

The background of the entire page is a photograph of the interior of the Texas State Capitol dome. The image shows a grand, circular space with a high, vaulted ceiling. The walls are white and feature a series of columns and arches. There are several portraits of men in suits hanging on the walls. The lighting is bright and even, highlighting the architectural details.

SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS

Texas Real Estate Commission

*Texas Appraiser Licensing
and Certification Board*

**2018–2019
86TH LEGISLATURE**

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TEXAS REAL ESTATE COMMISSION

**TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD**

SUNSET STAFF REPORT WITH FINAL RESULTS

2018-2019

86TH LEGISLATURE

HOW TO READ SUNSET REPORTS

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: **The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.**

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FINAL RESULTS

FINAL RESULTS

Senate Bill 624

Summary

The mission of the Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board 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.¹ 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.

As a result, Senate Bill 624 continues the agency for only six years, rather than the typical 12 years, and eliminates the agency's authority to construct, purchase, and sell property. To improve outcomes moving forward, the bill also strengthens data collection and performance reporting on the agency's key duties. Other provisions in the bill standardize and formalize licensing and enforcement functions by applying best practices, including removing several unnecessary licensing requirements and expanding the agency's enforcement tools.

The following material summarizes results of the Sunset review of the Real Estate Commission and Appraiser Board, including management actions directed to the agency that do not require legislative action.

ISSUE 1 — *Continue*

Recommendation 1.1, Adopted — Continue the Real Estate Commission and Appraiser Board for six years, but do not place them under the SDSI Act, Chapter 472, Texas Government Code. Instead, leave the Real Estate Commission and Appraiser Board under Chapter 1105, Texas Occupations Code and make the following changes:

- Add the reporting requirements, including trend performance data, from the SDSI Act to Chapter 1105
- Eliminate provisions that allow for the purchase, construction, or sale of property from Chapter 1105, replacing them with the language in the SDSI Act regarding property
- Require administrative penalties collected by the Appraiser Board to go to general revenue
- Eliminate requirements to pay retainers to the State Auditor's Office, office of the attorney general, and the State Office of Administrative Hearings from Chapter 1105, replacing them with the requirement to reimburse those agencies for any services rendered

Recommendation 1.2, Adopted — Direct the agency to evaluate and update its key performance measures. (Management action – nonstatutory)

Recommendation 1.3, Adopted — Direct the agency to develop a budget policy that fosters more realistic, straightforward budgeting and fee setting. (Management action – nonstatutory)

Recommendation 1.4, Adopted — Direct the agency to update its fund balance policy to limit growth. (Management action – nonstatutory)

ISSUE 2 — *Licensing*

Recommendation 2.1, Adopted — Eliminate instructor approval authority.

Recommendation 2.2, Adopted — Eliminate the branch office license.

Recommendation 2.3, Adopted — Remove a subjective qualification required for licensure applicants.

Recommendation 2.4, Adopted — Remove statutory provisions requiring certain applicants to establish Texas residency before obtaining a Texas real estate license or appraiser approval. Clarify that notwithstanding the removal of the residency requirement, the Real Estate Commission may continue to discipline brokers, sales agents, and inspectors who act incompetently, including by failing to consider market conditions in a geographic area where the licensee provides services to a client.

Recommendation 2.5, Adopted — Authorize the Real Estate Commission and Appraiser Board to deny license renewal applications for noncompliant applicants.

Recommendation 2.6, Modified — Direct the agency to review and streamline inspector pre-licensing education requirements by January 1, 2020. As part of its review of the requirements, direct the agency to ensure the content aligns with the inspector licensing exam subject matter and evaluate the impact of any streamlining on exam passage rates by January 1, 2021. (Management action – nonstatutory)

ISSUE 3 — *Enforcement*

Recommendation 3.1, Adopted — Require the Real Estate Commission and Appraiser Board to maintain complainants' confidentiality when possible.

Recommendation 3.2, Adopted — Authorize the Real Estate Commission to dismiss low-level complaints and to delegate this authority to staff.

Recommendation 3.3, Adopted — Authorize the Appraiser Board to order refunds to consumers.

Recommendation 3.4, Modified — 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)

Recommendation 3.5, Modified — 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)

Recommendation 3.6, Modified — 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)

Recommendation 3.7, Modified — 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)

ISSUE 4 — *Governance*

Recommendation 4.1, Modified — Update and apply standard across-the-board recommendations to the Real Estate Commission and Appraiser Board, such as those related to commission and board member training, including training on anticompetitive commission and board behavior and a requirement for each member to attest to both receiving and reviewing the training manual annually.

Recommendation 4.2, Adopted — Authorize the Appraiser Board to establish advisory committees in rule as needed.

Recommendation 4.3, Adopted — Repeal the Real Estate Commission’s and Appraiser Board’s SDSA annual and biennial reporting requirements.

NEW RECOMMENDATIONS ADDED BY THE SUNSET COMMISSION

Electronic submission of licensing information, Adopted — 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)

Submit proposal for property purchase, Adopted — 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)

Report annual performance data, Adopted — Direct the agency to report annual performance data to the Sunset Commission until January 1, 2023. Annual performance data must include the following:

- The average time to resolve a complaint
- The average time to issue a license
- Reserve fund balances
- Call hold times broken down by quarter
- The number and percentage of abandoned calls, broken down by quarter

(Management action – nonstatutory)

Provide quarterly call center reports, Adopted — 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)

Provisions Added by the Legislature

No provisions were added by the Legislature.

Fiscal Implication Summary

Overall, the Sunset Commission’s recommendations on the Real Estate Commission and Appraiser Board, as enacted by Senate Bill 624, will result in revenue gains to the state. Transferring the board’s administrative penalties to the General Revenue Fund will result in an estimated annual gain of about \$18,000 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 generally exceeds the cost of the services received. However, the exact amount of the savings will depend on services provided in the future and could not be calculated.

Eliminating the instructor approval process and branch office license will decrease costs to the industry and thereby revenue to the Real Estate Commission by \$209,300 per year, but the decrease in revenue will be offset by an equal decrease in costs to administer the programs. Other provisions of the bill will not have a fiscal impact to general revenue, since fees assessed to the license holders must cover the cost of regulation due to the agency’s SDSI status.

Real Estate Commission and Appraiser Board

Fiscal Year	Gain to the General Revenue Fund	Decrease in Revenue to the Agency
2020	\$18,000	\$18,000
2021	\$18,000	\$18,000
2022	\$18,000	\$18,000
2023	\$18,000	\$18,000
2024	\$18,000	\$18,000

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

———— **SUNSET COMMISSION DECISIONS**
DECEMBER 2018

SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board, as well as modifications and new recommendations raised during the public hearing.

The Real Estate Commission and Appraiser 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.¹ 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.

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.

ISSUE 1

Texas Should Continue Regulating the Real Estate and Appraisal Industries, but the Agency Has Not Used Its SDSI Status to Meet the Needs of License Holders and the Public.

Recommendation 1.1, Adopted as Modified — Continue the Real Estate Commission and Appraiser Board for six years, but do not place them under the SDSI Act, Chapter 472, Texas Government Code. Instead, leave the Real Estate Commission and Appraiser Board under Chapter 1105, Texas Occupations Code and make the following changes:

- Add the reporting requirements, including trend performance data, from the SDSI Act to Chapter 1105
- Eliminate provisions that allow for the purchase, construction, or sale of property from Chapter 1105, replacing them with the language in the SDSI Act regarding property
- Require administrative penalties collected by the Appraiser Board to go to general revenue

- Eliminate requirements to pay retainers to the State Auditor's Office, office of the attorney general, and the State Office of Administrative Hearings from Chapter 1105, replacing them with the requirement to reimburse those agencies for any services rendered

Recommendation 1.2, Adopted — Direct the agency to evaluate and update its key performance measures. (Management action – nonstatutory)

Recommendation 1.3, Adopted — Direct the agency to develop a budget policy that fosters more realistic, straightforward budgeting and fee setting. (Management action – nonstatutory)

Recommendation 1.4, Adopted — Direct the agency to update its fund balance policy to limit growth. (Management action – nonstatutory)

ISSUE 2

Key Elements of the Real Estate Commission's and Appraiser Board's Licensing Functions Do Not Conform to Common Licensing Standards.

Recommendation 2.1, Adopted — Eliminate instructor approval authority.

Recommendation 2.2, Adopted — Eliminate the branch office license.

Recommendation 2.3, Adopted — Remove a subjective qualification required for licensure applicants.

Recommendation 2.4, Adopted as Modified — Remove statutory provisions requiring certain applicants to establish Texas residency before obtaining a Texas real estate license or appraiser approval. Clarify that notwithstanding the removal of the residency requirement, the Real Estate Commission may continue to discipline brokers, sales agents, and inspectors who act incompetently, including by failing to consider market conditions in a geographic area where the licensee provides services to a client.

Recommendation 2.5, Adopted — Authorize the Real Estate Commission and Appraiser Board to deny license renewal applications for noncompliant applicants.

Recommendation 2.6, Adopted as Modified — Direct the agency to review and streamline inspector pre-licensing education requirements by January 1, 2020. As part of its review of the requirements, direct the agency to ensure the content aligns with the inspector licensing exam subject matter and evaluate the impact of any streamlining on exam passage rates by January 1, 2021. (Management action – nonstatutory)

ISSUE 3

The Real Estate Commission's and Appraiser Board's Enforcement Processes Cannot Fully Ensure Fair Treatment of Licensees and Complainants.

Recommendation 3.1, Adopted — Require the Real Estate Commission and Appraiser Board to maintain complainants' confidentiality when possible.

Recommendation 3.2, Adopted — Authorize the Real Estate Commission to dismiss low-level complaints and to delegate this authority to staff.

Recommendation 3.3, Adopted — Authorize the Appraiser Board to order refunds to consumers.

Recommendation 3.4, Adopted as Modified — 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)

Recommendation 3.5, Adopted as Modified — 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)

Recommendation 3.6, Adopted as Modified — 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)

Recommendation 3.7, Adopted as Modified — 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)

ISSUE 4

The Real Estate Commission's and Appraiser Board's Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Recommendation 4.1, Adopted as Modified — Update and apply standard across-the-board recommendations to the Real Estate Commission and Appraiser Board. Require the Real Estate Commission and Appraiser Board to allow public testimony at every regular meeting of the policymaking bodies.

Recommendation 4.2, Adopted — Authorize the Appraiser Board to establish advisory committees in rule as needed.

Recommendation 4.3, Adopted — Repeal the Real Estate Commission's and Appraiser Board's SDSI annual and biennial reporting requirements.

ADOPTED NEW RECOMMENDATIONS

Electronic Submission of Licensing Information

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)

Submit Proposal for Property Purchase

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)

Report Annual Performance Data

Direct the agency to report annual performance data to the Sunset Commission until January 1, 2023. Annual performance data must include the following:

- The average time to resolve a complaint
- The average time to issue a license
- Reserve fund balances
- Call hold times broken down by quarter
- The number and percentage of abandoned calls, broken down by quarter

(Management action – nonstatutory)

Provide Quarterly Call Center Reports

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)

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 generally exceeds 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

Fiscal Year	Gain to the General Revenue Fund	Decrease in Revenue to the Agency
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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¹ In this report, “agency” refers to the Real Estate Commission and Appraiser Board as a combined entity with shared staff.

**SUMMARY OF SUNSET
STAFF RECOMMENDATIONS**

SUMMARY

As anyone who lives in Texas knows, the real estate market has been hot for almost a decade. With Texas' strong economy and low unemployment rate, the state's housing sector has grown faster than in other parts of the country, and a similar trend can be seen in the commercial real estate market.¹ According to experts, Texas has been experiencing a fundamental shift toward becoming a center for growth for years to come.² This boom has contributed to a steady increase in applications to work in the real estate industry in Texas. From fiscal year 2013 to 2017, the number of Texas Real Estate Commission licensees increased from approximately 147,000 to 183,000. However, despite clear industry trends, the Sunset review found the Real Estate Commission failed to adjust quickly and decisively to the growth in the industry and the demands on the agency, ultimately to the detriment of license holders.

The Real Estate Commission and Texas Appraiser Licensing and Certification Board had the ability to respond successfully to the economy's significant impact on the real estate and appraisal industries. In 2011, to enable the agency to meet growing industry demands, the Legislature granted the agency self-directed semi-independent (SDSI) status, one of the most significant and somewhat rare tools available to state agencies.³ However, with this tool came great responsibility. Obtaining SDSI status effectively removed the agency from the appropriations process, giving the agency full authority and flexibility to manage its own budget and operations. This change in status also largely removed legislative oversight of the agency, placing it instead primarily in the hands of the agency's governing bodies — in this case, the commission and the board.

Beginning in 2014, rather than using its budget flexibility to improve operations to meet increasing license holder demands, the Real Estate Commission and Appraiser Board took advantage of SDSI provisions that allowed the agency to set aside funds for a building. The commission and board began putting significant amounts of excess revenue into their respective building reserve funds instead of using it for agency operations. By 2017, customer service problems had inundated and overwhelmed the agency while \$12.5 million sat in its building reserves.

At the beginning of the Sunset review in 2018, customer service problems had reached crisis proportions. Average call wait times exceeded 18 minutes, and at one point, 68 percent of callers were giving up and abandoning their calls. During the review, Sunset received numerous complaints regarding agency hold times ranging from 45 minutes to an hour, unanswered emails, a difficult-to-navigate website, and a slow licensing process. Ultimately, the review concluded the Real Estate Commission and Appraiser Board had failed to adequately assume and fulfill the critical oversight role the Legislature delegated to them

Rather than improving operations to meet growing industry demands, the agency put more than \$12 million into its building reserves.

under SDSI, continuing to allocate funds to the building reserves instead of addressing the agency's snowballing customer service problems. Meanwhile, license holders struggled to get the services from the agency that they had paid for with their licensing fees.

In light of these findings, Sunset staff recommends continuing the agency for only six years instead of the standard 12 years. Though the agency has recently taken steps to address some of its problems, the commission and board need increased oversight to ensure these efforts are long-lasting and effective. A six-year Sunset date would allow the Legislature to more quickly assess whether the Real Estate Commission, Appraiser Board, and agency staff have made necessary changes to get their house in order, restoring the trust of legislators, license holders, and the public. The report's recommendations would also increase oversight of the agency to better monitor its flexibility as an SDSI agency. Finally, these recommendations would require the commission and board to establish a more responsible budget and adopt licensing and enforcement best practices to reduce burdens on licensees and staff. A summary follows of the Sunset staff recommendations on the Real Estate Commission and Appraiser Board.

Issues and Recommendations

Issue 1

Texas Should Continue Regulating the Real Estate and Appraisal Industries, but the Agency Has Not Used Its SDSI Status to Meet the Needs of License Holders and the Public.

Texas has a continuing need to regulate the real estate and appraisal industries. Licensees advise clients on buying and selling homes, one of the largest financial commitments a consumer will make. Improper activities, such as defrauding the client, inappropriately disclosing the client's financial or personal information, failing to disclose property defects, or providing services in a negligent manner, could harm the consumer. Appraisers provide an impartial valuation of the property to a lender to ensure the property is worth the agreed upon purchase price, which is also an important role in the process.

However, the Real Estate Commission and Appraiser Board have not adequately monitored their budgets or performance of the agency's essential functions, a role the Legislature principally delegated to them when it gave the agency SDSI status in 2011. For several years, the commission and board put large amounts of excess revenue into building reserves instead of spending it on needed agency operations, such as staffing and improved technology, resulting in a customer service crisis. While the agency has begun to address these problems, placing it under the SDSI Act with a shorter, six-year continue date would allow the Legislature to evaluate whether the agency has made sufficient changes and compare it to other SDSI Act agencies that track five-year performance trend data to determine if further changes are needed.

Key Recommendations

- Continue the Real Estate Commission and Appraiser Board for six years and place them under the SDSI Act.
- Direct the agency to evaluate and update its key performance measures.

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

Issue 2

Key Elements of the Real Estate Commission's and Appraiser Board's Licensing Functions Do Not Conform to Common Licensing Standards.

The Real Estate Commission's and Appraiser Board's licensing processes do not match model standards or common practices observed through Sunset staff's experience reviewing regulatory agencies. Specifically, unnecessary regulation over education instructors and branch offices burdens licensees and staff without enhancing consumer protection. Additionally, certain pre-licensing requirements, such as home inspectors' redundant education requirements, serve as barriers to entry and do not help ensure new licensees can competently serve the public. The commission and board also lack standard authority to deny license renewals based on noncompliance with commission and board orders, which undermines their enforcement efforts and places consumers at risk. Aligning the commission's and board's statutes, rules, and procedures with best practices would help protect consumers and the public, reduce burden on licensees, and match the level of regulation with the level of risk posed to the public.

Key Recommendations

- Eliminate instructor approval authority.
- Eliminate the branch office license.
- Direct the Real Estate Commission to review and streamline its inspector pre-licensing education requirements.
- Authorize the Real Estate Commission and Appraiser Board to deny license renewal applications for noncompliant applicants.

Issue 3

The Real Estate Commission's and Appraiser Board's Enforcement Processes Cannot Fully Ensure Fair Treatment of Licensees and Complainants.

A regulatory agency should have clear procedures and rules in place for conducting investigations that address consumer protection concerns, promote fair treatment, and ensure timely compliance from regulated entities. The review found the Appraiser Board does not formally prioritize complaints based on risk or resolve investigations as quickly as comparable Texas agencies. The board also lacks authority to order refunds, which can help make consumers whole again after they are defrauded. Both the board and Real Estate Commission do not follow the standard enforcement practice of protecting complainants' identities to the extent possible. Finally, the commission lacks clear policies for handling each phase of the complaint process. Updating investigative processes and adopting best enforcement practices would help ensure the commission and board address complaints fairly, consistently, and in a timely manner.

Key Recommendations

- Direct the Appraiser Board to prioritize complaint investigations based on the risk each complaint poses to the public.
- Direct the Appraiser Board to develop a plan to improve its investigative process and reduce complaint resolution timeframes.
- Authorize the Appraiser Board to order refunds to consumers.
- Require the Real Estate Commission and Appraiser Board to maintain complainants' confidentiality when possible.
- Direct the Real Estate Commission to develop standard rules and procedures for handling each phase of the complaint process.

Issue 4

The Real Estate Commission's and Appraiser Board's Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Among the elements considered in a Sunset review, the Sunset Commission adopts across-the-board recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. The Appraiser Board's statute does not contain several of these provisions, and others for the Real Estate Commission and board should be updated. In addition, the Sunset Act directs the Sunset Commission to evaluate the need for an agency's advisory committees. Sunset staff found a board advisory committee is about to expire, so the board would benefit from having authority to establish this and other advisory committees in rule.

Key Recommendations

- Update and apply standard across-the-board recommendations to the Real Estate Commission and Appraiser Board.
- Authorize the Appraiser Board to establish advisory committees in rule as needed.

Fiscal Implication Summary

Overall, these recommendations would result in an \$89,750 gain to the General Revenue Fund and a \$1,136,250 decrease in revenue to the Real Estate Commission over the next five fiscal years. Since fees assessed to the licensees must cover the costs of regulation due to the agency's SDSI status, the recommendations in this report would decrease costs to the license holders by an estimated \$1,046,500 over the next five fiscal years. The fiscal implication of each recommendation is summarized below.

Issue 1 — The recommendation to place the commission and Appraiser Board under the SDSI Act and remit the board's administrative penalties to the General Revenue Fund would result in a gain to general revenue of approximately \$17,950 per year beginning in fiscal year 2020 and an offsetting decrease in revenue to the agency.

Issue 2 — The recommendation to eliminate the approval process for real estate and inspector instructors would decrease costs to the license holders and thereby revenue to the commission by \$174,750 per

year, and the recommendation to eliminate the branch office license would decrease costs to the license holders and thereby revenue to the commission by \$34,550 per year. These decreases in revenue would be offset by a corresponding decrease in costs to administer each license type.

Real Estate Commission and Appraiser Board

Fiscal Year	Gain to the General Revenue Fund	Decrease in Revenue to the Agency
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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¹ Steve Brown, "Texas topped the country in commercial real estate development in 2017," *Dallas Morning News*, March 19, 2018, <https://www.dallasnews.com/business/real-estate/2018/03/19/texas-topped-country-commercial-real-estate-development-2017>.

² Patrick Sisson, "Will hot housing markets in Texas ever cool down?: The state's winning streak may be a fundamental shift, not a temporary boom," *Curbed*, August 15, 2017, <https://www.curbed.com/2017/8/15/16150480/texas-real-estate-housing-moving>.

³ In this report, "agency" refers to the Real Estate Commission and Appraiser Board as a combined entity with shared staff.

AGENCY AT A GLANCE

OCTOBER 2018

AGENCY AT A GLANCE

The Legislature created the Texas Real Estate Commission in 1949. The commission's mission is to protect consumers by ensuring qualified and ethical service providers through upholding high standards in education, licensing, and regulation. To accomplish its mission, the commission performs the following key functions:

- Licenses real estate sales agents, brokers, and home inspectors
- Licenses residential service companies, which sell homeowners a service contract to cover the repair or replacement of certain appliances or systems that fail due to normal wear and tear
- Registers easement and right-of-way agents who negotiate easement and eminent domain processes for companies, property owners, and government agencies
- Registers timeshare plans, which give buyers the right to own or use a property for a specified period of time during the year
- Approves education providers, instructors, and courses for sales agents, brokers, and inspectors
- Investigates and resolves complaints, taking disciplinary action when necessary to enforce the commission's statutes and rules

In 1989, following the savings and loan crisis, the U.S. Congress established requirements for licensing real estate appraisers under the Federal Institutions Reform, Recovery, and Enforcement Act (FIRREA). To comply with FIRREA's requirements, the Texas Legislature created the Texas Appraiser Licensing and Certification Board in 1991 as an independent regulatory subdivision of the Real Estate Commission. As an independent subdivision, the board develops its own budget and licensing fees. A memorandum of understanding (MOU) formalizes the relationship between the commission and board, including allocation of responsibilities and shared staff.¹ To fulfill its consumer protection function, the board performs the following activities:

- Licenses appraisers and appraisal management companies
- Ensures appraiser education courses comply with criteria set by the federal Appraiser Qualifications Board
- Investigates and resolves complaints, taking disciplinary action when necessary to enforce state statutes, board rules, and federally adopted Uniform Standards of Professional Appraisal Practice

Key Facts

- **Texas Real Estate Commission.** The Real Estate Commission consists of six licensed brokers and three public members who are appointed by the governor to serve staggered six-year terms.² The governor also designates a broker member as chair. Three committees assist the commission in its work: the Texas Real Estate Inspector Committee, the Texas Real Estate Broker-Lawyer Committee, and the Education Standards Advisory Committee.³
- **Texas Appraiser Licensing and Certification Board.** The Appraiser Board consists of nine members who serve staggered six-year terms.⁴ The governor appoints four certified or licensed appraisers

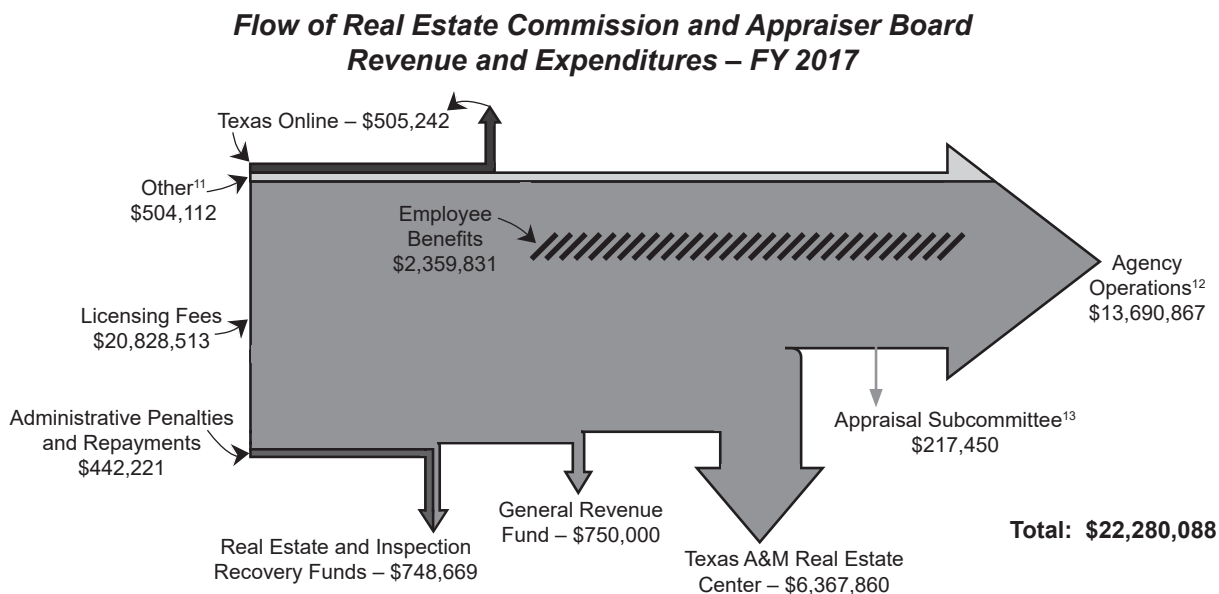
and four public members to the board.⁵ A representative of the Veterans’ Land Board serves as the ninth member.⁶ The governor designates an appraiser member as chair. The Appraisal Management Company Advisory Committee assists the board in its work.⁷

- **Funding.** In 2011, the Legislature granted the Real Estate Commission self-directed semi-independent (SDSI) status.⁸ As such, the agency does not receive a legislative appropriation. Instead, the commission and Appraiser Board set their own budgets and fund themselves through fees on the real estate and appraisal industries.⁹

At the end of fiscal year 2017, the Real Estate Commission and Appraiser Board maintained a combined fund balance of about \$17 million. The commission and board each dedicated a majority of this fund balance to three separate reserve funds for current operations and contingencies, education, and the eventual construction of a new building. The commission also maintains the Real Estate Recovery Trust Account and Real Estate Inspection Recovery Fund to reimburse consumers who suffer damages caused by the commission’s license holders.

In fiscal year 2017, the Real Estate Commission collected about \$12.5 million in revenue from license fees and spent about \$9.3 million. That same year, the Appraiser Board collected about \$1.4 million in revenues from license fees and spent about \$1.4 million.

The chart, *Flow of Real Estate Commission and Appraiser Board Revenue and Expenditures*, breaks down various sources of the agency’s revenue and shows how the agency spent this revenue in fiscal year 2017. As required under the commission’s SDSI statute, the agency made its annual \$750,000 remittance to the General Revenue Fund. The commission also collects fees to help fund the Texas A&M Real Estate Center, detailed in the textbox on the following page, *Texas A&M Real Estate Center*.¹⁰



A description of the agency’s use of historically underutilized businesses in purchasing goods and services for fiscal years 2015 to 2017 is included in Appendix A.

- **Staffing.** At the end of fiscal year 2017, the agency employed 102 staff — 91 Real Estate Commission employees and 11 Appraiser Board employees. While most staff were based at the agency’s headquarters

in Austin, four real estate investigators and three appraiser investigators worked in other locations covering different regions of the state. Appendix B compares the agency's workforce compositions to the percentage of minorities in the statewide civilian labor force for fiscal years 2015 to 2017.

Statute requires the same person to direct the staff of both the Real Estate Commission and the Appraiser Board.¹⁵ Under the commission and board's MOU, the commission provides the board with administrative support at no cost and oversees the board's education and licensing staff. The enforcement staff for the two entities operate separately, as discussed under *Enforcement*.

- **Licensing, certifying, and registering.** Staff process original and renewal applications for various individuals and businesses in the real estate and appraisal industries. In fiscal year 2017, the Real Estate Commission regulated over 155,000 active license holders, while the Appraiser Board regulated about 6,300 active appraisers and appraisal management companies. The table, *Most Common Individual License Types*, describes the agency's four most common license types. Appendix C provides information on pre-licensing requirements, original application fees, and the total number of regulated individuals and businesses for all license categories in fiscal year 2017.

Texas A&M Real Estate Center

In 1971, the 62nd Legislature created the Texas A&M Real Estate Center. The Real Estate Commission transfers a portion of license and renewal fees from sales agents, brokers, broker entities, and easement and right-of-way license holders to fund the center's work; that amount is set in statute.¹⁴ The center's main statutory duties include

- conducting and disseminating studies in all areas related to real estate;
- assisting the commission with the development of exam preparation materials and standards for approving education providers and courses;
- assisting colleges and universities in Texas with real estate teaching programs, including developing course materials; and
- recommending changes to state statute and municipal ordinances related to real estate.

Most Common Individual License Types – FY 2017

License Type	Description	Number
Sales Agent	Arranges and negotiates real estate sales in exchange for a commission under the supervision of a licensed broker.	102,904
Broker	Arranges and negotiates real estate sales in exchange for a commission. Requires more experience and education than a sales agent.	33,862
Home Inspector	Performs non-invasive, visual examinations of residential properties and identifies defects in exchange for a fee.	Total – 3,305
	The Real Estate Commission regulates three levels of home inspectors:	
	Apprentice inspectors	138
	Real estate inspectors	141
	Professional inspectors	3,026
Appraiser	Assigns an impartial, objective value to real property, including residential and commercial properties.	Total – 6,096
	The Appraiser Board regulates four levels of appraisers:	
	Appraiser trainees	868
	Licensed residential appraisers	423
	Certified residential appraisers	2,407
	Certified general appraisers	2,398

- **Education and examinations.** Real Estate Commission staff approve all pre-licensing and continuing education providers, instructors, and courses for sales agents, brokers, and inspectors. In fiscal year 2017, the commission oversaw 43 pre-licensing education providers, 457 continuing education providers, 2,721 real estate instructors, and 131 inspector instructors. The Appraiser Board approves appraiser courses only.
- **Enforcement.** The Real Estate Commission and Appraiser Board operate separate enforcement divisions to ensure compliance with federal appraiser independence laws. Employees in both divisions investigate written complaints against individuals and entities, and assist with background checks for licensure. As part of the licensing process, the board's enforcement staff also conduct federally mandated audits of appraiser applicants' work experience to ensure compliance with state and federal requirements.

In fiscal year 2017, the Real Estate Commission opened 4,561 cases, including complaints and application investigations, and closed 4,071 cases. Staff averaged 208 days to resolve jurisdictional complaints. That same year, the Appraiser Board opened 329 cases, including complaints and experience audits, and closed 306 cases. Staff averaged 313 days to resolve jurisdictional complaints. The table, *Real Estate Commission and Appraiser Board Disciplinary Actions*, shows enforcement actions taken in fiscal year 2017 by license type.

Real Estate Commission and Appraiser Board Disciplinary Actions – FY 2017

License Type	Advisory Letter	Reprimand	Administrative Penalty	Probation	Suspension	Revocation	Cease and Desist
Real Estate Commission							
Sales Agent	105	15	47	22	15	15	0
Individual Broker	198	16	47	15	7	15	4
Business Entity Broker	95	8	16	1	0	4	0
Inspector	11	6	20	3	0	0	3
Easement or Right-of-Way Agent	1	0	0	0	0	0	0
Easement or Right-of-Way Business	0	0	0	0	0	0	0
Timeshare Developer	0	0	0	0	0	0	0
Education Provider	4	0	0	0	0	0	0
Education Instructor	2	0	0	0	0	0	0
Residential Service Company	1	1	1	0	0	0	0
Total	417	46	131	41	22	34	7
Appraiser Board							
Appraiser	58	0	11	10	2	3	0
Appraisal Management Company	3	0	0	0	0	1	0
Total	61	0	11	10	2	4	0

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- ¹ In this report, “agency” refers to the Real Estate Commission and Appraiser Board as a combined entity with shared staff.
 - ² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 1101.051 and 1101.055(a), Texas Occupations Code.
 - ³ Subchapter B, Chapter 1102 and Subchapter F, Chapter 1101, Texas Occupations Code; Section 1101.158, Texas Occupations Code; 22 T.A.C. Section 535.43.
 - ⁴ Sections 1103.052 and 1103.055(a), Texas Occupations Code.
 - ⁵ Section 1103.052(a)(2), Texas Occupations Code.
 - ⁶ Section 1103.052(a)(1), Texas Occupations Code.
 - ⁷ Section 1103.159, Texas Occupations Code.
 - ⁸ S.B. 1000, 82nd Texas Legislature, Regular Session, 2011.
 - ⁹ Section 1105.003, Texas Occupations Code.
 - ¹⁰ Section 1101.154, Texas Occupations Code.
 - ¹¹ Includes interest and investment income, and charges for insufficient funds and public information requests.
 - ¹² Agency operations includes approximately \$3.7 million in funds from fiscal year 2017 set aside for the education and building reserves. Agency operations also includes \$17,950 from the Appraiser Board’s administrative penalties for the development of appraiser education programs and studies that enhance consumer protection.
 - ¹³ The Appraisal Subcommittee (ASC) is a federal oversight body that monitors states in the licensing and certification of appraisers. Payments to ASC allow the Appraiser Board to search ASC’s National Registry of Appraisers, a database with information on appraiser licenses, certifications, and disciplinary actions across the country.
 - ¹⁴ Section 1101.154, Texas Occupations Code.
 - ¹⁵ Section 1103.101, Texas Occupations Code.

ISSUES

ISSUE 1

Texas Should Continue Regulating the Real Estate and Appraisal Industries, but the Agency Has Not Used Its SDSI Status to Meet the Needs of License Holders and the Public.

Background

The Legislature created the Texas Real Estate Commission in 1949. In 1991, the Legislature established the Texas Appraiser Licensing and Certification Board to meet federal requirements for appraiser certification under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The Appraiser Board is an independent subdivision of the Real Estate Commission.

The agency's mission is to protect consumers of real estate services in Texas by ensuring qualified and ethical service providers through upholding high standards in education, licensing, and regulation.¹ The agency accomplishes this purpose by licensing over 155,000 active providers of real estate brokerage, appraisal, inspection, residential service contracts, timeshares, and right-of-way services and by investigating complaints and taking disciplinary action when necessary. In fiscal year 2017, the agency employed 102 staff, and had combined revenues of \$13.9 million from licensing fees, and expenditures of \$10.7 million. In the same year, the Real Estate Commission took 698 disciplinary actions against licensees and collected \$173,679 in administrative penalties, while the Appraiser Board took 88 disciplinary actions against licensees and collected \$17,950 in administrative penalties.

In 2011, the Legislature removed the Real Estate Commission and Appraiser Board from the General Appropriations Act and legislative appropriations process, granting the agency self-directed semi-independent (SDSI) status. Unlike the majority of state agencies, SDSI agencies have the freedom to set their own fees and budgets, increase staffing levels, change performance measures, and prioritize expenditures and programs with only the approval of their governing boards. These agencies also may carry forward reserve fund balances indefinitely because they cannot rely on the state to pay for large capital expenditures or unforeseen expenses.

Proponents of SDSI status point to the benefits of being able to offer higher salaries to recruit and retain more experienced staff, to make large capital expenditures on technology when necessary, and to respond more quickly to changing regulatory environments, such as an increase in license holders. By granting the agency SDSI status, the Legislature entrusted the Real Estate Commission and Appraiser Board to use the flexibility the status affords to responsibly manage public funds to fulfill their regulatory mission.

Findings

Texas has a continuing need to regulate the real estate and appraisal industries.

Purchasing a home is one of the largest financial commitments a consumer will make, and real estate licensees advise clients on buying and selling homes. The appraiser also plays an important role in the process, providing an impartial valuation of the property to a lender to ensure the property is worth the amount the home buyer has agreed to pay. Given the important role these professionals play in the home buying process, Texas should continue to regulate them.

Brokers and sales agents have a fiduciary obligation to their clients, requiring them to put the client's interests above their own. Consumers could be harmed by a licensee who violates this obligation by defrauding a client, improperly disclosing a client's personal or financial information, not listing a property timely, not disclosing defects in a property, providing improper advice that jeopardizes the transaction, or providing services in a negligent or incompetent manner.

The Real Estate Commission regulates other real estate-related individuals and businesses to ensure consumer protection, such as home inspectors, residential service companies, and timeshare developers. The agency ensures home inspectors meet minimum standards for providing inspections, residential service companies honor their service contracts, and timeshare property contracts include proper disclosures and required consumer "opt-out" provisions.

The Appraiser Board regulates real estate appraisers and appraisal management companies. In addition to ensuring home buyers and lenders are protected from fraudulent or improper home valuations, the board exists to meet a federal requirement for states to participate in federal home financing options. If Texas did not have an appraiser board, it could not participate in the secondary mortgage market, and Texas consumers would lose access to federal home financing options.²

Without an appraiser board, Texas consumers would lose access to federal home financing options.

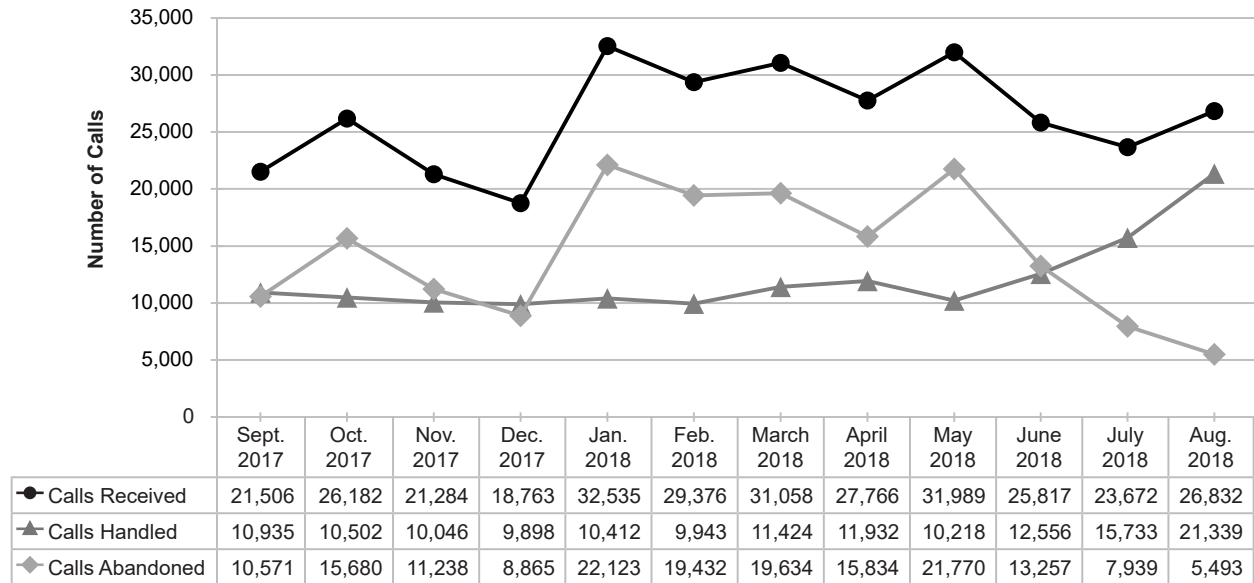
The Real Estate Commission's and Appraiser Board's lack of adequate oversight contributed to a customer service crisis.

As governing bodies, neither the Real Estate Commission nor the Appraiser Board adequately monitored the agency's budget or performance of its essential functions, a role the Legislature principally delegated to them when it gave the agency SDSI status. As a result, the agency did not allocate sufficient resources or take appropriate measures to respond timely to problems, ultimately enabling a customer service crisis to occur and persist for too long. While a few commission members openly expressed concern about the agency's poor customer service, the commission and board were slow to take meaningful action to address the agency's performance.

- **Unacceptable customer service.** From the start of the review, Sunset staff heard a litany of complaints of unanswered phone calls, long hold times when trying to reach agency staff, and inconsistent answers from customer service representatives. Call data shows between December 2017 and February 2018, average hold times were over 18 minutes, and stakeholders complained of calling the agency consistently for months without a response, sometimes waiting as long as 40 minutes before hanging up. The graph on the following page, *Call Distribution*, shows the agency's struggle to handle over 300,000 calls received in fiscal year 2018. According to the data, the agency was generally unable to handle 50 percent or more of the calls it received up until July 2018. At the agency's worst, 68 percent of callers gave up and abandoned their calls, a rate that dropped to 20 percent in August 2018.

At the agency's worst, 68 percent of callers gave up trying to reach staff and abandoned their calls.

**Call Distribution
September 2017–August 2018**



The agency cites several problems that led to these customer service challenges:

- A steady increase in the number of license holders — 24 percent from fiscal year 2013 to 2017 — leading to an increase in call volume
- An update to the licensing database in November 2016 that caused delays in processing license applications and renewals and call volume increases
- The launch of a new website in February 2017 that caused some confusion for license holders trying to renew their licenses
- The extension of license renewals due to Hurricane Harvey that ended in February 2018

While the agency has said major customer service problems developed over the past two years, a look back at customer survey data shows the agency has struggled in this area off and on since 2009 when slightly over 50 percent of survey respondents gave the agency a poor rating on phone wait times. Further, supporters pursuing SDSI status for the agency in 2011 said state-mandated budget cuts, including a reduction in employees, caused phones to go unanswered and meant the agency had to forgo obtaining needed new hardware to address the problem. As of last year, the agency had a 52 percent customer satisfaction rate, while other agencies under the SDSI Act had an average satisfaction rate of 93 percent.

At the root of the customer service crisis is the agency’s failure to adequately invest in human resources and information technology soon enough. Staff transfers to other agencies in fiscal years 2017 and 2018, and the

The agency’s failure to invest in human resources and IT led to a customer service crisis.

The agency only recently developed a strategic plan for its IT projects.

agency's difficulty in filling open positions, particularly in the public-facing divisions that handle communications and license applications, prompted the executive director to ask the internal auditor to look at how the agency was addressing compensation, recruiting, retention, and leadership training. Among other recommendations, the 2018 audit suggested the agency revise its compensation policies and procedures to be more competitive in the Austin job market, which the agency has recently begun.³ Human resource challenges are not new to the agency. Since fiscal year 2014, the agency has had turnover rates that were from three to almost 10 percentage points higher than those of other state licensing agencies, despite the flexibility afforded by having SDSI status.

Many of the agency's efficiency issues could be addressed with better technology, such as a more robust phone system and effective database software. Or more simply, the agency could use existing technology resources to develop process improvements, like the name management tool the agency launched in May 2018, which allows agents and brokers to go online at any time to update their business name. During the two weeks following the tool's introduction, over 1,200 people used it in lieu of the previous paper application process. Only recently did the agency develop a strategic plan for information technology with a prioritized list of agencywide projects, a management strategy that should have been implemented earlier to address customer service issues.

- **Changes since the Sunset review began.** The agency appeared to lack a sense of urgency in addressing the customer service problems that began in 2016 until just prior to the agency's Sunset review that began in April 2018. Although the agency started researching call center solutions in June 2017, including meeting with the Department of Information Resources and software vendors and putting together a Request for Proposal, the improvements with the greatest impact were not implemented until spring 2018. In April 2018, the executive director took the unusual step of writing a letter to stakeholders apologizing for the unacceptable quality of the agency's customer service and promising to do better. The media covered this letter with an article citing social media postings by irate license holders who could not get served by the agency.⁴ Starting May 1, 2018, the agency took a more focused approach, as shown in the chart on the following page, *Key Steps to Improve Customer Service*. With better commission and board oversight, agency staff could have put these steps in place much sooner, avoiding delays in processing license applications and the extreme stakeholder frustration with their inability to contact agency staff.

In May 2018, the agency began taking a more focused approach to improving customer service.

As a result of these changes, average call hold times improved to 13 minutes by July 2018, and the percentage of abandoned calls was down to 20 percent by the end of August 2018, though this number is still higher than the 5 to 8 percent industry standard for call centers.⁵ Further, at the August quarterly Real Estate Commission and Appraiser Board meetings, both bodies voted to reallocate a portion of their excess revenue for operating

Key Steps To Improve Customer Service

	Target Date 2018
Hire seven additional staff to work on licensing and communication	May 1–15 (completed)
Acquire new phone line dedicated to customer call back requests	May 1 (completed)
Retrain staff in customer service best practices	May 22 (completed)
Undergo diagnostic audit of Reception and Communication Services division by the agency's internal audit firm	June 8 (completed)
Implement caller-selected call routing menu on main lines	June 15 (completed)
Hire Deputy Executive Director to oversee customer service	August 1 (completed)
Implement call center management and reporting software upgrade	October 1
Upgrade VersaOnline login tools to identify current license holder	November 15
Upgrade VersaOnline to permit enhanced document handling of attachments to applications	December 15

expenses instead of putting it toward the building reserves as they have done for the previous four years. As a result, the agency plans to spend \$1.3 million for information technology projects in fiscal year 2019.

- Meaningless performance measures.** The agency sets its own performance measures in its strategic plan but does not use them regularly to inform its operations. Instead, staff present monthly reports with statistics — focused mostly on output, or volume, of agency activities and not the efficiency of the function — to the Real Estate Commission and Appraiser Board at their quarterly meetings. Further, the agency has not updated the methodology for calculating some key performance measures when necessary to make resulting data meaningful. For example, the measure regarding length of time to process new applications has not been met since 2010. The goal is to process 90 percent of license applications in 10 days. Because the agency starts the clock as soon as it gets the application, even if the person has not finished all the education requirements, the measure does not give a clear picture of how efficiently the agency processes applications. For a licensing agency, this measure is one of the most important to track accurately, but the agency, while aware of the problem, has not resolved the issue since it changed the application process in 2011.

A recent evaluation of the agency's call center operations found key performance indicators do not give the agency the insight needed for effective decision making to manage the calls it receives.⁶ In fiscal year 2015, the agency began to track the percentage of calls answered in less than 10 minutes, with a target of answering 75 percent of calls received in that timeframe. Over the 34 months of reporting this measure, the agency met its goal in just seven of those months, and has not met the goal since August 2016. In the last quarter of fiscal year 2017, the agency stopped reporting the data for this measure stating the new phone system could not capture this information, but continued to report the average hold

The agency cannot give a clear picture of how timely it processes applications.

time and call length at quarterly commission and board meetings. Only in July 2018 did the agency begin to report the number of calls handled and abandoned. Having accurate measures of this fundamental responsibility of the agency is essential to ensuring responsiveness to license holders and the public.

The Real Estate Commission, Appraiser Board, and agency staff failed to responsibly use their budget flexibility to address customer service issues.

The Sunset review found the agency and its oversight bodies failed to manage their resources responsibly to carry out the agency's regulatory mission. While they eventually allocated resources toward additional staff, higher salaries, and better technology, they did not take steps quickly enough to address the customer service crisis. Instead, the commission and board approved putting money into reserve funds for the eventual construction of their own building rather than spending it to effectively serve license holders.

Poor budgeting led to millions in excess revenue the agency put in its building reserves at the expense of operating needs.

- **Inaccurate budgeting and fee setting.** The agency lacks adequate policies to guide its budget development, allowing for a process that results in excess revenue generation and accumulating money in building reserves. According to the agency's budget policy, once anticipated expenses for the year are covered and three to four months of operating expenses are set aside in a reserve, other reserves are funded at levels approved by the Real Estate Commission and Appraiser Board. Instead of developing its budget based on actual real estate market trends, the agency assumes a downturn in the economy that would result in a 5 to 10 percent reduction in fee revenue, resulting in an inaccurate budget. Because of these budgeting practices, the agency has millions of dollars in excess revenue at the end of each year, most of which it puts in building reserves, as shown in the table, *Projected vs. Actual Excess Revenue*.

Projected vs. Actual Excess Revenue — FYs 2014–2017

Real Estate Commission	FY 2014	FY 2015	FY 2016	FY 2017
Projected Excess Revenue	\$414,666	\$267,269	\$554,561	\$949,486
Actual Excess Revenue	\$1,672,153	\$3,088,322	\$3,705,417	\$3,813,257
Amount to Building Reserve	\$2,000,000	\$2,785,000	\$3,450,000	\$3,265,000
Appraiser Board				
Projected Excess Revenue	\$565,973	\$27,668	\$65,526	\$52,274
Actual Excess Revenue	\$802,804	\$414,039	\$372,374	\$287,160
Amount to Building Reserve	\$240,000	\$180,000	\$320,000	\$280,000

Further, the agency's budget policy is not specific about when the agency will propose a fee reduction for licensees. The policy simply states that once the operating reserve is achieved and other reserves are funded at sufficient levels approved by the commission or board, if a revenue surplus

(amount to be determined) is prudently accumulated, it is the commission's and board's policy to prepare a fee reduction plan. However, the agency has not specified what the prudently accumulated revenue surplus amount should be nor has it determined sufficient levels for all of its reserve funds.

- **Lack of meaningful reserve fund policy.** The agency lacks a clear policy to develop its building reserve funds, including timeframes for their development and use, annual and long-term goals for their growth, and a finalized plan for their expenditure. As a result, the agency has aggressively put money into reserves at the expense of more pressing operating needs, such as information technology and human resources. Because the building funds make up the majority of the agency's fund balance at over \$12.5 million, stakeholders have expressed concern about future plans to fund the reserves while the agency is tending to its customer service crisis.
- **Improper use of reserves.** The Real Estate Commission and Appraiser Board each have educational development reserves that are used to fund routine education-related expenses more appropriately paid for out of the agency's operating budget. As established in the agency's reserve fund policy, the commission's educational reserve is funded by half of the exam fees paid to the agency by the contracted exam provider, and the board's reserve is funded by administrative penalties.⁷ While one purpose of the reserve was to pay expenses related to the development of certain educational courses and products, in fiscal year 2017, the agency spent almost \$70,000 out of the two reserves to fund staff and board member travel to national regulatory association meetings and conferences, conference fees, membership dues, and education and training expenses. Including these expenses in the agency's operating budget would make the agency's budget process more accountable and transparent. At the commission's August 2018 quarterly meeting, the commission voted to abolish the educational reserve and roll the balance back into its operating budget.

The agency lacks a clear policy for its building reserves that total over \$12.5 million.

Other agencies under the SDSI Act have additional statutory safeguards to provide adequate controls and oversight.

Other, better performing agencies under the SDSI Act have statutory tools and requirements that provide needed legislative oversight to ensure they are good stewards of the flexibility and autonomy SDSI status affords an agency. The agencies under the SDSI Act are the Board of Public Accountancy, Board of Architectural Examiners, and Board of Professional Engineers. In contrast, the Real Estate Commission and Appraiser Board have their own SDSI provisions in their enabling statute that lack those same tools and requirements.

The SDSI Act requires agencies to provide five years of trend performance data to the Legislature annually related to staffing, licensing, enforcement, fees, litigation costs, and reserve fund balances. These reporting requirements ensure the three agencies under it all maintain the same key data over time, allowing the Legislature to monitor performance trends and compare the agencies' performance to one another. Further, by requiring the agencies to track and

The SDSI Act requires agencies to provide five years of performance data to the Legislature.

submit data annually in these areas, an agency must update the methodology for collecting the data, a practice the commission and board have not prioritized in recent years with their own performance measures.

If the commission and board had been required to submit data in these areas to the Legislature, the Legislature might have seen the signs of performance issues and the agency's questionable resource allocations prior to its Sunset review. For example, as shown in Issue 3, a comparison of the board's complaint resolution times to the SDSI Act agencies demonstrates the board's inefficiency in that area over the past five years. Further, the SDSI Act requires agencies under it to track fund balance growth. The table, *Growth in Fund Balance*, below demonstrates how the commission's and board's fund balance growth stands out when compared to the other three agencies under the SDSI Act.

Growth in Fund Balance — FYs 2013–2017

Fiscal Year	Real Estate Commission and Appraiser Board	Board of Public Accountancy	Board of Architectural Examiners	Board of Professional Engineers
2013	\$4,878,327	\$3,112,066	\$2,326,459	\$904,004
2017	\$16,969,405	\$3,934,238	\$2,622,682	\$1,024,246
Percent Growth	248%	26%	13%	13%

The SDSI Act also requires administrative penalties to go to general revenue, a practice that ensures an agency's enforcement authority is not used as a proverbial "speed trap" to increase agency revenue. Administrative penalties for the Appraiser Board are placed in an education reserve account, not general revenue. This practice has contributed to the improper use of the board's education reserve to pay for expenses more appropriately included in the agency's operating budget, as noted above. However, administrative penalties for the commission go into the Real Estate Recovery Trust Account and the Real Estate Inspection Recovery Fund, which are restricted to repayment of damages and attorney fees to consumers who have obtained a judgment against a license holder without assets to pay the judgment.

Recommendations

Change in Statute

1.1 Continue the Real Estate Commission and Appraiser Board for six years and place them under the SDSI Act.

This recommendation would continue the Real Estate Commission and Appraiser Board for six years instead of the typical 12 years to ensure needed changes have occurred to reestablish the Legislature's, license holders', and public's trust and confidence in the agency. This shorter Sunset review date will give the Legislature the opportunity to more quickly assess whether the agency's performance has sufficiently improved. The Legislature could make any changes deemed necessary in the commission's and board's next Sunset review in 2025, including placing the commission and board back under the appropriations process with closer fiscal oversight.

This recommendation would also place the Real Estate Commission and Appraiser Board under the SDSI Act to provide for closer legislative oversight by requiring the agency to report the same performance trend data as other SDSI Act agencies. The SDSI provisions would be removed from the commission and board's statutes. The commission and board would be held to the same standard of remitting all administrative penalties to general revenue, as the agencies currently under the SDSI Act do; however, an exception would be granted to allow administrative penalties collected by the commission to continue to be deposited into the Real Estate Recovery Trust Account and the Real Estate Inspection Recovery Fund for the benefit of the public and license holders. The commission and board would no longer pay annual retainers to the State Auditor's Office, the Office of the Attorney General, and the State Office of Administrative Hearings. Instead, the commission and board would reimburse these agencies for any services rendered.

Management Action

1.2 Direct the agency to evaluate and update its key performance measures.

This recommendation would direct the agency to develop and adopt improved, outcome-based key performance measures by September 1, 2019. The agency would identify its key functions and responsibilities, identify measurable outcomes directly related to the performance of these functions, and implement new performance outcome measures that adhere to best practices for agency oversight performance measures, such as

- measuring true rates of performance to a goal;
- measuring factors that are clearly within the agency's control;
- highlighting each priority area of the agency's duties;
- tracking measures over time to understand trends; and
- consistently measuring across similar agency functions to facilitate comparison.

Moving forward, the agency would document any changes to its performance goals, minimize and document any changes to the calculation of its measures, and keep any data used to document performance measures for at least 12 years to facilitate agency oversight and evaluation in the future. The Real Estate Commission and Appraiser Board would receive reports on key performance measures that include trend data over a multi-year span, such as five years, in addition to the annual or quarterly data currently provided by staff.

Identifying and implementing better performance measures would allow the commission and board to accurately monitor agency performance, track trends in agency performance against budget expenditures or larger market shifts, and identify areas for improvement. Keeping performance measures consistent and with supporting documentation would allow legislative oversight bodies, such as the Sunset Commission, to substantiate changes in agency performance over time.

1.3 Direct the agency to develop a budget policy that fosters more realistic, straightforward budgeting and fee setting.

This recommendation would direct the agency to develop a budget and fee-setting policy that ensures consistent and reliable fees charged to license holders by September 1, 2019. This recommendation would require the agency to set a high-level policy goal to more accurately forecast revenues and expenditures

for the upcoming fiscal year and set fees on license holders more accurately upfront. While this recommendation may require a one-time change in rule to ensure flexibility in fee setting, the agency could implement this recommendation without requiring annual rulemaking for fees. The agency could, for example, set maximum fees in rule as applicable and then set exact fee amounts when approving the budget for the upcoming fiscal year. This recommendation would ensure the agency approves an accurate budget and associated fees in its public, open budget process and would allow license holders and the agency to better predict the cost of regulation and plan accordingly.

1.4 Direct the agency to update its fund balance policy to limit growth.

This recommendation would direct the agency to update its fund balance policy to set the total amount of allowable reserves and growth or change in the fund balance each year, and measure progress toward the established goal. As part of that policy, the agency would put specific parameters on its building reserves regarding total amount and annual growth or change. The agency would review best practices and other agencies' fund balance policies to identify the maximum appropriate level of budgeted fund balance change each year. The agency should adopt this update to the fund balance policy by September 1, 2019. This recommendation also directs the agency to establish clear procedures for tracking performance towards fund balance goals, including a requirement that agencies present a plan to bring high balances into compliance and that reserve fund balance savings be for probable, quantifiable, and non-routine needs. This recommendation would ensure the agency does not unnecessarily tie up regulatory fees in high fund balances without clear justification, and that the Real Estate Commission and Appraiser Board maintain active oversight.

Fiscal Implication

Overall, the recommendation to put the agency under the SDSI Act would result in a gain to the state of \$89,750 over the next five fiscal years, with the remittal of the board's administrative penalties to the General Revenue Fund. The other recommendations would have no fiscal impact to the state because of the agency's SDSI status, which requires the agency to cover the cost of regulation through fees.

Recommendation 1.1 would increase revenue to the General Revenue Fund by an estimated \$17,950 per year by requiring the agency to remit Appraiser Board penalties to the General Revenue Fund. In fiscal year 2017, the board assessed \$17,950 in administrative penalties.

The other recommendations requiring the agency to develop best practice policies for better oversight of the agency could be accomplished with existing resources, and would not have a significant impact on agency expenditures.

Real Estate Commission and Appraiser Board

Fiscal Year	Gain to the General Revenue Fund	Decrease in Revenue to the Agency
2020	\$17,950	\$17,950
2021	\$17,950	\$17,950
2022	\$17,950	\$17,950
2023	\$17,950	\$17,950
2024	\$17,950	\$17,950

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

² Home loans are bought and sold between lenders and investors in the secondary mortgage market. Fannie Mae and Freddie Mac are part of the process, and they purchase home mortgages from banks, bundle them into mortgage-backed securities, and resell them to other investors such as pension funds, insurance companies, and hedge funds.

³ McConnell & Jones LLP, *Internal Audit of Human Resource Functions Related to Compensation, Recruiting and Retention* (Austin: McConnell & Jones LLP, February 27, 2018), 5.

⁴ Dave Lieber, “ICYMI, a Texas state official sent you an apology note last week,” *Dallas Morning News*, April 19, 2018, <https://www.dallasnews.com/news/watchdog/2018/04/19/icymi-texas-state-official-sent-apology-note-last-week>.

⁵ McConnell & Jones LLP, *Diagnostic Review of the Reception and Communication Service Call Center Operations* (Austin: McConnell & Jones LLP, June 21, 2018), 10.

⁶ *Ibid.*, 6.

⁷ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.texas.gov/>. Section 1103.552, Texas Occupations Code.

ISSUE 2

Key Elements of the Real Estate Commission's and Appraiser Board's Licensing Functions Do Not Conform to Common Licensing Standards.

Background

The Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board issue and renew 20 types of licenses, certifications, registrations, and approvals for individuals and entities that offer real estate and appraisal services in Texas. In fiscal year 2017, the commission regulated about 145,000 active individuals and 10,000 businesses, while the board regulated about 6,100 appraisers and 172 appraisal management companies. The table, *Commission and Board Licenses*, shows each category of regulation and the number of regulated entities in fiscal year 2017.

The Sunset Commission has a long history of evaluating licensing and regulatory agencies, asking not only if the functions of an agency continue to be needed, but also whether the agency is performing those functions in the most effective, fair, and efficient manner. Over the course of more than 40 years, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. Sunset staff continue to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the commission's and board's statutes, rules, and procedures differ from these model standards and describes potential benefits of conforming to standard practices.

Commission and Board Licenses – FY 2017

Type	Number
Real Estate Commission License	
Real Estate Broker	33,862
Broker Business Entity	9,557
Sales Agent	102,904
Real Estate Branch Office	688
Professional Inspector	3,026
Real Estate Inspector	141
Apprentice Inspector	138
Residential Service Company	46
Real Estate Commission Registration	
Easement or Right-of-Way Agent	1,922
Easement or Right-of-Way Business	50
Timeshare Plan	155
Real Estate Commission Approval	
Education Provider	500
Course Instructor	2,852
Education Course	5,042*
Appraiser Board Certification	
General Appraiser	2,398
Residential Appraiser	2,407
Appraiser Board License	
Residential Appraiser	423
Appraiser Board Registration	
Appraisal Management Company	172
Appraiser Board Approval	
Appraiser Trainee	868
Education Course	507*

* As of August 29, 2018.

Findings

Inefficient and unnecessary license types burden Real Estate Commission staff and licensees without increasing consumer protection.

- Inefficient instructor approval requirements.** Agencies should develop licensing regulation at the minimum level necessary to protect the public. In addition to approving more than 5,000 education courses, the Real Estate Commission regulates real estate and inspector educators at two levels — course providers and the instructors who must work under them. Appendix D shows the types of regulated providers and instructors, as well as the commission's approval requirements for each type. The commission ultimately holds providers, not instructors, responsible for education outcomes. Providers must oversee their instructors and may be held accountable for an instructor's actions. Further, statute requires providers to show their students met certain pass rates on licensure exams before the commission renews their approval.¹ Instructors are not held similarly responsible for their students' performance. While the Appraiser Board has statutory authority to approve providers, instructors, and courses, staff currently approve courses only and are developing a process to approve providers.² Similarly, most other professions rely on education providers, rather than state agencies, to approve and hire instructors.

The commission unnecessarily regulates real estate and inspector educators at two levels.

Two outcomes suggest the Real Estate Commission's instructor approval process does not enhance consumer protection but instead contributes to administrative burden. First, instructors pose little risk to the public. In fiscal year 2017, the Real Estate Commission took only two disciplinary actions against instructors for minor offenses including teaching expired courses and violating advertising rules. The commission disciplined providers alongside instructors in both cases. Second, instructor approvals unnecessarily burden staff with manual reviews of paper applications and résumés. On average, staff take about 21 days to process each application for initial instructor approval, but they seldom deny applications. In fiscal year 2017, staff reviewed about 470 initial instructor approval applications and denied only three. That same year, staff did not deny a single application for an instructor's renewal or reinstatement.

Eliminating the instructor approval process would allow staff to focus on activities that directly protect consumers.

Eliminating the instructor approval process would allow staff to focus their time on activities that directly impact consumer protection, such as proactive, risk-based audits of education providers and courses, rather than perfunctory instructor approvals. To ensure instructor competence, the Real Estate Commission could instead set minimum instructor education and experience standards in rule for providers to apply, and could enforce provider compliance when necessary. Similarly, after the Appraiser Board finalizes its own provider approval process, the board could set and enforce instructor standards for its providers, ensuring consistency between the commission's and board's practices. This change would remove unnecessarily duplicative levels of regulation while maintaining a provider's statutory and market incentives to hire high quality instructors.

- **Unnecessary branch office licensure requirements.** Agencies should institute licensure requirements only when they serve a clear public protection purpose. Though branch offices pose no risk to consumers, statute requires brokers to obtain a license for each office address where they transact business beyond their initial fixed office.³ Every two years, brokers must submit a paper application and pay a fee to maintain each of their branch office licenses. In fiscal year 2017, the Real Estate Commission issued 295 branch office licenses and 393 renewals, but took no enforcement action on this license type. Licensing branch offices places an unnecessary administrative burden on brokers and commission staff without decreasing risk for consumers who visit the offices. Alternative means, such as an online notification system, would allow the commission to gather any address information necessary for contacting brokers without requiring a bureaucratic licensure process. Replacing this license type with a less burdensome notification process would reduce needless licensing costs and increase staff efficiencies while maintaining the same level of public protection.

Licensing branch offices burdens staff without decreasing risk to consumers.

Redundant and subjective licensure requirements create barriers to entry and place needless burdens on applicants and staff.

- **Ineffective and redundant education requirements.** Education requirements should be the minimum necessary to ensure an entry-level professional is competent to serve the public. Requirements for inspector licenses in Texas are currently higher than those in other states. Most inspector applicants bypass the entry-level license types to become professional inspectors — a path requiring about 400 hours of coursework and fieldwork. Applicants in New Jersey (the state with the second highest inspector education requirement) must complete only 180 hours for a comparable license.

Requiring a high number of pre-licensing education hours does not guarantee better mastery of the profession. For example, unnecessary redundancies exist throughout the commission's education requirements for real estate and professional inspectors. Applicants taking the "fast track" to a professional inspector license must complete three of the same courses twice before taking the licensure exam. Though the commission put redundancies in place to bolster applicants' ability to retain key information, declining exam pass rates show these requirements do not increase inspector competency, as demonstrated in the table on the following page, *Overall Pass Rates on Inspector License Exams*. Instead, exceptionally high and repetitive education requirements saddle applicants with additional costs and create inefficiencies when staff must review course completion certificates, especially those submitted for redundant courses. Removing redundancies and streamlining inspectors' pre-licensing education requirements to improve both their quality and efficiency would ensure new licensees receive the information they need to competently serve the public while decreasing unnecessary burdens on applicants and staff.

The commission requires certain inspector applicants to take three courses twice.

Overall Pass Rates on Inspector License Exams — FYs 2013–2017

License Type	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Real Estate Inspector	58%	50%	43%	37%	38%
Professional Inspector	54%	60%	54%	50%	47%

- **Subjective and arbitrary qualifications for licensure.** Qualifications for licensure should not overburden applicants or unreasonably restrict entry into practice. Currently, statute and rule require various individual applicants to be “of good moral character” before the Real Estate Commission or Appraiser Board may issue a license, certification, registration, or approval.⁴ Good moral character is a subjective, vague requirement that may be determined inconsistently. In reviewing applications, the commission and board rely on several provisions in statute and rule that set out guidelines for denying a license based on criminal history.⁵ Removing the requirement that applicants be of good moral character would be in line with the commission’s and board’s current practice of denying licenses based on criminal history directly related to the real estate and appraisal professions.

Residency requirements serve as barriers to entry into the real estate and appraisal professions.

Further, the Real Estate Commission and Appraiser Board arbitrarily require various applicants to establish Texas residency before they may obtain a license. For example, an applicant must establish residency before becoming a licensed apprentice inspector; however, if that same applicant bypasses the apprentice license to become a higher-level inspector, the residency requirement no longer applies. The commission and board already have sufficient pre-licensing requirements in place to ensure applicants are qualified to practice in Texas without requiring them to establish residency. Staff review out-of-state applicants in the same manner they review in-state applicants to ensure each person meets Texas’ robust education and experience qualifications. Residency requirements do not enhance consumer protection but rather serve as unnecessary barriers to entry into the real estate and appraisal professions. Removing these requirements would increase opportunities for qualified out-of-state applicants to obtain a Texas license without decreasing necessary safeguards for consumers and the public.

Licensing provisions in the Real Estate Commission’s and Appraiser Board’s statutes do not follow model standards and could potentially jeopardize consumer protection.

- **Lack of authority to deny license renewals for noncompliance.** The authority to deny license renewals based on the applicant’s failure to comply with a current administrative order bolsters an agency’s enforcement efforts and helps ensure disciplined licensees fulfill their responsibilities to consumers, other licensees, and the agency. Neither the Real Estate Commission nor the Appraiser Board has this authority, requiring staff to renew and subsequently suspend a person’s license until that license holder

comes into compliance. This approach requires additional staff resources and does not ensure disciplined licensees comply with orders designed to protect the public in a timely manner. Authorizing the commission and board to consider a license holder's compliance history during the renewal process would increase efficiencies and expand the tools available to staff to protect consumers.

Recommendations

Change in Statute

2.1 Eliminate instructor approval authority.

This recommendation would eliminate the Real Estate Commission's authority to approve real estate and inspector instructors. Under this recommendation, the commission would maintain the provider approval process and rely on provider expertise and business incentives to hire qualified instructors. This recommendation would also eliminate the Appraiser Board's unused authority to approve instructors to align with its current practices. The commission and board would be authorized to adopt rules setting minimum instructor education and experience standards for providers to apply, and would enforce compliance with these standards when necessary. Removing instructor approval authority would allow staff to focus on more significant licensing and education responsibilities, thereby increasing efficiency and dedicating limited resources to activities that directly impact consumer protection.

2.2 Eliminate the branch office license.

This recommendation would eliminate the branch office license to reduce unnecessary regulation without jeopardizing public protection. As part of this recommendation, the Real Estate Commission would be directed, as a management action, to develop a process by which brokers would timely provide staff with information about their places of business electronically and at no cost to brokers. Replacing the branch office license with a notification system similar to online tools the commission already has in place would allow the commission to retain access to a broker's business addresses while reducing administrative burden on staff and license holders.

2.3 Remove a subjective qualification required for licensure applicants.

This recommendation would remove the requirement for applicants to be "of good moral character," which is vague and subjective. The Real Estate Commission and Appraiser Board would continue to review an applicant's criminal history to determine the applicant's eligibility for licensure, certification, registration, or approval according to requirements in Chapter 53, Texas Occupations Code. Eliminating this requirement would ensure that, going forward, all criminal history licensure qualifications remain directly related to the fields of real estate and appraisal and do not unreasonably restrict entry into practice.

2.4 Remove statutory provisions requiring certain applicants to establish Texas residency before obtaining a Texas real estate license or appraiser approval.

This recommendation would remove statutory provisions requiring brokers, sales agents, apprentice inspectors, and appraiser trainees to establish Texas residency before applying for a real estate license or appraiser approval. Eliminating residency requirements would remove an arbitrary barrier to entry into the real estate and appraisal professions without negatively impacting consumer protection.

2.5 Authorize the Real Estate Commission and Appraiser Board to deny license renewal applications for noncompliant applicants.

Under this recommendation, the Real Estate Commission and Appraiser Board would have the discretion to determine whether noncompliant applicants could continue providing services without harm to the public or if their renewal applications should be denied. An applicant could appeal the denial in the same manner as other license denials. Authority to deny renewals would further protect consumers, bolster enforcement efforts, and provide a greater incentive for licensees to comply with commission and board orders in a timely manner.

Management Action

2.6 Direct the Real Estate Commission to review and streamline its inspector pre-licensing education requirements.

Under this recommendation, the Real Estate Commission would review and streamline its inspector education requirements to ensure they are meaningful, efficient, and not unnecessarily burdensome. This recommendation would require the commission, during its review, to eliminate redundancies for inspector applicants and consider reducing the total number of required education hours without compromising inspector competency. In implementing this recommendation, the commission should consult with the Real Estate Inspector Committee and other stakeholders, as well as assess education requirements for comparable licenses in other states. Reviewing and streamlining inspector pre-licensing requirements would help improve educational quality, eliminate unnecessary costs for inspector applicants, and simplify application processing for staff.

Fiscal Implication

These recommendations would not have a fiscal impact to the state because the Real Estate Commission is a self-directed semi-independent agency and therefore is exempt from the legislative appropriation process. As such, the Legislature made the commission and Appraiser Board responsible for charging fees to cover the cost of regulation, so any savings or costs would be passed on to license holders. These recommendations would have a negative fiscal impact to the Real Estate Commission of approximately \$209,300 annually resulting from revenue losses due to the elimination of instructor approval authority and the branch office license. This decrease in revenue would be offset by a corresponding decrease in workload for staff who currently process instructor and branch office applications.

Recommendation 2.1 would eliminate the approval process for real estate and inspector instructors, resulting in an approximate annual loss of \$174,750 from licensing fees. The Real Estate Commission charges \$150 for two-year approvals, renewals, and reinstatements for real estate education instructors.⁶ In fiscal year 2017, the commission received 447 initial approval applications, 469 renewal applications, and 232 reinstatement applications from real estate instructors. The commission also charges \$50 for two-year approvals, renewals, and reinstatements for inspector instructors.⁷ In fiscal year 2017, the commission received 24 initial approval applications, 23 renewal applications, and four reinstatement applications from inspector instructors.

Recommendation 2.2 would eliminate the branch office license, resulting in an approximate annual loss of \$34,550 from licensing fees. The Real Estate Commission charges \$50 for each two-year license and renewal.⁸ In fiscal year 2017, the commission received 298 branch office applications and issued 393

renewals. This recommendation would also require the commission to develop an electronic process through which brokers must notify the commission of their business addresses. However, staff indicate they could develop this process with existing resources.

Texas Real Estate Commission

Fiscal Year	Decrease in Revenue to the Agency
2020	\$209,300
2021	\$209,300
2022	\$209,300
2023	\$209,300
2024	\$209,300

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.texas.gov/>. Sections 1101.301(c) and 1101.301(e), Texas Occupations Code.

² Section 1103.153, Texas Occupations Code.

³ Section 1101.552(c), Texas Occupations Code.

⁴ Sections 1101.353, 1102.106, 1104.102(c)(1), and 1104.104(b)(3), Texas Occupations Code; 22 T.A.C. Sections 535.52, 153.19, 159.104(e), 159.105(b), 159.105(e), and 159.105(h).

⁵ Chapter 53, Texas Occupations Code; 22 T.A.C. Sections 535.52, 541.1, 153.19, and 159.105.

⁶ 22 T.A.C. Section 535.101(a)(21).

⁷ 22 T.A.C. Section 535.210(a)(22).

⁸ 22 T.A.C. Section 535.101(a)(8).

ISSUE 3

The Real Estate Commission's and Appraiser Board's Enforcement Processes Cannot Fully Ensure Fair Treatment of Licensees and Complainants.

Background

The Texas Real Estate Commission enforces laws and rules related to the real estate industry. An array of license holders, including brokers, agents, and home inspectors, are subject to the commission's enforcement authority. The Texas Appraiser Licensing and Certification Board enforces laws, rules, and federally adopted Uniform Standards of Professional Appraisal Practice. Appraisers and appraisal management companies are subject to the board's enforcement authority.

Unlike other regulatory functions staff perform, the Real Estate Commission's and Appraiser Board's enforcement functions operate separately to ensure compliance with federal appraiser independence laws. To carry out their duties, the commission employs six investigators, and the board employs five investigators. In fiscal year 2017, the commission and board dedicated about 30 percent of their combined expenditures to enforcement activities. The commission and board independently investigate complaints against their respective license holders, as well as individuals engaging in unlicensed activities. As necessary, the commission and board take disciplinary action for violations of statute or rule ranging from advisory letters to license revocation.

The Sunset Commission has a long history of evaluating licensing and regulatory agencies, asking not only if the functions of an agency continue to be needed, but also whether the agency is performing those functions in the most effective, fair, and efficient manner. Over the course of more than 40 years, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. Sunset staff continue to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the commission's and board's statutes, rules, and procedures differ from these model standards and describes potential benefits of conforming to standard enforcement practices.

Findings

Undefined and nonstandard enforcement practices could affect the Real Estate Commission's and Appraiser Board's fair and efficient resolution of complaints.

- **No maintenance of complainants' confidentiality.** To the extent possible, licensing agencies should protect the identity of complainants. When investigating complaints, the Real Estate Commission and Appraiser Board send a copy of the complaint, which includes the complainant's name, directly to the respondent. Failing to redact a complainant's identifying information potentially puts individuals at risk of retaliation and may discourage homeowners and license holders from filing necessary, legitimate

complaints. While license holders may ultimately learn who filed a complaint against them as the investigation process moves forward, many licensing agencies do their best to protect the identity of complainants for as long as possible. Maintaining complainants' confidentiality ensures an agency does not create an unnecessary barrier to filing complaints and may increase the likelihood that consumers and license holders bring substantive issues to light.

- **Lack of a comprehensive written complaint process.** Clear rules and procedures should guide an agency's entire complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public. Rules and procedures help ensure agency staff take appropriate and consistent action. The Real Estate Commission lacks comprehensive rules and a policy manual detailing each step of its complaint process, including clear standards for how quickly staff must initially evaluate and respond to complaints. Developing clear rules and procedures would provide license holders and the general public with the resources necessary to fully understand the complaint process.
- **Incomplete tracking of nonjurisdictional complaints.** High quality service to the public requires licensing agencies to have procedures in place for tracking and referring nonjurisdictional complaints. When the Real Estate Commission and Appraiser Board receive nonjurisdictional complaints, staff attempt to refer complainants to the entity that has authority over their concern. While the commission and board report the total number of nonjurisdictional complaints they receive each month, staff do not collect comprehensive information about each complaint's subject matter and the agency with authority over the complaint. Without this information, the state cannot identify gaps in enforcement across multiple state agencies. For example, various aspects of home warranty regulation enforced by the Real Estate Commission, Texas Department of Licensing and Regulation, and Texas Department of Insurance cause confusion among consumers who may not know which agency has the power to handle their particular complaint. Maintaining and sharing clear data on nonjurisdictional complaints could help the commission and board better identify potential areas of regulatory concern, decrease public confusion, and enhance coordination with other government entities.
- **Unclear authority to administratively dismiss complaints.** A licensing board should have the authority to both dismiss certain low-level complaints and delegate this authority to its staff, provided staff inform the board of all such dismissals. The Real Estate Commission does not have clear statutory authority to dismiss complaints. Instead, staff close certain complaints for various reasons, including insufficient evidence or no violation, and report the number of closed complaints to commission members each quarter. By contrast, the Appraiser Board has statutory authority to dismiss complaints deemed inappropriate or without merit.¹ The board permits staff to carry out this authority, though board members regularly review data on complaint dismissals.² Giving the commission specific statutory

Collecting comprehensive information about nonjurisdictional complaints can help identify gaps in enforcement across multiple agencies.

authority to dismiss low-level complaints and delegate this authority to its staff would better align the commission's and board's practices.

The Appraiser Board's complaint resolution process does not formally categorize violations based on risk and is slow, potentially jeopardizing consumer protection.

- **No formal prioritization of complaint investigations.** Addressing complaints based on the risk they pose to the public focuses an agency's attention where it is needed most. An Appraiser Board rule requires staff to triage complaints by first evaluating whether sufficient evidence exists to open an investigation or not.³ Beyond this initial complaint screening, the board does not use a formal process for prioritizing complaints that pose the greatest risk to consumers, a critical component of an effective investigative process. Developing and implementing an explicit complaint prioritization process like that of the Real Estate Commission would help ensure staff allocate their time and resources to resolving high-risk complaints over those presenting little risk of harm to consumers and the public.
- **Slow complaint resolution.** Agencies should ensure complaint investigations are completed in a reasonable amount of time to protect the public from licensees who require disciplinary action and from unlicensed activity. Federal guidelines require the Appraiser Board to resolve complaints within one year, and the board has met this requirement since 2014. However, the board set an internal goal to resolve complaints within 275 days and has failed to meet this goal for the past five years. On average, the board took about 313 days to resolve a complaint during fiscal year 2017. This complaint resolution timeframe lags behind those of other licensing agencies with self-directed semi-independent status, as shown in the table, *Comparison of Complaint Resolution Timeframes*.

On average, the board took 313 days to resolve a complaint in fiscal year 2017.

**Comparison of Complaint Resolution Timeframes
FYs 2013–2017**

Fiscal Year	Appraiser Board	Board of Public Accountancy	Board of Architectural Examiners	Board of Professional Engineers
2013	422	213	191	95
2014	320	191	171	109
2015	326	162	125	101
2016	281	149	148	107
2017	313	245	72	110

The Appraiser Board's hiring practices and staff divisions of labor contribute to slow complaint resolution. Although federal guidelines require investigators to merely be knowledgeable about appraisal standards, the board has chosen to hire only licensed and certified appraisers as investigators. As a result, the board has struggled to fill investigator

Staffing shortages and heavy workloads slow down the board's enforcement process.

positions, leading to personnel shortages particularly among staff who handle commercial appraisal complaints. In addition to their complaint investigation responsibilities, investigators must also assist with licensing activities, such as conducting federally mandated audits of applicants' work to ensure compliance with statute, rules, and federal standards. Staffing shortages and heavy workloads result in longer complaint resolution timeframes, allowing appraisers whose licenses may require suspension or revocation to continue offering services to an unknowing public.

Insufficient enforcement tools reduce the Appraiser Board's effectiveness in protecting consumers.

- **No refund authority.** Some regulatory agencies can order refunds instead of, or in addition to, imposing an administrative penalty or other sanction on licensees. These agencies may order a refund when a license holder defrauds a consumer or subjects a consumer to a loss that can be quantified, such as the cost of a home appraisal. Unlike the Real Estate Commission, the Appraiser Board does not have statutory authority to order a license holder to refund a consumer even though the board receives complaints involving undelivered or deficient appraisal reports.⁴ In these instances, the ability to grant a refund would give the board an additional enforcement tool to help make consumers whole again after they have been defrauded.

Recommendations

Change in Statute

3.1 Require the Real Estate Commission and Appraiser Board to maintain complainants' confidentiality when possible.

This recommendation would require the Real Estate Commission and Appraiser Board to maintain complainants' confidentiality to the extent possible by excluding complainants' identifying information from complaint notices sent to respondents. By better protecting complainants' identities, this recommendation would decrease the public's and license holders' fear of retaliation when filing complaints, while ensuring licensees still have access to all information necessary when responding to complaints.

3.2 Authorize the Real Estate Commission to dismiss low-level complaints and to delegate this authority to staff.

This recommendation would allow the Real Estate Commission to dismiss minor complaints and delegate this authority to staff, provided staff inform commission members of complaints disposed of under this authority. This recommendation would promote consistency between the commission and Appraiser Board.

3.3 Authorize the Appraiser Board to order refunds to consumers.

This recommendation would authorize the Appraiser Board to require a licensee to refund a qualified consumer for insufficient services. The amount of the refund could not exceed the amount the consumer paid the license holder and would not include any additional consideration of damages or harm. Any requirement to issue a refund may be in lieu of or in addition to other sanctions ordered against a licensee.

In addition, as a management recommendation, the board should revise its penalty matrix to account for its refund authority. This recommendation would allow the board to take more effective action when consumer harm can be quantified and offer relief to consumers without the need for separate civil court action to recover these amounts.

Management Action

3.4 Direct the Real Estate Commission to develop standard rules and procedures for handling each phase of the complaint process.

Under this recommendation, the Real Estate Commission would develop standard rules and procedures that lay out and document the complaint process. The recommendation would apply to all complaints made to the commission. The commission would be required to clearly define policies in rule for all phases of the complaint process from receipt to disposition, including timeframes for initial evaluations of and responses to complaints. Staff would also develop a policy manual to outline procedures for handling complaints consistently and effectively across the commission.

3.5 Direct the Real Estate Commission and Appraiser Board to document and track nonjurisdictional complaints.

This recommendation would direct the Real Estate Commission and Appraiser Board to document the subject matter of nonjurisdictional complaints and maintain information about where they refer these complaints, rather than simply reporting the total number of nonjurisdictional complaints received. Tracking nonjurisdictional complaints would enable the commission and board to identify trends and share information about potential areas of regulatory concern with other agencies.

3.6 Direct the Appraiser Board to prioritize complaint investigations based on the risk each complaint poses to the public.

Under this recommendation, the Appraiser Board would develop a formal process for prioritizing the order in which investigators handle complaints based on the risk of public harm. To comply with this recommendation, the board could consider developing a system to rate complaints numerically based on various factors including, but not limited to, the type and nature of the allegation, the respondent's previous complaint history, the seriousness of the issues identified, and the number of instances of alleged conduct involved in the complaint. A more formalized prioritization process would help ensure staff direct resources to investigating violations that jeopardize consumer protection in a timely manner.

3.7 Direct the Appraiser Board to develop a plan to improve its investigative process and reduce complaint resolution timeframes.

This recommendation would direct the Appraiser Board to develop a plan to identify and address the factors in its investigative process that contribute to long complaint resolution timeframes. The plan should include the following:

- Identify stages of the investigative process that delay complaint resolution and implement clear policies to minimize identified bottlenecks.
- Assess hiring practices and develop strategies for filling staff vacancies with individuals who qualify for employment under federal oversight standards.
- Expand and update performance measures for investigators, including tracking and documenting how investigators spend their time.

- Develop policies to train investigators on how to prioritize their complaint caseloads and licensing responsibilities.

The plan should help ensure Appraiser Board staff investigate complaints as thoroughly as necessary before closing each case, as quality should not suffer to gain more expedient complaint resolution. Board members should develop the plan with input from staff and stakeholders.

Fiscal Implication

These recommendations would not have a fiscal impact to the state because the Real Estate Commission is a self-directed semi-independent agency and therefore is exempt from the legislative appropriation process. These recommendations also would not have a fiscal impact to the Real Estate Commission or Appraiser Board and could be accomplished with existing resources.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.texas.gov/>. Section 1103.452(c), Texas Occupations Code.

² 22 T.A.C. Sections 153.24(b).

³ 22 T.A.C. Section 153.24(g).

⁴ Section 1101.659, Texas Occupations Code.

ISSUE 4

The Real Estate Commission's and Appraiser Board's Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Background

Over the years, Sunset reviews have included a number of standard review elements from direction provided by the Sunset Commission, statutory requirements added by the Legislature to the Criteria for Review in the Texas Sunset Act, or general law provisions imposed on state agencies. This review identified changes needed to conform the Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board statutes to Sunset across-the-board recommendations (ATBs), to authorize the Appraiser Board to create advisory committees in rule, and to address the need for the agency's required reports.¹ Also, this review assessed whether the agency's cybersecurity practices were in compliance with state requirements and industry best practices.

Findings

The Real Estate License Act and the Texas Appraiser Licensing and Certification Act do not reflect standard language typically applied across the board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These ATBs reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

Because the Appraiser Board has not been separately reviewed under Sunset before, its statute does not contain several ATB provisions, and others must be updated. The Real Estate Commission's statute lacks an updated ATB provision related to commission member training. Each provision is discussed in more detail below.

- **Public membership.** The Appraiser Board's statute does not include the standard provision relating to public membership on state agency policymaking bodies that prevents a person from serving as a public member of the board if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the board. This provision better ensures the Appraiser Board is more responsive to the public's broad interests rather than the regulated profession affected by the activities of the board.

The board lacks several across-the-board provisions.

Commission and board training should be updated to address potentially anticompetitive behavior.

Maintaining more complete complaint information would help the agency address problems more quickly.

- **Conflict of interest.** The Appraiser Board's statute contains language specifying the governor ensure the board is independent of a trade association, profession, or industry in making appointments. However, the statute lacks specific provisions defining a trade association, prohibiting a board member or the board's general counsel from lobbying on behalf of appraiser interests, and prohibiting high-ranking agency employees and their spouses from being closely affiliated with an appraiser professional trade association.
- **Grounds for removal.** The Appraiser Board's statute does not reflect all of the standard language related to the statutory basis and process for removing a member of a policymaking body. Specifically, it does not state that someone is ineligible for membership if that person violates public membership, conflict of interest, or lobbyist provisions.
- **Board member training.** Neither the Real Estate Commission's nor the Appraiser Board's statutes reflect updated requirements for policymaking body member training. The commission and board statutes contain standard language requiring policymaking body members to receive training and information necessary for them to properly discharge their duties. However, the statutes do not contain a newer requirement that the agency create a training manual for all commission and board members or specify that the training must include a discussion of the scope of and limitations on the policymaking body's rulemaking authority. The commission's and board's statutes should be modified by adding a provision adopted by the Sunset Commission in January 2017 to address concerns of potentially anticompetitive behavior.
- **Policymaking and staff functions.** The Appraiser Board's statute does not provide for separating the policymaking functions of the board from the day-to-day administrative functions of agency management. Such a provision can help avoid confusion about who is in charge of operations, which can undermine an agency's effectiveness.
- **Public testimony.** The Appraiser Board's statute does not require policies that provide an opportunity for the public to appear and speak before the board on issues under its jurisdiction, though the board takes public testimony at its meetings. Requiring such policies in law underscores the continuing importance of public input as a source of additional information and perspective to improve the overall decision-making process.
- **Complaint information.** The Appraiser Board's statute does not require the agency to maintain complete information on complaints, though the agency has a complaint tracking process. Having requirements in law would help maintain a system for acting on complaints and keeping proper documentation of complaints to ensure that problems will be addressed and in a timely fashion.

- **Alternative dispute resolution.** The Appraiser Board's governing statute does not include a standard provision relating to alternative rulemaking and dispute resolution. This provision helps improve rulemaking and dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

The Appraiser Board's statutory advisory committee is about to expire.

The Sunset Act directs the Sunset Commission to evaluate the need for an agency's advisory committees.² The Appraiser Board has one statutory advisory committee, the Appraisal Management Company (AMC) Advisory Committee, which advises and makes recommendations to the board on issues related to the regulation of AMCs.³ The composition of the committee can be found in the accompanying textbox.

Appraisal Management Company Advisory Committee Membership

The advisory committee consists of five members including

- the assistant presiding officer of the Appraiser Board;
- two governor-appointed members who are controlling persons of an AMC; and
- two governor-appointed public members.

The Texas Government Code establishes the duration of statutory advisory committees at four years from the anniversary of the advisory committee's creation.⁴ The AMC Advisory Committee will expire on January 1, 2020, unless the board takes action to extend it by rule. Given the unique interests of AMCs and their lack of representation on the Appraiser Board, the board would benefit from having this advisory committee and having statutory authority to formally establish advisory committees in rule as needed.

The agency's two required reports are no longer necessary.

The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.⁵ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are also not included, nor are routine notifications or notices, or posting requirements.

The agency has two statutory reporting requirements, as reflected in the chart on the following page, *Agency Reporting Requirements*. Sunset recommends eliminating these two reports related to the agency's self-directed semi-independent status since Issue 1 recommends placing the agency under the Self-Directed Semi-Independent (SDSI) Act which has its own reporting requirements.

Agency Reporting Requirements

Report	Legal Authority	Description	Recipients	Sunset Evaluation
1. SDSI Biennial Report	Section 1105.005(b), Texas Occupations Code	This report requires the agency to biennially report any State Auditor Office audits, financial reports, changes in fees, changes in agency jurisdiction, and new rules.	Governor, Legislature	Eliminate
2. SDSI Annual Report	Section 1105.005(c), Texas Occupations Code	This report requires the agency to annually report personnel salary, travel expenses, operating plan and annual budgets, and revenues and expenditures.	Governor, Senate Finance, House Appropriations, Legislative Budget Board	Eliminate

The agency should continue to implement state cybersecurity requirements and industry best practices.

The 85th Legislature tasked Sunset with assessing cybersecurity practices for agencies under review.⁶ To assess cybersecurity, staff focused on identifying whether the agency complied with state requirements and industry cybersecurity best practices. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the agency's technical infrastructure. Sunset staff communicated the results of this assessment to the agency.

Recommendations

Change in Statute

4.1 Update and apply standard across-the-board recommendations to the Real Estate Commission and Appraiser Board.

- **Public membership.** This recommendation would prohibit a public member from serving on the Appraiser Board if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.
- **Conflicts of interest.** This recommendation would define "Texas trade association," prohibit high-level agency employees from being an officer, employee, or paid consultant of an appraiser professional trade association, and prohibit high-level employees' spouses from being an officer, manager, or paid consultant of an appraiser professional trade association. It would also update statute to prohibit the agency's general counsel and board members from lobbying on behalf of appraiser interests.
- **Grounds for removal.** This provision would make it a ground for removal from the Appraiser Board if the person were ineligible to serve on the board under public membership, conflict of interest, or lobbyist provisions.

- **Board member training.** This recommendation would update existing statutory requirements for the agency to provide commission and board member training by requiring the agency to develop a training manual that each member attests to receiving annually. It would also require existing commission and board member training to include information and guidance about the scope of the commission's and board's rulemaking authority, as modified to address concerns of potentially anticompetitive behavior.
- **Separation of duties.** Under this recommendation, the Appraiser Board must adopt policies clearly defining its role of setting policy separate from staff responsibilities.
- **Public testimony.** This provision would add specific statutory language to ensure the opportunity for public input to the Appraiser Board on issues under its jurisdiction.
- **Complaint information.** This recommendation would require the agency to maintain a system for acting on all complaints, including those regarding the Appraiser Board, and that the agency make information available regarding its complaint procedures. The Real Estate Commission is required to maintain documentation on all complaints and periodically notify complaint parties about the status of complaints.⁷ A corresponding requirement for the Appraiser Board would ensure consistency in how the agency documents complaints and updates parties about their complaint status.
- **Alternative dispute resolution.** This provision would ensure the Appraiser Board develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution that conforms, to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency would coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

4.2 Authorize the Appraiser Board to establish advisory committees in rule as needed.

This recommendation would authorize the Appraiser Board to create advisory committees in rule, as needed, to provide special expertise. The board should adopt rules regarding its committees in compliance with Chapter 2110 of Texas Government Code, including

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

4.3 Repeal the Real Estate Commission’s and Appraiser Board’s SDSI annual and biennial reporting requirements.

This recommendation would discontinue the two SDSI reporting requirements in Chapter 1105, Texas Occupations Code. Issue 1 recommends placing the Real Estate Commission and Appraiser Board under the SDSI Act, which has two similar reporting requirements, making these reports unnecessary.

Fiscal Implication

These recommendations would have no fiscal impact.

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

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.texas.gov/>. Section 325.013, Texas Government Code.

³ Section 1103.159, Texas Occupations Code.

⁴ Section 2110.008, Texas Government Code.

⁵ Section 325.012(a)(4), Texas Government Code.

⁶ Section 325.011(14), Texas Government Code.

⁷ Section 1101.203, Texas Occupations Code.

APPENDICES

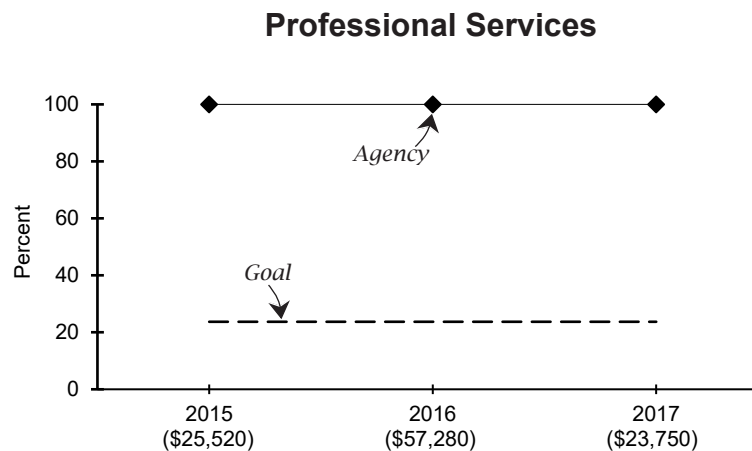
APPENDIX A

Historically Underutilized Businesses Statistics 2015 to 2017

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

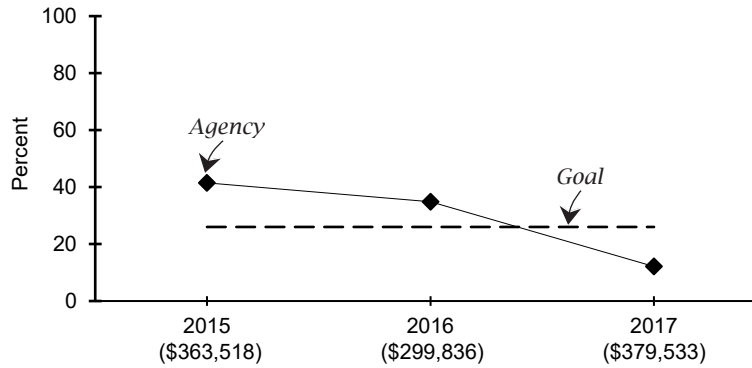
The agency far exceeded statewide goals for HUB purchases in the professional services and commodities categories each year from fiscal year 2015 to 2017. However, in fiscal year 2017, the agency fell short of the statewide goal in its largest spending category — other services.



The agency exceeded the statewide goal for HUB purchases in this category in each of the last three fiscal years.

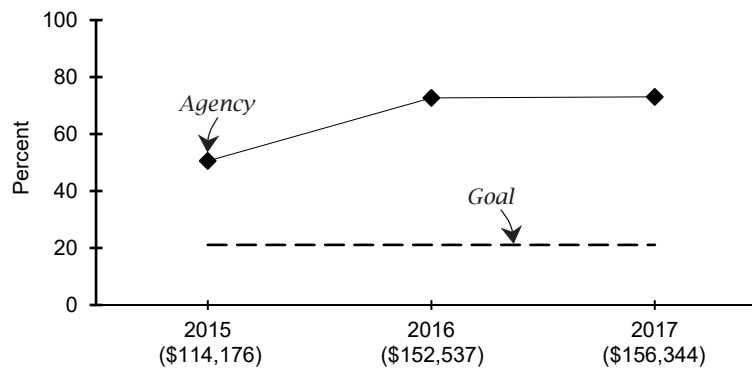
Appendix A

Other Services



The agency exceeded the statewide goal for HUB purchases in this category in fiscal years 2015 and 2016, but fell below the goal in fiscal year 2017. In 2017, the agency outsourced several projects, such as staff training and exam development, for which HUB providers were not available.

Commodities



The agency exceeded the statewide goal for HUB purchases in this category in each of the last three fiscal years.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

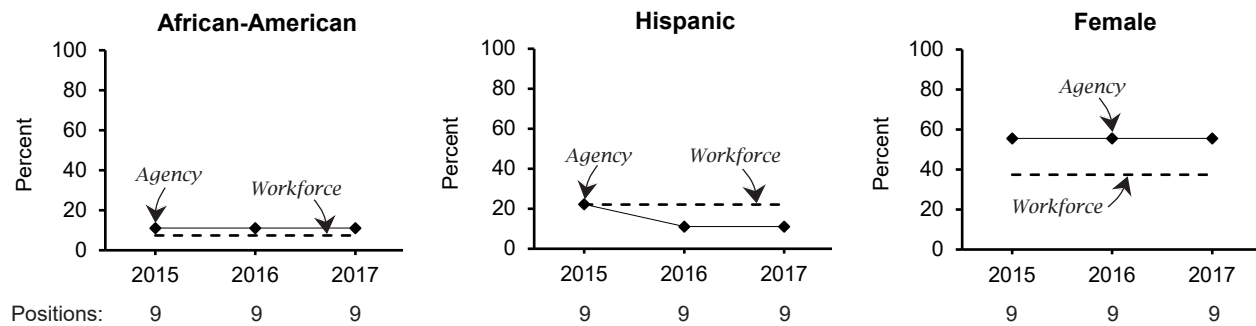
² In this report, “agency” refers to the Real Estate Commission and Appraiser Board as a combined entity with shared staff. Chapter 2161, Texas Government Code.

APPENDIX B

Equal Employment Opportunity Statistics 2015 to 2017

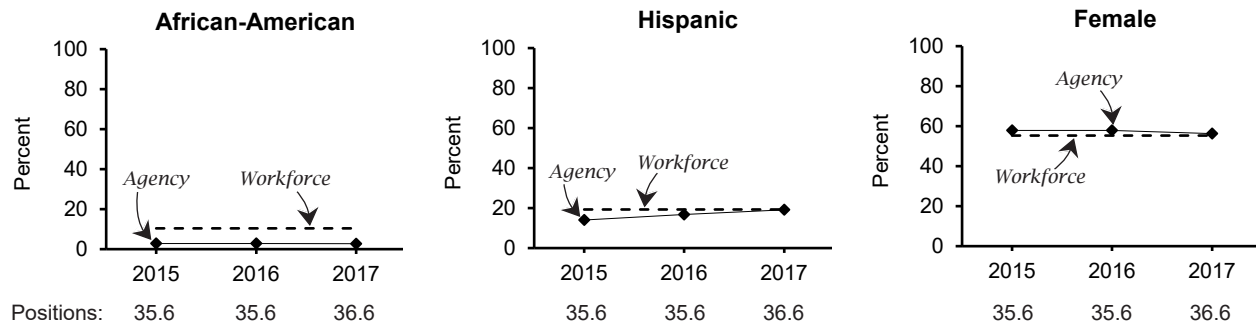
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. During this timeframe, the agency consistently fell below civilian workforce percentages for Hispanics in all categories and African-Americans in professional positions.

Administration



The agency fell below civilian workforce percentages in this category for Hispanics in fiscal years 2016 and 2017, but the agency employed few staff in this category. The agency exceeded percentages for African-Americans and females in each of the last three fiscal years.

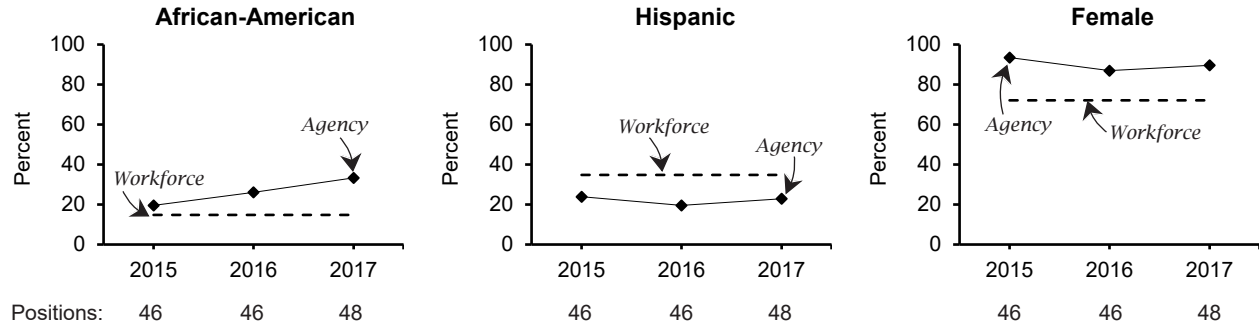
Professional



The agency fell below civilian workforce percentages in this category for African-Americans and Hispanics in each of the last three fiscal years, but exceeded percentages for females.

Appendix B

Administrative Support



The agency fell below civilian workforce percentages in this category for Hispanics in each of the last three fiscal years, but exceeded percentages for African-Americans and females.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

² In this report, “agency” refers to the Real Estate Commission and Appraiser Board as a combined entity with shared staff. Section 21.501, Texas Labor Code.

³ Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX C

Texas Real Estate Commission and Appraiser Board License Types – FY 2017

Type	Requirements	Application Fee ¹	Number
Real Estate Commission License			
Real Estate Broker	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy residency and background history requirements. • Complete 900 education hours, demonstrate four years of experience as an agent or broker, and pass an exam. • Complete practical experience with certain types of transactions. 	\$305 ²	33,862
Broker Business Entity	<ul style="list-style-type: none"> • Submit an application and fee. • Designate an active broker to act on the entity's behalf. • Submit proof of the broker's managing authority and ownership or proof of errors and omissions insurance. • Submit proof that the entity may transact business in Texas. 	\$305	9,557
Sales Agent	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy residency and background history requirements. • Find a sponsoring broker. • Complete 180 education hours and pass an exam. • Complete an additional 90 education hours before the agent's first renewal. 	\$205	102,904
Branch Office	Submit an application and fee.	\$50	688
Professional Inspector	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy background history requirements. • Submit proof of financial responsibility. • Complete 130 education hours, demonstrate a combination of additional education hours and experience, and pass an exam. • Pay \$10 deposit into the Real Estate Inspection Recovery Fund. 	\$120 ²	3,026
Real Estate Inspector	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy background history requirements. • Find a sponsoring professional inspector. • Submit proof of financial responsibility. • Complete 90 education hours, demonstrate a combination of additional education hours and experience, and pass an exam. • Pay \$10 deposit into the Real Estate Inspection Recovery Fund. 	\$100 ²	141

Appendix C

Type	Requirements	Application Fee ¹	Number
Apprentice Inspector	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy residency and background history requirements. • Provide a current photo. • Find a sponsoring professional inspector. • Submit proof of financial responsibility. 	\$60 ²	138
Residential Service Company	<ul style="list-style-type: none"> • Submit an application and fee. • Submit financial statements and reinsurance or security. 	\$3,500	46
Real Estate Commission Registration			
Easement or Right-of-Way (ERW) Agent	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy background history requirements. • Provide a current photo. 	\$290 ²	1,922
ERW Business	<ul style="list-style-type: none"> • Submit an application and fee. • Designate an ERW agent to act on behalf of the business entity. • Submit proof that the entity may transact business in Texas. 	\$290	50
Timeshare Plan	Submit an application and fee.	Formula ³	155
Real Estate Commission Approval			
Education Provider	See Appendix D.	\$400	500
Course Instructor	See Appendix D.	\$50–150	2,852
Education Course	Submit an application (which may include various documents such as a timed course outline and banks of exam questions), fee, and corresponding course approval forms for certain courses.	\$50 base fee ⁴	5,042 ⁵
Appraiser Board Certification			
General Appraiser	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy background history requirements. • Hold a bachelor's degree or higher. • Complete 300 education hours, demonstrate 3,000 experience hours over a period of at least 18 months, and pass an exam. 	\$405 ⁶	2,398
Residential Appraiser	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy background history requirements. • Demonstrate various levels of higher education or five years of experience as a licensed appraiser. • Complete an additional 200 education hours, demonstrate 1,500 experience hours over a period of at least 12 months, and pass an exam. 	\$355 ⁶	2,407

Appendix C

Type	Requirements	Application Fee ¹	Number
<i>Appraiser Board License</i>			
Residential Appraiser	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy background history requirements. • Complete 150 education hours, demonstrate 1,000 experience hours over a period of at least six months, and pass an exam. 	\$330 ⁶	423
<i>Appraiser Board Registration</i>			
Appraisal Management Company	<ul style="list-style-type: none"> • Submit a fee and application, including a certificate of good standing. • Submit certain information on the company's owners, the primary contact, and the appraiser contact. 	\$3,399	172
<i>Appraiser Board Approval</i>			
Appraiser Trainee	<ul style="list-style-type: none"> • Submit an application and fee, and satisfy residency and background history requirements. • Find a certified supervisor. • Complete 79 education hours. 	\$305	868
Education Course	<ul style="list-style-type: none"> • Submit an application. • Submit a letter indicating course approval from the federal Appraiser Qualifications Board or another state's appraiser regulatory board. 	\$0	507 ⁵

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¹ An additional \$20 fee may apply if certain applications are submitted on paper instead of online.

² Applicants must pay an additional \$27 if they were previously fingerprinted for another Real Estate Commission or Appraiser Board license.

³ An applicant for registration of a timeshare plan must pay a filing fee ranging from \$500–\$3,500 based on use availability.

⁴ Providers must pay additional fees based on the course's type, duration, and delivery method.

⁵ As of August 29, 2018.

⁶ After the Appraiser Board issues a license or certification to an applicant, that appraiser must pay an additional \$80 registration fee to the Appraisal Subcommittee (ASC). ASC is a federal oversight body that maintains the National Registry of Appraisers, a database with information on appraiser licenses, certifications, and disciplinary actions across the country.

APPENDIX D

Texas Real Estate Commission Approval Requirements for Education Providers and Instructors

Approval Type	Requirements
Qualifying Education (QE) Provider	<ul style="list-style-type: none"> • Submit an application and fee. • Satisfy agency standards for competency, honesty, trustworthiness, and integrity. • Demonstrate sufficient financial resources to conduct business. • Maintain a \$20,000 bond or other security. • Maintain a fixed office in Texas or designate a Texas resident as an authorized agent. • Ensure facilities are adequate and safe for administering courses.
Continuing Education (CE) Provider	<ul style="list-style-type: none"> • Submit an application and fee. • Satisfy agency standards for competency, honesty, trustworthiness, and integrity. • Maintain a fixed office in Texas or designate a Texas resident as an authorized agent.
Real Estate QE Instructor	<ul style="list-style-type: none"> • Submit an application and fee. • Satisfy agency standards for competency, honesty, trustworthiness, and integrity. • Demonstrate three years of teaching experience and <ul style="list-style-type: none"> – a college degree in a related subject area; or – five years as an active license holder. • Complete an adult education instructor training course.
Inspector QE Instructor	<ul style="list-style-type: none"> • Submit an application and fee. • Satisfy agency standards for competency, honesty, trustworthiness, and integrity. • Demonstrate three years of teaching experience and <ul style="list-style-type: none"> – a college degree in a related subject area; or – five years as an active real estate or professional inspector. • Complete an adult education instructor training course. • For certain courses, demonstrate five years as an active professional inspector and <ul style="list-style-type: none"> – perform at least 200 inspections as a professional inspector; or – have three years of experience teaching or sponsoring other inspectors.
Real Estate Non-Elective CE Instructor	<ul style="list-style-type: none"> • Hold current approval as a real estate QE instructor and satisfy requirements to teach specific qualifying classes. • Complete an approved instructor certification program on course content for the specific non-elective class an applicant wishes to teach and pass a final exam.

Appendix D

Approval Type	Requirements
Inspector Non-Elective CE Instructor	<ul style="list-style-type: none"> • Submit an application and fee. • Satisfy agency standards for competency, honesty, trustworthiness, and integrity. • Demonstrate five years as an active professional inspector and <ul style="list-style-type: none"> – perform at least 200 inspections as a professional inspector; or – have three years of experience teaching or sponsoring other inspectors. • Complete an adult education instructor training course.
Real Estate Elective CE Instructor	<ul style="list-style-type: none"> • Submit an application and fee. • Satisfy agency standards for competency, honesty, trustworthiness, and integrity.
Inspector Elective CE Instructor	<ul style="list-style-type: none"> • Submit an application and fee. • Satisfy agency standards for competency, honesty, trustworthiness, and integrity.

APPENDIX E

Staff Review Activities

During the review of the Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended Real Estate Commission, Appraiser Board, and advisory committee meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, federal and state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

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

- Interviewed members of the Real Estate Commission and Appraiser Board
- Interviewed staff from the Department of Information Resources and the Texas Department of Licensing and Regulation
- Observed the proceedings of an enforcement case at the State Office of Administrative Hearings
- Conducted a field visit and interviews with license holders

Sunset Staff Review of the
Texas Real Estate Commission
Texas Appraiser Licensing
and Certification Board

————— *Report Prepared By* —————

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