

SUNSET ADVISORY COMMISSION

FINAL REPORT

Texas Department of
Agriculture

Texas Boll Weevil
Eradication Foundation

Prescribed Burning Board

Texas-Israel Exchange
Fund Board

July 2009



Sunset Advisory Commission



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* Senator Kim Brimer served on the Commission from December 2005 through December 2008.

** Charles McMahan was appointed to fill the unexpired term of Michael Stevens.

Joey Longley

Director

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**TEXAS DEPARTMENT OF AGRICULTURE
TEXAS BOLL WEEVIL ERADICATION FOUNDATION
PRESCRIBED BURNING BOARD
TEXAS-ISRAEL EXCHANGE FUND BOARD**



**SUNSET FINAL REPORT
JULY 2009**



This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission and the Legislature for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and members of the public, as well as action taken by the Sunset Commission and the Legislature in each step of the Sunset process.

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



Staff Report – March 2008

Commission Decisions – June 2008

(Includes additional Commission decisions made in September 2008 and January 2009)

Final Report – July 2009

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SUMMARY



Summary

As the only state agency headed by a single statewide elected official that is subject to Sunset review, the Texas Department of Agriculture, more than other agencies, reflects the vision and personality of this one person at the top. Accountable directly to the state's voters, Agriculture Commissioners have traditionally been afforded leeway to define priorities and direction of the agency. Recent Commissioners have taken the agency well beyond its original mission of serving agriculture to include promoting rural economic development and ensuring healthy meals for Texas school children. This trend has continued under the current Commissioner, who, in his first year in office, has overseen the further consolidation of child and adult nutrition programs and pest control regulation within the agency, and the expansion of research and assistance grant programs, adding significantly to the agency's size and scope.

Sunset staff evaluated TDA from this standpoint, as an agency having experienced recent growth and change, overseen by an elected official with an interest in redirecting programs to ensure that they meet the needs of today's agriculture industry and the state as a whole. Sunset staff also evaluated the Prescribed Burning Board and the Texas-Israel Exchange Fund Board – two semi-independent boards operating under TDA's umbrella – that are separately subject to review under the Sunset Act.

Sunset staff found opportunities for redirecting several of TDA's programs to better reflect the Commissioner's and the State's interests. Sunset staff has developed a framework for deciding if programs that provide financial assistance for agricultural interests, regulate persons who conduct prescribed burns of vegetation, and conduct cooperative research with Israel, are worth the effort to improve their operations and delivery, or if they should be eliminated. Additional opportunities for the Commissioner to place his stamp on the agency would improve the operations of certain boards overseen by the agency, better focus the State's school nutrition policy, eliminate unnecessary regulations, and standardize the regulations that remain.

Sunset staff also evaluated the Boll Weevil Eradication Foundation – a non-profit, quasi-governmental entity with oversight from the Commissioner of Agriculture – that is also subject to its own review under the Sunset Act. Sunset staff found that the Foundation needs more flexibility in the way it collects and uses assessments from cotton growers as the state nears eradication of the boll weevil and begins to focus on an eradication maintenance program.

A summary of the Sunset staff recommendations on the Texas Department of Agriculture, Prescribed Burning Board, Texas-Israel Exchange Fund Board, and Boll Weevil Eradication Foundation is provided in the following material.



TDA's programs could be redirected to better reflect the Agriculture Commissioner's and the State's interests.

Issues and Recommendations

Issue 1

The Texas Agricultural Finance Authority Has Significant Structural Problems and Does Not Currently Meet the Needs of Texas Agriculture.

Key Recommendations

- ◆ Provide that the Commissioner of Agriculture, rather than the Governor, appoint the TAFE Board of Directors.
- ◆ Remove the statutory requirement that TAFE receive a portion of the State's private activity bond authority.
- ◆ Require TAFE to issue debt through the Texas Public Finance Authority.
- ◆ TDA should develop a plan for servicing TAFE's outstanding debt and for meeting the financial needs of the state's agriculture industry.

Issue 2

The State Needs to Continue and Strengthen the Regulation of Prescribed Burn Managers.

Key Recommendations

- ◆ Provide for the Prescribed Burning Board to serve as an advisory committee to the Texas Department of Agriculture, and clarify the agency's responsibility for administering the program.
- ◆ Require all commercially operating prescribed burn managers to be certified by the Texas Department of Agriculture.
- ◆ Authorize the agency to impose sanctions on non-compliant licensees and unlicensed activities.
- ◆ Require the agency to develop a complaint process for taking corrective action for prescribed burning violations.
- ◆ Require the agency to renew prescribed burn manager certifications every two years.

Issue 3

Texas Does Not Need a Separate Stand-Alone Board to Conduct Binational Collaborative Agricultural Research.

Key Recommendations

- ◆ Abolish the Texas-Israel Exchange Fund, and give the Texas Department of Agriculture the discretion to seek funding for cooperative agricultural research as the agency sees fit.
- ◆ If TDA chooses to continue its relationship with BARD, the agency should request funding for binational agricultural research through its Legislative Appropriations Request and ensure the results of that research are clearly communicated to the public.

Issue 4

Update the Structure of Certain Boards and Advisory Committees to Streamline Their Operations.

Key Recommendations

- ◆ Require the Commissioner of Agriculture and the Presidents of Texas A&M University and Texas Tech University, rather than the Governor, to appoint the members of the State Seed and Plant Board.
- ◆ Require the Commissioner of Agriculture, rather than the Governor, to appoint the members of the Produce Recovery Fund Board.
- ◆ Combine TDA's two wine advisory committees into the Wine Industry Development and Marketing Advisory Committee.

Issue 5

TDA Has No Formal Rules Governing How It Administers and Enforces the Texas Public School Nutrition Policy.

Key Recommendation

- ◆ The Texas Department of Agriculture should develop rules to administer and enforce the Texas Public School Nutrition Policy.

Issue 6

TDA's Regulatory Framework Needs Adjustment to Reflect the Current Need for Oversight and Trends in Certain Industries.

Key Recommendations

- ◆ Eliminate certification of rose graders.
- ◆ Eliminate registration of cash dealers in the handling and marketing of perishable commodities program.
- ◆ Remove the requirement for TDA to establish piece rates for agricultural commodities.
- ◆ Eliminate registration of cooperative marketing associations.
- ◆ Change the regulatory structure of the public weigher program such that businesses, rather than individuals, would be registered.
- ◆ Remove certain statutory claim limitations and raise others for the Produce Recovery Fund.

Issue 7

Key Elements of TDA's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Recommendations

- ◆ Standardize licensing functions by requiring TDA to create test admission and administration procedures and evaluate test questions, and by allowing the agency to charge fees for duplicate licenses and more effectively stagger license renewals.
- ◆ Improve TDA's ability to protect the public by granting clear inspection authority and cease-and-desist authority, raising administrative penalties, and requiring the agency to create complaint procedures, use informal settlement conferences, provide a standard complaint form, track nonjurisdictional complaints, track and analyze complaints, and provide more enforcement information on its website.

Issue 8

Statute Limits TDA's Ability to Fully Integrate the Structural Pest Control Program Into Its Regulatory Structure.

Key Recommendation

- ◆ Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.

Issue 9

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

Key Recommendation

- ◆ Continue the Texas Department of Agriculture for 12 years.

Issue 10

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

Key Recommendation

- ◆ Continue the Texas Boll Weevil Eradication Foundation for 12 years.

Issue 11

Statute Limits the Foundation's Ability to Adapt the Use and Collection of Grower Assessments to Meet the Changing Nature of Boll Weevil Eradication Efforts.

Key Recommendations

- ◆ Remove statutory limitations preventing the Foundation from transferring assessments among zones and allow the Foundation flexibility to do so, upon approval of the Foundation Board and the Agriculture Commissioner.
- ◆ Allow the Foundation statutory flexibility to adapt its assessment collection method and mechanism for its eradication program, not just its maintenance program, upon approval of the Foundation Board and the Agriculture Commissioner.

Fiscal Implication Summary

Two recommendations in this report may have a fiscal impact to the State, although that impact could not be estimated at this time.

- ◆ **Issue 1** – Requiring TDA to conduct a study of the Texas Agricultural Finance Authority’s financial assistance programs could have a fiscal impact to the State, depending on what TDA recommends in its plan for the programs.
- ◆ **Issue 2** – Expanding the regulation of prescribed burn managers could have a negative fiscal impact to the State, but the specific impact depends on how the agency approaches implementation. Although TDA can use its existing resources for the program, it will need additional staff to conduct complaint investigations and process licenses for approximately 100 new licensees. At the same time, the agency could raise its fees to cover some of the additional administrative cost.

Summary of Legislative Action

S.B. 1016 Estes/Hegar (Flynn)

The Legislature adopted all of the Sunset Commission's recommendations and added several provisions to Senate Bill 1016. The bill continues the Department of Agriculture; continues the Prescribed Burning Board, but removes its separate Sunset date; and abolishes the Texas-Israel Exchange Fund Board. The bill also restructures the Texas Agricultural Finance Authority, makes numerous changes to strengthen and streamline the Department's regulatory programs, and creates new programs for rural economic development and citrus pest management. The list below summarizes the major provisions of S.B. 1016, and more detailed discussion is located in each issue.

Sunset Provisions

1. Restructure the Texas Agricultural Finance Authority's programs so that they better meet the needs of Texas agriculture.
2. Continue the Prescribed Burning Board as a semi-independent board and strengthen its enforcement authority over noncompliant licensees and unlicensed activity.
3. Abolish the Texas-Israel Exchange Fund, and give TDA the discretion to seek funding for cooperative agricultural research as the agency sees fit.
4. Require the Commissioner of Agriculture, rather than the Governor, to appoint the members of certain boards and combine the two wine advisory committees into one.
5. Eliminate regulation of certain activities and conform the regulation of others to reflect current industry practices.
6. Conform key elements of TDA's licensing and enforcement functions to commonly applied licensing practices.
7. Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.
8. Continue TDA for 12 years.

Provisions Added by the Legislature

1. Grant TDA authority to impose requirements on unlicensed produce dealers to prevent losses to perishable commodity producers.
2. Update the Structural Pest Control Act so that it reflects current industry and regulatory practices.
3. Provide another eligibility requirement for the Commissioner and additional administrative tools for the agency.
4. Create grant programs to encourage rural economic development.

5. Grant the Texas Beef Council authority to administer in Texas the federal program for beef marketing.
6. Update statutory provisions related to livestock.
7. Create entities to promote the use of biofuels.
8. Create an entity to manage citrus pests and diseases.

Fiscal Implication Summary

Senate Bill 1016 contains two provisions that will increase TDA's number of full-time equivalent employees by three and will have a net cost of \$117,038 to the General Revenue Fund for the 2010-11 biennium.

- ◆ **Issue 1** – To avoid the problems of past TAFAs programs, TDA will need to hire two additional staff with expertise in managing complex financial assistance programs. These two staff will be paid for with funds already available in the Texas Agricultural Fund Account.
- ◆ **Issue 2** – Expanding TDA's authority to administer the regulation of prescribed burn managers and enforce against negligent or unlicensed burn managers will require the agency to hire one additional employee. Since this regulatory program generates a very small amount of revenue from licensing, the cost of the employee will come from the General Revenue Fund. The Legislature appropriated \$117,038 for the salary, benefits, and related expenses of this employee for the 2010-11 biennium.
- ◆ Provisions added by the Legislature, including the Rural Investment Fund, Rural Economic Development and Investment Program, Bioenergy Policy Council, and Bioenergy Research Committee, will require funding and staff to implement. However, the Legislature did not provide appropriations for these programs.

Summary of Legislative Action

H.B. 1580 Flynn (Hegar)

The Legislature adopted the Sunset Commission recommendations and added several provisions to House Bill 1580. The bill continues the Boll Weevil Eradication Foundation and provides additional flexibility and authority to the Foundation and TDA in the continued fight against boll weevils. The list below summarizes the major provisions of H.B. 1580, and a more detailed discussion is located in each issue.

Sunset Provisions

1. Continue the Texas Boll Weevil Eradication Foundation for 12 years.
2. Provide the Foundation flexibility in the collection and use of grower assessments to meet the changing nature of boll weevil eradication efforts.

Provisions Added by the Legislature

1. Provide the Texas Department of Agriculture and the Foundation with additional tools to manage volunteer and hostable cotton.
2. Modify the definition of “cotton grower.”

Fiscal Implication Summary

House Bill 1580 does not have a fiscal impact to the State.

ISSUES



Issue 1

The Texas Agricultural Finance Authority Has Significant Structural Problems and Does Not Currently Meet the Needs of Texas Agriculture.

Summary

Key Recommendations

- ◆ Provide that the Commissioner of Agriculture, rather than the Governor, appoint the TAFE Board of Directors.
- ◆ Remove the statutory requirement that TAFE receive a portion of the State's private activity bond authority.
- ◆ Require TAFE to issue debt through the Texas Public Finance Authority.
- ◆ TDA should develop a plan for servicing TAFE's outstanding debt and for meeting the financial needs of the state's agriculture industry.

Key Findings

- ◆ TAFE is carrying a significant amount of debt from defaulted loans and its large pool of financial resources is mostly unused.
- ◆ The structure of TAFE's financial assistance programs limits its ability to sustain the programs over time.
- ◆ Previous efforts to solve TAFE's problems have had little impact in improving the Authority's programs or financial standing.
- ◆ TAFE's organizational structure and allocation of resources inhibits effective administration of its programs.

Conclusion

The Legislature created the Texas Agricultural Finance Authority (TAFE) in 1987 to provide financial assistance to borrowers in the agriculture industry. Because of a high volume of defaulted loans, most TAFE programs have been under moratorium since 2002, and the Authority estimates that it is still carrying approximately \$14.7 million in debt as a result of delinquent loans. Further, the structure and statutory requirements of the programs limit TAFE's ability to fix its problems on its own.

Sunset staff identified significant concerns with TAFE and its programs. While Sunset staff identified needed statutory changes to TAFE's structure and authority, a more comprehensive assessment of TAFE's financial condition and a strategy for how best to serve the needs of Texas agriculture in today's market is needed to provide a meaningful solution. TDA should develop a strategy for TAFE's future and present it to the Sunset Commission before the 2009 legislative session.

Support

The Legislature created TAFE to administer financial assistance programs to support Texas agriculture.

TAFE has constitutional authority to issue up to \$525 million in general obligation debt.

- ◆ The Legislature created the Texas Agricultural Finance Authority (TAFE) in 1987 to provide financial assistance for the expansion, development, and diversification of production, processing, marketing, and export of Texas agricultural products. TAFE is designed to provide financial assistance through eligible lending institutions to creditworthy individuals and businesses, with a concentration on individuals and entities that have not traditionally had access to agricultural financial lending, such as value-added agricultural businesses. TAFE has the authority to issue general obligation bonds and may use the proceeds from the sale of bonds to acquire or make loans to eligible agricultural businesses, make or acquire loans from lenders, insure loans, guarantee loans, and administer or participate in programs to provide financial assistance to eligible agricultural businesses and rural economic development projects.
- ◆ The TAFE Board of Directors is the Authority's decision-making body. The Board has rulemaking authority and is in charge of adopting a budget and approving loans and loan guarantees. The Board consists of nine members: the Agriculture Commissioner or the Commissioner's designee; the Director of the Institute for International Agribusiness Studies at Prairie View A&M University; and seven members appointed by the Governor, comprising a local elected or appointed official, four experts in agricultural lending, a representative of an agricultural business and a representative of an agriculture-related entity. TAFE does not have its own staff, but instead relies on TDA staff to administer the Authority's programs.
- ◆ TAFE has three sources of revenue it can use to fund its financial assistance programs. It has constitutional authority to issue up to \$525 million in

General Obligation Debt

Tax-exempt debt that is legally backed by the full faith and credit of the issuing government. The government is legally obligated to use its full taxing power, if necessary, to repay the debt. In Texas, issuing general obligation debt requires voter approval. TAFE may issue general obligation debt in the form of long-term bonds or short-term commercial paper.

Private Activity Bonds

Tax-exempt bonds that may be used to finance certain privately-owned projects that serve a public purpose. Federal tax law and rules grant each state a certain amount of private activity bond authority and allow states to devise a process for allocating that authority to debt issuers. Each year, Texas allocates its private activity bonds for specific purposes, including affordable housing, higher education, industrial development, and water and wastewater infrastructure.

general obligation debt. TAFE has authority to use the revenue from a \$5 license plate tag fee on agricultural vehicles to guarantee the Young Farmer Loan Guarantee Program. This fee generated nearly \$900,000 in fiscal year 2007, and over time has grown into a reserve of \$15.6 million. TAFE is also authorized to issue a portion of the State's share of private activity bonds, totaling \$13.3 million in 2007. TDA reports that since TAFE's inception, the Authority has made 115 loans to 71 borrowers worth a total of \$77 million. The accompanying textbox explains general obligation debt and private activity bonds.

TAFAs are carrying a significant amount of debt from defaulted loans and its large pool of financial resources is mostly unused.

- ◆ By issuing general obligation debt, TAFAs generate funds for a variety of programs to provide loans and loan guaranties to eligible agricultural businesses and rural economic development projects. If the business defaults on the loan, TAFAs are responsible for the outstanding loan balance after assets are liquidated. Because the Legislature designed these programs to be self-supporting, and did not appropriate funds for debt service, as is common in other bond-financed programs, these programs rely on revenues from loan repayments to fund additional loans and pay off defaulted loans.

In November 2002, however, because of a high volume of loan defaults, the Commissioner of Agriculture and the TAFAs Board of Directors placed a moratorium on most of TAFAs programs. The moratorium is still in place. The problem loans were mostly associated with the Loan Guaranty Program, but the moratorium encompasses all programs that created an unacceptable financial risk to the State. The reason given for the high number of defaults in the Loan Guaranty Program was that, at the time, TAFAs were pursuing a strategy of supporting businesses engaged in innovative and value-added processing of agricultural products, which are inherently risky. In addition, TAFAs were not requiring enough equity from the borrowers to ensure that they assumed an adequate portion of the risk. Instead, TAFAs were assuming up to 90 percent of the risk on these loans.

As a result, TAFAs are still carrying an estimated \$14.7 million in debt incurred through defaulted loans made before the 2002 moratorium. TAFAs pay the debt service on these defaulted loans by using principal collections from performing loans made before the moratorium. Because the Loan Guaranty Program remains under moratorium, TAFAs cannot generate any revenue to buy down the debt. At some point, the performing loans will not provide enough revenue to service the debt, and another revenue source will be needed. TAFAs, however, cannot say when that time will come. Further, TAFAs cannot say exactly how much debt it is carrying from defaulted loans, but can only estimate that it is worth \$14.7 million.

- ◆ TAFAs have only taken advantage of a small portion of its \$525 million in bonding authority. Of this total, \$225 million is for the programs that are currently under moratorium. The remaining \$300 million is designated for the Farm and Ranch Finance Program, which was intended to be a self-supporting program that provides financial assistance for the purchase of farm or ranch land. The program, however, was unable to generate sufficient participation, which resulted in TAFAs paying more on the interest cost of the loans than it earned in income from the loans.

If a business defaults on a loan, TAFAs are responsible for the outstanding loan balance.

TAFAs are still carrying an estimated \$14.7 million in debt incurred through defaulted loans.

TAFAs three active programs do not have participation rates to justify the current effort.

- ◆ In response to the moratorium, TAFAs narrowed its scope to three programs that do not create a financial risk to the State, but also do not have high rates of participation to justify the agency's current effort. The three active programs are as follows.
 - The *Young Farmer Loan Guarantee Program* provides loan guaranties to lenders at a reduced interest rate for borrowers between the ages of 18 and 39 looking to establish or enhance a farm or ranch operation or agriculture-related business. The program has the capacity to guarantee approximately \$31 million, or twice the reserve accumulated from the \$5 tag fee, but is currently only guaranteeing \$1 million for 13 active loans.
 - The *Interest Rate Reduction Program (formerly called the Linked Deposit Program)* facilitates private commercial lending at below market rates to eligible applicants for specific agricultural projects. The program may use up to \$30 million to reduce the cost of funds for lenders, but as of November 2007, this program only had 25 active loans, totaling \$4.4 million.
 - The *Rural Municipal Finance Program* facilitates loans through TAFAs purchase of general obligation bonds from municipalities to fund the economic development of a rural area. In 2007, the program had nine active loans collectively worth \$9.23 million. Many entities that qualify for the Rural Municipal Finance Program loans may qualify for other state grant programs that do not require repayment, such as those offered by TDAs Texas Capital Fund or the Office of Rural Community Affairs.
- ◆ TAFAs has never used its authority to issue private activity bonds. In 2001, the Legislature designated in statute that TAFAs would receive a portion of the State's share of private activity bonds every year until June 1. After June 1, any unused bond authority is made available to other state entities. This allocation equaled \$13.3 million in 2007. TAFAs, however, has never issued any private activity bonds. Reserving this portion of the bonds for TAFAs prevents other state issuers from having access to them until after June 1.

To be self-sustaining, TAFAs would have to secure enough performing loans to offset losses from nonperforming loans.

The structure of TAFAs financial assistance programs limits its ability to sustain the programs over time.

- ◆ The Legislature designed financial assistance programs like the Loan Guaranty Program to be completely self-supporting, never appropriating TAFAs money for debt service. As a 1999 report by the State Auditor's Office revealed, for TAFAs to serve as a self-sustaining debt issuer, it would have to secure enough performing loans to offset any losses resulting from nonperforming loans.¹ Individuals and entities most likely to use TAFAs, however, are those with minimal experience and poor credit standing, who are most likely to default on a loan, and thus deprive TAFAs of revenue to support the program through loan repayments.

Without a dependable source of revenue to help cover these inherently risky loans, TAFAs margin is too small to support the program solely through performing loans. Other loan programs that provide financial assistance, such as those administered by the Texas Water Development Board, receive legislative appropriations for debt service.

- ◆ TAFAs active programs have many statutory restrictions regarding eligibility for participation and limits on funding available for each eligibility category and for each loan. The Young Farmer Loan Guarantee Program, for example, has a statutory limitation of \$250,000 per loan. These kinds of restrictions, while possibly providing needed control in the past, keep the program from meeting the needs of today's farmers. Lenders, too, are less likely to participate because the program's incentives are not worth the bureaucratic headaches.

In addition, the \$5 tag fee on every agricultural vehicle generates between \$800,000 and \$900,000 annually for a fund that has grown to approximately \$15.6 million. However, TAFAs statute prevents it from using this money for any purpose other than guaranteeing loans through the Young Farmer Program.

Previous efforts to solve TAFAs problems have had little impact in improving the Authority's programs or financial standing.

- ◆ Several reviews in the 1990s pointed to financial problems with TAFAs programs. The 1995 Sunset review concluded that the programs were unnecessarily risky.² The review found that the Loan Guaranty Program had experienced a comparatively high default rate and that high maximum loan limits, lack of a 90 percent loan guaranty limit, and providing multiple loans to the same business contributed to a higher level of risk. From 1997 to 1999, the State Auditor's Office conducted a series of audits variously concluding that TAFAs needed to take action to improve its financial position.³ Among the findings was that TAFAs needed to adhere to lending guidelines for all loans it makes and that some programs needed to be reassessed because they did not appear to have been active enough to meet their objectives. Later audits expressed concern over the decline of TAFAs equity position and recommended that TAFAs reassess the feasibility of its programs and implement corrective actions to improve its financial standing before state intervention would be necessary.
- ◆ Efforts to fix TAFAs programs did not prevent the moratorium. Following the last audit by the State Auditor's Office, the Legislature passed a bill in 1999 to revamp several of TAFAs programs to remove existing impediments and to provide access to a larger pool of eligible and creditworthy applicants.⁴ In the spring of 2002, the TAFAs Board sought to enact provisions to improve its financial condition, proposing new credit procedures, limiting loans to \$1 million, and providing guaranties

Statute prohibits TAFAs from using \$15.6 million generated in fees for servicing nonperforming debt.

Several past reviews and audits uncovered financial problems with TAFAs programs.

of only 50 percent, instead of the 90 percent guaranties under previous policy. However, six months later, in November 2002, the Agriculture Commissioner and TAFAs Board of Directors placed a moratorium on most of TAFAs programs. In 2005, the TAFAs Board reaffirmed the need for the moratorium.

- ◆ At the TAFAs Board meeting in February 2008, the Board discussed removing the moratorium and making adjustments to active programs, some of which would require statutory changes. As a result of that meeting, TAFAs has developed a set of proposals that it believes would reestablish financial leveraging ability for rural Texas. Without more in-depth analysis of TAFAs financial condition and of market forces affecting TAFAs programs, however, any hastily adopted proposals risk repeating the same outcomes of past efforts to address TAFAs problems.

*Vacancies on
TAFAs Board
have slowed its
ability to make
decisions.*

TAFAs organizational structure and allocation of resources inhibits effective administration of its programs.

- ◆ The Governor appoints seven of the nine members of TAFAs Board of Directors. Before the Governor appointed two new members in time for the Board’s first meeting of 2008, the Board had three vacancies, one of which had existed since October 2005. Vacancies can be a problem because each loan requires approval from the Board and failure to make a quorum would prevent such action from occurring, causing potentially lengthy delays or missed opportunities for borrowers to obtain financial assistance. In contrast, the Commissioner of Agriculture has close ties to the agriculture industry and may be better able to identify replacements when a board member’s term expires.

No constitutional reason exists for the Governor to appoint TAFAs Board members. Further, while TDA receives input from six other semi-independent boards, the Governor appoints the members of only two of them, the State Seed and Plant Board and the Produce Recovery Fund Board, which are discussed in Issue 4 of this report. The members of the other semi-independent boards are appointed by the Agriculture Commissioner, are representatives of public institutions, or are elected by producers at the local level, as is the case for the Boll Weevil Eradication Foundation Board. The Agriculture Commissioner also appoints all members to TDA’s nine advisory committees. TDA provides all staff and other administrative support for the TAFAs Board and carries out its policies; the Board does not have its own staff.

*TAFAs does not
have the expertise
or need to issue
its own bonds.*

- ◆ TAFAs does not have the expertise, staffing, or ongoing need to issue its own bonds. The authority to issue bonds is typically reserved for agencies with expertise and capacity to assume such a complex responsibility, such as the Texas Water Development Board. While it may have been the vision for TAFAs to be an active bond issuer, that reality has not transpired. The Legislature created the Texas Public Finance Authority to serve the bonding needs of agencies that do not issue bonds with a frequency that

enables them to develop this expertise. In addition, the Public Finance Authority has more direct involvement with the Military Preparedness Commission to issue bonds for specific loans subject to the Commission's administration of the loan program. The Commission and the Public Finance Authority work together to develop criteria for evaluating the credit of a loan applicant and the financial stability of a project.⁵

- ◆ The number of TDA staff dedicated for the administration of TAFE programs is very small. Three TDA staff members participate in the administration of TAFE programs, but only one of these individuals administers TAFE programs full-time. Although the Board grants final approval, only one staff member estimates the program's annual reserve and amounts of defaulted debt to write off. Further, TDA's Internal Auditor has not reviewed TAFE in at least six years.
- ◆ Statute requires TAFE to hire an independent firm to audit its accounts each fiscal year and to prepare a report of its activities for the preceding fiscal year.⁶ The audit is misleading because it does not clearly indicate TAFE's poor financial status. The audit counts revenue generated by the \$5 tag fee for the Young Farmer Program as a part of TAFE's total assets, which offsets the liabilities from its defaulted loans, conveying the image that TAFE is financially sound. However, the audit does not account for the fact that TAFE cannot use the tag fee revenue for anything other than guaranteeing loans for the Young Farmer Program. No official document, therefore, exists that indicates how much of the debt that TAFE is servicing is from performing loans and how much debt is attributed to nonperforming loans that the Authority has written off because it will not be able to recover those funds.

*No official
document exists
that indicates
TAFE's poor
financial status.*

Recommendations

Change in Statute

1.1 Provide that the Commissioner of Agriculture, rather than the Governor, appoint the TAFE Board of Directors.

This recommendation would remove the Governor's authority to appoint the members of the TAFE Board of Directors and give this authority to the Commissioner. The Commissioner of Agriculture is in a better position to be attuned to the needs of the state's agriculture industry. Enabling the Commissioner to appoint the members of the TAFE Board would also better ensure that the Board's vacancies are filled in a timely fashion.

Agency Response to 1.1

TDA supports the recommendation to allow the Commissioner of Agriculture to appoint the TAFE Board members. Promptly filling board vacancies ensures a complete and balanced board make up at all times. (Todd Staples, Commissioner – Texas Department of Agriculture)

Affected Agency Response to 1.1

The Office of the Governor agrees that the Commissioner of Agriculture should make appointments to the Texas Agricultural Finance Authority. (Teresa J. Spears, Director of Governmental Appointments – Office of the Governor)

For 1.1

None received.

Against 1.1

None received.

1.2 Remove the statutory requirement that TAFE receive a portion of the State's private activity bond authority.

This recommendation would remove from statute the requirement that TAFE receive a portion of the State's private activity bond authority. TAFE has never used its portion of these bonds, yet its authority must be reserved every year until June 1. Removing this statutory allocation would allow other state debt issuers to have access to this portion of the private activity bonds before June 1. TAFE would still be able to issue private activity bonds, but would have to compete with other state entities for access to the bonds that are not otherwise obligated.

1.3 Require TAFE to issue debt through the Texas Public Finance Authority.

This recommendation would mandate that TAFE issue general obligation bonds and commercial paper through the Texas Public Finance Authority. This agreement would be designed to resemble the agreement between the Public Finance Authority and the Military Preparedness Commission, which is outlined in Chapter 436 of the Government Code. As with that agreement, TAFE would continue to be responsible for administering the loan program to ensure full repayment of bonds and commercial paper and to pay costs incurred by the Public Finance Authority for its issuance of the debt and associated fees and expenses. This change would provide extra oversight for TAFE's debt issuance because the Public Finance Authority is required to receive legislative approval for each specific project for which the debt is to be issued and the estimated cost of the project or the maximum amount of bonded indebtedness that may be incurred by the issuance. Further, the Public Finance Authority's staff has expertise in the process for issuing state debt.

Management Action

1.4 TDA should develop a plan for servicing TAFE's outstanding debt and for meeting the financial needs of the state's agriculture industry.

TDA would produce a broad strategy for the future of TAFE and report it to the Sunset Commission before December 31, 2008, so that it may be considered in time for the 2009 legislative session. The report must include a comprehensive assessment of each of its financial assistance and rural development programs to determine if they are needed, and if so, how they can better serve the state's agriculture industry. The report should include recommendations for specific legislative changes based on expert analysis and understanding of current financial markets obtained from professional financial analysts outside the agency.

The report should define the strategic direction of the State's agricultural finance efforts, which should not be constrained by the statutory recommendations above. If, for example, TDA identifies an ongoing need for authority to issue its own debt instead of going through the Texas Public Finance Authority or to issue private activity bonds, it should communicate its findings and rationale in the report so that information, too, may be considered by the Sunset Commission as it considers the agency's suggestions.

The planning process should also include an assessment of yearly financial statements dating back to 1991, when TAFAs first began issuing commercial paper, to indicate how much of TAFAs' current debt is the accumulation of losses from defaulted loans. The agency may need to analyze loan documents and payment receipts to determine for which loans TAFAs has received repayment, which loans it has written off as uncollectible funds, and which nonperforming loans it has not yet written off. TDA should consult with the Texas Public Finance Authority, the Comptroller's Office, the State Auditor's Office, and other entities that either have substantial experience issuing state debt or can provide further insight into assessing TAFAs' financial standing.

TDA should then determine what measures will be needed to service the outstanding debt. The agency, for example, should determine whether removing statutory restrictions on the use of the funds within the Young Farmer Program would be an appropriate or sufficient method of servicing nonperforming debt from the Loan Guaranty Program or whether the agency will need an additional revenue source. The strategy should also state the terms of the commercial paper transactions, including maturity dates and payment procedures. TDA should consult with appropriate experts to assess the financial needs of the state's agriculture industry so that the agency may tailor existing financial assistance programs or any newly proposed programs to match the specific needs of the industry. TDA should also assess its staffing needs, especially if it plans to expand its programs and begin issuing debt again.

Agency Response to 1.2 to 1.4

The Texas Department of Agriculture (TDA) appreciates the Sunset Commission's diligent review of the Texas Agricultural Finance Authority and agrees the value of its programs can be greatly enhanced by statutory adjustments. TDA is currently pursuing an in-depth performance audit of TAFAs to be completed by August 2008. TDA and the TAFAs Board will use the information produced in the audit to develop a strategy for TAFAs' future. This strategy will be presented to the Sunset Commission before the 81st Legislative Session convenes. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 1.2 to 1.4

None received.

Against 1.2 to 1.4

None received.

Modification

1. Add a provision to raise the statutory limitation for loans in the Young Farmer Loan Guarantee Program from \$250,000 to \$500,000 for farmland and simplify the process to make it more transparent to lenders. (Randy Braden, President – St. Lawrence Cotton Growers Association, Garden City)

Fiscal Implication

These recommendations may have a fiscal impact to the State, but that impact could not be estimated at this time. The fiscal impact will depend on what TDA recommends as part of its plan for TAFA.

Commission Decision

June 2008: Adopted Recommendations 1.1 through 1.4.

January 2009: Adopted the following recommendations based on the strategic plan prepared by TDA for the Texas Agricultural Finance Authority, as required in Recommendation 1.4.

1. Expand the Texas Agricultural Finance Authority's Board of Directors from nine to 11 members. The additional two members would represent young farmers and their interests.
2. Eliminate the statutory requirement for the Board to give preference to value-added businesses as part of the Board's general purpose statement.
3. Require the Board to charge a minimum administrative fee not less than 1 percent of a guaranteed loan.
4. Create the Agricultural Loan Guaranty Program. Provide structure for the program, including:
 - ◆ tiered loan limits;
 - ◆ an interest rate reduction component not to exceed either 3 percent or an annual benefit of \$10,000;
 - ◆ a fixed interest rate for loans with terms extending beyond 12 months;
 - ◆ the authority to provide a certified lender's program; and
 - ◆ the authority to access the lesser of three-fourths or \$12,000,000 of the Young Farmer Account to fund the program.
5. Eliminate the Young Farmer Guarantee Program and replace it with two programs exclusively for young farmers: a grant program and an interest rate reduction program. Authorize the Board to administer a grant program. Create definitions for the new young farmer programs, including "Eligible Lending Institution," "Grant Application," and "Linked Deposit." Extend the eligibility age for the young farmer programs from 40 years of age to 45 years of age. Amend the Transportation Code to change the reference from the Young Farmer Loan Guarantee Account to the Texas Agricultural Fund Account. Include the following in the two newly constituted young farmer programs.
 - ◆ In the Young Farmer Interest Rate Reduction Program, provide for a linked deposit, capped interest rate, and an interest rate reduction component. Limit the Young Farmer Interest Rate Reduction Program to access one-fourth of the funds in the Young Farmer Account.

- ◆ In the Young Farmer Grant Program, provide for a minimum and maximum grant amount of \$5,000 to \$20,000 and a requirement for a minimum of one-to-one ratio of matching funds.
6. Rename the Linked Deposit Program as the Interest Rate Reduction Program. Expand the eligibility for the Interest Rate Reduction Program by eliminating the definition of “Eligible Borrower” and the statutory preference for specific projects. Raise the maximum loan amount eligible for participation in the Interest Rate Reduction Program from \$250,000 to \$500,000, regardless of the type of project.

Legislative Action

Senate Bill 1016 provides that the Commissioner of Agriculture, rather than the Governor, appoints the TAFAs Board of Directors. (Recommendation 1.1)

The bill adds two members representing young farmers to the TAFAs Board of Directors. (Commission Decision 1)

The bill removes the statutory requirement that TAFAs receive a portion of the State’s private activity bond authority. (Recommendation 1.2)

The bill requires TAFAs to issue debt through the Texas Public Finance Authority. (Recommendation 1.3)

The bill eliminates the statutory requirement for the Board to give preference to value-added businesses. (Commission Decision 2)

Senate Bill 1016 creates the Agricultural Loan Guarantee Program. The bill allows for tiered loan limits, an interest rate rebate component, fixed interest rates, and a certified lender’s program. The bill dissolves the Young Farmer Loan Guarantee Account and transfers money in that account to the Texas Agricultural Fund Account, and allows the TAFAs Board to access funds in the Agricultural Fund Account to guarantee loans under this program. The Legislature modified the provision specifying the amount that may be used to guarantee loans so that it may not exceed three-fourths of the amount in the Fund. The bill adds language specifying that the maximum interest rate reduction may not exceed either three percent or an amount resulting in \$10,000 in interest savings for the borrower for the year. The bill requires the TAFAs Board to charge an administrative fee on guaranteed loans to pay the administrative costs of the program. (Commission Decisions 3 and 4)

Senate Bill 1016 eliminates the Young Farmer Guarantee Program and replaces it with two programs exclusively for young farmers at least 18 years of age but younger than 46. The first, the Young Farmer Interest Rate Reduction Program, allows targeted farmers to receive reduced interest rates through private lenders, reflecting procedures of TAFAs’s existing interest rate reduction program. The second, the Young Farmer Grant Program, provides for young farmers to receive grant funding through a competitive process. The bill limits the amount of the grants and requires the grantee

to provide matching funds. Both programs would be funded through the Texas Agricultural Fund Account. The Legislature removed the provision limiting the Board to accessing one-fourth of the funds in the Texas Agricultural Fund Account. (Commission Decision 5)

Senate Bill 1016 renames the Linked Deposit Program as the Interest Rate Reduction Program removing specific statutory goals and objectives for the program to encourage commercial lending for enhanced production, processing, and marketing of certain agricultural crops. Instead, S.B. 1016 provides for the Board, through the program, to foster the creation and expansion of enterprises based on agriculture. The bill also removes language limiting loan amounts to \$250,000, making the maximum loan amount \$500,000. (Commission Decision 6).

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¹ State Auditor's Office, *An Audit Report on the Texas Agricultural Finance Authority*, report no. 99-034 (Austin, Texas, May 1999).

² Sunset Advisory Commission, *Staff Report to the Sunset Advisory Commission on the Texas Department of Agriculture* (Austin, Texas, December 1994), pp. 35-39.

³ State Auditor's Office, *A Management Control Audit of the Texas Department of Agriculture*, report no. 97-032 (Austin, Texas, January 1997); State Auditor's Office, *Review of the Texas Agricultural Finance Authority (TAF) Biennial Cost Benefit Study*, report 97-303 (Austin, Texas, January 1997); State Auditor's Office, *A Statutory Report on the Texas Agricultural Finance Authority*, report no. 98-016, (Austin, Texas, January 1998).

⁴ Texas House Bill 3050, 76th Legislature (1999).

⁵ Texas Government Code, sec. 436.153 – 154 and sec. 436.158 – 159.

⁶ Texas Agriculture Code, sec. 58.016.

Issue 2

The State Needs to Continue and Strengthen the Regulation of Prescribed Burn Managers.

Summary

Key Recommendations

- ◆ Provide for the Prescribed Burning Board to serve as an advisory committee to the Texas Department of Agriculture, and clarify the agency's responsibility for administering the program.
- ◆ Require all commercially operating prescribed burn managers to be certified by the Texas Department of Agriculture.
- ◆ Authorize the agency to impose sanctions on non-compliant licensees and unlicensed activities.
- ◆ Require the agency to develop a complaint process for taking corrective action for prescribed burning violations.
- ◆ Require the agency to renew prescribed burn manager certifications every two years.

Key Findings

- ◆ Texas has a continuing need to regulate persons responsible for conducting prescribed burns to protect landowners, the public, and the environment.
- ◆ Texas does not need a separate board to effectively regulate certified prescribed burn managers, but can do so more effectively within the existing regulatory structure of the Department.
- ◆ The statute does not provide for the adequate regulation of individuals who conduct prescribed burns in Texas.

Conclusion

Prescribed burning serves a need in Texas for controlling vegetative fuels that can contribute to wildfires and for managing land to maintain or restore ecosystems. Regulation of certified prescribed burn managers is intended to ensure that those responsible for conducting these burns have the training, experience, and financial responsibility to protect the interests of landowners. The regulations, however, do not require everyone conducting prescribed burns to be certified, but instead exist largely as an indemnity program for landowners to be shielded from liability for using certified prescribed burn managers because they carry the minimum required insurance coverage.

Because of the gap in coverage of these regulations and because of the inherent danger of setting fires in the environment, continued and stronger regulation of prescribed burning is needed. Short of this approach, the State should consider abolishing the program and allowing the insurance market to address the interests of landowners who hire someone to conduct a burn, rather than continuing the program without addressing its deficiencies.

Support

The Prescribed Burning Board certifies individuals to conduct prescribed burns at no liability to landowners who hire them.

- ◆ The Prescribed Burning Board was established by the Legislature as a separate board within TDA in 1999 to develop training standards, verify

experience, and ensure minimum insurance required for persons to be certified as prescribed burn managers. The accompanying textbox describes these certification requirements in more detail. The Board certifies prescribed burn managers to conduct prescribed burns within five regions across the state, depending on where the training occurred. Before conducting a burn, these certified burn managers must prepare a detailed burn plan that contains control techniques and contingency provisions and also provides for notifying proper officials. The Board also approves lead burn instructors to provide the required training for state certification as a prescribed burn manager and to promote the use of prescribed fire as a land management tool. The Board has certified 14 prescribed burn managers, and approved 11 lead burn instructors since its inception.

Certification Requirements for Prescribed Burn Managers

Training

Complete a Board-approved training course lasting from three to five days, including instruction in fire weather, fuel moisture, topography, fire effects, burn plans, and post-burn management.

Experience

Have proof of three years of prescribed burning experience in a particular region, with 30 days of prescribed burning, including five days as the person responsible for all aspects of the burn.

Insurance

Maintain minimum insurance of \$1 million in liability coverage, with a \$2 million aggregate limit in the policy period, and annually provide proof of insurance.

Continuing Education

Demonstrate 15 hours of continuing education spread over a five-year period.

The statute makes clear that landowners continue to have the right to conduct burns on their own property, but provides that landowners who hire certified prescribed burn managers for such burns would not be liable for damages associated with the burn. Another provision in state law exempts certified prescribed burn managers from county regulation during county burn bans, allowing certified individuals to conduct burns in such instances.¹

Landowners who hire certified prescribed burn managers to conduct burns are not liable for any resulting damages.

- ◆ The Board is composed of 13 burn industry representatives, six of whom are appointed by the Commissioner of Agriculture. The remaining seven members are representatives from other state agencies, including Texas Tech University, Texas Parks and Wildlife Department, Texas A&M University, Texas Commission on Environmental Quality, Texas Forest Service, and Texas State Soil and Water Conservation Board, and are appointed by their respective agency heads. See Appendix A for more information about the members of the Board.
- ◆ TDA administers the certified prescribed burn manager program, essentially verifying minimum insurance requirements. The Board Chair, with approval from the Board, has taken on the responsibility for ensuring that minimum training and experience requirements have

been met. The program has no budget for any full-time equivalent positions. Actual agency expenditures for the administration of the certified prescribed burn manager program were \$23,394 in fiscal year 2007. These expenditures included direct expenses, such as the salary for the program's part-time administrator, but did not include indirect costs, such as legal staff support. General Revenue funds most of the program because its licensing fee revenue, \$500 in fiscal year 2007, was not sufficient to support its operations.

Texas has a continuing need to regulate persons responsible for conducting prescribed burns to protect landowners, the public, and the environment.

- ◆ The use of prescribed fire is important to reduce the risk of wildfires by the controlled burning of vegetative fuels. This risk is of particular concern when a period of heavy rain, contributing to heavy vegetative growth, is followed by dry, windy conditions, as Texas often experiences. Prescribed fire is also an important land management tool to restore, maintain, or renew ecosystems. Prescribed burning differs from fires used for land clearing purposes, which generally serve to convert land from one use to another, especially for development purposes.
- ◆ Certification of prescribed burn managers helps ensure that they are competent to conduct a burn effectively, that smoke and fire do not get out of control for the safety of the public, and that local authorities receive proper notification of the burn occurrence. The insurance requirement serves to make landowners immune from suit for damages that may occur as a result of prescribed burning, providing an incentive for landowners to hire certified prescribed burn managers to conduct prescribed burns rather than doing so themselves.
- ◆ The State has recognized the need for certified prescribed burn managers in two ways. First, the Local Government Code provides an exception for certified prescribed burn managers to conduct burns during county burn bans.² These are times when the risk of wildfire is high, but also when burn managers suggest is the best time to conduct controlled burns. Some county officials have gone so far as to only allow certified prescribed burn managers to conduct controlled burns during burn bans. The second way that the State recognizes prescribed burning is in the rules of the Texas Commission on Environmental Quality that provide an exception for prescribed burns from its prohibition against outdoor burning.³

Texas does not need a separate board to effectively regulate certified prescribed burn managers, but can do so more effectively within the existing regulatory structure of the Department.

- ◆ Texas does not need a separate board to effectively regulate certified prescribed burn managers. The Board relied on an advisory committee



Prescribed fire is an important land management tool to restore, maintain, or renew ecosystems.



The Local Government Code allows certified prescribed burn managers to conduct burns during county burn bans.

to help it establish standards for prescribed burning when the program was established in 1999, and advisory committees are commonly used for other regulatory programs to provide expert advice on other matters under TDA's purview.



TDA staff perform important steps in the certification process without Board interaction.

- ◆ The full Board delegated some duties to its Chair that are more appropriately handled by TDA staff instead. Agency staff already perform important steps in the certification process without Board interaction, including verifying the minimum insurance requirement and issuing the certificate. TDA staff can assume additional administrative duties, such as reviewing applications for training and experience as is common for other TDA regulatory programs and for other licensing agencies in general. Such an approach would also ensure consistency in evaluating these applications and speed up the process by not having to wait for the Board to make these decisions.
- ◆ The certified prescribed burn manager program is appropriately placed within TDA, rather than at the State Fire Marshall's Office or the Texas Forest Service, because of the regulatory nature of the program and its application to agriculture. These other agencies do not have comparable activities or functions that would lend themselves to regulating certified prescribed burn managers. Also, their objectives related to fire are more in line with fire suppression activities.

The statute does not provide for the adequate regulation of individuals who conduct prescribed burns in Texas.

- ◆ Because the statute does not clearly define who can conduct prescribed burns, it does not serve the basic purpose behind the State's regulation, which is to ensure qualified practice of an activity that needs to be controlled. The statute establishes a process for certifying persons to conduct prescribed burns and requires a certified prescribed burn manager to be present when a prescribed burn is being conducted. It also provides for landowners to conduct burns on their own property and to assume the risk for any damage or injury resulting from the burn. In practice, landowners may also use the services of the ranch manager they employ to conduct burns on their land. If they use a certified prescribed burn manager, they are immune from suit if damage is caused by the burn.



Anyone can sell the service of a prescribed burn manager without the required training, experience, and insurance.

Although the statute requires a certified prescribed burn manager to be present at a prescribed burn, it does not expressly prohibit an uncertified person from conducting such burns in the State. TDA has interpreted the statute as not requiring that only a certified prescribed burn manager may conduct a prescribed burn. As a result, anyone can sell the service of a prescribed burn manager without the required training, experience, and insurance. The concern is not great when ranch managers conduct prescribed burns solely on land owned by their employer, and not as a commercial service on anyone else's land. The problem for landowners is

in distinguishing burn managers who are not certified from those who are, and thus benefiting from liability protection from potential damages.

While problems related to prescribed burns by unqualified individuals could not be quantified, the lack of definition in the statute and the inherent risk of setting fires in the environment indicate the need for further clarification. Not addressing this regulatory loophole would perpetuate a system that only hints at public protection. If steps are not taken to make prescribed burning regulations more like other state regulatory programs, the Legislature should consider abolishing the program and allowing the insurance market to protect the interests of landowners who hire someone to conduct a prescribed burn.

- ◆ The process for licensing certified prescribed burn managers is not adequate to maintain needed control over licensees and also to cover more of the costs of regulation. Currently, the five-year renewal period specified in statute does not allow the Board to ensure adequate oversight of practitioners. The Board's own policy provides for verifying required insurance coverage much more frequently – on an annual basis. While the regulation of burn managers is unlikely to pay the full costs of the program as is typical for other regulatory programs, the current \$50 fee for a five-year certification is low by any standard.
- ◆ The agency has no enforcement authority for taking action against certified prescribed burn managers who are negligent in conducting a burn or who fail to maintain insurance coverage required for certification. The statute contains no sanction authority common to state regulatory programs, including revocation, suspension, probation of suspended license, refusal to renew, administrative penalty, and reprimand. Statute also lacks authority for summary suspension in circumstances when fast enforcement action is needed. Without such a range of sanctions, the agency is unable to tailor enforcement to the nature and seriousness of the violations of the regulated individuals or to follow up with these individuals to see that they have complied with terms of the enforcement actions.
- ◆ The agency also lacks the ability to go after unlicensed activity, such as unqualified persons who represent themselves as certified prescribed burn managers. Without the authority to impose cease-and-desist orders or to pursue injunctive relief in court against persons who conduct burns without being certified, the agency cannot ensure that only qualified persons are conducting these burns.
- ◆ The statute has no provision for the agency to establish a complaint process to define how corrective action will be taken against a negligent certified prescribed burn manager. Without such a process, the agency cannot ensure appropriate and consistent action against violators of its prescribed burn regulations, and cannot inform the public as to processes for pursuing a complaint regarding prescribed burning.

*TDA has no
enforcement
authority
against negligent
prescribed burn
managers.*

The agency has no process for filing complaints, using a simple form that is easily available to interested parties and the public through means such as the agency's website. The agency does not have a process for conducting investigations, maintaining information about complaints, and keeping parties to the complaint informed as to its status. The agency also has no way to compile information about complaints, such as the basis of complaints, including nonjurisdictional complaints, to use as a management tool for the regulations and to understand matters of interest to the public.

Recommendations

Overall Agency Response to 2.1 to 2.5

TDA supports the continuation of this program and would like to raise some issues important to the Sunset staff report's recommendations. It is very difficult for individuals to obtain affordable insurance coverage for the purpose provided in this law. The insurance required is specialized and few insurance companies offer adequate policies. The current program is voluntary and intended to allow landowners the option to mitigate their liability by hiring a certified burn manager. Requiring all commercial burn managers to maintain the same insurance coverage as certified commercial burn managers will reduce the number of professional burns conducted. Reducing the availability of commercial burn managers may increase the number of burns conducted by less experienced, untrained property owners or reduce the number of prescribed burns conducted for fuel reduction, resulting in increased fire dangers.

The Sunset report underestimates the fiscal impact of the recommended changes. TDA does not currently have a full time employee assigned to this program. Additional resources will be necessary to manage program support, investigate non-compliance, implement enforcement actions and provide the extensive legal administrative support necessary for the program. The Board chair currently performs the complex analysis and approval of applicant's experience. It may be difficult for TDA to hire individuals with comparable experience and expertise. (Todd Staples, Commissioner – Texas Department of Agriculture)

Change in Statute

2.1 Provide for the Prescribed Burning Board to serve as an advisory committee to the Texas Department of Agriculture, and clarify the agency's responsibility for administering the program.

This recommendation would remove the Prescribed Burning Board as a separate entity subject to review by the Sunset Commission, and clarify its advisory role regarding the regulation of prescribed burning. The Board would be reconstituted as an advisory committee, limited to advising the Commissioner on prescribed burning standards, training curriculum, certification, training, minimum education, and professional experience standards for prescribed burn managers, and minimum insurance requirements. The advisory committee would have the same make-up and same members as the current Board, which includes representatives from each relevant government agency, as well as public members representing the prescribed burning industry, appointed by the Commissioner of Agriculture. The recommendation

would also provide for TDA staff to review applications for education, experience, and insurance requirements, and to make final certification approvals, without the need for separate Board approval.

For 2.1

None received.

Against 2.1

Sandra Rideout-Hanzak, Prescribed Burning Board Member and Assistant Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Carlton M. Britton, Former Prescribed Burning Board Member and Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Kirk Feuerbacher, Ranch Biologist – McFadden Enterprises Ltd., Victoria

Kirby Brown, Executive Vice President – Texas Wildlife Association and Chairman – Texas Outdoor Partners*, San Antonio

Jim Bergan, Ph.D., Director of Science and Stewardship – The Natural Conservancy of Texas, San Antonio

Jeff McSpadden, Jr., Vice President – Edwards Plateau Prescribed Burning Association, Marble Falls

Dr. M. M. (Mort) Kothmann – Texas A&M University, College Station

Jon Means, President – Texas and Southwestern Cattle Raisers Association, Fort Worth

Dusty Bruns, President – Hill Country Prescribed Burning Association, Kerrville

Jim Kenton, President – Cross Timbers Prescribed Burn Association and Director – Edwards Plateau Prescribed Burning Association, Jonesboro

Allen Ersch, President – Edwards Plateau Prescribed Burning Association, Fredericksburg and 16 members of that association including: Steve Olfers, Gillespie County Fire Marshall; George Cunningham; Charles G. Wilson; Austin Oldham; Christopher W. Rees; J. Leonard Hilliard; H.C. Olsen; and Virginia L. Sawin

Al L. Lindig and Tony Floerke, Directors – Blanco Prescribed Burning Association, Johnson City

* **Texas Outdoor Partners** is made up of the following organizations: Anglers Club of San Antonio; Audubon Texas; Austin Woods and Waters Club; Dallas Safari Club; Ducks Unlimited, Texas; Exotic Wildlife Association; Gulf Coast Chapter, Safari Club International; Houston Safari Club; Plateau Land and Wildlife Management; Quail Unlimited - Texas Chapter; Quality Deer Management Association; Recreational Fishing Alliance of Texas; Rocky Mountain Elk Foundation - Texas Chapter; Safari Club International, Austin Chapter; SCIF Austin Stables; S.M.A.R.T.; Texas Association of Bass Clubs; Texas Bighorn Society; Texas Black Bass Unlimited; Texas Chapter, National Wild Turkey Federation; Texas Chapter of The Nature Conservancy; Texas Chapter of The Wildlife Society; Texas Deer Association; Texas Dog Hunters Association, Inc.; Texas Gulf Coast Stewards; TexasHuntFish.Com; Texas Organization of Wildlife Management Associations; Texas Outdoor Council; Texas Sportsman's Association; and Texas Wildlife Association.

2.2 Require all commercially operating prescribed burn managers to be certified by the Texas Department of Agriculture.

This recommendation would require that all individuals who conduct prescribed burns for hire on a commercial basis to be certified by meeting statutory education, experience, and insurance requirements. This recommendation would not change the current exception for landowners to conduct prescribed burns on their own land, and does not concern ranch managers who conduct prescribed burning solely on land owned by their employer, but not as a commercial service on anyone else's land. It would not affect outdoor burning for land clearing as provided by the Texas Commission on Environmental Quality. Requiring the certification of all prescribed burn managers who conduct burns for hire would help ensure that everyone who is in the business of conducting controlled burns on another individual's land have the knowledge, experience, and financial responsibility to protect the land and the interests of the landowner.

For 2.2

Kirk Feuerbacher, Ranch Biologist – McFadden Enterprises Ltd., Victoria

Against 2.2

Sandra Rideout-Hanzak, Prescribed Burning Board Member and Assistant Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Carlton M. Britton, Former Prescribed Burning Board Member and Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Ray Prewett, President – Texas Citrus Mutual and Executive Vice President – Texas Vegetable Association, Mission

Kirby Brown, Executive Vice President – Texas Wildlife Association and Chairman – Texas Outdoor Partners, San Antonio

Jeff McSpadden, Jr., Vice President – Edwards Plateau Prescribed Burning Association, Marble Falls

Dr. M. M. (Mort) Kothmann – Texas A&M University, College Station

Dusty Bruns, President – Hill Country Prescribed Burning Association, Kerrville

Jim Kenton, President – Cross Timbers Prescribed Burn Association and Director – Edwards Plateau Prescribed Burning Association, Jonesboro

Allen Ersch, President – Edwards Plateau Prescribed Burning Association, Fredericksburg and 16 members of that association including: Steve Olfers, Gillespie County Fire Marshall; George Cunningham; Charles G. Wilson; Austin Oldham; Christopher W. Rees; J. Leonard Hilliard; H.C. Olsen; and Virginia L. Sawin

Al L. Lindig and Tony Floerke, Directors – Blanco Prescribed Burning Association, Johnson City

2.3 Authorize the agency to impose sanctions on non-compliant licensees and unlicensed activities.

This recommendation would give the agency the following enforcement authority over improper conduct associated with the prescribed burning profession.

- ◆ Authorize the agency to revoke or suspend a license, or probate a suspended license, refuse to renew, assess an administrative penalty, and impose a reprimand, as necessary.
- ◆ Authorize the agency to summarily suspend a license, issue cease-and-desist orders to stop the unlicensed practice of prescribed burning, and seek an injunction against persons holding themselves out as prescribed burn managers without a license.
- ◆ Require the agency to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.

The intent of this recommendation is to give the agency enforcement authority to investigate and dispose of complaints associated with non-compliant licensees and unlicensed activities. The recommendation does not require the agency to conduct routine inspections of every prescribed burn.

For 2.3

Kirby Brown, Executive Vice President – Texas Wildlife Association and Chairman – Texas Outdoor Partners, San Antonio

Against 2.3

Sandra Rideout-Hanzak, Prescribed Burning Board Member and Assistant Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Carlton M. Britton, Former Prescribed Burning Board Member and Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Jeff McSpadden, Jr., Vice President – Edwards Plateau Prescribed Burning Association, Marble Falls

Dr. M. M. (Mort) Kothmann – Texas A&M University, College Station

Dusty Bruns, President – Hill Country Prescribed Burning Association, Kerrville

Jim Kenton, President – Cross Timbers Prescribed Burn Association and Director – Edwards Plateau Prescribed Burning Association, Jonesboro

Allen Ersch, President – Edwards Plateau Prescribed Burning Association, Fredericksburg and 16 members of that association including: Steve Olfers, Gillespie County Fire Marshall; George Cunningham; Charles G. Wilson; Austin Oldham; Christopher W. Rees; J. Leonard Hilliard; H.C. Olsen; and Virginia L. Sawin

Al L. Lindig and Tony Floerke, Directors – Blanco Prescribed Burning Association, Johnson City

2.4 Require the agency to develop a complaint process for taking corrective action for prescribed burning violations.

This recommendation would ensure the agency has a process to ensure appropriate and consistent enforcement action regarding the regulation of prescribed burn managers.

- ◆ Require the agency to adopt procedures for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.
- ◆ Require the agency to develop a standard form for the public to make a complaint against a certified prescribed burn manager.
- ◆ Require the agency to maintain information on complaints so that all parties to a complaint are aware of its status, or agency procedures pertaining to a complaint.
- ◆ Direct the agency to develop a method for responding to and documenting non-jurisdictional complaints.

For 2.4

None received.

Against 2.4

Sandra Rideout-Hanzak, Prescribed Burning Board Member and Assistant Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Carlton M. Britton, Former Prescribed Burning Board Member and Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Jeff McSpadden, Jr., Vice President – Edwards Plateau Prescribed Burning Association, Marble Falls

Jim Kenton, President – Cross Timbers Prescribed Burn Association and Director – Edwards Plateau Prescribed Burning Association, Jonesboro

Allen Ersch, President – Edwards Plateau Prescribed Burning Association, Fredericksburg and 16 members of that association including: Steve Olfers, Gillespie County Fire Marshall; George Cunningham; Charles G. Wilson; Austin Oldham; Christopher W. Rees; J. Leonard Hilliard; H.C. Olsen; and Virginia L. Sawin

Al L. Lindig and Tony Floerke, Directors – Blanco Prescribed Burning Association, Johnson City

2.5 Require the agency to renew prescribed burn manager certifications every two years.

This recommendation would enable the agency to maintain better oversight of its licensees by subjecting them to more frequent checks for continuing education. It would also allow the agency to recover more of the administrative costs associated with administering the program.

For 2.5

None received.

Against 2.5

Sandra Rideout-Hanzak, Prescribed Burning Board Member and Assistant Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Carlton M. Britton, Former Prescribed Burning Board Member and Professor – Department of Natural Resources Management, Texas Tech University, Lubbock

Kirk Feuerbacher, Ranch Biologist – McFadden Enterprises Ltd., Victoria

Jim Bergan, Ph.D., Director of Science and Stewardship – The Natural Conservancy of Texas, San Antonio

Jeff McSpadden, Jr., Vice President – Edwards Plateau Prescribed Burning Association, Marble Falls

Jim Kenton, President – Cross Timbers Prescribed Burn Association and Director – Edwards Plateau Prescribed Burning Association, Jonesboro

Allen Ersch, President – Edwards Plateau Prescribed Burning Association, Fredericksburg and 16 members of that association including: Steve Olfers, Gillespie County Fire Marshall; George Cunningham; Charles G. Wilson; Austin Oldham; Christopher W. Rees; J. Leonard Hilliard; H.C. Olsen; and Virginia L. Sawin

Al L. Lindig and Tony Floerke, Directors – Blanco Prescribed Burning Association, Johnson City

Modifications to Issue 2

1. Continue the Prescribed Burning Board as semi-independent board, but remove its Sunset date. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)
2. Require all prescribed burn managers, including those who are not certified, to be properly trained before conducting burns. The Prescribed Burning Board would work with agricultural commodity groups, other interest groups, and the public to develop rules pertaining to the training requirements for the burn managers who are not certified. TDA would maintain a list of training opportunities and a list of trained prescribed burn managers, both those who are certified and those who are not, and make these lists easily accessible to the public. Organizations that provide prescribed burn training would be required to submit to TDA information on who completed and passed their training programs. The training requirement would not apply to landowners who conduct burns on their own land, but would apply to those conducting burns as part of a cooperative burn association or as a ranch manager, as well as commercially operating burn managers. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)

Modifications to Issue 2 (continued)

3. Change the title of “certified prescribed burn manager” to “certified and insured prescribed burn manager.” (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)
4. Require that all prescribed burns be reported to local fire department officials, local law enforcement officials, adjacent land owners, and the Texas Commission on Environmental Quality before the burn can take place. Authorize the Prescribed Burning Board to establish penalties for not reporting prescribed burns. Authorize the Prescribed Burning Board to establish penalties for persons who claim to be certified and insured, but are not or have allowed their training or insurance requirements to lapse. Local authorities who find such violations would be required to report them to the Prescribed Burning Board, which would then take the necessary enforcement action. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)
5. Require certified prescribed burn managers to provide proof on an annual basis of the validity of their insurance coverage. This requirement would ensure certified burn managers continue to meet the insurance requirements established by the Board. (Senator Glenn Hegar, Jr., Vice Chair – Sunset Advisory Commission)
6. Allow a certified prescribed burn manager to conduct a burn in a county in which a current Governor’s and/or Presidential Declaration of Emergency or Disaster is in effect, as long as that declaration does not expressly prohibit all outdoor burning. (Sunset staff, based on a request of Sunset Commission members)

For

Jim Bergan, Ph.D., Director of Science and Stewardship – The Natural Conservancy of Texas, San Antonio

Jon Means, President – Texas and Southwestern Cattle Raisers Association, Fort Worth

Against

None received.

7. Change the definition of “agricultural land” in Local Government Code, Section 352.081 (Regulation of Outdoor Burning) to match the definition of “agricultural land” in Natural Resources Code, Section 153.081 (Prescribed Burning Board enabling statute, Limitation of Owner Liability). (Jeff McSpadden, Jr., Vice President – Edwards Plateau Prescribed Burning Association, Marble Falls; Jim Kenton, President – Cross Timbers Prescribed Burn Association and Director – Edwards Plateau Prescribed Burning Association, Jonesboro)

Staff Comment: The term “agricultural land” is not used in Local Government Code, Section 352.081.

8. Allow a landowner the option to accept full liability or pass the liability to a certified prescribed burn manager if that burn manager is conducting a burn free of charge on the owner’s land. (Larry Belles, State Fire Manager – The Nature Conservancy of Texas, Nacogdoches; Jim Bergan, Ph.D., Director of Science and Stewardship – The Nature Conservancy of Texas, San Antonio)

Modifications to Issue 2 (continued)

9. Create a new class of license to allow ranchers to be certified prescribed burn managers for the purpose of burning on their own property during a county burn ban, without having to meet the insurance requirements of a commercial/for-hire certified prescribed burn manager. (Jon Means, President – Texas and Southwestern Cattle Raisers Association, Fort Worth; Dusty Bruns, President – Hill Country Prescribed Burning Association, Kerrville)

Fiscal Implication

Expanding the regulation of prescribed burning would have a fiscal impact to the State that would depend on the number of persons who become certified prescribed burn managers and how the agency approaches the implementation. The agency has said that as many as 100 new licensees could be added to the program based on a rough estimate of the number of people receiving prescribed burn training who would conduct burns on a for-hire basis. No assessment has been made, however, on how the cost of liability insurance would affect the number of persons who would actually become licensed.

Assuming that 100 new licensees are added to the program in the first couple of years after these requirements are enacted, TDA would likely need one additional program administrator to review applications and issue renewal certificates and one additional inspector to conduct complaint-based inspections. The cost of these two positions would be approximately \$100,000 per year. Because this new staff would assume some responsibility currently borne by existing TDA staff and because fee revenue would likely increase by requiring a two-year rather than a five-year renewal, the net impact would likely be somewhat less than \$100,000. However, the small number of licensees makes it unlikely that fee revenue will ever cover full program costs, requiring General Revenue to subsidize much of these additional costs associated with the expansion of the program.

The recommendation provides for TDA to conduct investigations associated with prescribed burning on a complaint basis, without the need to conduct routine inspections of every prescribed burn. If the agency wants to take a more aggressive enforcement approach to include more active enforcement activities, such as routine inspections, it would need to seek additional resources from the Legislature for this purpose.

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¹ Texas Local Government Code, sec. 352.081 (f) (2).

² Texas Local Government Code, Ch. 352.

³ Texas Administrative Code, Title 30, part 1, rule 111.211.

Commission Decision

Adopted Recommendations 2.3 through 2.5 and Modifications 1, 3, and 6.

Legislative Action

Senate Bill 1016 continues the Prescribed Burning Board as a semi-independent board, but removes its separate Sunset date and provides its review during the same period as TDA. (Modification 1)

The bill authorizes the agency to impose the same administrative sanctions, including administrative penalties, as TDA has in its general enforcement powers on non-compliant prescribed burn managers and unlicensed activities. (Recommendation 2.3)

The bill requires the agency to develop a complaint process for taking corrective action for prescribed burning violations. (Recommendation 2.4)

The bill requires the agency to renew prescribed burn manager certifications every two years. (Recommendation 2.5)

The bill changes the title of “certified prescribed burn manager” to “certified and insured prescribed burn manager.” (Modification 3)

The bill allows a certified prescribed burn manager to conduct a burn in a county in which a current Governor’s or Presidential Declaration of Emergency or Disaster is in effect, as long as that Declaration does not expressly prohibit all outdoor burning. (Modification 6)

Issue 3

Texas Does Not Need a Separate Stand-Alone Board to Conduct Binational Collaborative Agricultural Research.

Summary

Key Recommendations

- ◆ Abolish the Texas-Israel Exchange Fund, and give the Texas Department of Agriculture the discretion to seek funding for cooperative agricultural research as the agency sees fit.
- ◆ If TDA chooses to continue its relationship with BARD, the agency should request funding for binational agricultural research through its Legislative Appropriations Request and ensure the results of that research are clearly communicated to the public.

Key Findings

- ◆ While Texas benefits from this binational research effort, these benefits are not clearly visible to the Legislature, the agriculture industry, or the public.
- ◆ Texas does not need a separate board to oversee this competitive grant program.
- ◆ BARD has collaborative research partnerships with institutions throughout the United States, but none are similar to the TIE Fund Board.

Conclusion

The Texas-Israel Exchange Fund Board provides funding for agricultural research projects intended to be of mutual benefit to Texas and Israel. While the program is able to leverage state dollars to fund useful research for Texas agriculture, the funding for and results of these projects are not transparent to the Legislature, the agriculture industry, or the public. Sunset staff evaluated the structure of the Board and determined that the same functions could be provided by an advisory committee, rather than a semi-independent board. TDA would still be able to continue its partnership with Israel without the Texas-Israel Exchange Fund Board and could continue to seek funding for a binational agricultural research grant program, as long as it provides more transparency for the program.

Support

The Texas-Israel Exchange Fund Board provides funding for agricultural research projects that have a mutual benefit to Texas and Israel.

*Texas and Israel
share many
common interests
and challenges
with respect to
agriculture.*

- ◆ In 1985, TDA and Israel's Ministry of Agriculture signed a Memorandum of Agreement establishing the Texas-Israel Semi-Arid Partnership. The Legislature formalized the partnership in 1993, providing it with funding and an oversight body — the Texas-Israel Exchange (TIE) Fund Board. In starting this effort, the Legislature recognized that Texas and Israel share many common interests and challenges with respect to agriculture, such as semi-arid climates and rising demand for a limited supply of water. The Legislature authorized the TIE Fund Board to fund applied agricultural research related to production, processing, marketing, and agricultural services, with an emphasis on improving water, labor, and energy use in agriculture.
- ◆ With a biennial budget of \$500,000, the TIE Fund Board provides research grants to public and private entities in Texas that partner with Israeli researchers funded by the Binational Agricultural Research and Development Fund (BARD). BARD is an organization, based in Israel, created and funded jointly by the U.S. and Israeli governments. A Texas institution that receives a TIE Fund grant must provide a matching contribution; BARD then matches that sum total.
- ◆ The Board is composed of 12 members representing various interests. The Commissioner of Agriculture chairs the Board and appoints five of its members; three members represent the University of Texas, Texas A&M University, and Texas Tech University, and are appointed by the heads of those institutions; and the remaining three are non-voting, ex officio members representing the Comptroller, the Lieutenant Governor, and the Speaker of the House of Representatives. The Board does not have staff of its own, but relies on TDA for administrative support. See Appendix A for more information about the members of the Board.
- ◆ The grant cycle begins with TDA staff drafting a request for proposal, which defines the specific areas of research, subject to the review and approval of the TIE Fund Board. Once TDA receives the proposals, panels of scientists in both Texas and Israel, chosen by TDA and BARD respectively, evaluate and prioritize them. The recommendations of both panels are then forwarded to the Joint Advisory Committee, which consists of three members of the TIE Fund Board and three members from BARD, for further discussion and prioritization. The full TIE Fund Board and BARD review the prioritized list of research proposals and select the applicants to receive grant awards.

The Board reviews the progress of each research project twice a year to ensure it is meeting the terms of the grant agreement. For the 2004 grant cycle, the TIE Fund Board provided \$50,000 for each year of the

*The Board relies
on TDA for
administrative
support.*

three-year period to each of five projects. Appendix B includes a list of projects funded by the TIE Fund Board during the last two completed grant cycles in 2001 and 2004.

While Texas benefits from this binational research effort, these benefits are not clearly visible to the Legislature, the agriculture industry, or the public.

- ◆ The TIE Fund generates both commercial and diplomatic benefits for Texas agriculture. By leveraging state General Revenue dollars, the TIE Fund generates additional funding for agricultural research. Through the partnership with BARD, the TIE Fund quadruples the State's biennial appropriation of \$500,000 because the grant recipient matches the award and BARD matches the sum total. This funding helps Texas institutions fund agricultural research for which they may not otherwise be able to find financial assistance and has the potential to lead to new technology and methods that can help Texas agriculture increase efficiency and maximize returns on investment. Further, partnering with Israel creates goodwill with a close U.S. ally that could lead to opening markets for Texas agricultural products and additional collaborative relationships.
- ◆ Specific research benefits of projects funded through this program are not readily apparent. The Board has never evaluated the utility of the research it funds to determine whether the projects have had an impact on Texas agriculture. Because TDA dedicates all of the TIE Fund's \$500,000 biennial appropriation for research grants, the Board does not have the resources to evaluate these kinds of outcomes.

The rules governing the TIE Fund require grant applications to have a plan for dissemination of information gained from the project, but the request for proposals has no such requirement.¹ The request requires researchers to submit final reports, but neither these reports nor any other information regarding TIE Fund projects is available on TDA's website. While some of the research may have been published and publishing an investigative study in an academic journal is generally considered to be standard research protocol, none of the TIE research has been assembled and published in a publicly accessible manner. Further, TDA does not maintain a central repository for TIE Fund project reports. As a result, neither the public nor agricultural industries that may be able to use the research have access to this information.

- ◆ The decision to invest state funds in such an effort is not openly or clearly made. The Legislature has made an appropriation to the TIE Fund since 1993, even during the 2003 budget shortfall. While TIE funding was included as an exceptional item in TDA's last legislative appropriations request, it is generally included in the agency's \$28.9 million budget strategy for generating market opportunities, and not a specific line item in the budget. As a result, the decision to fund TIE may not be visible to policymakers or budget writers.

Through the partnership with Israel, the TIE Fund quadruples the State's biennial appropriation of \$500,000.

The Board does not evaluate the outcome of the research it funds.

An advisory committee and the Agriculture Commissioner could perform the Board's functions.

Texas does not need a separate board to oversee this competitive grant program.

- ◆ TDA staff perform the majority of tasks necessary to administer the TIE Fund grant program. TDA drafts the requests for proposals, conducts the first stage of proposal intake and evaluation, and assembles the scientist panels to review and prioritize the proposals. The agency also serves as the primary liaison between the TIE Fund Board and BARD. Since its members are all volunteers, the Board has limited resources to give to the grant process. As a result, the Board's main functions are to provide advice on the direction of the program and to approve TDA staff's decisions – functions that could be performed by an advisory committee and the Agriculture Commissioner.
- ◆ TDA has many other competitive grant programs that do not have separate boards. For some programs, such as the GO TEXAN Partner Program and the Wine Industry Development Fund, TDA relies on advisory committees to select grant recipients. Other programs, such as the Feral Hog Damage Abatement Program and the Home-Delivered Meals Grant Program, do not have a separate committee and agency staff choose grant recipients on their own.

BARD has collaborative research partnerships with institutions throughout the United States, but none are similar to the TIE Fund Board.

- ◆ BARD has working relationships with many other institutions in the United States. The bulk of BARD's budget originates from interest on a \$110 million endowment to which the U.S. and Israeli governments have contributed in equal amounts. With this endowment, BARD has funded more than 1,000 joint research projects and numerous fellowships, workshops, and other activities with a total funding to date of more than \$200 million. BARD mainly has agreements with individual institutions such as the Scripps Research Institute, National Institutes of Health, and Indiana University.
- ◆ The only other state government that BARD partners with is the State of Maryland. While Maryland contributes state funding to this partnership, like the State of Texas, its structure and purpose is different from that of the TIE Fund Board. The Maryland program comprises a grant commitment to one research institution, the University of Maryland Biotechnology Institute, specifically for aquaculture research. This commitment must be renewed every three years. In contrast, the TIE Fund Board administers a competitive grant program to fund research at multiple institutions throughout the state and does not have a specific renewal requirement, other than through the Sunset process.

Recommendations

Change in Statute

- 3.1 Abolish the Texas-Israel Exchange Fund, and give the Texas Department of Agriculture the discretion to seek funding for cooperative agricultural research as the agency sees fit.**

This recommendation removes the TIE Fund, the TIE Fund Board, and the Board's Sunset date from statute. In its place, the recommendation would add language authorizing TDA to partner with Israel to fund joint agricultural research. As a result, TDA would be able to continue its relationship with BARD and to request funding from the Legislature or seek other funding sources for binational agricultural research. Without the prescribed make-up of the TIE Fund Board in statute, TDA would be free to establish an advisory committee as it determines necessary to help it evaluate proposals, choose grant recipients, and monitor research projects.

Management Action

- 3.2 If TDA chooses to continue its relationship with BARD, the agency should request funding for binational agricultural research through its Legislative Appropriations Request and ensure the results of that research are clearly communicated to the public.**

If TDA elects to make a budget request for cooperative agricultural research, the agency would need to make the process more transparent by including the request as a specific line item in its Legislative Appropriations Request. In addition to funding for the research projects themselves, the agency should also request funding to conduct evaluations of past projects to determine if the results of that research have been of use to the State's agriculture industry. TDA should also produce brief written descriptions of the purpose and potential benefits of the research projects it funds and provide this and other information about the program on its website. By providing this information in a publicly accessible format, policymakers and budget writers will have a better idea of how state money is being spent and those in the agriculture industry can learn about research that may benefit them. The Legislature can also decide if it wants to continue funding such efforts, based on identified results and outcomes.

Agency Response to 3.1 and 3.2

TDA strongly supports the continuation of the Texas-Israel Exchange (TIE) Grant Program because of its significant mutual benefit to both the people of Texas and Israel. TDA agrees a separate stand-alone board is not necessary to oversee the TIE Program. The TIE Board provides important input and direction on this program and TDA would continue to depend on this expertise as an advisory committee.

TDA disagrees with the Sunset staff observation that "the decision to invest state funds in such an effort is not openly or clearly made." Although funding for this program is part of one of the agency's budget strategies as are many of TDA's other valuable programs, TIE funding has been specifically considered by the Legislature as recent as the 80th Legislative Session when funding was removed from and later restored into TDA's appropriation. TDA will continue to maintain its partnership with Israel and seek funding for this program through its Legislative Appropriations Request.

Agency Response to 3.1 and 3.2 (continued)

TDA agrees with the Sunset staff that research projects should constantly be reviewed for benefit analysis and is currently working to develop a user-friendly report outlining the results and commercial benefits of all funded research. TDA will maintain this report and make it available to the public on the agency’s website. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 3.1 and 3.2

Susan Combs, Comptroller of Public Accounts

Against 3.1 and 3.2

None received.

Fiscal Implication

Presuming TDA requests funding to continue conducting binational agricultural research with BARD and that the Legislature approves such a request, the cost to the State would continue to be \$500,000 for the biennium.

Commission Decision

Adopted Recommendations 3.1 and 3.2.

Legislative Action

Senate Bill 1016 abolishes the Texas-Israel Exchange Fund, and gives the Texas Department of Agriculture the discretion to seek funding for cooperative agricultural research as a program within the Department, as the agency sees fit. The bill allows TDA to establish an advisory committee to provide guidance and direction on activities conducted and money appropriated for cooperative agricultural research. (Recommendation 3.1)

.....
¹ Texas Administrative Code, Title 4, part 1, rule 17.104.

Issue 4

Update the Structure of Certain Boards and Advisory Committees to Streamline Their Operations.

Summary

Key Recommendations

- ◆ Require the Commissioner of Agriculture and the Presidents of Texas A&M University and Texas Tech University, rather than the Governor, to appoint the members of the State Seed and Plant Board.
- ◆ Require the Commissioner of Agriculture, rather than the Governor, to appoint the members of the Produce Recovery Fund Board.
- ◆ Combine TDA's two wine advisory committees into the Wine Industry Development and Marketing Advisory Committee.

Key Findings

- ◆ The Governor does not need to appoint the members of the State Seed and Plant or Produce Recovery Fund boards.
- ◆ The State does not need two separate advisory committees to promote the wine industry.

Conclusion

TDA receives input from a number of semi-independent boards and advisory committees. Three of these entities have members appointed by the Governor, two of which are discussed in this issue, and the other, the Texas Agricultural Finance Authority, is discussed in Issue 1 of this report. No constitutional or operational reason exists for the members of the State Seed and Plant Board or the Produce Recovery Fund Board to be appointed by the Governor; the Commissioner of Agriculture could appoint these members instead. In fact, the Commissioner may be able to fill vacancies on the boards more rapidly.

TDA receives input on the wine industry from two separate committees, causing over-representation of the wine industry in the agency's marketing efforts and duplication in agency staff efforts to support both committees. Combining the two wine advisory committees into an all-inclusive Wine Industry Development and Marketing Advisory Committee would be a more efficient use of agency resources and would better represent the wine industry as a whole.

Support

TDA receives input from a variety of boards and committees.

- ◆ The Commissioner of Agriculture receives input on various programs through semi-independent boards and advisory committees. The semi-independent boards have some rulemaking and decision-making authority, though the Commissioner generally retains final rulemaking authority. The advisory committees are purely advisory, making policy recommendations to the agency on their particular area of expertise, but they do not have rulemaking or decision-making authority. TDA considers these recommendations in the administration of its respective programs. All but one of these bodies were created in statute. The following provides information on four of these bodies.

- ◆ The Legislature created the State Board of Plant Breeder Examiners in 1923 and renamed it the State Seed and Plant Board in 1975. The Seed and Plant Board has six members, all appointed by the Governor with advice and consent of the Senate, as described in the accompanying textbox.¹ The Board's main duty is to establish standards for genetic purity and identity that seed and plants must meet to be certified. Seed producers and plant breeders seek certification for their products when they develop new varieties. The Board also licenses people who produce certified seed and breed certified plants. TDA provides support for the Board, including inspecting seed and plants for certification; the Board has no staff of its own.

State Seed and Plant Board Membership

- ◆ one individual from the Soils and Crop Sciences Department, Texas AgriLife Research (formerly the Texas Agricultural Experiment Station), Texas A&M University;
- ◆ one individual from the Department of Plant and Soil Sciences, Texas Tech University;
- ◆ one individual licensed as a certified seed or plant producer who is not employed by a public institution;
- ◆ one individual who sells certified seed or plants;
- ◆ one individual who is actively engaged in farming, but is not a producer or seller of certified seed or plants; and
- ◆ the head of the seed division of TDA.

The members of the Seed and Plant Board are also members of the Seed Arbitration Board. If farmers believe the certified seed they planted does not perform according to the label, they can file complaints with the Arbitration Board against the seed producer. The Board investigates these complaints, holds hearings, and makes decisions in favor of either the farmer or the producer. The Board heard one arbitration case in fiscal year 2007.

- ◆ The Legislature created the Produce Recovery Fund Board in 1977. The Board has five members, all appointed by the Governor, with advice and consent of the Senate, as detailed in the accompanying textbox.²

Produce Recovery Fund Board Membership

- ◆ two members must be producers;
- ◆ one member must be a produce packing facility; and
- ◆ two members must represent the general public.

Each member must reside in a different state senatorial district.

The Board's functions are to advise TDA on all matters relating to the Produce Recovery Fund, including budget and revenues; advise TDA on the adoption of rules relating to the payment of claims from the Fund; and conduct hearings on claims against the Fund. If a farmer sells produce to a produce packing

facility and that packer fails to pay the proper amount, the farmer can file a claim against the Fund to recover his loss. The Board hears those claims and makes decisions as to whether the farmer should receive money from the Fund. Produce packing facilities pay into the Fund through their licensing fees. The Board heard two claims against the Fund in fiscal year 2007.

- ◆ TDA receives input about the wine industry from two advisory committees. The Legislature created the Wine Marketing Advisory Committee in 2001. The Committee has seven members, all appointed by the Commissioner of Agriculture, as detailed in the accompanying textbox.³ The Committee provides guidance and direction to TDA on the implementation of the Texas Wine Marketing Assistance Program to promote the Texas wine industry. The members also give guidance to TDA staff on expenditures of marketing funds, totaling \$250,000 in fiscal year 2008.

The Legislature created the Wine Industry Development Advisory Committee in 2005. The Commissioner has appointed 19 members representing interests as shown in the accompanying textbox.⁴ The Committee provides advice to TDA staff regarding industry development, funding, research, educational programming, and marketing. The members also provide input on the distribution of funds, totaling \$1,749,000 in fiscal year 2008, mainly in the form of grants for research into grape growing and wine making in Texas.

Wine Marketing Advisory Committee Membership

- ◆ three members representing Texas wineries;
- ◆ one member representing a wine wholesaler;
- ◆ one member representing a wine package store;
- ◆ one TDA representative; and
- ◆ one representative of the Texas Alcoholic Beverage Commission.

Wine Industry Development Advisory Board Membership*

- ◆ wineries;
- ◆ grape growers;
- ◆ consumers; and
- ◆ researchers.

* State law does not require specific representation on this committee.

The Governor does not need to appoint the members of the State Seed and Plant or Produce Recovery Fund boards.

- ◆ No constitutional reason exists for the Governor to appoint members of either the Seed and Plant Board or the Produce Recovery Fund Board. While the Constitution requires the Governor to appoint the members of the Veterans' Land Board, Texas Water Development Board, and certain water districts, it does not have a similar requirement for either of these boards.
- ◆ While TDA receives input from five other semi-independent boards, the Governor appoints the members of only one of them, the Texas Agricultural Finance Authority Board, which is discussed in Issue 1 of this report. The members of the other semi-independent boards are appointed by the Agriculture Commissioner, are representatives of public institutions, or are elected by producers at the local level, as is the case for the Boll Weevil Eradication Foundation Board. The Agriculture Commissioner also appoints all members to TDA's nine advisory committees.

The Agriculture Commissioner appoints most members of TDA's boards and committees.

Further, TDA provides all staff and other administrative support for the Seed and Plant Board and the Produce Recovery Fund Board and carries out their policies. Neither board has its own staff.



The Governor does not need to appoint representatives of specific universities.

- ◆ Two members of the Seed and Plant Board represent specific institutions, Texas A&M University and Texas Tech University. On most boards with such representatives, the head of those institutions will make the appointment. The Seed and Plant Board statute also specifies the head of TDA's seed division as a member. As a specific individual employed by the Agriculture Commissioner, this Board position has no need for an appointing authority.
- ◆ The Governor's Appointment Office has not replaced members whose terms have expired. The terms of all members on both boards are expired, and most have been expired for a number of years. Of the six members of the Produce Recovery Fund Board, the terms of two expired in 2005, two expired in 2003, and two expired in 2001. Of the three members of the State Seed and Plant Board who do not represent public institutions, the term of one expired in 2007 and the other two expired in 2000. Each board is operating with one vacancy, which can cause difficulties when they need to make a quorum to conduct their business. In contrast, the Commissioner of Agriculture has closer ties to the agriculture industry and may be better able to identify replacements when a board member's term expires.

The State does not need two separate advisory committees to promote the wine industry.



A unified effort would enhance the promotion of the Texas wine industry.

- ◆ Developing a robust Texas wine industry requires the interests of researchers, growers, wineries, and sellers to work together – merging the scientific research of grape growers and winemakers with the promotional efforts of the wholesalers and package stores, all for the benefit of wine consumers. This point was illustrated at the December 2007 meeting of the Wine Marketing Advisory Committee and the February 2008 meeting of the Wine Industry Development Advisory Committee when both committees discussed the need for Texas to plant more grapes in general, but also more varieties and better quality grapes. The promotion of the Texas wine industry would be enhanced by bringing all these interests together in a unified effort.
- ◆ The two wine committees require extra effort by TDA staff to administer and harmonize the two efforts. TDA staff has to plan, organize, and attend the meetings; provide research; and prepare materials, including meeting minutes, for both committees. The staff's support of the two committees is duplicative as both committees ultimately have the same goals and desired outcomes. By unifying this effort, staff would be more productive in its work to promote the Texas wine industry.

Recommendations

Change in Statute

4.1 Require the Commissioner of Agriculture and the Presidents of Texas A&M University and Texas Tech University, rather than the Governor, to appoint the members of the State Seed and Plant Board.

Under this recommendation, the Governor would no longer appoint the members of the State Seed and Plant Board, and by extension the Seed Arbitration Board. The Senate would not provide its advice and consent of these members. Instead, the Commissioner of Agriculture would appoint the seed or plant producer and seller and the farmer. Likewise, the Presidents of Texas A&M University and Texas Tech University would appoint the representatives of their institutions. The head of TDA's seed division would also continue to serve on the Board, but would not need to be appointed.

Agency Response to 4.1

TDA supports the recommendation for the Commissioner and the Presidents of Texas A&M University and Texas Tech University to appoint the members of the State Seed and Plant Board. Allowing the Commissioner the authority to appoint members of this board will streamline the appointment process. TDA has an application and appointment process in place; therefore, the Commissioner has the tools to administer these duties effectively. (Todd Staples, Commissioner – Texas Department of Agriculture)

Affected Agency Response to 4.1

The Office of the Governor agrees that the Commissioner of Agriculture should make appointments to the State Seed and Plant Board. (Teresa J. Spears, Director of Governmental Appointments – Office of the Governor)

For 4.1

None received.

Against 4.1

None received.

4.2 Require the Commissioner of Agriculture, rather than the Governor, to appoint the members of the Produce Recovery Fund Board.

Under this recommendation, the Governor would no longer appoint the members of the Produce Recovery Fund Board, and they would not be subject to the advice and consent of the Senate. Instead, the Commissioner of Agriculture would appoint its members, according to the same membership qualifications already set in statute. However, each member would not have to reside in a different senatorial district. The number of members and who they represent would not change.

Agency Response to 4.2

TDA supports the recommendation for the Commissioner to appoint the members of the Produce Recovery Fund Board. Allowing the Commissioner the authority to appoint members of this board will streamline the appointment process. TDA has an application and appointment process in place; therefore, the Commissioner has the tools to administer these duties effectively. (Todd Staples, Commissioner – Texas Department of Agriculture)

Affected Agency Response to 4.2

The Office of the Governor agrees that the Commissioner of Agriculture should make appointments to the Produce Recovery Board. (Teresa J. Spears, Director of Governmental Appointments – Office of the Governor)

For 4.2

None received.

Against 4.2

None received.

4.3 Combine TDA's two wine advisory committees into the Wine Industry Development and Marketing Advisory Committee.

The new Wine Industry Development and Marketing Advisory Committee would encompass all wine industry stakeholders, including grape growers, wineries, wholesalers, retailers, package stores, researchers, and consumers, as well as representatives from TDA and the Texas Alcoholic Beverage Commission. The Commissioner would decide the size and specific representation of the committee and would make the appointments. The new committee would take on all responsibilities of the two current committees, including providing advice regarding development of the wine industry, research, educational programming, marketing, and the distribution of funds to support these efforts. The new committee would combine all of the expertise and functions of the existing committees with the benefit of a wider group of stakeholders in discussions of both wine marketing and research. TDA would also realize greater efficiency by only having to support one committee.

Agency Response to 4.3

The agency did not comment.

For 4.3

Dacota Haselwood, Executive Director – Texas Wine and Grape Growers Association, Grapevine
Cord Switzer, CEO – Fredericksburg Winery, Fredericksburg

Against 4.3

None received.

Fiscal Implication

These recommendations generally would not have a fiscal impact to the State. However, combining the two wine advisory committees would result in more efficient use of TDA staff by not having to support both committees.

Commission Decision

Adopted Recommendations 4.1 through 4.3.

Legislative Action

Senate Bill 1016 requires the Commissioner of Agriculture and the Presidents of Texas A&M University and Texas Tech University, rather than the Governor, to appoint the members of the State Seed and Plant Board. (Recommendation 4.1)

The bill requires the Commissioner of Agriculture, rather than the Governor, to appoint the members of the Produce Recovery Fund Board. (Recommendation 4.2)

The bill merges TDA's separate advisory committees for wine industry development and wine marketing assistance into a single Wine Industry Development and Marketing Advisory Committee. (Recommendation 4.3)

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¹ Texas Agriculture Code, sec. 62.002.

² Texas Agriculture Code, sec. 103.003.

³ Texas Alcoholic Beverage Code, sec. 110.003.

⁴ Texas Agriculture Code, sec. 50B.002.

Issue 5

TDA Has No Formal Rules Governing How It Administers and Enforces the Texas Public School Nutrition Policy.

Summary

Key Recommendation

- ◆ The Texas Department of Agriculture should develop rules to administer and enforce the Texas Public School Nutrition Policy.

Key Findings

- ◆ No formal rules govern the administration and enforcement of the state nutrition policy to inform interested stakeholders of important processes.
- ◆ The rulemaking process would assist the agency in more effectively administering the state nutrition policy.

Conclusion

Under its authority to administer federal nutrition programs, TDA sets and enforces the Texas Public School Nutrition Policy to improve the nutritional value of school lunches. However, TDA has no rules governing how it implements the policy or disseminates information to school districts and other stakeholders on policy requirements or updates. As a result, some stakeholders may not be aware of certain processes TDA uses for administering and enforcing the nutrition policy.

Sunset staff found that adopting rules for the Texas Public School Nutrition Policy would ensure fair and consistent administration and enforcement of the policy. Rules would also provide for some continuity in the policy whenever a new Commissioner takes office.

Support

TDA's Texas Public School Nutrition Policy reflects the State's interest in having the agency oversee school lunch programs in Texas.

- ◆ The State has established clear intent for TDA to oversee the school lunch program in Texas. Governor Rick Perry first established this intent in 2003 when he asked the U.S. Department of Agriculture (USDA) to transfer responsibility for the National School Lunch Program from the Texas Education Agency to TDA. The Program is funded by USDA and enables schools to provide free or reduced-cost meals to income-eligible public school children. Under this federal authority, TDA in 2004 implemented the Texas Public School Nutrition Policy, imposing additional

Highlights of the Texas Public School Nutrition Policy

- ◆ Schools cannot serve or sell foods of minimal nutritional value, such as soda water, water ices, chewing gum, and certain candies within certain time constraints.
- ◆ Access to vending machines may be restricted. Food and drinks in vending machines must meet nutrition guidelines.
- ◆ All foods must meet guidelines for fat and saturated fat content.
- ◆ Deep-fat frying is prohibited on-site.
- ◆ The portion size of certain foods is restricted, including French fries, chips, cookies, ice cream, and whole milk.
- ◆ Fruits and vegetables, preferably fresh, must be offered daily.
- ◆ Exemptions from the nutrition policy are allowed, but only under specific circumstances. For example, foods otherwise restricted by the policy are permitted at elementary classroom birthday parties. Each individual school is allowed up to three school-wide events per school year at which they are exempted from the policy. However, these events must be pre-approved by campus officials.

requirements on public schools participating in the National School Lunch Program to improve the nutritional value of meals to prevent obesity and related diseases in school children. In 2005, the Legislature first appropriated funds to TDA for its new food and nutrition program. In 2007, the Legislature cemented TDA's responsibility in this area by transferring the remaining USDA-funded meal programs from the Health and Human Services Commission for private and charter schools and for child and adult day care and other facilities.

The Texas Public School Nutrition Policy goes beyond federal requirements for the National School Lunch Program in that the policy defines stricter nutritional guidelines, restricts certain foods from elementary, middle, and high schools, and sets a schedule dictating when new requirements must be implemented. The policy is comprehensive because it covers all food in the school environment, including meals, vending machines, school stores, fundraisers, and parties. The accompanying textbox, *Highlights of the Texas Public School Nutrition Policy*, summarizes the key elements of the State's policy.

- ◆ TDA penalizes schools for violating the nutrition policy by disallowing the reimbursements they receive from USDA for the meals they serve under the National School Lunch Program. TDA reduces the school's next reimbursement by an amount equal to the cost of the meals provided during the week that the violation occurred. In cases involving more severe violations, TDA may disallow up to a full month's worth of meals. TDA took 26 enforcement actions against Texas school districts during

the 2006–2007 school year for policy violations. In all cases, TDA requires schools to agree to a corrective action plan, which the agency monitors to ensure continued compliance.

No formal rules govern the administration and enforcement of the state nutrition policy to inform interested stakeholders of important processes.

- ◆ When TDA implemented the Texas Public School Nutrition Policy in 2004, it did so under the authority of the federal regulations that allow states to impose additional requirements for participation in the National School Lunch Program. Nothing in Texas law addresses the State’s public school nutrition policy, and TDA has not adopted rules to layout specific provisions of the policy. In formulating the policy, former Agriculture Commissioner Susan Combs sought input from a variety of stakeholders and continued working with stakeholders to phase in the implementation of the policy.

Commissioner Todd Staples has continued this effort with the creation of the Healthy Students = Healthy Families Advisory Committee, which brings together representatives of parent organizations, school districts, regional education service centers, and other state agencies with child health responsibilities to provide input on needed changes to the policy. While these outreach efforts serve the important purpose of receiving public input in revising and refining the nutritional policy, they are not a substitute for the formal notification, posting, and comment processes required through rulemaking. Without a broader approach, TDA may have difficulty making changes to the policy in a way that includes everyone who is affected and needs to know. Also, TDA may lack a consistent approach to communicating those changes to affected parties.

- ◆ Although TDA has certain processes regarding compliance and enforcement of the nutrition policy outlined in a reference manual for school district staff and child nutrition professionals, this manual leaves out some important processes. For instance, the manual provides a detailed explanation of the process by which schools are reviewed by TDA, but it does not explain the process for schools to appeal when TDA finds a violation.

This manual is also a reference tool maintained at the district level and on TDA’s website under a special section of information for child nutrition professionals, but it is not a document written for a wider audience of stakeholders and the public. While TDA makes other efforts to distribute various informational documents to schools, regional education service centers, and stakeholders, these methods of communication cannot ensure all interested and affected parties receive important information regarding the nutrition policy or changes to the policy.

Nothing in Texas law addresses the State’s public school nutrition policy.

The reference manual for the nutrition policy does not explain how schools can appeal a TDA violation.

The rulemaking process would assist the agency in more effectively administering the state nutrition policy.

- ◆ The State's rulemaking process allows stakeholders to have input in developing and proposing government policies and procedures, and provides for public notification and comment on those proposals. Rulemaking formalizes an agency's process for incorporating stakeholder input and ensures all stakeholders have access to that process.
- ◆ Rulemaking leaves an agency much less vulnerable to challenge in certain instances where school districts or other stakeholders disagree with TDA's enforcement process. Generally, when an agency makes a decision that can have a significant impact on stakeholders, the public, vendors, or contractors, especially when giving or withholding money is involved, the agency can better defend its decision if it relies on authority from rule rather than internal policy. Without rules, affected parties could also challenge an agency on the grounds the agency has no authority to take an enforcement action.
- ◆ Adopting the State's nutrition policy in rule would ensure fair and consistent implementation and enforcement of the policy. The rulemaking process would also ensure that TDA has a transparent process for amending the policy, such as requiring the agency to publicly propose rule changes. Placing formal compliance and enforcement procedures in rule would help school districts understand how TDA ensures compliance and what happens if the agency finds a violation. Finally, by implementing rules, the agency can ensure continuity of efforts in the requirements of the policy and how it is administered with each new Commissioner of Agriculture who takes office.

Rules would ensure continuity in how each new Commissioner implements the nutrition policy.

Recommendation

Management Action

5.1 The Texas Department of Agriculture should develop rules to administer and enforce the Texas Public School Nutrition Policy.

TDA should formalize its existing procedures governing the Texas Public School Nutrition Policy through the rulemaking process. Rules should include the following components:

- ◆ the nutritional guidelines;
- ◆ the implementation schedule;
- ◆ the compliance process;
- ◆ the enforcement process, including how to appeal a sanction; and
- ◆ any other processes TDA uses to administer the policy.

Formalizing the agency's administration of the State's nutrition policy would standardize the way TDA implements the policy, ensure fairness in getting stakeholder input, allow for public notification and comment, and make the enforcement and appeals processes consistent and transparent to school districts and all other interested parties.

Agency Response to 5.1

TDA supports the recommendation to develop rules explaining the administration and enforcement procedures of the Texas Public School Nutrition Policy. Formalized rules will assist TDA in clarifying compliance, disallowance and appeal processes. This will ensure clear guidance is provided to school districts and affected parties through traditional state procedural processes. TDA is preparing a uniform appeal process and procedural rules for TDA's food and nutrition programs for publication in the *Texas Register*. Additionally, the Administrators' Reference Manual maintained by TDA will be updated to make reference to the Food and Nutrition Division's uniform appeal process, which, as noted above, will be adopted by rule. This reference manual is intended to be a reference source for program administrators and will continue to be made publicly available at both the state and school district level. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 5.1

Julie A. Shields, Assistant Director of Governmental Relations – Texas Association of School Boards, Austin

Against 5.1

Michelle Smith, Chair – Partnership for a Healthy Texas, Austin

Patricia Mouser, Chair – Texas Action for Healthy Kids, Midland

Veronica De La Garza, Advocacy Director – South Central Region, American Diabetes Association, Austin

Victor H. Gonzalez, M.D., Chair – Texas Diabetes Council, Austin

Carey Dabney, Healthy Lifestyles Consultant – Texas PTA, Austin

Modification

1. If the State imposes nutrition requirements that go beyond federal nutrition requirements, the State should provide funding to school districts to meet those more stringent requirements. (Rachelle Sherrin, President – Texas Association of School Nutrition, Carrollton)

Fiscal Implication

TDA should be able to cover costs associated with rulemaking, such as staff time needed to hold hearings, through its existing budget.

Commission Decision



Adopted Recommendation 5.1.

Legislative Action



No action needed.

Issue 6

TDA's Regulatory Framework Needs Adjustment to Reflect the Current Need for Oversight and Trends in Certain Industries.

Summary

Key Recommendations

- ◆ Eliminate certification of rose graders.
- ◆ Eliminate registration of cash dealers in the handling and marketing of perishable commodities program.
- ◆ Remove the requirement for TDA to establish piece rates for agricultural commodities.
- ◆ Eliminate registration of cooperative marketing associations.
- ◆ Change the regulatory structure of the public weigher program such that businesses, rather than individuals, would be registered.
- ◆ Remove certain statutory claim limitations and raise others for the Produce Recovery Fund.

Key Findings

- ◆ No clear public need exists for continued regulation of certain activities.
- ◆ Requirements for other regulatory programs no longer reflect industry practices.

Conclusion

TDA's regulation of certain activities does not provide any needed public protection. Regulation of these programs has not uncovered any significant problems and has resulted in very few complaints from the public, none of which have led to any type of enforcement action. As such, these programs do not serve any public safety or consumer protection purpose.

Similarly, other regulatory programs no longer reflect current practices of their respective industries. TDA is statutorily limited from adapting these programs to meet new industry practices. Eliminating or adapting these programs would allow TDA to focus its resources on other regulatory programs that protect the public.

Support

TDA regulates a variety of businesses and activities for the given purpose of protecting the public or Texas agricultural interests.

- ◆ TDA regulates many businesses and activities, including weights and measures, egg quality, grain warehouses, handling and marketing of perishable commodities (HMPC), plant quality, aquaculture, and cooperative marketing associations. Within some of these larger programs are smaller regulatory programs, such as certification of rose graders, public weighers, and registration of those who handle and market perishable commodities on a cash basis. In fiscal year 2007, TDA licensed more than 130,000 businesses, persons, or other entities.
- ◆ TDA activities range from checking the accuracy of gas pumps to certifying plants are free from disease to ensuring financial solvency of grain warehouses. These regulated activities are designed to protect the public or respective agricultural industries. For example, regulation of weight and measure devices, such as gas pumps, ensures that members of the public receive the correct amount of a product that they pay for. Regulation of pesticides ensures proper application of pesticides to prevent misuse issues that can potentially be harmful to human health. Grain warehouse regulation is designed to prevent fraud in the grain industry through inspection of the financial and structural conditions of grain warehouses.

No clear public need exists for continued regulation of certain activities.

- ◆ TDA's regulation of rose grading, HMPC cash dealers, and cooperative marketing associations, as well as the establishment of piece rates for the harvest of agricultural commodities is not necessary to protect the public. No significant problems have been uncovered or addressed through years of inspections and investigation of the rare complaint that has been filed in these areas. Further, these activities have never been subject to enforcement action by TDA, indicating the diminished need for the State's sanction of these activities. The following material provides more specific information about each program.
- ◆ **Rose Grading.** TDA issues a certificate of authority to individuals that grade roses according to rose quality standards specified in the Agriculture Code.¹ All rose processing plants must employ a certified rose grader, as well as have a nursery/floral certificate from TDA. The agency inspects and enforces rose grading standards during nursery/floral inspections. If TDA inspectors find misgraded or ungraded roses, inspectors may place a stop-sale order on those roses.

TDA does not require individuals to meet any standards to obtain a certificate of authority to grade roses, and TDA does not inspect the work

TDA licenses more than 130,000 businesses, persons, and other entities.

Some of TDA's regulatory programs are not necessary to protect the public.

of individual rose graders. TDA has no record of taking enforcement action or receiving complaints related to the work of an individual rose grader. In fiscal year 2007, TDA registered seven persons to grade roses. No other plant is inspected for grade quality.

- ◆ **Piece Rates.** The Texas Labor Code requires the Commissioner of Agriculture to establish a piece rate for each agricultural commodity commercially produced in the state.² Piece rates ensure that individuals who hand-harvest agricultural commodities receive at least the minimum wage for their work. Establishing a piece rate requires observing workers to determine how many pieces of the commodity they pick per hour, on average. The Commissioner of Agriculture must determine new piece rates anytime a substantial change in conditions occurs and provide new piece rates to the Texas Workforce Commission (TWC). TDA publishes the piece rates in the Texas Register.

Employees claiming their employers are not paying the appropriate piece rate may file a claim with TWC or the U.S. Department of Labor. Field inspectors from the Department of Labor investigate and enforce minimum standards for workers regarding wages, housing, transportation, and health and safety. The inspectors occasionally come across employers paying piece rates that are not equivalent to the federal minimum wage. In these cases, federal inspectors survey workers to establish the piece rate for that commodity and issue the employer a notice of violation.

TDA has never had anyone contest, complain, or comment on their established piece rates. Similarly, TWC, the state agency responsible for enforcing piece rates, has no record of ever receiving a complaint.

- ◆ **HMPC Cash Dealers.** TDA licenses individuals who purchase, pack, or sell perishable commodities, or produce, from growers. These individuals fall into two categories: those who purchase produce on credit, called general licensees; and those who pay in cash before or at the time of purchase, called cash dealers.³ TDA does not require any standards to be met for registration as either a general licensee or cash dealer. The program works like a simple registration program that TDA uses to keep track of produce packers in case growers are not paid for their produce. Because perishable commodities only hold their value for a limited time before spoiling, the value at the time of the original sale cannot be returned to producers. Typically, cash dealers sell produce at flea markets or on the side of the road. Since cash dealers pay cash before taking the produce, they do not pose the risk of nonpayment that HMPC regulation is designed to prevent. TDA, however, still inspects cash dealers, if only to see their license, even though it is unnecessary to protect growers under the program.
- ◆ **Cooperative Marketing Associations.** TDA began regulating cooperative marketing associations in 1979. These associations are member-owned organizations, similar to non-profits, that come together for the purpose

*The Texas
Workforce
Commission and
U.S. Department
of Labor handle
complaints about
minimum wage
violations.*

*TDA inspects
cash dealers
even though it is
unnecessary to
protect growers.*

*Statute limits
TDA's ability
to adapt its
regulatory
programs to meet
new industry
practices.*

of marketing an item. In fiscal year 2007, TDA registered 212 cooperative marketing associations. TDA maintains a database of all associations and asks for annual updates of financial information. TDA does not use this information for any purpose and has questioned the need for its continued collection. TDA has never received any complaints related to cooperative marketing associations and has never taken enforcement action against an association.

Requirements for other regulatory programs no longer reflect industry practices.

- ◆ Other regulatory areas, such as public weighers and the Produce Recovery Fund, no longer reflect current practices of their respective industries. Statutory limitations prevent the agency from adapting to meet new industry practices so that the programs can continue to meet the objectives of the regulation.
- ◆ **Public Weighers.** TDA appoints public weighers, authorizing them to certify the official weight of a commodity. Statute provides for county weighers, who must obtain a \$2,500 bond and may only certify weight within their county, and state weighers, who must obtain a \$10,000 bond and may certify weight anywhere in the state.⁴ Bonding requirements allow someone to claim on the bond if a public weigher misrepresents a weight. Statute also provides that counties may elect a public weigher, although an election has never taken place.

Most public weighers work for companies that need official weights for business purposes and use their public weigher certification as part of their job duties. Businesses typically certify weights for their commodities, such as rock or metal shipments, usually as part of a contractual relationship. Little need exists for public weighers to serve the public. In most cases, companies pay for their employee's bond and registration costs. TDA has no record of receiving a complaint or taking enforcement action on a public weigher certificate, and it has no information that anyone has ever claimed on a public weigher bond.

Changing the licensing program to license public weighers at the business level would remove the registration and bonding requirements from the individual and place them on the company, which more appropriately bears the responsibility for accurate weight certificates.

- ◆ **Produce Recovery Fund.** The Produce Recovery Fund was designed to indemnify producers who are not paid by packers purchasing produce. Statutory limitations, however, may keep producers from being adequately compensated for lost produce. Instead of bonding requirements, the program requires those who handle or market perishable commodities on a credit basis to pay a license fee and a fee to the Produce Recovery Fund for reimbursing producers who do not get paid by a licensee.

*Little need
exists for public
weighers to serve
the public.*

Statute prescribes caps on claims and awards because of initial concern regarding depletion of the Produce Recovery Fund, which currently has approximately \$1.5 million. Statute caps produce loss awards at \$35,000.⁵ Recently filed claims, however, have been as high as \$279,126, although that claim has not been validated. The Legislature has not raised the cap on the Fund in eight years, when the cap was raised from \$20,000 to \$35,000. In the last three years, 18 percent of filed claims have been for more than \$35,000. Raising the claim cap for the Fund would account for inflation and better reflect price and sale quantities of today's market.

The Fund also limits award amounts to all of the first \$2,000 and only 70 percent of the claim above \$2,000. Thus, a producer is only paid a portion, not the full amount, of the claim award, up to the claim cap. Further, claims against any single licensee cannot exceed \$85,000 in any one calendar year.⁶ If multiple producers file claims against the same licensee, they may not all be paid if their claims total more than \$85,000. Eliminating these limitations would allow the Fund to reimburse growers more accurately and fairly for lost produce, up to the claim cap.

*The Legislature
has not raised
the cap on
the Produce
Recovery Fund
in eight years.*

Recommendations

Overall Agency Response to 6.1 to 6.6

TDA supports each of the key recommendations listed in Issue 6 of Sunset's report. Agency staff has been reviewing these program areas and has arrived at similar recommendations to update program operations and build efficiencies. (Todd Staples, Commissioner – Texas Department of Agriculture)

Change in Statute

6.1 Eliminate certification of rose graders.

Under this recommendation, individuals who grade roses would no longer be required to register with TDA. Rose grading standards would remain in law and TDA would continue to enforce rose grading standards during nursery/floral inspections.

For 6.1

Jim Reaves, Director of Legislative and Regulatory Affairs – Texas Nursery and Landscape Association, Austin

Against 6.1

None received.

6.2 Eliminate registration of cash dealers in the handling and marketing of perishable commodities program.

This recommendation would eliminate the requirement that cash dealers who handle or market perishable commodities register with TDA. General licensees, who pay credit for perishable commodities, would still be required to register with TDA and pay into the Produce Recovery Fund.

For 6.2

None received.

Against 6.2

None received.

6.3 Remove the requirement for TDA to establish piece rates for agricultural commodities.

This recommendation would remove the requirement in the Texas Labor Code that the Commissioner of Agriculture establish and update piece rates for each agricultural commodity commercially produced in the state. This would also remove all statutory language requiring the Commissioner of Agriculture to submit that information to the Texas Workforce Commission as well as provisions relating to an appeals process to contest proposed piece rates.

For 6.3

None received.

Against 6.3

None received.

6.4 Eliminate registration of cooperative marketing associations.

Under this recommendation, cooperative marketing associations would no longer need to register with TDA or provide financial information associated with that registration.

For 6.4

None received.

Against 6.4

None received.

6.5 Change the regulatory structure of the public weigher program such that businesses, rather than an individuals, would be registered.

This recommendation would adapt the public weigher program to place bonding and other requirements on businesses, rather than individuals. This change would also eliminate the distinction between state

and county weighers and remove the process for electing a county public weigher. TDA would establish rules governing bond requirements and fees.

For 6.5

None received.

Against 6.5

None received.

6.6 Remove certain statutory claim limitations and raise others for the Produce Recovery Fund.

This recommendation would increase the claim cap on the Produce Recovery Fund from \$35,000 to \$50,000 and remove statutory language that limits claim awards to all of the first \$2,000 and 70 percent of the rest of the claim. Claimants would be eligible to receive the full value of their validated claim, up to the amount of the claim cap. This recommendation would also remove the \$85,000 cap on the amount of claims against any single license holder in a single year.

For 6.6

None received.

Against 6.6

None received.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. Elimination of rose grader, cooperative marketing association, and HMPC cash dealer registration, would result in an aggregate loss to General Revenue of less than \$20,000. This amount would be offset by a reduction in TDA staff time and resources no longer dedicated to processing those licenses and registrations. Removing the requirement for the Commissioner of Agriculture to establish piece rates will have no fiscal implication because TDA does not regularly perform this activity.

The changes to the public weigher program would have no fiscal impact, as TDA would set business weigher fees at a level that would offset any loss in revenue from individual weigher fees. Any fiscal impact to the Produce Recovery Fund from adjusting payout limits would depend on the number and dollar amount of claims filed, which cannot be determined.

Commission Decision

Adopted Recommendations 6.1 through 6.6.

Legislative Action

Senate Bill 1016 eliminates the certification of rose graders. (Recommendation 6.1)

The bill exempts cash dealers from the requirement to register with TDA in the handling and marketing of perishable commodities program. (Recommendation 6.2)

The bill removes the requirement for TDA to establish piece rates for agricultural commodities. (Recommendation 6.3)

The bill removes the requirement that cooperative marketing associations register or file articles of incorporation with TDA. (Recommendation 6.4)

The bill changes the regulatory structure of the public weigher program such that businesses, rather than persons who are elected or appointed, will be registered. The bill removes separate references to state, county, appointed, and deputy public weighers, and removes the process for electing a county public weigher. (Recommendation 6.5)

The bill raises the limit for claims under the Produce Recovery Fund from \$35,000 to \$50,000 and removes other statutory claim limitations. (Recommendation 6.6)

The Legislature added several provisions to S.B. 1016 to update various other regulatory practices at TDA. The bill makes the commercial use of citrus budwood that is not certified or does not come from a designated foundation grove a criminal offense and subject to administrative penalties. The bill removes specific requirements for the expiration and reestablishment of emergency quarantines and instead requires TDA to follow the emergency rulemaking procedures in the Administrative Procedure Act when establishing an emergency quarantine. The bill allows TDA to establish a Mexican Fruit Fly quarantine without a proclamation from the Governor.

¹ Texas Agriculture Code, sec. 121.004.

² Texas Labor Code, sec. 62.103.

³ Texas Agriculture Code, sec. 101.004(b).

⁴ Texas Agriculture Code, sec. 13.252.

⁵ Texas Agriculture Code, sec. 103.008(b).

⁶ Texas Agriculture Code, sec. 103.008.

Issue 7

Key Elements of TDA's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Summary

Key Recommendations

- ◆ Standardize licensing functions by requiring TDA to create test admission and administration procedures and evaluate test questions, and by allowing the agency to charge fees for duplicate licenses and more effectively stagger license renewals.
- ◆ Improve TDA's ability to protect the public by granting clear inspection authority and cease-and-desist authority, raising administrative penalties, and requiring the agency to create complaint procedures, use informal settlement conferences, provide a standard complaint form, track nonjurisdictional complaints, track and analyze complaints, and provide more enforcement information on its website.

Key Findings

- ◆ Licensing provisions of TDA's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- ◆ Nonstandard enforcement provisions of TDA's statute could reduce the agency's effectiveness in protecting consumers.

Conclusion

Various licensing and enforcement processes in the Agriculture Code do not match model standards developed by Sunset staff based on experience gained through more than 93 occupational licensing reviews over the last 31 years. Sunset staff compared TDA's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, Sunset staff identified recommendations for TDA's general regulatory authority and for specific regulatory programs as needed to bring them in line with the model standards.

Support

Regulating agricultural industries and occupations requires common activities that the Sunset Commission has observed and documented over more than 30 years of reviews.

*TDA regulates
a variety of
agriculture-
related businesses
and industries.*

- ◆ The purpose of TDA's regulatory programs is to protect the public and agriculture-related businesses in a variety of industries and in the marketplace. This includes overseeing items like grocery store scales, egg quality, nursery products, and gasoline pumps. TDA has eleven regulatory programs, listed below in the textbox *TDA Regulatory Programs*. Two programs, for agricultural pesticide applicators and structural pest control, license occupations, while the others certify or register specific activities that do not require the heavy regulatory effort of occupational licensing.

TDA Regulatory Programs

- ◆ Agricultural Pesticides
- ◆ Aquaculture
- ◆ Cooperative Marketing Associations
- ◆ Egg Quality
- ◆ Grain Warehouses
- ◆ Handling and Marketing of Perishable Commodities
- ◆ Organic Certification
- ◆ Plant Quality
- ◆ Structural Pest Control
- ◆ Seed Certification
- ◆ Weights and Measures

Aspects of the Agriculture Code and some of TDA's regulatory practices are outdated. Bringing those aspects into conformity with current licensing standard practices could benefit TDA, license holders, and the public.

- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 93 licensing agency reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where TDA's statute and rules differ from these model standards, and describes the potential benefits of conforming with standard practices. It does not include a discussion of structural pest control regulation because that program had model standards applied to the Structural Pest Control Board during its Sunset review in 2007, when it was transferred to TDA.

Licensing provisions of TDA's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.

- ◆ *Examination procedures.* Agency rules or policies should reflect exam procedures governing all parts of the testing process, including test admission and administration. Such procedures prevent the opportunity for bias and allow applicants to better prepare for exams. However, TDA has not adopted policies relating to admission of exam applicants and administration of the examination process. For example, the agency lacks a policy to prevent potential bias by ensuring applicant anonymity on the test when the test is graded. By adopting clear procedures governing the testing process, TDA would help ensure the consistent and fair treatment of applicants. Doing so would also provide potential applicants with a simple, one-stop source for information on how to apply to take and what to bring to a licensure exam.
- ◆ *Evaluation of test questions.* Statistical review of exam results helps agencies identify important exam defects. Questions that are almost always answered correctly, incorrectly, or omitted could be reconsidered for overall effectiveness. Currently, TDA does not validate exam questions or perform routine analysis of exam results to ensure questions are clear and properly assess applicant knowledge. Doing so would allow TDA to better assess the adequacy and difficulty of individual exams.
- ◆ *Duplicate license fees.* Because administrative costs are associated with printing duplicate licenses, agencies should have the authority to charge a fee to issue them. Currently, TDA does not have the authority to charge fees to licensees who have lost or misplaced their licenses. Fees would help TDA recover costs associated with issuing duplicate licenses.
- ◆ *Staggered renewals.* An agency should have the authority to stagger license renewals to promote an even workload throughout the year and make the best use of staff time and resources. Currently, some of TDA's licenses, such as egg and pesticide licenses, expire on the first anniversary of the date of licensure, and must be processed continuously throughout the year. Having the ability to process these renewals on a staggered basis, such as at the end of each month with other licenses, would improve the efficiency of TDA's license renewal process.

Nonstandard enforcement provisions of TDA's statute could reduce the agency's effectiveness in protecting consumers.

- ◆ *Inspections.* Agencies should have clear authority for conducting inspections to help ensure compliance of licensees with agency laws and rules. Though it lacks clearly defined inspection authority for its pesticide program, TDA does have authority for ensuring pesticide applicators and dealers comply with the law and agency rules. As such, TDA conducts unannounced inspections of licensees' offices and



Testing procedures would help ensure the consistent and fair treatment of applicants.



TDA lacks clear authority to conduct inspections in its pesticide program.

records to check compliance with standards for pesticide use and worker protection. Providing TDA with specific inspection authority will allow it to continue to ensure that pesticide applicators and dealers comply with requirements, and to adequately investigate complaints.

Risk-based inspections would allow TDA to prioritize and focus on detecting serious violations.

Allowing agencies to conduct inspection activities according to risk ensures that limited resources are placed where they are needed most. TDA already conducts its inspections on a risk basis in all regulatory programs except for weights and measures, nursery and floral, grain warehouse, and structural pest control programs, which have inspection frequencies specified in statute. A risk-based approach would still ensure regular inspections, but would allow TDA to prioritize inspections to focus on detecting serious violations and on licensees with poor compliance histories.

- ◆ **Complaint procedures.** Agencies should provide sufficient information to members of the public and licensees about procedures for filing complaints and what to expect if they have a complaint filed against them so they can adequately participate in their defense. Clearly communicated procedures in rules, brochures, and websites promote awareness both among members of the public and within the regulated community. While TDA has a pesticide brochure that defines some aspects of how a complaint is handled, they do not clearly lay out all of opportunities for the respondent to participate in the process. In addition, this information is not available for complainants and respondents in TDA's other regulatory programs, such as cotton stalk destruction.
- ◆ **Nonjurisdictional complaints.** A licensing agency should have a process to refer complaints not within its jurisdiction to the appropriate agency or organization. The agency should keep track of these complaints to have a full picture of the public's problems and concerns that, though they may be nonjurisdictional, provide valuable information about the regulatory environment. For example, TDA frequently receives nonjurisdictional complaints about water in gasoline and questions about people who perform pest control for public health purposes. Although TDA refers complainants to the proper agency, TDA does not track the number of nonjurisdictional complaints it receives. Maintaining information about these types of complaints would enable TDA to identify trends and identify potential areas where regulatory change may be needed or greater coordination is needed between TDA and other agencies.
- ◆ **Complaint filing.** The public should be able to file a written complaint against a licensee on a simple form provided by the agency. Complaint forms should be available on an agency's website, through e-mail, or through regular mail. Currently, individuals wishing to file a complaint with TDA must call 1-800-TELL-TDA. Making a simple form for filing complaints continuously available on its website would allow the public to file a complaint at any time of day and reduce the amount of staff time dedicated to handling consumer inquiries.

A complaint form on TDA's website would allow the public to file a complaint any time of day.

◆ **Informal settlement conferences.** The Legislature, through legislation regarding alternative dispute resolution, has encouraged agencies to settle enforcement cases using informal proceedings. Informal settlement conferences allow an agency to explore resolution without resorting to contested case hearings at the State Office of Administrative Hearings (SOAH), thus saving time and resources. While TDA informs the licensee in a notice of violation of the opportunity to call to informally negotiate a settlement, this opportunity is not clear in subsequent explanations of the complaint and investigation process. TDA will informally negotiate with licensees over the phone, but they are offered limited opportunity to discuss details of the case in person. If the licensee refuses to sign the resulting proposed order, TDA forwards the case to SOAH. By more clearly indicating the opportunity for informal settlement as a venue for negotiating agreed orders, TDA could more easily and fairly resolve complaints.

◆ **Administrative penalty.** An agency's administrative penalty authority should authorize penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. In its weights and measures program, administrative penalties for violations of gas pump accuracy are capped at \$500, well below the potential for overcharging customers, especially as gasoline prices have risen in recent years. In its pesticide program, TDA has authority to impose a penalty amount of up to \$4,000 for all violations related to a single incident, no matter the number of violations of state law or TDA rules. Given the significant harm that can result from illegal activity, such as the misapplication of pesticides, TDA's current administrative penalty amount may not be adequate to deter illegal behavior. Other licensing agencies have authority to impose a penalty amount of up to \$5,000 per violation per day. Increasing TDA's administrative penalty limit and removing the single incident cap for pesticide violations would give TDA authority to address the potentially severe nature of illegal activity and would conform the agency to the standard penalty amount of other regulatory agencies.

◆ **Cease-and-desist authority.** A licensing agency should have enforcement authority not only over its licensees, but over those who engage in unlicensed activity. An agency should be able to quickly stop unlicensed or harmful activity through the use of orders that provide immediate relief. While injunctive authority allows agencies to take legal action to stop unlicensed activity, cease-and-desist orders provide an interim step that agencies may take on their own to stop unlicensed activity.

TDA lacks broad authority to issue cease-and-desist orders. TDA's current process of issuing stop-sale or stop-use-stop-distribution letters to stop unlicensed activity does not apply to all regulatory programs, and seeking injunctions through the Attorney General can be cumbersome and time consuming. This could limit TDA's ability to deal with unlicensed activity quickly and prevent additional harm to the public. Cease-and-

*Penalty amounts
should reflect
the severity of
the violation.*

*Cease-and-desist
authority could
help TDA stop
harmful activities
immediately.*

desist orders provide for faster action by regulatory agencies, especially when violators of these orders are subject to additional sanctions, such as administrative penalties.

- ◆ **Enforcement information.** Agencies should make enforcement information, such as final disciplinary orders and sanctions, readily available to the public. This information helps the public make informed consumer choices. While TDA identifies on its website gas stations that are out of compliance with weights and measures requirements, detailed information regarding other regulatory programs is not readily available to consumers.


*Analyzing
complaint trends
could help
TDA identify
regulatory
problem areas.*

Because disciplinary actions are public information, TDA will provide this information to anyone who calls the agency and requests it. However, because consumers may not know to call TDA to request information on disciplinary actions, the public does not have unfettered access to disciplinary information regarding licensees, such as pesticide applicators. This also creates an unnecessary workload for TDA staff. Requiring TDA to include more information on current disciplinary actions in a user-friendly format would provide the public with complete information about businesses or other entities disciplined by TDA.

- ◆ **Complaint trend analysis.** Agencies should analyze the sources and types of complaints and violations to identify problem areas and trends. Identifying such trends can help an agency better understand the regulatory environment and manage its resources more effectively, leading to greater protection of consumers. An agency can use such information to create educational materials for licensees about common violations of laws and agency rules. TDA currently does not perform trend analysis of complaints or violations, and cannot track a complaint through to its disposition. As a result, TDA misses out on a tool for identifying regulatory problem areas, and for better understanding areas of public concern. Conducting an analysis of complaints and violations would allow TDA to focus on problem areas, leading to more informed licensees and fostering better public protection.

Recommendations

Overall Agency Response to 7.1 to 7.14

TDA generally supports the recommendations made in Issue 7 and is currently working to implement recommendations such as identifying clear testing procedures, evaluating test questions and developing information materials on TDA's enforcement process. TDA looks forward to working with the Commission, Sunset staff and the Legislature to address statutory barriers and streamline TDA authorities in order to better serve Texans. (Todd Staples, Commissioner – Texas Department of Agriculture)

Licensing – Change in Statute

7.1 Require TDA to adopt clear procedures governing all parts of the testing process, including test admission and administration.

Under this recommendation, TDA would adopt guidelines detailing procedures for the testing process, including admission requirements and internal administration procedures. To ensure that applicants and potential applicants can readily find information on exam requirements, TDA would post exam procedures on its website.

For 7.1

None received.

Against 7.1

None received.

7.2 Require TDA to evaluate test questions.

This recommendation would require TDA to evaluate the effectiveness of its licensure exams. Evaluation of pass/fail rates and test questions may serve as an indicator of the usefulness of the testing process. Doing so would also allow TDA to identify test questions that may be subjective or unclear as well as determine if the question is of proper difficulty to assess the applicant's knowledge.

For 7.2

None received.

Against 7.2

None received.

7.3 Authorize TDA to charge fees for duplicate licenses.

This recommendation would allow TDA to establish, by rule, fees to cover the administrative costs of issuing duplicate licenses.

For 7.3

None received.

Against 7.3

None received.

7.4 Authorize TDA to adopt a system under which licenses expire on various dates during the year.

Under this recommendation, TDA would establish, by rule, a license renewal system under which licenses expire on various dates during the year. This change would remove individual renewal dates

from the Agriculture Code specifying licenses expire on their first anniversary for all egg licenses and the following pesticide licenses: certified private pesticide applicator, commercial pesticide applicator, noncommercial pesticide applicator, noncommercial political pesticide applicator, and private pesticide applicator real estate development licenses. This recommendation would also provide new authority to TDA to stagger license renewals. Because agency staff processes renewals for many types of registrations and licenses, this recommendation would improve staff efficiency renewing licenses.

For 7.4

None received.

Against 7.4

None received.

Enforcement – Change in Statute

7.5 Authorize TDA to conduct inspections for its pesticide program.

This recommendation would authorize TDA to inspect the premises of a pesticide licensee on an unannounced basis during reasonable business hours, as part of TDA's compliance audits and complaint investigations. TDA would be able to inspect facilities and review records as necessary.

For 7.5

None received.

Against 7.5

None received.

7.6 Allow TDA to establish a risk-based approach for all inspection activities.

A risk-based approach would allow the agency flexibility to balance its inspection schedule based on highest priority of risk against staff resources available to conduct inspections. Mandated inspection frequencies for weights and measures, nursery and floral, grain warehouse, and structural pest control programs would remain in statute, but the agency would have authority to inspect licensees on a risk basis within those time frames. This recommendation would allow TDA to focus greater attention on businesses with poor compliance histories and less attention on businesses that consistently follow the law. In implementing this recommendation, if TDA finds that statutory inspection frequencies impede the effective regulation of its programs, it should convey its concerns to the Legislature, with its proposal for the needed frequency of inspections to maintain adequate control over licensees.

For 7.6

None received.

Against 7.6

None received.

Modification

1. Increase the frequency of citrus nursery inspections to more often than the current once-a-year requirement. (Ray Prewett, President – Texas Citrus Mutual and Executive Vice President – Texas Vegetable Association, Mission)

Staff Comment: The statute makes no distinction between citrus nurseries and other types of nurseries required to obtain a nursery/floral certificate. Statute requires TDA to inspect nurseries at least once every three years (Texas Agriculture Code, sec. 71.044(a)).

7.7 Require TDA to clearly outline its enforcement process and make information about the process accessible to licensees.

This recommendation would promote a better understanding of TDA's enforcement process and help licensees accused of violations prepare a response. TDA must outline its enforcement process and the steps a complaint would take from initial filing until final disposition, including appeal options, various hearings, and a licensee's ability to obtain copies of complaint files. Information should be made available in the agency's brochures and website and any other available resources. TDA must also make information about allegations and TDA's investigation available to licensees in time for them to adequately participate in their defense.

For 7.7

None received.

Against 7.7

None received.

7.8 Require TDA to offer respondents the opportunity to settle contested cases through informal settlement.

Under this recommendation, TDA would provide sufficient opportunity for a respondent to indicate whether the terms of a proposed order are acceptable, and would clearly state this opportunity in its notices of violation. Respondents who do not agree to proposed orders, would be able to request an informal settlement conference so they can present their case to the agency in person. TDA would also be able to conduct informal settlement conferences over the phone.

For 7.8

None received.

Against 7.8

None received.

7.9 Increase TDA’s administrative penalty authority.

The maximum administrative penalty TDA would be able to impose on an individual who violates sections of the Agriculture Code, rule, or other state laws, would be increased to \$5,000 per violation per day, and per-incident limitations would be removed. This amount reflects the significant harm that can result from illegal activity in the application of pesticides and other regulatory programs, and would provide a larger deterrent than the existing penalty amount.

For 7.9
Jim Reaves, Director of Legislative and Regulatory Affairs – Texas Nursery and Landscape Association, Austin

Against 7.9
None received.

7.10 Authorize TDA to issue cease-and-desist orders.

Cease-and-desist authority would allow TDA to move more quickly to stop unlicensed activity that threatens the health and safety of the public. This recommendation would also authorize TDA to assess administrative penalties against individuals who violate cease-and-desist orders. TDA would still be able to refer unlicensed activity cases to the Attorney General for injunctive relief or to seek prosecution, if necessary.

For 7.10
None received.

Against 7.10
None received.

7.11 Require TDA to develop a method for analyzing trends in complaints and violations.

This recommendation would require TDA to develop a method for analyzing the sources and types of complaints and violations. The agency would analyze complaints and violations to identify trends and regulatory problem areas. In implementing this recommendation, TDA should establish categories for complaints and violations, such as section of statute or rule, as well as a process to track complaints and violations discovered through inspections and determine their disposition. TDA could use this analysis to focus its information and education efforts on specific areas. Developing a method to analyze complaints would provide TDA with improved information regarding the nature of complaints.

For 7.11
None received.

Against 7.11
None received.

Enforcement – Management Action

7.12 TDA should track the number and types of nonjurisdictional complaints it receives.

TDA should document the nonjurisdictional complaints it receives by keeping track of the number of complaints received, the subject matter of complaints, and the agency to which TDA referred the complaint. Doing so would allow TDA to get a more accurate picture of the types of complaints received, address areas of confusion to the public, and better coordinate with other agencies.

For 7.12

None received.

Against 7.12

None received.

7.13 TDA should make a complaint form available on its website in an easily accessible format.

Making a complaint form available on TDA's website would assist licensees and the public to more easily prepare and file complaints.

For 7.13

None received.

Against 7.13

None received.

7.14 TDA should post information about disciplinary actions on its website.

Under this recommendation, consumers would have improved access to TDA's disciplinary information. TDA should provide more detailed information about licensees disciplined by TDA, including a citation of the law or rule violated, TDA's action, and the date of the TDA's order. In addition to increasing the public's access to enforcement data, this listing may reduce the amount of time staff must dedicate to handling consumer inquiries.

For 7.14

None received.

Against 7.14

None received.

Fiscal Implication

These recommendations would improve the efficiency of TDA's licensing and enforcement processes, but any savings would likely be negligible.

Commission Decision

Adopted Recommendations 7.1 through 7.14.

Legislative Action

Senate Bill 1016 requires TDA to adopt clear procedures governing all parts of the testing process, including test admission and administration, and requires TDA to post its policies on testing procedures on its website. (Recommendation 7.1)

The bill requires TDA to evaluate the effectiveness of test questions in assessing knowledge. (Recommendation 7.2)

The bill authorizes TDA to charge fees for duplicate licenses. (Recommendation 7.3)

The bill requires, rather than authorizes, TDA to adopt a system under which licenses expire on various dates during the year. The Legislature added language allowing TDA to increase or decrease the term of an initial or renewal license to coordinate the expiration dates of multiple licenses held by one person or company. The Legislature modified the provision regarding license renewal to specify that all pesticide applicator licenses, except private applicator licenses, expire at the end of the license period established by TDA rule. The bill specifies that private pesticide applicator licenses are valid for five years and egg reseller licenses are valid for one year. (Recommendation 7.4)

The bill authorizes TDA to enter and inspect the premises of a pesticide licensee without notice during regular business hours. (Recommendation 7.5)

The bill allows TDA to establish a risk-based approach for conducting additional inspections based on specified criteria and to waive inspection requirements if an emergency arises or to accommodate complaint investigations or risk-based inspections. (Recommendation 7.6)

The bill requires TDA to clearly outline its enforcement process and make information about the process accessible to licensees, including information about actual complaints against licensees. The Legislature added a provision allowing TDA to withhold confidential information about a complaint investigation from a licensee. (Recommendation 7.7)

The bill requires TDA to offer respondents the opportunity to settle contested cases through informal settlement. (Recommendation 7.8)

The bill increases TDA's administrative penalty authority to a maximum of \$5,000 for all violations. The bill also removes language that capped the penalty for pesticide violations at \$4,000 for all violations related to a single incident. Instead, TDA may consider each day a violation continues or occurs to be a separate violation for the purposes of penalty assessment. (Recommendation 7.9)

The bill authorizes TDA to issue cease-and-desist orders to stop illegal unlicensed activity. (Recommendation 7.10)

The bill requires TDA to develop a method for analyzing trends in complaints and violations. (Recommendation 7.11)

The Legislature added other provisions to conform the agency's regulatory activities to standard practices or to expand agency practices. The bill removes requirements for TDA to hold five regional hearings and publish notice in three major newspapers before adopting any proposed pesticide rule. The bill also adds to TDA's existing authority to obtain criminal history record information from DPS and FBI as it relates to certain persons, including applicants, licensees, and persons seeking a determination of eligibility for a license. TDA would be prohibited from disclosing criminal history information to any person other than as required under a court order. The bill also repeals outdated language regarding the use of the term "Texas Agricultural Product."

Issue 8

Statute Limits TDA's Ability to Fully Integrate the Structural Pest Control Program Into Its Regulatory Structure.

Summary

Key Recommendation

- ◆ Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.

Key Findings

- ◆ Both the Structural Pest Control Act and the Agriculture Code define licensing and enforcement processes, limiting TDA's ability to create a standard regulatory structure for all its programs.
- ◆ Standardizing all regulatory processes in one agency leads to greater efficiency and fairness.

Conclusion

In 2007, the Legislature abolished the Structural Pest Control Board and transferred its functions to TDA. As a result, structural pest control applicators were added to the myriad individuals, businesses, and activities already regulated by TDA. Since structural pest control regulation is governed by its own statute with its own set of licensing and enforcement processes, TDA cannot fully integrate this program into its existing regulatory structure. Harmonizing the Structural Pest Control Act with the Agriculture Code would help TDA create greater efficiency and consistency in the administration of all its regulatory programs.

TDA began regulating the structural pest control industry in September 2007.

Differences in the laws governing TDA's programs make it difficult for the agency to create a standard regulatory structure.

Support

The Legislature recently added structural pest control regulation to TDA's other regulatory programs.

- ◆ Based on a recommendation of the Sunset Advisory Commission, the 80th Legislature abolished the independent Structural Pest Control Board and transferred regulation of the structural pest control industry to TDA. On September 1, 2007, TDA officially began regulating the structural pest control industry. This regulation is governed by the Structural Pest Control Act. TDA's Structural Pest Control Service performs this regulation with assistance from the agency's Legal and Administrative Divisions and the newly appointed Structural Pest Control Advisory Committee. Since September, TDA has been working diligently to incorporate this program into its regulatory structure.
- ◆ Structural pest control regulation joins many other regulatory programs at TDA, including agricultural pesticides, grain warehouses, weights and measures, and plant quality. In fiscal year 2007, TDA licensed, certified, or registered more than 130,000 persons, businesses, or entities. Provisions in the Agriculture Code govern these regulatory programs.

Both the Structural Pest Control Act and the Agriculture Code define licensing and enforcement processes, limiting TDA's ability to create a standard regulatory structure for all its programs.

- ◆ Since the structural pest control industry was, until recently, regulated by an independent agency, the Structural Pest Control Act contains all provisions necessary to regulate the industry.¹ At the same time, the Agriculture Code contains those provisions necessary to regulate the rest of TDA's programs.² Both laws define standard licensing and enforcement processes. In some cases, such as with license sanctions and stop-use orders, these processes are very similar in both laws. In other cases, such as with late renewal penalties, one law has more stringent requirements than the other.
- ◆ Now that structural pest control regulation is under TDA's umbrella, the agency must regulate that program according to the processes defined in its Act, while still regulating other programs according to the processes in the Agriculture Code. Even minor differences in the statutes make it difficult for TDA to create one standard regulatory structure to govern all of its programs.

Standardizing all regulatory processes in one agency leads to greater efficiency and fairness.

- ◆ Programs under an umbrella licensing structure should be standardized to the extent possible. The existence of multiple licensing programs within one organizational structure presents the opportunity to standardize

functions, such as licensing and enforcement. Standardization promotes efficiency by reducing the number of administrative processes needed to arrive at the same outcome. It also promotes consistent treatment of licensees and applicants, resulting in processes that are more fair. Conforming common statutory provisions provides the opportunity to simplify the laws so that any future modifications or updates can be easily made through general statutory language applicable to all programs, rather than having to separately conform numerous statutes.

- ◆ During the 2007 Sunset review of the Structural Pest Control Board, which led to the Board being abolished and its functions transferred to TDA, the Sunset Commission made changes to that agency's regulatory structure to conform it with commonly applied licensing practices. Issue 7 of this report contains recommendations to do the same for TDA's regulatory functions. If the recommendations in that issue are adopted, the regulatory framework in the Agriculture Code will be even more similar to that in the Structural Pest Control Act, creating an ideal opportunity to harmonize the two statutes.

*Standardization
promotes
efficiency and
consistent
treatment of
licensees.*

Recommendation

Change in Statute

8.1 Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.

This recommendation would remove certain regulatory processes from the Structural Pest Control Act and replace them with references to those processes in the Agriculture Code. The Agriculture Code would also be updated to ensure its regulatory processes apply to the structural pest control program. These changes would help TDA better integrate structural pest control into its operations, leading to greater efficiency and consistency in the agency's administration of its myriad regulatory programs.

One of the changes under this recommendation would be to remove the language in the Structural Pest Control Act governing late renewal penalties, so that structural pest control licenses would be subject to the same late renewal provisions as set out in the Agriculture Code. This change would require relaxing the late renewal requirements from the shorter time frames currently contained in the structural pest control statute to the longer late renewal requirements in the Agriculture Code, which reflect the Sunset Commission's standard for encouraging timely license renewal.³ The advantage of this standard approach is that TDA would only need a single process for handling late license renewals rather than duplicative processes based on different time frames.

This recommendation would also conform other regulatory processes to the Agriculture Code, but they would not be changed to the extent of the late renewal penalty process. Conforming these other processes depends on the recommendations in Issue 7 of this report being adopted, which would bring the Agriculture Code more in line with provisions already in the Structural Pest Control Act. The following regulatory processes would be affected by this recommendation:

- ◆ risk-based inspections;
- ◆ cease-and-desist orders;

- ◆ administrative penalties;
- ◆ license sanctions, including revocation, suspension, probation, and refusal to renew;
- ◆ stop-use orders;
- ◆ fees for duplicate or replacement licenses; and
- ◆ informal settlement of contested cases.

Agency Response to 8.1

TDA supports enhanced integration of the procedural processes for agriculture and structural pest control for a more efficient, effective and understandable process of regulating pesticide-related activities. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 8.1

Jim Reaves, Director of Legislative and Regulatory Affairs – Texas Nursery and Landscape Association, Austin

Against 8.1

None received.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. Although the change in late renewal penalty time frames for structural pest control licenses could have a negative fiscal impact to the State, that impact would likely be very small and cannot be estimated at this time.

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¹ Texas Occupations Code, ch. 1951.

² Texas Agriculture Code, ch. 12 and ch. 76.

³ Texas Occupations Code, sec. 1951.310, and Texas Agriculture Code, sec. 12.024.

Commission Decision

Adopted Recommendation 8.1.

Legislative Action

Senate Bill 1016 conforms the Structural Pest Control Act with TDA's general authority under the Agriculture Code to better integrate the program into the Department's regulatory structure. The bill deletes language and repeals certain licensing and enforcement provisions of the Structural Pest Control Act and applies similar provisions in the Agriculture Code related to TDA's other licensing and regulatory programs to structural pest control regulations. (Recommendation 8.1)

Issue 9

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

Summary

Key Recommendation

- ◆ Continue the Texas Department of Agriculture for 12 years.

Key Findings

- ◆ Texas has a continuing need to support and promote Texas agriculture, as well as rural economic development, nutrition, and consumer protection.
- ◆ TDA is the most appropriate agency to support and promote Texas agriculture, as well as performing its other functions.

Conclusion

The Texas Department of Agriculture's mission – to support and promote Texas agriculture – is important to Texas because agriculture is a significant contributor to the state's economy. TDA's other functions – helping rural communities develop their economies, distributing federal funding so that schools and other institutions can provide nutritious meals, and protecting consumers through regulation of various activities – are also vital to the State. Sunset staff's evaluation of TDA's functions and structure found that the agency is uniquely positioned to promote agriculture, rural economic development, nutrition, and consumer protection and should be continued for another 12 years.

Support

TDA's mission has expanded beyond supporting and promoting Texas agriculture.

When TDA was created 100 years ago, it had a staff of four, including the Commissioner.

- ◆ The Legislature established the Texas Department of Agriculture (TDA) in 1907 and created the statewide elected office of Commissioner of Agriculture. At that time, the agency had a staff of four, including the Commissioner, and its duties were to develop and market agriculture, investigate agriculture-related diseases, and maintain relationships with USDA and other states' agriculture departments. Over time, the mission of the agency broadened and the size and duties of the agency gradually expanded. Today, the agency's mission is to make Texas the nation's leader in agriculture, while promoting excellence in children's nutrition and rural economic development.
- ◆ To accomplish its mission, TDA performs a variety of functions, including:
 - promoting Texas agricultural products locally, nationally, and internationally;
 - assisting in the development of agribusiness industry in Texas by promoting rural communities and distributing grant money;
 - regulating the sale, use, and disposal of pesticides and herbicides;
 - controlling destructive plant pests and diseases;
 - protecting consumers through its regulation of agricultural commodities and measuring devices; and
 - administering federal child and adult nutrition programs.
- ◆ For fiscal year 2008, TDA's operating budget totals more than \$347 million. A significant portion, 80 percent, of that budget comes from USDA for federally funded nutrition programs. TDA passes nearly all of this federal money through to schools and other entities to pay for meals under the National School Lunch Program and other such programs. TDA retains a portion of the federal money to pay its costs of administering the programs. The agency has authority to employ up to 650.5 staff in fiscal year 2008.

Today, TDA has authority to employ up to 650.5 staff.

Texas has a continuing need to support and promote Texas agriculture, as well as rural economic development, nutrition, and consumer protection.

- ◆ Texas is the second-largest agricultural state in the nation, accounting for about 7 percent of the total U.S. agricultural income.¹ Texas' food, horticulture, and fiber industries generate more than \$100 billion a year for the state's economy.² Further, agriculture is one of the five largest

industries in the state and employs one out of every seven working Texans.³ Since agriculture is such an important part of the economy, the State has a significant interest in promoting and supporting it. TDA does this by promoting Texas products through its GO TEXAN campaign and other marketing efforts, providing grants for agricultural research, protecting agricultural producers by controlling plant pests and diseases, among other activities.

- ◆ The economic health of rural communities has an impact on both agricultural and non-agricultural industries in those communities. Through its rural economic development programs, TDA helps small communities and businesses find funding sources and markets for their products to improve their economic outlook and provide jobs to rural residents. In 2007, TDA provided assistance to 1,020 businesses and 652 rural communities. The agency also gave \$11 million in grants to rural communities for infrastructure improvement and downtown revitalization through the Texas Capital Fund.
- ◆ Texas also has an interest in ensuring school children and low-income individuals and families have enough food to eat. USDA provides funding to states for a variety of child and adult nutrition programs. This funding supports the National School Lunch Program, as well as other programs that provide meals to children and adults and surplus agricultural commodities to food banks. TDA administers these programs for Texas. In fiscal year 2007, these programs provided more than 900 million meals and 150 million pounds of surplus agricultural commodities.
- ◆ Consumer protection is another important function of the State. TDA performs a variety of regulatory activities with the intent of protecting consumers in the marketplace. The agency's two biggest regulatory programs are weights and measures and pesticides. Under the weights and measures program, TDA tests gas pumps, grocery scales, and octane levels in fuel to ensure consumers are getting what they pay for. Under the pesticides program, TDA regulates both agricultural and structural pesticide applicators, as well as pesticide dealers, to ensure they are following Environmental Protection Agency and state requirements for the use, storage, and sale of pesticides. In fiscal year 2007, TDA responded to 1,801 complaints from the public, including 1,322 related to inaccurate fuel pumps and 242 about pesticide misuse.⁴

TDA is the most appropriate agency to support and promote Texas agriculture, as well as performing its other functions.

- ◆ As a statewide elected official, the Commissioner of Agriculture is in a unique position to be a spokesperson for Texas agriculture locally, nationally, and internationally. The Commissioner is directly accountable to voters and spends much time traveling around the state, talking to people about the needs of agriculture.

Since agriculture is an important part of the economy, the State has an interest in promoting and supporting it.

TDA tests gas pumps and grocery scales to ensure consumers are getting what they pay for.

*TDA's budget
quadrupled and
its staff grew by
146 employees
in 2007.*

- ◆ The Legislature has shown its confidence in TDA by giving it significant new responsibilities in the past 10 years. In 2001, the Legislature gave the agency authority to operate rural economic development programs. In 2003, the National School Lunch Program was transferred from the Texas Education Agency to TDA. In 2007, the Legislature transferred all other federally funded nutrition programs from the Health and Human Services Commission to TDA and gave the agency authority to regulate the structural pest control industry. TDA also received funding to conduct 72-hour roadside inspections for plant pests, to administer a grant program to help local organizations deliver meals to the homebound elderly and disabled, and to provide funding for research on Zebra Chip Disease. As a result, TDA's budget quadrupled and its staff grew by 146 employees.

- ◆ No other entity has the broad range of expertise necessary to perform all of TDA's functions. While many other entities, including the following, perform similar functions, none perform all of these functions or has a large enough presence to promote and support the agricultural industry as a whole.
 - The Office of Rural Community Affairs administers rural economic development programs.
 - The Health and Human Services Commission and the Texas Education Agency have administered federal nutrition programs in the past.
 - The Texas Department of Licensing and Regulation performs a variety of regulatory activities.
 - The Environmental Protection Agency has ultimate authority to regulate pesticides and would take over the regulation if Texas did not do it.
 - Individual agricultural industries have their own associations that promote their products.

All other states have departments of agriculture with similar functions, although not all are run by statewide elected officials.

- ◆ All other states have departments of agriculture. Some are run by statewide elected officials, others are run by Governor appointees. The range of functions performed by other states' agriculture departments varies widely, but they all have the ultimate goal of promoting and supporting agriculture.

Recommendation

Change in Statute

9.1 Continue the Texas Department of Agriculture for 12 years.

This recommendation would continue TDA as an independent agency, responsible for supporting and promoting agriculture, rural economic development, child nutrition, and consumer protection.

Agency Response to 9.1

TDA agrees with the Sunset staff's assessment that Texas has a continuing need to support and promote agriculture, economic development, healthy lifestyles and consumer protection, and that TDA is the most appropriate agency to perform these functions. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 9.1

None received.

Against 9.1

None received.

Fiscal Implication

If the Legislature continues TDA using the existing organizational structure, the agency's annual appropriation of \$347.1 million would continue to be required for its operations; \$277.9 million of that appropriation is from federal funds.

¹ Texas Department of Agriculture (TDA), *Agency Strategic Plan for the Fiscal Year 2007 - 2011* (Austin, Texas, July 7, 2006), page 7.

² This projection was provided to Sunset staff by TDA, February 27, 2007. The projection uses Texas AgriLife Extension Service data as a baseline along with the latest crop production, livestock inventory, and prices from USDA to model the economic impact for 2007.

³ TDA, *Agency Strategic Plan for the Fiscal Year 2007 - 2011* (Austin, Texas, July 7, 2006), page 7.

⁴ The number of pesticide misuse complaints comes from TDA's Agricultural Pesticides Program and does not include similar complaints from the Structural Pest Control Program since this program was not transferred to TDA until fiscal year 2008.

Commission Decision

Adopted Recommendation 9.1.

Legislative Action

Senate Bill 1016 changes TDA's Sunset review date to 2021 to continue the agency for the standard 12-year period. (Recommendation 9.1)

Issue 10

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

Summary

Key Recommendation

- ◆ Continue the Texas Boll Weevil Eradication Foundation for 12 years.

Key Findings

- ◆ Texas has a continuing interest in eliminating the boll weevil to protect the cotton industry and promote the wider benefits of boll weevil control.
- ◆ The Foundation's cooperative approach to boll weevil eradication offers some advantages over traditional regulatory approaches.
- ◆ All cotton-growing areas of the U.S. participate in a boll weevil eradication program, and most have a structure similar to Texas.

Conclusion

The Legislature created the Texas Boll Weevil Eradication Foundation in 1993 to eradicate the boll weevil and pink bollworm from Texas cotton fields. The Foundation is a grower-initiated and grower-funded program that operates as a non-profit, quasi-governmental agency with oversight from the Texas Department of Agriculture.

Boll weevil eradication is beneficial to cotton growers in Texas, as Texas is the number one cotton-producing state in the U.S. Increased cotton production, largely resulting from boll weevil eradication efforts, greatly benefits Texas' economy, as the cotton industry contributes significantly to the state's economic health. Boll weevil eradication efforts have also contributed to reduced pesticide use and decreased production costs. Since its inception, the Foundation has reduced boll weevil and pink bollworm populations by more than 99 percent.

The Sunset Review evaluated the continuing need for the current organizational structure to conduct boll weevil and pink bollworm eradication efforts in the state. The review found that the Foundation effectively accomplishes its mission of working to eradicate the boll weevil and pink bollworm from Texas cotton fields and that the current structure offers advantages over a regulatory approach. Further, the Foundation's cooperative approach between cotton growers and Foundation staff benefits cotton growers and provides meaningful results.

Support

The Foundation seeks to eradicate the cotton boll weevil through a cooperative effort between cotton growers and the State.

*The Foundation
is a quasi-
governmental
entity.*

- ◆ The Legislature created the Texas Boll Weevil Eradication Foundation in 1993 as a non-profit, quasi-governmental agency to eradicate the boll weevil and pink bollworm from Texas cotton fields. In April 1997, the Texas Supreme Court declared that the Legislature unconstitutionally delegated the Foundation powers of the State, and the Court dissolved the Foundation. The Legislature addressed the Court's concerns in the 1997 legislative session and designated the Foundation to carry out boll weevil and pink bollworm eradication in the state, with oversight from TDA.
- ◆ Because the Foundation is a quasi-governmental entity, its employees are not state employees and its budget is not subject to the legislative appropriations process. In fact, statute specifies that the Foundation is only considered a state agency for purposes of tax exemption and indemnification from personal liability.¹
- ◆ The Foundation is primarily funded by cotton growers and in calendar year 2007, the Foundation collected \$37 million in assessments from nearly 27,000 growers. The Foundation also received \$21 million in federal funding and \$13 million in state funding through TDA. That same year, the boll weevil eradication program operated with 390 full-time employees and 908 additional seasonal employees scattered among 16 zones and 56 offices across the state.
- ◆ Area cotton growers established each of the 16 eradication zones through a referendum in which at least two-thirds of the growers, or a majority of cotton acres in production in the zone, voted to approve the establishment of a program. Currently, every cotton growing area in the state is within one of these zones. Representatives of each zone propose assessment levels to the Foundation Board for their zone, but the Commissioner of Agriculture must finally approve all assessment levels. A zone may petition the Commissioner of Agriculture to hold a referendum to withdraw from the program at any time. Since the redesignation of the Foundation in 1997, none of the zones has sought to withdraw from the program.
- ◆ Foundation staff is actively involved in eradicating the boll weevil and bollworm from Texas cotton fields. To determine the location of each cotton field in each zone, Foundation staff maps cotton fields and checks its maps against data reported by farmers to the Farm Service Agency. Foundation staff checks the boll weevil traps once a week and records data, such as the crop stage and number of weevils in each trap. Trap

*Cotton growers
in each of the
16 eradication
zones voted to
participate in
the program.*

data help the Foundation determine local boll weevil infestation rates, as well as how often to apply pesticides. The Foundation contracts with aerial applicators for pesticide applications on cotton fields containing boll weevils. The Foundation employs similar eradication techniques, including pheromone traps, insecticide, sterile insects, and Bt cotton – a cotton variety resistant to pink bollworms – to control pink bollworm populations.

Texas has a continuing interest in eliminating the boll weevil to protect the cotton industry and promote the wider benefits of boll weevil control.

- ◆ Data collected through the Foundation’s trapping efforts indicate boll weevil populations in Texas have been reduced by more than 99 percent since the program’s inception. The boll weevil has been suppressed or functionally eradicated in 11 of the 16 eradication zones in the state, with boll weevil populations significantly reduced in the other zones as well. According to Foundation records, 87 percent of the cotton planted in Texas is within these 11 zones.
- ◆ Texas is the nation’s number one cotton-producing state, with the 2007 cotton crop translating into an estimated economic impact of \$11.2 billion for the state.² Approximately 30 percent of cotton produced in the U.S. comes from Texas. In fact, independently, Texas ranks sixth in cotton production in the world.³

In 2007, Texas produced the second largest cotton crop in the state’s history, even with 250,000 fewer cotton acres.⁴ The 2007 cotton crop also resulted in the largest cotton yield per acre on record, largely the result of reduced boll weevil populations in Texas.

Just in the Southern High Plains region alone, losses resulting from the boll weevil are estimated at more than \$200 million from 1995 to 1998, before the region began eradication efforts.⁵ The boll weevil is credited as being the most costly insect in the history of American agriculture.⁶

- ◆ Even as boll weevil eradication efforts have recently begun in five new zones, covering all cotton-producing areas of the state, the cost of boll-weevil eradication statewide has decreased 52 percent since 2001. In the eleven suppressed or functionally eradicated zones, Foundation records indicate eradication costs have decreased 81 percent over the same period. Decreased costs of the boll weevil eradication program have subsequently decreased production costs for cotton growers.
- ◆ The boll weevil eradication program has also dramatically reduced pesticide use for cotton in Texas. In the High Plains Zone, Foundation records indicate the amount of insecticide they have applied to cotton fields has been reduced 99.8 percent since the program began.⁷ Similarly,

Boll weevil populations have been reduced by more than 99 percent since the Foundation’s inception.

Pesticide applications on Texas cotton fields have been dramatically reduced.

according to Foundation records, the number of applications statewide in each of the last four years is 50 percent lower compared with the number of insecticide applications that occurred within the seven years prior to the inception of the eradication program.

- ◆ Boll weevil eradication efforts in Texas are crucial to eradicating the boll weevil in other parts of the U.S. The boll weevil entered the U.S. through Texas, and Texas continuously fights infestation from Mexico. If Texas did not maintain an effective boll weevil eradication program, boll weevils would be free to reinfest fields and harm cotton production nationwide.

The Foundation's cooperative approach to boll weevil eradication offers some advantages over traditional regulatory approaches.

- ◆ The Foundation's structure for conducting boll weevil eradication efforts allows a cooperative approach between cotton growers and staff, while still delivering meaningful results, such as buy-in from cotton producers and a self-policing atmosphere. For example, each of the Foundation's zones has independently formed and initiated boll weevil eradication efforts. Since 2005, the boll weevil eradication effort has been statewide, with all cotton-growing areas of Texas voting to participate in the eradication program. Additionally, cotton acreage in the program has expanded from 1.4 million acres in 1996 to nearly 6 million acres in 2005.⁸

Having cotton growers initiate participation in the program, rather than being forced into regulation, allows the Foundation to get better involvement from growers, who share in both the cost of and results from the program. This relationship generally allows Foundation staff to access private property and carry out their daily duties without discontent from growers.

A cooperative effort among growers who also contribute to the common cause of eradicating the boll weevil creates a self-policing environment. Growers are more likely to keep others in line, as the actions of one grower directly affect operations of another, making the program more proactive than traditional regulatory approaches. Also, the program is self-financed with less reliance on state tax dollars, encouraging efficiency among growers and the Foundation to keep costs down.

- ◆ The Texas Department of Agriculture is statutorily authorized to quarantine and conduct eradication or control programs against insect pests or plant diseases in order to protect the State's agricultural resources. TDA currently conducts eradication programs for other plant pests, including the Mexican Fruit Fly, and regulates cotton stalk destruction to prevent cotton from hosting pests such as the boll weevil. In these cases, TDA serves a regulatory role, in contrast to the Foundation's cooperative pest management approach.


*The Foundation's
cooperative
approach creates
support from
cotton growers.*

Because TDA provides regulatory oversight for the program separate from the Foundation, the Foundation can operate the eradication program in a cooperative manner. The Commissioner of Agriculture oversees the Foundation's operations, including holding referenda, final approval of grower assessments, and rulemaking authority. The Commissioner may also place liens against a farmer's cotton crop if the farmer fails to pay the assessment. If the Commissioner of Agriculture finds that the purpose has been fulfilled, or if the Foundation is inoperative or abandoned, the Commissioner is statutorily authorized to dissolve the Foundation. This provides an adequate mechanism for checking the Foundation's power while maintaining its cooperative approach.

- ◆ At the federal level, USDA's Animal and Plant Health Inspection Service has responsibility for safeguarding agriculture and natural resources from the risks associated with the entry, establishment, or spread of plant pests. USDA has a cooperative boll weevil eradication program in which it partners with states by providing technical support and limited federal funds. However, USDA does not have authority to engage in boll weevil eradication within a state; both federal and state laws would need to be changed to allow for this. Without a state entity to administer the boll weevil eradication program, the federal government, other states, and other countries could refuse to allow shipment of cotton or cotton products from Texas.

All cotton-growing areas of the U.S. participate in a boll weevil eradication program, and most have a structure similar to Texas.

- ◆ Other states largely conduct boll weevil eradication efforts using a structure similar to the Foundation. Of the seven states that still maintain active eradication programs, all use an approach similar to Texas.⁹ Four of the seven states, including Texas, have independent Foundations. The other three are members of the Southeastern Boll Weevil Eradication Foundation, a regional organization that handles eradication operations in Alabama, Florida, Georgia, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia.
- ◆ The Southeastern Foundation coordinates boll weevil eradication efforts for all of the states, although each state maintains its own Foundation for administrative purposes, except North Carolina and Virginia. These two states administer boll weevil eradication efforts through their departments of agriculture. Other states that have eradicated the boll weevil either no longer have a need to continue monitoring for the boll weevil, or have varied structures to conduct maintenance efforts where needed. All 15 million acres of U.S. cotton are covered by a boll weevil eradication program, and ten states have eradicated the boll weevil entirely.¹⁰



The Agriculture Commissioner is statutorily authorized to dissolve the Foundation.



All 15 million acres of cotton grown in the U.S. participate in a boll weevil eradication program.

Recommendation

Change in Statute

10.1 Continue the Texas Boll Weevil Eradication Foundation for 12 years.

This recommendation would continue the Texas Boll Weevil Eradication Foundation as a quasi-governmental agency with oversight from the Texas Department of Agriculture for the standard 12-year period, until 2021. The Foundation would maintain its responsibility for conducting boll weevil and pink bollworm eradication efforts across the state.

Agency Response to 10.1

The Texas Boll Weevil Eradication Foundation is in full agreement with staff's recommendation in Issue 10 of the report. The continuation of the Foundation is vital to ensuring that boll weevil eradication is completed across Texas, and that the investments made to date by growers, the State, and the Federal government are protected. (Lindy W. Patton, Executive Director – Texas Boll Weevil Eradication Foundation)

Affected Agency Response to 10.1

The Texas Department of Agriculture agrees with the Sunset staff's recommendation to continue the Texas Boll Weevil Eradication Foundation. The Foundation's cooperative approach to eradication coupled with TDA's oversight and regulatory authority will continue to provide meaningful results for Texas cotton producers. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 10.1

Webb Wallace, Executive Director – Cotton and Grain Producers of the Lower Rio Grande Valley, Harlingen

Against 10.1

None received.

Fiscal Implication

This recommendation would not have a fiscal impact to the State. The State assists boll weevil eradication through a grant administered by TDA. The amount of the grant has varied in recent years, but the Legislature appropriated \$29 million to boll weevil and pink bollworm eradication over fiscal years 2008-2009.

Commission Decision

Adopted Recommendation 10.1.

Legislative Action

House Bill 1580 continues the Texas Boll Weevil Eradication Foundation as a quasi-governmental agency with oversight from the Texas Department of Agriculture for the standard 12-year period, until 2021. (Recommendation 10.1)

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¹ Texas Agriculture Code, sec. 74.109(d).

² High Plains Midwest Ag. Journal, "Bumper Cotton Crop Has Texas Farmers Smiling," November, 15, 2007. Online. Available: <http://www.hpj.com/archives/2007/nov07/nov19/BumpercottoncrophasTexasfar.cfm>. Accessed: November 16, 2007.

³ SHG Resources, www.shgresources.com/tx/symbols/fibreandfabric/, Accessed: February 11, 2008.

⁴ High Plains Midwest Ag. Journal, "Bumper Cotton Crop Has Texas Farmers Smiling," November, 15, 2007. Online. Available: <http://www.hpj.com/archives/2007/nov07/nov19/BumpercottoncrophasTexasfar.cfm>. Accessed: November 16, 2007.

⁵ Texas Cooperative Extension, *Economic Impact Brief: Boll Weevil Eradication Efforts Showing Significant Economic Benefits*. March 2007. Online. Available: http://texasextension.tamu.edu/strategyimpact/economicimpact/Bollweevil07UE_3558.pdf. Accessed: February 13, 2008.

⁶ D.D. Hardee, "A review of literature on the pheromone of the boll weevil, *Anthonomus Grandis Boheman*, *Cooperative Economic Insect Report* 22," (1972), pp.200–207.

⁷ Southwest Farm Press, "Northern High Plains Weevil Suppression Announced," June 9, 2004. Online. Available: <http://southwestfarmpress.com/news/texas-weevil-suppression/>. Accessed: January 14, 2007.

⁸ Texas Cooperative Extension, *Economic Impact Brief: Boll Weevil Eradication Efforts Showing Significant Economic Benefits*. March 2007. Online. Available: http://texasextension.tamu.edu/strategyimpact/economicimpact/Bollweevil07UE_3558.pdf. Accessed: February 13, 2008.

⁹ The seven states with active eradication programs are: Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.

¹⁰ The ten states that have eradicated the boll weevil include: Alabama, Arizona, California, Florida, Georgia, Kansas, New Mexico, North Carolina, South Carolina, and Virginia.

Issue 11

Statute Limits the Foundation's Ability to Adapt the Use and Collection of Grower Assessments to Meet the Changing Nature of Boll Weevil Eradication Efforts.

Summary

Key Recommendations

- ◆ Remove statutory limitations preventing the Foundation from transferring assessments among zones and allow the Foundation flexibility to do so, upon approval of the Foundation Board and the Agriculture Commissioner.
- ◆ Allow the Foundation statutory flexibility to adapt its assessment collection method and mechanism for its eradication program, not just its maintenance program, upon approval of the Foundation Board and the Agriculture Commissioner.

Key Findings

- ◆ The statutory provision prohibiting assessments from being used outside the zone in which they were collected could have unintended consequences on certain growers, affecting the overall effectiveness of the State's eradication efforts.
- ◆ The Foundation's method for collecting assessments based on acres of cotton in production is difficult to collect and unfair to some growers.
- ◆ Other states with boll weevil eradication programs provide greater flexibility in collecting assessments.

Conclusion

The Texas Boll Weevil Eradication Foundation primarily funds boll weevil and pink bollworm eradication efforts by collecting assessments from cotton growers based on the number of acres in production. Based on early concerns about whether boll weevil eradication could be successful, statute limits how grower assessments can be collected and used to fund the eradication program.

Removing limitations and creating flexibility in the methods and mechanisms available to the Foundation for collecting and using grower assessments could provide a more equitable and efficient system to pay for boll weevil and pink bollworm eradication efforts. As the Foundation nears eradication of the boll weevil and pink bollworm, providing greater statutory flexibility would allow the eradication program to adapt to successfully complete its mission, while ultimately keeping decision-making authority in the hands of cotton growers.

*The Foundation
collects
assessments from
approximately
27,000 cotton
growers.*

Support

The Foundation’s way of assessing cotton growers to fund boll weevil and pink bollworm eradication efforts reflects early concerns about how the money would be collected and used.

- ◆ The Foundation receives about half its annual funding from assessments paid by cotton growers. Each year, the Foundation collects assessments from approximately 27,000 cotton growers across the state based on the cost of eradication efforts and the number of cotton acres in production. The Foundation has collected \$482 million in grower assessments since its inception. The Foundation also receives funding from state and federal governments as part of its cost-share program.
- ◆ Because of initial uncertainty surrounding the ability to eradicate the boll weevil from Texas cotton fields, statute is very prescriptive in how the Foundation may collect and use assessments to fund the eradication program. For example, statute prohibits assessments from being used for eradication purposes in zones other than the zone from which the assessment is collected.¹ Statute also prescribes that the Foundation must collect assessments from individual growers based on the number of acres in production.²

The statutory provision prohibiting assessments from being used outside the zone in which they were collected could have unintended consequences on certain growers, affecting the overall effectiveness of the State’s eradication efforts.

- ◆ As the Foundation nears boll weevil eradication in Texas, an eradication program along the Mexican border will likely still be necessary to prevent the reinfestation of boll weevils from Mexico. In effect, zones such as the Lower Rio Grande Valley, which will most likely be the last place in the U.S. to eradicate the boll weevil, will have to serve as a buffer to Mexico, which is outside the control of state eradication efforts, and the weevil-free areas to the north.

Providing such a buffer would benefit all cotton growers in the state, but Valley cotton growers could ultimately bear the entire cost of preventing reinfestation because state law prevents the use of assessments from other growers to help the zone with a maintenance program. Further, to the extent that a zone like this has difficulty maintaining a control program, the overall effectiveness of the State’s eradication effort could be compromised.

In another example, the Southern Rolling Plains Zone, a zone that functionally eradicated the boll weevil, was reinfested with boll weevils that moved from the South Texas/Winter Garden Zone through winds from Tropical Storm Erin. A collective, statewide effort to fully eradicate boll weevils from Texas could prevent future reinfestations of areas of Texas that have eradicated the boll weevil.

*A statewide effort
to eradicate the
boll weevil could
prevent future
reinfestations.*

The Foundation's method for collecting assessments based on acres of cotton in production is difficult to collect and unfair to some growers.

- ◆ Currently, the Foundation collects assessments from approximately 27,000 farmers per year on a per-acre basis. The Foundation's administrative costs associated with billing producers, collecting assessments, and pursuing uncollected assessments are high. Although assessment collection rates are usually around 97 percent, billing and collection costs make up approximately 20 percent of the Foundation's administrative budget.

Because the Foundation assesses such a large number of growers, the Foundation is continuously involved in lawsuits over uncollected assessments. For example, in calendar year 2007, the Foundation filed 222 suits relating to uncollected assessments. During the last three years, the Foundation has filed 555 suits relating to uncollected assessments. As a result, the Foundation must pay the legal costs of these suits and may or may not recover the uncollected assessments.

- ◆ Cotton growers whose crops fail must still pay their full assessments. In these cases, growers plant cotton, and the Foundation assesses the grower's cotton acres, as the land is treated as part of the eradication program. However, if the cotton fails, growers do not harvest a crop for sale and receive no money with which to pay their assessments.
- ◆ Some zones charge different assessment rates for dryland versus irrigated cotton acres, as irrigated land generally produces more cotton and is a greater risk for boll weevil infestation. Cotton producers in those zones complain that they unfairly pay higher assessment rates for the use of irrigation, rates that may not always accurately reflect anticipated increased cotton production for irrigated cotton.
- ◆ The Foundation's own statute allows the Foundation to collect fees for a maintenance program, as opposed to an eradication program, on a per-acre or per-bale basis at central points in the cotton marketing process, such as cotton gins or warehouses.

Other states with boll weevil eradication programs provide greater flexibility in collecting assessments.

- ◆ In the Southeastern Boll Weevil Eradication Foundation, a regional organization, member states collect additional assessments from growers to subsidize maintenance and eradication efforts along the boll weevil buffer zone, a line that separates active eradication programs from areas that have eradicated the boll weevil. All member states, including states that have eradicated the boll weevil, pay this additional grower assessment that is pooled in an effort to move the line of boll weevil eradication until it is outside the member states. Aiding eradication efforts beyond their own zone boundaries allows growers in states that have eradicated


*In the past
three years, the
Foundation filed
555 lawsuits
related to
uncollected
assessments.*

the boll weevil, such as North Carolina and Virginia, to benefit from a reduced risk of reinfestation from states such as Tennessee.

Oklahoma's collection rate is 100 percent, and it has never had to sue over uncollected assessments.

- ◆ Oklahoma collects assessments based on both pounds of cotton lint at cotton gins as well as acres in cotton production. Costs related to assessment collection make up 0.02 percent of Oklahoma's administrative budget, compared with approximately 20 percent of Texas' administrative budget. Oklahoma's collection rate is 100 percent, and it has never been involved in a lawsuit related to uncollected assessments. In Oklahoma, collecting assessments based on cotton production has eliminated the need to distinguish assessment rates between irrigated and dryland cotton acres. Basing assessments on cotton production has also addressed criticism from farmers about paying assessments on failed cotton acres, as part of the assessment is in proportion to the amount of cotton produced on the land.

Recommendations

Change in Statute

11.1 Remove statutory limitations preventing the Foundation from transferring assessments among zones and allow the Foundation flexibility to do so, upon approval of the Foundation Board and the Agriculture Commissioner.

This recommendation would remove statutory language specifying that grower assessments collected in one zone may only be used in that zone, and authorize the Foundation to transfer grower assessments among zones. Both the Foundation Board and the Commissioner of Agriculture would be required to approve the transfer of grower assessments collected for eradication efforts in one zone for use in another zone. This recommendation would allow boll-weevil-free areas to help infested areas with maintenance efforts so they can benefit from reduced risk of reinfestation.

Agency Response to 11.1

The Foundation understands the reasons behind this recommendation and agrees there may be a need in the future to spread the burden of protecting the investment made by the state, the federal government, and all cotton growers. Such an approach has been integral to other successful eradication programs across the cotton belt. Further, Foundation leaders have been, for several years, laying the groundwork with cotton leaders from all cotton growing regions of the United States for the idea that once eradication is achieved, Texas will still be on the front lines of the boll weevil battle. We believe that states across the cotton belt should help Texas growers with any long-term maintenance operations. For the most part, this idea has been received positively.

If we believe other states should share in the cost of our maintenance operations, Texas producers must also be willing to work cooperatively. Further, with 87 percent of the cotton acres in Texas reaching suppressed or functionally eradicated status, all cotton growing areas have a common interest in maintaining the status and in completing eradication across the state. Additionally, the Legislature has been a partner to the growers in eradication efforts since 1999, and from a policy standpoint, giving the Foundation such flexibility increases its ability to use grower funds to protect progress made to date.

Agency Response to 11.1 (continued)

However, the Foundation has significant concerns about this recommendation because it represents a major change to the current statutory scheme. We believe it critical for grass-roots groups, especially zone steering committees, to be involved in developing safeguards that protect grower funds that have been collected before any legislative changes. (Lindy W. Patton, Executive Director – Texas Boll Weevil Eradication Foundation)

Affected Agency Response to 11.1

The Texas Department of Agriculture (TDA) supports the Sunset staff’s recommendation to remove statutory limitations preventing the Foundation from transferring assessments among zones. TDA staff believes, as does the Foundation, that protection from re-infestation is of paramount interest to all zones participating in boll weevil eradication. The ability to create “barriers” in areas of the state will provide a benefit to all cotton producers in Texas and throughout the country and should not be the sole financial burden of cotton growers in zones where “barriers” must be located. Producers will want, and the program will need strong controls built around any potential flexibility in transferring assessments among zones. However, this statutory change, coupled with the current producer led process for establishing assessment rates is an appropriate progression for this successful program and will also maintain sufficient controls at the local producer level. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 11.1

Webb Wallace, Executive Director – Cotton and Grain Producers of the Lower Rio Grande Valley, Harlingen

Jeff Nunley, Executive Director – South Texas Cotton and Grain Association, Victoria

Against 11.1

Randy Braden, President – St. Lawrence Cotton Growers Association, Garden City

Tommy D. Fondren – Lorenzo

Modification

1. Allow for the transfer of funds only after the entire state reaches the maintenance phase and subject to approval of the Foundation Board, Agriculture Commissioner, and the majority of growers in each zone on a zone-by-zone basis. (Randy Braden, President – St. Lawrence Cotton Growers Association, Garden City)

11.2 Allow the Foundation statutory flexibility to adapt its assessment collection method and mechanism for its eradication program, not just its maintenance program, upon approval of the Foundation Board and the Agriculture Commissioner.

Under this recommendation the Foundation would have authority to change the method and mechanism of its collection of grower assessments. The Foundation currently has this statutory flexibility for the boll weevil and pink bollworm maintenance program, but this recommendation would expand that authority to the eradication program. This would allow the Foundation to collect assessments at central points in

the cotton marketing process, such as cotton gins or warehouses, as well as to collect assessments based on cotton production or acres in production or a combination of these methods. To change the method or mechanism for collecting grower assessments, both the Foundation Board and the Commissioner of Agriculture must approve such action. This change could allow the Board flexibility to decide how to collect assessments and potentially benefit financially from reduced administrative and legal costs associated with greater ease of collection and higher collection rates.

Agency Response to 11.2

The Foundation supports this recommendation. As stated in the staff report, collecting assessments individually from more than 27,000 producers is expensive and time-consuming. And as assessment rates go down in eradicated areas, collection costs as a percentage of total assessments will increase. A more streamlined collection system is needed. Given the wide acceptance of the program at this point, the Foundation looks forward to working with relevant sectors of the cotton industry to arrive at a consensus approach to streamlining collections should the Legislature implement this recommendation. (Lindy W. Patton, Executive Director – Texas Boll Weevil Eradication Foundation)

Affected Agency Response to 11.2

The Texas Department of Agriculture also agrees with the Sunset staff recommendation to allow statutory flexibility for assessment collection. The Foundation currently has this flexibility in statute, during the maintenance phase of the eradication program, to collect assessments on a per-acre or per-bale basis at central points in the cotton marketing process, such as cotton gins or warehouses. TDA believes this flexibility can be of benefit before maintenance programs are implemented. In addition to overall fairness to cotton producers, this flexibility may decrease overall costs of administration for the Foundation, which will also benefit Texas cotton producers. (Todd Staples, Commissioner – Texas Department of Agriculture)

For 11.2

Webb Wallace, Executive Director – Cotton and Grain Producers of the Lower Rio Grande Valley, Harlingen

Jeff Nunley, Executive Director – South Texas Cotton and Grain Association, Victoria

Against 11.2

Randy Braden, President – St. Lawrence Cotton Growers Association, Garden City

Tommy D. Fondren – Lorenzo

Modification

2. Require approval from a majority of cotton growers in the zone before any change in collection method or mechanism. (Randy Braden, President – St. Lawrence Cotton Growers Association, Garden City)

Fiscal Implication

Changing the assessment basis to include fewer collection points could have a positive fiscal impact for the Foundation, and ultimately cotton growers, resulting from lower administrative costs and leading to more money going directly to eradication and maintenance efforts.

Commission Decision

Adopted Recommendations 11.1 and 11.2.

Legislative Action

House Bill 1580 removes statutory language specifying that grower assessments collected in one zone may only be used in that zone, and authorizes the Foundation to transfer grower assessments among zones. Both the Foundation Board and the Commissioner of Agriculture must approve the transfer of grower assessments collected for eradication efforts in one zone for use in another zone. The Legislature modified the provision to require the Board to consult with affected grower steering committees before recommending that the Commissioner approve a transfer of proceeds. (Recommendation 11.1)

House Bill 1580 also authorizes the Commissioner to adopt rules to change the method and mechanism of its collection of grower assessments to provide additional flexibility beyond the current method of collecting on a per-acre, per-year basis. The Foundation currently has this statutory flexibility for the boll weevil and pink bollworm maintenance program, but the bill expands that authority to the eradication program. To change the method or mechanism for collecting grower assessments, the Commissioner must receive a recommendation from the Board. The Board must consult with affected grower steering committees and the technical advisory committee before recommending that the Commissioner adopt rule changes. (Recommendation 11.2)

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¹ Texas Agriculture Code, sec. 74.113 (f)(1) and (2).

² Texas Agriculture Code, sec. 74.203 (b).

ACROSS-THE-BOARD RECOMMENDATIONS



ATBs

Texas Department of Agriculture

Recommendations	Across-the-Board Provisions
Not Applicable	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Not Applicable	3. Require unbiased appointments to the agency's policymaking body.
Not Applicable	4. Provide that the Governor designate the presiding officer of the policymaking body.
Not Applicable	5. Specify grounds for removal of a member of the policymaking body.
Not Applicable	6. Require training for members of the policymaking body.
Not Applicable	7. Require separation of policymaking and agency staff functions.
Not Applicable	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Note:

Sunset staff does not recommend applying the Across-the-Board recommendations (ATBs) to the Boll Weevil Eradication Foundation, the Prescribed Burning Board, or the Texas-Israel Exchange Fund Board. The ATBs do not apply to the Boll Weevil Eradication Foundation because it is a quasi-governmental entity and the majority of its Board members are elected by cotton growers. The ATBs would not be needed for the Prescribed Burning Board because Sunset staff, in Issue 2 of this report, is recommending eliminating the Board as an independent body and instead making it an advisory committee to TDA. The ATBs would not be needed for the Texas-Israel Exchange Fund Board because Sunset staff, in Issue 3 of this report, is recommending abolishing the Board.

Commission Decision

Adopted staff recommendations.

Legislative Action

Adopted Commission decision.

NEW ISSUES



New Issues

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

12. Expand the state's role in the Food Distribution and Fresh Fruit and Vegetable programs and place greater emphasis on TDA's role in facilitating the flow of fresh produce from Texas farms to Texas schools. (Michael U. Villarreal, State Representative, District 123 – Texas House of Representatives)
13. The Texas Department of Agriculture, with cooperation from the Texas Parks and Wildlife Department, shall establish a pilot project to provide venison to the state's food bank system. TDA shall seek funding from the Legislature to provide grant funding to food banks to work with qualified meat processors and landowners in the Managed Lands Deer Permit Program at Parks and Wildlife to provide for the processing and delivery of meat from deer taken from their lands as part of the permit program. (Ike Sugg, Public Member – Sunset Advisory Commission)
14. TDA shall, to the extent allowed by USDA regulations, explore a pilot project to provide venison to schools through TDA's child nutrition programs. TDA shall use the distribution system described in New Issue 13 above, with the cooperation of Parks and Wildlife, to provide venison to schools. (Ike Sugg, Public Member – Sunset Advisory Commission)
15. TDA and Parks and Wildlife shall explore a pilot project with the Texas Department of Criminal Justice to provide venison to the food services operations in prisons across the state. TDA and Parks and Wildlife shall use the distribution system described in New Issue 13 above, with the cooperation of TDCJ, to provide venison to prisons. (Ike Sugg, Public Member – Sunset Advisory Commission)
16. Authorize the Department to establish permanent, instead of temporary, road stations to inspect agricultural products for pests. (Ray Prewett, President – Texas Citrus Mutual and Executive Vice President – Texas Vegetable Association, Mission)
17. Strengthen the Department's regulatory quarantine authority, as proposed last session in S.B. 1561, referred to as an agricultural warrant law. Department staff would be able to obtain a warrant to access private property to determine if pests exist, and a panel of experts, appointed by the Commissioner, would review pest outbreaks and recommend actions to address the situation. (Ray Prewett, President – Texas Citrus Mutual and Executive Vice President – Texas Vegetable Association, Mission)
18. TDA should decrease its share of the Citrus Budwood Program fee in rule and increase the share of the fee dedicated to the Texas A&M University - Kingsville Citrus Center to help offset the Center's expenses associated with operating the Citrus Budwood Program. (Ray Prewett, President – Texas Citrus Mutual and Executive Vice President – Texas Vegetable Association, Mission)

Staff Comment: This recommendation is a direction to TDA's management and would not require statutory change.

19. TDA should increase the focus of the GO TEXAN Partner Program (GOTEPP) on industry-wide marketing efforts, instead of just individual companies. (Ray Prewett, President – Texas Citrus Mutual and Executive Vice President – Texas Vegetable Association, Mission)

Staff Comment: This recommendation is a direction to TDA's management and would not require statutory change.

20. Eliminate TDA's aquaculture licensing requirement unless removal of this requirement results in either the Texas Parks and Wildlife Department or Texas Commission on Environment Quality establishing a new licensing requirement for aquaculture facilities, in which case aquaculture licensing should remain under the jurisdiction of TDA. (Paul Dorsett, President – Texas Aquaculture Association, Bryan)

Commission Decision

After postponing consideration of New Issues 13, 14, and 15 at the June decision meeting, the Commission adopted New Issues 13, 14, and 15 as management actions on September 24, 2008.

Legislative Action

TDA sought funding from the 81st Legislature to establish a pilot project to provide venison to the state's food bank system, but the Legislature chose not to provide funding for this purpose. TDA plans to explore other options for providing venison to food banks, schools, and prisons and will be meeting with the Texas Parks and Wildlife Department, Texas Department of Criminal Justice, Texas Food Bank Network, and other interested parties.

AGENCY INFORMATION

(MARCH 2008)



Agency Information

Texas Department of Agriculture

Agency at a Glance

The Legislature established the Texas Department of Agriculture (TDA) in 1907. Since that time, the agency has evolved from its original responsibility for gathering information and statistics on crops and livestock to incorporate a largely regulatory function, and most recently to include marketing, economic development, and nutrition functions. Today, the agency encompasses all phases of modern agriculture, agricultural businesses, and consumer protection. To fulfill its mission of making Texas the leader in agriculture, TDA:

- ◆ promotes Texas agricultural products locally, nationally, and internationally;
- ◆ assists in the development of agribusiness industry in Texas by promoting rural communities and distributing grant money;
- ◆ regulates the sale, use, storage, and disposal of pesticides and herbicides;
- ◆ controls destructive plant pests and diseases;
- ◆ protects consumers through its regulation of agricultural commodities and measuring devices; and
- ◆ administers federal nutrition programs for school children and for adults and children in day care facilities.



TDA's budget for fiscal year 2008 is more than four times its budget for fiscal year 2007.

As part of its functions, TDA administers both the Texas-Israel Exchange Fund and the prescribed burn manager certification program. TDA receives guidance on these programs from two statutorily-created, semi-independent bodies – the Texas-Israel Exchange Fund Board and the Prescribed Burning Board – which are both subject to review under the Sunset Act in the same time frame as TDA.

Key Facts

- ◆ **Funding.** The Texas Department of Agriculture received an appropriation of \$347 million for fiscal year 2008, more than four times its \$80.5 million budget for fiscal year 2007. The increase is due to the transfer of several nutrition programs from the Health and Human Services Commission, the transfer of structural pest control regulation, and funding for a grant program to help organizations that deliver meals to homebound persons.

- ◆ **Staffing.** The number of employees authorized for TDA for fiscal year 2008 is 650.5, an increase of 146 employees from 2007 due to the additional responsibilities given to the agency. About half of the staff is based in Austin and the other half works in the field offices throughout the state.
- ◆ **Food and Nutrition.** Through its administration of federally funded nutrition programs, including the National School Lunch Program and surplus agricultural commodity distribution programs, TDA oversaw the serving of more than 900 million meals and the distribution of 150 million pounds of agricultural commodities in 2007.
- ◆ **Marketing.** The GO TEXAN marketing campaign, launched in 1999, promotes all Texas agricultural products under one recognizable trademark. TDA finished fiscal year 2007 with 1,848 GO TEXAN members, representing a wide variety of Texas-made agricultural and non-agricultural products.
- ◆ **Regulatory Programs.** The agency licenses, certifies, or regulates more than 130,000 persons, businesses, or entities – 53 percent of which are associated with the agency’s pesticide program. In addition to pesticides, TDA also regulates commercial weights and measures, plant quality, seed quality, perishable commodities, aquaculture facilities, cooperative marketing associations, grain warehouses, egg quality, and organics. The agency performs more than 290,000 inspections annually of fields, vehicles, warehouses, products in commerce, retail establishments, and other locations throughout the state. TDA currently certifies 14 certified prescribed burn managers.
- ◆ **Grants.** TDA administers a number of state and federally funded grant programs. One such program will provide grants totaling \$19 million over the 2008-2009 biennium to support local organizations that deliver meals to the homebound elderly and disabled. Another program, the Texas-Israel Exchange Fund, will grant \$500,000 over the biennium for agricultural research conducted by Texas and Israeli researchers. Through its Texas Capital Fund program, TDA will provide \$10 million to small communities for infrastructure improvement and downtown revitalization.

Major Events in Agency History

- 1907 The Legislature establishes the Texas Department of Agriculture.
- 1925 The Legislature transfers the functions of the Office of the Commissioner of Markets and Warehouses to the Commissioner of Agriculture.

- 1957 The Egg Quality program is established to ensure eggs sold to Texas consumers meet quality standards.
- 1981 TDA is charged as the lead agency for pesticide regulation in Texas and is required to enforce the federal Pesticide Control Act.
- 1987 The Legislature creates the Texas Agricultural Finance Authority within TDA to provide financial assistance through eligible lending institutions to creditworthy individuals and businesses.
- 1989 TDA establishes a promotional marketing membership program to promote Texas-grown products.
- 1993 The Legislature first appropriates funding to the Texas-Israel Exchange Fund.
- 1999 The Legislature creates the Prescribed Burning Board as a separate entity within TDA.
- 2003 Administration of the National School Lunch Program is transferred from the Texas Education Agency to TDA.
- 2007 The Legislature transfers certain federal nutrition programs from HHSC to TDA. The Legislature also abolishes the Structural Pest Control Board and transfers its responsibilities to TDA.

Organization

Commissioner of Agriculture

The Commissioner of Agriculture is a statewide elected official who heads the Texas Department of Agriculture and serves a four-year term. The current Commissioner is the Honorable Todd Staples. The Commissioner implements and enforces the state's agricultural laws. The Commissioner also, with the help of the Deputy Commissioner of Agriculture, manages the daily operations of the agency and sets and implements program policy for the Department.

The Commissioner receives input on various programs through semi-independent boards and advisory committees. Nine semi-independent boards have some rulemaking and decision-making authority, though the Commissioner of Agriculture generally retains final rulemaking authority. The Commissioner or a TDA representative serves as chair or as a member on the majority of these boards. The table on page 110, *TDA Semi-Independent Boards*, describes each of these boards in further detail.



The Commissioner receives input on various programs through 18 boards and committees.

TDA Semi-Independent Boards

Board	Membership	Purpose
GO TEXAN Partner Program Advisory Board	At least eight members, appointed by the Commissioner, representing TDA; USDA's Commodity Credit Corporation; consumers; radio, print, and television advertising media; the advertising profession; the Internet website or electronic commerce industry; someone with economic analysis expertise; and other members as the Commissioner deems necessary.	Reviews applications and approves or denies funding for marketing projects.
Produce Recovery Fund Board	Five members, appointed by the Governor: two producers, a licensed retailer, and two representatives of the general public.	Advises the agency on all matters relating to the Produce Recovery Fund, including budget and revenues. Conducts hearings on claims against the fund.
State Seed and Plant Board	Six members, appointed by the Governor: a Texas A&M representative, a Texas Tech representative, a certified seed or plant producer, a seller of certified seed or plants, an active farmer who does not produce or sell certified seed or plants, and the head of TDA's seed division.	Prescribes rules and procedures by which seed and plant certification is conducted in Texas. Has rulemaking authority.
Seed Arbitration Board	Six members, appointed by the Governor. Same members as State Seed and Plant Board.	Investigates, hears, and reports findings concerning seed law complaints that meet the criteria for seed arbitration.
The Food and Fibers Research Council	Thirteen members: the Commissioner or the Commissioner's designee and 12 members, appointed by the Commissioner, representing the cotton, food processing, wool and mohair, and textile industries.	Reviews and approves funding for surveys, research, and investigations relating to the use of cotton fiber, oilseed products, other products of the cotton plant, wool, mohair, and other textile products.
Texas-Israel Exchange Fund Board (see Appendix A for more information)	Nine members: the Commissioner; five Commissioner appointees; and representatives of University of Texas, Texas A&M, and Texas Tech. Three non-voting, ex officio members representing the Comptroller, the Speaker of the House, and the Lt. Governor.	Selects and oversees projects supported by the fund and works with its corresponding body in Israel to ensure that proposed projects meet the objectives of the program.
Prescribed Burning Board (see Appendix A for more information)	Thirteen members comprising representatives of the following entities: Texas Forest Service, Texas Parks and Wildlife Department, Texas Commission on Environmental Quality, Texas AgriLife Extension Service, Texas AgriLife Research, Texas Tech University, TDA, and State Soil and Water Conservation Board; and five Commissioner-appointed agricultural land owners.	Sets standards for prescribed burning including training requirements and ensures minimum insurance standards for certified prescribed burn managers. Approves certified burn managers. Has rulemaking authority.
Texas Agricultural Finance Authority	Nine members. The Commissioner or the Commissioner's designee, the director of the Institute for International Agribusiness Studies, and seven Governor-appointed members: a local elected or appointed official, four experts in agricultural lending, and a representative of an agricultural business and of an agriculture-related entity.	Manages several agricultural financing programs by adopting a budget, issuing bonds, and approving loans and loan guaranties. Has rulemaking authority.

TDA Semi-Independent Boards (continued)

Board	Membership	Purpose
Texas Boll Weevil Eradication Foundation Board (see Texas Boll Weevil Eradication Foundation Agency Information section for more detail)	Twenty-one members: one elected by each of the 16 active eradication zones, and five Commissioner appointees including an agricultural lender, an independent entomologist who is an integrated pest management specialist, two cotton production representatives, and a pest control industry representative.	Makes annual recommendations to the Commissioner for assessments to be charged to cotton producers to conduct the eradication efforts. Board may also borrow money for the operation of the boll weevil eradication program with the Commissioner's approval.

Nine more bodies are purely advisory. These advisory committees make policy recommendations to the agency on their particular area of expertise, but they do not have rulemaking or decision-making authority. TDA considers these recommendations in the administration of its respective programs. The table, *TDA Advisory Committees*, describes each of these committees in further detail.

TDA Advisory Committees

Advisory Committee	Membership	Purpose
Wine Marketing Advisory Committee	Seven members, appointed by the Commissioner: three representatives from wineries, one wine wholesaler, one from a wine package store, one from TDA, and one from the Texas Alcoholic Beverage Commission.	Directs the wine marketing program and advises the agency on the expenditures of appropriated funds.
Wine Industry Development Advisory Committee	Nineteen members appointed by the Commissioner.	Assists the agency in industry development, funding, research, educational programming, and marketing.
Organic Agriculture Industry Advisory Board	Thirteen members, appointed by the Commissioner: four who produce organic agricultural products, two who sell organic products, one who distributes organic products, one who processes organic products, one from a trade association representing organic products, one from the AgriLife Extension Service, one technical advisor, one member of the public, and one from TDA.	Advises the agency on how to promote and expand the organic agricultural products industry.
Structural Pest Control Advisory Committee	Nine members, appointed by the Commissioner: two structural pest control application experts, three representatives of the public, a member from an institution of higher education, a structural pest control operator representative, a representative for consumers, and the Commissioner of State Health Services or the Commissioner's designee.	Advises the Commissioner on education and curricula for applicants, proposes rules and standards for issuance of licenses and other issues affecting the practice of structural pest control.

TDA Advisory Committees (continued)

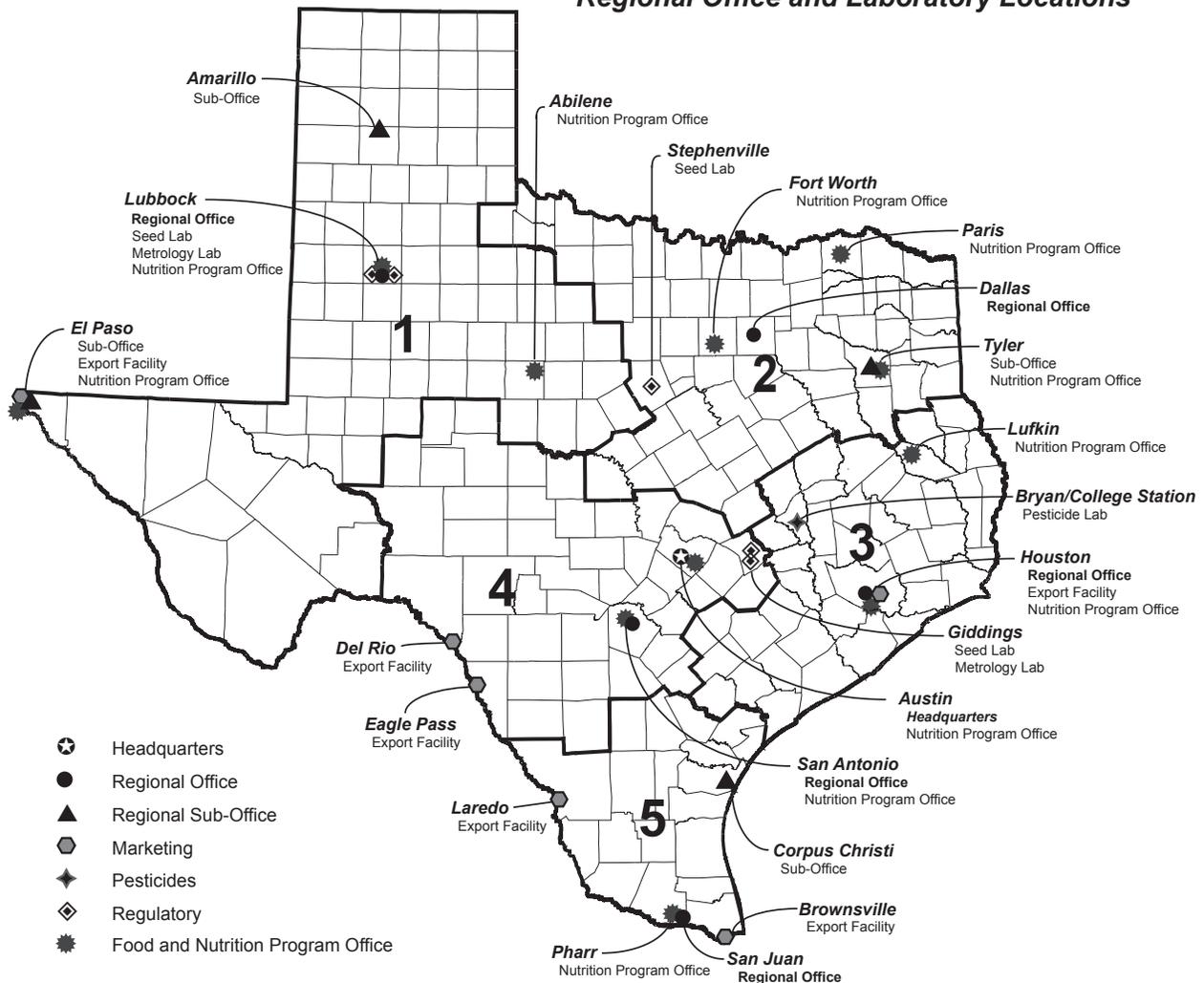
Advisory Committee	Membership	Purpose
Pest Management Zone Committees	Ten separate committees, appointed by the Commissioner, including a TDA representative and cotton producers from each of the 10 cotton stalk destruction zones.	Makes recommendations to control and prevent cotton pest infestations.
Texas Shrimp Marketing Program Advisory Committee	Ten members, appointed by the Commissioner: two commercial bay shrimp boat owners, two commercial gulf shrimp boat owners, a Texas shrimp aquaculture industry representative, one retail fish dealer, one wholesale fish dealer, a researcher or instructor at an institution of higher education specializing in food science, particularly seafood, a seafood restaurant industry representative, and a representative of the public.	Provides advice on marketing strategies and information about the shrimping industry.
Texas Oyster Advisory Committee	Nine members, appointed by the Commissioner: five oyster dealers, a member representing consumer interests, a grocery retail representative, a restaurant industry representative, and a researcher or instructor from an institution of higher education who specializes in food science, particularly seafood.	Provides advice on marketing strategies and information about the oyster industry.
Citrus Budwood Advisory Council	Seven members, appointed by the Commissioner: a representative each from TDA, Texas A&M University – Kingsville’s Citrus Center, and two from the citrus nursery industry; two citrus growers; and an expert in citrus diseases and pests.	Advises the agency on standards and rules for foundation groves, citrus budwood certification, and the regulation of citrus budwood and citrus nursery trees.
Healthy Students = Healthy Families Advisory Committee	Commissioner-appointed members, including representatives from the education, health, and nutrition communities.	Makes recommendations about the Texas Public School Nutrition Policy and the nutrition issues affecting Texas school children.

Staff

TDA employed 475.2 staff at the end of fiscal year 2007, although the agency had an allocation of 504.5 positions. TDA’s headquarters in Austin houses almost half of the agency’s staff. The rest of the agency’s staff works out of five regional offices, four satellite offices, six laboratories, and six livestock export facilities. Some field staff, such as inspectors and rural economic development representatives, work out of their homes. TDA’s six laboratories include three seed labs, two metrology labs, and one pesticide lab. The map on page 113, *Texas Department of Agriculture Regional Office and Laboratory Locations*, shows the locations of each of the agency’s offices and labs.

As a result of the transfer of food and nutrition programs from the Health and Human Services Commission (HHSC) to TDA, the agency received an additional allocation of 100 full-time employees. A requirement for

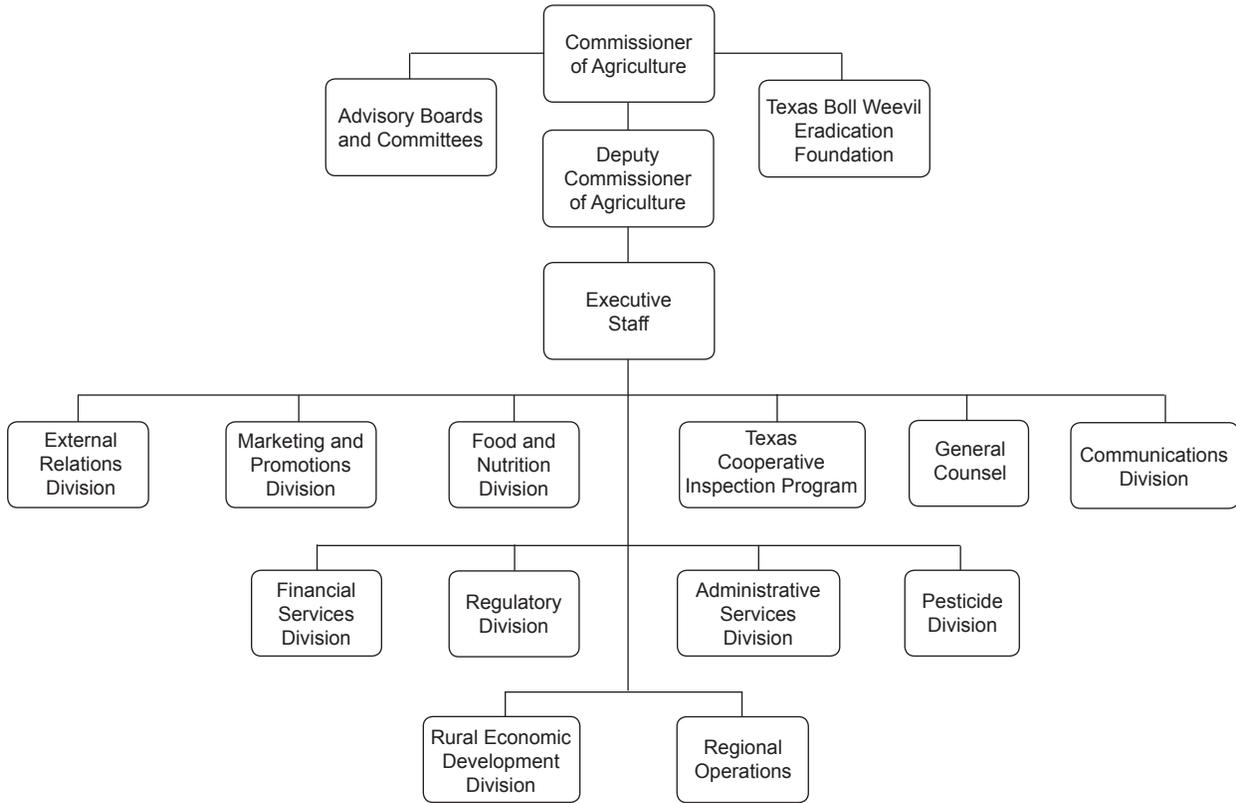
Texas Department of Agriculture Regional Office and Laboratory Locations



additional roadside inspections created 12 new staff positions. TDA also received 35 new employees because of the transfer of structural pest control regulation to TDA. As a result, TDA has budgeted 650.5 employees for fiscal year 2008. The *Texas Department of Agriculture Organizational Chart* on page 114 depicts the structure of the agency. The Texas-Israel Exchange Fund Board and the Prescribed Burning Board have no full-time employees. Instead, TDA staff administer these two programs with guidance from their respective boards.

Appendix C compares the agency's workforce composition to the minority civilian workforce over the past three years. Because TDA provides staff support to the Prescribed Burning Board and the Texas-Israel Exchange Fund, these two entities do not have separate equal employment opportunity reporting requirements.

Texas Department of Agriculture Organizational Chart



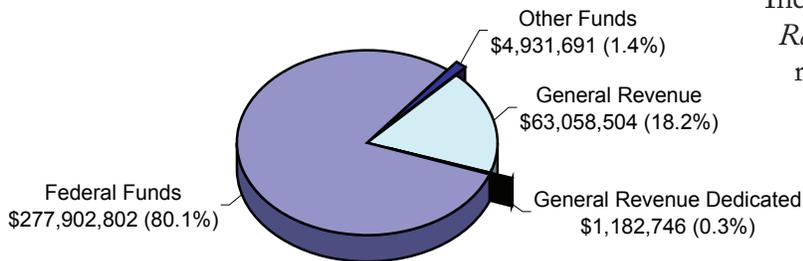
Funding

Revenues

With the transfer of federal nutrition programs from the Health and Human Services Commission, TDA's budgeted revenue ballooned to \$347 million in fiscal year 2008, more than four times its budget from the previous year. About \$278 million, or 80 percent, of TDA's 2008 budget will come from federal funding, to support the agency's new and existing food and nutrition programs. Most of the rest of the agency's revenue comes from General Revenue, appropriated receipts, and dedicated funds.

The pie chart, *TDA Budgeted Sources of Revenue*, details the agency's sources of revenue for fiscal year 2008.

**TDA Budgeted Sources of Revenue
FY 2008**



Total: \$347,075,743

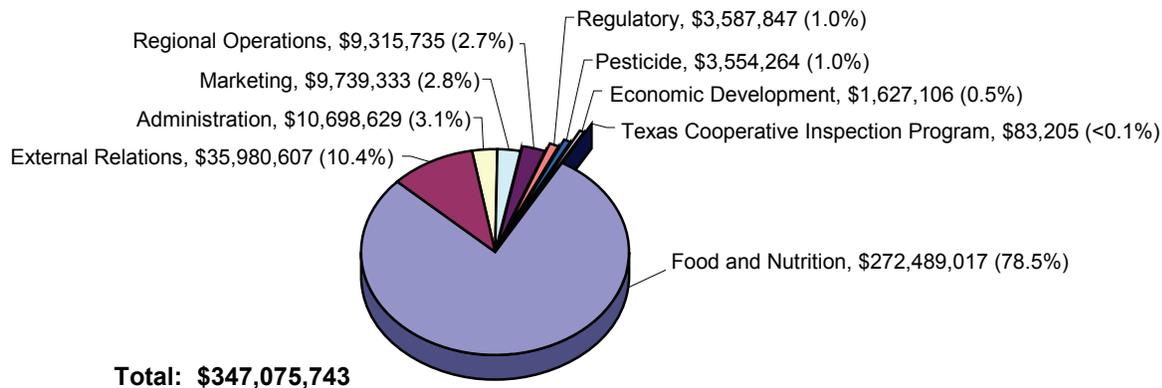
The Legislature designated \$500,000 in general revenue funds for the Texas-Israel Exchange Fund for the 2008-2009 biennium. The Prescribed Burning Board's only source of funding is through

fees generated by the program, totaling \$500 in fiscal year 2007. TDA provides administrative and legal support to both the Exchange Fund and the Prescribed Burning Board as part of its routine functions paid for by its general revenue appropriation.

Expenditures

The agency expects to spend its \$347 million budget across nine areas – marketing, economic development, pesticide and other types of regulation, food and nutrition, grants, administration, regional operations, and the Texas Cooperative Inspection Program – during fiscal year 2008. The nutrition programs transferred from HHSC account for the largest percentage of TDA’s budget, largely as a pass-through to provide meals for certain school children and for children and adults in day care facilities. The External Relations portion of the agency’s budget includes funding for many of the agency’s special grants programs, including approximately \$14.5 million for boll weevil eradication and \$10 million for the new Home-Delivered Meals Grant Program. The budgeted amount spent on each area is detailed in the pie chart, *TDA Budgeted Expenditures by Program Area*.

**TDA Budgeted Expenditures by Program Area
FY 2008**



Appendix D describes TDA’s use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2004 to 2007. The agency makes purchases in five categories: building construction, special trade, professional services, commodities, and other services. During the past four fiscal years, the agency met or exceeded the statewide goals for both the professional services and the commodities categories. While HUB purchases in the other services category have lagged behind the goal, HUB spending in this category has improved significantly over the last couple years. The Texas-Israel Exchange Fund and the Prescribed Burning Board are tied to TDA for the purposes of purchasing and contracting, and do not have their own separate HUB reporting requirements.

Agency Operations

The Department of Agriculture performs a variety of functions, ranging from protecting consumers and agricultural industries through its regulatory activities to administering programs to promote Texas agricultural products, rural economic development, child and adult nutrition, and agricultural research.

Regulatory Programs

TDA's 11 regulatory programs licensed, certified, or registered 132,267 persons, businesses, and other entities in fiscal year 2007. TDA's regulatory functions can be classified into three categories: consumer protection, value-added programs, and plant quality. Appendix E shows fee amounts and revenue associated with each regulatory program.

Consumer Protection Programs

The majority of the regulatory programs at TDA protect consumers by ensuring fairness and preventing fraud in the marketplace. TDA categorizes its regulatory programs into pesticide programs and registration programs. Pesticide programs include agricultural pesticide application and, beginning in 2007, structural pest control regulation. Registration programs include egg quality, grain warehouses, perishable commodities, aquaculture, and weights and measures programs. Each of the regulatory programs typically involve licensing, inspection, and enforcement functions. The table, *TDA'S Consumer Protection Programs*, shows details about each of the entities or activities regulated by the agency.

TDA's Consumer Protection Programs

Program	Regulated Entities or Activities
Pesticides	TDA licenses persons who apply or sell pesticides for agricultural or non-structural purposes, as well as persons or businesses who apply pesticides in or around structures for pay or as part of their job. Pesticide products must also be registered with TDA for distribution in Texas.
Egg Quality	TDA inspects eggs at packing plants, distribution centers, and retail outlets for standards of quality, grade, and size.
Grain Warehouses	TDA inspects grain elevators, mill warehouses, sub-terminal grain warehouses, and other facilities that receive grain for storage, handling, processing, or shipment, to ensure the quantity and quality of stored commodities, as well as company solvency.
Perishable Commodities	TDA licenses persons, packers, handlers, dealers, processors, and warehousemen that receive or handle Texas grown fruits or vegetables. License fees maintain the Produce Recovery Fund, which indemnifies producers who do not receive compensation.
Weights and Measures	TDA inspects weighing and measuring devices, such as gas pumps, to ensure performance within acceptable tolerances. TDA requires registration of companies and technicians that service or inspect weighing or measuring devices, as well as persons who provide independent third-party weighing of commodities. TDA also inspects gasoline octane levels for compliance with posted octane ratings, and price scanners for accurate price representations.

TDA's Consumer Protection Programs (continued)

Program	Regulated Entities or Activities
Aquaculture	TDA licenses businesses that produce and sell cultured species raised in private facilities, such as ponds, tanks, or cages wholly within or on private land or water or on permitted public land or water. TDA also registers vehicles used to transport cultured species from a private facility if cultured species are sold from the vehicle.
Cooperative Marketing Associations	TDA licenses member-owned cooperative associations that work to make production and distribution of agricultural products as effective as possible between the producer and consumer.

Pesticide Programs

Licensing – Pesticide regulation is the agency’s largest and most complex regulatory program, and makes up more than half of the agency’s total licensees. TDA regulates 54,641 pesticide applicators, 13,899 pesticide products, and 1,563 pesticide dealers in its agricultural pesticide program. TDA regulates 17,599 individual applicators and businesses in its structural pest control program.

Applicants for pesticide applicator licenses must meet education, experience, and examination requirements, in addition to paying their license fees. The textbox, *Pesticide Specializations*, describes the various areas in which pesticide applicators may specialize. Applicators may specialize in as many areas as they wish, but each specialization requires additional experience and an examination.

The agency performs mandatory criminal history background checks on all applicants for structural pesticide licenses. The agency also runs background checks on applicants for agricultural pesticide licenses, but only for those applicants who indicate on their application that they have committed a felony.

Pesticide applicators must complete continuing education to renew their licenses. Continuing education credits must include education on laws and regulations and integrated pest management.

TDA also registers all businesses that sell pesticides or restricted herbicides, as designated by the Environmental Protection Agency. Pesticide products must be registered with TDA for their specific use before the product may be distributed in Texas. TDA may grant special requests for use of non-approved pesticides in emergency conditions or based on local needs.

Pesticide Specializations

Agricultural

- ◆ Aerial Application
- ◆ Agricultural Pest Control
- ◆ Aquatic Pest Control
- ◆ Ornamental Plant and Turf Pest Control
- ◆ Forest Pest Control
- ◆ Right-of-Way Pest Control
- ◆ Research and Administration
- ◆ Regulatory Pest Control
- ◆ Seed Treatment
- ◆ Chemigation
- ◆ Chlorine gas

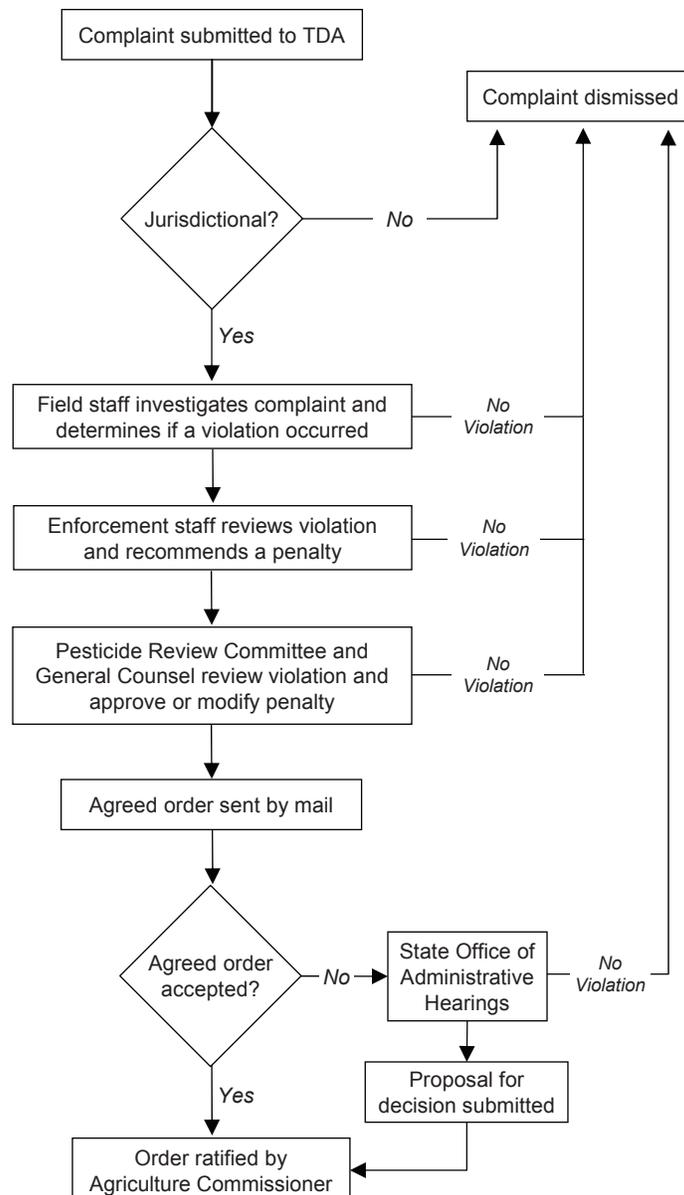
Structural

- ◆ Pest Control
- ◆ Termite Control
- ◆ Lawn and Ornamental
- ◆ Structural Fumigation
- ◆ Commodity Fumigation
- ◆ Weed Control
- ◆ Wood Preservation

Inspections – TDA field staff conduct risk-based inspections and complaint investigations for its agricultural pesticide programs. Separate structural pest inspectors conduct inspections at least every four years for structural pest control businesses.

Enforcement – TDA investigates and resolves violations of pesticide rules and state laws identified through routine and risk-based inspections and complaints from the public, as well as violations of federal pesticide laws for the Environmental Protection Agency. The flow chart, *TDA Pesticide Enforcement Process*, illustrates how the agency resolves complaints for its pesticide program.

TDA Pesticide Enforcement Process



As the agency's largest regulatory program, agricultural pesticides accounted for 13 percent of all complaints received. These complaints generally involve use of pesticides that is inconsistent with their labels, or using, purchasing, or selling pesticides or regulated herbicides without a license. The table, *Pesticide Complaint Disposition*, illustrates the agency's disposition of pesticide complaints submitted by the public in fiscal year 2007. The agency pursues violations found through pesticide inspections through its field offices and could not similarly break down the disposition of those cases. These complaint numbers do not reflect the Structural Pest Control Program, as it was not transferred to TDA until September 1, 2007.

***Pesticide Complaint Disposition
FY 2007***

Complaint Disposition	Number of Actions
Dismissed	189
Warning Issued	136
Administrative Penalty Assessed	94
Advisory Letter Issued	39
Deferred Adjudication Granted	8
Not Within TDA's Jurisdiction	4

Registration Programs

Registration – TDA's other consumer protection programs require mainly facilities, but also some individuals, to be registered with the agency. To become registered in any of these programs, applicants must submit a fee and an application, but generally, do not have to meet experience or educational requirements like occupational licenses. Rather, registrations serve as a tracking tool for the agency, and fees pay for inspections of the facilities. Depending on the program, other requirements must be met for registration. For example, grain warehouse applicants must be bonded and provide proof of insurance and financial statements with their fee and application.

Inspections – Regional field staff are cross-trained to perform inspections for each of TDA's registration programs. Field staff perform routine inspections as well inspections in response to consumer complaints to ensure regulated entities and activities comply with agency rules and statute. Inspection frequencies vary among programs and registration types, ranging from annual inspections for the grain warehouses to only on a complaint basis for random and standard packages.

Enforcement – To enforce its rules and laws, TDA investigates and resolves complaints from the public as well as violations found through routine inspections. For most regulatory registration programs, the violations are straightforward. For example, when a gas pump is tested to meet a standard measure of dispensed gasoline, the device either falls within the allotted measurement tolerance, or the device is out of compliance, resulting in a violation. Penalties are assessed to the violator based on the seriousness of the violation and the violator's previous enforcement history. For all regulatory registration programs, in fiscal year 2007, the agency received 1,572 complaints, 98 percent of which were regarding gas pumps.



*In fiscal year
2007, 98 percent
of the complaints
TDA received
involved gas
pumps.*

Value-Added Programs

TDA's value-added programs ensure products meet a more stringent set of standards for a particular commodity, such as those produced in the organic and seed certification programs. In the organic certification program, for example, the agency verifies that prohibited materials, such as pesticides, are not present in organic operations through inspections that include tests of soil and tissue samples. Similarly, seed certification verifies genetic purity of agricultural or vegetable seed. TDA tests seed labels to ensure labels accurately represent quality and type of seed, as well as to check for contaminants, such as noxious weeds. As seen in the textbox, *Organic and Seed Certification*, TDA certified 215 organic producers and 108 seed growers.

Organic and Seed Certification	
Organic Producers.....	215
Organic Processors	80
Organic Retailers.....	74
Organic Distributors.....	19
Seed Packages Tested.....	373,806
Certified Seed Growers	108

Plant Quality Programs

Through its plant quality and pest management programs, TDA works to protect consumers and the plant industry from crop and economic damage caused by plant pests. The agency works to prevent the introduction and spread of harmful pests into Texas through nursery/floral certificates, phytosanitary

inspection of plant products, quarantine enforcement, and pest monitoring. The textbox, *Plant Quality Activities*, describes TDA's efforts to deter the introduction of new plant pests to Texas. TDA cooperates with USDA to protect plants from pests, diseases, and noxious weeds. Additionally, TDA works with USDA to monitor and enforce quarantine requirements for plants imported to or exported from Texas.

Texas' large agricultural industry makes the state particularly vulnerable to a bioterrorism or agriterrorism attack, such as the intentional introduction of a plant pest. As a result, TDA is a member of the State Emergency Management Council and the Homeland Security Council, requiring the agency to participate in planning, training, and exercise activities to prepare for response during an emergency.

Plant Quality Activities

Quarantine Authority – TDA has broad authority to set quarantines for any pest that is not known to occur in Texas or any part of Texas and that TDA believes could cause harm to Texas plants.

Phytosanitary Certificates – TDA issues certificates to accompany plants transported out of the state to verify they are not infested with pests.

Nursery/Floral Certificates – TDA inspects businesses licensed to sell plants, such as nurseries and landscapers, to ensure they do not sell plants infested with pests.

Cotton Stalk Destruction – TDA requires producers to destroy crop residue after harvest to prevent cotton plants from becoming hosts for pests, such as the boll weevil.

Roadside Inspections – Field staff work with the Department of Public Safety at daytime and 72-hour road stops to stop trucks hauling plants or plant products to look for quarantined pests illegally entering Texas.

Pest Surveys – TDA staff sets and monitors traps to survey for suspected pests to determine local infestation rates.

Pest and Disease Alerts – TDA provides information to the public about current pest quarantines.

Sweet Potato Certificates – TDA performs inspections to ensure that shipments of sweet potatoes are free of the sweet potato weevil.

Rose Grading – TDA issues a certificate of authority to individuals to grade and label, for quality control purposes, rose plants sold or offered for sale in Texas.

Certified Budwood – TDA certifies virus-free budwood to be used for production of certain varieties of citrus plants.

Food and Nutrition Programs

TDA administers a number of federally funded programs designed to ensure low-income school children, senior citizens, and households receive nutritious meals and food items. These programs are sponsored by USDA and fall into two categories – meal programs and commodity programs. To deliver services, TDA contracts with a variety of public and private organizations. TDA passes the funding and commodities it receives from USDA through to these contracting organizations, who provide meals and commodities to their clients.

Meal Programs

TDA's meal programs provide free or reduced-cost lunches, breakfasts, and snacks to children and adults throughout the state. Since 2003 when the responsibility transferred from the Texas Education Agency (TEA), TDA has administered breakfast and lunch programs for public school children. In 2007, the Legislature transferred all other USDA-funded meal programs from the Health and Human Services Commission to TDA. The table, *TDA's Meal Programs*, lists the programs TDA administers along with basic information about each one. All of the meal programs are entitlement programs, meaning USDA will reimburse for all meals served, as long as they comply with all eligibility requirements.

*Public school
meal programs
were transferred
from TEA to
TDA in 2003.*

**TDA's Meal Programs
FY 2007**

Program	Number of Meals	Amount of Reimbursement
National School Lunch Program, School Breakfast Program, and After School Snack Program provide free and reduced-cost meals and snacks to children attending public, charter, and private schools, and those at residential child care and juvenile correctional institutions. TEA receives the majority of this funding from USDA to reimburse public school districts.	Lunches: 499,975,066 Breakfasts: 216,562,642 Snacks: 18,155,752	Lunches: \$849,386,225 Breakfast: \$281,652,495 Snacks: \$11,625,777
Summer Nutrition Programs provide free meals to children attending summer programs sponsored by public or private schools, local governments, colleges or universities, or other tax exempt organizations. The Summer Food Program is available to all sponsor types. Sponsors who participate in the National School Lunch Program may opt to participate in the Seamless Summer Option to serve meals during summer months.	17,778,458	\$39,613,854
Special Milk Program provides milk to children who attend schools, nurseries, child care centers, or summer camps, and those at residential child care institutions.	359,285	\$54,659
Child and Adult Care Food Program helps child and adult day care facilities and family day homes provide free meals to their clients.	166,663,931	\$205,092,609



TDA denies reimbursement for meals served that do not comply with federal and state requirements.

To receive meals, child and adult participants must meet eligibility requirements set by USDA. The public or private organization providing the meals determines the eligibility of their clients, prepares meals, and requests reimbursement for the cost of those meals from TDA. Funding for the National School Lunch, Breakfast, and Snack Programs flows from USDA to the Texas Education Agency, which sends money to school districts based on claims for reimbursement that the districts make to TDA. In fiscal year 2007, TEA passed \$1.1 billion through to public schools for their meal programs. TDA receives funding for the rest of its meal programs directly from USDA.

These organizations must also follow USDA requirements for nutrition, accounting, and other standards. TDA performs compliance monitoring of all service providers on a regular basis according to USDA guidelines. When TDA finds a violation of USDA's requirements, it will deny reimbursement to the service provider for the meals they served that did not comply with regulations.

Texas Public School Nutrition Policy

To supplement USDA's nutrition requirements, TDA developed the Texas Public School Nutrition Policy in 2004. While USDA requires all meals to be substantial and to include all five food groups, the Texas policy focuses on improving the nutritional value of meals and preventing obesity and related diseases in school children. All public schools participating in the National School Lunch program must comply with the policy.

The policy is comprehensive in that it covers all food in the school environment, including school meals, vending machines, school stores, fundraisers, and school parties. When TDA staff conduct their USDA compliance reviews of public schools, they also check for compliance with the State policy. TDA will deny reimbursement for meals when it finds violations of the policy.

Commodity Programs



Commodity programs were transferred from HHSC to TDA in 2007.

TDA administers three programs to distribute surplus agricultural commodities donated by USDA to schools, food banks, and other organizations. These commodities include canned fruits and vegetables, meats, grains, and other staples. Fresh fruits and vegetables are also available, but in limited quantities. The Health and Human Services Commission administered these commodity programs until 2007, when the Legislature transferred them to TDA. The table on page 123, *TDA's Commodity Programs*, provides a description of and statistics for each program.

All schools participating in the National School Lunch Program are entitled to an allotment of donated commodities to use in the preparation of their meals. The schools have to pay to have the commodities stored and delivered to them, but otherwise they are free, thus reducing the overall cost of meal preparation. Food banks throughout the state also benefit from these programs in that they receive free commodities to distribute to their clients.

**TDA's Commodity Programs
FY 2007**

Program	Amount of Commodities Distributed	Value of Commodities
Food Distribution Program provides USDA-donated commodities to public and private schools, residential child care institutions, summer programs, and disaster relief efforts.	124 million pounds	\$101.7 million
Texas Commodity Assistance Program distributes, through food banks, USDA-donated commodities to low-income households, unemployed individuals, and organizations that serve meals to low-income persons.	29.7 million pounds	\$17 million
Commodity Supplemental Food Program distributes USDA-donated commodities and provides nutrition education to low-income women, infants, children, and senior citizens in Dallas and Webb Counties.	5.09 million pounds	\$3.8 million

While food banks must also pay to have the commodities delivered to them, these programs help to reduce their overall operational budget. To ensure compliance with USDA requirements for the programs, TDA staff regularly review the commercial distributors that receive commodities from USDA and distribute them to schools, the food processors that can the donated commodities, and the regional food banks that distribute commodities to local food banks.

Marketing and Promotions

TDA conducts a variety of marketing and promotional activities. The objectives of these activities include increasing sales and consumer awareness of products grown, processed, or produced in Texas; promoting rural Texas to tourists, retirees, and sportsmen; and promoting healthy nutrition for all Texans. Nearly half of TDA's marketing staff work out of the agency's five regional offices, so they can work with producers and promote agricultural products throughout the state.

GO TEXAN

As TDA's comprehensive marketing campaign, GO TEXAN promotes all Texas products. Companies with products grown, produced, or processed in Texas can apply for GO TEXAN membership by submitting an application. Agricultural-product categories include food, wine, horticulture, fiber, livestock, forestry, and beef. At the end of the 2007 fiscal year, GO TEXAN had 1,848 members who each pay an annual membership fee of \$25. GO TEXAN membership benefits include use of the GO TEXAN logo and eligibility to apply for the GO TEXAN Partner Program. The textbox on the following page, *GO TEXAN Marketing Programs*, describes all of TDA's efforts to market the GO TEXAN brand.



*Under the GO
TEXAN logo,
1,848 companies
sell Texas grown,
produced,
or processed
products.*

GO TEXAN Marketing Programs

GO TEXAN Partner Program provides matching grants to GO TEXAN members to fund specific marketing projects.

GO TEXAN Restaurant Program links participating Texas restaurant establishments to local producers and other Texas-grown or processed food producers.

GO TEXAN Rural Communities Program promotes tourism within rural Texas towns, cities, and counties, through matching grant programs, such as Hometown STARS or Bootstrap Bucks.

Food Marketing Program helps build recognition for GO TEXAN and Texas foods through a variety of activities, including planning GO TEXAN promotions at retail grocery stores, food fairs, and festivals.

Fiber Marketing Program promotes Texas natural fibers, such as cotton, wool, mohair, and leather, through a TDA-sponsored website, *TexStyles E-zine*, spotlighting unique Texas designers.

Texas Wine Marketing Assistance Program promotes and markets Texas wines and educates the public about the Texas wine industry.

Livestock Marketing Program assists ranchers interested in buying or selling Texas purebred commercial livestock.

International Marketing Program works with farmers, ranchers, commodity organizations, cooperatives, and businesses through the GO TEXAN campaign to promote and increase sales of all Texas agricultural products at home and abroad.

Food and Fiber Pavilion promotes GO TEXAN at the Texas State Fair.

Other Marketing Programs

TDA has other marketing programs beyond GO TEXAN, including the following.

- ◆ ***Pick Texas*** promotes Texas plants by providing information to consumers on the diversity of crops produced in the state, and specific harvest dates, and how to get the most out of Texas plants, flowers, and trees.
- ◆ ***Texas Shrimp Marketing Program*** promotes Texas shrimp by sharing recipes and events through the Texas Shrimp Hotline and website.
- ◆ ***Market News*** provides livestock, grain, poultry, pecan, fruit, and vegetable market reports by voice-mail recordings, radio, and TDA's Market News Website.
- ◆ ***Texas Agricultural Statistics Service*** provides weekly, monthly, quarterly, and annual records of state, district, and county estimates for major field crops, small grains, livestock, fruit, pecan, and vegetable inventories based on information from farmers and ranchers.
- ◆ ***Livestock Export Pens*** are holding and inspection sites operated by TDA for livestock leaving the country.

Rural Economic Development

TDA administers several rural economic development programs to promote agricultural diversification, rural entrepreneurship, small town revitalization, and rural tourism development. These programs help create and retain jobs in rural communities through business development and community assistance. TDA field staff throughout the state promote these programs and help rural communities, businesses, and individuals find and apply for other types of assistance. The textbox, *TDA's Rural Economic Development Programs*, provides a brief description of the agency's programs.

In addition to several stand-alone incentive and promotional programs, TDA also administers financial assistance programs through the Texas Capital Fund and the Texas Agricultural Finance Authority. For the Texas Capital Fund, TDA receives a portion of the federal Community Development Block Grant funding that is allocated to Texas. TDA awards this funding through grants to small communities to help them pay for infrastructure improvements. In 2007, TDA granted \$11 million to 27 communities



TDA works to create and retain jobs in rural communities through economic development.

TDA's Rural Economic Development Programs

Stand-alone Programs

Certified Retirement Community Program helps Texas communities encourage retirees and potential retirees to make their homes in Texas. As of February 2008, TDA has certified nine communities.

Agricultural Development District Program allows agricultural producers to designate local areas for the purpose of processing farm and ranch products. No agricultural producers have requested this designation.

Texas Capital Fund Programs

Main Street Improvements Program provides grants to small cities designated as official Main Street cities by the Texas Historical Commission for public infrastructure improvements designed to revitalize a city's main street area. In 2007, TDA made four awards of \$150,000 each.

Downtown Revitalization Program provides grants to small cities for public infrastructure improvements designed to eliminate slum or blighted areas. In 2007, TDA made eight awards, totaling \$1.2 million.

Infrastructure Development Program provides grants to small communities to build public infrastructure needed to assist a business that commits to create or retain permanent jobs for low and moderate income individuals. In 2007, TDA made 13 awards, totaling \$7.83 million.

Real Estate Development Program provides grants to small communities to develop real estate the community owns but leases to a business that commits to create or retain permanent jobs for low and moderate-income individuals. In 2007, TDA made two awards of \$1.35 million.

Texas Agricultural Finance Authority Programs

Young Farmer Loan Guarantee Program provides loan guarantees to lenders at a reduced interest rate for borrowers between the ages 18 and 39 looking to establish or enhance a farm or ranch operation or agricultural-related business. The program is currently guaranteeing \$1 million for 13 active loans.

Interest Rate Reduction Program (formerly called the Linked Deposit Program) facilitates private commercial lending at below market rates to eligible applicants for specific agricultural projects. As of November 2007, this program has 107 active loans, totaling \$8.5 million.

Rural Municipal Finance Program facilitates loans through TDA's purchase of general obligation bonds from municipalities to fund the economic development of a rural area. In 2007, TDA had six active loans collectively worth \$4.95 million.


TDA awards special grants to support agriculture research and education.

through the Texas Capital Fund Program. TDA also administers the Texas Agricultural Finance Authority programs, which provide loans and loan guarantees through eligible lending institutions to creditworthy individuals and businesses, with a concentration on those that have not traditionally had access to agricultural financial lending.

Special Grants

TDA administers a number of state and federal grant programs. In the 2008-2009 biennium, the agency expects to award nearly \$58 million through the grant programs detailed in the table, *TDA's Grant Programs*. Most grants are competitive, although selection processes vary. Some programs, such as the Texas-Israel Exchange Fund, use a board or advisory committee to recommend grant recipients. TDA staff chose recipients in other programs. The Home-Delivered Meals Grant Program is the newest and largest competitive program. Through this program, created in 2007, TDA will be able to give \$19 million to local organizations that deliver

**TDA's Grant Programs
FYs 2008 – 2009**

Grant Program	Purpose	Total Expected Grant Awards
Boll Weevil Eradication	To support eradication of the boll weevil and pink bollworm from Texas cotton fields. This money is passed through to the Texas Boll Weevil Eradication Foundation.	\$29,000,000
Food and Fibers Research Grant Program	To support surveys, research, or investigations of cotton, cottonseed oil or other related oilseed products, wool mohair, or other related textile products.	\$2,493,318
Enology and Viticulture Research and Development Grants	To support projects dedicated to education or research in the areas of enology and viticulture for the continued growth of the grape and wine industry.	\$2,186,000
Texans Feeding Texans: Home-Delivered Meals Grant Program	To support organizations that deliver meals to homebound persons who are elderly or have a disability.	\$19,000,000
Texans Feeding Texans: Surplus Agricultural Grant Program	To offset the costs of harvesting and transporting Texas produce to food banks in each county in the state.	\$2,000,000
Texas-Israel Exchange Fund	To support projects promoting applied, collaborative agricultural research and development activities conducted jointly by scientists in Texas and Israel.	\$500,000
Feral Hog Abatement Program	To support projects assessing feral hog damage to crops, evaluating control efforts, or measuring economic impact of damage done by feral hogs.	\$1,000,000
Urban School Agricultural Grants	To support agricultural projects designed to foster an understanding and awareness of agriculture in elementary and middle school students.	\$20,000 estimated
Zebra Chip Research	To support research on the pathogens that cause Zebra Chip Disease in Texas potatoes.	\$1,584,000

meals to the homebound elderly and disabled. TDA staff monitor recipients for compliance with grant requirements by reviewing quarterly reports or performing other similar activities. All of the grants in the chart are funded by General Revenue, except the Urban School Agricultural Grant, which is funded through private donations. TDA also administers federal grants from USDA when they are available.

Other Operations

Prescribed Burning Board

The Prescribed Burning Board was established by the Legislature as a separate board within TDA in 1999 to develop standards for training persons to conduct prescribed burns and to ensure that they obtain the minimum insurance required to be certified as prescribed burn managers. The Board certifies prescribed burn managers to conduct prescribed burns within five regions across the state. Landowners using certified burn managers are exempt from liability for any adverse effects of a prescribed burn. The Board also approves lead burn instructors to provide the required training for state certification as a prescribed burn manager and to promote the use of prescribed fire as a land management tool. As of February 2008, the Board has certified 14 prescribed burn managers, with three applications pending, and approved 11 lead burn instructors.

A prescribed burn is a controlled fire that takes place under the appropriate atmospheric conditions to destroy excessive vegetation build-up that may contribute to wildfire risk or that otherwise affects land management.

Texas Cooperative Inspection Program

The Texas Cooperative Inspection Program is a part of a federal-state partnership created by the USDA's Agricultural Marketing Service to enhance the marketability of agricultural products. The Program employs 200 inspectors to conduct inspections of fruits, vegetables, tree nuts, and peanuts grown in Texas or imported into the United States through Texas to ensure they meet USDA standards for quality. The producers of these commodities pay fees to cover the cost of the inspections; no state or federal funds are used to support this program. All of the program's inspectors are private employees who do not work for TDA or USDA. However, TDA administers all financial and personnel matters for the program, including hiring personnel, collecting user fees, and paying all expenses incurred in the operation of the program. In return, TDA receives a portion of the fees collected. In fiscal year 2007, TDA received nearly \$84,444 to cover its administrative costs for the program. That same year, the program collected more than \$4.8 million in user fees. USDA oversees the program by training inspectors, requiring an annual financial audit, and auditing the program's compliance with USDA procedures every five years.

Commodity Producer Boards

Commodity Producer Boards are statutorily created bodies composed of agricultural producers organized to promote and fund programs for research, disease and insect control, predator control, and education for the benefit of their products. The Boards work to encourage the production, marketing, and use of an agricultural commodity. Any nonprofit organization authorized by law to represent producers of an agricultural commodity, such as a growers association, may petition the Commissioner to become a Commodity Producer Board. TDA staff oversees the ten active Commodity Producer Boards, which are listed in the accompanying textbox, by attending board meetings and reviewing and approving each board's election processes, budgets, and annual reports.

Commodity Producer Boards

Texas Corn Producers Board
Texas Mohair Producers Board
Texas Rice Producers Board
Texas Citrus Producers Board
Texas Pecan Producers Board
Texas Grain Sorghum Producers Board
Texas Peanut Producers Board
Sheep and Goat Meat Predator Management
Texas Wheat Producers Board
Texas Wintergarden Spinach Producers

Agency Information

Texas Boll Weevil Eradication Foundation

Agency at a Glance

The Legislature created the Texas Boll Weevil Eradication Foundation in 1993 as a non-profit, quasi-governmental agency to eradicate the boll weevil and pink bollworm from Texas cotton fields. The Foundation is primarily a grower-initiated and grower-funded effort to eradicate boll weevils by hiring employees to map cotton fields around the state and to set traps and monitor traps for boll weevils. The Foundation also arranges for aerial pesticide applications in areas of boll weevil infestation.

Cotton growers vote to participate in the eradication program, and assess themselves to pay for eradication efforts. Similarly, cotton growers may vote to withdraw from the program at any time. Because the Foundation is a quasi-governmental entity, its employees are not state employees and its budget is not subject to the legislative appropriations process.

All active cotton-growing areas of Texas participate in the Foundation's boll weevil eradication efforts. The textbox, *What is a boll weevil?*, describes the boll weevil in more detail. The Foundation also works to eradicate the pink bollworm, a cotton pest that primarily causes damage in West Texas. The pink bollworm is a moth whose larvae feeds on cotton bolls, damaging the cotton. Since the program's inception, boll weevil and pink bollworm populations have been reduced by more than 99 percent.

Key Facts

- ◆ **Funding.** In calendar 2007, the Foundation operated on a budget of about \$75 million, including \$37 million in assessments from nearly 27,000 growers, \$21 million in federal funding, and \$13 million in state funding. The Foundation also has an accumulated statewide debt of \$107 million, in low-interest loans from the Farm Service Agency.
- ◆ **Staff.** The Foundation operated with 390 full-time employees and 908 additional seasonal employees in calendar year 2007.
- ◆ **Field Offices.** The Foundation conducts eradication efforts across the entire state, and is divided into 16 eradication zones covering nearly 6 million cotton acres. The Foundation has 56 offices across the state.

What is a boll weevil?



The boll weevil (*Anthonomus grandis Boheman*) is a beetle measuring an average length of six millimeters, or ¼ inch, which feeds on cotton buds and flowers.

Thought to be native to Central America, the boll weevil migrated into the U.S. from Mexico in 1892 and had infested all U.S. cotton-growing areas by the 1920s, devastating the cotton industry.

Estimates of annual economic losses in cotton crops from the insect have been as much as \$200 million or more per year since the pest's introduction to the U.S. The boll weevil is credited as being the most costly insect in the history of American agriculture.



*The Legislature
reorganized
the Foundation
in 1997 to
provide TDA
greater oversight
authority.*



*The Foundation
Board is
composed of
cotton growers
elected from each
of the 16 zones.*

Major Events in Agency History

The Texas Boll Weevil Eradication Foundation was originally established by the Legislature in 1993 to eradicate the boll weevil and pink bollworm. In April 1997, the Texas Supreme Court declared that the Legislature unconstitutionally delegated public authority to a private entity, and the Court dissolved the Foundation. The Legislature addressed the Court's concerns in the 1997 legislative session by reorganizing the Foundation and providing the Texas Department of Agriculture greater oversight authority.

Organization

Policy Body

The Texas Boll Weevil Eradication Foundation Board of Directors meets quarterly and is composed of cotton growers elected from each of the 16 eradication zones, as well as members appointed by the Commissioner of Agriculture. Cotton growers in each eradication zone elect a board member by referenda, and the Commissioner appoints five additional members comprising one agricultural lender, one independent entomologist who is an integrated pest management specialist, two representatives from industries allied with cotton production, and one representative from the pest control industry. Board members are not paid and serve a four-year term. The Foundation's bylaws specify that the Board elects officers, including the chair, every two years. The chart on page 131, *Texas Boll Weevil Eradication Foundation Board of Directors*, provides information about the 21 board members.

Because the Foundation is a non-profit corporation, the Foundation Board operates under Articles of Incorporation and Bylaws, in addition to statutory guidance provided by the Legislature. The Board's major duties include setting policy, making recommendations to the Commissioner of Agriculture regarding assessments statewide, and hiring the Foundation's Executive Director. The Board also reviews each zone's budget and makes recommendations regarding technical aspects of the eradication program.

The Board also obtains input from advisory and grower steering committees in each zone. Either an advisory committee or grower steering committee, made up of area cotton growers, exists in each eradication zone to gather advice and input concerning boll weevil eradication for consideration by the Board.

The Commissioner of Agriculture oversees the Foundation's operations, including holding referenda, approving grower assessment rates, and making rules. The Commissioner may also place a lien against a grower's cotton crop if the grower fails to pay their assessment.

Referenda

Area cotton growers established each eradication zone through a referendum in which at least two-thirds of the growers voting, or a majority of acres in the

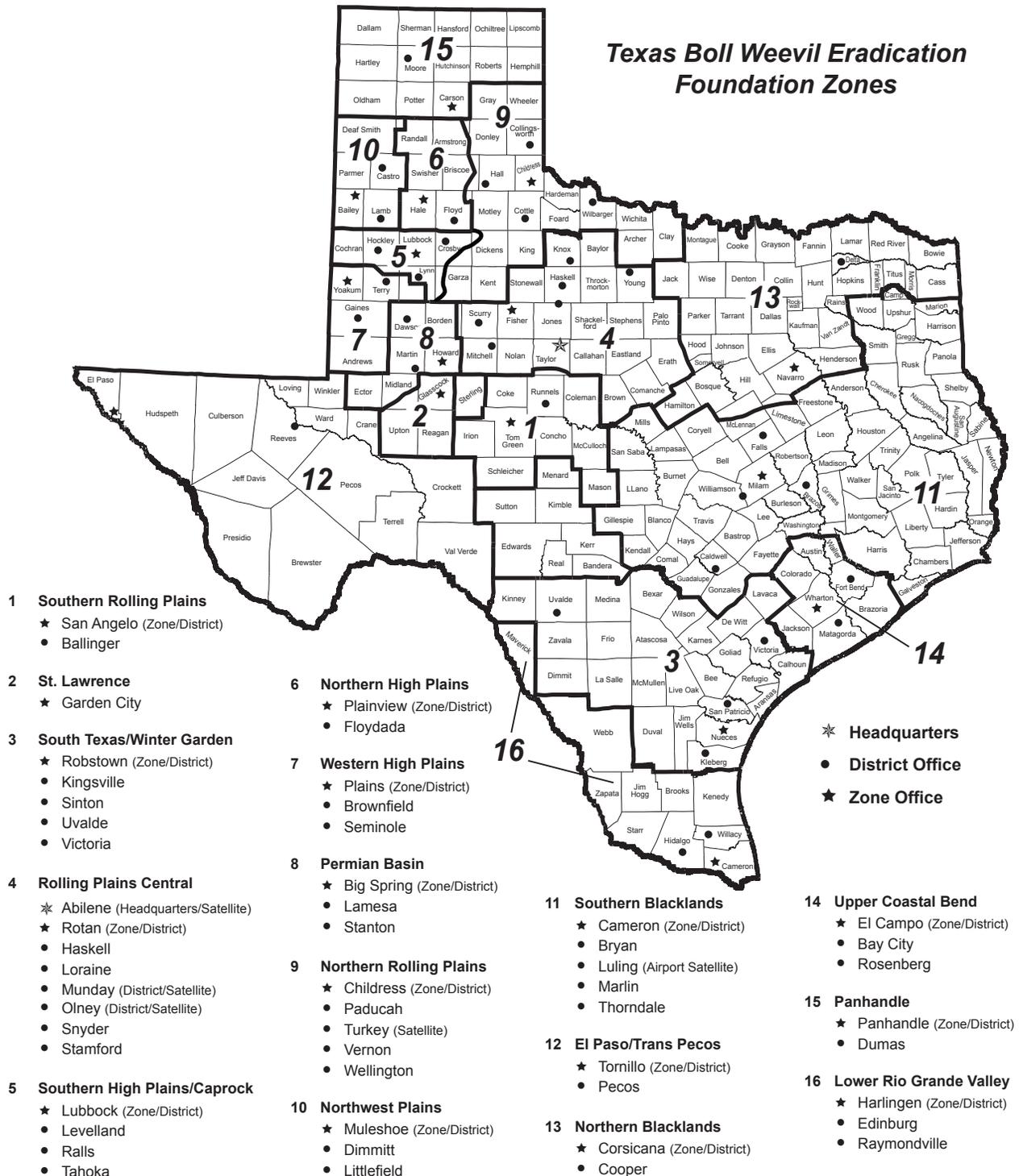
zone, approved the establishment of an eradication program, as well as the assessment to pay for the program. A zone may petition the Commissioner of Agriculture to hold a referendum to withdraw from the program at any time, though currently every cotton-growing area of the state participates in eradication efforts through one of these zones. Referenda are regularly held in each zone to elect its Foundation Board representative. TDA manages the referenda process for each zone.

Texas Boll Weevil Eradication Foundation Board of Directors

Member	Term Expiration	Qualifications
Woodrow Anderson Chairman	2010	Cotton Grower, Rolling Plains Central
Don Parrish Vice Chairman	2010	Cotton Grower, Western High Plains
Weldon Melton Secretary	2008	Cotton Grower, Northern High Plains
John Inman Treasurer	2011	Cotton Grower, Northern Rolling Plains
Joe Alspaugh	2008	Cotton Grower, Southern High Plains/Caprock
Steven Beakley	2009	Cotton Grower, Northern Blacklands
Keith Bram	2010	Cotton Grower, Upper Coastal Bend
Kenneth Gully	2010	Cotton Grower, Southern Rolling Plains
Eddy Herm	2011	Cotton Grower, Permian Basin
Mark Morris	2009	Cotton Grower, South Texas/Winter Garden
Carey Niehues	2008	Cotton Grower, St. Lawrence
John Saylor	2011	Cotton Grower, Northwest Plains
Sam Simmons	2008	Cotton Grower, Lower Rio Grande Valley
Larry Turnbough	2011	Cotton Grower, El Paso/Trans Pecos
Neil Walter	2011	Cotton Grower, Southern Blacklands
Keith Watson	2008	Cotton Grower, Panhandle
Ron Craft	2007	Commissioner Appointee, Ginning Industry
Hylton Nolan	2010	Commissioner Appointee, Pest Control Industry
John Norman	2010	Commissioner Appointee, Independent Entomologist/ Integrated Pest Management Specialist
Craig Shook	2007	Commissioner Appointee, Agribusiness Affiliate
Mike Wright	2010	Commissioner Appointee, Agricultural Lending

Staff

The Executive Director manages the daily operations of the Foundation, including hiring employees and implementing boll weevil eradication efforts throughout the zones. In calendar year 2007, the Foundation employed 1,298 people, including 390 full-time employees, and 908 seasonal employees. As seen in the map, *Texas Boll Weevil Eradication Foundation Zones*, the Foundation has 16 eradication zones and 56 offices across the state. Including



seasonal employees, approximately 98 percent of Foundation staff are field personnel located throughout the 16 eradication zones. Other managerial and administrative staff maintain the Foundation headquarters in Abilene. The Foundation is not required to comply with state equal employment opportunity laws, but complies with federal laws as part of the agency's USDA cooperative agreement.

Funding

The Foundation is primarily funded by cotton growers who assess themselves in an effort to eradicate the boll weevil and the pink bollworm from Texas cotton fields. The Foundation also receives money from state and federal governments to assist in eradication efforts.

The Foundation operates on a calendar year, as the cotton growing season governs the Foundation's reporting intervals. Thus, funding information represents the 2007 calendar year.

Assessments

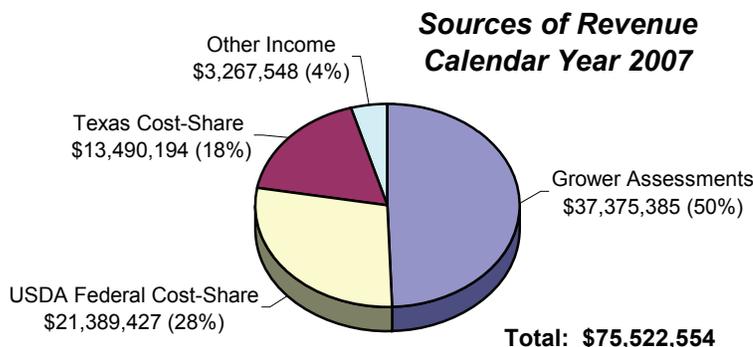
The Foundation collects assessments from cotton growers each year to help pay for its eradication efforts. Since the program's inception, the Foundation has collected \$482 million in grower assessments. Members of advisory committees or zone steering committees propose assessment rates for their zone to the Foundation Board, but the Commissioner of Agriculture must finally approve all assessment rates. Each zone's assessments pay only for eradication efforts in that zone, and cannot be used to fund eradication efforts in other zones.

◆

Since inception, the Foundation has collected \$482 million in assessments from cotton growers.

Revenues

In calendar year 2007, the Foundation received \$75.5 million in total revenue, including \$37.4 million in assessments paid by 26,812 cotton growers. USDA, through a cost-sharing program, gave the Foundation \$21.4 million, or 28 percent of the Foundation's total revenue in calendar year 2007. The Foundation also has a state cost-share component with TDA totaling \$13.5 million, or 18 percent of total revenue in calendar year 2007, for boll weevil eradication. The pie chart, *Sources of Revenue Calendar Year 2007*, details the agency's overall budget.



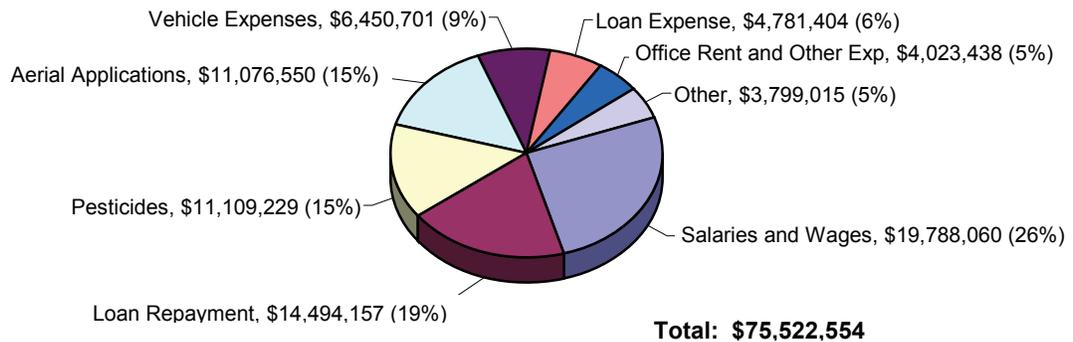

Costs of boll weevil eradication vary widely across the state.

Because the costs of operating a boll weevil eradication program are higher in the early years of an eradication program, the Foundation takes out low-interest loans from the USDA Farm Service Agency to finance costs over a longer period of time. Zone debt varies depending on the length of time the zone has been in the eradication program and difficulty of eradication – including weather patterns affecting program effectiveness and prevalence of boll weevils in the zone. The Foundation’s statewide aggregate debt as of December 31, 2007 is approximately \$107 million. Also, because eradication efforts are more costly at the beginning of the program, if a zone votes to withdraw from the eradication program, cotton producers continue to pay assessments until the zone’s eradication debt is retired.

Expenditures

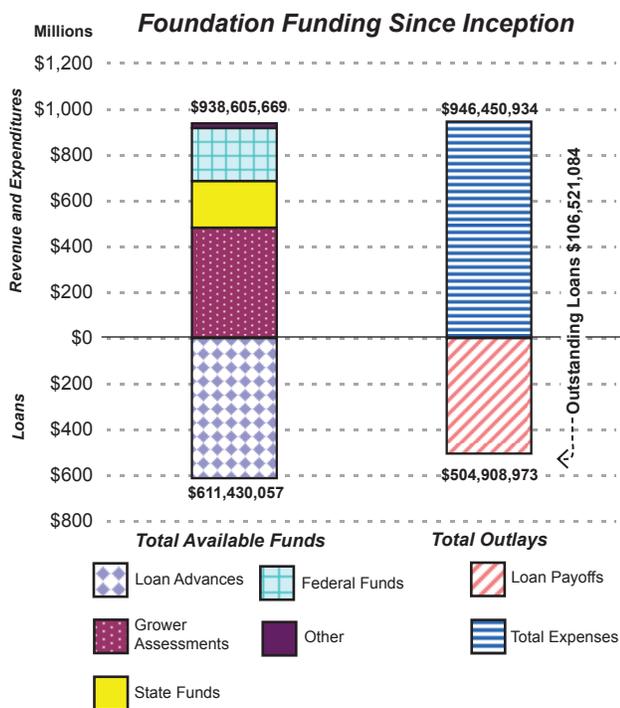
In calendar year 2007, Foundation expenditures totaled \$75.5 million. Salaries accounted for the Foundation’s largest object of expense, \$19.8 million in calendar year 2007. Loan principal repayments of \$14.5 million made up the Foundation’s second largest outlay. The Foundation’s third and fourth largest expenses were pesticides and aerial application of pesticides used in its eradication efforts, respectively. The pie chart, *Expenditures by Object of Expense Calendar Year 2007*, shows the agency’s expenditures for calendar year 2007.

**Expenditures by Object of Expense
Calendar Year 2007**



Because the zones voted to participate in the eradication program at different times, and because each cotton growing area of Texas differs in terms of location, weather patterns, and boll weevil populations, the costs of eradication vary widely. The chart on pages 138 and 139, *Funding Since Inception by Zone*, illustrates the total funds received in grower assessments, state funds, federal funds, and federal loans since each zone’s introduction to the program as compared to the zone’s total expenditures, including loan repayment through

December 31, 2007. The chart, *Foundation Funding Since Inception*, illustrates the Foundation's total funds and expenditures, by source, since the Foundation was created in 1993. The agency is not required to comply with Historically Underutilized Business laws, but does so voluntarily.




Since inception, the Foundation has spent \$946 million on boll weevil eradication.

Agency Operations

The Foundation conducts efforts to eradicate the boll weevil in all cotton-growing areas of Texas, which, in calendar year 2007, included 5,635,857 acres of cotton. The Foundation also conducts pink bollworm eradication efforts in West Texas.

Eradication

The Foundation works to eradicate the boll weevil by setting traps, which contain pheromones to attract boll weevils, around the perimeter of every cotton field in the state. In calendar year 2007, the Foundation set 275,184 traps across the state. The textbox, *Boll Weevil Traps*, describes how the traps work. To determine the location of each cotton field in each zone, Foundation staff map cotton fields and check their maps against data reported by farmers to the Farm Service Agency. Foundation staff check the boll weevil traps once a week and record data, such as the crop stage and number of weevils in each trap. Trap data helps the Foundation determine local boll weevil infestation rates, as well as how often to apply pesticides.

Boll Weevil Traps

Yellow-green traps, designed to mimic cotton plants, are placed around cotton fields in locations that are visible to boll weevils and have good air circulation. Traps contain an artificial pheromone, a chemical version of the weevil's own scent attractant, which the wind carries across the fields to draw in boll weevils. Boll weevils that land on the trap crawl upward through the top of a screen cone into a capture cylinder, holding the pheromone strip and insecticide, which kills weevils that enter the trap.

The Foundation contracts with aerial applicators for pesticide applications on cotton fields containing boll weevils. As a result of the Foundation's eradication efforts, pesticide use for cotton in Texas has been dramatically reduced. In the High Plains Zone, for example, Foundation records indicate the amount of pesticides applied per year has been reduced 99.8% since the program began. The Foundation has also successfully reduced boll weevil populations across the state. The chart, *Texas Boll Weevil Reduction Per Zone Since Inception*, shows the effectiveness of the Foundation's boll weevil eradication efforts in each zone. The Foundation also coordinates with TDA's cotton stalk destruction program by reporting cotton that could still host boll weevils beyond TDA's destruction deadlines.

Texas Boll Weevil Reduction Per Zone Since Inception

Zone	Year Foundation Eradication Efforts Started	Average Number of Boll Weevils Caught per Trap Calendar Year 2007	Percent Reduction in Boll Weevil Populations Since Inception
Southern Rolling Plains	1994	0.022	99.72
Rolling Plains Central	1996	0.00014	99.99
South Texas/Winter Garden	1996	1.07	91.65
El Paso/Trans Pecos	1999	0	100
Northern Rolling Plains	1999	0	100
Northwest Plains	1999	0	100
Permian Basin	1999	0.00016	99.99
Western High Plains	1999	0	100
Northern High Plains	2001	0	100
Southern Blacklands	2001	0.238	98.26
Southern High Plains/Caprock	2001	0.0000016	99.99
Upper Coastal Bend	2002	0.111	99.44
Panhandle	2004	0	100
St. Lawrence	2004	0.000388	99.99
Lower Rio Grande Valley	2005	0.086	99.25

To avoid re-contaminating zones with very low boll weevil populations, each eradication zone is assigned a quarantine level in accordance with its infestation rate. The textbox on the following page, *Boll Weevil Quarantine Levels*, details the infestation tolerances for each quarantine level. TDA requires those who transport cotton equipment, such as for harvesting or ginning, to thoroughly clean equipment before entering a zone with a higher quarantine level. This prevents the accidental introduction of boll weevils from equipment used in a zone with a high boll weevil population to a zone with a low boll weevil

population. As seen in the map, *Quarantine Status of Texas Boll Weevil Eradication Zones*, two zones have functionally eradicated the boll weevil, and nine zones have achieved suppressed status.

Pink Bollworm Program

In the El Paso/Trans-Pecos Eradication Zone, the pink bollworm has historically caused more damage to cotton fields than boll weevils. Since 1999, the El Paso/Trans-Pecos Zone has conducted pink bollworm suppression and eradication efforts. To date, the zone has reduced the pink bollworm by more than 99 percent. The Foundation employs similar eradication techniques used for the boll weevil, including traps, insecticides, sterile insects, and Bt cotton – a cotton variety resistant to pink bollworms – to control pink bollworm populations.

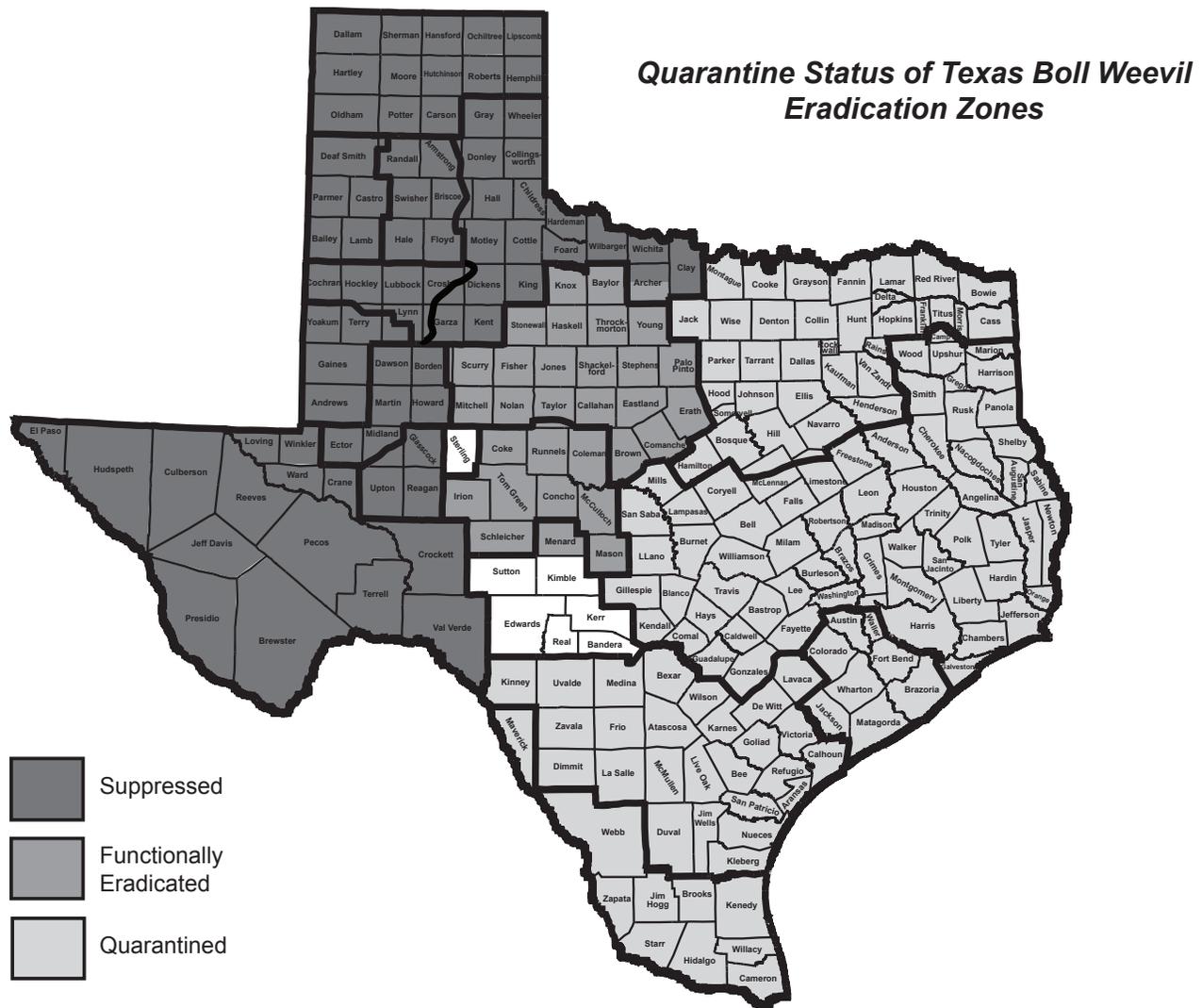
Boll Weevil Quarantine Levels

Quarantined: Infestation level of higher than 0.025 weevils per trap inspection.

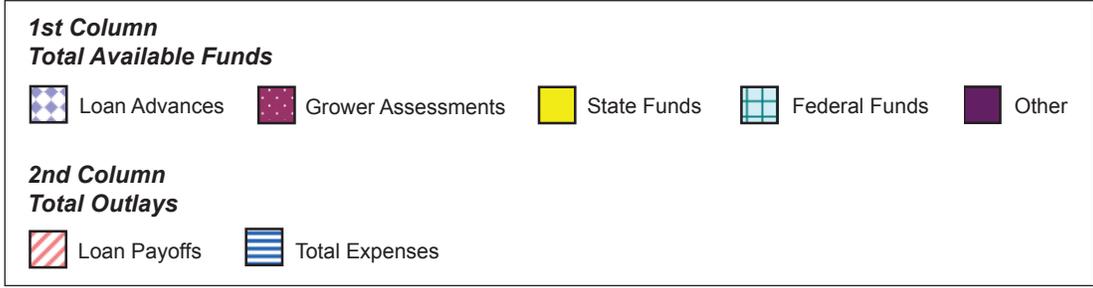
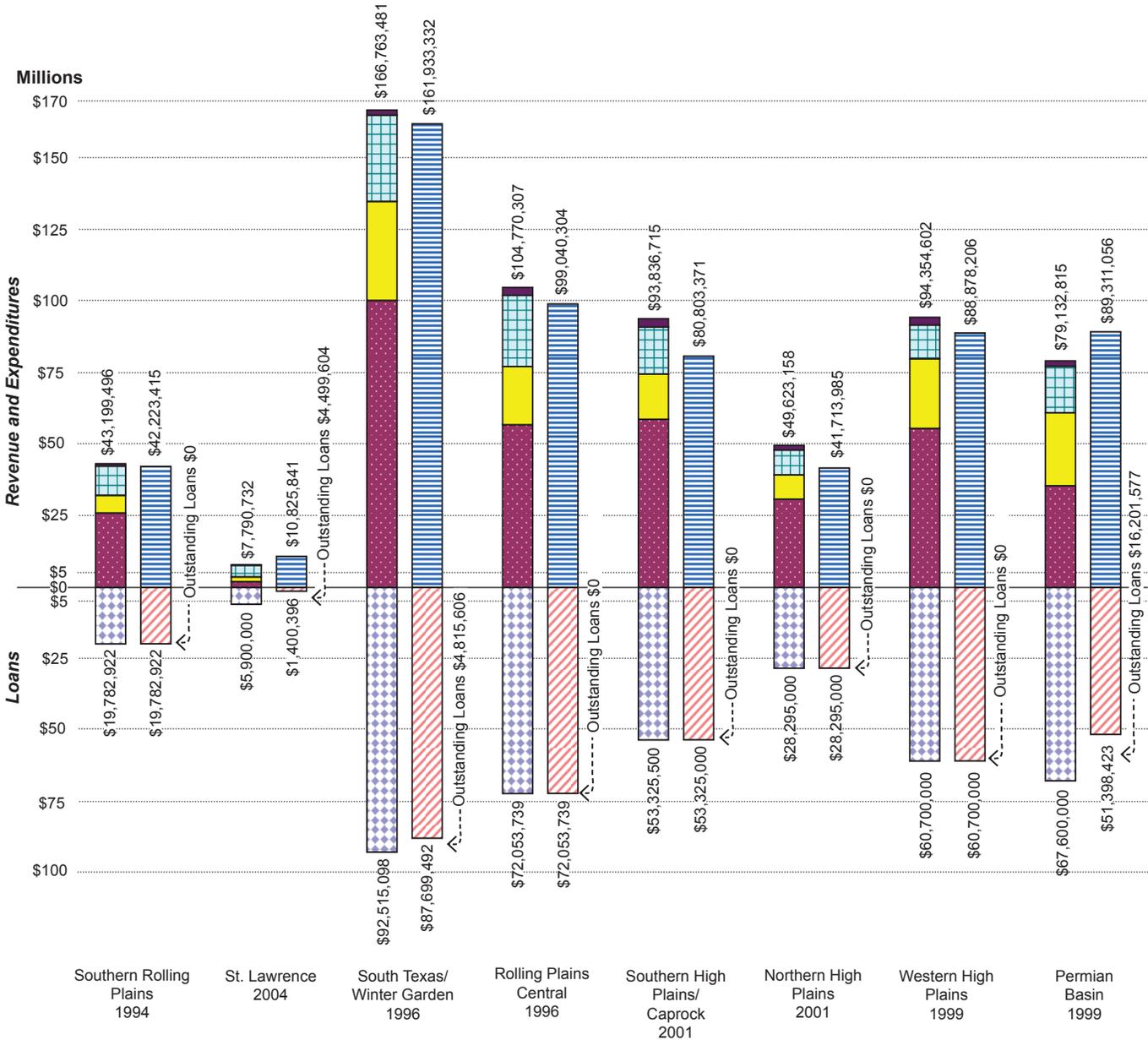
Suppressed: Infestation level of 0.025 weevils per trap inspection or lower.

Functionally Eradicated: Infestation level of 0.0001 weevils per trap inspection or lower.

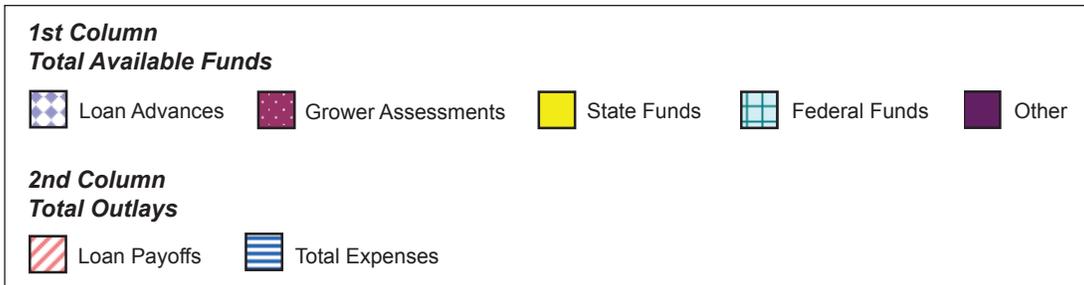
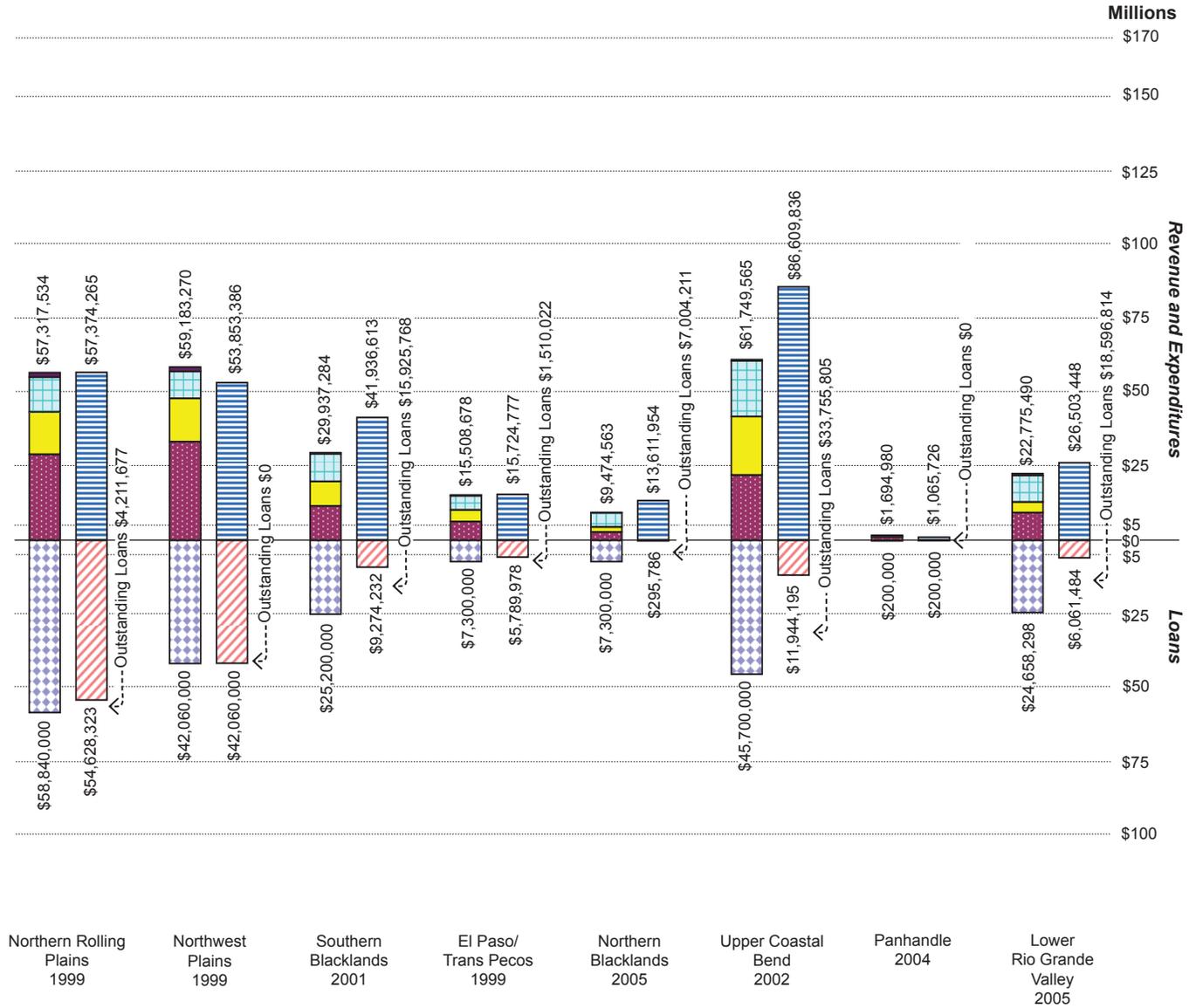
Eradicated: No boll weevils detected for at least one cotton season.



Funding Since Inception by Zone



Funding Since Inception by Zone



APPENDICES



Appendix A

Prescribed Burning Board

Member	Term Expiration	Qualification
Lynn Drawe, Ph.D. Chairman	2008	Agricultural Landowner
Dan Barnes	2008	Agricultural Landowner
Suzanne Birmingham Walker	2008	Agricultural Landowner
R.A. Brown	2008	Agricultural Landowner
Don Petty	2008	Agricultural Landowner
Sandra Rideout-Hanzak, Ph.D.	2008	Texas Tech University Representative
Linda Campbell	2006	Texas Parks and Wildlife Department Representative
Andy Garza	2008	Texas State Soil and Water Conservation Board Representative
Wayne Hanselka, Ph.D.	2008	Texas AgriLife Extension Service Representative
Ramiro Garcia, Jr.	2009	Texas Commission on Environmental Quality Representative
Mike McMurry	2008	TDA Representative
Ernie Smith	2008	Texas Forest Service Representative
Charles Taylor, Ph.D.	2007	Texas AgriLife Research Representative

Appendix A

Texas-Israel Exchange Fund Board

Member	Term Expiration	Qualification
The Honorable Todd Staples Chairman	N/A	Commissioner of Agriculture
Michael A. DeGiglio	2012	Commissioner Appointee
Larry Levine	2011	Commissioner Appointee
Sam Roosth	2007	Commissioner Appointee
Ron Smith	2007	Commissioner Appointee
Mel Waxler	2009	Commissioner Appointee
David Eaton, Ph.D.	2007	University of Texas Representative
Edwin Price, Ph.D.	2011	Texas A&M University Representative
Cary Green, Ph.D.	2009	Texas Tech University Representative
Caasi Lamb	N/A	Speaker of the House of Representatives Designee
Bob Ozer	N/A	Comptroller of Public Accounts Designee
Vacant	N/A	Lieutenant Governor Designee

Appendix B

Texas-Israel Exchange Fund Projects

2001 Grant Recipient	Project
Lower Colorado River Authority	Technical and Economic Feasibility of Using Israeli Subsurface Drip Irrigation Technology for Growing Rice in Texas
Stephen F. Austin State University	Ornamental Annuals, Perennials, Bulbs, and Corms for Cut Flower Production and Gardening in Warm Climate Regions
Texas Agricultural Experiment Station	Pilot Scale for the Production of Shrimps, Fish, and Seaweed in an Environmentally Friendly Land-Based Integrated System Safe Application of Sewage Products to Sustain Irrigated Agriculture
Texas A&M University, Office of International Agriculture Programs	Advancement of Cotton Drought-Tolerance by Plant Breeding Assessment of the Feasibility of Using Reclaimed Nursery Runoff and Treated Domestic Graywater for Irrigation of Cut Flowers and Bedding Flower Plants Chlorophyll Fluorescence, Canopy Temperature Depression and Reflectance in Visible Spectrum as Crop Stress Indicators of Wheat and Cotton Under Semi-Arid Conditions of Texas and Israel Developing Innovative Techniques to Protect Greenhouse-Grown Orchids from Ethylene Contamination Evaluation, Development and Production of Heat and/or Drought Tolerant Specialty Cut Flower Crops for Texas and Israel: Novel Lupinus spp. (Bluebonnets) and Superior Phlox Cultivars Optimizing Water Use and Production Efficiency to Enhance Quality and Decrease Drought Physiological Disorders in Field and Greenhouse Specialty Peppers The Use of Wastewater to Irrigate Vegetable Crops with Subsurface Drip Irrigation Systems
Texas Tech University	Development of Selected Ornamentals Tolerant to Recycled and Saline Irrigation Water Genetic Resources of Drought Resistance on Wild Emmer Wheat for Wheat Improvement
USDA, Grassland, Soil and Water Research Laboratory	Biological Control of Saltcedar in Texas for Water Conservation and Environmental Improvement, Using Israeli Phytophagous Insects

Appendix B

Texas-Israel Exchange Fund Projects

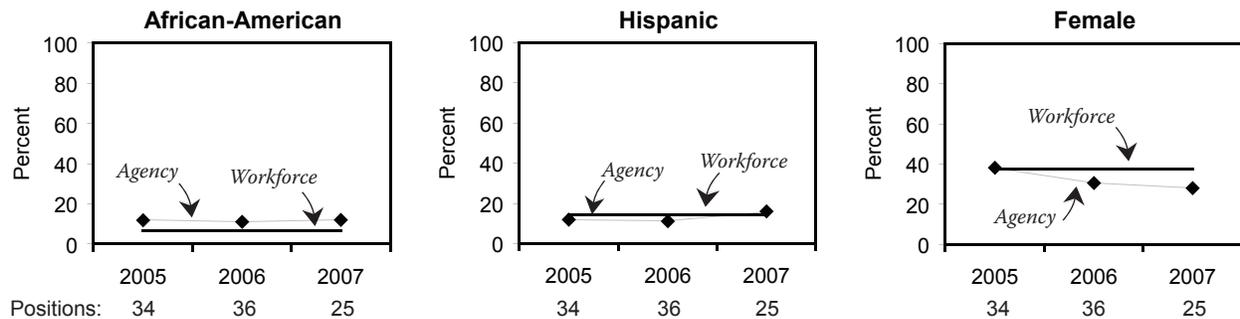
<i>2004 Grant Recipient</i>	<i>Project</i>
Texas Agricultural Experiment Station	Grafting as a Strategy for Disease and Stress Management in Muskmelon Role of Obligatory Dormancy in Cool-Season Perennial Grasses for Improved Semiarid Grassland Ecosystems Use of Multiple Biological Control Agents for Control of Western Flower Thrips
Texas A&M University Research Foundation	A Unified Map of Ornamental Phenotypes in Roses
USDA, Agricultural Research Service	Improved Analysis of Thermally Sensed Crop Water Status and Mapping Spatial Variability for Site Specific Irrigation

Appendix C

Equal Employment Opportunity Statistics 2005 to 2007

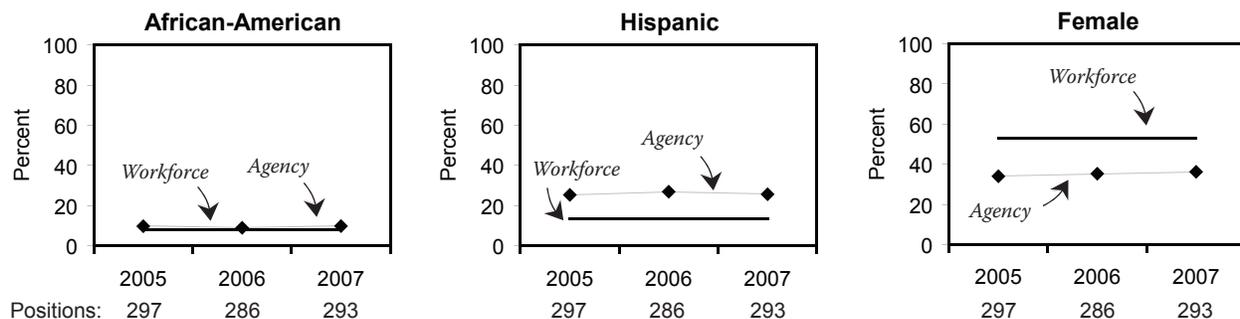
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Department of Agriculture employment of minorities and females in all applicable categories.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2005 to 2007. The agency generally met the civilian workforce percentages in most job categories for African-Americans and Hispanics, but fell short of the percentages for females in most categories. In those categories where the agency experienced difficulty meeting the percentages, the agency typically had a small number of positions in the category.

Administration



Generally, the agency met the civilian workforce percentages for African-Americans, Hispanics, and females in all three years.

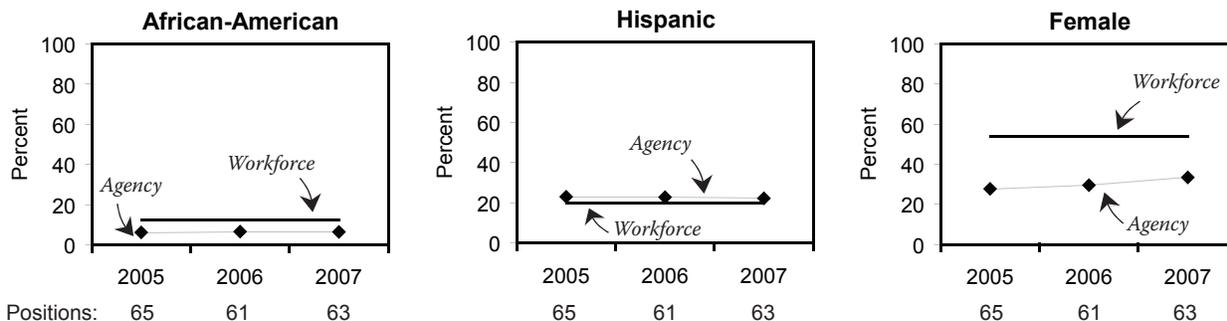
Professional



Representing the largest category of staff, the agency met or exceeded the civilian workforce percentages for African-Americans and Hispanics in the last three fiscal years. The agency fell below the civilian workforce percentages for females in those same years.

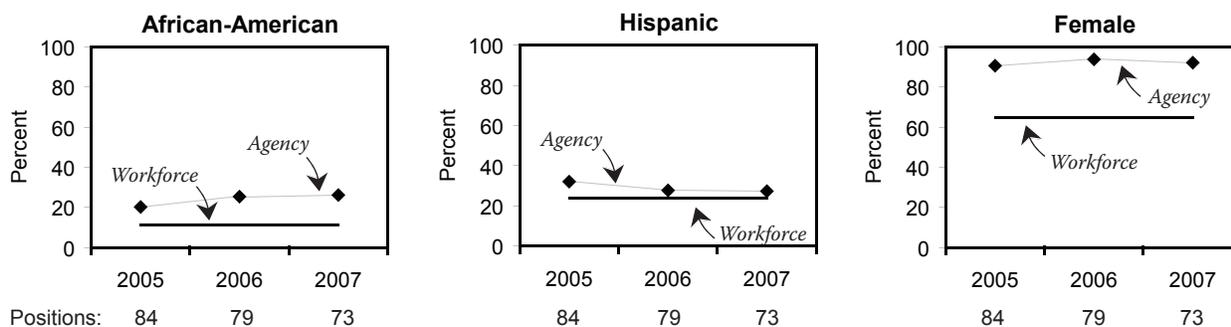
Appendix C

Technical



The agency exceeded the civilian workforce percentages for Hispanics in the last three fiscal years. Although the agency did not meet the civilian workforce percentages for African-Americans and females in the last three fiscal years, the agency's minority workforce percentages in these categories have increased in recent years.

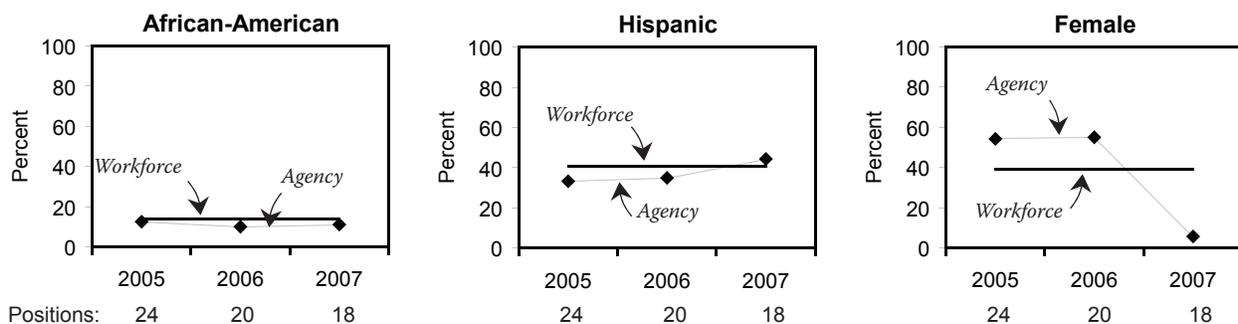
Administrative Support



The agency exceeded the civilian workforce percentages for African-Americans, Hispanics, and females, in the last three fiscal years.

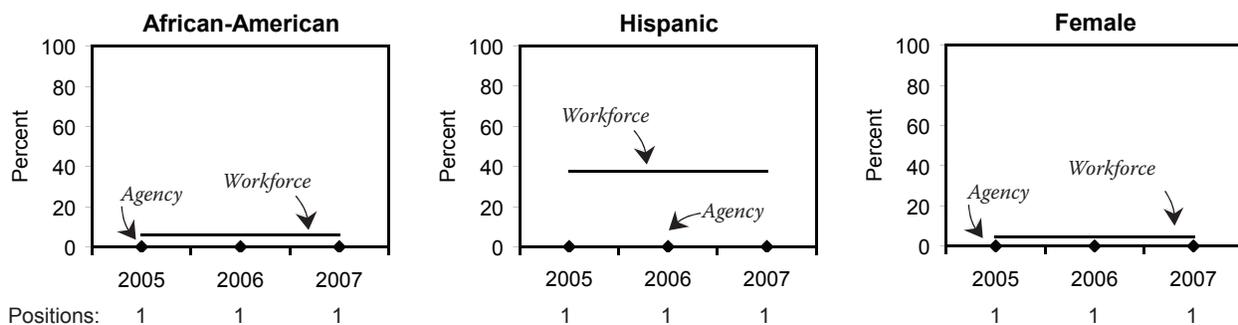
Appendix C

Service/Maintenance³



The agency fell short of civilian workforce percentages for African-Americans in the last three fiscal years. The agency also fell below civilian workforce percentages for Hispanics in fiscal years 2005 and 2006, but exceeded those percentages in fiscal year 2007. The agency greatly exceeded civilian workforce percentages for females in fiscal years 2005 and 2006, but fell significantly below those percentages in fiscal year 2007.

Skilled Craft



Representing the smallest category of staff with only one position, the agency was not able to meet the civilian workforce percentages for all three minority groups for the last three fiscal years.

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

² Texas Labor Code, sec. 21.501.

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

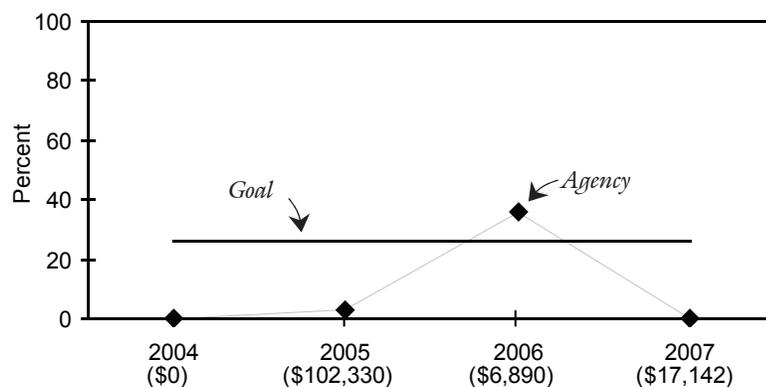
Appendix D

Historically Underutilized Businesses Statistics 2004 to 2007

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 Department of Agriculture's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2004 to 2007. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency exceeded some of the State's HUB purchasing goals, but had difficulty meeting other goals because the agency does not make many purchases in some categories, and the agency purchases contracts that are not always available from HUB vendors. The agency met other HUB-related requirements, such as appointing a HUB coordinator, establishing a HUB policy, and developing a mentor-protégé program.

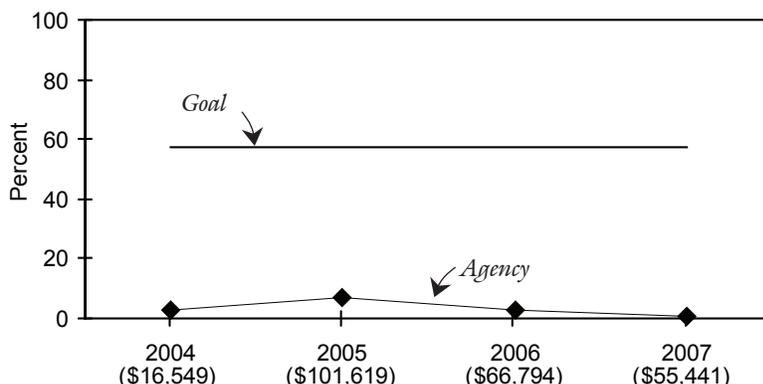
Building Construction



The agency exceeded the State's goal for spending on building construction in fiscal year 2006. However, the agency fell below the State's goal for spending in fiscal years 2004, 2005, and 2007. Spending in this category is for facilities improvements, such as roofing repairs to the agency's livestock export pens. However, the agency normally does not do a lot of building construction. The Texas Facilities Commission does the bidding for building construction contracts over \$25,000.

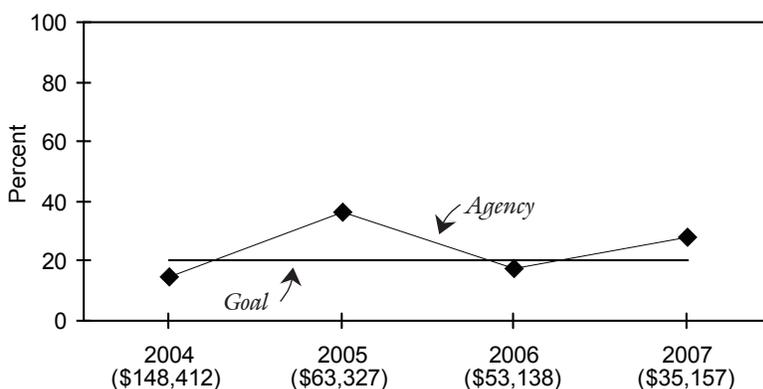
Appendix D

Special Trade



The agency fell below the State's goal for spending for special trade in each fiscal year. The agency typically spends only a small amount for facilities maintenance and repair under this category.

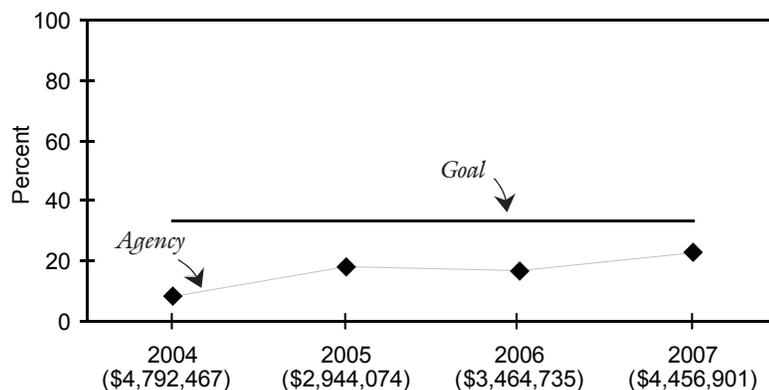
Professional Services



In fiscal years 2005 and 2007, the agency exceeded the State's goal for spending for professional services. However, in fiscal years 2004 and 2006, the agency fell short of the goal. Spending in this category is for accounting, architectural, legal, and medical services. Typically, contracts for professional services are not biddable. The agency has a contract for internal audit functions under this category, and tries to find HUB businesses, which are not always available.

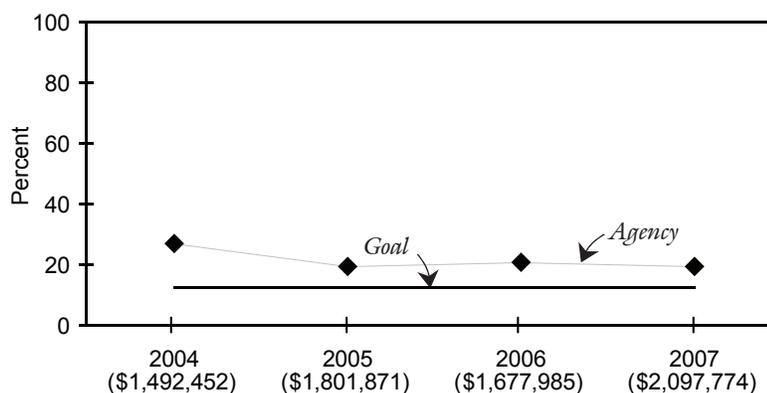
Appendix D

Other Services



The agency fell below the State's goal for spending for other services in each fiscal year. The contracts for other services are competitively bid if they exceed \$5,000. Spending in this category includes services such as janitorial and lawn maintenance, education and training services, and telecommunications maintenance.

Commodities



The agency exceeded the State's goal for spending for commodities each fiscal year. Spending in this category includes items such as fuels and lubricants, agricultural supplies, promotional items, computer equipment, and motor vehicles.

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

² Texas Government Code, ch. 2161.

Appendix E

Texas Department of Agriculture Fee Revenue FY 2007

Fee Description / Program	Current Fee / Statutory Maximum	Fee Revenue
Aquaculture Application and Renewal Fee	\$120	\$8,465
Aquaculture/Shrimp Assistance Surcharge	\$8 per acre in production for each year	\$401
Citrus Budwood Fees and Foundation Grove Application Fees	\$250 per grove; \$0.06 for each citrus budwood sold	\$12,908
Citrus Maturity Stamp Fees	\$0.15 – \$0.25 per box	\$21,935
Cooperative Marketing Application and Renewal Fee	\$25	\$3,900
Egg Law Application and Renewal Fees	\$20 – \$2,400	\$145,377
Egg Law Inspection/Self Report Fee	\$0.03 per case	\$386,768
Export Facility Fees	Varies per type of animal	\$353,409
GO TEXAN Membership Fee	\$25	\$35,924
Grain Warehouse and Inspection Fees	\$12 – \$100	\$276,944
Grain Warehouse Application and Renewal Fees	\$100 – \$150	\$45,198
Handling & Marketing Perishable Commodities Application and Renewal Fees	\$10 – \$90	\$55,600
Handling & Marketing Perishable Commodities/Produce Recovery Fund Fee	\$250	\$83,284
Late Fees – Agriculture Registration Fees	Various	\$23,520
Late Fees – Business Fees – Agriculture	Various	\$29,736
Late Fees – Game/Fish/Equipment Fees – Commercial	Various	\$300
Late Fees – Regulatory Inspection Programs	Various	\$146,413
Late Fees – Weighing and Measuring Device Inspector License	Various	\$630
Motor Vehicle Assessment (Young Farmers)	\$5	\$917,886
Motor Vehicle Registration Fee (GO TEXAN License Plate)	\$22	\$4,136
Nematode Testing Fee	\$30	\$0
Octane Testing Fees	\$2.50 – \$7.50	\$605,617
Organic Applications, Renewals, and Inspection Fees	\$75 – \$625	\$179,895
Out-of-State Travel Fees – Seed Audit/Egg Inspection	Actual costs	\$2,146
Pesticide Applicator License Application and Renewal Fees	\$12 – \$180	\$1,171,087
Pesticide Commercial/Noncommercial Applicator Testing Fee	\$24	\$21,891

Appendix E

Texas Department of Agriculture Fee Revenue FY 2007

Fee Description / Program	Current Fee / Statutory Maximum	Fee Revenue
Pesticide Dealer License Application and Renewal Fee	\$240	\$24,960
Pesticide Products Registration, Application, and Renewal Fee	\$420	\$2,603,122
Pesticide Recertification Exam Fee	\$50	\$1,000
Plant Quality Application, Renewal, and Event Block Fees	\$75 – \$180	\$1,411,909
Prescribed Burn Manager Certification Fee	\$50	\$500
Produce Recovery Claim Filing Fee	\$15	\$30
Public Weigher Application Fees	\$120 – \$480	\$41,040
Quarantine/Phytosanitary Certificate – State & Federal Fees	\$30 – \$50	\$228,913
Quarantine/Phytosanitary Certificate Growing Season Fee	\$30	\$0
Rose Grading Application and Renewal Fees	\$18 – \$120	\$0
Seed Arbitration Filing Fee	\$300	\$900
Seed Certification Field Inspection and Label Fees	\$25 per field inspection; \$0.10 per label per 100 pounds	\$402,190
Seed Fee Labels (Texas Tested)	\$0.07 per label	\$267,415
Seed Quarterly Reporting System Fee	\$0.07 per 100 pounds or fraction thereof	\$321,330
Seed Quarterly Reporting System Late Fee	\$30	\$0
Seed Testing Fees	\$5 - >\$100	\$244,427
Structural Pest Control – Administrative Penalty*	Various	\$162,245
Structural Pest Control – Business License Fee – Original*	\$180	\$61,380
Structural Pest Control – Business License Fee – Renewal*	\$180	\$587,880
Structural Pest Control – Certified Applicator License Fee – Original*	\$85	\$169,039
Structural Pest Control – Certified Applicator License Fee – Renewal*	\$80	\$638,000
Structural Pest Control – Continuing Education Units*	\$40	\$9,760
Structural Pest Control – Copies of Records*	\$.10 per page	\$1,040
Structural Pest Control – Duplicate License Fee*	\$30	\$2,490
Structural Pest Control – Late Renewal Fee: 0 – 30 days*	\$30.75	\$7,838
Structural Pest Control – Late Renewal Fee: 30 – 60 days*	\$75	\$7,272

Appendix E

Texas Department of Agriculture Fee Revenue FY 2007

Fee Description / Program	Current Fee / Statutory Maximum	Fee Revenue
Structural Pest Control – Name Change in License Fee*	\$30	\$12,090
Structural Pest Control – Returned Check Fee*	\$25	\$100
Structural Pest Control – Technician License Fee – Original*	\$65	\$219,587
Structural Pest Control – Technician License Fee – Renewal*	\$60	\$182,340
Structural Pest Control – Testing Fee – All Categories*	\$50	\$250,950
Structural Pest Control – TxOnline Subscription Fee*	\$5	\$55,690
Structural Pest Control – Sale of Publications*	\$9	\$143
Sweet Potato Inspection Fee	\$0.01 per tag	\$0
Texas Certified Retirement Community Program Application Fee	\$5,000 or .25 multiplied by population	\$41,998
Vegetable Seed License Fee	\$120	\$2,032
Weights & Measures Application and Renewal Fees	\$8.50 - \$120	\$3,773,169
Weights and Measures – Registered Technicians Exam Fee	\$60	\$48,140
Weights and Measures Licensed Inspection Service Companies Fee	\$90	\$37,530
Weights and Measures Metrology Testing Fees	\$20 - \$787.50	\$152,367
Total Fee Revenue		\$16,504,186

* TDA cannot ensure the reliability of Structural Pest Control fee amount and revenue data because the information was gathered and reported by the Structural Pest Control Board before the regulation was transferred to TDA on September 1, 2007.

Appendix F

Staff Review Activities

During the review of the Texas Department of Agriculture, Prescribed Burning Board, Texas-Israel Exchange Fund, and Boll Weevil Eradication Foundation, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; spoke with staff from key legislative offices; conducted interviews with 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 using the Internet.

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

- ◆ Attended meetings and interviewed members of the Prescribed Burning Board, Texas-Israel Exchange Fund Board, Boll Weevil Eradication Foundation, Texas Agricultural Finance Authority, Produce Recovery Fund Board, two Cotton Grower Steering Committees, one Pest Management Zone Committee, Healthy Students = Healthy Families Advisory Committee, Wine Marketing Advisory Committee, Wine Industry Development Advisory Committee, and Shrimp Marketing Assistance Advisory Committee.
- ◆ Interviewed staff from the Texas Public Finance Authority, Texas Bond Review Board, Texas Comptroller of Public Accounts, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas Education Agency, Texas Forest Service, Texas Department of Insurance, Texas AgriLife Research, Texas Department of State Health Services, Texas Workforce Commission, U.S. Department of Labor, U.S. Department of Agriculture, and Binational Agricultural Research and Development Fund.
- ◆ Toured TDA's metrology, seed, and pesticide labs in Giddings and College Station.
- ◆ Accompanied TDA regulatory inspectors on inspections of eggs, gas pumps, grocery scales, cotton fields, and a nursery.
- ◆ Accompanied TDA Rural Economic Development, Food and Nutrition, and Marketing staff on visits to rural communities, a school district, and GO TEXAN promotional activities.
- ◆ Attended a workshop for ranch managers, landowners, and others wanting to use prescribed burns for land management.
- ◆ Toured an aquaculture facility.
- ◆ Toured cotton fields to observe boll weevil traps.

PROVISIONS ADDED BY LEGISLATURE



Provisions Added by Legislature

Texas Department of Agriculture

1. Grant TDA authority to impose requirements on unlicensed produce dealers to prevent losses to perishable commodity producers.

The Legislature added several provisions to S.B. 1016 related to unlicensed produce dealers. The bill allows a person who purchases perishable commodities without a license to obtain a license within 30 days of their first purchase. The bill applies the same regulatory requirements of licensed perishable commodities dealers to unlicensed dealers. The bill allows producers of perishable commodities to file claims with the Produce Recovery Fund to recover money lost to an unlicensed dealer. Producers who file claims against unlicensed dealers may only receive 80 percent of the amount of their claim from the Produce Recovery Fund. Unlicensed dealers who have had a claim filed against them must repay the Produce Recovery Fund one and a half times the amount of the claim.

2. Update the Structural Pest Control Act so that it reflects current industry and regulatory practices.

The Legislature added several provisions to S.B. 1016 to further reform the regulation of structural pest control applicators. The bill eliminates the exemption from the Structural Pest Control Act for those holding a florist or nursery registration certificate from TDA. The bill removes duplicative and outdated provisions of the Structural Pest Control Act, including the requirement for TDA to adopt bylaws governing the structural pest control program. The bill allows TDA to enter into reciprocal licensing agreements with other states that have similar structural pest control licensing requirements as Texas.

Senate Bill 1016 requires structural pest control technicians to be licensed, and provides that a certified applicator or licensed technician is not required to obtain a separate license for each branch office of an employer, but must be associated with a business license holder. The bill clarifies that a person is not engaged in the “business of structural pest control” if the person is a clerical employee or a manual laborer and does not perform certain functions related to pest control. The bill requires licensees to make available, rather than actively provide, information about pesticide treatments and makes other changes to notification requirements for indoor treatments.

The bill specifies that the appointment of the consumer representative on the structural pest control advisory committee does not need to be based on recommendations from consumer advocacy groups. The bill adds requirements for regular, orderly advisory committee meetings.

3. Provide another eligibility requirement for the Commissioner and additional administrative tools for the agency.

The Legislature added a fourth eligibility requirement for a person to be elected or appointed Commissioner of Agriculture. A person must meet one of the three existing qualifications, or have worked for at least five years for the Texas Agricultural Council, an organization that is a member of the Council, or another agricultural producer organization.

The Legislature added provisions to improve TDA's administrative practices. The bill allows TDA to solicit and accept gifts, grants, and donations from any person to be expended or distributed for any public purpose related to the agency's duties. The bill allows TDA to develop an outreach program to promote better health and nutrition programs and prevent obesity among children. To administer this program, TDA will be able to solicit gifts, grants, and donations from any public or private source and adopt rules as necessary.

4. Create grant programs to encourage rural economic development.

Senate Bill 1016 establishes the Rural Investment Fund to be administered by TDA. The Fund consists of legislative appropriations, gifts, grants, other donations, and earned interest. TDA may only use the Fund to pay for grants or loans to public or private entities for projects in rural communities that promote economic development. The bill specifies that TDA shall administer the fund and select recipients of grants and loans from the fund.

The bill also requires the Commissioner to establish and administer a financial assistance program to encourage economic development and investment in rural areas. TDA may provide financial assistance to a county with not more than 75,000 people, a city with not more than 50,000 people, or an economic development corporation or community development financial institution serving such an area. The Commissioner may use appropriated funds to extend credit, lower interest rates, finance purchase or lease agreements, or provide other means of leveraging money to eligible entities and to establish conditions under which those funds must be repaid.

5. Grant the Texas Beef Council authority to administer in Texas the federal program for beef marketing.

Senate Bill 1016 qualifies the Texas Beef Council to collect the proceeds of and administer the federal beef check off program. The bill directs how the assessment is to be applied and includes the administrative costs of conducting the assessment referendum. The bill allows the Commissioner, on the Council's recommendation, to exempt producers from the assessment if they are exempt under federal law. The bill makes other changes to facilitate the assessment and collection of funding for the check off program, subject to referendum and approval by the Commissioner. The bill reduces the number of members on the Council by removing one of the members representing the Livestock Marketing Association of Texas and provides for Council members to be nominated by the Council and appointed by the Commissioner. The bill imposes limitations on the terms of Council members and allows a member of the Council who is elected to serve as an officer to serve as chair or past chair beyond a typical member's term limit.

6. Update statutory provisions related to livestock.

Senate Bill 1016 specifies that a livestock mark or brand recorded by a federally authorized inspection association does not serve as a record under state law and that such an association has no duty to verify ownership of livestock at a point of sale.

The bill also clarifies that a requirement of a political subdivision does not apply to conduct that is generally accepted and otherwise lawful in support of animal husbandry or other agricultural practice involving livestock animals.

7. Create entities to promote the use of biofuels.

Senate Bill 1016 establishes the Bioenergy Policy Council and Bioenergy Research Committee to promote the goal of making biofuels a significant part of the State's energy industry. The Council and Committee are independent entities administratively attached to TDA. The duties of the policy council include promoting the development and creation of biofuels and creating a vision to unify the bioenergy sector with the energy industry. The duties of the research committee include identifying, researching and pursuing strategies to promote bioenergy projects in each region of the State.

8. Create an entity to manage citrus pests and diseases.

Senate Bill 1016 establishes the Official Citrus Producers' Pest and Disease Management Corporation as a grower-funded and -administered quasi-governmental entity to control and suppress citrus greening. The bill allows citrus growers to establish, by referenda, zones and assessments to fund the program, similar to the Boll Weevil Eradication Foundation. The bill specifies that the Agriculture Commissioner oversees the Corporation through the development and adoption of rules for the program. The Corporation has a Sunset date of 2021.

Provisions Added by Legislature

Texas Boll Weevil Eradication Foundation

1. Provide the Texas Department of Agriculture and the Foundation with additional tools to manage volunteer and hostable cotton.

House Bill 1580 requires TDA to set cotton stalk destruction deadlines for each pest management zone, and to collect a volunteer or hostable cotton fee, per acre, each week from persons who do not comply with the deadlines. The bill specifies that the volunteer or hostable cotton fee would be collected and used to treat volunteer or hostable cotton, and establishes a waiver process for extenuating circumstances surrounding the presence of hostable or volunteer cotton beyond the destruction deadline. House Bill 1580 allows TDA to destroy or treat hostable cotton that remains beyond the destruction deadline.

To assist TDA in managing volunteer and hostable cotton, the Foundation must determine the effect of cotton stalk destruction deadlines on the cost of the boll weevil eradication program. The bill also requires the Foundation to conduct a study of the effects of volunteer cotton on the boll weevil eradication program and submit annual recommendations to TDA for cotton stalk destruction deadlines in pest management zones.

2. Modify the definition of “cotton grower.”

House Bill 1580 modifies the definition of “cotton grower” to apply to a person who grows cotton for commercial purposes, rather than someone who only receives income from the sale of cotton. The bill expands the definition of “cotton grower” to include a person who shares in an indemnity or other payment from the planting, growing, or failure of cotton.

**SUNSET STAFF REVIEW OF THE
TEXAS DEPARTMENT OF AGRICULTURE
TEXAS BOLL WEEVIL ERADICATION FOUNDATION
PRESCRIBED BURNING BOARD
TEXAS-ISRAEL EXCHANGE FUND BOARD**



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