

**SUPPLEMENTAL COMMENTS OF THE  
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF TEXAS  
(ACEC TEXAS)  
REGARDING THE SUNSET COMMISSION STAFF REPORT ON  
THE TEXAS DEPARTMENT OF TRANSPORTATION**

ACEC Texas submitted comments on the Sunset TxDOT report prior to the hearing. Part of the comments related to a new recommendation in Issue 3 Contracting Oversight to reconsider employment restrictions imposed in SB 20 in the last legislative session and exempting TxDOT from these restrictions.

We would like to revise those comments to make a more specific alternative recommendation: **That the Commission adopt a new recommendation under Issue 3 to revise Chapter 572.069, Government Code, as it relates to TxDOT to provide that a former agency officer or employee who participated in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date that the procurement was concluded or cancelled.**

This revision would continue appropriate ethical safeguards while remedying the effect of the current statute, which is to disincentivize experienced senior personnel from involvement in contracting.

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These comments are provided on behalf of ACEC Texas, the business association of Texas engineering firms, on the Sunset Commission Staff Report on the Texas Department of Transportation. The report is correctly framed around the most important question: “Is TxDOT ready for the significant infusion of capital from Prop 1, Prop 7 and other initiatives?” The answer that is provided is: “The agency is moving in the right direction, and needs stability rather than wholesale renovation, but it needs to move faster in key areas.”

Generally, we agree that this is the correct question and a fair answer. **We support the need for stability and for a 12-year extension for the agency.**

**Issue 1: Transportation Planning**

On Issue 1 (Transportation Planning), we would urge the Commission to recognize that there has been considerable time and effort spent on this matter by the Legislature and the Department during the last two years, mostly related to the passage of HB 20. There may be a greater need for stability in this area than in any other. At some point, the continued flux on the project selection/planning side makes it more difficult for the Department to lock in a shorter-term work plan and focus on executing it.

That is not to say that project prioritization – picking the right projects to build – is not an important issue. It is. But that process always has a degree of politics and subjectivity. Not everyone is always going to agree on what is their “fair share.”

**But the most important thing is that at least four years out, the planning process needs to yield a locked-in, project-specific work plan so that the Department can focus on the accountable execution of that plan – buying the right-of-way, clearing utilities, designing, and building the projects.**

The Sunset Commission should be aware that continued uncertainty in the planning process can get in the way of execution, and the Commission should look to avoid that result.

## **Issue 2: Project Delivery**

We believe that Issue 2 (Project Delivery) is the most important aspect of the report. ACEC Texas believes that the Sunset Commission's primary focus needs to be on creating and reinforcing what one Transportation Commissioner has described as the **accountable, performance-measured execution of a defined work plan**. That sort of process is good for the public because they know what is coming and what is being done with their money, it is good for the Department because it creates a focus and a mission, and it is good for the contracting community because it creates predictability.

**Accordingly, we support recommendations 2.1, 2.2, and 2.3 as the essence of this. However, we would support sharpening recommendation 2.1 to clarify that the requirement is for a four-year project specific work plan for the agency, with consistently formatted district portfolio plans as a component of this.**

## **Issue 3: Contracting Oversight**

On the part of Issue 3 that addresses contracting oversight for professional engineering contracts, we believe that the agency is aware of and working on many of these issues.

**We certainly agree with the recommendation in 3.14 that the agency needs to update and simplify its signature authority, although the Commission should clarify whether changes are needed in SB 20 from last session to fully accomplish this goal.**

### **A. Employment Restrictions**

On the issue of contracting oversight and SB 20, we believe that there is one other issue that should be addressed in the recommendations. SB 20 was the omnibus contracting bill from last session. Among other changes, it amended Chapter 572 of the Government Code provide that a state agency employee who participates on behalf of the state agency in a procurement or contract negotiation involving a person may not accept employment from that person for two years after leaving state agency employment.

This may sound logical in theory, but in reality it is having a negative impact on procurement within TxDOT (the opposite of the bill's intent) and should be revised. As an example, any large professional services procurement within TxDOT might have 50 responses, with 4-5 firms on each team. So in effect, anyone who works on the selection process for several of these automatically removes him or herself from being employed by hundreds of firms, even if they work for TxDOT another ten years and never work on another procurement. As a result, the willingness of experienced, senior engineers – the very people you want involved in decision-making and contracting – to participate in the procurement process has declined. ACEC Texas members believe almost unanimously that the experience level of personnel involved in contracting has declined over the last few years. There may be other factors besides the revisions to Chapter 572 involved, but that is clearly a factor.

**We encourage the Sunset Commission to adopt a new recommendation under Issue 3 excluding TxDOT from this provision, at least for most design and construction contracts.**

As a practical matter, these procurements are all publicly advertised, competed, and scored by a panel of reviewers. The scenario of an employee steering a contract to one firm then taking a job with the firm is not completely implausible. But as a practical matter there are checks on this; the number of people and approvals involved in a procurement make it very unlikely. And it can be addressed in other ways, such as the enforcement of the ethical obligations of professional engineers. In hard practical terms, in order for the contracting process to work best and generate the best outcomes, the Department and the industry both need senior, experienced personnel involved in the process. We should not dis-incentivize this.

### **Issue 6: Support for Districts**

**We support the recommendations in Issue 6, especially recommendation 6.2, that the agency needs to provide greater support for district programs.** The districts have been given more responsibility for a number of programs related to project delivery (strategic projects, right-of-way, utilities), but not always with the resources to handle them. In the short term, these resources are available in the private sector, provided that the districts have the latitude to use them. If there is to be accountability, the resources and flexibility to deliver must be present as well.