

SUNSET ADVISORY COMMISSION

STAFF REPORT WITH COMMISSION DECISIONS

Texas Ethics Commission

2024-25
89TH 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 ETHICS COMMISSION

SUNSET STAFF REPORT WITH COMMISSION DECISIONS

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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. 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.

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.

CURRENT VERSION: 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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SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Ethics Commission (TEC), as well as modifications and new recommendations developed in response to testimony at the public hearing.

Created by constitutional amendment in 1991, TEC administers the state's disclosure-based ethics system to promote and safeguard the public's trust in government. Because TEC is constitutionally created, it is not subject to abolishment and the Sunset Commission did not address the agency's continuation.

While the review found TEC to be generally well run, the agency faces many of the same problems it did 12 years ago when its Sunset bill was vetoed. Complicated disclosure laws and atypical regulatory processes continue to burden filers and result in TEC being overly focused on enforcing against minor reporting errors rather than more serious ethical violations. The Sunset Commission identified several opportunities to streamline statute and minimize late filing penalties to ease the burden on filers and increase the agency's operational efficiency while balancing the need for timely and accurate disclosure. Seeking to further reduce the strain the complicated laws place on filers, the commission recommended several changes to improve TEC's trainings, guidance documents, and general customer service. Finally, the commission found that distinguishing the seriousness of reporting violations and other violations of the law would enable TEC to use its limited resources more efficiently, and aligning TEC's sworn complaint process with certain regulatory best practices would promote procedural certainty for respondents.

ISSUE 1

Cumbersome Laws and Informal Management Practices Result in a Disclosure System that Limits TEC's Efficiency and Burdens the Regulated Community.

Recommendation 1.1, Adopted — The House Appropriations and Senate Finance committees should consider providing TEC additional guidance regarding the use of unexpended funds for IT improvements. (Change in appropriation)

Recommendation 1.2, Adopted as Modified — Require TEC to adjust reporting and registration thresholds every 10 years instead of annually, rounding the thresholds to the nearest \$10 if under \$100, \$100 if under \$1,000, and nearest \$1,000 for all above \$10,000 to make the limits more practical to remember and report. This recommendation would also exempt lobby compensation categories from the adjustment.

Recommendation 1.3, Adopted — Align monthly reporting periods and deadlines.

Recommendation 1.4, Not Adopted — Align the itemization thresholds for electronic and non-electronic contributions.

Recommendation 1.5, Adopted — Eliminate double counting of political expenditures made using credit cards.

Recommendation 1.6, Adopted — Remove prescriptive mailing requirements from statute.

Recommendation 1.7, Adopted — Remove the electronic filing exemption for campaign finance reports.

Recommendation 1.8, Adopted — Direct TEC to develop a comprehensive plan for short- and long-term improvements to the agency's IT resources. (Management action – nonstatutory)

Recommendation 1.9, Adopted — Direct TEC to improve its EFS contract monitoring practices. (Management action – nonstatutory)

Recommendation 1.10, Adopted — Direct TEC to ensure key contract management staff receive appropriate training. (Management action – nonstatutory)

Recommendation 1.11, Adopted — Direct TEC to offer trainings to help filers navigate their disclosure requirements. (Management action – nonstatutory)

Recommendation 1.12, Adopted — Direct TEC to coordinate helpline guidance among its divisions. (Management action – nonstatutory)

ISSUE 2

TEC's Regulatory Tools and Practices Hinder Its Compliance Efforts and Prevent the Agency from Prioritizing Serious Violations of State Ethics Laws.

Recommendation 2.1, Adopted — Require TEC to categorize violations of law within its jurisdiction according to seriousness.

Recommendation 2.2, Not Adopted — Restructure TEC's audit function to better differentiate between facial compliance reviews and complete audits.

Recommendation 2.3, Adopted — Require TEC to prioritize complaint investigations based on risk to full and accurate disclosure.

Recommendation 2.4, Adopted — Authorize TEC to increase penalties for filers who repeatedly file reports late.

Recommendation 2.5, Adopted — Require TEC to develop a penalty matrix.

Recommendation 2.6, Not Adopted — Require filers to provide supporting records and documentation upon request by TEC.

Recommendation 2.7, Adopted — Direct TEC to collect and use data to improve its compliance efforts. (Management action – nonstatutory)

ISSUE 3

TEC's Sworn Complaint Process Fails to Promote Efficiency and Weakens the Commission's Role in Enforcing Disclosure Laws.

Recommendation 3.1, Adopted — Restructure the preliminary review hearing to involve only a subset of commission members.

Recommendation 3.2, Adopted — Clearly authorize TEC to send formal hearings to SOAH.

Recommendation 3.3, Not Adopted — Require judicial review of commission decisions to be based on the substantial evidence rule.

Recommendation 3.4, Adopted — Require TEC to implement discovery control plans.

ISSUE 4

TEC's Statute and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

Recommendation 4.1, Adopted — Amend TEC's Sunset review date to 2037.

Recommendation 4.2, Adopted — Update the standard across-the-board requirement related to commission member training.

Recommendation 4.3, Adopted — Direct TEC to adopt a rule review plan. (Management action – nonstatutory)

ADOPTED NEW RECOMMENDATIONS

Customer Service

- The House Appropriations and Senate Finance committees should consider appropriating TEC additional funding for FTEs to support the agency's ability to provide timely customer service through its dedicated legal helpline and main phone line. (Change in appropriation)
- Direct TEC to provide any in-person trainings and online webinars, as well as any guides and instructions on its website, EFS help guide, and other training materials in plain language to the extent practicable. As part of this recommendation, TEC should consider tailoring some training material toward first-time and less sophisticated filers. TEC should also develop a plain-language guide for members of the public about engaging with policymakers and government officials. This guide should be published prominently on TEC's website and include information on when an individual or group would be required to register as a lobbyist or political committee; any restrictions on giving gifts to policymakers; and information relevant to first-time candidates for office and first-time or volunteer campaign treasurers. When providing guidance over TEC's helpline, TEC staff should include a clear, plain language warning about potential accruing penalties that may be applied when a filer corrects a report. (Management action – nonstatutory)

Penalty Assessment and Compliance

- Amend Section 254.042, Texas Election Code, to specify that if an 8-day pre-election report is determined to be late, the filer is liable to the state for a civil penalty of \$500 for the first day the report is late and \$100 for each day thereafter through election day that the report is late.
- Exclude the first semiannual report due after an election from accruing daily late penalties under Section 254.042(b), Texas Election Code.
- Require TEC to waive late penalties if TEC cannot produce a record of the late notice sent to the filer.

- Direct TEC to consider revising its rules related to the definition of “substantial compliance.” (Management action – nonstatutory)
- Direct TEC to consider revising its rules related to the definition of “principal purpose.” (Management action – nonstatutory)
- Direct TEC to display the agency’s list of delinquent penalties prominently on its website and include more detailed information on the amount and status of unpaid penalties. Specifically, the list should identify unpaid penalties resulting from late filed reports and from publicly available sworn complaint orders. TEC should provide (1) the filer’s name; (2) the filer’s status when the penalty was incurred; (3) the date and penalty amount of each violation; (4) which penalties have been referred to the Office of the Attorney General for collections; (5) whether the Office of the Attorney General accepted the referral, if known; and (6) any other information TEC deems relevant, so long as it is not confidential. (Management action – nonstatutory)

Fiscal Implication Summary

Overall, the Sunset Commission’s recommendations would result in a direct cost to the state of approximately \$190,000 per fiscal year. Other recommendations could result in costs or savings, but those impacts would depend on implementation and cannot be estimated at this time. Authorizing TEC to use unexpended funds for IT improvements would result in a loss to general revenue of approximately \$203,000 per fiscal year that would be offset by savings of approximately \$14,000 per year from eliminating prescriptive mailing requirements. Recommendations to authorize the agency to assess higher penalties for repeatedly late filers may have a fiscal impact, but the extent of costs or increased revenue would depend on the number of filers paying increased fines. Other recommendations associated with minimizing or eliminating late penalties would result in a loss to general revenue, but the exact fiscal impact will depend on the number of late filings. Providing TEC additional funding for staff to take filer calls would result in a cost to the state, but the exact fiscal impact would depend on the number of staff added. Finally, recommendations related to the sworn compliant process would create additional efficiencies and shorter resolution times, which would achieve long-term savings.

SUMMARY OF SUNSET STAFF REPORT

With historic levels of money pouring into elections and few limits on campaign contributions and expenditures, disclosure of political activity is the state's primary tool for minimizing the risk of undue influence over elections and governmental actions. Created by constitutional amendment in 1991, the Texas Ethics Commission (TEC) administers the state's disclosure-based ethics system to promote and safeguard the public's trust in government. This system works by requiring candidates, officeholders, state officials, and lobbyists to periodically file reports that disclose their political — and in certain circumstances personal — financial activity, thereby shining a light on potential sources of influence for the public to see and judge.

While the review found TEC to be generally well run, the agency faces many of the same problems it did 12 years ago. Because TEC's 2013 Sunset bill was vetoed and little ethics reform has occurred in the intervening years, complicated disclosure laws and atypical regulatory processes continue to burden filers and result in TEC being overly focused on enforcing against minor reporting errors rather than more serious ethical violations.

Statute focuses TEC on minor report errors rather than more serious ethical violations.

The state's disclosure laws contain numerous confusing requirements and layers upon layers of exemptions, making compliance challenging for the regulated community and enforcement difficult for the agency. While Sunset staff did not attempt to recommend a complete overhaul of the laws, the review identified several opportunities to streamline statute to ease the burden on filers and the agency itself while balancing the need for full public disclosure. Furthermore, recommendations for the agency to holistically evaluate and prioritize its IT projects and improvements to its electronic filing system would help filers better navigate complex disclosure requirements while giving TEC automated tools to improve the agency's efficiency.

In a contentious political climate, TEC's sworn complaint process remains a source of concern for both the agency and regulated community as the number of filed complaints continues to grow year after year. Recommendations to better distinguish the seriousness of reporting and other violations of the law would enable TEC to use its limited resources more efficiently and help the public understand whether an individual was engaged in serious, ethically questionable behavior or simply made an honest mistake. Furthermore, aligning TEC's sworn complaint process with best practices in the state's Administrative Procedure Act and those of other regulatory agencies would minimize costs and promote procedural certainty for respondents while still providing them sufficient due process protections.

To further focus TEC's attention, Sunset staff also recommends restructuring the agency's audit function to be more effective and efficient. By streamlining the existing compliance or completeness check for filed reports and then requiring TEC to perform full audits of high-risk campaign finance and lobby

activity reports, these recommendations would better equip the agency to concentrate on matters with the most potential to conceal undue influence or distort public disclosure. This structure would provide a more efficient approach to catching minor errors on the front end and giving filers an opportunity to correct them before a violation is found and would establish a more proactive means of ensuring the public has information that is accurate and truthful.

Finally, Sunset staff did identify issues related to TEC's independence from the political environment in which it operates, some of which the agency discussed in its *Self-Evaluation Report*. In many ways, TEC is designed to be insulated from politics — the agency is established in the constitution, its commission is required to be bipartisan with appointments from the legislative and executive branches, and key decisions require a supermajority vote of the commission. However, TEC is in the precarious position of having to regulate the same elected officials who are responsible for its funding, oversight, and unpaid penalty collections. Additionally, because campaign finance regulation intersects with constitutionally protected political free speech, TEC often finds itself at the center of legal battles challenging its authority to enforce the laws the Legislature enacted. However, restrictions in the state budget can prevent TEC from obtaining outside legal counsel when doing so may be appropriate to avoid potential conflicts of interest or obtain experts in constitutional matters for the best chance of success at defending the state's laws. While these political realities are important and impact TEC's ability to fulfill its purpose, they are the result of significant policy decisions outside the scope of Sunset staff's review.

As a constitutionally created agency, TEC is not subject to abolishment under the Sunset Act so this staff report does not address the agency's continuation. The following material highlights Sunset staff's key recommendations for the Texas Ethics Commission.

Sunset Staff Issues and Recommendations

ISSUE 1

Cumbersome Laws and Informal Management Practices Result in a Disclosure System that Limits TEC's Efficiency and Burdens the Regulated Community.

TEC's core function is to promote the meaningful disclosure of financial and political activity that voters rely on to hold public officials accountable. However, complicated, outdated, and unclear statute places unnecessary burdens on filers and hinders meaningful disclosure. For instance, statute requires TEC to annually update 74 distinct reporting and registration thresholds to account for inflation, resulting in unintuitive thresholds that filers must track to comply with the law. Simplifying, updating, and clarifying this and other statutes would make compliance easier for filers, improve disclosure, and save TEC time and money. Furthermore, several challenges, including budget restrictions and statutory changes requiring expensive modifications to TEC's electronic filing system, have prevented the agency from fully developing crucial IT tools to better facilitate disclosure and meet the expectations of filers and the public. Having a more formalized plan for IT projects and improved IT contract monitoring would enable TEC to better use its limited resources to maintain an effective and efficient disclosure system.

Key Recommendations

- The House Appropriations and Senate Finance committees should consider providing TEC additional guidance regarding the use of unexpended funds for IT improvements.

- Require TEC to adjust reporting and registration thresholds every 10 years instead of annually.
- Remove prescriptive mailing requirements from statute.
- Direct TEC to develop a comprehensive plan for short- and long-term improvements to the agency's IT resources.

ISSUE 2

TEC's Regulatory Tools and Practices Hinder Its Compliance Efforts and Prevent the Agency from Prioritizing Serious Violations of State Ethics Laws.

TEC has several regulatory tools to help ensure prompt and accurate disclosure of political activity to enable the public to make informed judgments about the behavior of candidates and public officials. However, TEC's current regulatory framework provides insufficient guidance about the severity of violations, which can distort the public's perception of candidates and officials. Furthermore, TEC lacks clear statutory direction for its audit function, and other atypical enforcement processes limit the agency's effectiveness and efficiency. Clarifying statute and providing TEC additional authority would align its compliance efforts with best practices for regulatory agencies and allow TEC to focus its efforts on violations with the most potential to impact the public.

Key Recommendations

- Require TEC to categorize violations of law within its jurisdiction according to seriousness.
- Restructure TEC's audit function to better differentiate between facial compliance reviews and complete audits.
- Require TEC to prioritize complaint investigations based on risk to full and accurate disclosure.
- Authorize TEC to increase penalties for filers who repeatedly file reports late.
- Require filers to provide supporting records and documentation upon request by TEC.

ISSUE 3

TEC's Sworn Complaint Process Fails to Promote Efficiency and Weakens the Commission's Role in Enforcing Disclosure Laws.

TEC investigates alleged violations of laws under its jurisdiction through the sworn complaint process, which is comprised of several stages with opportunities for resolution or dismissal at each. While TEC handles most sworn complaints efficiently, several atypical processes can waste the agency's and respondents' resources and prolong outcomes. Aligning TEC's sworn complaint processes with best practices for regulatory agencies would not only improve efficiency but also ensure the agency investigates and resolves complaints in a timely manner and that its considerable effort and decisions are not rendered moot when appealed to district court.

Key Recommendations

- Restructure the preliminary review hearing to involve only a subset of commission members.
- Require judicial review of commission decisions to be based on the substantial evidence rule.
- Require TEC to implement discovery control plans.

ISSUE 4**TEC's Statute and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.**

Certain TEC statutory provisions and processes do not align with standard Sunset review elements derived from direction traditionally provided by the Sunset Commission, statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or general law provisions imposed on state agencies. This review identified the need for continued legislative oversight of TEC and changes needed to conform TEC's statute to standard Sunset language generally applied to all state agencies under Sunset review. Additionally, TEC would benefit from a formalized rule review plan to ensure rules accurately reflect current law and agency practice.

Key Recommendations

- Amend TEC's Sunset review date to 2037.
- Update the standard across-the-board requirement related to commission member training.
- Direct TEC to adopt a rule review plan.

Fiscal Implication Summary

Overall, the recommendations in this report would result in a direct cost to the state of approximately \$190,000 per fiscal year. Other recommendations could result in costs or savings, but those impacts would depend on implementation and cannot be estimated at this time. Recommendations in Issue 1 authorizing TEC to use unexpended funds for IT improvements would result in a loss to general revenue of approximately \$203,000 per fiscal year that would be offset by savings of approximately \$14,000 per year from eliminating prescriptive mailing requirements. Recommendations in Issue 2 to restructure TEC's audit function and authorize the agency to assess higher penalties for repeatedly late filers may have a fiscal impact, but the extent of costs or increased revenue would depend on the implementation of the new audit function and the number of filers paying increased fines, respectively. Finally, recommendations in Issue 3 would create additional efficiencies and shorter resolution times for sworn complaints, which would achieve long-term savings.

AGENCY AT A GLANCE

The Texas Ethics Commission (TEC) administers and enforces the state's campaign finance and ethics laws that govern the conduct of state officers and employees, candidates for and officeholders of state and local offices, political committees, political parties, and lobbyists. Created by a constitutional amendment adopted by voters in 1991, the agency's major functions include:

- Maintaining financial disclosure reports and making them available to the public.
- Investigating ethics and campaign finance complaints and assessing penalties when warranted.
- Issuing advisory opinions interpreting laws under the agency's jurisdiction.
- Providing information and assistance to stakeholders to help them understand their obligations under campaign finance and ethics laws.
- Registering persons engaged in lobbying at the state level and requiring periodic lobby activity reports.

Key Facts

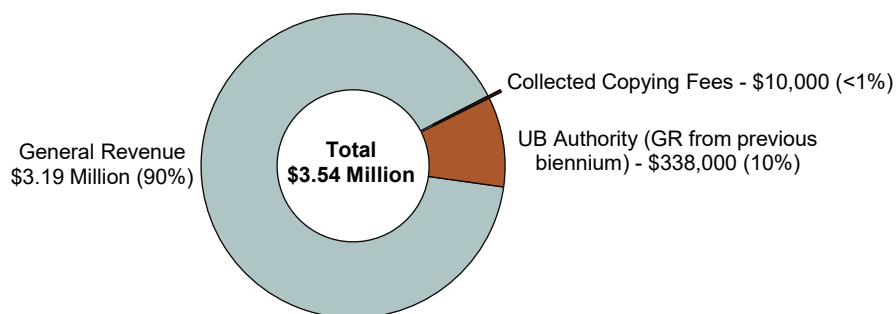
- **Governance.** The Texas Constitution establishes the agency's bipartisan, eight-member commission: four appointed by the governor from a list submitted by members of each political party of the House and Senate; two appointed by the speaker of the House from a list submitted by members of each political party of the House; and two appointed by the lieutenant governor from a list submitted by members of each political party of the Senate.¹ The constitution requires these appointing authorities to split their appointments between each political party required to hold a primary so that the commission is evenly divided between Republicans and Democrats.² The accompanying table details the commission's current members, all but one of whom have holdover status.

Texas Ethics Commission

Member	Term	Party	Appointed by
Randall Erben, Chair	2017-21	Republican	Speaker
Chris Flood, Vice Chair	2017-19	Democrat	Lt. Governor
Chad Craycraft	2016-23	Republican	Governor
Sean Gorman	2024-27	Democrat	Governor
Patrick Mizell	2018-21	Republican	Governor
Richard Schmidt	2018-21	Democrat	Governor
Joseph Slovacek	2017-21	Republican	Lt. Governor
Steven Wolens	2016-19	Democrat	Speaker

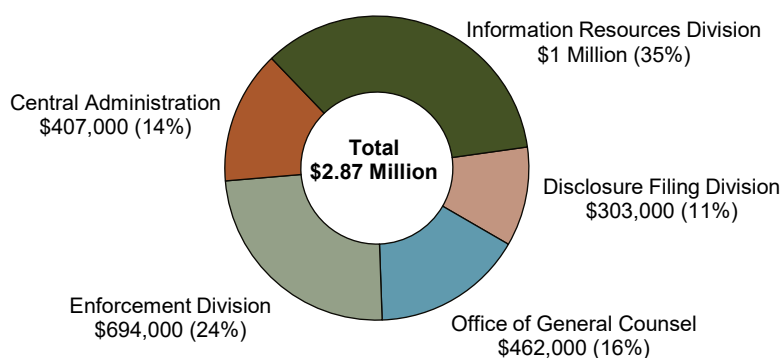
- **Funding.** As shown in the *TEC Sources of Revenue* chart on the following page, the agency received \$3.54 million in revenue in fiscal year 2023. Over 99 percent of the agency's budget is supported by general revenue, with the remainder consisting of copying fees for public information requests. TEC also used its unexpended balance authority to carry revenue forward into fiscal year 2023, including supplemental appropriations and emergency appropriations granted by the governor to support the cloud migration of TEC's electronic filing system (EFS). In July 2022, EFS crashed while processing several large filings, prompting an urgent need to migrate the system to a cloud-hosted environment for increased processing power before November elections.

TEC Sources of Revenue - FY 2023



As shown in the *TEC Expenditures* chart, the agency spent \$2.87 million in fiscal year 2023, with 35 percent going toward information resources to support EFS. The \$670,000 difference between TEC's available revenue and expenditures was due to the agency lapsing appropriations, including unspent supplemental and emergency appropriations and outside counsel funding for litigation.

TEC Expenditures - FY 2023



Appendix A describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2021-23.

- **Staffing.** In fiscal year 2023, TEC employed 25 staff, all located in Austin. The Legislature reduced the agency's employee cap from 34 to 28 for the 2024-25 biennium, aligning the cap to typical staffing levels the agency maintains. Appendix B compares the percentages of minorities and women in TEC's workforce to the statewide civilian labor force for the past three fiscal years.
- **Disclosure filings.** Candidates, state officers and employees, certain local officers, political committees, political parties, and lobbyists are required to submit periodic reports to the agency disclosing their expenditures and contributions as well as personal financial information.³ In 2016, TEC also began accepting disclosure forms (known as "Form 1295") for businesses that contract with governmental entities or state agencies.⁴ The agency assists filers in fulfilling disclosure reporting requirements, organizes and archives reports, and makes reports available to the public. In fiscal year 2023, the agency received 168,045 reports, as detailed in the table below.

Submitted Reports - FY 2023

Report Type	Number of Reports Submitted	Number of Active Filers
Campaign Finance Reports	14,418	4,863
Personal Financial Statements	2,839	2,820
Lobby Activity Reports	12,822	2,025
Interested Parties Certificates ("Form 1295")	137,966	37,490

- Lobby registration.** Persons who engage in certain lobbying efforts with the legislative and executive branches must register with the agency and file lobby activity reports as noted above.⁵ With some exceptions, persons must register as lobbyists if they receive more than \$1,870 in a calendar quarter as compensation or reimbursement to lobby or if they spend more than \$940 in a calendar quarter for certain purposes.⁶ While statute sets a floor of \$200 for each of these thresholds, the thresholds were set by commission rule in 1996 to \$1,000 for compensation and \$500 for expenditures, which TEC now updates for inflation. In 2023, the number of registered lobbyists totaled 2,025. Lobbyists paid a total of more than \$1 million in registration fees in fiscal year 2023, which were deposited in the General Revenue Fund.
- Sworn complaints.** The agency investigates and resolves complaints against candidates, political committees, state officers and employees, officers and employees of political subdivisions, and lobbyists.⁷ Any Texas resident may file a sworn complaint of an alleged violation with the agency.⁸ The agency may also initiate preliminary review with an affirmative vote of at least six commission members.⁹ In fiscal year 2023, the agency received 390 complaints. In general, most complaints allege violations of campaign finance and political advertising laws.
- Enforcement.** TEC enforces laws under its jurisdiction. Offenses in the Penal Code, such as bribery, improper influence, and abuse of office are outside TEC's enforcement jurisdiction.¹⁰ The agency also lacks enforcement authority for disclosure forms concerning interested parties in state and local government contracts, though TEC is still required to collect and post these forms to its website.¹¹ The agency's enforcement authority extends to candidates, officeholders, and their supporters filing with local filing authorities as well as those filing with the agency. Statute authorizes the agency to investigate complaints, hold enforcement hearings, issue orders, impose civil penalties, refer issues for criminal prosecution, and take action against a lobbyist's registration.¹² Statute imposes a civil penalty on filers who submit certain reports late, which may reach \$10,000 if the filer fails to pay the initial late report penalty on time.¹³ For violations other than submitting a report late, statute caps civil penalties at \$5,000 or triple the amount at issue, whichever is greater.¹⁴ The agency can waive or reduce late report penalties, accept payment of penalties to deposit in the General Revenue Fund, and refer unpaid penalties to the Office of the Attorney General for collection.¹⁵ Many penalties currently remain uncollected, as shown in the accompanying table.¹⁶
- Advisory opinions.** The agency issues advisory opinions about relevant laws, including campaign finance, political advertising, lobby activity, financial disclosure, standards of conduct of government officials, bribery of public servants, and the misuse of public resources.¹⁷ An advisory opinion provides a defense to prosecution or imposition of a civil penalty for a person who has reasonably relied on such an opinion in a substantially similar fact situation.¹⁸ The number of advisory opinions issued has steadily increased in recent years, from three issued in fiscal year 2019 to 16 issued in fiscal year 2023.
- Education.** Statute directs TEC to provide ethics training for new and returning members of the Legislature at the start of the legislative session and to provide ethics training for state employees in cooperation with state agencies, covering standards of conduct and conflict-of-interest provisions.¹⁹ Additionally, the agency provides information and documents about laws within its jurisdiction to

**Status of Penalties for Late Reports
Due in FY 2023**

Amount of penalties assessed	\$1,609,700
Amount of penalties waived	\$530,200
Amount of penalties paid to TEC	\$204,700
Total amount of outstanding penalties not paid	\$874,800

anyone who requests it. The agency provides a dedicated legal helpline for disclosure filing questions from the regulated community and directs much of its educational efforts toward posting FAQs, filing templates, and video guides on its website.

¹ All citations to Texas statutes are as they appear on <http://statutes.legis.texas.gov/>. Section 24a, Article III, Texas Constitution.

² Ibid.

³ Title 15, Texas Election Code; Chapters 305 and 572, Texas Government Code.

⁴ Section 2252.908, Texas Government Code. Form 1295s are submitted to Texas Ethics Commission (TEC) by businesses seeking to contract with governmental entities. Governmental entities then acknowledge the form submitted by the business selected for the contract.

⁵ Chapter 305, Texas Government Code.

⁶ Sections 305.003(a) and 571.064, Texas Government Code; 1 Texas Administrative Code (TAC), Part 2, Chapter 34, Subchapter B, Sections 34.41-34.45 (TEC, *Regulation of Lobbyists*); 1 TAC, Part 2, Chapter 18, Section 18.31, Figure 2 (2024) (TEC, *Adjustments to Reporting Thresholds*).

⁷ Chapter 571, Subchapter E, Texas Government Code.

⁸ Section 571.122, Texas Government Code.

⁹ Section 571.124(b), Texas Government Code.

¹⁰ Section 571.061, Texas Government Code.

¹¹ Section 2252.908, Texas Government Code.

¹² Chapter 571, Subchapters E and F, Texas Government Code.

¹³ Section 254.042, Texas Election Code; Sections 305.033 and 572.033, Texas Government Code.

¹⁴ Section 571.173, Texas Government Code.

¹⁵ Sections 404.094, 571.1731, and 2107.003, Texas Government Code.

¹⁶ The status of penalties in the table are current as of July 20, 2024.

¹⁷ Chapter 571, Subchapter D, Texas Government Code.

¹⁸ Section 571.097, Texas Government Code.

¹⁹ Section 571.071 and Chapter 572, Subchapter C, Texas Government Code.

ISSUE 1

Cumbersome Laws and Informal Management Practices Result in a Disclosure System that Limits TEC's Efficiency and Burdens the Regulated Community.

Background

The Texas Ethics Commission (TEC) serves as the state's repository for certain campaign finance, lobby activity, and personal financial information. State law requires candidates, state officers and employees, certain local officers, caucuses, political committees, and lobbyists to submit periodic reports to the agency in an effort to fully disclose political activity and financial interests and thereby provide the public a measure of accountability for their actions.¹ TEC administers these disclosure laws and enforces them by assessing civil penalties for failure to file reports on time or in response to sworn complaints, as discussed further in Issue 3.² Appendix C lists the types of reports TEC collects, who is required to file those reports, and their deadlines.

In fiscal year 2023, TEC collected and made available to the public approximately 14,000 campaign finance reports, 13,000 lobby activity reports, and 3,000 personal financial statements. TEC's primary tool for collecting, processing, and publishing these reports is its electronic filing system (EFS), a custom-designed, cloud-hosted software application and database the agency describes as a "TurboTax" style program that enables individuals to complete and submit forms to TEC. The agency also provides several educational resources to help filers navigate filing requirements, including guidance documents and video tutorials posted on its website and a legal helpline staffed full time.

Findings

Complicated, outdated, and unclear statute creates confusion, which hinders meaningful disclosure, strains TEC's limited resources, and burdens filers.

Throughout the review, Sunset staff heard numerous complaints about the complexity and lack of clarity in the statutory disclosure requirements TEC administers and enforces. Sunset staff received significant feedback about disclosure laws and TEC's disclosure functions from over 700 filers responding to an online survey. As highlighted in the textbox on the following page, filers lamented how challenging complying with the law can be. Confusion about reporting and other disclosure requirements can lead to serious consequences for filers. Even if a filer makes a simple error or submits a report just minutes late, these mistakes are often violations under the law that carry civil penalties. Filers must then navigate TEC's administrative process and contend with notices of late penalties and associated waiver requests when they may have limited or no experience with the agency and its processes. Worse yet, filers are at risk of receiving a sworn complaint for reporting errors that may be due to innocent mistakes. When filers seek answers from TEC, they sometimes struggle to get through to someone on the agency's phone lines, which are flooded near major report deadlines. Confusion has consequences for TEC

Filers lament how challenging complying with the law can be.

as well, adding to the agency's workload and straining its limited resources as additional filers are pulled into its regulatory processes.

Many of the state's ethics laws date back to 1993 and are undoubtedly due for an overhaul.³ However, recommending such an overhaul would require significant policy decisions outside of Sunset staff's scope. Instead, Sunset staff identified problematic aspects of the law that place a considerable burden on filers or significantly impact the agency's ability to efficiently and effectively promote compliance with disclosure requirements.

Ethics Law Confuses Filers

Overall complexity

- "Difficult to understand for a regular guy with no experience and no accountant."
- "I had an investment that diversified into multiple subcategories and there were no rules to cover how to file this. This report is very time consuming. It takes me and 2 investment agents many hours to create reports to provide the information required."
- "Simplify the laws governing ethics filings that would simplify the instructions and the processes. Modernize the website."

Threshold adjustments

- "The idea of increasing thresholds with the CPI [Consumer Price Index] makes sense on its face, but it makes the thresholds impossible to remember. It creates a 'gotcha' situation when that was certainly not the intent."

Electronic/credit card reporting

- "Please, please, please get rid of the requirement to report every single electronic transaction. Just keep it to the threshold limit, whether electronic or not."
- "The way the items must be filed is insanely complicated. It makes no logical sense. If something was charged on a credit card, it seemed to be counted twice. Maybe I did it wrong.... but it took FOREVER!!!!"

TEC must
annually update
74 distinct
reporting
thresholds and
categories for
inflation.

- **Confusing and ineffective reporting and registration threshold updates.** Statute establishes a number of thresholds that require filers, if their political activity meets the threshold, to submit more detailed information or additional reports and requires TEC to annually update each of the 74 distinct reporting thresholds and categories to account for inflation.⁴ While TEC communicates these changes to filers, the adjustments result in unintuitive, difficult-to-remember amounts that burden filers who have to keep track of the amounts each year to comply with disclosure requirements. Without clear, easy-to-remember amounts, filers risk crossing certain disclosure thresholds inadvertently, which could result in late or missing reports or information. For example, statute requires general-purpose political committees to submit daily campaign finance reports in the eight days leading up to an election if they make direct campaign expenditures toward a group of candidates that in the aggregate exceed \$15,000.⁵ However, as adjusted for inflation, in 2024 that threshold is \$32,280.⁶

Statute requires lobbyists to report compensation received per client per year as falling within one of 14 different compensation ranges, with higher ranges intended to indicate greater potential influence over legislation.⁷

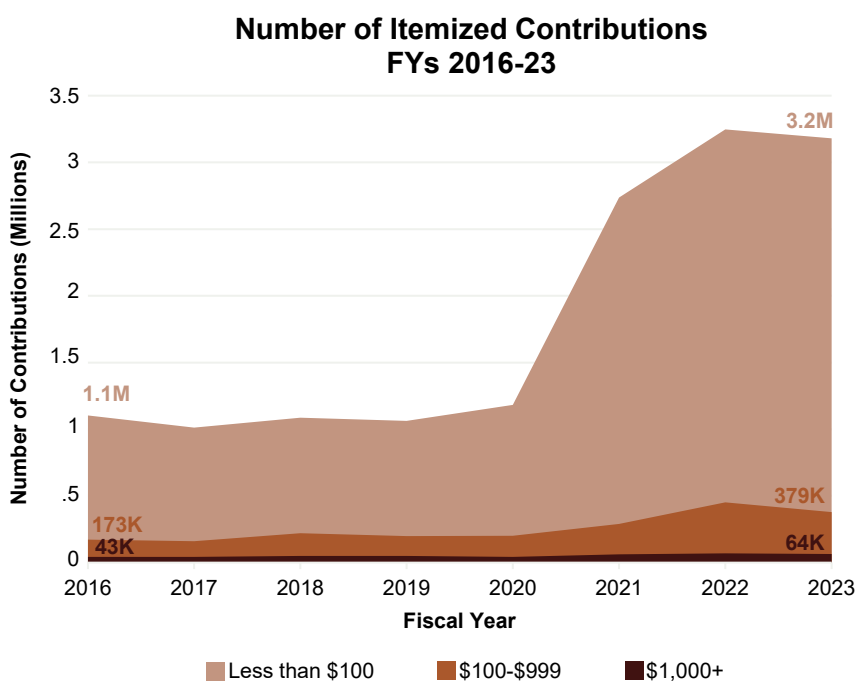
Statute also requires TEC to adjust the compensation ranges to account for inflation.⁸ However, compensation changes tend to lag behind inflation due to different economic factors.⁹ As a result, TEC's annual adjustments over time have eroded the ranges and resulted in less meaningful disclosure, as explained in the textbox below.

Unintended Consequences of Lobby Compensation Adjustments

According to the compensation ranges established in statute, a lobbyist who receives compensation less than \$10,000 reports this under one category and reports compensation between \$10,000 and \$25,000 under a separate category. With TEC's adjustment for inflation in fiscal year 2024, lobbyists now report any compensation below \$21,250 under one category and compensation between \$21,250 and \$53,810 under a separate category. This means in fiscal year 2024, lobbyists reported compensation of \$1,000 and \$20,000 under the same category but would have reported these under different categories in fiscal year 2020.

The adjustment over time has compressed the ranges into which lobbyists report compensation. In fiscal year 2018, 77 percent of lobby activity fit in the lowest four of 14 compensation categories (including the lowest \$0 category) compared to 90 percent in fiscal year 2023.

- **Onerous itemization for electronic contributions.** Statute requires campaign finance report filers to provide detailed information, including the contributor's full name, address, and date of contribution, for every electronic contribution regardless of amount.¹⁰ This requirement burdens filers who must enter each contribution or prepare and upload a specific EFS-compatible formatted spreadsheet into the EFS database. By contrast, statute only requires filers to provide the same level of information for *non-electronic* contributions over \$110, as adjusted for inflation.¹¹ Effective September 2019, the inconsistent requirement to itemize all electronic contributions exponentially expands the size of campaign finance reports, as shown in the accompanying chart.



These contributions can reach tens of thousands of entries in a given report but individually do not meaningfully impact disclosure, such as showing recurring credit card donations and payroll contributions of amounts as small as \$0.01. The sheer size of the reports, especially those for campaigns of significant interest to voters, hinders the public's ability to meaningfully use the disclosed information to identify political contributions and expenditures they may be interested in without sophisticated data analysis tools. Furthermore, several very large campaign finance reports, some of which included nearly 500,000 electronic contributions, forced TEC to migrate EFS to the cloud for increased processing power after the system failed to process the reports in July 2022. Although EFS can now handle such large reports, the requirement still places a significant burden on filers who rely on many small contributions.

TEC spent
\$14,000 on
mailing costs in
FY 2023.

- **Double counting credit card expenditures.** When campaign finance report filers use a credit card to make a political expenditure, statute requires them to report the purchase as an expenditure and report the repayment to the credit card issuer.¹² TEC counts both the credit card purchase and the repayment as expenditures for the purpose of calculating a filer's total expenditures, which can mislead the public concerning the true amount of a filer's political activity. The requirement is also one of several statutory requirements that can be confusing to filers who expect these reports to use typical accounting practices, where reported contributions and expenditures should add up to a filer's "cash-on-hand" balance at the end of the report.
- **Outdated mailing requirements.** Statute provides TEC some flexibility to send notices regarding upcoming filing deadlines to campaign finance filers by email rather than regular mail.¹³ However, as described in the accompanying textbox, statute does not provide the agency similar

Example Prescriptive Statutory Mailing Requirements

- **Campaign Finance Reports:** Requires TEC to mail a notice to certain filers upon determining that a report is late.
- **Personal Financial Statements:** Requires TEC to send a notice of liability for a penalty by registered mail once a report is more than 30 days late.
- **Lobby Registrations and Reports:** Requires TEC to send a notice of failure to file a registration or report by certified mail.
- **Sworn Complaints:** Requires TEC to send documents related to sworn complaints by registered or certified mail, restricted delivery, return receipt requested.

flexibility to more efficiently provide other notices.¹⁴ TEC's mail costs have consistently increased since 2019 and totaled approximately \$14,000 in fiscal year 2023, not including the staff time needed to prepare and mail the notices.¹⁵ Furthermore, according to TEC staff, the U.S. Postal Service is phasing out online ordering for registered mail stickers from its website so staff will have to pick them up from the post office in person.

Sending certain time-sensitive notices by physical mail rather than email can also impact filers financially. TEC must send a letter by regular mail to the filer when it determines campaign finance reports are late, and certain campaign finance reports have statutorily accruing late penalties of \$100 per day that start when the filer misses the deadline.¹⁶ In fiscal year 2023, TEC sent 84 initial late notices for reports with these accruing penalties.

Receiving a notice by first-class mail can take up to five days, during which time the penalty could have increased by up to \$500. Although the late penalty notice is not the first opportunity for filers to learn about their report deadlines — TEC sends out email notifications in advance of deadlines — subjecting filers to additional penalties as a result of outdated mailing requirements is unnecessary. Recognizing the expense and inefficiency associated with mailing requirements, TEC has repeatedly requested the Legislature remove the requirements, and as part of its 2024 Strategic Fiscal Review, the Legislative Budget Board also recommended removing them.¹⁷

- **Inconsistent reporting periods.** Certain monthly reports cover periods that are seemingly arbitrary and inconsistent with other kinds of reports, which can potentially lead to filer reporting errors. Semiannual campaign finance reports cover whole months, generally January 1 through June 30 and July 1 through December 31.¹⁸ Monthly lobby activity reports also cover the previous whole month.¹⁹ However, monthly campaign finance reports cover the period beginning the 26th day of each month and continuing through the 25th day of the following month.²⁰ The unintuitive nature of these monthly reports may cause filers to manually select incorrect reporting periods in EFS, leading to overlaps or gaps between periods covered by reports.
- **Antiquated paper-based filings.** Statute requires all campaign finance reports to be submitted electronically through EFS but exempts filers with limited activity if they affirm they do not use computer equipment to keep current records of political activity.²¹ While paper-based reports account for only about 0.5 percent of all campaign finance reports, allowing filers to submit these reports hinders meaningful disclosure. Because TEC scans and uploads image-only PDFs of these reports to its website, the full content of these paper-based reports is not searchable in the EFS database, meaning someone searching the database for all contributions made by a specific individual would not find any contributions from these reports.

Furthermore, in practice TEC accepts paper-based reports regardless of whether the filer submits an affidavit because it lacks the resources to enforce the exemption. On occasion, TEC even receives emailed PDF versions of reports created using EFS, which implies the filer had access to the necessary computer equipment and likely was not eligible for an exemption.

The full content of paper-based reports is not searchable in TEC's database.

TEC has not fully leveraged its available tools and resources to efficiently and effectively perform its core disclosure functions.

- **Struggle to balance long-term IT goals with short-term achievable fixes.** TEC's EFS and website play a central role in the agency's ability to fulfill its disclosure functions. Together these tools should provide clear information to filers, make complying with disclosure requirements and submitting reports as easy as possible, and ultimately provide the public with meaningful access to disclosed information. Unfortunately, reality

has never fully matched these expectations. Because of limited resources, increasing workload, and other challenges, TEC approaches improvements to EFS and its website in a patchwork manner, and neither information technology (IT) tool lives up to its full potential to maximize the agency's efficiency and improve compliance.

Example EFS and Website Problems

EFS

- No functioning online payment portal
- No penalty calculation function despite a displayed “fines tab”
- Inoperable chat feature that has never been supported
- No automated password reset
- Multiple log-in paths across report types for the same filer
- No standardization of names in EFS system to prevent duplicative variations

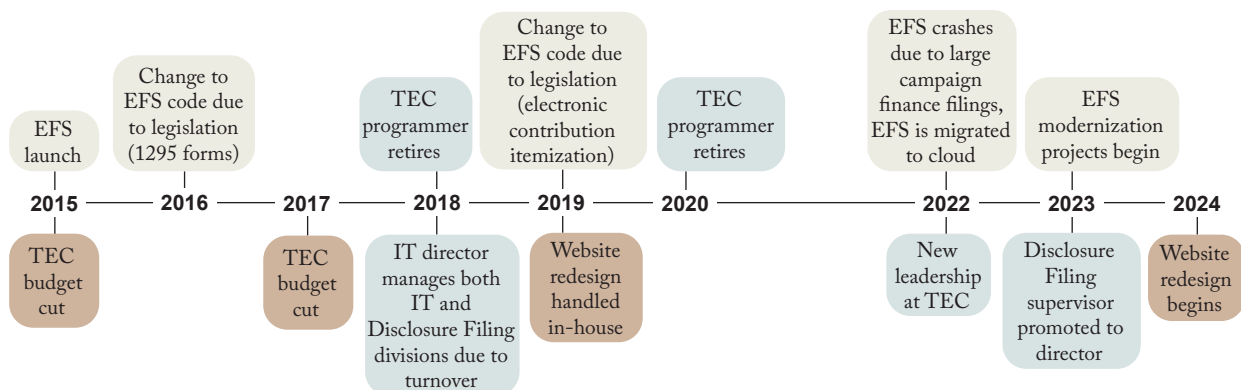
Website

- Limited search capabilities for campaign finance data
- Cumbersome design with information buried
- No dedicated FAQs for using EFS

No formal plan to deal with competing priorities. Current agency leadership has a vision for EFS and the TEC website to better serve filers and the public, and the agency has embarked on several projects to modernize both tools. For example, TEC began several EFS modernization projects in 2023 and entered into a contract in July 2024 to redesign its website.²² However, TEC has no comprehensive, formally documented plan for prioritizing and completing short- and long-term projects to bring its vision to life. As a result, both EFS and the website have persistent problems, as described in the accompanying textbox.

In 2013, TEC and its selected vendor, RFD and Associates, Inc., began developing a new electronic system for filers. TEC deployed EFS on a tight two-year schedule. Unsurprisingly, the system was not perfect on day one, as is typical for the release of a major software system. Since launching EFS in 2015, the agency has not only had to fix initial bugs in the system but also make adjustments to address new disclosure requirements and other pressing priorities, as highlighted in the timeline below.²³ For example, TEC had plans to hire a contractor to update its website but ultimately had to do the work in-house in 2019 due to agency budget cuts in the 2016-17 and 2018-19 biennia, resulting in an improved but still flawed website.²⁴

IT Project Management Timeline



TEC and RFD have immediately addressed urgent situations such as migrating EFS to the cloud when the existing system hardware could not process extremely large reports during the 2022 election season. While mostly successful, this approach is piecemeal, and TEC has no process for ensuring projects that were sidelined in favor of an overriding priority get completed in a timely fashion. For example, despite a highly desired payment portal being dropped from EFS' original design due to deployment time pressures, TEC had no timeline for implementing the payment portal at a later date — and still none exists today even as the agency bounces from one priority to the next. Similarly, following a 2023 State Auditor's Office (SAO) report criticizing the agency's buildup of software enhancement hours, as explained in the textbox, TEC began a number of projects to quickly spend down those hours.²⁵ Yet the agency never stepped back to holistically consider which projects it should prioritize in the short and long term or develop specific timelines to complete them.

EFS Contract Audit

Among its findings, SAO found that between fiscal year 2016 and 2023, TEC pre-purchased software enhancement hours for anticipated projects, resulting in a credit balance with the vendor of nearly 6,000 hours with a value of approximately \$824,000 as of February 2023. According to the audit, TEC did not comply with applicable contracting guidelines to maintain documentation or provide other justification for the need to make advance payment for those hours.

TEC will always have to contend with the Legislature changing the law in ways that impact EFS and with unforeseen circumstances it simply cannot predict. However, without a more formal, documented plan that includes clear objectives, priority projects, and milestones, TEC will continue to use a fragmented approach, stifling the agency's vision for more modern systems that would make its job easier and ultimately improve disclosure.

Limited contract monitoring practices. While TEC is satisfied with RFD's performance, some informal processes undermine the agency's ability to more effectively manage the EFS contract. According to contracting best practices compiled by Sunset staff, such as those established in the Office of the Comptroller of Public Accounts' *Procurement and Contract Management Guide*, vendor performance monitoring is necessary to ensure an agency gets what it pays for.²⁶ TEC lacks a formal, consistent process that clearly outlines the agency's expectations and how it will monitor RFD's performance. TEC has contracted with RFD since 2015 to provide services for EFS, including debugging, code upgrades, and around-the-clock maintenance support to ensure the system is available to the regulated community. Since this contract includes debugging projects under the flat contract price, the agency has limited visibility into RFD's workload and would benefit from setting metrics to assess the timely completion of projects and confirm the vendor's efforts justify the cost of the contract. For example, TEC could set clear timeframes for completing projects and collect status data to track project work time and duration to adequately gauge the progress of deliverables. Furthermore, TEC has not formally evaluated its EFS vendor upon contract closeout when all services under the contract have been completed.²⁷ While TEC began completing statutorily

TEC still lacks an online payment portal that was part of the original 2015 EFS design.

required vendor performance reports upon contract closeout in fiscal year 2024, these reports do not include specific details on each vendor's successes and shortcomings or lessons learned to apply in the next procurement.²⁸

Additionally, agency staff involved in managing contracts should receive standard contract training, including training on IT procurement requirements provided by the comptroller and the Department of Information Resources (DIR), which statute requires for agencies with IT contracts.²⁹ Although TEC's director of finance and purchaser have completed the comptroller's contract manager training, TEC staff who manages the agency's IT contracts lack formal contract management training. Ensuring appropriate staff receive

training on how to properly monitor contracts for expected deliverables and when and how to address contractor performance problems would help ensure the agency's contracts are managed effectively.

Insufficient filer feedback. TEC does not formally collect and use feedback from EFS and website users, limiting its visibility into improvements that could most effectively address the users' needs. For instance, TEC does not involve filers in the "user-acceptance testing" performed on EFS enhancements before deployment, instead relying on IT staff and the EFS vendor to test enhancements. TEC also does not have concrete plans to seek out feedback from website users for the current redesign project, though the agency expressed a willingness to do so to Sunset staff.

While TEC invites input through its biennial customer service survey, the survey contains no questions specific to EFS and few related to its website.³⁰ In response to Sunset staff's survey, most stakeholders expressed an overall positive impression of EFS, but many commented on problems they experienced using the system and the website, as highlighted in the accompanying textbox. Because TEC does not seek filer feedback in a formal way, it has an incomplete awareness of the problems filers experience using EFS, limiting the agency's ability to incorporate filers' perspectives when determining priorities or accurately gauging how well EFS is living up to expectations.

EFS and Website Frustrate Stakeholders

EFS

- "I could not easily find unitemized section. I have to go to a totally different place and there is no clear path. Also, when I put funds available in campaign account, that's not easy to find."
- "The instructions are not clear in certain areas...Some clear instructions/examples dealing with modern campaigns would help. Also, I don't know what information will be scrubbed and when, so I have worried about listing some people's home addresses. I have not yet found information on this on the website."
- "The filing system should tell us the threshold amounts for each section instead of saying 'look at this document to see the threshold.' The filing system should just tell us the threshold."

Website

- "Website verbiage guidance and training material is clear as mud, unless you're an attorney."
- "The website/process is 'clunky' and does not seem like it has been reviewed by laypersons."
- "The website needs improvement. It's not intuitive. For example, the upcoming deadlines link should have the filing schedule for the whole year, not just what's immediately in front of us."
- "I believe it is very hard to navigate the site. I found myself having to remember the weird way I got to the information that I once found because it is not all on one page and/or there is no good navigation system for the entire site."

- **Lapsing funds that could support technology needs.** As part of its base budget, the Legislature appropriates \$300,000 per fiscal year to TEC with the intent that the funds be spent on outside legal counsel when the Office of the Attorney General declines to represent the agency in certain lawsuits.³¹ However, the General Appropriations Act provides TEC with no explicit guidance regarding the use of these funds or what to do if it does not spend the entire amount. As a result, TEC regularly lapses funds that are not needed for outside legal counsel. In the last six fiscal years, the agency has returned approximately \$990,000 to general revenue.³² While TEC's attempt to be a good steward of taxpayer dollars is commendable, the agency has a continuing need to improve key IT tools. TEC has also lapsed approximately \$150,000 in funding related to certain retirement payments in the last two fiscal years that could further support these IT needs.³³
- **No interactive trainings.** TEC has not used a valuable tool the Legislature provided the agency to help educate filers about their obligations. In 2011, in the midst of funding reductions across all agencies, the Legislature eliminated appropriations for TEC's education program.³⁴ However, in 2021, the Legislature authorized TEC to conduct training seminars and collect a fee to cover the costs.³⁵ TEC has never exercised this authority. While the agency creates detailed training webinars and posts them to its website, these videos do not provide an opportunity for filer interaction. Moreover, Sunset staff observed that the webinars tend to inherit and reproduce the complexity of the laws they attempt to explain. Based on responses to Sunset's survey, many filers do not make use of these webinars, with 62 percent of stakeholders reporting they have never used or were unaware of them. Given the complexity of the state's ethics laws, more interactive training opportunities for filers, especially first-time filers, could promote more timely and accurate reporting and decrease calls to TEC.
- **Insufficient cross-divisional coordination on helpline guidance.** While TEC's Legal Division relies on a guidance document for addressing common questions to ensure consistency, other divisions do not use similar documentation, which can result in filers getting different answers depending on who they call. Competing and inconsistent information can contribute to filer confusion about requirements, in some cases resulting in filers submitting reports that TEC deems late and for which it assesses a penalty. Staff informally discusses caller issues at weekly staff meetings in an attempt to coordinate responses. Nevertheless, some stakeholders report receiving conflicting information from staff, suggesting room for improvement exists.

In the last six fiscal years, TEC lapsed \$990,000 in funding for outside counsel.

TEC's webinars tend to reproduce the complexity of the laws they attempt to explain.

Sunset Staff Recommendations

Change in Appropriation

1.1 The House Appropriations and Senate Finance committees should consider providing TEC additional guidance regarding the use of unexpended funds for IT improvements.

This recommendation would express the will of the Sunset Commission that the Legislature consider authorizing TEC to direct its unexpended funds to cover its outstanding IT needs at the end of the fiscal year. Such IT needs include maintaining TEC's EFS, website, and other software, hardware, and tools at a level necessary to achieve its mission. To accomplish this goal, the committees could consider the following actions:

- Establishing a rider in TEC's bill pattern in the General Appropriations Act clarifying the use of appropriated funds for obtaining outside legal counsel for its litigation defense needs and authorizing the use of unexpended funds on necessary IT improvements.
- Modifying TEC's retirement rider to authorize the use of unexpended funds for IT improvements.
- Establishing a rider in TEC's bill pattern in the General Appropriations Act authorizing TEC to use any unexpended funds on necessary IT improvements.

The committees could also consider granting TEC unexpended balance authority between fiscal years to ensure the agency has adequate time to spend the funds. By providing TEC with clear authority to redirect unexpended funds that would otherwise lapse, this recommendation would allow TEC to continue using these funds for its outside legal counsel and retirement needs while also providing TEC the flexibility to maintain its IT resources as new legislation arises that mandates changes to these resources.

Change in Statute

1.2 Require TEC to adjust reporting and registration thresholds every 10 years instead of annually.

This recommendation would require TEC, by rule, to adjust reporting and registration thresholds for inflation every 10 years. Statute would require TEC to make adjustments in a manner that achieves reasonable, sensible thresholds and would authorize the agency to consider, where appropriate, historical reporting trends to ensure its inflation adjustments do not hinder meaningful disclosure. For example, lobby compensation threshold adjustments could account for compensation lagging behind inflation to avoid artificially compressing the ranges into which lobbyists report compensation. Decennial adjustment would reduce the burden on TEC and filers and provide clear, easy-to-remember requirements.

1.3 Align monthly reporting periods and deadlines.

This recommendation would align monthly campaign finance report requirements for general-purpose political committees with the more intuitive monthly reporting requirements for lobby activity reports. Specifically, monthly campaign finance reports would be due between the 1st and 10th day of each month and would report activity from the previous month.

This recommendation would reduce the burden on filers by making reporting periods and deadlines for monthly reports consistent across filing types and by covering more intuitive periods. The recommendation would also reduce the strain on TEC resources by removing a potential source of confusion that could result in technical errors in EFS and questions from filers.

1.4 Align the itemization thresholds for electronic and non-electronic contributions.

This recommendation would require filers to itemize and provide detailed information for electronic contributions only when the amount of those contributions exceeds the threshold already in statute for non-electronic contributions, providing filers with a consistent standard for when they must provide detailed, itemized reports of contributions. Under TEC's 2024 adjustments, this change would mean filers are not required to itemize contributions under \$110 regardless of whether they receive those contributions electronically. The recommendation would substantially decrease the burden on filers, especially candidates or officeholders who rely on numerous small electronic campaign contributions.

1.5 Eliminate double counting of political expenditures made using credit cards.

This recommendation would remove the requirement for filers to report expenditures in a single itemized list by credit card company. Filers would still be required to report political expenditures made using a credit card. This recommendation would reduce the burden on filers and give the public a clearer picture of the true amount of expenditures made by campaigns. Because other reporting requirements also diverge from typical accounting practices, the agency could benefit from legislative guidance on how to holistically address payments made for unpaid, incurred obligations.

1.6 Remove prescriptive mailing requirements from statute.

This recommendation would remove all mailing requirements from statute and instead require TEC to adopt rules prescribing how it will handle notifications and correspondence. This recommendation would not prohibit TEC from continuing to use physical mail for certain notifications should it choose to do so. Eliminating mailing requirements would save the state thousands of dollars annually and help filers receive notices more quickly.

1.7 Remove the electronic filing exemption for campaign finance reports.

This recommendation would require filers to submit all campaign finance reports electronically through EFS without exception. This recommendation would improve disclosure by ensuring that submitted reports are searchable in TEC's publicly available database.

Management Action

1.8 Direct TEC to develop a comprehensive plan for short- and long-term improvements to the agency's IT resources.

This recommendation would direct TEC to develop a comprehensive plan for IT projects and improvements that would leverage its IT resources to better support core agency functions, achieving efficiencies for staff and improving effectiveness of its public-facing systems. In developing this plan, TEC should:

- Assess the current capabilities of its existing IT resources.
- Identify agency priorities for both short- and long-term improvements to key systems, including EFS, in light of adopted Sunset recommendations and user experiences.
- Evaluate agency functions to determine what aspects could be improved using EFS' current capabilities and other existing IT resources in the short term.
- Propose a concrete timeline for addressing persistent problems in the current version of EFS and with its website.

- Develop a long-term plan for retooling EFS to realize its full potential, such as using EFS to provide TEC with information about where filers are having problems and to facilitate the agency's audit function, as discussed in detail in Issue 2.
- Develop criteria for evaluating the success of its IT systems.
- Identify any statutory barriers to improvements and whether the agency will need additional resources. The agency could include any necessary statutory recommendations in the *Biennial Report* it submits to the governor and Legislature and additional resource needs in its next Legislative Appropriations Request.

In developing this plan, TEC should consult DIR regarding programs and services that could help the agency fulfill and implement aspects of this plan. For example, TEC could obtain a consultation through DIR for an assessment of technology services to help evaluate EFS' current capabilities and identify potential agency practices that could be automated or streamlined using EFS in the future. TEC should also use its customer service survey or other appropriate methods to seek input from filers and other users of the agency's IT resources about their experiences. The agency should submit the plan to its commission for approval and also provide a copy to the Sunset Commission.

As TEC approaches the 10-year anniversary of its EFS contract, which expires at the end of fiscal year 2025, this recommendation would give TEC the opportunity to comprehensively reevaluate its filing system needs to inform the development of its next competitive contract solicitation. Assessing its current IT capabilities and planning for the future should help TEC define its expectations of a filing system and identify concrete steps to achieve those expectations, whether that means developing discrete projects for EFS upgrades or soliciting for a new filing solution.

This holistic approach to planning would ensure TEC obtains tools that effectively and efficiently meet the agency's needs as well as the needs of filers and the public.

1.9 Direct TEC to improve its EFS contract monitoring practices.

This recommendation would direct TEC to establish a formal, consistent process to outline expectations for contract monitoring, including setting clear timeframes and collecting status information and data. As part of this recommendation, TEC should also complete more detailed evaluations of its EFS vendor for internal use, including documenting any lessons learned, to compare actual performance with performance measures and objectives. TEC should continue to meet statutory requirements to submit vendor performance reports to the comptroller. TEC should use these evaluations to develop future procurements by better defining needs, statements of work, deliverables, and performance measures and to guide future vendor selection.

1.10 Direct TEC to ensure key contract management staff receive appropriate training.

This recommendation would direct TEC to ensure all staff members involved in monitoring significant contracts receive training appropriate to their role in the contracting process. Training should include best practices for contract monitoring, vendor performance review, and collecting and sharing performance data with agency leadership. This recommendation would also direct TEC to certify appropriate staff members involved in contract management through the comptroller's office.

1.11 Direct TEC to offer trainings to help filers navigate their disclosure requirements.

To provide more hands-on education for filers, this recommendation would direct TEC to use its statutory authority to provide training seminars for a fee. Doing so would enable filers — especially first-time filers — to navigate complex ethics disclosure requirements. Offering these trainings could improve TEC's efficiency by reducing calls from filers near report deadlines and reducing the frequency of late or inaccurate reports due to filer confusions that then get caught up in the late penalty process or sworn complaint process.

1.12 Direct TEC to coordinate helpline guidance among its divisions.

This recommendation would direct TEC to implement a more formal system for tracking common caller issues and coordinating guidance across divisions. For example, TEC could develop an agencywide tracking system for open filer inquiries and categories of inquiry to enable the agency to better identify the most significant filer confusions and better prioritize the agency's limited resources. As part of this recommendation, TEC could also consider making a filer survey to obtain feedback on the filer's experience with EFS, the website, and any other customer service issues.

Fiscal Implication

Overall, these recommendations would result in a negative fiscal impact to the state of approximately \$190,000. As detailed below, the fiscal impact results from authorizing the agency to use unexpended funds on IT improvements, which would be partially offset by savings in mailing expenses.

Recommendation 1.1, which would authorize TEC to use unexpended funds for IT, would result in a loss to general revenue of approximately \$203,000 per fiscal year based on the average amount TEC lapsed for retirement payouts over the last four fiscal years and outside legal counsel over the last six fiscal years. Recommendation 1.6, which would eliminate prescriptive mailing requirements, would result in savings to the state of approximately \$14,000 per year — the average amount TEC has spent over the last six fiscal years on mailing notices and other correspondence.

Directing TEC to develop a plan to improve its IT resources would allow the agency to identify and eliminate procedural bottlenecks and better allocate staff resources away from manual processes. TEC would likely incur costs associated with implementing the plan but, in the long term, improvements to EFS and the agency's website would increase the agency's efficiency through automation and reduced time spent answering filer questions. Other recommendations would not have a direct fiscal impact but would result in long-term efficiency gains by reducing the number of questions from filers, late filings, and sworn complaints that result from confusing disclosure requirements.

¹ All citations to Texas statutes are as they appear on <https://www.statutes.legis.texas.gov/>. Title 15, Texas Election Code; Chapters 305 and 572, Texas Government Code.

² Sections 571.061 and 571.173 and Chapter 571, Subchapter E, Texas Government Code; Section 254.042, Texas Election Code, and Sections 305.033 and 572.033, Texas Government Code.

³ Chapter 571, Texas Government Code.

⁴ Section 571.064, Texas Government Code.

⁵ Section 254.039(a)(2), Texas Election Code.

- ⁶ 1 Texas Administrative Code (TAC), Part 2, Chapter 18, Section 18.31(a), Figure 1 (2024) (Texas Ethics Commission (TEC), *Adjustments to Reporting Thresholds*).
- ⁷ Section 305.005(g), Texas Government Code.
- ⁸ Section 571.064, Texas Government Code.
- ⁹ John M. Bremen, “Why salary increases still don’t align with inflation,” *WTW*, June 2, 2023, accessed online October 15, 2024, <https://www.wtwco.com/en-us/insights/2023/06/why-salary-increases-still-dont-align-with-inflation>.
- ¹⁰ Section 254.031(a)(1-a), Texas Election Code.
- ¹¹ Section 254.031(a)(1), Texas Election Code. The \$50 threshold in statute is updated to \$110 by 1 TAC, Part 2, Chapter 18, Section 18.31(a), Figure 1 (2024) (TEC, *Adjustments to Reporting Thresholds*).
- ¹² Section 254.036(g), Texas Election Code.
- ¹³ Section 251.033(a), Texas Election Code.
- ¹⁴ Section 254.042, Texas Election Code; Sections 305.033, 305.034(b), 571.032, 572.030(b), and 572.033, Texas Government Code.
- ¹⁵ Legislative Budget Board (LBB), *Strategic Fiscal Review*, “Texas Ethics Commission,” September 2024, p. 7, accessed online October 30, 2024, https://www.lbb.texas.gov/Documents/Budget/8512_Strategic_Fiscal_Review_2024.pdf.
- ¹⁶ Section 254.042, Texas Election Code.
- ¹⁷ TEC, *Biennial Report 2017-2018*, December 2018, p. 34; TEC, *Biennial Report 2019-2020*, December 2020, pp. 51-52; TEC, *Biennial Report 2021-2022*, December 2022, pp. 16-17; LBB, *Strategic Fiscal Review*, p. 7.
- ¹⁸ Sections 254.063, 254.093, and 254.123, Texas Election Code.
- ¹⁹ Section 305.007, Texas Government Code.
- ²⁰ Sections 254.157 and 254.158, Texas Election Code.
- ²¹ Section 254.036, Texas Election Code.
- ²² TEC, *Legislative Appropriations Request for Fiscal Years 2026 and 2027*, “Administrator’s Statement,” August 2024, p. 2.
- ²³ TEC, *Legislative Appropriations Request for Fiscal Years 2020 and 2021*, “Administrator’s Statement,” Tab 6, September 2018, p. 9.
- ²⁴ LBB, *Fiscal Size-up 2016-17 Biennium*, May 2016, Figure 61 (Texas Ethics Commission), p. 70; LBB, *Fiscal Size-up 2018-19 Biennium*, September 2018, Figure 55 (TEC), p. 66.
- ²⁵ Texas State Auditor’s Office, *An Audit Report on Financial Processes at the Texas Ethics Commission*, July 2023, accessed online October 10, 2024, <https://sao.texas.gov/SAOReports/ReportNumber?id=23-036>.
- ²⁶ Texas Comptroller of Public Accounts, *State of Texas Procurement and Contract Management Guide, Version 3.0*, accessed online October 30, 2024, <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>.
- ²⁷ *Ibid.*, p.111.
- ²⁸ Section 2155.089, Texas Government Code.
- ²⁹ Section 656.052, Texas Government Code.
- ³⁰ TEC, *Report on Customer Service*, June 2018; TEC, *Strategic Plan Fiscal Years 2021-2025*, June 2020, pp. 42-54; TEC, *Report on Customer Service*, June 2022.
- ³¹ LBB, *Strategic Fiscal Review*, p. 6.
- ³² *Ibid.*
- ³³ TEC, *Operating Budget for Fiscal Year 2024*, “2.B. Summary of Budget By Method of Finance,” December 2023, pp. 2-3, accessed online October 14, 2024, https://www.ethics.state.tx.us/data/legislation/reports/Operating_Budget_2024.pdf.
- ³⁴ TEC, Article I, p. I-40, Chapter 1355 (HB 1), Acts of the 82nd Legislature, Regular Session, 2011 (General Appropriations Act).
- ³⁵ Section 571.071(d), Texas Government Code.

ISSUE 2

TEC's Regulatory Tools and Practices Hinder Its Compliance Efforts and Prevent the Agency from Prioritizing Serious Violations of State Ethics Laws.

Background

The Texas Ethics Commission (TEC) oversees a disclosure-based ethics system for state and local elected officials and candidates, political committees, state officers and employees, and lobbyists. Under this system, statute requires periodic disclosure of political contributions and expenditures, lobby activity, and personal financial information, thereby enabling the public to make informed judgments about the financial behavior of public officials before going to the ballot box.¹ Key to this disclosure system are regulatory processes that help ensure complete, timely, and accurate reporting to promote accountability. TEC's regulatory processes include an administrative process for late reports, an audit function, and a sworn complaint process.

- **Administrative late penalty process.** Statute imposes an automatic \$500 penalty for most disclosure reports filed late and subjects filers of certain disclosure reports to larger penalties based on the number of days late.² TEC administers a process that allows filers to request a reduction or waiver of the penalty.³
- **Audit function.** The agency performs a facial compliance review of randomly selected disclosure reports, giving filers an opportunity to correct technical deficiencies without a penalty.⁴ Statute also authorizes a complete audit, which the agency does not perform due to resource constraints.⁵
- **Sworn complaint process.** As discussed more fully in Issue 3, TEC investigates complaints alleging a violation of law under the agency's jurisdiction, holds enforcement hearings, and issues orders.⁶ Individuals who violate the state's ethics laws may be liable for civil or criminal penalties.⁷

Findings

TEC's current regulatory framework does not provide sufficient guidance about the seriousness of reporting violations, which can mislead the public and potentially influence election outcomes.

An effective regulatory framework establishes a clear connection between the seriousness of a violation and the actions an agency takes so the public can make informed judgments about the behavior of those subject to the law. In a disclosure-based ethics system, the agency's actions should seek to distinguish between simple or minor mistakes and more significant matters to ensure that filers are treated fairly and the public understands the nature and seriousness of the wrongdoing.

The seriousness of violations depends on the risk of harm to the public, where the magnitude of risk is usually discernible on the face of the violation. In other regulatory frameworks, such as with traditional occupational licensing,

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agencies are able to identify serious violations based on the intuitive risk of significant harm to public health and safety. For example, the State Board of Dental Examiners has identified different seriousness categories for violations based on the risk to patients ranging from administrative violations involving no patient care, such as failing to comply with advertising restrictions, to violations involving high standards of patient care like improperly administering anesthesia during a procedure.⁸

By contrast, the risk of harm to the public in the ethics system is informational rather than physical or monetary. The risk is to the public's interest in full and accurate disclosure of financial activity so it can see the complete picture of who is funding or influencing election campaigns and state government.⁹ Here, the magnitude of risk increases as the quality of disclosure decreases, where violations become more serious with increasing distortion of disclosure to the public. However, statute does not clearly indicate the significance of different violations under TEC's jurisdiction, leaving the agency and the public unable to sufficiently distinguish severe violations from more nominal ones.

Currently, statute establishes two categories of violations that refer to the administrative complexity of evaluating a violation, not its seriousness. Category One violations are those that are "generally not difficult to ascertain whether the violation occurred," such as a political advertising violation, while Category Two violations are defined as "not a Category One violation."¹⁰ Statute does provide some direction for what constitutes the least severe violations by excluding technical or *de minimis* errors from receiving penalties, and TEC used this guidance to develop rules that identify those errors for the regulated community.¹¹ However, the state's ethics statutes do not provide similar guidance for more severe violations.

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While statute establishes varying levels of criminal penalties for specific actions in violation of law, these penalties are not always reflective of the seriousness of those violations. For example, statute provides that a filer commits a misdemeanor if they knowingly fail to include required information in a disclosure report.¹² Meanwhile, a filer could face a third-degree felony charge for unintentionally accepting a small corporate contribution — like receiving a contribution from a church (a nonprofit corporation) which the filer subsequently returned.¹³ Other unintentional, noncriminal reporting violations can also be considered serious depending on the scope of the violation and may cause a more severe harm to public disclosure than a criminal reporting violation. For example, a filer would only be subject to a civil penalty for unintentionally omitting a large campaign contribution on an eight-day pre-election report despite concealing exactly the kind of information the public is interested in seeing before voting.¹⁴ The seriousness of that violation would increase for larger amounts of concealed activity or depending on whether the violation occurred near an election or legislative session regardless of whether the concealment was intentional.

The consequence of statute's overall lack of clarity means those found in violation of the state's disclosure laws may be stigmatized as ethics violators regardless of the seriousness of the violation in question. This can distort

voters' perception of candidates and public officials, potentially influencing their decisions at the ballot box.

As currently structured, TEC's audit function is ineffective and inefficient.

Other than providing for an investigation in response to a sworn complaint, statute contemplates two types of reviews TEC may conduct of disclosure reports: a "facial compliance" review and a "complete audit." However, given limited statutory direction on either process, the agency's current approach results in a mediocre, inefficient audit function that is overly focused on minor errors and fails to identify potentially serious violations.

- **Unclear and insufficient statutory direction.** Statute requires TEC to "review for facial compliance" a subset of reports and authorizes it to perform "complete audits."¹⁵ While the terms "facial" and "complete" suggest two distinct processes, statute also gives TEC authority to review "any available documents" as part of a facial compliance review. This level of access creates uncertainty about the Legislature's intent for the two processes. Although statute clearly authorizes TEC to perform complete audits, it requires a vote of at least six commission members to do so and implies that only reports subject to a facial compliance review can undergo a complete audit. This restrictive approach deprives the state of a more comprehensive and proactive means of ensuring reports are, in fact, correct and free of deception.

In the absence of a clear and sufficient statutory framework, TEC's approach to its audit function in practice is the worst of both worlds — its facial compliance review is not always a true facial check and finds mostly minor violations using an inefficient process, and TEC does not conduct any complete audits that could find more serious violations.

As a means of educating filers and helping them avoid minor mistakes, a facial compliance review that is limited to the four corners of the report could be beneficial if conducted efficiently. But staff's current practice misses the mark. TEC's auditor conducts a manual facial compliance review by pulling randomly selected disclosure reports from TEC's electronic filing system (EFS) and visually reviewing each one for compliance with requirements. For example, the auditor adds up all reported contributions to compare against the reported contribution total. The auditor will also visually check if any required fields in the report are blank or incomplete, which can be time consuming. However, the auditor could reduce this review time by receiving results of an automated check for blank or missing fields presently performed by EFS. When a filer electronically submits a report or statement, EFS performs this error check, bringing the filer's attention to any required fields that are blank or incomplete. In a few situations, TEC allows the filer to proceed with blank fields in an attempt to achieve at least some disclosure. While EFS captures the results of this error check in an event log, this information is not shared with the auditor, unnecessarily lengthening the time needed to conduct a facial compliance review.

TEC's current audit approach is overly focused on minor errors.

TEC does not conduct complete audits that could find more serious violations.

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In situations where TEC identifies a significant discrepancy between the reported amount of political contributions and what TEC expected the total to be based on the previous report, the auditor will request a bank statement to verify the information.¹⁶ However, this is the only document TEC ever requests as part of a facial review. Without any additional documentation, TEC limits its ability to ever identify anything other than *de minimis* violations, resulting in a much less effective tool to catch serious errors as compared to a complete audit in which the agency receives all documentation necessary to verify compliance. While TEC does not track outcomes of its facial compliance reviews, the auditor believes based on anecdotal evidence that most deficiencies found are *de minimis* violations.

Compared to Texas, other states have clearer, discrete audit functions. Sunset staff researched 19 states with disclosure-based ethics systems and found seven states are authorized to perform both a completeness check and an audit of campaign finance or lobbying reports, with three of those seven states actually required to do both.¹⁷ The Federal Elections Commission also reviews campaign finance reports for completeness through its electronic filing system and conducts audits for compliance.¹⁸

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activity.

- **No explicit authorization to consider risk.** Statute does not expressly authorize TEC to use risk factors to inform its audit function, preventing TEC from allocating its limited resources to focus on high-risk filers and activity. Because statute requires TEC to conduct facial compliance reviews on “randomly selected” reports, the agency interprets this mandate as not being able to account for risk in any way even though, arguably, staff could randomly select reports from a larger risk-based pool.¹⁹ Since statute ties complete audits to facial compliance reviews, even if TEC performed complete audits, those too would not be based on risk. Other state agencies incorporate risk factors into their regulatory functions, balancing the need for efficient use of state resources with the need to ensure the regulated community receives the level of attention necessary to provide adequate ongoing oversight.

TEC’s statute and procedures do not conform to best practices for regulatory agencies, limiting the effectiveness and efficiency of its enforcement efforts.

- **No risk-based complaint prioritization.** Addressing complaints based on the risk they pose to the public focuses an agency’s attention where it is needed most. Currently, statute requires TEC staff to evaluate whether a sworn complaint provides sufficient evidence of an alleged violation to open an investigation.²⁰ Without sufficient statutory guidance about what potential violations are more serious than others, as previously discussed, TEC does not have a formal process for prioritizing complaints beyond this initial screening. As a result, all complaints receive the same priority regardless of the impact the potential violation may have on public disclosure. Without a policy in place indicating which complaints to investigate first,

the agency's time and attention may be diverted away from resolving high-risk complaints in favor of those presenting little risk of harm to disclosure. For example, a sworn complaint alleging a candidate accepted a corporate contribution (a third-degree felony) is not prioritized ahead of an allegation that a roadside political advertising sign did not include the required right-of-way notice (a potential *de minimis* violation).²¹

- Lack of scalable penalties for repeatedly late filers.** An agency's statute should authorize a full range of penalties that scale to meet the seriousness of multiple or repeated statutory violations. TEC lacks clear statutory authority to assess larger penalties on filers who repeatedly submit disclosure reports late. As previously mentioned, statute imposes a \$500 penalty for most disclosure reports filed late with additional penalties assessed only if the initial penalty is not paid on time.²² Filers of certain reports may receive larger penalties based on the number of days late, not the number of times they missed a deadline.²³ A filer who is repeatedly late simply faces the same statutory penalty for that violation again and again. Since 2016, over 260 different filers were responsible for nearly 1,500 late reports, all of whom paid their late penalties while continuing to miss deadlines. The accompanying table breaks down these late filers by the amount of time during which they repeatedly missed filing deadlines.

Repeated Late Filings Since 2016

Number of Years with Missed Deadlines	Number of Late Filers	Number of Late Reports
1 year	219	764
2 years	19	155
3 years	13	244
4 years	8	179
5 or more	4	154
Total	263	1,496

Since 2016, most filers who submit reports late do so within a single year. However, some late filers have chosen to repeatedly file late year after year and simply pay the penalty; for example, two filers paid for 66 and 39 late filed reports, respectively. The statutory penalty may be too small to be an effective deterrent against this behavior for some filers, ultimately becoming just the "cost of doing business."

- No penalty guidelines.** An agency should establish a set of guidelines, often called a "penalty matrix," that links specific types of violations to specific penalties or penalty ranges and provides for aggravating and mitigating factors. Such guidelines help ensure sanctions correspond to the nature and severity of the offense and promote transparency and consistency in how the agency assesses penalties for similar types of violations. Although statute requires TEC to consider certain factors when assessing a sanction, such as the filer's previous history of violations, TEC does not use a penalty matrix that would better guide its assessment of sanctions or its consideration of aggravating or mitigating factors when determining a civil penalty amount.²⁴ Instead, staff reviews past case files involving similar offenses to get a sense of past practice.

TEC lacks explicit access to supporting documentation for disclosure reports, prolonging regulatory processes and wasting resources.

Protracted discovery and subpoena challenges can delay an investigation by weeks or months.

While statute requires candidates, officeholders, political committees, and lobbyists to maintain records that support their reports for at least two years past the filing deadline, it does not explicitly grant TEC access to these records to efficiently fulfill its regulatory responsibilities.²⁵ As previously discussed, during a facial compliance review TEC may request a recent bank statement to verify the accuracy of reported activity.²⁶ However, despite rules authorizing the agency to request this information, some filers still hesitate to hand over documents that contain sensitive financial and personal information.²⁷ If filers do not comply with TEC's requests, the commission may initiate a preliminary review to obtain this information.²⁸ Since fiscal year 2021, TEC has initiated five preliminary reviews as a result of a facial compliance review, all of which ultimately resulted in no finding of a violation, unnecessarily dragging out the process and wasting the agency's and filers' time and resources.

Similarly, when a sworn complaint alleges a violation related to a disclosure report, TEC staff requests supporting documentation to determine whether the violation occurred and may have to subpoena this information if the filer does not provide it willingly.²⁹ Although rare, filers have challenged TEC subpoenas, which is a dispute that must be heard in district court before the investigation can proceed.³⁰ These disputes can be expensive and time consuming for sworn complaint respondents and the agency. TEC estimates enforcing a subpoena can take over 160 hours of staff time and potentially cost the agency thousands of dollars. As discussed more fully in Issue 3, protracted discovery and subpoena challenges can delay the investigation by weeks or even months as the court process runs its course. For many other state agencies, statute facilitates much more efficient regulatory processes by requiring those engaging with the agency to make records available to the agency for inspection, as described in the accompanying textbox.³¹

Inspectable Records in Regulation

- **Texas Alcoholic Beverage Commission:** Manufacturers and wholesalers of liquor must keep records of each sale and to whom the sale is made and make them available for inspection by the agency.
- **Texas Comptroller of Public Accounts:** Wholesalers, distributors, manufacturers, and other permitted entities involved in the sale and production of cigarettes must keep records available for inspection for at least four years and provide copies of the records on demand.
- **Texas Department of Family and Protective Services:** A person providing adoption services under license to operate a child-placing agency must provide financial information to the department to determine if adoption income and disbursements are reasonable.
- **Texas Department of Licensing and Regulation:** Service contract providers must provide records to the executive director as necessary to enable the director to determine compliance with statute.
- **Texas Department of Transportation:** Landowners contracting with the department must make all books and other records related to the project available to the department.

TEC does not systematically collect and use data and information to better promote compliance.

Although TEC provides numerous resources to help filers comply with the state's complex ethics laws, the agency has not collected or analyzed data and information that it could use to improve compliance and its own operations. TEC does not track information that would allow it to identify problems among different types of filers such as those filing reports for the first time. Instead, the agency relies on institutional knowledge and anecdotes to identify potential problems. For example, TEC does not formally track trends in common problems noticed by staff through their engagement with filers and reports, but staff may informally try to address these problems with rule changes and clarifying instructions.

Similarly, TEC does not track outcomes of its audit function to improve the efficiency and effectiveness of its compliance efforts. Since TEC began conducting facial compliance reviews in 2016, it has found an overall error rate of more than 32 percent, meaning of the 3,543 reports reviewed during that time, 1,148 of them had some sort of deficiency. However, TEC does not track the nature of these deficiencies, and the audit results are not tied to a filer's account in EFS. TEC therefore cannot evaluate the effectiveness of its audit function in promoting compliance. Without a regular process for reviewing and analyzing its data, TEC lacks a full understanding of the cause of common filer problems and misses opportunities to make needed changes to its forms, rules, guidance documents, website, or EFS to proactively improve compliance.

TEC does not formally track common problems experienced by filers.

Sunset Staff Recommendations

The following recommendations are designed to work together to provide TEC with the tools and guidance that would enable the agency to prioritize and penalize serious violations and effectively encourage prompt and accurate reporting. These changes would shift TEC's regulatory focus away from minor violations toward more severe violations that may hide sources of influence on political figures or distort information that impacts elections.

Change in Statute

2.1 Require TEC to categorize violations of law within its jurisdiction according to seriousness.

This recommendation would distinguish significance among violations by eliminating the current statutory violation categories, creating three new categories, and requiring TEC to associate each violation of law in its jurisdiction with a category based on the seriousness of the violation. The statutory categories would be as follows:

- Category One: A technical, clerical, or *de minimis* violation
- Category Two: A violation that is not a Category One or Category Three violation
- Category Three: A serious violation

Under this recommendation, statute would provide criteria TEC must consider when categorizing each violation, including:

- The amount at issue.
- The timing of a report relative to an election or legislative session.
- The grade of a criminal penalty, if any, associated with the violation.
- The potential for concealment of influence on public officials or distortion of public disclosure.
- Other factors the commission considers necessary to prevent harm to the public.

Using these criteria, the agency would develop a written categorization for violations that would be adopted by the commission after providing an opportunity for public comment. TEC would publish the categorization on its website. The commission could decide to categorize one violation within multiple categories based on these factors. For example, a failure to disclose political contributions may fall into any of the three categories depending on the size of the amount unreported. This recommendation would help the public better understand the nature of violations and would help TEC prioritize its regulatory processes, as discussed in Recommendations 2.2 and 2.3.

2.2 Restructure TEC's audit function to better differentiate between facial compliance reviews and complete audits.

This recommendation would strengthen TEC's processes for verifying the completeness and accuracy of disclosure reports by establishing two distinct processes, as described below.

Random facial compliance reviews

This recommendation would limit the facial compliance review to the face of selected disclosure reports without referencing outside documentation. The limited facial compliance review would be a simple check to find basic errors and would provide an opportunity for filers to correct mistakes before a violation is formally found through the sworn complaint process. This recommendation would continue to require the agency to perform facial compliance reviews for at least a subset of randomly selected campaign finance reports, lobby activity reports, and personal financial statements. The commission would determine the number of reviews staff performs, and these reviews would continue to be completely random. On discovery of an error, TEC would send the filer a notice of deficiency, identifying the need for correction and informing the filer they may be subject to a penalty if left uncorrected. As part of the facial compliance review, TEC should consider checking for required fields left blank and formatting errors and that reported totals add up.

While this review may be performed manually, TEC should consider evaluating whether aspects of the revised facial compliance review can be automated using EFS as recommended in Issue 1. TEC could implement some aspects in the short term with EFS' current capabilities while the agency may have to wait to implement others until it expands EFS' capabilities. For example, EFS currently checks if a required field is left blank, so this information could be provided to TEC's auditor to reduce time spent manually verifying all required fields are complete. In the future, TEC could potentially have EFS perform several of the abovementioned checks to identify a deficiency automatically when the filer submits a report. Automating the review to reach all filed disclosure reports would provide more consistently complete and facially accurate information to the public.

Risk-based complete audits

This recommendation would also require TEC to perform complete audits of selected campaign finance and lobby activity reports with the ability to use all available outside documentation. Personal financial disclosure statements would not be subject to a complete audit. The complete audit would verify reported activity to ensure reports are compliant and that public disclosure is full and accurate. The commission would determine the number of audits to be performed, and the executive director would initiate them. TEC would identify reports eligible for inclusion in the audit pool based on the following risk factors:

- Seriousness factors described in Recommendation 2.1 such as the amount at issue or the timing of a report.
- The filer's compliance history, including facial compliance review deficiencies, sworn complaint history, and repeat violations.
- The time since the filer's last complete audit.
- Current violation trends identified from prior audits and sworn complaints.
- Other factors defined by the commission.

To avoid any appearance of targeting, the executive director would randomly select a subset of disclosure reports from the risk-based pool of eligible disclosure reports proportional to report type. Upon selection, TEC would send a notice of audit to the filer with a request for documentation necessary to support the validity of the disclosure report, including bank statements, credit card statements, cancelled checks, receipts, and other financial records. Recommendation 2.6 would provide TEC with explicit access to such documentation. TEC should consider performing the following actions as part of a complete audit:

- Compare a filer's information in previously filed reports to a current report.
- Compare a filer's current report to other filers' reports.
- Use publicly available databases to confirm reported information.

If TEC does not find any violations, it would send the filer a notice of completion of the audit. If TEC finds any violations, it would send the filer a notice of correction, identifying the violation(s) and giving the filer 30 days to submit a corrected report. If the filer fails to correct the report within 30 days or is otherwise not cooperative, the executive director may submit the violation at issue to the commission for a vote to initiate a preliminary review.

If the filer submits a corrected report within 30 days that TEC confirms corrects the violation(s), the agency would send the filer a notice of completion of the audit. However, even if the filer corrects the report, TEC could assess a penalty depending on the seriousness of the violation, as outlined in Recommendation 2.1. If multiple violations exist, TEC would consider all violations when assessing a penalty. TEC should continue to work with filers to negotiate an agreed settlement and could also consider any mitigating or aggravating factors to reduce or increase the penalty, as discussed in Recommendation 2.5. If a filer disagrees with any violation TEC finds, the filer could appeal to the commission using the preliminary review hearing process.

TEC should also consider evaluating whether aspects of the complete audit could be automated using EFS. For example, EFS could cross-reference reported contributions within an audited disclosure report to other filed reports or vice versa to confirm that all contributions from one filer to another have been disclosed in a corresponding expenditure.

2.3 Require TEC to prioritize complaint investigations based on risk to full and accurate disclosure.

This recommendation would require TEC, after providing an opportunity for public comment, to adopt written policies formally guiding prioritization of complaint investigations based on risk of harm to disclosure using the following criteria:

- The seriousness of the alleged violation(s), as described in Recommendation 2.1.
- Evidence of intent to conceal influence over public officials or distort public disclosure.
- The filer's compliance history, including audit history, sworn complaint history, and repeat violations.
- Complaints concerning matters receiving negative media attention.
- Other indicators of increased risk defined by the commission.

As part of this recommendation, TEC would publish the policies on its website and should train staff on how to apply them to their caseloads. Establishing a risk-based approach to complaints would ensure the most efficient allocation of resources toward investigating alleged violations that pose a greater danger of inaccurate, incomplete, or misleading disclosure to the public.

2.4 Authorize TEC to increase penalties for filers who repeatedly file reports late.

This recommendation would explicitly authorize the commission to issue graduated, escalating penalties for filers who repeatedly file late reports. Escalating penalties are a greater deterrent to violating the law and promote confidence in the regulated community that repeat violators will face consequences.

2.5 Require TEC to develop a penalty matrix.

This recommendation would require TEC to develop a penalty matrix covering the full range of possible violations and provide transparency to filers about the range of civil penalties, criminal penalties, and other sanctions that can be levied against a filer. A penalty matrix is a guideline with both aggravating and mitigating factors designed to inform but not dictate an agency's enforcement actions. The agency should ensure the matrix relates the appropriate penalties and sanctions to different violations based on their severity and provide for increased penalties for repeat violations. The commission should approve the penalty matrix, and the agency should make it available on its website. This recommendation would work hand in hand with Recommendations 2.1 and 2.4 to ensure the commission can consistently and fairly apply its full range of sanctions to the regulated community for violations of state law.

2.6 Require filers to provide supporting records and documentation upon request by TEC.

This recommendation would explicitly require campaign finance filers and registered lobbyists to provide TEC, upon request, any supporting documentation they are already required to retain as part of their records. Additionally, this recommendation would modify the retention requirements to require campaign finance filers and lobbyists retain supporting documentation for at least three years in accordance with TEC's statute of limitations on violations. This recommendation would require TEC to destroy documents it receives in response to a request three years after the conclusion of the audit or enforcement proceeding, including deleting the information from their systems. Requiring filers to comply with TEC requests for documents would minimize the need for subpoenas as part of the sworn complaint and audit processes, reducing the overall time and resources these processes consume.

Management Action

2.7 Direct TEC to collect and use data to improve its compliance efforts.

This recommendation would direct TEC to develop a data-driven strategy to support compliance efforts. Specifically, TEC should track information such as the age and report history of accounts in EFS, trends in repeat late filings, and trends in reports flagged with errors by EFS' automatic error-check feature. The agency should also monitor and document errors detected during facial compliance reviews and complete audits and analyze those data to identify relevant trends such as increases in errors relating to a single field in a disclosure report. Tracking this information would provide TEC with a more accurate picture of issues impacting specific groups like new filers. TEC should use this data to improve its educational materials, inform decisions on resource allocation, and address the most common problems facing filers.

Fiscal Implication

Overall, these recommendations may have a fiscal impact to the state, but this impact would depend on implementation and cannot be estimated at this time. Taken together, the recommendations are intended to make TEC more efficient and would prioritize its efforts toward addressing potentially serious violations of the state's ethics laws. While some recommendations, such as requiring TEC to conduct complete audits, would require staff time, other recommendations would save time and resources, such as limiting facial compliance reviews to a more basic check and granting TEC access to documentation that could speed up regulatory processes. Similarly, authorizing the agency to increase penalties on repeat violators should provide additional incentives to comply but could result in a gain to general revenue if filers continue to submit reports late.

¹ All citations to Texas statutes are as they appear on <http://statutes.legis.texas.gov/>. Title 15, Texas Election Code; Chapters 305 and 572, Texas Government Code.

² Section 254.042, Texas Election Code; Sections 305.033 and 572.033, Texas Government Code.

³ Section 571.1731, Texas Government Code.

⁴ Section 571.069(a), Texas Government Code.

⁵ Section 571.069(b), Texas Government Code.

⁶ Chapter 571, Subchapter E, Texas Government Code.

⁷ See Sections 254.041 and 254.042, Texas Election Code; Sections 305.031, 305.032, 305.033, 571.171, 571.173, 572.033, and 572.034, Texas Government Code.

⁸ Sections 259.005 and 258.153, Texas Occupations Code; State Board of Dental Examiners, “Disciplinary Matrix,” published in *Texas Register* June 7, 2019, accessed online October 2, 2024, <https://tsbde.texas.gov/laws-rules/disciplinary-matrix/>.

⁹ See Section 571.001, Texas Government Code. Statute defines the policy of the Legislature to prohibit undue influence over elections; to disclose fully information related to expenditures and contributions for elections and lobbying; and to ensure the public’s confidence and trust in its government.

¹⁰ Sections 571.1211(2)-(3), Texas Government Code.

¹¹ Section 254.031(a-1), Texas Election Code; Section 571.0631, Texas Government Code; 1 Texas Administrative Code (TAC), Part 2, Chapter 12, Subchapter F, Section 12.92 (2024) (Texas Ethics Commission (TEC), *Resolution of Technical or De Minimis Allegations*).

¹² Section 254.041, Texas Election Code.

¹³ Sections 253.003(b) and 253.094, Texas Election Code; Jessica Priest and Jeremy Schwartz, “Trio of Texas Churches Donated to Political Candidate Despite Clear IRS Prohibition,” *Pro Publica*, May 5, 2013, accessed online October 11, 2024, <https://www.propublica.org/article/texas-churches-campaign-donations-abilene-beard-johnson-amendment>.

¹⁴ Sections 254.042 and 254.064(c), Texas Election Code.

¹⁵ Section 571.069(a)-(b), Texas Government Code.

¹⁶ 1 TAC, Part 2, Chapter 16, Section 16.12 (2019) (Texas Ethics Commission, *Facial Review of Total Amount of Political Contributions Maintained*).

¹⁷ Sunset staff researched the disclosure-based ethics systems of Alabama, Arkansas, California, Florida, Georgia, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, Oklahoma, South Carolina, Tennessee, and Washington. Staff found authorization for both functions in California (both required), Georgia (both required), Maine, Missouri, Montana, New Mexico, and South Carolina (both required).

¹⁸ Federal Election Commission (FEC), “Audit Reports,” accessed online October 7, 2024, <https://www.fec.gov/legal-resources/enforcement/audit-reports/>; FEC, “Electronic filing overview,” accessed online October 7, 2024, <https://www.fec.gov/help-candidates-and-committees/filing-reports/electronic-filing/>.

¹⁹ Section 571.069(a), Texas Government Code.

²⁰ Sections 571.122(b)(6), 571.122(d), and 571.124(a), Texas Government Code.

²¹ Sections 253.003(b), 253.094, and 259.001, Texas Election Code; 1 TAC, Part 2, Chapter 12, Subchapter F, Section 12.92 (2024) (TEC, *Resolution of Technical or De Minimis Allegations*).

²² Section 254.042(b), Texas Election Code; Sections 305.033(b)-(c) and 572.033(b), Texas Government Code.

²³ Section 254.042(b), Texas Election Code.

²⁴ Section 571.177, Texas Government Code.

²⁵ Section 254.001(d), Texas Election Code; and Section 305.009(d), Texas Government Code. The Election Code requires candidates, officeholders, and political committees to maintain records for two years. The Government Code requires lobbyists to maintain records for four years.

²⁶ See 1 TAC, Part 2, Chapter 16, Section 16.12 (2019) (TEC, *Facial Review of Total Amount of Political Contributions Maintained*).

²⁷ 1 TAC, Part 2, Chapter 16, Section 16.4 (2018) (TEC, *Additional Documents and Information Submitted in Response to a Facial Compliance Review; Timeliness*) and Section 16.12 (2019) (TEC, *Facial Review of Total Amount of Political Contributions Maintained*).

²⁸ Section 571.069(b), Texas Government Code.

²⁹ Section 571.137, Texas Government Code.

³⁰ Section 571.137(c), Texas Government Code.

³¹ Section 206.01(a), Texas Alcoholic Beverage Code; Section 154.209, Texas Tax Code; Section 42.045(b), Texas Human Resources Code; Section 1304.051(b), Texas Occupations Code; and Section 223.049(b)(4), Texas Transportation Code.

ISSUE 3

TEC's Sworn Complaint Process Fails to Promote Efficiency and Weakens the Commission's Role in Enforcing Disclosure Laws.

Background

Any Texas resident may file a sworn complaint with the Texas Ethics Commission (TEC) alleging a violation of law under the commission's jurisdiction.¹ The sworn complaint process involves several stages, but opportunities exist for resolution or dismissal at each, as shown in the *Sworn Complaint Process* flowchart on the following page.

The process begins with TEC staff reviewing filed complaints for completeness and determining whether TEC has jurisdiction over the matter.² Once the agency accepts jurisdiction, the complaint enters preliminary review, which is the investigative stage of the process.³ The few cases that cannot be resolved during preliminary review may proceed to a preliminary review hearing and finally a formal hearing, both of which are held before the full commission.⁴ The *Sworn Complaints Resolution* table shows the number and percentage of complaints resolved at each stage of the process for the last three fiscal years.

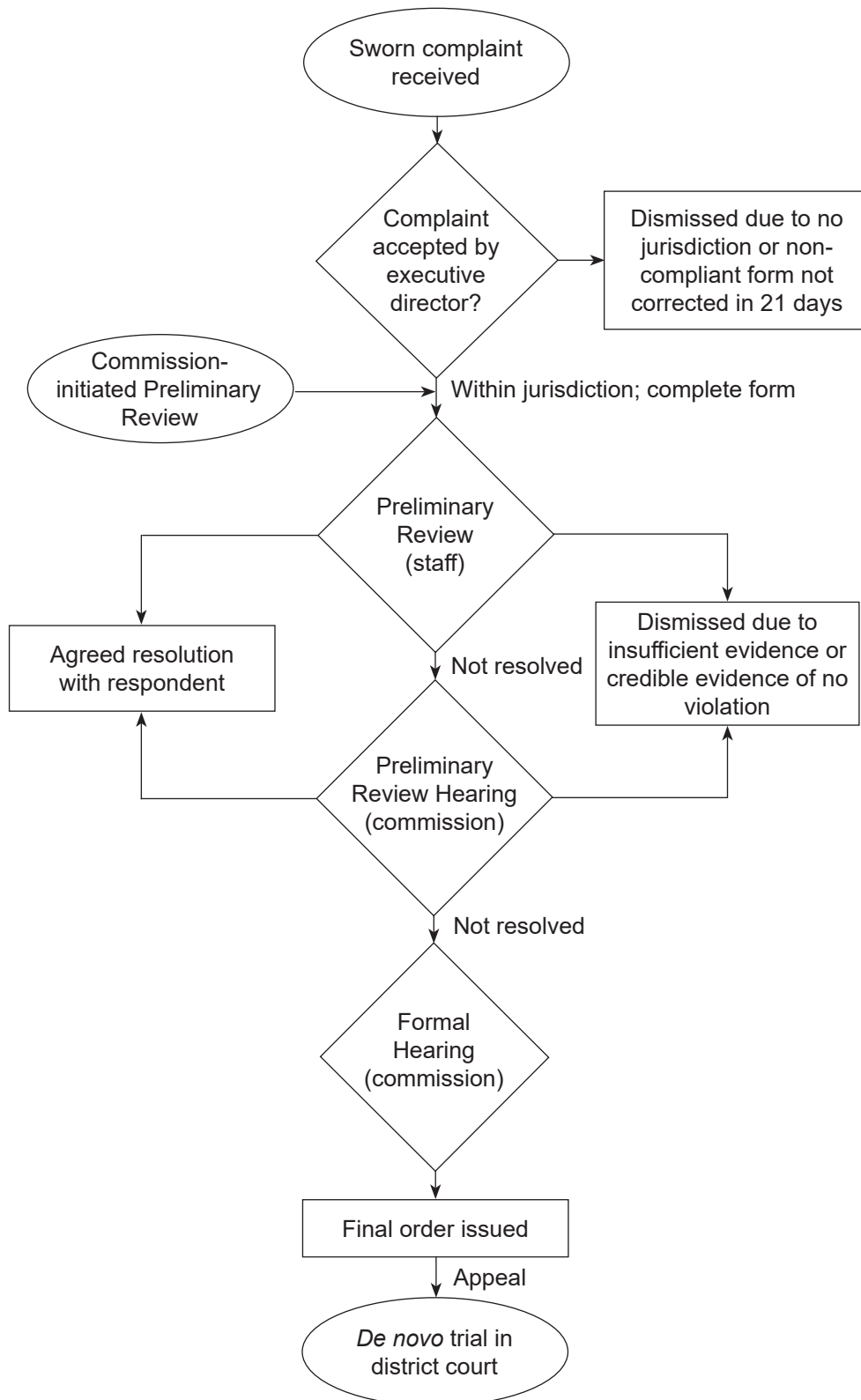
Respondents may appeal a final commission decision to district court in Travis County or the county in which they reside.⁵ Since fiscal year 2018, four final decisions were appealed to district court.

Sworn Complaints Resolution, FYs 2021-23

Fiscal Year	Total Complaints Received	Dismissed for Lack of Jurisdiction or Insufficient Information		Resolved in Preliminary Review Stage		Resolved at Preliminary Review Hearing		Resolved at Formal Hearing		Still Pending	
2021	279	162	58%	106	38%	8	3%	3	1%	0	0%
2022	379	219	58%	155	41%	5	1%	0	0%	0	0%
2023	390	203	52%	176	45%	5	1%	0	0%	6	2%

Note: This table categorizes resolution by the fiscal year in which the sworn complaint was filed and does not necessarily reflect the fiscal year in which the resolution occurred.

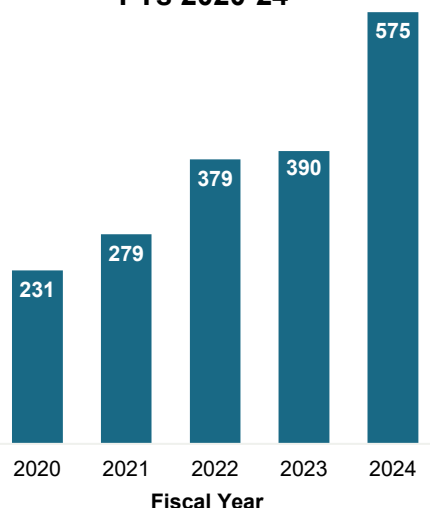
Sworn Complaint Process



Findings

The Sunset review found TEC efficiently handles the overwhelming majority of sworn complaints, resolving on average over 96 percent of complaints without the need for any hearing. However, several atypical processes can affect the few respondents who do proceed to a hearing. Furthermore, although these atypical processes currently impact relatively few respondents, TEC has received an increasing number of complaints over the last five fiscal years, as shown in the accompanying chart, and the agency expects this trend to continue. TEC would therefore benefit from more standard processes that can be scaled to meet future needs while still providing sufficient due process protections for all respondents.

**Sworn Complaints Filed
FYs 2020-24**



TEC's duplicative hearings for ethics complaints do not align with best practice for regulatory agencies.

TEC informally removed commission involvement in staff's initial investigation of alleged violations at the preliminary review stage of the process then formalized that practice as part of its recent sworn complaint rule changes, which addressed a recommendation from Sunset's 2013 report.⁶ However, the full commission is still involved in both the confidential preliminary review hearing and the public formal hearing. This practice differs from typical hearing procedures at other regulatory agencies. Though Sunset staff found no evidence of impropriety, the duplicative sworn complaint hearing structure does not follow best practice specifically designed to promote impartiality.

A respondent who is unsatisfied with agency staff's proposed resolution to a complaint may choose to have a preliminary review hearing, where the full commission hears evidence and decides whether that evidence suggests a violation occurred. If the respondent and commission still cannot agree on a resolution at this stage, the complaint proceeds to a formal hearing held before the same commission members who already determined there is credible evidence that a violation occurred. TEC's preliminary review hearing is similar to other state agencies' informal settlement conferences that attempt to resolve a complaint through informal negotiation before proceeding to a formal hearing. Agencies that involve their governing bodies in these proceedings, such as the Texas Medical Board and State Board of Dental Examiners, reduce the risk of potential bias by using only a subset of board members for informal or preliminary hearings.⁷

Other state agencies use only a subset of board members for informal or preliminary hearings.

Additionally, other state agencies use the State Office of Administrative Hearings (SOAH) to provide an unbiased, consistent standard of independent decision making to carry out their contested case process. TEC rule permits

the commission to decide whether to hold formal hearings at SOAH, though TEC has only used SOAH for one formal hearing in the past.⁸ However, statute is ambiguous as to whether the agency may actually use SOAH for formal hearings, referring to but not specifically authorizing its use.⁹

Atypical judicial review of commission decisions wastes state and respondent resources and weakens TEC's regulatory role.

De novo review discards both TEC's and respondents' considerable work and resolution efforts.

Statute requires that an appeal of a commission decision be resolved through a new trial, or trial *de novo*, in district court, completely discarding both the agency's and respondents' considerable work and resolution efforts and further burdening already crowded trial court dockets.¹⁰ In a *de novo* review, issues of fact and law are determined anew in district court, even if the agency developed a complaint record. Administering commission hearings is expensive, consuming staff resources at an estimated cost of \$3,000 for each preliminary review hearing and \$30,000 for a formal hearing, and can cost respondents tens of thousands of dollars in attorneys' fees to prepare for and make appearances before the commission. While very few complaints ever proceed beyond the preliminary review stage, appeals to district court for those that do are not unusual. Since fiscal year 2018, respondents appealed 11 percent of TEC's final decisions to district court.

Requiring a new trial on appeal also undermines the commission's enforcement of disclosure requirements that are at the heart of the state's ethics laws. Because a trial *de novo* requires the court to try each issue of fact and law and "not admit in evidence the fact of prior action by the commission or the nature of that action," such a review renders moot the agency's decisions, especially on the larger, more significant matters most likely to require formal commission action.¹¹ By diminishing the commission's role, the current appeals process affects the agency's ability to fulfill one of its purposes as established by the Legislature — to ensure the public's confidence and trust in its government.¹² A more common standard for contested case appeals is the substantial evidence rule, where the court reviews the complaint record the agency develops to ensure that the evidence presented substantiates the decision, saving time and expense while providing a sufficient level of protection on appeal. Furthermore, general state law defaults to review under the substantial evidence rule if the law does not define the scope of judicial review, suggesting this rule is the state's preferred standard for review of agency administrative decisions.¹³

TEC sets no limit on the number of discovery requests it issues.

TEC's discovery process prolongs complaint resolutions and increases costs for respondents.

Once a complaint reaches the preliminary review stage, statute requires TEC to propose a resolution or dismiss the complaint within 120 days.¹⁴ This clock starts when TEC receives a respondent's answer to either a notice of the complaint or to a discovery request, which may consist of requests for documentation or written questions the agency asks that are reasonably intended to lead to the discovery of matters relevant to its investigation.¹⁵ As statute allows, TEC resets

by rule the 120-day deadline once a respondent fulfills a discovery request.¹⁶ However, TEC sets no limit on the number of questions the agency can ask or the total number of discovery requests it can issue.¹⁷ Multiple rounds of discovery can cost a respondent thousands of dollars in attorneys' fees and effectively keep the case from being resolved or moving forward in the process. Undoubtedly, some delays may be attributed to respondents being nonresponsive or only partially complying with TEC's discovery requests. While most complaint investigations do not involve discovery at the preliminary review stage, those that do take longer to resolve, as shown in the following table. Of complaints resolved at the preliminary review stage over the last three fiscal years, those with a discovery request took almost six months on average to resolve, which is four months longer than those without a discovery request. For 26 of those complaints, resolution exceeded six months.

Discovery's Impact on Resolution Timelines, FYs 2021-23

Fiscal Year	Number of Complaints Resolved in Preliminary Review Stage	Number of Complaints with One or More Discovery Requests	Number of Complaints Without Discovery Requests	Average Number of Days to Reach Resolution	
				With Discovery	Without Discovery
2021	106	8	98	168	56
2022	155	21	134	181	63
2023	176	27	149	193	70

Over the course of the review, Sunset staff found no evidence that TEC abused the discovery process. However, without additional guardrails TEC's current ability to reset the 120-day deadline through the issuance of discovery requests creates a structural weakness with the potential for misuse.

Furthermore, TEC's procedures are atypical compared to other state agencies. For example, some agencies set limits on discovery such as the Texas Commission on Environmental Quality's (TCEQ) rules that limit the number of written questions issued to 25.¹⁸ Additionally, state agencies — including TCEQ, the Railroad Commission of Texas, and the Employees Retirement System of Texas — use the Texas Rules of Civil Procedure to define the scope of discovery and set deadlines for periods in which discovery must be completed.¹⁹

Sunset Staff Recommendations

Change in Statute

3.1 Restructure the preliminary review hearing to involve only a subset of commission members.

This recommendation would limit the number of commission members involved in preliminary review hearings to two, with one commission member from each political party selected on a rotating basis to give all members the opportunity to serve on a preliminary review hearing panel. As part of this recommendation, the commission would adopt rules defining preliminary review hearing procedures,

including how panel members are selected and when panels would convene for hearings. For example, multiple preliminary review hearings could be held simultaneously on the date of the commission's regular meetings or could be held on other dates scheduled as needed to resolve complaints before the next regular meeting, shortening the amount of time a respondent must wait for a decision. A tie vote on an action in a preliminary review hearing or rejection of a proposal by the respondent would elevate the case to the formal hearing stage. A respondent's rejection of a proposal from a preliminary review hearing would not preclude the possibility of higher sanctions resulting from a formal hearing. Should a complaint proceed to a formal hearing, the commission members who served on the preliminary review hearing panel would not need to recuse themselves from the proceeding. Limiting the number of commission members present for the initial proceeding would further insulate TEC from any appearance of bias against respondents if the case continues to the formal hearing stage and would gain the added benefits of more efficient use of commission resources and shortened resolution timelines for respondents.

3.2 Clearly authorize TEC to send formal hearings to SOAH.

This recommendation would eliminate current ambiguity in statute by expressly authorizing, but not requiring, the commission to refer cases to SOAH to conduct formal hearings. Additionally, this recommendation would require TEC to establish procedural rules for formal hearings it sends to SOAH, specifying the parties to the complaint, who bears the burden of proof, the standard of evidence required, any applicable rules of evidence, subpoena power, and the scope of power to address disorderly or disrespectful behavior for these hearings. As is typical with other agencies that use SOAH to conduct hearings, SOAH would develop a proposal for decision, but the commission would be able to accept, modify, or reject the proposal and issue a final decision.

3.3 Require judicial review of commission decisions to be based on the substantial evidence rule.

This recommendation would require the commission's final decisions to be subject to appeal under the substantial evidence rule rather than the requirement of a new trial. This recommendation would not infringe on respondents' rights to appeal to district court but would ensure that both respondents' and the state's resources are not wasted and that the role of the commission is not diminished.

3.4 Require TEC to implement discovery control plans.

This recommendation would require TEC to develop rules requiring agency staff and the respondent to agree to a discovery control plan as part of the sworn complaint process, outlining a finite time period during which all discovery should be completed and setting appropriate limits on the amount of discovery necessary for a particular case. TEC should align its discovery rules to comply with the Texas Rules of Civil Procedure. Discovery rules would ensure the agency investigates and resolves complaints in a timely manner.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the state. TEC could incur additional costs if the commission chooses to send formal hearings to SOAH, but additional efficiencies resulting in shorter resolution timelines could achieve savings in the long term.

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- ¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 571.122, Texas Government Code.
- ² Sections 571.122, 571.123, and 571.124, Texas Government Code.
- ³ Section 571.124(a), Texas Government Code.
- ⁴ Sections 571.125(a) and 571.126(b), Texas Government Code.
- ⁵ Section 571.133(a), Texas Government Code.
- ⁶ 1 Texas Administrative Code (TAC), Part 2, Chapter 12, Subchapter A, Section 12.3 (2024) (Texas Ethics Commission (TEC), *Ex Parte Communications*); 1 TAC, Part 2, Chapter 12, Subchapter C, Section 12.83 (repealed 2024) (TEC, *Preliminary Review*).
- ⁷ 22 TAC, Part 9, Chapter 187, Subchapter B, Section 187.21 (2018) (Texas Medical Board, *Board and District Review Committee Members Participation*); 22 TAC, Part 5, Chapter 107, Subchapter A, Section 107.63 (2018) (State Board of Dental Examiners, *Informal Disposition and Mediation*).
- ⁸ 1 TAC, Part 2, Chapter 12, Subchapter E, Division 4, Section 12.83 (2024) (TEC, *Formal Hearing: Venue*).
- ⁹ Section 571.132(a), Texas Government Code.
- ¹⁰ Section 571.133(d), Texas Government Code.
- ¹¹ *Ibid.*
- ¹² Section 571.001(5), Texas Government Code.
- ¹³ Section 2001.174, Texas Government Code.
- ¹⁴ Section 571.1242(g), Texas Government Code.
- ¹⁵ Sections 571.1242(f) and 571.1242(g), Texas Government Code.
- ¹⁶ Section 571.1244, Texas Government Code; 1 TAC, Part 2, Chapter 12, Subchapter C, Section 12.22 (2024) (TEC, *Written Questions*); 1 TAC, Part 2, Chapter 12, Subchapter C, Section 12.23 (2024) (TEC, *Production of Documents During Preliminary Review*).
- ¹⁷ Section 571.1242(f), Texas Government Code; 1 TAC, Part 2, Chapter 12, Subchapter C, Section 12.22 (2024) (TEC, *Written Questions*); 1 TAC, Part 2, Chapter 12, Subchapter C, Section 12.23 (2024) (TEC, *Production of Documents During Preliminary Review*).
- ¹⁸ 30 TAC, Part 1, Chapter 80, Subchapter D, Section 80.152(c) (1999) (Texas Commission on Environmental Quality (TCEQ), *Scope and Level of Discovery*).
- ¹⁹ 30 TAC, Part 1, Chapter 80, Subchapter D, Section 80.152(c) (1999) (TCEQ, *Scope and Level of Discovery*); 16 TAC, Part 1, Chapter 1, Subchapter E, Section 1.51(b) (2017) (Railroad Commission of Texas, *Forms and Scope of Discovery in Protested Contested Cases*); 34 TAC, Part 4, Chapter 67, Section 67.107 (2006) (Employees Retirement System of Texas, *Discovery Generally*).

ISSUE 4

TEC's Statute and Processes Do 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 the Texas Ethics Commission's (TEC) four-year rule review process and changes needed to conform TEC's statute to standard Sunset language generally applied to all state agencies under Sunset review. Additionally, this review identified a continued need for TEC's single reporting requirement and legislative oversight of TEC.

- **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.¹ 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.²
- **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.³ These ATBs reflect an effort by the Legislature to enact 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.
- **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.⁴ 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

The state benefits from continued legislative oversight of TEC.

Although not subject to abolishment under the Sunset Act, the Legislature placed TEC under the Sunset Commission's oversight in 2025, requiring a comprehensive review of TEC's operations using the criteria of the Sunset Act. Through that review, Sunset staff has identified a number of opportunities to enhance the effectiveness, efficiency, transparency, and accountability of TEC. More broadly, continued oversight by the commission provides future legislatures a powerful tool to assess TEC and invite public input on improving it.

TEC does not yet comply with the statutory requirement to review its administrative rules every four years.

TEC completed its last formal rule review in compliance with statute in 2001.

Statute requires state agencies to review their rules every four years and determine whether the reasons for initially adopting each rule continue to exist.⁵ Although the agency began a comprehensive review and reorganization of its rules in 2023, addressing its sworn complaint and penalty waiver rules, TEC completed its last formal rule review in compliance with statute in 2001. TEC indicated to Sunset staff its intent to review all rules but does not have a formal timeline for that effort and has not begun the process for other key sections such as rules related to reporting political contributions and expenditures. The agency's failure to comply with this requirement results in stakeholders and members of the public having to comply with rules that may not accurately reflect current law and agency practice. For example, TEC is missing rules reflecting agency practice for semiannual campaign finance reports required from legislative caucuses.⁶ Because statute does not specify who must file these reports, TEC treats the legislative caucus chair as the responsible individual but has not formalized that practice through rulemaking. This gap leaves an open question about who is legally responsible if the caucus files a report late or someone submits a sworn complaint about the caucus.

TEC's rules provide scant guidance on how to report various investment assets.

In addition, neglecting to review rules allows for the continuation of regulation that may not be meaningful or needed. For example, TEC currently has an instruction guide and few rules relating to personal financial statements that provide scant guidance on how filers should report various investment assets that do not clearly fall into a stock category. While the agency proposed some additional rules at its September 2024 commission meeting, TEC did not use this opportunity to undertake a comprehensive review of its current guidance to provide more meaningful explanations that would help filers understand how to report the sometimes complex financial nature of their assets.⁷ One of TEC's proposed rules does clarify how two types of investment products should be treated, but the agency did not clarify the treatment of other types of products managed by third parties, instead continuing to rely on an advisory opinion from 30 years ago.⁸ TEC would have benefited from revisiting its current approach and determining whether it was still appropriate for a modern financial environment. Had TEC complied with the four-year rule review requirement, the agency may have addressed this and other gaps in its personal financial statement rules.

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

TEC's statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties.⁹ 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 commission's rulemaking authority. Statute also does not require the

agency to create a training manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.

TEC's biennial reporting requirement continues to serve a useful purpose.

Statute requires TEC to submit a biennial report to the governor and Legislature on or before December 31 of each even-numbered year.¹⁰ The report must include each advisory opinion the commission issued in the preceding two years; a summary of commission activities in the preceding two years, including certain data on sworn complaints and civil penalties issued; and recommendations for any necessary statutory changes.¹¹ The report provides relevant information on the commission's activities and continues to be needed.

Sunset Staff Recommendations

Change in Statute

4.1 Amend TEC's Sunset review date to 2037.

Because TEC is not subject to abolishment under the Sunset Act, but the Legislature and the public benefit from continued legislative oversight of TEC, this recommendation would extend the Sunset date in TEC's statute to 2037, placing the agency under Sunset review again in 12 years.

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

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

Management Action

4.3 Direct TEC to adopt a rule review plan.

This recommendation would direct TEC to develop and adopt a rule review plan to help ensure it complies with the statutory requirement to regularly review its rules every four years, including determining whether the initial reasons for adopting the rules continue to exist.¹² The plan should include a schedule indicating when each chapter of rules will be reviewed so all rules are reviewed timely. TEC would adopt and submit the plan to the Sunset Commission by July 1, 2025. The agency should also post the plan on its website to ensure stakeholders and the public are aware of upcoming opportunities to provide input on rule changes. Finally, TEC should consider filing its rule review plan with the Office of the Secretary of State for publication in the *Texas Register*.¹³

Fiscal Implication

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

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(8), Texas Government Code.

² Section 2001.039, Texas Government Code.

³ Available at: <https://www.sunset.texas.gov/across-board-policies>.

⁴ Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

⁵ Section 2001.039, Texas Government Code.

⁶ Section 254.0311, Texas Election Code.

⁷ 1 Texas Administrative Code (TAC), Part 2, Chapter 40 (Texas Ethics Commission (TEC), *Financial Disclosure for Public Officers*); TEC, “Public Meeting Materials,” September 24, 2024, pp. 60-61, accessed online September 25, 2024, https://www.ethics.state.tx.us/data/meetings/packets/2024/Public-Packet_09-24-2024.pdf.

⁸ TEC, “Ethics Advisory Opinion No. 326,” May 10, 1996, accessed online October 25, 2024, <https://ethics.state.tx.us/opinions/partII/326.html>.

⁹ Section 571.0271, Texas Government Code.

¹⁰ Section 571.073, Texas Government Code.

¹¹ Ibid.

¹² Section 2001.039, Texas Government Code.

¹³ 1 TAC, Part 4, Chapter 91, Subchapter D, Section 91.72(a) (2003) (Office of the Secretary of State, *Plan to Review*).

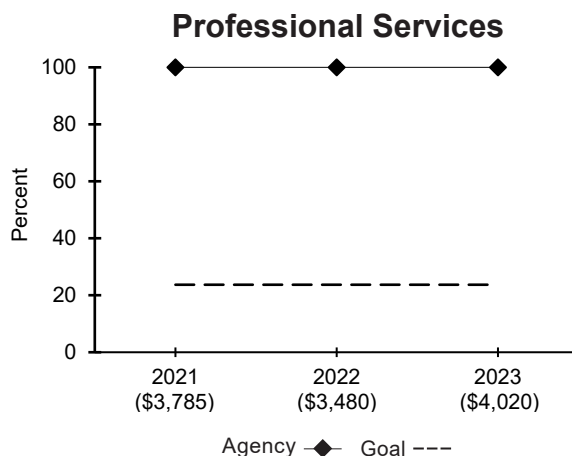
APPENDIX A

Historically Underutilized Businesses Statistics, FYs 2021-23

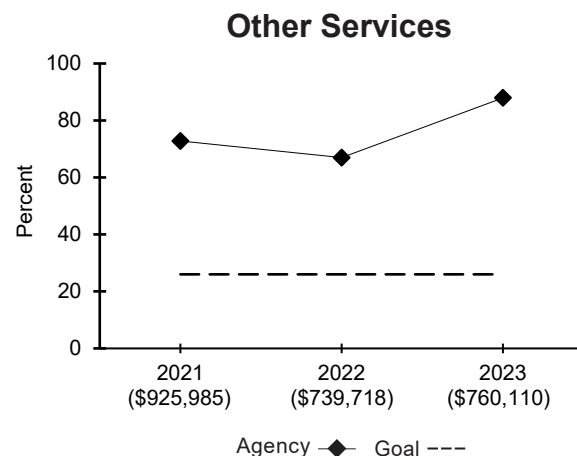
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules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

The following material shows trend information for the Texas Ethics Commission's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the Office of the Comptroller of Public Accounts. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2021-23. 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, building construction, or special trade categories. The agency exceeded the statewide goal for HUB spending in professional services, other services, and commodities in each of the last three fiscal years.

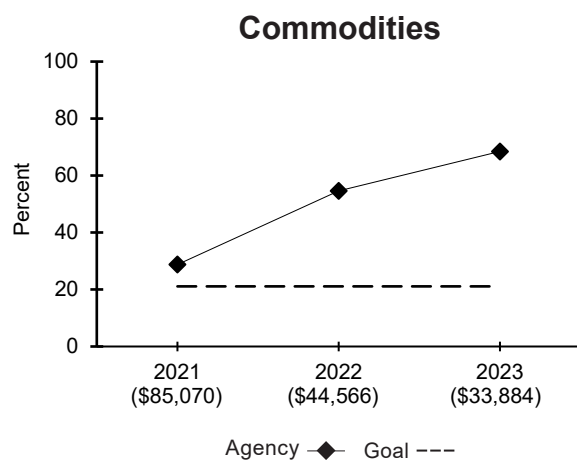


The agency exceeded the statewide goal for HUB spending in professional services in each of the last three fiscal years.



The agency exceeded the statewide goal for HUB spending in other services in each of the last three fiscal years.

Appendix A



The agency exceeded the statewide goal for HUB spending in commodities in each of the last three fiscal years.

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

² Chapter 2161, Texas Government Code.

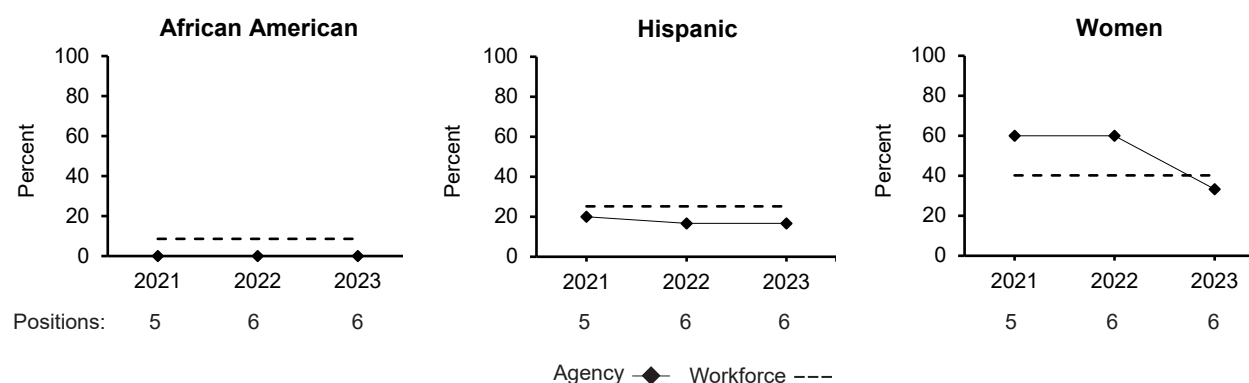
APPENDIX B

Equal Employment Opportunity Statistics, FYs 2021-23

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 Ethics Commission.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from fiscal years 2021-23.

Although the agency rarely exceeded the statewide civilian percentages for minorities or women in the administration and professional categories across each of the last three fiscal years, it has very few staff in these categories. The agency exceeded civilian workforce percentages for African Americans and women in the administrative support category in each of the last three fiscal years but failed to meet the percentages for Hispanics. The agency did not have any employees in the service/maintenance, skilled craft, or protective services categories. The technical category had too few employees to conduct a meaningful comparison to the overall civilian workforce.

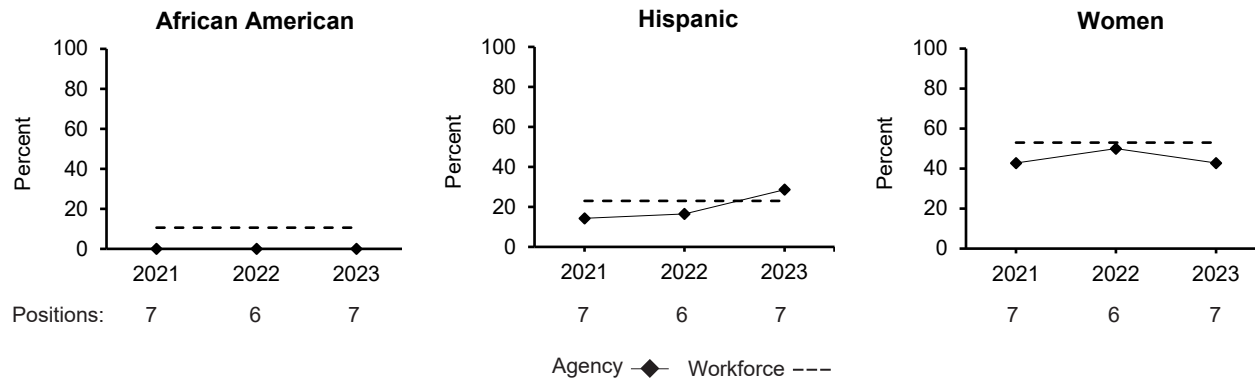
Administration



The agency failed to meet the statewide civilian workforce percentages for African Americans and Hispanics in each of the last three fiscal years. The agency exceeded the statewide civilian workforce percentage for women in fiscal years 2021 and 2022 but failed to meet the percentage in fiscal year 2023. Overall, the agency had few employees in this category.

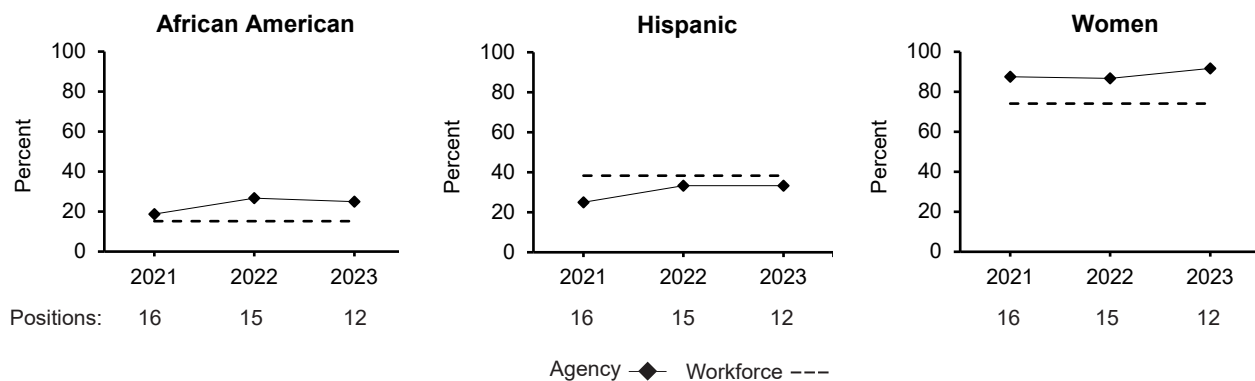
Appendix B

Professional



The agency failed to meet the statewide civilian workforce percentages for African Americans and women in each of the last three fiscal years. The agency failed to meet the statewide civilian workforce percentage for Hispanics in fiscal years 2021 and 2022 but exceeded the percentage in fiscal year 2023. Overall, the agency had few employees in this category.

Administrative Support



In each of the last three fiscal years, the agency exceeded the statewide civilian workforce percentages for African Americans and women but failed to meet the percentage for Hispanics.

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

² Section 21.501, Texas Labor Code.

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

APPENDIX C

Required Disclosure Reports and Deadlines

Report Type	Filer Type		Deadline
Campaign Finance			
Semiannual Report ¹	Legislative caucuses; candidates; officeholders; specific-purpose political action committees (SPAC); general-purpose political action committees (GPAC)		July 15 and January 15
Monthly ²	GPACs using the monthly filing option (MPAC)		5th of the month
Near election ³	Certain candidates; SPACs; GPACs	First report	30 days before election
		Second report	8 days before election
		Runoff	8 days before election
		Daily (certain candidates, SPACs, and GPACs)	Daily starting 8 days before election, ending day before election
Special Legislative Session ⁴	Certain statewide officeholders; legislators; SPACs		Within 30 days of final adjournment
Report following campaign treasurer appointment ⁵	Officeholder		15 days after treasurer appointment
Dissolution/termination report ⁶	SPACs; GPACs		Within 10 days of termination of campaign treasurer appointment
Final report ⁷	SPACs; candidates		Next relevant reporting deadline after last report for which activity is expected
Annual report of unexpended contributions ⁸	Former officeholders; unsuccessful candidates with unexpended contributions		January 15, each year the person continues to have unexpended contributions
Report of disposition of unexpended contributions ⁹	Former officeholders; unsuccessful candidates		30 days after sixth year after the person ceases to be an officeholder or candidate or last filed a report as officeholder or candidate, whichever is later
Reports by parties accepting corporate or labor union contributions ¹⁰	Political parties		July 15, January 15, 8th day before primary election, and 50th day before general election
Lobby Law			
Annual Lobby Registration and Renewal ¹¹	Lobbyists		End of December
Activities Report ¹²	Lobbyists		10th day of each month
Annual Modified Report ¹³	Certain lobbyists		January 10

Appendix C

Report Type	Filer Type	Deadline
Personal Financial Statements		
Annual Personal Financial Statement ¹⁴	State officers; state party chairs; county judicial officers (may file with county clerk or the agency)	April 30
	Partisan or independent candidates for office as elected officer; candidates for county judicial officer (may file with county clerk or the agency)	Varies • The later of either the 60th day after the regular filing deadline for getting on the ballot in the general primary election, or February 12 • If the deadline for getting on the ballot falls after the regular deadline for the general primary election (except for regular deadlines for independent candidates or write-in candidates), the report is due either the 30th day after the deadline or no later than five days before the election • Before the 5th day before the election for candidates in special elections

¹ All citations to Texas statutes are as they appear on <https://www.statutes.legis.texas.gov/>. Sections 254.0311, 254.063, 254.093, 254.123, and 254.153, Texas Election Code.

² Sections 254.155 and 254.157, Texas Election Code.

³ Sections 254.038, 254.039, 254.064, 254.124, and 254.154, Texas Election Code.

⁴ Section 254.0391, Texas Election Code.

⁵ Section 254.094, Texas Election Code.

⁶ Sections 254.127 and 254.160, Texas Election Code.

⁷ Sections 254.125 and 254.065, Texas Election Code.

⁸ Sections 254.201 and 254.202, Texas Election Code.

⁹ Section 254.205, Texas Election Code.

¹⁰ Section 257.003, Texas Election Code; 1 Texas Administrative Code, Part 2, Chapter 20, Subchapter H, Section 20.529 (1993) (Texas Ethics Commission, *Reporting Schedule for Political Party Accepting Corporate or Labor Organization Contributions*).

¹¹ Sections 305.003, 305.004, 305.0041, 305.005, Texas Government Code.

¹² Sections 305.006 and 305.007, Texas Government Code.

¹³ Section 305.0063, Texas Government Code.

¹⁴ Sections 572.021, 572.026, and 572.027, Texas Government Code; Sections 159.052 and 159.053, Texas Local Government Code.

APPENDIX D | Staff Review Activities

During the review of the Texas Ethics Commission (TEC), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended commission meetings; interviewed commission members; 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 performed the following activities unique to this agency.

- Surveyed individuals and organizations who file campaign finance reports, personal financial statements, or lobby activity reports with TEC; individuals who filed sworn complaints with the agency; and individuals who have had sworn complaints filed against them.
- Observed a proceeding in district court related to a subpoena challenge associated with a sworn complaint.
- Attended a seminar discussing recent court cases impacting political disclosure laws.
- Interviewed staff from the Department of Information Resources, Legislative Budget Board, State Office of Administrative Hearings, and Secretary of State.

Sunset Staff Review of the *Texas Ethics Commission*

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