

# *Texas Department of Agriculture Prescribed Burning Board Texas-Israel Exchange Fund Board*

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## **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.

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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 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 one billion meals and the distribution of 166 million pounds of agricultural commodities in 2008.
- ◆ **Marketing.** The GO TEXAN marketing campaign, launched in 1999, promotes all Texas agricultural products under one recognizable trademark. TDA finished fiscal year 2008 with 2,320 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 335,000 inspections annually of fields, vehicles, warehouses, products in commerce, retail establishments, and other locations throughout the state. TDA currently certifies 18 prescribed burn managers.
- ◆ **Grants.** TDA administers a number of state and federally funded grant programs. One such program will provide grants totaling \$19 million during 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 during 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.

## Agency Head

Todd Staples, Commissioner of Agriculture  
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## Recommendations

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. Direct TDA to develop rules to administer and enforce the Texas Public School Nutrition Policy.

6. Eliminate regulation of certain activities and conform the regulation of others to reflect current industry practices.
7. Conform key elements of TDA's licensing and enforcement functions to commonly applied licensing practices.
8. Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.
9. Direct TDA to explore ways to get excess venison from landowners to food banks, schools, and prisons.
10. Continue TDA for 12 years.

# Issue 1

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

### **Key Findings**

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

The Legislature created the Texas Agricultural Finance Authority (TAFAs) in 1987 to provide financial assistance to borrowers in the agriculture industry. Because of a high volume of defaulted loans, most TAFAs programs have been under moratorium since 2002, and the Authority is still carrying approximately \$14.7 million in debt as a result of delinquent loans. Further, the structure and statutory requirements of the programs limits their effectiveness in meeting the needs of Texas agriculture. TDA indicates that it intends to work with the Legislature, through the appropriations process, to address the outstanding debt, but statutory changes are necessary to fix TAFAs other problems.

### **Recommendations**

#### **Change in Statute**

##### **1.1 Provide that the Commissioner of Agriculture, rather than the Governor, appoint the TAFAs Board of Directors.**

This recommendation would remove the Governor's authority to appoint the members of the TAFAs 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 TAFAs Board would also better ensure that the Board's vacancies are filled in a timely fashion.

##### **1.2 Add two members to TAFAs Board of Directors to represent young farmers.**

This recommendation would expand the size of the Board from nine to 11 members. The two additional members would represent young farmers and their interests and would be appointed by the Commissioner of Agriculture. Given that several TAFAs programs are targeted to young farmers, this recommendation would give them the representation on the Board that is currently lacking.

##### **1.3 Remove the statutory requirement that TAFAs receive a portion of the State's private activity bond authority.**

Since TAFAs has never used its private activity bond authority, removing this statutory allocation would allow other state debt issuers to have access to TAFAs portion of the bonds. TAFAs 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.

#### **1.4 Require TAFAs to issue debt through the Texas Public Finance Authority.**

Under its agreement with the Public Finance Authority, TAFAs would continue to be responsible for administering its loan program to ensure full repayment of debt 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 TAFAs' 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.

#### **1.5 Eliminate the statutory requirement for the Board to give preference to value-added businesses.**

Without the provision requiring the Board to give preference to value-added agricultural businesses, the Board would be able to consider all types of operations equally when making its lending decisions.

#### **1.6 Create the Agricultural Loan Guarantee Program.**

This program would offer guaranteed loans to eligible agricultural producers or other agricultural businesses and would have the following features.

- ◆ The Board would guarantee a certain amount of a loan depending on its size. The larger the loan, the lower the guaranteed amount.
- ◆ Borrowers would be able to receive a rebate on their interest rate, up to a certain amount.
- ◆ Interest rates for loans with terms extending beyond 12 months would be fixed.
- ◆ The Board would be able to create a certified lender's program to speed up the loan approval process.
- ◆ To fund the program, the Board would be able to access either three-fourths or \$12 million, whichever is less, of the Young Farmer Loan Guarantee Account, which would be renamed the Texas Agricultural Fund Account.
- ◆ To cover its administrative costs, the Board would be required to charge an administrative fee of at least 1 percent of the guaranteed amount of each loan.

This new program would be more attractive to agricultural operations and private lenders than existing TAFAs programs, while minimizing the financial risk to the State and avoiding the problems of past TAFAs programs.

#### **1.7 Eliminate the Young Farmer Guarantee Program and replace it with two programs exclusively for young farmers.**

In place of the Young Farmer Guarantee Program, this recommendation would create an interest rate reduction program and a grant program for young farmers. To increase eligibility for both programs, the definition of a young farmer would be expanded from 40 years of age to 45 years of age. The Young Farmer Interest Rate Reduction Program would allow borrowers to get lower interest rates on loans from private lenders than what is available on the commercial market. To fund the program, the Board would be able to access one-fourth of the funds in the Texas Agricultural Fund Account.

The Young Farmer Grant Program would provide grants of between \$5,000 and \$20,000 and would require the grantee to provide at least the same amount in matching funds. The funding for this grant program would come from the Texas Agricultural Fund Account. These changes would make TAFAs programs more attractive to young farmers by providing the financing needed to enter and become established in the agriculture industry in today's economic environment.

### **1.8 Rename the Linked Deposit Program and expand the program's eligibility.**

This recommendation would rename the existing Linked Deposit Program as the Interest Rate Reduction Program, to better describe the purpose of the program. The program's eligibility would be expanded by raising the maximum loan amount eligible for participation from \$250,000 to \$500,000. These changes would make this program more attractive to agricultural producers and other agricultural businesses in need of financing options.

## *Issue 2*

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

#### **Key Findings**

- ◆ Texas has a continuing need to regulate persons responsible for conducting prescribed burns to protect landowners, the public, and the environment.
- ◆ The statute does not provide for the adequate regulation of individuals who conduct prescribed burns in Texas.

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 agency, however, 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 agency also lacks the ability to go after unlicensed activity, among other limitations.

#### **Recommendations**

##### **Change in Statute**

### **2.1 Continue the Prescribed Burning Board as a semi-independent board, but remove its separate Sunset date.**

This recommendation would continue the Prescribed Burning Board as a semi-independent board within the Texas Department of Agriculture, and would remove the Board's Sunset date. Future Sunset reviews of TDA would include a review of the Board as a part of its overall operations.

## **2.2 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.

This recommendation would give the agency enforcement authority to investigate and dispose of complaints to prevent unlicensed activities and non-compliance of licensees. The recommendation does not require the agency to conduct routine inspections of every prescribed burn.

## **2.3 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 action on complaints.

- ◆ 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 nonjurisdictional complaints.

## **2.4 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.

## **2.5 Change the title of “certified prescribed burn manager” to “certified and insured prescribed burn manager.”**

Changing the title of “certified prescribed burn manager” to “certified and insured prescribed burn manager” in statute would clarify that all individuals who conduct prescribed burns for hire meet statutory education, experience, and insurance requirements. This recommendation would also help promote public knowledge that individuals who are in the business of conducting controlled burns on

another individual's land have not only the knowledge and experience, but also the required financial responsibility to protect the land and the interests of the landowner.

**2.6 Allow 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.**

Under this recommendation, certified prescribed burn managers would be allowed to conduct burns as long as the Governor's or Presidential Declaration of Disaster does not specifically prohibit outdoor burning. This recommendation would clarify to the commissioners court of a county, which has the power to prohibit or restrict outdoor burning, that such a declaration does not affect certified prescribed burn managers conducting burns. This recommendation would allow greater use of prescribed burning as a tool for land management during conditions favorable for burning.

## *Issue 3*

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

#### **Key Findings**

- ◆ Texas benefits from the binational agricultural research agreement with Israel, but 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.

The Texas-Israel Exchange (TIE) 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. The same functions could be provided by an advisory committee, rather than a semi-independent board.

#### **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 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 supporting joint agricultural research with Israel, the agency should request funding for such 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.

## Issue 4

### ***Some of TDA's Boards and Advisory Committees Are Not Structured in a Way to Ensure Their Best Operation.***

#### 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.

TDA receives input from a number of semi-independent boards and advisory committees. 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. 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.

#### 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.**

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. The Commissioner may be able to fill vacancies on the boards more rapidly than the Governor. 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.

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

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. The Commissioner may be able to fill vacancies on the boards more rapidly than the Governor.

#### **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.

## *Issue 5*

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

#### **Key Finding**

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

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.

## 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. Rules would also provide for some continuity in the policy whenever a new Commissioner takes office.

## Issue 6

### ***Certain TDA Regulations Are Not Needed to Protect the Public or No Longer Reflect Current Practices.***

#### Key Findings

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

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. Such inactivity is an indicator that 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 and reduce its regulatory burden.

## Recommendations

### Change in Statute

#### **6.1 Eliminate certification of rose graders.**

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.

#### **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.

#### **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.

#### **6.4 Eliminate registration of cooperative marketing associations.**

Cooperative marketing associations would no longer need to register with TDA or provide financial information associated with that registration.

#### **6.5 Change the regulatory structure of the public weigher program such that businesses, rather than 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.

#### **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.

# Issue 7

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

### **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.

Various licensing and enforcement processes in the Agriculture Code do not match model standards developed from experience gained through more than 93 occupational licensing reviews over the last 31 years. Comparing TDA's statute, rules, and practices to the model licensing standards identified variations that need to be brought in line with the model standards.

### **Recommendations**

#### **Licensing – Change in Statute**

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

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.

##### **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.

##### **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.

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

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.

## **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.

### **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.

### **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.

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

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.

### **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.

### **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.

### **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.

## **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.

### **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.

### **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.

# Issue 8

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

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.

### **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. 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 for structural pest control to the Agriculture Code, in conjunction with the recommendations in Issue 7. 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.

## *Issue 9*

### ***Landowners Who Manage Their Lands to Improve Wildlife Habitat Do Not Have the Needed Outlets for the Venison They Harvest.***

Through the Managed Lands Deer Permit Program, the Texas Parks and Wildlife Department (TPWD) works with private landowners to manage their land to the benefit of wildlife habitat. The program allows landowners who have developed a formal management plan, with help from TPWD, to have more flexible deer hunting seasons and increased harvest opportunities. However, many landowners in the program would like to harvest more deer, but cannot use all of the venison and would like to donate it to organizations and institutions that can. TDA has well-established relationships with public schools and food banks through its administration of the National School Lunch Program and programs that distribute surplus agricultural products.

### **Recommendations**

#### **Management Action**

#### **9.1 TDA, with cooperation from TPWD, should establish a pilot project to provide venison to the state's food bank system.**

TDA should seek funding from the Legislature to provide grant funding to get more venison into food banks. With this grant funding, food banks could work with qualified meat processors and landowners in TPWD's Managed Lands Deer Permit Program to pay the cost of processing and distributing meat from deer taken from lands as part of the permit program. This pilot project could provide the opportunity for food banks to access a new source of protein and for landowners to have an additional outlet for the deer harvested from their lands.

#### **9.2 TDA and TPWD should explore a pilot project to provide venison to schools through TDA's child nutrition programs.**

TDA, in cooperation with TPWD, should explore the feasibility of working with meat processors, landowners, and public schools to provide venison through the National School Lunch Program. To determine whether such a pilot project would be feasible, TDA would have to consult with the U.S. Department of Agriculture, which administers the school lunch program, to determine whether providing venison to Texas schools is permissible and under what circumstances. This pilot project could provide the opportunity for schools to access a new source of protein and for landowners to have an additional outlet for the deer harvested from their lands.

**9.3 TDA and TPWD should explore a pilot project with the Texas Department of Criminal Justice to provide venison to the food services operations in prisons.**

TDA, with cooperation from TPWD, should explore whether they could work with meat processors, landowners, and the Texas Department of Criminal Justice to provide venison to prisons. This pilot project could provide the opportunity for prisons to access a new source of protein and for landowners to have an additional outlet for the deer harvested from their lands.

## *Issue 10*

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

#### **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.

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. The agency is uniquely positioned to promote agriculture, rural economic development, nutrition, and consumer protection.

#### **Recommendation**

##### **Change in Statute**

##### **10.1 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.

# *Fiscal Implication Summary*

Three of these recommendations may have a fiscal impact, but the actual amount of the impact will depend on how the recommendations are implemented.

- ◆ **Issue 1** – Overall, the recommendations for the Texas Agricultural Finance Authority (TAFAs) would not have a fiscal impact to the State. TDA has authority to pay the costs of administering TAFAs's programs with the interest from the Young Farmer Loan Guarantee Account, which consists of revenue from a \$5 license plate tag fee on agricultural vehicles. As a result, the costs of adding two members to TAFAs's Board of Directors and any additional staff TDA requires to administer the new financing programs would be paid for with that interest income. Further, restructuring TAFAs's financing programs, including creating a grant program, will not have a fiscal impact to the State because those programs will draw on funds already available in the Young Farmer Account, which would be rolled into 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 could increase the agency's workload. The agency would have to process renewals more frequently and conduct complaint investigations and enforcement proceedings. However, since the program currently only certifies 18 prescribed burn managers, the agency's workload is not likely to increase significantly.
- ◆ **Issue 9** – Directing TDA to seek funding from the Legislature for a pilot project to provide venison to the state's food bank system may have a negative fiscal impact to the State. Based on discussions with the Texas Parks and Wildlife Department and food banks, TDA's initial estimate for the cost of a pilot project is \$200,000. However, the actual cost will depend on how much money, if any, the Legislature decides to appropriate to TDA for this purpose.

