transfer the Department's penalty appeals hearings to the State Office of Administrative Hearings.

This recommendation would require TDHCA to refer penalty appeals to SOAH, following the same process as TDHCA's Manufactured Housing Division. In conducting hearings, SOAH would consider the Department's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Board would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. The Board could 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 Board finds a technical error in a finding of fact that should be changed.

5.2 Require judicial review of appeals of the Department's decisions to be based on the substantial evidence rule.

This recommendation would require use of the substantial evidence rule, instead of a *de novo* review, for judicial review of appeals of administrative decisions. Any party subject to a penalty would continue to be authorized to appeal board decisions to district court, but this recommendation would specify that appeals be made under the substantial evidence rule, consistent with the vast majority of other administrative appeals.

5.3 Authorize the Department to use debarment as a sanction and protection in all its programs.

This recommendation would clearly permit the Department to debar individuals for significant performance failures across all housing and community affairs programs, not just the housing tax credit program. This change would also permit the agency to set terms for debarment. This recommendation would not grant any new sanction authority to the Department. Participants facing debarment would be authorized to appeal decisions to the board.

Management Action

5.4 The Department should track and timely refer properties that fail to come into compliance for additional enforcement action.

The Department should develop a process to ensure that all properties that are not in compliance with Department requirements are referred for additional enforcement action. The Department should set clear deadlines for compliance and owners that miss the deadlines without just cause should be referred to enforcement. The agency should also track the time it takes properties to come into compliance and report this information to the board.

Issue 6

The State's Process for Inspecting Manufactured Housing Installations Is Inefficient and Does Not Provide Adequate Statewide Coverage.

Faulty installations account for many of the problems associated with manufactured housing, particularly in the event of a hurricane or tornado. The Division of Manufactured Housing licenses manufactured housing installers in Texas and is required by law to inspect at least 25 percent of installations. The Sunset Commission found many inefficiencies in the Division's approach to conducting inspections, greatly reducing the effectiveness of these inspections in helping to ensure the safety of homes across Texas. On average, inspections do not occur until more than nine months after installation; and inspectors fail to complete more than half of all attempted inspections.

Recommendation

Change in Statute

6.1 Require the Division to inspect 75 percent of all manufactured housing installations, report on meeting this goal and, if the Division cannot meet the goal, institute a third-party inspection process to supplement state inspections.

This recommendation would increase the Division's inspection requirement from 25 percent to 75 percent of all manufactured housing installations. The Division would be required to report to the Legislative Budget Board, Governor's Office of Budget, Planning, and Policy and the legislative committees of jurisdiction on meeting the new inspection goal before the legislative session in 2015.

If the Division cannot complete 75 percent of installation inspections by 2015, the recommendation requires the Division to establish a third-party inspection process to supplement existing state inspections, and requires the Division to establish maximum fees, in rule, for third-party installation inspections.

Under this recommendation the consumer would pay for the inspection and the retailer or installer would ensure the inspection occurs within 14 days of installation. The inspector would report the inspection results to the retailer, installer, and the Division, and pay a small filing fee to the Division.

Issue 7

Key Elements of the Manufactured Housing Division's Functions Do Not Conform to Common Licensing Standards.

Over the past 32 years, the Sunset Commission has reviewed more than 98 occupational licensing agencies. In doing so, the Commission has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing licensing functions at the Manufactured Housing Division, the Sunset Commission found that certain education, licensing, and enforcement processes in the agency's statute do not match these model standards. The Sunset Commission identified changes needed to bring the Division in line with model standards to better protect owners of manufactured homes and the public.

Recommendations

Change in Statute

7.1 Reduce initial core education requirements for all licensees from 20 to eight hours but require an additional four hours of specialized training for installers and retailers.

This recommendation would reduce the core curriculum for all new licensees from 20 to eight hours, and require installers and retailers to obtain an additional four hours of specialized instruction in their specific occupations. Any testing required for licensure would be in addition to the hours of instruction.

7.2 Require a management official at each licensed retailer location to fulfill appropriate education requirements.

Under this recommendation, each licensed retailer location would be required to have at least one individual who has met necessary education requirements and who will have actual authority over any employees involved in the sale of manufactured homes.

7.3 Require the Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

This recommendation would require the Division to conduct fingerprint criminal background checks, through DPS, on all licensees to review complete federal and state criminal histories of applicants. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks at the time of renewal. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants would pay the one-time $45 cost.

7.4 Grant cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.

This recommendation would allow the Division to issue cease-and-desist orders when it discovers an individual or entity operating without a license. The Division would also be authorized to assess administrative penalties on unlicensed individuals or entities of up to $1,000 for each day of the violation, consistent with the Division's current penalty authority. These changes would not impact the Division's authority to also seek an injunction through the Attorney General.

7.5 Authorize the Division to order direct refunds as part of the manufactured housing complaint settlement process.

This recommendation would authorize the Division to order refunds directly from the licensee, instead of having to use the licensee's surety bond, for any violation that caused consumer harm. This recommendation would not expand the basic authority the Division already has, but would simply increase options for payment, allowing licensees to pay refunds directly or, if they are unwilling or unable, to use their bond, as currently authorized in law.

7.6 Authorize Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.

Under this recommendation, dismissal information reported to the Division's Board should contain sufficient explanation indicating why complaints were dismissed.

7.7 Eliminate manufactured housing branch and rebuilder licenses from statute.

This recommendation would eliminate the unused and unnecessary branch and rebuilder licenses.

7.8 Authorize the Division to collect a fee for reprinted manufactured housing licenses.

This recommendation would permit the Division to collect a fee, determined by the Division's board, for reprinted licenses requested by a licensee.

Management Action

7.9 The Division should explore offering broader access to license education courses and examination across the state.

The Division should examine offering initial education courses and examinations at different locations across the state, or explore opportunities to outsource courses to providers who can host trainings at multiple locations.

7.10 Direct the Division to remove the requirement that manufactured housing complaints filed with the Division be notarized.

Under this recommendation, the Division should remove any suggestion on forms or its website that notarization is necessary for simply filing a complaint. Existing provisions of the Penal Code that make falsifying a government record a crime would continue to apply to filed complaints.

7.11 Direct the Division's Board to make all disciplinary orders and sanctions available to the public on the Division's website and in an easily accessible format for consumers.

This recommendation would require the Division to provide easy access to licensee history on its website.

Issue 8

The Law Governing the Application of the Department's Regional Allocation Formula to the State's Housing Trust Fund Is Unclear.

Annually, the Department's state-funded Housing Trust Fund provides funding for several different housing activities that benefit low- and moderate-income Texans. The Department's Regional Allocation Formula requires TDHCA to allocate funds to different state regions according to needs and resources. The Department has interpreted current law to require that the Regional Allocation Formula apply to each programmed activity within the Housing Trust Fund. The Sunset Commission concluded that applying this formula to each programmed activity within the Trust Fund can result in very small or unusable allocations to some regions, and unnecessarily delay the use of the funds.

Recommendation

Change in Statute

8.1 Clarify in statute that Housing Trust Fund programmed activities funded with less than $3 million are exempt from the Department's regional allocation formula.

This recommendation clarifies that the Department would not apply the regional allocation formula to an activity funded by the Housing Trust Fund unless the activity received more than $3 million in funding for that application cycle.

Issue 9

The State Has a Continuing Need for the Texas Department of Housing and Community Affairs.

Texas faces a shortage of affordable housing that will continue for the foreseeable future. The federal government and the Texas Legislature have established numerous programs to help communities increase housing and community-based services options for low- and moderate-income people. The Sunset Commission concluded that the Department acts as a necessary partner in these programs, disbursing hundreds of millions of dollars annually.

Recommendations

Change in Statute

9.1 Continue the Texas Department of Housing and Community Affairs for 12 years.

While the Department has some operational challenges ahead, as discussed in the previous issues of the report, this recommendation would continue the Texas Department of Housing and Community Affairs as an independent agency responsible for the allocation of state and federal funds related to development of affordable housing and the provision of community services for 12 years. The recommendation would also continue the Manufactured Housing Division, within the Department, and maintain its separate board.

9.2 Apply the standard Sunset across-the-board requirement for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that the Division develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The Division would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the Division to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication Summary

These recommendations would have no fiscal impact to the State.

Texas State Affordable Housing Corporation

Project Manager: Christian Ninaud

Corporation at a Glance

The Legislature created the Texas State Affordable Housing Corporation (the Corporation) in 1995 as a self-sustaining nonprofit corporation to help low-income Texans obtain affordable housing. To achieve its mission, the Corporation carries out the following key activities:

- issues bonds to finance the purchase of single family homes by qualifying low-income first-time homebuyers and Texas educators, firefighters, corrections officers, emergency medical personnel, and law enforcement personnel;
- seeks out grants and donations to help support affordable housing initiatives;
- provides grants to nonprofits and rural governmental entities to build or rehabilitate homes;
- supports the Texas Foreclosure Prevention Taskforce, and gives grants to local organizations providing foreclosure counseling services; and
- partners with nonprofit organizations and local governments to acquire and redevelop foreclosed homes, vacant land, and other properties.

Summary

The Sunset Commission considered the Corporation through a special purpose review, following up on the full Sunset review of the Corporation conducted in 2008. At that time, the Sunset Commission adopted and forwarded recommendations on the Corporation to the 81st Legislature, but the Corporation's Sunset bill did not pass. Instead, the Legislature continued the Corporation for two years in separate legislation and directed the 2010 Sunset review to focus on the appropriateness of the Sunset Commission's previous recommendations.

Given the Corporation's progress, the Sunset Commission recommends continuing it for 12 years.

Sunset's re-examination revealed that the Corporation has capitalized on its status as a statewide nonprofit entity to raise private and public funds to support affordable housing initiatives, foreclosure prevention counseling services, and redevelopment of foreclosed properties as affordable housing.

As such, the Sunset Commission determined that most of the previous recommendations remain appropriate. However, given the Corporation's progress, the Commission recommends a standard 12-year continuation, rather than the six years recommended previously. The Sunset Commission also found that the Corporation continues to need statutory authority and direction to implement these recommendations. The following material summarizes the Sunset Commission's recommendations on the Corporation that continue to be appropriate for consideration by the 82nd Legislature.

Issue 1

The Corporation Helps Meet the State's Need for Affordable Housing, but Could Benefit From Changes to Its Board and Enforcement Abilities.

Recommendations

Change in Statute

1.1 Continue the Texas State Affordable Housing Corporation for 12 years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.

This recommendation would continue the Corporation for 12 years, to coincide with the Sunset review of the Texas Department of Housing and Community Affairs, and require the Corporation to annually provide the Legislature with information that shows its effectiveness at competing for grant funds, raising private donations, leveraging private funds for lending, and making grants.

1.2 Maintain the current five member size of the Corporation's Board and require one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations.

This recommendation would ensure that the Corporation's Board includes members that can provide expertise and input from stakeholders served by the Corporation's single family programs and nonprofit organizations that provide affordable housing, without increasing the size of the Board.

1.3 Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.

This recommendation would require the Corporation to include, at a minimum, the following range of enforcement options in all multifamily development contracts financed by the Corporation.

- Assessment of financial penalties for non-compliance with bond documents and Corporation policies.
- Withdrawal of reserve funds by the Corporation to make needed repairs and replacements to a property.
- Removal of the property manager and replacement with one acceptable to the Corporation.
- Appointment of the Corporation as receiver to protect and operate the property.

1.4 Update standard Sunset across-the-board requirements for the Corporation.

- **Conflict of interest**. This recommendation would update current statute prohibiting an individual from serving as a member of the Board if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of mortgage lending.
- **Presiding officer designation**. This recommendation would update current statute requiring the Governor to designate a member of the Board as the presiding officer to serve in that capacity at the pleasure of the Governor.
- **Board member training**. This recommendation would update current statute establishing the type of information to be included in Board member training.
- **Complaint information**. This recommendation would update current statute requiring the Corporation to maintain a system to act promptly on complaints filed with the Corporation and to make available information describing its complaint investigation and resolution procedures.

Fiscal Implication Summary

None of the recommendations would have a fiscal impact to the State because the Corporation is self-funded and does not receive state appropriations.

Department of Information Resources

Project Manager: Katharine Teleki

Agency at a Glance

The Department of Information Resources (DIR) is the State's information technology (IT) and telecommunications agency. The Legislature created DIR in 1989 to set the overall strategic direction for state agencies' use and management of IT. Since then, DIR's responsibilities have expanded significantly. DIR now provides a range of IT and telecommunications products and services to state agencies and eligible voluntary customers, including local governments and universities, primarily by procuring and administering contracts on behalf of the State.

DIR's purpose is to coordinate and support the IT and telecommunications needs of the State by carrying out the following key activities.

- Procures and manages statewide cooperative contracts for information and communications technology services and products (ICT cooperative contracts).
- Provides telecommunications services, including the Texas Agency Network (TEX-AN) and Capitol Complex Telephone System (CCTS).
- Manages consolidated data center services.
- Manages Texas.gov, the official website of Texas.
- Provides guidance and oversight of state information security.
- Provides statewide IT strategic planning, reporting, and standards setting.

Summary

During the last 10 years, DIR has evolved from an IT policy and standards-setting agency to an agency responsible for delivering and managing a wide range of critical IT and telecommunications services for the State. DIR has struggled with these expanded responsibilities and DIR's Board has not provided adequate oversight of the agency and its increasingly complex programs. Additionally, despite having more than $1.5 billion flowing through its programs, DIR seems to fly below the radar in regards to legislative oversight and interest.

More than $1.5 billion flows through DIR's programs, yet the Department has not received adequate attention or oversight.

The Sunset Commission identified serious concerns with DIR's management of its internal operations, including the accumulation of large fund balances in its cost-recovery programs, and its

handling of major statewide contracts. All three of DIR's major outsourced contracts are currently in critical transition periods, including the well-publicized data center services contract, as well as the equally critical TEX-AN and Texas.gov contracts for the State's telecommunications network and official website. Based on these concerns, DIR needs a more limited focus and increased attention and oversight by both its Board and the Legislature to improve these critical services on which the State depends. The following material summarizes the Sunset Commission's recommendations on DIR.

Issue 1

Texas Has a Continuing Need for DIR, but the Department Lacks Needed Focus and Oversight.

The State has a continuing need for an agency such as DIR to maximize the cost effectiveness and use of IT and telecommunications resources. However, as DIR's duties greatly expanded in scope and complexity, the agency increasingly relied on cost-recovery fees rather than General Revenue to fund its operations. As a result, DIR has lost its focus. DIR seems more concerned with generating revenue through its cost-recovery programs, particularly its ICT cooperative contracts program, rather than best serving state agencies, the primary customers it was created to serve. Agencies have become dissatisfied and frustrated with DIR's quality of service, especially small agencies that need the most assistance. Through these challenges, DIR's Board has failed to provide adequate oversight of the agency's funding structure and the delivery of critical functions. These concerns require increased attention and action by both the Board and the Legislature to ensure immediate improvements.

Recommendations

Change in Statute

1.1 Transfer the ICT cooperative contracts program from DIR to the Comptroller's office.

This recommendation would transfer DIR's current authority in law to manage a statewide cooperative contracting program for information and communications technology commodities and services to the Comptroller's office, which already administers the State's other statewide cooperative purchasing program. DIR would retain responsibility for its core functions of data center services, statewide telecommunications and network security, the capitol complex telephone system, Texas.gov, and setting IT policy and standards. To ensure DIR focuses on the state agencies it was created to serve, DIR would be statutorily required to help state agencies with advice and technical assistance in determining IT needs and solving problems.

Management Action

1.2 Direct the Comptroller's office to report on historically underutilized business (HUB) participation in the statewide purchasing programs.

This recommendation directs the Comptroller's office to provide frequent reports to the Legislature on the status of HUB participation and usage in its statewide purchasing programs. Also, the Sunset Commission staff should review this information and the status of HUB participation in these programs during the next Sunset review of the Comptroller's statewide purchasing functions, currently scheduled to occur in 2013.

Change in Statute

1.3 Require the appointment of a new DIR Board with members representing specific areas of expertise.

This recommendation would replace the seven current DIR Board members with seven new members appointed by the Governor to staggered six-year terms. Board members would be required to represent specific areas of expertise such as business and financial management, information technology, telecommunications, or any other areas of expertise necessary to set policy for and successfully oversee the agency. One member would continue to represent higher education. Three ex officio, non-voting, state agency members would continue to serve on the Board, except that in addition to representatives from several large agencies, one would now be required to represent a state agency with less than 100 staff. DIR's current Board members would continue to serve until the Governor makes the new appointments.

1.4 Require DIR's Board to establish a customer advisory committee.

The customer advisory committee would be comprised of customer representatives receiving services from each of DIR's key programs, including small agencies. The committee would provide a direct link between DIR's customers and the Board. The committee would give needed input and advice to the Board on the status of DIR's delivery of critical statewide services such as data center services, telecommunications, and the Texas.gov website.

1.5 Continue the Department of Information Resources for six years.

This recommendation would provide increased oversight by allowing Sunset and the Legislature to reevaluate DIR sooner than the standard 12-year period. The Sunset review in six years would be focused on evaluating whether DIR has implemented changes to address the significant problems identified by the Sunset Commission, specifically relating to DIR's focus, funding structure, contract management, and internal audit functions.

1.6 Apply the standard Sunset across-the-board requirement for DIR to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that DIR develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. DIR would also provide training as needed and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the Department to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Management Action

1.7 Direct DIR's Board and executive management to refocus the Department on its original mission and purpose, serving state agencies.

This recommendation directs DIR's Board and management to provide increased consideration of and attention to state agencies, the primary customers DIR was created to serve. DIR should ensure it has a consistent mission and focus that prioritizes providing technical assistance, policy development and guidance, and customer service to state agencies. DIR should also provide more coordinated services to state agencies, and increase communication among programs that serve the same state agency constituency. Additionally, DIR should provide sufficient resources to support these functions, funded by cost-recovery fees already authorized.

Under this recommendation, DIR should develop and regularly update the guidance it provides state agencies to reflect current industry-standard practices, including information on how best to access and use new DIR initiatives. Finally, DIR should develop an agencywide policy and system for consistently tracking and responding to customer contacts and complaints and less formal suggestions for improvement.

1.8 Direct DIR to take steps to improve its performance, efficiency, and customer service.

This recommendation directs DIR to take the following actions.

- DIR should develop a detailed action plan of all actions needed to bring the performance of the Department to a satisfactory level. This action plan should be monthly or quarterly, as appropriate. Each month or quarter, the agency's accomplishments should be evaluated and corrective action taken as needed to assure meeting the timetable for satisfactory performance.
- DIR and each client agency should jointly develop Service Level Agreements that include agreed upon standards for services provided by or through DIR. DIR should hold service level meetings with each agency monthly or quarterly depending upon the complexity of the client agency.
- DIR should review all outside professional contracts for redundancy.
- DIR should implement a rigorous process of expense management to evaluate and control factors leading to the 115 percent increase in expenses over the past four years.
- DIR should compare fees charged to client agencies to private sector fees, to the extent possible.
- DIR should report its revenues, expenses, and results of operations separately for each of the agency's programs, in addition to consolidated results currently reported. DIR should also report trends and analytical data to the Board as appropriate to help ensure the Board fully understands the results of the agency's operations.

Issue 2

DIR Lacks Needed Incentives and Oversight to Reduce Its Costs and Spend Taxpayer Funds More Efficiently.

As a cost-recovery agency, DIR has broad authority to collect and spend fees for its administration, yet lacks consistent procedures and incentives needed to ensure it operates efficiently and delivers the savings customers and the Legislature expect. The Department's growing fund balances, which totaled $29 million at the end of fiscal year 2009, indicate DIR is collecting profit beyond amounts necessary to operate its programs. DIR is not held accountable to a carefully planned budget, and has not sufficiently controlled its administrative spending, particularly on professional services. Though problems with DIR's financial management of its telecommunications program are most critical, increased oversight of all DIR's cost-recovery programs would help DIR minimize the cost of its services and control its own spending, while providing its customers and the State more cost-effective IT and telecommunications services.

Recommendations

Change in Appropriations

2.1 Request that the Legislature transfer a portion of the surplus fund balances in DIR's accounts to General Revenue.

This recommendation expresses the will of the Sunset Commission that the Legislature transfer a portion of the surplus balances in DIR's accounts, including the Telecommunications Revolving Fund and Clearing Fund, to the General Revenue Fund. Under this recommendation, the Legislature should consider adopting an appropriations rider prohibiting DIR from carrying forward the entirety of its surplus fund balances every year. Instead, the Department should be given authority to keep two months of working capital and additional amounts as determined by the Legislature necessary to cover budgeted capital expenditures. Any remaining unobligated and unencumbered balances should be transferred to the General Revenue Fund.

This recommendation is intended to remove incentives for DIR to collect funds in excess of its costs and to help reduce the fees DIR charges its publicly funded customers, not to produce a new and ongoing source of General Revenue for the State. In future years, the Legislature, with assistance from Legislative Budget Board (LBB) staff, should continue to monitor all of DIR's account balances and could consider transferring surplus fund balances at the end of each fiscal year, or providing rebates to customers.

2.2 Request that the Legislature require DIR to adhere to a "not to exceed" level of appropriations.

This recommendation expresses the will of the Sunset Commission that the Legislature require DIR to limit its spending to the amounts specified in the General Appropriations Act to fund the Department's various appropriations strategies. As part of this recommendation, DIR's riders would need to be reviewed and adjusted to limit the Department's spending authority.

2.3 Request that the Legislature fund DIR directly with General Revenue and offset the overall costs to the General Revenue Fund.

This recommendation expresses the will of the Sunset Commission that the Legislature directly fund DIR with General Revenue to simplify its complex cost-recovery fee structure and remove reverse incentives to collect funds in excess of its costs. Further consideration would be necessary during the appropriations process to make this recommendation cost neutral by reducing and offsetting the overall costs to General Revenue.

Change in Statute

2.4 Require DIR to establish clear procedures for setting, adjusting, and approving administrative fees for each of its cost-recovery programs as part of its annual budget process.

Under this recommendation, DIR would adopt a process for calculating the administrative fees for each of its cost-recovery programs. Fees must be directly related to the amount the Department needs to collect to recover the cost of its operations, as determined by the Department's annual budget process. DIR would develop clear procedures directing how staff in each of DIR's programs and the finance division would work together to determine fees, including review and approval of fees by DIR's Chief Financial Officer, Executive Director, and Board.

2.5 Require DIR to report its administrative fees and the methodology used to set them to the Legislative Budget Board annually, and post all fee information on its website.

After reviewing and adjusting its fees as part of its annual budget process, the Department would report its fees for the new fiscal year to LBB, along with the underlying analysis and methodology which determined the fee amounts. DIR would also post information about the fees for its cost-recovery programs, including a description of how they are derived, on its website. As part of this recommendation, DIR should provide updates anytime a contract amendment or other action results in major pricing changes. The Department would also report the cost allocation charged to its telecommunications customers, similar to existing reporting requirements for its ICT cooperative contracts and data center services customers.

2.6 Establish each of DIR's accounts in statute and limit expenditures to program purposes.

This recommendation would add DIR's Clearing Fund Account and the Statewide Technology Account to statute, along with a description of their intended use to benefit each program, similar to what already exists for the Telecommunications Revolving Fund. DIR should not use funds in these accounts for purposes other than those specifically authorized by the Legislature.

2.7 Require DIR to develop a clear policy governing the appropriate use of staff augmentation contractors and outside consultants.

Under this recommendation, DIR would develop clear criteria for the appropriate use of staff augmentation contractors and outside consultants by the Department. DIR staff would prepare, and the Board would approve, an annual analysis of staffing needs and proposed use of contractors and consultants in conjunction with its budget process. The analysis should include the need for and cost-effectiveness of using staff augmentation contractors or outside consultants, and should consider the possibilities for DIR to use its own workforce to accomplish tasks proposed for contractors or consultants, and any training or additional resources that may be needed.

Management Action

2.8 DIR should take steps to ensure it offers the most competitive pricing possible.

For telecommunications services that DIR provides directly, such as shared internet and CCTS, the Department's annual analysis should include benchmarking its prices against the private sector to ensure it provides the expected cost savings to customers. DIR should also evaluate whether other methods of procuring contracts for ICT commodities such as low bid or strategic sourcing could produce lower prices for some commodities.

Issue 3

DIR's Management and Enforcement of Major Statewide Contracts Have Increased Costs and Risks to the State.

Although chosen by the Legislature to help other state agencies mitigate risks inherent in major IT contracts, DIR has not yet effectively filled this role. Two of DIR's major statewide contracts for data center and telecommunications services currently face significant, unresolved challenges. DIR's responsibility for these major statewide contracts, and the Department's demonstrated difficulty in

effectively managing contractor performance, require an increased level of attention and oversight by DIR's Board than currently exists, and a more strategic, best-practices approach to contract management from DIR's staff. In addition, DIR has not effectively tracked and reported the costs and progress of the data center services consolidation project.

Recommendations

Change in Statute

3.1 Require DIR to consistently measure and report cost savings and project status for IT consolidation projects.

This recommendation would require DIR to develop a consistent and clear way to measure the costs and progress of any of its IT consolidation initiatives. DIR would work with the entities involved in the consolidation to develop an agreed upon methodology to first collect and validate data for a baseline assessment of costs, for use in both initial projections and subsequent cost comparisons. DIR would be required to use this methodology to evaluate and annually report information on actual costs and cost savings to the DIR Board, LBB, and DIR customers. DIR would also report on the progress of the projects compared to the initially projected timelines for implementation.

DIR would report this information on both a statewide and individual agency level. DIR should coordinate with its Internal Audit Department for guidance on how to ensure the methodology provides an objective assessment of costs and project status. DIR would post these status reports on its website. This recommendation would apply to existing data center services consolidation and any future consolidation initiatives DIR undertakes.

3.2 Require DIR to create a contract management guide to provide a clear, overall approach to managing its major outsourced contracts.

Under this recommendation, DIR would be required to create a contract management guide specifically targeted toward providing an overall, consistent approach on how to procure and manage DIR's major outsourced contracts. Currently, these contracts include Texas.gov, TEX-AN, and data center services. DIR should update this manual regularly, using lessons learned and changing conditions to guide these updates. The manual would be required to include, but not be limited to, the following subjects.

- Definition of DIR's general approach to business case analysis, procurement planning, solicitation, contract execution, and contract monitoring and oversight. While Recommendation 3.3 would require DIR to create customized management plans specific to each contract, the manual would document DIR's general approach.
- Establishment of clear lines of accountability, staff roles and responsibilities and decision-making authority, including program staff, contract management staff, executive management, customer governance structures, and the Board.
- Description of DIR's strict ethics standards and policies, including those required by Recommendation 3.7.
- Establishment of DIR's process for evaluating and managing risk during each stage of contract procurement, implementation, and management.
- Definition of DIR's transition approach when contemplating major changes to a program's internal structure at DIR, or its model for delivering services to customers.

- Description of expectations and standards for obtaining and using stakeholder input during all phases of initial analysis, solicitation development, contract award, and contract implementation.
- Coordination with DIR's Internal Audit Department as needed for assistance and guidance in developing procedures for monitoring contracts and individual contractors.

3.3 Require DIR to create management plans specific to each of its major outsourced contracts.

This recommendation would require DIR to develop specific procedures for administering, monitoring, and overseeing each of its major contracts. The plans would define DIR's specific approach to managing and mitigating risks inherent in each contract. The plans would be required for Texas.gov, TEX-AN, and data center services, and any other major outsourced contract DIR enters into in the future. Contract administration and program staff would develop these plans jointly, with input from executive management and the Board, and approval by the Executive Director.

For each of its major contracts, DIR should tailor the plan to define its approach to transitioning from one contract to another, establishing lines of accountability and coordinating of contract activities, implementing the program, monitoring contractor performance, identifying and mitigating risks, and involving and communicating with customers. DIR should revise its management plans as necessary to keep current during the active contract phase, and as it reprocures its contracts to ensure the plans remain updated and incorporate any changes resulting from new contracts.

3.4 Strengthen and improve the Board's oversight of DIR's contracting functions.

This recommendation would require DIR's Board to take the following actions to improve its oversight of DIR's contracting functions.

- Require the Board to approve all major outsourced contracts and any significant amendments with statewide impact, such as data center services or other outsourced consolidation activities; TEX-AN; and Texas.gov.
- Require the Board to adopt a policy establishing criteria for approval of all other contracts, including a monetary threshold above which Board approval is required for contract execution.
- Require the Board to adopt a policy describing the Board's role in setting a strategic direction for DIR's programs, in particular, for developing new initiatives and service offerings. Require the Board to evaluate and approve new initiatives or categories of services offered by DIR under its various programs.
- Require the Board to establish subcommittee(s) to monitor DIR's major outsourced contracts, including data center services, TEX-AN, and Texas.gov.
- Require the Board to regularly evaluate the extent to which DIR meets its information technology mission by providing cost effective services and meeting customer needs.
- Require the Board to regularly evaluate the operations of the agency, including reviewing analytical data and trend information regarding the agency's revenues and expenses, as well as performance information.

3.5 Require DIR to develop and implement an agencywide training policy for all staff involved in contract management and Board members.

This recommendation would require DIR to develop a policy establishing contract management training requirements for all staff involved in contract management, including contract managers, program staff, and executive management, as well as the members of DIR's Board. The training policy would include specific training on DIR's overall approach to procuring and managing contracts, as well as contract-specific procedures, as developed under Recommendations 3.2 and 3.3. Contract management training for Board members, while less specific, would be a part of the Board member training already required in statute.

3.6 Require DIR to establish formal contract governance structures for each of its major contracts.

Under this recommendation, DIR would be required to establish a formalized contract governance structure for each of its major contracts, including data center services, TEX-AN, and Texas.gov, to ensure customer involvement in decision making. This recommendation would require DIR to have a standard, coordinated approach to obtaining the feedback necessary to effectively manage its contracts to best meet customer needs.

3.7 Establish stricter conflict of interest provisions in DIR's statute.

This recommendation would add specific provisions to DIR's statute similar to those in the Comptroller of Public Account's statute. DIR employees involved in contracting and procurement would be prohibited from soliciting or accepting anything of value from a vendor or potential vendor.

The recommendation would also prohibit a former DIR employee at the deputy director level or above who leaves employment with DIR from accepting employment or receiving compensation from any vendor regarding a particular contract in which the former employee participated during the period of employment. This prohibition would last two years from the date the employee leaves DIR. DIR would be required to include these provisions in its internal policies, such as its employee and contract management manuals, and in staff training.

Management Action

3.8 DIR's Board should immediately establish a subcommittee to monitor the TEX-AN reprocurement process and implementation of the new contract(s).

This recommendation directs DIR to immediately begin implementing Recommendation 3.4 by forming a board subcommittee to monitor major contracts specifically for its current TEX-AN reprocurement effort. Board oversight of this critical procurement should begin immediately instead of waiting for statutory changes to be passed by the Legislature through DIR's Sunset bill in 2011. This subcommittee should closely monitor the staff's progress on reprocuring the TEX-AN contract and actively request information to stay informed about their progress. Once the contract is established, this subcommittee should continue to monitor the implementation and transition to the new TEX-AN contract(s).

3.9 DIR should immediately develop transition plans for upcoming changes to the TEX-AN and data center services contracts.

DIR should immediately begin developing a transition plan to ensure a properly planned TEX-AN transition process. This plan should be finalized after DIR awards contract(s), but before implementation

and conversion of customers to new services. The plan should define DIR's approach for ensuring a smooth transition, including educating and informing customers on changes, ensuring DIR staff is properly trained to administer new services, and defining how DIR plans to update its business model to accommodate the changes.

DIR should also immediately begin planning for upcoming changes to the data center services program resulting from DIR's recent notification to IBM of the likely rebid of portions of that contract. DIR should develop a transition plan to effectively implement changes and ensure customers are involved and informed throughout the transition process.

As part of this planning process, DIR should evaluate its administrative structure to ensure it can appropriately implement and monitor the likely multiple-vendor approach to delivering TEX-AN and data center services. DIR should involve stakeholders in developing these plans, and should make the plans publicly available when complete.

Issue 4

DIR Has Failed to Prioritize and Provide Adequate Resources to Its Internal Audit Function, Putting Both the Department and the State at Risk.

DIR's significant responsibility to the State and the $1.5 billion in public funds flowing through the programs it manages require a high degree of scrutiny. However, despite a clear pattern of increasing risk associated with its functions, the resources DIR has dedicated to its internal audit function are insufficient. Without an adequate internal audit program, the critical programs DIR manages on behalf of the State have not received enough oversight or attention, allowing serious problems to go undetected and uncorrected for years.

Recommendations

Change in Statute

4.1 Require DIR to establish an Internal Audit Department.

4.2 Require the DIR Board to maintain an audit subcommittee.

These recommendations would solidify the Board's recent decision to establish an Internal Audit Department. This approach would ensure DIR maintains a full-time, in-house internal audit function, and that the Board continues to closely monitor the internal audit activities to improve oversight. The audit subcommittee would be required to determine if allocated resources are adequate to cover the areas of risk identified in the annual audit plan, as required by the Texas Internal Auditing Act. The subcommittee would make recommendations to the full Board regarding the adequacy of DIR's audit resources, and re-evaluate needed resources during DIR's annual budgeting process.

The Internal Audit Department would prepare an annual audit plan using risk assessment techniques to determine DIR's areas of greatest risk, for approval by the Board. The Internal Audit Department could bring issues outside the annual audit plan to the Board that require immediate attention. The Internal Audit Department would also coordinate all audit activity at DIR, including acting as DIR's liaison for external auditing entities, such as the State Auditor's Office, and providing consultation and guidance, but not approval, on the design of audit activities DIR program areas undertake, such as auditing vendors' reported performance information or payments.

Management Action

4.3 DIR should dedicate at least three additional full-time staff to its Internal Audit Department.

This recommendation serves as a starting point to provide DIR's Internal Audit Department the resources needed to adequately evaluate each of the agency's major programs. Currently, the Internal Audit Department has only one employee. Once DIR adds the additional staff, the Board should regularly evaluate whether these resources are adequate to cover DIR's significant areas of risk as defined in the annual risk assessment, and make any necessary adjustments to staffing and other audit resources as required by the Internal Auditing Act.

4.4 Direct DIR's Internal Audit Department to evaluate DIR's contract management policies and procedures.

This recommendation directs the internal auditor to conduct an immediate audit of DIR's procedures for monitoring vendor performance and financial information. This audit will provide an immediate, independent review of the Department's contract management functions, a critical DIR responsibility that has not received sufficient independent scrutiny.

4.5 DIR should contract for an independent and comprehensive audit of its telecommunications program.

The audit should be conducted after DIR awards the new TEX-AN contract(s) to provide long-overdue, qualified analysis and needed attention at a time when DIR is contemplating major changes to the State's telecommunications program. The audit should include an evaluation of the following areas of concern:

- billing processes and systems;
- cost-recovery fee and price-setting practices;
- use of contractors in the telecommunications division, particularly DIR's financial and oversight controls of staff augmentation contractors; and
- overall administration and management, including organizational structure.

Fiscal Implication Summary

Two recommendations could result in a positive impact to the General Revenue Fund, but the amount of the impact would depend on how the recommendations are implemented as discussed below.

- ***Issue 1*** – Transferring the ICT cooperative contracts program from DIR to the Comptroller's office could produce savings by consolidating staff and taking better advantage of the State's purchasing power. However, the actual impact would depend on how the recommendation is implemented and therefore could not be estimated for this report.
- ***Issue 2*** – If the Legislature chooses to transfer a portion of DIR's surplus fund balances through the appropriations process, it could result in an estimated one-time gain to the General Revenue Fund of $9.7 million in 2012, based on balances at the end of fiscal year 2010. However, this estimate would change based on the actual amount of cash available in DIR's accounts at the time the

transfer is made. Also, if the Legislature chooses to fund DIR directly with General Revenue, the overall impact should be neutral by using DIR's existing fund balances and fees to offset the cost to General Revenue.

Fiscal Year	Gain to the General Revenue Fund
2012*	$9,700,000
2013	$0
2014	$0
2015	$0
2016	$0

* Depending on the passage of the supplemental appropriations bill, this amount could be credited to fiscal year 2011.

Office of Injured Employee Counsel

Project Manager: Kelly Kennedy

Agency at a Glance

The Office of Injured Employee Counsel (Office) was created in 2005, when the Legislature abolished the Texas Workers' Compensation Commission, transferred its regulatory duties to the Texas Department of Insurance (TDI), and moved its employee assistance functions to this newly established state agency. The Office represents the interests of workers' compensation claimants. To achieve its mission, the Office carries out the following key activities.

- Assists unrepresented injured employees in navigating the Division of Workers' Compensation's (DWC) dispute resolution process.
- Advocates on behalf of injured employees as a class in rulemaking and judicial proceedings.
- Educates injured employees regarding the Texas workers' compensation system.

Summary

Nearly six years after the sweeping reforms made by the 79th Legislature, the Sunset review of the Office found the agency, and the workers' compensation system as a whole, still in the wake of incredible transition. Overall the system seems to be healthier, with stabilizing medical costs, fewer claims and disputes, lower insurance rates, fewer lost days of work, and better return-to-work outcomes. The structural transition of the Office has worked, by providing useful assistance to injured workers, thus allowing DWC to focus on its role in the system. The Sunset Commission focused on evaluating the Office's role within the evolving system and identifying possibilities to fine-tune past reform efforts.

Created as part of the 2005 reforms, the Office provides beneficial education and assistance to individuals with workers' compensation claims.

The following material summarizes Sunset Commission's recommendations on the Office of Injured Employee Counsel.

Issue 1

Texas Has a Continuing Need for the Office of Injured Employee Counsel.

The Sunset Commission found that Texas has a continuing need to help injured employees navigate the complex workers' compensation system. The Commission further concluded that the Office is well-positioned to positively affect the efficiency of DWC's dispute resolution process by helping to resolve disputes quickly and as informally as possible to avoid the need for more formal and lengthy proceedings.

Recommendations

Change in Statute

1.1 Continue the Office of Injured Employee Counsel for six years.

This recommendation would continue the Office of Injured Employee Counsel as an independent agency, responsible for aiding injured employees in the workers' compensation system. The shorter continuation date coincides with that of DWC, giving the Legislature the opportunity to monitor the ongoing implementation of major reforms from 2005.

1.2 Apply standard Sunset across-the-board requirements to the Office of Injured Employee Counsel.

This recommendation would require the Office to maintain a system to promptly and efficiently act on complaints filed with the Office. The language would require the Office to maintain information on the parties to a complaint, the subject matter, a summary of results, and the disposition. The recommendation also would require the Office to make information about its complaint procedures public and periodically notify the complaint parties of the status of the complaint.

The recommendation would also ensure that the Office develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expense. This requirement for alternative dispute resolution would not affect the way the Office participates in DWC's administrative dispute resolution process. In addition, the required policy would not affect dispute resolution that falls under TDI's authority through the Office's administrative attachment to that agency.

Management Action

1.3 Direct the Office to work with DWC to ensure injured employees are fully prepared by Ombudsmen before attending a DWC Benefit Review Conference.

The review found that DWC struggles with the inefficiency of more than 13,000 rescheduled Benefit Review Conferences a year, mostly due to unprepared parties. The office can play a role in reducing these inefficiencies.

This recommendation directs the Office to take steps toward reducing the number of rescheduled proceedings at DWC, through efforts by Ombudsmen to fully prepare injured employees they are assisting. These efforts could include refraining from scheduling proceedings until after an Ombudsman

has initially met with an injured employee, scheduling the Ombudsman's initial meeting with an injured employee within a certain timeframe before a proceeding, or ensuring certain important documents are possessed by the injured employee before attending a proceeding.

Issue 2

The Office Has Inappropriate Access to Claims Information Held by the Division of Workers' Compensation.

The Office performs two of its primary roles – assisting injured employees in dispute resolution hearings and advocating for injured employees as a class – in adversarial proceedings in which the Office acts as one of several interested parties before a neutral regulator, such as DWC. The Sunset Commission found that the Office's administrative attachment to DWC, and statutory language allowing the Office to obtain otherwise confidential information, gives the Office access to information that other parties cannot receive. This situation places the Office in a potentially more favorable position than other parties in the workers' compensation system. Limiting this access would remove the appearance of impropriety, as well as solidify the Office's independence from DWC without preventing the Office from fulfilling its statutory duties.

Recommendations

Change in Statute

2.1 Limit the Office's authority to access claim files for injured employees the Office is not directly assisting.

This recommendation would remove existing language that excepts the Office from the confidentiality requirements surrounding claim file information and that directs DWC to release such information to the Office. The recommendation would also remove language granting the Office broad access to information from all executive agencies. Instead, the recommendation would clarify that the Office has the same access to information that another, similarly situated party has and is allowed access to a claim file when officially assisting an injured employee.

Until the implementation of DWC's new computer system occurs, the changes made by the recommendation would require the Office to self-enforce the legal limits on its authority to access information. The Office would be required to work with DWC to implement new procedures by which the Office will request information from DWC. These procedures should reflect the practical needs of the Office's day-to-day use of the DWC computer system, yet strive to reflect the manner in which other system participants request and access information.

In addition, the recommendation would not restrict the Office's access to information it uses to generally educate injured employees and death beneficiaries about the existence of the Office and its services, which it does to fulfill its statutory duty to assist them in obtaining workers' compensation benefits. Such information may include the names and contact information of employees whose injuries are reported to DWC, but would not include other information included in the claims files, such as sensitive medical claim information.

Management Action

2.2 Direct the Office to work with DWC to complete firewalls in the new database system.

This recommendation directs the Office to work with DWC during its development of the new computer system to include proper firewalls restricting information. These firewalls would ensure that the Office has the appropriate access to information needed to perform its duties without receiving information that is statutorily protected.

Fiscal Implication Summary

None of the recommendations regarding the Office would result in additional costs to the State.

Texas Department of Insurance

Project Manager: Chloe Lieberknecht

Agency at a Glance

The Texas Department of Insurance (TDI) regulates the insurance industry in Texas to ensure that Texas consumers have access to competitive and fair insurance products. TDI's major functions include:

- regulating insurance companies' solvency, rates, forms, and market conduct;
- licensing individuals and entities involved in selling insurance policies;
- providing consumer education on insurance and helping consumers resolve complaints;
- investigating and taking enforcement action against those who violate insurance laws or rules; and
- providing fire prevention services across the state through the State Fire Marshal's Office.

The Department also regulates workers' compensation in Texas through the Division of Workers' Compensation. Information about the Division can be found in a separate section of this report.

Summary

The Sunset Commission considered TDI through a special purpose review, as a follow-up on the full Sunset review of the agency conducted in 2008. At that time, the Sunset Commission adopted and forwarded to the 81st Legislature recommendations on TDI, but the agency's Sunset bill did not pass. Instead, the Legislature continued TDI for two years in separate legislation, and focused the 2010 Sunset review on the appropriateness of the recommendations voted on and adopted by the Commission in 2008.

The majority of the Sunset Commission's 2008 recommendations on TDI remain appropriate.

Based on this re-examination, the Sunset Commission concluded the majority of Sunset's previous recommendations remain appropriate, and that TDI continues to need statutory authority and direction to implement them. The following material summarizes the Sunset Commission's recommendations on TDI that continue to be appropriate for consideration by the 82nd Legislature.

Issue 1

Rate Regulation for Homeowners Insurance Lacks Clarity, Predictability, and Transparency.

Recommendations

Change in Statute

1.1 Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.

This recommendation would establish deemer dates for the Department's review of all property and casualty rate filings. The Department would have 30 days to request information from insurers, conclude rate review, and disapprove rates as necessary. The Commissioner would be authorized to extend the review period for one additional 30 day period only, and only for good cause. If TDI requests additional information from insurers, the time it takes for insurers to respond to TDI's requests would not count against the Department's review period.

Insurers would continue to be permitted to use rates as soon as they are filed, if they choose. This recommendation would only affect filings not immediately used, and is not intended to change the Department's ability to disapprove rates under current law, nor to give the Department the authority to approve rates under this regulatory system.

TDI would be permitted to administratively disapprove rates until the point that companies implement rates, or the expiration of the review period, whichever event occurs first. If TDI wanted to disallow a rate following the review period, the Department would have to disapprove the rate following its implementation, using the contested case process, as currently laid out in state law.

While the problems identified in this Issue pertain primarily to residential property insurance filings, state law requires similar regulation of all property and casualty rates, and these changes would affect all lines.

1.2 Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.

This recommendation would require TDI to further define, through rulemaking, the process for requesting supplemental information from insurers during its review of property and casualty rates. The review process would require, at a minimum, that TDI:

- make requests in a timely manner, enabling insurers to respond to requests and implement rates more quickly;
- reduce the number of separate requests;
- more specifically define the kinds of information that the Department can request during a rate review; and
- track and routinely analyze the volume and content of information requests to identify trends and ensure that requests are reasonable.

This recommendation would also require the Department to track and analyze the factors that contribute to administrative disapproval of rates. TDI would track precedent related to disapprovals to help ensure that the Department consistently applies rate standards. In conjunction with analyzing disapprovals, TDI would make information about the Department's general process for rate review, and factors that contribute to disapprovals, available to the public on a yearly basis. All information provided to the public would be general, so as not to infringe upon any individual company's proprietary rate development data or techniques.

1.3 Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.

Under this recommendation TDI would further define, through rulemaking, guidelines that constitute rating practices, financial conditions, or statewide emergencies that could subject an insurer to prior-approval review. This recommendation would not require the agency to enumerate specific practices or circumstances. Recognizing that determining if certain practices or conditions exist requires flexibility and depends on the specific circumstances of a filing, this recommendation aims only to more generally define conditions that might contribute to a company being placed under prior approval. The Commissioner would maintain the authority to determine if individual company's practices or statewide situations warranted additional scrutiny though prior approval.

1.4 Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.

Under this recommendation, TDI would periodically assess whether insurers need to remain under prior approval for rate filings. Similar to other probationary measures, prior approval review can be used as a method to more closely monitor insurer ratings practices or financial conditions. To clarify expectations, the recommendation would require TDI to provide companies with written information, when they are placed under prior approval, detailing the steps they must take to return to file-and-use review. When an insurer meets the stated conditions, this recommendation would require the Commissioner to issue an order stating that the financial condition, rating practices, or statewide emergency no longer exists, and that future company filings will be subject to file-and-use.

1.5 Require the Department to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims.

This recommendation is intended to give TDI additional information about the timeliness of claims payment, including if they are paid promptly and in full. The recommendation would require TDI to collect aggregate claims data including the number of claims:

- filed during the reporting period;
- pending on the last day of the reporting period, including pending litigation;
- closed with payment during the reporting period;
- closed without payment during the reporting period;
- carrying over from the previous reporting period; and
- any other relevant information relating to the processing of claims.

This information would be collected on an annual basis, with the information broken down by quarter. In addition to collecting the data, TDI would be required to publish or disseminate the collected information to the general public via the agency's website. TDI would be authorized to adopt rules as necessary to implement a plan for collecting and publishing claims data.

Issue 2

Without Additional Tools, TDI Cannot Effectively Regulate Title Insurance.

Recommendation

Change in Statute

2.1 Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

This recommendation would require the Commissioner of Insurance to assess, every five years, the expense data collected for purposes of promulgating rates and consider whether the data should be revised to capture additional or different information, or whether any items no longer remain necessary.

Issue 3

Most of TDI's Advisory Committees No Longer Need to Be in Law.

Recommendations

Change in Statute

3.1 Eliminate 15 TDI advisory committees from statute.

This recommendation would eliminate 15 committees currently in statute. Specifically, this recommendation would eliminate the following committees:

- Agents Study Proposal/Vendor Committee;
- Consumer Assistance Program for Health Maintenance Organizations Advisory Board;
- Examination of License Applicants Advisory Board;
- Fire Alarm Advisory Committee;
- Fire Extinguisher Advisory Council;
- Fire Sprinkler Advisory Council;
- Fireworks Advisory Council;
- Health Maintenance Organization Solvency Surveillance Committee;
- Insurance Adjusters Advisory Board;

- Public Insurance Adjusters Examination Advisory Committee;
- Technical Advisory Committee on Claims Processing;
- Technical Advisory Committee on Electronic Data Exchange;
- Texas Health Coverage Awareness and Education Program Task Force;
- Texas Residential Property Insurance Market Assistance Program (MAP) Executive Committee; and
- Utilization Review Advisory Committee.

This change would eliminate several advisory committees, adjust statute as needed, and remove other unnecessary statutory language related to these advisory committees. The Commissioner of Insurance would be allowed to create or re-create advisory committees in rule, as necessary, to provide expertise and to advise the Department.

3.2 Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.

The Commissioner of Insurance should adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, structure, and use of the Department's advisory committees, including:

- the purpose, role, responsibility, and goals of the committees;
- size and quorum requirements of the committees;
- qualifications of the members, such as experience or geographic location;
- appointment procedures for the committees;
- terms of service;
- training requirements;
- process to regularly evaluate the need for each committee;
- duration of the committee; and
- a requirement that the committees comply with the Open Meetings Act.

This recommendation would require TDI to routinely evaluate advisory committees to ensure that they continue to serve a purpose. TDI would be allowed to retain or develop committees to meet its changing needs. All committees would be structured and used to advise the Commissioner, the State Fire Marshal, or staff, but not be responsible for rulemaking or policymaking. Committee meetings would also be open to the public.

Issue 4

To Reduce the Risk of Fire Hazard, the State Fire Marshal's Office Needs Direction to Target Its Inspections of Buildings.

Recommendations

Change in Statute

4.1 Require the SFMO to periodically inspect state-leased buildings.

As state law already requires of state-owned buildings, this recommendation would require the State Fire Marshal's Office (SFMO) to periodically inspect state-leased buildings, and to take action necessary to protect state employees and the public from fire hazards in state-leased buildings. The recommendation would also require the SFMO to share and coordinate state-leased building inspection information with affected agencies, the Texas Facilities Commission, and the State Office of Risk Management, as already required with state-owned buildings. This recommendation would allow agencies to make informed decisions regarding lease agreements, but is not intended to pre-empt compliance with locally adopted fire safety codes.

4.2 Require the SFMO to create a risk-based approach to conducting its routine inspections of state buildings.

As part of this change, SFMO would need to develop guidelines for assigning potential fire safety risks to state buildings. As a part of TDI, the Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. To ensure that even all low-risk buildings are inspected at some point, the rules would address a planned timeframe for continuing to inspect all buildings under the SFMO's purview. This change would not affect the SFMO's response to complaints and requests for inspections, as these cannot be assigned a risk and must be dealt with on an as-needed basis. The SFMO should also periodically report its findings on state-owned and state-leased building inspections to the relevant committees of the Legislature.

4.3 Authorize the SFMO to charge a fee for inspections of privately owned buildings.

This recommendation would statutorily authorize the SFMO to establish a reasonable fee for performing private building inspections. The Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. In developing the fee amount, the SFMO should consider its overall costs in performing these inspections, including the approximate amount of time staff needs to perform the inspection, travel costs, and other expenses.

Issue 5

The State Fire Marshal's Office Lacks the Ability to Issue Fines to Ensure Licensee Compliance.

Recommendation

Change in Statute

5.1 Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and delegate administration of these penalties to the SFMO.

Under this recommendation, the Commissioner would create, by rule, a penalty matrix for SFMO licensee violations to ensure fair and consistent application of fines. Further, the Commissioner would delegate the administration of these penalties to the SFMO, which would give the SFMO the ability to issue fines to violators without referring the violations to TDI's broader enforcement function.

In developing the matrix, the Commissioner would take into account factors, including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The penalty amounts would reflect the severity of the violation and serve as a deterrent to violations. The Commissioner should also adopt rules defining which types of enforcement actions will be delegated to the SFMO, and outlining the process with which the SFMO will assign penalties. The recommendation would also provide for due process by authorizing a licensee to dispute the fine, and request a contested case hearing. If a licensee does not pay the fine, the SFMO would refer the case to TDI's enforcement division.

Issue 6

The Department's Statute Has Not Kept Pace With Available Electronic Transaction Technologies.

Recommendation

Change in Statute

6.1 Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.

This recommendation would clarify the applicability of existing and future provisions in the Insurance Code to permit electronic commerce transactions. The recommendation would supplement existing laws by removing barriers to electronic commerce transactions. The Department would provide businesses and consumers with standards for electronically delivering documents. The recommendation would not require parties to conduct business electronically, but would facilitate transactions in which the parties agree to conduct business electronically.

Issue 7

Qualifications for Reduced Rate Filing Requirements for Certain Insurers Writing Residential Property Insurance in Underserved Areas May Need Adjustment.

Recommendation

Change in Statute

7.1 Require the Commissioner of Insurance to study the qualifications for reduced rate filings for insurers writing residential property insurance in underserved areas.

This recommendation would require the Commissioner to study the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements, and to include the study results in the Department's biennial report. This recommendation would also expand the factors that the Commissioner must consider when designating areas of the state as underserved to include reasonable access to the full range of coverages and policy forms. Finally, the Commissioner would be required to study areas of the state designated as underserved and to determine which areas to designate as underserved every six years.

Issue 8

The State Has a Continuing Need for the Texas Department of Insurance.

Recommendations

Change in Statute

8.1 Continue the Texas Department of Insurance for 12 years.

This recommendation would continue TDI as an independent agency for 12 years.

8.2 Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.

This recommendation would better define the agency's overall duties in statute by updating existing language to charge the agency with:

- protecting and ensuring the fair treatment of consumers; and
- ensuring fair competition in the insurance industry, thus fostering a competitive market.

8.3 Apply the standard Sunset across-the-board requirement for the Commissioner to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that TDI develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. This requirement for alternative

dispute resolution would not affect the administrative dispute resolution process in statute elsewhere for the Division of Workers' Compensation.

The agency would also provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication Summary

None of the recommendations would have a net fiscal impact to the State's General Revenue Fund, since TDI is funded through taxes and assessments on insurers. Two issues could result in revenue gains but, as described below, the gains could not be estimated as the amounts would depend on unknown levels of future activities.

- ***Issue 4*** – Authorizing the State Fire Marshal's Office to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the Office's costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the Office and the number of requests that continue to come in once the SFMO charges for this service.

- ***Issue 5*** – Allowing the SFMO to fine its licensees could result in an increase in revenues, but would depend upon the number and types of violations pursued by the SFMO, and cannot be estimated. Any administrative penalties collected by the SFMO would be deposited in General Revenue.

Office of Public Insurance Counsel

Project Manager: Chloe Lieberknecht

Agency at a Glance

The Office of Public Insurance Counsel (OPIC) represents the interests of consumers as a class in insurance matters. The Legislature created OPIC in 1991 as an independent agency to advocate for consumers in rate, form, and rule proceedings primarily at the Texas Department of Insurance (TDI). To accomplish its mission, the Office of Public Insurance Counsel:

- reviews rate and policy form filings, and works with TDI and insurance companies to negotiate changes advantageous to consumers;
- participates in contested rate cases and industry-wide rate hearings before the State Office of Administrative Hearings, the Commissioner of Insurance, district court, and the court of appeals;
- advocates on behalf of consumers in rulemaking procedures at TDI; and
- provides information to consumers regarding insurance coverage and markets.

Summary

The Sunset Commission considered OPIC through a special purpose review, as a follow-up on the full Sunset review of the agency conducted in 2008. At that time, the Sunset Commission adopted and forwarded to the 81st Legislature recommendations on OPIC, but the agency's Sunset bill did not pass. Instead, the Legislature continued OPIC for two years in separate legislation, and focused the 2010 Sunset review on the appropriateness of the recommendations voted on and adopted by the Commission in 2008.

The Sunset Commission's 2008 recommendation to continue OPIC remains appropriate.

Based on this review, the Sunset Commission's previous recommendation to continue OPIC for 12 years continues to be appropriate for the Legislature's consideration, as summarized in the following material.

Issue 1

The State Has a Continuing Need for the Office of Public Insurance Counsel.

Recommendations

Change in Statute

1.1 Continue the Office of Public Insurance Counsel for 12 years.

This recommendation would continue OPIC as an independent agency for 12 years.

1.2 Apply the standard Sunset across-the-board requirement for the Office to develop a policy regarding alternative dispute resolution.

This recommendation would ensure that OPIC develops and implements a policy to encourage alternative procedures for dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The standard language would be modified to exclude references to rulemaking, since OPIC does not have rulemaking authority.

The agency would also provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication Summary

Neither of the recommendations on the Office of Public Insurance Counsel would have a fiscal impact to the State.

Texas Youth Commission
Texas Juvenile Probation Commission
Office of Independent Ombudsman

Project Manager: Leah Daly

Texas Youth Commission at a Glance

Originally established in 1949, the Texas Youth Commission (TYC) is the State's juvenile corrections agency. The Commission promotes public safety by operating juvenile correctional facilities and helping youth in the agency's custody receive the education, treatment, and skills needed to successfully reintegrate back into the community. To accomplish its mission, TYC:

- provides secure confinement for youth committed to its custody;
- operates education and treatment programs designed to reduce criminal and delinquent behavior;
- supervises youth on parole; and
- works with families, volunteers, victims, and advocacy groups to help keep communities safe and increase opportunities for youth to succeed.

While the juvenile justice agencies have implemented the majority of mandated reforms, significant problems persist.

Texas Juvenile Probation Commission at a Glance

In 1981, the Legislature created the Texas Juvenile Probation Commission (TJPC) to ensure access to juvenile probation services throughout the state. Today, Texas has 165 juvenile probation departments serving all 254 counties. The agency supports and oversees these departments to help reduce crime and divert youth from possible commitment to the Texas Youth Commission. The departments provide an array of services, from basic probation to secure community-based placement.

TJPC's key functions are:

- disbursing state and federal funding to assist counties in supervising juvenile offenders and to help divert youth from commitment to TYC;

- monitoring and overseeing juvenile probation departments and locally run detention and correctional facilities to ensure compliance with established standards; and
- providing technical and legal assistance and training to counties to improve probation services.

Office of Independent Ombudsman at a Glance

As part of the major 2007 juvenile justice reforms, the Legislature created the Office of the Independent Ombudsman (OIO) as a separate and independent state agency tasked with investigating, evaluating, and securing the rights of children committed to TYC. Additional statutory requirements direct OIO to review and investigate complaints other than ones of a criminal nature, review facilities, and provide assistance to youth and families. By law, OIO is required to undergo Sunset review at the same time as the Texas Youth Commission, though the Office is not subject to abolishment.

Summary

The Sunset Commission considered the Texas Youth Commission, Texas Juvenile Probation Commission, and Office of the Independent Ombudsman through a special purpose review, following up on the full Sunset review of the agencies conducted in 2008. At that time, the Sunset Commission voted to consolidate TYC and TJPC into one large juvenile justice agency, but the Legislature ultimately continued TYC and TJPC as stand-alone agencies for a two-year probationary period, and required the Sunset Commission to re-evaluate the agencies' implementation of recent reforms.

The Sunset re-examination found that TYC, TJPC, and OIO have implemented the majority of required reforms, but that significant problems still exist in the juvenile justice system. Specifically, declining youth populations continue to drive up the cost of commitment, which now stands at almost $127,000 per youth per year. Recent diversion initiatives have demonstrated probation departments' ability to treat more youth locally, and at a lower cost than TYC. In addition, TYC worker injury rates remain very high and while staff turnover rates are down, TYC continues to have difficulty staffing specialized treatment positions. Finally, the agency can still improve the number of youth enrolling in and completing needed treatment.

After several years of study, the Sunset Commission concluded that the combination of on-going challenges at TYC, the agency's declining population and rising costs, and the success of diversion initiatives provides an excellent opportunity to continue reforms by consolidating the juvenile justice agencies into a single, fiscally responsible agency to serve youthful offenders.

Issue 1

Texas' Juvenile Justice Agencies Need Major Restructuring to Improve Services to Youthful Offenders and Safeguard the State's Resources.

Recommendation

Change in Statute

1.1 Abolish TYC and TJPC and transfer their functions to a newly created state agency, the Texas Juvenile Justice Department, headed by a 13-member Board and with a six-year Sunset date of 2017.

This recommendation would create a unified juvenile justice system anchored by a single state agency, the Texas Juvenile Justice Department, with a Sunset date of 2017. The merger would have a one-year phase-in period ending with creation of the new Department on September 1, 2012. The mission of the new Department would reflect the goal of prioritizing local probation above state commitment. The new 13-member Juvenile Justice Board would have the following composition:

- four juvenile court judges or county commissioners;
- one juvenile court prosecutor;
- three chief juvenile probation officers representing small, medium, and large counties;
- one mental health or other treatment professional;
- one education professional;
- one child or victim advocate; and
- two public members who are not employees of the criminal or juvenile justice systems.

The recommendation would create a transition team to assist in the organization of the new agency. The Governor would appoint the team, which would begin work on September 1, 2011 and disband on December 31, 2012 or as soon thereafter as possible. The team would be composed of the following:

- a representative of the Governor, who would chair the team;
- administrative heads of TJPC and TYC;
- representatives of the Lieutenant Governor and Speaker of the House;
- three stakeholders representing youth, families, and advocacy groups; and
- three stakeholders representing small, medium, and large probation departments.

This recommendation would not change the law governing OIO's functions, and the Office would continue to investigate and evaluate the rights of youth committed to the State's care only.

1.2 Allow the State to transfer any closed TYC facility, in a county with a population of less than 100,000, to the county or city in which the facility is located.

This recommendation would permit TYC or its successor agency to transfer a closed facility to the city or county in which it is located, if it is located in a county with a population of less than 100,000.

Fiscal Implication Summary

- ***Issue 1*** – Consolidating the Texas Youth Commission and Texas Juvenile Probation Commission would result in an overall annual savings of at least $2.9 million beginning in 2013. Annual savings of about $1.3 million would come from the elimination of nine full-time executive positions, including salaries and fringe benefits, that would be duplicative in a single agency. The Department and its transition team would determine the actual positions that would be consolidated, but possible positions include the executive director, deputy executive director, general counsel, human resources director, director of government relations, chief financial officer, chief information officer, director of research, and director of public affairs.

  Given ongoing reductions in population at the Texas Youth Commission, the new Department should be able to further downsize central administration. As the new Department reorganizes its functions, it could consolidate positions in other areas such as information services, training, and governmental and public affairs. A reduction of 10 percent in central office staff, or about 25 FTEs in addition to already-identified executive positions, would result in savings of about $1.6 million annually.

  Further significant savings could be realized through the closure of Texas Youth Commission facilities, but such closures were not specifically addressed in the Sunset Commission's recommendations on these agencies.

Fiscal Year	Savings to the General Revenue Fund	Change in the Number of FTEs from FY 2011
2012	$0	0
2013	$2,922,819	-34
2014	$2,922,819	-34
2015	$2,922,819	-34
2016	$2,922,819	-34

Texas Public Finance Authority

Project Manager: Michelle Downie

Agency at a Glance

The Legislature created the Texas Public Finance Authority (TPFA) in 1983 to issue bonds on behalf of the General Services Commission, and has since expanded its clients to currently include 23 state entities. Today, TPFA is the State's primary issuer of debt repaid from General Revenue.

The Authority's mission is to provide the most cost-effective financing available to fund capital projects, equipment purchases, and other programs authorized by the Legislature. To achieve its mission, the Authority carries out the following key activities.

- Analyzes and issues general obligation and revenue bonds for its client agencies and other programs authorized by the Legislature.
- Makes debt service payments and manages debt proceeds, ensuring compliance with federal and state law governing the proper use of the funds.
- Provides financing for certain capital equipment purchases such as computers, phone systems, or vehicles.

Summary

The State of Texas sells millions of dollars in bonds to finance projects as wide-ranging as building construction, cancer research, and major technology purchases. Rather than every state agency going out on its own to issue and market bonds, the Legislature in 1983 centralized much of the State's debt issuance into one agency, the Texas Public Finance Authority. TPFA currently manages $2.8 billion in outstanding state debt.

Consolidating debt issuance into TPFA has significant value for the State.

TPFA's main role is to cost-effectively issue bonds and service debt for 23 state agencies and universities that generally use debt financing infrequently and lack in-house bond finance expertise. The Sunset Commission concluded that the consolidation of smaller and infrequent debt issuance and service in one agency has significant positive value for the State. Given the ongoing need for TPFA's functions, the Sunset Commission identified opportunities to expand use of TPFA's expertise and track record and, in one recommendation, remove a multi-million dollar obstacle to efficiently issuing state debt.

Issue 1

Texas Has a Continuing Need for the Texas Public Finance Authority.

Texas achieves cost efficiencies by consolidating the issuance of a large portion of the State's debt in the Texas Public Finance Authority. The Authority successfully negotiates low cost debt issuance and identifies ongoing opportunities to reduce debt service costs. No organizational alternatives for TPFA were identified that would reduce costs or increase its effectiveness.

Recommendations

Change in Statute

1.1 Continue the Texas Public Finance Authority as an independent agency for 12 years.

This recommendation would continue the Authority as an independent agency, responsible for issuing and managing debt on behalf of other state entities.

1.2 Apply the standard Sunset across-the-board requirement for TPFA to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that TPFA develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Issue 2

Limitations on the Cancer Prevention and Research Institute's Debt Issuance Waste State Funds.

Key to TPFA's effectiveness in managing the State's debt are its close working relationships with client agencies to carefully time debt issuance and its flexibility to take advantage of financing methods best suited for market conditions. However, a needless restriction in the newly created Cancer Prevention and Research Institute's (CPRIT) statute prevents TPFA from managing the Institute's $3 billion in general obligation bond authority in the most efficient way. Removing the restriction and allowing TPFA to manage CPRIT's debt the same as other general obligation debt could save $31 million in General Revenue debt service costs during the next biennium.

Recommendation

Change in Statute

2.1 Remove CPRIT's requirement to escrow multi-year grant awards, and extend TPFA's standard authority to stagger debt issuance to include CPRIT's grants.

Paying bond debt while money sits in escrow is not cost-effective. Under this recommendation, statute would no longer require CPRIT to hold multi-year grant funds in an escrow account at the time of

the award. TPFA would manage CPRIT's general obligation debt the same way it manages its other client agencies' debt, using its expertise and flexibility to minimize debt service costs to the State. The recommendation would also improve the timing of debt issuance by adding CPRIT's grants to the list of projects funded by general obligation bonds that can move forward before TPFA has issued the debt, as long as TPFA and the Bond Review Board have approved the issuance.

Issue 3

State Law Limits TPFA's Ability to Assist State Colleges and Universities.

Since creating TPFA in 1983, the Legislature has recognized the Authority's success by expanding the number of clients it serves, including the addition of three state universities. No reason exists for limiting the number of universities that TPFA may assist, and several others could potentially benefit from having access to TPFA's expertise. In particular, Texas State Technical College (TSTC) is one of the smallest and least frequent state debt issuers and would benefit from becoming a full client of TPFA.

Recommendations

Change in Statute

3.1 Authorize TPFA to provide debt issuance services, upon request, to state colleges and universities.

This recommendation would allow TPFA to provide debt issuance services to state universities upon agreement between TPFA and the university. Should a state university wish to access TPFA's bond or commercial paper expertise, the Authority would be able to consider requests on a case-by-case basis and enter into agreements with those it can accommodate. These colleges and universities would maintain the authority to issue their own debt as well.

TPFA whould be authorized to receive reimbursement for services it renders under these agreements although the agency would continue to issue all debt without reimbursement for its client universities.

3.2 Require TPFA to issue the debt for Texas State Technical College's legislatively authorized projects.

This recommendation would transfer the debt issuance functions of Texas State Technical College to TPFA. TPFA's relationship with TSTC would be the same as its relationship with current university clients, all of which ceased issuing debt upon the transfer of their bonding authority to TPFA. TSTC would still be fully responsible for project planning, obtaining legislative approval, and all related decisions. As a result, the University would no longer have to contract and pay for bond counsel, financial advisors, or underwriters. TPFA's role would only be to arrange cost-effective bond financing, and would have no authority over TSTC or its projects. TPFA would provide these services without reimbursement.

Issue 4

Authorize Stephen F. Austin State University to Use TPFA or Issue Its Own Debt.

Stephen F. Austin State University is currently required by law to use TPFA's services for its debt needs. Since the university has grown and needs to issue debt more regularly, the Sunset Commission concluded that the university may be able to cost-effectively issue its own debt and should no longer be mandated to use TPFA.

Recommendation

Change in Statute

4.1 Remove the requirement that TPFA issue bonds for Stephen F. Austin State University, allowing the University to choose to use TPFA or to issue its own debt for legislatively approved projects.

This recommendation would give Stephen F. Austin State University the flexibility to choose to use TPFA or to issue its own debt for legislatively approved projects.

Fiscal Implication Summary

None of the recommendations in this report would result in additional costs to the State. One of the recommendations would result in significant savings to the General Revenue Fund.

- ***Issue 2*** – Removing the requirement that the Cancer Prevention and Research Institute of Texas escrow grant funds would provide significant savings to the General Revenue Fund by giving TPFA the flexibility to manage the Institute's debt the same as its other client agencies' debt. Based on information from TPFA, estimated savings total about $31 million in the next biennium. The savings primarily result from cost avoidance by postponing debt issuance until CPRIT actually needs funds to reimburse its grantees. The estimates could fluctuate based on TPFA's choice of financing methods, actual market conditions, and CPRIT's timing of grant awards in the future.

Fiscal Year	Savings to the General Revenue Fund
2012	$6,770,301
2013	$24,263,890
2014	$35,755,814
2015	$38,336,964
2016	$37,414,718

Public Utility Commission of Texas

Project Manager: Karl Spock

Agency at a Glance

The Public Utility Commission (PUC) oversees electric and telecommunications companies in Texas. The Legislature created PUC in 1975 to regulate rates and services of monopoly utilities as a substitute for competition. Since then, legislative changes have restructured and deregulated major portions of electric and telecommunications markets, and PUC's focus has evolved to oversee aspects of these changes. In fiscal year 2009, PUC estimates that, of staff hours directly devoted to utility regulation, about 83 percent were allocated to electric-related activities, showing the agency's dominant focus in this area. PUC carries out the following key duties.

- In areas of the state open to electric competition, oversee the rates and services of transmission and distribution utilities, certify retail electric providers, and register power generation companies.
- Oversees the operations and fee requests of the Electric Reliability Council of Texas (ERCOT) in areas of the state open to competition.
- Regulates the rates, services, and service quality of electric utilities that continue to operate as monopolies in areas of the state not open to electric competition.
- Administers renewable energy and energy efficiency programs throughout the state.
- Carries out varying degrees of regulation or oversight of telecommunications providers.
- Administers various assistance programs for low-income electric or telephone customers.

Summary

The Public Utility Commission is the most reviewed of all agencies subject to Sunset evaluation, possibly because of the dynamic nature of electric and telecommunications industries in Texas in the last 15 years. The current review intersects electric and telecommunications industries five years after PUC's last Sunset review in 2005. Today, even with continuing changes in market forces and technology, much remains the same as in 2005. PUC continues to regulate monopoly providers and to protect consumers in competitive markets through rulemaking, investigation and enforcement, and complaint resolution.

For all the expectations for market and technology change, the needs of utility regulation are much the same as in the last Sunset review in 2005.

Recent legislative decisions have set a clear market-oriented policy for overseeing electric and telecommunications utilities which has gained broad acceptance and would be exceedingly difficult to undo or change significantly as the State's approach to dealing with these utilities. Instead, the Sunset Commission concentrated on improvements in PUC's ability to oversee the increasingly competitive electric market to better protect consumers and to eliminate statutory impediments that hinder the progression to more competition in the telecommunications industry. The following material summarizes the Sunset Commission's recommendations.

Issue 1

PUC Lacks Regulatory Tools Needed to Provide Effective Oversight and Prevent Harm to the Public.

Since 1995, the Legislature has enacted laws restructuring electric and telecommunications industries from traditional rate regulated monopoly markets to markets open to competition. In these restructured markets, PUC relies on licensing-related functions to achieve oversight instead of focusing on rate regulation. These functions include granting businesses operating authority, resolving consumer complaints, and taking enforcement actions against violators.

PUC still lacks a degree of regulatory authority necessary for effective oversight in these restructured markets. The agency lacks strong enforcement authority in limited areas to ensure that penalties serve as an effective deterrent and to immediately halt actions that are of eminent danger to the public. PUC's limited oversight of certain telecommunications entities also suffers because the agency's list of some regulated entities is inaccurate. This inaccuracy occurs primarily because no renewal process exists to ensure timely tracking and updates of the active status of these organizations.

Recommendations

Change in Statute

1.1 Increase PUC's administrative penalty authority to $100,000 per violation per day for electric industry participants' violations of Electric Reliability Council of Texas' (ERCOT's) reliability protocols or PUC's wholesale reliability rules.

Under this recommendation, PUC's administrative penalty authority for reliability-related violations by electric industry participants would increase from a maximum of $25,000 per violation per day to $100,000 per violation per day. To ensure that all parties are aware of the potential penalties for reliability-related violations, PUC would pass rules adopting a penalty matrix and specifying which violations are serious enough to warrant higher penalties.

1.2 Authorize PUC to issue emergency cease-and-desist orders to electric industry participants.

PUC could use this authority when an electric industry participant's actions would harm the reliability of the electric grid; are fraudulent, hazardous, or create an immediate danger to public safety; or could reasonably be expected to cause immediate harm to consumers in situations in which monetary compensation would be inadequate. This recommendation also would authorize PUC to assess administrative penalties against companies that violate an emergency cease-and-desist order, and allow companies to appeal the orders and penalties through the normal enforcement process.

1.3 Require PUC to provide for the renewal of registrations for Competitive Local Exchange Carriers and Interexchange Carriers.

Statute would require Competitive Local Exchange Carriers and Interexchange Carriers to renew their registrations by January 1, 2012, so that PUC could develop an accurate list of entities that continue to be active and subject to its limited oversight. Information to be submitted to satisfy the renewal requirement would be limited to the carrier's name, address, and annual report that is currently required. Statute would authorize PUC to adopt rules establishing the process, including determining the time periods for the renewal of registrations and providing a grace period for active carriers who fail to timely file the required information. Carriers that fail to meet the filing requirement and grace period would need to satisfy all requirements of the original authorization issued by PUC to be reinstated.

Management Action

1.4 PUC should publish additional complaint and enforcement data related to the electric industry on its website.

Implementation of this recommendation should increase consumers' online access to complaint and enforcement data related to the electric industry, and provide it in a more user-friendly format. Informal complaints received by PUC would be aggregated to display information such as the total number of complaints by type and a breakdown of how they were resolved.

Enforcement-related information displayed on PUC's website would include all investigation and enforcement activity related to the electric industry, whether initiated from an informal complaint or elsewhere. Data shown, for example, could include the origin of the action, disposition of investigations, and the amount of final enforcement penalties by company. PUC also should make available trend data and analysis online from the information above.

Data should be updated periodically, such as quarterly. PUC staff should formally present information and analysis on complaint and enforcement activities to PUC commissioners at least annually, with the opportunity for the public to comment.

Issue 2

Outdated Statutory Provisions Related to the Telecommunications Industry Lead to Unnecessary Regulation or Services that Are No Longer Requested.

The telecommunications industry in Texas has evolved to a competitive structure featuring new technologies, but some outdated provisions more appropriate to earlier times still remain on the books. Provisions requiring telecommunications providers to submit contracts for competitive services to PUC such as for provision of high-speed private lines are no longer necessary, given the competitive nature of these contracts. In addition, PUC has received no requests for extended area service since May 1998. This service allows customers to make calls outside their local calling area to neighboring communities for a flat monthly fee.

Recommendations

Change in Statute

2.1 Eliminate the requirement for PUC to approve customer-specific contracts.

By eliminating the approval requirement, PUC would no longer need to require incumbent telecommunications providers to routinely file their customer-specific contracts with the agency. However, this recommendation would still allow PUC to require providers to file these contracts upon an inquiry or complaint filed by an affected party or upon request by the agency. Providers would need to maintain their customer-specific contracts for a specific period of time established by PUC in rule.

2.2 Eliminate the requirement for telecommunications providers to routinely file contracts for private networks with PUC.

Rather than requiring certain incumbent telecommunications providers to file all private network contracts with PUC, this recommendation would allow PUC to require those providers to file the contracts only if the agency received an inquiry or complaint filed by an affected party or if PUC wanted the information. Providers would need to keep their private network contracts for a specific period of time established by PUC in rule.

2.3 Eliminate the process for establishing new extended area service.

Although PUC would no longer establish new service of this type, communities that already have the service would be able to retain their service plans.

Issue 3

The State Has a Continuing Need for the Public Utility Commission.

Regulatory oversight is still needed for Texas' essential electric and telecommunications industries. The State needs to regulate remaining electric and telecommunications monopoly utilities to ensure just and reasonable rates and high quality service. In addition, the State still needs to oversee the competitive aspects of the electric and telecommunications markets because of their complexity and the potential for fraud and abuse.

PUC continues to be the proper agency to carry out this regulation. The three-member full-time board also is appropriate for this agency, given its quasi-judicial functions. However, statutory conflict-of-interest provisions applied to Commissioners have not been updated to reflect the close oversight role that the Commission has come to play over ERCOT.

Recommendations

Change in Statute

3.1 Continue the Public Utility Commission for 12 years.

This recommendation would continue the Public Utility Commission for the standard 12-year period.

3.2 Prohibit PUC commissioners from being employed by ERCOT for two years after leaving PUC.

Current conflict-of-interest provisions prohibit a PUC Commissioner from employment with a public utility in the Commissioner's responsibility for two years after leaving the agency. This recommendation extends the provision to also prohibit employment with ERCOT for two years.

Fiscal Implication Summary

PUC Issue 1 could result in a gain to the General Revenue Fund, but the amount could not be estimated.

- ***Issue 1*** – Requirements would increase administrative penalties for endangering electric market reliability, and these penalties would be deposited to the General Revenue Fund. However, the fiscal impact resulting from increased penalties could not be estimated.

Office of Public Utility Counsel

Project Manager: Karl Spock

Agency at a Glance

The Legislature created the Office of Public Utility Counsel (OPUC) in 1983 as an independent agency, separate from the state's Public Utility Commission (PUC), to represent the interests of residential and small commercial customers in state electric and telecommunication utility matters. OPUC carries out the following key duties.

- Intervenes in rate cases and contested cases that may affect rates at PUC.
- Participates in rulemakings and projects at PUC.
- Advocates on behalf of consumers in federal regulatory proceedings, primarily before the Federal Communications Commission and Federal Energy Regulatory Commission.
- Appeals decisions by PUC, or intervenes in appeals brought by others, to state district court.
- Represents residential and small commercial consumers as a member of the Board of the Electric Reliability Council of Texas (ERCOT), several advisory committees to the ERCOT Board, and the Board of the Texas Reliability Entity.
- Recommends legislation concerning consumer issues.

Summary

The Sunset review of OPUC occurred along with reviews of the Public Utility Commission and the Electric Reliability Council of Texas. As the electric and telecommunications markets in Texas have continued their evolution toward greater competition, OPUC's traditional role of representing residential and small commercial consumers in matters before PUC has also evolved. OPUC continues to represent these interests in rate cases in non-competitive markets as well as other proceedings in both regulated and restructured markets.

OPUC continues to represent interests of residential and small commercial consumers in both regulated and restructured markets.

Issue 1

Texas Has a Continuing Need for the Office of Public Utility Counsel.

As it concluded in 2005, the Sunset Commission found that the State has a continuing interest in having an advocate for residential and small commercial utility consumers in both competitive and regulated environments. The complexity of today's electric and telecommunications markets means small consumers need someone representing their interests in regulatory proceedings at PUC, ERCOT, Texas Reliability Entity, and at the federal level. Further, the independence of the Public Counsel is a key consideration in allowing more focused advocacy on the needs of consumers.

Recommendation

Change in Statute

1.1 Continue the Office of Public Utility Counsel for 12 years.

This recommendation would continue OPUC as an independent agency, responsible for advocating for residential and small commercial utility consumers.

Fiscal Implication Summary

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

Texas Racing Commission
Equine Research Account Advisory Committee

Project Manager: Steven Ogle

Agency at a Glance

The Texas Racing Commission (Commission) regulates all aspects of horse and greyhound racing to protect the animals and participants involved in live racing, and to ensure the integrity of pari-mutuel wagering. The Legislature authorized pari-mutuel wagering on horse and greyhound races in 1986 by passing the Texas Racing Act, and established the Texas Racing Commission to oversee the racing industry and promote the economic and agricultural development of racing.

To accomplish its mission, the Commission:

- licenses racetrack facilities and all racing industry occupations;
- enforces the Texas Racing Act and establishes rules for racing conduct;
- allocates race dates, and supervises licensee and animal conduct during live racing events;
- oversees all pari-mutuel wagering activity, including wagers placed on simulcast races; and
- administers the Accredited Texas-bred Incentive Program.

A majority of Sunset's 2008 recommendations remain appropriate with a few modifications.

Committee at a Glance

The Equine Research Account Advisory Committee (Committee) helps address the informational needs of the equine breeding and racing industries by recommending funding for equine research at Texas universities. In 1991, the Legislature amended the Texas Racing Act to dedicate a small amount of horse-racing wagers for equine research. These funds are deposited into the Equine Research Account, which is administered by the Director of Texas AgriLife Research, a system agency of the Texas A&M University System. The Committee, also created in 1991, provides subject matter expertise to AgriLife Research's Director when making grant decisions.

To accomplish its mission, the Committee sets grant topics, reviews grant proposals, and recommends grant awards. The Committee is also statutorily charged with holding an annual conference on relevant equine research topics.

Summary

These special purpose reviews of the Texas Racing Commission and the Equine Research Account Advisory Committee follow up on the full Sunset reviews conducted in 2008. At that time, the Sunset Commission adopted and forwarded to the 81st Legislature recommendations on the Texas Racing Commission and the Advisory Committee. However, the Legislature did not pass the Sunset bill on either entity. Instead, the Legislature continued both for two years in separate legislation, and focused the current Sunset staff reviews on the appropriateness of the recommendations voted on and adopted by the Sunset Commission in 2008.

Based on this re-examination, the Sunset Commission concluded that a majority of its previous recommendations on the Racing Commission remain appropriate with a few modifications, and that statutory authority and direction are needed to implement them. In 2008, the Sunset Commission made only one recommendation related to the Advisory Committee, which was to abolish it. That recommendation continues to be appropriate. The following material summarizes the Sunset Commission's recommendations on the Texas Racing Commission and Equine Research Account Advisory Committee for consideration by the 82nd Legislature.

Issue 1

The Commission Lacks Certain Regulatory Tools Needed to Oversee Today's Racing Industry.

Recommendations

Change in Statute

1.1 Require the Commission to designate each racetrack license as either active or inactive and develop renewal criteria for inactive licenses.

Some racetrack license holders have failed to choose a location or build facilities for more than 20 years. Under this recommendation, the Commission would be required to determine whether each racetrack license holder is actively working to fulfill the basic obligations of a license and then designate each racetrack license either active or inactive. The Commission would establish standards, by rule, to be considered an active license holder, based on the overall standard of either holding live races or making good faith efforts to hold live races. The Commission would complete assessments of all existing racetrack license holders by September 1, 2012, and would complete assessments of all new licenses within one year of license issuance. Inactive licenses would be subject to an annual license renewal process until active status is achieved or the Commission refuses to renew the license. Active licenses would have their operations reviewed by the Commission every five years, as required in statute and further explained in Recommendation 1.6.

The Commission would devise, by rule, a renewal process for licenses designated as inactive. In developing this process, the Commission should consider factors reviewed during the initial licensure process, including financial soundness and the ability to conduct live races. The Commission would be authorized to charge inactive racetracks a fee to cover any additional costs associated with processing license renewals. The Commission would review each inactive racetrack license holder, no later than one year after the designation of the license as inactive, to determine whether the licensee has taken

sufficient steps to meet the obligations of a license holder. Additionally, the Commission would be authorized to not renew an inactive license if it finds the licensee has not made a good faith effort to conduct live racing or if continuing to grant the license is not in the best interests of the racing industry or the public. If renewed, the Commission would annually review an inactive license for as long as the license remains inactive.

1.2 Clarify the Commission's authority and ability to revoke a license.

This recommendation would clearly grant the Commission authority to revoke a license from any license holder for significant violations of the Act or Commission rules. The recommendation would require the Commission to adopt rules clearly outlining the revocation process. Under this recommendation, licenses would no longer be held in perpetuity.

1.3 Authorize the Commission to require license holders to post security at any time.

The Racing Act only provides for new licensees to post security. This recommendation would allow the Commission to require racetrack license holders to post security at any time, instead of only when a new license is issued. This would assist the Commission to ensure that license holders fulfill their statutory obligations to build their tracks and run live races.

1.4 Eliminate uncashed winning tickets as a source of Commission revenue.

This recommendation would remove an unstable and dwindling source of revenue as a funding mechanism for the agency. Racetracks would be allowed to keep revenue from uncashed winning tickets and continue to use that revenue to offset the cost of drug testing race animals. The Commission would replace the lost revenue by adjusting other racing-related regulatory fees paid by each licensed racetrack, a more stable source of funding.

1.5 Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.

Under this recommendation, the Texas Racing Act would be amended to clarify that no entity, including out-of-state businesses that offer online or phone accounts, can accept wagers on horse or greyhound races by Texas bettors unless sanctioned by the Act. While some online betting sites would clearly ignore such a change in Texas law, many have legitimate licenses in other states and contracts with out-of-state racetracks that could be jeopardized if they do not follow Texas law. As a result, at least partial compliance is expected from this clarification of law.

Management Action

1.6 The Commission should review the operations and management of all active racetrack licenses.

This recommendation directs the Commission to begin conducting reviews of racetrack licenses under the agency's existing authority to review license holders. The Commission should conduct thorough, but abbreviated, reviews that do not overwhelm staff's ability to conduct the reviews while also completing other necessary agency tasks. Further, the Commission should develop a schedule for reviews that would allow it to continue conducting reviews on each racetrack license every five years as currently set out in statute.

Issue 2

Weaknesses Exist in the Commission's Approach to Licensing Racing Industry Occupations.

Recommendations

Change in Statute

2.1 Require the Commission to license only those individuals who can affect pari-mutuel racing.

This recommendation would limit Commission licensure to only those individuals directly involved with pari-mutuel racing. The Sunset Commission found no reason for the agency to continue licensing workers such as popcorn vendors and parking attendants. The Commission would continue to license occupations that need significant access to the backside of a racetrack or restricted areas of the frontside as part of their job duties. The Commission would retain authority over the actions of non-licensed employees through their employers. Racetracks would be responsible for ensuring employees' compliance with the Racing Act and Rules of Racing.

Commission investigators would be able to focus their attention on the other licensees who account for most violations. The Commission would also save costs of running criminal history checks for these occupations, as the fee for these licenses does not cover the Commission's costs for performing basic criminal history checks.

2.2 Require the Commission to obtain criminal history reports every three years.

This recommendation would require the Commission to perform criminal history checks every three years instead of the current five-year time period. Doing so would provide better public protection and bring Texas in line with national racing industry standards. Licensees would pay these costs.

Issue 3

Texas Has a Continuing Need for the Texas Racing Commission.

Recommendations

Change in Statute

3.1 Continue the Texas Racing Commission for six years.

This recommendation would continue the Commission as an independent agency for six years, instead of the standard 12 years. This would allow the Legislature the opportunity to re-evaluate the Commission's role in regulating a declining industry at that time. While the State should continue regulating the pari-mutuel racing industry, the future of the industry is unknown, and the Commission may need additional tools to again readjust to a further decline or a revived industry.

3.2 Apply the standard Sunset across-the-board requirements to the Commission.

This recommendation would ensure that the Commission develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent

possible to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expense.

In addition, this recommendation would update language in the Commission's statute to more fully conform to the across-the-board Sunset provision regarding conflicts of interest. The provision would ensure that Commission members and high-level employees are free from both actual and apparent conflicts of interest in the performance of their duties.

Issue 4

The State No Longer Needs the Equine Research Account Advisory Committee.

Recommendation

Change in Statute

4.1 Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

The functions of the Equine Research Account Advisory Committee are not necessary for the effective administration of funds from the Account. This recommendation would eliminate the Advisory Committee from statute but retain Texas AgriLife Research's authority to expend appropriated Equine Research Account funds. In expending these funds, Texas AgriLife Research would use its existing research proposal review and award process, including involving subject-matter experts to evaluate proposals when needed, and would adhere to Texas A&M University System conflict of interest provisions. Texas AgriLife Research would also be able to pair Equine Research Account funds with other agency revenue or funding sources to create larger funding pools for long-term research initiatives. Under this recommendation, Texas AgriLife Research would also use existing agency resources to communicate the impact of funded research projects to the racing industry, including the Texas Racing Commission.

Fiscal Implication Summary

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

Railroad Commission of Texas

Project Manager: Kelly Kennedy

Agency at a Glance

The Railroad Commission of Texas (Commission) serves as the State's primary regulator of the oil and gas industry. The agency's mission is to ensure the efficient production, safe transportation, and fair price of the State's energy resources, with minimal effects to the environment. To fulfill its mission, the Commission:

- oversees all aspects of oil and natural gas production, including permitting, monitoring, and inspecting oil and natural gas operations;
- permits, monitors, and inspects surface coal and uranium exploration, mining, and reclamation;
- inspects intrastate pipelines to ensure the safety of the public and the environment;
- sets gas utility rates and ensures compliance with rates and tax regulations; and
- promotes the use of propane and licenses all propane distributors.

Summary

Despite being charged with overseeing Texas' oil and gas industry – a vital sector of the State's economy, and one that continues to be fraught with controversy – the Railroad Commission of Texas has quietly fulfilled its mission for nearly 120 years. As the State's oldest regulatory agency, the Commission's early history is rooted in regulating railroad rates and tariffs, a function from which the agency also acquired its name. However, over time, state and federal law have stripped away the agency's involvement with railroads. Meanwhile, the Legislature has broadened its regulatory role to include the economic oversight of oil and gas production and, more recently, a greater focus on environmental protection.

Advancements in the oil and gas industry put the Commission face-to-face with a new set of regulatory challenges and new public demands.

For most of its lengthy tenure, the Commission primarily interacted with oil and gas producers and citizens, mostly in rural Texas, accustomed to the ways and impacts of oil and gas production. Today, however, as technological advances allow oil and gas exploration in areas of the state previously thought to be economically unfeasible, the Commission faces both a new set of regulatory challenges and a new constituency.

The Sunset review of the Railroad Commission has occurred in the midst of these game-changing events, as oil and gas exploration continues to move into urban and suburban areas of the state, followed by public outcries against such development. The Sunset Commission evaluated the structure and functions of the Railroad Commission within this new regulatory environment, and identified several critical concerns with the agency's oversight, funding, and enforcement processes. The following material summarizes the Sunset Commission's recommendations on the Railroad Commission of Texas.

Issue 1

The 19th Century Design of the Three-Member, Elected Railroad Commission No Longer Aligns With the Agency's Current-Day Mission.

The Sunset Commission determined that the functions of the Railroad Commission of Texas continue to be needed, and that a stand-alone agency is warranted to carry out these functions. However, the three-member, elected Commission, established in the late 1800s, does not provide the accountability and responsiveness needed to adequately oversee today's oil and gas industry. The elected body structure also raises potential questions of conflicts between the Commission as a regulatory agency and the oil and gas industry it regulates, and the antiquated agency name does not reflect its current functions and confuses the public.

Recommendations

Change in Statute

1.1 Establish the Texas Oil and Gas Commission, governed by a single, elected Commissioner, to assume the regulatory role currently served by the Railroad Commission, and continue the agency for 12 years.

This recommendation would create the new Texas Oil and Gas Commission to perform the functions of the Railroad Commission of Texas. To accomplish this recommendation, the Railroad Commission would be abolished as an agency, thus removing the requirement for three statewide elected officials, as is prescribed in the Texas Constitution.

Terms of the current Railroad Commissioners would end on the date the Texas Oil and Gas Commissioner is appointed by the Governor. Under this recommendation, the Railroad Commission's current statutory duties, including oversight of oil and gas exploration and production, pipeline safety, gas utility oversight, and surface mining operations, would be transferred to the Texas Oil and Gas Commission. The newly created Oil and Gas Commission would be continued for the standard 12-year period. The following information provides additional detail related to implementing such a recommendation.

- **Single, elected commissioner**. To transition to this new structure, the Railroad Commission would be abolished on September 1, 2011 and at that time, the Governor would appoint a single Oil and Gas Commissioner. The appointed Commissioner would serve through the next general election in 2012. The newly elected Commissioner would then serve until the following general election in 2014, allowing the election cycle to sync with the other four-year term statewide elected officials up for re-election. Once elected in 2014, the Texas Oil and Gas Commissioner would serve a standard, four-year term.

- **Name change.** Under this recommendation, the Commission would be required to adopt a timeframe for phasing in the agency's new name, so as to spread out the cost associated with updating letterhead, signs, publications, and other official agency documents.

In addition, as part of this recommendation, one standard Sunset across-the-board requirement would be applied to the Texas Oil and Gas Commission to require the Commission to adopt dispute resolution and rulemaking procedures. The agency would be required to develop a plan that encourages alternative dispute resolution and negotiated rulemaking procedures and applies them to its rulemaking, internal employee grievances, and other appropriate potential conflict areas.

1.2 Prohibit the Texas Oil and Gas Commissioner and candidates seeking this office from receiving campaign contributions during certain timeframes.

This recommendation would prohibit the Texas Oil and Gas Commissioner from being able to solicit and receive campaign contributions for other statewide and nationally elected positions, except in the final 12 months leading up to the general election of the final year of their term, and during the time period between that general election and 30 days prior to the next legislative session.

This recommendation would also prohibit the Texas Oil and Gas Commissioner and any candidates seeking office as the Texas Oil and Gas Commissioner from being able to solicit and receive campaign contributions, except in the final 12 months leading up to the general election of the final year of the current expiring term, and during the time period between that general election and the 30 days prior to the next legislative session.

Issue 2

Using General Revenue to Regulate the Oil and Gas Industry Shifts Oversight Costs From the Industry to Taxpayers.

Unlike most regulatory programs, the Sunset Commission found that the Oil and Gas program at the Railroad Commission is not self-supporting. Instead, the program's $52.5 million budget for fiscal year 2011 relies on about $23.4 million in General Revenue. Of the remaining budgeted amount, about $27.5 million appropriately comes from fees, fines, and other miscellaneous revenues levied on the oil and gas industry. In contrast, other regulatory agencies have statutory means to ensure fee revenues cover the costs of regulation.

Recommendations

Change in Statute

2.1 Require the Commission's Oil and Gas program to be self-supporting, and authorize the Commission to levy surcharges on the program's permits, licenses, certificates, or reports to achieve this purpose.

This recommendation would require the Oil and Gas program to be self-supporting, and set up surcharges adjustable by the Commission as the means to achieve that end. In addition to currently required fees, the Commission would have the authority to add, at its discretion, surcharges to licensing-related activities of the program. The Commission would adjust the surcharges to meet the self-supporting statutory directive in this recommendation, and the surcharges would be collected at

the time of application. For purposes of this recommendation, strategies in the 2010-2011 biennium making up the Oil and Gas program include Energy Resource Development, Oil and Gas Monitoring and Inspections, Oil and Gas Remediation, Oil and Gas Well Plugging, and Public Information and Services.

Under this recommendation, the agency would establish a methodology for developing the surcharge that reflects the time taken for the regulatory work associated with the licensing-related activity; the number of individuals or entities over which cost could be spread; the impact of the surcharge on operators of all sizes, as measured by number of oil or gas wells; existing balances in any dedicated fund to be carried forward; and other factors it considers to be important to the fair and equitable levying of a surcharge. The methodology would be established in rule, ensuring the opportunity for affected entities and the general public to comment on them. The Commission would set the actual surcharges by Commission order at amounts determined, in aggregate, to cover the costs of the Oil and Gas program.

Change in Appropriations

2.2 Add language in the General Appropriations Act to further ensure that the Commission collects fee amounts to offset the direct and indirect costs of administering its Oil and Gas program, including benefits.

This language would be placed in the Commission's appropriation pattern as new rider language. The rider would require that fees and other miscellaneous revenues associated with the Oil and Gas program cover, at a minimum, all program costs, including direct and indirect administrative costs as well as benefits, as similar riders limit appropriations to other regulatory agencies. As with a number of these riders, if revenues are insufficient to cover these costs, the Legislative Budget Board and Governor could direct the Comptroller's office to reduce the appropriation authority to be within the amount of fee revenue expected to be available.

Change in Statute

2.3 Reconstitute the Oil Field Cleanup Fund as the Oil and Gas Regulation and Cleanup Fund, continued as a dedicated fund in General Revenue established to pay for the entire Oil and Gas program.

Statute would be amended to expand the General Revenue-dedicated Oil Field Cleanup Fund into the General Revenue-dedicated Oil and Gas Regulation and Cleanup Fund. The renamed and restructured fund would receive fees and other miscellaneous revenues currently deposited to the Oil Field Cleanup Fund, as well as the new surcharges. Revenues in the Fund could be used for any aspect of the Oil and Gas program, including administrative support and personnel benefits. Fund balances in the Oil Field Cleanup Fund would transfer to the renamed and restructured fund. This recommendation would not make any changes to the Commission's ongoing oil field cleanup efforts.

2.4 Redirect fines previously deposited in the Oil Field Cleanup Fund to General Revenue.

Revenues generated from fines levied by an agency are typically deposited into General Revenue and not made available for the general support of an agency or its programs, thus avoiding any allegations that an agency is abusing its fine authority to increase its revenues. Currently, statute directs certain fine revenues related to oil and gas regulation to the Oil Field Cleanup Fund. Projected revenues from this source are estimated at $2.5 million for fiscal year 2011. Under this recommendation, these

revenues from fines would be directed to General Revenue, instead of the Oil Field Cleanup Fund or the reconstituted Oil and Gas Regulation and Cleanup Fund.

2.5 Abolish the Oil Field Cleanup Fund Advisory Committee, but require the Commission to continue tracking related performance measures.

This statutory advisory committee, created in 2001, has served its purpose and is no longer needed. Under this recommendation, statute establishing the Committee would be repealed. However, to ensure ongoing accountability for oil field clean up, this recommendation would require, in statute, that the State appropriations process continue to include, as it does now, two key output measures from the Railroad Commission:

- the number of orphaned wells plugged with the use of state-managed funds; and
- the number of abandoned sites investigated, assessed, or cleaned up with State funds.

Also, the recommendation would modify the Commission's current quarterly statutory reporting requirements related to cleanup and remediation to require that the Commission report to the Legislative Budget Board its performance in meeting projected targets for the two key output measures noted above, with explanation of any variance of more than 5 percent. Further, the recommendation would require that these reports include information related to total funds deposited to the new Oil and Gas Regulation and Cleanup Fund, as well as expenditures from the fund related to clean up and remediation.

Issue 3

Current Enforcement Processes Hinder the Commission's Ability to Prevent Future Threats to the Environment and Public Safety.

The Railroad Commission enforces laws aimed at ensuring public safety and protecting the environment from adverse effects of oil and natural gas production. However, the Commission focuses on bringing violators into compliance, with only a very limited percentage of violations resulting in enforcement action or fines, an important aspect for deterring future violations. The Commission also lacks a clear system for pursuing enforcement action that is based on a consistent measure of severity or pattern of repeat offenses. In addition, unlike most state agencies, the Commission conducts its own enforcement hearings, rather than taking advantage of the independence that the State Office of Administrative Hearings offers. As the oil and gas industry continues to affect significantly populated areas of the state, the Commission needs an enforcement process that leaves little room for the public to question the agency's appropriate and consistent handling of identified violations.

Recommendations

Change in Statute

3.1 Require the Commission to develop, in rule, an enforcement policy to guide staff in evaluating and ranking oil- and natural gas-related violations.

This recommendation would require the Commission to develop an overall enforcement policy in rule that includes specific processes for classifying violations based on the risk to public safety or the risk of pollution. The Commission would adopt standards providing guidance to field staff on which type of

violations to appropriately dismiss based on compliance, versus violations that should be forwarded to the central office for enforcement action. In addition, the Commission would develop standards that take into account an operator's previous violations and compliance history when determining whether to forward a violation.

3.2 Require the Commission to formally adopt penalty guidelines in rule.

This recommendation would require the Commission to adopt its penalty guidelines in rule, using public input to update current penalty amounts. The guidelines would assign penalties to different violations based on their risk and severity, making full use of higher penalties for more serious and repeat violations. By formally adopting penalty guidelines in rule for oil- and natural gas-related violations, the Commission would be aligning these enforcement procedures with its Pipeline Safety division's enforcement procedures.

3.3 Transfer the Commission's enforcement hearings to the State Office of Administrative Hearings.

Under this recommendation, the Commission would enter into an interagency contract with State Office of Administrative Hearings (SOAH) to conduct all the Commission's enforcement hearings – not just oil- and natural gas-related violations. In conducting hearings, SOAH would consider the Commission's applicable substantive rules and policies. Like other agencies that have hearings conducted at SOAH, the Commission would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. The Commission could reverse or modify a decision only if the judge did not properly apply or interpret applicable law, Commission 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.

Management Action

3.4 Direct the Commission to revamp its tracking of violations and related enforcement actions tied to oil and natural gas production, and to develop a clear and consistent method for analyzing violation data and trends.

This recommendation directs Commission staff to compile more useful statistical information on violations to identify regulatory problem areas, and report on this data to the Commission at least annually. At a minimum, the Commission should collect information on the number of complaints received and how the complaints were resolved, the number and severity of violations sent for enforcement action, the number of violations sent for enforcement action for each Commission rule, and the number of repeat violations found for each operator.

3.5 The Commission should publish additional complaint and enforcement data on its website.

This recommendation directs the Commission to increase the public's access to complaint and enforcement data online, and provide a more user-friendly format. Enforcement-related information displayed on the Commission's website should include all inspection, designating whether the inspection was Commission-initiated or complaint-based, and all confirmed, investigated violations that have gone through the full enforcement process. Data should include the disposition of violations and the amount of final enforcement penalties assessed to the operator. The Commission should also make available trend data and analysis online from the information collected as part of Recommendation 3.4. The Commission should update this data at least quarterly.

Issue 4

The Commission's Marketing of Propane Is No Longer Necessary.

The Railroad Commission is charged with ensuring the safe delivery of propane to both commercial and residential users. However, the Commission also promotes the use of propane, placing the agency in conflict with its regulatory role. In fact, no other regulatory agency in the state markets a product that it also regulates. In addition, the Commission's propane marketing function duplicates the work of other state and national organizations that promote propane and raises costs for consumers.

Recommendation

Change in Statute

4.1 Eliminate the Commission's statutory authority to promote the use of propane.

This recommendation would remove the Commission's statutory authority to promote propane, including its marketing, research, and education functions. As part of this recommendation, the Commission's statutory authority to assess a delivery fee on the propane industry for the purpose of funding Alternative Fuels Research and Education Division (AFRED) would also be removed. These changes would also do away with the need for the AFRED General Revenue-dedicated account, which would be dissolved.

Under this recommendation, the Commission would continue to administer, until completed, its current propane-related grants. In the future, nothing would prohibit the Commission from continuing to apply for such grants; however, the Commission should do so with an alternative-fuel-neutral approach.

As part of this recommendation, the Propane Alternative Fuels Advisory Committee's statutory authority to advise the Commission on opportunities to expand the use of propane in Texas would also be eliminated. The Advisory Committee, however, would continue to help the Commission develop ideas for training and testing of propane licensees as these changes would not impact the Commission's ongoing role in licensing businesses and individuals who work with propane.

Issue 5

Texas' Interstate Pipelines Lack Needed Damage Prevention Oversight to Ensure Public Protection.

Texas has more than 214,000 miles of pipeline that traverse the state, including both intrastate pipelines that run within the state, and interstate pipelines that connect to other states. To help ensure public safety, Texas has established a damage prevention program to enforce against excavators and operators who damage intrastate pipelines. However, as the Commission only has statutory authority over intrastate pipelines, this program does not extend to interstate lines, leaving a large and potentially dangerous regulatory gap. By extending the Commission's damage prevention program to cover interstate pipelines, the State could help prevent the devastating effects of pipeline incidents, no matter which type of pipeline is involved.

Recommendation

Change in Statute

5.1 Authorize the Commission to enforce damage prevention requirements for interstate pipelines.

This recommendation would authorize the Commission to amend its pipeline damage prevention rules to apply to interstate, as well as intrastate, pipelines, and to enforce these rules for violations that affect both types of pipelines. Under this recommendation, the Commission could assess administrative penalties against operators and excavators that violate damage prevention rules on interstate lines. The Commission would deposit these penalties in the General Revenue Fund, as it does with penalties collected from its intrastate pipeline damage prevention program.

Issue 6

Impending Retirements of Key Staff Could Leave the Commission Vulnerable to a Significant Loss of Institutional Knowledge.

The Commission needs a strong and highly skilled staff to effectively oversee the oil and natural gas industry. However, a large portion of the Commission's workforce, particularly its top management, is nearing retirement. Although the Commission has developed a Workforce Plan that identifies positions at risk of becoming vacant, the Commission has not implemented a succession plan that trains and develops employees to move into these positions. Not implementing a succession plan leaves the Commission vulnerable to a significant loss of experienced staff in key management and technical areas in the near future.

Recommendation

Management Action

6.1 The Railroad Commission should develop and implement a succession plan to prepare for impending retirements and workforce changes.

With the expected increase in staff turnover of top-level management positions, the Commission should implement a succession plan by no later than September 2011, before anticipated retirement-eligibility dates of key staff. As part of the succession planning process, the Commission should identify positions at risk of becoming vacant; identify the skills needed to fill these vacancies; identify experienced and capable staff to fill vacancies; and prepare staff to assume top-level management roles by providing additional training and development opportunities. Also, in an effort to better meet statewide EEO civilian workforce percentages, the Commission should place greater emphasis on recruiting and training minorities and women to fill all vacancies at the agency including top-level management positions.

Issue 7

Gas Utility Contested Rate Cases Lack the Independent Review Provided to Other Utility Cases.

The Railroad Commission relies on its own staff attorneys to preside as hearings examiners over gas utility contested rate cases. Use of SOAH for administrative hearings is now typical for most agencies unless good reasons exist to hold hearings in-house. SOAH specializes in hearings, and in fact, has a division devoted to hearing utility cases. External hearings promote independence from any potential pressures that might come from inside or outside an agency. SOAH also has the capability to conduct hearings throughout much of the state, as well as Austin.

Recommendation

Change in Statute

7.1 Require the Commission to use the State Office of Administrative Hearings to conduct hearings in contested gas utility cases.

This recommendation would remove the option in law to have contested gas utility cases heard at SOAH, and instead require them to be heard at SOAH, the same as all other utility cases. As with other agencies using SOAH, the responsible agency would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge.

Issue 8

The Commission's Oversight of Mineral Pooling Needs Clarification to Ensure Mineral Owners Are Aware of Their Rights.

The Mineral Interest Pooling Act allows the Commission to pool mineral interests for a particular oil or gas well under certain circumstances. The Commission's current process for informing mineral owners affected by an application for pooling uses outdated and cumbersome language, resulting in potential confusion and a general lack of understanding of how to engage in contesting a permit. In addition, mineral owners seeking to protest a pooling permit do not have the option of requesting a local hearing on the matter and applicants may withdraw their permit at any time, without penalty, adding further burden to the mineral owner who may be forced to attend another hearing in Austin.

Recommendations

Change In Statute

8.1 Authorize a party affected by forced pooling to request a hearing on the matter in the county where the proposed well will be drilled.

This recommendation would authorize a mineral owner or other party affected by forced pooling to request a local hearing, instead of having to attend a hearing at the Commission's central office in Austin. As part of this recommendation, the Commission would also be authorized to enter into contracts with other state agencies that have field offices to hold such hearings either in person or by phone.

8.2 Authorize the Commission to develop a fee schedule, by rule, for increased charges associated with re-filing permits that have been previously withdrawn.

This recommendation would authorize the Commission to develop an increased fee for those applicants who re-file a petition for pooling rights, when they have previously submitted and withdrawn an application set for hearing without giving proper notice. As part of this recommendation, the Commission would develop the timeframe, by rule, as well as the fee associated with re-filing under these circumstances.

Management Action

8.3 Direct the agency to revise its notice of hearing provided to parties affected by forced pooling.

This recommendation directs the agency to revise its notice of hearing so non-industry members of the public are able to easily understand the implications of forced pooling and how to engage in the hearing and permit process.

Fiscal Implication Summary

Overall, the Sunset recommendations impacting the Railroad Commission would result in an estimated positive fiscal impact to the State of more than $27.6 million annually and a reduction of 22 full-time positions. The fiscal impact for each of these recommendations is summarized below, followed by a five-year summary chart showing the cumulative impact of the recommendations.

- ***Issue 1*** – The recommendations in Issue 1 to create the Texas Oil and Gas Commission governed by a single, elected Commissioner would result in a savings to General Revenue. Eliminating two of the three elected Commissioners, their respective staff, and the agency's Executive Director position would result in a savings of $1,234,971 and a reduction of 12 staff positions.

- ***Issue 2*** – Authorizing the Commission to levy surcharges for its Oil and Gas program to cover the costs of regulation would result in an estimated savings to General Revenue of $23,353,796. Redirecting administrative penalties to the General Revenue Fund to avoid a potential conflict of interest would result in an additional $2.5 million gain to General Revenue. These recommendations would have no impact on the Commission's staffing levels.

- ***Issue 3*** – Requiring the Commission to develop an enforcement policy to guide referrals would likely increase the number of violations forwarded for enforcement, and updating the penalty guidelines would likely bring in more revenue. However, because penalty amounts generated depend on the number and seriousness of future violations, the potential fiscal impact could not be estimated. Transferring the Commission's enforcement hearings to SOAH would have no significant fiscal impact to the State and no associated reduction of staff. The savings to the agency would be offset by the cost of conducting the hearings at SOAH.

- ***Issue 4*** – Elimination of the Commission's propane promotion program would result in a savings to General Revenue of $596,775 because the costs of the program are not fully covered by industry fees. This change would also result in a reduction of 10 full-time equivalent positions.

- ***Issue 7*** – The recommendation to require the use of SOAH to conduct gas utility contested rate hearings would result in increasing SOAH's budget and staff by about $101,000 in General Revenue and 1.5 FTEs, with corresponding reductions from the Railroad Commission's Office of General Counsel.

- ***Issue 8*** – Requiring the Commission to provide a local hearing for mineral owners seeking to protest applications for pooling would not result in a fiscal impact, as the Commission would be authorized to conduct such hearings via telephone. The recommendation authorizing the Commission to charge a fee for re-filing permits that have been previously withdrawn would result in increased revenue; however, the amount of revenue could not be estimated, as it would depend upon the number of permits withdrawn in the future, which is not known.

Fiscal Year	Savings to the General Revenue Fund	Gain to the General Revenue Fund	Net Positive Fiscal Impact to the General Revenue Fund	Change in the Number of FTEs From FY 2011
2012	$25,185,542	$2,500,000	$27,685,542	-22
2013	$25,185,542	$2,500,000	$27,685,542	-22
2014	$25,185,542	$2,500,000	$27,685,542	-22
2015	$25,185,542	$2,500,000	$27,685,542	-22
2016	$25,185,542	$2,500,000	$27,685,542	-22

Texas State Soil and Water Conservation Board

Project Manager: Sarah Kirkle

Agency at a Glance

The Texas State Soil and Water Conservation Board (State Board) works directly with owners and operators of agricultural land to develop and implement conservation plans involving land treatment measures for erosion control, water quantity, and water quality purposes. The State Board's mission is to encourage the wise and productive use of natural resources throughout the state and to ensure their availability for future generations. To achieve its mission, the State Board carries out the following key activities:

- provides technical and financial assistance to assist the operation of 216 local soil and water conservation districts;
- serves as the lead state agency for the prevention, management, and abatement of nonpoint source pollution resulting from agricultural and silvicultural, or forestry-related, activities; and
- administers grant programs for the maintenance and repair of flood control dams, water supply enhancement, development of water quality management plans, and management and abatement of agricultural nonpoint source pollution.

All of the State Board's programs and services are voluntary in nature, and the agency performs no enforcement functions.

Summary

The State Board has growing pains. Since the agency's creation in 1939, the agency has grown far beyond its initial duties of assisting soil and water conservation districts (SWCDs) across the state, and now has responsibility for water quality issues, water supply issues, and public safety concerns related to aging flood control structures. With this growth in responsibility has also come growth in the agency's budget, nearly doubling from fiscal year 2009 to 2010 to more than $28 million.

While conservation is still the State Board's mission, the agency's responsibilities have significantly expanded.

Despite this growth, the agency has remained in many ways a small, low profile agency. The Sunset Commission found that the State Board lacks processes and systems to track effectiveness and outcomes to justify what the State is getting for its investment in increasingly sensitive areas. The State

Board is in need of clear, statewide approaches to ensure that its programs are effective and accountable to the State. The following material summarizes the Sunset Advisory Commission's recommendations on the State Board.

Issue 1

Weaknesses in the Agency's Riskiest State-Funded Grant Programs Prevent the State From Evaluating Overall Agency Performance.

The majority of the State Board's activities involve making grants of state funds, on a cost-share basis, to landowners to address water quality and water quantity issues and public safety concerns about flood control structures throughout the state. The State Board administers these programs through a decentralized structure that helps ensure that programs are sensitive to the needs of the affected area. However, this structure also challenges the agency's ability to provide a consistent statewide approach for administering these grant programs and, ultimately, to assess how well these programs are working.

The State Board lacks standard practices, such as establishment of clear program goals, measurement of grant performance, evaluation of outcomes, and routine program adjustment to improve performance to ensure that its state-funded grant programs are effective and accountable to the State. While use of empirical evaluation tools, such as modeling and monitoring, for small environmental grants can be expensive and time-consuming, other planning tools are available to clearly link program goals to more easily measured outcomes. Given the recent growth in funding for the State Board's grant programs, a more holistic approach for tying goals to outcomes would provide needed information to help the agency and legislators better evaluate program impact statewide, and ensure the greatest return for the State's increased investment.

Recommendations

Change in Statute

1.1 Require the State Board to establish specific program goals and statewide grant practices, and to measure impacts for state-funded grant programs.

This recommendation would require the agency to develop appropriate program goals for its state-funded grant programs. Goals should define the beneficiaries of each program and the anticipated program results.

The recommendation would also require the State Board to establish statewide policies in each state-funded grant program to ensure grantees continue to meet grant responsibilities over the life of the grant. The agency could allow offices to have variations in regional grant verification practices based on local needs; however, all verification practices should follow the same basic statewide approach. The agency should also collect and analyze comprehensive data on status reviews or other verification activities to ensure statewide and region-specific activities are sufficient to guarantee grant conditions are met.

Statute would require the agency to create a centralized complaint tracking system to complement the complaint reviews performed by each State Board office. Finally, statute would require the Board to measure grant impact, using either empirical or non-empirical methods, and report program results publicly via the agency's website or through any existing statutorily required annual publication.

Management Action

1.2 The State Board should use a stakeholder process to develop grant goals and performance measures, and to routinely use grant results to improve existing programs.

The State Board should work with stakeholders, including SWCDs, landowners, grantees, and contractors, to develop program goals and expected short-, medium-, and long-term outcomes for each grant. These goals would establish a direct relationship between the purpose of the grant, the activities of the grant, and the expected impact. The agency should explore the use of empirical and non-empirical techniques to measure program impact and effectiveness. The State Board should also develop a process to periodically review all grant programs and make necessary adjustments, based on ongoing evaluations and results, if results indicate the programs are not achieving anticipated goals.

Issue 2

State Guidance for Water Supply Enhancement Provides a Confusing and Ineffective Framework for Meeting Critical Water Conservation Needs.

The State Board's Water Supply Enhancement Program, which works through controlling certain water-depleting brush, lacks direction and process to ensure its success and effectiveness. Because landowners participate in the Program for brush control benefits other than water supply enhancement, the agency must balance conflicting expectations for the Program. Such conflicts impede the State Board's ability to effectively accomplish legislative intent to focus the program in areas most likely to produce water where it is most needed. The Sunset Commission concluded that additional requirements are needed to help justify program decisions, ensure a more quantifiable means of increasing available water supplies for the State, and lend needed credibility to the Program.

Recommendations

Change in Statute

2.1 Clarify the Program's focus on water supply enhancement.

This recommendation would clarify the Program's water supply enhancement focus by changing the statutory name of the program from the Texas Brush Control Program to the Water Supply Enhancement Program. Statute would explicitly state the Program's purpose as enhancing available surface and groundwater through the removal of brush species detrimental to water conservation. The State Board would continue performing brush control for purposes beyond water supply enhancement through the State Board's other programs administered under Chapter 201 of the Texas Agriculture Code. The State Board would also define specific goals for the Program, such as water use and benefitting populations of the Program.

2.2 Require the State Board to develop a system to rank and prioritize water supply enhancement projects, rather than areas of the State, based on water conservation need and water yield.

This recommendation would remove the requirement for the State Board to rank areas of the State in need of a brush control program. The State Board would be required to develop a system to rank water supply enhancement project proposals, giving priority to projects that balance the most critical

water conservation need and the highest potential water yield. The State Board would also consider administrative factors, such as workload and capacity within the grant timeframe. Applications for landowner cost-share would be based on similar criteria, prioritizing water conservation need and water-yield criteria, within the specifications of the approved project. Applications would require projected water yield to be modeled by a person with appropriate credentials, such as water resources or hydrology.

The State Board would rank project proposals based on the following project selection criteria:

- water conservation need, based on information presented in the State Water Plan;
- the project's projected water yield, based on soils, slope, land use, vegetative or brush type and distribution, and proximity of the brush to the stream or channel;
- description of the project plan, including:
  - methods of brush removal,
  - landowner cost-share rates,
  - location and size of the proposed project,
  - budget and grant funding request, and
  - implementation schedule over the grant timeframe; and
- any other criteria the State Board deems relevant to implement the Program effectively, efficiently, and in line with research related to brush removal for water supply enhancement.

The State Board would be required to work with stakeholders to define standard methods of reporting water-yield criteria and modeled results in a way that allows the State Board to compare applications across the state and adopt these reporting methods through the agency's rulemaking process.

2.3 Require the State Board to establish a process to contract for feasibility studies on new water supply enhancement projects.

For water supply enhancement project proposals that have not modeled potential water yield for their project, the State Board would be required to establish a process to contract for completion of a feasibility study by a person with appropriate credentials, such as water resources or hydrology, that would model water yield results in the proposed watershed location. Projects that have completed a feasibility study that includes modeled water yield by a credentialed source would be eligible to directly apply for project funding, as long as they meet the State Board's application requirements.

While SWCDs and other applying entities would be responsible for funding the studies, the State Board could dedicate a limited amount of its appropriation toward sharing the cost of funding for the feasibility studies. If the State funds a portion of a feasibility study, applicants would be required to demonstrate potential for water yield to qualify for funding.

2.4 Require the State Board to rank and prioritize areas and cost-share applications within each water supply enhancement project.

This recommendation would require the State Board to rank areas within each approved water supply enhancement project, prioritizing those areas with the most critical water conservation needs balanced with the highest potential water yield. Areas of a watershed project receiving a lower ranking would

receive a lesser cost-share amount from the State Board. The State Board would determine the cost-share amounts for the different areas of a watershed project. The State Board should adopt the ranking system in rule.

2.5 Require the State Board to ensure follow-up brush control treatment and assess overall program effectiveness.

The recommendation would require the State Board to continue to require follow-up brush control treatment, at no cost to the State, in its brush control conservation plans. The State Board would conduct status reviews in accordance with the dates specified in the brush control conservation plan for a 10-year period subsequent to initial treatment to ensure brush canopy averages remain at or below 5 percent on lands treated with State funding. As part of its annual report to the Legislature on the Water Supply Enhancement/Brush Control Program, the State Board would include a comprehensive analysis of the program, including a review of the effectiveness of the Program and the level of noncompliance with follow-up brush control treatment.

Management Action

2.6 The State Board should develop an application process for water supply enhancement projects.

In developing an application process, the State Board should clearly provide program objectives, application categories, grant amounts and timeframes, project selection criteria, and the project selection process to potential applicants to help it gather information needed to prioritize projects. After ranking proposals based on project selection criteria, State Board staff should present selected proposals and funding recommendations to the State Board, contingent on landowner participation. Upon request, the State Board should provide an explanation of denial to applicants if the project is not selected. Once a project is selected and funded, the State Board should require applicants to seek State Board approval to change elements of the approved proposal.

2.7 The State Board should approve brush species eligible for treatment through the Program.

The State Board should consider existing research regarding the degree to which a brush species consumes water at a rate detrimental to water conservation, and only approve project funding for removal of species that the State Board believes will lead to water enhancement.

2.8 The State Board should explore the need to contract for technical expertise in administration of the Program.

Under this recommendation, the State Board should explore whether it needs to employ or contract as needed with a person with appropriate credentials, such as water resources or hydrology, for various program purposes, such as ranking project proposals or evaluating potential water monitoring projects.

2.9 The State Board should continue to dedicate a portion of its funding to evaluate the effectiveness of the Program.

The State Board should continue to dedicate a portion of its program funding toward measuring the effectiveness of the Program. The State Board should fund research that would continue to evaluate whether removal of brush through the Program results in increased water supply.

Issue 3

The State Board Lacks Explicit Authority to Carry Out Its Responsibilities as the Lead Agency for the Control of Terrestrial Invasive Plant Species.

In 2009, the State Board was made responsible for administering the Texas Invasive Species Coordinating Committee, comprising six agencies, whose job is to coordinate approaches and the exchange of information related to preventing and managing invasive species in the state. The State Board controls and removes many terrestrial invasive plant species through its administration of the Water Supply Enhancement Program. However, the State Board lacks explicit authority to control terrestrial invasive plant species that are not a detriment to water conservation. It also lacks clear authority to receive federal and state funding for addressing terrestrial invasive species.

Recommendation

Change in Statute

3.1 Clarify the State Board's role regarding terrestrial invasive plant species.

This recommendation would establish the agency's authority in Chapter 201, Agriculture Code, to specify that the State Board is the lead agency for the control of terrestrial invasive plant species and is authorized to receive and administer state and federal appropriations on the matter.

Issue 4

Texas Has a Continuing Need for the Texas State Soil and Water Conservation Board.

The Sunset Commission concluded that the State has a continuing need to develop and implement conservation plans and abate agricultural nonpoint source pollution, which is a potential contributor to over half of the total impairments of state waterbodies. No significant benefits would justify an alternative organization to the current independent agency structure. However, the Commission did find a need to monitor the State Board's progress in implementing key recommendations related to program effectiveness and accountability in four years.

Recommendations

Change in Statute

4.1 Continue the Texas State Soil and Water Conservation Board for 12 years.

This recommendation would continue the Texas State Soil and Water Conservation Board as an independent agency responsible for the development and implementation of conservation plans and abating agricultural nonpoint source pollution for 12 years.

4.2 Require a special purpose review of the State Board's implementation of Sunset Commission recommendations as part of the 2015 Sunset review cycle.

This recommendation would require the Sunset Advisory Commission to conduct a special purpose review of the State Board as part of the Sunset Commission's review of agencies for the 2015 Legislature. The Sunset Commission's review would be limited to the agency's implementation of recommendations made by the Sunset Commission to the 82nd Legislature regarding the Water Quality Management

Plan, Flood Control, and Brush Control/Water Supply Enhancement Programs. The State Board would not be subject to abolishment in this review. In the Sunset Commission's report to the 84th Legislature, the Commission may include any recommendations it considers appropriate.

4.3 Apply standard Sunset across-the-board requirements to the Texas State Soil and Water Conservation Board.

This recommendation would add language to the State Board's statute to ensure that the Governor makes appointments to the State Board on an impartial and unbiased basis.

The recommendation would update the standard statutory language regarding grounds for removal and training of board members to ensure their applicability to governor-appointed members in the same manner as other members of the State Board. Separate statutory language applying these provisions to governor-appointed members would be removed, as updated across-the-board language would provide clearer direction regarding grounds for removal and training requirements for all members.

The recommendation would also update the State Board's complaint information requirements to clarify the State Board's need to maintain complaint information on all complaints and to provide information on its complaint procedures to the public.

Finally, the recommendation would ensure that the State Board develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

Fiscal Implication Summary

None of these recommendations would result in additional costs to the State.

- ***Issue 2*** – Any decision by the State Board to fund feasibility studies or contract for technical expertise would not result in additional costs to the State. However, funding available to landowners for brush removal and water conservation would be reduced. Based on a 25 percent cost-share rate for feasibility studies by the State Board, program funding available for brush removal would be reduced by approximately $60,000 to $80,000 per year.

State Board of Examiners for Speech-Language Pathology and Audiology

Project Manager: Erick Fajardo

Board at a Glance

The State Board of Examiners for Speech-Language Pathology and Audiology (the Board) regulates speech-language pathologists (SLPs) and audiologists in Texas. Speech-Language Pathologists evaluate and treat disorders related to communication, language, and swallowing, and must obtain a masters-level degree to be licensed. Audiologists evaluate and treat ailments related to hearing and vestibular functions, including the fitting and dispensing of hearing instruments. As of January 1, 2007, licensed audiologists must obtain a doctorate-level degree.

The Board's mission is to protect and promote public health by designing and enforcing licensure rules and regulations for SLPs and audiologists. To achieve its mission, the Board carries out the following key activities.

- Develops and updates standards of practice for licensed speech-language pathologists and audiologists.
- Issues and renews licenses to qualified individuals as SLPs, SLP interns, and SLP assistants as well as audiologists, audiologist interns, and audiologist assistants.
- Receives and investigates complaints concerning licensees, and takes disciplinary actions against individuals who violate the Board's statute or rules.

The Board is administratively attached to the Texas Department of State Health Services (DSHS), housed within its Professional Licensing and Certification Unit. DSHS provides staff, facilities, and infrastructure necessary to execute the Board's duties. DSHS also houses the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee), that licenses and regulates individuals who fit and dispense hearing instruments.

Summary

As part of this review, the Sunset Commission considered both the Board and the Committee, since both are housed within and administered by DSHS' Professional Licensing and Certification Unit and both license and regulate individuals who fit and dispense hearing instruments. The Sunset Commission considered the need to regulate these professions jointly, but concluded that they should be continued separately since the practice of speech-

Some elements of the Board's regulatory functions do not conform to common licensing standards.

language pathology and audiology is focused on providing a healthcare service to consumers, while the practice of fitting and dispensing hearing instruments is focused more on providing a product to consumers. Additionally, since the same DSHS staff administers both the Board and the Committee, consolidation would not yield any significant efficiencies or cost savings.

The Sunset Commission found several inconsistencies in the Board and Committee's regulation of hearing instrument sales, particularly with respect to written contracts, recordkeeping, and the 30-day trial period. The Commission also compared the Board's statute against standard licensing practices and identified several changes that would enhance efficiency, fairness, and public protection, and improve the consistency of the Board's operations. The following material summarizes the Sunset Commission's recommendations on the State Board of Examiners for Speech-Language Pathology and Audiology. Material on the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments can be found can be found in a separate section of this report.

Issue 1

Texas Has a Continuing Need for the State Board of Examiners for Speech-Language Pathology and Audiology.

The Board regulates speech-language pathologists who evaluate and treat disorders related to communication, language, and swallowing; and audiologists who evaluate and treat ailments related to hearing and vestibular functions. The Sunset Commission found the State has a continuing need to license and regulate these professions to protect Texas consumers and to improve and maintain professional standards for these occupations, particularly as the complexity of the conditions and treatments these healthcare professions address will continue to evolve.

However, the Sunset Commission concluded the Board should only be continued for six years so that its next Sunset review would coincide with the review of several other licensing programs within DSHS' Professional Licensing and Certification Unit. Performing these reviews at the same time would allow their structure and administration to be evaluated together, and would provide sufficient time for the Board to implement any changes resulting from this review as well as the upcoming Sunset review of DSHS in 2013.

Recommendations

Change in Statute

1.1 Continue the State Board of Examiners for Speech-Language Pathology and Audiology for six years.

This recommendation would continue the Board for six years, administratively attached to DSHS. This shorter Sunset date would enable the Sunset Commission to evaluate the Board together with six other licensing programs administered by DSHS' Professional Licensing and Certification Unit that are scheduled for Sunset review in 2017.

1.2 Apply the standard Sunset across-the-board requirements to the State Board of Examiners for Speech-Language Pathology and Audiology.

- **Public membership.** Under this recommendation, a person would be prohibited from being appointed as a public member of the Board if the person's spouse is registered, certified, or licensed

by a regulatory agency in the field of speech-language pathology or audiology. This recommendation would also prohibit a person from serving as a public member of the Board if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Board other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses.

- **Conflict of interest.** This recommendation would define "Texas trade association" and prohibit an individual from serving as a member of the Board if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of health care.

- **Presiding officer designation.** This recommendation would require the Governor to designate a member of the Board as the presiding officer to serve in that capacity at the pleasure of the Governor, rather than the Board selecting the presiding officer, as it does currently.

- **Grounds for removal.** This recommendation would specify the grounds for removal for Board members and the notification procedure for when a potential ground for removal exists. This recommendation would also clarify that if a ground for removal of a Board member exists, actions taken by the Board are still valid.

- **Board member training.** This recommendation would clearly establish the type of information to be included in the Board member training. The training would need to provide Board members with information regarding the legislation that created the Board; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

Issue 2

Having Different Rules Governing the Sale of Hearing Instruments Treats Customers Inequitably and Causes Confusion.

Both the Board and the Committee have authority to adopt rules regarding the sale of hearing instruments. The Sunset Commission found several inconsistencies in the Board's and the Committee's rules relating to the standards for hearing instrument sales, including different requirements for the written purchase contract, recordkeeping, and 30-day trial period. Having inconsistent rules regarding hearing instrument sales is unfair to consumers and creates confusion for both consumers and licensees. Requiring the Board and the Committee to jointly adopt rules for hearing instrument sales would ensure consumers who purchase hearing instruments from audiologists receive the same information about their purchase as consumers who purchase hearing instruments from hearing instrument fitters and dispensers.

Recommendation

Change in Statute

2.1 Require the Board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to jointly develop and adopt rules for hearing instrument sales.

Under this recommendation, the Board and the Committee would be statutorily required to work together to develop and adopt common rules for hearing instrument sales, including the written contract, recordkeeping, and 30-day trial period for hearing instrument sales. The written contract and 30-day trial period policy for hearing instruments would be required to be written in clear, plain language. To help ensure fairness and consistency, DSHS staff should facilitate this process, bringing together the expertise of the professional members of both the Board and Committee. The Board and Committee should adopt the common rules by May 1, 2012.

Issue 3

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.

Over the past 32 years, the Sunset Commission has reviewed more than 98 occupational licensing agencies. In doing so, the Commission has identified standards that are common practices throughout the agencies' statues, rules, and procedures. In reviewing the Board's licensing functions, the Sunset Commission found that certain licensing and enforcement processes in the agency's statute do not match these model standards. Based on these variations, the Sunset Commission identified changes needed to bring the Board in line with model standards to more fairly treat licensees and better protect the public.

Recommendations

Change in Statute

3.1 Require the Board to conduct a fingerprint-based criminal background check of SLP and audiologist licensees.

This recommendation would require the Board to conduct fingerprint criminal background checks, through the Department of Public Safety (DPS), on all licensees, except speech-language pathologists and assistants in speech-language pathology working in the Texas state school system, who are already subject to fingerprint-based criminal background checks as a condition of their employment. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks when investigating a complaint or conducting an audit. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal.

3.2 Authorize the Board to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.

This recommendation would authorize the Board to mandate that a licensee issue a refund to a consumer who is entitled to it according to the terms of the 30-day trial period policy for hearing instruments.

3.3 Require Board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.

This recommendation would require Board members to recuse themselves from voting on disciplinary actions in cases in which they played a role at the investigatory level. Recusing Board members who have a prior interest in a case would promote objective decision making and ensure that the respondent receives a fair hearing.

3.4 Grant cease-and-desist authority to the Board for unlicensed practice of speech-language pathology and audiology.

This recommendation would authorize the Board to assess administrative penalties against individuals who violate cease-and-desist orders, to better protect the public from unlicensed speech-language pathologists and audiologists.

Fiscal Implication Summary

These recommendations would have no fiscal impact to the State.

Texas Department of Transportation

Project Manager: Jennifer Jones

Agency at a Glance

The Texas Department of Transportation (TxDOT) began in 1917 as the State Highway Department. Since that time, the Department has evolved from its original responsibilities of granting financial aid and directing county road construction programs, to a much broader mission of delivering a 21st century transportation system to address the State's growing transportation needs. To fulfill its mission of providing safe, efficient, and effective means for the movement of people and goods throughout the state, TxDOT:

- plans, constructs, maintains, and supports the State's transportation system, including roads, bridges, public transportation, railroads, airports, the Gulf Intracoastal Waterway, and ferry systems;
- develops and operates a system of toll roads using public- and private-sector partners and financing options; and
- manages operations on the state highway system, including improving traffic safety, issuing oversize/overweight permits, providing rest areas and travel information, and regulating outdoor advertising.

Summary

The Sunset Commission considered TxDOT through a special purpose review, following up on the full Sunset review of the agency conducted in 2008. At that time, the Sunset Commission adopted and forwarded recommendations to the 81st Legislature aimed at restoring trust and confidence in TxDOT, but the agency's Sunset bill did not pass. Instead, the Legislature continued TxDOT for two years in separate legislation and directed the 2010 Sunset review to focus on the appropriateness of the Sunset Commission's previous recommendations.

More time is needed to ensure TxDOT's progress is lasting.

Based on this re-examination, the Sunset Commission concluded that while TxDOT has worked diligently to address many of the previous recommendations, more time is needed to judge the depth and effect of the changes before TxDOT's progress in restoring trust and confidence can be considered lasting. As such, the Sunset Commission determined the majority of the previous recommendations remain appropriate, and that TxDOT continues to need statutory authority and direction to implement them. The following material summarizes the Sunset Commission's recommendations on TxDOT that continue to be appropriate for consideration by the 82nd Legislature.

Issue 1

Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.

Recommendations

Change in Statute

1.1 Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.

This recommendation would abolish the five-member Texas Transportation Commission and replace it with a single Commissioner of Transportation. The Governor would appoint the Commissioner with the check and balance of Senate confirmation every two years. The Commissioner's two-year term would expire February 1 of each odd-numbered year. The Commissioner of Transportation would be prohibited from serving if the Commissioner's term has expired and the Commissioner has not been reappointed by the Governor and confirmed by the Senate. If the Governor does not reappoint the Commissioner or make a new appointment by February 28 of odd-numbered years, then the authority to appoint the Commissioner would, by statute, transfer to the Lieutenant Governor. Although the appointment by the Governor would be subject to Senate confirmation, the appointment by the Lieutenant Governor would not.

1.2 Require the Commissioner of Transportation to resign from office before accepting any campaign contributions if running for elected office.

This recommendation would require the Commissioner of Transportation (or any successor policy-making structure) running for elected office to resign from office before accepting any campaign contributions.

Recommendation to Legislative Committees

1.3 Request that the Senate Committee on Transportation and Homeland Security and the House Committee on Transportation continue providing necessary oversight of the Department and the State's transportation system.

Instead of creating a separate Transportation Legislative Oversight Committee to provide additional and possibly duplicative oversight of TxDOT as was recommended in 2008, the Sunset Commission requests the Senate Committee on Transportation and Homeland Security and the House Committee on Transportation, as part of their ongoing charge, to consider:

- overseeing and assessing TxDOT's progress in implementing the management audit and other recommendations, particularly those identified by the TxDOT Restructure Council as priorities;
- monitoring TxDOT's planning, programming, and funding of the State's transportation system, including reviewing and commenting on TxDOT's transportation research program;
- assessing the cost-effectiveness of the use of state, local, and private funds in the transportation system;
- identifying critical problems in the transportation system, including funding constraints and recommending strategies to solve those problems; and

- determining long-range needs of the transportation system and recommending policy priorities for the system.

As part of this recommendation, TxDOT would be required to report the status of its implementation of the management audit recommendations and process improvements to the Committees as well as the Senate Finance and House Appropriations Committees.

Change in Statute

1.4 Continue TxDOT for four years.

This recommendation would continue TxDOT for a four-year period to ensure that needed changes have occurred to re-establish the Legislature's and the public's trust and confidence in the Department. This shorter Sunset review timeframe will give the Legislature the opportunity to evaluate these changes, including the accountability of a single Transportation Commissioner. The Legislature could make any changes it deems necessary in the Department's next Sunset review in 2015.

1.5 Apply the standard Sunset across-the-board requirement for the Department to develop a policy regarding negotiated rulemaking and alternative dispute resolution, and update other standard across-the-board provisions.

This recommendation would ensure TxDOT develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The Department would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the Department to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses. The other standard across-the-board requirements would be updated to apply to a single Commissioner, rather than the Transportation Commission.

Issue 2

TxDOT's Internal Controls Are Not Adequate to Ensure the Transparency and Accountability Necessary to Maintain Public Trust and Confidence.

Recommendations

Change in Statute

2.1 Require TxDOT's Chief Financial Officer to report directly to the Commissioner of Transportation.

Under this recommendation, TxDOT's Chief Financial Officer would report directly to the Commissioner of Transportation instead of reporting to the Executive Director to ensure adequate oversight and accountability of the Department's financial operations.

2.2 Require TxDOT to evaluate the performance of its administrative and decision-making staff to determine whether employees should retain their positions within the Department.

This recommendation would require the Commissioner of Transportation to ensure that TxDOT employees are performing their duties with the citizens of Texas foremost in mind, which includes being professional, diligent, and responsive to directives and requests from the Commissioner and the Legislature. To carry out this recommendation, TxDOT employees would undergo performance reviews. Based on the outcomes of these reviews, the Commissioner would need to re-evaluate the employment of any employee not satisfying these objectives.

2.3 Require TxDOT and its employees to develop, adopt, and adhere to a Code of Ethics, and to establish an ethics hotline for reporting violations.

Under this recommendation, TxDOT would be statutorily required to develop and adopt a Code of Ethics to promulgate a transparent culture and enhance public trust in the agency. All TxDOT employees would be required to annually affirm their adherence to this Code of Ethics. TxDOT would also be required, by statute, to establish an ethics hotline through which employees and others could report, anonymously or by name, violations of the Code of Ethics.

Issue 3

The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made.

Recommendations

Change in Statute

3.1 Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.

This recommendation would integrate TxDOT's various planning efforts into a single, measurable plan. This new plan should present a focused, meaningful vision to guide all of TxDOT's and Metropolitan Planning Organizations' (MPOs') other short-range planning and programming efforts. The new plan would re-engineer the Statewide Transportation Plan, already required by both federal and state law. This recommendation would add to existing statutory provisions by requiring the following elements.

- **Measurable goals.** TxDOT would develop specific, long-term transportation goals for the state, and measurable targets for each goal. The Department would report annually to the Legislature on its progress toward these goals, as already required in state law. This information also would be easily accessible from TxDOT's website.
- **Statewide priorities.** The Department would identify priority corridors, projects, or areas of the state of particular concern in meeting statewide goals.
- **Participation plan.** TxDOT would develop a participation plan specifying methods for obtaining formal input on statewide goals and priorities from other relevant state agencies, political subdivisions, local planning organizations, and the general public.
- **Regular updates.** The plan would span 24 years and would be updated every four years, similar to MPOs' long-range plans.

- **Forecast assumptions.** TxDOT and MPOs would collaborate to develop mutually acceptable assumptions for long-range federal and state funding forecasts. These assumptions would guide TxDOT's and MPOs' long-range planning in the Statewide Transportation Plan and Metropolitan Transportation Plans.

- **Integration with other long-range plans.** All other long-range transportation planning and policy efforts would support the specific goals outlined in the Statewide Transportation Plan. TxDOT should clearly reference how these plans fit together with and support the Statewide Transportation Plan.

3.2 Require TxDOT to establish a transparent, well-defined, and understandable system of project approval and programming within TxDOT that integrates project benchmarks, timelines, priorities, and cash forecasts.

This recommendation would place the framework for TxDOT's transportation programming process in statute to provide greater visibility about its overall purpose and greater control to the Legislature regarding the way TxDOT makes transportation decisions. Specific elements of the programming process would be left to the Department through rulemaking. TxDOT would be required to establish a project development plan and statewide work program that largely reflects its current internal programming document, the Unified Transportation Program. The recommendation would require TxDOT to annually set target funding levels and list all projects it plans to develop and begin constructing over a 10-year time period, but would not require the specific list of projects to be established in statute or rule to maintain the Department's flexibility to make adjustments during project implementation.

TxDOT would collaborate with its local transportation partners to update the actual programming document each year. The annual updates would include funding scenarios, a list of major projects with benchmarks and timelines, and project priority groups, as guided by agency rules, discussed in more detail below. The Department would be required to work with MPOs and other local planning entities to develop scenarios for the annual funding forecast based on a range of underlying assumptions. TxDOT, however, would be responsible for determining the forecast to be used for statewide planning purposes by MPOs and TxDOT. The Department would also develop publicly available summary documents highlighting project benchmarks, priorities, and forecasts in a way that is understandable to the public.

The recommendation would require TxDOT to define, in rule, program funding categories, such as safety, maintenance, and mobility. These rules would also describe how the Department selects projects for inclusion in the program in cooperation with MPOs and local partners. In implementing the recommendation, TxDOT must ensure that rules do not conflict with federal transportation planning requirements. TxDOT would also be required to adopt rules, as discussed below, to provide tools that are not in its current programming process, to better manage and monitor the Department's performance.

- **Project benchmarks and timelines.** Through a project approval process clearly defined in rule, TxDOT and its local partners would be required to develop benchmarks and timelines for implementation of major transportation projects in the programming document. Benchmarks and timelines would need to be set for both implementation and construction phases. These partners would define a "major project" so that creating and tracking benchmarks and timelines would not be unreasonably difficult to implement. The list of major projects would be updated annually, and projects could not enter the four-year implementation phase of the programming document unless critical benchmarks and timelines were met. Benchmarks should include, at a minimum,

target timeframes for each major stage of project development, such as preliminary engineering, advance planning and environmental review, right-of-way acquisition, and production of final plans, specifications, and estimates.

- **Project priority groups.** Through a process clearly defined in rule, TxDOT and local partners would assign all projects in the programming document to broad priority groups. The highest priority group would reflect the list of major projects identified for benchmark tracking. Other projects would be grouped into categories of lesser priorities. Grouping projects in this manner would establish prioritized categories instead of prioritized projects, a difficult task to accomplish when many projects carry similar importance in different regions of the state. TxDOT's central office staff could use project priority groups as one indicator to help allocate staff time and resources to the most important statewide projects. Prioritization would also make the programming document more useful in explaining how TxDOT's work program is meeting statewide goals.

- **Funding allocations.** TxDOT would be required to establish and regularly update formulas for allocating funds in each program category at least every five years through a clearly defined rulemaking process.

- **Cash forecast.** The Department would be required to annually produce and publish an official cash forecast through a process and schedule clearly defined in rule. TxDOT would be required to allocate funds based on the adopted funding allocation formulas, and could not exceed the cash forecast.

This recommendation would require TxDOT to annually produce a programming document that shows the progress of transportation projects through development, promotes the allocation of resources systematically among competing priorities, provides reasonable projections of future funding to help planning and avoid surprises, and increases the overall transparency of project programming.

3.3 Require TxDOT districts to develop detailed work programs driven by benchmarks for major projects and other statewide goals for smaller projects.

This recommendation would require each TxDOT district to develop a consistent, publicly available work program based on projects in the programming document described in Recommendation 3.2. These work programs would cover a four-year period and include all projects that districts will implement during that time. The work programs would track major projects in the same way as the overall programming document, according to project implementation benchmarks developed in cooperation with local transportation partners. Information on lower priority projects would also be available in summary form. District work programs would provide valuable information describing the status of local projects to transportation partners and the public. TxDOT should use information in the work programs to monitor performance of the district and key district personnel.

3.4 Require TxDOT to develop online reporting systems for providing project specific information in a regularly updated dashboard, judging the effects of spending on specific transportation problems, and assessing progress in meeting overall transportation goals.

- **Dashboard reporting system.** This recommendation would require TxDOT to develop an online, comprehensive, and regularly updated dashboard reporting system, with input from the Legislature, local planning organizations, and the public, through a process clearly defined in rule. The dashboard report would combine information from all of TxDOT's plans into one master list that would be presented in an easy-to-navigate and searchable format. TxDOT should use

information such as letting schedules that are currently available, and update the online information on a regular schedule specified in rule. TxDOT would be required to adopt rules clearly describing the specific elements in the dashboard report which should include, but not be limited to, the following elements, as practically available and not cost prohibitive:

- details on funding sources for projects, including information linking specific sources of funding to specific projects;
- project benchmarks and timelines, current progress towards goals for meeting specific benchmarks, and a list of project managers assigned to projects and their contact information;
- an annual review of project benchmarks and timelines to determine their completion rates and show whether the projects were on time;
- for projects scheduled to last more than one month or costing more than $5 million, work zone information detailing the number of lanes open or closed; time of closure; and expected and measured delay when closed;
- clearly defined criteria for projects classified as maintenance and disclosure of the condition of a road prior to maintenance expenditures;
- information about the sources of funding and expenditures by TxDOT district, spending category, and type of revenue, including private sources such as Comprehensive Development Agreements or toll revenue; and
- options to download statistical information in various formats, including HTML, PDF, Excel, or other database programs.

- **Effects of transportation spending.** TxDOT would be required, by rule, to develop a process to clearly identify both the State's transportation needs and the State's transportation wants, and a system to report on the effects of spending on specific transportation problems. TxDOT would be required to adopt rules clearly describing how this information would be reported, including locally entered information about local transportation projects listed in priority order by district, as part of the online dashboard report described above. A user should be able to easily compare projects in this system with projects actually in TxDOT planning or construction phases using the dashboard report.

  TxDOT would be required to prepare a list of the most significant transportation problems in each TxDOT district, and report on the effectiveness of transportation spending in addressing these problems, described by the indicators below, to justify why each project is a priority. TxDOT would be required to prepare before and after studies on the effects of all TxDOT spending programs, internally or through a university's transportation research program. Performance measures would be defined in rule and should include the following indicators, searchable on the dashboard report by county, road numbers, and functional road class:

  - pavement condition indicators such as the International Roughness Index used by the Federal Highway Administration, and the percentage of pavement in good or better condition;
  - bridge condition indicators such as structurally deficient, functionally obsolete, and bridge deterioration scores;

- congestion and traffic delay indicators, including the locations of the worst delays and variable travel times on major streets and highways, and the effects on both person and truck freight travel; and

- crash, injury, and fatality indicators including a list of the worst sections of road in the state by TxDOT district, as practically available.

- **Annual reports.** TxDOT would also provide at least three types of annual reports that would be available on TxDOT's and districts' websites in a searchable and easily accessible format.

- **Statewide report.** The Department would prepare the "State of Texas Transportation" report, providing a high-level summary of annual progress in meeting transportation goals. The report should include information about attainment of statewide goals as described in the Statewide Transportation Plan, progress in attaining major priorities, a summary of success in meeting statewide project implementation benchmarks, and information about the accuracy of past financial forecasts. The report would be formally presented to legislative committees with oversight of transportation issues each year, and be easily accessible on the Department's website.

- **Legislative district report.** Each year, TxDOT would develop "report card" information similar to that contained in the State of Texas Transportation report, but containing information on progress in attaining transportation goals in the TxDOT districts within each state legislative district. TxDOT would provide members of the Legislature with this specific report and meet with them at their request to explain it.

- **TxDOT district report.** TxDOT would provide this same type of report for each of its districts, forwarding it to local planning entities, cities, county commissioners' courts, regional planning councils, and other appropriate local entities in the TxDOT district.

As part of this recommendation, the Legislature should consider eliminating many of the reports it requires TxDOT to produce by rider in the General Appropriations Act, since information they contain would be available through the newly created reporting system.

Issue 4

TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Unbiased, and Meaningful Public Involvement.

Recommendations

Change in Statute

4.1 Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agencywide.

This recommendation would require TxDOT to develop an official policy that provides guidance outlining additional public involvement strategies such as those suggested by the U.S. Department of Transportation, and consider requiring district and division staff to document these activities.

TxDOT should also work to clearly tie public involvement to decision making and provide clear information to the public about the specific outcomes of their input. This recommendation should

apply to all public input with TxDOT, including into statewide transportation policy making, specific projects through the environmental process, and all of the Department's rulemaking procedures.

TxDOT would also be required to provide information about public input relating to all environmental impact statements, including the number of positive, negative, or neutral comments received. TxDOT would present this information to the Commissioner of Transportation in an open meeting, and report this information on its website in a timely manner.

4.2 Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.

This recommendation would require TxDOT to develop policies and procedures to formally document and effectively manage the complaints it receives agencywide according to the following provisions.

- Adopt rules that clearly define TxDOT's complaint process from receipt to disposition, and specify that these rules apply to each of its divisions and districts.
- Develop a standard form for the public to make a complaint to the Department. The complaint form would be available to the public on the Department's website and complaints would be accepted through the Internet.
- Compile detailed statistics and analyze complaint information trends to get a clearer picture of the problems the public has with TxDOT's functions and responsibilities. This complaint data would include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. The Department should track this information on a district basis, as well as by each division. TxDOT should report this information monthly to administration and quarterly to the Commissioner.

This recommendation would also update the standard Sunset across-the-board language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints.

4.3 Strengthen lobbying prohibitions for TxDOT.

This recommendation would prohibit the Commissioner of Transportation and TxDOT employees from using any money under the agency's control or engaging in activities to attempt to influence the passage or defeat of a legislative measure. Advocacy or activity of this nature would be grounds for dismissal of an employee. This recommendation would not prohibit the Commissioner of Transportation or employees of TxDOT from using state resources to provide public information or to provide information responsive to a request, nor would it prohibit TxDOT from lobbying for federal appropriations.

Implicit with this recommendation is the repeal of the statutory provision (Texas Transportation Code, sec. 201.0545) that requires the Transportation Commission to consider ways to improve its operations and authorizes the Commission Chair to periodically report to the Legislature concerning potential statutory changes that would improve the operation of the Department. Strengthening lobbying prohibitions for TxDOT officials and employees would effectively render this provision meaningless. These changes would address concerns that some TxDOT officials or employees may have overstepped their authority to suggest operational improvements, and instead appear to engage in advocacy.

Issue 5

State Statute Unnecessarily Restricts Contracting Practices Available to TxDOT.

Recommendations

Change in Statute

5.1 Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.

TxDOT's statute currently only allows toll roads to use the design-build model of project delivery, in which the design and construction phases of a project occur under one contract. This recommendation would allow the Department to use design-build for traditionally financed highway projects. This recommendation would not require TxDOT to use design-build, but would simply authorize its use.

TxDOT would develop rules specifying the conditions under which a design-build contract could be considered. Factors that should be addressed in rule include the size and complexity of the project; the speed in which the project is needed; the level and training of agency staff managing the project; and any other elements determined to be important in the proper use of this project delivery model.

5.2 Remove provisions in statute requiring TxDOT to advertise certain contract notifications in local or statewide newspapers.

This recommendation would remove statutory advertising requirements for the time and place of construction and maintenance contract bid openings. TxDOT would still have the authority to use newspaper notifications in situations where their use is necessary and cost effective.

Issue 6

More Information Is Needed to Improve Regulation of Oversize and Overweight Vehicles to Prevent Damage to Roads and Bridges.

Recommendations

Change in Statute

6.1 Require TxDOT to review ways of improving the regulation of oversize and overweight vehicles.

Under this recommendation, TxDOT would be required to continue to work to evaluate the impacts and improve the regulation of oversize and overweight vehicles, including the consideration of the following:

- prohibiting overweight vehicles from using Texas highways if the loads cannot be engineered to prevent damage to the road(s) or bridge(s) based upon the weight specifications for which the roads and bridges were built;
- requiring an applicant for an overweight permit to pay a graduated highway maintenance fee based on the overweight amount that is commensurate with the damage done to roads and bridges;

- requiring all fees collected by the State from oversize and overweight permits to be deposited to the State Highway Fund; and
- eliminating all exemptions for overweight vehicles and requiring an overweight permit and fee in an amount commensurate to the amount of damage done to the roads and bridges by the permitted vehicle.

Management Action

6.2 Direct TxDOT to report its findings for improving the regulation of oversize and overweight vehicles.

Under this recommendation, TxDOT would brief the Sunset staff quarterly on its progress towards reporting its recommendations for improvements to the regulation of oversize and overweight vehicles. TxDOT's report(s) and recommendations should be completed by December 31, 2011.

Issue 7

The State's Overall Approach to Outdoor Advertising Does Not Follow Common Licensing Practices, Reducing the Effectiveness of Regulation.

Recommendations

Change in Statute

7.1 Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads.

This recommendation would require a license to operate outdoor advertising on rural roads, matching the license requirements that currently exist for outdoor advertisers only on federal-aid roads. Under this change, a single license would enable outdoor advertisers to operate on both road systems. Outdoor advertisers would still have to obtain permits for individual signs with different standards, such as height and spacing, for each type of road.

The license for outdoor advertisers on rural roads would be subject to the same enforcement authority as currently governs the federal-aid road license. These provisions include the authority to revoke or suspend licenses, or place licensees on probation for a violation of statute or rules. In combination with Recommendation 7.4, clarifying the Department's authority to deny license renewal, these provisions would provide standard enforcement options for all outdoor advertisers operating along the state highway system to ensure more consistent regulation of signs on all roads.

7.2 Standardize the appeals process for denied sign permits by eliminating the Board of Variance.

This recommendation would eliminate TxDOT's Board of Variance for hearing appeals of rural road sign permit denials. TxDOT would use the same review process for rural road permit appeals as currently exists for federal-aid roads. Under this change, the agency head would have authority to grant variances from the rural road sign standards.

7.3 Require TxDOT to deposit all outdoor advertising fees into the State Highway Fund.

This change would require the fees collected for signs along federal-aid roads be deposited into the State Highway Fund, the same as fees collected for signs along rural roads, instead of the Texas Highway Beautification Account in General Revenue.

7.4 Authorize the Department to deny license renewal if a licensee's permits are in poor standing.

This recommendation would clarify the Department's authority to deny the renewal of an existing license for outdoor advertisers on federal-aid roads. Providing this standard enforcement tool would ensure the Department considers any compliance issues that a licensee might have before renewing a license.

7.5 Require the Department, by rule, to establish a complaints process and procedures for tracking and reporting outdoor advertising complaints, and providing information to the public about how to file a complaint.

This recommendation would complement the Department's recent efforts to develop a complaint process by requiring it to clearly outline in rule how it will handle complaints regarding outdoor advertising. The rules should include, at a minimum:

- a system for prioritizing complaints so the most serious complaints receive attention before less serious complaints;
- procedures for complaint investigation and resolution; and
- a procedure for compiling and reporting detailed annual statistics about complaints.

The Department should also have processes in place to inform the public of complaint procedures. Persons affected by the regulations should be able to file a written complaint against a licensee on a simple form provided by the Department.

7.6 Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the State Highway Fund.

This recommendation would clarify the existing administrative penalty authority as an enforcement tool for regulating outdoor advertising on rural roads. Specifically, this recommendation would eliminate language that a violation be intentional before the Department may assess an administrative penalty under its rural road regulations. It would also provide for an appeal of such a penalty by substantial evidence instead of by trial de novo. The recommendation would extend this standard administrative penalty authority to violations of the Department's regulations on federal-aid roads.

As part of this recommendation, all fines collected for both types of roads would be deposited into the State Highway Fund, not to the General Revenue-Dedicated Texas Highway Beautification Account.

Issue 8

Unmanaged Dynamic Message Signs May Affect TxDOT's Ability to Ease Traffic Flows.

Recommendation

Change in Statute

8.1 Require all electronic signage to be actively managed to mitigate congestion, including suggesting alternative routes when applicable.

This change would require TxDOT to ensure that all Dynamic Message Signs located on highways are managed and kept as current as possible by personnel from TxDOT or with the cooperation of local governments.

Issue 9

TxDOT Has Not Developed a Plan to Implement Recommended Changes from Recent Reports in an Effective and Timely Manner.

Recommendations

Management Action

9.1 Direct TxDOT management to develop a plan for implementing recommendations of the Sunset Commission, the Restructure Council, and the Grant Thornton audit.

This recommendation directs TxDOT to develop a detailed implementation plan by June 30, 2011 for effecting the recent recommendations of the Sunset Commission, Restructure Council, and Grant Thornton audit. The Plan should detail each process or procedure to be implemented, a specific timeline for each step of each process or procedure, and the individual responsible for successful implementation. TxDOT should put a full-time dedicated Implementation Team in place immediately with the assistance of an outside professional change management firm. The Implementation Plan should be substantially implemented by June 30, 2014.

Recommendation to Legislative Committees

9.2 The Sunset Commission requests that the Legislature's standing committees on transportation monitor TxDOT's progress in implementing recommendations from recent reports.

This recommendation is a request to the Senate Committee on Transportation and Homeland Security and the House Transportation Committee to monitor TxDOT's progress in implementing the Plan noted above. TxDOT should report monthly on progress towards meeting the implementation timeline, including processes and procedures that are failing to meet the timeline. If the Committees recommend corrective action on the processes and procedures failing to meet the timeline, TxDOT management should respond in writing to action taken on each recommended corrective action.

Fiscal Implication Summary

The recommendations on TxDOT would result in an overall savings of approximately $1.6 million per year, as summarized below.

- ***Issue 1*** – Eliminating the five-member Texas Transportation Commission would result in a savings of $628,671 to the State Highway Fund and a reduction of six FTEs. Annual savings of about $79,570 would come from eliminating the part-time salaries members receive. Eliminating the five commissioner assistant positions would result in a savings of $510,078 for these salaries and fringe benefits. An additional savings of $39,023 would result from elimination of the travel and operating expenses of both the Commission members and their assistants. With a full-time Commissioner, the Department would not need both an Executive Director and a Deputy Executive Director. The savings from eliminating one of these positions, and reorganizing staffing and salaries accordingly, would provide the necessary funding for the Commissioner's salary as determined by the Legislature.

- ***Issue 5*** – The recommendation to eliminate required newspaper advertising for construction and maintenance contract bid openings, at TxDOT's discretion, would result in savings to the State Highway Fund. TxDOT could reduce annual expenditures from the State Highway Fund by an estimated $1 million, assuming TxDOT would eliminate newspaper notice for larger projects.

- ***Issue 7*** – The statutory recommendations to deposit all outdoor advertising program fees and fines into the State Highway Fund would result in an approximate $585,605 annual gain to this account, and a loss of the same amount to the General Revenue-Dedicated Texas Highway Beautification Account.

Fiscal Year	Savings to the State Highway Fund	Gain to the State Highway Fund	Loss to the General Revenue-Dedicated Texas Highway Beautification Account	Change in FTEs From FY 2011
2012	$1,628,671	$585,605	$585,605	-6
2013	$1,628,671	$585,605	$585,605	-6
2014	$1,628,671	$585,605	$585,605	-6
2015	$1,628,671	$585,605	$585,605	-6
2016	$1,628,671	$585,605	$585,605	-6

Texas Water Development Board

Project Manager: Sarah Kirkle

Agency at a Glance

The Texas Water Development Board (Board) was created in 1957 through a state constitutional amendment that authorized the Board to issue general obligation water development bonds through loans to political subdivisions. Since the 1960s, the Board has assumed increased responsibility for ensuring sufficient water supplies for the state through its roles in water planning and in providing technical assistance and water-related data. The Board's mission is to provide leadership, planning, financial assistance, information, and education for the conservation and responsible development of water for Texas. To accomplish its goals for addressing the State's water needs, the Board performs the following activities.

- Provides financial assistance in the form of loans and grants through state and federal programs to Texas communities for the construction of water supply, wastewater treatment, flood control, and agricultural water conservation projects.
- Supports the development of regional water plans and prepares the State Water Plan for the development of the State's water resources.
- Collects, analyzes, and disseminates water-related data, conducts studies on surface water and groundwater resources, and develops and maintains surface water and groundwater availability models to support planning, conservation, and development of surface water and groundwater for Texas.

Summary

The Board is not accustomed to being square in the eye of controversy. Since its creation, the Board has enjoyed its position of providing funding for water projects and infrastructure and, more recently, has won over fans for its regional water planning process. Controversies related to the intractable nature of water issues have always surrounded the agency. Now, however, they threaten the Board's fundamental ability to support the development of the State's water resources on several fronts.

Several threats exist to the development of the State's water resources.

First, the Board's remaining bond authority may be exhausted as soon as the end of fiscal year 2011. Without additional bond authority, the Board will be unable to fulfill its constitutional mission to provide financial assistance through loans to political subdivisions to meet water and wastewater infrastructure needs.

Second, evolving processes associated with groundwater affect the Board's ability to effectively conduct statewide water planning and ultimately affect the management of this vital resource. Much of this controversy surrounds a joint planning process in which groundwater districts join together to make decisions about the desired future condition of aquifers they manage. While the joint planning process and groundwater districts are distinct elements apart from the Board, they can have a clear impact on the Board's operations. Specifically, the Board's process for considering the reasonableness of a desired future condition decision does not provide for a complete or meaningful administrative process that ensures final resolution. The following material summarizes the Sunset Commission's recommendations on the Texas Water Development Board.

Issue 1

The Board's Remaining Development Fund Bond Authority Is Insufficient to Fulfill Its Constitutional Responsibility.

The Board was created in 1957 through constitutional amendment to provide financial assistance for water and wastewater projects throughout the state. However, because of increased demand for its financing programs, the Board's largest constitutional bond authority, Development Fund, will be insufficient to sustain the Board's responsibilities as soon as the end of this biennium. Without additional authority, the Board may not be able to meet the State's water and wastewater needs and the State will lose federal funds.

Recommendations

Constitutional Amendment

1.1 Authorize the Board to issue Development Fund general obligation bonds, at its discretion, on a continuing basis, in amounts such that the aggregate principal amount outstanding at any time does not exceed $6 billion.

This recommendation would allow the Board to issue additional general obligation bonds for one or more accounts of the Development Fund up to $6 billion. This recommendation would require the Legislature to pass a joint resolution containing this evergreen authority and Texas voters to approve an amendment to the State Constitution.

Change in Statute

1.2 Clarify that the Board's authorized but unissued Development Fund general obligation bonds are not considered state debt payable from general revenue for purposes of calculating the constitutional debt limit until the Legislature appropriates debt service to the Board.

This recommendation would clarify current practice whereby the Board's Development Fund bonds would be treated as state debt repayable with state general revenues only if the Legislature appropriates debt service to the Board, and, at the time of issuance, the bond resolution states that the bonds are to be repaid with state general revenues. This recommendation would require the Board, when requesting the Bond Review Board's approval of bond issues, to certify the debt service on the bonds is expected to be paid from either the State's general revenues or another revenue source. This recommendation would also require the Bond Review Board, during its approval of the Board's bond issues, to confirm that the Legislature appropriated debt service to support the issuance of any not self-supporting debt.

1.3 Authorize the Board to request the Attorney General take legal action to compel a recipient of any of the Board's financial assistance programs to cure or prevent default in payment.

This recommendation would ensure the Board has full statutory authority across all funding programs to request the Attorney General compel borrowers to perform specific duties legally required of them in documents such as bond ordinances and loan and grant agreements. This recommendation would provide the Board consistent statutory authority across all the Board's financial assistance programs and all types of borrowing entities, including certain water supply corporations.

Issue 2

The Lack of Coordination Among Separate Water Planning Processes Impedes the Board's Statewide Water Planning.

The separation between the regional water planning process and the development of desired future conditions (DFCs) for aquifers hurts the Board's ability to conduct statewide water planning. Ensuring that members of groundwater management areas (GMAs) responsible for developing DFCs serve as voting members of regional water planning groups would increase communication between the two separate planning groups. Additionally, specifying a point in time at which a DFC will be used in the water planning process could provide certainty that an adopted DFC would be used in the next round of water planning. Strengthened public notice requirements would also ensure reasonable opportunity for stakeholders' notice and comment regarding a proposed DFC.

Recommendations

Change in Statute

2.1 Add a representative of each groundwater management area that overlaps with a regional water planning group as a voting member of that regional water planning group.

This recommendation would add a representative of each groundwater management area that overlaps with a regional water planning group as a voting member of that regional water planning group. In addition, the groundwater management area representative must come from a groundwater conservation district that overlaps with the regional water planning group.

2.2 Require regional water planning groups to use the desired future conditions in place at the time of adoption of the Board's State Water Plan in the next water planning cycle.

This recommendation would require DFCs adopted before the State Water Plan due date to be used by regional water planning groups in the subsequent water planning cycle. The recommendation would allow GMAs to make changes to their DFC, if they choose, by a certain date, with assurance that the new managed available groundwater number will be used in the next regional – and state – water plan adopted by the Board. As a result, DFCs adopted at any point before January 5, 2012 would be used in the water planning cycle resulting in the 2017 State Water Plan.

2.3 Strengthen the public notice requirements for groundwater management area meetings and adoption of desired future conditions and require proof of notice be included in submission of conditions to the Board.

This recommendation would require each GMA to provide uniform notice posted in each district's office, the courthouse of each county wholly or partially in the GMA, the Texas Register, and each district's website, if available, at least 10 days before the GMA meeting. Notice for any GMA meeting must include:

- the date, time, and location of the public meeting or hearing;
- a list of agenda items;
- names of each groundwater conservation district making up the GMA;
- the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and
- information on how the public may submit comments.

Additionally, before a GMA adopts a DFC, a 30-day public comment period must be provided, during which time each district would be required to conduct a public hearing on any proposed DFC relevant to their district and make a copy of the proposed DFC and any supporting materials, such as groundwater availability model runs, available to the public in the district's office. Notice for the public hearing in each district would include the same elements as GMA meeting notices above, as well as the proposed DFC.

GMA meetings would be considered open meetings under Chapter 551 of the Texas Government Code. As a requirement for the Board to accept a DFC, the GMA must provide proof of notice of the adopted DFC. The Board could define additional methods for stakeholder notice in rule to ensure reasonable opportunity for notice to, and comment from, affected stakeholders, such as landowners, permit holders, local officials, and other members of the public.

Issue 3

The State's Processes to Petition an Aquifer's Desired Future Conditions Are Fundamentally Flawed.

The process for questioning the reasonableness of DFCs at the Board lacks standard components of administrative processes designed to ensure a clear resolution, which ultimately wastes state time and resources. Removing *any* challenge to the reasonableness of the DFC and instead establishing a more rigorous process for adopting DFCs through rule, with challenges to a district's proper adoption of the rule, would replace the existing, unworkable process with an improved process for local decision making in groundwater matters.

Additionally, processes guiding the development of DFCs lack statutory guidance for districts in establishing a reasonable DFC and documenting the impacts of the DFC. Further, the processes do not ensure adequate public notice or opportunities for public participation in the development of a DFC. Strengthening the process to develop a DFC would promote more input into the joint planning process during the establishment of the DFC.

Recommendations

Change in Statute

3.1 Require groundwater management areas to document consideration of factors or criteria that comprise a reasonable desired future condition and to submit that documentation to the Board.

This recommendation would require districts in a GMA, in determining their DFC, to document the factors or criteria they considered that demonstrate the reasonableness of their DFC. The Board would require that districts in a GMA include documentation of consideration of reasonableness factors and impacts of a DFC in writing for the submission of the DFC to be accepted as administratively complete. Districts could submit this documentation through such means as the DFC resolution.

3.2 Remove the process to petition the reasonableness of a desired future condition at the Board and strengthen the process for developing desired future conditions.

This recommendation would repeal the process to petition the reasonableness of a DFC at the Texas Water Development Board and instead add requirements and guidelines for developing and adopting DFCs by groundwater conservation districts within each GMA.[1]

The recommendation would require the presiding officer or the presiding officer's designee of each groundwater conservation district wholly or partially in each groundwater management area to serve as delegates and convene at least annually to conduct joint planning at a DFC Joint Planning Conference. Delegates at the DFC Joint Planning Conference would perform current requirements to review the management plans and develop desired future conditions.[2]

Delegates could appoint and convene non-voting advisory committees consisting of social, governmental, environmental, or economic segments within each groundwater management area to assist in the development of DFCs. Both the Board and the Texas Commission on Environmental Quality (TCEQ) would make technical staff available to serve in an non-voting advisory capacity to the DFC Joint Planning Conference and or advisory committees if requested.

Proposed DFC(s) would require support from two-thirds of all eligible voting delegates before being submitted to individual districts within the groundwater management area for consideration. Each district would be required to consider all proposed DFC(s) relevant to the district during a public hearing, wherein the districts would solicit public comment on the proposed DFC(s). Upon conclusion of the public hearing, districts would be required to each prepare a report for consideration at the DFC Joint Planning Conference describing public comment received and proposing any revisions, including the basis for the revisions, to the proposed DFC.

The conference delegates would be required to reconvene to review the reports from individual districts, and consider revisions to the proposed DFC. The delegates would issue a DFC report for the GMA. The DFC report would identify each DFC, policy and technical justification for each DFC, other DFC options considered and reasons why they were not adopted, and discuss reasons why recommendations made by advisory committees and public comment received by the districts were or were not incorporated into the DFC.

The DFC report would also document consideration and impacts of the following criteria in establishing reasonable desired future conditions:

- aquifer uses and conditions within the management area, including uses or conditions that differ substantially from one geographic area to another;
- the water supply needs and water management strategies included in the adopted state water plan;
- whether the desired future conditions are physically possible;
- socioeconomic impacts reasonably expected to occur;
- environmental impacts, including spring flow and other interactions between groundwater and surface water;
- the impact on the interests and rights in private property, including ownership and rights of owners of the land and their lessees and assigns in groundwater as recognized in law;[3]
- hydrogeological conditions including, but not limited to, total estimated recoverable storage provided by the executive administrator, recharge, inflows, and discharge;
- impact on subsidence; and
- any other information relevant to the specific desired future condition.

Upon issuance of the DFC report, each district within the groundwater management area would be required to adopt the relevant DFCs identified in the report by rule under district rulemaking procedures.[4] The Board would be prohibited from approving a district's management plan that has not adopted relevant DFCs and incorporated the DFCs into the management plan.

Appeals of district rule adoption of a DFC would be made to district court in the same manner as any challenge to a district rule under substantial evidence review in any county in which the district lies.[5]

An affected person by the DFC would be eligible to file an inquiry with the TCEQ for any of the following:

- failure of a district to engage in joint planning, including failure to formally adopt a DFC;
- failure of a district to update its management plan within two years of the GMA's adoption of a DFC or failure to adopt rules within one year after updating its management plan to implement the DFC;
- the rules adopted by a district are not designed to achieve the DFC in the GMA;
- the groundwater in the management area is not adequately protected by the rules adopted by a district; or
- the groundwater in the groundwater management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.[6]

An affected person would be defined as a landowner in the GMA, a district in or adjacent to the GMA, a regional water planning group with a water management strategy in the GMA, a permit holder or permit applicant in the GMA, any holder of groundwater rights in the GMA, or any other affected person, as defined by TCEQ in rule. TCEQ would be authorized to take action against a district related to its failure to conduct joint planning, as modified to be consistent with changes above.[7]

Management Action

3.3 TCEQ should promote mediation in desired future condition petition cases where appropriate.

Under this recommendation, TCEQ should promote mediation as a means to resolve a petition in any DFC petition case it determines is an appropriate candidate for mediation. TCEQ should use procedures similar to those it currently uses in its other regulatory processes to make the parties aware of mediation options.

Issue 4

Structural and Technical Barriers Prevent the Board From Providing Effective Leadership in Geographic Information Systems.

The Texas Natural Resources Information System (TNRIS), housed within the Board, is responsible for acquisition of statewide data sets used to develop and disseminate geographic data products. However, the data center services contract administered by the Department of Information Resources (DIR) constrains TNRIS' ability to timely disseminate key geographic data sets, especially during an emergency. In addition, the Texas Geographic Information Council (TGIC) does not provide effective leadership or coordination in advancing the use of Geographic Information System (GIS), and its separate functions are no longer needed.

Recommendations

Management Action

4.1 The Board should request a full exemption for TNRIS from the data center services contract at DIR to accommodate its statutory emergency management responsibilities.

The Board should pursue a full TNRIS exemption from the data center services contract at DIR to allow both TNRIS' development and production environments to operate outside the contract. The Board's other data center resources, such as email and accounting systems and geographic data outside of TNRIS, would remain in the contract.

Change in Statute

4.2 Clarify TNRIS' duties regarding coordinating and advancing GIS initiatives.

In accordance with TNRIS' existing role as the centralized clearinghouse and referral center for state geographic data, this recommendation would designate the Director of TNRIS as the State Geographic Information Officer, reporting to the Board's Executive Administrator, responsible for:

- coordinating the acquisition and use of high priority imagery and data sets;
- establishing, supporting, and/or disseminating authoritative statewide geographic data sets;
- supporting geographic data needs of emergency management responders during emergencies;

- monitoring trends in geographic information technology; and
- supporting public access to state geographic data and resources.

4.3 Require the Board, in consultation with stakeholders, to report TNRIS' progress in executing its responsibilities and to propose new initiatives for geographic data to the Legislature.

The Board shall, in consultation with stakeholders, submit a report at least once every five years to the Governor, Lieutenant Governor, and Speaker of the House of Representatives with recommendations related to:

- statewide geographic data acquisition needs and priorities, including updates on the progress in maintaining the statewide digital base maps;
- policy initiatives to address the acquisition, use, storage, and sharing of geographic data across state government;
- funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and
- opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data.

In fulfilling this requirement, the Board may establish advisory committees, as needed, to accomplish its functions or to obtain input from state agencies in preparing its report to the Legislature. In designating the membership of any advisory committees, the Board must consider inclusion of the major users of geographic data in state government. Advisory committees should include liaisons from other interests, such as federal or local agencies, and the state information technology agency.

4.4 Abolish the Texas Geographic Information Council.

This recommendation would remove TGIC and its related functions from statute, as its functions are either no longer needed or already performed by the Board through TNRIS. This recommendation does not eliminate any of the Executive Administrator's statutory duties related to TNRIS operations and other duties related to geographic data. However, performing these duties will no longer require guidance from TGIC. Abolishing TGIC should not preclude DIR, or any other agency, from pursuing GIS initiatives, but they should coordinate those initiatives with TNRIS and other state agencies that may benefit from those efforts.

Issue 5

The Board Lacks Data to Determine Whether Implementation of Conservation and Other Water Management Strategies Is Meeting the State's Future Water Needs.

As the State wraps up its third water planning cycle, opportunities exist for evaluating the State's progress in meeting future water needs. Compiling and tracking implementation of strategies or projects as part of the State Water Plan could answer questions about the extent to which the water planning process has facilitated meeting future water demands. Additionally, a lack of uniform reporting requirements for measuring municipal water conservation, through gallons per capita daily (GPCD) figures, prevents the State from effectively gauging progress of water conservation methods.

Recommendations

Change in Statute

5.1 As part of the State Water Plan, require the Board to evaluate the State's progress in meeting its water needs.

This recommendation would require the Board to evaluate the State's progress in meeting future water needs through such means as tracking water management strategies and/or projects implemented since the last State Water Plan and report this information to the Legislature as part of the Board's State Water Plan. The Board would work with regional water planning groups to obtain implementation data and should include a summary of progress toward meeting the State's water needs as part of all future State Water Plans. Additionally, the Board should continue its analysis of how many implemented state water plan projects received its financial assistance, and include that analysis in the State Water Plan.

5.2 Require the Board and TCEQ, in consultation with the Water Conservation Advisory Council, to develop uniform, detailed gallons per capita daily reporting requirements.

This recommendation would require the Board and TCEQ to work with the Water Conservation Advisory Council to develop uniform GPCD reporting requirements outlining how entities calculate and report municipal water use. The agencies should incorporate the uniform methodologies into their existing annual report and five-year implementation report requirements. The recommendation would clarify that water use reporting applies only to entities required to submit municipal water use data to the Board or TCEQ. The recommendation is not intended to require metering of individual water wells.

Because the Board and TCEQ would only be developing reporting methodologies to include as part of their current processes, no cost to the State is anticipated. While some larger entities that submit water conservation plans currently have advanced billing systems capable of reporting detailed GPCD data immediately, smaller entities and those with fewer resources may not have such advanced capabilities. As such, the Board and TCEQ should require entities to report the most detailed level of data currently available, but should not require entities report information that is more detailed than their billing system is capable of producing. The Board and TCEQ should consider phasing in more detailed reporting as capabilities improve and billing systems evolve.

Management Action

5.3 As additional tools and data evolve, the Board should continue exploring ways to develop metrics for additional water use sectors and incentivize water conservation efforts.

The Board should continue working with the Advisory Council to develop metrics to track implementation and reporting of water conservation strategies for water use sectors beyond municipal use to optimize water planning across the state. Additionally, as the Council makes new recommendations, data collection capabilities evolve, and entities' reporting systems improve, the Board should continue exploring ways to incentivize conservation efforts.

Issue 6

The Board's Statute Does Not Reflect Standard Language Typically Applied Across-the-Board During Sunset Reviews.

The Sunset Commission adopts across-the-board recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. Some aspects of the Board's statute do not conform to these commonly applied standards.

Recommendation

Change in Statute

6.1 Apply standard Sunset across-the-board requirements to the Texas Water Development Board.

The recommendation would update the Board's complaint information requirements to clarify that the Board must maintain complaint information on all complaints, not just written complaints, and must provide information on its complaint procedures to the public.

The recommendation would also ensure that the Board develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

Fiscal Implication Summary

These recommendations would cost the State $109,907, but could also result in potential savings to the General Revenue Fund over the next two years. The specific fiscal impact of each of these recommendations is summarized below.

- ***Issue 1*** – A constitutional amendment to allow the Board to issue additional bond authority would not have an immediate fiscal impact to state general revenue, beyond the State's one-time $109,907 publication cost for placing the constitutional amendment on the ballot. Because the bond authority would be limited to self-supporting debt unless the Legislature appropriates funds for debt service, the fiscal impact for debt service cannot be determined.
- ***Issue 4*** – Depending on approval by DIR, exempting TNRIS from the data center services contract could save the State about $2.7 million in general revenue over the next biennium, due primarily to a reduction in geographic data storage costs.

Fiscal Year	Cost to the General Revenue Fund
2012	$109,907
2013	$0
2014	$0
2015	$0
2016	$0

[1] Texas Water Code, sec. 36.108(l)-(n).

[2] Texas Water Code, sec. 36.108(c) and (d).

[3] Texas Water Code, sec. 36.002.

[4] Texas Water Code, sec. 36.101.

[5] Texas Water Code, ch. 36, Subchapter H.

[6] Texas Water Code, sec. 36.108(f).

[7] Texas Water Code, sec. 36.3011.

Division of Workers' Compensation – Texas Department of Insurance

Project Manager: Kelly Kennedy

Division at a Glance

As a division of the Texas Department of Insurance (TDI), the Division of Workers' Compensation (DWC) regulates and administers the workers' compensation system in Texas. Workers' compensation insurance provides employees injured on the job with medical care and income replacement benefits. While mandatory for governmental entities and companies that contract with the government, purchasing a workers' compensation insurance policy is optional for private employers in Texas. However, in most circumstances, state law gives employers who choose to provide these benefits immunity from further liability related to a workplace injury.

The Division's regulation of the workers' compensation system aims to accomplish four basic goals established by the Legislature, including ensuring that each employee: is treated with dignity and respect when injured on the job; has access to a fair and accessible dispute resolution process; has access to prompt, high-quality medical care; and returns to employment as soon as considered safe and appropriate.

The Division performs the following major functions:

- oversees the workers' compensation benefit delivery system;
- administers a dispute resolution process for income benefits, medical care, and payment for medical treatment;
- develops and adopts fee and treatment guidelines for medical services;
- provides safety resources, education services, and training for system participants;
- certifies employers who choose to self-insure as their own workers' compensation insurance carriers; and
- investigates complaints and conducts performance and compliance audits, and enforces compliance with statutes and rules.

Nearly six years after sweeping reforms, Texas' workers' compensation agencies are still in the wake of incredible transition.

Summary

Among growing concerns of high utilization and increasing medical costs, limited access to high-quality medical care, and poor return-to-work rates, the 79th Legislature made sweeping changes to the workers' compensation system. These extensive reforms included abolishing the standing regulatory agency and splitting its functions between TDI and a newly created injured employee advocacy agency – the Office of Injured Employee Counsel.

Nearly six years later, the Sunset review of DWC found the agency, and the system as a whole, still in the wake of incredible transition. Overall the system seems to be healthier, with stabilizing medical costs, fewer claims and disputes, lower insurance rates, fewer lost days of work, and better return-to-work outcomes. In addition, the structural transition of the Division into TDI has worked, although many aspects of the reforms are still very much in the implementation phase.

The timing of the current Sunset review presented both challenges and opportunities. Since not enough time has passed to allow for evidence of longterm, concrete outcomes, many of the system-wide changes are not yet ripe for evaluation. Given these challenges, the review identified possibilities to fine-tune past reform efforts, improve major program areas, and address lingering statutory questions needing further directive.

The following material summarizes the Sunset Commission's recommendations on the Division of Workers' Compensation.

Issue 1

The Division's Complicated Dispute Resolution Process Often Fails to Provide a Quicker, More Accessible Alternative to the Courts.

An effective administrative dispute resolution process is vital to a well-functioning workers' compensation system. The Division's dispute resolution process allows dissatisfied parties, particularly injured employees, the opportunity to appeal the denial or reduction of services through low-cost, accessible means, instead of through the formal and costly court system. The Sunset review assessed the dispute resolution process as a whole, as well as the impact of recent legislative changes.

Different dispute resolution paths exist depending on the type of dispute, the amount of the dispute, and how the employee received medical care. These differences create inequities within the dispute resolution process, unfairly subjecting system participants to varied levels of formality during hearings, and ultimately depriving participants of a quick, accessible means to resolution. The system is also hampered by more than 13,000 requests a year to reschedule informal Benefit Review Conferences (BRCs), primarily due to parties requesting a BRC despite not having the necessary documents.

Recommendations

Change in Statute

1.1 Require parties to a dispute to prove preparedness as a prerequisite to a Benefit Review Conference.

This recommendation would require injured employees, employers, health care practitioners, insurance carriers, and other parties to a dispute to obtain information necessary to facilitate resolution of the

dispute as part of the initial request for a BRC. In evaluating a BRC request, Division staff would be authorized to deny the request for a BRC if participants have failed to attest to having necessary documentation, such as medical records. Under this recommendation, the Division would be required to adopt rules outlining what types of documents would be needed to approve a request for a BRC, as well as the process used by Division staff for evaluating submitted information.

Under this recommendation, parties to a dispute would also be required to provide notice to the Division before rescheduling a Benefit Review Conference. The Division would develop circumstances, by rule, in which rescheduling a BRC would be authorized for good cause, as well as the timeframes by which a request to reschedule must occur. Rescheduled Benefit Review Conferences would not automatically be reset on the agency's docket; rather the participant requesting the reset would be required to re-submit a request for a Benefit Review Conference for Division approval, and comply with all requirements of an initial request for a BRC.

Failure to abide by the Division-approved system for rescheduling would result in forfeiting an opportunity to attend a Benefit Review Conference. Parties to a dispute who reach the statutory two-BRC limit could resolve the dispute themselves or proceed to a formal Contested Case Hearing.

1.2 Require parties to a non-network medical fee dispute to attempt a low-level mediation, through a Benefit Review Conference, before appealing to the Contested Case Hearing level.

This recommendation would require parties to a non-network medical fee dispute to participate in a BRC administered by DWC as a prerequisite to filing an appeal for a Contested Case Hearing. Non-network medical fee disputes would remain subject to an initial staff review and decision process, however, parties dissatisfied with the staff decision would file an appeal for mediation as a prerequisite to proceeding to a Contested Case Hearing.

Under this recommendation, the mediation process for non-network medical fee disputes would mirror the structure for BRCs held on indemnity disputes. As part of the mediation process, parties to the dispute would be able to resolve issues, such as billing discrepancies. However, parties would not be authorized to negotiate fees outside of the Division's adopted fee guidelines. This recommendation would only affect appeals of staff-level medical fee dispute decisions issued on or after the effective date of the Sunset bill.

1.3 Establish an administrative appeal mechanism for network medical necessity disputes.

This recommendation would augment the current appeal process for network medical necessity disputes by restructuring appeals of Independent Review Organization (IRO) determinations to include a Contested Case Hearing (CCH) before the Division, instead of a direct appeal to district court. Contested Case Hearings held on network medical necessity disputes would conform to the same procedures outlined in the Labor Code as those CCHs conducted on appeals of non-network medical necessity disputes. Division Hearings Officers would be required to weigh a network's adopted evidence-based treatment guidelines, in adjudicating the appeal just as they currently weigh Division-adopted treatment guidelines for medical care delivered by a non-network health care provider.

Because IROs conduct desk reviews of medical records that are not formal, recorded proceedings, under this recommendation, the Contested Case Hearing process would produce a record admissible to court during an appeal for judicial review. As a result, network medical necessity disputes would no longer be subject to a trial de novo standard of judicial review. Instead, network medical necessity

disputes would be subject to a substantial evidence review, allowing the judge to review the formal record resulting from a Contested Case Hearing before the Division.

1.4 Streamline the process for resolving medical disputes, requiring the Division to conduct all medical necessity Contested Case Hearings and SOAH to conduct all medical fee Contested Case Hearings.

Under this recommendation the State Office of Administrative Hearings (SOAH) would no longer have a role in performing Contested Case Hearings for workers' compensation medical necessity disputes. Instead, all Contested Case Hearings for medical necessity cases would be held before the Division. Appeals of medical necessity CCH decisions, including those decisions related to spinal surgery cases, would not be subject to the Division's Appeals Panel review, and could be appealed directly to district court.

As part of this recommendation, the Division would no longer have a role in conducting medical fee Contested Case Hearings. Instead, all medical fee Contested Case Hearings would be held before SOAH. Also, as part of this recommendation, the losing party appealing the Division's staff-level medical fee decision would be required to pay all associated Contested Case Hearing costs and the Division would be authorized to intervene in SOAH hearings involving significant issues of fee guideline interpretation.

This recommendation would only affect appeals of IRO medical necessity decisions and staff-level medical fee dispute decisions issued on or after the effective date of the Sunset bill.

1.5 Authorize the Division's Appeals Panel to issue written affirmations in limited circumstances.

This recommendation would allow the Division's Appeals Panel to issue written decisions affirming Contested Case Hearing decisions on only the following types of cases:

- cases of first impression;
- cases that are impacted by a recent change in law; and
- cases involving errors which require correction but which do not affect the outcome of the dispute, including:
  - findings of fact for which there is insufficient evidence;
  - incorrect conclusions of law;
  - findings of fact or conclusions of law which were not properly before the hearing officer; or
  - other legal errors.

This recommendation would only affect appeals of CCH decisions issued on or after the effective date of the Sunset bill.

Management Action

1.6 The Division should require a review of all Contested Case Hearing decisions to ensure consistency amongst field office staff.

Under this recommendation, the Division should require a review of all Hearing Officers' contested case decisions before releasing the final order. By practice, all Hearing Officers are already requesting this review; however, the Division should ensure that this practice continues in the future.

Issue 2

The Division's Medical Quality Review Process Needs Improvement to Ensure Thorough and Fair Oversight of Workers' Compensation Medical Care.

The medical quality review process is a key part of DWC's efforts to ensure system participants make appropriate decisions regarding the type, level, and quality of medical care needed by an injured employee. The Division's Medical Advisor, along with a Panel of outside health care providers, play significant roles in this review process. Several inadequacies in the process threaten the meaningfulness of the Division's review efforts, potentially compromising the impartiality of review outcomes. In fact, the Division discarded medical quality review cases referred to enforcement because of questions regarding the objectivity of the case selection process. In addition, the Division does not ensure that medical quality review process members have the qualification and training needed to ensure high-quality review outcomes.

Recommendations

Change in Statute

2.1 Require the Division to develop guidelines to strengthen the medical quality review process.

This recommendation would require the Division to develop criteria, subject to the Commissioner's approval, to further improve the medical quality review process. In developing such guidelines, the Division would be required to consult with the Medical Advisor and consider input from key stakeholders. The Division should also define, at a minimum, a fair and transparent process for the handling of complaint-based cases, and selection of health care providers and other entities for review.

Once developed, the Division would be required to make the adopted process for conducting both complaint-based and audit-based reviews available to stakeholders on its website.

2.2 Establish the Quality Assurance Panel in statute.

This recommendation would establish the Quality Assurance Panel (QAP) in statute and require the Division to hold QAP meetings as a means to assist the Medical Advisor and the Medical Quality Review Panel (MQRP), while providing a second level evaluation of all reviews.

Management Action

2.3 Improve the medical quality review process by clarifying the Quality Assurance Panel's involvement.

In conjunction with Recommendation 2.2, but as a management action, the Commissioner would adopt procedures, subject to input from the Medical Advisor, to further define the QAP's role in the medical quality review process and establish the frequency of QAP meetings. At a minimum, such procedures should include:

- a process for selecting QAP members from the pool of appointed MQRP members, including health care professionals from diverse health care specialty backgrounds and individuals with expertise in utilization review and quality assurance;
- a policy outlining the length of time a member may serve on the QAP;
- procedures to ensure QAP members are kept informed of enforcement outcomes of cases under review; and
- formal procedures to clarify the roles and responsibilities of QAP members and Division staff at QAP meetings.

Change in Statute

2.4 Require the Division to develop additional qualification and training requirements for Medical Quality Review Panel members.

This recommendation would require the Commissioner, subject to input from the Medical Advisor, to adopt rules outlining clear prerequisites to serve as a MQRP expert reviewer, including necessary qualifications and training requirements. In developing these policies, the Division could use the Texas Medical Board's expert reviewer process as a guide. At a minimum, rules on qualifications should include:

- a policy outlining the composition of expert reviewers serving on MQRP, including the number of reviewers and all health care specialties represented;
- a policy outlining the length of time a member may serve on MQRP;
- procedures defining areas of potential conflicts of interest between MQRP members and subjects under review and the avoidance of such conflicts; and
- procedures governing the process and grounds for removal from the Panel, including instances when members are repeatedly delinquent in completing case reviews or submitting review recommendations to the Division.

As part of this recommendation, the Division would also develop rules on training. Under this recommendation, MQRP members would be required to fulfill training requirements to ensure panel members are fully aware of the goals of the Division's medical quality review process and the Texas Workers' Compensation Act. Training topics should include, at a minimum, the following areas:

- administrative violations affecting the delivery of appropriate medical care;
- confidentiality of the review process and the qualified immunity from suit granted to MQRP members under the Labor Code; and
- medical quality review process guidelines adopted under Recommendation 2.1.

The Division could also include training on topic areas such as the Division's adopted treatment and return-to-work guidelines, other evidence-based medicine resources, and the impairment rating process.

Under this recommendation, the Division would also be required to work to better educate Panel members about the status and enforcement outcomes of cases resulting from the medical quality review process.

2.5 Require the Division to work with health licensing boards to expand the pool of Medical Quality Review Panel members.

Under this recommendation, the Division, in consultation with the Medical Advisor, would be required to work with health licensing boards, beyond just the Texas Medical Board and the Texas Board of Chiropractic Examiners, as necessary, to expand the pool of health care providers available as expert reviewers. The Division should also work with the Texas Medical Board to increase the pool of specialists available, as necessary, enabling the Division to better match a MQRP member's expertise to the specialty of a physician under review.

As part of this recommendation, when selecting the composition of expert reviewers serving on MQRP, the Medical Advisor would advise the Division by identifying areas of medical expertise that may not require ongoing representation on the MQRP. In such circumstances, the Division would develop a method to partner with these other agencies to access outside expertise on an as-needed basis.

Management Action

2.6 Direct the Division to develop an ex parte communication policy relating to cases under investigation.

The Division should, by rule, develop an ex parte communication policy that extends to any case under investigation in which the Commissioner of Workers' Compensation would be the ultimate arbiter in a final enforcement action. The adopted policy should prohibit ex parte communication before the minimum timeframes outlined in the Administrative Procedures Act and should aim to preserve the agency's enforcement process.

Issue 3

The Division Cannot Always Take Timely and Efficient Enforcement Actions to Protect Workers' Compensation System Participants.

The Division monitors the activities of all system participants and takes enforcement action against violators of law, rule, and order using a variety of administrative sanctions. However, the Division lacks some enforcement tools that would allow for meaningful enforcement actions and ensure that TDI, as a whole, has an efficient agency-wide enforcement process. In addition, some Labor Code provisions that govern the Division's enforcement are confusing and outdated.

Recommendations

Change in Statute

3.1 Clarify that the Division can conduct announced and unannounced inspections.

This recommendation would amend the Division's current investigative authority to clarify that it can conduct onsite inspections in investigating potential violations of the law, rule, or order. In addition, the recommendation would authorize DWC to perform both announced and unannounced inspections. To ensure that all regulated entities are treated fairly and consistently, the Division would develop clear procedures defining the entities and records subject to inspection, and how it will use its unannounced inspection authority.

3.2 Authorize DWC to refuse to renew Designated Doctor certifications.

This recommendation would clarify the Division's authority to refuse to renew a Designated Doctor's biennial certification. Under the recommendation, doctors disagreeing with DWC's decision to refuse to renew would be entitled to a hearing at the State Office of Administrative Hearings.

3.3 Authorize the Commissioner to issue emergency cease-and-desist orders.

Under this recommendation, the Commissioner of Workers' Compensation would be able to issue cease-and-desist orders in emergency situations. The Division could use this authority if a system participant's actions were violations of law, rule, or order, and would result in harm to the health, safety, or welfare of other participants. The recommendation would provide for notice and opportunities for expedited hearings, similar to the Insurance Code's provisions relating to emergency cease-and-desist authority. In addition, DWC would be authorized to assess administrative penalties against persons or entities violating cease-and-desist orders.

3.4 Specify that the judicial review standard for appeals of DWC enforcement cases is substantial evidence.

This recommendation would add language to the Labor Code specifying that any appeal of a Commissioner enforcement order is subject to the substantial evidence rule.

3.5 Authorize the Commissioner to make final decisions on enforcement cases involving monetary penalties.

This recommendation would remove final decision authority from SOAH in enforcement cases involving monetary penalties, and require the Commissioner of Workers' Compensation to enter final orders upon consideration of a proposal for decision from SOAH. As part of this recommendation, the Commissioner would adhere to provisions in the Administrative Procedures Act governing how an agency may consider, adopt, or change proposals for decision. The Division would also amend its current memorandum of understanding with SOAH to include procedures for handling SOAH proposals for decision for monetary penalties, as it is already generally required to do by statute.

As part of this recommendation, the Commissioner of Workers' Compensation should adopt internal policies to prevent any ex parte communication within the Division on enforcement cases as TDI and DWC have already done for SOAH proposals for decision that return to the agency for final decision currently.

3.6 Remove outdated and confusing enforcement provisions in the Labor Code.

Under this recommendation, statute would be amended to remove outdated language referencing specific classes of violations or penalty amounts. The recommendation would also remove language relating to notice requirements for subsequent violations under the Code that suggest conflict with DWC's broader administrative penalty authority. As part of this recommendation, statute would be changed to clarify what DWC's full range of administrative sanctions are for all system participants, and locate all sanctioning authority in the same piece of statute, to ensure that system participants are aware of DWC's complete enforcement authority.

3.7 Deposit all administrative penalties assessed and collected by the Division in the General Revenue Fund, instead of the Texas Department of Insurance operating account.

This recommendation would amend the Labor Code to require that all administrative penalties assessed and collected by the Division be deposited into the General Revenue Fund, aligning the administrative penalty collection process with other state agencies and resulting in a gain to General Revenue.

Issue 4

The Division's Oversight of Designated Doctors Does Not Effectively Ensure Meaningful Use of Expert Medical Opinions in Dispute Resolution.

Designated Doctors provide a neutral assessment of an injured employee's medical condition that DWC uses to resolve disputes, especially in circumstances in which an insurance carrier's doctor and an injured employee's treating doctor disagree. The presumptive weight of Designated Doctor opinions in legal disputes necessitates that Designated Doctors are able to consistently provide high-quality, independent medical assessments. However, the way that the Division certifies and schedules Designated Doctors lacks sufficient parameters to ensure that applicants can adequately perform the specific statutory duties required.

Recommendations

Change in Statute

4.1 Require the Commissioner to develop qualification requirements for Designated Doctors.

This recommendation would require the Commissioner of Workers' Compensation to develop a certification process, in rule, that effectively uses the spectrum of eligibility, training, and testing to assess the general proficiency of Designated Doctors. This recommendation would require the Division to revisit the current minimal requirements and adopt any changes in rule. Under this recommendation, the Division should develop a process that ensures doctors have either the appropriate specialty qualification, through educational experience or previous training, or demonstrated proficiency, through additional training and testing, to serve as a Designated Doctor.

At a minimum, the Division should develop standard course materials and testing for initial and renewed Designated Doctor certification. If the Division chooses to continue to rely on an outside provider, Division staff should be involved in the development of course materials and tests, and all final products should be Commissioner approved. Training and any associated end-of-course tests developed to

serve as part of a certification renewal process should include topics that allow the Division to ensure a doctor's continued competency in providing assessments.

Finally, as part of this recommendation, the Division should formulate a process for maintaining and regularly updating course materials, regardless of whether training and testing materials are developed in-house or by an outside provider.

4.2 Direct the Commissioner to adopt rules requiring Designated Doctors remain with case assignments, unless otherwise authorized.

As part of this recommendation, the Commissioner of Workers' Compensation would develop, by rule, certain circumstances permissible for a Designated Doctor to discontinue service in a particular area of the state or with a particular case. Such circumstances could include the decision to stop practicing in the workers' compensation system, relocation, or other instances where the doctor is no longer available. Designated Doctors choosing to no longer practice in a county would be expected to remain available as a resource and to perform subsequent exams for the same injured employee throughout the life of the claim for any cases previously assigned, unless the Division authorizes otherwise.

4.3 Modify the Designated Doctor matrix selection process to be based on diagnosis and injury area, instead of a treatment-based selection process.

This recommendation would provide the Division with additional criteria to aid in the Designated Doctor assignment process, ensuring the Designated Doctor has the appropriate training and background needed to adequately assess an injured employee's specific injury.

4.4 Direct the Division to allow all Designated Doctors to participate in any county desired, rather than the current 20 county maximum service area.

This recommendation would remove restrictions on the number of counties in which a Designated Doctor may see injured employees. Under this change, Designated Doctors would remain with case assignments, unless otherwise authorized.

Issue 5

The Division's Responsibility for Making Some Individual Claims Decisions Conflicts with Its Oversight and Dispute Resolution Duties.

The overall structure of Texas' workers' compensation system contemplates insurance carriers paying for and managing individual claims, and DWC overseeing and resolving disputes in the system. As a limited exception to this general approach, statute charges DWC with making certain individual claims decisions. The Division's involvement in eight types of decisions is unnecessary and conflicts with the agency's regulatory role.

Recommendations

Change in Statute

5.1 Transfer the responsibility for certain claims decisions from DWC to insurance carriers.

This recommendation would remove the Division and the Commissioner from making decisions on individual claims, transferring responsibility for these decisions to insurance carriers. As a result, DWC would only be involved in an individual claim if a dispute arises or for system monitoring and oversight purposes. Any disputes arising from these claims decisions made by insurance carriers would be resolved through the Division's existing dispute resolution process. This recommendation would not impact the Commissioner's statutory requirements to prescribe criteria by which carriers make these claims decisions. Additionally, DWC should amend its current rules regarding these claims decisions to reflect carrier responsibility, consistent with statute, rule, and internal processes already established. This recommendation would affect the following claims decisions:

- Acceleration of Impairment Income Benefits;
- Advancement of Income Benefits;
- Initial Determination of Supplemental Income Benefits;
- Change of Treating Doctor; and
- Maximum Medical Improvement Extension After Spinal Surgery.

Management Action

5.2 Direct DWC to require insurance carriers to make decisions on certain individual claims.

Under this recommendation, the Division should adjust its practices to ensure carriers make individual claims decisions. Although statute does not specifically require DWC to be involved in these decisions, historically DWC has approved changing the way that employees and beneficiaries receive their benefits. As part of this recommendation, DWC should amend rules and internal processes to clarify insurance carriers' responsibility for making these decisions, as well as any necessary requirements the carrier should adhere to when making decisions. The Division should only be involved in an individual claim through its current dispute resolution processes if a dispute arises based on one of these decisions, or for system monitoring and oversight purposes. This recommendation affects the following decisions:

- Distribution of Death Benefits;
- Annuities for Lifetime Income Benefits; and
- Lump Sum Impairment Income Benefits.

Issue 6

Employers Outside the Workers' Compensation System Are Failing to Report Information the Legislature Needs to Evaluate the Health of the System.

While state law does not require private Texas employers to offer workers' compensation coverage to their employees, it does require all employers to report their decision to DWC, as well as information about any injuries, illnesses, or deaths at the workplace. This information gives the Legislature a better understanding of the system and all workplace safety in Texas. However, despite increased education and compliance efforts by DWC, only an estimated 10 percent of nonsubscribing employers report this information.

Recommendation

Management Action

6.1 The Division should closely coordinate with other state agencies to include nonsubscription reporting requirements in their print and electronic publications.

This recommendation directs DWC to coordinate with other state agencies about nonsubscription reporting, including the Comptroller of Public Accounts, the Secretary of State, the Governor's Office of Economic Development and Tourism, and the Department of Information Resources, as well as further coordination with the Texas Workforce Commission. Coordination should include efforts such as adding information about workers' compensation reporting requirements to the other agencies' websites, including links to DWC's online reporting form as it develops. Coordination could also include adding workers' compensation information to other relevant agency publications. If beneficial, DWC might also explore further data sharing of employer information with these agencies to identify nonreporting employers. Under this recommendation, DWC and these other agencies would have the flexibility to determine the most useful and cost effective ways to coordinate, as conditions change.

Issue 7

Texas Has a Continuing Need for the Division of Workers' Compensation.

The Sunset Commission evaluated DWC's functions and structure as a division within the Texas Department of Insurance, led by a separate Commissioner of Workers' Compensation, and concluded that the Division fulfills an important role in ensuring the fair treatment of all system participants. In addition, the Commission found that, while the merger with TDI generally works well, the magnitude of the reforms passed during the 79th Legislature warrant a short continuation date, allowing the Legislature the opportunity to continue to monitor the implementation of such reforms.

Recommendations

Change in Statute

7.1 Continue the Division of Workers' Compensation for six years.

This recommendation would continue DWC for six years as a division within TDI.

7.2 Require the Division to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.

This recommendation would require DWC to develop standard procedures to formally document and analyze complaints. The recommendation would apply to all complaints made to the Division, including both formal and informal complaints. The Division would be required to clearly lay out policies for all phases of the complaint process, from receipt to disposition. The recommendation would also require DWC to compile statistics, including the number, source, type, length of resolution time, and disposition of complaints. The Division would analyze complaint information trends to get a clearer picture of system participants' concerns about the Division and allow DWC to make improvements. The Division should track this information by field office and by program, and report to the Commissioner of Workers' Compensation on a regular basis.

Fiscal Implication Summary

Overall, the recommendations regarding DWC would have a positive fiscal impact of approximately $1 million per year to the State's General Revenue Fund, as described below.

- ***Issue 1*** – Requiring the losing party appealing the Division's staff-level medical fee decision to pay all associated Contested Case Hearing costs would result in an annual savings, as the Division would no longer reimburse SOAH for costs associated with conducting hearings. However, since the Division of Workers' Compensation – Texas Department of Insurance is funded through taxes and assessments on workers' compensation insurers, this recommendation would affect the Department's operating account, and not the General Revenue Fund.

- ***Issue 3*** – Depositing all administrative penalties assessed and collected by the Division in the General Revenue Fund, instead of the Texas Department of Insurance operating account, would result in a gain to the Fund of approximately $1 million annually, based on fiscal year 2009 assessments.

Fiscal Year	Approximate Gain to the General Revenue Fund
2012	$1,000,000
2013	$1,000,000
2014	$1,000,000
2015	$1,000,000
2016	$1,000,000

Implementation of 2009 Sunset Legislation

Implementation of 2009 Sunset Legislation

The Sunset Act requires the Sunset Commission to review the ways in which agencies implement Sunset bill provisions in the session following their Sunset review. This review helps ensure that agencies implement changes adopted by the Legislature through the Sunset process.

In 2009, the 81st Legislature passed 13 of the 18 bills containing changes recommended by the Sunset Commission. These bills contained a total of 196 provisions requiring action by the agencies involved. Sunset staff worked with each agency impacted by these provisions to follow up on their efforts to implement the required changes.

Sunset staff found that 91 percent of required changes have been made by the agencies reviewed for compliance based on directives contained in the Sunset legislation from 2009. Key changes implemented as a part of the Sunset process include the following.

- Abolishing the Texas Residential Construction Commission. Although the Sunset Commission identified significant problems and recommended reforms, the Legislature ultimately decided to sunset the agency. After winding down its operations, the agency closed its doors on September 1, 2010.
- Abolishing the Board of Tax Professional Examiners and the Polygraph Examiners Board, and transferring their functions to the Texas Department of Licensing and Regulation to increase licensee services and improve consumer protection.
- Requiring the Department of Public Safety to manage its vehicle inspection program as a civilian business operation with clear goals and performance.
- Requiring the Commission on Jail Standards to develop a risk-based approach to inspections to increase county jail compliance with established laws and standards.

While most statutory provisions from 2009 have been implemented, the chart, *Summary of 2009 Sunset Legislation Implementation*, shows that 9 percent of the provisions have not yet been fully put into action.

The chart on the following page, *2009 Sunset Legislation Implementation by Agency*, shows the progress of each agency in implementing its statutory changes. Detailed information on the status of each statutory provision that is in progress, partially implemented, or not implemented, is provided by agency in the following material.

Summary of 2009 Sunset Legislation Implementation*

Status of Provisions	Number	Percentage
Implemented	178	91%
In Progress	8	4%
Partially Implemented	8	4%
Not Implemented	2	1%
Total	**196**	**100%**

* As of February 2011.

2009 Sunset Legislation Implementation by Agency*

Agency		Bill Number	Changes Required	Changes Implemented	In Progress	Partially Implemented	Not Implemented
Agriculture, Texas Department of		S.B. 1016	31	31			
Boll Weevil Eradication Foundation, Texas		H.B. 1580	3	3			
Credit Union Department		H.B. 2735	10	10			
Fire Protection, Texas Commission on		S.B. 1011	12	10	2		
Jail Standards, Texas Commission on		S.B. 1009	12	12			
Law Enforcement Officer Standards and Education, Texas Commission on		H.B. 3389	16	13	3		
Licensing and Regulation, Texas Department of (Polygraph Examiner Regulation)		S.B. 1005	5	5			
Licensing and Regulation, Texas Department of (Tax Professional Regulation)		H.B. 2447	14	14			
Military Preparedness Commission, Texas		H.B. 2546	5	5			
Parks and Wildlife Department, Texas		H.B. 3391	9	7	2		
Public Safety, Department of Private Security Board		H.B. 2730	32	27	1	3	1
State-Federal Relations, Office of		S.B. 1003	4	4			
Juvenile Justice Agencies	Youth Commission, Texas	H.B. 3689	15	14		1	
	Juvenile Probation Commission, Texas		25	21		3	1
	Office of Independent Ombudsman		3	2		1	
Totals			**196**	**178**	**8**	**8**	**2**

* As of February 2011.

The Legislature, during the Regular Session, did not pass the Sunset legislation on the Texas Department of Transportation, Texas Department of Insurance, Office of Public Insurance Counsel, Texas Racing Commission, Equine Research Account Advisory Committee, or Texas State Affordable Housing Corporation. Instead, these agencies were continued until September 1, 2011, in legislation passed during the 1st Called Session. Current Sunset reviews address reforms related to these agencies, which can be found in other sections of this report.

The Sunset legislation in 2009 for the Texas Youth Commission, Texas Juvenile Probation Commission, and Office of Independent Ombudsman continued the agencies for two years and required Sunset staff to do a specialized re-review of these agencies and their compliance with recent legislative reforms.

This report summarizes compliance information on the juvenile justice agencies, and more information on these agencies can be found in other sections of this report.

House Bill 2730, continuing the Department of Public Safety in 2009, also required the Sunset Commission to report on DPS' efforts to improve driver license program customer service and implementation of recommendations to improve information technology. As of December 2010, DPS had either implemented recommendations in these areas or had made significant progress toward implementation, as detailed on page 198 of this report.

In addition to statutory changes, the Sunset Commission adopted 42 management recommendations for improvements to agency operations under review before the 2009 Session. The State Auditor's Office evaluated the implementation of a select number of these management recommendations, and the Auditor's findings are contained in SAO Report number 10-041, State Agencies' Implementation of Sunset Advisory Commission Management Actions, which can be obtained at www.sao.state.tx.us.

Texas Commission on Fire Protection – S.B. 1011

Senate Bill 1011, as adopted by the 81st Legislature, continues the Texas Commission on Fire Protection for 12 years. The legislation included 12 changes requiring action. The following chart summarizes two provisions that are still in progress and provides the status of each.

Bill Provisions	Implementation	
	Status	Comments
1. Requires fire departments to submit continuing education records to the Commission at the time of certification renewal.	**In Progress**	As part of the Commission's new *Firefighters: Individuals and Departments Online* system, the agency is developing a module for fire departments to submit evidence of continuing education to the agency online. The continuing education reporting module should be fully functional by November 2011.
2. Requires the Commission to develop a method for analyzing trends in complaints and violations.	**In Progress**	As part of the *Firefighters: Individuals and Departments Online* system, the agency is developing a module that will allow agency staff to track and analyze trends in complaints and violations. The complaints and violations reporting module should be fully functional by November 2011.

Texas Commission on Law Enforcement Officer Standards and Education – H.B. 3389

House Bill 3389, as adopted by the 81st Legislature, continues the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) for 12 years. The legislation included a total of 16 changes requiring action. The following chart summarizes three provisions that have not been adequately implemented to date, and provides the status of each.

Bill Provisions	Implementation	
	Status	Comments
1. Requires the Commission to establish clear rules for conducting audits of law enforcement agencies.	**In Progress**	TCLEOSE published the rules in the Texas Register in early February and expects the rules to be effective in July 2011.
2. Requires the Commission to clearly identify which crimes relate to the ability of a person to perform the occupation of county jailer.	**In Progress**	TCLEOSE published the rules in the Texas Register in early February and expects the rules to be effective in July 2011.
3. Provides that TCLEOSE clarify its enforcement procedures for "at-risk" training providers.	**In Progress**	TCLEOSE published the rules in the Texas Register in early February and expects the rules to be effective in July 2011.

Texas Parks and Wildlife Department – H.B. 3391

House Bill 3391, as adopted by the 81st Legislature, continues the Texas Parks and Wildlife Department (TPWD) for 12 years. The legislation included a total of nine changes requiring action. The following chart summarizes two provisions that are still in progress and provides their status.

Bill Provisions	Implementation	
	Status	Comments
1. Requires the Department to create a list of exotic aquatic plants that may be imported and possessed within Texas without a permit. Requires the Department to publish the initial list of approved exotic aquatic plants by December 31, 2010.	**In Progress**	TPWD has created a risk assessment model for evaluating exotic aquatic plants for inclusion on the approved list and published proposed rules in the Texas Register, but the Commission has postponed consideration of the rules.
2. Instructs TPWD and the Texas Youth Commission to jointly seek representation by the Attorney General to pursue a modification of the Trust terms and purposes of the Parrie Haynes Trust to designate TPWD as the state agency responsible for the Parrie Haynes Ranch and Trust. Establishes that the requirement expires on the date that the court orders a modification of the Trust or on September 1, 2021.	**In Progress**	TPWD and the Texas Youth Commission have sent a letter to the Attorney General requesting joint representation in a judicial proceeding for a trust modification of the Parrie Haynes Trust. The three agencies have continued to meet, and a final plan for joint petition for judicial modification of the Parrie Haynes Trust is pending.

Department of Public Safety and Private Security Board – H.B. 2730

House Bill 2730, as adopted by the 81st Legislature, continues the Department of Public Safety (DPS) and the Private Security Board, which is housed at DPS, for six years. The legislation included 32 changes requiring action. The following chart summarizes five provisions that are still in progress, partially implemented, or not implemented, and provides the status of each.

Bill Provisions	Implementation	
	Status	Comments
1. Increases the amount of the Private Security Act's maximum administrative penalty from $500 to $5,000, and requires the Private Security Board to develop an administrative penalty matrix in rule.	**In Progress**	The Private Security Board, housed at DPS, adopted its previously approved penalty schedule by reference in rule which was published in the *Texas Register* in July 2010, but the rule was withdrawn and is being prepared for re-publication by DPS' Office of General Counsel.
2. Requires DPS to collect data regarding collisions of automobiles driven by students taught by different driver education programs and to report annually on the data. Requires DPS and the Texas Education Agency (TEA) to enter into an MOU under which DPS may access TEA's electronic enrollment records to verify a student's enrollment in public school.	**Partially Implemented**	DPS and TEA are currently working to resolve problems with electronic verification of records. DPS anticipates signing a memorandum of understanding with TEA in mid-2011.
3. Requires DPS to adopt rules for determining whether residency has been established before issuing driver licenses or IDs, including rules prescribing the types of documentation the department may require from the applicant to verify the validity of the claimed domicile. Also requires DPS by rule to establish a system for identifying unique addresses that are submitted in driver license or ID applications in a frequency or number that casts doubt on whether the addresses are the actual addresses where the applicants reside.	**Partially Implemented**	The Public Safety Commission published residency rules in the *Texas Register* on December 24, 2010. DPS will propose rules for verifying addresses after the residency rules have been adopted because currently a person staying at a hotel or other temporary address can still qualify for a driver license or ID.
4. Requires DPS to participate in a pilot program to issue driver licenses and IDs to inmates of the Texas Department of Criminal Justice (TDCJ) upon release.	**Partially Implemented**	TDCJ and DPS have been meeting to develop the required memorandum of understanding and procedures, and draft procedures have been provided to TDCJ for their review. TDCJ has provided draft information for the required report which is currently under review by DPS.

Department of Public Safety and Private Security Board – H.B. 2730 (continued)

Bill Provisions	Implementation	
	Status	Comments
5. Requires DPS to send additional notices to drivers assessed a Driver Responsibility Program surcharge. Specifies that DPS must spread out the payment period for surcharges of $250 or more. Requires DPS to establish a procedure to deduct one point for each year that the person has not accumulated points.	**Not Implemented**	These provisions were delayed by the Legislature due to concern of associated costs and do not take effect until September 2011. Thus, DPS has not taken action as the agency does not yet have the authority to do so.

DPS' Efforts to Improve Driver License and Information Technology Programs

House Bill 2730 also required the Sunset Commission to report on DPS' efforts to improve driver license program customer service and implementation of recommendations to improve information technology. Sunset staff found that DPS has either implemented or made significant progress toward implementation of recommendations to improve driver license program customer service and information technology.

To achieve driver license improvements, DPS expanded hours at several driver license offices and contracted with a call center expert to streamline work processes. The agency recently purchased a new telephone system, scheduled for full installation in the spring of 2011, to incorporate customer self-serve functions. DPS is also procuring new mailing equipment or a mailing service vendor to decrease the time needed to send replacement driver licenses. This change is expected during fiscal year 2011.

In terms of implementing recommendations of the 2008 information technology audit, DPS has implemented seven of the 13 recommendations, including key recommendations to develop an information technology strategic plan and governance model. Six recommendations are in progress, including improvements in their disaster recovery program and developing additional online services. DPS expects work on both of these recommendations to be completed in the summer of 2011.

Texas Youth Commission, Texas Juvenile Probation Commission, and Office of Independent Ombudsman – H.B. 3689

House Bill 3689, as adopted by the 81st Legislature, continued the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) for two years. The legislation included 15 provisions requiring action by TYC, 25 provisions requiring action by TJPC, and three provisions requiring action by the Office of the Independent Ombudsman for TYC (OIO). The following chart summarizes five partially implemented or not implemented provisions, and provides the status of each.

Bill Provisions	Implementation	
	Status	**Comments**
1. Requires TJPC to regulate all public and private nonsecure correctional facilities. Defines a nonsecure facility and clarifies who may operate a nonsecure facility.	**Partially Implemented**	TJPC is in the process of drafting standards, in the form of administrative rules, pertaining to nonsecure correctional facilities. TJPC presented these standards to the TJPC Board in November 2010 for initial publication in the *Texas Register*. TJPC anticipates the rules will become effective in June 2011.
2. Requires TJPC to consider past performance in awarding future community corrections grants or pilot program grants. Requires grant recipients to report on applicable measures.	**Partially Implemented**	TJPC incorporated provisions in its grant contracts to ensure grantees comply with minimum performance measures, established by the Commission, based on the grantee's historical performance of services. TJPC is currently working with its advisory council to restructure how grant funds are awarded to local juvenile probation departments. The revisions TJPC seeks to implement will further link performance to grant awards as well as consolidate and streamline existing grants. TJPC is seeking changes through the appropriations process and anticipates it will finish restructuring grants in time for the 2012-2013 biennium.
3. Requires TJPC and TYC to adopt a memorandum of understanding with Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) for continuity of care for juvenile offenders with mental impairments. Requires TCOOMMI, in coordination with the TYC, TJPC, and other participating state and local agencies, to collect data and report on the outcomes of the MOU.	**Partially Implemented**	This is implemented in practice; however, the MOU is pending approval by all of the parties.

Texas Youth Commission, Texas Juvenile Probation Commission, and Office of Independent Ombudsman – H.B. 3689 (continued)

Bill Provisions	Implementation	
	Status	Comments
4. Adds modified standard Sunset language requiring OIO to maintain information on all complaints that relate to the operations or staff of the office, and to notify the parties about policies for and status of complaints.	**Partially Implemented**	The Office has drafted procedures and anticipates formal adoption soon.
5. Provides enabling language to permit TJPC to contract with Burke MHMR for the use of the Peavy Switch Facility for youth on probation with mental health needs. Provides that the facility may not continue to operate beyond the end of the school year if it does not provide adequate educational and mental health services. Requires the State Board of Education to grant a charter to the facility.	**Not Implemented**	TJPC submitted budget materials to the Legislative Budget Board in the Fall of 2009, and drafted a contract for the use of the Peavy Switch Facility with Burke MHMR. The State Board of Education approved a charter school application in January 2010. Funding for this project was returned to the State and the project is on permanent hold consistent with the requirement that all state agencies reduce current budgets by 5 percent.

Appendices

Appendix A

Sunset Review Schedule – 2013

Aging and Disability Services, Department of
Arts, Texas Commission on the
Assistive and Rehabilitative Services, Department of
Banking Commissioner, Office of
Consumer Credit Commissioner, Office of
Court Interpreter Advisory Board, Licensed
Criminal Justice, Texas Board and Department of
Developmental Disabilities, Texas Council for
Education Agency, Texas
Emancipation Juneteenth Cultural and Historical Commission, Texas
Facilities Commission, Texas
Family and Protective Services, Department of
Finance Commission of Texas
Fire Fighters' Pension Commissioner, Office of
Health and Human Services Commission
Health Services Authority, Texas
Health Services, Department of State
Invasive Species Coordinating Committee, Texas
Judicial Conduct, State Commission on
Lottery Commission, Texas
Occupational Therapy Examiners, Texas Board of
Orthotics and Prosthetics, Texas Board of
Pardons and Paroles, Board of
Pension Review Board, State
People with Disabilities, Governor's Committee on
Physical Therapy and Occupational Therapy Examiners, Executive Council of
Physical Therapy Examiners, Texas Board of
Preservation Board, State
Procurement and Support Services Division, Comptroller of Public Accounts[1]
Purchasing from People with Disabilities, Texas Council on
Rural Affairs, Texas Department of
Savings and Mortgage Lending, Department of and Office of Commissioner
Securities Board, State

Appendix A

Self-Directed Semi-Independent Agency Project Act
Tax Division, State Office of Administrative Hearings
Veterans Commission, Texas
Workforce Commission, Texas

[1] The Sunset Commission must conduct a limited review of the transfer of powers and duties from the Texas Building and Procurement Commission to the Comptroller of Public Accounts in 2013.

Appendix B

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 12-member Sunset Advisory Commission has five members of the Senate, five 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 textbox, *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 improve an agency or correct problems identified during the review. These changes may include other agencies not under review that overlap or duplicate, or otherwise relate to the agency under review.

Sunset Review Questions

1. How efficiently and effectively does the agency and its advisory committees operate?
2. How successful has the agency been in achieving its mission, goals, and objectives?
3. Does the agency perform any duties that are not statutorily authorized? If so, what is the authority for those activities and are they necessary?
4. What authority does the agency have related to fees, inspections, enforcement, and penalties?
5. In what ways could the agency's functions/operations be less burdensome or restrictive and still adequately protect and serve the public?
6. How much do the agency's programs and jurisdiction duplicate those of other agencies and how well does the agency coordinate with those agencies?
7. Does the agency promptly and effectively address complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions?
9. How has the agency complied with state and federal requirements regarding equal employment opportunity, the rights and privacy of individuals, and purchasing guidelines for historically underutilized businesses?
10. How effectively does the agency enforce rules on potential conflicts of interest of its employees?
11. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
12. Would abolishing the agency cause federal government intervention or loss of federal funds?

Appendix B

Continuing an Agency

If the Commission recommends that an agency be continued, it has legislation drafted for that purpose, and to make improvements identified during the Sunset review. Sunset legislation typically continues an agency for 12 years, although the Commission may recommend a shorter term.

Terminating an Agency

If the Commission recommends abolishment of an agency, the agency generally has a one-year period 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 implementation of a Sunset bill before the next legislative session. In addition, the State Auditor evaluates the agency's compliance with certain non-statutory management changes recommended by the Commission. The Sunset Commission reports the results of both these compliance review efforts to the Legislature.