



# SUNSET ADVISORY COMMISSION

Texas Department  
of Licensing and  
Regulation



Staff Report  
February 2002

**TEXAS DEPARTMENT OF LICENSING AND REGULATION**

**SUNSET STAFF REPORT**

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# SUMMARY



## Summary

### Sunset Staff Report

## Texas Department of Licensing and Regulation

In conducting the review of the Texas Department of Licensing and Regulation, Sunset staff evaluated the agency's ability to function in its legislatively assigned role as the State's umbrella agency for occupational licensing. By its nature as an umbrella agency, TDLR ends up with programs and functions that originated elsewhere. In fact, the agency's functions have grown significantly from its origins in 1909 as the Bureau of Labor Statistics, as it is now responsible for the oversight of 20 professions.

Consequences of this growth in responsibilities are that TDLR must contend with perpetual change, and that little attention may be given to ensuring that it has the tools and ability to do its job. In addition, as the agency inherits these programs, statutes, and operating systems, they may not have been modernized or standardized to clearly fit within the agency's umbrella licensing structure.

While the agency has recently made changes to reflect its role as the State's licensing agency, such as aligning its organization according to its licensing and enforcement functions, additional changes could further improve the agency's functioning. The Sunset review sought to determine if the Commission on Licensing and Regulation adequately oversees the agency, providing a broad perspective and deliberation on issues, while maintaining accountability to the Governor. The review also sought to ensure that agency programs and statutes conform with model standards observed and developed over 25 years of Sunset reviews, and that the agency properly focuses on its central regulatory mission, discontinuing any programs not needed to protect the public.

*Certain changes would solidify the Department's status as an umbrella licensing agency.*

Finally, the review examined TDLR's administrative hearing function and the question of whether the function would be better housed in the State Office of Administrative Hearings. Because SOAH is itself the subject of a Sunset review this biennium, any recommendation to transfer this function would be made as part of the staff report on that agency.

A summary of the recommendations in this report is provided in the following material.

*For more information, contact Steve Hopson, (512) 463-1300. Sunset staff reports are available online at [www.sunset.state.tx.us](http://www.sunset.state.tx.us).*

## Issues / Recommendations

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### **Issue 1 The Commission on Licensing and Regulation Lacks Oversight Powers Common to Agency Policy Bodies.**

#### **Key Recommendations**

- Vest all rulemaking authority for the licensing and regulatory programs of TDLR in the Commission.
- Grant the Chair of the Commission, with approval of the Commission, the authority to make all appointments to advisory committees under the Commission's jurisdiction

### **Issue 2 The Current Size of the Commission Does Not Comply With the Constitution.**

#### **Key Recommendation**

- Change the size of the Texas Commission on Licensing and Regulation from six to five members.

### **Issue 3 Key Elements of the Programs Administered by the Department Do Not Conform to Commonly Applied Occupational Licensing Practices.**

#### **Key Recommendations**

- Standardize and remove elements of the agency's licensing authority that introduce too much subjectivity into licensing decisions, such as inconsistent approaches to dealing with criminal offenses and the use of oral exams or interviews.
- Revise elements of TDLR's enforcement activities that are overly complicated, too undefined, or vary from standard practices, such as the burdensome requirements for filing complaints or the lack of guidelines for establishing specific administrative penalties.
- Change administrative aspects of the Department's licensing programs by removing fee caps and standardizing license issuance periods and refund policies.

### **Issue 4 Current Elevator Inspection Requirements Do Not Take Full Advantage of Reporting by the Elevator-Riding Public.**

#### **Key Recommendations**

- Require elevator certificates of compliance to be posted in publicly visible areas.

- Require annual inspections of elevators instead of the current 18-month cycle.

**Issue 5 Oversight of Abandoned and Unplugged Water Wells Is Not an Appropriate Duty for the Department.**

**Key Recommendation**

- Transfer the responsibility of enforcement against landowners with abandoned water wells from the Department to the Texas Natural Resource Conservation Commission.

**Issue 6 State Oversight of Transportation Service Providers, Career Counselors, and Personnel Employment Services Is No Longer Needed.**

**Key Recommendations**

- Abolish the registration of transportation service providers.
- Abolish licensing of career counselors.
- Abolish licensing of personnel employment services.

**Issue 7 Texas Has a Continuing Need for the Texas Department of Licensing and Regulation.**

**Key Recommendation**

- Continue the Texas Department of Licensing and Regulation for 12 years.

**Fiscal Implication Summary \_\_\_\_\_**

This report contains recommendations that will have a fiscal impact to the State. These recommendations are discussed below, followed by a five-year summary chart.

- *Issue 1* – Granting the Commission on Licensing and Regulation rulemaking authority would probably require the Commission to conduct two additional meetings per year to ensure the timely adoption of rules. The additional travel and per diem expenses would cost the State about \$1,800 a year.
- *Issue 2* – Reducing the size of the Commission to five members would result in reduced travel and per diem expenses, saving the State about \$900 a year.

- **Issue 6** – Abolishing state oversight of Transportation Service Providers, Career Counselors, and Personnel Employment Services would result in a savings to the State of about \$90,882 a year; however, this savings would be offset by reductions in licensing revenue.

<b>Fiscal Year</b>	<b>Savings to General Revenue</b>	<b>Cost to General Revenue</b>
2004	\$91,782	\$92,682
2005	\$91,782	\$92,682
2006	\$91,782	\$92,682
2007	\$91,782	\$92,682
2008	\$91,782	\$92,682

## **ISSUES / RECOMMENDATIONS**

# Issue 1

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## The Commission on Licensing and Regulation Lacks Oversight Powers Common to Agency Policy Bodies.

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### Summary

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#### Key Recommendations

- Vest all rulemaking authority for the licensing and regulatory programs of TDLR in the Commission.
- Grant the Chair of the Commission, with approval of the Commission, the authority to make all appointments to advisory committees under the Commission's jurisdiction.

#### Key Findings

- The Commission's ability to fully oversee the Department is hampered by a lack of direct rulemaking authority.
- Vesting rulemaking authority in the Executive Director eliminates the standard forum for public deliberations.
- The Commission's ability to oversee the Department's licensing functions is hindered because it does not receive needed advice directly from its advisory committees.
- Most other agency boards and commissions exercise authority for rulemaking and advisory committee appointments.

#### Conclusion

The Commission on Licensing and Regulation oversees 20 professions and industries yet the rulemaking authority for most of these licensing functions is not vested in the Commission but in the Executive Director. While the Executive Director must conform to all the public input requirements of the Administrative Procedure Act, removing the Commission from the rulemaking process deprives the State of the input and discussion of the agency's policymaking body and limits the Commission's ability to oversee TDLR's regulatory programs.

To assist the Department in oversight for its 20 regulatory functions, the Legislature has established 11 advisory committees that recommend rules, licensing requirements, fees, continuing education, and other issues. However, these advisory committees do not report directly to the Commission, but exist primarily to advise TDLR's Executive Director. This disconnect between the advisory committees and the policymaking body limits the assistance the Legislature created these committees to provide. This lack of Commission involvement with the appointment of advisory commissions and in the rulemaking process is unusual among Texas state agencies.

The recommendations are designed to improve the Commission's ability to oversee the agency and to provide a broader perspective in agency rulemakings. In addition, the public will be afforded a greater role in the agency's work by being able to directly address the Commission during rulemakings.

## Support

### **The Commission on Licensing and Regulation serves as the umbrella policy body for regulation of 20 professions and industries.**

- The Commission oversees the Department's regulation of 20 separate licensing and regulatory programs. The Commission's oversight duties include hiring the Executive Director, approving the Department's budget and fees, approving enforcement actions, and hearing appeals of administrative cases arising from the agency's regulatory actions. The rulemaking authority for most of the programs administered by TDLR is vested in the Executive Director – not the Commission.

### **Eleven statutorily created advisory committees assist the Executive Director in overseeing the professions licensed by TDLR.**

- The Legislature has created 11 advisory committees to assist the Department in its regulation of the 20 different industries. Although the composition, appointing authority, and purpose of these advisory committees varies greatly, the primary role of each committee is to advise the Executive Director on creating rules governing a specific program area. Some committees also have a role in advising the Commission on setting licensing fees. Information about each committee is available in the table, *TDLR Advisory Committees*, found on page 56 of the Agency Information section of this report.

One separate board, the Industrialized Building Code Council (IBCC) is associated with TDLR in a similar fashion as these advisory committees, but does not serve in an advisory function. The role of the IBCC is to make decisions regarding industrialized buildings. These decisions are binding upon the TDLR Commission and on local governments. Because the IBCC is not advisory in nature, it is not considered within the scope of this issue.

### **The Commission's ability to fully oversee the Department is hampered by a lack of direct rulemaking authority.**

- For most programs, TDLR's statutes give the Executive Director authority to create rules, and assign the Commission the authority to set fees. Although setting fees can directly affect the economics of each profession, the ability to create rules is more important because rules govern the standards of practice for each profession;

*Although Commission members may discuss proposed rules with the Executive Director, they do not have the consistent opportunity to discuss the rules with each other.*

and violating a rule can have economic, civil, and, sometimes, criminal penalties. The table, *Rulemaking Authority for TDLR Programs*, details each program and shows the statutory designation of rulemaking authority.

- Because the Commission does not have rulemaking authority, it cannot fully oversee the Department’s programs. For example, the Commission’s sole statutory rulemaking authority concerns the standards and specifications of building plans in the Architectural Barriers program. However, the Executive Director maintains rulemaking authority over the Registered Accessibility Specialists who interpret and apply the standards. For every other program, the Executive Director promulgates the rules by which the licensees must comply.

**Vesting rulemaking authority in the Executive Director eliminates the standard forum for public deliberations.**

- Having the Executive Director responsible for rulemaking eliminates the public deliberations that Commission involvement would provide. While Commission members may make their views known directly to the Executive Director, they do not collectively have the opportunity to consistently bring their experiences, opinions, and deliberations into the rulemaking process.

In addition, although the Executive Director complies with all the posting and public input requirements of the Administrative Procedure Act, the public is not afforded the opportunity to address

<b>Rulemaking Authority for TDLR Programs</b>	
<b>Program</b>	<b>Rulemaking Authority</b>
Air Conditioning and Refrigeration	Executive Director
Architectural Barriers	Commission may adopt standards and specifications for building plans. Executive Director has rulemaking authority concerning registration of accessibility specialists.
Auctioneers	Executive Director
Boilers	Executive Director
Career Counseling	Executive Director
Combative Sports	Executive Director
Elevators	Executive Director
Industrialized Housing and Buildings	Executive Director who must adopt rules to implement the actions, decisions, interpretations, and instructions of the Texas Industrialized Housing and Building Council.
Personnel Employment Services	Executive Director
Property Tax Consultants	Executive Director
Service Contract Providers	Executive Director
Staff Leasing Services	Executive Director
Talent Agencies	Executive Director
Temporary Common Worker Employers	Executive Director
Transportation Service Providers	Executive Director
Water Well Drillers	Executive Director with advice and comment from the Texas Natural Resource Conservation Commission.
Water Well Pump Installers	Executive Director
Weather Modification	Executive Director

the Commission about the potential ramifications of proposed rules before passage.

**The Commission's ability to oversee the Department's licensing functions is hindered because it does not receive needed advice directly from its advisory committees.**

- The Commission does not have full authority to appoint the members of TDLR's advisory committees or the chairs. Of the 11 advisory committees, the Governor appoints the members of two, the Commission appoints two, and the Executive Director appoints seven. Similarly, the Governor names the chair of one committee, the Executive Director names four, five committees elect their own chairs, and an employee of TDLR serves as chair of one. The Commission does not name the chairs of any advisory committee.
- Advisory committees report to the Executive Director both because of their appointments and because each committee's statutory charge is to advise the Executive Director on rules. Because their role is so limited, advisory committees address the Commission only on an infrequent basis. Members of both the Commission and the advisory committees expressed concern to Sunset staff about the lack of communication.<sup>1</sup>
- The Commission is also hampered by current state law related to forming new advisory committees. A provision of the Government Code requires all advisory committees to be funded only through the General Appropriations Act or through the budget execution process. Under provisions of the current Appropriations Act, no funds are available to pay the travel costs of members were the Commission to create a new advisory committee.

In addition, a 1998 Attorney General opinion specifically limits the authority of the Commission on Licensing and Regulation to form advisory committees. The opinion found that the Commission may not create an advisory committee absent specific statutory authority.<sup>2</sup> Apart from that establishing the current advisory committees, no additional authority exists.

**Most other agency boards and commissions exercise authority for rulemaking and advisory committee appointment.**

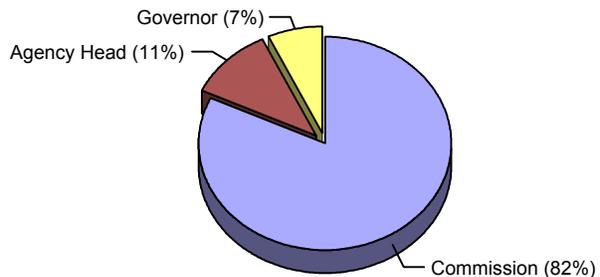
- The ability of the Executive Director to adopt rules is unusual for executive branch state agencies. Other than TDLR, Texas statutes grant independent authority to adopt rules to only five, non-elected, executive branch agency heads who serve under boards or commissions.<sup>3</sup> In several instances state law specifically prohibits boards or commissions from delegating rulemaking authority to agency heads.<sup>4</sup>

*Other than TDLR, Texas statutes grant independent rulemaking authority to only five non-elected agency heads.*

Recently the Legislature has acted to remove rulemaking authority from agency heads and place it with boards or commissions. For example, in 2001, the Legislature removed rulemaking authority from the Banking Commissioner and Savings and Loan Commissioner and vested that authority with the Finance Commission.

- The authority vested in TDLR's Executive Director to appoint the members of advisory committees is also not the standard for Texas state government. As shown in the chart, *Advisory Committee Appointment Authority*, a Sunset staff review of the enabling statutes creating 98 advisory committees attached to other agencies overseen by a Governor-appointed board or commission, found 11 are appointed by the agency head, seven by the Governor, and 80 by the governing body, presiding officer, or executive committee.

**Advisory Committee Appointment Authority**



## Recommendation

### Change in Statute

#### 1.1 Vest all rulemaking authority for the licensing and regulatory programs of TDLR in the Commission.

This recommendation would give the Commission the important tool of rulemaking for the programs that it oversees. The statutory citations giving this authority to the Executive Director would be replaced with grants of authority to the Commission. To ensure continuity and to prevent the Commission's workload from increasing, all rules existing on the effective date of this recommendation would remain in effect unless rewritten by the Commission.

#### 1.2 Grant the Chair of the Commission, with approval of the Commission, the authority to make all appointments to advisory committees under the Commission's jurisdiction.

This recommendation would clarify that the advisory committees exist to serve the Commission. The statutes would expressly provide that the work of the advisory committees is to assist the Commission in creating rules and regulating the professions and industries under its jurisdiction. Under the Sunset Commission's across-the-board recommendations, the Governor would select the Presiding Officer of the Commission. Having the Presiding Officer, as a direct gubernatorial selection, appoint members of advisory committees would provide greater accountability in the process. In turn, the Presiding Officer would also select the chairs of each advisory committee to serve a two-year term. Current Advisory Board Chairs would remain until the Presiding Officer appoints a new chair. This recommendation would not affect the Industrialized Building Code Committee as its members would continue to be appointed by the Governor.

## Impact

These recommendations would strengthen the Commission's oversight of the Department and would conform the Commission's powers for rulemaking and advisory committee appointment with that of other boards and commissions. The recommendation would also permit greater public deliberations during the rulemaking process and would afford the public the opportunity to address the Commission concerning these rules.

By creating stronger ties between the Commission and the advisory committees, the Commission would be able to take greater advantage of the assistance these committees were created to provide. This assistance is particularly important in combination with rulemaking authority because the Commission is composed of all public members and does not have technical expertise in all the fields that it regulates.

## Fiscal Implication

These recommendations would have a nominal fiscal impact to the State. The recommendation granting the Commission rulemaking authority does not repeal current rules and hence would not significantly add to the Commission's workload. However, the Commission would probably need to conduct two additional meetings per year to ensure that rules are adopted in a timely fashion. Based on current projections, the travel and per diem expenses for two additional meetings would be about \$1,800. The recommendation to change appointment authority for the advisory committees does not require creation of any new advisory committees, or require any additional appropriations for committees.

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>
2004	\$1,800
2005	\$1,800
2006	\$1,800
2007	\$1,800
2008	\$1,800

<sup>1</sup> Sunset staff interviews November and December, 2001.

<sup>2</sup> LO No. 98-009. A later AG opinion, JC-0189, found that an agency's authority to create advisory committees arise from implied powers within its statute. Although this opinion modified the earlier opinion for most agencies, it specifically did not revisit the earlier opinion concerning the Commission on Licensing and Regulation.

<sup>3</sup> These agency heads are the Director of the Department of Public Safety, Executive Director of the Manufactured Housing Division of the Department of Housing and Community Affairs, Commissioner of Education, Commissioner of Health (for specific programs or in emergencies), and Consumer Credit Commissioner (only for coin operated machines used in credit transactions).

<sup>4</sup> For example, statutes prohibit the Board of Protective and Regulatory Services, Juvenile Probation Commission, and the Rehabilitation Commission from delegating rulemaking authority to their agency directors.

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## Issue 2

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### **The Current Size of the Commission Does Not Comply With the Constitution.**

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## Summary

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### **Key Recommendation**

- Change the size of the Texas Commission on Licensing and Regulation from six to five members.

### **Key Findings**

- The size of the Commission does not comply with the Texas Constitution.

### **Conclusion**

The primary duties of the Commission on Licensing and Regulation, which is composed of six public members, are to approve fees for the Department's licensing programs, to hear appeals of administrative cases brought by the Department, and to oversee the operation of the agency. In 1999, Texas voters approved a constitutional amendment requiring state agency boards to be composed of an odd number of members. The Sunset review examined the work of the Commission and the impact of the constitutional amendment and concluded that removing a single member would bring the Commission into compliance with the Constitution and maintain a sufficient number of members to handle the Commission's deliberative workload.

## Support

### The Commission on Licensing and Regulation is a six-member governing body.

- The Commission is the policymaking body for TDLR and is composed of six public members appointed by the Governor. The chart, *TDLR Commission*, shows the agency's current Commission members. The Chair of the Commission is elected by the Commission for a two-year term.

TDLR Commission	
Name	Term Expires
William Fowler, Buda (Chair)	2007
Mickey Christakos, Allen (Vice Chair)	2003
Elliott B. McConnell, Rockport	2003
Gina Parker, Waco	2007
Patricia Stout, San Antonio	2005
Leo Vasquez, Houston	2005

- The Commission, which is required to meet at least quarterly in Austin, adopts fees, make final rulings on contested disciplinary actions, hires the Executive Director, and oversees the management of the Department. The Commission met six times in fiscal year 2001.

### The size of the Commission does not comply with the Texas Constitution.

- In 1999, Texas voters approved a constitutional amendment that requires state boards and commissions created by the Legislature to have an odd number of members.
- The constitutional amendment does not have a grandfather provision allowing commissions created before the amendment to continue under their current composition. Rather, a temporary provision of the amendment requires the Legislature to recreate nonconforming commissions to meet the new requirements by September 1, 2003.

*The Legislature must re-create all nonconforming even-numbered commissions by September 1, 2003.*

## Recommendation

### Change in Statute

#### 2.1 Change the size of the Texas Commission on Licensing and Regulation from six to five members.

This recommendation would reduce the Commission to five members. The Commission would continue to be composed of all public members.

## Impact

This recommendation would reduce the size of the Commission on Licensing and Regulation to comply with the terms of the Constitution. The workload of the Commission does not appear to be so great that a decrease in its membership by one would constitute a burden on the remaining members. In addition, transferring rulemaking authority for the Department's programs from the Executive Director to the Commission, as envisioned by Issue 1 of this report, would not significantly add to the Commission's workload. Maintaining the Commission as an all public member body is appropriate because of the wide range of professions that the Commission regulates. The Commission is also able to access technical information about each profession because, as detailed in the *Agency Information* section of this report, the Department is advised by 11 advisory committees composed largely of industry members. In addition, Issue 1 recommends strengthening the ties between the Commission and the advisory committees.

## Fiscal Implication

This recommendation would have result in a savings to the State. Reducing the size of the Commission would result in reduced travel and per diem expenses. Based on current projections, costs would decrease by about \$900 per year.

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>
2004	\$900
2005	\$900
2006	\$900
2007	\$900
2008	\$900



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## Issue 3

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### **Key Elements of the Programs Administered by the Department Do Not Conform to Commonly Applied Occupational Licensing Practices.**

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## Summary

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### **Key Recommendations**

- Standardize and remove elements of the agency's licensing authority that introduce too much subjectivity into licensing decisions, such as inconsistent approaches to dealing with criminal offenses and the use of oral exams or interviews.
- Revise elements of TDLR's enforcement activities that are overly complicated, too undefined, or vary from standard practices, such as the burdensome requirements for filing complaints or the lack of guidelines for establishing specific administrative penalties.
- Change administrative aspects of the Department's licensing programs by removing fee caps and standardizing license issuance periods and refund policies.

### **Key Findings**

- Licensing provisions of several of TDLR's program statutes do not follow model licensing practices and could potentially affect the equal treatment of licensees and consumer protection.
- Non-standard enforcement provisions of several TDLR program statutes potentially reduce the agency's effectiveness in protecting the consumer.
- Inconsistent administrative provisions of several TDLR programs reduce the agency's efficiency and flexibility to adapt to changing circumstances.

### **Conclusion**

The Texas Department of Licensing and Regulation operates 20 diverse occupational or industry related licensing programs created over about 70 years. Various licensing, enforcement, and administrative processes set up in agency and program statutes do not match model licensing standards that Sunset staff have developed from experience gained through more than 70 occupational licensing reviews in 25 years. Some licensing or enforcement activities, such as oral interviews of applicants or licensee involvement in licensing and enforcement decisions against fellow licensees, introduce the possibility of bias. Lack of statutory requirements for the development of guidelines, as well as the lack of guidelines in some areas, increases the opportunity for inconsistent decisions, as, for example, in the application of administrative penalties. Administrative processes such as statutory fee caps in five programs reduce TDLR's administrative efficiency and flexibility.

The Sunset review identified these areas by first developing model occupational licensing standards based on previous reviews. The review then compared TDLR's programs and statutes against these standards to identify variations from the model and to recommend changes to bring them in line.

## Support

**The Texas Department on Licensing and Regulation administers 20 diverse occupational or industry-related licensing programs that were created over a 70-year period of time.**

- TDLR administers 20 occupational or industry-related licensing statutes initially enacted between 1933 and 2001. As shown in the table, *Creation Date of TDLR Programs*, the earliest enactment established the Combative Sports program in 1933; the most recent enactment occurred in 2001 with the creation of the Vehicle Protection Product Warrantors and Licensed Court Interpreters programs.
- Many licensing practices have changed over the 70-year span of these programs. Some programs have been amended from time to time to update licensing practices and change licensing provisions. However, many programs transferred to or created within TDLR continue to operate with provisions that have not been standardized or modernized within this umbrella licensing structure.

Creation Date of TDLR Programs	
Creation	Program
1933	Combative Sports
1937	Boilers
1949	Personnel Employment Services
1961	Water Well Drillers
1967	Weather Modification
1970	Architectural Barriers
1975	Auctioneers
1983	Air Conditioning
1985	Industrialized Housing
1987	Career Counseling
1989	Talent Agencies
1991	Property Tax Consultants Temporary Common Worker Employers
1992	Water Well Pump Installers
1993	Elevators Staff Leasing Services
1997	Transportation Service Providers
1999	Service Contract Providers
2001	Licensed Court Interpreters Vehicle Protection Product Warrantors

*Many of TDLR's programs operate with provisions that have not been standardized within the umbrella licensing structure.*

**The Sunset Commission's experience from reviewing more than 70 occupational licensing programs has been documented for application to future reviews.**

- The rapid increase and questionable practices of some occupational licensing programs were main focuses behind creation of the Sunset Advisory Commission in Texas. The first agencies reviewed by the Commission in 1977 were primarily licensing agencies.

Currently, about 65 professional or occupational licensing functions exist in the state as free-standing agencies, as member agencies or programs within the Health Professions Council, or as programs under an umbrella agency such as TDLR.<sup>1</sup> Forty-five licensing programs have undergone Sunset review since the Commission's creation in 1977, and 24 of these programs have been reviewed more than once, resulting in more than 70 evaluations of licensing functions. Sunset recommendations led the way in establishing TDLR as an umbrella licensing agency in 1989. Sunset also was instrumental in creation of the Health Professions Council in 1993, an agency that provides administrative coordination to health profession licensing agencies.

- Over time, the Sunset Advisory Commission has adopted eight across-the-board provisions for application to licensing agencies going through Sunset review. For example, two of these standards require licensing agencies to adopt a system of continuing education for licensees and give these agencies a full range of administrative sanctions ranging from reprimands to license revocation. Application of such standards helps to ensure the consistent use of key licensing and enforcement features across licensing programs.
- Sunset staff has documented lessons learned in reviewing licensing programs to guide reviews of occupational licensing agencies. These standards are not intended for blanket application to all licensing agencies, but provide a model for evaluating a licensing program's structure. The following material highlights areas where TDLR program statutes differ from these model standards, and describes the potential benefits of bringing these programs and statutes into conformity with these standard practices.

**Licensing provisions of several of TDLR's program statutes do not follow model licensing practices and could potentially affect the equal treatment of licensees and consumer protection.**

- *Criminal convictions.* State law provides a general standard to guide agencies in determining which crimes should affect licensure in a given profession. This law, Chapter 53 of the Occupations Code, "Consequences of Criminal Conviction," takes effect when individual licensing statutes are silent on the relationship of crime to licensure. Basically, it provides that a criminal conviction affects qualifications for licensure when the crime is related to the profession, according to guidelines developed by the agency and published in the Texas Register. Following these guidelines, an agency may then choose to suspend or revoke a license, disqualify a person from receiving a license, or deny the opportunity to take a licensing exam because of specific criminal activity.

*Sunset staff have documented model standards to guide reviews of occupational licensing agencies.*

Several statutes administered by TDLR include their own language, different from Chapter 53, defining how felonies and misdemeanors affect a person's continuing licensure. The Auctioneers statute requires the agency to deny an application or suspend or revoke the license of any auctioneer for conviction in any state of a criminal offense involving moral turpitude or a felony. This language leaves open to question which felonies may disqualify an individual for licensure. The statutes of Staff Leasing Services, Licensed Court Interpreters, and Transportation Service Providers programs more precisely define particular types of criminal convictions that directly relate to an applicant's profession. However, these statutes still limit TDLR's ability to comprehensively define which crimes are most applicable to a profession.

- *Oral exams.* Oral tests and interviews should not be required elements in a licensing examination because they introduce too much subjectivity in determining a person's qualifications for licensure. These procedures lend themselves to differences in interpretation and scoring among different examiners, and also introduce the possibility of judging an examinee based on factors that are not skill-related, such as appearance or personality.

Contrary to the preferred approach, the Auctioneers statute authorizes oral examinations, although the agency has not used this authority.

- *Licensee conflicts.* Most boards and commissions, whose membership include a majority of licensees, are not involved in the initial screening of applicants or initial recommendations on validity of complaints against fellow licensees. Professional staff can make these determinations, which eliminates the appearance of bias that may result from licensees making judgments about other licensees at initial decisionmaking stages.

*Permitting licensees to make judgments about other licensees creates the appearance of bias.*

Among its duties, the Water Well Drillers Advisory Council, composed of six driller professionals and three public members, makes recommendations to the Department on the qualifications of individuals seeking a license. The Council uses oral interviews to make its determination, a practice that also introduces a degree of subjectivity in interpreting results. In addition, the Council makes recommendations on the disposition of complaints. Although recommendations of the Council are non-binding and the Council is not the ultimate decisionmaking body for this program, TDLR's other advisory committees do not have the authority to make recommendations on applications and disposition of complaints.

**Non-standard enforcement provisions of several TDLR program statutes potentially reduce the agency's effectiveness in protecting the consumer.**

- **Complaint filing.** Legislative enactments have established that the public should have easy access to the agency's enforcement processes through reasonable complaint filing procedures. However, three of TDLR's program statutes have procedures that unnecessarily impede the public's ability to file complaints.

The Auctioneers program provides for an Auctioneer Education and Recovery Fund that permits consumers to file a claim against the Fund for violation of the contract. However, the statute requires consumers to submit a filing fee of \$50 and a notarized complaint to initiate the claim against the fund. Typically, complaints are not required to be notarized in other programs. In addition, the \$50 filing fee is unnecessary as a screening device since the agency evaluates each complaint on its merits as it is received. Similar to the Auctioneers program, the Career Counselors and Personnel Employment Services statutes also include provisions requiring complaints to be notarized. Eliminating these requirements would also enable filing of complaints over the Internet, a practice that makes complaint filing easy and convenient in several other TDLR programs.

- **Inspection authority.** Routine inspections should have a statutory basis to ensure proper authority and inspection procedure. Routine inspections are conducted in two of TDLR's programs: Combative Sports and Weather Modification. Specific authority for these inspections is not included in these statutes, which could be strengthened by this addition.
- **Documented complaint process.** An agency's complaint process benefits from written procedures that guide the agency through all complaint phases from receipt to disposition. TDLR is in the process of developing such procedures for its various programs, but their development is not a requirement. Such a requirement would ensure the final adoption and use of complaint guidelines.
- **Administrative penalty standardization.** In general, an umbrella agency benefits from provisions that are standard across programs. When standardization is reasonable, it increases efficiency by eliminating the need for special processes and by simplifying program administration.

TDLR's general statute authorizes administrative penalties of up to \$5,000 per day per violation. However, specific provisions in the statutes governing four of the agency's programs authorize different amounts, as shown in the table, *TDLR's Administrative Penalties*.

*Requiring a filing fee or notarization impedes the public's ability to file complaints.*

<b>TDLR's Administrative Penalties</b>	
<b>Program</b>	<b>Amount</b>
General Authority for Most Programs	Not to exceed \$5,000 per day per violation
Service Contract Providers	Not to exceed \$500 per violation or \$10,000 in the aggregate
Water Well Drillers	Not to exceed \$2,500 per violation
Staff Leasing Services	Not less than \$1,000 for each violation, but not more than \$50,000
Vehicle Protection Product Warrantors	Not to exceed \$500 per violation or \$10,000 in the aggregate

The agency's general administrative penalty authority provides enough flexibility for the agency to set amounts at levels reasonably associated with harm to the public. The flexibility results from the language that authorizes penalties *not to exceed* \$5,000, thereby permitting smaller penalties as necessary.

- ***Administrative penalty matrix.*** Administrative penalty authority should go hand in hand with a penalty matrix establishing penalties for specific violations. The matrix helps to ensure fair and consistent treatment for all violators. In addition, the matrix should be adopted by an agency's policymaking body in procedure or rule so that opportunity exists for public debate and awareness.

TDLR has penalty matrices for most of its programs and has begun developing them for the others. Requiring their final development or completion would help ensure fair treatment for licensees in all programs.

- ***Standard hearing time frames.*** The State has established standard hearing processes in the Administrative Procedure Act (APA). Licensing programs typically should use this standard approach unless special reasons exist for deviation.

Two agency programs have hearing requirements that differ from the APA. The statutes creating the Career Counselor and Personnel Employment Services programs require complaint hearings to occur not later than the 45<sup>th</sup> day after a complaint is filed. The agency must then enter a decision on the possible violation not later than eight days after the hearing ends.

Time limitations for these actions are not set out in the APA. The 45-day time limit may harm consumers by limiting the amount of time available to carry out a potentially complicated process, including assignment of a complaint for investigation, carrying out the investigation, and meeting the APA's required notice of 10 days to all parties before a hearing may proceed. The eight days allotted for the Commissioner to render a reasoned decision also is short.

*The State has established standard hearing timeframes in the Administrative Procedure Act.*

**Inconsistent administrative provisions of several TDLR programs reduce the agency's efficiency and flexibility to adapt to changing circumstances.**

- ***Flexible fees.*** The Legislature has established a practice in many programs of eliminating fixed or capped fee amounts in statute and to allow agencies to set fees by rule. This practice goes along with a provision in the appropriations bill that require agencies to set fees in amounts necessary to cover the cost of regulation. This requirement, and the fact that agencies may only spend what they have been appropriated, would discourage them from setting fees

too high. The public has the opportunity to comment on proposed fees since the agency sets them in rule.

Contrary to this approach, five of the agency's 20 programs are capped by statute, limiting TDLR's flexibility to set fees as needs change. Programs in which fees are capped are shown in the table, *TDLR Fees Capped in Statute*.

- Licensing periods.** When possible, provisions such as licensing periods should be consistent among programs in an umbrella agency. Consistency promotes more efficient program operation because the agency needs fewer administrative processes.

<b>TDLR Fees Capped in Statute</b>			
<b>Program</b>	<b>Fee Category</b>	<b>Current Fee</b>	<b>Statutory Cap</b>
Elevators	Inspector Registration	\$15	\$15
	Inspector Registration Renewal	\$15	\$15
	Filing fee	\$20 per bldg. \$5 per elevator	\$20 per bldg. \$5 per elevator
	Late Filing Fee	\$100	\$100
Service Contract Providers	Registration Fee	\$750 - \$1,900	\$2,000
Staff Leasing Services	License Fee	\$3,000 - \$5,000	\$6,000
	Limited License Fee	\$1,000	\$6,000
Talent Agencies	Talent Agents License	\$100	\$100
	Talent Agents Renewal License	\$100	\$100
	Update Registration	\$100	\$100
Vehicle Protection Products	Registration Fee	\$500 - \$1,500	\$2,500

Although licenses in 16 of TDLR's programs expire annually, three programs have basic licensing periods of two years: Property Tax Consultants, Staff Leasing Services, and Transportation Service Providers. Two-year terms are thus inconsistent with the majority of TDLR's programs and require a degree of special administrative treatment. Two-year terms also reduce the attention that TDLR gives to a licensee's operation since the agency typically checks this history before license renewal.

- Licensing renewal.** Consistency in licensing renewal provisions is another area of potential program efficiency for an umbrella licensing agency. A consistent approach reduces special procedures to accommodate atypical program requirements.

Unlike all other TDLR programs, two do not have clear renewal provisions at license expiration: Service Contract Providers and Vehicle Protection Product Warrantors. Lack of clear renewal provisions requires the resubmission of all licensing information annually for relicensing to occur, a situation that is administratively inefficient as well as inconvenient for the licensee.

- Refundable fees.** Policies allowing the blanket refund of exam fees, regardless of circumstances or notification time before a test, fail to account for an agency's administrative expense in preparing

materials for an exam, setting up the exam site, and holding the exam. A blanket refund policy also reduces an applicant's incentive to be serious about taking a test before applying to sit for it.

Depending on the program, TDLR follows differing exam fee refund policies for persons who register but end up not sitting for an exam. Architectural Barriers and Water Well Drillers and Pump Installers do not allow exam refunds. Exam refunds are permitted in Air Conditioning, Auctioneers, and Property Tax Consultants programs; in addition, the rules of the Boiler program allow exam fee refunds if an applicant notifies TDLR of withdrawal within 10 days of the exam. Changing TDLR statutes to require an approach that recognizes emergency circumstances, such as death in the family and reasonable advance notice of withdrawal as legitimate reasons for a refund, would balance the needs of both the agency and the applicant.

## Recommendation

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### Change in Statute

#### Licensing

#### **3.1 Require agency programs to deal with felony and misdemeanor convictions in the standard manner defined in the Occupations Code.**

This recommendation would require the Department to follow the general guidelines set up in Chapter 53 for dealing with criminal convictions. Conflicting language found in Auctioneers, Staff Leasing Services, Transportation Service Providers, and Licensed Court Interpreter statutes would be removed, and new language would be added to reference Chapter 53 for all agency programs. Based on the requirements of this Chapter, the Department would develop guidelines explaining how a particular crime relates to a particular license. These guidelines would be published in the Texas Register with the opportunity for public comment. The recommendation would apply to the Transportation Service Providers program only if it continues in existence despite the recommendation in Issue 6 to abolish.

#### **3.2 Eliminate the statutory authority for oral exams in the Auctioneers statute.**

Statutory language for the Auctioneers program authorizes oral exams, although the Department has not used this authority. This recommendation would remove the authority from statute.

#### **3.3 Eliminate the involvement of the Water Well Drillers Advisory Council in making recommendations on specific licensure and enforcement actions.**

No other TDLR advisory committee performs these occupational licensing and enforcement functions, which puts the six water well drillers on this nine-member advisory council in the position of making recommendations on entry to the profession, validity of complaints against drillers, and sanctions that should be applied. This recommendation requires that the statute be amended to

eliminate these functions. The change would not affect the ability of the Council to provide technical advice on issues that may be the subject of enforcement cases.

## **Enforcement**

### **3.4 Eliminate onerous requirements on individuals to file complaints with the agency.**

Specifically, this recommendation would eliminate the \$50 filing fee and notarized complaint required to make a claim against the Auctioneers Education and Recovery Fund. It would also eliminate the requirement that complaints be notarized in the Career Counselors and Personnel Employment Services programs. These requirements are more onerous than typical complaint filing requirements. The form and content of complaint forms would be left to the discretion of the Department. This recommendation would apply to Career Counselors and Personnel Employment Services programs only if they continue in existence despite the recommendation in Issue 6 to abolish.

### **3.5 Provide statutory language authorizing routine inspections for the Combative Sports and Weather Modification programs.**

Routine inspections are conducted in these two programs. This recommendation adds statutory language that provides the Department with clear authority to perform inspections. The provisions should ensure that TDLR appropriately inform licensees of upcoming inspections and follow all relevant laws and decisions regarding inspection authority.

### **3.6 Require the Department to develop comprehensive complaint procedures that are adopted by the Commission and published in the Texas Register.**

This recommendation requires that the agency document its complaint process from submission of the complaint to its final disposition. Although the agency has begun this process, a statutory requirement would ensure its completion. The procedures would not require formal adoption as rules, but would be finally adopted by the Commission and published in the Texas Register after giving the public opportunity for comment.

### **3.7 Set administrative penalties for all Department programs not to exceed \$5,000 per day per violation.**

Four agency programs set amounts that differ from this standard: Service Contract Providers, Water Well Drillers, Staff Leasing Services, and Vehicle Protection Product Warrantors. This recommendation removes these non-standard amounts and replaces them with the cap of \$5,000 per day per violation used for all other Department programs. As with other programs, this amount is a cap, and the Department should tailor penalty amounts to the varying needs of each program as reflected in the next recommendation.

### **3.8 Require the agency to adopt an administrative penalty matrix for each program in agency procedures or rules.**

This recommendation would ensure that the Department develops administrative penalty amounts that relate appropriately to different violations for each program. The agency may develop these amounts in procedures and not in formal rules; however, the procedures should be adopted by the Commission and published in the Texas Register, after giving the public the opportunity to comment.

One program, Staff Leasing Services, currently requires the Department to adopt its penalty matrix in rule. This recommendation also would change that requirement to allow the flexible adoption of the matrix as either a procedure or a rule.

**3.9 Eliminate hearing and decision time lines that vary from the standard approach in the Administrative Procedure Act.**

The statutes for the Career Counselors and Personnel Employment Services programs require that various hearings occur not later than the 45th day after the date on which a complaint is filed with the Commissioner. These acts further provide that the Commissioner must enter a decision on the possible violation not later than eight days after the hearing ends. This recommendation removes these short and non-standard time periods and returns the programs to the standards set out in the Administrative Procedure Act. This recommendation would apply only if these programs continue in existence despite the recommendation in Issue 6 to abolish.

**Administrative Operations**

**3.10 Eliminate the fee caps in the Elevator, Service Contract Providers, Staff Leasing Services, and Talent Agencies programs.**

This recommendation would give TDLR the flexibility to set fees in these four programs, as it has in its other programs, at the level necessary to recover program costs as conditions change. Statutory language would be added as necessary to clarify that the programs' fees be designed to cover costs and not to earn additional revenues for the agency.

**3.11 Change licensing renewal periods from two years to one year for the Property Tax Consultant, Staff Leasing Services, and Transportation Service Providers programs.**

This recommendation would standardize all agency renewal periods to one year. The Commission would adjust renewal fees as necessary to recover program costs and to prevent over-collection of funds because of the shorter renewal period. This recommendation would apply to the Transportation Service Providers program only if it continues in existence despite the recommendation in Issue 6 to abolish.

**3.12 Provide renewal provisions for Service Contract Providers and Vehicle Protection Product Warrantors.**

These two programs do not have renewal provisions, requiring registrants to resubmit registration information annually. Under this recommendation, the Department would need to inform registrants of new renewal requirements which, typically, are less burdensome on both the licensee and the agency than having to re-register. As set out in the Administrative Procedure Act, an existing registration would remain in effect until the Department made a final renewal determination, as long as a registrant's renewal application was timely and sufficient.

**3.13 Require the Department to establish a policy for refunding examination fees under certain circumstances.**

The Department follows differing exam refund policies. These policies should be standardized to allow refunds only to applicants who provide reasonable advance notification of their inability to sit

for the exam or who miss the exam because of emergency circumstances. The agency would need to develop a rule to define the reasonable notification period and the emergency situations that would warrant a refund.

## **Impact**

The application of these recommendations to the Department's programs results in efficiency and consistency from standardization, additional administrative flexibility, fairer processes for the licensee, and additional protection to consumers. The chart on the following page, entitled *Benefits of Recommendations*, categorizes the recommendations according to their greatest benefits.

## **Fiscal Implication**

These recommendations would not have a significant fiscal impact. Most recommendations change procedures in ways that do not require additional resources. A small amount of revenue, estimated at about \$300 in Fiscal Year 2001, would be lost from eliminating the \$50 filing fee requirement to make a claim against the Auctioneers Education and Recovery Fund. Changing caps on administrative penalties or requiring the development of penalty matrices could alter the amount of fines collected, but the effect of these modifications cannot be estimated and the agency is not reappropriated these fines. Additionally, some savings would result from increased efficiencies from standardization, but this amount cannot be estimated and the savings would be available to meet the agency's ongoing program needs.

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<sup>1</sup> Legislative Budget Board, *General Appropriations Act for the 2002-2003 Biennium* (Austin, Texas, May 2001); Texas Department of Licensing and Regulation, "About TDLR." Online. Available: [www.hpc.state.tx.us](http://www.hpc.state.tx.us). Accessed: February 16, 2002.

<b>Benefits of Recommendations</b>					
<b>Recommendation</b>	<b>Programs Affected</b>	<b>Benefits</b>			
		<b>Efficiency from Standardization</b>	<b>Administrative Flexibility</b>	<b>Fairness to Licensee</b>	<b>Protection of Consumer</b>
<b>Licensing</b>					
3.1 Require that felony and misdemeanor convictions follow Chapter 53, Occupations Code	All programs	✓	✓	✓	✓
3.2 Eliminate oral exams	Auctioneers	✓		✓	✓
3.3 Eliminate advisory council recommendations on applicant qualifications and enforcement actions	Water Well Drillers Advisory Council	✓		✓	✓
<b>Enforcement</b>					
3.4 Eliminate unusually onerous complaint filing requirements	Auctioneers, Career Counselors, Personnel Employment Services	✓	✓		✓
3.5 Provide statutory authority for routine inspections	Combative Sports, Weather Modification	✓		✓	✓
3.6 Require comprehensive complaint procedures	All programs	✓		✓	✓
3.7 Set all administrative penalty caps at the same level	Service Contract Providers Water Well Drillers, Staff Leasing Services, Vehicle Protection Products	✓			✓
3.8 Require a penalty matrix in procedure	All programs	✓		✓	✓
3.9 Eliminate hearing and decisions timeframes that do not track the Administrative Procedure Act	Career Counselors, Personnel Employment Services	✓	✓	✓	✓
<b>Administration</b>					
3.10 Uncap fees	Elevator, Service Contract Providers, Staff Leasing Services	✓	✓		
3.11 Change licensing periods from two years to one	Property Tax Consultants, Staff Leasing Services, Transportation Service Providers	✓	✓		
3.12 Provide renewal periods for programs that lack them	Service Contract Providers, Vehicle Protection Products	✓	✓	✓	
3.13 Eliminate exam refunds except on proper notice and in emergencies	All programs with Exams	✓		✓	

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# Issue 4

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## **Current Elevator Inspection Requirements Do Not Take Full Advantage of Reporting by the Elevator-Riding Public.**

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### **Summary**

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#### **Key Recommendations**

- Require elevator certificates of compliance to be posted in publicly visible areas.
- Require annual inspections of elevators instead of the current 18-month cycle.

#### **Key Findings**

- To the extent that elevators are not being inspected, the State and the public cannot be ensured of their safe operation.
- Statutory language concerning elevator inspection cycles is confusing to building owners and burdens TDLR.
- Most other statewide elevator inspection programs require conspicuous posting of certificates of compliance.
- Other Texas regulatory programs also require conspicuous posting of certificates of compliance or seals.

#### **Conclusion**

The elevator inspection program at TDLR intends to protect the safety of individuals who use elevators and escalators but is hampered by the number of uninspected, and possibly unsafe, elevators and escalators that the public is using across the state. The Sunset review sought to identify the least restrictive regulatory approach to strengthen TDLR's existing elevator and escalator inspection program. Posting elevator certificates of compliance in publicly accessible areas in the building would encourage consumers to report the inspection status of the elevators in which they ride, increasing TDLR's opportunity to find uninspected elevators and bring more elevators into compliance with state standards. In addition, requiring annual elevator inspections instead of allowing 18 months between inspections would simplify the inspection cycle, making it easier for building owners to comply, and balance the workload for TDLR's staff.

*Upon successful elevator inspection, building owners receive a certificate of compliance that is posted in the mechanical room.*

#### **Commonly Reported Elevator Violations**

- Fire service protections are not working properly; smoke detectors are not working or correctly installed.
- Shunt-trip breakers (machinery that shuts off power to the elevator before application of water from the fire sprinklers) are not working or installed.
- Emergency signaling devices (phones or alarms) are not working or installed.
- Emergency lighting is not working or not present.
- Access to machine rooms is blocked.
- Non-elevator related equipment is installed in machine rooms.
- Elevator doors are out of adjustment or not working properly.
- Hoistway and machine rooms are not properly fire-rated.

## **Support**

### **State law requires elevators and escalators to be inspected.**

- TDLR's elevator inspection program is designed to protect the safety of individuals who ride on elevators, escalators or related equipment (collectively, elevators). In general, state law requires an elevator that is open to the general public to be inspected for compliance with TDLR's safety standards. Building owners are responsible for having their buildings' elevators inspected and ensuring compliance with safety standards. Municipalities may operate their own elevator inspection programs separate from the State, as long as the standards are at least as stringent as TDLR standards. Currently, Houston is the only city with its own program.
- TDLR registers third party inspectors, Qualified Elevator Inspectors (QEIs), who are hired and paid by building owners, to conduct inspections. QEIs inspect elevators for both installation and maintenance problems according to state safety standards, which are based on the American Society of Mechanical Engineers standards. After the QEI files an initial inspection report with the agency, the building and its elevators are registered with TDLR. Upon successful inspection, building owners receive a certificate of compliance that is posted in the elevator mechanical room or escalator box.

About 110 QEIs conduct elevator inspections in Texas. They inspected approximately 14,500 buildings with 27,800 elevators in 2001. The program's FY 2001 budget was about \$500,000.

- Inspections are required once each calendar year, with no more than 18 months between inspections. For example, an elevator inspected for the first time in January would not be due for inspection again until July of the next year. In the third year, and each year thereafter, that elevator would be due for inspection by December.

### **To the extent that elevators are not being inspected, the State and the public cannot be ensured of their safe operation.**

- By their nature, elevator inspections help ensure that elevators are safe. According to TDLR, recent elevator safety violations result less from installation problems than from routine maintenance problems. If elevators are not inspected, violations may go unreported and unresolved, creating safety hazards. The textbox, *Commonly Reported Elevator Violations*,<sup>1</sup> lists eight problems found on elevator inspections.
- Building owners reported about 133 elevator injuries to TDLR in 2001. The most common causes of injury due to elevator

malfunction are shown in the textbox entitled *Common Elevator Injuries*.<sup>2</sup> The injuries reported to TDLR were only on elevators which have been inspected and registered with TDLR, and do not include injuries on uninspected or unregistered elevators. Many elevators in Texas are not inspected because TDLR has no knowledge of their existence. Since TDLR relies on building owners to self-report their elevators, if building owners fail to have elevator inspections, TDLR has few methods of knowing about those elevators. TDLR states that a significant number of elevators in Texas are unregistered.

**Common Elevator Injuries**

- Elevators and escalators abruptly stopping or dropping resulting in falls.
- Elevator doors shutting improperly resulting in extremities being caught.
- Elevator not level or flush with the floor when door opens resulting in falls.
- Elevator motor burn-outs, resulting in smoke inhalation or falls.
- People falling or playing on escalators and getting something (clothing, hair, extremities) caught in the escalator teeth, or between the steps and the side panel.
- People taking wheelchairs, strollers or other bulky items on escalators, resulting in falls.

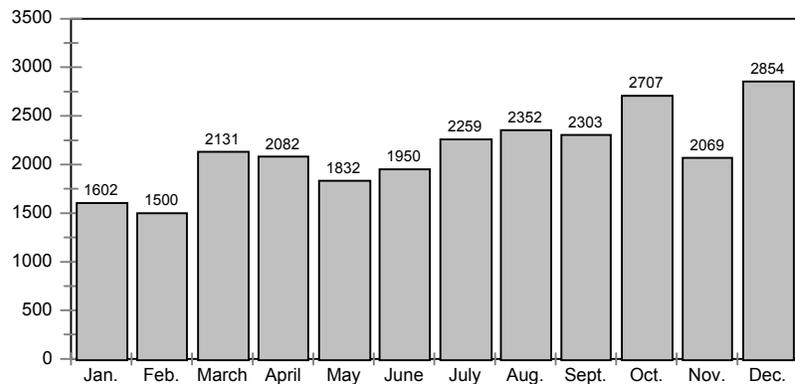
- Although elevators are used by the public every day, consumers also have no way of knowing if elevators have been inspected, because certificates of compliance are posted in the elevator mechanical room, which is inaccessible to elevator riders. In fact, current state law prohibits TDLR from requiring certificates of compliance to be posted inside or immediately outside an elevator car or escalator, or in the lobby or hallways of a building.

*Current state law prohibits TDLR from requiring certificates of compliance to be posted inside or immediately outside an elevator car or escalator, or in the lobby or hallways of a building.*

**Statutory language concerning elevator inspection cycles is confusing to building owners and burdens TDLR.**

- Current law contains a floating and seemingly contradictory inspection cycle requirement – once each calendar year, but not more than 18 months between inspections. This is confusing to building owners.
- Elevator inspectors and TDLR are burdened because the floating cycle results in a higher number of elevators becoming due for inspection later in the year and not enough QEIs are available to inspect them. Since some elevators miss their inspection dates, building owners may be unfairly penalized. The chart, *Monthly Elevator Inspections – 2001*,<sup>3</sup> shows the number of elevator inspections completed each month for 2001.

**Monthly Elevator Inspections - 2001**



*Only three other states with elevator inspection programs require building owners to post certificates of compliance in the machine room.*

**Most other statewide elevator inspection programs require conspicuous posting of certificates of compliance.**

- Of the 35 other states that have elevator inspection programs, 26 states require building owners to post certificates of compliance in or near the elevator car, or to post a sign in the elevator directing the public to where the certificate is posted. This type of publicly accessible posting requirement promotes consumer knowledge about the compliance and inspection status of the elevator. Texas is one of only four states that requires building owners to post certificates in the machine room, which is inaccessible to the public.<sup>4</sup>

**Other Texas regulatory programs also require conspicuous posting of certificates of compliance or seals.**

- As a means of consumer protection, the Texas Department of Agriculture ensures that weighing and measuring devices perform correctly and requires the publicly visible posting of certificates of inspection. TDA registers weighing and measuring devices, such as gas pumps or grocery store scales, inspects these devices, and issues seals that confirm compliance with state standards. According to TDA staff, the availability and visibility of these seals, which are posted on the pump or on the scale, increases the likelihood of consumers reporting overdue or uninspected scales or pumps.<sup>5</sup>
- The Sunset Commission has an across-the-board recommendation that requires consumers be notified as to where to file a complaint.

## Recommendation

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### Change in Statute

#### **4.1 Require elevator certificates of compliance to be posted in publicly visible areas.**

This recommendation would repeal the statutory provision prohibiting TDLR from requiring building owners to post certificates of compliance in the elevator car, immediately outside the car, or in the lobby or hallways of the building. Instead, certificates of compliance would be required to be posted in a publicly accessible area within the building. The certificate should include information showing the date of the inspection and the due date of the next, and contact information for the consumer to report violations to TDLR. The Commission on Licensing and Regulation would be granted rulemaking authority to determine the location of the certificates and the information required to be included.

#### **4.2 Require annual inspections of elevators instead of the current 18-month cycle.**

This recommendation would remove the current statutory requirements mandating an elevator inspection once every calendar year, but no later than 18 months after the last inspection. These

would be replaced by a requirement for an annual inspection of elevators. Inspections would be valid for one year after the date of current inspection. The Commission would be given rulemaking authority to establish a phase-in inspection schedule to achieve a balanced inspection calendar.

## Impact

These recommendations are designed to increase both the number of elevators inspected for compliance with TDLR's safety standards, and public awareness of elevator safety. Although TDLR states it does not know the location of many of the elevators subject to state regulation in Texas, these uninspected elevators are not hidden; many people ride on them everyday. The public should be able to know if the elevators they are riding on are safe. By publicly posting certificates of compliance, the public will know of the compliance status of the elevator on which they are riding. Certificates could be posted within the elevator car itself, in the lobby, or in some other publicly accessible place in the building. By including TDLR's phone number on the certificates, the public will be able to report overdue and uninspected elevators. This recommendation does not establish a new licensing or reporting requirement and is the least restrictive regulatory approach that will bring more elevators in to compliance through the increased likelihood of consumer reporting.

Changing to an annual inspection cycle simplifies the requirements for both TDLR and building owners. Inspections will be due one year from the previous inspection date, instead of at some point in the calendar year. This change will allow the agency to reduce the number of inspections that are due in December, thereby balancing workload.

## Fiscal Implication

These recommendations could have some fiscal impact to TDLR, but the impact will be revenue neutral. Any additional cost associated with the design and issuance of the new certificate of compliance would be minimal and would be assessed to the building owner through the existing inspection fees. As additional elevators come into compliance with state standards for the first time, TDLR will have additional data processing needs to accommodate new inspection reports. However, this cost would be offset by additional inspection fees for each new elevator inspected and licensing fees charged to any additional QEIs registered to inspect the new population of elevators. The agency may need a small increase in its number of full-time equivalents to handle the increased workload, but the number of new elevators that would be inspected could not be estimated for this report.

Replacing the current elevator inspection cycle with an annual one would create a better balance of agency workload, however, its fiscal impact would not be significant.

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<sup>1</sup> Common violation information was provided by TDLR in response to Staff's request for information in December 2001.

<sup>2</sup> Sunset staff analyzed injury reports from 1996 - present, provided by TDLR Elevator Program staff in December 2001.

<sup>3</sup> TDLR Elevator Program staff provided Sunset staff with these numbers in January 2002.

<sup>4</sup> Staff researched other state requirements via the Internet and telephone calls made in January 2002. Only three other states, Idaho, Missouri and Utah, required building owners to post certificates in the machine room. Fourteen states had no state elevator program.

<sup>5</sup> Telephone interview with Texas Department of Agriculture, Weights and Measures Program staff (Austin, Texas, January 7, 2002).



## Issue 5

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### **Oversight of Abandoned and Unplugged Water Wells Is Not an Appropriate Duty for the Department.**

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## Summary

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### **Key Recommendation**

- Transfer the responsibility of enforcement against landowners with abandoned water wells from the Department to the Texas Natural Resource Conservation Commission.

### **Key Findings**

- Abandoned water wells contribute to groundwater contamination.
- TDLR is inappropriately charged with the problem of abandoned water wells.
- The Texas Natural Resource Conservation Commission, the state's environmental agency, oversees environmental law concerning groundwater pollution and is equipped to enforce against landowners with abandoned wells.

### **Conclusion**

An estimated 150,000 abandoned and unplugged water wells in Texas pose a danger of contaminating groundwater supplies. While TDLR is responsible for licensing water well drillers, it is inappropriately charged with taking enforcement action against landowners who fail to plug abandoned wells. In comparison, the Texas Natural Resource Conservation Commission (TNRCC) is charged with protecting groundwater in the state and its staff has the knowledge and enforcement structure in place to investigate and enforce against groundwater contamination and to sanction violators.

The Sunset review evaluated the proper placement of the State's function for ensuring that landowners plug abandoned wells on their property. The review assessed whether this function should continue to be placed in a licensing agency and concluded that transferring enforcement of water well plugging requirements from TDLR to TNRCC could reduce the danger of groundwater contamination from abandoned wells by making better use of the State's existing structure for water quality enforcement.

## Support

### The Texas Department of Licensing and Regulation is responsible for licensing water well drillers.

- TDLR's water well driller licensing program is designed to protect the health and safety of the state by preventing groundwater pollution. By licensing drillers, TDLR protects groundwater at the time a well is drilled. Drillers must construct wells according to TDLR's construction and siting specifications, ensure that equipment and parts, such as the well casing, are installed properly, and ensure that the water well will not result in intermixing of aquifer waters or other materials. TDLR's licensing program seeks to make sure that drillers are qualified and enables enforcement actions to be taken against licensees for violations of the statute and rules. The program also registers driller apprentices who must work under direct supervision of a licensed driller.

#### History of Water Well Drillers Licensing

The Board of Water Engineers, later renamed the Texas Water Commission, began licensing water well drillers in 1961. In 1965, the Texas Water Well Drillers Board was created as a separate agency. In 1991, the Legislature transferred the program to the Texas Natural Resource Conservation Commission. TDLR acquired the program from TNRCC in 1997.

Texas has licensed water well drillers for more than 40 years, although the function has been placed in several different agencies. The textbox, *History of Water Well Drillers Licensing*, gives more detail about the program's background.

- Although water wells themselves are not registered by the State, TDLR requires drillers to report each new well they drill. These well reports are forwarded to the Texas Water Development Board, which adds the reports to a well log database. This database tracks all wells drilled since 1965. Ultimately, the Texas Natural Resource Conservation Commission (TNRCC) keeps the reports on file for reference.
- TDLR regulates about 1,500 licensed drillers and 600 registered apprentices, who together drilled 25,000 wells in 2001. The FY 2001 budget for this program was \$500,000. TDLR is assisted by the nine-member Water Well Drillers Advisory Council, which provides rulemaking suggestions to the Executive Director, reviews and recommends applicants, and hears and makes recommendations on consumer complaints.

### TDLR is also responsible for enforcing against landowners with abandoned wells.

- State law requires landowners to plug an abandoned well on their property according to standards adopted by TDLR. An abandoned well is defined as one that is deteriorated or not in use. Once landowners learn they possess an abandoned or deteriorated well, they have 180 days to plug or cap the well. The law also charges TDLR with the responsibility to take enforcement actions against landowners who fail to comply with the law.

*State law makes landowners responsible for plugging an abandoned well on their property.*

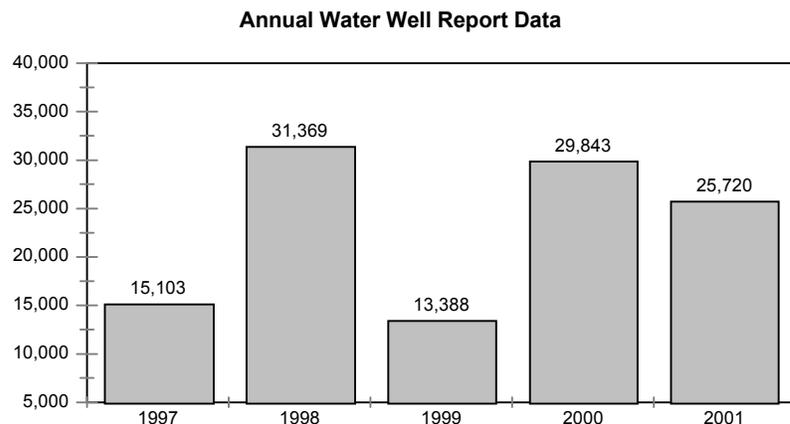
- TDLR may assess administrative penalties against landowners who fail to plug abandoned or deteriorated wells according to TDLR standards.

### **Abandoned water wells contribute to groundwater contamination.**

- The Texas Groundwater Protection Committee has stated that abandoned water wells pose dangers to groundwater quality.<sup>1</sup> This danger exists because, as a direct conduit, an abandoned well can carry contaminants from runoff to the groundwater and, ultimately, to other wells and surface water. Contamination also occurs when water or other materials intermingle between aquifer levels because of a degraded well casing.<sup>2</sup>

In addition, contamination may occur when an abandoned well is used to dispose of waste. For example, TDLR, working in conjunction with the Texas Natural Resource Conservation Commission, has apprehended individuals disposing of septic sludge and motor oil down abandoned wells.<sup>3</sup>

- TDLR staff estimates that about 150,000 abandoned and unplugged water wells exist in Texas. This number is extrapolated from available water well data, including the approximate 600,000 water wells reports on file with the State, tracked since reporting began in 1965. The chart, *Annual Water Well Report Data*,<sup>4</sup> shows how many wells have been drilled each year in the last five years.



### **TDLR is inappropriately charged with the problem of abandoned water wells.**

- Although TDLR's charge is to regulate well drillers, the statute requires TDLR to take enforcement actions against landowners who do not comply with the well plugging law. The aim of water well driller licensing is to protect groundwater at the time water wells are drilled. Well abandonment, and the associated danger to groundwater quality, does not occur until many years after the well is drilled. At the time that wells are abandoned, neither TDLR nor the water well driller involved has any interaction with the well or the landowner, other than specifying correct plugging standards. Other than TDLR's responsibility over abandoned wells, the Department doesn't have contact with landowners. In fact, TDLR

*As a direct conduit, an abandoned water well can carry pollutants and contaminants to groundwater.*

*The driller program's funding – derived from licensing fees paid by water well drillers – is used for regulating drillers, not landowners.*

<b>Driller Enforcement Actions – FY 2001</b>	
<b>Type of Violation</b>	<b>Number of Violations</b>
Failure to Properly Cement Well	29
Surface Completion Violation	24
Drilling Without a License	13
Failure to Submit Well Report	13
Property Line Distance Violation	10
Failure to Submit Accurate Well Report	5
Improper Distance from Potential Contamination	3
Drilling Without a Current License	3
Improper Supervision of an Apprentice	2
Offering to Perform Services Without a License	2
Failure to Provide Cap	2
Failure to Properly Plug Well	2
Improperly Completed Public Water Supply System Well	1
Aiding and Abetting	1

has only taken action against landowners twice in the five year history of the program at TDLR, despite the agency’s own estimate of 150,000 abandoned wells in Texas.

- Charging TDLR with responsibility for enforcing against landowners for failure to plug their abandoned wells is also inappropriate because the program derives its funding from licensing fees paid by water well drillers. Those funds are collected for use in regulating drillers, not landowners—a constituency with which TDLR has little contact. TDLR’s enforcement resources for this program are generally limited to enforcement against water well drillers who abuse their licenses. The chart, *Driller Enforcement Actions*,<sup>5</sup> shows the types of violations the program enforces against.

TDLR’s limited funding resources leaves it unable to find the 150,000 abandoned wells or the groundwater contamination that stems from those wells. TDLR has three investigators based in Austin who investigate well drilling complaints for the whole state. The number and organization of TDLR investigators are insufficient for locating abandoned wells.

**The Texas Natural Resource Conservation Commission, the state’s environmental agency, oversees environmental law concerning groundwater pollution and is equipped to enforce against landowners with abandoned wells.**

- The Texas Natural Resource Conservation Commission is the agency primarily responsible for protecting, monitoring, remediating, and enforcing water quality, including groundwater, in Texas.<sup>6</sup> Individuals are in violation of TNRCC requirements if they discharge, knowingly or by omission, waste into any water. If owners of abandoned wells are contaminating groundwater through an unplugged well, they are in violation of the state’s water quality laws barring unauthorized discharges. TNRCC can assess administrative and can pursue civil and criminal penalties on individuals who are contributing to groundwater contamination in violation of its requirements.
- TNRCC already works with landowners in its On-Site Sewage Facility Permitting Program. Among other things, TNRCC helps to ensure that landowners are not polluting groundwater through domestic septic treatment and disposal systems. TNRCC also has enforcement responsibility for owners of water wells which encounter saltwater or water containing other minerals that may be injurious to vegetation or agriculture. By law, these water wells

*Landowners violate TNRCC requirements if they discharge, knowingly or by omission, waste or pollutants in any water.*

must be plugged or capped to prevent the water from contaminating the surface of the ground or other water-bearing stratum.

- TNRCC has authority over the management plans of Groundwater Conservation Districts. Districts may be created to provide for conservation, preservation and protection of groundwater and are the State's preferred method of groundwater management. Groundwater Conservation Districts require permits for wells to be drilled and may require specific siting and construction specifications above and beyond those required by TDLR. District permits may also include requirements for compliance with well plugging guidelines. These specifics are included in the District's management plan, which TNRCC approves and oversees. Districts may enforce against individuals violating the local rules by injunction and civil penalty, in addition to any other penalty provided for by state law. TNRCC's relationships with local Districts puts the agency in a unique position for well oversight.
- As the record keeper for well drilling reports, TNRCC has the most complete information on existing wells in the state. Because TNRCC delegates investigation responsibilities to its 16 field offices, TNRCC is also better equipped than TDLR to investigate abandoned wells across the state.

#### **TDLR, TNRCC and Groundwater Conservation Districts**

TNRCC works with 87 Groundwater Conservation Districts, though about 20 are still waiting for confirmation from the Texas Water Development Board. Districts create local rules for groundwater protection, which include some standards for water well drilling. Water well drillers must comply with TDLR's siting and construction requirements. However, if the location at which they are drilling is within a Groundwater Conservation District, the drillers must also comply with the District's standards, even if those standards are more strict than TDLR well drilling standards.

## **Recommendation**

### **Change in Statute**

#### **5.1 Transfer the responsibility of enforcement against landowners with abandoned water wells from the Department to the Texas Natural Resource Conservation Commission.**

This recommendation would transfer the responsibility for taking enforcement actions against individuals with unplugged abandoned water wells to TNRCC, thereby leaving the Water Well Drillers Program at TDLR responsible for the licensing of water well drillers and the regulation of water well drilling activities. TDLR will maintain responsibility for creating well plugging standards and landowners must still have their wells plugged according to those standards.

TNRCC is the state agency charged with water quality protection and to this end, it enforces against those who contaminate groundwater. Those who contribute to groundwater contamination through abandoned wells would also be enforced against by TNRCC through its existing groundwater protection programs, including enforcement against unauthorized discharges into groundwater.

## Impact

Abandoned, unplugged water wells threaten groundwater supplies through pollution. This recommendation is designed to reduce groundwater contamination through unplugged wells by better using the State's existing tools of water quality enforcement.

Sunset staff did not attempt to evaluate whether making landowners responsible for these abandoned wells is the best approach to the problem. That is a policy decision beyond the scope of this review, and is a more appropriate decision for the Legislature.

Transferring the responsibility of enforcement of the abandoned water well statute from TDLR to TNRCC consolidates jurisdiction and gives TNRCC more sanctions against individuals with unplugged wells who violate the law. Not only would TNRCC be able to use its existing authority to take action against those individuals who unlawfully discharge waste into groundwater, it would also be able to assess penalties for not complying with the plugging law.

TNRCC has the investigative and enforcement tools in place to sanction individuals who cause groundwater contamination, whereas TDLR's enforcement instruments are more appropriately directed to the individuals licensed or engaging in activities requiring a license by the Department. Because the danger of unplugged water wells is groundwater contamination, and because TNRCC is the State's authority over groundwater quality, TNRCC is the logical agency to enforce against individuals who are contaminating the waters of the state by not plugging abandoned wells. TNRCC's access to current and historical water well drilling reports and its close coordination with Groundwater Conservation Districts puts it in position to consolidate the state's information about existing wells.

## Fiscal Implication

This recommendation would not have a significant fiscal impact. The enforcement responsibility against abandoned well owners will coincide with enforcement actions already being taken by TNRCC programs that regulate and enforce water quality in the state. The transferred enforcement tools will not create a new program for TNRCC, but will complement its existing programs.

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<sup>1</sup> Texas Groundwater Protection Committee, *Activities of the Texas Groundwater Protection Committee: Report to the 76th Legislature*, (October, 1998), p. 35. The Texas Groundwater Protection Committee is a legislatively created committee composed of representatives from ten state agencies involved with groundwater protection. TDLR has one representative on the Committee, and TNRCC chairs the Committee.

<sup>2</sup> Texas Groundwater Protection Committee, *Landowner's Guide to Plugging Abandoned Wells*, April, 1999. (pamphlet)

<sup>3</sup> Sunset Staff interview with Texas Department of Licensing and Regulation, Water Well Driller Program staff (Austin, Texas, November 19, 2001).

<sup>4</sup> Texas Water Development Board, "Well reports", Well Log Spreadsheet, e-mail to Sunset Advisory Commission, January 3, 2002.

<sup>5</sup> Violations and numbers were supplied by TDLR in November 2001.

<sup>6</sup> Texas Groundwater Protection Committee, *Joint Groundwater Monitoring and Contamination Report-2000*, (Austin, Texas, April 2001), p. 31. This report includes detailed descriptions of all state programs relating to groundwater protection, as well as groundwater contamination data for the year 2000.

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## Issue 6

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### **State Oversight of Transportation Service Providers, Career Counselors, and Personnel Employment Services Is No Longer Needed.**

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## Summary

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### **Key Recommendations**

- Abolish the registration of transportation service providers.
- Abolish licensing of career counselors.
- Abolish licensing of personnel employment services.

### **Key Findings**

- Registration of transportation service providers offers little benefit to the state and is unnecessarily burdensome on the industry.
- Licensing of career counselors does not enhance consumer protection and is burdensome.
- Licensing of personnel employment services provides limited consumer protections.

### **Conclusion**

Current law requiring the registration of transportation service providers does not provide protections to the state. Only 77 companies are licensed and no consumer has ever filed a complaint against one. Although the original intent of the law is to collect additional information on companies that may be used by drug smugglers, this information has not proven useful to law enforcement agencies. The licensing of career counselors and personnel employment services provides less remedy to defrauded consumers than is available through other means. Consumers who complain to TDLR about a career counselor or personnel employment service are only entitled to receive actual damages. However, consumers who pursue their own claims against one of these companies under the Deceptive Trade Practices Act are entitled to treble damages. TDLR receives few consumer complaints in either program.

The Sunset review of TDLR examined its 20 licensing programs to see which ones no longer merited continuation. The Sunset Act provides a criteria for reviewing programs and requires consideration of ways in which an agency's operations could be less burdensome and still adequately protect the public. The review concluded that TDLR's programs for transportation service providers, career counselors, and personnel employment services do not provide additional public protections and are burdensome on the industries.

## Support

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### **The Department is responsible for registering transportation service providers, and licensing career counselors and personnel employment services.**

- The Legislature created the registration of transportation service providers in 1997, assigning the function to TDLR and creating criminal and administrative penalties for violations. Transportation service providers are freight forwarders who transport property for compensation. Companies that perform each of the following services are required to register: assembling and consolidating shipments, breaking bulk shipments, assuming responsibility for land transportation of property, and using motor or rail carriers. Currently, 77 companies are licensed and a two-year license costs \$50, with an additional \$320 processing fee.

The Act also requires companies to keep records of transactions, subject to audit by TDLR, and permits the agency to request the assistance of the Department of Public Safety in investigating violations.

- In 1987, the Legislature began the licensing of companies that provide career counseling services. These companies give advice on job searches and career options, but don't actually place clients into jobs. TDLR issues certificates of authority that permit these companies to operate. Each location must be separately licensed and licensure requires the filing of a financial statement and a \$10,000 bond. In fiscal year 2001, the agency issued 21 certificates at a cost of \$750 to each company. Personnel employment service companies, licensed professional counselors and licensed psychologists are exempt from licensure.

The Career Counselor Act creates specific requirements on licensees and how these firms interact with consumers. For example, the Act requires licensees to respond to complaints, resolve complaints, or refer complaints to arbitration within statutory timeframes; it also requires licensees to be able to prove advertising claims, and requires contracts to contain cancellation clauses. The Act also permits consumers to file complaints with TDLR or to bring private action under terms of the Deceptive Trade Practices Act (DTPA) for violations of the Career Counselor Act.

- Regulation of personnel employment service companies has been in place since 1949. These companies provide job placement services to consumers. Companies that are paid by the business (such as executive search firms) are exempt from regulation, as are governmental personnel services, labor unions, and professional

counselors. In fiscal year 2001, the 400 licensed companies paid licensing fees of \$75 or annual renewal fees of \$50. All licensed companies are required to provide a surety bond.

The Personnel Employment Services Act prohibits licensees from engaging in specific conduct such as: charging fees and not actually looking for jobs, falsely advertising jobs that do not exist, advertising jobs without disclosing that the ad is placed by a personnel service, and referring applicants to jobs that are dangerous without disclosing the dangers. The Act also permits consumers to file complaints with TDLR or to bring private action under terms of the Deceptive Trade Practices Act (DTPA) for these types of conduct violations.

**Registration of transportation service providers offers little benefit to the state and is unnecessarily burdensome on the industry.**

- According to TDLR staff, registration of transportation service providers was originally envisioned to assist law enforcement in the war on drugs by requiring these businesses to maintain transaction records to track activities, and to prevent drug smugglers from masquerading as legitimate businesses. However, TDLR has only received one inquiry from a law enforcement agency since the program has been in operation, and has never received a consumer complaint about a transportation service provider.
- The information compiled by TDLR about these companies is also of limited use because only 77 companies are currently registered. This number has declined in recent years, as shown in the table, *Transportation Service Providers Licenses*.

Transportation Service Providers Licenses	
1999	122
2000	83
2001	77

*TDLR has never received a complaint against a transportation service provider.*

One reason for the small number of licensees is that, according to the agency, the vast majority of companies providing freight forwarding services in Texas are exempt from registration. This exemption is due to the statute's four-part test to define a company as a transportation service provider and to require registration. In fact, the Federal Highway Administration requires freight forwarders engaged in interstate commerce to register and includes many more Texas companies than does the TDLR program.

**Licensing of career counselors does not enhance consumer protection and is burdensome.**

- Defrauded consumers receive a greater financial benefit by seeking redress through the courts rather than through TDLR. This is because consumers who believe that they have been defrauded by a career counselor may seek redress either through TDLR or by

bringing suit under the Deceptive Trade Practices Act (DTPA) for violating the career counseling services act. A consumer who requests TDLR to pursue an administrative case against a career counselor may be entitled to receive damages equal to the fee paid and TDLR may also impose a penalty for double that amount. However, a consumer who pursues a case against a career counselor under the terms of DTPA may receive treble damages.

Consumers have not used TDLR's services to a great extent. In the past three years, the agency has brought sanctions against licensees in only nine cases, three of which involved refunding the consumer's fees. The agency does not track private cases against career counselors.

- TDLR must recover the cost of regulating a profession through licensing fees. Because only 21 career counselors are currently licensed, TDLR is in the process of raising the licensing fee from \$1,000 to \$2,500. As recently as last year, the cost of licensing was only \$750.

Career Counselor Licenses	
1999	27
2000	19
2001	21

**Licensing of personnel employment services provides limited consumer protections.**

- In the same fashion as the career counselor statute, defrauded consumers receive a greater benefit by pursuing their own claims rather than seeking redress through TDLR. Defrauded consumers who request TDLR to pursue an administrative case against a personnel employment service are entitled only to actual damages, while the agency may impose a penalty for double damages. Consumers who pursue a case alleging violations of the personnel employment services act under terms of DTPA may receive treble damages.

In fiscal year 2001, TDLR received 45 consumer complaints against personnel employment services. The agency has not issued any sanctions against a personnel employment service or ordered refund of consumer fees in the past three years. TDLR has no way of tracking private actions taken against personnel employment services.

- Recent industry trends also decrease the need for licensure of personnel employment services. Many employment services are now paid for by companies as exempt, executive search firms. Also, the rise of the Internet has permitted many consumers to easily conduct their own job searches. The table, *Personnel Employment Services Licenses*, shows the decline in the number of licenses over the last three fiscal years.

*Defrauded consumers of career counselors and personnel employment services can receive greater relief through the courts than through TDLR.*

Personnel Employment Service Licenses	
1999	460
2000	411
2001	328

## Recommendation

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### Change in Statute

#### **6.1 Abolish the registration of transportation service providers.**

This recommendation would repeal requirements that transportation service providers register with TDLR. To preserve evidence that may be useful to law enforcement agencies, the statute requiring companies to keep transaction records would remain. The provision permitting TDLR to audit these records would transfer to the Department of Public Safety, as the state's primary law enforcement agency.

#### **6.2 Abolish licensing of career counselors.**

This recommendation would repeal the licensing requirement for career counselors, but preserve the ability of consumers to bring private actions under the Deceptive Trade Practices Act. The current statute's detailed listing of career counseling offenses would remain to guide actions taken under DTPA.

#### **6.3 Abolish licensing of personnel employment services.**

This recommendation would repeal the licensing requirement for personnel employment services, but preserve the ability of consumers to bring private actions under the Deceptive Trade Practices Act. The current statute's detailed listing of personnel employment service offenses would remain to guide actions taken under DTPA.

### Impact

These recommendations seek to lessen the burdens upon the transportation service providers, career counseling, and personnel employment services industries while retaining the benefits of the current statutes. Because the registration information about transportation service providers held by TDLR has not proven to be beneficial to law enforcement agencies, no reason remains to require their registration. Because records of the transactions conducted by the firms may be needed in the future, these firms would still be required to permit audits of their books. Because these records are the type of business records kept by most companies, maintaining the record keeping and audit requirements would not be a burden on the industry.

Eliminating licensing of career counselors would remove the burden on the industry to pay annual licensing fees. Consumers would still be protected, however, by their ability to bring suit under the Deceptive Trade Practices Act. In fact, consumers are entitled to higher damages under these provisions than through TDLR. In addition, consumers may be able to enter into class action lawsuits thereby lessening their legal costs. Consumers are also able to seek information about career counselors and to report ethical violations through one of three governing bodies within the career counseling industry: National Board for Certified Counselors, National Career Development Association, and American Counseling Association. These associations establish standards of practice and codes of ethics for the career counseling profession.

Eliminating licensing of personnel employment services also lessens the burden on the industry while preserving the right of consumers to bring actions under DTPA. Consumers may also access information about these firms through their associations such as the Texas Association of Personnel Consultants and the International Association of Personnel Employment Services.

### **Fiscal Implication**

These recommendations would not result in a fiscal impact to the State. Licensing programs are required to bring in sufficient licensing revenue to offset the costs of regulation. Savings from eliminating the programs would be offset by reductions in licensing revenue. This workload reduction would allow the agency to reassign employees to other programs as workload needs dictate. In addition, although all licensing programs are expected to cover operating costs with licensing fees, the agency has had difficulty in raising enough fee revenue to cover the cost of career counselor licensing. Eliminating this license will permit the agency to more correctly correlate the cost of programs and fees paid.

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Cost to the General Revenue Fund</b>
2004	\$90,882	\$90,882
2005	\$90,882	\$90,882
2006	\$90,882	\$90,882
2007	\$90,882	\$90,882
2008	\$90,882	\$90,882

# Issue 7

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## Texas Has a Continuing Need for the Texas Department of Licensing and Regulation.

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### Summary

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#### Key Recommendation

- Continue the Texas Department of Licensing and Regulation for 12 years.

#### Key Findings

- Texas has a continuing interest in licensing and regulating certain occupations, businesses, and professions.
- TDLR functions efficiently in its role of licensing a variety of occupations.
- The Legislature has demonstrated its confidence in TDLR through recent enactments, signaling the agency's readiness to expand its role as an umbrella licensing agency.
- Most other states use a central licensing agency to regulate a variety of professions.

#### Conclusion

The Department of Licensing and Regulation oversees 20 professions and industries through its licensing, inspection and enforcement functions. Its regulatory functions are needed for consumer safety and protection in the state, and the Department should be continued for 12 years. TDLR's organization and use of technology enables it to operate efficiently as the State's umbrella licensing agency.

The Sunset review assessed the overall need for an umbrella licensing agency and the need for the specific regulatory programs TDLR currently administers. The results showed a continuing need for the licensing and regulation of certain technical occupations in the state. The review also determined that TDLR is working well as an umbrella licensing agency and is prepared to assume additional occupational licensing responsibilities, which are presently housed at other agencies.

## Support

### Regulatory Programs of TDLR

Air Conditioning Contractors  
 Architectural Barriers  
 Auctioneers  
 Boilers  
 Career Counseling Services  
 Combative Sports  
 Court Interpreters  
 Elevators, Escalators  
 Industrialized Housing and Buildings  
 Personnel Employment Services  
 Property Tax Consultants  
 Service Contract Providers  
 Staff Leasing Services  
 Talent Agencies  
 Temporary Common Worker Employers  
 Transportation Service Providers  
 Vehicle Protection Product Warrantors  
 Water Well Drillers  
 Water Well Pump Installers  
 Weather Modification

**The Department of Licensing and Regulation serves as the umbrella agency for occupational and professional licensing.**

- The State licenses and regulates a number of non-health related professionals through its umbrella licensing agency, the Texas Department of Licensing and Regulation. In 1989, the Legislature established TDLR as the primary state agency responsible for the oversight of businesses, industries, general trades, and occupations that are state-regulated. TDLR's mission—promoting the public's safety and ensuring fair and competitive business for its programs is currently applied to 20 regulatory programs, which are shown in the textbox, *Regulatory Programs of TDLR*. The Agency Information section of this report gives specific information about the purpose of each of these individual programs; and information on the number, type, and cost of licenses or certificates.
- TDLR accomplishes its mission through three main functions: licensing, inspection and enforcement. The chart, *TDLR Workload*, has additional information regarding the extent of the Department's work.

**Texas has a continuing interest in licensing and regulating certain occupations, businesses, and professions.**

- Generally, analysis of TDLR's program functions established the continuing need for regulation of TDLR's program industries. Staff determined three industries currently regulated by TDLR no longer need state oversight. Issue 6 of this report recommends the abolishment of these three programs – Career Counseling Services, Personnel Employment Services, and Transportation Service Providers.

TDLR Workload – FY 2001	
Total Licenses and Certificates Issued	123,337
Inspections Completed	85,644
License Renewals	33,955
Exams Administered	2,620
Disciplinary Actions	1,299
Total Complaints Resolved	3,810

The remaining 17 programs at TDLR continue to demonstrate a need for regulation. Some programs, like elevator and boiler inspections, are needed to ensure the health and safety of the public. Others are needed to protect consumers from exploitation, such as auctioneer and talent agency licensing. Still other programs are needed to ensure public accessibility to buildings, as in the Architectural Barriers program.

**TDLR functions efficiently in its role of licensing a variety of occupations.**

- TDLR has organized itself to maximize its efficiency by organizing along functional lines. Its licensing division administers licensure for all programs by processing applications, determining that education and experience requirements are met, and giving exams. All inspections are coordinated through the code review and inspections division and complaints and investigations are handled by the enforcement division.
- TDLR's progressive use of technology enables it to efficiently perform its licensing functions. For example, TDLR was commended for the quality and quantity of information posted on its Web site by the Open Records Steering Committee, which studies and determines the types of public information useful to the public or cost-effective to the government and then reports to the State.<sup>1</sup>

For many of its programs, TDLR offers online license renewals, online complaint filing for consumers, and online license search databases. These efforts reduce the Department's data processing and distribute a lot of information about regulatory programs to consumers. More information regarding TDLR's use of technology can be found in the Agency Information section of this report.

- TDLR also is striving to better serve its licensees by offering some of its licensing exams electronically through independent testing centers across Texas, allowing its licensees more flexibility in taking their exams. TDLR aims to make electronic exams available for most programs, as appropriate.
- TDLR is proactive about identifying and penalizing individuals who fail to comply with its regulations. For example, through the comparison of databases to uncover unlicensed activity, TDLR has begun identifying and implementing enforcement actions against unlicensed and uninspected violators. In FY 2001, TDLR enforced against 124 uninspected Architectural Barriers projects, 128 unlicensed air conditioning contractors, and 196 buildings with uninspected elevators.
- TDLR was invited to present a report on the Department's results of The Survey of Organizational Excellence at the Governor's Conference in Organizational Excellence in November, 2001. The Department was one of three state agencies invited to speak at the Conference, and its report, entitled *A Success Story of Management Intervention and Agency Improvement*, focused on the ability for state agencies to change and improve.<sup>2</sup> At the Conference, TDLR reported that survey results have shown a dramatic increase in confidence in TDLR in recent years.

*TDLR's progressive use of technology reduces the Department's data processing workload and provides information to consumers.*

*TDLR's success in administering diverse licensing programs demonstrates it is capable of assuming additional licensing and regulatory functions.*

- A Sunset staff survey of interest groups found most industry and consumer groups who responded are pleased and impressed with the job TDLR is doing. A recent constituent survey administered by TDLR showed that 88 percent of customer satisfaction respondents rated their satisfaction with TDLR as “good” or “excellent”.<sup>3</sup>

**The Legislature has demonstrated its confidence in TDLR through recent enactments, signaling the agency's readiness to expand its role as an umbrella licensing agency.**

- In recent years, the Legislature has expressed confidence in TDLR as the state's umbrella licensing agency by giving the Department additional regulatory responsibilities. In 1997, the Legislature transferred water well driller licensing from the Texas Natural Resource Conservation Commission to TDLR. In 1999, the Legislature gave TDLR responsibility for the new Service Contract Provider program.

In the 77th session, the Legislature transferred another licensing program to TDLR, the Weather Modification program, which TNRCC had previously overseen. Additionally, the Legislature created regulatory programs for court interpreters, who provide interpretations in court for individuals who do not speak English, and vehicle protection product warrantors and placed the programs at TDLR. Detail about these programs can be found in the Agency Information section of this report.

- TDLR's ability to successfully administer diverse licensing programs demonstrates it is capable of assuming the duties of additional single-function licensing agencies, if any of these type of agencies are identified as being appropriate for transfer.
- Licensing and regulation functions exist at TNRCC, the Department of Public Safety, and other agencies that may be appropriate for transfer. TDLR is equipped to assume these licensing programs should they be considered for transfer by the Legislature.

**Most other states use a central licensing agency to regulate a variety of professions.**

- Although the type and number of industries regulated differ among states, most other states have a type of centralized umbrella licensing and regulatory agency for occupational and professional licensures. Some states, such as Florida, California, and Illinois, have agencies that regulate an even larger number of diverse professions instead of having a separate agency for each occupation. For example, Florida's Department of Business and Professional Regulation oversees barbers and funeral directors, while Texas has a separate agency for each of these professions.

# Recommendation

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## Change in Statute

### 7.1 Continue the Texas Department of Licensing and Regulation for 12 years.

## Impact

This recommendation would continue the Texas Department of Licensing and Regulation as the State's umbrella agency for licensing and regulation for the standard 12-year period.

## Fiscal Implication

As 99 percent of TDLR's revenue is received through licensing fees paid into the General Revenue Fund, continuing the Department will have a revenue neutral impact on the State. Its annual appropriation of \$6.9 million would need to continue.

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<sup>1</sup> The Open Records Steering Committee, *Report Regarding the Posting of Information of State Agencies' Web Sites*, (Austin, Texas, November 2000). The Open Records Steering Committee is a statutory standing committee whose charge is to advise the General Services Commission regarding its statutory duties. The Committee includes representatives from six state agencies, three local governmental bodies, and five public members.

<sup>2</sup> Telephone interview with The Survey of Organizational Excellence staff (Austin, Texas, January 30, 2002). The Survey of Organizational Excellence is administered by the School of Social Work at the University of Texas. Its mission is to assess private and public entities for organizational structure and employee perception to promote organizational excellence and improve organization and employee perception within an entity. The Governor's Conference in Organizational Excellence occurs every two years and is an opportunity for State agencies to prepare for strategic planning.

<sup>3</sup> Texas Department of Licensing and Regulation, *Strategic Plan for the Years 2001-2005*, (Austin, Texas, June 1, 2000), p. 10.



## **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Department of Licensing and Regulation</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Already in Statute	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Require information to be maintained on complaints.
Update	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

<b>Texas Department of Licensing and Regulation</b>										
	Air Conditioning Contractors	Architectural Barriers	Auctioneers	Boilers	Career Counseling Service	Combative Sports	Court Interpreters	Elevators and Escalators	Industrialized Housing and Buildings Services	
<b>B. Licensing</b>	<b>Recommendations</b>									
1. Time Frames	a	n	a	a	a	n	a	n	n	a
2. Notification of Exam Results	u	u	u	u	n	n	a	n	n	n
3. Endorsement and Reciprocity	s	n	s	s	n	s	a	n	s	a
4. Provisional Licenses	n	n	n	n	n	n	n	n	n	n
5. Staggered Renewal of Licenses	s	s	s	s	s	s	s	s	s	s
6. Full Range of Penalties	u	s	u	s	s	u	u	u	u	s
7. Advertising and Competition	s	s	s	s	s	s	s	s	s	s
8. Continuing Education	u	u	a	u	a	n	a	a	u	a

a =apply; u =update; s =already in statute; n =do not apply

1. Time Frames – Require standard time frames for licensees who are delinquent in renewal of licenses.
2. Notification of Exam Results – Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
3. Endorsement and Reciprocity – Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
4. Provisional Licenses – Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
5. Staggered Renewal of Licenses – Authorize the staggered renewal of licenses.
6. Full Range of Penalties – Authorize agencies to use a full range of penalties.
7. Advertising and Competition – Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
8. Continuing Education – Require the policymaking body to adopt a system of continuing education.





## **AGENCY INFORMATION**

# Agency Information

## Agency at a Glance

The Texas Department of Licensing and Regulation (TDLR) serves as an umbrella licensing agency for 20 regulatory programs. TDLR's four major programs are reviewing building plans for architectural barriers, inspecting boilers, licensing air conditioner contractors, and inspecting elevators and escalators. The textbox, *Regulatory Programs at TDLR*, lists all of the agency's programs. TDLR traces its history to 1909 when the Legislature created the Bureau of Labor Statistics. Over time the agency's purpose broadened to include a number of labor-related regulatory functions and, in 1989, Sunset legislation established TDLR as an umbrella licensing agency for non-health related professions and renamed it to clarify its role.

To oversee the regulated industries and professions, TDLR:

- licenses, certifies, and registers qualified professional applicants;
- inspects equipment, facilities and buildings, including boilers, elevators, industrialized buildings, for safety and accessibility; and
- ensures compliance by investigating and resolving complaints against persons or businesses.

### Regulatory Programs at TDLR

Air Conditioning Contractors  
 Architectural Barriers  
 Auctioneers  
 Boilers  
 Career Counseling Services  
 Combative Sports  
 Court Interpreters  
 Elevators and Escalators  
 Industrialized Housing and Buildings  
 Personnel Employment Services  
 Property Tax Consultants  
 Service Contract Providers  
 Staff Leasing Services  
 Talent Agencies  
 Temporary Common Worker Employers  
 Transportation Service Providers  
 Vehicle Protection Product Warrantors  
 Water Well Drillers  
 Water Well Pump Installers  
 Weather Modification

## Key Facts

- **Funding.** TDLR operates with an annual budget of \$6.9 million – 99 percent of which comes from licensing fees paid into the General Revenue Fund.
- **Staffing.** TDLR has 145 employees, with 113 in Austin, and 32 in regional and field offices in Dallas, Houston, San Antonio, Wichita Falls, Midland/Odessa, and Lubbock.
- **Architectural Barriers.** TDLR reviews construction plans and inspects buildings to help ensure that buildings are accessible to persons with disabilities.
- **Boilers.** TDLR certifies and inspects 60,000 boilers in Texas for safe operation. The agency also commissions 300 boiler inspectors to aid in the inspection workload.

- **Air Conditioning Contractors.** TDLR licenses 12,000 air conditioning and refrigeration contractors and oversees 10,000 freon registrants.
- **Elevators and Escalators.** TDLR issues certificates of compliance for 30,000 inspected elevators and escalators that meet minimum standards. TDLR requires building owners to have elevators and escalators inspected by third-party inspectors certified by the agency as Qualified Elevator Inspectors.

## Organization

### Commission

The Commission of Licensing and Regulation is the policy body for TDLR. The Commission is composed of six public members appointed by the Governor. The chart, *TDLR Commission*, shows the agency's current Commission members.

TDLR Commission	
Name	Term Expires
William Fowler, Buda (Chair)	2007
Mickey Christakos, Allen (Vice Chair)	2003
Elliott B. McConnell, Rockport	2003
Gina Parker, Waco	2007
Patricia Stout, San Antonio	2005
Leo Vasquez, Houston	2005

The Chair of the Commission is elected by the Commission for a two-year term. The Commission adopts fees and makes final rulings on contested disciplinary actions, but rule-making authority for the programs administered by TDLR is vested in the Executive Director – not the Commission.

The agency also receives assistance from 11 statutorily created advisory committees. The composition, appointing authority, and purpose of these advisory committees varies greatly, but each one gives advice in one specific program area. The chart, *TDLR Advisory Committees*, provides information about each committee.

TDLR Advisory Committees			
Committee	Membership	Appointed By	Purpose
Air Conditioning and Refrigeration Contractors Advisory Board	<u>6 Members</u> 4 industry representatives 2 city officials	Governor	<ul style="list-style-type: none"> <li>• Advises Executive Director in adopting rules and enforcing Act.</li> <li>• Advises Commission in setting fees.</li> </ul>
Architectural Barriers Advisory Committee	<u>9 Members<sup>1</sup></u> 4 building professionals 5 persons with disabilities	Commission	Reviews rules and recommends changes to Commission and Executive Director.

<b>TDLR Advisory Committees</b>			
<b>Committee</b>	<b>Membership</b>	<b>Appointed By</b>	<b>Purpose</b>
Auctioneer Education Advisory Board	<u>8 Members<sup>2</sup></u> 3 licensed auctioneers 3 consumers 1 Department of Economic Development designee 1 Texas Workforce Commission designee	Executive Director	Advises Executive Director on auctioneer education.
Board of Boiler Rules	<u>9 Members</u> 3 boiler owners 3 insurance companies 1 boiler manufacturer or installer 1 mechanical engineering faculty member of a college 1 labor union	Executive Director	Advises Executive Director on boiler rulers.
Elevator Advisory Board	<u>13 Members<sup>3</sup></u> 1 elevator inspector 1 elevator manufacturer 1 elevator constructor 1 elevator maintenance company 1 building owner of a building, 6 stories or more, with an elevator 1 engineer or architect 4 public members 2 public members with a physical disability	Executive Director	Advises Executive Director on adoption of standards for installation, alteration, operation, and inspection of elevators.
Licensed Court Interpreters Advisory Board	<u>9 Members</u> 1 district or county court judge 1 court administrator 1 attorney 3 licensed court interpreters 3 public members	Governor	Advises Executive Director on adoption of rules and design of licensing examination.
Property Tax Consultants Advisory Council	<u>6 Members<sup>4</sup></u> 3 registered property tax consultants 3 consumers	Commission	<ul style="list-style-type: none"> <li>● Advises Executive Director on license requirements and standards of practice.</li> <li>● Advises Commission on fees.</li> </ul>
Service Contract Providers Advisory Council	<u>6 Members</u> 2 service contractors 2 service contract retailers 1 reimbursement insurer 1 service contract buyer	Executive Director	<ul style="list-style-type: none"> <li>● Advises Executive Director on rules and enforcement.</li> <li>● Advises Commission on fees.</li> </ul>
Vehicle Protection Products Warrantor Advisory Board	<u>6 Members</u> 2 vehicle protection product warrantors 2 retailers of vehicle protection product warranties 2 consumers	Executive Director	<ul style="list-style-type: none"> <li>● Advises Executive Director on rules and enforcement.</li> <li>● Advises Commission on fees.</li> </ul>

<b>TDLR Advisory Committees</b>			
<b>Committee</b>	<b>Membership</b>	<b>Appointed By</b>	<b>Purpose</b>
Water Well Drillers Advisory Council	<u>9 Members</u> 6 licensed drillers: 1 from the state at large 1 from Gulf Coast 1 from Trans-Pecos 1 from Central Texas 1 from Northeast Texas 1 from Pan handle-South Plains 3 public members	Executive Director	<ul style="list-style-type: none"> <li>• Advises Executive Director on the licensing examination, and continuing education programs.</li> <li>• Proposes rules for adoption by Executive Director.</li> <li>• Makes recommendations on complaints and applicants for license to Executive Director.</li> </ul>
Weather Modification Advisory Committee	<u>5 Members<sup>5</sup></u>	Executive Director	Advises Executive Director on issuance of licenses and permits for weather modification.

One separate board, the Industrialized Building Code Council (IBCC) is associated with TDLR in a similar fashion as these advisory committees, but does not serve in an advisory function. The role of the IBCC is to make decisions regarding industrialized buildings, which are binding upon the TDLR Commission and on local governments. TDLR is required to adopt rules to implement IBCC's decisions. Information about the IBCC is provided in the table, *Industrialized Building Code Council*.

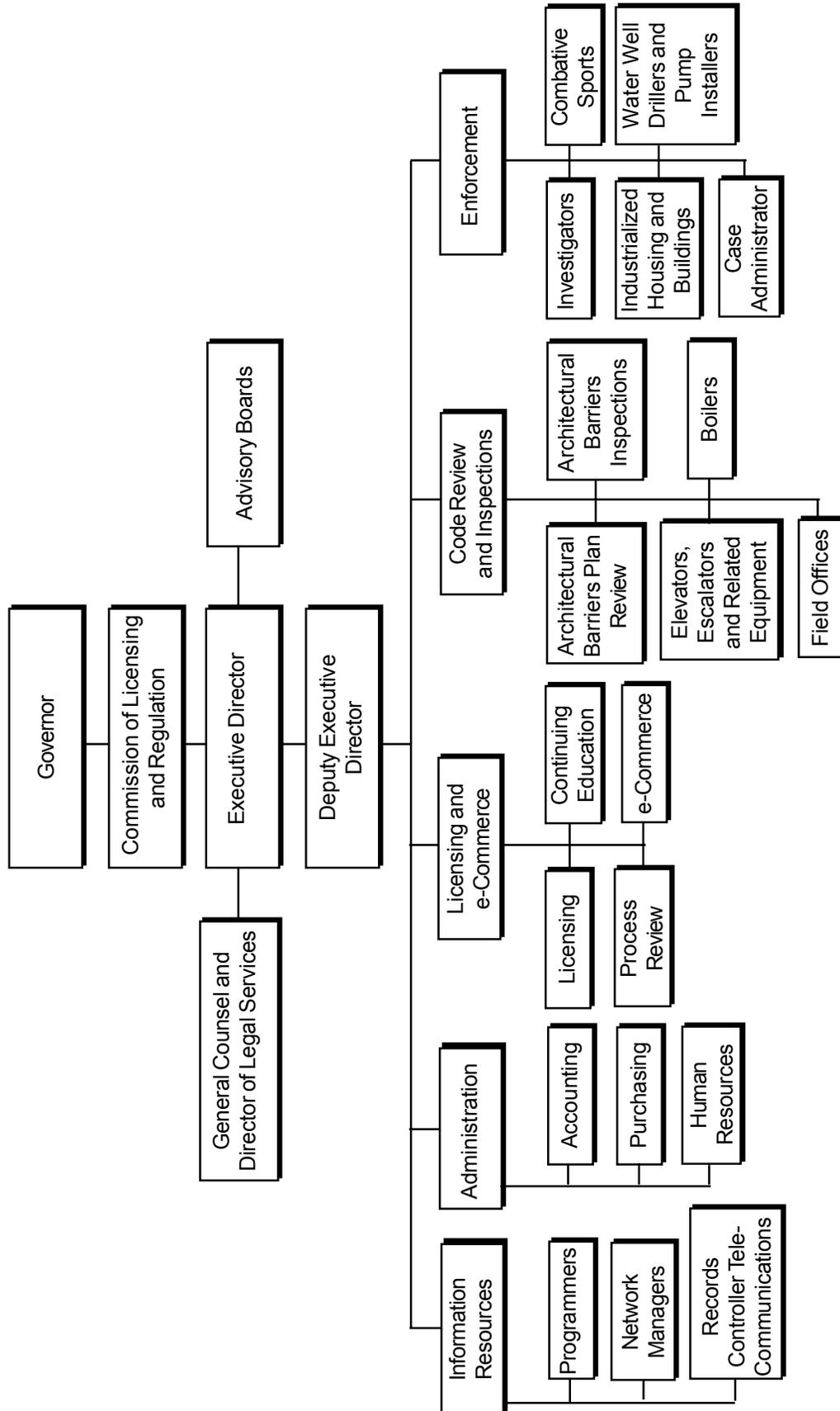
<b>Industrialized Building Code Council</b>			
<b>IBCC</b>	<b>Membership</b>	<b>Appointed By</b>	<b>Purpose</b>
Industrialized Building Code Council	<u>12 Members</u> 3 industrialized housing and building industry representatives 3 municipal building officials 3 general contractors who build on site 1 licensed structural engineer 1 licensed electrical engineer 1 licensed architect	Governor	Approves program decisions, actions, and interpretations that are binding on the Department, third-party agencies, and local political subdivisions.

<b>TDLR Employees by Location FY 2001</b>		
<b>Office</b>	<b>Location</b>	<b>Employees</b>
Headquarters	Austin	113.5
	Dallas	11
Regional Offices	Houston	10
	San Antonio	6
Field Offices	Wichita Falls	1
	Midland/Odessa	2
	Lubbock	1
<b>Total</b>		<b>144.5</b>

**Staff**

TDLR is organized along workflow functions – licensing, inspection, enforcement, administration, and information resources – as depicted in the chart, *Texas Department of Licensing and Regulation Organizational Chart*. The agency's 145 employees are located at the headquarters in Austin, regional offices in Dallas and Houston, and field offices in San Antonio, Wichita Falls, Midland/Odessa, and Lubbock. The table, *TDLR Employees by Location*, shows the number of employees at each location.

# Texas Department of Licensing and Regulation Organizational Chart



A comparison of the TDLR's composition to the minority civilian labor force is provided in Appendix A. The agency has generally met or exceeded civilian labor force levels for most job categories.

## Funding

### Revenues

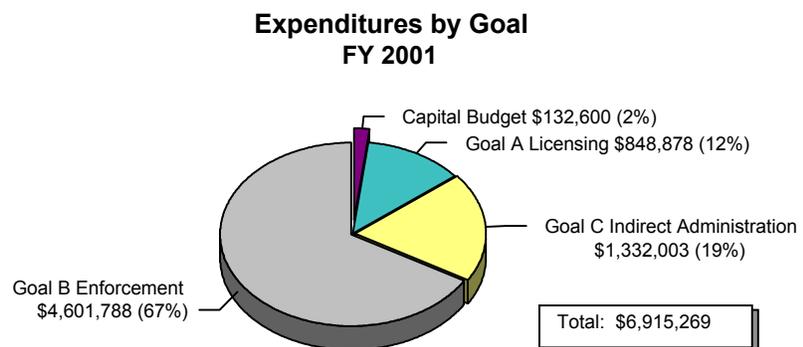
*99 percent of the agency's funding comes from licensing fees.*

TDLR's appropriations for fiscal year 2001 totaled \$6.9 million. TDLR received 99 percent of its revenues from licensing fees paid into the General Revenue Fund. The Auctioneer Education and Recovery Trust Fund, interagency contracts and appropriated receipts together provided the agency with about 1 percent of its funding. This appropriation included \$133,000, which was budgeted for capital projects – primarily information resource projects.

As a licensing agency, TDLR raises revenue through licensing fees to cover its administrative costs. In FY 2001, the revenue raised by the agency through registration, certification, licensing, and inspection fees totaled \$10,445,855. This amount excludes administrative fines because this revenue is generally paid directly to the General Revenue and is not made available for agency expenditures.

### Expenditures

Two-thirds of TDLR's expenditures in fiscal year 2001 were for enforcement, as shown in the pie chart, *Expenditures by Goal*. Because TDLR receives its appropriation based upon the licensing fees generated by each program, the agency allocates its expenditures back to the program from which they were derived. The table, *TDLR Expenditures by Program*, details this spending by general license type.



In addition to the expenditures shown above, the Legislature has directed TDLR, and other licensing agencies that pay the costs of regulatory programs with fees levied on licensees, to also cover direct and indirect costs appropriated to other agencies. Examples of these costs include rent and utilities paid by the State Building and Procurement Commission, employee benefits paid by the Employees Retirement System, and accounting services provided by the Comptroller of Public Accounts. For fiscal year 2001, these direct and indirect costs totaled \$1.8 million.

Appendix B describes TDLR's use of Historically Underutilized Businesses (HUBs) in its purchasing of goods and services. Although the agency fell behind the statewide goal for other services in FY 2001, its HUB spending on commodities was well above the goal. TDLR was also above the goals in each category for which it recorded spending in fiscal years 1999 and 2000.

<b>TDLR Expenditures by Program – FY 2001</b>	
<b>Program</b>	<b>Expenditures</b>
Air Conditioning and Refrigeration	\$1,049,957
Architectural Barriers	2,274,907
Auctioneers	168,210
Boilers	1,478,622
Career Counseling	35,948
Combative Sports	214,332
Elevators	524,979
Industrialized Housing and Buildings	216,367
Personnel Employment Services	15,600
Property Tax Consultants	38,661
Service Contract Providers	78,001
Staff Leasing Services	139,723
Talent Agencies	27,131
Temporary Common Worker Employers	11,531
Transportation Service Providers	5,426
Water Well Drillers and Pump Installers	503,274
<b>Total</b>	<b>\$6,782,669</b>

## Agency Operations

As the State's umbrella licensing agency over 20 regulatory and licensing programs, the Department of Licensing and Regulation's mission is to promote the public's safety while ensuring a fair and competitive business environment for regulated trades, businesses, industries, and occupations. The chart, *TDLR's Regulatory Programs*, shows details about each of the 20 industries or professions regulated or licensed by the agency.

As explained in the following sections, the agency accomplishes its mission and oversees these licensing and regulatory functions through three main divisions: licensing, inspection and enforcement. Throughout agency operations, TDLR uses technology to lower its costs and improve customer service. For examples, see the textbox, *TDLR's Use of Technology*.

## Licensing

TDLR attempts to screen applicants to ensure that only qualified persons or businesses are approved to work in a regulated industry. According to the enabling statute authorizing the industry's regulation, TDLR will register, certify or license individuals to practice the profession. In fiscal year 2001, the agency had 115,704 registrants,

<b>TDLR's Regulatory Programs</b>	
<b>Industry or Profession</b>	<b>Regulated Entity or Activity</b>
Air Conditioning Contractors	Contractors who install and service air conditioners and refrigeration units. A/C technicians who work for licensed contractors are not required to be licensed.
Architectural Barriers	Review of building plans with construction or renovation costs of more than \$50,000 to ensure accessibility of building and adherence to the Texas Architectural Barriers Act and Texas Accessibility Standards.
Auctioneers	Persons who sell personal and real property by bid call.
Boilers	Annual safety inspection of 60,000 boilers used in dry cleaners, car washes, power plants, schools, hospitals, office buildings and nuclear plants.
Career Counseling Services	Counselors who give advice on job searches and career options, but don't actually place clients into jobs.
Combative Sports	Persons involved in boxing, kickboxing, martial arts, elimination tournaments, and other contact sports, but not wrestling.
Court Interpreters	Persons who interpret language for plaintiffs, defendants, and witnesses during court proceedings.
Elevators and Escalators	Inspection of 30,000 elevators and escalators in Texas for safety and conformance to mechanical codes.
Industrialized Housing and Buildings	Inspection of pre-fabricated or modular buildings designed to be placed on a permanent foundation — not manufactured housing which is temporary or portable in nature.
Personnel Employment Services	Companies that provide executive search and job placement services.
Property Tax Consultants	Consultants who prepare tax renditions and reports or assist persons protesting or negotiating property tax valuations.
Service Contract Providers	Persons who contract with consumers to provide extended warranties to repair, replace, or maintain products.
Staff Leasing Services	Companies that provide human resources services for other companies.
Talent Agencies	Persons who attempt to obtain employment for actors and models.
Temporary Common Worker Employers	Labor hall companies that hire workers and sell their services on a daily basis to other companies.
Transportation Service Providers	Freight forwarding warehouses that provide for assembling, consolidating, breaking-bulk, and distributing shipments for land transportation.
Vehicle Protection Product Warrantor	Companies providing enhanced automobile theft warranties for vehicle theft deterrent devices.
Water Well Drillers	Individuals who drill water wells.
Water Well Pump Installers	Individuals who install pumps into water wells.
Weather Modification	Political subdivisions, organizations, and individuals who wish to create rain-enhancement projects.

### **TDLR's Use of Technology**

TDLR uses an Internet Web site to explain the Department's mission and its many different programs, and to enable licensees to renew their licenses online as part of the Texas Online Initiative. Currently, TDLR's clients may renew A/C contractor licenses, register building projects for the Architectural Barrier program, and report their boiler inspections online. TDLR was only the second state agency to use this type of electronic licensing system. The agency plans, as part of a new licensing system, to include additional programs in the online licensing system in the next year and to eventually offer online licensing examinations.

TDLR's Web site also allows the public to access licensing and inspections databases. These databases list licensees and registrants for TDLR's programs and allows the public to view inspection information and enforcement actions. These databases are searchable by program type, license number, location, and company name. The enforcement database shows who has been the subject of a TDLR enforcement action, what the violation was, and the action taken. These online programs increase the availability of information for both licensees and the general public. Using this system, the public may check on a company's license status and see if other clients have experienced problems with that company. TDLR also allows the public to submit complaints against licensees through the Internet site for most of its programs.

TDLR's Web site can be visited at [www.license.state.tx.us](http://www.license.state.tx.us).

certificate holders and licensees. The table, *TDLR Licensing Programs*, provides detailed information on licenses issued by the agency.

Depending upon the statutory requirements in each program, TDLR's screening process may include a combination of examinations, background checks, education or credential verifications, financial requirements, and experience assessments. For example, air conditioning contractors, auctioneers, boiler inspectors, property tax consultants, and water well drillers and pump installers must pass an examination to be licensed. In response to public feedback, the agency is beginning to provide online registration and license renewals through the Internet. Currently air conditioning and refrigeration contractors are the only licensees who can renew their licenses online. For information on a specific licensing program that embodies many of the elements of a TDLR licensing program see the textbox, *Licensing of Air Conditioning Contractors*.

### **Inspections**

In addition to licensing individuals and companies, TDLR also certifies or regulates facilities, as in the Architectural Barriers, Industrialized Housing and Building, Boilers, and the Elevators and Escalators programs. For the Architectural Barriers program, regulation

### **Licensing of Air Conditioning Contractors**

The Air Conditioning and Refrigeration program regulates contractors who install, repair, or maintain systems related to air conditioning, refrigeration, or heating. The program licenses A/C contractors, files proof of insurance for all contractors, and issues one-time certificates of registration for Freon purchasers. The agency licenses two different classes of contractors: Class A, authorizing work on systems and equipment with 25 tons of cooling capacity and more, and Class B, authorizing work on units with less than 25 tons of cooling capacity. Each license must also have an endorsement associated with it. The types of endorsements are: Environmental (treating air to control temperature for human comfort), Refrigeration (controlling temperature of specific spaces, such as commercial refrigerators) or a combination. TDLR administers exams for each class and each endorsement.

To be licensed as an Air Conditioner contractor, a person must have 36 months of hands-on experience in the air conditioning industry within the last five years, and must satisfy a criminal history check. In addition, the applicant must pass an examination testing knowledge of air conditioning and refrigeration. Currently, TDLR contracts with independent testing centers to develop and administer the A/C license exams. This system is a departure from the traditional method of giving the test once a month in Austin, and is more convenient and efficient for potential contractors, as they can take the test Monday through Saturday at about 15 locations across the state. After passing the examination, the applicant must submit proof of adequate insurance to TDLR.

In September of 2001, TDLR converted from a three year license to a one year license for A/C contractors. The A/C program offers its contractors online license renewals and fee payment and online insurance certification, which also helps increase efficiency for licensees and reduces the amount of paper processing for TDLR.

<b>TDLR Licensing Programs - FY 2001</b>				
<b>Industry</b>	<b>License</b>	<b>Number</b>	<b>Fee</b>	<b>Revenue<sup>6</sup></b>
Air Conditioning and Refrigeration	Type A & B Contractors	4,923	\$350 <sup>7</sup>	\$1,670,238
Auctioneers	Auctioneer	2,815	\$100	\$294,875
	Associate Auctioneer		\$50	
Career Counseling Services	Certificate of Authority	28	\$750	\$16,175
Combative Sports	Promoter	26	\$1,000	\$26,000
	Contestant	962	\$40	\$36,865
	Manager	23	\$200	\$4,750
	Second (Ringman)	552	\$30	\$16,470
	Matchmaker	4	\$175	\$675
	Referee	27	\$250	\$16,850
	Judge	78	\$200	
	Timekeeper	31	\$40	\$1,140
	Gross Receipts Tax	92	3%	\$141,618
Court Interpreters <sup>8</sup>	Interpreter	N/A	N/A	N/A
Personnel Employment Services	Original License	51	\$75	\$29,550
	Renewal	315	\$50	
Property Tax Consultants	PTC Registration	132	\$150	\$101,110
	Senior PTC Registration	490	\$225	
Service Contract Providers	Registration	173	\$750 to 2,000 <sup>9</sup>	\$291,600
Staff Leasing Services	License	201	\$1,000 to 6,000 <sup>10</sup>	\$664,750
Talent Agencies	Original License	20	\$100	\$36,375
	Renewal	82	\$100	
Temporary Common Worker Employers	Original License	6	\$550	\$63,275
	Renewal	85	\$550	
Transportation Service Providers	Certificate	11	\$50	\$7,680
	Processing Fee		\$320	
Vehicle Protection Product Warrantors	Registration	N/A	N/A	N/A
Water Well Drillers and Water Well Pump Installers	License	\$1,327	\$170	\$438,488
	Combination License		\$220	
	Apprentice		\$50	
Weather Modification <sup>11</sup>	License	N/A	N/A	N/A

is accomplished by reviewing building plans and inspecting buildings to determine if buildings will be accessible to persons with disabilities. After reviewing a building plan for accessibility, TDLR will inspect the resulting building for conformity to the plan. If future remodeling changes result in expenditures greater than \$50,000, building owners must resubmit plans.

In Industrialized Housing, regulation is achieved by reviewing design plans and certifying and inspecting manufacturing plants. TDLR also inspects boilers, elevators, and escalators to determine their safety. TDLR regulates combative sports, or boxing, as an inspection activity because this licensing function is primarily performed onsite. Information about TDLR's programs that inspect facilities is shown in the table, *TDLR Inspection Programs*. This table does not show information about combative sports licensing as that information was previously displayed in the table, *TDLR Licensing Programs*.

In recent years TDLR has been shifting its inspection focus to one of supervising third-party inspectors rather than conducting inspections with state employees. To assist these third-party inspectors, the agency provides technical and administrative assistance, and assists with enforcement efforts. For more information on a specific program for which TDLR relies primarily on inspection for regulatory purposes see the textbox, *TDLR Inspection of Elevators and Escalators*.

## Enforcement

TDLR's enforcement effort investigates and resolves complaints for the agency's 20 programs. While TDLR enforcement is primarily complaint-driven, some enforcement actions stem from agency facility inspections. Not only does TDLR have enforcement responsibility over the regulation of licensees and facilities described in the chart, *TDLR's Regulatory Programs*, on page 62, it also has responsibility for the oversight of the third-party inspectors registered with the Department and may take action against those inspectors through reprimands and administrative penalties. These third-party inspectors are found in the Elevator, Industrialized Housing and Buildings, and Architectural Barriers programs.

TDLR employs 15 in-house investigators who are assigned primary responsibility for a specific program, but are cross-trained on other programs so that enforcement for individual programs is spread throughout the Department. TDLR also employs two field investigators, one each in Wichita Falls and San Antonio, who primarily conduct A/C contractor sting operations to identify individuals operating without a license.

*In its Architectural Barriers program, the agency looks for accessibility for persons with disabilities.*

### TDLR Inspection of Elevators and Escalators

Building owners must have their elevators inspected annually for compliance with TDLR's safety standards. Instead of using TDLR staff to inspect these elevators, TDLR registers Qualified Elevator Inspectors (QEIs) as third party inspectors, paid by elevator owners to conduct the inspections. In fiscal year 2001, TDLR registered 111 QEIs. To be certified, QEIs must pass an exam administered by an organization accredited by the American Society of Mechanical Engineers (ASME), which developed the code TDLR uses for its elevator safety standards. After passing the examination, these elevator inspectors must register with TDLR, pay a fee, and are required to annually attend a one-day course held by TDLR about code changes and technical issues. TDLR issues buildings certificates of compliance based on the QEI's inspection report and handles enforcement against building owners not in compliance with TDLR's safety standards.

<b>TDLR Inspection Programs - FY 2001</b>				
<b>Industry</b>	<b>Activity</b>	<b>Number</b>	<b>Fee</b>	<b>Revenue<sup>13</sup></b>
Architectural Barriers	Preliminary Review	1,665	\$145	\$580,532
	Review		\$250-1,175 <sup>14</sup>	
	Late Review		\$350-2,200 <sup>15</sup>	
	Inspection Filing Fee	7,145	\$100	\$458,490
	Inspection	3,366	\$350-1,175 <sup>16</sup>	\$825,153
	Variance Application	1,605	\$150	\$221,085
Boilers	Inspection	27,618	\$45-115 <sup>17</sup>	\$458,490
	Special Inspection	180	650 + Travel	\$136,690
	Variance Application	1,605	\$150	\$221,085
Elevators and Escalators	Filing Fee	10,013	\$20 per building + \$5 per elevator or escalator	\$296,290
	Late Filing Fee	1,380	\$100	\$138,126
	Inspector Registration	111	\$15	\$17,275
Industrialized Housing	Manufacturer Registration	81	\$750	\$64,786
	Builder Registration	207	\$375	\$77,975
	Design Review Agency	7	\$300	\$2,100
	Third-Party Inspection Agency	7 agencies 62 inspectors	\$150 per firm \$100 per inspector	\$9,000
	Certification Inspection by TDLR	13	\$40 per hour	\$19,812
	Decal	9,210	\$.07 per sq. ft. floor area with \$25 minimum	\$383,526
	Insignia	210	\$.02 per sq. ft. surface area, \$.60 per sq. ft. floor, with \$15 minimum	
	Monitoring of Design Review and Third-Party Inspection Agencies	9	\$40 per hour	\$7,094
Installation Permit	113	\$75 per building	\$7,125	

For all programs in FY 2001, about 3,900 complaints were filed at the agency. Complaint statistics for specific regulatory programs can be found in the table, *TDLR Complaint Information*. The three biggest programs, A/C Contractors, Architectural Barriers and Elevators account for more than three quarters of all complaints received. These complaints generally involve operating without a license, failure to perform duties with mechanical integrity, failure to register buildings with the Department, and failure to obtain requisite inspections.

Complaint resolution is usually accomplished through mediation among TDLR, the complainant and the respondent. TDLR docketed 1,042 complaints for contested case hearings in 2001. Of those 1,042 cases, all but 212 were resolved before an actual formal hearing was held. Enforcement resolution is usually accomplished by administrative penalties, written reprimands, cease and desist orders, and license suspension and revocation.

*A/C Contractors, Architectural Barriers, and Elevators account for three-fourths of all complaints.*

<b>TDLR Complaint Information FY 2001</b>		
<b>Program</b>	<b>Complaints Received</b>	<b>Complaints Resolved<sup>18</sup></b>
Air Conditioning Contractors	1,408	1,195
Architectural Barriers	1,311	1,384
Auctioneers	75	86
Boilers	72	81
Combative Sports	12	12
Career Counseling	31	49
Elevators, Escalators and Related Equipment	309	387
Industrialized Housing and Buildings	61	45
Personnel Employment Services	45	40
Property Tax Consultants	15	9
Service Contract Providers	225	147
Staff Leasing Services	45	42
Talent Agencies	49	45
Temporary Common Worker Employers	8	7
Transportation Service Providers	0	0
Water Well Drillers and Pump Installers	228	281
<b>Total Number of Complaints</b>	<b>3,894</b>	<b>3,810</b>

- 
- <sup>1</sup> Exact composition not specified in statute – must be at least 8 members with a majority of persons with disabilities. Members serve at the will of the Commission.
- <sup>2</sup> Statute requires nine members.
- <sup>3</sup> Statute only requires nine members.
- <sup>4</sup> This is the current composition of the Property Tax Consultants Advisory Council. V.T.C.S. Art. 8886, §10 requires all six members to be property tax consultants.
- <sup>5</sup> Composition is not statutorily required, but the committee has been active since 1957 and TDLR proposes to continue its current composition – 5 members: an atmospheric scientist, an attorney, a businessman, a rancher or farmer, and an engineer.
- <sup>6</sup> In many cases, totals include late fees, duplicate license fees and other fees that increases the amount shown.
- <sup>7</sup> In FY 2001, A/C Contractor license was valid for three years.
- <sup>8</sup> The court interpreter license was created by the Legislature in 2001.
- <sup>9</sup> Fee varies by amount of company assets.
- <sup>10</sup> Fee varies by amount of company assets.
- <sup>11</sup> The Weather Modification license was moved to TDLR from Texas Natural Resource Conservation Commission by the Legislature in 2001.
- <sup>12</sup> The Vehicle Protection Product Warrantors registration was created by the Legislature in 2001.
- <sup>13</sup> In many cases, totals include late fees, duplicate license fees and other fees that increases the amount shown.
- <sup>14</sup> Varies according to project size.
- <sup>15</sup> Varies according to project size.
- <sup>16</sup> Varies according to project size.
- <sup>17</sup> Varies according to type – heating boilers are \$45, other types without manhole covers are \$85, and other types with manhole covers are \$115.
- <sup>18</sup> Includes resolution of complaints from the previous fiscal year.

# APPENDICES

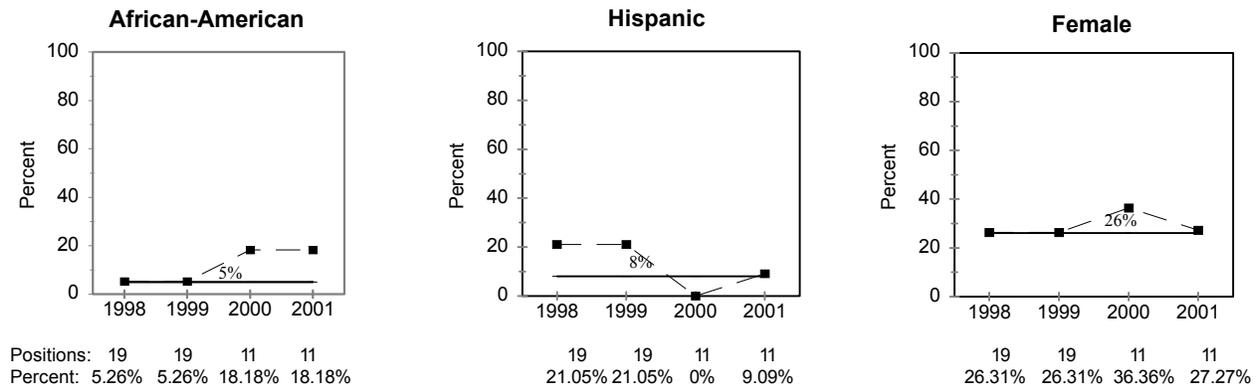
## Appendix A

### Equal Employment Opportunity Statistics

#### 1998 to 2001

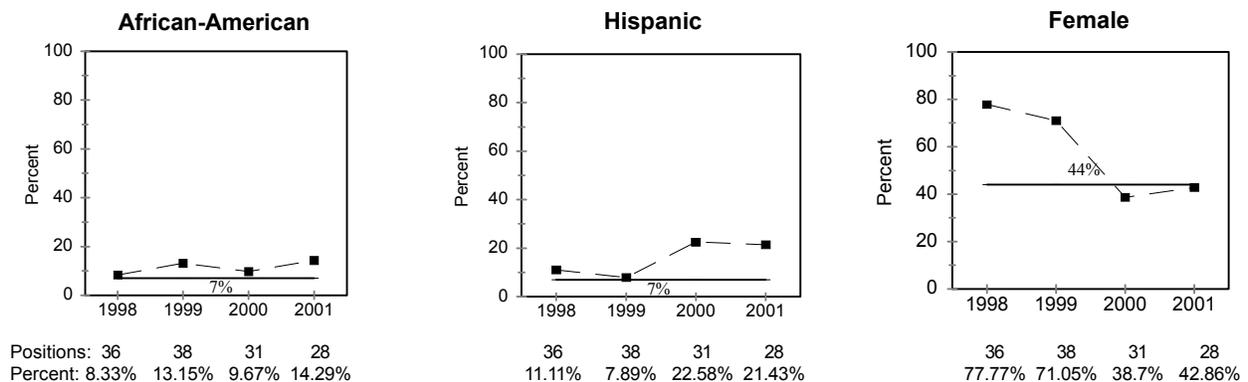
In accordance with the requirements of the Sunset Act, the following material shows trend information for the agency's employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian labor force that African-Americans, Hispanics, and females comprise in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1998 to 2001.

#### State Agency Administration



The Department has generally met expectations for employment in the agency administration category.

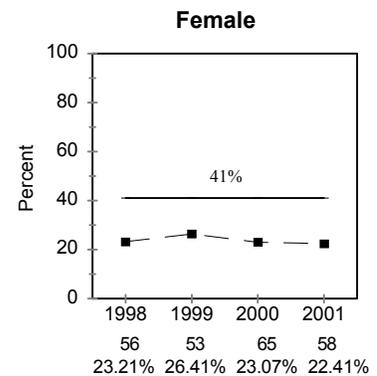
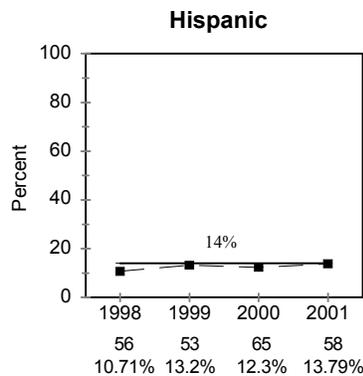
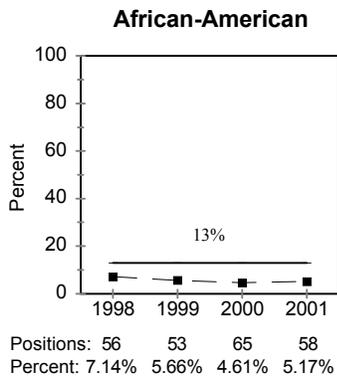
#### Professional



The agency met or exceeded the state goal each year in this job category.

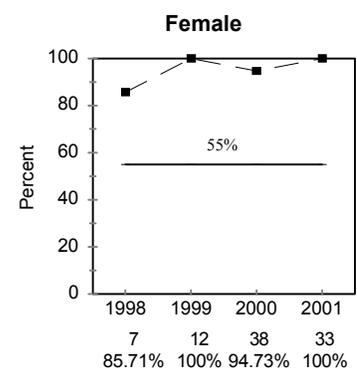
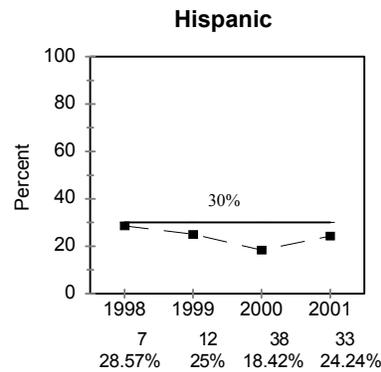
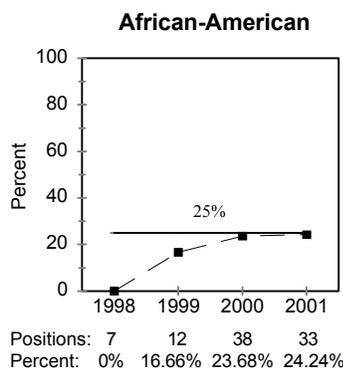
## Appendix A

### Technical



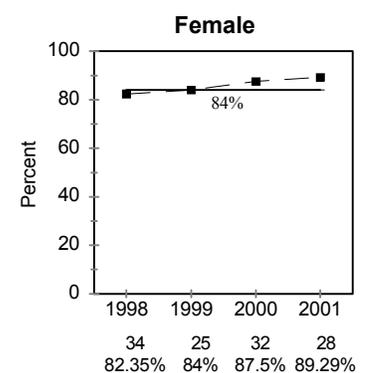
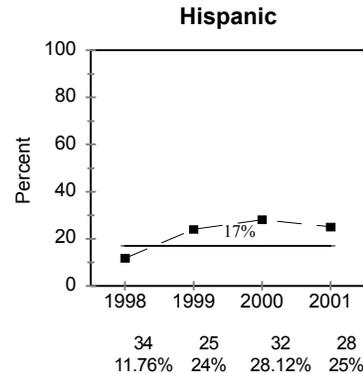
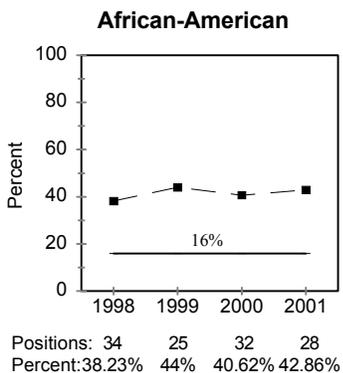
TDLR has lagged behind the civilian labor force guidelines for African-Americans and females.

### Paraprofessional



The agency has generally met its hiring guidelines.

### Administrative Support



The agency has met and exceeded the civilian labor force guidelines each year since 1998.

<sup>1</sup> Texas Government Code Ann., ch. 325, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code Ann., ch. 21, sec. 21.501.

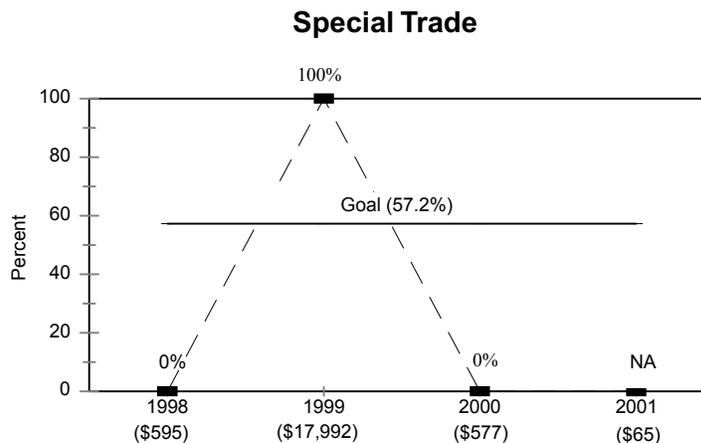
## Appendix B

### Historically Underutilized Businesses Statistics

#### 1998 to 2001

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.<sup>1</sup> The review of TDLR revealed that the agency is not complying with all state requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules, has not implemented a HUB forum program, and has not adopted a HUB mentor – protege program. However, the agency has appointed a HUB coordinator and has published a HUB policy statement.

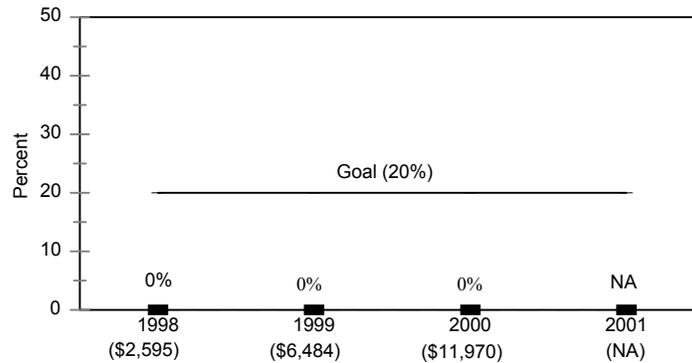
The following material shows trend information for the Department of Licensing and Regulation's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 1998 to 2001. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. Generally, TDLR has met or exceeded HUB purchasing goals.



The Department exceeded the state goal in the only year it had significant spending in this area.

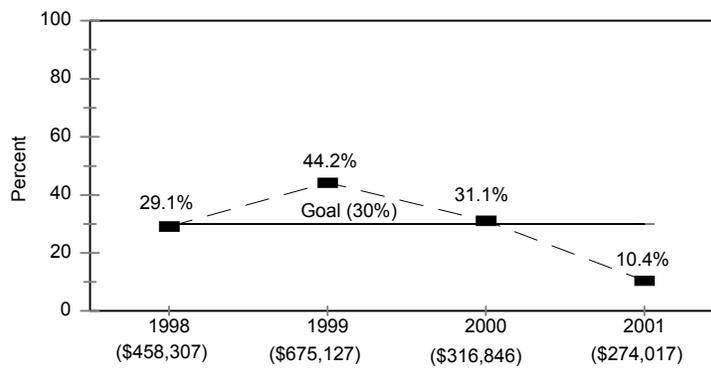
## Appendix B

### Professional Services



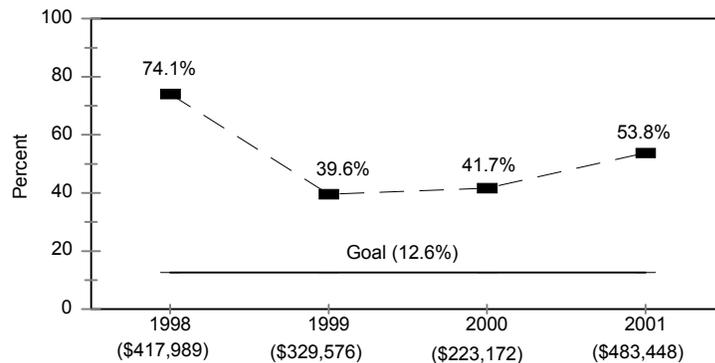
The Department has not met the state goal for HUB spending on professional services.

### Other Services



The Department met or exceeded the state goal in three of the past four years.

### Commodities



The Department greatly exceeded the state goal for HUB spending on commodities each year since 1998.

<sup>1</sup> Texas Government Code Ann., ch. 325, sec. 325.011(9)(B) (Vernon 1999).

<sup>2</sup> Texas Government Code Ann., ch. 2161.

## **Appendix C**

### **Staff Review Activities**

The Sunset staff engaged in the following activities during the review of the Texas Department of Licensing and Regulation.

- Worked extensively with agency staff at its Austin headquarters.
- Attended meetings of the Commission on Licensing and Regulation and met individually with members.
- Interviewed members of TDLR advisory boards.
- Solicited written comments from state and local interest groups, including those representing the regulated occupations and the public, regarding their ideas and opinions about TDLR.
- Held phone interviews with other states regarding the structure and requirements of programs with similar functions.
- Conducted a phone interview with the School of Social Work at the University of Texas regarding the Survey of Organizational Excellence.
- Observed TDLR personnel overseeing a combative sports match.
- Met with staff of the Texas Natural Resource Conservation Commission regarding the overlap of jurisdiction with TDLR's programs.
- Met with staff of the State Office of Administrative Hearings regarding TDLR's administrative law function.
- Interviewed staff of the Texas Water Development Board and the Railroad Commission regarding well drilling and plugging.
- Observed elevator mechanics conducting an elevator inspection.
- Conducted phone interviews with the U.S. Consumer Protection Safety Commission and the Texas Department of Health regarding elevator injury reporting.
- Interviewed staff of the Texas Department of Agriculture regarding the Weights and Measures program.
- Met with representatives of the Career Counseling industry regarding TDLR's regulation of the profession.
- Met with interested members of the public regarding TDLR's regulation of A/C contractors.
- Performed background and comparative research using the Internet.



**SUNSET REVIEW OF THE  
TEXAS DEPARTMENT OF LICENSING  
AND REGULATION**

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