

# SUNSET ADVISORY COMMISSION

## *Report to the 86th Legislature*

**2018–2019  
86TH LEGISLATURE**



# SUNSET ADVISORY COMMISSION

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*Acting Director*



# SUNSET ADVISORY COMMISSION

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

February 8, 2019

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The Honorable Greg Abbott  
Governor of Texas

The Honorable Dan Patrick  
Lieutenant Governor of Texas

The Honorable Dennis Bonnen  
Speaker, Texas House of Representatives

Honorable Members of the 86th Legislature  
Assembled in Regular Session

Ladies and Gentlemen:

As we begin the 86th Legislative Session, the members of the Sunset Advisory Commission present to you the enclosed results of one of the busiest and challenging review schedules in the history of Sunset, which included thousands of hours of staff work and commission hearings, debate, and decisions. As you know, the Texas Sunset Act directs commission members and staff to evaluate the performance of agencies scheduled for review each biennium and recommend abolishing or continuing these agencies, propose statutory or management changes needed to better serve Texans, and prepare legislation to implement the commission's proposed statutory changes.

The Sunset Commission reviewed 32 entities for the 86th Legislative Session, resulting in 496 recommendations to streamline government while enhancing services to our citizens. Notable improvements include abolishing and transferring or consolidating six agencies, eliminating many unnecessary regulations, and strengthening agencies' accountability and effective delivery of services to the citizens of Texas.

On behalf of the Sunset Advisory Commission, we are pleased to share with you the commission's findings and recommendations to enhance state government for the benefit of those we serve — the people of Texas.

Respectfully submitted,

Senator Brian Birdwell  
Chair  
Sunset Advisory Commission

Representative Chris Paddie  
Vice Chair  
Sunset Advisory Commission



# **REPORT TO THE 86TH LEGISLATURE**

**FEBRUARY 2019**



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# INTRODUCTION



# INTRODUCTION

Sunset is the Legislature’s regular assessment of the continuing need for a state agency to exist. The process also provides a unique opportunity to take a close look at agencies to fundamentally change their mission or operations to make them more efficient, effective, and more open and responsive to citizens. The Sunset process works by setting a date on which an agency is automatically abolished unless the Legislature passes a bill to continue its operations. Agencies typically undergo review once every 12 years.

## Sunset for the 86th Legislative Session

The Sunset Commission conducted a total of 32 reviews this biennium. Financial regulation was a focus area, with reviews of the Finance Commission of Texas, Texas Department of Banking, Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending, State Securities Board, and Texas State Board of Public Accountancy. Other reviews covered a broad spectrum of agencies, such as the Department of Public Safety, Texas Department of Motor Vehicles, and Texas Alcoholic Beverage Commission. The Sunset Commission also reviewed six state agencies not subject to abolishment, including the Texas Windstorm Insurance Association, Veterans’ Land Board, and four river authorities, including the Guadalupe-Blanco River Authority, Lower Colorado River Authority, Nueces River Authority, and Red River Authority of Texas.

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*Sunset adopted 496 recommendations to improve the 32 agencies under review.*

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## Results

After extensive analysis, testimony, and deliberations, the Sunset Commission recommends that the 86th Legislature pass legislation to continue 20 agencies, abolish the Texas State Board of Plumbing Examiners and transfer its functions to the Texas Department of Licensing and Regulation, consolidate the Texas Board of Professional Land Surveying with the Texas Board of Professional Engineers, and consolidate four behavioral health licensing boards into a new behavioral health agency. The chart on Page 3, *86th Session Sunset Summary Information*, summarizes the Sunset Commission’s decisions regarding the continuation of the agencies under review and provides an estimated two-year fiscal impact of recommended changes. In total, the Sunset Commission adopted 496 recommendations — 281 that require statutory change and 215 non-statutory management actions — to improve these agencies’ accountability and operations, use their available funds more efficiently, and position them to better serve and protect the people of Texas.

A hallmark of the Sunset process is elimination of unnecessary or burdensome regulation and the Sunset Act specifically requires an assessment of whether regulation can be less burdensome while still adequately protecting the public.

Following the review of 20 occupational licensing and regulatory agencies, the Sunset Commission recommends eliminating several unnecessary layers of regulation, including numerous unneeded registrations, permits, and licenses. In some instances deregulation means a loss in state revenue, since the state will no longer collect some regulatory fees. Recommendations to consolidate or transfer agencies, while expected to save money over time, would require some upfront investments in the upcoming biennium. Overall, the Sunset Commission's recommendations are estimated to result in a negative fiscal impact to the state of about \$4.4 million during the next two fiscal years.

### **Guide to Recommendations**

Individual sections in this report summarize the Sunset Commission's recommendations for each agency under review this biennium, including the two types of recommendations described below, followed by the fiscal impact of the recommended changes.

- **Statutory Change.** Changes in law that require consideration and action by the full Legislature and are drafted into Sunset legislation on each agency.
- **Management Action.** Changes that require consideration and action by the agency and do not require legislative action. As adopted by the Sunset Commission, these recommendations should be implemented by each agency over the next two years or as specified by the commission.

The discussion of the Sunset Commission's recommendations has been shortened for this report. However, more detailed information on the recommended changes can be found in the individual Sunset staff report on each agency, available on the commission's website, [www.sunset.texas.gov](http://www.sunset.texas.gov), or by contacting Sunset staff directly.

**86th Session Sunset Summary Information**

<b>Agency</b>	<b>Action</b>	<b>Two-Year Net Fiscal Impact</b>
Accountancy, Texas State Board of Public	Continue	No Impact
Alcoholic Beverage Commission, Texas	Continue	(\$885,650)
Behavioral Health Boards	Consolidate	(\$857,073)
Counselors, Texas State Board of Examiners of Professional		
Marriage and Family Therapists, Texas State Board of Examiners of		
Psychologists, Texas State Board of Examiners of		
Social Worker Examiners, Texas State Board of		
Finance Commission of Texas	Continue	No Impact
Banking, Texas Department of		
Consumer Credit Commissioner, Office of		
Savings and Mortgage Lending, Department of		
Funeral Service Commission, Texas	Continue	(\$1,000)
Geoscientists, Texas Board of Professional	Continue	(\$200,400)
Historical Commission, Texas	Continue	No Impact
Land Surveying, Texas Board of Professional	Consolidate	\$45,972
Library and Archives Commission, Texas State	Continue	No Impact
Lower Colorado River Authority	N/A	No Impact
Medical Board, Texas	Continue	\$11,745
Military Department, Texas	Continue	No Impact
Motor Vehicles, Texas Department of	Continue	(\$197,376)
Plumbing Examiners, Texas State Board of	Abolish and Transfer	(\$474,739)
Public Safety, Department of	Continue	(\$980,450)
Real Estate Commission, Texas	Continue	\$35,900
Appraiser Licensing and Certification Board, Texas		
River Authorities	N/A	No Impact
Guadalupe-Blanco River Authority		
Nueces River Authority		
Red River Authority of Texas		
Risk Management, State Office of	Continue	No Impact
School Land Board	Continue	No Impact
Securities Board, State	Continue	(\$851,700)
Veterans Commission, Texas	Continue	No Impact
Veterans' Land Board	N/A	No Impact
Windstorm Insurance Association, Texas	N/A	No Impact
<b>Net Fiscal Impact</b>		<b>(\$4,354,771)</b>



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**SUNSET COMMISSION  
RECOMMENDATIONS**





# TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

*Alan Leonard, Project Manager*

## Summary

Accountants play a vital role in the financial health of Texas residents, companies, and public institutions. Overall, the board does its job ensuring accountants practicing in the state have the knowledge and impetus to perform their work well, as should be expected from any agency, but especially one with self-directed semi-independent (SDSI) status and the freedom to raise its fees to cover the cost of regulation.

However, the board has not always scrutinized its own performance in meeting the standards and expectations of a well-functioning regulatory agency with the same effort as it oversees its licensees. In particular, the Sunset Commission found the way the board decides how much to contract out key pieces of its enforcement function — and the processes it uses to find and retain contractors — to be too informal for a Texas state agency. The Sunset Commission also found opportunities for the board to adopt other best practices, such as providing appropriate public access to its meetings and being more transparent in how it assesses its administrative costs against disciplined licensees. Finally, the Sunset Commission recommends continuing the board for 12 years as an independent agency.

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*The board's professional services contracting processes are too informal for a state agency.*

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## Recommendations

### ***Continue***

- Continue the Texas State Board of Public Accountancy for 12 years.

### ***Contracting***

- Require the board to seek approval from the office of the attorney general for all outside counsel contracts.
- Direct the board to develop a formal, agencywide contract development and solicitation process for its professional services contracts. (Management action – nonstatutory)
- Direct the board to develop a contracting improvement process. (Management action – nonstatutory)

### ***Licensing and Enforcement***

- Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees, phased in over a two-year period. Exempt licensees currently on 'retired' status unless they decide to resume their practice with an active license.
- Remove subjective licensure provisions for CPAs and non-CPA firm owners.
- Remove requirement for annual license renewal for CPA firms.
- Remove unnecessary licensure and continuing education provisions for non-CPA firm owners, and require the resident manager be a licensed CPA who is responsible for a firm's license to clarify a firm's internal management would be left to the discretion of the firm's owners.
- Clarify the board's injunctive authority to align with other regulatory agencies.
- Direct the board to comply with statute directing rules and procedures for military service members, veterans, and military spouses by March 1, 2019. (Management action – nonstatutory)
- Direct the board to remove unnecessary application requirements for candidates to take the CPA exam. (Management action – nonstatutory)
- Direct the board to accept online submission of exam applications. (Management action – nonstatutory)
- Direct the board to eliminate rules and policies requiring notarized information. (Management action – nonstatutory)
- Direct the board to amend its peer review rules to account for risk posed to the public. (Management action – nonstatutory)
- Direct the board to update its complaint policies and procedures by March 1, 2019. (Management action – nonstatutory)
- Direct the board to develop rules on administrative costs assessed on respondents. (Management action – nonstatutory)

### ***Board Composition Study***

- Direct the Sunset Commission to request that the Legislature examine all state boards, including the Texas State Board of Public Accountancy, for any legislation needed to mitigate the potential liability of boards controlled by active market participants. (Management action – nonstatutory)

### ***Public Comment***

- Direct the board to revise its rules to facilitate public comment and statutorily require the board to include public testimony as an agenda item at every regular board meeting.

### ***Governance***

- Update the standard across-the-board requirements related to board member training and complaints system.
- Continue the board's SDSI and scholarship reporting requirements but repeal the requirement on statistical analysis of complaints.

- Update the agency's statute to reflect the requirements of the person-first respectful language initiative.

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources.



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

*Emily Johnson, Project Manager*

## Summary

Following the repeal of Prohibition, Texas, like many states, chose to regulate alcohol through a three-tier system, separating the manufacture, distribution, and sale of alcoholic beverages. Recently, however, the state has also shown an interest in growing the industry and reaping the resulting economic and tax benefits by relaxing the strict separation among the tiers. As a result, the Texas Alcoholic Beverage Commission (TABC) is in the precarious position of trying to balance its role as a regulator and law enforcement agency with the state's interest in supporting a robust alcoholic beverage industry.

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*TABC and the Alcoholic Beverage Code are in need of serious modernization.*

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Over the years, the Legislature has taken a piecemeal approach to responding to the evolving alcoholic beverage industry, carving out exceptions for various activities and creating ever more complicated nuances in the law instead of taking a more holistic approach to regulating the industry. The Sunset Commission found both the Alcoholic Beverage Code and TABC's operations in serious need of modernization, and the commission's recommendations focus on simplifying and updating both within the three-tier system. To reduce regulatory burdens on TABC and the industry, the Sunset Commission recommends streamlining the state's archaic, overly complex licensing system by reducing the number of different license and permit types from 75 to 36. Additionally, the commission recommends combining beer and ale into a single regulatory category and applying most statutory regulations for beer to all malt beverages with only a few exceptions, such as allowing retailers to purchase beer on short-term credit, as they can for all other alcoholic beverages. While the recommendations would significantly simplify the overall licensing structure, the commission recognizes additional changes may be needed to fully modernize the Alcoholic Beverage Code and recommends a more in-depth analysis of the code in 2022.

In addition to the complexities of the licensing structure, the Sunset Commission identified obstacles that slow the licensure process, as well as other processes that do not align with best practices for regulatory agencies. Other recommendations would eliminate certain business practice regulations that cause the agency to expend considerable effort and resources with little measurable impact on public safety, such as requiring malt beverage manufacturers to go through a duplicative label approval process.

Finally, while TABC should be continued for 12 years, the Sunset Commission found the agency's governing body is limited by its small size and has delegated too many key responsibilities to staff, abdicating its oversight role and creating

an environment that leaves the agency susceptible to industry influence on operations. The governing body needs to take a more active role in the agency — one that sends a clear message to the industry about who is in charge.

## Recommendations

### ***Continue***

- Continue the Texas Alcoholic Beverage Commission for 12 years.

### ***Governance***

- Expand the Alcoholic Beverage Commission from three to five members.
- Modernize TABC's conflict-of-interest provisions by defining financial interest to mean a cumulative 5 percent or more in alcoholic beverage businesses. Prohibit a TABC employee or commission member from being employed by an alcoholic beverage business or having a financial interest in one or more alcoholic beverage businesses, and prohibit their spouse or dependent child from having a financial interest in one or more alcoholic beverage businesses.
- Repeal the language in Alcoholic Beverage Code Section 11.01(c) that specifies that acts not permitted by the code are unlawful.
- Authorize the commission to establish advisory committees by rule.
- Direct the commission to establish advisory committees to provide expertise for rulemaking and other issues, and to adopt rules regarding standard committee structure and operating criteria. (Management action – nonstatutory)
- Direct TABC to evaluate and address gaps in its rules. (Management action – nonstatutory)
- Direct TABC to update its rule describing the separation of duties between the commission and executive director. (Management action – nonstatutory)
- Restrict the release of personnel records of commissioned TABC officers involved in an open internal investigation.
- Authorize TABC to receive market data from a licensee or permittee so the receipt does not result in a violation of the Alcoholic Beverage Code. The licensee or permittee may voluntarily provide the information, which may only be used for law enforcement purposes. Authorize TABC to review such information, but prohibit the agency from creating a database of information containing individually identifying information.
- Direct TABC to make meeting materials and recordings available online. (Management action – nonstatutory)
- Update the standard across-the-board requirement related to commission member training, and require each board member to attest to both receiving and reviewing the training manual annually.
- Discontinue the requirement for TABC to prepare a limited report on after-hours violations.
- Update the agency's statute to reflect the requirements of the person-first respectful language initiative.

### ***Licensing and Permitting***

- Streamline the state's alcoholic beverage licensing system by reducing the number of licenses and permits to provide regulatory clarity and administrative efficiency, as follows:
  - a. Combine primary and subordinate licenses and permits
  - b. Eliminate agent licenses and permits. As part of eliminating agent licenses and permits, ensure the statutory language does not change the current statutory liability of employers of agents
  - c. Combine temporary event permits and licenses
  - d. Combine passenger transportation permits
  - e. Combine late hours licenses and permits
  - f. Eliminate obsolete licenses and permits
- Modernize Texas' regulation of malt beverages by eliminating distinctions between beer and ale. The recommendation would include the key elements below and apply the Alcoholic Beverage Code's provisions for beer to all malt beverages in the event of inconsistencies in statutory provisions for beer and ale that are not explicitly addressed:
  - a. State excise taxes. The lower beer excise tax rate would apply to all malt beverages.
  - b. Application protests. All hearings related to protests of malt beverages would be conducted by the State Office of Administrative Hearings.
  - c. Marketing regulations. The current more restrictive beer marketing laws and regulations would apply to all malt beverages.
  - d. Retail payment oversight. All malt beverage payments would be governed by the credit law.
  - e. Storage. The current authority for beer manufacturers to store beer anywhere in the state would apply to all malt beverages.
  - f. Transportation. The current authority for manufacturers and distributors to transport beer statewide would apply to all malt beverages.
  - g. Hours of distribution and sale. The current authorized hours for distribution and sales of beer would apply to all malt beverages.
  - h. Alcohol content. Consistent with other kinds of alcoholic beverages, all malt beverage product labels would be required to display the alcohol content.
  - i. Package stores. Package stores and wine-only package stores would have authority to purchase and sell all malt beverages with one permit instead of two, and package stores with a local distributor's permit would be clearly authorized to purchase beer from distributors and distribute it to bars, restaurants, and private clubs.
  - j. Grandfathering local option beer-only locations. To avoid constitutional conflicts with local option election results, approximately 355 retail locations would be grandfathered into the new system.
- Remove fees from statute to allow TABC to systematically review and adjust license and permit fees on an ongoing basis.

- Require county and city officials to complete the local certification process for TABC license and permit applicants within 30 days of receiving the application.
- Direct TABC to modify its applications to allow local jurisdictions to clearly indicate if they do not certify an area as wet for the license or permit being sought. (Management action – nonstatutory)
- Direct TABC to implement a policy allowing license and permit applicants to submit only the name, address, and date of birth for individuals who are not the primary applicant or business owner, and requiring further personal information only if cross-tier or criminal background concerns arise. The policy would only apply to holders of a federal basic permit and TABC could request a copy of the federal permit in lieu of further personal information. (Management action – nonstatutory)

### ***Business Practice Regulations***

- Streamline TABC’s process for approving alcoholic beverages for sale in Texas by creating a single, consistent process for all alcohol product registration and label approval. In addition
  - authorize a licensee to request a hearing before the State Office of Administrative Hearings if TABC denies label and registration approval for a beverage that has a valid federal Certificate of Label Approval (COLA) or if TABC does not issue either approval or denial of registration within 45 days of receiving an application;
  - specify that although TABC may adopt a regular testing program under its general authority to test the content of alcoholic beverages, it may not require testing of a beverage as a condition for beverage registration;
  - as a management action, direct TABC to adopt rules and penalty guidelines for licensees who manufacture alcoholic beverages who substantially mislead the public about a beverage’s alcohol content; and
  - as a management action, direct TABC to adopt rules regarding the documentation manufacturers must maintain regarding their products’ alcohol content testing.
- Eliminate overly restrictive outdoor advertising requirements.
- Direct the commission to update its existing penalty guidelines to strengthen enforcement against licensees who violate the credit law. (Management action – nonstatutory)

### ***Protest Process***

- Restructure TABC’s protest process to align with best practices, improving consistency and accountability for applicants and TABC.
- Direct TABC to clearly inform applicants of their due process rights. (Management action – nonstatutory)

### ***Enforcement***

- Require TABC to establish a two-pronged approach for inspections of alcoholic beverage businesses that prioritizes public safety risks, as follows:
  - Require TABC to establish, by rule, a timeframe by which every regulated location must be inspected and whether each inspection will be through a virtual compliance reporting method or through a physical inspection



- Require TABC to physically inspect every regulated location in the state within a reasonable period of time set by rule
- Authorize TABC to consider profits earned from violating the law when setting a disciplinary penalty, but only for repeat violations by a licensee.
- Authorize TABC to temporarily suspend licenses and permits if it finds a continuing threat to the public welfare.
- Make noncompliance with a commission order a statutory violation and authorize TABC to take disciplinary action or deny license or permit renewal for noncompliance.
- Remove the nonstandard requirement allowing the public to testify at TABC disciplinary hearings.
- Require the commission to take final enforcement and disciplinary action on all contested cases as well as agreed orders that meet a threshold established by rule. Authorize the commission to delegate to staff the authority to enter into final orders for agreed orders not meeting the threshold.

As a management action, direct TABC staff to report information about disciplinary actions to the commission at each regular commission meeting. These reports should include information such as a summary of any significant cases settled or dismissed by staff, trend data regarding case resolution and assessed penalties, and a summary of pending enforcement actions being pursued by agency staff.

- Direct TABC to complete its schedule of sanctions to account for all regulatory violations. (Management action – nonstatutory)

### ***Ports of Entry***

- Retain TABC's Ports of Entry Program, but direct TABC to issue a report to the Legislature by March 1, 2019 with recommendations to make the program cost-neutral. The report should address the pros and cons of various options, including but not limited to
  - operating additional ports of entry locations,
  - expanding operating hours,
  - increasing the administrative fee or the tax, and
  - increasing the statutory limits on the amount of alcohol that can be imported for personal use.(Management action – nonstatutory)

### ***Alcoholic Beverage Code Modernization***

- Require the Sunset Commission staff and the Texas Legislative Council (TLC), with assistance from TABC, to analyze and make recommendations for a modernization and a non-substantive revision of the Texas Alcoholic Beverage Code. Sunset staff and TLC would not consider changes to the overall three-tier regulatory system, but would evaluate
  - inconsistencies in authorities and treatment of different alcoholic beverages and regulated businesses;
  - use of the terms “license” for beer and “permit” for all other alcoholic beverages;

- technical changes needed, including but not limited to removing unconstitutional provisions and outdated language, updating the code’s structure to comply with modern drafting standards, and correcting legal citations; and
- other changes needed to modernize the code within the three-tier system.

TLC would identify statutory inconsistencies and other issues that may impede modernizing the code. Sunset staff would work directly with TLC and TABC to determine whether and how to address the identified issues. Sunset staff would be authorized to engage interested stakeholders in this process. TLC would prepare a non-substantive revision bill to address any technical changes needed, which the Sunset Commission would consider for a vote by September 1, 2022. Separately, Sunset staff would make recommendations to the Sunset Commission by September 1, 2022, to address other, more substantive issues needed to modernize the Texas Alcoholic Beverage Code.

## Fiscal Implication Summary

Overall, the Sunset Commission’s recommendations would result in a negative fiscal impact to the state of about \$440,000 per year. However, the recommendations would result in increased efficiency and effectiveness for TABC and lower the cost of regulation for the alcoholic beverage industry.

Expanding the commission from three to five members would result in minimal additional costs of approximately \$4,000 per year in per diem and travel expenses for two new members.

The Sunset Commission’s recommendations to modernize and streamline the state’s alcoholic beverage licensing structure are designed to improve the efficiency of TABC’s licensing and regulatory operations and, with the exception of a reduction in excise taxes on malt beverages, should be cost-neutral to the state since TABC is required to generate revenue sufficient to cover the cost of regulation. Applying the beer excise tax rate to all malt beverages would result in a loss to general revenue of approximately \$350,000 per year. This estimate is based on applying the beer excise tax rate of about \$0.194 per gallon to approximately 79 million gallons of ale taxed in fiscal year 2017.

The recommendation to transition to a federal COLA as the basis for the malt beverage registration process would reduce the number and amount of fees collected from malt beverage applications. In fiscal year 2017, licensees paid a \$25 fee for 3,553 additional sizes of a malt beverage product beyond the first size being approved. Under a COLA-based approval process, licensees would only be required to pay a single \$25 fee, regardless of container size, resulting in an estimated loss to general revenue of \$88,825 annually.

### *Texas Alcoholic Beverage Commission*

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>	<b>Cost to the General Revenue Fund</b>
2020	\$438,825	\$4,000
2021	\$438,825	\$4,000
2022	\$438,825	\$4,000
2023	\$438,825	\$4,000
2024	\$438,825	\$4,000

# BEHAVIORAL HEALTH BOARDS

## TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

## TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

## TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

## TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

*Robert Romig, Project Manager*

### Summary

The limited review of Texas' four behavioral health licensing boards follows up on the full Sunset review of these boards conducted in 2016–2017 and the failure of the resulting Sunset bill to pass during the 85th Legislature. The Sunset Commission found the boards have made notable strides in addressing problems identified in the previous Sunset review by reforming unnecessarily bureaucratic and inefficient licensing and enforcement processes. However, the commission again determined that the administrative attachment of the marriage and family therapy, professional counseling, and social work boards to the Health and Human Services Commission is still not working and fails to efficiently regulate these professions, putting vulnerable Texans at risk. The current structure continues to impede these boards' ability to right their operations and respond to the ongoing backlog of licensing applications and enforcement complaints found during the review.

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*The state has failed to most effectively regulate these professions, putting vulnerable Texans at risk.*

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To address these ongoing challenges, the commission recommends consolidating these three boards with the psychology board to form the Texas Behavioral Health Executive Council (BHEC), as previously recommended by the 2016–2017 Sunset Commission. A consolidated behavioral health licensing agency presents the best approach to align and improve the regulation of these behavioral health professions, as well as create administrative efficiencies through functional alignment and economies of scale.

Beyond consolidating the four boards, the commission also adopted previous Sunset recommendations focused on removing unnecessary barriers to entry into these professions; providing more flexibility to the boards to manage their operations; and instituting several standard licensing practices, such as biennial license renewals and improved background checks.

## Recommendations

### ***Creation of the Behavioral Health Executive Council***

- Consolidate the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, and Board of Social Worker Examiners with the Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council.
- Direct the Behavioral Health Executive Council to develop policies and procedures to ensure its rulemaking function focuses solely on creating rules governing administration of licensure, investigation, and sanction procedures, and reviewing rules proposed by each licensing board for anti-competitive impacts, administrative consistency, and good governance concerns — not infringing on matters related to professional standards of practice. (Management action – nonstatutory)
- Update the standard across-the-board requirement related to board member training.

### ***Licensing and Enforcement***

- Require the boards to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Authorize the boards to check for disciplinary actions in other states or from other licensing boards and to pursue any necessary enforcement actions based on the results.
- Remove subjective licensure qualifications.
- Remove the statutory limitation currently restricting the boards' authority to lower fees.
- Remove the statutory requirement that marriage and family therapist applicants have 750 hours of direct clinical services and authorize the marriage and family therapy board to establish the required hours by rule.
- Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.
- Authorize the psychology board to provide biennial license renewal.
- Authorize the psychology board to issue remedial plans to resolve minor complaints.
- Clarify the psychology board's authority to require physical or mental evaluations and hold related hearings for noncompliance.
- Extend confidentiality of complaint and investigative information to applicants and non-licensees.

### ***Psychology Oral Exam***

- Eliminate the authority for the psychology board to administer an oral exam.

### ***Psychology Supervised Experience***

- Authorize the psychology board to count certain pre-doctoral internship hours toward the post-doctoral supervision year.

- Allow qualified psychologists licensed in good standing in other states, who have practiced independently for five years or more, to be exempted from the requirement of two years supervised experience when applying for a Texas license.

### ***Psychology Compact***

- Adopt the Psychology Interjurisdictional Compact.

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would result in much better regulation for the professions and reduced regulatory costs over time. However, accomplishing the necessary consolidation and transformation into BHEC requires an initial upfront investment. None of the other recommendations would have a fiscal impact to the state, with the boards recovering any costs or loss of revenue associated with the recommendations through adjustments in regulatory fees.

BHEC would require a one-time startup appropriation of about \$850,000 for database transfers, information technology, and employee startup costs and equipment, as well as a full-time equivalent employee (FTE) for an executive director for six months in fiscal year 2020. Meanwhile, the four behavioral health programs would need current operating funds to continue to function in place during fiscal year 2020.

In fiscal year 2021, BHEC's first full year of operations, current appropriations and FTE positions for the behavioral health programs would be transferred from HHSC and the psychology board to BHEC. Some additional funding would be required going forward to replace administrative services previously provided by HHSC (such as legal and technology) without charge to the behavioral health boards' budgets. In addition, BHEC would need three additional FTE positions for two years to address the boards' ongoing backlogs found during the review. However, like the current behavioral health boards, BHEC would be statutorily required to generate sufficient revenue to cover its costs, offsetting any increased cost to general revenue.

### ***Texas Behavioral Health Executive Council***

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Change in the Number of FTEs From FY 2019</b>
2020	\$857,073	+5
2021	\$0	+3
2022	\$0	+3
2023	\$0	0
2024	\$0	0



# FINANCE COMMISSION OF TEXAS

## TEXAS DEPARTMENT OF BANKING

## OFFICE OF CONSUMER CREDIT COMMISSIONER

## DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

*Carissa Nash, Project Manager*

### Summary

Since their last Sunset review 17 years ago, the three finance agencies — Texas Department of Banking (DOB), Office of Consumer Credit Commissioner (OCCC), and Department of Savings and Mortgage Lending (SML) — have weathered the storms of the financial crisis well and maintained transparent, accountable practices even with recent decreased legislative oversight after the Legislature granted the agencies self-directed semi-independent status, which places greater responsibility for oversight, coordination, and efficiency on the Finance Commission rather than the Legislature.

The Sunset Commission did not find significant concerns with the agencies and recommends continuing each agency as a separate entity under the continued oversight of the Finance Commission. However, the Sunset Commission concluded the Finance Commission has not sufficiently harnessed its coordination role over the three agencies to strongly press towards efficiency in operations. The Sunset Commission recommends requiring the Finance Commission to adopt best practices for oversight to ensure state funds continue to be used effectively and programs are coordinated well between the closely related agencies under its purview. Other recommendations provide for smaller, smarter government by eliminating three small regulatory programs, and aligning the agencies' practices with standard best practices of other regulatory agencies.

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*Self-directed semi-independent status places the burden of oversight and efficiency on the Finance Commission.*

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### Recommendations

#### ***Continue***

- Continue the Texas Department of Banking, Office of Consumer Credit Commissioner, and Department of Savings and Mortgage Lending under the continued oversight of the Finance Commission for 12 years, until 2031.

***Oversight and Efficiency***

- Direct the Finance Commission to evaluate and update the agencies' key performance measures. (Management action – nonstatutory)
- Direct the Finance Commission to develop a budget policy that fosters more straightforward budgeting and fee setting. (Management action – nonstatutory)
- Direct the Finance Commission to analyze and report on the implementation of their new fund balance policy adopted in February 2018, and report on each agency's change in total fund balance, types of funds reserved, and methodologies by which the agencies reduced their fund balances, if applicable, to the governor, lieutenant governor, speaker of the House, and Sunset Commission on September 1, 2020. (Management action – nonstatutory)
- Direct the Finance Commission to develop standard policies regarding tracking and reporting travel expenditures. (Management action – nonstatutory)
- Direct the Finance Commission to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies, evaluating not just cost efficiencies, but also changes that will make it easier for the public to interact with the agencies. (Management action – nonstatutory)

***Unnecessary Regulation***

- Discontinue licensure of pawnshop employees, while specifying that a pawnbroker is responsible for the acts of a pawnbroker's officers, directors, employees, and agents in the conduct of the pawnshop business.
- Discontinue registration of cemetery brokers.
- Discontinue registration of private child support enforcement agencies.

***Department of Banking Licensing and Enforcement***

- Authorize DOB to establish license terms in rule for death care service licensees.
- Update DOB's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.
- Update outdated appeals provisions to align with the Administrative Procedure Act.
- Direct DOB and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)

***Office of Consumer Credit Commissioner Licensing and Enforcement***

- Remove subjective licensure provisions for pawnshops and pawnshop employees.
- Authorize OCCC to provide biennial license renewals for its licensees and registrants.
- Update OCCC's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.
- Authorize OCCC to disclose summary complaint resolution information to a complainant.



- Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.
- Remove an outdated, overly restrictive burden of proof for proving regulatory violations.
- Give OCCC standard authority to take action against crafted precious metal dealers violating state regulations.
- Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.
- Standardize OCCC's burden of proof for ordering restitution in all regulatory programs.
- Authorize OCCC to order crafted precious metal dealers to pay consumer restitution.
- Update outdated appeals provisions to align with the Administrative Procedure Act.
- Direct OCCC and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)
- Direct the agency to make enforcement orders available online. (Management action – nonstatutory)

### ***Department of Savings and Mortgage Lending Licensing and Enforcement***

- Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.
- Update SML's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.
- Direct SML and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)
- Direct SML to modify its penalty matrix to ensure consistent application of administrative penalties. (Management action – nonstatutory)

### ***Governance***

- Update the standard across-the-board requirement related to Finance Commission member training and require each Finance Commission member to attest to both receiving and annually reviewing the training manual.
- Authorize the finance agencies to establish advisory committees in rule as needed.
- Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies and continue their required reports.

## **Fiscal Implication Summary**

The Sunset Commission's recommendations would not have a fiscal impact to general revenue, since fees assessed to the regulated industries must cover the costs of regulation due to the agencies' self-directed semi-independent status. Deregulating three unneeded regulatory programs would decrease costs to the industry and thereby revenue to the finance agencies by \$190,885 per year, but the decrease in revenue would be offset by an equal decrease in costs to administer the programs.



# TEXAS FUNERAL SERVICE COMMISSION

*Julie Davis, Project Manager*

## Summary

The Texas Funeral Service Commission (TFSC) regulates individuals and businesses that provide funeral and death care services to protect the public from deceptive trade practices and ensure every person's final disposition is conducted professionally and ethically. Despite limited resources, TFSC largely achieves its licensing and regulatory functions and effectively monitors and enforces legal and professional standards for licensees, and the Sunset Commission recommends continuing the agency for 12 years. Other recommendations standardize and formalize enforcement and licensing functions by applying best practices, remove several unnecessary licensing requirements and antiquated processes, and clarify the agency's authority to protect the public. The Sunset Commission also found opportunities for TFSC to better coordinate with the Department of State Health Services (DSHS) and provide more, comprehensive information to the public.

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*Despite limited resources, TFSC largely achieves its mission.*

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Generally, the Sunset Commission determined TFSC's regulation continues to serve a defined public interest. However, regulation of a small number of non-perpetual care cemeteries subject to state oversight is unnecessary to protect the public, and TFSC's involvement in private cemetery-related disputes is an unusual and unwarranted use of state resources. The Sunset Commission recommends discontinuing both and replacing the cemetery owner or operator member of the TFSC commission with a crematory owner or operator member to reflect the growing prevalence of cremation in the industry.

## Recommendations

### ***Continue***

- Continue the Texas Funeral Service Commission for 12 years.

### ***Governance***

- Replace the cemetery owner or operator member of the TFSC commission with a crematory owner or operator member to reflect the growing prevalence of cremation.
- Authorize TFSC to create advisory committees using stakeholders and members of the public.
- Update the standard across-the-board requirement related to commission member training.
- Modify the agency's biennial reporting requirement to increase transparency.

**Cemeteries**

- Discontinue TFSC's regulation of the few non-perpetual care cemeteries subject to state oversight.
- Direct the agency to discontinue its involvement in mediating private cemetery access disputes. (Management action – nonstatutory)
- Direct the agency to provide information on nontraditional methods and options for the disposition of a body, such as cremation and green burials. (Management action – nonstatutory)

**Enforcement**

- Require the agency to inspect licensed funeral establishments and crematories at least once every three years and as a management action, direct the agency to establish a risk-based approach to inspections.
- Authorize the agency to seek injunctive relief through the attorney general to pursue unlicensed activity, and to take disciplinary action against a licensed funeral establishment, commercial embalming facility, or crematory that assists or allows an individual to engage in unlicensed activity.
- Make complaints and other investigative information confidential and exempt from public disclosure, other than final enforcement actions, and as a management action, direct the agency to maintain complainants' confidentiality when possible.
- Clarify the distinction between a first call, when a consumer initially makes contact with a funeral home to arrange for the disposition of a body, and the removal of a body, solely in relation to transportation.
- Authorize TFSC to order refunds to consumers.
- Direct the agency to modify its memorandum of understanding with DSHS to include sanitation standards for funeral homes and death care businesses, and to coordinate with DSHS to ensure investigators have access to death certificate information. (Management action – nonstatutory)
- Direct the agency to adopt rules for informal settlement conferences and to provide more detailed disciplinary information on its website. (Management action – nonstatutory)

**Licensing**

- Authorize TFSC to determine the criteria for preparation room exemptions.
- Remove outdated and unused licensure qualifications and authorize TFSC to set license terms in rule.
- Authorize TFSC to issue duplicate licenses to license holders for the purpose of meeting the requirement to display their license at each place of business.
- Provide TFSC general fee-setting authority to fully recover its costs.
- Direct the agency to make the consumer brochure regarding funerals and complaint procedures freely available to licensees online. (Management action – nonstatutory)
- Direct the agency to accept all license applications and fee payments online, and to eliminate notarization requirements for its forms. (Management action – nonstatutory)

- Direct TFSC to develop standard procedures for evaluating experience for military service members, military veterans, and military spouses. (Management action – nonstatutory)
- Direct TFSC to review and evaluate continuing education courses. (Management action – nonstatutory)

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a significant fiscal impact. The recommendation to discontinue state regulation of five non-perpetual care cemeteries would result in an annual loss of about \$500 in revenue currently collected from licensure fees.



# TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

*Morgan Constantino, Project Manager*

## Summary

The practice of geoscience was unregulated in Texas until the Legislature created the standalone Texas Board of Professional Geoscientists 17 years ago. The board licenses about 4,500 geoscientists and geoscience firms. Although Sunset staff found state regulation of geoscientists provides no measureable public benefit and recommended abolishing the board and repealing the Texas Geoscience Practice Act, the Sunset Commission considered other organizational alternatives to maintain regulation of geoscientists in Texas, including consolidating the board with the Texas Board of Professional Engineers, a profession that frequently interacts with geoscientists. Ultimately, the commission recommends continuing the current standalone board and regulation of geoscientists for six more years, with a shortened Sunset date of September 1, 2025, which aligns with the Texas Board of Professional Engineers' Sunset review.

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*The board should focus its enforcement efforts on complaints that present actual risk or harm to the public, not low-risk, administrative violations.*

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The commission's other recommendations aim to improve the effectiveness and efficiency of the board's operations by applying occupational licensing model standards and best practices; removing unnecessary barriers into the geoscience profession; and refocusing the board's enforcement efforts on complaints that present an actual risk of harm to the public instead of low-risk, administrative violations.

## Recommendations

### **Continue**

- Continue the Texas Board of Professional Geoscientists and the Texas Geoscience Practice Act for six years.

### **Governance**

- Apply the Sunset across-the-board recommendations related to presiding officer designation, board member training, complaint information, and alternative dispute resolution.

### **Enforcement**

- Increase the board's maximum administrative penalty amount from \$100 to \$1,500 per day for each violation.

- Direct the board to cease routinely opening unlicensed public practice complaints against expired licensees who failed to timely renew. (Management action – nonstatutory)
- Direct the board to further develop policies guiding the administrative dismissal of complaints by staff, specifically to provide staff clear direction to handle continuing education complaints unless aggravating circumstances require board involvement. (Management action – nonstatutory)
- Direct the board to publish its penalty matrix on its website. (Management action – nonstatutory)

### ***Licensing***

- Eliminate the statutory notarization requirement for individuals applying for the professional geoscientist license.
- Eliminate the statutory letter of reference requirement for individuals applying for a professional geoscientist license, as well as the letter of reference requirement for individuals applying to register as a geoscientist-in-training required by board rule.
- Direct the board to discontinue geoscience firm registration. (Management action – nonstatutory)

## **Fiscal Implication Summary**

The Sunset Commission's recommendations would not have a significant fiscal impact to the state. Discontinuing geoscience firm registration in rule would result in an estimated loss of about \$100,200 to general revenue currently collected from 334 firms at a cost of \$300 per firm in fiscal year 2017.



# TEXAS HISTORICAL COMMISSION

*Steven Ogle, Project Manager*

## Summary

Since its last Sunset review in 2007, the Texas Historical Commission (THC) has grown from just a regulatory agency providing advice and tools to preservationists to one actively managing and marketing 22 historic sites and resources in Texas. The Sunset Commission found the agency to be generally well-run, particularly with regard to its core preservation functions, but in need of improving its newer, less established programs — managing state historic sites and supporting local heritage tourism development. In particular, the commission recommends THC establish goals for these programs and find opportunities to coordinate with other agencies to improve historic preservation in the state.

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*Texas has failed to comprehensively plan for its state historic sites.*

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Texas has long failed to comprehensively plan for its state historic sites, which are managed by four agencies — THC, Texas Parks and Wildlife Department (TPWD), State Preservation Board (SPB), and General Land Office (GLO) — with little statewide coordination or direction. Recognizing this, the commission recommends increasing coordination between all entities managing historic sites to reduce the risk of losing important state history. This increased cooperation and collaboration across state historic sites would maximize each agency's strengths and better use the limited resources available to improve and preserve these sites. Further, to ensure each agency makes best use of its particular expertise in managing these sites, the commission recommends transferring eight historic sites at TPWD that are not attached to a state park to THC.

THC also works with local governmental and nonprofit groups to foster preservation efforts across the state. The agency's main heritage tourism program, the Texas Heritage Trails, supports 10 regional nonprofit organizations seeking to increase historic and cultural heritage tourism. However, THC has allowed the program to operate for far too long without proper internal or external controls to ensure effective outcomes and full accountability. The commission found no evidence of wrongdoing by the nonprofit organizations, but recommends providing clearer direction for the program through statute and rule alongside stronger contracting practices to provide needed oversight of the state's financial investment.

## Recommendations

### ***Continue***

- Continue the Texas Historical Commission for 12 years.

### ***Collaboration Across Historic Sites***

- Direct THC to establish and lead a working group composed of the chair or their designee from THC, TPWD, and SPB, the commissioner of GLO or his designee, and stakeholders to begin to develop a statewide historic sites master plan, including presenting a proposal for the development of such a plan by December 10, 2018. (Management action – nonstatutory)
- Transfer the eight remaining historic sites from TPWD to THC that are not attached to a state park:
  - Battleship Texas
  - Fanthorp Inn
  - Fort Leaton
  - Lipantitlan
  - Monument Hill / Kreische Brewery
  - Port Isabel Lighthouse
  - San Jacinto Monument and Battleground
  - Washington-on-the-Brazos
- Direct THC and TPWD to develop a memorandum of understanding to limit duplication in management of historic sites related to curatorial storage facilities, procurement and contracting, and preservation and interpretation. (Management action – nonstatutory)
- Direct THC to adopt rules providing for a process that includes input from professional historians to provide additional perspectives for stakeholders to challenge the accuracy of existing THC historical markers. (Management action – nonstatutory)

### ***Curatorial Collections***

- Align statutory requirements for the sale of surplus state goods with curatorial collection best practices, and as a management action, direct Sunset staff to work with the Texas Legislative Council to ensure statute dedicates the funds from these sales for the selling agency's use.
- Direct THC and TPWD to work with the Texas Facilities Commission (TFC) to explore options for a joint curatorial facility to serve the needs of the state's historic site collections. Also direct THC and TPWD, in consultation with the SPB, GLO, and the Texas State Library and Archives Commission, to identify and consider each agency's storage needs. Also specify the agencies should work together to create a master inventory of the state's curatorial collections. Further, direct THC to collaborate with TPWD, SPB, GLO, and the Texas State Library and Archives Commission to develop a uniform approach to inventorying the state's curatorial collections and create a master inventory of such property. (Management action – nonstatutory)

- Direct agencies with a curatorial collection and deaccession policy to work with TFC to sell unneeded collections items, and request that the Senate Finance and House Appropriations committees consider adding a rider to the bill pattern of any agency with an officially adopted deaccession policy to retain proceeds from the sale of deaccessioned items. (Management action – nonstatutory)

### ***Heritage Trails Program***

- Clearly establish the Heritage Trails program in statute and require THC to adopt rules regarding the program.
- Direct THC to work with the attorney general’s office on a single, performance based contract for the Heritage Trails program and to provide stronger contract oversight. (Management action – nonstatutory)
- Direct THC to include the use of the Heritage Trails program and nonprofits in its long-term planning. (Management action – nonstatutory)

### ***Governance***

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

## **Fiscal Implication Summary**

Overall, the Sunset Commission’s recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources.



# TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

*Darren McDivitt, Project Manager*

## Summary

While Texas has a clear, ongoing need to regulate the practice of land surveying, the Sunset Commission found that the Texas Board of Professional Land Surveying has failed to meet its fundamental duties and responsibilities. The agency has increasingly struggled to carry out several key functions since its last Sunset review in 2003. These struggles are most notable in enforcement, where broken processes put consumers at risk and treat licensees unfairly, as shown by an unacceptably long average complaint resolution timeframe of over two years. The agency was also unable to provide consistent and reliable accounting information and standard licensing and enforcement data. Furthermore, the agency has knowingly lapsed over \$423,000 since fiscal year 2012, leaving funds unspent despite a clear need to resolve some of these serious and ongoing challenges and improve programs and functions.

As required by the Sunset Act, the commission considered whether the agency's organizational structure provides the most effective and efficient regulation. The board and agency's modest attempts to make improvements have not worked, and inaction in other areas led the commission to determine these problems cannot be fixed within the current organization. As a result, the Sunset Commission recommends transferring the regulation of land surveyors to the Texas Board of Professional Engineers to create the Texas Board of Professional Engineers and Land Surveyors, which could more effectively regulate this important profession. The commission also adopted recommendations to increase the effectiveness and efficiency of licensing, examination, and enforcement processes by applying occupational licensing best practices.

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*As currently structured, the agency cannot effectively regulate land surveyors.*

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## Recommendations

### ***Continue***

- Consolidate the Texas Board of Professional Land Surveying with the Texas Board of Professional Engineers, creating the Texas Board of Professional Engineers and Land Surveyors.

### ***Enforcement***

- Clarify statute to realign the agency's complaint intake and investigation procedures with model standards.
- Direct the board to publish disciplinary history online. (Management action – nonstatutory)

### **Licensing**

- Authorize the board to set biennial license and firm registration terms in rule.
- Remove the residency requirement for licensed state land surveyors from statute.
- Direct the board to review application requirements to conform with current policy and statute, and to adopt a staggered renewal system for licenses and registrations. (Management action – nonstatutory)

### **Exams**

- Authorize the agency to outsource its exams and replace the board’s exam advisory committees with general statutory authority to establish advisory committees.
- Direct the board to conduct a comprehensive analysis regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam. (Management action – nonstatutory)

## **Fiscal Implication Summary**

Overall, the Sunset Commission’s recommendations would result in an estimated positive fiscal impact to the state of about \$183,888 over the next five years. Abolishing the Texas Board of Professional Land Surveying and transferring regulation of the profession to the newly created Texas Board of Professional Engineers and Land Surveyors would result in an estimated annual positive impact to the state of about \$45,972 each year beginning in fiscal year 2021, and a reduction of two staff positions.

In fiscal year 2017, the agency reported \$563,220 in revenue and \$439,185 in expenditures, resulting in a deposit of \$124,035 in excess revenue to the General Revenue Fund. Land surveying regulation would no longer fall under the appropriations process beginning fiscal year 2021, as a result of the newly created board also being a self-directed semi-independent (SDSI) agency, so any excess funding would no longer be deposited to general revenue. However, eliminating the land surveying board executive director and chief financial officer staff positions would result in annual savings of \$170,007 in salary and benefits to general revenue.

The estimated annual operating costs for the new Texas Board of Professional Engineers and Land Surveyors to regulate land surveying is approximately \$260,227. As an SDSI agency, the new board would maintain the flexibility to set licensing fees necessary to cover the costs of its operations.

### **Texas Board of Professional Engineers and Land Surveyors**

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Loss to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$0	\$0	0
2021	\$170,007	\$124,035	-2
2022	\$170,007	\$124,035	-2
2023	\$170,007	\$124,035	-2
2024	\$170,007	\$124,035	-2

# TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

*Tamara Schiff Aronstein, Project Manager*

## Summary

The Texas State Library and Archives Commission (TSLAC) zealously performs its mission to provide Texans with the information needed to lead informed, productive, and fulfilled lives by supporting libraries throughout the state, managing the state archives, and helping government agencies properly manage records.

With libraries generally reporting satisfaction with TSLAC's services, the Sunset Commission focused on the agency's role managing the state archives and promoting sound records management practices for both state and local government entities. These mundane-sounding tasks form the backbone of government transparency and openness, as public information laws would otherwise be of little use. The commission recommends continuing the agency for 12 years, but requiring it to take a more strategic approach to reducing the archives backlog and categorizing research requests. The commission also recommends clarifying procedures for legislative records management and working more collaboratively with legislative staff to provide a better framework for unique legislator records. The commission further recommends the agency collaborate with other state agencies and seek additional opportunities to promote and better support its programs.

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*The agency has struggled to manage the influx of records in recent years, thwarting easy public access.*

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## Recommendations

### **Continue**

- Continue the Texas State Library and Archives Commission for 12 years.

### **State Archives Management**

- Require TSLAC to develop a strategic plan for managing the state archives, with targets for processing the backlog, analyzing staffing needs, and regularly reporting on progress.
- Authorize TSLAC to distinguish between different types of information requests to better manage archives workload.
- Direct TSLAC to adopt a fee schedule for PIA requests. (Management action – nonstatutory)

### **Records Management**

- Clarify the processes for waiving confidentiality protections on legislative records and approving institutions outside the state archives to store legislator records.

- Remove the requirement for TSLAC to approve local government records retention schedules, and authorize TSLAC to transfer custody of certain local records to local institutions.
- Direct TSLAC to create a working group for legislative records issues. (Management action – nonstatutory)
- Direct TSLAC to gather customer input and regularly update the minimum state records retention schedule, including assessing any changes from the 86th Legislature and establishing a working group of state agency records management officers to help update and adopt a new schedule by April 1, 2020. (Management action – nonstatutory)

### **Grants**

- Direct TSLAC to prohibit grant reviewers from applying for grants in the same categories they score. (Management action – nonstatutory)
- Direct TSLAC to openly solicit peer grant reviewers. (Management action – nonstatutory)
- Direct TSLAC to adjust grant award criteria and scoring to better disperse grant funding to a wider pool of libraries. (Management action – nonstatutory)
- Direct TSLAC to identify and coordinate with other state agencies to promote the agency's grant programs to increase participation among libraries across the state. (Management action – nonstatutory)

### **Program Support**

- Authorize TSLAC to use its current resources, including general revenue, grant funds, gift funds, and federal funding if permitted, to advertise the agency's programs.
- Authorize TSLAC to sell replicas of archival materials held in the state archives and approved for sale by the commission, with funds received to be used for preservation, digitization, archives information services, and education operations. As a management action, direct Sunset staff to work with the Texas Legislative Council to ensure statute dedicates the funds from these sales for TSLAC's use. Also request the appropriate committees to consider adding a rider for TSLAC to retain proceeds from these sales.
- Direct TSLAC to work with the Texas Historical Commission, Texas State Preservation Board, Texas Parks and Wildlife Department, and General Land Office to explore options for new curatorial space at TSLAC's Shoal Creek location. (Management action – nonstatutory)

### **Governance**

- Update the standard across-the-board requirement related to commission member training, including a requirement for each commission member to attest to both receiving and reviewing the training manual annually.
- Authorize the commission to establish advisory committees in rule as needed.

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources.



# LOWER COLORADO RIVER AUTHORITY

*Erick Fajardo, Project Manager*

## Summary

The Legislature created the Lower Colorado River Authority (LCRA) in 1934 to control floods, protect and store water, conserve land, and generate and sell electricity. Now the second-largest electric company in Texas, LCRA derives about 93 percent of its roughly \$1 billion in annual revenue from its electric generation and transmission businesses and has a huge operational presence in more than 70 counties. LCRA's dual role as a major player in the competitive electric market and as a governmental entity providing a vital natural resource makes it unique among the other 16 river authorities in Texas. Like other river authorities, state law does not subject LCRA to abolishment under the Sunset Act, but unlike the others, state law specifically prohibits Sunset from reviewing LCRA's electric businesses. Accordingly, the Sunset Commission did not consider LCRA's electric operations or the appropriateness of LCRA's arrangement as both an electric and water provider.

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*LCRA has a difficult job of balancing many competing interests and needs.*

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Instead, the commission focused on LCRA's other activities, primarily its water functions, which have a tremendous impact on Central Texas' rapidly growing population and the industry, communities, and environment in the lower Colorado River basin. The Sunset Commission found LCRA is a very sophisticated, well-functioning organization that has a difficult job of balancing many competing interests and needs. However, the region needs LCRA to succeed as a water supplier, and LCRA's success hinges on its ability to improve public trust. The commission determined LCRA still has room for improvement, particularly in the areas of financial transparency and public engagement, and must do more than the minimum required to obtain and retain public trust. The commission's recommendations include requiring LCRA to adopt a public engagement policy for water supply projects and to provide more detailed financial information to the public.

The Sunset Commission also examined LCRA's efforts to conserve and protect public and private lands in the basin, contribute to economic development among the communities LCRA serves, and regulate water quality and safety along the Highland Lakes. The commission recommends LCRA implement best practices in the areas of regulation and grants administration, as well as transparency and openness reflective of the commission's more than 40 years observing, documenting, and applying good government standards.

## Recommendations

### ***Public Engagement***

- Require LCRA to adopt a public engagement policy for water supply projects.
- Require LCRA to develop and maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures.
- Require LCRA to provide an official opportunity for public testimony at meetings of its board and its committees-of-the-whole.
- Direct LCRA to amend its public testimony protocols to provide greater accessibility. (Management action – nonstatutory)

### ***Transparency***

- Direct LCRA to provide more detailed financial information in its publicly available documents. Specify that in providing more detailed financial information, LCRA should do so in an annual, publicly available report that strives to include the information listed in the staff recommendation. Clarify that the clear explanation of money transfers between business units, departments, and funds applies only to material transfers. For its operational reserve funds, LCRA should provide a list of each fund, its purpose, and its balance. For its strategic reserve funds, LCRA should just provide the cumulative balance of all the funds. (Management action – nonstatutory)
- Direct LCRA to provide more transparent, consistent, and accurate agenda meeting notices to the public. (Management action – nonstatutory)
- Direct LCRA to improve transparency of its committees-of-the-whole. (Management action – nonstatutory)

### ***Colorado River Land Trust***

- Direct LCRA to clearly separate the governance and management of the land trust from its own board and staff. (Management action – nonstatutory)
- Direct LCRA to update its service agreement with the land trust to include performance goals and a timeline of expectations for the land trust to move towards greater financial independence from LCRA. (Management action – nonstatutory)

### ***Regulatory Programs***

- Direct LCRA to document and publish a clear appeals process for on-site sewage facility regulatory decisions. (Management action – nonstatutory)
- Direct LCRA to develop and publicize an online option for submitting on-site sewage facility permit applications and payments. (Management action – nonstatutory)
- Direct LCRA to develop and publicize a clear complaints process for all three water quality regulatory programs. (Management action – nonstatutory)
- Direct LCRA to collect, maintain, and report detailed information on complaints. (Management action – nonstatutory)

### **Grant Program Administration**

- Direct LCRA to develop and adopt a conflict-of-interest policy specific to the grant program including disclosure and recusal elements. (Management action – nonstatutory)
- Direct LCRA to update its grant application materials to more clearly disclose scoring criteria to applicants. (Management action – nonstatutory)
- Direct LCRA to update the overall goals for its community development partnership grant program to include more specific program priorities and outcome measures to inform future investments. (Management action – nonstatutory)
- Direct LCRA to use available technology to improve grant tracking and communication to applicants and grantees. (Management action – nonstatutory)

### **Organizational Best Practices**

- Require LCRA to provide training to board members to enable them to properly discharge their duties.
- Apply the good government standard relating to alternative dispute resolution to LCRA's statute.
- Direct LCRA to update its board nepotism policy to fully conform to Texas Commission on Environmental Quality requirements and state law. (Management action – nonstatutory)
- Direct LCRA to improve its Small and Diverse Supplier Program to better comply with the intent of HUB laws. (Management action – nonstatutory)
- Direct LCRA to plan, more proactively implement, and monitor its efforts to increase workforce diversity. (Management action – nonstatutory)

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a significant impact to the state. LCRA would be able to implement most of the recommendations within its existing resources, but some minimal impacts are discussed below.

Requiring LCRA to adopt a public engagement policy for water supply projects could result in LCRA holding additional public outreach events, which could have some minor additional costs. However, LCRA could implement an improved public engagement strategy within its current resources.

Recommendations for LCRA to clarify its relationship with the Colorado River Land Trust (CRLT) to promote more independence would decrease costs to LCRA over time by converting the two LCRA employees assigned to CRLT to land trust employees and by reducing LCRA's in-kind services, but the savings could not be estimated.

Directing LCRA to establish a standardized grant application tracking and communication mechanism for the Community Development Partnership Program would have a small cost to LCRA, but the authority should also see a savings in staff time by automating communication to grantees.



# TEXAS MEDICAL BOARD

*Erick Fajardo, Project Manager*

## Summary

The limited review of the Texas Medical Board follows up on the full Sunset review of the board conducted in 2016–2017 and the failure of the resulting Sunset bill to pass during the 85th Legislature, although some of the commission's recommendations passed in other legislation. Having just completed its work on the Medical Board in 2017, the commission focused on evaluating the ongoing appropriateness of the original recommendations that were adopted by the Sunset Commission but did not pass during the legislative session.

The commission still recommends authorizing the Texas Physician Health Program, the state's peer assistance program for physicians and other licensees, to accept gifts, grants, and donations to better set up the program to achieve its mission to help licensees return safely to practice. To avoid the risk of unnecessarily disrupting a physician's practice and wasting the Medical Board's limited time and resources, the commission again recommends authorizing the board to establish a risk-based approach to inspecting office-based anesthesia providers. The commission also recommends expanding access to expert reviewer reports for informal settlement conferences.

In addition to the recommendations made during the previous biennium, the commission also adopted several new recommendations. These recommendations include requiring the Medical Board to adopt an expedited licensing process for qualified out-of-state physicians, removing complaint information from physician public profiles when no action was taken by the board, restricting use of drug enforcement personnel as security in board investigations, and directing board staff to create a central location to receive and review complaints made about the Medical Board. Finally, the commission again recommends continuing the Medical Board for 12 years.

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*The commission recommends continuing the Medical Board, but with several licensing and enforcement enhancements.*

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## Recommendations

### ***Continue***

- Continue the Texas Medical Board for 12 years.

### ***Licensing***

- Require the Medical Board to adopt an expedited licensing process for qualified out-of-state physicians and amend statutory caps on the number of attempts made by a physician licensure applicant to

take the United States Medical Licensing Examination (USMLE) or any other licensing exam recognized by the Medical Board.

- Establish in statute an advanced-level medical radiologic technologist (MRT) certificate and define the term “radiologist assistant” as an individual who holds an advanced-level MRT certificate. Require that radiologist assistants only practice under the supervision of a radiologist, and require the Board of Medical Radiologic Technology, with approval of the Medical Board, to adopt rules for education and training, practice restrictions, and supervision levels required for radiologist assistants.
- Remove unnecessary qualifications for surgical assistant applicants that restrict entry to practice.
- Amend statute to clearly authorize the board’s current practice to conduct fingerprint-based criminal background checks of acupuncture and surgical assistant applicants.

### **Enforcement**

- Allow the Medical Board to remove certain actions that resulted in a remedial plan from a physician’s public profile after a period of five years, provided these actions were not related to the delivery of care or in cases where two or more remedial plans have been issued for the same violations, including those not related to the delivery of healthcare.
- Require the Medical Board, in its annual update of a physician’s profile on the board’s website, to remove from the profile any record of a formal complaint if the complaint was dismissed as baseless, unfounded, or not supported by sufficient evidence that a violation occurred, or no action was taken against the physician’s license. Also require the board, in the annual update of a physician’s profile, to remove any record of the investigation of medical malpractice claims or complaints if no action was taken against the physician’s license.
- Authorize the board to establish a risk-based approach to its office-based anesthesia inspection, focusing on the length of time since equipment and procedures were last inspected.
- Remove the requirement that the Medical Board’s formal complaints filed with the State Office of Administrative Hearings (SOAH) be sworn to.
- Authorize the Medical Board to offer a remedial plan — which is a nondisciplinary action for less serious violations — for a physician at most once every five years, instead of once per lifetime.
- For a site visit the Medical Board makes as part of an investigation or inspection, require the Medical Board to establish practices that preclude the use of Drug Enforcement Administration personnel, or any peace officer whose primary assignment is drug enforcement, as security personnel. (Management action – nonstatutory)
- As part of an informal settlement conference for a case involving an allegation of a standard of care violation, require the Medical Board to share with the license holder who is the subject of the allegation a complete copy of each preliminary written report produced by each expert physician reviewer for the license holder’s case, not just the final report currently required by law. As part of this provision, require the Medical Board to redact all identifying information of each expert physician reviewer, except the reviewer’s specialty.
- As part of their evaluation of whether a physician has committed a violation of the standard of care, require members of the informal settlement conference disciplinary panel to consider whether the physician was practicing complementary and alternative medicine.

- Require notice of a SOAH hearing by the Medical Board to physicians to be sent by certified mail.

### ***Texas Physician Health Program***

- Require the Medical Board and Texas Physician Health Program to develop a memorandum of understanding covering services and operations, including performance measures and auditing requirements.
- Authorize the Texas Physician Health Program to accept gifts, grants, and donations.

### ***Governance***

- Direct internal staff to create a central location to receive and review complaints made about the Medical Board, and report regularly to the board these complaints and their status. (Management action – nonstatutory)
- Apply the standard Sunset across-the-board recommendations relating to board member training and alternative rulemaking and dispute resolution to the medical, acupuncture, respiratory care, and medical radiologic technology boards.

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a significant fiscal impact to the state, as many are designed to improve efficiency and increase accountability for both physicians and consumers in ways that would have minimal impact on resources. The expedited licensing process for out-of-state physicians could require additional resources; however, the fees associated with this process would cover those costs. The recommendation to create a medical radiologic technology radiologist assistant certificate would result in a small positive fiscal impact to the state of about \$5,220 in fiscal year 2020 and \$6,525 each following year from licensing fees.

### ***Texas Medical Board***

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>
2020	\$5,220
2021	\$6,525
2022	\$6,525
2023	\$6,525
2024	\$6,525





# TEXAS MILITARY DEPARTMENT

*Robert Romig, Project Manager*

## Summary

As the state agency that oversees the training and readiness of the state's military forces, the Texas Military Department (TMD) plays a vital role in responding to international military deployments and to both state and national disasters.

The Sunset review focused on the internal management and operations of the department as the state agency that supports its outward-facing public service mission. The Sunset Commission found the department struggles somewhat to safeguard state administrative interests and policy concerns, given its perpetual need to shift attention to military and emergency matters. TMD's complex relationship between myriad state and federal players means it must have solid institutional structures in place to ensure consistent attention to state requirements.

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*TMD struggles to safeguard state administration, given its perpetual attention shift to military and emergency matters.*

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The commission recommends continuing the department for 12 years and clarifying statute to better integrate state administration into TMD's leadership structure, to ensure broader oversight across all of the department's diverse state programs and functions. The commission also recommends the department better support effective and efficient purchasing across its decentralized programs by adopting improved tools for collecting data and sharing information. Other recommendations provide a course correction for several department programs using significant state funding and needing new strategic direction to succeed and mitigate potential risks to the state, including the Texas State Guard, the Texas Challenge Academy for at-risk youth, and the state-funded tuition assistance program for guard members.

## Recommendations

### **Continue**

- Continue the Texas Military Department for 12 years.

### **Governance**

- Clarify the adjutant general's responsibility over all aspects of the department and strengthen internal oversight of state administration.
- Direct the adjutant general to improve supervision and support of the department's state employees. (Management action – nonstatutory)
- Direct the department to review and update its administrative rules. (Management action – nonstatutory)

**Purchasing**

- Direct the department to improve planning and implementation of purchasing policy changes, including scheduling policy updates based on risk and ensuring all staff involved in purchasing have information needed to carry out their duties. (Management action – nonstatutory)
- Direct the department to track and report performance of all phases of the purchasing process. (Management action – nonstatutory)
- Direct the department to develop a process for programs to share information about timelines and needs to prioritize purchasing workload across the department. (Management action – nonstatutory)

**Texas State Guard**

- Direct TMD to evaluate State Guard missions and establish strategies to support the program and protect the state's interest. (Management action – nonstatutory)
- Direct the department to provide State Guard members with access to the department's ombudsman for voicing general program concerns. (Management action – nonstatutory)

**Challenge Academy**

- Direct the department to identify specific options for relocating the Sheffield campus no later than January 1, 2019, with a goal to preserve federal funding and other Challenge program benefits for Texas' at-risk youth. (Management action – nonstatutory)
- Direct the department to close the Texas Challenge program's Sheffield campus in March 2020, regardless of whether relocation is feasible. (Management action – nonstatutory)

**State Tuition Assistance**

- Direct the department to establish updated goals to target the use of limited state tuition benefits and collect information needed to measure performance. (Management action – nonstatutory)
- Direct the department to update informational materials and training to ensure recruiters and potential applicants receive accurate information about state tuition benefits. (Management action – nonstatutory)

**Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources.

# TEXAS DEPARTMENT OF MOTOR VEHICLES

*Steven Ogle, Project Manager*

## Summary

This Sunset review is the Legislature's first opportunity, since the creation of the Texas Department of Motor Vehicles in 2009, to comprehensively evaluate how well the department is meeting the Legislature's goals for improved performance in issuing vehicle titles and registrations, and regulating motor vehicle sales and motor carriers. The Sunset Commission found the department has largely accomplished these goals and should be continued for 12 years.

However, the department's board struggles to balance its role as the administrator, regulator, and arbitrator of competing interests in the motor vehicle industry, particularly since the majority of the board members represent different facets of the industry. The Sunset Commission recognized the potential for the board to initiate potentially anticompetitive rulemaking, but determined this is not a problem unique to this regulatory board. As such, the commission decided to request the Legislature to examine all state boards, including the Texas Department of Motor Vehicles board, for any legislation needed to mitigate the potential liability of boards controlled by active market participants.

The commission also found the department lacks standard oversight and enforcement mechanisms needed to better protect the integrity of state vehicle titles and registrations, particularly in the wake of Hurricane Harvey. In addition, the role of county tax assessor-collectors in helping the department detect title and registration fraud needs to be better defined. Finally, the department lacks key enforcement authority necessary to best protect the public and needs to improve its enforcement processes to reduce complaint resolution timeframes, including expanding its enforcement data tracking and reporting, and analyzing inefficiencies to better allocate resources. For salvage activity, and salvage vehicle dealers specifically, the department lacks authority to combat unlicensed practice, comprehensive criminal background checks on applicants, and a risk-based approach to conduct effective inspections of licensed salvage vehicle dealers.

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*The board struggles to balance its role as administrator, regulator, and arbitrator of competing interests in the motor vehicle industry.*

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## Recommendations

### *Continue*

- Continue the Texas Department of Motor Vehicles for 12 years.

**Governance**

- Require the board to adopt rules and policies to establish clear standards for conduct and handling of contested cases coming before the board for final decisions.
- Remove the board's exemption from providing balanced representation on its advisory committees.
- Direct the board to establish advisory committees to provide expertise for rulemaking and other issues and adopt rules regarding standard committee structure and operating criteria. (Management action – nonstatutory)
- Apply the standard Sunset across-the-board requirements related to alternative dispute resolution and complaint processing, and update and modify the board member training requirement.
- Update the Sunset across-the-board requirement that requires agencies to adopt policies clearly delineating the policymaking functions of the board from the day-to-day administration of the agency, to clarify the division of responsibilities between the department's board and its executive director.

**Vehicle Title Fraud**

- Require counties to follow standard contracting practices when outsourcing state services to full-service deputies.
- Clarify the department's statutory authority to control access to the registration and title system and require the department work with county tax assessor-collectors to create clear criteria for the department to suspend or deny access to the system by March 1, 2020.
- Require the department to implement a proactive, risk-based approach to monitoring fraud, and share best practice protocols with county tax assessor-collectors.
- Direct the department to adopt its current "red flag" fraud warning system to further implement a clear and efficient path for county tax assessor-collectors to report and request department action for suspected fraud, waste, or abuse of the registration and title system by employees, dealers, and full-service deputies. (Management action – nonstatutory)
- Implement mandatory fraud training, either in-person or online, for all persons processing state registration or title transactions prior to gaining access to the registration and title system.
- Authorize the department and the respective county tax assessor-collector to audit or perform a compliance review of any entity providing registration and title services.
- Require the department to coordinate with the comptroller of public accounts and authorize the comptroller of public accounts to include as part of its ongoing audits of state revenue collections by county tax assessor-collector offices, a review of processes relating to a county's collection and remittance of revenues included in the audit.
- Authorize Automobile Burglary and Theft Prevention Authority (ABTPA) grant recipients to use funds to combat a broader range of motor vehicle crimes, such as title and odometer fraud, beyond just automobile burglary and theft; and codify the ABTPA statutes.

**Salvage Dealer Regulation**

- Eliminate the salvage agent license.

- Eliminate separate salvage license endorsements and establish a single, streamlined salvage license and authorize the department to set salvage license terms in rule.
- Remove unnecessary application requirements for salvage licenses. (Management action – nonstatutory)
- Direct the department to adopt criminal history evaluation rules and guidelines consistent with Chapter 53, Texas Occupations Code for salvage industry regulation. (Management action – nonstatutory)
- Direct the department to establish a risk-based approach to its salvage vehicle dealer inspections. (Management action – nonstatutory)
- Authorize the department to use cease-and-desist authority for unlicensed salvage activity.

### ***Licensing and Enforcement***

- Eliminate motor vehicle show and exhibition approval requirements.
- Eliminate the representative license.
- Direct the department to conduct criminal history checks for all motor vehicle license renewals. (Management action – nonstatutory)
- Remove statutory exceptions from standard enforcement practices for deceptive advertising violations by motor vehicle dealers.
- Direct the department to identify and implement methods to reduce its complaint resolution timeframes; develop clear guidance and criteria for prioritizing investigations and inspections; and improve enforcement data tracking within its existing systems. (Management action – nonstatutory)
- Direct the department to revise and expand key performance indicators and annual enforcement reports. (Management action – nonstatutory)
- As an additional disciplinary tool, authorize the department to require refunds for consumers for motor vehicle and motor carrier violations.
- Direct the department to publish penalty matrices and provide more detailed enforcement histories of regulated motor vehicle and motor carrier businesses online. (Management action – nonstatutory)

### ***Information Technology***

- Require the department to ensure webDEALER is available to automobile dealers in all Texas counties by September 1, 2020.
- Direct the department to develop a comprehensive approach to developing, maintaining, and updating its IT infrastructure. (Management action – nonstatutory)
- Direct the department to evaluate and identify further opportunities to consolidate and modernize its customer service functions. (Management action – nonstatutory)
- Direct the department to complete the existing contracted study, as required under House Bill 1959 (85th Legislature, Regular Session), to identify and assess alternative technologies for registering commercial vehicles by March 31, 2019, instead of December 1, 2021.

**Board Composition Study**

- Direct the Sunset Commission to request that the Legislature examine all state boards, including the Texas Department of Motor Vehicles board, for any legislation needed to mitigate the potential liability of boards controlled by active market participants. (Management action – nonstatutory)

**Fiscal Implication Summary**

Overall, the Sunset Commission’s recommendations would result in increased efficiency and effectiveness for the department, regulated entities, and stakeholders, as well as reduced regulatory costs over time. Recommendations to eliminate unnecessary motor vehicle licenses and processes are expected to have a negative fiscal impact to the state of \$98,688 annually, but would improve efficiency and oversight of the program. Abolishing the motor vehicle shows and exhibitions approval process would result in an estimated savings of \$68,310 to the Texas Department of Motor Vehicles Fund (TxDMV Fund) associated with the elimination of one full-time employee position. Eliminating the representative license would result in a loss of approximately \$168,400 annually in fee revenue to the TxDMV Fund, which would be offset by savings from an estimated \$9,311 associated with administering this license type. Requiring the department to conduct criminal background checks for all motor vehicle license renewals would have a small cost to the department of \$7,909 annually from the TxDMV Fund. Other recommendations do not have an anticipated fiscal impact or could be accomplished within existing resources.

**Texas Department of Motor Vehicles**

<b>Fiscal Year</b>	<b>Revenue Loss to TxDMV Fund</b>	<b>Savings to TxDMV Fund</b>	<b>Cost to the Department</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$168,400	\$77,621	\$7,909	-1
2021	\$168,400	\$77,621	\$7,909	-1
2022	\$168,400	\$77,621	\$7,909	-1
2023	\$168,400	\$77,621	\$7,909	-1
2024	\$168,400	\$77,621	\$7,909	-1

# TEXAS STATE BOARD OF PLUMBING EXAMINERS

*Julie Davis, Project Manager*

## Summary

Texas has about 58,000 licensed plumbers, but the skyrocketing population growth and recurring severe storms, such as Hurricane Harvey and historic flooding across Central Texas, have driven the demand for plumbing services well beyond the industry's capacity. Difficulty meeting demand for plumbers exacerbates affordable housing shortages and increases costs for construction, repairs, and maintenance, all of which impact the state's citizens and economy. With demand increasing, but supply plateauing, the regulation of plumbing in Texas is in need of serious change. Ultimately, the Sunset Commission concluded the plumbing board's serious, ongoing problems and reticence to change no longer meets the expectations of the state or the growing demands of the industry and recommends transferring the regulation of plumbing to the Texas Department of Licensing and Regulation (TDLR).

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*The regulation of  
plumbing in Texas is in  
need of serious change.*

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As a small agency, the plumbing board struggles to allocate its already stretched staff and resources, and to navigate sometimes restrictive statutory requirements. However, the board and agency leadership have a track record of neglecting known deficiencies. The Sunset Commission found many problems existed long before the storms and were within the board's control to fix, including backlogged exams, with more than 1,400 individuals waiting to take exams; poor customer service, with the agency only able to answer about 62 percent of its calls; and growing complaint caseloads and resolution times. Statute and board rules also create a litany of constraints on plumbers that make entry into the trade and progression through a career difficult. The agency's enforcement processes also fail to meet standard practices to ensure consistent, documented, and fair application of laws and rules to licensees, or provide public transparency.

Board members and agency leadership acknowledge some of these persistent problems, but have failed to appropriately address them, and broader problems, like the workforce shortage, have been exacerbated by board inattention and unwillingness to change the status quo. TDLR regulates several other construction trades, including electricians and air conditioning and refrigeration technicians, and can capitalize on that experience to provide more consistent, robust oversight of plumbing in Texas. Oversight by TDLR, along with other Sunset recommendations, would reduce wait times for exams, eliminate unnecessary licensure requirements, improve enforcement procedures, address customer service and public safety concerns, and harmonize the regulation of several construction trades to meet the growing needs of the state.

## Recommendations

### ***Abolish and Transfer***

- Transfer the regulation of plumbers to TDLR, and reconstitute the current board as an advisory board with eight professional members and one member representing the public.
- Direct the board and TDLR to form a working group by February 1, 2019, to develop regulatory processes and rules and facilitate the transfer of plumbing to TDLR, and submit quarterly status reports to the Sunset Commission on the implementation of recommendations. (Management action – nonstatutory)

### ***Licensing***

- Authorize the board to enter into reciprocity agreements with other states and to waive certain requirements for out-of-state applicants, and allow an out-of-state applicant licensed for at least two years to obtain an equivalent license in Texas without taking an exam.
- Authorize the agency to issue temporary licenses to respond to natural disasters.
- Direct the agency to eliminate the requirement to have a high school diploma or GED for licensure. (Management action – nonstatutory)
- Require the agency to obtain fingerprint background checks for all applicants and licensees.
- Require an apprentice or tradesman plumber to obtain on-the-job or classroom training before performing authorized tasks under general supervision, and credit any classroom training toward the hours for licensure and any continuing education requirements.
- Eliminate the drain cleaner-restricted, drain cleaner, and residential utilities installer registrations and any statutory requirements for direct supervision, and instead allow the board to determine supervision requirements for apprentice and tradesman plumbers in rule.
- Eliminate the responsible master plumber designation and create a plumbing contractor license, similar to other construction trades.
- Clarify the board's authority to approve continuing education course content and instructors only.
- Direct the board to simplify the timeframe for obtaining continuing education. (Management action – nonstatutory)
- Authorize the board to establish annual or biennial license terms in rule.
- Align the renewal for endorsements with the renewal for licenses.

### ***Exams***

- Authorize the board to outsource the creation and administration of its exams.
- Remove the statutory requirement to only have licensed plumbers administer the written portions of exams, but continue to require a licensed plumber to administer the practical portions of the exams, even if outsourced.



- To address the exam backlog, direct the agency to establish or partner with third parties to open at least seven testing facilities by September 1, 2019. (Management action – nonstatutory)
- Direct the agency to eliminate or revise exam questions that could implicate a conflict between the International Plumbing Code and Uniform Plumbing Code. (Management action – nonstatutory)

### **Enforcement**

- Repeal the cumbersome statutory enforcement committee to streamline enforcement processes.
- Repeal the board’s outdated and unused authority to issue criminal citations.
- Eliminate statutory job qualifications for field investigators.
- Direct the agency to adopt a risk-based approach to investigations that prioritizes higher risk complaints over lower risk activities, such as jobsite compliance checks. (Management action – nonstatutory)
- Direct the agency to use informal settlement conferences. (Management action – nonstatutory)
- Direct the agency to publish disciplinary history online. (Management action – nonstatutory)

## **Fiscal Implication Summary**

Overall, the Sunset Commission’s recommendation to transfer plumbing regulation to TDLR would result in an estimated savings of about \$768,000 in general revenue over the next five fiscal years. The savings would result primarily from capitalizing on TDLR’s size and structure, reducing the number of employees needed to regulate the industry, and eliminating administrative costs necessary for an independent agency. The transfer would also result in more efficient and focused administration of plumbing regulation. Other recommendations to streamline and simplify licensure functions would result in efficiencies but would not have a significant fiscal impact.

On September 1, 2020, TDLR would assume responsibility for the plumbing board’s functions but would need the plumbing board’s separate building and facilities for an additional year to ensure a smooth transition of licensing, examination, and enforcement functions. As such, most savings would be realized after fiscal year 2021. The plumbing board has 31 full-time equivalent positions, all of which would be necessary to administer the plumbing program through fiscal year 2021. After that, TDLR’s process improvements, such as outsourcing the exam administration, would reduce the need for three employees who currently perform examinations.

TDLR would need start-up costs for furniture, computers, and office supplies and, after fiscal year 2021, ongoing office rental costs for the 28 employees. Costs to convert the agency’s database into TDLR’s existing database are anticipated to be \$200,000. An additional \$50,000 in one-time costs would be necessary to make other changes recommended, including changes to the renewal process for endorsements and licenses, replacing the responsible master plumber designation with a contractor license, and eliminating three registration types; \$25,000 would be required each year thereafter to maintain those changes.

**Texas State Board of Plumbing Examiners**

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$200,000	\$8,103	0
2021	\$309,672	\$46,803	0
2022	\$134,200	\$541,735	-3
2023	\$134,200	\$541,735	-3
2024	\$134,200	\$541,735	-3

# DEPARTMENT OF PUBLIC SAFETY

*Amy Trost, Project Manager*

## Summary

The Sunset Commission's recommendations focus on the Department of Public Safety's (DPS) administrative operations and non-law enforcement functions. While DPS rightfully prioritizes its police work, it also must carefully administer its other important duties.

The Sunset Commission found the driver license and motorcycle safety training programs have not been administered well at DPS. The commission did not adopt a Sunset staff recommendation directing DPS to develop a plan to close inefficient driver license offices, focusing instead on the program's potential transfer to the Texas Department of Motor Vehicles (TxDMV). The commission recommends requiring DPS to contract for an independent analysis of the challenges and opportunities of transferring the driver license program to TxDMV. In the event the 86th Legislature does not fund the analysis, the commission recommends transferring the program to TxDMV by 2021. The commission also recommends transferring the motorcycle safety program to the Texas Department of Licensing and Regulation (TDLR), a more appropriate, non-law enforcement agency.

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*While DPS rightfully prioritizes its police work, it also must carefully administer its other important duties.*

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The commission also reviewed DPS' difficult and dangerous work at the Texas-Mexico border. The Legislature has invested more than \$1.4 billion over the last four years on this effort, and with this investment comes an expectation of information on the return or impact the funding has on border safety. While objectively measuring the success of border security is not easy, the commission recommends improvements to DPS' data collection and analysis of border security impacts, including tracking and publicly providing certain crime statistics, to help the state more effectively plan for future investment in the program.

In reviewing DPS' regulatory functions, the Sunset Commission found the department's current approach to overseeing the private security industry delves too deeply into purely business affairs without a clear nexus to public safety. The commission also found that continuing to have a separate, quasi-independent Private Security Board creates dueling regulatory authority, inefficiencies, and unnecessary risks for DPS, and therefore recommends reconstituting the board as an advisory body. Finally, the commission recommends 14 licenses and registrations for elimination because the regulation is simply unnecessary to protect the public.

## Recommendations

### *Continue*

- Continue the Department of Public Safety for 12 years.

### *Driver License*

- Contingent upon funding, direct DPS to contract with an independent third party to perform an analysis and make recommendations on opportunities and challenges of transferring the driver license program to TxDMV. A report with the analysis and recommendations will be due to the Sunset Commission, legislative leadership, and the governor by September 1, 2020. (Management action – nonstatutory)
- If the 86th Legislature does not appropriate money to DPS to fund the third-party analysis, then the driver license program shall be transferred to TxDMV effective September 1, 2021.
- Extend the term of a Class C driver license from six to eight years and require DPS to implement the change by June 1, 2020, with fees assessed so that the change is revenue neutral to the state.

### *Border Security*

- Require DPS to track and publicly provide crime statistics as part of the reporting of its border security performance.
- Direct DPS to develop a system for collecting and maintaining output data related to its border security mission. (Management action – nonstatutory)
- Direct DPS to regularly report to members of the Legislature threat levels along the Texas-Mexico border. (Management action – nonstatutory)

### *Private Security*

- Reconstitute the Private Security Board as an advisory committee, and require the Public Safety Commission to appoint its members.
- Require everyone who provides services regulated under the Private Security Act or who owns 51 percent or more of a company that provides such services to obtain an individual license and to work under a company license.
- Require governmental subdivisions and private businesses with internal security departments to provide a one-time registration with DPS that lists a point of contact.
- Discontinue regulation of private security salespersons and consultants, guard dog companies and trainers, and telematics companies at the state level.
- Require individuals who provide private security services to obtain a license, rather than a registration or endorsement.

### *Licensing*

- Remove conflicting, nonstandard statutory definitions regarding convictions and unnecessary, subjective qualifications for applicants.

- Authorize DPS to conduct fingerprint-based criminal background checks for all applicants and licensees, and to establish flexible license renewal requirements.
- Discontinue regulation of precursor chemical and laboratory apparatus sales and transfers.
- Discontinue duplicative registration of peyote distributors.
- Direct DPS to adopt a process for applying mitigating and aggravating factors in criminal history evaluations. (Management action – nonstatutory)
- Direct DPS to cease permanently disqualifying individuals for certain convictions (other than those convictions specified by Chapter 53), but allow DPS to apply mitigating and aggravating factors to crimes relevant to the profession according to the level of threat to public safety. (Management action – nonstatutory)

### ***Enforcement***

- Establish clear authority for DPS to receive, investigate, and resolve complaints.
- Clarify the Public Safety Commission's responsibility to take final enforcement actions for regulatory programs under DPS' jurisdiction, and prohibit the commission from delegating that responsibility to the director.
- Require DPS to establish a process to informally resolve complaints.
- Provide DPS a full range of sanctions to enforce regulations.
- Remove restrictive fee authority from statute.
- Direct DPS to adopt a risk-based inspection process, and also direct DPS to work with TxDMV to identify the most appropriate means of managing investigations and inspections of salvage yards, and to establish a memorandum of understanding with TxDMV to coordinate oversight of these entities. (Management action – nonstatutory)

### ***Regulatory Management***

- Require DPS to track and annually report regulatory information on its website.
- Direct DPS to work with TDLR to develop regulatory processes and rules. (Management action – nonstatutory)

### ***Motorcycle Safety Program***

- Transfer the motorcycle and ATV safety training programs from DPS to TDLR.
- The department and TDLR should develop a transition plan for the transfer of the motorcycle and ATV safety training programs. (Management action – nonstatutory)
- Direct DPS to discontinue loaning motorcycles to training course operators and allow TDLR to use money collected from motorcyclists to support the motorcycle safety program more efficiently.
- Transfer instructor training, research, education, and advocacy functions from DPS to the Texas A&M Engineering Extension Service (TEEX) and to the Texas A&M Transportation Institute

(TTI) so that TDLR partners with TEEEX to train and certify instructors; and TTI to conduct research, education, and advocacy.

### **Emergency Assistance Registry**

- Direct DPS to better coordinate the State of Texas Emergency Assistance Registry and provide greater guidance to local jurisdictions to ensure the safety of vulnerable Texans during natural disasters. (Management action – nonstatutory)

### **Contracting**

- Direct DPS to analyze its contracting and purchasing procedures, and align its levels of review, approval, and accountability with the value and complexity of the contracts and purchases. Also, direct the director of DPS to provide an annual assessment and report of contract management to the Public Safety Commission that includes trends and best practices on all contracts at the agency. (Management action – nonstatutory)
- Direct DPS to track, analyze, and report contracting and purchasing data through all phases of the procurement process. (Management action – nonstatutory)
- Direct DPS to maintain all contract-related documentation in a central location and post up-to-date contract information on its website. (Management action – nonstatutory)
- The department should reform its business case development process to include a cost-benefit analysis when deciding whether to outsource a major function. (Management action – nonstatutory)

### **Governance**

- Update the standard across-the-board requirement related to commission member training, and require that each Public Safety Commission member attests to receiving and reviewing annually the training manual.
- Eliminate three of DPS' required reports.
- Continue the department's two statutory advisory committees on metal recycling and vehicle inspection.

## **Fiscal Implication Summary**

Recommendations regarding the private security program would result in an annual negative fiscal impact of about \$490,225 to the General Revenue Fund. Eliminating unnecessary layers of regulation and deregulating several security industry groups would result in a loss of about \$846,850 in licensure fee revenue, offset by about \$350,515 in administrative cost savings. Reconstituting the Private Security Board as an advisory committee would also save about \$6,110 in travel reimbursements. Eliminating unnecessary regulation would reduce the number of full-time positions necessary for administering the private security program by seven.

Recommendations to transfer the motorcycle safety program would have a positive fiscal impact to the state. Current program funding and staff — about \$2.3 million and nine staff — would transfer to TDLR which would then contract with TEEEX and TTI for instructor training, research, education, and advocacy. Disposing of the 800 motorcycles currently on loan to program sponsors would result in a one-time gain to the Motorcycle Education Fund Account, but the resale value of the motorcycles cannot be estimated at this time.

***Department of Public Safety***

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Loss to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$356,625	\$846,850	-7
2021	\$356,625	\$846,850	-7
2022	\$356,625	\$846,850	-7
2023	\$356,625	\$846,850	-7
2024	\$356,625	\$846,850	-7





# TEXAS REAL ESTATE COMMISSION

## TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

*Kay Hricik, Project Manager*

### Summary

The Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board's mission is to protect consumers of real estate services across the state. Over the last decade, the Texas real estate industry boomed, increasing the importance of the agency's oversight role.<sup>1</sup> To meet growing industry demands, the Legislature granted the agency self-directed semi-independent (SDSI) status, a rare tool that gives the agency full authority and flexibility to manage its own budget outside of the appropriations process. However, the agency did not use its flexibility to improve operations. Instead, in the midst of a customer service crisis, the agency set aside millions of dollars in reserves to construct a new building, while license holders and consumers struggled to get services from the agency. The Sunset Commission concluded the Real Estate Commission and Appraiser Board had failed to adequately assume and fulfill the critical oversight role the Legislature delegated to them under SDSI. As a result, the Sunset Commission recommends continuing the agency for only six years, rather than the typical 12 years, and eliminating the agency's authority to construct, purchase, and sell property.

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*As governing bodies of an SDSI agency, the Real Estate Commission and Appraiser Board failed to responsibly oversee the agency's budget and operations.*

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To improve outcomes moving forward, the Sunset Commission recommends strengthening data collection and performance reporting on the agency's key duties, and directs the Real Estate Commission and Appraiser Board to develop more realistic budget policies. Other recommendations standardize and formalize licensing and enforcement functions by applying best practices, including removing several unnecessary licensing requirements, expanding the agency's enforcement tools, and directing the agency to improve the inspector pre-licensing education program and the Appraiser Board's complaint resolution process.

### Recommendations

#### *Continue*

- Continue the Real Estate Commission and Appraiser Board for six years.

**Governance**

- Revise the Real Estate Commission's and Appraiser Board's SDSI provisions to enhance the reporting requirements; eliminate the provision allowing for the purchase, construction, or sale of property; and adjust processes governing administrative penalties and payments to other state agencies for services.
- Update and apply standard across-the-board recommendations to the Real Estate Commission and Appraiser Board, including requiring public testimony at every regular meeting.
- Authorize the Appraiser Board to establish advisory committees in rule as needed.
- Direct the Real Estate Commission to submit a proposed plan, timeline, budget, and statement of need for the purchase of property to the Texas Facilities Commission and the Sunset Commission by September 1, 2019. (Management action – nonstatutory)

**Performance Measures**

- Direct the agency to evaluate and update its key performance measures. (Management action – nonstatutory)
- Direct the agency to report annual performance data to the Sunset Commission until January 1, 2023, including timeframes for complaint resolution and license issuance, reserve fund balances, and call hold times and abandonment rates. (Management action – nonstatutory)
- Direct the agency to provide quarterly call center reports including average call wait times by month and percentage of calls abandoned by month to the Sunset Commission beginning March 1, 2019 until January 1, 2021. (Management action – nonstatutory)

**Budgeting**

- Direct the agency to develop a budget policy that fosters more realistic, straightforward budgeting and fee setting. (Management action – nonstatutory)
- Direct the agency to update its fund balance policy to limit growth. (Management action – nonstatutory)

**Licensing**

- Direct the agency to review and streamline inspector pre-licensing education requirements by January 1, 2020, and ensure the content aligns with the inspector licensing exam subject matter, evaluating the impact of any streamlining on exam passage rates by January 1, 2021. (Management action – nonstatutory)
- Eliminate instructor approval authority and the branch office license.
- Remove statutory provisions requiring certain applicants to establish Texas residency before obtaining a Texas real estate license or appraiser approval.
- Authorize the Real Estate Commission and Appraiser Board to deny license renewal applications for noncompliant applicants.
- Remove a subjective qualification required for licensure applicants.

- Direct the Appraiser Board to implement policies and practices to allow for electronic submission of licensing information, materials, and experience logs whenever possible by March 15, 2019. (Management action – nonstatutory)

### **Enforcement**

- Direct the Appraiser Board to develop a plan to improve its investigative process and reduce complaint resolution timeframes by March 15, 2019. (Management action – nonstatutory)
- Direct the Appraiser Board to establish a process to prioritize complaint investigations based on the risk each complaint poses to the public by March 15, 2019. (Management action – nonstatutory)
- Require the Real Estate Commission and Appraiser Board to maintain complainants' confidentiality when possible.
- Authorize the Real Estate Commission to dismiss low-level complaints and to delegate this authority to staff.
- Authorize the Appraiser Board to order refunds to consumers.
- Direct the Real Estate Commission to develop standard rules and procedures for handling each phase of the complaint process by March 15, 2019. (Management action – nonstatutory)
- Direct the Real Estate Commission and Appraiser Board to establish a process to document and track nonjurisdictional complaints by March 15, 2019. (Management action – nonstatutory)

### **Fiscal Implication Summary**

Transferring the Appraiser Board's administrative penalties to the General Revenue Fund would result in an estimated annual gain of \$17,950 to general revenue and an offsetting decrease in board revenue. Eliminating the requirement to pay retainers to the State Auditor's Office, office of the attorney general, and State Office of Administrative Hearings could reduce agency expenditures for those services, because the amount of the retainers can exceed the cost of the services received. However, the exact amount of the savings would depend on services provided in the future and could not be calculated.

Eliminating the instructor approval process and branch office license would decrease costs to licensees and decrease the Real Estate Commission's revenue by \$209,300 per year. The decrease in revenue would be offset by a corresponding decrease in agency costs to administer the instructor and branch office license types. All other recommendations could be accomplished with existing resources and would not have a significant impact on agency expenditures or a fiscal impact to general revenue because of the agency's SDSI status, which requires the agency to cover the cost of regulation through fees.

***Real Estate Commission and Appraiser Board***

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Decrease in Revenue to the Agency</b>
2020	\$17,950	\$227,250
2021	\$17,950	\$227,250
2022	\$17,950	\$227,250
2023	\$17,950	\$227,250
2024	\$17,950	\$227,250

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<sup>1</sup> In this report, “agency” refers to the Real Estate Commission and Appraiser Board as a combined entity with shared staff.

# STATE OFFICE OF RISK MANAGEMENT

*Tamara Schiff Aronstein, Project Manager*

## Summary

The Legislature created the State Office of Risk Management (SORM) in 1997 to protect the state's employees as well as its physical and financial assets by reducing and controlling risk. As the risk manager and insurance provider for the state, SORM has the important task of helping state entities plan for and manage situations they hope never arise, including injuries or illnesses to state employees.

Serving a large and diverse group of 265 state entities is a difficult job that SORM has generally performed well, and the Sunset Commission recommends continuing the agency for 12 years. However, SORM needs to take a more proactive approach to address several operational problems, some of them long-standing, to maximize its limited resources to better serve and reduce costs. In particular, SORM needs to fully implement needed improvements to its contracting processes. The agency's largest contracts, for workers' compensation cost containment services, lack the performance and enforcement measures needed to ensure contractors perform adequately. SORM also needs to better tailor its services to best meet its customers' needs. The commission further recommends improvements to the agency's healthcare network contract and reporting, particularly related to cost containment strategies.

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*SORM generally performs well, but needs to take a more proactive approach to address several operational problems.*

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## Recommendations

### **Continue**

- Continue the State Office of Risk Management for 12 years.

### **Contract Management**

- Direct SORM to develop detailed contract management policies and procedures. (Management action – nonstatutory)
- Direct SORM to include detailed, actionable performance measures in contracts, and to monitor its contracts more regularly and more closely to ensure proper performance. (Management action – nonstatutory)
- Direct SORM to develop and require regular training for staff involved in the contracting process to effectively monitor contracts. (Management action – nonstatutory)
- Direct SORM to include detailed enforcement measures in contracts and apply enforcement tools consistently across contractors. (Management action – nonstatutory)

- Direct SORM to maximize opportunities to use OAG's contract procurement and management expertise. (Management action – nonstatutory)

### **Workers' Compensation**

- Direct SORM to evaluate and adjust its workers' compensation healthcare network contract to obtain best value for the state, including providing adequate coverage for injured state employees. (Management action – nonstatutory)
- Direct SORM to include the accuracy of the healthcare network provider directory as a performance measure in the healthcare network contract, and to regularly evaluate the accuracy of the provider directory as part of the agency's enhanced contract monitoring. (Management action – nonstatutory)
- Direct SORM to study the feasibility of contracting with a second healthcare network to expand coverage to areas of the state not covered in the agency's primary healthcare network and include this information in the agency's report to the 87th Legislature. (Management action – nonstatutory)
- Direct SORM to evaluate the agency's medical bill quality assurance strategy and make any needed improvements to maximize cost savings. (Management action – nonstatutory)
- Direct SORM to include additional information in its cost containment reports to better demonstrate the agency's performance, including the impact of telemedicine as a cost containment measure and information on healthcare network utilization by provider type. (Management action – nonstatutory)
- Direct SORM to provide additional information and resources regarding return-to-work programs. (Management action – nonstatutory)
- Direct SORM to collect and report lost-time outcomes and return-to-work information as currently required by statute, and do not authorize the agency to consider requesting the Legislature to remove the reporting requirement. (Management action – nonstatutory)

### **Risk Management**

- Require SORM to regularly review and update risk management guidelines for state entities.
- Require state entities to submit their annual reports to SORM not later than the 60th day after the last day of each fiscal year, instead of not later than the 60th day before the last day of each fiscal year as currently required by statute.
- Direct SORM to use existing data to determine state entity risk levels and needs, and to prioritize resources and requirements by risk. (Management action – nonstatutory)
- Direct SORM to develop and use a standard assessment tool to focus on key areas of risk during site visits. (Management action – nonstatutory)
- Direct SORM to regularly solicit and use customer input to better tailor risk management services and resources. (Management action – nonstatutory)
- Direct SORM to develop objective tools to help state entities determine whether to transfer risk through purchasing insurance. (Management action – nonstatutory)

- Direct SORM to provide state entities with easy-to-use materials and templates for continuity planning. (Management action – nonstatutory)

### **Governance**

- Update the standard across-the-board requirement related to board member training, including a requirement for each Risk Management Board member to attest to both receiving and reviewing the training manual annually.
- Direct SORM to strengthen oversight by updating its board regularly on identified problems and improvements. (Management action – nonstatutory)

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources. Several of the recommendations are designed to improve internal operations and efficiency at the agency in ways that would have minimal impact on resources. Strengthening and improving SORM's cost containment efforts could result in some savings to SORM and the state, but the potential savings cannot be estimated until the agency implements these new strategies.





# RIVER AUTHORITIES

## GUADALUPE-BLANCO RIVER AUTHORITY

## RED RIVER AUTHORITY OF TEXAS

## NUECES RIVER AUTHORITY

*Danielle Nasr, Project Manager*

### Summary

The Sunset Commission found these three river authorities at different stages of significant organizational transition. Along with such substantial changes come opportunities for a closer, more discerning look at the past and future of an organization, and thus fortuitous timing for these three river authorities to undergo Sunset review.

**Guadalupe-Blanco River Authority (GBRA).** GBRA's new management team has begun work to repair existing and past issues with the authority's management. However, addressing the past is not enough, especially as GBRA is working to quench the thirst of the basin's growing population along the I-35 corridor. The Sunset Commission's recommendations therefore focus on what GBRA needs to do to usher it successfully into the future, including both asset planning and strategic planning.

**Red River Authority of Texas (RRA).** RRA encounters many of the struggles that face rural utility providers. These obstacles, however, do not excuse the authority from meeting minimum safety and transparency standards. The Sunset Commission's recommendations focus not only on improving processes to come into compliance but also to increase accountability to stave off recurrence of the authority's current problems.

**Nueces River Authority (NRA).** NRA is a well-run, successful authority, but stands on the precipice of change. The Sunset Commission's recommendations therefore focus on preparing the authority to engage in strategic management in preparation for future changes.

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*The Sunset reviews of these three river authorities occurred at a time of transition for each.*

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## Recommendations

### ***Guadalupe-Blanco River Authority (GBRA)***

#### Management and Contracting

- Direct GBRA to develop and maintain a comprehensive asset management plan and ensure the asset management process is linked to the authority's public messaging and communications. (Management action – nonstatutory)
- GBRA should take additional steps to centralize its procurement and contracting functions and ensure key procurement and contract management staff receive formal training. (Management action – nonstatutory)
- GBRA should improve certain contracting activities to ensure consistency and enhance monitoring, re-evaluate professional services contracts every five years, and frequently compile updated vendor lists and best value practices. (Management action – nonstatutory)

#### Nonprofits

- Direct GBRA to consolidate the funds it provides to two of its nonprofits — the Guadalupe-Blanco River Trust and the San Antonio Bay Foundation — to one organization and clearly define expectations tied to this funding. (Management action – nonstatutory)
- Direct GBRA to create clear boundaries and reporting structures between its staff and associated nonprofits. (Management action – nonstatutory)
- Direct GBRA to evaluate whether the Gorge Preservation Society's narrow mission justifies GBRA support or whether its activities could be performed internally. (Management action – nonstatutory)
- Direct GBRA to evaluate the continuing need for relationships with any nonprofits every five years to ensure the nonprofits are achieving shared goals. (Management action – nonstatutory)

### ***Red River Authority of Texas (RRA)***

- Require RRA to develop and maintain a comprehensive asset management plan.
- Require the RRA board to adopt a policy to ensure meaningful public input on significant rate changes.
- Require RRA to inform customers of their right to appeal rate changes.
- Require the State Auditor's Office to conduct an audit of the Red River Authority no later than December 1, 2022 to evaluate whether RRA has addressed the operational challenges identified by Sunset.
- Direct RRA to provide written semi-annual reports to the Sunset Commission regarding the implementation of the recommendations adopted by the commission, beginning January 31, 2019. (Management action – nonstatutory)
- Direct RRA to document and regularly update its key duties and procedures, and take action to prepare for future retirements and workforce changes. (Management action – nonstatutory)

### ***Nueces River Authority (NRA)***

- Require NRA to adopt a formal, written five-year strategic plan and engage in a regular strategic planning process, and require this plan to be made public record online.

- NRA should take action to prepare for future retirements and workforce changes. (Management action – nonstatutory)

### **Cross Issues — Apply to Multiple River Authorities Under Review**

- Direct river authorities to implement additional transparency best practices related to their websites, record retention, and financial information. (Management action – nonstatutory)
- Make changes to GBRA, RRA, and NRA’s governing laws to facilitate future codification of those laws, such as grammatical fixes and updating outdated references.
- Apply good government standards to river authorities’ governing laws to promote accountability, transparency, and best practices relating to board practices, public testimony, complaint information, and alternative dispute resolution.
- Direct RRA and NRA to develop a policy to ensure all professional services contracts are reviewed every five years, and to frequently compile vendor lists and best value practices for cost savings. (Management action – nonstatutory)
- Direct RRA to comply with TCEQ rules by adopting policies related to contracting, nepotism, and granting money or property. (Management action – nonstatutory)
- Direct GBRA and RRA to adopt a formal, written five-year strategic plan and post this plan publicly online. (Management action – nonstatutory)

### **Summary of Recommendations**

<b>Recommendation</b>	<b>GBRA</b>	<b>RRA</b>	<b>NRA</b>
<b>Recommendation 6.1 — Transparency</b>			
a. Website	Apply	Apply	Apply
b. Record retention requirements		Apply	
c. Financial information	Apply		
d. Update governing laws	Apply	Apply	Apply
<b>Recommendation 6.2 — Long-Standing Contracts</b>	See Issue 2	Apply	Apply
<b>Recommendation 6.3 — Good Government Standards</b>			
a. Presiding officer designation	Apply	Apply	Apply
b. Grounds for removal		Apply	
c. Board member training	Apply	Apply	Apply
d. Separation of duties	Apply	Apply	Apply
e. Public testimony	Apply	Apply	Apply
f. Complaint information	Apply	Apply	Apply
g. Alternative dispute resolution	Apply	Apply	Apply
<b>Recommendation 6.4 — Compliance With TCEQ Rules</b>			
a. Prohibiting granting of money or property		Apply	
b. Prohibiting nepotism		Apply	
c. Maintaining pre-qualified firms		Apply	
<b>New Recommendation</b>			
Adopt a formal, written five-year strategic plan	Apply	Apply	See Issue 5

## Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources. Minimal impacts to each of the three river authorities are discussed below.

**Guadalupe-Blanco River Authority** — The recommendations would not have a significant fiscal impact to GBRA. The authority will have some costs associated with implementing a comprehensive asset management process and procuring a contract management system, but has already budgeted for these costs. Other recommendations, such as implementing best practices for transparency, would not have a significant fiscal impact to GBRA and could be absorbed within existing resources.

**Red River Authority of Texas** — The recommendations would have minimal or temporary fiscal impact on RRA. For example, RRA may need to contract for expertise when first developing an asset management plan. However, quality comprehensive asset management would better ensure RRA funds are well-spent and prevent excessive future costs or additional fines. A required audit by the State Auditor's Office would not result in direct costs to the authority, but would have a minimal impact on the authority in terms of staff time. The State Auditor's Office could conduct the audit with existing resources. Other changes reflecting improved management and open government practices could be achieved with existing resources.

**Nueces River Authority** — The recommendations would not have a significant fiscal impact to NRA. Preparing for future staff needs and ensuring a strategic vision for the agency are essential functions and could be achieved with existing resources.

# SCHOOL LAND BOARD

*Lauren Ames, Project Manager*

## Summary

Established by the Legislature in 1939, the School Land Board (SLB) oversees the management, sale, and leasing of over 13 million acres of Permanent School Fund (PSF) land, which generates revenue the board uses to purchase additional real estate and make investments that ultimately help fund public education. The board shares management of the PSF with the State Board of Education (SBOE). Since the last Sunset review of SLB in 1984, the board's investment authority has greatly expanded. In 2001, the Legislature gave the board authority to make investments to generate revenue for the PSF; prior to this, SBOE invested the revenues. The Legislature expanded SLB's investment authority further in 2005 and 2007, allowing the board to invest in real estate, energy, and infrastructure, in addition to land.

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*SLB needs to strengthen transparency and oversight of its investments.*

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Although the review found no significant problems within the investment program, the Sunset Commission determined the board needs to improve coordination with SBOE, implement additional best practices to better guide its investment process, and strengthen transparency and oversight of its investments. The commission recommends SLB adopt rules to align its investment policy and strategies with those of SBOE, report more detailed information about its investment performance, and meet annually with SBOE to discuss the investment of the dually managed PSF. These changes would allow the board, SBOE, Legislature, and others to more fully understand SLB's investment program and better ensure a successful investment portfolio is maintained in the future.

Additionally, while the commission recommends continuing SLB for 12 years, it found the work of SLB in overseeing PSF land and investments is hampered by the board's small size and recommends expanding the board from three to five members to allow the board to operate more effectively. Other recommendations would improve SLB's contract monitoring processes and apply standard review elements to the board's statute.

## Recommendations

### *Continue*

- Continue the School Land Board for 12 years and expand the board from three to five members. The governor and attorney general would each appoint a new public member from a list of six people submitted by SBOE.

### **Governance**

- Require board members to receive an in-depth training regarding SLB's investment programs and strategies, as well as a comprehensive overview of the PSF.
- Apply the standard across-the-board requirements regarding board member training, separation of duties, public testimony, and complaints.
- Eliminate the duplicative economic impact of PSF investments reporting requirement, and continue SLB's four other required reports.

### **Investments**

- Require an annual joint, public meeting of SLB and SBOE to discuss the investment of the dually managed PSF.
- Clarify in statute that all SLB assets, including cash, are part of the calculation of the 15 percent cap in statute on SLB real estate investments, and specify the cap is measured against all assets and cash managed or held by SLB and SBOE.
- Direct SLB to adopt rules to guide its investment policy and strategies and to align its investment policy and strategies with those that apply to SBOE. (Management action – nonstatutory)
- Direct SLB to adopt rules for the size, membership, and responsibilities of the investment advisory committee, including a requirement that a majority of the committee members have expertise in the management of a financial institution or other business in which investment decisions are made. (Management action – nonstatutory)
- Direct SLB to publicly report more detailed investment information in the *PSF Comprehensive Annual Financial Report* and to provide SBOE a quarterly report that includes returns for the investment benchmark and investments themselves. (Management action – nonstatutory)
- Direct SLB to document the division of responsibilities for its investment management staff. (Management action – nonstatutory)

### **Contracting**

- Direct SLB to review and approve large contracts and to receive briefings from the General Land Office (GLO) Director of Contract Management at least once a year regarding contracts under \$1 million. (Management action – nonstatutory)
- Direct SLB to develop, adopt, and implement clear contract monitoring policies and include them in the contract manual and training. (Management action – nonstatutory)
- Direct GLO to develop a training policy and provide contract management training for project managers and other staff involved in the contracting process. (Management action – nonstatutory)

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state.

# STATE SECURITIES BOARD

*Alan Leonard, Project Manager*

## Summary

While the federal Securities and Exchange Commission has overall responsibility for monitoring the securities marketplace in the United States, the State Securities Board plays a critical role in protecting Texas residents from fraudulent or negligent practices by securities professionals and criminal opportunists. Since its last Sunset review in 2000, the agency has responded to volatile market swings and regulatory changes at the national level that have broadened the scope and scale of its regulatory authority and introduced new challenges, like cryptocurrency offerings. The Sunset Commission found the State Securities Board remains a needed agency that effectively carries out its mission to protect investors and ensure a healthy and productive securities market. The Sunset Commission's recommendations continue the agency for 12 years and seek to further streamline the agency's functions and provide tools its staff needs to address evolving demands. Other recommendations apply best practices to improve the agency's enforcement processes, increase transparency to the public and Legislature, and simplify the agency's registration requirements.

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*The State Securities Board effectively carries out its mission to protect investors.*

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## Recommendations

### ***Continue***

- Continue the State Securities Board for 12 years.

### ***Enforcement***

- Clarify statute to authorize the agency to provide prosecutorial assistance and require the agency to develop a process to determine staff resources available to support prosecutions.
- Authorize the agency to order refunds for violations of agency statute or rules in both contested and uncontested cases.
- Direct the agency to develop a penalty matrix for both administrative penalties and sanctions recommended for final enforcement actions, and to submit a brief report on the implementation of this recommendation to the Sunset Commission by March 15, 2019. (Management action – nonstatutory)
- Direct the board to develop and adopt rules describing all phases of its complaint process, and to submit a brief status report on the implementation of this recommendation to the Sunset Commission by March 15, 2019. (Management action – nonstatutory)

- Direct the agency to review its risk-based inspection tool at least every four years. (Management action – nonstatutory)
- Direct the agency to improve its tracking of complaint and case resolution timeframes, and to submit a brief status report on the implementation of this recommendation to the Sunset Commission by March 15, 2019. (Management action – nonstatutory)

### **Licensing**

- Remove the requirement that branch offices be registered.
- Direct the agency to accept online submissions of applications and fees, and to develop and present a detailed plan outlining how the agency will complete this recommendation to the Sunset Commission by March 15, 2019. (Management action – nonstatutory)
- Direct the agency to remove the notarization requirements on its forms by March 15, 2019. (Management action – nonstatutory)

### **Governance**

- Update and apply standard across-the-board recommendations relating to complaint information, alternative dispute resolution, and board member training to the State Securities Board and require each board member to attest to both receiving and reviewing the training manual.
- Continue the agency’s statutory reporting requirement.

## **Fiscal Implication Summary**

Overall, the Sunset Commission’s recommendations would result in an estimated negative annual fiscal impact to the state of about \$425,850. Most of the Sunset Commission’s recommendations would have no fiscal impact or could be accomplished with existing resources and processes, and several recommendations reduce administrative burdens. However, the recommendation to remove the requirement to register branch offices would have an estimated negative impact of \$425,850 to the General Revenue Fund, due to the loss of associated fee revenue. This estimated negative impact is based on the loss of \$25 charged for each of the 11,347 branch offices the agency registered in fiscal year 2017 and each of the 5,687 amendments to branch office certificates in the same year. Removing this requirement would reduce an administrative burden and any efficiencies gained would be used for other agency operations.

#### **State Securities Board**

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>
2020	\$425,850
2021	\$425,850
2022	\$425,850
2023	\$425,850
2024	\$425,850



# TEXAS VETERANS COMMISSION

*Claudia Tijerina, Project Manager*

## Summary

As the state's main advocate for veterans, staff at the Texas Veterans Commission (TVC) care deeply for the well-being of veterans and work diligently to fulfill the agency's many legislative mandates. The Sunset Commission recommendations are meant to push the agency out of a business-as-usual mentality and strive toward continuous improvement. The commission recommends setting clear goals and performance targets, collecting the right information to accurately measure impact to veterans, and better planning for future veteran needs across all its programs.

The Sunset Commission paid special attention to TVC's state-funded claims assistance program, its bread-and-butter program where agency staff counsel veterans through the federal benefit claims process. The commission recommends that TVC strategically manage the placement and targeting of its claims staff and measure how well its staff performs to achieve favorable VA decisions for veterans. The commission also recommends that TVC take several basic steps to modernize customer service. Other recommended changes would improve the impact of TVC's well-funded grant program and more cost-effectively target the agency's training resources to employees and partners that need it most.

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*The Sunset Commission focused on pushing the agency out of its business-as-usual mentality.*

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## Recommendations

### **Continue**

- Continue the Texas Veterans Commission for 12 years.

### **Claims Counseling**

- Require TVC to track, evaluate, and strategically adjust claims staffing and special teams.
- Require TVC to better track and analyze claims outcome data to guide program success.
- Remove specific statutory military service requirements for veteran county service officers (VCSOs), but add a statutory requirement for a veterans preference for VCSOs based on the veterans preference in state law that state agencies follow (Section 657.002, Texas Government Code). Also, require counties to adopt their own veterans preference policies for VCSOs.
- Direct TVC to temporarily report on claims staffing and outcome data analyses. (Management action – nonstatutory)
- Direct TVC to strengthen support for claims staff and preserve institutional knowledge. (Management action – nonstatutory)

- Direct TVC to add information to its website about the claims process, including forms, checklists, basic claims information, and embedded VA resources. (Management action – nonstatutory)
- Direct TVC to allow veterans to schedule appointments for claims counseling, while maintaining the option for walk-in services. Also, direct the agency to use teleconference or other alternative technologies to assist Texas veterans when the veteran does not need to be physically present in the office for assistance. (Management action – nonstatutory)

### **Grants**

- Direct TVC to extend the length of its grant cycle from one to two years. (Management action – nonstatutory)
- Direct the agency to formalize the roles and training of the commissioners and the grants advisory committee to improve quality and transparency in the evaluation process. (Management action – nonstatutory)
- Direct TVC to develop and track enhanced grantee performance measures to better evaluate the benefit of its grant funding to veterans. (Management action – nonstatutory)
- Direct the agency to create and provide grant-writing training for VCSOs either through online or in-person training. (Management action – nonstatutory)

### **Governance**

- Require TVC to annually evaluate and set priorities, and create and track meaningful outcome measures for all its programs.
- Direct the agency to survey Texas veterans on a regular basis about their experience with agency programs and overall needs. (Management action – nonstatutory)
- Direct TVC to create a publicly available complaint process and track complaint data. (Management action – nonstatutory)
- Direct TVC to restructure and streamline the scope and expense of its annual conference. (Management action – nonstatutory)
- Direct TVC to track and analyze detailed training costs to identify potential savings and improvements. (Management action – nonstatutory)
- Direct TVC to prioritize online training and other cost-effective tools to facilitate regular collaboration among staff and partners. (Management action – nonstatutory)
- Update the standard across-the-board requirement related to commission member training.
- Direct the commission to implement requirements for encouraging purchasing from historically underutilized businesses. (Management action – nonstatutory)

## **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be achieved with existing agency resources.

# VETERANS' LAND BOARD

*Claudia Tijerina, Project Manager*

## Summary

Established in the Texas Constitution in 1946, the Veterans' Land Board (VLB) provides land, home, and home improvement loans; long-term nursing care; and burial and internment services to veterans and their families. As a constitutionally-created board, VLB is subject to review, but not abolishment under the Sunset Act. The Sunset commission's recommendations focus on strengthening VLB's procurement and contracting operations, since the board contracts for the administration of many of its large programs, including the servicing of its home loan program, and the construction and operation of its veterans nursing homes and cemeteries.

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*VLB needs to improve its contract management and monitoring.*

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Despite recent improvements made to VLB's process for developing contracts, the commission concluded additional changes are needed to improve VLB's contract management and monitoring at the program level. The commission recommends VLB make additional improvements to ensure all of its contracting processes adhere to best practices, including establishing and implementing consistent contract monitoring policies, and better training project managers on how to monitor contractor performance. Additionally, the board needs to increase its involvement in overseeing the contracting process, including reviewing contracts over \$1 million and receiving a status briefing on all contracts less than \$1 million at least once a year. These changes will help ensure VLB holds its contractors accountable and gets what it pays for.

## Recommendations

### **Contracting**

- Direct VLB and GLO staff to work together to develop and require regular training for staff involved in the VLB contracting process to effectively monitor contracts. (Management action – nonstatutory)
- Direct VLB to work with GLO to further develop written policies outlining clear authority over the board's contracting functions, including the roles of project management and other program staff. (Management action – nonstatutory)
- Direct VLB and GLO to develop a framework for program staff to identify significant contract compliance issues and a clear process for requiring the reporting and documenting these issues for review. (Management action – nonstatutory)
- Direct VLB to develop and adopt written policies establishing criteria for all levels of contract review, including board review of contracts over \$1 million. Additionally, direct VLB to receive briefings

from the GLO Director of Contract Management at least once a year regarding the status of all contracts under \$1 million. (Management action – nonstatutory)

### **Governance**

- Update the standard across-the-board requirements related to board member training and policies to separate policymaking and staff functions.
- Continue the VLB loan reporting requirement.
- Update VLB's statute to reflect the requirements of the person-first respectful language initiative.
- Direct VLB to ensure stakeholders have access to board information and the public has an opportunity to appear before the board. (Management action – nonstatutory)
- Direct VLB to track complaint data and make the complaint process accessible to the public by March 15, 2019. (Management action – nonstatutory)

### **Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and can be achieved with existing agency resources.

# TEXAS WINDSTORM INSURANCE ASSOCIATION

*Carissa Nash, Project Manager*

## Summary

In the aftermath of Hurricane Harvey, Texas Windstorm Insurance Association (TWIA) is broke, in debt, and facing a shrinking revenue pool. The Legislature designed TWIA to balance competing interests: first, to provide insurance to those who cannot purchase it elsewhere and second, to rely primarily on premiums and debt repaid by policyholders for its funding, with TWIA receiving no general revenue or tax dollars. These mandates create an inherent tension. Despite complaints from coastal communities about the cost of windstorm insurance, TWIA's premiums are not high enough to cover the cost of future claims and expenses. Keeping premiums as they are means financing these future claims with debt, which is expensive for the policyholders who have to repay it. At the same time, raising premiums to make TWIA's funding design sustainable may make windstorm insurance too expensive for some coastal residents.

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*TWIA's structure places its long-term stability and financial health at risk.*

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While the Sunset Commission found that TWIA's structure impacted its long-term stability and financial health, the commission concluded that the Legislature as a whole should determine the best strategy to ensure adequate windstorm insurance along the Texas coast, not Sunset. As a result, the commission did not adopt any recommendations addressing TWIA's competing mandates, but did adopt several recommendations that would increase the effectiveness and efficiency of TWIA's operations, improve TWIA's customer service, decrease costs to policyholders, and help ensure TWIA can respond more quickly to legislative changes.

## Recommendations

### ***Sunset Review***

- Require TWIA to undergo another Sunset review in 12 years, and maintain the language in TWIA's current sunset provision specifying that TWIA is not subject to abolishment and must pay for the cost of the review.

### ***Efficiency and Customer Service***

- Require TWIA to accept installment premium payments and payments via credit card and give TWIA explicit authority to recoup credit card processing fees through a surcharge on customers who use this payment option.
- Require TWIA to automatically offer policy renewal unless new information is necessary.

- Direct TWIA to directly bill customers for premiums for automatic renewal by January 1, 2020. (Management action – nonstatutory)
- After TWIA has implemented recommendations to streamline the policy renewal and payment process, direct TWIA to submit to the commissioner of insurance separate insurance agent commission rates for new applications and automatic renewals. (Management action – nonstatutory)

### **Claims Handling**

- Authorize TWIA to issue supplemental payments.
- Require TWIA to assess the replacement cost of a property only at the time TWIA issues or renews the policy.
- Direct TWIA to track and report more comprehensive information regarding claims handling performance. (Management action – nonstatutory)
- Direct TWIA to develop a post-hurricane communication plan with more input from stakeholders. (Management action – nonstatutory)
- Direct TWIA to fully implement a risk-based approach to monitoring insurance adjusters. (Management action – nonstatutory)

### **Public Input and Transparency**

- Require TWIA to make any proposed rate filings publicly available on its website for at least one week before the board of directors votes on a proposed rate filing, and require TWIA to accept public comment on the proposal at a board meeting before voting on that matter.
- Direct TWIA to make the assumptions used and results of anticipated loss modeling available on its website and in the board materials before consideration of any rate changes or purchases of reinsurance. (Management action – nonstatutory)

### **Governance**

- Require TWIA board members and members of TWIA's Underwriting and Actuarial Subcommittee to publicly disclose specific conflicts of interest.
- Apply standard across-the-board requirements related to public membership.
- Authorize TWIA to formally propose rules to the Texas Department of Insurance.
- Apply the standard across-the-board requirement related to board member training and require each TWIA board member to attest to both receiving and reviewing the training manual.
- Eliminate the duplicative *Bimonthly Report Card* reporting requirement and continue TWIA's two other required reports.

### **Windstorm Certificates of Compliance**

- Transfer the issuance of windstorm certificates of compliance for completed projects from TWIA to the Texas Department of Insurance.
- Remove the ability to obtain a windstorm certificate of compliance based on design alone.

***Depopulation***

- Make the Assumption Reinsurance Depopulation Program more efficient by removing deadlines for insurance companies and insurance agents that fall during hurricane season, allowing flexibility in program commencement dates, and limiting the opt-out period to less than 60 days for policyholders.

**Fiscal Implication Summary**

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state, as TWIA is not a state agency and receives no funding from tax dollars or the General Revenue Fund.





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# APPENDICES



# APPENDIX A

## *Sunset Review Schedule — 2021*

### **37 Reviews**

Agriculture, Texas Department of  
Early Childhood Health and Nutrition Interagency Council<sup>1</sup>  
Prescribed Burning Board<sup>1</sup>

Animal Health Commission, Texas

Boll Weevil Eradication Foundation, Board of Directors of the Official Cotton Growers'

Credit Union Department and Commission

Criminal Justice, Texas Board and Department of  
Correctional Managed Health Care Committee<sup>1</sup>

Economic Development and Tourism Office, Texas

Facilities Commission, Texas

Fire Protection, Texas Commission on

Higher Education Tuition Board, Prepaid

Holocaust and Genocide Commission, Texas

Information Resources, Department of

Injured Employee Counsel, Office of

Inspector General of the Health and Human Services Commission, Office of<sup>2</sup>

Invasive Species Coordinating Committee, Texas

Jail Standards, Commission on

Juvenile Justice Board and Department, Texas  
Independent Ombudsman of the Juvenile Justice Department, Office of<sup>1</sup>

Law Enforcement, Texas Commission on

Licensing and Regulation, Texas Commission and Department of

Lone Star Rail District

Pardons and Paroles, Board of

## **Appendix A**

Parks and Wildlife Department, Texas

Procurement and Contracting System Evaluation<sup>2</sup>

Procurement and Support Services Division of the Comptroller of Public Accounts<sup>2</sup>

River Authorities

    Brazos River Authority

    Lower Neches Valley Authority

    Sabine River Authority of Texas

    San Jacinto River Authority

    Upper Guadalupe River Authority

State-Federal Relations, Office of

State Use Program, Texas Workforce Commission's Administration of the

Veterinary Medical Examiners, State Board of<sup>2</sup>

Windham School District within the Texas Department of Criminal Justice

Workers' Compensation, Texas Department of Insurance Division of

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1 Reviewed in conjunction with the review(s) listed above

2 Limited-scope or special-purpose review

# 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*, on the following page. The commission's report on most agencies must include a recommendation to abolish or continue the agency, and may contain recommendations to correct problems identified during the review. These problems may include other agencies not under review that overlap or duplicate, or otherwise relate to the agency under review.

### **Continuing an Agency**

If the commission recommends that an agency be continued, it has legislation drafted for that purpose, and to correct the problems found during the Sunset review. Sunset legislation usually continues an agency for 12 years.

### **Abolishing 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 actions after a Sunset bill is passed to determine if the agency has implemented the new statutory requirements. In addition, the state auditor may evaluate the agency's compliance with nonstatutory management changes recommended by the commission.

## **Appendix B**

### **Sunset Review Questions**

#### **All Agencies**

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?
13. Do the agency's statutory reporting requirements effectively fulfill a useful purpose?
14. Does the agency comply with cybersecurity best practices?

#### **Occupational Licensing Agencies**

1. Does the agency's occupational licensing program serve a meaningful public interest and provide the least restrictive form of regulation needed to protect the public interest?
2. Could the program's regulatory objective be achieved through market forces, private certification and accreditation programs, or enforcement of other law?
3. Are the skill and training requirements for a license consistent with a public interest, or do they impede applicants, particularly those with moderate or low incomes, from entering the occupation?
4. What is the impact of the regulation on competition, consumer choice, and the cost of services?

Sunset Advisory Commission

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