

SUNSET ADVISORY COMMISSION

FINAL REPORT



Texas Forest Service

July 2011

Sunset Advisory Commission



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

Texas Forest Service

SUNSET FINAL REPORT

JULY 2011

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, October 2010* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
 - *Hearing Material, November 2010* – Summarizes all responses from agency staff and the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission at its public hearing.
 - *Decision Material, January 2011* – Includes additional responses, testimony, or new policy issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Commission Decisions, January 2011* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency's Sunset bill.
 - *Final Report, July 2011* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency's Sunset bill.
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Summary

Summary

The demands and expectations placed on the Texas Forest Service (TFS) have grown enormously since its establishment within the Texas A&M University System almost 100 years ago. The agency has always been responsible for forest resource management and wildland firefighting, but in the last 20 years TFS has been directed to perform those duties statewide, not just in East Texas. The additional duty of responding to other disasters such as hurricanes and floods has tested the agency's ability to continue delivering high quality services with its relatively small staff.

The agency receives enthusiastic praise from many stakeholders for its forestry and firefighting expertise and its service-driven approach. Yet other stakeholders, including current and former employees, have raised concerns about the agency's management and focus. That the Legislature took the unusual step of putting an agency in higher education under Sunset review also demonstrates concern about the agency.

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

TFS is indeed an anomaly. Though housed under higher education, it is not an academic institution but is a state agency with a vital public safety function. TFS benefits from being part of the Texas A&M University System, but its reporting structure through a vice chancellor and ultimately to the Board of Regents does not provide the direct oversight of its strategic and policymaking decisions that is common for state agencies of its importance. Such direct oversight, in the form of a new commission appointed by the Board of Regents, could serve the agency well as it continues to grow to beyond its East Texas origins.

In some ways, in fact, TFS seems to operate as two separate agencies, with its East Texas Operations integrating firefighting and forestry while in the rest of the state, separate TFS staff typically provide those services. While some variation in service delivery makes sense given the diversity of the Texas landscape from East Texas pine plantations to West Texas ranchland, the agency's current organizational structure affects its ability to successfully expand statewide and should be examined and improved.

Sunset staff studied TFS' approach to its critical and costly duty of preventing and responding to wildland fires across the state. Clarifying the agency's authority to take all actions needed to respond to fires, regardless where in the state they occur, would help TFS develop a more seamless approach to wildland fires. Likewise, having a detailed wildfire protection plan would help guide the Legislature's effort to budget and plan for protecting Texans from wildland fires. Also, more fully integrating the volunteer fire service in TFS' fire response efforts could help reduce the need for costly out-of-state firefighters during severe fire seasons that exceed local or regional capacity.

Finally, Sunset staff assessed the continuing need for TFS to have its own law enforcement program. Staff determined that responsibility for wildland arson investigations in jurisdictions without their own fire investigators could be transferred to the State Fire Marshal's Office, and that timber theft investigations could be appropriately assumed by local law enforcement authorities. No other commodity has its own police force, particularly one funded by state general revenue.

The following material summarizes Sunset staff's recommendations on the Texas Forest Service.

Issues and Recommendations

Issue 1

Texas Has a Continuing Need for the Texas Forest Service, but the Agency Lacks Sufficient Oversight.

Because the State has a continuing need for statewide forestry, wildland firefighting support, and all-hazard emergency response programs, TFS should be continued and be subject to continuing Sunset reviews. While no significant benefits would result from consolidating or transferring TFS functions elsewhere, the agency lacks direct oversight common to important state agencies and would benefit from having its own dedicated policy body to provide strategic direction.

Key Recommendations

- Continue the Texas Forest Service at Texas A&M University System for 12 years.
- Create a Texas Forest Service Commission appointed by the Texas A&M University System Board of Regents to help oversee the agency.

Issue 2

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

The Texas Forest Service's statutory responsibilities require it to balance responding to wildfires and managing forest resources. Although it has met these responsibilities well, TFS has struggled over the last decade to organize itself effectively as it establishes itself as a statewide presence. In many respects, this struggle is reflected in problems with TFS' division of the delivery of its programs between forestry and firefighting and between East Texas and Central/West Texas. Directing the agency to examine its organizational structure and develop a new approach would help TFS effectively provide services across the state and maximize the productivity of its staff.

Key Recommendations

- TFS should evaluate its organizational structure to develop a more comprehensive statewide approach to delivering its services.
- The agency should cross-train program delivery staff in both firefighting and forestry programs, as appropriate.

Issue 3

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

The Texas Forest Service is the State's lead agency for helping communities prevent wildfires and for assisting local fire departments with protecting Texans and their property when fires break out. Wildfires are a significant threat beyond East Texas, but statute authorizing TFS to respond to these fires has not kept pace with change. As discussed in Issue 2 of this report, TFS has struggled organizationally and operationally to develop a seamless statewide approach to wildfire response. In addition, Texas is making significant investments in the training and equipping of volunteer firefighters, often the first to respond to the majority of wildfires. To help ensure readiness and to provide an incentive for volunteers to enhance their qualifications, TFS could ensure that firefighters who receive money to assist TFS with wildfire response are properly certified. Such an approach could also reduce the need for costly out-of-state firefighters. Additionally, with recently increased funding for the Texas Wildfire Protection Plan, TFS should formalize its approach to addressing wildfires by creating a more detailed and robust Plan. Such a Plan will better guide the Legislature's efforts to protect Texans from these fires.

Key Recommendations

- Authorize TFS to take all necessary actions to respond to all wildfires to help best protect communities.
- Authorize TFS to involve the volunteer fire service in statewide wildfire response, and ensure these personnel have needed qualifications.
- Require TFS to develop a Texas Wildfire Protection Plan to be reported to the Legislature.

Issue 4

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

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

Key Recommendations

- Require TFS to include a criterion regarding wildfire risk and threat of loss to communities when awarding VFD Assistance Program grants.
- Authorize TFS to allocate a portion of its VFD Assistance Program funding to help volunteer fire departments meet cost-sharing requirements for federal grants.

Issue 5

The Texas Forest Service's Employment of Peace Officers Overlaps Other Law Enforcement Efforts and Is an Unnecessary Use of State General Revenue.

The Texas Forest Service employs 10 peace officers to fulfill the agency's statutory charge to enforce all laws pertaining to the protection of forest land, which is primarily done through investigating suspected wildland arson and timber theft. However, arson investigation overlaps investigations already carried out by local jurisdictions and the State Fire Marshal's Office. In addition, local law enforcement is the appropriate jurisdiction to investigate timber thefts. Sunset staff did not find another commodity with a dedicated, state-funded police force, and few other states grant their forestry agency the authority to investigate arson and timber theft. Removing the statutory authority for TFS to enforce forest-related laws would eliminate unnecessary overlap of enforcement authority and expense of General Revenue.

Key Recommendations

- Remove TFS' law enforcement authority, which would result in the transfer of four staff positions to the State Fire Marshal's Office.
- Remove TFS' authority to appoint peace officers.

Fiscal Implication Summary

Issue 4 of the report could potentially draw down as much as \$4.5 million in additional federal funding for Texas, and Issue 5 of the report would result in annual savings to General Revenue of about \$600,000.

- **Issue 4** – Authorizing TFS to allocate a portion of its Volunteer Fire Department Assistance Program grant funds to help smaller departments meet cost-share requirements for Federal Emergency Management Agency (FEMA) firefighter grants could potentially increase these federal funds drawn down for Texas by as much as \$4.5 million annually, depending on the number of competitive grants FEMA ultimately approves.
- **Issue 5** – Eliminating TFS' peace officer positions would result in annual savings to General Revenue of approximately \$600,000 and the overall reduction of 7 staff positions. Sunset staff estimates the State Fire Marshal's Office (SFMO) would need four FTE positions transferred from TFS, with an annual cost of \$240,500, to conduct the arson investigations currently performed by TFS. However, because SFMO is funded through the Department of Insurance's maintenance taxes and fees (Fund 36), these costs would not impact General Revenue.

Texas Forest Service

Fiscal Year	Savings to the General Revenue Fund	Change in FTEs
2012	\$600,000	-7
2013	\$600,000	-7
2014	\$600,000	-7
2015	\$600,000	-7
2016	\$600,000	-7

Summary of Legislative Action

S.B. 646 Nichols (Cook)

Senate Bill 646 continues the Texas Forest Service for 12 years and contains all of the Sunset Commission's recommendations to improve the agency's wildfire planning, protection, and response roles. The list below summarizes the major provisions of S.B. 646, and more detailed discussion is located in each issue.

Sunset Provisions

1. Continue the Texas Forest Service for 12 years.
2. Grant the Texas Forest Service clear authority for its wildfire response and planning role.
3. Update the Volunteer Fire Department Assistance Program to better serve the Texas Forest Service's strategic wildfire protection goals.

Provision Added by Legislature

1. Update Texas Forest Service statute to be gender-neutral.

Fiscal Implication Summary

Senate Bill 646 will not have a significant fiscal impact to the State.

Agency at a Glance
(October 2010)

Agency at a Glance

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

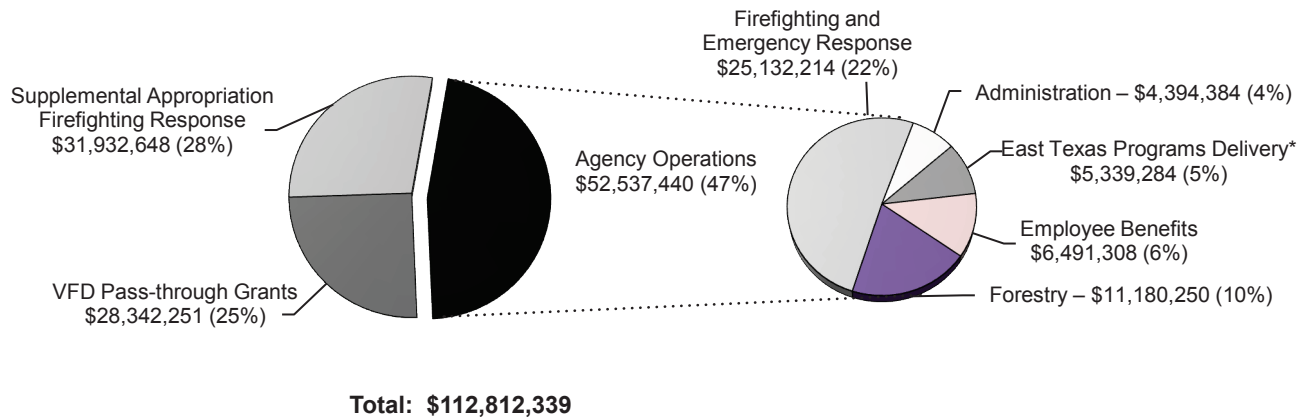
- offers technical assistance and grants to landowners and communities to help with sustainable forestry practices and to ensure the overall health of forests and trees;
- provides personnel and grant funding to help volunteer firefighters suppress wildland fires and fires occurring where communities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

Key Facts

- **Policy Board.** The Texas A&M University System Board of Regents, composed of nine public members appointed by the Governor, oversees the Texas Forest Service. The Board of Regents hires the Director, who by statute must be a certified forester and who reports to the Vice Chancellor and Dean for Agriculture and Life Sciences.
- **Staff.** In fiscal year 2009, TFS had 389 full-time staff. Of these, 90 work at the agency's College Station headquarters, and the remainder work in 52 field offices across the state. The Legislature approved an additional 65 staff positions, primarily for firefighting, and TFS began hiring these staff in fiscal year 2010. TFS also hires temporary employees as needed during wildfire seasons.
- **Funding.** In fiscal year 2009, TFS received \$101 million, including more than \$83 million in General Revenue and \$11 million in federal funds used primarily for forestry programs. TFS also received \$7 million from a variety of sources, including reimbursements for out-of-state emergency response and sale of low-cost firefighting equipment to volunteer fire departments. Of the General Revenue funds, \$32 million were supplemental appropriations to help cover the cost of responding to the 2008 and part of the 2009 fire seasons. The Legislature also increased the Rural Volunteer Fire Department Assistance Program funding from \$15 million to \$30 million annually beginning in fiscal year 2010. The Legislature authorized TFS to spend \$5 million of these funds on its Texas Wildfire Protection Plan and increased the Plan's funding by an additional \$3.5 million.

In fiscal year 2009, TFS spent about \$112.8 million, as shown in the chart on the following page, *Texas Forest Service Expenditures*, with almost \$11 million going toward its forestry programs. Despite the 2009 supplemental appropriation, TFS' wildfire expenses caused the agency to exceed its revenue by almost \$12 million in fiscal year 2009. TFS must reimburse the U.S. Forest Service for its assistance in fighting fires, although delays in the federal billing process usually allow TFS to carry expenses until the next legislative session. TFS plans to ask the 82nd Legislature for a supplemental appropriation, currently estimated to be \$22.5 million, to cover the \$12 million shortfall plus additional firefighting and emergency response bills received in the last two years.

Texas Forest Service Expenditures – FY 09



* Includes staff that deliver both forestry and firefighting services.

- Forestry Programs.** TFS promotes the management of forests and trees in Texas by assisting landowners and educating communities on issues relating to forests and tree health. Key TFS forestry programs follow.

Stewardship – TFS staff develop stewardship plans for landowners that provide detailed management strategies to meet landowners’ long-term land use goals, such as producing timber or creating wildlife habitat. In fiscal year 2009, TFS staff wrote 407 stewardship plans for landowners across the state.

Forest Inventory Analysis – TFS staff regularly collect detailed information about forest growth to increase the state’s knowledge about forest health, invasive species, and wildfire fuel potential. The data helps target reforestation efforts and economic development opportunities such as where best to locate biomass facilities or lumber mills.

Forest Health and Pest Management – TFS provides landowners with technical assistance and funding to combat diseases such as oak wilt, and researches the effects of pests and invasive species on forests to develop methods to eliminate them. TFS staff spent almost 15,000 hours assisting landowners with forest pest prevention and helped provide 81 oak wilt treatments in fiscal year 2009.

Water Quality – Through a contract with the Texas State Soil and Water Conservation Board, TFS has developed best management practices (BMPs) for the logging industry to help reduce nonpoint source water pollution from forest operations. TFS staff have trained almost 3,000 loggers in BMPs since the program began in 1995 and estimate that 91.5 percent of forest operations were using BMPs as of the end of 2008.

State Forests and Lands – As part of its mission to sustain the state’s trees and forests, TFS owns and manages five state forests totaling 7,300 acres. The working forests demonstrate sound forest management practices and also provide recreational opportunities for the public. TFS manages another 5,700 acres for the Texas General Land Office to ensure the forests remain healthy and productive.

- **Firefighting and Emergency Response Programs.** TFS works to protect the state's citizens, forests, and other natural resources by evaluating the risk of wildfires and working with communities and emergency personnel to respond to these fires and other emergencies such as hurricanes and floods. TFS staff help suppress wildfires when local resources are depleted, and TFS provides an incident management team during emergencies as directed by the Texas Department of Emergency Management. In fiscal year 2009, TFS responded to 1,551 wildfires that burned 375,031 acres and responded to four other emergencies, including Hurricane Ike and the Presidio County floods. TFS also provides wildfire and emergency response training to volunteer firefighters and local officials, and helps train regional incident response teams for emergencies that exceed local capacity.

TFS staff administer several grant and cost reimbursement programs that assist volunteer fire departments (VFDs) with needed training, equipment, and insurance coverage. In fiscal year 2009, the largest of these programs, the Rural Volunteer Fire Department Assistance Program, provided departments with \$17.7 million that helped pay for 106 tankers and brush trucks and trained almost 6,000 firefighters. TFS also helps volunteer fire departments purchase low-cost protective equipment and administers a risk pool to provide VFDs with vehicle liability coverage.

- **Law Enforcement.** TFS has ten commissioned peace officers that investigate timber theft and arson. Over the past five years, TFS has investigated 415 cases of timber theft, recovering \$1.5 million for landowners. In addition, TFS has investigated 1,150 fire complaints, 469 of which involved arson.

Issues

Issue 1

Texas Has a Continuing Need for the Texas Forest Service, but the Agency Lacks Sufficient Oversight.

Background

Created in 1915 as part of the Texas A&M University System, the Texas Forest Service (TFS) works with landowners and communities to manage and protect forest resources. Originally focused on the forests of East Texas, TFS has established a presence across the state. TFS' mission is to ensure the state's trees, forests, and related natural resources are sustained for the benefit of all. The agency accomplishes its mission by providing technical assistance to landowners on sustainable forestry practices, and by providing personnel and grant funding to support volunteer fire departments. The agency also helps the State respond to all-hazard incidents such as hurricanes and floods by providing personnel and training.

TFS is under the authority of the Texas A&M University System Board of Regents and reports to the Vice Chancellor and Dean for Agriculture and Life Sciences. The agency has about 390 staff, 90 of whom work at the agency's headquarters in College Station, and the remainder at 52 field offices across the state. The agency spent more than \$112 million in fiscal year 2009, almost \$32 million of which was a supplemental appropriation to cover wildfire response costs from previous years. TFS spent about \$11 million on its forestry programs in fiscal year 2009.

Findings

Texas needs statewide forestry, wildland firefighting support, and all-hazard emergency response programs.

Through technical assistance to landowners and other services such as oak wilt and southern pine beetle prevention programs, TFS helps landowners keep their forests and woodlands intact. The state's trees and forests provide innumerable environmental and economic benefits. In addition to air quality impacts, they provide critical habitat for wildlife and opportunities for recreation. The Texas forest sector also employed 78,000 workers and paid \$4.4 billion in wages in 2007, and directly produced \$19.4 billion of industry output.¹ In addition, Texas receives about \$4 million each year in federal funds that would be lost if TFS' forestry programs were eliminated.

TFS notes that fires in Texas are becoming more devastating with changing land use, drought, and increased population, especially where urban and rural areas meet. In the last five years, more than 78,000 wildfires have killed 24 Texans, burned 4.7 million acres, and resulted in the loss of \$790 million in property. While the 1,900 volunteer fire departments (VFDs) in Texas are generally the first to respond to wildland fires, they receive expertise, personnel, and heavy equipment such as bulldozers from TFS when these departments' resources are exceeded. TFS staff responded to 1,551 fires in fiscal year 2009 and saved three homes for every one they lost to fire.² TFS' grant programs

Texas' trees and forests provide innumerable environmental and economic benefits.

also support statewide firefighting efforts by helping build VFD capacity by funding equipment, training, and insurance coverage. In fiscal year 2009, TFS' largest grant program provided VFDs with \$17.7 million that helped pay for 106 tankers and brush trucks and trained almost 6,000 firefighters.

TFS has expertise in managing responses to all types of emergencies.

Through decades of responding to wildland fires, TFS has developed expertise that applies in managing responses to all types of emergencies. While this responsibility is not in TFS' statute, the State relies on the agency's expertise to train teams of local emergency officials. TFS has helped train hundreds of these officials across the state who can be mobilized into regional teams to respond to incidents too large for a local area to handle. TFS has also developed an incident response team composed solely of TFS staff that has responded to dozens of incidents, both in Texas and other states, ranging from the Columbia Space Shuttle recovery to Hurricane Ike.

Review of the Texas Forest Service and other related agencies did not reveal significant benefits from consolidation or transfer of functions.

As an agency within the Texas A&M University System, TFS is an anomaly for an agency under Sunset review. Rarely do Sunset reviews venture into the State's institutions of higher education. At first glance, the connection with Texas A&M looks like an odd fit. The importance of its firefighting and forestry mission and its statewide scope would indicate the need for a more typical state agency structure. While an independent agency structure is neither necessary nor a realistic consideration, other organizational structures were considered to see if improvements could be achieved to justify such a move. Some of these structures have advantages, as discussed in the following material, but ultimately none provide a clear benefit over the current structure with the Texas A&M University System.

The Texas Department of Agriculture supports and promotes every agricultural commodity except timber.

- **Texas Department of Agriculture (TDA).** TDA supports and promotes every agricultural commodity except timber and, like TFS, has a significant presence across rural areas of the state. TDA would provide a similar relationship to TFS that the U.S. Department of Agriculture has with the U.S. Forest Service. TDA has recently been able to assume the administration of nutrition programs from the Texas Health and Human Services Commission and taken on the responsibility for regulating structural pest control. As a statewide elected official, the Agriculture Commissioner would bring a higher level of accountability and visibility than the agency currently has. The Department, however, does not currently have forestry or firefighting expertise. That expertise would have to be transferred from current TFS operations, reducing the efficiency of a combination and minimizing any savings that would occur. While TDA would be a good fit for TFS' functions, the disruption caused by such a move would ultimately outweigh the benefits.

- **Consolidated Fire Agency.** The wildland firefighting program at TFS could potentially be consolidated with the functions of the State Fire Marshal's Office and the Texas Commission on Fire Protection to create a new state fire agency. In fact, in the early 1990s, Texas combined all its fire programs except the Texas Forest Service into a unified fire protection agency. In 1997, however, the Legislature abandoned its consolidated approach. Creating a new state fire agency would likely result in little efficiency, as each agency has its own responsibility, with little overlap. It could even reduce the effectiveness and efficiency of the current approach of cross-training foresters and firefighters at TFS. In addition, combining a quasi-firefighting agency with the fire regulatory agency could create conflicts that may further impair agency effectiveness.
- **Texas Commission on Environmental Quality.** Each state recognizes that forestry is an important and state-level function and, although other state organizational structures vary, a majority of state forestry agencies are part of a larger department of natural resources or conservation. While such a consolidation could provide advantages from the standpoint of resource protection and statewide scope, the Commission on Environmental Quality does not get involved in fire prevention and control. It also has a full agenda addressing the state's air, water, and waste concerns for it to assume such a large new role.
- **Texas Division of Emergency Management.** TFS' emergency management functions of training regional response teams and maintaining its own response team could potentially be transferred to the Texas Division of Emergency Management at the Department of Public Safety. The Division of Emergency Management trains local officials on aspects of incident management such as disaster recovery and evacuation planning. However, the TFS staff that train local responders to be members of incident management teams have extensive firsthand experience that Division of Emergency Management training staff typically do not have. In addition, the Division of Emergency Management's role is to coordinate the State's response to emergencies, not to provide "boots on the ground."

TFS benefits from its affiliation with the Texas A&M University System, but a lack of oversight common to state agencies may allow organizational pressures to build.

The Texas Forest Service benefits from being under the Texas A&M University System for some administrative efficiency and for its proximity to other System agencies such as AgriLife Research and the AgriLife Extension Service. TFS also works closely with the Texas Engineering Extension Service programs that train volunteer firefighters. In addition, the agency benefits from its academic connection to the University. TFS shares a forest geneticist joint appointment with the University, and the oak wilt and forest

The Legislature has already tried and abandoned consolidating the State's fire agencies.

The Texas Division of Emergency Management's role is to coordinate the State's response to emergencies, not provide "boots on the ground."

pest research conducted by the A&M faculty is invaluable to TFS' forestry programs. The University has expressed an interest in expanding joint appointments with TFS to take greater advantage of this relationship.

The Texas A&M University System Board of Regents has not had a substantive, policy-related TFS item on its agenda in years.

For all of the benefits of its association with Texas A&M, TFS has grown in stature since its establishment in 1915, and the current oversight structure is no longer sufficient for TFS' critical statewide functions. The Texas A&M University System Board of Regents appropriately focuses more on academics and long-term System goals and has not had a substantive, policy-related TFS item on its agenda in years. TFS' director reports to the Vice Chancellor and Dean for Agriculture and Life Sciences, but the Vice Chancellor also oversees three other agencies with more than 3,000 employees, and serves as the Dean of the College of Agriculture and Life Sciences, so the specific focus on TFS is limited. While the Vice Chancellor employs staff that help monitor TFS' finances and major activities, staff cannot provide the policy direction that an oversight body typically provides for important state agencies. Because of a recent change in the supervision of Texas A&M University System agencies, TFS' director now reports directly to the Vice Chancellor, who has demonstrated a genuine interest in the agency's oversight. However, no ongoing structure exists to ensure that this improvement is permanent.

No single advisory committee takes a comprehensive look at all TFS programs.

TFS relies on a patchwork of informal advisory committees and councils for input on its programs, only two of which are required by law.³ No single group takes a comprehensive look at all of the agency's programs. The Rural Fire Advisory Council provides information and advice only on rural fire protection and not on the agency's forestry programs. The Council's ability to provide objective advice to TFS may be limited in that the Director appoints most of its members and can dissolve the Council any time. The State Stewardship Coordinating Committee provides valuable advice but only on the agency's forestry programs and meets just once a year, limiting its ability to provide needed guidance.

This lack of direct, ongoing oversight and the effect it has had on TFS' efforts to achieve its statewide mandate may best be seen in the organizational pressures the agency confronts, as discussed in Issue 2 of this report. These organizational challenges continue to have an impact on the agency and could potentially have been avoided with closer attention from a more directly connected policy body. As TFS continues its expansion as a statewide agency, more oversight and input would provide better strategic direction and help the agency avoid pitfalls of expansion.

State agencies usually have oversight bodies to provide strategic direction, expertise, and accountability, and should have standard provisions to ensure open and effective operations.

Whether appointed or elected statewide, most state agencies have their own policy body. A well-functioning board is accountable for sound fiscal management of the agency and for making policy decisions that set clear

priorities for the agency's overall direction. An agency board also serves to ensure that stakeholders and the public have an opportunity to participate in the decision making process; holding public meetings when adopting rules provides one example. A portion of board members typically have expertise in the agency's programs and provide a broad perspective on issues to help staff develop sound policies, and a portion typically represent the general public to help ensure the agency responds to broad public interests. The public may hold board members accountable in the event the agency seriously missteps.

Through more than 30 years of reviewing state agency operations, the Sunset Commission has developed statutory standards designed to ensure open, responsive, and effective government. These standards include ensuring public representation on governing boards, prohibiting conflicts of interest by board members, and requiring agencies to maintain information on complaints filed with the agency.

A review of the agency's equal employment opportunity and historically underutilized business performance, as required by the Sunset Act, reveals significant deficiencies.

The Sunset Act requires Sunset staff to consider agencies' compliance with applicable state requirements regarding equal employment opportunity (EEO) and historically underutilized businesses (HUBs). While staff routinely evaluate agency performance regarding these requirements in the course of a Sunset review, staff only report significant deficiencies.

Regarding its EEO numbers, TFS generally did not meet civilian workforce percentages in any category except for female employees in administrative support and African-American employees in skilled craft positions. The agency indicates that the historical lack of females and minorities in the forestry and firefighting communities has limited its applicant pool. Appendix A shows the agency's EEO performance in each job category for fiscal years 2007 to 2009.

Regarding HUB expenditures, TFS exceeded some of the State's HUB purchasing goals for professional services and commodities, but had difficulty meeting the goal for other purchasing categories because the agency's spending is mostly on large machinery such as bulldozers and on fuel for which HUB vendors are generally not available. The agency met other HUB-related requirements, such as appointing a HUB coordinator, establishing a HUB policy, and developing a mentor-protégé program. Appendix B shows the agency's HUB spending for fiscal years 2007 to 2009.

Recommendations

Change in Statute

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

This recommendation would continue TFS as an agency at Texas A&M University System for the standard 12-year period and provide for continuing Sunset review of the agency. TFS' statute would clearly authorize the agency's all-hazard emergency management functions of training regional response teams and maintaining a response team composed of its own staff. The agency's statewide forestry responsibilities would remain in statute, as would its wildland firefighting support responsibilities, as modified by Issue 3 of this report, relating to the agency's wildfire protection plan.

1.2 Create a Texas Forest Service Commission appointed by the Texas A&M University System Board of Regents to help oversee the agency.

This recommendation would create a seven-member commission appointed by the Texas A&M University System Board of Regents to oversee TFS' activities and make policy decisions. The Vice Chancellor and Dean for Agriculture and Life Sciences, or his designee, would serve ex officio on the Commission. The remaining Commission members would comprise three public members and three members having expertise in forestry, volunteer firefighting, and emergency management. All members except for the Vice Chancellor would serve six-year terms, and the Board of Regents would designate a member to serve as chair for a two-year term. The Commission would hire the TFS director, adopt rules, and hold public meetings. While the Commission would consider and recommend the agency's budget and Legislative Appropriations Request, the A&M University System Board of Regents would have final authority for TFS' budget. Should disagreement about the budget occur, the Board of Regents would make the final determination. The Commission would meet quarterly or at the call of the chair.

The Commission would review TFS' existing nonstatutory advisory committees and councils and determine which ones to continue. The Commission could also create new advisory committees as necessary. Texas Government Code Chapter 2110, which provides standards for advisory committees, would apply to TFS' advisory committees. TFS' only advisory committee required by Texas law, on the Rural Volunteer Fire Department Insurance Program, would be modified so that it advises the Commission, not the Director.

1.3 Apply standard Sunset across-the-board requirements to the Texas Forest Service Commission.

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

Conflict of interest. This recommendation would define "Texas trade association" and prohibit an individual from serving as a member of the Commission if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of forestry, firefighting, or emergency management.

Unbiased appointments. This recommendation would require the Board of Regents to make appointments to the Commission without regard to race, color, disability, sex, religion, age, or national origin of the appointee.

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

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

Separation of duties. Under this recommendation, the Commission would be required to adopt policies clearly defining its role of setting policy separate from staff responsibilities.

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

Complaint information. Under this recommendation, TFS would be required to maintain a system to act promptly on complaints filed with the agency and to make available information describing its complaint investigation and resolution procedures.

Dispute resolution and rulemaking procedures. This recommendation would ensure that TFS develops a plan that encourages alternative dispute resolution and negotiated rulemaking procedures and applies them to its rulemaking, internal employee grievances, and other appropriate potential conflict areas.

Fiscal Implication Summary

Creating the Texas Forest Service Commission would cost about \$10,000 annually for members' travel reimbursements for quarterly meetings, which the agency could cover with existing resources. If the Legislature continues the functions of the Texas Forest Service, the agency's annual appropriation of \$54.5 million would continue to be required for its operation.

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¹ Texas Forest Service, *Economic Impact of the Texas Forest Sector, 2007*, by Yanshu Li and Burl Carraway (College Station, October 2009).

² Texas Forest Service, Legislative Appropriations Request for FY 2012 and 2013, p. 2.D.

³ Texas Government Code, Sec. 614.073 requires the director of TFS to appoint an advisory committee to provide direction on the Rural Volunteer Fire Department Insurance Program, and federal law requires the Secretary of the U.S. Department of Agriculture, in consultation with the State forester, to establish a state coordinating committee.

Responses to Issue 1

Recommendation 1.1

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

Agency Response to 1.1

The Texas Forest Service agrees with this recommendation. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 1.1

Randy C. Renois, Fire Marshal – Tarrant County, Fort Worth

Against 1.1

None received.

Modifications

1. Abolish the Texas Forest Service, eliminating most forestry programs and transferring fire response, state forests, water quality, and forest inventory analysis programs to other state agencies. (Charles McMahan, Public Member – Sunset Advisory Commission)
2. Consider placing TFS training and oversight of regional all-hazard incident management teams under the jurisdiction and direction of the Texas Division of Emergency Management, and require TFS to maintain a statewide incident management team for specific response to wildfire incidents. (Mike Fisher, Emergency Management Coordinator – Bastrop County, Bastrop)

Recommendation 1.2

Create a Texas Forest Service Commission appointed by the Texas A&M University System Board of Regents to help oversee the agency.

Agency Response to 1.2

The Texas Forest Service does not agree with this recommendation. Having two oversight bodies (a commission and a board of regents) is an illogical management structure. The proposed structure is inconsistent with how the Legislature has structured governance in higher education and is inefficient. Oversight and accountability is effectively accomplished within the current structure of the A&M System Board of Regents, who are appointed by the Governor and are statutorily charged with oversight responsibilities, and by System leadership. TFS does, however, recognize the underlying concerns regarding the current informal and non-comprehensive advisory committees and proposes a more effective approach to address the concerns.

Agency Modification

3. Require the A&M System Board of Regents to formally establish a Texas Forest Service Advisory Committee. This committee would be charged with reviewing program delivery strategies and policies, substantive organizational changes, etc., and providing advice to the Director, Vice Chancellor, Chancellor, and Board of Regents on matters relating to the Texas Forest Service. The committee would provide increased input and direction from key leaders of cooperator, constituent and industry groups for all programs (forestry and firefighting). Establishment of the committee would be formalized in System policy, without the need for any statutory changes. This committee approach is similar to that of the Board of Visitors for Texas A&M University at Galveston.

(Tom Boggus, Director and State Forester – Texas Forest Service)

For Agency Modification

Randy C. Renois, Fire Marshal – Tarrant County, Fort Worth

Thom Karels, President – Texas Forestry Association, Lufkin

For 1.2

Mike Fisher, Emergency Management Coordinator – Bastrop County, Bastrop

Against 1.2

Thom Karels, President – Texas Forestry Association, Lufkin

Steve Perdue, T-Flag Chairman – State Firemen’s and Fire Marshals’ Association of Texas, Mineral Wells

Randy C. Renois, Fire Marshal – Tarrant County, Fort Worth

Modifications

4. Require the members of the newly created Texas Forest Service Commission to be appointed by the Governor and confirmed by the Senate instead of being appointed by the A&M University System Board of Regents. (Senator Robert Nichols, Member – Sunset Advisory Commission)
5. Consider an appointment process that creates some degree of independence from the A&M System governance such as nominations from peer groups for those members that bring expertise from forestry, firefighting, and emergency response backgrounds. (Mike Fisher, Emergency Management Coordinator – Bastrop County, Bastrop)

Recommendation 1.3

Apply standard Sunset across-the-board requirements to the Texas Forest Service Commission.

Agency Response to 1.3

The Texas Forest Service does not agree with this recommendation since the agency does not accept the need for a formal commission. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 1.3

None received.

Against 1.3

Steve Perdue, T-Flag Chairman – State Firemen’s and Fire Marshals’ Association of Texas, Austin

Commission Decision

Adopted Recommendation 1.1 with the following modifications.

As a management action, direct TFS to work with the Texas Parks and Wildlife Department to study the feasibility and fiscal impact of transferring state forests to the Department. Also direct TFS to work with the Council on Competitive Government to study the feasibility and fiscal impact of selling TFS’ West Texas Nursery to the private sector. The agencies should report the results of their studies to the Sunset Advisory Commission by March 2011 so that the Legislature can make any needed changes to the agencies’ statutes or appropriations during the 2011 session.

As a management action, direct the Texas Department of Agriculture to study the feasibility and fiscal impact of transferring TFS’ forest inventory analysis, forest economics and resource analysis, and forest pest management programs, along with any other appropriate forestry programs, to TDA. The study should also look at any overlap between TFS and county extension agents in providing forestry-related services. TDA should report the results of its study to the Sunset Advisory Commission by March 1, 2011 so that the Legislature can make any needed changes to the agencies’ statutes or appropriations during the 2011 session.

A link to these studies can be found on our website at www.sunset.state.tx.us/82.htm#tfs.

Legislative Action

Senate Bill 646 continues the Forest Service as an agency at Texas A&M University System for the standard 12-year period. The bill also authorizes the agency’s all-hazard emergency management functions of training regional response teams and maintaining a response team composed of its own staff. The Legislature took no action on the studies conducted jointly by the Forest Service, Texas Parks and Wildlife Department, and Texas Department of Agriculture. (Recommendation 1.1 with Commission modifications)

Issue 2

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

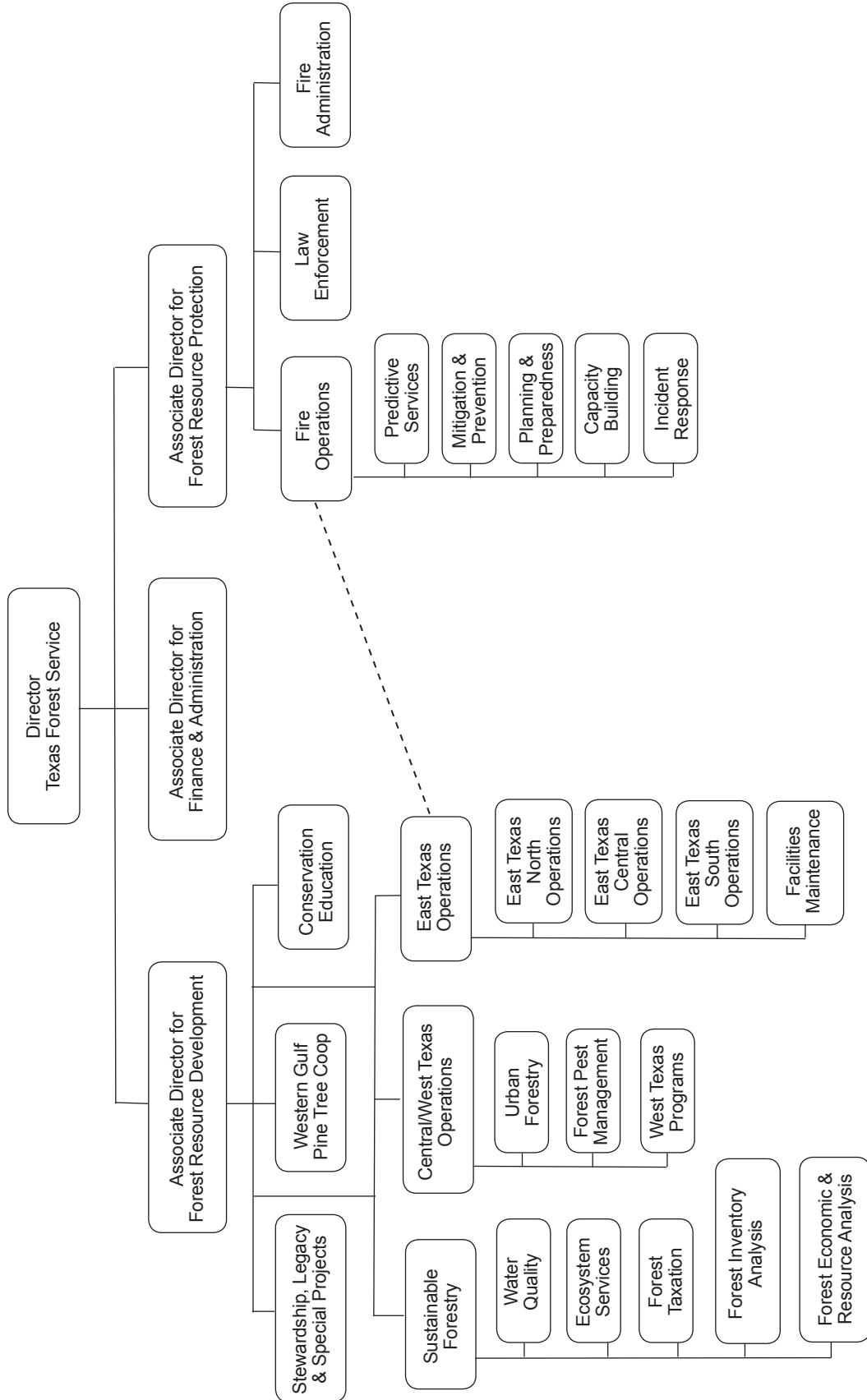
Background

Since its creation, the Texas Forest Service (TFS) has been responsible for both forestry management programs and efforts to suppress and control wildfires. These responsibilities require TFS to balance the need to develop and maintain a force capable of responding to wildfires and other incidents with its responsibility to conserve forest resources. This balancing act occurs in an environment in which the agency has recently exerted a stronger statewide presence beyond its East Texas roots. The result is an agency that has day-to-day forestry duties, but that must also be ready to respond quickly to wildfires and other life-threatening situations anywhere in the state, at any time.

The agency's organizational structure has changed in an attempt to meet these demands. TFS' current organization generally separates the planning and delivery of its programs into divisions for Forest Resource Development (forestry) and Forest Resource Protection (firefighting), as shown in the graphic on the following page, *Texas Forest Service Organizational Chart*. The delivery of programs within each division, though, is further distinguished by two geographic regions. Even though it is located in the forestry division, the agency's East Texas Operations program employs personnel who perform both forestry and firefighting jobs. In comparison, the firefighting division has regional fire coordinators to manage wildfire response, but those coordinators in East Texas do not supervise the actual staff that perform wildfire response. The dashed line in the graphic depicts minimal program oversight of these forestry personnel by the Fire Operations Chief in the firefighting division.

The agency's Central and West Texas region is organized differently from East Texas. Within the forestry division, the Central/West Texas Operations program includes urban forestry, forest pest management, staff foresters for the region, and the seedling nursery in Idalou. Typically, personnel in these programs are not assigned wildfire response duties. Incident response for wildfires or other emergencies for this region is provided by the Incident Response program in the firefighting division.

Texas Forest Service Organizational Chart



Findings

The Texas Forest Service is under a significant amount of organizational pressure.

Overall, TFS receives good reviews from stakeholders and the general public for the forestry and firefighting services it provides. However, it is experiencing enormous organizational pressure as it works to become a statewide agency, beyond its East Texas beginnings. As the agency makes this transition, it must balance the interests of its forestry and firefighting sides, with their particular technical and geographic demands. In addition, it must expand and balance these interests at a time in which changes in land use have increased wildfire threats in many parts of the state where cities encroach into wildland areas.

Perhaps related to these pressures, the agency has also been subject to a noteworthy amount of discontent by current and former employees and, to some extent, the Legislature. To be sure, employee complaints are not unusual for agencies undergoing Sunset reviews. However, the number and intensity of complaints about the agency is indicative of issues with its organization. The Legislature also has its concerns about the agency's development and focus. While these concerns did not prevent the Legislature last session from giving the agency an additional \$15 million each year for assistance grants for volunteer fire departments and for the agency's own wildfire protection planning efforts, with this money comes heightened expectations. Concerns about the agency are one reason TFS, an agency of the Texas A&M University System, in a higher education system largely excluded from Sunset reviews, was put under review for the first time in its almost 100-year history.¹

The Texas Forest Service has struggled to adjust its organizational structure to meet its statewide responsibilities.

- **Damaging Reorganizations.** Since 1996, TFS has undergone at least five reorganizations. These reorganizations created upheaval and turmoil within TFS, much of which has only recently begun to subside. In particular, one reorganization divided the agency between forestry and fire response programs and forced staff to choose in what program they would solely participate, despite the longstanding tradition and benefit of having TFS staff participating in both. Such a change threatened a loss of expertise in delivering TFS services because, through cross-training in program delivery, field employees could gain expertise in both forest management and wildfire suppression that ultimately benefitted the agency and the employee. This organizational change was abandoned after only three years, and other reorganizations were similarly never allowed to fully take hold before being abandoned. For example, the forestry division was once split into two sections, only to be reunited eight months later when one section's supervisor retired.

TFS is experiencing enormous organizational pressure as it becomes a statewide agency.

TFS is still recovering from several attempts to reorganize.

Various shifts and splits of TFS' organization have created inefficiencies in staffing levels and delivery of programs.

- **Lack of Long-term Strategic Planning.** Much of the reorganization efforts do not appear tied to a long-term strategic plan based on the agency's growth statewide. Rather, movement of programs and development of new ones often appear to be responses to the immediate needs of the agency or based on personnel issues. Since 2001, 12 field offices have closed, with eight new offices opening in different locations. In one example, TFS closed a field office with one employee when the employee left, and a new field office opened in a different location based on the next employee hired. Other offices likely have experienced similar fluctuations of staff numbers from year to year, but the agency did not have systems in place to accurately track its field office staff.
- **Barriers to Effectiveness.** The various shifts and splits at TFS have caused the two divisions and some programs to function as silos within the agency. Such separations create inefficiencies in staffing levels and delivery of programs. For example, TFS has geographic information system staff and accounting assistants attached to various programs throughout the agency rather than operating as unified departments that could take advantage of economies of scale and cross-program knowledge. In addition, the separation of programs has prevented the agency from having cohesive regional boundaries for program delivery – instead drawing multiple sets of boundaries across the state depending on the program. Having separate program boundaries within the same agency can create communication and operational difficulties.

Much of TFS' current organizational difficulties are reflected in the split in responsibilities in the agency's East Texas and Central/West Texas Operations.

TFS' fire response in East Texas relies on good relationships rather than a clear command structure.

Although most staff in the East Texas forestry programs also perform wildfire response, lines of supervision do not exist between TFS' forestry and firefighting divisions. When a wildfire or the potential for a wildfire exists, regional fire coordinators are tasked with moving TFS staff and assets into locations that can respond to the wildfire. Under the current management structure, though, these coordinators must request the use of staff from the forestry chain of command. In this way, TFS fire response in East Texas relies on good relationships between TFS employees rather than a clear command structure. Given the need for a fast response, any potential confusion about authority and roles is problematic, especially if it causes any delay in response.

In Central and West Texas, forestry and firefighting responsibilities are split between the forestry and firefighting divisions. While such a split may provide a clearer chain of command that is missing in the East Texas Operations, this split deprives the agency of the cross-training and joint program delivery between the forestry and firefighting staff that makes the East Texas Operations more efficient.

Recommendations

Management Action

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

This recommendation would direct the agency to evaluate its organizational structure, including delivery of programs, lines of supervision, and the location of programs and field offices. This evaluation should account for the agency's future statewide growth, particularly when considering field office locations, and the delivery of both forestry and firefighting programs to maximize efficient use of staff. TFS should report the results of this evaluation to its governing body, along with proposed alternative organizational structures to improve the agency's effectiveness. For example, TFS could consider integrating program delivery staff from the East Texas Operations, Central/West Texas Operations, and Incident Response programs to create a single division for program delivery. The remaining programs within the Forest Resource Development and Forest Resource Protection divisions could focus on planning and coordination of forestry and firefighting programs, respectively. TFS could also consider establishing a common set of regional boundaries for its programs across the state. Any organizational changes should include consideration of mobilization of staff and assets during wildfires and other emergency responses.

2.2 The agency should cross-train program delivery staff in both firefighting and forestry programs, as appropriate.

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

Fiscal Implication Summary

These recommendations would have no significant fiscal impact to the State. Any changes made to the organizational structure of TFS would work within current staffing levels. Cross-training more staff could result in efficiencies, but they could not be estimated for this report.

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¹ Sunset reviewed the Office of State Forester in 1985 but did not review the entire agency.

Responses to Issue 2

Overall Agency Response to Issue 2

While agreeing with these recommendations, the Texas Forest Service disagrees with some of the underlying assessments. TFS does not agree that the agency is under a significant amount of organizational pressure, and states that employee and customer surveys demonstrate a high degree of satisfaction with the agency. TFS also states that past office closures and staffing level changes do not reflect a lack of planning, and that Sunset staff's conclusion that accounting assistants and GIS staff should operate as separate departments does not reflect sound management. Finally, TFS notes that the difference in responsibilities and organization in East Texas and Central/West Texas operations is a function of staffing and programs and does not by itself represent a problem. The concentration of staff and breadth of programs in East Texas make the multi-program staff structure there effective and efficient, whereas Central/West Texas programs provide less opportunity for multi-program staff. TFS states that Sunset staff's underlying assertion that "TFS' fire response in East Texas relies on good relationships rather than a clear command structure" is incorrect and does not reflect a proper understanding of fire response in East Texas. (Tom Boggus, Director and State Forester – Texas Forest Service)

Recommendation 2.1

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

Agency Response to 2.1

The Texas Forest Service agrees with this recommendation. The agency is committed to looking for ways to be more effective and efficient, because it supports the agency's core vision to conserve, protect and lead. The agency will initiate a comprehensive review and complete it by the end of the fiscal year. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 2.1

None received.

Against 2.1

None received.

Recommendation 2.2

The agency should cross-train program delivery staff in both firefighting and forestry programs, as appropriate.

Agency Response to 2.2

The Texas Forest Service agrees with this recommendation and will continue to build on existing efforts to cross-train staff for effective and efficient delivery of programs and services. As an agency with a limited workforce, the Texas Forest Service has long recognized the value and need for staff to be multi-program. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 2.2

None received.

Against 2.2

None received.

Commission Decision

Adopted Recommendations 2.1 and 2.2 with the following modification to 2.1.

As a management action, direct the Texas Forest Service to reduce the current number of its field offices, co-locating staff with other public agencies when possible.

Legislative Action

As management recommendations not needing statutory change, Recommendations 2.1, as modified, and 2.2 did not result in legislative action.

Issue 3

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

Background

In 1998, the Texas Forest Service (TFS) outlined a concept, called the Texas Wildfire Protection Plan, to guide the agency in carrying out its duties to prevent and suppress wildfires. While not statutorily required to do so, TFS created the concept in response to the increasing frequency and severity of wildfires in Texas. The textbox, *Texas Wildfire Protection Concept*, outlines its goals. The Legislature has recently increased funding for this approach, though according to TFS, it is far from fully funded. From fiscal years 2000 to 2010 the Legislature appropriated \$47.7 million to fund TFS activities related to its wildfire protection approach, primarily from insurance assessments and fees. This amount includes an \$8.5 million annual increase, starting in fiscal year 2010, to place about 60 additional fire personnel and heavy equipment in Central and West Texas. According to TFS, fully funding this approach would cost about \$28.1 million annually, excluding pass-through grants to volunteer fire departments, and would substantially reduce the need for more costly out-of-state firefighters and ground equipment.¹

Texas Wildfire Protection Concept

This strategic concept guides TFS' approach to preventing wildfires and helping fire departments suppress these fires. TFS' Forest Resource Protection Division is organized to support the following goals of the concept.

- Predicting the likelihood of wildfire and providing this information to local responders and officials.
- Preventing wildfires by reducing risks and hazardous conditions, such as fuel loads.
- Unifying local, state, and federal emergency response operations.
- Building the capacity of local fire departments by providing grants and other assistance.
- Responding to wildfires by positioning firefighters and equipment around the state based on risk.

Statute authorizes TFS to *coordinate* wildfire responses statewide and to take *any action needed* to extinguish forest fires.² Based on this language, the agency has developed two different wildfire response models, one for wildfires in Central and West Texas, and one primarily for forest fires in East Texas. In Central and West Texas TFS has 40 fire personnel who respond to wildfires upon a request from local officials. In forested East Texas, TFS takes a more active approach in which its 117 fire personnel may respond on the agency's own initiative. In fiscal year 2009, TFS responded to 1,551 wildfires, or about 9 percent of all fires, that burned 375,031 acres, or about half of all acreage burned in Texas.

By statute, TFS is the State's agency for providing wildfire response training, and does so using National Wildfire Coordinating Group standards. Based on this training, TFS certifies full-time and seasonal employees, qualifying them to fight wildfires, operate equipment, and manage emergency responses. TFS also provides wildfire training to volunteer firefighters who can use this training to supplement certifications issued by the State Firemen's and Fire Marshals' Association of Texas, which has about 14,500 certified members.

Findings

TFS lacks clear authority to initiate its response to wildfires statewide, potentially hindering its ability to protect communities and develop a seamless approach to wildfire protection.

TFS lacks a seamless statewide approach for responding to wildfires.

Wildfires are no longer just an East Texas concern, as they largely were in 1915 when the Legislature created TFS. Now, due to changing land use, population growth, and weather patterns, wildfires are more of a statewide threat. However, TFS lacks clear authority to respond as needed in all areas of Texas.³ TFS has interpreted its statute to mean that for East Texas fires it can respond on its own initiative or when requested by local volunteer fire departments (VFDs). However, in Central and West Texas, the agency responds to wildfires only by request of local officials or VFDs via a county-level emergency response protocol. This statutory divide between East Texas and the rest of the state is emblematic of the agency's organizational struggles and its ability to function seamlessly as a statewide agency, as discussed in Issue 2. While TFS has responded appropriately to wildfires statewide, this lack of clear authority to take any needed actions to protect communities could potentially hinder its ability to act quickly, particularly as TFS begins positioning more firefighting resources in Central and West Texas.

These two different geographically based TFS wildfire response models make creating a fully integrated approach to forest/wildfire protection that provides a clear role for TFS fire response efforts across the state difficult. The resulting approach does not lay out a unified system for TFS' statewide fire response and what exact protocol local officials and VFDs should use to call in TFS. This approach may cause confusion about how and when to involve TFS, potentially causing hesitation and delays when speed is essential. Without clear authority to act in wildfire situations and without clear communication between the agency, local officials, and VFDs, an effective state-local response to wildfires is threatened.

TFS does not maximize the benefits of the volunteer fire service in fighting wildfires statewide, contributing to TFS' reliance on more costly out-of-state firefighters.

TFS lacks authority to directly involve, and pay, volunteer firefighters to help the agency fight wildfires.

Texas has about 40,000 volunteer firefighters on the front lines of responding to the vast majority of wildfires in Texas. However, TFS' concept for carrying out its duties related to the Wildfire Protection Plan does not maximize the involvement of qualified volunteer firefighters, who could be paid to assist TFS in fighting wildfires. Fire departments have agreements with surrounding departments to assist each other if needed, but large wildfires can quickly outstrip this local capacity. The Texas Intrastate Fire Mutual Aid System (TIFMAS) allows local fire departments and TFS to mobilize available personnel during statewide disasters. However, TIFMAS does not authorize TFS to draw down, and pay, volunteer personnel to augment the agency's firefighting capacity in fighting wildfires.

While not all volunteer personnel have the time or ability to spend numerous days on a wildfire, out of the thousands of volunteers in Texas, a significant number could. TFS already has training grants and facilities, credentialing processes, and databases in place to readily qualify and draw down volunteer personnel. In addition, through its VFD Assistance Program grants TFS has helped these departments purchase more than 1,000 tanker and brush trucks that can serve as a ready resource.

By not involving more volunteer firefighters in large wildfire responses, TFS has to rely on costly out-of-state firefighters to supplement state and local resources. On average, an out-of-state firefighter costs almost double that of an in-state firefighter. TFS spends about \$725 per day for a non-Texas firefighter compared to about \$375 a day for a TFS seasonal firefighter. In the last five years, TFS has spent about \$184.8 million responding to wildfires and other emergencies, and of these costs \$159.2 million, or 86.3 percent, was for out-of-state personnel, ground equipment, and air support.⁴ Greater involvement of the volunteer fire service would not eliminate the need for out-of-state resources during severe fire seasons, but volunteers could help lower these costs.

TFS' approach towards wildfires does not adequately inform and guide the State's efforts to manage wildfires and protect communities.

The Legislature is investing significant funding to support TFS' wildfire protection concept, but statute does not task TFS with developing a plan that contains clear priorities, goals, and outcomes. The agency is making progress on developing a detailed agency operational plan to support the concept's broad objectives. However, no actual Wildfire Protection Plan exists except for a brochure and miscellaneous documents compiled by TFS. The current concept lacks a sufficient level of detail to effectively communicate and guide the State's strategic approach to managing wildfires and to help the effectiveness of this approach. Specific concerns with the agency's current concept for addressing wildfires are discussed in the following material.

- **Costs of the Approach.** In fiscal year 2009, TFS spent \$85.4 million, or 76 percent of all spending, on its wildfire and emergency program strategy. However, despite this significant spending, TFS does not provide detail on all state and federal revenues and expenditures associated with its approach to wildfire protection annually and over time. For example, TFS' approach does not separate out its response costs for routine fires, imbedded in its operational budget, compared to emergency wildfire costs. Without a clearer picture of overall funding and spending related to managing wildfires, the Legislature lacks information needed to evaluate the benefits of this spending and to make sound future funding decisions.
- **Effectiveness of the Approach.** TFS touts its effectiveness in reducing wildfire size, loss from fires, and response costs. However, the planning concept does not include data and measures to substantiate these claims

An out-of-state firefighter costs TFS about \$725 a day, almost double the cost of a Texas firefighter.

TFS lacks a detailed Texas Wildfire Protection Plan.

and to help determine if the State's investment is actually saving more lives, homes, and property. In various documents TFS claims that fully funding the concept will decrease average fire size from about 7,400 acres to 1,000 acres, eliminate the need for out-of-state ground resources, and reduce wildfire and national mobilization costs by 80 percent.⁵ While TFS has developed some outcome measures, these are not incorporated into its planning to help the agency and the Legislature evaluate its effectiveness and make any needed changes.

TFS' role in conducting prescribed burns is not clear.

- **Role of Prescribed Fire.** TFS does not address its role in conducting prescribed fire burns, despite the need to reduce hazardous wildfire fuels in Texas. The state faces significant risk of wildfires due to increased fuels from changing land use and other factors.⁶ Prescribed burning is a cost-effective, proven method of reducing wildfire risks and improving habitat. Because of liability concerns, TFS no longer conducts prescribed burns on private land as it had in the past. The agency still conducts burns on public lands, doing 10 of these burns on 5,298 acres in fiscal year 2009. While Texas regulates prescribed burn managers, they may not be able to economically meet all the needs of landowners. As a result, TFS could potentially play a role in conducting prescribed burns on private land, particularly for small land owners. However, the concept does not address where TFS' prescribed burning fits with other state agencies, nonprofits, and private providers who also conduct burns, omitting an important consideration in the State's overall effort to balance prevention and suppression of wildfires.
- **Wildfire Issues.** TFS does not provide a detailed analysis of issues and concerns affecting the State's efforts to manage wildfires, such as communities encroaching on wildlands or changing firefighting capacity in areas of the state. For example, private firefighting resources in East Texas have declined dramatically in recent years, shifting more of the burden of protecting timber lands to local VFDs and TFS. In 2000, timber companies started divesting themselves of land ownership, along with the firefighters and bulldozers they used to fight fires alongside VFDs and TFS, reducing combined private and state resources by more than 50 percent. Investment organizations now own large tracts of timberland but have not replaced these firefighting resources. Since 2000, East Texas has lost about 133 timber company firefighters and 53 large bulldozers, leaving the area with 117 TFS fire personnel and 52 smaller bulldozers.⁷
- **Stakeholder Participation.** TFS lacks a formal process to ensure that local responders, officials, and communities directly affected by the State's approach to managing wildfires can participate in developing this approach. While TFS uses informal means to get input and suggestions on the concept, it has not held public meetings on its development. Lack of formalized stakeholder and public input can deprive TFS of expertise and perspective in developing an effective plan that meets the needs of

Since 2000, East Texas has lost about 133 timber company firefighters and 53 large bulldozers.

local communities. It also causes the agency to miss an opportunity to communicate the purpose and goals of its planning efforts and involve communities in developing their own wildfire protection goals.

Recommendations

Change in Statute

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

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

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

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

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

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

Under this recommendation, TFS would be required to develop its existing conceptual plan into a more robust Plan with a sufficient level of detail to guide the State's approach towards managing wildfires. TFS should develop the Plan, and regularly update it, by holding public meetings to ensure stakeholders have the opportunity to participate in the Plan's development and adoption. The Plan should include the following elements:

- a clear description of TFS' role in managing wildfires and supporting local fire department responses, the role of the volunteer fire service, and how local communities can engage TFS when needed;
- a full description of all expected sources of revenues, expenditures, and staffing that support implementation of the Plan, and anticipated future funding needs;
- savings expected from implementing the Plan, and performance measures to assist with evaluating the Plan's success;

- the agency’s role in conducting prescribed burning and an assessment of statewide efforts to conduct these burns;
- analysis of key wildfire trends and issues, with potential recommendations to address these issues; and
- other elements to be determined by TFS.

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

Fiscal Implication Summary

Paying Texas’ volunteer firefighters to assist with wildfire response could result in savings to the State by reducing the need for more costly out-of-state firefighters. For example, the costs for a 10-person out-of-state fire crew on a wildfire for 10 days could be reduced from \$72,500 to \$37,500 by using in-state firefighters. During the 2009 fire season, TFS spent \$37.4 million for out-of-state resources, including 1,733 personnel, equipment, and air support. About one-half of these costs were for personnel, and to the extent that volunteer firefighters can substitute for out-of-state personnel, TFS could realize savings. However, the amount of these savings would vary based on the severity of fire seasons and the number of volunteer firefighters participating.

Volunteers paid as if they were seasonal employees may not be able to use VFDs’ vehicles and equipment, requiring TFS to cover these costs. Also, TFS would have to pay expenses as they are incurred, creating more upfront costs instead of seeking reimbursement through supplemental appropriations, the method used to fund much of the State’s emergency responses. TFS could implement this recommendation using available resources, such as reserve funds the agency has for general spending, and recover these costs during the next appropriations cycle.

Training volunteer firefighters and issuing National Wildfire Coordinating Group certifications would not have a significant fiscal impact to TFS because the agency already provides training grants that could be used for this purpose. The agency already has a process in place for issuing and tracking these certifications.

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¹ Texas Forest Service, *Texas Wildfire Protection Plan – The promise of a safer future for Texans*. (College Station, Texas, August 2006). p. 1. Online. Available: www.txforestsERVICE.tamu.edu/uploadedFiles/FRP/TWPP%20Brochure.pdf. Accessed: September 10, 2010. Also, Texas Forest Service, *TWPP Impact Analysis*, provided to Sunset staff August 30, 2010.

² Texas Education Code, secs. 88.118 and 88.102(3).

³ Texas Forest Service, *Self-Evaluation Report* submitted to the Sunset Advisory Commission (September 2009), p. 142.

⁴ Texas Forest Service, *Emergency Response Costs*. Provided to Sunset staff June 16, 2010.

⁵ *TWPP Impact Analysis* and *Texas Wildfire Protection Plan*.

⁶ Southern Group of State Foresters, *Fire in the South*, Undated publication. p. 5 and p. 10.

⁷ Texas Forest Service, *Cooperator and Texas Forest Service Firefighting Resources in Texas*. (College Station, Texas, May 17, 2005).

Responses to Issue 3

Recommendation 3.1

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

Agency Response to 3.1

The Texas Forest Service agrees with this recommendation and believes clarifications in statute would be beneficial, but also points out that the lack of clear authority has not been a problem due to TFS staff and the great cooperators TFS works with throughout the state. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 3.1

Randy C. Renois, Fire Marshal – Tarrant County, Fort Worth

Against 3.1

None received.

Recommendation 3.2

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

Agency Response to 3.2

The Texas Forest Service agrees with this recommendation and is completely supportive of utilizing the volunteer fire service to the fullest extent possible. The agency points out that there are non-statutory factors limiting the deployment of volunteer resources for statewide assignments. These factors include:

1. Volunteer Firefighter Availability – Most volunteers have full-time jobs and would have to take annual leave or leave without pay to go on a statewide assignment. Also, they are generally needed to protect their local communities.
2. Financing of Costs – Texas is a pay as you go state and therefore does not appropriate funding in advance for major fire events. Delays in billings from federal cooperators usually allow the agency to wait until the next legislative session for funding. Fire departments responding to statewide events will expect to be paid immediately; by law, individual firefighters employed as seasonal employees would have to be paid at the time of employment.
3. VFD Status – How (and if) the firefighters are eventually paid may affect their “volunteer” status and create issues with state regulations.

4. Employer/Employee Issues – If payment is issued to the firefighter from the volunteer department as a wage or salary, VFDs are generally not equipped to issue W-2s and other employer tax requirements. If firefighters are to be employed as seasonal firefighters by TFS, they could not use their “home” fire department vehicles and equipment. TFS would be responsible for all cost associated with training, outfitting and mobilizing firefighters (i.e. vehicles, equipment, workers comp, wages, etc.).

This recommendation has impacts well beyond the Texas Forest Service that will involve numerous stakeholders. The agency believes the appropriate action is for TFS to work with key leaders in the fire service to further investigate opportunities for better utilization of the volunteer fire service for statewide fire suppression efforts. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 3.2

Mike Fisher, Emergency Management Coordinator – Bastrop County, Bastrop

Randy C. Renois, Fire Marshal – Tarrant County, Fort Worth

Against 3.2

None received.

Modification

1. Change state law to reflect the inclusion of career fire departments, emergency services districts, and volunteer fire departments as part of a state-level fire response. (J.D. Gardner, Chief – Killeen Fire Department and President – Texas Fire Chiefs Association, Killeen)

Recommendation 3.3 _____

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

Agency Response to 3.3

The Texas Forest Service agrees with this recommendation. The agency has developed the elements that make up the Texas Wildfire Protection Plan but has not yet organized them into a formal planning document. The agency will do this for the upcoming legislative session and will implement this recommendation with or without statutory change. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 3.3

None received.

Against 3.3

None received.

Modifications

2. Require TFS to include in the Wildfire Protection Plan programs and strategies for mitigation and prevention with specific goals and objectives that address growth areas known as Wildland/Urban Interface (WUI) zones. (Mike Fisher, Emergency Management Coordinator – Bastrop County, Bastrop)
3. Direct TFS to develop and implement programs and strategies for delivery of prescribed burning services to private landowners of Texas. (Mike Fisher, Emergency Management Coordinator – Bastrop County, Bastrop)

Commission Decision

Adopted Recommendations 3.1 through 3.3.

Legislative Action

Senate Bill 646 clarifies the agency's authority to take all needed actions to respond to wildfires statewide as it currently does for forest fires that occur in East Texas. (Recommendation 3.1). The bill also authorizes the Forest Service to develop a method for allowing volunteer firefighters to assist the agency with wildfire response when demands on local resources are exceeded, as determined by the agency. To the extent that resources are available, the agency may compensate volunteer firefighters or fire departments for labor, expenses, and equipment. The agency may also establish minimum qualifications a volunteer firefighter must meet to be compensated. In determining the appropriate wildfire response, the Forest Service must use the most cost-effective combination of volunteer firefighters, temporary employees, and out-of-state personnel and equipment. (Recommendation 3.2)

Finally, the bill requires the Forest Service to develop its existing conceptual wildfire protection plan into a more robust plan with a sufficient level of detail to guide the State's approach towards managing wildfires. Among the elements that must be included, the plan must detail the respective roles of the Forest Service and volunteer fire departments in wildfire response matters; describe the expected revenue, expenditures, and staffing needs to implement the plan; and estimate savings resulting from the plan. (Recommendation 3.3)

Issue 4

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

Background

TFS’ Rural Volunteer Fire Department (VFD) Assistance Program is a grant program that helps fire departments obtain fire trucks, equipment, protective gear, and training needed to enhance their ability to respond to fires and protect communities. In the last five years, VFDs have responded to about 84,000 wildfires which resulted in the deaths of 24 Texans and the loss of 1,472 homes and \$792.2 million in property.¹ This grant funding supports TFS’ goal of protecting life and property by suppressing wildfires. The grant program is paid for by insurance taxes and fees, which the Legislature raised in 2009 to increase funding from \$15 million to \$30 million annually.² In fiscal year 2009, TFS approved 2,090 grant requests and awarded \$17.7 million in funds, primarily for trucks, as shown in the chart *VFD Assistance Program Grants*. Grants pay 100 percent of training tuition costs, 90 percent of fire truck costs, and 75 percent of rescue equipment costs; fire departments pay the remaining costs.

VFD Assistance Program Grants – FY 09

Category	Number of Grants/Units	Amounts
Tanker and brush trucks	106 grants/106 units	\$13,339,837
Truck chassis and slip on tanks	42 grants/42 units	\$1,100,632
Training	1,520 grants/5,897 students	\$1,507,465
Fire and rescue equipment	225 grants/654 units	\$1,110,882
Personal protective equipment	197 grants/4,390 units	\$604,352
Total		\$17,663,168

Volunteer fire departments send grant applications to TFS, which scores and ranks applications based on size and population of the 911 protection area, distance to the nearest department, and number of years the department has existed.³ TFS weights scoring in favor of departments with larger 911 areas where other assisting departments are farther away.

Statute authorizes the Director to approve grants, establish criteria and procedures for awarding funds, and to adopt rules. Agency staff develops the program in consultation with a seven-member advisory committee appointed by TFS’ Rural Fire Advisory Council. The committee’s members include the Executive Director of the State Firemen’s and Fire Marshals’ Association of Texas, a member from the Texas A&M Emergency Services Training Institute, and members from volunteer fire departments.

Findings

Because the Volunteer Fire Department Assistance Program does not consider the risk of wildfires, TFS misses an avenue for pursuing wildfire protection.

Texas has about 6,500 communities at high to very high risk of loss from wildfires.

According to TFS, the VFD Assistance Program supports the Texas Wildfire Protection Plan, which guides the State's approach for use of resources to manage wildfires.⁴ However, TFS' method of awarding grant funds to build local fire response capacity does not specifically account for the significant threat that wildfires pose to numerous communities. By not incorporating wildfire risk and potential loss as a factor in approving grants, the agency misses an opportunity to advance one of its strategic objectives. Mostly due to population growth, changing land use, and drought, Texas faces greater risks and potential consequences from fires in areas where suburban and urban communities encroach on wildlands, known as the wildland-urban interface.⁵ Texas has about eight million acres of land in this interface with about 6,500 communities at high to very high risk of loss from wildfires.⁶

Since 2001, TFS has awarded \$128.3 million in grants to volunteer fire departments statewide. However, counties at low risk of wildfires tend to receive more funding than counties at high risk, and potentially higher loss of property. Of the 30 counties whose volunteer fire departments received the largest amounts of grant funds, a slightly higher percentage of funding went to those counties at very low to low risk of wildfires and associated losses. The map on the following page shows the distribution of these funds in counties with significant areas at higher risk of wildfires and those with comparatively lower risks. Risk level was determined using TFS' Southern Wildfire Risk Assessment that measures risk of wildfire occurrence and threat of loss to communities over a period of three to five years.⁷ TFS developed the Assessment to help guide decisions on allocating resources to manage wildfires and protect life and property.⁸

TFS has not maximized its potential to help fire departments access available federal grants.

TFS does not play a role in helping volunteer fire departments access FEMA grants.

TFS provides guidance to fire departments applying for Department of Interior Rural Fire Assistance grants, helping 10 departments receive a total of \$55,700 in 2010. However, TFS does not play a role in helping fire departments access larger Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grants, such as providing technical assistance or funding to meet federal cost-share requirements. In 2009, Texas fire departments received \$23.4 million in FEMA grant funding. This funding included \$9.9 million going to 32 all-paid departments, \$12.6 million going to about 170 volunteer departments, and about \$850,000 for fire prevention research.⁹ In the past, Texas has received as much as \$36.4 million in FEMA grant funding. Since FEMA scores grant applications competitively on a nationwide basis, the more high-scoring grants Texas fire departments submit, the more funding they can potentially access.

While TFS' overall management of the VFD Assistance Program is sound, minor deficiencies affect the openness and efficiency of the grant-making process.

TFS makes little Program information available to the public.

- **Public Input and Decision Making.** TFS lacks an adequate process for taking public input on the VFD Assistance Program, making it difficult for the public and stakeholders to be aware of opportunities to participate in decisions that can affect local communities. While agency staff meet with the advisory committee to discuss, and vote on, proposed Program changes, these meetings are not readily accessible to the public. In addition, TFS has not adopted Program rules, making it possible for policies to change without public participation as provided by the rulemaking process.
- **Transparency and Accountability.** TFS makes little Program-related information available to the public, making it difficult to understand Program administration and to ensure the agency is operating with accountability and fairness. Important documents such as the annual report, advisory committee minutes, applicant rating criteria, emergency grant criteria, scored funding list, and waiting list are not posted on TFS' website or otherwise available to the public.
- **Efficiency and Technology.** TFS does not make the best use of electronic communication, contributing to numerous paper letters and forms being mailed back and forth between VFDs and the agency. In fiscal year 2009, TFS mailed about 4,700 grant receipt and approval letters, and received about 2,700 grant applications, primarily by mail because the agency requires a signature on the application.

Recommendations

Change in Statute

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

This recommendation would require TFS to account for risk factors such as wildfire occurrence, size, severity, and potential for loss when awarding assistance grants to eligible volunteer fire departments. For example, TFS could modify grant scoring criteria to provide bonus points to VFDs in areas of the state with higher levels of concern identified by the Southern Wildfire Risk Assessment and other information, as determined by TFS.

This change would only add a criterion regarding wildfire risk to the criteria that TFS already considers when making assistance grant decisions. The added criterion is intended to shift the agency's consideration and not to change the focus or the purpose of the program from continuing to serve the general needs of volunteer fire departments. In implementing this recommendation, TFS should review all program policies, allocation formulas, and scoring criteria and modify as needed. As part of this process, TFS should work closely with stakeholders to help maintain an appropriate balance of funding between higher

and lower risk areas of the state, but still meet the overall needs of Texas' volunteer fire departments, who also respond to non-wildfire incidents.

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

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

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

This recommendation would require the agency to develop and adopt a set of Program policies and procedures through the rulemaking process. In addition, TFS would be required to hold public meetings when making decisions related to Program administration, such as awarding grant funds and considering Program changes with the advisory committee.

Management Action

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

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

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

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

Fiscal Implication Summary

These recommendations would not have an overall fiscal impact to the State, but could benefit local fire departments and their communities. If TFS allocated \$500,000 in VFD Assistance Program funds to meet a \$10,000 per grant cost-share requirement, based on an average federal grant of \$90,000, local fire departments could potentially draw down an additional \$4.5 million in federal funds. However, any additional federal funds awarded to Texas fire departments would ultimately depend on grant applications scoring competitively and being approved by FEMA. Developing a simple electronic application form would not have a significant fiscal impact, and any costs could be offset by savings in staff time resulting from making better use of email and streamlining paperwork.

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- ¹ Texas Forest Service data on fire season frequency, size, and loss of life and property. Received July 1, 2010. Volunteer fire departments also respond to significant numbers of structural fires, car accidents, hazardous materials spills, and other incidents.
 - ² Texas Senate Bill 1, General Appropriations Act, 81st Legislature (2009).
 - ³ Texas Forest Service, *Implementation Guidelines*, p. 5-3. September 12, 2005.
 - ⁴ Texas Forest Service, *Strategic Plan Fiscal Years 2011-15*, (College Station, Texas), p. 18. Texas Forest Service, *Texas Wildfire Protection Plan*, November 8, 2002.
 - ⁵ Southern Group of State Foresters, *Fire in the South – The Southern Wildfire Risk Assessment* (December 2008), p. 6.
 - ⁶ *Fire in the South – The Southern Wildfire Risk Assessment*, pp. 27-28.
 - ⁷ The Southern Wildfire Risk Assessment for Texas uses data such as fire occurrence history, fuel conditions, weather conditions, suppression capability, wildland-urban interface areas, property, transportation infrastructure, and other information to develop Level of Concern Ratings for areas of the state.
 - ⁸ *Fire in the South – The Southern Wildfire Risk Assessment*, p. 9.
 - ⁹ U.S. Department of Homeland Security, Assistance to Firefighters Grant (AFG) – FY 2009 Award Recipients (August 20, 2010). Online. Available: www.firegrantsupport.com/content/html/afg/Awards09.aspx. Accessed: August 26, 2010.

Responses to Issue 4

Recommendation 4.1

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

Agency Response to 4.1

The Texas Forest Service agrees with this recommendation and will implement it as a management action beginning in September of 2011. Because of data limitations, use of the Southern Wildfire Risk Assessment has not been feasible before now, but updated Risk Assessment products will be available by the end of the calendar year. Beginning in FY 2011, the Texas Forest Service will be able to effectively utilize this assessment tool to support planning, mitigation and fire department programs. The agency will implement this recommendation with or without statutory change. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 4.1

Steve Perdue, T-Flag Chairman – State Firemen’s and Fire Marshals’ Association of Texas, Austin

Against 4.1

None received.

Recommendation 4.2

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

Agency Response to 4.2

The Texas Forest Service agrees with this recommendation and will implement it with or without statutory change. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 4.2

Steve Perdue, T-Flag Chairman – State Firemen’s and Fire Marshals’ Association of Texas, Austin

Against 4.2

None received.

Recommendation 4.3

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

Agency Response to 4.3

The Texas Forest Service does not agree with this recommendation. TFS has an extensive set of grant program policies and procedures which were developed under the authority of the initial program legislation. Before implementing the VFD Assistance Program, a comprehensive and formal survey of all fire departments was conducted to determine needs. This program has passed the scrutiny of multiple A&M System and State audits in the program's eight year history. The VFD Assistance Program policies, procedures and funding meetings have been open to the public since the program's inception. We support an open and transparent process and see no need to impose the rulemaking process on this program. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 4.3

None received.

Against 4.3

None received.

Recommendation 4.4

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

Agency Response to 4.4

The Texas Forest Service agrees with this recommendation. The agency will review its current website to ensure program information is readily available and accessible to the public. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 4.4

None received.

Against 4.4

None received.

Recommendation 4.5

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

Agency Response to 4.5

The Texas Forest Service agrees with this recommendation, but it should be recognized that not all VFDs use electronic communications on a consistent basis. To ensure maximum participation by VFDs, TFS uses both e-mail and conventional mail notifications. This approach has proven effective, but TFS will review for opportunities for greater utilization of electronic communication. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 4.5

None received.

Against 4.5

None received.

Commission Decision

Adopted Recommendations 4.1 through 4.5.

Legislative Action

Senate Bill 646 requires the Forest Service to add criteria that account for risk factors such as wildfire occurrence, size, severity, and potential for property loss when awarding Volunteer Fire Department Assistance Program grants to eligible departments. (Recommendation 4.1) Senate Bill 646 also authorizes the Forest Service to make a small portion of grant funding available to volunteer fire departments to meet Federal Emergency Management Agency and any other federal cost-share requirements. (Recommendation 4.2) Finally, the bill requires the Forest Service to develop and adopt a set of grant program policies and procedures through the rulemaking process and hold public meetings when making program decisions. (Recommendation 4.3)

As management recommendations not needing statutory change, Recommendations 4.4 and 4.5 did not result in legislative action.

Issue 5

The Texas Forest Service's Employment of Peace Officers Overlaps Other Law Enforcement Efforts and Is an Unnecessary Use of State General Revenue.

Background

State law directs the Texas Forest Service (TFS) to “enforce all laws pertaining to the protection of forests and woodlands, and prosecute violation of those laws.”¹ In 1975, the Legislature authorized TFS to hire certified peace officers to carry out these enforcement duties, although TFS did not hire a full-time peace officer until 1996.² Currently, TFS employs 10 full-time peace officers. Primarily, these peace officers investigate suspicious wildfires for possible arson and alleged thefts of timber. TFS has a registered AKC bloodhound, Arson Annie, that assists in arson investigations.

The TFS law enforcement department spends about one-third of its time on arson investigations, with each peace officer investigating an average of 26 suspicious fires each year. Since 2005, TFS has investigated about 1,150 non-accidental wildfires, of which 469 were determined to be arson and 681 were believed caused by misdemeanor negligent activity, such as burning debris during a burn ban. In that time, TFS has issued 200 misdemeanor citations and filed 10 cases for arson prosecution. Over the last decade, though, the reported number of arsons committed in Texas has declined.³

The department spends another third of its time investigating alleged timber thefts. TFS has received 415 complaints of timber theft since 2005, and investigations of those complaints have led to 18 convictions and the collection of nearly \$1.5 million in restitution.⁴ In addition to wildland arson and timber theft investigation, TFS peace officers respond to wildfires during high-occurrence fire seasons and respond to other emergencies such as hurricanes and floods. On average, peace officers spend about 15 percent of their time responding to wildfires each year.

Findings

The Texas Forest Service's arson investigations overlap efforts by the State Fire Marshal's Office and local jurisdictions.

For much of its existence, TFS went without peace officers to enforce laws against arson and misdemeanor wildfires. These crimes were typically prosecuted by other entities such as county and municipal governments, which have the authority to hire fire investigators and carry out their own arson investigations. Texas has more than 1,200 certified arson investigators.⁵

In addition, statute requires the State Fire Marshal's Office (SFMO) to investigate arson crimes statewide, defining the State Fire Marshal as the “chief investigator in charge of the investigation of arson and suspected arson in the state.”⁶ The Office employs 22 field investigators, including four canine teams, that are stationed throughout the state. In addition, SFMO runs the Forensic Arson Laboratory in Austin. The Office primarily assists smaller municipalities and rural areas that cannot employ a full-time fire investigator with structural arson investigations. While SFMO does not

currently investigate wildland arson, all certified fire investigators must learn about both wildland and structural arson. Several SFMO investigators have received wildland arson training and, with additional training for all SFMO investigators, they could become proficient in wildland arson. Since 2005, SFMO has investigated about 2,700 fires, of which 1,100 were ruled arson and 300 resulted in convictions.

Local jurisdictions have authority to investigate timber theft, and no other commodity has its own state-funded peace officers.

Many local officials already investigate and prosecute timber theft cases.

Although TFS employs peace officers to help investigate timber thefts, these thefts fall into the jurisdiction of police or sheriffs' offices, depending on the location of the theft. Many local officials already carry out investigations and prosecutions currently without the assistance of TFS peace officers. TFS could continue to provide expertise to local law enforcement regarding timber value estimations, but does not need peace officers to do so. In addition, according to local officials and TFS staff, the passage of laws against timber theft during the late-1990s, accompanied by increased awareness and prosecution of these thefts, has helped reduce timber thefts. For example, the law now requires lumber mills to retain a record for every timber purchase that includes the name of the landowner and information about the tract of land from which the timber came.

Texas does not provide a dedicated police force to investigate the theft of any other commodity. Although special rangers police the cattle industry, that force is supported by the cattle raisers' association, not state funds.

Most other states' forestry agencies do not employ police forces to investigate arson or timber theft.

Although every state has some type of forestry agency, only 15 states give that agency the authority to investigate wildland arson. In addition, only seven states charge the agency with investigating timber thefts. The United States Forest Service investigates both arson and timber theft cases, but these investigations are solely on the national forest land managed by the USFS, not on private or state land.

Recommendations

Change in Statute

5.1 Remove TFS' law enforcement authority, which would result in the transfer of staff positions to the State Fire Marshal's Office.

This recommendation would remove the statutory language charging TFS to "enforce all laws pertaining to the protection of forest and woodlands, and prosecute violation of such laws." Local law enforcement would continue to have primary responsibility for handling these violations. Specifically, law enforcement would investigate timber theft, wildland arson, and misdemeanor fires as resources allow. As it does with structural arson investigations, SFMO would provide assistance with investigations of wildland arson to local jurisdictions upon request.

5.2 Remove TFS' authority to appoint peace officers.

This recommendation would remove the statutory authority for TFS to appoint certified peace officers for the purpose of executing the agency's enforcement duties. TFS would eliminate its law enforcement department and the position of peace officer, as well as cease investigating wildland arson and timber theft cases. Existing TFS staff could absorb the other duties performed by peace officers such as wildfire response.

Fiscal Implication Summary

These recommendations would result in annual savings to General Revenue of approximately \$600,000 and a net reduction of seven staff positions out of 11 (10 peace officers and one accountant assistant). Sunset staff estimates SFMO would need four FTE positions transferred from TFS, with an annual cost of \$240,500 in salary, benefits, and travel expenses, to conduct the arson investigations currently performed by TFS. The recommendations assume the vehicles and equipment associated with TFS' law enforcement program would also transfer to SFMO. However, because SFMO is funded through the Department of Insurance's maintenance taxes and fees (Fund 36), these costs would not impact General Revenue.

Texas Forest Service

Fiscal Year	Savings to the General Revenue Fund	Change in FTEs
2012	\$600,000	-7
2013	\$600,000	-7
2014	\$600,000	-7
2015	\$600,000	-7
2016	\$600,000	-7

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1 Act of March 20, 1915, 34th Leg., R.S., ch. 141, § 1, 1915 Tex. Gen. Laws 220.

2 Act of May 31, 1975, 64th Leg., R.S., ch. 570, § 1, 1975 Tex. Gen. Laws 1840.

3 Texas Department of Public Safety, *2009 Crime in Texas*, "Arson," p. 30.

4 For timber thefts, TFS first attempts to secure payment for the aggrieved landowner. If unable to collect damages, TFS then works to prosecute the alleged offender.

5 Information from the Texas Commission on Fire Protection, received on September 24, 2010.

6 Texas Government Code, sec. 417.004.

Responses to Issue 5

Overall Agency Response to Issue 5

The Texas Forest Service does not agree with these recommendations. While agreeing with the finding that most other states' forestry agencies do not employ police forces to investigate arson or timber theft, TFS points out that 11 of 13 states in the southeast region, where the agency asserts wildland arson is a problem, do have their own law enforcement staffs. Also, forest land in the western U.S. is largely federally owned, and applicable federal agencies have their own law enforcement staffs. TFS also points out that other state agencies (e.g. TPWD, TABC and LCRA) employ law enforcement staff to enforce statutes relative to their programs and mission. (Tom Boggus, Director and State Forester – Texas Forest Service)

Recommendation 5.1

Remove TFS' law enforcement authority, which would result in the transfer of staff positions to the State Fire Marshal's Office.

Agency Response to 5.1

The Texas Forest Service does not agree with this recommendation, and does not agree that TFS' law enforcement efforts overlap efforts by SFMO and local jurisdictions. Each has the authority to conduct arson investigations, but SFMO does not conduct wildland arson investigations. Local jurisdictions conduct them when they have the resource capacity to do so, and TFS conducts them when requested or when local capacity is exceeded. SFMO does not investigate illegal or uncontrolled burning, which constitutes a high volume of the cases handled by TFS law enforcement staff. These cases are referred to TFS by local law enforcement agencies or reported by TFS fire suppression personnel. Also, TFS deploys arson task forces to areas of the state experiencing arson problems to help investigate and serve as a deterrent to further arson activity. Similarly, local jurisdictions investigate timber theft when they have the resource capacity to do so and TFS investigates when requested or when local capacity has been exceeded.

This recommendation does not consider the larger issue of program delivery and enforcement. The TFS law enforcement program was born out of a need in Texas to deal with enforcement of laws pertaining to arson, illegal burning and timber theft. The need existed because other law enforcement agencies either did not have the resources to handle the investigations or had other areas of local law enforcement requiring higher priority. Recognizing that enforcement is required for laws to be effective deterrents and is a critical element of the state's fire prevention program, the Legislature granted TFS authority to employ law enforcement officers. The agency implemented this authority by redirecting internal resources (primarily firefighter positions in East Texas).

This recommendation also does not consider jurisdiction. Local law enforcement agencies are bound by their jurisdiction boundaries; however, wildland arson, illegal or uncontrolled burning, and timber theft are not. It is common for these cases to cross jurisdictional boundaries. The statewide authority granted to TFS enables it to handle these cases without jurisdictional boundary problems. (Tom Boggus, Director and State Forester – Texas Forest Service)

Affected Agency Response to 5.1

The State Fire Marshal's Office supports this recommendation. With additional training for current SFMO fire investigators and the addition of four FTE positions, SFMO could provide assistance with investigations of wildland arson to local jurisdictions upon request. (Paul Maldonado, State Fire Marshal – State Fire Marshal's Office, Texas Department of Insurance)

For 5.1

None received.

Against 5.1

Mike Fisher, Emergency Management Coordinator – Bastrop County, Bastrop

J.D. Gardner, Chief – Killeen Fire Department and President – Texas Fire Chiefs Association, Killeen

Thom Karels, President – Texas Forestry Association, Lufkin

M. Dale Little, Midland County Fire Marshal/EMC

Mike Montgomery, Fire Marshal – Harris County, Humble

Steve Perdue, T-Flag Chairman – State Firemen's and Fire Marshals' Association of Texas, Austin

Brian Sellers, Houston

Recommendation 5.2

Remove TFS' authority to appoint peace officers.

Agency Response to 5.2

The Texas Forest Service does not agree with this recommendation for the reasons cited for Recommendation 5.1. The agency also does not agree with the assumption that existing staff will absorb the other duties performed by peace officers, such as wildfire response. The elimination of the peace officer positions would reduce TFS' firefighting and fire prevention resources. (Tom Boggus, Director and State Forester – Texas Forest Service)

For 5.2

None received.

Against 5.2

J.D. Gardner, Chief – Killeen Fire Department and President – Texas Fire Chiefs Association, Killeen

Thom Karels, President – Texas Forestry Association, Lufkin

M. Dale Little, Midland County Fire Marshal/EMC

Mike Montgomery, Fire Marshal – Harris County, Humble

Steve Perdue, T-Flag Chairman – State Firemen’s and Fire Marshals’ Association of Texas, Austin

Brian Sellers, Houston

Commission Decision

Not adopted. The Sunset Commission took no action on Issue 5.

Legislative Action

No action needed.

New Issues

New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

6. Institute methods for timber investment management organizations and real estate investment trusts to provide additional assistance to the Texas Forest Service for firefighting suppression efforts on their properties. (Charles McMahan, Public Member and Representative Rafael Anchia, Member – Sunset Advisory Commission)
7. To help TFS determine the best allocation of Volunteer Fire Department Assistance Program funds, require the agency to contact county fire marshals, in the counties that have them, about the needs of volunteer fire departments that are requesting funds. (Randy C. Renois, Fire Marshal – Tarrant County, Fort Worth)
8. Require the Texas Forest Service to educate those involved in the forest industry about woody biomass plants and carbon credits, and account for how much carbon the timber industry in Texas is taking out of the atmosphere. (Andy Wilson, Policy Analyst – Public Citizen, Austin)

Commission Decision

The Commission did not adopt any new issues.

Legislative Action

No action needed.

Provision Added By Legislature

Provision Added by Legislature

1. Update Texas Forest Service statute to be gender-neutral.

The Legislature added a provision to S.B. 646 that removes references to “his,” “he,” and “men” to make the Forest Service statute gender-neutral.

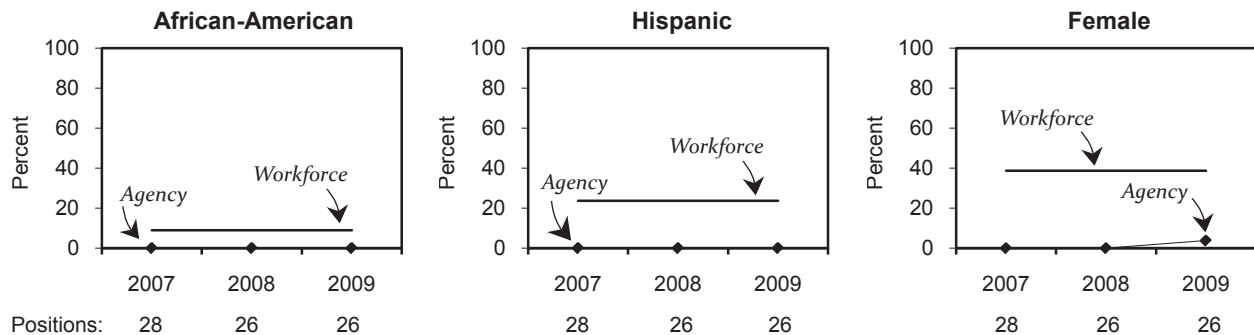
Appendices

Appendix A

Equal Employment Opportunity Statistics 2007 to 2009

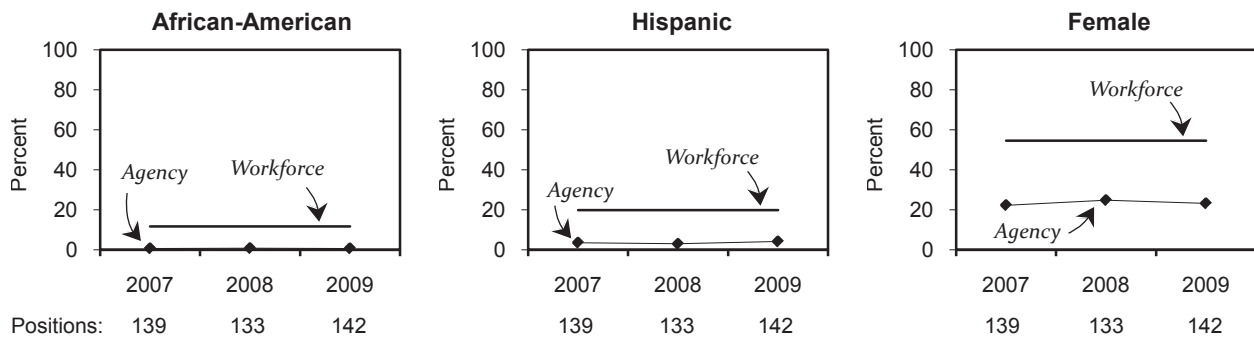
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Forest Service.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. 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 2007 to 2009. The agency generally did not meet civilian workforce percentages in any category, except for female employees in administrative support and African-American employees in skilled craft positions. The agency indicates that the historical lack of females and minorities in the forestry and firefighting communities has limited its applicant pool.

Administration



The agency fell well below the civilian workforce percentages in all three groups in the past three fiscal years.

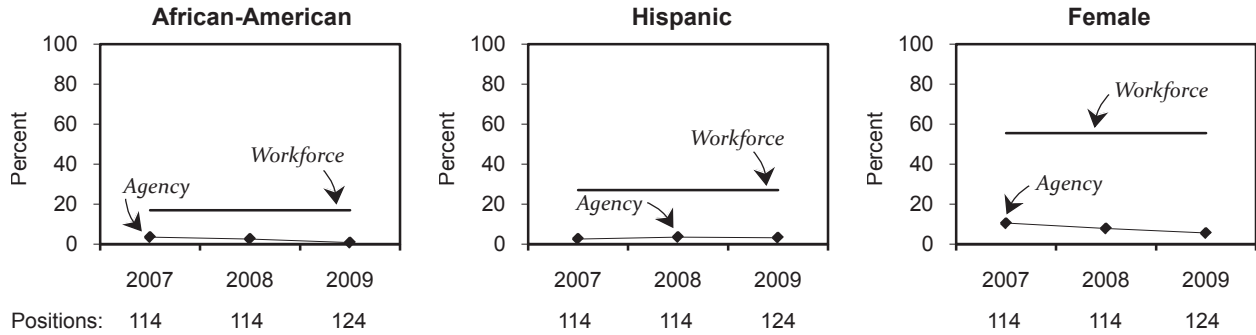
Professional



In the largest category of staff, the agency fell well below the civilian workforce percentages in all three groups in the past three fiscal years.

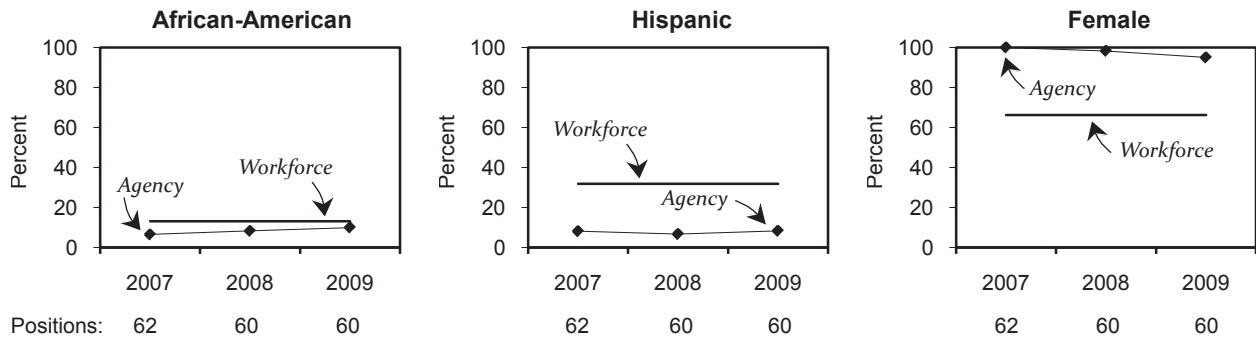
Appendix A

Technical



The agency fell well below the civilian workforce percentages in all three groups in the past three fiscal years.

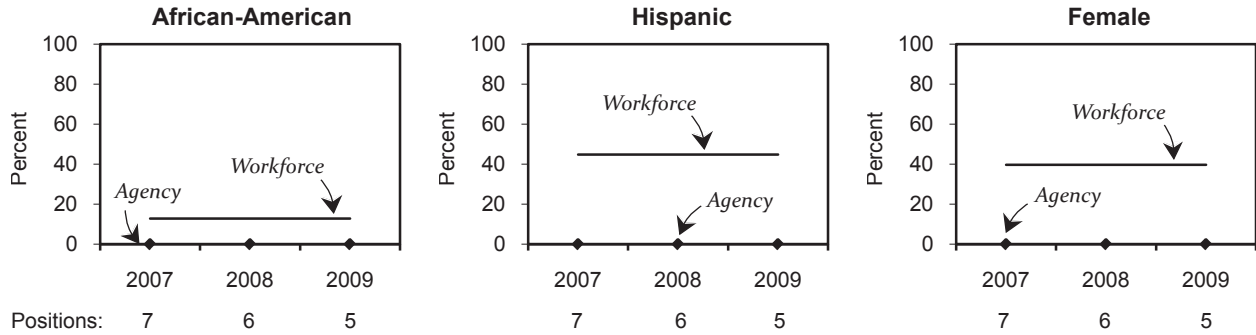
Administrative Support



The agency exceeded the civilian workforce percentage goal for females in administrative support for the past three fiscal years. However, the agency did not meet percentage goals for African-American or Hispanic employees for this category in the past three fiscal years.

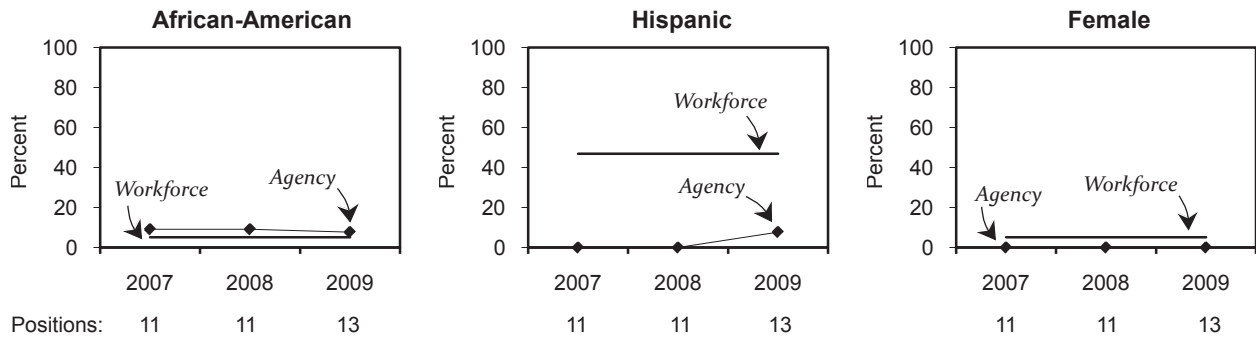
Appendix A

Service/Maintenance³



The agency fell well below the civilian workforce percentages in all three groups in the past three fiscal years, but had few staff in this category.

Skilled Craft



The agency exceeded the civilian workforce percentage goal for African-Americans in skilled craft for the past three fiscal years. The agency did not meet percentage goals for Hispanics or females for this category in the past three fiscal years, though the agency did have an increase of the percentage for Hispanics in fiscal year 2009.

¹ Texas Government Code, sec. 325.011(9)(A).

² Texas Labor Code, sec. 21.501.

³ The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.

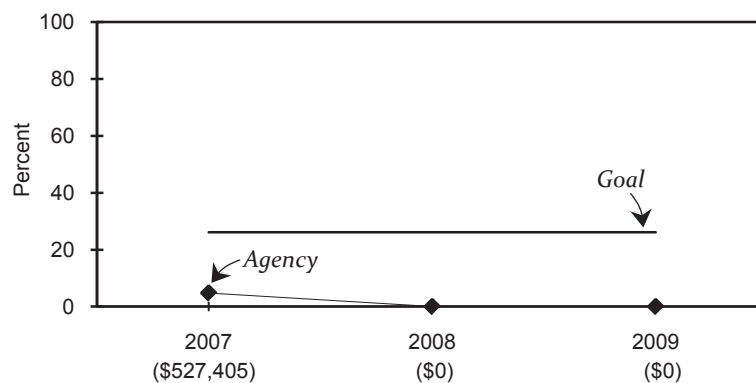
Appendix B

Historically Underutilized Businesses Statistics 2007 to 2009

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 Forest Service'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 flat 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 2007 to 2009. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency exceeded some of the State's HUB purchasing goals for professional services and commodities, but had difficulty meeting the goal for other purchasing categories because the agency's spending is mostly on large machinery such as bulldozers and on fuel for which HUB vendors are not generally available. The agency met other HUB-related requirements, such as appointing a HUB coordinator, establishing a HUB policy, and developing a mentor-protégé program.

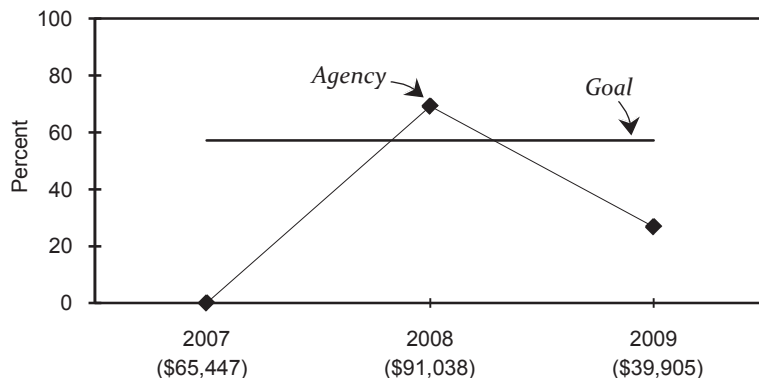
Building Construction



The agency fell below the State's goal for spending in this category in fiscal year 2007, the last year it had expenditures in this category.

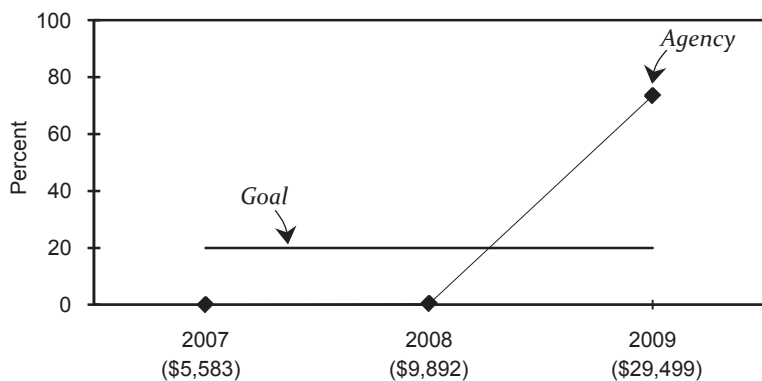
Appendix B

Special Trade



In fiscal year 2008, the agency exceeded the State's goal for spending for special trade. However, in fiscal years 2007 and 2009, the agency fell short of the goal. The expenditures in this category were small, one-time expenditures for these fiscal years.

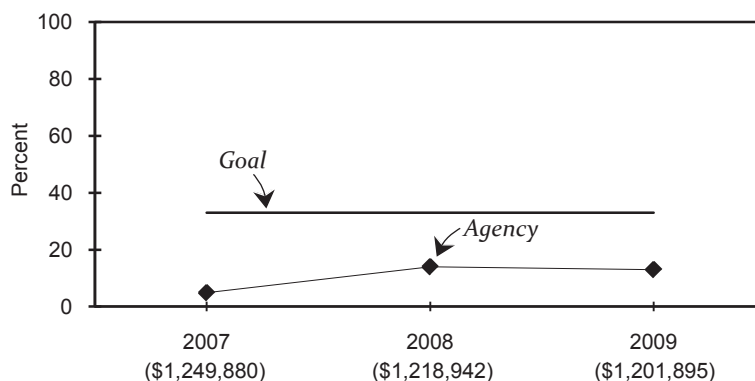
Professional Services



In fiscal year 2009, the agency exceeded the State's goal for spending for professional services. However, in fiscal years 2007 and 2008 the agency fell short of the goal. The expenditures in this category were small, one-time expenditures for these fiscal years.

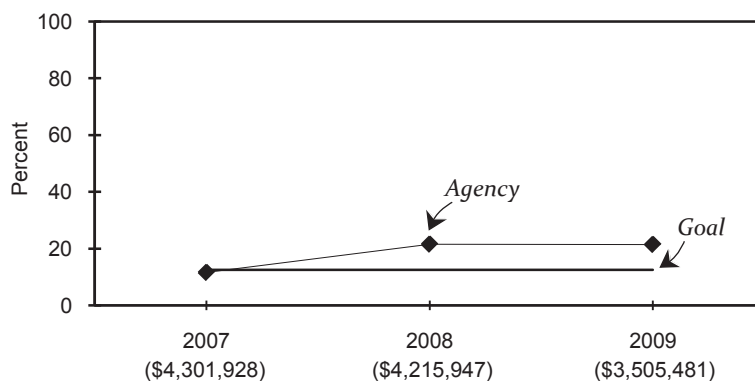
Appendix B

Other Services



Purchases for the other services category fell below the State purchasing goal each fiscal year. Purchases in this category were for services in which HUB vendors were generally not available, such as for timber reforestation or for wildland firefighting training.

Commodities



In its largest expenditure category, the agency exceeded the State's goal for spending for commodities in fiscal years 2008 and 2009, and almost met the goal in fiscal year 2007.

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¹ Texas Government Code, sec. 325.011(9)(B).

² Texas Government Code, ch. 2161.

Appendix C

Staff Review Activities

During the review of the Texas Forest Service (TFS), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes and rules, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

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

- Toured TFS field offices in Austin, Bastrop, Conroe, Crockett, Fredericksburg, Johnson City, and Lufkin. These tours included visits to the Jones State Forest in Conroe and the TFS Pest Management Lab and Texas Interagency Coordination Center in Lufkin.
- Toured the TFS West Texas Nursery in Idalou.
- Toured the TFS Incident Command Post in Granbury.
- Visited Texas Army National Guard's Camp Swift where TFS holds its fire training academy and conducts prescribed burns.
- Observed TFS staff conduct a Forest Inventory Analysis survey.
- Inspected a TFS Remote Automated Weather Station.
- Visited privately owned property with examples of stewardship management plans, timber production, oak wilt suppression efforts, and prescribed burning, and met with landowners.
- Visited the Texas A&M University Texas Engineering Extension Service Annual Municipal Fire Training School.
- Met with or interviewed local elected officials, local emergency management officials, and volunteer firefighters and chiefs.
- Met with or interviewed staff from the U.S. Forest Service, the Federal Emergency Management Agency, the Legislative Budget Board, the State Fire Marshal's Office, the Texas Division of Emergency Management, the Texas Commission on Law Enforcement Officer Standards and Education, the Texas Department of Agriculture, and the State Auditor's Office.

SUNSET STAFF REVIEW OF THE TEXAS FOREST SERVICE

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