

EXECUTIVE SUMMARY OF SUNSET STAFF REPORT

Texas Department of Agriculture

Texas Boll Weevil Eradication
Foundation

Prescribed Burning Board

Early Childhood Health and
Nutrition Interagency Council

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Since its creation in 1907, the **Texas Department of Agriculture (TDA)** has grown to play a significant role in not only agricultural but also rural affairs across the state. From supporting rural infrastructure and hospitals, to managing the state's extensive food assistance programs for school children and at-risk populations, TDA's functions now extend well beyond regulating and promoting the state's \$25 billion agriculture industry. As one of the few state agencies headed by a statewide elected official, the department's growth and changes in focus have resulted in part from the various priorities set by its agriculture commissioners. Although each commissioner's personality ultimately affects how the department carries out its duties, Sunset's role is not to evaluate the individual commissioner, but rather to ensure TDA as a whole is efficiently and effectively serving the state in carrying out its statutory duties. With this in mind, Sunset staff concluded TDA is well-managed, and found the department's day-to-day responsibilities are largely removed from the politics and public attention focused on the commissioner, and recommends the department continue for 12 years. However, Sunset staff identified several opportunities to provide a firmer foundation for staff to successfully perform TDA's multitude of functions regardless of any shifting focus at the top.

TDA should develop a firmer foundation for day-to-day operations, independent of shifting leadership focus.

Overall, TDA would benefit from using more objective data and performance analysis to inform the department's various programs. For example, the department's highly visible GO TEXAN marketing program has no formal mission or objectives to direct its operations or resources, leading some GO TEXAN members to question the program's fairness and value. Similarly, the department's regulatory programs and administrative functions should make better use of available data and public input to guide decision making. Specifically, the department should use violation trend data and risk-based analyses to prioritize its regulatory inspections, and make regular use of stakeholder input to evaluate the effectiveness of agency rules and procedures. Establishing more formal goals and metrics to guide its operations will also help the department depend less upon staff intuition and individual experience and more upon consistent, measurable results. Further, in performing its own

analysis of the department's regulatory data, Sunset staff determined TDA's regulation of aquaculture businesses provides no meaningful public benefit and should be eliminated.

Sunset staff also evaluated the Texas Boll Weevil Eradication Foundation, Prescribed Burning Board, and Early Childhood Health and Nutrition Interagency Council, which are separately subject to review under the Sunset Act.

Texas Boll Weevil Eradication Foundation. The foundation is a nonprofit quasi-governmental entity overseen by TDA that undergoes its own review under the Sunset Act. Since its last Sunset review in 2009, the foundation has made significant strides toward its goal of eliminating the boll weevil to protect Texas cotton farmers. Currently, Texas is the only state with an active presence of boll weevils. The review determined the foundation continues to play a critical role in preventing re-infestation of the boll weevil in the United States and should be continued.

Prescribed Burning Board. As a semi-independent, 13-member board administratively attached to the department, the Prescribed Burning Board regulates standards for using prescribed burning to reduce the risk of wildfires on Texas property. Sunset staff found a lack of clear rulemaking authority regarding prescribed burning between the board and the department, and recommends formally vesting TDA with all rulemaking authority. The board would continue as an advisory committee within TDA to provide expertise and help oversee prescribed burning practices.

Early Childhood Health and Nutrition Interagency Council. The council was established in 2009 to review best practices and develop recommendations related to early childhood nutrition and physical activity. However, the council issued its final report and disbanded in 2018. The functions of the council duplicate the work of the Early Childhood Obesity Prevention Committee administered by the Department of State Health Services, so the council should be formally abolished.

The following material highlights Sunset staff's key recommendations for the Texas Department of Agriculture, the Texas Boll Weevil Eradication Foundation, and the Prescribed Burning Board.

Sunset Staff Issues and Recommendations

ISSUE 1

The GO TEXAN Program Lacks the Guidance and Direction Needed for a Successful Program.

The department's GO TEXAN program promotes Texas agriculture, horticulture, and other industries through advertising, trade shows, and social media promotion, using a distinctive logo to increase consumer awareness of Texas products. However, statute does not provide a clear purpose for the GO TEXAN program beyond TDA's general directive to promote Texas agriculture. The Sunset review identified several concerns related to the program's effectiveness, efficiency, fairness, and accountability that must be addressed for the department to successfully operate the program.

Key Recommendations

- Re-establish the GO TEXAN program and its purpose in statute.
- Direct TDA to establish a mission, goals, and objectives for the GO TEXAN program.

- Direct TDA to develop a policy to ensure expired members comply with department rules.
- Direct TDA to establish clear performance measures to evaluate its progress in meeting GO TEXAN program goals.

ISSUE 2

TDA's Aquaculture Licensing Program Is Not Necessary to Protect the Public.

TDA's Aquaculture program licenses individuals who produce and sell fish and shellfish raised in private facilities. However, the program performs no meaningful enforcement activity and adds no value to the industry or the public. Because other state agencies regulate the aquaculture industry and adequately protect consumers and the public, the department's Aquaculture program is unnecessary and should be eliminated.

Key Recommendation

- Eliminate TDA's Aquaculture program.

ISSUE 3

The Regulation of Prescribed Burning Should Be Continued and Consolidated Within the Texas Department of Agriculture.

In 1999, the Legislature established the semi-independent Prescribed Burning Board within TDA to develop standards for the safe and responsible use of fire to clear vegetation and reduce the impact of wildfires on Texas lands. The review found the board's expertise and oversight of prescribed burning continues to be necessary, but neither TDA nor the board have clear rulemaking authority to regulate prescribed burning. Sunset staff concluded consolidating rulemaking authority within TDA would provide more effective regulation, and continuing the Prescribed Burning Board as an advisory committee to provide expertise and oversight of prescribed burning practices would ensure the benefits and protections of prescribed burning continue to be available to Texas landowners.

Key Recommendation

- Clearly authorize TDA to adopt rules for all prescribed burning standards and continue the Prescribed Burning Board as an advisory committee to the department.

ISSUE 4

Key Elements of the Department's Statute and Rules Do Not Conform to Common Regulatory Standards.

Several of TDA's regulatory requirements and processes differ from model standards that are common at other regulatory agencies. For example, the department has not established risk-based criteria to target its routine inspections, despite statutory direction to do so as a result of the 2009 Sunset review.

TDA also needs to improve coordination with other state agencies that have overlapping regulatory responsibilities to ensure consistent oversight occurs. Finally, the department fails to use or analyze available data that would improve the efficiency and effectiveness of its regulatory programs. Aligning the department's statute and rules with best practices would help ensure fair treatment of licensees and effective regulation across TDA's regulatory programs.

Key Recommendations

- Direct TDA to establish a risk-based approach to inspections.
- Require a memorandum of understanding to facilitate better coordination between TDA and the Office of the Attorney General.
- Direct TDA and Health and Human Services Commission to share information about the licensing and registration status of food program participants.
- Direct TDA to collect and analyze data from its regulatory programs to increase their effectiveness.

ISSUE 5

Texas Has a Continuing Need for the Texas Department of Agriculture.

As the third-largest agricultural producer in the United States, Texas has a vested interest in regulating and promoting the state's agriculture industry, and the department is the most appropriate agency to carry out this function. However, two entities administered by the department are no longer operational or necessary, and should be discontinued. Additionally, the department would benefit from improving its communication with its various stakeholder groups.

Key Recommendations

- Continue the Texas Department of Agriculture for 12 years, until 2033.
- Abolish the Early Childhood Health and Nutrition Interagency Council.
- Eliminate the Texas Rural Foundation.
- Direct TDA to improve its stakeholder engagement, website content, and public information.

ISSUE 6

TDA's Statutes and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

Sunset reviews include a number of standard elements, including evaluating an agency's rulemaking, statutory advisory committees, and reporting requirements. Sunset staff found the department does not meaningfully review and revise its rules every four years and does not have required negotiated rulemaking policies. Sunset staff also found 24 of the department's 27 advisory committees are either abolished by operation of law or no longer needed, and identified several statutorily required reports that should be eliminated or modified.

Key Recommendations

- Direct the department to adopt a policy to ensure each rule undergoes meaningful rule review pursuant to state law.
- Remove abolished advisory committees from statute and authorize the department to create advisory committees in rule.

ISSUE 7

Texas Has a Continuing Need for the Texas Boll Weevil Eradication Foundation.

As the largest cotton producer in the United States, Texas has a continuing interest in the suppression and eradication of the boll weevil. The foundation has been a successful model for eliminating the boll weevil and should be continued. However, the foundation would benefit from developing a reserve fund balance policy to ensure its reserve, which includes cotton grower assessments, does not go unchecked. In addition, the foundation's statute should be updated to include two across-the-board provisions regularly applied in Sunset reviews that reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government.

Key Recommendations

- Continue the Texas Boll Weevil Eradication Foundation for 12 years.
- Apply the standard across-the-board requirements regarding the separation of duties of board members from those of foundation staff, and developing and maintaining a system for receiving and acting on complaints.
- Direct the foundation to implement a reserve fund balance policy.

Fiscal Implication Summary

Overall, the recommendations in this report would not have a significant fiscal impact to the state. The department should be able to implement most recommendations with existing resources. In addition, the department is required to generate revenue to cover the cost of its regulatory programs, so any loss of revenue or increase in expenditures that result from recommendations associated with these programs should be cost-neutral. However, discontinuing TDA's Aquaculture program would result in a loss of about \$4,500 annually to general revenue. A decrease of approximately \$12,300 annually in licensing fee revenue currently collected by TDA would be offset by a savings of about \$7,800 for administering the program.

Texas Department of Agriculture

Fiscal Year	Savings to the General Revenue Fund	Loss to the General Revenue Fund	Net Loss to the General Revenue Fund
2022	\$7,800	\$12,300	\$4,500
2023	\$7,800	\$12,300	\$4,500
2024	\$7,800	\$12,300	\$4,500
2025	\$7,800	\$12,300	\$4,500
2026	\$7,800	\$12,300	\$4,500