

SUNSET ADVISORY COMMISSION

Texas Ethics
Commission



Staff Report
March 2002

TEXAS ETHICS COMMISSION

SUNSET STAFF REPORT

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SUMMARY



Sunset Staff Report

Texas Ethics Commission

Summary

In 1991, the Legislature proposed a constitutional amendment, which was later adopted by the voters, to create the Texas Ethics Commission. Given the atmosphere of political scandals at that time, the Legislature proposed the creation of the agency and adopted several sweeping revisions to the state's ethics laws. The Legislature's stated policy in proposing the creation of the Commission was as follows:

“to protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence while also protecting the constitutional right of the governed to apply to their government for the redress of grievances.”

Over the years, the Commission's responsibilities and authority have remained essentially unchanged. The Commission's structure and functions are the result of a careful compromise to ensure overall fairness and to prevent misuse of the system. The membership of the Commission, as established in the Constitution, guarantees equal representation of the state's major political parties. Further, the process for handling complaints, as established in statute, ensures confidentiality and due process. However, the Sunset staff review found several areas that prevent the Commission from more effectively carrying out its duties.

First, the breadth of confidentiality restrictions inhibits the agency's ability to properly investigate complaints. While strong confidentiality protection should remain in place, the Commission needs flexibility to do its job. Also, the Commission's hearing process is lengthy and has redundant elements. Streamlining the hearing process will allow quicker resolution of complaints.

The Sunset review also assessed the agency's ability to provide information to the public. Texas' campaign finance and financial disclosure laws are based on public disclosure of financial information,

with few campaign contribution limits for elected offices. Therefore, the public needs access to as much information as possible to make informed decisions about its elected and appointed officials. While the agency is diligent about making financial disclosure reports easily accessible, the Sunset review showed that the electronic campaign finance reporting system is not being used to its fullest extent. This limits the amount of financial

Although the Commission's structure and functions are the result of a careful compromise, the agency needs greater flexibility to do its job.

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disclosure information available to the public online and creates an administrative burden on the agency. Finally, the quality and simplicity of information about the agency's complaint process can also be strengthened.

A summary of the recommendations identified in this report is outlined below. This report does not address continuation of the agency because the Commission is subject to review, not abolishment, under the Texas Sunset Act.

Issues / Recommendations

Issue 1 The Commission Lacks Adequate Authority to Conduct Investigations.

Key Recommendations

- Maintain the Commission's confidentiality provisions, but clarify them to allow staff to conduct investigations.
- Grant subpoena power for documents and other materials at the preliminary review stage.
- Allow the Commission to share confidential investigatory information with the State Commission on Judicial Conduct, and appropriate law enforcement agencies.

Issue 2 Remove Unnecessary Steps in the Commission's Complaint Process.

Key Recommendations

- Remove the requirement that the Commission must vote to accept jurisdiction of a complaint.
- Remove the extra informal hearing stage from the complaint process.

Issue 3 Lack of Complaint Deadlines and Incomplete Review of Filings Prevent the Commission from Fully Carrying Out Its Duties.

Key Recommendations

- Require the Commission to set timelines for resolving complaints.
- The Commission should establish a system to randomly check reports.

Issue 4 Exemptions from the Electronic Filing System Limit Public Access to Campaign Finance Information.

Key Recommendations

- Allow the Commission, by rule, to limit the no-computer electronic filing exemption.
- Remove the exemption from electronic filing for district judges and district attorneys.
- Remove the specific software requirements for the electronic filing system.

Issue 5 Improve the Clarity and Consistency of Public Information Provided by the Agency.

Key Recommendations

- Require the Commission to improve the quality and accessibility of public information about its enforcement process and activities.
- The Commission should develop and update lists of frequently asked questions.

Issue 6 Certain Requirements of the Financial Disclosure Program Waste Limited Resources.

Key Recommendations

- Remove the requirement that the agency mail forms to all filers.
- Allow the Commission to terminate the campaign treasurer appointments of inactive candidates.

Fiscal Implication Summary _____

This report contains recommendations that will have a fiscal impact to the State. These recommendations are discussed below.

- *Issue 2* - Allowing the staff to determine whether complaints are within the Commission's jurisdiction and eliminating the informal hearing stage from the complaint process will result in cost savings. The agency could save an estimated \$1,350 per year by sending fewer expensive, restricted delivery letters, and could save a portion of the \$7,000 cost per case referred to the State Office of Administrative Hearings.
- *Issue 3* - As a result of the recommendation to perform completeness checks on incoming reports, the Commission may need to request additional funds of \$33,500 for salary and benefits to hire a full-time clerical person.

- **Issue 6** - Removing the requirement that the agency mail blank forms to all financial disclosure filers, and allowing the Commission to terminate campaign treasure appointments of inactive candidates will result in a cost savings. The estimated \$10,000 to \$20,000 savings per year could be put to better use within the agency.

ISSUES / RECOMMENDATIONS

Issue 1

The Commission Lacks Adequate Authority to Conduct Investigations.

Summary

Key Recommendations

- Maintain the Commission's confidentiality provisions, but clarify them to allow staff to conduct investigations.
- Grant subpoena power for documents and other materials at the preliminary review stage.
- Allow the Commission to share confidential investigatory information with the State Commission on Judicial Conduct, and appropriate law enforcement agencies.

Key Findings

- The severity of the penalties for breach of confidentiality impairs the agency's ability to properly investigate complaints and differs from common state practices.
- Lack of subpoena power impairs early investigation of complaints.
- Inadequate complaint investigations reduce the public's confidence in the Commission's enforcement of ethics laws.

Conclusion

Severe penalties for breach of confidentiality and lack of appropriate investigatory tools prohibit the agency from performing adequate investigations of complaints of ethics violations. The Sunset review evaluated the level of investigation performed, the outcomes of complaint cases, and opinions from people involved in the complaint process. These recommendations would help the Commission to better protect the public and enforce ethics laws by more thoroughly investigating complaints.

Support

The Commission is authorized to investigate complaints, but must maintain strict confidentiality in the process.

- The agency's Enforcement Division processes and investigates complaints for presentation to the Commission. The Division consists of six attorneys and one legal assistant. The agency receives an average of 76 complaints per year.
- During the preliminary review of a complaint, Division staff may talk to and review information provided by the complainant, the respondent, and the respondent's counsel. At a preliminary review hearing, the respondent and counsel may present additional information to the Commission and rebut evidence collected by the staff. Witnesses, documents, and materials may not be subpoenaed during these initial stages. At the written request of at least six Commissioners, a subpoena may be issued in connection with the informal or formal hearings. The flowchart, *Complaint Process*, details the steps in the agency's complaint process.
- All information relating to the preliminary review, preliminary review hearing, and informal hearing is confidential except for agreed orders to settle complaints, which are public information. If a Commissioner or any member of the staff breaches this confidentiality, that person could be charged with a Class A misdemeanor, with a fine up to \$4,000 and up to a year in jail; and be subject to a civil penalty up to \$10,000, or the amount of damages incurred by the respondent, whichever is greater.
- On a vote of at least six Commissioners, the Commission is authorized to refer criminal violations to the appropriate prosecuting attorney. While the Commission has advisory jurisdiction over relevant Penal Code violations, including bribery, honoraria, gifts to public servants, and the misuse of government resources, it does not have enforcement jurisdiction over these violations. District attorneys have prosecutorial jurisdiction over Penal Code violations.

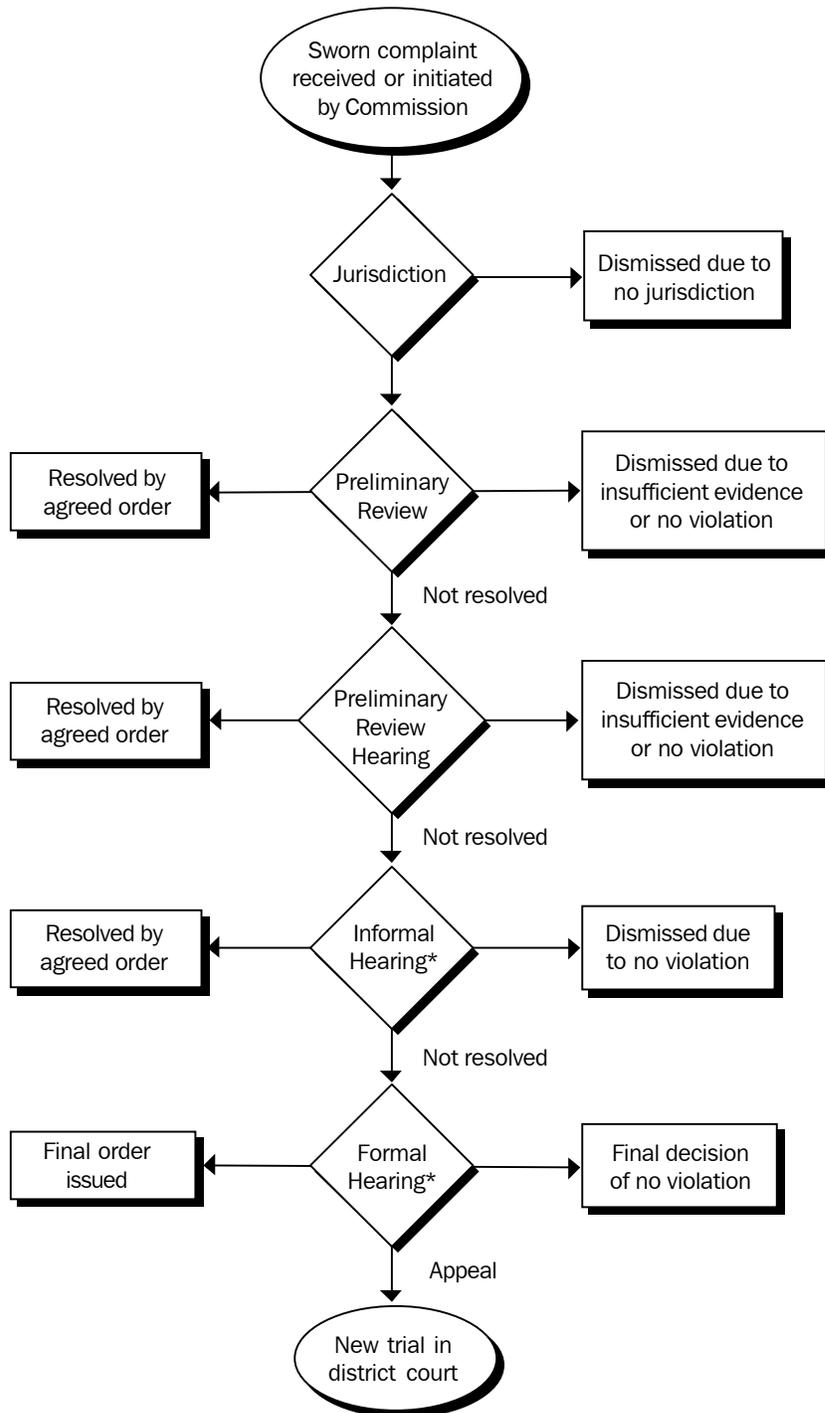
A breach in confidentiality can result in a Class A misdemeanor and a civil penalty of up to \$10,000.

The severity of the penalties for breach of confidentiality impairs the agency's ability to properly investigate complaints and differs from common state practices.

- The strict confidentiality requirements severely limit the amount of information available to the agency during its complaint investigations. Due to the confidentiality restrictions, Commission staff indicate that they may not interview witnesses or investigate beyond talking to the respondent, the respondent's counsel, and the complainant.¹ To interview witnesses and investigate further puts the staff at risk of violating confidentiality and subjecting staff to the criminal and civil penalties.

Due to confidentiality concerns, staff do not investigate beyond talking to the respondent and the complainant.

Texas Ethics Commission Complaint Process



* SOAH conducts the hearing and makes a recommendation to the Commission, which makes the final decision.

No other state agency has such a heavy burden on its staff to maintain confidentiality, yet it is still taken very seriously.

Allegations of Penal Code violations are not referred for criminal prosecution.

- Sunset staff's review of 80 randomly selected complaint case files from 1998 through 2000, showed that the Commission relied mainly on information provided by the complainant and the respondent. In some cases, the agency would request public documents from local filing authorities. Sunset staff found no evidence that the Commission staff talked to any third parties, although several complaints provided witness names or newspaper articles with additional investigatory leads.
- Most Texas state agency enforcement processes allow staff to thoroughly investigate complaints while still maintaining confidentiality. Research indicates that no other agency has such a heavy burden on its staff to maintain confidentiality, and yet those agencies still take the confidentiality of cases very seriously. For example, the State Commission on Judicial Conduct conducts complete investigations of allegations against judges, including interviewing witnesses, counsel, and anyone else they feel could offer information about the case, but keeps all materials related to the investigation confidential.
- Due to the confidentiality restrictions, the Commission does not share complaint information with other entities, such as the State Commission on Judicial Conduct, the State Bar, or law enforcement agencies. Although the statute authorizes the Commission to refer cases for criminal prosecution, it has not. The staff has expressed concern that it would be breaching confidentiality by making referrals.² During the review of 80 complaint files, Sunset staff found allegations of ten violations of the Penal Code. In most cases, a letter was simply sent to the complainant stating that the Commission does not have jurisdiction over these matters. In comparison, the Legislature recently allowed the State Commission on Judicial Conduct to share relevant confidential information with the State Bar and law enforcement agencies. The Ethics Commission does not have a similar provision in its statute.

Lack of subpoena power impairs early investigation of complaints.

- The Commission lacks sufficient authority to gather evidence through examination of subpoenaed documents and witnesses. This gap in authority hampers the staff's ability to thoroughly investigate a sworn complaint. As a result, the Commission resolves some cases without access to relevant information. Instead, the agency must rely on information provided by the complainant, the respondent, and any information that is publicly available. The table, *Complaints Resolved at Each Step in the Process 1992-2001*, shows how many complaints have been resolved at each stage in

Complaints Resolved at Each Step in the Process 1992 - 2001			
Received		757	100%
Dismissed due to noncompliance with filing requirements, no jurisdiction, or withdrawn by the complainant.		131	17%
Resolved at the preliminary review stage.	Dismissed	325	43%
	Settled	248	33%
Resolved at the preliminary review hearing stage.	Dismissed	2	<1%
	Settled	1	<1%
Resolved at the informal hearing stage.		0	0%
Resolved at the formal hearing stage.	Dismissed	0	0%
	Violation Found	1	<1%
Unresolved as of December 31, 2001.		49	6%

the process. The Commission has subpoena power only at the informal and formal hearing stages. Only one case has reached these stages since the Commission began operations.

Inadequate complaint investigations reduce the public's confidence in the Commission's enforcement of ethics laws.

- The Sunset review of the agency's complaint files found evidence that the Commission regularly dismisses complaints due to lack of evidence. Certainly, many of these dismissals are appropriate. However, without the ability to seek evidence other than from the complainant and respondent, the number of cases that staff could have pursued is unknown.

The Commission's enabling statute states that its purpose is to protect "the constitutional right of the governed to apply to their government for the redress of grievances" and "to ensure the public's confidence and trust in its government." However, if the Commission must dismiss complaints because it is unable to gather adequate evidence to prove or disprove an allegation, it is not effectively enforcing the state's ethics laws.

- In response to a random survey of complainants, respondents, and financial disclosure filers conducted by Sunset staff, more than half of the complainants who responded said they do not believe complaints are being investigated adequately (see Appendix D). Complainants also indicated that they felt the process was unfair to

The Commission is not effectively enforcing ethics laws when it routinely dismisses complaints due to inadequate evidence.

the complainant, staff would not accept additional information because of a lack of resources, and that confidentiality prevented useful investigations.³

Similar agencies have greater authority to investigate complaints.

- *Confidentiality* – The State Commission on Judicial Conduct, the Federal Election Commission, and the New York and Florida ethics commissions all conduct investigations that are confidential and maintain confidential complaint files, but none have specific confidentiality restrictions placed on the staff. At the California Fair Political Practices Commission, all complaint proceedings and information are public.
- *Subpoena power* – The State Commission on Judicial Conduct, the Federal Election Commission, and the New York, Florida, and California ethics commissions all have subpoena power from the beginning of the process.

Recommendation

Change in Statute

1.1 Maintain the Commission's confidentiality provisions, but clarify them to allow staff to conduct investigations.

This recommendation would allow the agency to investigate complaints while still maintaining confidentiality of all information related to the complaint. Staff would be able to talk to third parties, such as witnesses, without breaching confidentiality, as long as they make a good faith effort to appropriately investigate a complaint and maintain confidentiality. The confidentiality provisions would explicitly provide an exception allowing investigative work properly conducted by staff acting in good faith while performing Commission duties. Current confidentiality penalties would remain in place.

1.2 Grant subpoena power for documents and other materials at the preliminary review stage.

This change would authorize the Commission to issue subpoenas for materials and documents, with just cause, earlier in the complaint process. As a result, the staff could conduct more thorough investigations toward the beginning of the complaint process. Issuance of subpoenas for witness testimony would still only occur at the formal hearing stage. A vote of six Commissioners would still be required to issue a subpoena.

1.3 Allow the Commission to share confidential investigatory information with the State Commission on Judicial Conduct, and appropriate law enforcement agencies.

This recommendation would enable the Commission to assist in protecting the public by reporting to the appropriate law enforcement authority information alleging that a possible criminal violation

of ethics laws has been committed. The Commission would also be allowed to release information to the State Commission on Judicial Conduct regarding persons under investigation who are also judicial officers. Information could be shared with the appropriate entities at the Ethics Commission's own motion or at the request of the other agency. The confidentiality restrictions currently governing ethics complaints would transfer to the entity receiving the information.

Management Action

1.4 The Commission should refer allegations of Penal Code violations to the prosecuting attorney.

If the Commission believes an allegation of a Penal Code violation to be valid, it should refer the case to the appropriate prosecuting attorney. The Commission already has the authority to make the referrals, and would not pursue any additional investigation of the matter due to lack of jurisdiction.

Impact

The intent of these recommendations is to grant the Ethics Commission adequate authority to investigate sworn complaints and therefore better serve the public interest. Removing some of the restrictions the Commission and staff are currently under would allow them more investigatory freedom without compromising the credibility or integrity of the people they are investigating.

Fiscal Implication

These recommendations could result in minor costs related to serving subpoenas and court procedures if someone contests a subpoena. The number of subpoenas to be issued and contested is unknown, and therefore no exact cost can be estimated for this report.

¹ Interviews with Texas Ethics Commission, Enforcement Division staff (Austin, Texas, January 2002).

² Telephone interview with Texas Ethics Commission, Enforcement Division staff (Austin, Texas, February 2002).

³ Sunset survey of financial disclosure filers, complainants, and respondents about the Texas Ethics Commission, November 2001.

Issue 2

Remove Unnecessary Steps in the Commission's Complaint Process.

Summary

Key Recommendations

- Remove the requirement that the Commission must vote to accept jurisdiction of a complaint.
- Remove the extra informal hearing stage from the complaint process.

Key Findings

- The complaint process requires Commission involvement in preliminary reviews of complaints and includes three separate hearings.
- Requiring the Commission, rather than the staff, to formally accept jurisdiction is inefficient and differs from common state practices.
- The informal hearing stage is redundant, wasting both time and money.

Conclusion

The ethics complaint process is a multi-layered, multi-step procedure, constructed as a result of efforts to ensure overall fairness and to prevent misuse of the process. However, some steps of the process are unnecessary and result in wasted resources. Sunset staff identified ways to streamline the complaint process while fully maintaining the due process rights of the respondents. Streamlining the process will also reduce the time and expense required to resolve complaints.

Support

The complaint process requires Commission involvement in preliminary reviews of complaints and includes three separate hearings.

- When a person files a complaint with the agency, the staff determines whether the complaint complies with form requirements. The staff prepares a memo for the next Commission meeting, providing basic information about the complaint, including staff’s opinion whether it alleges a violation that is within the Commission’s jurisdiction to enforce. In a closed meeting, the Commission votes to accept or reject jurisdiction, after which the staff sends a letter notifying the complainant and respondent of the decision. The flowchart, *Complaint Process*, on page 7, details the steps in the agency’s complaint process.

Facts About Ethics Complaints

- The Commission may enforce all laws under its jurisdiction except laws in the Penal Code, such as bribery, improper influence, and abuse of office.
- Any individual who believes that a violation of one or more of the laws under the jurisdiction of the Commission has occurred may file a notarized, sworn complaint submitted on a prescribed form.
- The respondent named in a complaint has the opportunity to rebut the violation alleged in the complaint in writing at the preliminary review stage, and in person at the preliminary review hearing.
- In 2001, the agency received 75 complaints, 55 of which have been resolved.

Complaints not resolved by agreed orders go through a five-step administrative process.

- A complaint may go through several stages before reaching a resolution. First, the Commission meets to decide jurisdiction. Then the Commission meets again to review preliminary information about the complaint, and may decide to offer a settlement to the respondent or dismiss the complaint. If the complaint is not resolved at the preliminary review stage, it may continue on to a preliminary review hearing, an informal hearing, a formal hearing; and, finally, may be appealed to a district court for a new trial. The State Office of Administrative Hearings (SOAH) conducts both the informal and formal hearings.¹

Requiring the Commission, rather than the staff, to formally accept jurisdiction is inefficient and differs from common state practices.

- By requiring the Commission to formally accept jurisdiction by a record vote, the complaint process is lengthened unnecessarily. Currently, the staff reviews all complaints and recommends to the

Commission whether to accept jurisdiction. Determining jurisdiction is a simple exercise that the staff is capable of performing.

- The process requires expensive, yet superfluous, mailings. Under current law, the staff must send a notice of compliance to the complainant and respondent and then must wait until after the next Commission meeting to send a separate acceptance of jurisdiction letter. The agency is required to send all letters relating to sworn complaints by registered or certified mail, restricted delivery, return receipt requested, at an average cost of \$9.61 per letter.² Sending two notices by such expensive means is a waste of time and money.
- Most Texas state agency enforcement processes allow staff to make an initial determination whether a complaint is within that agency's authority to resolve. In this manner, a board or commission can hear evidence for the first time when and if a case reaches a hearing.

The informal hearing stage is redundant, wasting both time and money.

- The informal hearing stage offers little new information about a case, and therefore does not give the respondent any additional due process. Respondents may present additional evidence at the preliminary review hearing. If dissatisfied, a respondent could request an informal hearing before SOAH, followed by a formal hearing before SOAH. The only substantial differences between the informal and formal hearings are the evidence standard and the slight difference in subpoena power.³
- In the history of the agency, only one case has made it past the preliminary review hearing stage. The case went through the informal stage, without a decision, to the formal stage. SOAH charged the agency \$7,000 to conduct these hearings.⁴ The Commission delegated the hearing of these last two stages to SOAH because the Commission had already heard the available evidence twice before.

Respondents can force cases to go through two separate hearings before the State's administrative hearings office.

Jurisdiction and hearing processes are considerably simpler at similar agencies.

- *Jurisdiction* – At the State Commission on Judicial Conduct; the Office of the Attorney General; and the California, New York, Florida, and Georgia ethics commissions, staff determines jurisdiction and begins a preliminary investigation of a complaint before taking the issue to the Commission or other decisionmaking body.
- *Hearings* – At the State Commission on Judicial Conduct; and the California, New York, Florida, and Georgia ethics commissions,

the hearing process includes only one informal and one formal hearing. The Office of the Attorney General does not conduct hearings in its consumer complaint process.

Recommendation

Change in Statute

2.1 Remove the requirement that the Commission must vote to accept jurisdiction of a complaint.

This recommendation would allow the staff to determine jurisdiction, and would therefore expedite the process at the outset. The Commission's staff should send one letter to a complainant and respondent about compliance with form requirements and jurisdiction. At this point, the staff would begin an investigation of a jurisdictional complaint.

2.2 Remove the extra informal hearing stage from the complaint process.

This recommendation would streamline the complaint process by removing a superfluous step. The preliminary review hearing stage would act as the only informal hearing. All powers and duties authorized at the informal hearing would be transferred to the preliminary review hearing, except for the authority to subpoena documents and materials, which would be transferred to the preliminary review stage as discussed in Issue 1. The simplified complaint process would still allow the respondent due process because of the opportunities that remain, at the preliminary review hearing and formal hearing, to present a case before the Commission and to respond to evidence collected by the staff.

Impact

The intent of these recommendations is to streamline the complaint process for all parties involved, including the Commission's staff. The recommendations will continue to allow the State to provide a fair complaint resolution process and maintain due process for the respondent, while reducing the cost and time necessary to resolve complaints.

Fiscal Implication

Allowing the staff to determine jurisdiction and notify the complainant and respondent of compliance and jurisdiction in one letter would result in savings to the State by reducing the number of expensive, restricted delivery letters that would need to be sent. While not significant, these savings, estimated to be about \$1,350 per year, would allow the agency to better focus its resources on more productive parts of the complaint investigation process.

Eliminating the informal hearing and transferring its powers to the preliminary review hearing would save a portion of the \$7,000 cost per case referred to SOAH for a hearing. A streamlined hearing process would also save staff time because the Commission's attorneys and other staff would not have to prepare for the extra informal hearing stage.

¹ The Commission is not required to use SOAH at these stages, but chooses to so that the Commissioners will not be hearing the same information that was presented to them at the preliminary review and preliminary review hearing.

² Average cost per letter determined from data submitted by the Texas Ethics Commission to Sunset staff, December 31, 2001.

³ At the informal hearing stage, the Commission must use a credible evidence standard and may subpoena documents and materials. At the formal hearing stage, the Commission must use a clear and convincing evidence standard and may subpoena documents, materials, and witnesses.

⁴ Interview with Texas Ethics Commission, Enforcement Division staff (Austin, Texas, October 9, 2001).

Issue 3

Lack of Complaint Deadlines and Incomplete Review of Filings Prevent the Commission from Fully Carrying Out Its Duties.

Summary

Key Recommendations

- Require the Commission to set timelines for resolving complaints.
- The Commission should establish a system to randomly check reports.

Key Findings

- The administration of complaints allows for extensive time delays.
- The administration of the financial disclosure filing process does not help prevent incomplete filings.

Conclusion

The Commission's statutes and rules do not provide proper guidelines for timely resolution of complaints, or for ensuring complete and accurate financial reporting. The Sunset staff reviewed complaint files for the length of time to resolution and interviewed staff about deadlines and compliance checks. The review showed that some complaints linger for over a year, and that campaign reports receive little review for completeness or accuracy. These recommendations would help the Commission resolve complaints in a timely manner, and encourage filers to file complete financial disclosure reports.

Support

The administration of complaints allows for extensive time delays.

- Although the Commission's enabling statute imposes several deadlines for notifying the complainant and respondent throughout the sworn complaint process, it has no deadlines for the investigation or forward movement of a complaint. The Commission's current strategic plan includes performance measures to respond quickly to sworn complaints, and the staff tracks how many complaints are resolved within 180 days.¹ However, complaints can take many months or even years to resolve. Of the 238 sworn complaints filed in calendar years 1998 through 2000, 81 took more than 180 days to resolve, 58 took more than a year to resolve, and 20 remain unresolved. Of these unresolved complaints, six remain unresolved because the agency has not been able to contact the respondent.²
- The Commission has no way to compel a response from a respondent and is hesitant to take action on a complaint without this response. As a result, a respondent can delay resolving a complaint simply by not responding to the agency's requests for information. The agency sends letters to the respondent requesting information, but does not set a deadline for a response.

Sunset staff discovered in its review of complaint files that some respondents never replied to repeated requests by the agency to agree to a proposed settlement. The agency sends several letters to respondents who do not reply, one respondent being sent letters regularly over a period of more than two years, saying that if no response was received, the Commission would schedule a hearing. No hearings were scheduled for these respondents, and the agency did not pursue the matter in any other way than by sending more letters.

The agency has identified these delays as a problem, and believes it may issue a default judgement if a respondent does not reply. However, this power is not defined by any time limit for receiving a response from a respondent or for issuing such an order.

- In response to a random survey of complainants, respondents, and financial disclosure filers conducted by Sunset staff, many complainants felt that the complaint process was very slow and therefore unfair.³
- Other Texas state agencies and other state and federal ethics commissions follow and achieve strict timelines for complaint resolution. The State Commission on Judicial Conduct has a performance measure to resolve complaints in six months, and the

Although the agency tries to resolve complaints within 180 days, many take more than a year to resolve.

One respondent delayed resolution for more than two years by simply not responding to the agency's request for information.

average time to resolution is less than four and a half months. It has an internal timeline of 30 days to complete an investigation of a complaint. The Office of the Attorney General resolves all consumer complaints in 45 to 60 days. The Federal Election Commission and the New York State Ethics Commission both give respondents 15 days to respond to a complaint before advancing to the next stage, and the California Fair Political Practices Commission gives the respondent 21 days before advancing to the next stage.

The administration of the financial disclosure filing process does not help prevent incomplete filings.

- The agency does not thoroughly check incoming financial disclosure reports for completeness. The staff only regularly checks the cover and signature pages of a report for basic information about the filer's total contributions and expenditures. The staff does not check the attached pages to make sure all required information is provided, such as donor names and addresses and purposes for expenditures. Compliance checks are especially crucial on reports that must be filed eight days before an election. Judging by the severe penalties imposed on late eight day reports, as discussed in the textbox, *Penalties for Eight Day Reports*, the Legislature considers these reports very important to public disclosure. However, the agency says it does not have the resources to check reports for further compliance.⁴
- Since the agency does not thoroughly check incoming reports, it only becomes aware of incomplete reports if a filer submits a corrected report or if someone files a complaint. Complaints are regularly filed alleging that a respondent has submitted an incomplete report. The staff stated it would not know about missing information and be able to assess a penalty unless a filer submits a correction or someone files a complaint.⁵

The staff does not check financial disclosure reports for all required information.

Penalties for Eight Day Reports

A person who files a late eight day before election report, or corrects a mistake on that report after the deadline, will be fined \$100 for each day the report or correction is late, up to a \$10,000 maximum.

If the agency does not regularly take action against filers who submit incomplete reports, filers have little incentive to ensure they provide all of the required information. Texas' campaign finance and financial disclosure laws are based on full disclosure of financial information. Without complete information, the public cannot accurately assess the accountability of candidates and elected officials.

- The need to check incoming reports for compliance would be diminished if more filers used the agency's electronic filing system. This system alerts filers if their reports do not contain all required information before submission. However, more than half of all reports required to be filed electronically were filed on paper in calendar year 2001.⁶ This is addressed in Issue 4.

- Performing compliance checks of financial disclosure reports is a standard and recommended practice. The New York and California ethics commissions require that all incoming reports be checked for deficiencies. The Council on Governmental Ethics Laws' Model Law for Campaign Finance, Ethics, and Lobby Registration recommends that states examine each statement and report received and determine whether it is complete and in compliance.

Recommendation

Change in Statute

3.1 Require the Commission to set timelines for resolving complaints.

This recommendation would authorize the Commission to set reasonable time limits for the resolution of complaints. This recommendation would require the Commission to adopt rules governing how and when it will enforce timely resolution. These rules should set the maximum time allowed for a respondent to reply to correspondence from the Commission. These rules would also set forth a process to determine Commission action based on the seriousness of the violation and whether the respondent had violated previous ethics laws. For example, a first time offender who does not respond to a settlement offer may merit a hearing, whereas a multiple offender who does not appear at a hearing should receive a default order that would be enforced by the Attorney General if unpaid.

Management Action

3.2 The Commission should establish a system to randomly check reports.

Performing quick completeness checks on randomly selected incoming paper disclosure reports should not take much of the staff's time and would help ensure compliance with ethics laws. The staff could phase in a system of checking that takes into account the greatest risk to the public's interest. For example, the eight day report is considered to be the most crucial for disclosure accountability, therefore the first phase of a random facial compliance checking system could consider only these reports. Once that system is in place, the staff could randomly check 30 day before election reports and, farther down the line, non-election year reports. The Commission should determine what percentage of reports should be checked at regular intervals. Discovery and enforcement of incomplete reports by the staff at the initial receipt of the report would encourage filers to file complete and accurate reports the first time, and would ensure better disclosure of financial information to the public.

Impact

The intent of these recommendations is to improve the administration of the Commission's enforcement duties, and therefore better protect the public's interests. By setting deadlines for a response, the Commission would prevent the delay of a complaint resolution by the respondent, and thus help ensure a more efficient and timely administration of justice for the public. Also, establishing a system to randomly check reports could act as a deterrent to filers who file incomplete reports and would ensure that the public has access to more complete campaign finance information.

Fiscal Implication

Recommendation 3.2, to establish an approach to randomly check reports, may require hiring a clerical person to perform completeness checks on incoming reports. This person would be available to perform other Commission duties at times when the volume of reports is low. Additional funds of \$33,500 for salary and benefits would be required to hire a full-time employee for this purpose.

¹ Texas Ethics Commission, *Agency Strategy Plan For the Fiscal Years 2001-05 Period* (Austin, Texas, June 1, 2000), p. 11.

² Memorandum from the Texas Ethics Commission to Sunset staff, February 5, 2002.

³ Sunset survey of financial disclosure filers, complainants, respondents, and interest groups about the Texas Ethics Commission, November 2001. See Appendix D.

⁴ Telephone interview with Texas Ethics Commission staff (Austin, Texas, February 12, 2002).

⁵ Interviews with Texas Ethics Commission staff (Austin, Texas, January 2002).

⁶ Information on the number of reports submitted electronically and on paper provided by the Texas Ethic Commission in response to Sunset staff's request for information, February 7, 2002.

Issue 4

Exemptions from the Electronic Filing System Limit Public Access to Campaign Finance Information.

Summary

Key Recommendations

- Allow the Commission, by rule, to limit the no-computer electronic filing exemption.
- Remove the exemption from electronic filing for district judges and district attorneys.
- Remove the specific software requirements for the electronic filing system.

Key Findings

- The exemptions from the electronic filing requirement result in inconsistency of information available to the public, encourage paper filing, and create an administrative burden for the agency.
- Specific software requirements could result in needless expense on future system updates.
- Certain local judicial candidates and officeholders and lobbyists are not required to use the electronic filing system.

Conclusion

The State made a large investment in the Commission's electronic filing system to increase public access to campaign finance information and to make filing easier. Yet, due to exemptions, more than half of all potential electronic filers still do not use the system. Further, requirements in statute limit the agency's flexibility in upgrading the system. Sunset staff identified ways to increase electronic filing of campaign finance information, and to allow the agency to efficiently update the system.

Support

The Legislature recently created an electronic filing system for most candidates, officeholders, and political committees.

- The Ethics Commission is a repository for campaign finance information. In 1999, the Legislature required most candidates, officeholders, and political committees to file their campaign finance reports electronically; and directed the Commission to create an electronic filing system. The Legislature appropriated \$800,000 to create the electronic filing system and complete a project that would allow all paper reports to be stored electronically, for archival purposes.
- As required by statute, the software must be easy for people with basic computer skills to use and must function on multiple operating systems, including Windows and Macintosh. To distribute the software, the agency mails a compact disk to filers to install the filing system on their computers. While filers may also download the software from the Web site, the agency indicates that the process could take nearly two hours and the downloaded software is not as user-friendly as the compact disk software.

Filers who do not use computers to keep current campaign finance records are exempt from the electronic filing system.

Filers send completed reports to the agency via the Internet, a modem, or by mail on a diskette. The agency posts electronically filed finance reports on the Internet, where the public may search the documents. The first reports using this system were filed in July 2000.

- The Legislature provided two exemptions from the electronic filing requirement. A filer can submit a report on paper if an affidavit is provided stating that neither the filer, nor a person acting on the filer's behalf, uses computer equipment to keep current records of political contributions, expenditures, or donors. The statute also provides an exemption from electronic filing if a candidate does not accept or spend more than \$20,000 per year. The Commission will waive late penalties in certain circumstances, such as if a filer has technical difficulties with the system that the agency cannot solve.¹

The exemptions from the electronic filing requirement result in inconsistency of information available to the public, encourage paper filing, and create an administrative burden for the agency.

- The amount of campaign finance information available to the public on the agency's Web site varies depending on whether a filer submitted a report on paper or electronically. When the agency receives reports via the electronic filing system, it posts the reports

directly to the Internet so the public can see the entire report. When the agency receives paper reports, it scans them to produce a digital image for archival purposes and enters the total amounts of contributions and expenditures into a database. Only this database of total amounts is available to the public on the Internet. Although the agency scans paper filed reports, it does not make these images available to the public on its Web site because they contain donor addresses that cannot be posted on the Internet.² The electronic filing system automatically blocks these addresses before reports are posted on the Internet.

The public has full Internet access to electronically filed reports, but not paper reports.

- The difference in availability of information on the agency’s Web site encourages filers to submit their reports on paper, rather than using the electronic filing system. Paper filers may have a competitive advantage over their political opponents because less of their campaign contribution and expenditure information is accessible via the Internet than if they had filed electronically.
- The State has spent a significant amount of money on the electronic filing system, yet more than half of all required filers still file on paper. The exemptions from electronic filing encourage paper filing by allowing filers to easily opt out of the system. A substantial number of filers requested exemptions and filed on paper in 2001, and for the recent semiannual reporting deadline. The table, *Electronic vs. Paper Filers*, compares the number of people who filed electronically to the number who filed on paper.

Electronic vs. Paper Filers ³				
	Calendar Year 2001		January 15, 2002	
Required to File Electronically	2,185		2,570*	
Filed Electronically	965	44%	797	31%
Filed on Paper	1,220	56%	1,373	53%

* As of February 8, 2002, 400 filers, or 16 percent, had not filed their campaign finance reports with the agency.

- The dual systems, paper and electronic, create an administrative burden on the agency. For example, some paper filers submit a sworn affidavit claiming either the \$20,000 or the no-computer exemption. Other paper filers are simply exempt from electronic filing, in which case the agency must determine whether the filer is eligible for the exemption.⁴ The agency must also scan paper reports and enter information from them into a database.

The electronic filing system does not require any of these additional administrative steps. The electronic system has another administrative benefit in that it will tell filers whether their reports are properly filled in before submission to the agency. As a result, electronically filed reports are more likely to be complete than those filed on paper.

*Few filers request
Macintosh software.*

Specific software requirements could result in needless expense on future system updates.

- The statute creating the electronic filing system requires the agency to distribute software to users and to accommodate both Windows and Macintosh users. As a result, the agency incurs distribution costs by mailing software to filers. Few filers use the electronic filing software created for Macintosh users. The agency has only received 21 requests for copies of the Macintosh filing software since the system was created in 2000.⁵
- Future changes to campaign finance laws, such as what information must be reported, could require the agency to make costly modifications to the current system. If the agency must update the electronic filing software to accommodate these changes in law, it will incur extra expense for Macintosh compatible software development, additional technical support, and distribution of the new software to filers.
- The statutory restrictions on use of a software-based filing system limit the agency's ability to efficiently handle future changes in technology. Innovations in personal computer hardware and software require the agency to increase technical support and make modifications to the current system. For example, the two most recent Windows operating systems will not run the electronic filing system without additional software to read the computer language the system is written in.⁶ As more software compatibility issues arise, the cost of providing technical support will increase.

Certain local judicial candidates and officeholders and lobbyists are not required to use the electronic filing system.

*Lobbyists cannot use the
existing electronic filing
system and must file
reports on paper.*

- In 1999, when the Legislature created the electronic filing system, it also required district judges to begin filing their campaign contributions and expenditures with the Ethics Commission. However, the Legislature exempted them from the electronic filing system. Multi-county district attorneys are also exempted from electronic filing, although they have been filing with the Commission since before 1999.⁷
- Lobbyists must submit lobby activity reports, detailing their expenditures and clients, to the agency on an annual or monthly basis. The type of information provided in these reports varies significantly from that in the campaign finance reports filed by candidates, officeholders, and political committees. As a result, lobbyists cannot use the existing electronic filing system and must file their reports on paper. The agency receives reports from approximately 1,600 lobbyists per year. The public can access

summary information about a lobbyist's clients and expenditures on the Internet, but must go to the agency's offices to view full reports.

Other Texas agencies and the federal government have electronic filing systems that do not require specific software.

- The Texas Legislature demonstrated its support for innovation in government services when it created the Texas Online Project in 2001. The purpose of this project is to create a common electronic infrastructure through which state agencies and local governments can electronically receive documents and required payments from the public.

The Texas Department of Licensing and Regulation participated in the project by putting several occupational and professional licensing services on the Texas Online Web site.⁸ A variety of other services are currently available on the Texas Online Web site, including driver license and vehicle registration renewal and workers' compensation coverage verification. The public may access all of these services by filling out online forms. No special software is required.

- The Texas Comptroller of Public Accounts maintains two online programs that do not require the filer to use a particular software to fill out forms on its Web site. All Texas businesses, regardless of size, may file sales tax returns online with the Comptroller's WebFile system. Taxpayers complete an online sales tax return, and the computer automatically verifies the completeness of the report and identifies potential errors.

The Comptroller also offers an online job application system. Applicants fill out a registration form and obtain a password. Applicants may then apply to various jobs with the Comptroller and access their records at any time.⁹

- A portion of the Federal Election Commission's electronic campaign finance reporting system is available online. Filers use the Internet browser software provided on the Web site to file their 48 hour reports electronically. The Commission requires political committees and other persons to file electronically if they have aggregate contributions or expenditures exceeding \$50,000 in a calendar year. The Commission does not have an exemption from electronic filing for those who do not use computers.

The Federal Election Commission does not exempt those who do not use computers from electronic filing.

Recommendation

Change in Statute

4.1 Allow the Commission, by rule, to limit the no-computer electronic filing exemption.

This recommendation would provide statutory authority for the Ethics Commission to establish, by rule, a dollar limit of contributions or expenditures that a filer could not exceed and still claim the no-computer exemption from electronic filing. To develop these rules, the Commission would consider trends in the amounts of contributions and expenditures on the reports filed using the no-computer exemption. For example, if the Commission saw a significant number of reports with more than \$50,000 in activity that were filed using the no-computer exemption, it could adopt a rule allowing only filers with less than \$50,000 in activity to claim the exemption. As a result, more filers would use the electronic filing system while still allowing filers with few contributions or expenditures to claim the exemption.

4.2 Remove the exemption from electronic filing for district judges and district attorneys.

This recommendation would expand the use of the electronic filing system to certain local judicial candidates and officeholders who already file on paper with the Ethics Commission. These filers may access the same electronic filing exemptions discussed above. This recommendation will also increase information available to the public on the Internet, and expand the use of the electronic filing system.

4.3 Remove the specific software requirements for the electronic filing system.

By removing the requirements that the agency distribute software to users and accommodate multiple operating systems, the electronic filing system would be easier to update in the future. The Commission would be allowed to consider a completely online electronic filing system, and not be statutorily required to distribute software to filers. The agency would also be allowed to create a more efficient system while still accommodating various operating systems. In the future, when the system requires updating due to technological innovations or changes in campaign finance laws, the Commission could consider all available options rather than be required to meet certain specifications. This flexibility will help the system become more efficient and less expensive to administer and update.

Management Action

4.4 The Commission should display all information, which is not prohibited by law, from paper filed campaign finance reports on its Web site.

The Commission should examine ways to block out donor address information on the scanned images of campaign finance reports that are filed on paper so that it can post these reports to its Web site. This recommendation would ensure an equitable display of campaign finance information to the public and remove a disincentive to file electronically. While these scanned documents would not be searchable, as electronically filed documents are, they would be visible to the public.

4.5 The Commission should explore low cost methods for developing an electronic filing system for lobbyists.

The Commission should explore ways to allow lobbyists to file electronically, without creating an expensive software-based system like the current campaign finance reporting system. Allowing lobbyists to file electronically will not only make filing easier for lobbyists, it will also allow greater public access to lobby information. To accomplish this task, the agency could seek out opportunities to work with other agencies or states that have experience in creating electronic services, possibly using an interagency contract for the assistance.

Impact

The intent of these recommendations is to encourage more efficient electronic filing of campaign finance information, and more effective use of the information submitted. Through the improved use of existing resources, the Commission can make the electronic filing system faster and easier to administer and update, and make more information accessible to the public.

Fiscal Implication

These recommendations will not result in a fiscal impact to the State. Removing the exemption from electronic filing for district judges and district attorneys will not result in additional cost because these filers will use the existing campaign finance reporting system. Removing the specific software requirements for the electronic filing system will save money on future system updates, but such savings cannot be quantified.

¹ Interview with Texas Ethics Commission, Computer Services Division staff (Austin, Texas, February 7, 2002).

² Telephone interview with Texas Ethics Commission, Enforcement Division staff (Austin, Texas, March 5, 2002).

³ Information on the number of reports submitted electronically and on paper provided by the Texas Ethics Commission in response to Sunset staff's request for information, February 7 and 8, 2002.

⁴ Interview with Texas Ethics Commission, Computer Services Division staff (Austin, Texas, February 7, 2002).

⁵ Memorandum from the Texas Ethics Commission to Sunset staff, January 2, 2002.

⁶ Interview with Texas Ethics Commission, Computer Services Division staff (Austin, Texas, February 7, 2002).

⁷ Multi-county statutory county court judges are also exempted from electronic filing. While the Legislature created the potential for multi-county statutory county court judicial offices, none have been created to date.

⁸ For more information about the Texas Online Project, visit www.texasonline.com.

⁹ For more information about the Comptroller's online services, visit www.window.state.tx.us.

Issue 5

Improve the Clarity and Consistency of Public Information Provided by the Agency.

Summary

Key Recommendations

- Require the Commission to improve the quality and accessibility of public information about its enforcement process and activities.
- The Commission should develop and update lists of frequently asked questions.

Key Findings

- Limited information results in a lack of public understanding about how the agency handles complaints.
- Limited information also results in a lack of public knowledge about what the Commission accomplishes through its enforcement activities.
- The agency's legal staff spends a substantial portion of its time answering telephone inquiries.
- The agency does not use an established precedents manual to provide informal advice like other entities.

Conclusion

Without clear and simple published information about the Commission's processes and activities, the general public is left to interpret ethics laws itself or make numerous calls to the agency for personalized informal advice. The Sunset review found that information about the Commission is not easy for the average person to understand and is not widely available. Sunset staff identified ways for the agency to provide clearer and more consistent information to the public. These recommendations should help the public better understand ethics laws and how the agency administers them.

Support

The agency provides information about the laws it administers in a variety of ways.

- The agency helps the public understand the state's complex ethics laws by providing personalized informal advice. The public can use a toll-free phone number, e-mail, or regular mail to ask questions about advisory opinions or Commission statutes and rules. The public can also use these avenues to get technical support in filing disclosure statements. In fiscal year 2001, the agency received approximately 89,000 telephone inquiries, 150 e-mail inquiries, and 1,000 inquiries by mail.
- The agency also provides public information in several more generalized forms. The agency's Web site includes copies of financial disclosure forms, instructions for completing those forms; guides to campaign finance laws; filing schedules; and the Commission's statutes, rules, and advisory opinions. The agency also publishes brochures on various campaign finance topics, and provides ethics training on request.

The agency received 89,000 telephone inquiries last fiscal year.

Limited information results in a lack of public understanding about how the agency handles complaints.

- Although the Commission's complaint process is complex, the agency does not provide the public with a clear and simple explanation of the process or what to expect after filing a complaint. The only public information the agency produces about the process consists of a brief description in a brochure and on the agency's Web site. This description is provided in the textbox, *Sworn Complaint Information*. For more detailed information about the process, the public must do its own interpretation of the Commission's laws and rules.
- Filing a complaint with the agency is also a complex process. To file a complaint, the public must call the agency to request the prescribed complaint form. The agency will then mail a potential complainant a packet consisting of the form;

Sworn Complaint Information

Through a brochure and its Web site, the agency provides information to the public about its complaint process. This information consists of a listing of the statutes over which the Commission has jurisdiction and the following description of the process.

"A sworn complaint sets in motion a process which includes both formal and informal hearings, and which permits resolution of the matter at several points in the process. The Commission may ultimately resolve a sworn complaint by dismissal, referral for criminal prosecution, or imposition of a civil penalty. A final decision of the Commission in a sworn complaint process may be appealed to a district court for a trial de novo. During most stages of the process the Commissioners and Commission staff are required to keep the complaint confidential."

the Commission's rules governing the complaint process; the laws governing political contributions, expenditures, and advertising; the brochure mentioned above; and a statement of the respondent's rights. While the packet contains important information, its legal tone may discourage some people from filing complaints. The potential complainant must interpret these legal documents correctly to ensure filing of a valid, jurisdictional complaint.

- Other entities that handle complaints from the public provide clear and simple information about their processes. For example, as a result of Sunset legislation in 2001, the State Commission on Judicial Conduct provides a basic description of its responsibilities including what it can and cannot do; descriptions of unacceptable behaviors and each type of consequence; and a basic flowchart depicting the steps in the complaint process. The Judicial Conduct Commission also provides an information sheet that states in plain language who the Commission has jurisdiction over, what is expected in the complaint, confidentiality issues, and a simple, non-mandatory form.

Ethics commissions in other states, such as California, Florida, Missouri, Pennsylvania, South Carolina, and Minnesota, make their complaint forms available online. Many of these states also provide plain-language explanations of the process and answer standard questions on their Web sites.

Limited information also results in a lack of public knowledge about what the Commission accomplishes through its enforcement activities.

- The public has little opportunity to learn about the Commission's enforcement actions because it does not make information about the complaints it settles widely available. After investigating a complaint and finding a violation of an ethics law, the Commission will offer a settlement to the respondent through an agreed order. If the violation was not merely technical, the agreed order becomes public information. However, to see these agreed orders, the public must request a copy from the agency. Often, the public has no knowledge that a complaint was filed in the first place because that information is not public. As a result, the public may not know to ask the agency for information about agreed orders. Without widely available information about the Commission's findings of violations and the penalties it assesses, the public has no way of knowing how the Commission is enforcing ethics laws through the sworn complaint process.
- Other agencies with similar functions make their complaint settlements more widely available. For example, as a result of Sunset legislation in 2001, the Judicial Conduct Commission must publish its judicial misconduct sanctions in the *Texas Bar Journal*. Also,

The public has difficulty knowing how the Commission is enforcing ethics laws without more widely available information.

other state ethics agencies publish information about complaint settlements on their Web sites. California, Indiana, Pennsylvania, New York, and South Carolina provide summaries of their settlements online. Minnesota and Florida display the actual settlement documents on their Web sites.

The agency's legal staff spends a substantial portion of its time answering telephone inquiries.

- The agency's legal staff, which is concentrated in the Enforcement Division, consists of the General Counsel and five staff attorneys. In an average day, the General Counsel spends 20 percent of her time, three attorneys spend up to half their time, and two attorneys spend 70 percent or more of their time answering telephone inquiries.¹
- Depending on the time of year, many of the questions the legal staff receives concern the same or similar subject matter.² Near filing deadlines, for example, many filers have questions about how to fill out their forms correctly. After elections, questions about sworn complaints peak. During the legislative session, questions often concern whether certain gifts or activities are permissible, or how new legislation will affect filing requirements. To answer each question, the legal staff must individually refer to laws and rules or consult with more experienced staff.

The agency does not use an established precedents manual to provide informal advice like other entities.

- Despite the significant amount of informal advice the agency provides on a daily basis, it does not formally analyze the types of questions it receives or the answers it gives most frequently. While the legal staff bases its informal advice on the precedents set in statute, rule, and advisory opinions, it does not document standard answers to common questions. To remain useful to the public, the information disseminated by the agency must be consistent between phone calls and over time. Staff turnover or differences in staff interpretation could result in a lapse of institutional knowledge or inconsistency in answers.
- Other entities have systems for tracking the precedents they set through their decisions or informal advice. For example, the Texas Workforce Commission uses a precedents manual to ensure consistency among its unemployment insurance appeal decisions. Before creating the manual, the Commissioners made decisions on a case-by-case basis without referring to how they ruled on similar cases in the past. The agency's legal staff also uses the manual to help settle cases before an appeal to the Commission. The document is regularly updated, and an indexed version is available on the agency's Web site.

Precedents manuals are a commonly used device to ensure consistent answers.

The legal staff at the Texas Association of School Boards also uses a program to record staff answers to legal inquiries from its members. The system has become an essential tool for the legal staff who record the name, phone number, main topic, subtopic, and notes for each legal question. The system cuts down time spent on the phone, and researching answers.³ While printouts of the reports are possible, the staff uses the system as a paperless list of frequently asked questions and precedents manual.

Recommendation

Change in Statute

5.1 Require the Commission to improve the quality and accessibility of public information about its enforcement process and activities.

This recommendation will improve the quality and accessibility of public information through the following changes.

- Require the Commission to put its complaint form on its Web site.
- Require the Commission to develop plain-language materials describing what to expect during the complaint and enforcement process.
- Require the Commission to inform the public of agreed orders through its Web site.

The recommendations to put the complaint form on the Commission's Web site and to require plain-language descriptions of the enforcement process will assist complaint filers to more easily and properly prepare complaints. The information should include, at a minimum, a description of the complainant's responsibilities, the agency's duties, the types of sanctions issued by the Commission, and a basic flowchart of the process. The agency should add the plain-language material to its standard packet for sworn complaint filers and post these materials on its Web site.

The recommendation to publish agreed orders on its Web site as soon as possible after resolution would give filers and the public a clearer understanding of the penalties for ethics violations. The Commission should decide if the actual agreed orders or summaries of the agreed orders will be posted.

Management Action

5.2 The Commission should develop and update lists of frequently asked questions.

The Commission should create and update lists of frequently asked questions about the complaint process, financial disclosure reporting, campaign finance laws, and other standard questions. The Commission should answer specific questions and provide examples of common situations, such as circumstances when expense-paid trips to conferences are appropriate, or how to report mortgage or stock information on personal financial statements. This information should be posted on its

Web site. The recommendation would improve public access to answers to common questions. The legal staff should use the frequently asked questions document as the starting point for a precedent manual to better ensure consistency of answers. The availability of answers via the Web site and the use of a precedents manual by legal staff, should significantly reduce time spent answering repetitive questions by telephone. This increased availability of legal staff time will provide time to perform any additional investigative work resulting from Issue 1 of this report.

5.3 The Commission should create a precedents manual.

The Commission should create a resource for the legal staff in answering telephone, e-mail, and other informal inquiries. The agency may use the frequently asked questions documents as a starting point, and consider how other organizations create this tool to assist legal staff in answering questions quickly and consistently.

Impact

Providing more information about the complaint process to the public will assist the agency in enforcing the laws under the Commission's jurisdiction. Also, the creation of documents to track frequently asked questions and answers will promote consistency of information from legal staff while potentially saving time and money.

Fiscal Implication

These recommendations will not result in a fiscal impact to the State. The Commission could experience time savings from the frequently asked questions lists and precedents manual. Any potential savings will allow legal staff more time for other Commission activities, particularly enforcement. While requiring some initial staff time, the agency should create the plain-language information with existing staff resources.

¹ Memorandum from the Texas Ethics Commission to Sunset staff, December 31, 2001.

² Telephone interview with Texas Ethics Commission, General Counsel (Austin, Texas, February 8, 2002).

³ Telephone interview with Texas Association of School Boards, Legal Division staff (Austin, Texas, January 15, 2002).

Issue 6

Certain Requirements of the Financial Disclosure Program Waste Limited Resources.

Summary

Key Recommendations

- Remove the requirement that the agency mail forms to all filers.
- Allow the Commission to terminate the campaign treasurer appointments of inactive candidates.

Key Findings

- The agency has extensive notice and process requirements for financial disclosure reporting.
- Mailing blank forms to all filers, even though they are easily accessible, unnecessarily wastes limited resources.
- Continuing to notify inactive candidates of filing deadlines and assessing late fines also wastes resources.

Conclusion

Ethics statutes place wasteful administrative requirements on the Commission's financial disclosure program. The Sunset review compared the cost of these requirements to the benefit they provide to those who must file financial information with the agency, and the public who uses that information. These administrative burdens can be eliminated without sacrificing customer service. The money saved could be put to better use within the agency.

Support

The agency has extensive notice and process requirements for financial disclosure reporting.

- Ethics statutes require the agency to notify all filers of impending filing deadlines by mail with a copy of the necessary form. The agency must mail one copy of the campaign finance report form for each of the semiannual filing deadlines to candidates, officeholders, and political committees. The agency must also mail two copies of the personal financial statement form to the candidates, officeholders, and state agency officials who are required to file annually. With each mailing, the agency also sends instructions for completing the forms. For an average filing deadline, the agency mails between 2,500 and 3,000 packets of information.

The agency does not send blank forms to filers who use the electronic filing system. Instead, a copy of the filing software, which contains the necessary forms, is sent to all new system users. The agency notifies electronic filers of impending deadlines by mail.

- Candidates running for elected office must file a form with the agency appointing a campaign treasurer. Candidates who lose or drop out of the race must file a final report. Until a final report is filed, candidates must file financial reports and the agency must notify candidates of filing deadlines, assess penalties for missed deadlines, and refer delinquent cases to the Office of the Attorney General.

Mailing blank forms to all filers, even though they are easily accessible, unnecessarily wastes limited resources.

- The packets of information the agency sends to filers are large since the forms and instructions are usually many pages long. The table, *Notification Mailings for Recent Filing Deadlines*, shows the number and content of packets sent and the production and mailing cost for significant deadlines in 2001 and 2002. Including supplies, printing, staff time, and postage, the total cost for the three mailings was more than \$27,000. These costs are higher during election years as the agency must send forms to the multitude of candidates who file to run for office, in addition to officeholders.
- The agency uses fewer resources to notify electronic filers. As the table notes, the agency sends only a few pages of material to electronic filers as opposed to the large packets of forms and instructions sent to paper filers.
- All of the agency's forms and instructions are easily accessible. Everything a filer needs is available on the agency's Web site. If a

For an average filing deadline, the agency mails between 2,500 and 3,000 packets of information.

During the last two years, the agency spent more than \$27,000 mailing packets.

Notification Mailings for Recent Filing Deadlines¹			
Report	Packets Sent	Contents	Cost
Personal Financial Statement April 2001	2,500	All filers received two copies of the form (20 pages each), one copy of the instruction guide (42 pages), and a notification memo.	\$13,048
Semiannual Campaign Finance Report July 2001	483 to Electronic Filers	Electronic filers received a notification memo.	\$ 5,836
	2,087 to Paper Filers	Paper filers received one copy of the form (up to 13 pages), one copy of the instruction guide (up to 42 pages), a notification memo, information about electronic filing, and affidavits to be exempted from electronic filing.	
Semiannual Campaign Finance Report January 2002	667 to Electronic Filers	Electronic filers received a notification memo and a filing schedule for 2002.	\$ 8,771
	2,144 to Paper Filers	Paper filers received one copy of the form (up to 13 pages), one copy of the instruction guide (up to 42 pages), a notification memo, information about electronic filing, affidavits to be exempted from electronic filing, and a filing schedule for 2002.	

filer does not have Internet access, the agency provides blank forms in its office near the State Capitol, or mails forms to filers upon request.

Continuing to notify inactive candidates of filing deadlines and assessing late fines also wastes resources.

- The agency currently tracks 40 people who once filed campaign treasurer appointments, but have not filed the required financial reports in the last two years.² Often, candidates will forget about their responsibilities to the Ethics Commission once they decide not to run or lose the election. Other candidates may not understand how to terminate their relationship with the agency. Whatever the reason, the agency is required to keep these inactive candidates in its database until a final report is filed.
- The agency is spending a portion of its limited resources sending notices to inactive candidates. While the agency cannot estimate how much it costs to track these people, it must send packets notifying the candidates of deadlines and letters attempting to collect penalties owed for failure to submit financial disclosure reports. Tracking inactive candidates who are not likely to file again is unnecessary.
- The Office of the Attorney General also wastes resources trying to collect delinquent penalties from inactive filers referred by the Ethics Commission. If the Attorney General cannot collect a penalty through reasonable efforts, including sending a letter and making

The agency must notify candidates of filing deadlines and late penalties, even if they are no longer politically active.

a phone call, it will close the case. However, the Ethics Commission will re-refer inactive candidates after each filing deadline, thus starting the collections cycle again.³

Other state agencies and institutions can terminate inactive accounts.

- The Comptroller of Public Accounts may cancel a sales tax permit if the permit holder has reported no business activity for 12 consecutive months. To identify inactive permit holders, the staff will search its database to identify businesses that have reported no activity in the past year. The staff will then send notices of the Comptroller's intention to cancel the permit. The permit holder has 30 days to respond to the letter. If the Comptroller does not receive a response within the time limit, staff will cancel the permit.
- The state statute governing banks and other depositories allows these institutions to close abandoned accounts, even if they still have funds in them. An account can be considered abandoned if the owner has not deposited or withdrawn funds for at least five years and the bank cannot locate the owner. When an account is abandoned, the bank is required to remit any remaining funds to the State.

Recommendation

Change in Statute

6.1 Remove the requirement that the agency mail forms to all filers.

This recommendation will remove the requirement that the agency mail a blank form to all campaign finance report filers and two blank forms to all personal financial statement filers. However, the agency will still be required to send notices of deadlines to all filers. In these notices, the agency should inform filers that they can download all necessary forms and instructions from the Commission's Web site, or they can use the agency's toll-free phone number or e-mail address to request that the materials be mailed.

6.2 Allow the Commission to terminate the campaign treasurer appointments of inactive candidates.

This recommendation will allow the Commission to stop tracking candidates who are no longer politically active, but who have not filed the necessary final report. The Commission should adopt rules governing how and when it will terminate the campaign treasurer appointments of inactive candidates. These rules should define what constitutes an inactive candidate. For example, the Commission could define an inactive candidate as a person who has not filed a financial report in two years. The rules would also include provisions for the Commission to make its termination decisions during its regularly scheduled public meetings, and to notify candidates when considering their cases for termination.

Management Action

6.3 Allow all filers to choose whether to receive notification of filing deadlines by regular mail or by e-mail.

This recommendation would require the agency to give filers the option of receiving deadline notices by e-mail. Current statute requires the Commission to notify filers of deadlines, but does not specify how that notification should occur. As a result, the Commission is free to adopt other means of notification. To implement this recommendation, the Commission should create a step that allows filers to state their preferred method of notification. Filers who do not state a preference would continue to receive notifications by regular mail.

Impact

These recommendations would reduce some of the administrative burden on the agency and increase efficiency. By removing the requirements for the agency to send lengthy forms by mail and to continue tracking inactive candidates, the agency will save time and money without reducing the level of service provided to its customers. The forms and instructions a filer needs are easily accessible and the agency has established a reputation of providing excellent customer service. As a result, the agency should not use limited state resources to send blank forms to every filer. Requiring the Commission to adopt rules to terminate campaign treasurer appointments will allow both the agency and the public to provide their expertise on the best way to implement this recommendation.

Fiscal Implication

The recommendation that the agency send forms only to those who request them will result in a cost savings. While the agency will still have to mail notices of filing deadlines, these notices are usually just one page, or could be sent by postcard, meaning lower costs for supplies, printing, and postage. Further, the agency may begin sending some notices by e-mail, depending on how many filers request this option, thus eliminating most of the administrative cost for those notices.

Allowing the Commission to administratively terminate campaign treasurer appointments would have a positive fiscal impact because the agency would not continue mailing notices and collection letters to inactive filers. This recommendation would also result in fewer delinquent cases being referred to the Attorney General's office, thus reducing the Bankruptcy and Collections Division workload slightly.

The amount of cost savings from these recommendations is not significant. However, the estimated \$10,000 to \$20,000 savings per year could be put to better use within the agency, such as discussed in other issues in this report.

¹ Information on the notification mailings for recent filing deadlines provided by the Texas Ethics Commission in response to Sunset staff's request for information, January 2, 17, and 31, 2002.

² Memorandum from the Texas Ethics Commission to Sunset staff, November 15, 2001.

³ Telephone interview with Office of the Attorney General, Bankruptcy and Collections Division staff (Austin, Texas, January 22, 2002).

ACROSS-THE-BOARD RECOMMENDATIONS

Texas Ethics Commission	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Do Not Apply	1. Require at least one-third public membership on state agency policymaking bodies.
Modify	2. Require specific provisions relating to conflicts of interest.
Update	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.
Do Not Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Apply	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.
Apply	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.
Apply	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

AGENCY INFORMATION

Agency Information

Agency at a Glance

The Texas Ethics Commission (the Commission) administers and enforces the state's ethics laws which govern the conduct of state officers and employees, candidates for state and local offices, political committees, lobbyists, and certain district and county judicial officers. Created by a constitutional amendment adopted by the voters in 1991, the Commission's major functions include:

- maintaining financial disclosure reports and making them available to the public;
- enforcing compliance with ethics laws by investigating complaints and assessing penalties;
- issuing advisory opinions interpreting laws under the Commission's jurisdiction; and
- providing ethics training and producing educational materials for state officers, employees, and other groups.

Key Facts

- **Funding.** The Commission operates with an annual budget of about \$1.7 million. Approximately 98 percent of the agency's budget is supported by General Revenue with the remainder supported by miscellaneous charges, such as copying fees.
- **Staffing.** The Commission has a staff of 35 full-time employees.
- **Information Filing.** In 2001, 3,806 individuals or groups filed campaign finance reports with the Commission, 1,612 lobbyists filed lobby activity reports, and 2,451 state officials filed personal finance reports. Less than half of all campaign finance reports are filed electronically, while all other reports are filed on paper.
- **Complaints.** Approximately 760 complaints have been filed with the Commission during its existence. Most of the complaints regard violations of campaign finance and political advertising laws. Any individual may file a sworn complaint of an alleged violation with the Commission. The Commission may also initiate a complaint with an affirmative record vote of at least six Commissioners.
- **Enforcement.** The Commission may enforce all laws under its jurisdiction except laws in the Penal Code, such as bribery, improper influence, and abuse of office. It is authorized to investigate

Mission Statement

To promote individual participation and confidence in electoral and governmental processes by enforcing and administering applicable ethics laws and by providing information to the people of Texas to enable them to oversee the conduct of public officials and those attempting to influence public officials.

Texas Ethics Commission on the Internet

Information about the Commission, including statutes, rules, advisory opinions, electronic filing instructions, forms, guides, and lobby and campaign finance reports, is available on the Internet at <http://www.ethics.state.tx.us>.

complaints, hold enforcement hearings, issue orders, impose civil penalties, refer issues for criminal prosecution, and take action against a lobbyist's registration.

- **Advisory Opinions.** The Commission issues advisory opinions about relevant laws, including campaign finance, political advertising, lobbyist activities, financial disclosure, standards of conduct of government officials, bribery of public servants, and the misuse of public resources. Since 1992, the Commission has issued more than 440 advisory opinions.
- **Training.** The Commission provides ethics training for state officials and employees upon request, and for new members of the Legislature in January of odd-numbered years. The Commission produces educational materials and provides ethics training, upon request, for groups affected by the laws under its jurisdiction.

Major Events in Agency History

After several well-publicized scandals in Texas, the Legislature adopted sweeping revisions to the state's ethics laws.

The Texas Ethics Commission was created in a time of major ethics reform across the country. Many state legislatures responded to media and public attention to scandals involving public officials by passing significant ethics reform legislation. After several well-publicized incidents in Texas, the Legislature adopted sweeping revisions to the state's ethics laws in 1991.¹ At the same time, the Legislature proposed a constitutional amendment, which was later adopted by voters, to create the Ethics Commission. Commission members were appointed and the agency began operations in 1992.

The new agency offered greater authority and consistency in the application of ethics laws than its predecessors. Before 1991, the Office of the Secretary of State was the filing authority for campaign finance and lobby activity reports. While the Office could impose fines for late reports, it could not investigate complaints alleging violations of ethics laws.² Also, no entity existed to provide formal advisory opinions on the meaning of complex ethics laws. While the State Ethics Advisory Commission had issued 27 opinions during its short existence in the early 1980s, new members had not been appointed since 1986, when the Commission's appropriation was eliminated.³

While the reforms made in 1991 have remained essentially unchanged, the Legislature has added to the Ethics Commission's jurisdiction and responsibilities. In 1995, the Judicial Campaign Fairness Act imposed several new campaign finance requirements on candidates for most judicial offices. In 1999, the Legislature required certain officials, candidates, and political committees to file campaign finance reports electronically. The bill also required the agency to make these electronic documents easily accessible to the public through the Internet.

Organization

Policy Body

The Texas Constitution establishes the Commission consisting of eight members, with four members appointed by the Governor and two each by the Lieutenant Governor and the Speaker of the House of Representatives. Appointees are selected from lists submitted by both houses of the Legislature to represent each major political party. As a result, the Commission is composed of four Democrats and four Republicans. Members serve staggered four-year terms and cannot be candidates for elective public office for 12 months after leaving the Commission. The presiding officer is elected annually by members of the Commission at a public meeting. Information on current Commission members can be seen in the chart, *Texas Ethics Commission Policy Body*.

Texas Ethics Commission Policy Body			
Name (Residence)	Term	Submitted By	Appointed By
Ernestine Glossbrenner, Chair (Alice)	1996-2001*	House Democrats	Governor
Wales Madden III, Vice-Chair (Amarillo)	1997-2001*	Senate Republicans	Lt. Governor
Lem B. Allen (Luling)	1993-2001*	House Republicans	Speaker
Francisco Hernandez, Jr. (Fort Worth)	2000-2003	Senate Democrats	Lt. Governor
Jerome W. Johnson (Amarillo)	1996-2003	Senate Democrats	Governor
Mickey Jo Lawrence (Houston)	2000-2003	Senate Republicans	Governor
Richard Slack (Pecos)	1991-1999*	House Democrats	Speaker
Louis E. Sturns (Arlington)	1996-2001*	House Republicans	Governor

* These Commissioners continue to serve pending the appointment of new members to fill their positions.

The Commission is responsible for setting policy and determining the direction of the agency. At public meetings, the Commission primarily considers advisory opinion drafts and penalties for late reports. In closed meetings, the Commission functions as an adjudicative body in enforcement proceedings. The Commission may delegate any of its powers except those that require a vote by the members, its rulemaking authority, or its advisory opinion authority. In fiscal years 2000 and 2001, the Commission met 10 times each year.

In addition, the Constitution authorizes the Commission to recommend the salaries of members of the Legislature, the Lieutenant Governor, and the Speaker of the House, subject to approval by voters. The Constitution also requires the Commission to set the per diem rate of members of the Legislature and the Lieutenant Governor.

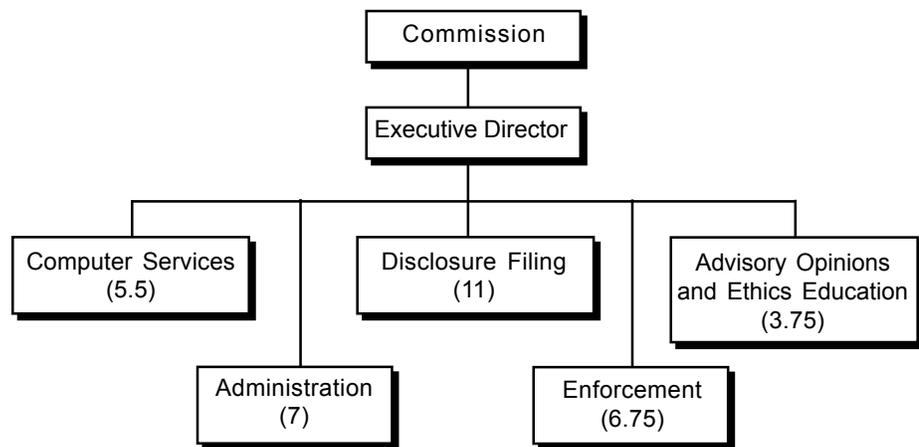
Staff

At the end of fiscal year 2001, the agency had a staff of 35 employees, all of whom work in its Austin headquarters. The Commission also employed nine contract workers in fiscal year 2001 to help implement

The Constitution authorizes the Commission to recommend legislative salaries, subject to approval by voters.

its electronic filing system. The Executive Director oversees the agency's operations. The agency is organized into divisions according to its main functions. These divisions are Computer Services, Administration, Disclosure Filing, Enforcement, and Advisory Opinions and Ethics Education. The chart, *Texas Ethics Commission Organizational Chart*, depicts the organization of the agency and the number of employees in each division.

Texas Ethics Commission Organizational Chart
With Number of Employees



A comparison of the agency's workforce composition to the minority civilian labor force over the past four years is shown in Appendix A, *Equal Employment Opportunity Statistics*. The Commission has generally exceeded civilian labor force levels for each job category.

Funding

Revenues

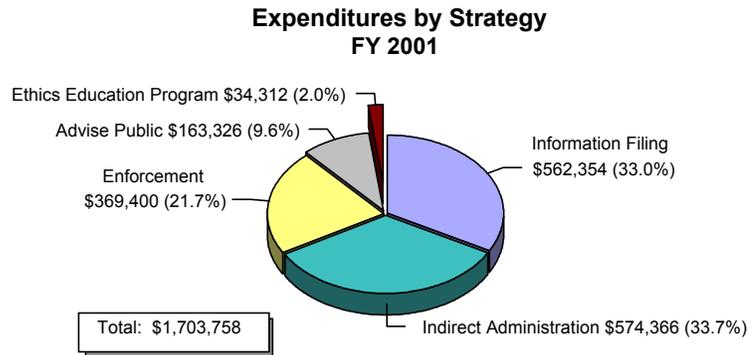
In fiscal year 2001, the Commission received a total of \$1.7 million – \$1.66 million in general revenue, and \$41,338 in appropriated receipts. Appropriated receipts consist of the standard fees the agency charges the public for reproducing information, such as making copies and putting information on disk.

The agency generates money for the General Revenue Fund in two ways. Each lobbyist pays an annual registration fee. Lobbyists who only represent non-profit entities pay \$100 per year, and all other lobbyists pay \$300 per year. The lobby registration fees generated \$447,300 in fiscal year 2001. The agency also collected \$69,442 in penalties for delinquent reporting and other violations of ethics laws in fiscal year 2001.

Lobby registration fees generated more than \$400,000 for the State in fiscal year 2001.

Expenditures

The agency spent \$1.7 million in fiscal year 2001. The pie chart, *Expenditures by Strategy*, provides a snapshot of the agency's spending. The Commission expended funds for the core functions of information filing, enforcement, advising the public through formal opinions, and providing ethics education.



Appendix B shows the Commission's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services. The agency had mixed success at meeting the State's HUB goals.

Agency Operations

The mission of the Texas Ethics Commission is to promote participation and confidence in electoral processes and to provide Texans with the information they need to oversee the conduct of public officials and those attempting to influence public officials. The agency accomplishes this mission through three core functions – receiving, maintaining, and providing public access to financial disclosure reports; enforcing ethics laws; and providing public assistance in understanding complex ethics laws.

Financial Disclosure Reporting

State ethics laws require any person or group giving or receiving political contributions to file reports detailing their financial activity with the Texas Ethics Commission. The textbox, *Persons and Groups Required to File Financial Disclosure Reports with the Commission*, provides a complete list of filers. Candidates for and officeholders of local and federal offices must file financial disclosure reports with local filing authorities and the Federal Election Commission, respectively.

The reports filed with the Ethics Commission fall into three main categories: campaign finance reports, personal financial statements, and lobby activity reports. Candidates, officeholders, and political committees must file campaign finance

Persons and Groups Required to File Financial Disclosure Reports with the Commission

- Candidates for and officeholders of the following non-judicial offices
 - Governor
 - Lieutenant Governor
 - Attorney General
 - Comptroller
 - Land Commissioner
 - Agriculture Commissioner
 - Railroad Commissioner
 - State Legislature
 - State Board of Education
- Candidates for and officeholders of the following judicial offices
 - chief justice or justice of the Supreme Court
 - presiding judge or judge of the Court of Criminal Appeals
 - chief justice or justice of a court of appeals
 - district judge
- Secretary of State
- Appointed state officers
- Executive heads of state agencies
- Members of the boards of river authorities
- District attorneys
- Lobbyists
- Political committees
- Political parties

reports semiannually and before elections. General purpose political committees have the option of filing monthly rather than semiannually. Candidates, officeholders, and state agency officials must file annual personal financial statements. Lobbyists must register annually and file monthly or annual lobby activity reports. In 2001, 3,806 individuals and groups filed campaign finance reports; 2,451 individuals filed personal financial statements; and 1,612 lobbyists filed lobby activity reports. The Ethics Commission administers the reporting system by informing filers of deadlines, receiving and processing incoming filings, notifying and assessing fees on late filers, and assisting the public in finding information.

In 2001, 44 percent of filers submitted their campaign finance reports electronically.

In 1999, the Legislature required all candidates, officeholders, and political committees that file with the Ethics Commission to file their campaign finance reports electronically. Some filers are exempt from this law, including those who do not use computer equipment to maintain financial records, those who do not accept or spend more than \$20,000 a year, and those running for or holding certain local judicial offices. In 2001, 44 percent of filers submitted their campaign finance reports electronically.⁴

Delinquent Filers

Once a filing deadline has passed, the agency must send out notices to delinquent filers. Late filer notification is a three step process. First, 30 days after the filing deadline, the agency sends a preliminary late letter requiring the filer to file the necessary report and pay a fine. The late fine for most reports is \$100. However, the fine for reports that are required to be filed eight days before an election is \$100 a day, up to \$10,000. If the filer does not respond to the first letter within 15 days, the agency sends a warning letter. If that letter is not acknowledged, the agency sends a letter informing the late filer that it is referring the case to the Office of the Attorney General for collection of the fine. The textbox, *Late Filer Notification for the January 2001 Filing Deadline*, provides figures on the number of letters sent by the agency following a recent deadline. Of the more than 28,000 reports required to be filed in fiscal year 2000, 8 percent were filed late or not at all.⁵ That year, the agency collected more than \$70,000 in late fines.⁶

Late Filer Notification for the January 2001 Filing Deadline

For this deadline, 3,035 candidates, officeholders, and political committees were required to file their semiannual campaign finance reports. Following the deadline, the agency mailed:

- 489 preliminary late letters, accounting for 16 percent of those required to file,
- 271 warning letters, indicating that more than half of the preliminary letter recipients did not respond, and
- 177 Attorney General referral letters, indicating that two-thirds of the warning letter recipients did not respond.

Public Access

Virtually all of the reports filed with the agency are public documents. To allow easy access to the information, the agency operates a public room in its offices near the State Capitol, and a comprehensive Web site. Between January and October of 2001, the agency assisted 2,881 persons in the public room, completed 621 copy orders, and filled 594 requests for forms. Requests for paper copies of reports have decreased dramatically since the agency made most information available on its Web site.

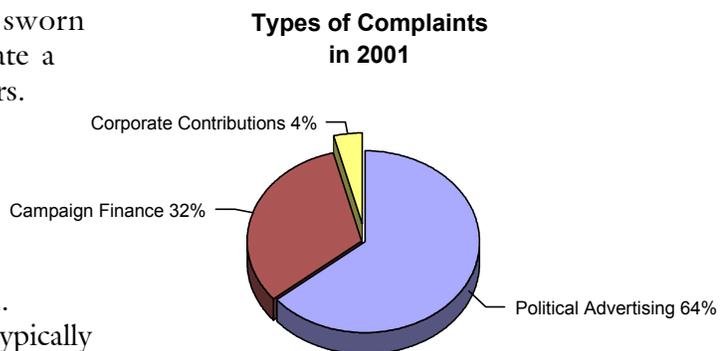
Enforcement

The Commission investigates and rules on complaints against candidates, political committees, state officers and employees, and lobbyists. Any individual who believes that a violation of one or more of the laws under the jurisdiction of the Commission has occurred may file a sworn complaint. The Commission may initiate a complaint by a vote of at least six members.

Most of the complaints made to the Commission allege violations of campaign finance or political advertising laws. The pie chart, *Types of Complaints in 2001*, shows the breakdown of complaints filed with the Commission.

During an election year, the Commission typically receives twice as many complaints as during a non-election year. Violations of ethics laws in the Penal Code, such as bribery, gifts to public servants, and misuse of government resources, are enforced by district attorneys.

The flowchart, *Complaint Process*, on page 7 of this report shows how the Commission handles sworn complaints. Once the agency receives a complaint, the staff may conduct an initial investigation by reviewing documents and requesting a written statement from the person alleged to have committed the violation, and then may report the findings to the Commission. The Commission reviews the findings and either dismisses the complaint or attempts to settle with the respondent. It may dismiss a case at any stage in the process if it cannot find evidence to substantiate the complaint or does not find a violation. If the Commission does find that a violation has occurred, it will propose sanctions. If the respondent does not agree to the sanctions, the case automatically moves on to the next stage. The Commission delegates its authority to the State Office of Administrative Hearings to preside over cases at the informal and formal hearing stages. All information relating to a complaint is confidential except formal hearing proceedings, and any order that is issued by the Commission for a substantial violation.



The complaint may be dismissed or resolved at any stage. Since the agency’s founding in 1991, only four cases have advanced past the preliminary hearing stage. Of those four, one reached the formal hearing stage.

In most cases, the Commission may assess a penalty of up to \$5,000 for an ethics violation.

If the Commission finds that a violation has occurred, it is authorized to do the following:

- assess a civil penalty of up to \$5,000 or triple the amount at issue, whichever is more;
- notify the appropriate regulatory or supervisory entity, including the State Commission on Judicial Conduct, the Senate, the House of Representatives, or the State Bar of Texas;
- issue and enforce a cease and desist order;
- issue an affirmative order to require compliance with laws under the jurisdiction of the Commission;
- deny, suspend, or revoke a lobbyist registration; or
- refer the case to the appropriate prosecuting attorney for criminal prosecution.

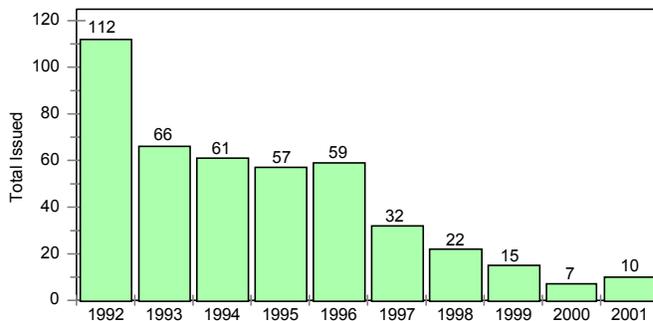
Public Assistance

The Commission helps the public understand the state’s complex ethics laws in three ways – by issuing advisory opinions, offering informal advice, and providing ethics training.

Advisory Opinions

The Commission’s function of issuing advisory opinions allows persons subject to the state’s ethics laws to seek clarification about the application of those laws. Appendix C, *Texas Ethics Laws*, lists the statutes the Commission covers. The identity of the requestor is confidential unless the requestor waives confidentiality in writing. The Commission may also issue advisory opinions on its own initiative.

**Advisory Opinions Issued
1992 - 2001**



Since its creation, the Commission has issued more than 440 opinions. Although the Commission issued 112 advisory opinions in 1992, the number of opinions issued per year has dropped significantly. The chart, *Advisory Opinions Issued*, illustrates this decline. The agency believes this decline is due to ethics laws not changing significantly and most ethics questions having already been addressed through opinions. The drop off in official

requests has been replaced with requests for informal responses through letters, phone calls, and e-mails.

Informal Advice

In addition to formal advisory opinions, the agency's staff provides informal advice on a daily basis. The public can use a toll-free number, e-mail, or regular mail to ask questions about advisory opinions or Commission rules or statutes. The public can also use these avenues to get technical support in filing disclosure statements. In fiscal year 2001, the agency received approximately 89,000 telephone inquiries, 150 e-mail inquiries, and 1,000 inquiries by mail.

*The agency received
89,000 telephone
inquiries last fiscal year.*

Ethics Training

The Commission provides ethics training upon request. Before each legislative session, the agency conducts a training seminar for new legislators concerning compliance with the laws administered and enforced by the agency. The Commission also works with state agencies to provide ethics training programs tailored to their employees. The textbox, *Selected Entities Receiving Ethics Training in Recent Years*, lists a number of entities, including those outside of state government, for which the Ethics Commission has provided training. The agency also publishes numerous brochures and guides to help the public better understand ethics laws and the agency's processes.

Selected Entities Receiving Ethics Training in Recent Years

Combined Law Enforcement Associations of Texas
Employees Retirement System
Funeral Service Commission
International Hospitality Council
Lieutenant Governor Rick Perry's staff
National Legislature of El Salvador
Nacogdoches Independent School District
Staff Attorneys for Appellate Courts
State Board of Education
Texas Association of School Administrators
Texas Association of Water Board Directors
Texas Banking Commission
Texas Lottery Commission
Texas Women Lawyers
University of Texas School of Law

¹ Karen Lundquist and Sarah Woelk, Current Issues and Developments in Lobby Law, presented to the Fifteenth Annual Conference on Governmental Ethics Laws (St. Paul, Minnesota, September 19-22, 1993), p. 2.

² *Ibid.*, p. 18.

³ *Ibid.*, p. 2.

⁴ Information on the number of reports submitted electronically and on paper provided by the Texas Ethics Commission in response to Sunset staff's request for information, February 7, 2002.

⁵ Memorandum from the Texas Ethics Commission, Disclosure Filings Division staff, to Sunset staff, October 24, 2001.

⁶ This total does not include any late fines that were referred to the Office of the Attorney General for collection. Late fines information provided by the Texas Ethics Commission in response to Sunset staff's request for information, February 6, 2002.

APPENDICES

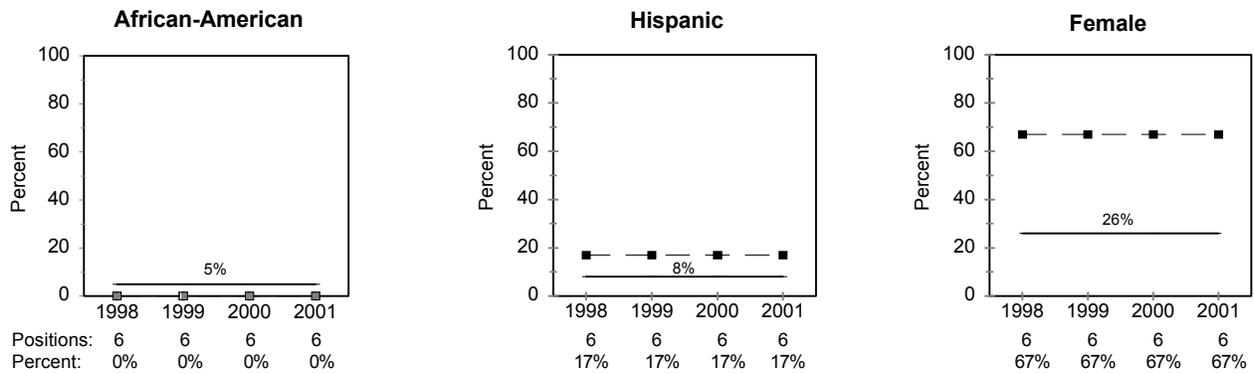
Appendix A

Equal Employment Opportunity Statistics

1998 to 2001

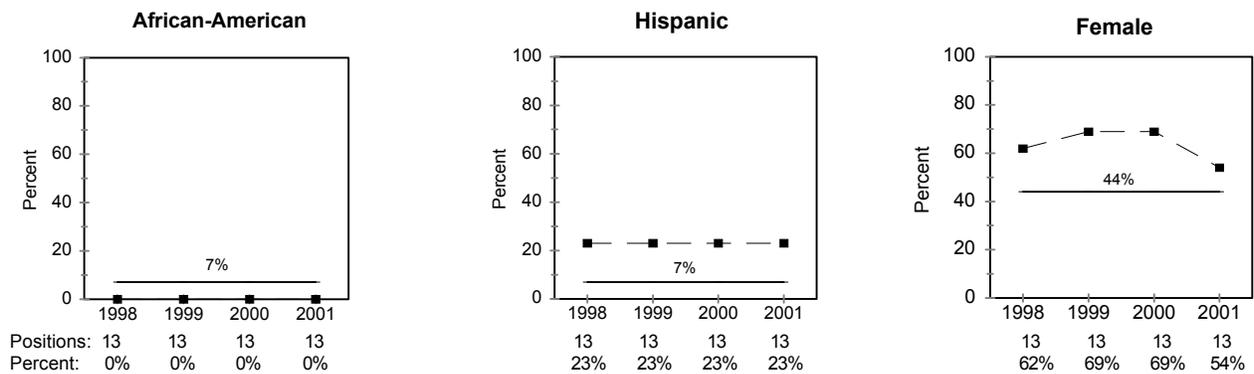
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Ethics Commission's employment of minorities and females in all applicable categories.¹ The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.² 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. The Commission only employs a total of 35 staff, resulting in fewer than 10 positions in most categories.

State Agency Administration



While the agency did not hire any African-Americans in this job category, it exceeded the civilian labor force percentages for Hispanics and females.

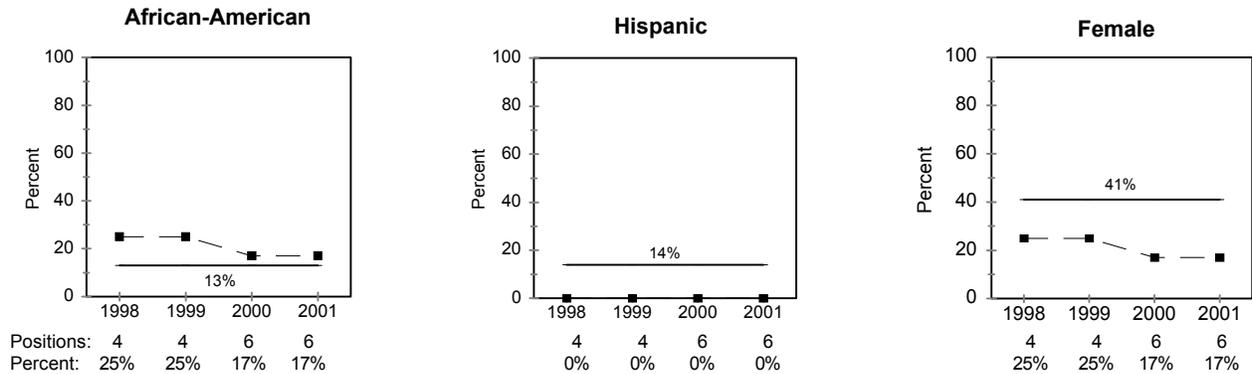
Professional



In the professional category, the agency exceeded the percentages for Hispanics and females, but did not hire any African-Americans.

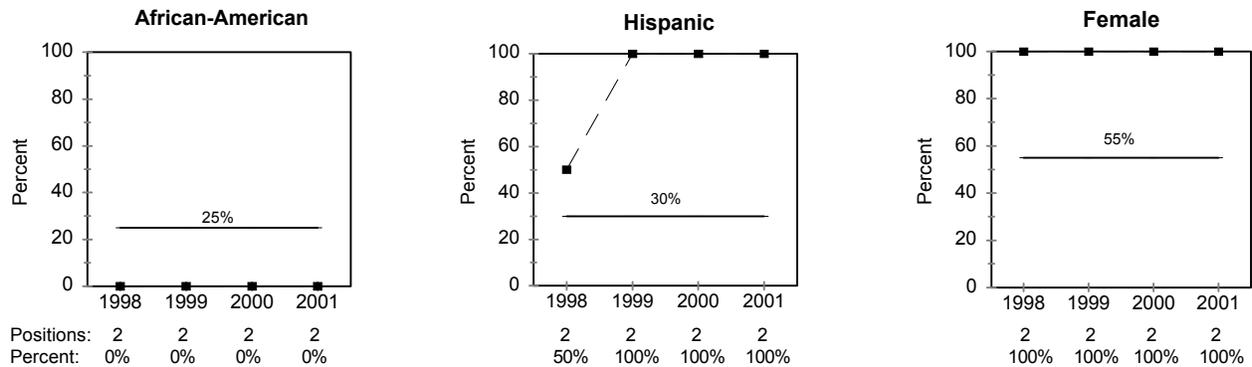
Appendix A

Technical



The agency fell below the civilian labor force percentages for Hispanics and females in technical positions, but exceeded the percentage for African-Americans.

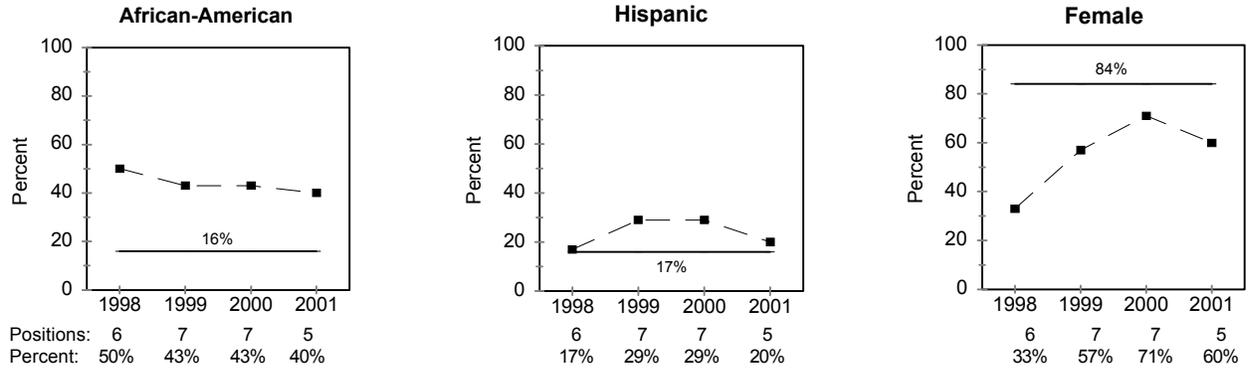
Paraprofessional



The agency consistently exceeded the civilian labor force percentages for Hispanics and females in this category, but did not hire any African-American paraprofessionals.

Appendix A

Administrative Support



The agency generally exceeded the percentages for African-Americans and Hispanics in this category. The agency has not met the percentage for females in this category.

¹ Tex. Gov't. Code ch. 325, sec. 325.011(9)(A).

² Tex. Labor Code ch. 21, sec. 21.501.

Appendix B

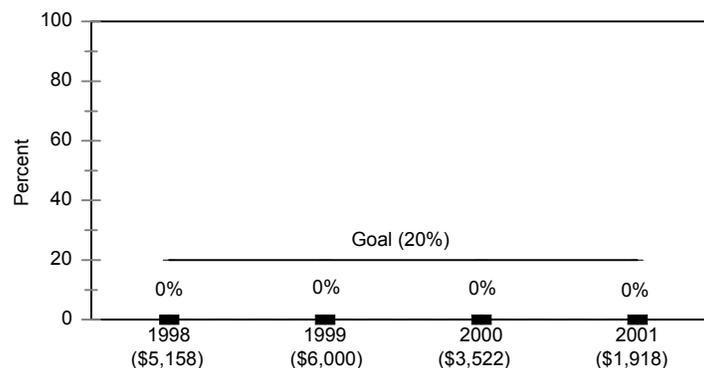
Historically Underutilized Businesses Statistics

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.¹ The review of the Texas Ethics Commission revealed that the agency is not complying with all state requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules, though it does reflect the Building and Procurement Commission's rules in its purchasing manual.

The following material shows trend information for the Texas Ethics Commission 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.² 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. The Ethics Commission has not met the State's goals except for the purchase of commodities.

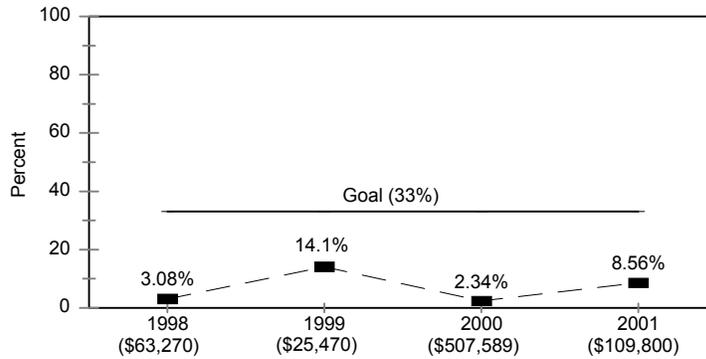
Professional Services



The agency did not purchase any professional services from HUBs between 1998 and 2001.

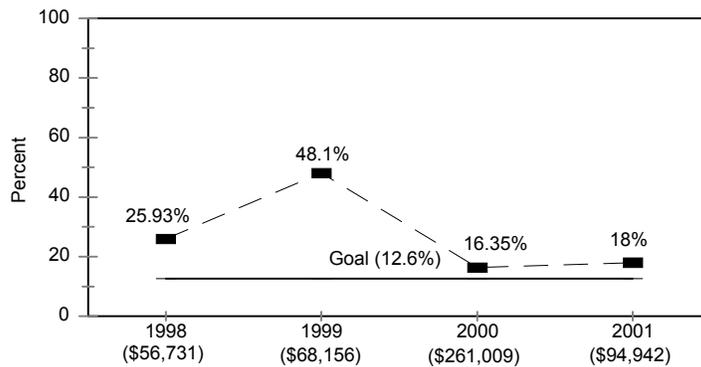
Appendix B

Other Services



The agency fell short of the state goal in this category from 1998 to 2001.

Commodities



The agency exceeded the state goal for commodities purchases from 1998 to 2001.

¹ Tex. Gov't. Code ch. 325, sec. 325.011(9)(B) (Vernon 1999).

² Tex. Gov't. Code ch. 2161, (Vernon 1999).

Appendix C

Texas Ethics Laws

Chapter 302, Government Code, regarding campaign finance restrictions for the election of the Speaker of the House of Representatives.

Chapter 303, Government Code, regarding Governor for a day and Speaker's reunion day ceremonies.

Chapter 305, Government Code, regarding lobbyist registration, reporting, and activities.

Chapter 2004, Government Code, relating to registration of certain persons who appear before state agencies.

Chapter 572, Government Code, relating to personal financial disclosure requirements for state officers and candidates, standards of conduct, and conflicts of interest.

Chapter 159, Local Government Code, regarding enforcement of provisions relating to judges of statutory county courts and statutory probate courts who elect to file personal financial statements with the Commission.

Title 15, Election Code, regarding administration of provisions relating to political contributions and expenditures, political advertising, and political parties.

Chapters 36 and 39, Penal Code, regarding the application of these chapters, which include provisions relating to bribery, honoraria, gifts to public servants, and misuse of government resources.

Appendix D

Results of Sunset Survey of Complainants, Respondents, and Financial Disclosure Filers

As part of this review, Sunset staff designed a survey to obtain input from individuals and groups who have been a part of the Ethics Commission's complaint or financial reporting process or who have a concerted interest in the work of the Commission. In November 2001, Sunset staff surveyed 325 randomly selected financial disclosure filers, or 10 percent of the total, and 13 interest groups. To protect confidentiality, the Commission assisted Sunset by randomly selecting and sending the survey to 100 people who filed an ethics complaint and 100 people who had complaints filed against them in calendar years 1999 through 2001. This sample represents nearly half of the 216 complaints filed during the three calendar years. Sunset staff also made the survey available on our Web site.

Sunset staff received a total of 68 responses, or 13 percent, of the total number surveyed. This number included responses from two respondents, 27 complainants, four interest groups, and 31 financial disclosure filers.

The chart below summarizes the responses, and shows selected comments made by survey respondents.

Survey Results	
Question	Responses
How well does the Commission provide information about its complaint process?	<p>Most complainants said adequate to well. The one respondent reply to the question said very well. Several people commented on the staff's helpfulness and responsiveness to questions. Many people said that although they felt the information to be adequate, much of it was complicated and heavy with legal terminology. Some stated they were not informed of how long the process could be.</p> <p>Interest groups said because of the confidentiality, the Commission did not provide any information.</p> <p>Complainants' comments included the following:</p> <ul style="list-style-type: none"> • "The process is obscure especially after a complaint is filed. Staff is helpful on phone but constrained with info that can be shared." • "I feel the Commission provides information adequately. However, in some cases it is slow." • "It does a good job – publications are available at their office and phone requests are promptly filled." • "Good, although some information needs an attorney to interpret."
How can the Commission improve the information it provides?	<p>Complainants' suggestions included:</p> <ul style="list-style-type: none"> • "Provide some kind of time frame – I had no idea the process took so long." • "By making the complaint forms available on their Web site." • "Make its presence know, possibly at the polling places with a written statement on the paper ballots." • "Some question and answer format along with examples would help."

Appendix D

Survey Results	
Question	Responses
How can the Commission improve the information it provides? (cont.)	<p>Interest group suggestions include:</p> <ul style="list-style-type: none"> • "Be open like a regular enforcement agency." • "By making the complaint forms available on their website."
How well does the Commission provide a fair complaint process?	<p>Most complainants said they felt the process was not fair. Several said they felt the process took too long to resolve complaints and complaints were not thoroughly investigated.</p> <p>Complainants' comments included the following:</p> <ul style="list-style-type: none"> • "Seems fine to me from my perspective except for the concept of due process being ineffective when the process takes too long to address the complaint." • "I feel that I was treated fairly within the constraints that they have to abide by. But the process is basically unfair to the complainant." <p>Interest group comments included:</p> <ul style="list-style-type: none"> • "Does no investigation – that's not fair to public or complainants." • "The same basic rights should be granted to complainants in this agency as for others that have been through Sunset reviews."
Does the Commission handle complaints in a timely manner?	Most complainants and all interest groups said no.
How well does the Commission keep complainants and respondents informed of their case status?	<p>Most complainants said they were kept informed very or adequately well.</p> <p>Complainants' comments included the following:</p> <ul style="list-style-type: none"> • "They follow the law. For the complainant, you're notified that your complaint has been accepted and after the investigation is final, the outcome." • "Complainants are kept informed on a quarterly basis. More frequently would be better."
How thoroughly does the Commission investigate complaints?	<p>The majority of complainants felt that complaints were not investigated thoroughly. Several were unsure, but noted that witnesses were not contacted.</p> <p>Complainants' comments included the following:</p> <ul style="list-style-type: none"> • "The Commission tells me they have very limited resources and scope to do investigations." • "I have no way to know. I sent evidence with the complaint and based on the findings the evidence was obviously given proper consideration. I was not aware of any further investigation by the Commission."

Appendix D

Survey Results	
Question	Responses
How thoroughly does the Commission investigate complaints? (cont.)	<ul style="list-style-type: none"> • "Investigations appear to be limited to evaluating material submitted by complainants and respondents. Within that limitation, the investigation is thorough." • "The Commission ruled consistent with my complaint both times I filed, however, they did not contact me for further information before ruling." <p>Interest group comments included:</p> <ul style="list-style-type: none"> • "Not at all – doesn't audit records, subpoena records, or interview witnesses outside the complainant and respondent." • "Because the entire process is secret, it is impossible to know."
How can the Commission improve its complaint process?	<p>Complainants' suggestions included making the complaint process more accessible to the average citizen; resolving complaints in a more timely manner; making the Commission and process more widely known; and performing more thorough investigations.</p>
How well does the Commission protect the confidentiality of complainants and respondents?	<p>While most complainants felt that the Commission adequately protected the confidentiality of both the complainants and the respondents, many felt that the Commission favored the confidentiality of the respondent.</p> <p>Complainants' comments included the following:</p> <ul style="list-style-type: none"> • "The Commission sends a copy of the Complaint to the respondent with the complainants name on it, so I do not know what confidentiality you are referring to." • "Very well, maybe too well as far as public officials are concerned." • "The Commission does fine. However, this is a silly requirement for the Commission since others do not have to protect the confidentiality and usually do not."
Are there any situations where confidentiality requirements hinder the Commission from carrying out its functions?	<p>Most of the complainants said they did not believe that confidentiality hindered the Commission or were not aware of the restrictions or particular situations that were affected.</p> <p>Complainants' comments included:</p> <ul style="list-style-type: none"> • "Because of this requirement the staff doesn't subpoena witnesses or evidence. The staff also must be fearful of criminal and civil penalties that could be imposed on them that no other commission has – further impeding enforcement." • "The detrimental part of keeping the fact that a complaint has been filed confidential is that others who may have pertinent information about the complainant are not aware and have no reason or opportunity to come forward with that information. Therefore, the information used for a decision may not be complete."

Appendix D

Survey Results	
Question	Responses
<p>How well do the Commission's sanctions address misconduct of public officials?</p>	<p>Most complainants believed not well. Several noted that fines were low, time to resolution was long, and the investigations were insufficient. The one respondent who replied to the question said that no misconduct was known, and the complaint process only served as "a way for people with political axes to grind to attack elected officials."</p> <p>Complainants' comments included:</p> <ul style="list-style-type: none"> • "The rules are clear, but the penalties are weak." • "I saw nothing in the process that would inhibit this or any other candidates from violating the regulations in the future." • "Not well, need more than a slap on the hand." • "I honestly can't see that they address anything. It looks like a 'he said, she said' atmosphere."
<p>How could the Commission better prevent the misconduct of public officials?</p>	<p>Interest group suggestions included:</p> <ul style="list-style-type: none"> • "The Commission was given authority to do ethics training for officeholders and their staff; but over the years, the ethics training has trained mostly staff – and not the officeholders." • "Real investigations. Real sanctions." <p>Complainants' suggestions included:</p> <ul style="list-style-type: none"> • "Fines should be higher, so officials will take the requirements seriously." • "Enact laws or rules to prohibit anyone who violates Texas ethics laws continually from running for office." • "Investigate and enforce the law. Penalties must be greater than the gain." • "Increase training of officials. Publicize admonishments and punishments." • "Do it now! Make it public! Make them pay fines that hurt! Have the investigation take place right away when an election is involved."
<p>How well does the Commission make financial information from candidates, officeholders, lobbyists, and others easy for the public to access and understand?</p>	<p>Most filers said well. Several stated that the Web site was helpful, but expressed a need for the Commission to improve the online information and accessibility.</p> <p>Filers' comments included:</p> <ul style="list-style-type: none"> • "It is easy to access. Sometimes it is time-consuming to locate specific records or information." • "The Commission staff was a great help to me both times I requested information." • "The website should also provide general information to ensure the public understands the financial information."

Appendix D

Survey Results	
Question	Responses
How well does the Commission provide information to financial disclosure report filers about its reporting procedures?	<p>Most filers said well. Several commented on the helpfulness of Commission staff in answering questions and keeping filers informed.</p> <p>Filers' comments included:</p> <ul style="list-style-type: none"> • "The documents are easy to understand and explain the procedures accurately." • "The Commission staff is well informed and responsive, and its written materials are helpful." • "It is good to have the information on the website; however, the explanatory language is hard to understand." • "The financial disclosure form is too cumbersome, too hard to fill out."
How can the Commission improve the information it provides, whether it is financial information provided to the public or information on how to file financial disclosure reports?	<p>Interest group suggestions included:</p> <ul style="list-style-type: none"> • "Make it all electronic." • "The Commission should put the information on their website and make sure it is linked from the websites of local and county officials, and other general state legislative websites." <p>Filers' suggestions included:</p> <ul style="list-style-type: none"> • "I think training classes for new filers and to retrain current filers on new laws and regulations." • "Update the online forms. They are difficult to use and do not flow well." • "Make the guide more 'layman' friendly – more plain language." • "Go electronic on lobby reports."
Do you use the Commission's Web site to access financial information, reporting forms, and instructions?	Approximately half of filers who responded said yes.
Are you required to file electronically? If not, would you like to be able to file electronically?	Most filers said they were not required to file electronically and would not like to. The remainder said they either would like to or already do file electronically.
Do you file electronically? If not, why not?	Most filers said they do not file electronically. The reasons, in decreasing numbers, were that they were not able or not required to, did not use a computer, and did not want to.
How well does the electronic filing system work? How can it be improved?	<p>Most filers said the system works well.</p> <p>Filers' suggestions included:</p> <ul style="list-style-type: none"> • "It is very slow and does not function well. It could be upgraded to work better. I consider myself to be a normal computer user and I have problems

Appendix D

Survey Results	
Question	Responses
<p>How well does the electronic filing system work? How can it be improved? (cont.)</p>	<p>with the links and page changes often."</p> <ul style="list-style-type: none"> • "I have had problems filing electronically via the Internet. I file now via diskette." <p>Interest group suggestions included:</p> <ul style="list-style-type: none"> • "Search engine needs to be more user friendly with more fields." • "Allow lobbyists to file electronically."
<p>How well do the Commission's fees address delinquent report filing?</p>	<p>The majority of filers who responded said well. Several felt the fines were of a sufficient amount to deter chronic late filing. Some felt that the fines were not high enough.</p>
<p>Should the Commission do more to deter delinquent filers? If so, what?</p>	<p>Most filers said nothing more needs to be done. Suggestions included increasing fines for chronic late filers and media coverage of delinquent filers.</p>
<p>Are there other specific functions the Commission should perform?</p>	<p>Filers' suggestions included:</p> <ul style="list-style-type: none"> • "They should develop more expertise and play a greater role in controlling conflicts of interest and training all officeholders." • "Enforce incomplete information on incorrect personal financial statements of officeholders." • "Training PAC treasurers and other disclosure filers." <p>Interest group suggestions included the following:</p> <ul style="list-style-type: none"> • "They should develop more expertise and a greater role in controlling conflicts of interest and training all officeholders." • "Local candidate violation enforcement."
<p>Is some other agency or group better equipped to perform the Commission's duties?</p>	<p>Virtually all filers said no. Suggestions included the Secretary of State and the Attorney General.</p>
<p>Should any changes be made to the Commission's composition, currently eight member equally representing the Democratic and Republican parties?</p>	<p>Most filers said no changes should be made. Suggestions included appointments without regard to partisan affiliation; forbidding a legislator, lobbyist, campaign treasurer, or consultant from serving for two years before appointment; qualifications based on occupation; and reduction of the number of Commissioners.</p>

Appendix D

Survey Results	
Question	Responses
Please add any other comments about the Texas Ethics Commission.	<p>Interest group suggestions included:</p> <ul style="list-style-type: none"> • A deadline for the submission of lists and for the making of appointments to the Commission. • Prohibiting members of the Commission, at the time of appointment, from being registered political candidates or campaign treasurers, officers of the state, members of the legislature and lobbyists. <p>Filers' and complainants' suggestions included:</p> <ul style="list-style-type: none"> • Semi-annual training for financial disclosure filers and PAC treasurers. • Streamline the Commission's enforcement powers and sworn complaint procedures. • Give the Commission more investigative teeth.

Appendix E

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas Ethics Commission.

- Worked extensively with the agency's Executive Director, General Counsel, and staff.
- Met with several of the Commission members and attended public meetings of the Commission.
- Reviewed agency documents, advisory opinions, reports, rules, and complaint files.
- Reviewed state statutes, the Texas Constitution, legislative reports, previous legislation, literature on electronic government services, Attorney General opinions, and information available on the Internet.
- Met with staff of the State Commission on Judicial Conduct, the Speaker's Office, State Auditor's Office, Legislative Budget Board, Governor's Appointment Office, and key legislative committees.
- Surveyed and met with individuals and organizations who file financial disclosure reports with the Commission, those who filed sworn complaints with the Commission, those who have had sworn complaints filed against them, and other interested parties.
- Talked with staff of the Office of the Attorney General, Department of Information Resources, the Comptroller of Public Accounts, and the Texas Department of Licensing and Regulation regarding issues in the report.
- Attended ethics training seminars for legislative employees and the State Board of Education.
- Performed comparative research of other states' ethics commissions and the Federal Election Commission by talking to staff over the phone, searching the Internet, referring to nationwide ethics organizations, and reviewing statutes.

**SUNSET REVIEW OF THE
TEXAS ETHICS COMMISSION**

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