

# SUNSET ADVISORY COMMISSION

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## STAFF REPORT

### Texas State Soil and Water Conservation Board

### Texas Invasive Species Coordinating Committee

2022-23

88TH LEGISLATURE



# SUNSET ADVISORY COMMISSION



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

**TEXAS STATE SOIL AND WATER  
CONSERVATION BOARD**

**TEXAS INVASIVE SPECIES  
COORDINATING COMMITTEE**

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## HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at [sunset.texas.gov/how-sunset-works](https://sunset.texas.gov/how-sunset-works). The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at [sunset.texas.gov](https://sunset.texas.gov).

### **CURRENT VERSION: Sunset Staff Report**

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

### **Sunset Staff Report with Commission Decisions**

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

### **Sunset Staff Report with Final Results**

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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# SUMMARY OF SUNSET STAFF REPORT

The Texas Legislature created the Texas State Soil and Water Conservation Board (TSSWCB) in 1939 as part of a national movement to mitigate the effects of the Dust Bowl. TSSWCB supports the state's 216 local soil and water conservation districts, and together they work with landowners to encourage voluntary natural resource conservation throughout the state. The last full Sunset review of TSSWCB in 2011 found the agency had grown far beyond its initial role of providing financial and technical assistance to the soil and water conservation districts. The agency's responsibilities, and its budget, had significantly expanded to include addressing water quality issues related to agriculture and forestry-related nonpoint source pollution, and providing funding to help maintain, repair, and rehabilitate the state's 2,040 flood control dams. However, that review found the agency lacked defined goals and internal processes to efficiently and effectively administer its new programs and responsibilities.

**TSSWCB must be able to demonstrate and justify its grant funding decisions.**

Twelve years later, this Sunset review found the Legislature had further expanded TSSWCB's budget and responsibilities related to flood control, but once again, the agency did not develop the clear goals and updated processes necessary to transparently, efficiently, and effectively handle this sudden growth. While TSSWCB successfully works with landowners on conservation and should be continued, the agency must be able to demonstrate and justify to the state and taxpayers its decisions to prioritize and fund certain projects over others.

In 2019, following Hurricane Harvey's devastating flooding, the Legislature appropriated \$150 million from the Economic Stabilization Fund, also known as the Rainy Day Fund, to TSSWCB for dam infrastructure projects. The appropriation was nearly 10 times the agency's original biennial budget for flood control, and the agency had wide latitude and flexibility on how to best distribute this funding. Having only two years to obligate the \$150 million, and until 2025 to spend the funds, agency staff undertook the herculean task of attempting to review, select, and fund several times their usual number of projects through the agency's competitive dam structural repair grant program. However, instead of proactively planning and appropriately modifying its grants administration processes to accommodate this substantial increase in state funding, TSSWCB continued operating business as usual, limiting the efficiency and transparency of the program and reducing the effectiveness of the additional funding.

TSSWCB estimates it may lapse between \$30 million and \$45 million of the Economic Stabilization Fund appropriation due to project delays and increases in construction costs during the pandemic, but the review determined this is also due to some of the agency's own actions. Additionally, TSSWCB's lack of documentation for the program prevented Sunset staff from determining whether these funds were distributed appropriately, even according to the agency's own criteria. Also, the rarity of an Economic Stabilization Fund



appropriation heightens the importance of ensuring this funding is used effectively and accountably, and lapsing funds means the Legislature cannot use those dollars to address other state priorities. As TSSWCB prepares to request more funding to continue the program to meet Texas' estimated \$2 billion in dam project needs, it is even more critical for the agency to improve its grant administration and management practices.

Finally, this review also looked at the Texas Invasive Species Coordinating Committee, which has its own separate Sunset review date and is administratively attached to TSSWCB. Sunset staff determined the committee continues to be needed, but its statute needs to be updated to refocus the committee's responsibilities on interagency coordination.

The following material highlights Sunset staff's key recommendations for the Texas State Soil and Water Conservation Board and the Texas Invasive Species Coordinating Committee.

## **Sunset Issues and Recommendations**

### **ISSUE 1**

#### **TSSWCB Needs to Improve Its Administration of the Dam Structural Repair Program to Ensure Consistency, Fairness, and Accountability.**

TSSWCB insufficiently prepared to administer the \$150 million appropriation from the Economic Stabilization Fund for flood control projects. The agency did not have clear goals, rules, or policies to effectively guide and efficiently obligate this funding through its dam structural repair grant program, limiting its effectiveness and transparency. Further, without proper documentation, the agency cannot show it treated grant applicants consistently or justify its funding decisions.

#### **Key Recommendations**

- Require TSSWCB to develop and adopt one clear set of overall priorities, goals, and associated measures for the dam structural repair program.
- Direct TSSWCB to establish and update its policies for administering the dam structural repair program.
- Direct TSSWCB to proactively inform dam sponsors and co-sponsors about dam structural repair funding availability.

### **ISSUE 2**

#### **The State Has a Continuing Need for the Texas Invasive Species Coordinating Committee, but Statute Could Better Align With the Committee's Needs.**

In 2009, to address the lack of invasive species coordination among state agencies, the Legislature created the Texas Invasive Species Coordinating Committee, and attached it to TSSWCB. The committee has not met since 2017, but Texas has a continuing interest in coordinating the state's various invasive



species control efforts, so the committee should be continued. However, the committee's statute should be updated to better position the committee to serve its primary purpose of interagency coordination.

### **Key Recommendations**

- Continue the Texas Invasive Species Coordinating Committee and require it to be reviewed at the same time as TSSWCB.
- Modify statute to better align with the committee's purpose and current needs.

## **ISSUE 3**

### **Texas Has a Continuing Need for the Texas State Soil and Water Conservation Board, but the Agency Needs Changes to Improve Accountability.**

TSSWCB benefits the state by helping ensure landowners have the tools necessary to conserve the state's natural resources and keep agricultural practices productive and profitable to meet future needs. As such, the agency should be continued for 12 years. While TSSWCB continues to be needed, the review identified additional safeguards needed to improve its financial accountability and mitigate conflicts of interest.

### **Key Recommendations**

- Continue TSSWCB for 12 years and remove the Sunset date of the agency's enabling statute.
- Direct TSSWCB to develop a board member recusal policy, including a written explanation for the recusal.
- Direct TSSWCB to improve its district director training, including providing a training manual the directors would have to attest to receiving and reviewing annually.

## **ISSUE 4**

### **The Agency's Statute Does Not Reflect Some Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review are across-the-board recommendations that reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. TSSWCB's statute needs updates related to the across-the-board recommendations on board member training, complaints management, and the separation of the board's policymaking functions from staff's day-to-day administrative functions. TSSWCB also needs to adopt a policy to meaningfully review its administrative rules every four years, and recertify its outdated records retention schedule to meet statutory requirements.

### **Key Recommendations**

- Update the standard across-the-board requirements related to board member training, separation of duties, and complaints.

- Direct TSSWCB to adopt a policy guiding its rule review process.
- Direct TSSWCB to recertify its records retention schedule and develop a records retention policy.

## **Fiscal Implication Summary**

Overall, these recommendations would not have a fiscal impact to the state. Some recommendations in the report will require staff time to complete, but should improve internal operations to better maximize state funding in the long term.

# AGENCY AT A GLANCE

Established by the Legislature in 1939 during the Dust Bowl, the Texas State Soil and Water Conservation Board (TSSWCB) coordinates voluntary natural resource conservation throughout the state.<sup>1</sup> The agency also serves as the lead state agency for the planning, management, and abatement of agricultural and forestry-related water pollution that originates from multiple sources, known as nonpoint source pollution. TSSWCB's mission is to work with local soil and water conservation districts to encourage the wise and productive use of natural resources to ensure their availability for future generations. To achieve this mission, TSSWCB performs the following key activities:

- Providing grant funding for operations and maintenance, repair, rehabilitation, and upgrade of flood control dams.
- Administering grant programs to develop water quality management plans and other nonpoint source pollution management and abatement efforts.
- Providing technical and financial assistance for conservation to the state's 216 soil and water conservation districts.
- Addressing invasive and endangered species, including administering the interagency Texas Invasive Species Coordinating Committee.

## Key Facts

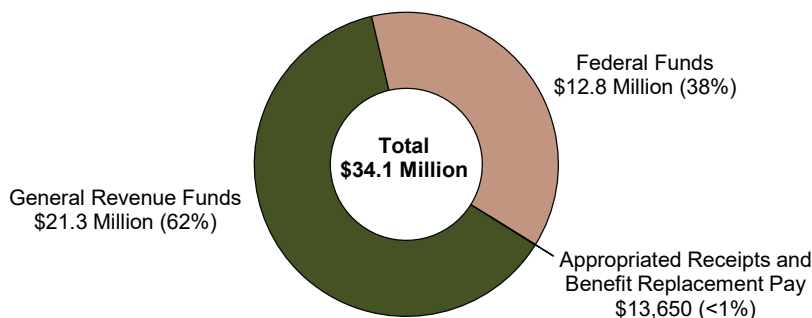
- **Governance.** A seven-member board governs the agency, with five members elected by soil and water conservation district delegates from each of the state's five electoral soil and water conservation districts, and two members appointed by the governor. The map in Appendix A shows the electoral districts and the 216 soil and water conservation districts. The governor-appointed members must be actively engaged in the agriculture business, own or lease land in connection with that business, and may not be a member of the board of directors of a conservation district. Members serve staggered two-year terms and the board elects its chair.<sup>2</sup>
- **Staffing.** In fiscal year 2021, TSSWCB employed 67 staff. Employees are split between the agency headquarters located in Temple, six regional offices, and three program offices located throughout the state. The map in Appendix A shows the location of each office. In fiscal year 2021, 24 staff were based in Temple and 30 in regional and program offices. The agency also has 10 field services representatives, who are not based in any office and travel between their assigned soil and water conservation districts within their region, and two flood control field services representatives. The executive director splits his time between the Temple headquarters and the field. Appendix B compares the percentages of minorities and women in the agency's workforce to the statewide civilian labor force for the past three fiscal years.
- **Funding.** TSSWCB receives a combination of state and federal funds, and in 2019, received an additional one-time appropriation of \$150 million from the Economic Stabilization Fund, also known as the Rainy Day Fund, for dam infrastructure projects.

The chart, *TSSWCB Sources of Revenue*, shows the agency's revenues in fiscal year 2021, not including funds from the Economic Stabilization Fund. The agency received over \$34 million in revenue in fiscal year 2021. Of that amount, over \$21 million came from the state's General Revenue Fund, and over \$12 million came from federal funding.

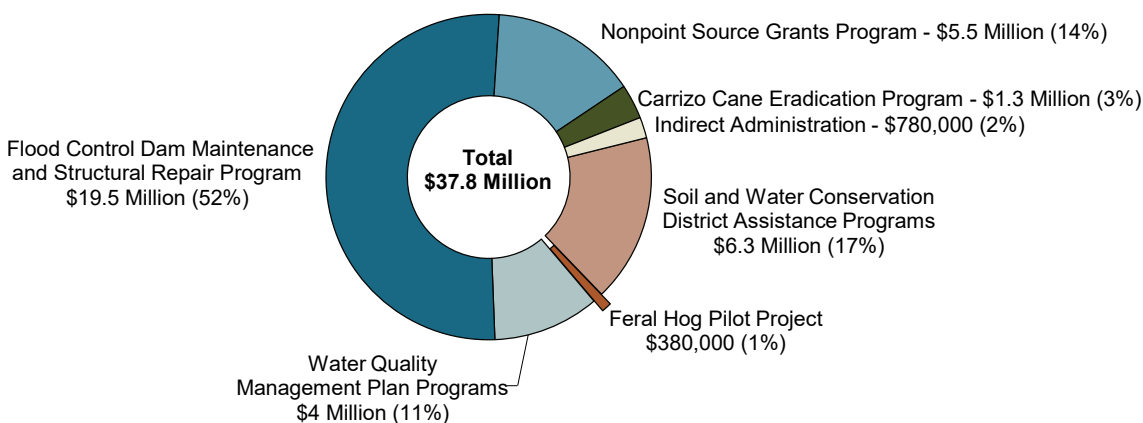
The U.S. Environmental Protection Agency partially funds the agency's nonpoint source pollution implementation grants, and the U.S. Department of Agriculture's Natural Resources Conservation Service partially funds flood control dam projects and qualifying soil and water conservation district activities.

As shown in the chart, *TSSWCB Expenditures*, the agency spent the majority of its funding in fiscal year 2021 on the flood control program, soil and water conservation district assistance programs, and the nonpoint source pollution grants program. This chart includes \$3.7 million in Economic Stabilization Fund funding the agency spent on flood control dam structural repairs. Appendix C describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2019-21.

### TSSWCB Sources of Revenue - FY 2021



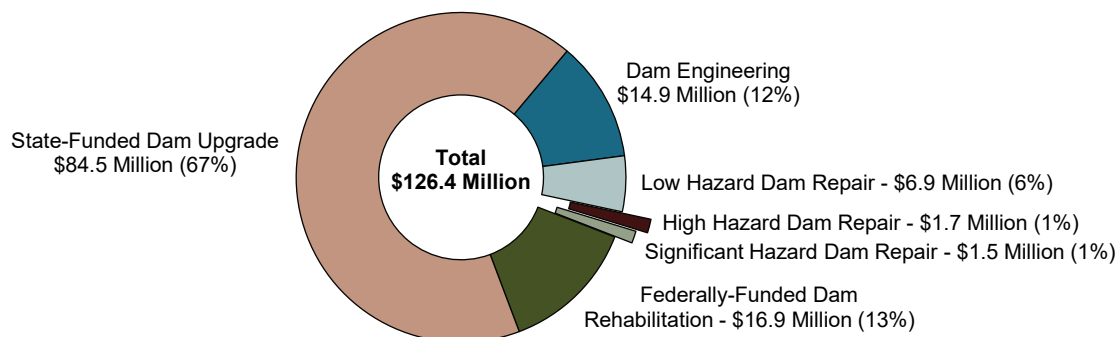
### TSSWCB Expenditures - FY 2021



- Flood control programs.** The agency makes grant funding available to soil and water conservation districts and the co-sponsors of their dams to conduct operations and perform maintenance, repairs, upgrade, and rehabilitation activities on over 2,000 flood control earthen dams in the state. Operations and maintenance of dams is ongoing and includes activities such as fence repair, erosion control, and brush clearing to help ensure these dams do not degrade. Dam repairs typically entail engineering work to restore a dam to its original condition, while rehabilitation and upgrade involve construction to bring a dam into compliance with hazard classification requirements. Development downstream from a dam may cause a dam's hazard classification to change from low to high.

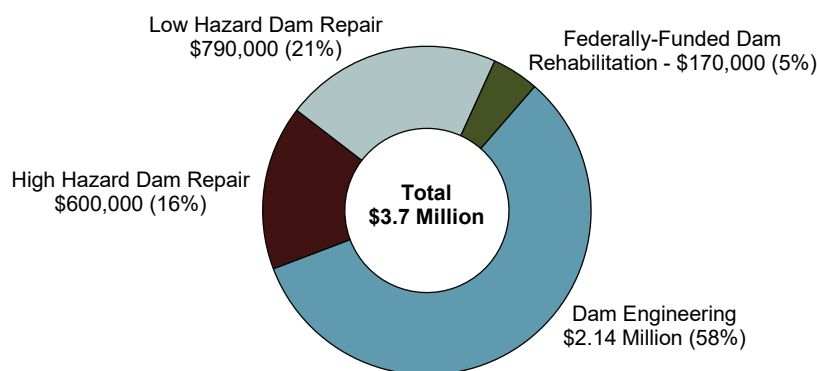
The \$150 million from the Economic Stabilization Fund had to be obligated over two years and once obligated spent by 2025. The agency obligated the first \$23.6 million of these funds in fiscal year 2020 and obligated the remaining \$126.4 million in fiscal year 2021. The chart, *TSSWCB Economic Stabilization Fund Obligations*, shows these grant obligations by activity. TSSWCB obligated the majority of funding to state-funded dam upgrade projects.

### TSSWCB Economic Stabilization Fund Obligations - FY 2021



Though TSSWCB obligated all \$150 million by the mid-2021 deadline, the agency only spent \$3.7 million of these funds in fiscal year 2021, as shown in the chart, *TSSWCB Economic Stabilization Fund Expenditures*. The agency spent the majority of these funds on dam engineering and the rest must be spent by mid-2025, or will lapse back to the state.

### TSSWCB Economic Stabilization Fund Expenditures - FY 2021



- Nonpoint source pollution grants.** The agency administers the agricultural and forestry-related components of the Texas Nonpoint Source Management Program. As part of this effort, TSSWCB provides grant funding to entities such as soil and water conservation districts, local governments, nonprofits, river authorities, and universities for nonpoint source abatement activities. These activities include implementing watershed protection plans, working with the Texas Commission on Environmental Quality on the nonpoint source component of total maximum daily loads, monitoring surface water quality, and developing water quality management plans, defined in the textbox on the following page, *Definitions Related to Water Quality*. In fiscal year 2021, the agency initiated 18 nonpoint source pollution projects and had 52 active projects. Examples of projects include tracking bacterial sources of pollution and implementing watershed protection plans.

### Definitions Related to Water Quality

- **Nonpoint source pollution** is water pollution that does not originate from one source, instead coming from runoff that carries pollutants such as fertilizers, sediment, and bacteria.
  - A **watershed protection plan** is a coordinated framework for implementing priority water quality protection and restoration strategies holistically within a watershed.
  - A **total maximum daily load** is the maximum amount of a pollutant allowed to be present in a waterbody on a daily basis for the waterbody to still meet water quality standards.
  - A **water quality management plan** is a site-specific plan that includes appropriate land management measures to prevent or abate nonpoint source pollution.
- **Water quality management plan grants.** TSSWCB provides grant funding to landowners and agricultural producers to implement water quality management plans that include best practices to reduce nonpoint source pollution. Examples of best management practices implemented through these plans include implementing proper grazing systems, water facilities, or nutrient management. Participation in the program is voluntary except for certain poultry operations, which statute requires to participate. In fiscal year 2021, the agency certified 197 water quality management plans under the program.
  - **Soil and water conservation district assistance.** The agency provides funding, technical, and programmatic assistance to the state's 216 soil and water conservation districts. These districts are political subdivisions with unpaid, locally elected boards and can encompass multiple counties. District directors and staff work with TSSWCB to deliver conservation programs to local landowners and producers.
  - **Invasive and endangered species programs.** TSSWCB administers a voluntary carrizo cane management program along the Rio Grande River to assist in state border security priorities. Carrizo cane, or arundo donax, is a non-native plant that reduces law enforcement's visibility along the river, uses large amounts of water to grow, and impairs local ecology. In fiscal year 2021, the agency spent over \$1.3 million, including administrative costs, to treat nearly 8,000 acres of carrizo cane. TSSWCB also received a U.S. Department of Agriculture grant to administer a feral hog control pilot program. The pilot project includes a program to loan smart feral hog traps to landowners, and to provide education, outreach, and technical assistance. Additionally, TSSWCB is a member of the comptroller's Interagency Task Force on Economic Growth and Endangered Species and has partnered with federal agencies on initiatives to adopt conservation practices in the threatened lesser prairie chicken range and conserve monarch butterfly habitats in the state.
  - **Texas Invasive Species Coordinating Committee.** In 2009, the Legislature tasked TSSWCB with administering the committee, which includes representatives from six state agencies that work on invasive species control, listed in the accompanying textbox. The committee last met in 2017. The committee is subject to abolishment under the Texas Sunset Act and is discussed in further detail in Issue 2.

#### Texas Invasive Species Coordinating Committee Members

- Texas State Soil and Water Conservation Board
- Texas Department of Agriculture
- Texas Parks and Wildlife Department
- Texas A&M AgriLife Extension Service
- Texas A&M Forest Service
- Texas Water Development Board

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<sup>1</sup> Chapter 3 (HB 20), Acts of the 46th Texas Legislature, Regular Session, 1939.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 201.015 and 201.019, Texas Agriculture Code.





# ISSUE 1

## TSSWCB Needs to Improve Its Administration of the Dam Structural Repair Program to Ensure Consistency, Fairness, and Accountability.

### Background

The Texas State Soil and Water Conservation Board (TSSWCB) provides grant funds to local soil and water conservation districts for dam operations and maintenance, repair, rehabilitation, and upgrade. These districts, with local co-sponsors, own 2,040 dams in Texas built by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). The map in Appendix D shows the distribution of these dams across the state. The Texas Commission on Environmental Quality (TCEQ) evaluates each dam's condition and hazard level, as shown in the *TCEQ Dam Conditions and Classifications* textbox.<sup>1</sup> A dam's hazard classification of low, significant, or high establishes the level of risk a dam poses to property and human life in case of a dam breach or failure.

Currently, Texas has 514 NRCS dams needing rehabilitation or upgrade to meet high hazard standards, and TCEQ estimates this number grows by about 20 dams per year. The *Responsibility for NRCS Dams* textbox discusses who is responsible for the maintenance and upkeep of these dams. NRCS provides federal funding to rehabilitate dams and pays for repairs resulting from design or construction flaws during the dam's economic life, usually 25, 50, or 100 years.

The state provides funding for these dams through TSSWCB. The agency has two competitive flood control grant programs that began in 2010 with a combined biennial budget of \$15 million. The dam operations and maintenance program funds ongoing upkeep needs. The dam structural repair program provides matching funds for rehabilitation, certain repairs, and upgrade, as defined in the *TSSWCB Dam Structural Repair Program Terminology* textbox on the following page.

#### TCEQ Dam Conditions and Classifications

**Good Condition:** Minor maintenance deficiencies, with no visible structural or hydraulic deficiencies that could lead to possible failure.

**Fair Condition:** Moderate maintenance, structural, and/or hydraulic deficiencies that if not corrected could eventually lead to failure.

**Poor Condition:** Major maintenance, structural, and/or hydraulic deficiencies that could threaten the integrity of the dam.

**Low Hazard Classification:** Failure could result in no loss of human life and only minimal economic loss.

**Significant Hazard Classification:** Failure could result in loss of human life (one to six lives or one or two habitable structures in the breach inundation area downstream of the dam) or appreciable economic loss.

**High Hazard Classification:** Failure could result in loss of life (seven or more lives or three or more habitable structures in the breach inundation area downstream of the dam) or excessive economic loss, located primarily in or near urban areas.

#### Responsibility for NRCS Dams

When NRCS constructed the earthen dams over the past 80 years, they were built with the understanding that the private property owner would provide the land, the federal government would provide the technical design expertise and the funding to construct them, and units of local government would be responsible for maintaining them into the future. In Texas, this responsibility went to the 216 local soil and water conservation districts, which lack taxing authority, and their co-sponsors, which have taxing authority, such as cities, counties, and water control and improvement districts. Currently, 106 districts each have responsibility for at least one NRCS dam.

Both programs are voluntary, and the agency cannot compel a district or co-sponsor to participate. The Sunset review identified significant problems with TSSWCB's administration of the dam structural repair program, which this issue focuses on accordingly. The state provides funding for upgrade and repair to these dams through TSSWCB's dam structural repair grant program, which, by rule, requires sponsors to provide a local match for these state funds. As of January 2022, the dam structural repair program had funded 134 projects, with another 34 under contract.

### TSSWCB Dam Structural Repair Program Terminology

**Repair:** May be state or federally funded through NRCS with a local match. Restoring a dam to its original condition. Repairs NRCS funds are mostly for dams still within their economic life.

**Rehabilitation:** Federally funded through NRCS with a local match, regardless of whether the dam is within its economic life. Rebuilding a dam to meet new criteria due to a change in hazard classification.

**Upgrade:** State funded with a local match. Rebuilding a dam to meet new criteria due to a change in hazard classification.

## Findings

### TSSWCB insufficiently prepared to effectively administer the \$150 million appropriation from the Economic Stabilization Fund.

In 2019, in the wake of Hurricane Harvey, the Legislature took significant steps to address statewide flooding issues, including making a one-time appropriation of \$150 million from the Economic Stabilization Fund, also known as the Rainy Day Fund, to TSSWCB for flood control infrastructure projects.<sup>2</sup> The Legislature also statutorily required TSSWCB to develop, and revise as needed, a Ten-Year Plan to identify all of the state's dam repair and maintenance needs and deliver it to the Texas Water Development Board.<sup>3</sup> Besides the Ten-Year Plan requirement, statute gives the agency great latitude in deciding how to administer and spend funds for its flood control responsibilities.<sup>4</sup>

The agency was unprepared for the tenfold increase in its budget.

Having only two years to obligate the \$150 million — and until 2025 to spend the funds — once the state's 2019 budget became effective, TSSWCB prioritized getting the money out the door through its competitive dam structural repair grant program. However, the agency was unprepared for the tenfold increase in its budget and demand for these funds. Instead of proactively planning and appropriately modifying its grants administration process to accommodate this substantial increase in funding, which significantly shifted the amount of analysis and decision-making from the federal government to the agency, TSSWCB continued operating business as usual.

Once the Legislature made the appropriation, the agency continued relying mainly on one in-house program manager to evaluate the technical specifications and cost estimates of proposed projects, ensure sponsors' legal and financial preparation, and track and document all project selection decisions under changing circumstances. Further, despite spending years assembling an inventory to inform the Legislature of the structural repair needs of the state's flood control dams in anticipation of future funding, TSSWCB did not take the time to appropriately plan for and properly establish updated policies and processes to efficiently and transparently obligate and distribute the funds. As a result,

TSSWCB has severely limited the effectiveness of its dam structural repair program and these funds.

TSSWCB is currently on track to complete approximately 59 percent of the originally planned projects, but despite herculean efforts by TSSWCB staff, the agency will likely lapse a significant portion of the funding. In its February 2022 board meeting, agency staff reported its dam structural repair grant program may lapse between \$30 million and \$45 million due to projects unable to be completed by the 2025 deadline.<sup>5</sup> Various issues have contributed to this situation, including construction cost increases during the pandemic and permitting delays, as well as the agency's actions, such as not requiring updated applications and cost estimates.

Despite its best efforts, TSSWCB may lapse millions from the Economic Stabilization Fund.

### **TSSWCB did not establish clear goals, rules, or policies to guide and administer the dam structural repair grant program.**

- **Conflicting guidance documents.** TSSWCB has three primary guidance documents for its flood control programs: the 2019 Ten-Year Dam Repair, Rehabilitation, and Maintenance Plan (Ten-Year Plan), program goals and evaluation criteria (goals document), and program rules in Texas Administrative Code.<sup>6</sup> The table on the following page, *Guidance Document Comparison*, summarizes the program goals and criteria identified in each of these guidance documents.

Ultimately, these three guidance documents emphasize different goals and priorities, providing unclear guidance on which flood control projects the agency will prioritize for funding. For example, the Ten-Year Plan prioritizes completing all currently known dam repairs and a portion of currently known dam rehabilitations or upgrades. The goals document, by contrast, prioritizes eliminating the backlog of dam rehabilitations and repairs, but does not mention upgrades. It also prioritizes dams with the highest hazard classification and potential to fail, which could conflict with the goal in the Ten-Year Plan to prioritize all currently known dam repairs, some of which are for low hazard dams. Even within the goals document, the agency has potentially conflicting goals — prioritize dams with the highest hazard classification and highest potential to fail, and prioritize the presence of federal funding, which is potentially problematic as dams eligible for federal funding may not have the highest potential to fail. Additionally, the dam structural repair program's rules list different prioritization criteria from the goals document, including the ability of a sponsor to provide matching funds, potential loss of life due to dam failure, and accuracy and completeness of the application.

Guidance documents provide conflicting direction for the dam structural repair program.

Because the guidance documents provide conflicting direction for the program, the agency cannot effectively achieve the long-term goals of the investments. The confusing guidance also reduces the accountability of agency funding decisions because sponsors cannot clearly determine under which set of criteria staff evaluate and select grant applications. Based on one of the guidance documents, the agency can justify any program

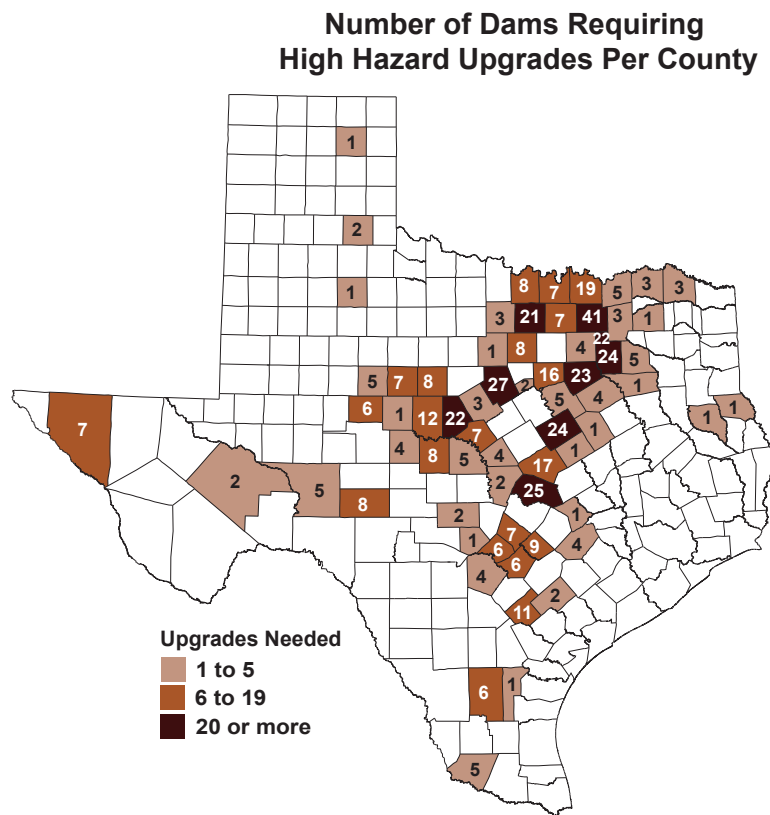
## Guidance Document Comparison

	Ten-Year Plan	Goals Document	Rules
<b>Goals</b>	<ul style="list-style-type: none"> <li>Complete all known dam maintenance and repairs</li> <li>Complete rehabilitation or upgrade of 331 high hazard dams</li> </ul>	<p><b>Goal 1:</b> Eliminate the backlog of repair and rehabilitation needs on flood control dams through a competitive grant program giving priority to those dams with the highest hazard classification and highest potential to fail</p> <p><b>Goal 2:</b> Leverage federal funding to the maximum amount possible using state funds for the match requirement when possible</p>	No goals identified
<b>Prioritization Criteria</b>	<ul style="list-style-type: none"> <li>Addressing currently identified needs</li> <li>The existence of federal funding funds for rehabilitation projects</li> </ul>	<p><b>Criteria 1:</b></p> <ul style="list-style-type: none"> <li>The existence of an order to complete a repair on a dam issued by TCEQ regarding dam safety</li> <li>A dam's hazard classification, as determined by TCEQ</li> <li>Type of repair activity required</li> <li>The priority a dam sponsor places on one dam repair compared to others under its jurisdiction</li> </ul> <p><b>Criteria 2:</b> Include the presence of federal funds as a criterion for selecting projects toward the goal of eliminating the backlog of dam repair, upgrade, and rehabilitation</p>	<p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>Accuracy and completeness of the application</li> <li>Risk of dam failure</li> <li>Potential loss of life due to dam failure</li> <li>Potential critical infrastructure damage due to dam failure</li> <li>Extent and type of repair</li> <li>Sponsors' ability to provide required matching funds</li> </ul>

decision, such as prioritizing an expensive repair to a high hazard dam over several less expensive low hazard dam repairs or forgoing a high hazard dam project to repair a low hazard dam.

- Unrealistic goals.** Statute gives the agency considerable latitude to develop the Ten-Year Plan, allowing the agency to set its own goals and objectives. However, the agency did not engage in a formal planning process to develop the plan. Instead, TSSWCB quickly produced a plan with unrealistic long-range goals, making it difficult to effectively communicate its vision to stakeholders or be held accountable for progress towards these goals through its dam structural repair program. In the plan, TSSWCB set the unrealistic goal of completing all known dam repairs and rehabilitating or upgrading 331 dams to high-hazard standards. This goal would require TSSWCB to fund an average of 33 dam rehabilitations or upgrades per year, more per year than the agency has done in its history.

TSSWCB's current dam structural repair program rules also put the plan's long-term goals out of reach. Agency rules require dam sponsors to provide 1.75 percent matching funds for dam upgrades, which currently average almost \$100,000 and can total over \$150,000. The matching funds requirement is a rule, not a statutory requirement, that both the agency and sponsors indicate creates a fiscal burden on sponsors, limiting participation in the program and preventing the agency from meeting the plan's goals. As shown in the map, 10 counties account for almost half of the dams requiring an upgrade, reflecting a sizeable fiscal burden for sponsors to meet the local match requirement. Out of the hundreds of dams currently requiring a high hazard upgrade, in 2021, sponsors only submitted upgrade applications for 11 dams, which could indicate a barrier to participation and could cast doubt on the feasibility of the plan's goals.



- **Outdated and insufficient rules.** The rules an agency adopts to implement its statutory requirements have the force of law until and unless the Legislature or a court overrides the rules or rescinds the agency's authority. As such, outdated rules that do not reflect the agency's current processes leave an agency open to legal liability and reduce transparency to stakeholders. TSSWCB's lack of a meaningful rule review process, discussed further in Issue 3, has resulted in outdated and incomplete rules for the dam structural repair program. While TSSWCB readopted the entire chapter of program rules in 2018, the agency has not amended several of the rules since 2010.<sup>7</sup>

The lack of updated rules is especially concerning, considering the program changed significantly with the arrival of Economic Stabilization Fund dollars in 2019. This large infusion of state funding created a significant shift in TSSWCB's project evaluation and selection process, but the only rule change to the program was reducing the matching funds requirement for dam upgrades. During this time, the agency also allowed staff to change the program's operations, which are not reflected in the outdated rules. For example, agency staff added a requirement that dams have a completed emergency action plan to be eligible for funding to upgrade it to high hazard standards. However, this requirement, which can cost the sponsor thousands of dollars and take months to complete, is not in rule. Without

TSSWCB's outdated rules do not reflect current grant requirements.



TSSWCB has  
subjectively  
waived grant  
requirements.

updating rules, applicants, other stakeholders, and members of the public cannot know what rules or requirements must be adhered to and do not have the opportunity to provide formal input on the administration or implementation of the program.

- **Undocumented policies and procedures.** The agency's lack of documented policies and procedures risks treating applicants unfairly. For example, dam structural repair program rules require sponsors to provide matching funds unless the "original watershed agreement did not include at least one sponsor empowered by the State of Texas to levy taxes."<sup>8</sup> In practice, however, the agency has interpreted this rule to include a sponsor with taxing authority that had been unsuccessful in raising taxes to fund projects. When the sponsor reached out to agency staff and explained the lack of local support to increase taxes to meet the matching funds requirement, agency staff simply waived the requirement. While such a waiver may make sense in some instances, TSSWCB does not have any policies stating this, creating an unlevel and unclear playing field for sponsors who may not know a waiver process exists and therefore do not request one.

Additionally, to use available project funding fully, the agency pays contracted engineers to design more projects than it can fund for construction and the selection of projects for design relies entirely on the intuition of the program manager. TSSWCB does not have a rule or policy guiding the number of projects the agency should design, which projects staff should prioritize for design, or how the agency should gauge the risk of a sponsor not being able to complete a designed project in the future. The absence of such a rule or policy makes TSSWCB overly dependent on one employee, and is another way TSSWCB obscures how and why the agency selects some dam projects for design over others.

### **The agency lacks a fixed application period and uses incomplete and outdated applications, delaying project evaluation and selection.**

With no set  
application  
period, sponsors  
do not know  
when their  
project could be  
funded.

When evaluating an agency's grant programs and contracting operations, Sunset staff uses the general framework established in the Texas Comptroller of Public Accounts' *Texas Grant Management Standards* and *State of Texas Procurement and Contract Management Guide*, as well as documented standards and best practices compiled by Sunset staff over four decades.<sup>9</sup>

- **No fixed application period.** The funding cycle of a grant program should support the goals of the agency and the grant program, promote accountability of public funds, and consider the needs of grantees in performing duties of the grant. The dam structural repair program does not use a fixed application period. Instead, staff receives applications on a rolling basis, resulting in applicants not knowing when or if the program will fund their application. While rolling applications over from one funding period to another may provide flexibility for TSSWCB, it creates uncertainty for sponsors' financial planning. A defined funding period would



better serve sponsor needs and better support the agency's and program's goals in the long run.

- **Unclear application forms.** While the application instructions indicate the submission of photographs is required, and a letter of financial commitment could enhance an application's chances of being selected for funding, the application forms do not give applicants clear direction on the agency's criteria when evaluating grant applications. The application requires a variety of information, some of which the agency uses as a weighted criterion, such as the type of repair needed, some of which the agency may use for project planning after an award, and some for which the agency establishes no clear purpose. Neglecting to clarify all the information the agency uses for award decisions prevents applicants from understanding the actual selection criteria and what they need to provide to strengthen their application. Additionally, if applicants fail to provide the information needed to enhance their chances of obtaining funding, they may submit inadequate applications, limiting the agency's ability to compare applications effectively.
- **Reliance on extremely outdated information and incomplete applications.** The agency's fiscal planning information is often outdated because TSSWCB does not require sponsors to update outdated applications before awarding funding. TSSWCB lists applications as pending if the agency does not select them for funding, and has left some applications pending for 10 or more years. Staff then rescores the applications in subsequent years against new submissions. This practice results in TSSWCB considering applications with inaccurate, outdated information and using conflicting criteria from previous funding periods to rank and award applications. Using old information also may result in applicants not being ready to start a project when the agency finally awards funding. In 10 years, a lot can change, including the dam's condition, hazard classification, repairs required, and construction costs. For example, 26 dams with applications submitted in 2015 or earlier initially had an estimated cost of \$18.5 million. When the agency finished contracting five years later, the cost for these dams had doubled to almost \$37.75 million. In addition, possibly due to staff using outdated applications, sponsors canceled over 10 planned Economic Stabilization Fund-financed projects because they were no longer prepared to execute them.

Also, despite rules requiring complete and accurate applications, the Sunset review found the agency accepts incomplete applications with vague information, such as a one-line justification for a \$5 million grant. The agency has no policy for what constitutes a complete and accurate application, and Sunset's review of applications found few submissions included required photographs or a comprehensive description of the repairs needed. Further, defining what constitutes a complete and accurate application and rejecting applications that do not meet that definition would make more efficient use of staff time and help ensure staff treats all applicants fairly.

Application forms do not reflect the criteria used for grant award decisions.

Some grant applications are over 10 years old.

### The agency cannot demonstrate it evaluates and selects grant applications consistently.

TSSWCB  
does not  
evaluate grant  
applications  
based on the  
same criteria.

- **Ineffective ranking and prioritization process.** An agency should evaluate all applicants on the same criteria and maintain adequate documentation of its decision-making process. TSSWCB established criteria for the grant program, as required by statute. In practice, the agency uses multiple systems and unweighted criteria to evaluate grant applications. Additionally, TSSWCB does not use the best practice of grant evaluation team members separately reviewing and scoring applications before convening to compare scores and make award decisions accordingly. TSSWCB program staff instead score applications together as a group and do not keep records of individual rankings. Meanwhile, if staff score an application more than once per funding cycle, staff may change the recorded score in the spreadsheet without keeping a historical record. As a result, staff could not demonstrate they consistently evaluate all applications against the same criteria.
- **Unclear process for evaluating sponsor readiness.** A sponsor's readiness to start a project is one of the main factors staff uses to evaluate grant applications, but TSSWCB does not have a documented policy defining how staff should evaluate this factor. Sponsors canceled several projects after TSSWCB selected them for funding, sometimes because sponsors were unaware of all the grant requirements or because sponsors were not ready when the agency contacted them before awarding funds. The agency has no formal process to assess the sponsor's capabilities, such as looking at a sponsor's past performance, capacity, project management and engineering expertise, or the firmness of the co-sponsor's matching funds commitment. Sponsors canceled at least seven of the planned Economic Stabilization Fund-financed projects because the sponsor lacked the capacity to manage multiple projects simultaneously.
- **Subjective project selection process.** The process for selecting applications should be fair and reasonably transparent. The agency lacks documented policies for evaluating and selecting grant applications, resulting in a program that cannot demonstrate it treats all applications fairly. The review found application scores do not appear to correspond to the dam projects that ultimately receive funding and identified multiple instances when the agency left high-ranked dam applications pending while applications for lower-ranked dams were selected and funded. For example, in practice, agency staff have bundled lower-ranked, low hazard dams with higher-ranked, high hazard dams and funded them together to lower construction costs, but this practice is not documented internally or in rule, and is another practice that prevents sponsors from knowing why certain projects received funding. Without consistent and meaningful evaluation criteria and a clear policy for scoring applications and retaining documentation, TSSWCB cannot always justify its funding decisions. TSSWCB's nonpoint source pollution grant program and water quality management plan program have

TSSWCB cannot  
always justify  
its grant funding  
decisions.

developed clear policies and direction for staff to evaluate applications. The agency and applicants could benefit from creating similar policies for the dam structural repair program.

- **Insufficient grant application and selection documentation.** To be best positioned to monitor its grants and associated contracts and respond to potential issues that could arise during project execution, an agency should maintain one complete master file for each project and keep these files in a central repository. The Sunset review found TSSWCB staff do not keep discrete files with all information related to each project, preventing the agency from providing a cogent picture of any particular project, or the program as a whole. Instead, staff store project documentation in multiple locations, and do not keep copies of project-related correspondence with dam sponsors, such as a sponsor's acknowledgment of the emergency action plan requirement, as part of the file.

TSSWCB does not have or maintain a complete file for each dam project.

Centralization of documentation also better facilitates outside oversight. When asked to provide status information on Economic Stabilization Fund projects and documentation of funding decisions, the agency provided multiple, incompatible spreadsheets listing different dams, project statuses, funding amounts, and ranking numbers, with labels that had different meanings in different spreadsheets. To decipher these, the agency relies heavily on the institutional knowledge of the engineer managing the program to explain the information in the spreadsheets and how the program works on a day-to-day basis. However, none of this information is clearly documented, creating significant liability for the agency, because staff would have difficulty explaining their funding decisions, and the status of each project, if the program manager left.

Finally, TSSWCB does not effectively document or publish application ranking results, without which, applicants do not know why they were or were not selected, or how to improve future applications. TSSWCB also does not explain publicly why some dams were selected, and others left pending, so applicants and others cannot hold the agency accountable for its grant decisions. In contrast, the Texas Water Development Board posts a list of ranked projects and their scores for that agency's Flood Infrastructure Fund grants to its website.<sup>10</sup>

TSSWCB does not clearly document why some dam projects were funded while others were not.

- **Lack of oversight of grant decisions.** TSSWCB's leadership does not have a formal review or approval process for grant awards. The program manager makes all funding decisions and briefs the executive director and the board on the results, and the executive director signs purchase orders. The agency does not require the board to approve grant awards, even grants over \$1 million, limiting board oversight over significant funding decisions.

### **Limited guidance and insufficient outreach to potential applicants hinder the grant program's effectiveness.**

The agency does not notify all dam sponsors that grant funding is available.

TSSWCB depends on dam sponsors knowing about and applying for its voluntary grant program, and statute requires the agency to offer appropriate assistance to soil and water conservation districts.<sup>11</sup> However, of the 106 soil and water conservation districts that sponsor dams, only 31 have applied for dam structural repair funding. The agency does not proactively seek out dam sponsors, such as those with dams TCEQ has identified as needing a high hazard rehabilitation or upgrade or sponsors with dams in poor condition, to ensure they know funding is available. Instead, the agency relies on dam sponsors, who may be unpaid volunteers, to seek staff contact information on the agency's website and apply for the program. TSSWCB posts basic information about the flood control program to its website, notifies some sponsors of grant opportunities through an email list, and presents at meetings of the Texas Association of Watershed Sponsors; however, the email list does not include all dam sponsors, and not all dam sponsors may attend these meetings.

TSSWCB also does not disclose to sponsors when they apply for matching funds that the agency may not provide full funding. The agency normally provides 33.25 percent of the project cost for the sponsor to use as matching funds for federal rehabilitation projects, reducing the sponsor's share. However, when the agency lacks sufficient funding, as happened in 2014, it reduces the amount of funding it provides equally across all projects, requiring sponsors to make up the difference. For less well-resourced sponsors, this creates a funding gap that could force the sponsor to forgo the federal project. Ensuring all sponsors understand the potential for reduced state assistance when they apply for funding would improve transparency and help sponsors with financial planning.

TSSWCB may be using state funds for projects eligible for federal funds.

Finally, TSSWCB does not require sponsors with eligible dams to apply for federal funding before applying for state funding. As a result, dams not qualifying for federal funding could lose out on limited state dollars to projects that are eligible for federal funds, meaning the state could miss an opportunity to have the federal government pay for major infrastructure costs. Without this requirement, sponsors have little incentive to apply for the federal program because the state program is quicker, easier, and generally will have the same sponsor cost as the federal program. In the past three years, two sponsors have applied through TSSWCB for federal rehabilitation funding for six dams, while 14 have applied for state-funded upgrades on 34 dams. While the federal program is slower than the agency's program and subject to federal funding availability, it is still a viable option. The agency may use state funding in place of federal funding for certain reasons, such as a shortage of federal funding or a need to get the project done quickly. However, the agency does not have a documented process for considering these factors. A policy that considers whether a project is eligible and has applied for federal funding, the availability of federal funding, and the project's urgency would ensure TSSWCB fully leverages available federal resources.

## Sunset Staff Recommendations

### *Change in Statute*

#### **1.1 Require TSSWCB to develop and adopt one clear set of overall priorities, goals, and associated measures for the dam structural repair program.**

This recommendation would require the agency, in a formal process with stakeholder input, to establish a singular set of goals, criteria, and metrics for the dam structural repair program and ensure the agency's guidance documents, such as the Ten-Year Plan, rules, and policies match its practices. Under this recommendation, TSSWCB would be required to use stakeholder input to better gauge the need across the state for dam structural repair funding, including the number of projects sponsors can realistically execute per year, to guide the program. TSSWCB, in consultation with stakeholders, should consider changes to the program rules and policies, including matching funds requirements and waivers.

As a management action under this recommendation, TSSWCB would analyze past performance data, such as the number of projects per year the agency normally funds, to determine the Ten-Year Plan's goals and estimate future staff capacity to execute them. Also, the agency should solicit stakeholder input in future revisions of the plan. This recommendation would provide improved guidance to agency staff, allowing staff to make more efficient use of time and resources while providing stakeholders more transparency.

### *Management Action*

#### **1.2 Direct TSSWCB to establish and update its policies for administering the dam structural repair program.**

This recommendation would direct TSSWCB to ensure transparency, accountability, and fairness of the dam structural repair program by developing, updating, and publishing its policies covering each component of the program, including its grant application, selection, and award processes.

To better facilitate sponsor planning and readiness, the policies should establish fixed timelines for receiving and reviewing grant applications; clarify what constitutes a complete and accurate application, including reasons why staff would reject an application; and require applicants to update applications annually. The policies would provide information on how the agency ranks and prioritizes applications, aligning scoring documents with criteria published in guidance documents, ensuring the agency follows its guidance to achieve its goals. The policies also would cover how program staff should individually score applications and document the scores and selection. To support sponsor planning, the policy would establish a matching funds policy for federal grants, including the potential for reduced funding based on the agency's budget.

This recommendation also would direct the agency to develop and adopt a policy for prioritizing projects that qualify for federal funding, in accordance with the program's goals. Considering the availability of federal funding and the project's urgency, the agency should require sponsors to apply for a federal rehabilitation grant before making the sponsors eligible to apply for a state-funded dam upgrade.

Lastly, under this recommendation, TSSWCB would update the program's grant application form to explain all grant requirements, including sponsor readiness, cost-sharing, and the program's evaluation criteria. The agency also would publish its list of ranked projects, their scores, any other information necessary to understand the agency's decisions, and a list of awarded grants on its website, allowing sponsors to understand the reasoning behind TSSWCB's project selections. The provisions of this recommendation



would align TSSWCB's spending with the program's long-term plans and guidance materials, ensure the agency is maximizing the use of federal funding, provide a firm basis for program fiscal planning, provide transparency and consistency to stakeholders, and increase the program's efficiency and effectiveness.

### **1.3 Direct TSSWCB to maintain a centralized master file system for dam structural repair grants.**

Under this recommendation, TSSWCB would maintain centralized master files, including coherent naming conventions, for all dam structural repair grants. Each master file should include all grant documentation from initial application submission to final closeout and assessment. The agency also would maintain the documentation and policies contemplated in Recommendation 1.2 in the master files. Agency staff could consult the comptroller's grant and contract management guides for other appropriate information to include in these files. Implementing effective documentation processes would enable transparency by allowing the agency to demonstrate it followed published policies in making decisions.

### **1.4 Direct the TSSWCB board to approve all grants and contracts over \$1 million.**

Under this recommendation, the board would have approval authority over all grants and contracts over \$1 million, to ensure the board has visibility of the agency's most significant expenditures. This recommendation also would enable effective board oversight of the dam structural repair program by providing an opportunity for the board to formally consider program staff recommendations.

### **1.5 Direct TSSWCB to proactively inform dam sponsors and co-sponsors about dam structural repair funding availability.**

Under this recommendation, each application cycle, TSSWCB would reach out to all eligible sponsors and co-sponsors through email, phone calls, or other means to notify them of the availability of funds. TSSWCB would work with stakeholder organizations and TCEQ to identify sponsors who have not yet applied and could most benefit from the program, such as sponsors with high risk or poor condition dams. Before awarding funds or starting work on a grant project, TSSWCB also would provide all applicants, in writing, readiness requirements for receiving a grant and other potential costs, including the possibility for increased costs. Conducting active outreach would ensure those most in need of the program have the information to use the dam structural repair program grants.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state. The recommendations related to improving TSSWCB's grant process are standard practices from the Texas Comptroller of Public Accounts' *Texas Grant Management Standards* and *State of Texas Procurement and Contract Management Guide* state agencies should follow, and doing so would improve the effectiveness of the agency's grant management.<sup>12</sup>

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<sup>1</sup> 30 Texas Administrative Code, Part 1, Chapter 299, Subchapter B, Section 299.14 (2009) (Texas Commission on Environmental Quality, *Hazard Classification Criteria*).

<sup>2</sup> SB 500, 86th Texas Legislature, Regular Session, 2019.

<sup>3</sup> SB 8, 86th Texas Legislature, Regular Session, 2019.

<sup>4</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 201.029, Texas Agriculture Code.

<sup>5</sup> Texas State Soil and Water Conservation Board, Board Meeting, February 15, 2022, archival video, time stamp 49:15, accessed online February 28, 2022, <https://www.docs.tsswcb.texas.gov/s/qXdREXgwX78x9Bx>.

<sup>6</sup> Texas State Soil and Water Conservation Board, *Ten-Year Dam Repair, Rehabilitation, and Maintenance Plan*, May 2020, accessed online February 24, 2022, <https://www.tsswcb.texas.gov/sites/default/files/files/programs/flood-control/10-YEAR%20PLAN-SIGNED.pdf>. Texas State Soil and Water Conservation Board, *TSSWCB Program Goals and Evaluation Criteria*, accessed online March 27, 2022, <https://www.tsswcb.texas.gov/sites/default/files/files/programs/flood-control/TSSWCB%20Flood%20Control%20Program%20Goals%20and%20Evaluation%20Criteria-2021.pdf>. 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter B (Texas State Soil and Water Conservation Board, *Structural Repair Grant Program*).

<sup>7</sup> 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Section 529.53 (2010) (Texas State Soil and Water Conservation Board, *Prioritization of Structural Repair Needs*).

<sup>8</sup> 31 Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Sections 529.52(e) (2020) (Texas State Soil and Water Conservation Board, *Administration of Funds*).

<sup>9</sup> Texas Comptroller of Public Accounts, *Texas Grant Management Standards*, accessed online March 17, 2022, <https://comptroller.texas.gov/purchasing/grant-management/>. Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide*, accessed online March 27, 2022, <https://comptroller.texas.gov/purchasing/docs/96-1809.pdf>.

<sup>10</sup> Texas Water Development Board, “Flood Infrastructure Fund (FIF),” accessed online February 21, 2022, <https://www.twdb.texas.gov/financial/programs/fif/index.asp>.

<sup>11</sup> Sections 201.022(a)(1) and 201.001 (d), Texas Agriculture Code.

<sup>12</sup> Texas Comptroller of Public Accounts, *Texas Grant Management Standards*, accessed online March 17, 2022, <https://comptroller.texas.gov/purchasing/grant-management/>; Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide*, accessed online March 27, 2022, <https://comptroller.texas.gov/purchasing/docs/96-1809.pdf>.





## ISSUE 2

### The State Has a Continuing Need for the Texas Invasive Species Coordinating Committee, but Statute Could Better Align With the Committee's Needs.

#### Background

In 2009, the Legislature created the Texas Invasive Species Coordinating Committee to address the lack of invasive species coordination among state agencies.<sup>1</sup> Committee members include representatives from the Texas State Soil and Water Conservation Board (TSSWCB), Texas Department of Agriculture (TDA), Texas Parks and Wildlife Department (TPWD), Texas A&M AgriLife Extension Service, Texas A&M Forest Service, and Texas Water Development Board. Statute administratively attaches the committee to TSSWCB and subjects the committee to the Texas Sunset Act, abolishing the committee and its statute on September 1, 2023, unless continued by the Legislature.<sup>2</sup>

Statute directs TSSWCB to provide one full-time equivalent employee to serve as committee coordinator and authorizes TSSWCB to accept and administer loans, grants, gifts, or other funds to carry out committee functions. The committee has not met since 2017 and does not currently have any revenues, expenditures, or its own staff.

Statute requires each member agency of the committee to coordinate invasive species control activities with the committee, share technical expertise related to invasive species, advise the committee of known invasive species threats, and cooperate in obtaining appropriations and grants for invasive species control.<sup>3</sup> In addition to member agency requirements, statute tasks the committee as a whole with certain duties, summarized in the textbox below.

#### Texas Invasive Species Coordinating Committee Duties<sup>4</sup>

- Serve as a catalyst for cooperation between state agencies in the area of invasive species control.
- Facilitate governmental efforts, including efforts of local governments and special districts, to prevent and manage invasive species.
- Make recommendations to state agencies regarding research, technology transfer, and management actions related to invasive species control.
- Facilitate the exchange of information so that each member agency is informed of committee plans, recommendations, and proposals related to invasive species.
- Provide a forum for developing coordinated interagency strategies and policies for invasive species control.
- Provide technical information and input to regional and national invasive species control coordination efforts.
- Facilitate the review of committee technical decisions and work product by specialists and interested persons.
- Report as needed to the governor, lieutenant governor, and speaker of the House on committee plans, work product, and accomplishments.
- Adopt bylaws, including a procedure to elect a committee chair, a procedure to call committee meetings at least annually, and the ability to create subcommittees and advisory committees.

## Findings

### Texas has a continuing interest in coordinating the state's various invasive species control efforts.

Impacts of  
invasive species  
exceed \$1 billion  
per year in  
Texas.

Invasive species — defined in statute as a species that is not native to an ecosystem and whose introduction causes or has been demonstrated to cause economic harm, environmental harm, or harm to human health — continue to be a costly and extensive problem in Texas.<sup>5</sup> Invasive species can negatively impact ecosystems by threatening native species; cause economic harm through damage to property, agricultural productivity, and outdoor recreation; and carry diseases that pose a threat to human health.<sup>6</sup> According to the Texas Invasive Species Institute, impacts of invasive species exceed \$1 billion per year in the state.<sup>7</sup> In forestry alone, invasive insects are estimated to cost the United States forestry industry more than \$4 billion annually.<sup>8</sup> Both the state and federal government provide significant funding for invasive species control and eradication efforts in Texas.

Currently, the state spends millions of dollars annually across multiple state agencies to address invasive species, particularly those that negatively affect agricultural production and the state's natural resources. Given the scale of the invasive species problem in Texas and the numerous state agencies receiving funding to help address it, interagency coordination where possible, when done correctly, would help ensure the state is efficiently and effectively addressing the significant problems invasive species pose in Texas.

At least four  
state agencies  
have feral hog  
programs.

- **Reduce duplication.** The committee provides a forum for state agencies to coordinate their invasive species activities to help avoid duplication of effort. Many state agencies are involved in invasive species control efforts, sometimes for the same species. For example, at least four state agencies, three of which are committee members, have programs or responsibilities related to controlling feral hogs. Invasive feral hogs damage property, reduce water quality, and cause an estimated \$118.8 million in agricultural damage in Texas annually, and are capable of transmitting diseases to humans, wildlife, and livestock.<sup>9</sup> Sunset staff observed agencies do not always know about each others' similar programs, and may approach the same issue from sometimes duplicative perspectives. For example, TPWD regulates the hunting of feral hogs on public land, TDA operated a feral hog abatement program that has since transferred to the Texas A&M AgriLife Extension Service, and TSSWCB has a federally funded feral hog trapping pilot program.<sup>10</sup> Additionally, although not a member of the committee, the Texas Animal Health Commission regulates the movement of live feral hogs to control the spread of disease.<sup>11</sup> An active coordinating committee would help ensure a more consistent and efficient statewide response to controlling feral hogs and addressing the problems they pose.
- **Share information.** The committee allows its member agencies to discuss their invasive species programs and learn about others to identify and fill in any information gaps. For example, in 2012 the committee successfully

recommended TDA add the chinaberry tree to its list of noxious and invasive species, which the agency did, since the chinaberry is a poisonous tree used in landscaping that grows quickly, affects soil chemistry, and crowds out native plants.<sup>12</sup> However, this was the last time TDA updated its list and since the committee is inactive, it has been unable to provide input to TDA regarding the potential listing of additional invasive species.<sup>13</sup> Having an active coordinating committee would allow state agencies to better ensure their programs and policies regarding invasive species are up to date.

- **Prevent inconsistencies.** Lack of coordination may result in state agencies having conflicting messages or practices regarding an invasive species. For example, TDA publishes a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state.<sup>14</sup> TPWD has its own separate list of invasive and potentially harmful aquatic species, including plants.<sup>15</sup> A total of 13 aquatic plant species, including salvinia, appear on both lists. However, seven additional invasive aquatic plant species appear only on the TPWD list, which could cause confusion as to whether they are invasive depending on which list the public accesses. An active coordinating committee would provide more cohesive messaging and dialogue between the agencies on these issues to help resolve inconsistencies between programs and messaging to the public.

An active coordinating committee would help resolve inconsistencies between agency programs.

### **The committee's statute does not align with the committee's needs and capacity.**

Statute neither reflects how committee members envision necessary coordination on invasive species control, nor provides the committee enough flexibility to comply with statutory requirements and successfully fulfill its mission. The Legislature tasked the committee with several statutory duties, such as making recommendations on invasive species control research and facilitating governmental efforts to prevent and manage invasive species.<sup>16</sup> In practice, however, committee members report the main value of the committee is to serve as a forum for information sharing and developing interagency strategies for invasive species control. Interagency coordination is expected to result in recommendations, state policy proposals, technical input, or other work products as the committee's statute contemplates. However, based on a review of committee meeting minutes, interviews with current and former committee participants, and several existing invasive species control efforts in Texas, Sunset staff found most of the committee's statutory duties to be more expansive than what the committee could realistically achieve absent additional resources, distracting from the committee's primary function of interagency coordination.

The committee's statutory duties are unrealistic absent additional resources.

In addition, the ambiguity of the statutory requirement for the committee bylaws to include a procedure to call committee meetings and meet at least annually may have contributed to the committee not meeting for over four years. Currently, the committee's bylaws state that member agencies may call upon the committee chair to schedule a meeting. Neither statute nor the bylaws explicitly state who is responsible for calling meetings if the committee chair

leaves state employment, or if no member requests a meeting. This vagueness has caused confusion among member agencies as to whether TSSWCB must schedule and call the meetings or if a member agency must request a meeting for one to be scheduled. Further, though statute requires the administering agency to support the committee with one full-time equivalent employee, this requirement is unnecessary as the committee historically met a maximum of three times per year. Finally, the committee's separate Sunset date is not needed, as the committee receives no state appropriations, and has no employees or regulatory authority to warrant a review separate from that of TSSWCB.

## Sunset Staff Recommendations

### *Change in Statute*

#### **2.1 Continue the Texas Invasive Species Coordinating Committee and require it to be reviewed at the same time as TSSWCB.**

This recommendation would continue the Texas Invasive Species Coordinating Committee and its administrative attachment to TSSWCB. This recommendation also would remove the committee's separate Sunset date from statute, making the committee part of TSSWCB's next Sunset review in 12 years. Committee membership would remain the same and its current bylaws would remain in place until readoption.

#### **2.2 Modify statute to better align with the committee's purpose and current needs.**

Under this recommendation, the committee would be required to provide a forum for sharing information and developing interagency strategies and policies for invasive species control. Additionally, this recommendation would authorize, but not require the committee to perform, all other duties currently established in statute, such as making recommendations to state agencies, providing technical information to regional and national invasive species control coordination efforts, and facilitating the review of committee technical decisions.

The committee would be required to meet at least annually at the call of either the TSSWCB representative on the committee or the committee chair, and TSSWCB would be responsible for ensuring the committee meets at least annually. Finally, this recommendation would remove the requirement that the administering agency provide one full-time equivalent employee to serve as committee coordinator, as administering the committee is not a full-time responsibility.

## Fiscal Implication

These recommendations would not result in a fiscal impact to the state or the agency. Neither the committee nor TSSWCB receive state appropriations to perform the committee's limited duties, which do not require full-time staff. As such, TSSWCB could administer the committee using existing resources.

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- <sup>1</sup> Chapter 98 (HB 865), Acts of the 81st Texas Legislature, Regular Session, 2009.
  - <sup>2</sup> All citations to Texas statutes are as they appear on <http://statutes.legis.texas.gov/>. Chapter 776, Texas Government Code.
  - <sup>3</sup> Ibid.
  - <sup>4</sup> Section 776.004, Texas Government Code.
  - <sup>5</sup> Chapter 776, Texas Government Code.
  - <sup>6</sup> U.S. Department of Agriculture National Invasive Species Information Center, “General Impacts,” accessed online February 10, 2022, <https://www.invasivespeciesinfo.gov/subject/general-impacts>.
  - <sup>7</sup> Texas Invasive Species Institute, “What are invasive species?,” accessed online February 10, 2022, <http://www.tsusinvasives.org/home/invasives-101/>.
  - <sup>8</sup> Michigan State University Extension, “Invasive Species Are Costly in Economic and Ecological Damage, Further Introductions Must Be Avoided,” accessed online February 15, 2022, [https://www.canr.msu.edu/news/invasive\\_species\\_are\\_costly\\_in\\_economic\\_and\\_ecological\\_damage\\_further\\_intro](https://www.canr.msu.edu/news/invasive_species_are_costly_in_economic_and_ecological_damage_further_intro).
  - <sup>9</sup> Texas Parks and Wildlife Department, *Ecology and Management of Wild Pigs*, John C. Kinsey, CWB, 2020, accessed online February 10, 2022, [https://tpwd.texas.gov/publications/pwdpubs/media/pwd\\_bk\\_w7000\\_1943.pdf](https://tpwd.texas.gov/publications/pwdpubs/media/pwd_bk_w7000_1943.pdf).
  - <sup>10</sup> Texas Parks and Wildlife Department, “New Texas Laws Affecting Feral Hog Hunting, License Validation Take Effect Sept. 1,” news release, August 29, 2019, accessed online February 17, 2022, <https://tpwd.texas.gov/newsmedia/releases/?req=20190829a>; Texas Department of Agriculture, “Feral Hog Resources,” accessed online February 17, 2022, <https://www.texasagriculture.gov/Home/ProductionAgriculture/FeralHogResources.aspx>; Texas A&M AgriLife Extension Service, Rider 7, p.III-237, Article 3 (SB 1), Chapter 1053 (SB 1), Acts of the 87th Legislature, Regular Session, 2021 (the General Appropriations Act); Texas State Soil and Water Conservation Board, “Feral Swine Control Pilot Project in Texas,” accessed online February 17, 2022 <https://www.tsswcb.texas.gov/index.php/feral-swine-texas>.
  - <sup>11</sup> Texas Animal Health Commission, *Feral Swine Regulations*, February 2015, accessed online February 17, 2022, [https://www.tahc.texas.gov/news/brochures/TAHCBrochure\\_FeralSwine.pdf](https://www.tahc.texas.gov/news/brochures/TAHCBrochure_FeralSwine.pdf).
  - <sup>12</sup> Texas Invasives Database, Chinaberry tree, accessed online February 18, 2022, [https://www.texasinvasives.org/plant\\_database/detail.php?symbol=MEAZ#:~:text=Ecological%20Threat%3A%20Chinaberry%20outcompetes%20native,height%20in%204%20%2D%205%20years;Texas%20Invasive%20Species%20Coordinating%20Committee,October%2010,%202012,meeting%20minutes](https://www.texasinvasives.org/plant_database/detail.php?symbol=MEAZ#:~:text=Ecological%20Threat%3A%20Chinaberry%20outcompetes%20native,height%20in%204%20%2D%205%20years;Texas%20Invasive%20Species%20Coordinating%20Committee,October%2010,%202012,meeting%20minutes).
  - <sup>13</sup> 4 Texas Administrative Code, Part 1, Chapter 19, Subchapter T, Section 19.300 (2013) (Texas Department of Agriculture, Noxious and Invasive Plant List).
  - <sup>14</sup> Ibid.
  - <sup>15</sup> 31 Texas Administrative Code, Part 2, Chapter 57, Subchapter A, Section 57.112 (2021) (Texas Parks and Wildlife, *Exotic Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants*).
  - <sup>16</sup> Chapter 776, Texas Government Code.





## ISSUE 3

### Texas Has a Continuing Need for the Texas State Soil and Water Conservation Board, but the Agency Needs Changes to Improve Accountability.

#### Background

Established in 1939 to address soil erosion during the Dust Bowl, the Texas State Soil and Water Conservation Board's (TSSWCB) functions now include agricultural and forestry-related nonpoint source pollution management, flood control dam maintenance and repair, and invasive species management. TSSWCB also supports the operations of the state's 216 soil and water conservation districts, political subdivisions overseen by voluntary, unpaid locally elected boards.

TSSWCB supports soil and water conservation districts by providing \$1.1 million annually in matching funds for district operations, as well as about \$2.7 million in technical assistance funds for districts to hire staff to help landowners implement conservation practices. The agency also supports districts by providing leadership training to district directors and hosting an annual director meeting. TSSWCB field representatives travel regularly to each district to coordinate agency programs statewide and provide operations support.

As the state's lead entity for the planning, management, and abatement of agricultural and forestry-related nonpoint source pollution, defined in the accompanying textbox, TSSWCB also awards \$9.7 million annually in mostly federal grants to soil and water conservation districts, universities, landowners, and agricultural producers. Funded projects aim to reduce nonpoint source pollution in federally defined impaired water bodies, support the development and implementation of educational outreach and implementation workshops for farmers and ranchers, and provide incentives for landowners to implement plans to protect and improve the water quality in affected watersheds. TSSWCB also administers state and federal funding for operations, maintenance, and repair grants for over 2,000 earthen dams.

#### Definition of Nonpoint Source Pollution<sup>1</sup>

Nonpoint source pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Unlike pollution from industrial and sewage treatment plants, nonpoint source pollution comes from many diffuse sources.

#### Findings

##### **The state has a continuing need to coordinate and fund voluntary natural resource conservation throughout the state.**

As Texas' population continues to grow, it is vital to ensure landowners have the tools necessary to conserve the state's natural resources and keep agricultural practices productive and profitable to meet future needs. Recent land trends estimate that Texas gains almost 2,000 new landowners per year, and the state benefits from educating new and existing landowners on how to reduce agriculture and forestry-related water pollution.<sup>2</sup> TSSWCB provides grant funds to help farmers, ranchers, and landowners learn about and implement

The agency estimates dams provide annual benefits of more than \$150 million to Texas.

conservation practices, such as managing waste from animal feeding operations, controlling erosion and promoting soil health through prescribed grazing and use of cover crops, and controlling unwanted forest vegetation. By implementing these conservation practices, Texas agricultural businesses are able to produce more food, fuel, and other agricultural outputs using no more water than the state used in the 1950s.<sup>3</sup>

In addition, TSSWCB distributes the majority of its budget as grant funding to maintain and repair the state's over 2,000 flood control dams maintained by soil and water conservation districts, to prevent loss of life and property due to flooding. The agency estimates these dams provide annual benefits of more than \$150 million to Texas residents, landowners, and businesses. TSSWCB is the only state agency that funds operations and maintenance of these dams by providing grants for fence repair, erosion repair, and clearing brush. Operations and maintenance funding helps ensure earthen dams do not degrade over time, and that overgrown vegetation does not cause a dam to overflow during a storm. TSSWCB also is the only state agency that coordinates U.S. Department of Agriculture funding to soil and water conservation districts for rehabilitation projects on high hazard dams, those whose failure or misoperation will probably cause loss of human life or excessive economic loss, and provides essential funding to repair dams that no longer qualify for federal grants. Soil and water conservation districts do not have taxing authority and many would not be able to afford dam repairs without TSSWCB's support.

### **No substantial benefits would result from transferring TSSWCB's functions to a different state agency.**

Sunset staff considered organizational alternatives for administering TSSWCB's programs, but concluded no significant benefit would result from transferring functions or merging TSSWCB with another agency. The federal Clean Water Act does not require state regulation of agricultural and forestry-related nonpoint source pollution, which is why the Environmental Protection Agency (EPA) and states operating under its delegated authority rely on voluntary compliance to protect water quality. In Texas, where 95 percent of the land is privately owned and state law generally prioritizes individual property rights, conservation requires the state to rely heavily on landowner cooperation.

Texas relies on landowners to help protect water quality.

Unlike other state natural resource agencies, such as the Texas Commission on Environmental Quality (TCEQ) and the Texas Department of Agriculture (TDA), TSSWCB primarily serves a non-regulatory role. The agency focuses on assisting the soil and water conservation districts and providing grant funds to local landowners and agricultural producers. TSSWCB's non-regulatory role allows it to avoid potential conflicts that can arise when a regulatory agency also provides grants to those it regulates. During the Sunset review, some stakeholders reported they may not be as interested in voluntarily participating in the agency's grant programs if they were coupled with a regulatory component. As such, transferring TSSWCB to a larger regulatory entity could negatively affect the state's ability to encourage voluntary adoption of conservation practices.

Additionally, while other state agencies, such as TCEQ and the Texas Water Development Board (TWDB), also have roles in overseeing and maintaining the state's flood control infrastructure, these agencies do not have the same connections to local landowners as TSSWCB. The agency is uniquely situated to work with soil and water conservation districts and local sponsors on upkeep of earthen dams on privately owned land. While TCEQ and TWDB have grant administration and engineering expertise to perform TSSWCB's functions, they would lack the resources to efficiently and effectively take on these additional responsibilities. Also, transferring its functions to another agency would require almost a direct transfer of resources, yielding limited, if any, savings while providing no significant benefits to justify the change.

The review also found TSSWCB is best situated to assist soil and water conservation districts and deliver funds on the local level. Statute tasks TSSWCB with assisting the operations of soil and water conservation districts, as well as several other duties, summarized in the textbox.<sup>4</sup> While the federal government could send funds directly to each of the 216 soil and water conservation districts, they lack the taxing authority to raise their own funds to acquire the staff and expertise necessary to manage the complicated federal grant funding process while also providing day-to-day technical assistance to landowners.<sup>5</sup> As a state agency, TSSWCB is better able to apply for and administer federal funds, and distribute federal and state grant funding effectively across districts, ensuring landowners receive consistent conservation assistance tailored to the specific agricultural needs of each district.

#### **TSSWCB Statutory Duties Related to Soil and Water Conservation Districts**

- Encourage the formation of districts and conduct elections to create new districts.
- Approve changes to district boundaries.
- Assist with district elections.
- Approve the appointment of district directors.
- Offer appropriate assistance to district directors in carrying out their programs and powers.
- Coordinate district programs through advice and consultation.
- Provide grant funding to districts and designate districts to administer certain agency programs.
- Conduct an annual meeting of district directors.

#### **While organizational structures vary, all 50 states perform soil and water conservation.**

The creation of state soil and water conservation boards came out of the model act President Franklin D. Roosevelt sent to state governors in 1937, which included direction for forming soil and water conservation districts and specified the composition of a state soil and water conservation committee. If Texas abolished TSSWCB without transferring its duties, Texas would be the only state without this function. Most states use a separate governing body, such as a board, committee, or commission for the soil and water conservation function.

#### **The agency needs additional safeguards to improve financial accountability and mitigate conflicts of interest regarding district funding.**

- **No board member recusal policy.** Though TSSWCB has a policy prohibiting staff and board members from personally receiving agency cost-share

assistance, TSSWCB does not have a board recusal policy to protect against conflicts of interest for board members who approve funding for their own local soil and water conservation districts. Currently, several TSSWCB board members also serve on the boards of their local soil and water conservation districts, which is allowed under statute.<sup>6</sup> However, TSSWCB has not developed or required a recusal policy for board members when voting on grant funding that may benefit the district on whose board they serve. The agency has no record of board members recusing themselves from any decision in the last three years. Developing and implementing a recusal policy would prevent potential conflicts of interest when board members vote on grant funding for — or other decisions directly benefitting — their local soil and water conservation districts.

Training is  
only available  
to those who  
attend in person.

- **Inadequate district director training.** TSSWCB provides training to the directors of the 216 soil and water conservation districts during an annual in-person leadership meeting, but many directors do not attend due to travel costs and other scheduling conflicts. However, the district directors training manual agency staff develop and provide at the training is only available to those who attend in-person. As Sunset staff observed during the review, many directors do not fully understand all their responsibilities as local officials and their relationship to TSSWCB as the state agency that provides funding for their district's operations.

Training should ensure district directors clearly and fully understand their financial responsibilities to oversee these and other funds, which can range from a few thousand dollars that help landowners implement conservation practices to millions in flood control grant funding. Directors could benefit from additional training on their financial responsibilities, including the requirement to submit financial reports to TSSWCB and statutory prohibitions on using district funds for personal gain, which they may not know exist without such training.<sup>7</sup>

## Sunset Staff Recommendations

### *Change in Statute*

#### **3.1 Continue TSSWCB for 12 years and remove the Sunset date of the agency's enabling statute.**

This recommendation would continue the Texas State Soil and Water Conservation Board until September 1, 2035, and would also remove the Sunset date of the agency's statute to ensure only the agency, not its statute, expires.

### *Management Action*

#### **3.2 Direct TSSWCB to develop a board member recusal policy, including a written explanation for the recusal.**

TSSWCB should develop a policy setting the standards, requirements, and procedures for the recusal of an agency board member. The policy should include a requirement for board members who recuse

themselves from a vote to explain the reason for their recusal in writing. In implementing the policy, TSSWCB could consider having the board vote separately on funding decisions that would benefit the local boards on which state board members serve. Having such a policy would help clarify when board members must recuse themselves to avoid any real or perceived bias or conflict of interest based on a personal or financial interest in an item before the board.

### **3.3 Direct TSSWCB to improve its district director training, including providing a training manual the directors would have to attest to receiving and reviewing annually.**

Under this recommendation, by December 31, 2022, TSSWCB would provide a training manual to all current soil and water conservation district directors and to new district directors upon election. TSSWCB would require each district director to attest to receiving and reviewing the training manual annually. Providing all district directors with a training manual would help ensure directors understand their responsibilities as local officials and also their relationship to TSSWCB. The agency also should consider providing additional training opportunities, such as through online video tutorials, videoconferences, or conference calls and making a recording of the annual leadership training available online so district directors and employees could watch training modules when convenient for them.

## **Fiscal Implication**

Continuing the Texas State Soil and Water Conservation Board would require an annual appropriation from the Legislature, which was \$37 million in fiscal year 2023. The recommendations would not result in any additional fiscal impact to the state.

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<sup>1</sup> Environmental Protection Agency, “Basic Information about Nonpoint Source (NPS) Pollution,” accessed online February 21, 2022, <https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution>.

<sup>2</sup> Texas A&M Agrilife Extension Wildlife and Fisheries, “New Landowners,” accessed online February 13, 2022, <https://wildlife.tamu.edu/new-landowners/>.

<sup>3</sup> Texas Water Development Board and Texas State Soil and Water Conservation Board, *An Assessment of Water Conservation in Texas, Prepared for the 85th Legislature as a Supplement to the 2017 State Water Plan*, January 2018, accessed online February 13, 2022, [https://www.twdb.texas.gov/publications/reports/special\\_legislative\\_reports/doc/TWDB\\_TSSWCB\\_85th.pdf](https://www.twdb.texas.gov/publications/reports/special_legislative_reports/doc/TWDB_TSSWCB_85th.pdf).

<sup>4</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Chapter 201, Texas Agriculture Code.

<sup>5</sup> Texas State Soil and Water Conservation Board, *Annual Report*, January 1, 2021, p. 8, accessed online March 16, 2022, <https://www.tsswcb.texas.gov/sites/default/files/files/docs/Final%20Annual%20Report.pdf>.

<sup>6</sup> Texas Attorney General Opinion No. MW-403 (1981).

<sup>7</sup> Chapter 171, Texas Government Code.





## ISSUE 4

# The Agency's Statute Does Not Reflect Some Standard Elements of Sunset Reviews.

### Background

Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified changes needed to conform the Texas State Soil and Water Conservation Board's (TSSWCB) statute to standard Sunset language generally applied to all state agencies, address the need for required reports, and encourage meaningful review of the agency's rules.

- **Sunset across-the-board provisions (ATBs).** The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These ATBs reflect an effort by the Legislature to place policy directives to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.
- **Four-year rule review.** The Sunset Act directs the Sunset Commission to assess each agency's rulemaking process, including the extent to which agencies encourage public participation in rulemaking.<sup>1</sup> As part of this assessment, Sunset considers an agency's compliance with statutory requirements in the Administrative Procedure Act, including an agency's review and consideration of the continuing need for each of its rules every four years from the date each rule took effect.<sup>2</sup>
- **Records retention schedules.** State law requires state agencies to prepare and maintain a records retention schedule that lists the state records created and received by the agency, and specifies how long those records will be kept by the agency.<sup>3</sup> The schedule helps ensure agencies maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency to protect the financial and legal rights of the state and any person affected by the activities of the agency. State agencies must submit their records retention schedule to the Texas State Libraries and Archives Commission (TSLAC) and recertify their schedule every five years to ensure it accurately reflects current agency practices.
- **Reporting requirements.** The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.<sup>4</sup> The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, or posting requirements.

## Findings

### TSSWCB's statute does not reflect standard language typically applied across the board during Sunset reviews.

Statute does not contain newer requirements for board member training.

- **Board member training.** TSSWCB's statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the board's rulemaking authority. Statute also does not require the agency to create a training manual for all board members or specify that board members must attest to receiving and reviewing the training manual annually.
- **Policymaking and staff functions.** While TSSWCB's statute requires the agency to develop and implement policies separating the respective responsibilities of the board and staff, statute does not specifically provide for separating the policymaking functions of the board from day-to-day administrative functions of managing the agency. Updating the provision would help avoid confusion about who is in charge of operations, which can undermine an agency's effectiveness.
- **Complaint information.** TSSWCB's statute contains standard language requiring the agency to maintain complete information on complaints and make information on complaint procedures available to the public. However, TSSWCB's statute does not specify the agency may not inform parties of the status of complaints if doing so would jeopardize an ongoing investigation. Including this provision would help ensure complaints are fully investigated to protect the public.

### TSSWCB does not meaningfully review and revise its administrative rules every four years.

Agencies must review all rules to evaluate whether they are still needed.

Statute requires state agencies to review their rules every four years and determine whether the reasons for initially adopting each rule continue to exist.<sup>5</sup> While TSSWCB regularly readopts its rules, the agency fails to use the review process to carefully and consistently consider the continuing need and appropriateness of its rules. The four-year rule review process is intended to be more than simply posting rules in the *Texas Register* for public comment before readoption. A meaningful rule review should consider whether the initial factual, legal, and policy reasons for adopting each rule are still relevant.<sup>6</sup> As part of its analysis, an agency should consider the practical experience the agency, stakeholders, and the public have had with each rule over the past four years.<sup>7</sup> In addition, in its recent rule review, TSSWCB did not include rules for the water supply enhancement program. The program has not received appropriations since fiscal year 2017, but it still exists in statute, remains a component of the agency's legislative charge, and could receive funding in the future.<sup>8</sup> Agencies should review all rules to evaluate whether they are still needed, and post to the *Texas Register* the reason for their continuation.<sup>9</sup>

**TSSWCB has not consistently updated its records retention schedule as required.**

TSLAC has not recertified TSSWCB's records retention schedule since 2012.<sup>10</sup> TSSWCB amended its schedule in 2013 and, as required by law, submitted its schedule for recertification in 2017. However, TSSWCB did not resume the process — which should have been completed before 2020 — until 2021 and, as a result, will not complete recertification until 2022. Having and following an up-to-date records retention schedule would comply with statute and better ensure the agency maintains records needed to protect the financial and legal rights of the agency and the state, and any person affected by the activities of the agency, and ensure access to those records for those affected by the activities of the agency.

**The agency's annual report continues to be needed.**

Statute requires the agency to produce an annual report to the governor, lieutenant governor, and speaker of the House on the status of its overall responsibilities, including grants made and received, federal funding applied for and received, outreach programs, special projects, and oversight of soil and water conservation district activities.<sup>11</sup> This report continues to serve a useful purpose as it provides overall information on the agency's programs and activities not otherwise available.

**Sunset Staff Recommendations*****Change in Statute*****4.1 Update the standard across-the-board requirement related to board member training.**

This recommendation would require TSSWCB to develop a training manual that each board member attests to receiving annually, and require existing board member training to include information about the scope of and limitations on the board's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

**4.2 Update the standard across-the-board requirement regarding the separation of duties of board members from those of staff.**

This recommendation would require TSSWCB to adopt policies to clearly separate board policy functions from the agency's staff day-to-day operations.

**4.3 Update the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public.**

This recommendation would update the statutory language requiring TSSWCB to develop and maintain a complaints system and make information on complaint procedures available to the public by specifying the agency may not notify complaint parties of the status of complaints if doing so would jeopardize an ongoing investigation.

## **Management Action**

### **4.4 Direct TSSWCB to adopt a policy guiding its rule review process.**

This recommendation would direct TSSWCB to adopt a policy formally establishing and explaining its four-year rule review process.<sup>12</sup> The policy should require the review to consider current factual, legal, and policy reasons for readopting each rule, as well as practical experience the agency, stakeholders, and public have had with each rule since its adoption or last review. The agency should also consider including the process for amending its rules in the policy. Such consideration should include how to provide clear notice in the *Texas Register* when a rule will be amended as a result of the rule review, and when amendments will be published, if not during the rule review process.<sup>13</sup>

A more thorough analysis of rules would allow TSSWCB to maintain its rules based on current circumstances and factors, and to better engage the public. Also, clearly linking amendments to the rule review process would provide more transparency as to where rule changes come from. TSSWCB would provide a copy of the policy to the Sunset Commission by December 31, 2022, to consider during its compliance review of the agency.

### **4.5 Direct TSSWCB to recertify its records retention schedule and develop a records retention policy.**

TSSWCB should recertify its records retention schedule with TSLAC by December 31, 2022. As part of this recommendation, TSSWCB should also develop and implement a records retention policy to ensure staff properly maintain and dispose of agency records in accordance with state law.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state. Several of these recommendations update provisions already required by statute and TSSWCB could implement them with existing resources.

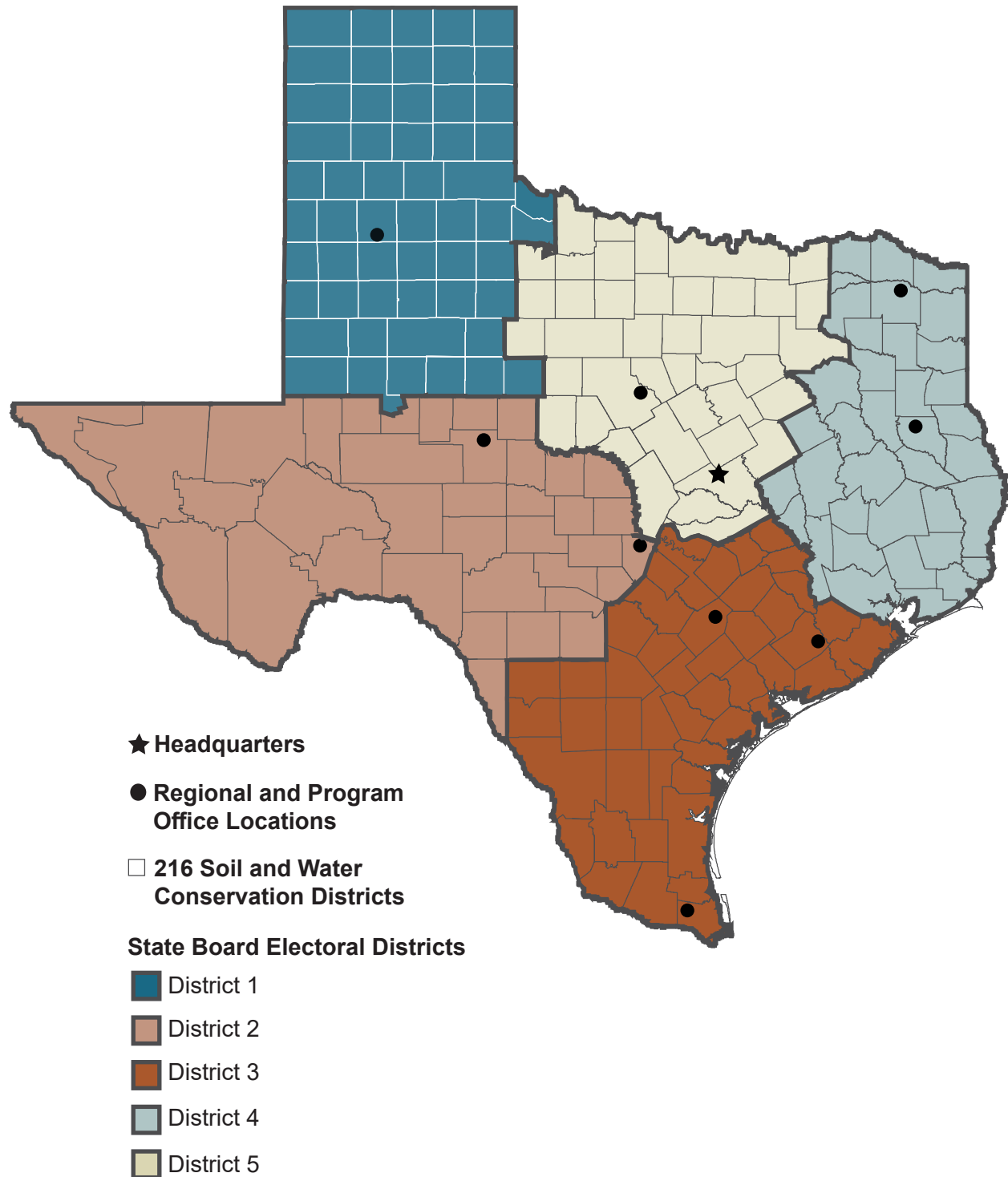
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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(8), Texas Government Code.
  - <sup>2</sup> Section 2001.039, Texas Government Code.
  - <sup>3</sup> Texas Government Code, Section 441.185.
  - <sup>4</sup> 13 Texas Administrative Code, Part 1, Chapter 6, Subchapter A, Section 6.3 (2014) (Texas State Library and Archives Commission, *Submission of Records Retention Schedules for Recertification*).
  - <sup>5</sup> Section 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.
  - <sup>6</sup> Section 2001.039, Texas Government Code.
  - <sup>7</sup> Ronald L. Beal, *Texas Administrative Practice and Procedure*, New York: Matthew Bender & Company, 2018, Section 3.8, 36-37.
  - <sup>8</sup> Ibid.
  - <sup>9</sup> 31 Texas Administrative Code, Part 17, Chapter 517, Subchapter B (2003) (Texas State Soil and Water Conservation Board, *Cost-Share Assistance for Water Supply Enhancement*).
  - <sup>10</sup> Texas State Library and Archives Commission, “Certified State Agency Records Retention Schedules,” accessed online February 18, 2022, <https://www.tsl.texas.gov/slrn/state/schedules#r-z>.
  - <sup>11</sup> Section 201.028, Texas Agriculture Code.
  - <sup>12</sup> Section 2001.039, Texas Government Code.
  - <sup>13</sup> Section 2001.039(b), Texas Government Code.





# APPENDIX A

## Texas State Soil and Water Conservation Board Districts and Offices



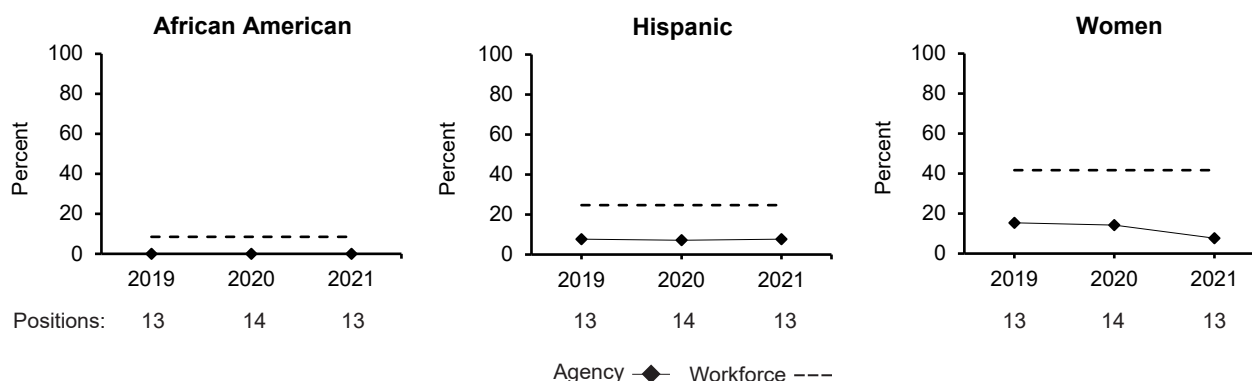


# APPENDIX B

## Equal Employment Opportunity Statistics, FYs 2019-21

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and women in all applicable categories by the Texas State Soil and Water Conservation Board.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.<sup>3</sup> 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 fiscal years 2019-21. The agency failed to meet statewide civilian workforce percentages for the administration and professional categories for the last three fiscal years. In the administrative support category, the agency exceeded civilian workforce percentages for women in the last three fiscal years and for African Americans in fiscal years 2019 and 2020. The agency had no employees in the service maintenance, protective services, or skilled craft categories, and had too few employees in the technical category to conduct a meaningful comparison to the overall civilian workforce.

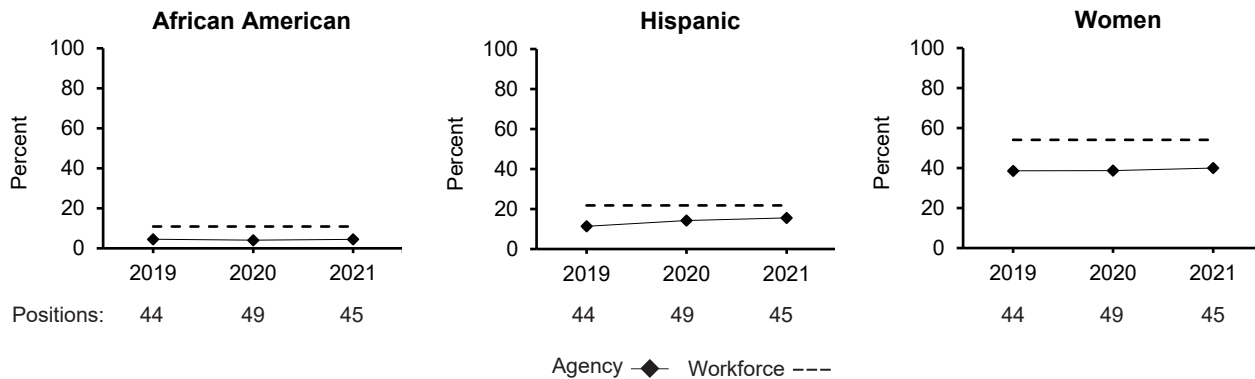
### Administration



The agency failed to meet statewide civilian workforce percentages in all categories for the last three fiscal years.

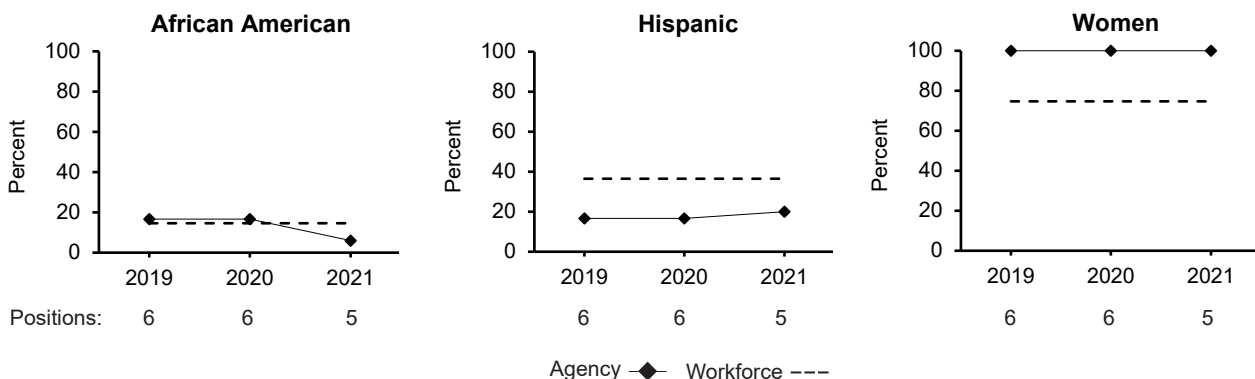
## Appendix B

### Professional



The agency failed to meet statewide civilian workforce percentages in all categories for the last three fiscal years.

### Administrative Support



The agency exceeded statewide civilian workforce percentages for women in each of the last three fiscal years, and for African Americans in fiscal years 2019 and 2020 but not in fiscal year 2021. The agency fell short for percentages of Hispanics in each of the past three fiscal years.

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

<sup>2</sup> Section 21.501, Texas Labor Code.

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

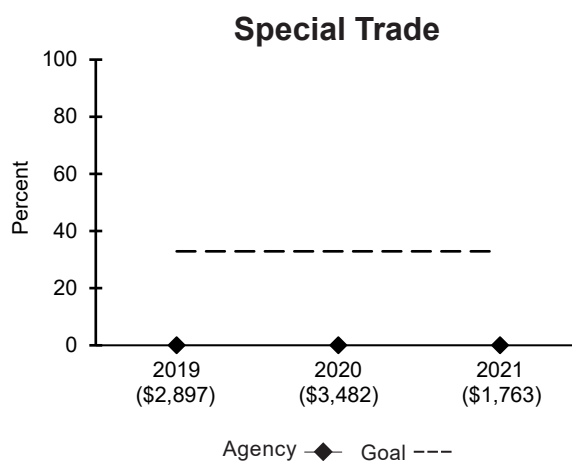
## APPENDIX C

### Historically Underutilized Businesses Statistics, FYs 2019-21

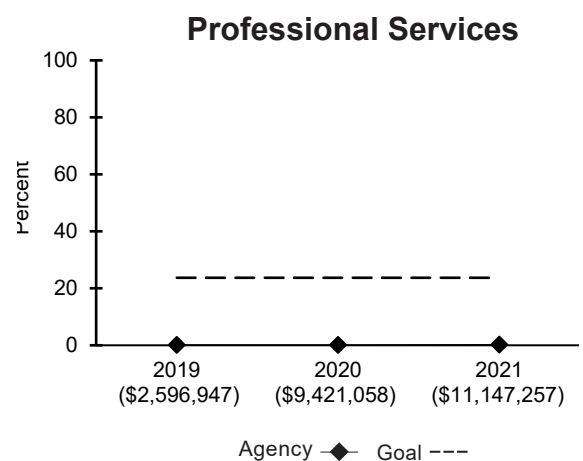
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules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

The following material shows trend information for the Texas State Soil and Water Conservation Board's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2019-21. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency did not spend any funds in the heavy construction or building construction categories. However, the agency did not meet statewide goals for HUB spending in the special trade, professional services, other services, and commodities categories, citing limited purchasing needs that resulted in fewer opportunities for using HUB vendors.

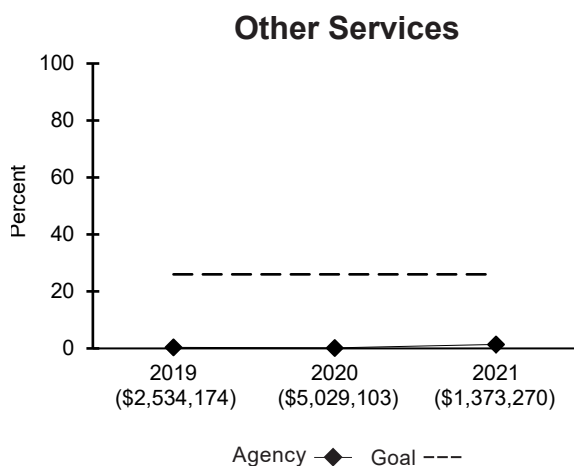


The agency did not meet the state goal for HUB spending in the special trade category in each of the last three fiscal years. However, the agency had minimal spending in this category.

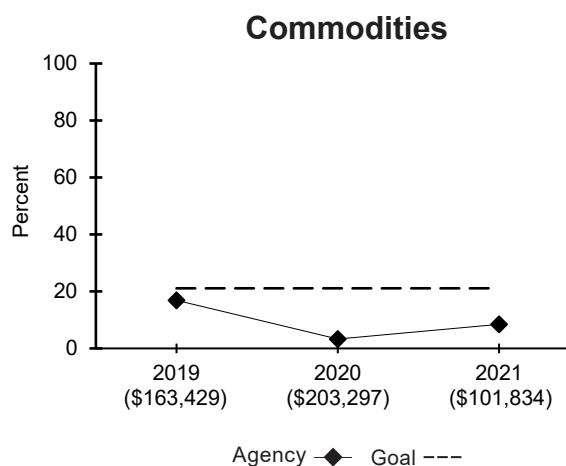


The agency failed to meet the state goal for HUB spending in the professional services category in each of the last three fiscal years.

## Appendix C



The agency failed to meet the state goal for HUB spending in the other services category in each of the last three fiscal years.



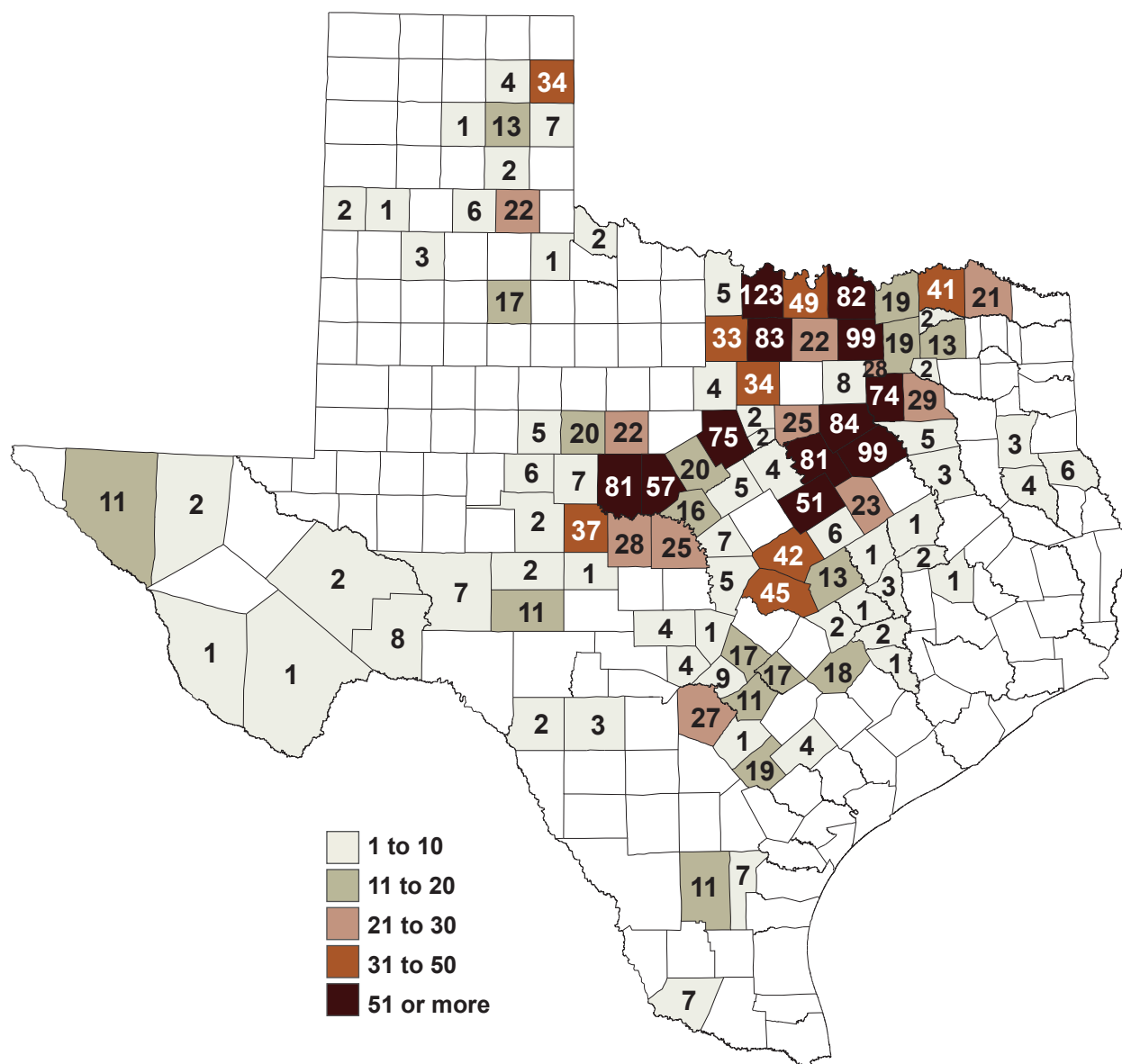
The agency failed to meet the state goal for HUB spending in the commodities category in each of the last three fiscal years.

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

<sup>2</sup> Chapter 2161, Texas Government Code.



# Texas State Soil and Water Conservation Board Number of Dams Per County





# APPENDIX E

## Staff Review Activities

During the review of the Texas State Soil and Water Conservation Board and Texas Invasive Species Coordinating Committee, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

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

- Attended the Annual State Meeting of Soil and Water Conservation District Directors and a Texas Watershed Steward workshop at Texas A&M AgriLife Extension Service.
- Met with and attended conferences of various statewide associations related to soil and water conservation.
- Surveyed and interviewed soil and water conservation district directors and stakeholders.
- Toured dam structural repair grant projects and met with dam co-sponsors.
- Toured a carrizo cane eradication project and interviewed contractors.
- Interviewed representatives from the U.S. Department of Agriculture's Natural Resources Conservation Service, Oklahoma Conservation Commission, Colorado State Conservation Board, Texas Commission on Environmental Quality, Texas A&M AgriLife Extension Service, Texas Department of Agriculture, Texas A&M Forest Service, Texas Parks and Wildlife Department, and Texas Water Development Board.



Sunset Staff Review of the  
*Texas State Soil and Water Conservation Board*  
*Texas Invasive Species Coordinating Committee*

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