

# SUNSET ADVISORY COMMISSION

FINAL REPORT  
WITH LEGISLATIVE ACTION

*Texas Facilities  
Commission*

JULY 2013



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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.*

# TEXAS FACILITIES COMMISSION

SUNSET FINAL REPORT WITH LEGISLATIVE ACTION  
JULY 2013

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This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, November 2012* – Sunset staff develops a separate report on each individual agency, or on a group of related agencies. Each report contains both statutory and management recommendations developed after the staff’s extensive evaluation of the agency.
  - *Sunset Staff Report with Hearing Material, December 2012* – Adds responses from agency staff and the public to Sunset staff recommendations, as well as new issues raised for consideration by the Sunset Commission at its public hearing.
  - *Sunset Staff Report with Decision Material, January 2013* – Adds additional responses, testimony, or new issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
  - *Sunset Staff Report with Commission Decisions, January 2013* – Adds the decisions of the Sunset Commission on staff recommendations and new issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
  - *Sunset Final Report with Legislative Action, July 2013* – Adds action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.
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# TABLE OF CONTENTS

	PAGE
<b>SUMMARY</b>	
.....	1
<b>Staff Recommendations (page 2)</b>	
<b>Summary of Final Results (page 6a)</b>	
 <b>AGENCY AT A GLANCE</b>	
.....	7
 <b>ISSUES/RECOMMENDATIONS</b>	
1    The State Lacks a Coordinated, Transparent Approach to Planning Future Development of the Capitol Complex.....	11
<b>Commission Decision (page 20h)</b>	
<b>Final Results (page 20h)</b>	
2    TFC’s Current Approach to Public-Private Partnerships Needs Additional Safeguards to Avoid Exposing the State to Significant Risks .....	21
<b>Commission Decision (page 32i)</b>	
<b>Final Results (page 32i)</b>	
3    TFC’s Contracting Functions Lack Standard Elements Necessary to Improve Contract Transparency and Management.....	33
<b>Commission Decision (page 42f)</b>	
<b>Final Results (page 42f)</b>	
4    TFC Struggles to Effectively Plan for and Manage Its Deferred Maintenance Needs .....	43
<b>Commission Decision (page 48c)</b>	
<b>Final Results (page 48c)</b>	

5 The Texas Facilities Commission’s Statute Contains Inefficient Reporting Requirements and Does Not Reflect Standard Elements of Sunset Reviews ..... 49  
**Commission Decision (page 52b)**  
**Final Results (page 52b)**

6 The State Has a Continuing Need for the Texas Facilities Commission..... 53  
**Commission Decision (page 56b)**  
**Final Results (page 56b)**

**NEW ISSUES**

..... 57  
**Commission Decision (page 60)**  
**Final Results (page 60)**

**PROVISIONS ADDED BY THE LEGISLATURE**

..... 61

**APPENDICES**

Appendix A — Capitol Complex Map ..... 65

Appendix B — Texas Facilities Commission Reporting Requirements..... 67

Appendix C — Equal Employment Opportunity Statistics ..... 71

Appendix D — Transfer of Texas Facilities Commission Functions..... 75

Appendix E — Texas Facilities Commission Buildings and Leased Space..... 77

Appendix F — Staff Review Activities ..... 79

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# SUMMARY

# SUMMARY

The Texas Facilities Commission (TFC) and its predecessors have been a bit like wayward children, sometimes favored, sometimes scolded by the Legislature. Over time, this approach has led to questions about the agency's role in state government, and the duties and the functions it must carry out to be successful. While the origins of TFC as a central services agency date back to 1919 with the creation of the State Board of Control, since 2007 the Legislature has reduced these responsibilities to focus TFC on planning for and managing the space needs of state government. This role has now placed TFC front and center of a major initiative to consolidate state agency leases and develop state-owned properties in the Capitol Complex and elsewhere to house state employees. TFC's growing role in making significant decisions on the use and development of key state assets coincides with the Legislature's adoption of a new approach for procuring public facilities under the Public and Private Facilities and Infrastructure Act (P3 Act) in 2011.<sup>1</sup>

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*TFC is at the forefront of using public-private partnerships for major developments in the Capitol Complex.*

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While at the forefront of implementing P3 projects, TFC has put the cart before the horse, stepping into these efforts without adequate guidance, planning, and resources needed to ensure protection of the State's best interests. TFC quickly shifted gears from its previous state office development plan and issued a plan focusing on the Capitol Complex. Given that the most recent plan for the future of the Capitol Complex was developed and adopted by the State Preservation Board in 1989, proceeding to develop the Complex without a current plan developed with and agreed to by state leadership seems hasty. Further, TFC's decision to use public-private partnerships to develop the Complex is moving forward without sufficient guidelines, expertise, and funding for effective consideration of these multi-faceted agreements.

In forming the approach to the review, Sunset staff evaluated whether TFC operates with a high level of transparency, accountability, and effectiveness in carrying out its core functions. Given its new role, TFC must respond to demands for greater public participation, a major adjustment for an agency that used to generate little public interest. Now more than ever, effective planning and collaboration with key agencies that include the State's highest leadership, is critical to ensuring TFC proceeds with a unified vision for any future development of the Capitol Complex.

While Sunset staff recommends a shorter than normal eight-year continuation date for TFC, this recommendation is not due to particular problems, but to align TFC's next Sunset review with the reviews of the Department of Information Resources and the Comptroller's Procurement Division, the other primary agencies that provide support services to the State. Sunset

would then be positioned to more comprehensively evaluate Texas' decentralized approach towards providing support services to state agencies in the future, an approach also recommended in the recent Sunset staff report on these other agencies.

Overall, this Sunset review seeks to ensure TFC has the statutory direction and tools in place to operate with greater transparency, collaboration, and accountability. The following material summarizes Sunset staff's recommendations for TFC.

## Issues and Recommendations

### *Issue 1*

#### **The State Lacks a Coordinated, Transparent Approach to Planning Future Development of the Capitol Complex.**

The Texas Facilities Commission works to cost-effectively meet the long-term space needs of Texas government, yet its efforts to develop the Capitol Complex are hampered by the lack of a clear plan, built upon coordination with key partners in the Complex. In addition to TFC, other state agencies, including the State Preservation Board, General Land Office, and Texas Historical Commission have responsibilities related to development of the Capitol Complex, but none are clearly charged with leading or planning for this development. Recently, TFC has taken the lead in planning not just office space needs, but also the development of state-owned properties throughout Austin, including the Capitol Complex. However, TFC's efforts have not provided a consistent vision of the properties, particularly the Complex's future, nor have they been sufficiently open to ensure adequate public participation and inclusion of all relevant stakeholders. Requiring TFC to develop a Capitol Complex Master Plan with adequate stakeholder and public input and establishing clear roles for state agencies with an interest in the Complex would provide the State with a single, comprehensive roadmap for the future development of the Capitol Complex.

#### **Key Recommendations**

- Require TFC to inclusively develop and formally adopt a Capitol Complex Master Plan to guide decision making on the Complex's future development.
- Require TFC to develop and adopt, in rule, a comprehensive planning process that guides and ensures more meaningful public and stakeholder input for all its planning and development responsibilities.
- Require TFC to submit the Capitol Complex Master Plan to the State Preservation Board for review, comment, and possible action; and to the General Land Office for review and comment.
- Require the General Land Office to conform any recommendations on property within the Capitol Complex to the Capitol Complex Master Plan.

## *Issue 2*

### **TFC's Current Approach to Public-Private Partnerships Needs Additional Safeguards to Avoid Exposing the State to Significant Risks.**

As authorized by the recently enacted Public and Private Facilities and Infrastructure Act (P3 Act), TFC is embarking on significant efforts to redevelop state-owned properties within the Capitol Complex and other areas of the state using P3 projects. Currently, TFC has received six unsolicited P3 proposals affecting nine different potential sites with a total construction value of about \$824 million. The P3 procurement method presents the opportunity for great benefits to the State, but also brings the potential for new and more complex risks that TFC is not fully prepared to mitigate. TFC lacks sufficient transparency, procedures, controls, and staff expertise needed to ensure it can effectively protect the State's interest when planning, negotiating, and overseeing P3 projects. However, the question of whether TFC should develop P3 proposals for purely private uses of state land is a policy question best answered by the Legislature.

#### **Key Recommendations**

- Require TFC to include a complete and clearly documented process for evaluating P3 proposals in its P3 Guidelines, and make the evaluation results publicly available.
- Require TFC to use a value for money analysis to ensure the agency has full information to assess the best approach for developing state assets.
- Require TFC to hold a public hearing on a P3 proposal before submitting it to the Partnership Advisory Commission, and to incorporate public comments into the proposal submission.
- Require TFC to submit each P3 contract to the Comptroller's Contract Advisory Team, and any other appropriate entity such as the Attorney General, for review and comment before adoption by the Commission.
- Direct the Commission to delay formal action on P3 proposals until after September 1, 2013.

## *Issue 3*

### **TFC's Contracting Functions Lack Standard Elements Necessary to Improve Contract Transparency and Management.**

TFC has a large contracting function that carries significant risk due to the multi-million dollar service contracts involved, such as for facilities construction, and in the near future, public-private partnerships that bring new complexities and risks to the procurement process. In fiscal year 2011, TFC spent \$37 million, or 51 percent of its \$72.4 million budget, on contracts. Sunset staff evaluated TFC's contracting practices and found that TFC lacks certain contracting standards related to selection of contracting methods, procurement, and contract administration. Applying these standards would help reduce risk and further ensure TFC's contracting function achieves best value for the State.

### **Key Recommendations**

- Direct the Commission to formally adopt policies on contracting methods and indefinite delivery/indefinite quantity contracts in a public meeting.
- TFC should apply certain contracting standards to better align its contract procedures with best practices.
- TFC should develop a policy to apply contracting standards to public-private partnership contracts when applicable.

## ***Issue 4***

### **TFC Struggles to Effectively Plan for and Manage Its Deferred Maintenance Needs.**

TFC's deferred maintenance program manages large construction projects to address maintenance and capital needs and delayed repairs of equipment and building systems. In fiscal year 2011, the agency spent about \$19.1 million in General Obligation bonds on 77 deferred maintenance projects, completing 26 of these projects. Already a high-risk area because of the millions of dollars of repairs involved, deferred maintenance has risen to the forefront lately as TFC's inventory of state properties continues to deteriorate. TFC does not have the information necessary to effectively manage or assess performance of its deferred maintenance program. The data TFC relies on to assess building conditions, manage its deferred maintenance projects, and measure performance is in many cases unreliable and inaccurate. The agency also lacks comprehensive information on future needs, such as for capital renewal. Without accurate information, TFC cannot effectively plan for and inform the Legislature of deferred maintenance needs.

### **Key Recommendations**

- Require TFC to develop and regularly update a comprehensive plan for all of its maintenance and capital improvement needs.
- Direct TFC to better track and report management and performance data about its deferred maintenance program and the condition of its building systems.

## ***Issue 5***

### **The Texas Facilities Commission's Statute Contains Inefficient Reporting Requirements and Does Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement established in law for an agency under review. The Texas Facilities Commission has 21 reporting requirements that should be continued; however, aligning the due dates and recipients of six of these reports would allow TFC to more effectively consolidate this information into a single report rather than producing several individual reports. The Sunset Commission also adopts Across-the-Board recommendations as standards that it applies to all state agencies under review to ensure open, responsive, and effective government. TFC's statute does not include the standard provision relating to alternative rulemaking and dispute resolution. In addition, the Commission considers agencies' compliance with applicable federal and state requirements regarding equal employment opportunities. Sunset staff found that TFC did not meet some of the statewide civilian workforce percentages for females and African-Americans.

## Key Recommendations

- Continue all of TFC’s reporting requirements, but align the due dates and recipients of selected reports to allow for report consolidation.
- Apply the standard Sunset across-the-board requirement for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

## Issue 6

### The State Has a Continuing Need for the Texas Facilities Commission.

The State continues to need the Texas Facilities Commission to manage the buildings, grounds, and properties, and their associated infrastructure, which support state government operations. TFC manages 130 state-owned facilities and 25.5 million square feet of leased office space for 103 state agencies in 288 Texas cities. Since 2007 the Legislature has focused TFC more squarely on its state facilities planning and management duties, and the review did not find any significant advantages that would result from transferring TFC’s statewide support functions to another state agency. However, Texas has chosen a decentralized approach towards managing the administrative support needs of state agencies and also maintains key support services at the Department of Information Resources (DIR) and the Comptroller’s Texas Procurement and Support Services Division (Division). Aligning TFC’s Sunset date with the recommended September 1, 2021 Sunset date for both DIR and the Division would allow for a more comprehensive review of State’s overall approach to providing administrative support services in the future.

### Key Recommendation

- Continue the Texas Facilities Commission for eight years to align its review with other state agencies that provide administrative support services in Texas.

## Fiscal Implication Summary

Overall, these recommendations would not result in a direct fiscal impact to the State. Information on potential financial impacts of certain recommendations is summarized below.

**Issue 1** — The recommendation to produce a Capitol Complex Master Plan would not have a significant fiscal impact to the State. TFC already produces a Facilities Master Plan Report, which contains some components that would be included in the Capitol Complex Master Plan. TFC is currently hiring a design firm to complete a detailed plan related to the Capitol Complex that could be used for this newly recommended Plan.

**Issue 2** — Recommendations relating to the implementation of public-private partnerships, and the resulting financial benefits, have the potential for a significant positive fiscal impact for the State. This potential would likely be tapped in the next five fiscal years, but the amounts cannot be estimated. Authorizing TFC to charge fees to developers to cover the costs of reviewing P3 proposals would offset these costs for the State.

<sup>1</sup> Chapter 2267, Texas Government Code.



# SUMMARY OF FINAL RESULTS

## *S.B. 211 Nichols (Dutton)*

The Sunset review of the Texas Facilities Commission (TFC) brought to light the combined concerns of legislators and the public regarding the use of public-private partnerships (P3s) to develop state land under the relatively untested Public-Private Facilities Infrastructure Act (P3 Act). These concerns — including TFC's quick acceptance and use of this authority with limited direction, involvement, or oversight — dominated the discussion about the need for and role of the agency throughout the review. Ultimately, the review of TFC produced needed changes to ensure that TFC specifically, and other governmental entities generally, proceed more carefully with private development of public land.

Senate Bill 211, the TFC Sunset bill, makes significant strides toward developing state land with appropriate planning, greater transparency, stakeholder involvement, consideration of local community needs, and external oversight. These changes also aim to better balance the undeniable tension between developing state properties for a public purpose, while still benefiting both the State and private partners. In particular, the bill ensures that the development of the Capitol Complex, the heart of Texas government, is done carefully in collaboration with key stakeholders, and is agreed to and approved by state leadership.

The continuing controversy and concerns about the use of P3s to develop state properties also resulted in the Legislature enacting House Bill 3436, which places a statewide ban on any state agency P3 developments for one year. This ban is an extension of a nonstatutory Sunset Commission recommendation that directed TFC to delay any formal action on P3 proposals until September 1, 2013. Senate Bill 211 specifically improves TFC's approach to development of P3s by requiring TFC to provide sufficient rational and information to the public to justify decisions to pursue P3 proposals, and requires the expertise needed to effectively evaluate, implement, and oversee these projects. Beyond TFC's use of P3s, S.B. 211 also enacts significant changes to the broad P3 Act to protect the State's property rights, ensure consideration of local zoning and land use regulations, and require P3 projects to have a clear public purpose.

Considering the significance and importance of the changes in S.B. 211 regarding TFC's responsibilities, the Legislature chose to continue TFC for only two years. House Bill 1675 continues TFC until September 1, 2015 and requires the agency to undergo a limited Sunset review. This shorter review date provides the Legislature the opportunity to evaluate TFC's progress in implementing S.B. 211 sooner, and make any additional statutory changes that may be needed.

The following material summarizes results of the Sunset review of TFC, including management actions that do not require statutory change.

### **Development of the Capitol Complex and State Land**

- Requires TFC to develop and formally adopt a Capitol Complex Master Plan to guide decision making on the Complex's future development.

- Prohibits TFC from selling, leasing (other than space in state office buildings and garages), or disposing of real property within the Capitol Complex.
- Requires TFC to submit the Capitol Complex Master Plan to the State Preservation Board (SPB), General Land Office, and Partnership Advisory Commission (PAC) for review and comment, and final approval by SPB and the PAC.
- Requires the Legislature to authorize, and the PAC to approve, each P3 project within the Capitol Complex, and otherwise excludes projects within the Capitol Complex from the P3 Act.
- Exempts the Capitol Complex from the state-owned properties the General Land Office is required to evaluate and make recommendations on regarding highest and best use, and possible sale.
- Requires TFC to develop and adopt a comprehensive planning process that guides and ensures more meaningful public and stakeholder input for its planning and development responsibilities.
- Ensures TFC Commission members receive advance notice of development projects in municipalities.
- Clarifies that Chapter 2166, Government Code, relating to construction and acquisition of state buildings, applies to property bought and sold for state purposes.
- Directs TFC staff to present information to the Commission at least 30 days before the Commission votes on an item related to development of TFC property statewide. (management action – nonstatutory)

### **TFC's P3 Projects**

- Requires TFC to include in its P3 Guidelines, specific review criteria and documentation to guide the initial review of P3 proposals, including professional expertise needed, and to make the evaluation results publicly available.
- Requires the Commission to use a value for money analysis, but authorizes the use of an alternative analysis methodology if a value for money analysis is not appropriate.
- Requires TFC to hold a public hearing on a P3 proposal before submitting it to the PAC, and to incorporate the public comments into the proposal submission.
- Requires TFC to submit each P3 contract to the Contract Advisory Team for review and comment before adoption by the Commission.
- Specifically authorizes TFC to charge a reasonable proposal fee to recover the costs of processing, reviewing, and evaluating P3 proposals.
- Prohibits outside employment of TFC P3 program staff in fields or activities related to their responsibilities at the agency.

- Directs the Commission to delay formal action on P3 proposals until after September 1, 2013. (management action – nonstatutory) The Legislature expanded this recommendation by enacting a statewide ban on any state agency P3 developments before September 1, 2014. (H.B. 3436)
- Directs TFC to provide financial information and analysis related to any P3 revenues to the Legislative Budget Board. (management action – nonstatutory)

### **Other P3 Projects**

- Partnership Advisory Commission (PAC)
  - Requires the PAC to approve all state entities' P3 guidelines.
  - Requires the PAC to approve or disapprove each P3 proposal submitted for review and prohibits further negotiation of any P3 proposal disapproved by the PAC.
  - Specifies PAC meetings are subject to the Open Meetings Act.
  - Requires TFC to provide professional services to support the PAC in its review and evaluation of P3 proposals with the costs of these services recovered from fees.
- Public-Private Facilities and Infrastructure Act (P3 Act)
  - Ensures protection of the State's property and financial interests over those of private partners.
  - Authorizes the adoption of development plans on state property to conserve and enhance the value of the property, and sets out requirements of these plans.
  - Establishes a Special Board of Review and process to hear appeals of decisions on application of local zoning regulations to development on state property.
  - Adds new requirements for state and local government P3 Guidelines, including criteria for evaluating project design quality and life-cycle costs.
  - Establishes new criteria for P3 proposals, including requiring a statement of public purpose and evaluation of quality, conformity with community plans, historical significance, and environmental impact.
  - Clarifies proposal information not subject to public disclosure, including trade secrets and work products that would provide a competing proposer an unjust advantage.
  - Creates new requirements for public hearings and notice of P3 proposals.
  - Establishes conflict-of-interest and employment-prohibition requirements for employees involved in developing and implementing a P3 project.
  - Clarifies definitions in the P3 Act, including revenue, improvement, private entity, property, proposer, real property, revenue, and state entity.

### **Contracting**

- Directs the Commission to formally adopt policies on contracting methods and indefinite delivery/indefinite quantity contracts in a public meeting. (management action – nonstatutory)
- Directs TFC to revise its policy on the use of interagency contracts and develop a policy for bundled contracts. (management action – nonstatutory)
- TFC should improve its procedures for soliciting and awarding contracts, including performing risk and needs assessments and documenting needed information. (management action – nonstatutory)
- Directs TFC to apply certain contracting standards to better align its contract administration procedures with commonly accepted best practices. (management action – nonstatutory)
- TFC should develop a policy to apply contracting standards to P3 contracts when applicable. (management action – nonstatutory)

### **TFC Deferred Maintenance**

- Requires TFC to develop and regularly update a comprehensive capital improvement and deferred maintenance plan.
- Directs TFC to better track and report management and performance data about its deferred maintenance program and the condition of its building systems. (management action – nonstatutory)
- Transfers facilities maintenance services for the Texas School for the Blind and Visually Impaired and Texas School for the Deaf to TFC.

### **Other TFC Programs**

- Specifies that lease revenues equal to certain costs associated with the parking program be appropriated back to TFC.
- Prohibits recipients of state surplus property from disposing of property for two years.

### **Continuation**

- Continues TFC until 2015 and places the agency under a limited-scope Sunset review in the 2014-15 biennium. (H.B. 1675)

### **Standard Sunset Review Elements**

- Continues all of TFC's reporting requirements, but aligns the due dates and recipients of selected reports to allow for report consolidation.
- Applies the standard Sunset Across-the-Board recommendation for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

**Fiscal Implication**

Senate Bill 211 will not have a significant fiscal impact to the State, but could result in an estimated \$35,000 annual decrease in parking program revenues deposited to the General Revenue Fund and an increase by the same amount in Appropriated Receipts to TFC for parking lot and garage maintenance.



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**AGENCY AT A GLANCE**  
**NOVEMBER 2012**

# AGENCY AT A GLANCE

The Texas Facilities Commission (TFC) manages the building construction, maintenance, and leasing needs of state agencies. TFC carries out the following key activities.

- Provides office space for state agencies through acquisition or design and construction of facilities, or through leasing services.
- Maintains state-owned facilities in a secure and cost-efficient manner.
- Provides various support services to state agencies, such as operating state and federal surplus property programs and coordinating the recycling program.

## Key Facts

- **Policy Body.** A seven-member Commission governs the agency. The Commission consists of all public members, with five members appointed by the Governor, including two members from nominees submitted by the Speaker of the House; and two members appointed by the Lieutenant Governor.

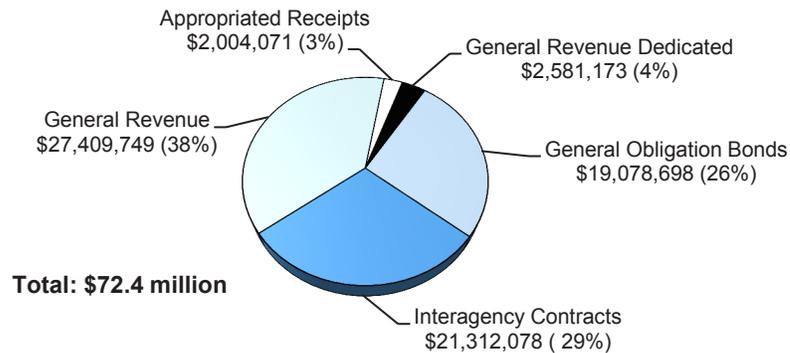
### *Texas Facilities Commission*

Member	City	Term Expiration	Appointed by
The Honorable Betty Reinbeck, Chair	Sealy	2017	Governor
Virginia Hermosa, Vice Chair	Austin	2015	Governor
William D. Darby	Austin	2015	Governor*
Douglas M. Hartman	Austin	2013	Lieutenant Governor
Brant C. Ince	Dallas	2015	Governor
Mike Novak	San Antonio	2013	Governor*
Alvin Shaw	Round Rock	2017	Lieutenant Governor

\* From Speaker nomination

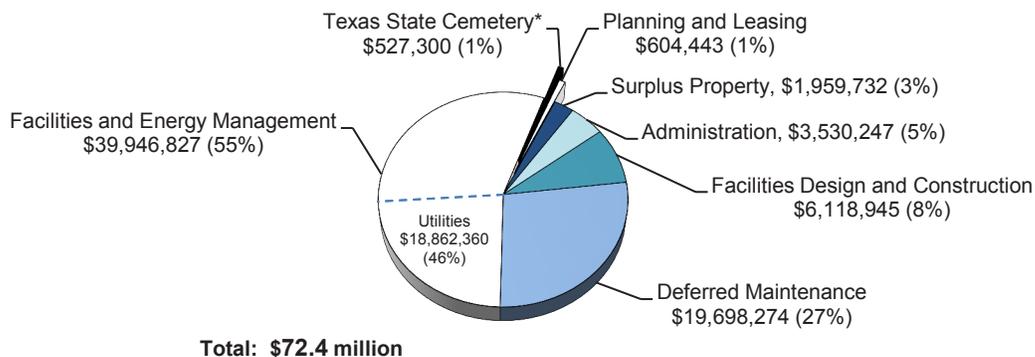
- **Staffing.** At the end of fiscal year 2011, of TFC's 474 authorized positions, it employed 261 staff, including 98 contracted custodial and grounds maintenance staff. Most staff work in TFC's Austin facilities, however 12 work in surplus property offices located in San Antonio and Fort Worth.
- **Funding.** TFC's budget totaled about \$72.4 million for fiscal year 2011. As shown in the pie chart on the following page, *Texas Facilities Commission Revenues*, on the following page, about two-thirds of the agency's revenue came from General Revenue and interagency contracts for construction and other TFC services. General obligation bonds accounted for another 26 percent of TFC revenues.

**Texas Facilities Commission Revenues – FY 2011**



The pie chart, *Texas Facilities Commission Expenditures*, provides a breakdown of TFC’s expenditures for fiscal year 2011. Facilities and energy management, which included nearly \$19 million for utility costs for state facilities, comprised more than half the agency’s total expenditures. Facilities design, construction, and deferred maintenance projects accounted for another 35 percent of TFC’s expenditures.

**Texas Facilities Commission Expenditures – FY 2011**



\*Pass through funds for Texas State Cemetery operations and maintenance.

- **Planning and Real Estate Management.** The agency carries out long-range planning activities that address the status and costs of current and future requirements for TFC-owned and leased facilities. These activities include planning and analysis related to redevelopment of the Capitol Complex and other state properties to meet future space needs. TFC also manages about 1,000 leases, providing 10.8 million square feet of facilities for nearly 40,000 state employees in 288 Texas cities.
- **Facilities Design and Construction.** While TFC contracts for construction services, the agency provides centralized project management and oversight of state agency construction projects and property improvements. Currently, TFC is managing about 100 projects with a total value of about \$316 million. Of these projects, 35 address deferred maintenance needs — upgrades, repairs, or building system replacements necessary to maintain the integrity and safety of facilities. TFC estimates the State’s deferred maintenance needs across all facilities totals about \$403 million.<sup>1</sup>

- **Facilities Management.** TFC provides facilities management services for 130 state-owned buildings and facilities, mostly in Austin and Travis County. These properties provide about 14.7 million square feet of usable space, housing approximately 88 agencies and over 20,000 state employees.<sup>2</sup> TFC facilities management services include custodial, recycling, maintenance, repair, security, and minor construction services. TFC contracts out for many of these services and in fiscal year 2011, fulfilled nearly 33,000 work orders for client agencies. As shown in the textbox, *Entities and Buildings Exempt From TFC Management*, statute exempts certain agencies and facilities from using TFC's services. Agencies may also request that TFC delegate this authority to them, and any state agency may request services from TFC.<sup>3</sup>

***Entities and Buildings Exempt From  
TFC Management***

- Texas Department of Criminal Justice
- Texas Department of Public Safety\*
- Texas Department of Transportation
- Texas Historical Commission
- Texas Juvenile Justice Department
- Texas Workforce Commission\*
- Capitol Building and Extension
- Credit Union Department Building
- Bob Bullock Texas State History Museum
- Finance Commission Building
- Governor's Mansion
- state agency regional or field offices
- facilities located in state parks
- institutions of higher education
- military facilities
- residential facilities

\*Agencies TFC delegated authority to manage their own facilities.

- **State and Federal Surplus Property Programs.** TFC manages the state surplus property program, which allows state agencies, political subdivisions, certain service organizations, and the general public to obtain surplus property at reduced prices. In fiscal year 2011, state surplus property sales totaled about \$6.2 million, with \$2.6 million returned to General Revenue. The state surplus property program also sells items relinquished at major airports in Texas. TFC also administers the donation of federal surplus property in Texas, which allows state agencies and select organizations to receive federal surplus property for a nominal handling fee. TFC collects, sorts, and stores federal surplus property in warehouses in Fort Worth and San Antonio.
- **Texas State Cemetery.** The State Cemetery Committee oversees and manages the Texas State Cemetery, which is administratively attached to TFC. The Committee consists of three voting Governor appointees and three non-voting advisory members, one each appointed by the Texas Facilities Commission, the Texas Parks and Wildlife Department, and the Texas Historical Commission.
- **Energy Management.** TFC identifies areas within its building inventory where energy and utility savings can be realized while still maintaining a comfortable working environment for state employees. The agency works to negotiate lower cost energy contracts with utility providers, assesses and installs energy efficient equipment, and assesses alternative energy solutions.

<sup>1</sup> Texas Facilities Commission, *Facilities Master Plan Report 2012* (Austin: Texas Facilities Commission, 2012), p. 10.

<sup>2</sup> Ibid., pp. 8-12.

<sup>3</sup> Sections 2165.007(b) and 2165.056, Texas Government Code.



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**ISSUES**

# ISSUE 1

## *The State Lacks a Coordinated, Transparent Approach to Planning Future Development of the Capitol Complex.*

### Background

The Legislature has long recognized the importance of and need to effectively plan for the future space needs of state government. As the seat of Texas state government, Austin — particularly the Capitol Complex — has been the focal point of this planning and development. As early as 1941, the Legislature formed a Capitol Planning Commission to develop a plan for further development to meet the State’s growing needs for office space. Since then, several long-range Capitol Complex Plans have been developed by various state agencies, including the Texas Facilities Commission (TFC) and State Preservation Board (SPB), as shown in the accompanying textbox.

#### **Capitol Complex Plans**

- 1956 – Capitol Area Master Plan (State Building Commission)
- 1963 – The Capitol Area Master Plan and Its Development (State Building Commission)
- 1979 – Development Study for the Capitol Complex (State Purchasing and General Services Commission)
- 1989 – Texas Capitol Preservation and Extension Plan (State Preservation Board)

These early plans generally recognized that state-built and operated buildings are more economical than leasing office space for state agencies’ employees. The plans also espoused that centralizing state government functions was better for both the employees providing services and the citizens accessing them, rather than having them located scatter-shot across the city. As such, these plans focused on developing the Capitol Complex and envisioned future expansion and development within the Complex to centralize state government functions and reduce reliance on more costly leased space. However, these plans also noted that any future development should preserve the dignity and aesthetic nature that both the Capitol Complex and State demand.

Today, TFC continues carrying out long-range planning activities to address the status, costs, and needs of state-owned and leased space for state government. Statute requires TFC to develop a long-range master plan on the space needs of state agencies in Travis County, the Facilities Master Plan Report (FMP), which includes many TFC buildings and properties in the Capitol Complex.<sup>1</sup> As discussed in Issue 2 of this report, TFC is also moving forward with accepting and evaluating public-private partnership (P3) proposals for development projects on state-owned properties, including those within the Capitol Complex. For example, TFC is currently evaluating an unsolicited proposal for a mixed-use development located across from the Bob Bullock Texas State History Museum that would include a planetarium, science museum, and technology center, as well as a 47-story residential tower and retail space.

## Findings

### No single entity has clear responsibility for planning and developing the Capitol Complex.

The Capitol Complex consists of 122 acres of state-owned property, including the Capitol Building and grounds, the Governor's Mansion, state office buildings, and parking lots and garages.<sup>2</sup> The *Capitol Complex Map* in Appendix A shows the boundaries and properties within the Complex. According to TFC, 21 acres of underdeveloped TFC properties exist in the Capitol Complex, equaling about seven million square feet of development potential.<sup>3</sup> As discussed below, several agencies, including TFC, have responsibilities related to the development of the Complex, but none are specifically charged with or responsible for developing a master plan for the overall Capitol Complex development.

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*Twenty-one acres of underdeveloped TFC properties exist in the Capitol Complex.*

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- **Texas Facilities Commission.** Despite its historical involvement in developing capitol area master plans and the fact that nearly 40 percent of TFC's statewide facilities inventory lies within the Complex, statute does not explicitly define TFC's role in planning the Complex's development. Details of its role are found in the Background section of this issue.
- **State Preservation Board.** SPB preserves and maintains the Capitol, Governor's Mansion, and Capitol Visitors Center, and operates the Bob Bullock Texas State History Museum and Capitol Visitors Parking Garage.<sup>4</sup> With such a significant portion of the Capitol Complex under its control, SPB plays an important role in the future development of the Complex, but statute does not fully define that role.

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*Statute does not explicitly define TFC's role in planning the Capitol Complex's development.*

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Statute requires SPB to approve a long-range master plan for its buildings and their grounds, but does not extend this planning requirement to the entire Capitol Complex or provide guidance about what SPB's long-range plan should include.<sup>5</sup> At the same time, statute requires any proposal to construct a building, monument, or other improvement in the Capitol Complex be provided to SPB for its review and comment.<sup>6</sup> In 1989, SPB produced the Texas Capitol Preservation and Extension plan, which outlined restoration of the Capitol and construction of the Capitol Extension, but also provided guidelines for developing the northern area of the Capitol Complex, such as height restrictions for buildings and landscaping plans.<sup>7</sup> Although outside the plan's statutory purview, these guidelines were a method to provide direction regarding future development of the Complex. While SPB's plan provides a valuable discussion of design concepts for the Capitol Complex, it is outdated, limiting its usefulness.<sup>8</sup>

- **General Land Office.** The General Land Office (GLO) has a broad range of property-related duties, primarily geared towards supporting the Permanent School Fund. Statute requires GLO to evaluate state properties — including those in the Capitol Complex — determine

their market value and highest and best use, and make recommendations on the sale, lease, or other use of properties to the Governor and the Legislature when in session.<sup>9</sup> If in session, the Legislature may authorize state property be sold or leased, at which point GLO takes control of the property and negotiates the transaction on the State's behalf.<sup>10</sup> The Governor has 90 days to veto a GLO recommendation, but absent this, GLO may purchase, sell, lease, or develop the property.<sup>11</sup> Statute allows TFC to review and comment on GLO's recommendations, but GLO has authority to dispose of a property regardless of any future development plans for the property.<sup>12</sup> Under its statutory authority, the School Land Board — chaired by the Texas Land Commissioner — could theoretically purchase and develop a property within the Capitol Complex to benefit the Permanent School Fund, as it did with the Triangle development in Austin.

- **Texas Historical Commission.** The Texas Historical Commission (THC) oversees several state historical properties within the Complex, listed in the textbox, *Texas Historical Commission Capitol Complex Properties*.<sup>13</sup> THC maintains these buildings and their grounds for beautification and cultural enhancement as significant historical sites and in a manner consistent with development of the Capitol Complex. However, THC has no specific statutory role or requirement to participate in the planning and development of the Complex.<sup>14</sup>

***Texas Historical Commission  
Capitol Complex Properties***

- Gethsemane Church
- Carrington-Covert House
- Luther Hall
- Elrose Building
- Christianson-Leberman Building

**Lacking clear statutory direction, TFC has filled the leadership gap in planning the development of the Capitol Complex, but its efforts fall short in consistency, transparency and effective collaboration.**

Through its FMP, the agency has taken the lead in planning the future development of state properties throughout the Austin area and specifically in the Capitol Complex to satisfy both immediate and long-term state agency space needs. For a corridor as significant as the Capitol Complex, planning must be consistent, open, and inclusive of all relevant stakeholders, including state leadership and the public. As discussed below, TFC's planning efforts, although within its authority, have not fully met this standard.

- **Inconsistent long-range plans.** TFC's facilities master plans have not provided a clear and consistent vision for meeting agency space needs, specifically within the Capitol Complex. TFC's master plans from 1992 to 2004 primarily focused on building new offices and renovating facilities within the Complex to accommodate agency space needs. Then, in 2006, TFC began developing the "Crossroads" initiative, a proposal for a new master-planned state agency campus outside of the downtown Austin area, which would have been paid for in part by selling state-

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*TFC's facilities master plans have not provided a clear and consistent vision for meeting agency space needs.*

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owned properties in the Capitol Complex.<sup>15</sup> By 2011, TFC had shelved the “Crossroads” initiative and returned to its previous development plans to expand use of the Capitol Complex. In its 2012 FMP, the agency recommends consolidating state leases into new, state-owned facilities and generating additional revenues by leasing state properties in the Austin area for development, including those in the Capitol Complex, North Austin Complex, Bull Creek Annex, and Park 35 Complex.<sup>16</sup>

*Conflicting goals between TFC and GLO have created uncertainty about the future of underdeveloped state properties.*

- **Insufficient stakeholder involvement.** Although TFC has informed stakeholders about its plans to develop the Capitol Complex, it has not effectively engaged them in the development process itself. TFC has provided numerous briefings and updates to key stakeholders, including state leadership, state agencies, and local government officials regarding its plans for developing the Capitol Complex. However, these discussions, while a good first step, have not led to resolution of the fundamental differences that exist regarding how the Capitol Complex should be developed. Unaddressed, these concerns and differences create uncertainty and unease about development of the Capitol Complex to best meet the State’s future space needs. For example, SPB’s long-range plan suggests new buildings along North Congress Avenue should be limited to a height of between 80 and 140 feet to preserve and enhance the view of the Capitol from the north, yet neither TFC’s 2011 or 2012 FMP acknowledge or address these guidelines and the agency is currently evaluating proposals for buildings greatly exceeding that height.<sup>17</sup>

Despite repeated communication between TFC and GLO, conflicting goals between the agencies regarding the use of underdeveloped state properties have created uncertainty about the future of those properties.

As discussed in its FMP, TFC recommends redeveloping the Capitol Complex and other properties, yet GLO has the authority to recommend, and potentially sell, these same properties. As described in the accompanying textbox, GLO has recommended selling several Capitol Complex properties, and has recently sold the former service station next to the Robert E. Johnson Building for \$875,000, against TFC’s recommendation. GLO has also proposed selling Parking Lot 19 next to the Bob Bullock Texas State History Museum, also against TFC’s recommendation to retain the property for future development. Conversely, TFC has recommended development of several parking lots within the Capitol Complex that GLO has not identified as underused. Several of these parking lots are located near properties owned by the Texas Historical Commission.

**Capitol Complex Properties  
Recommended for Sale or Lease by  
GLO with Appraised Values\***

- Former Service Station: Sold \$875,000
- Capitol Childcare Facility and Parking Lot 8: \$13,965,000
- Parking Lots:
  - No. 7: \$19,260,000
  - No. 12: \$5,950,000
  - No. 19: \$3,870,000
  - No. 25: \$2,290,000
  - No. 27: \$4,550,000

\*Texas General Land Office, *Real Property Evaluation Report*, September 2012, pp. 119-129.

TFC has not reached out to THC for input regarding these properties or its Capitol Complex development efforts, despite THC’s architectural and historical expertise.

- **Lack of sufficient transparency and public input.** TFC's planning efforts have not been open and do not ensure adequate public input in the decision-making process. In 2008, despite direction from the Senate Government Organization Committee for TFC to continue examining options for developing the "Crossroads" master-planned state agency campus, TFC staff never publicly briefed its Commission on the "Crossroads" development plan or received public input on the proposal. Ultimately, the Commission never considered the proposal and the agency did not move forward with it.

Commission agendas and minutes in the year leading up to the approval of the 2011 FMP showed TFC did not regularly update the Commission on the agency's specific Capitol Complex planning efforts, reducing opportunities that would encourage public participation in this important decision-making process. Additionally, although TFC made the 2011 FMP available for public review and comment, the Commission received the most substantial comments at the same meeting in which it voted to approve the plan, leading one to question the extent to which the Commission was able to fully consider the input.

Recognizing the need for more detailed development guidelines as it moves forward in evaluating P3 projects, TFC recently attempted to hire a design firm to complete a strategic facilities plan for the Capitol Complex, North Austin Complex, and other properties in the Austin area that would include feasibility analyses, design standards, and cost estimates. Initially, rather than going through an open, competitive procurement to select a firm to produce this plan, TFC determined this was an emergency procurement. At its October 2012 meeting, the Commission approved awarding a contract to a firm through one of its already executed indefinite/delivery indefinite quantity (IDIQ) contracts. However, according to TFC, shortly after the Commission approved the IDIQ procurement, senior TFC staff identified a problem with the meeting materials and canceled the procurement. TFC has now issued a formal request for qualifications for the development of the plan.

Unlike TFC, GLO has a statutory process it may use to solicit public and stakeholder input on development plans it prepares when intending to sell or lease property. This process authorizes GLO to hold a public hearing on the highest and best use of the property, allow the affected local government to present any relevant local plans, and allow comments by stakeholders.<sup>18</sup>

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*TFC has not regularly updated its Commission on specific Capitol Complex planning efforts.*

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**Other states have comprehensive capitol complex plans to address government space needs and provide guidelines for future development.**

Though the space needs and opportunities for development vary from state to state, other states have detailed plans that serve as a blueprint for developing their capitol complexes into the future. For example, Iowa recently updated its State Capitol Complex Master Plan, which provides building design guidelines, assessments of infrastructure needs, and investigates opportunities for complementary development with local jurisdictions.<sup>19</sup> Virginia's 2005 State Capitol Master Plan contains similar components, but also provides flexibility to planners by outlining several building design options.<sup>20</sup> Capitol complex master plans, such as these, outline clear goals for future development and serve as a guide for decision makers.

## Recommendations

### *Change in Statute*

#### **1.1 Require TFC to develop and formally adopt a Capitol Complex Master Plan to guide decision making on the Complex's future development.**

This recommendation would require TFC to develop a long-range Capitol Complex Master Plan to guide decision making on any future development and improvement in the Capitol Complex. The Plan would outline the overall strategy and goals for developing the Capitol Complex and provide recommendations for meeting the goals. The Plan would include, at a minimum:

- an overview and summary of previous planning efforts;
- a stated strategic vision and long-term goals for the Capitol Complex;
- analysis of Capitol Complex buildings and properties, and the extent to which the State satisfies its space needs through these properties;
- analysis and recommendations relating to real estate market conditions, with input from GLO;
- detailed, site-specific proposals for development of buildings and properties, including consideration of use of properties and space for public or private sector purposes;
- analysis and recommendations on design guidelines to ensure appropriate quality in new or remodeled buildings;
- analysis and recommendations related to infrastructure needs such as transportation, utilities, and parking;
- analysis and recommendations for financing options, including private sector participation;
- timeframes for implementation of the plan;
- consideration of alternative options for meeting state space needs outside the Capitol Complex; and
- other information relevant to the Capitol Complex considered appropriate.

Under this recommendation, TFC would submit the Plan to the Governor, Comptroller of Public Accounts, Lieutenant Governor, Speaker of the House, and Legislative Budget Board by July 1, 2014 and subsequent updates by July 1 of even-numbered years. This timeframe would align the Plan with the agency's other statutorily-required reports. This recommendation would not preclude TFC from performing additional, more detailed studies necessary to implement the Plan. The Capitol Complex Master Plan would impact the FMP, but the two plans should work hand-in-hand to provide a comprehensive approach to address state agencies' space needs. This recommendation would provide the State with a clear vision for the Capitol Complex and guidelines to direct its future development, and would ensure TFC has an adequate basis for evaluating proposals and making decisions affecting the Complex.

### **1.2 Require TFC to develop and adopt, in rule, a comprehensive planning process that guides and ensures more meaningful public and stakeholder input for its planning and development responsibilities.**

This recommendation would require TFC to develop and adopt, in rule, a process for planning the development of state-owned facilities in its inventory, including those in the Capitol Complex, to ensure the public, stakeholders, and other state agencies have ample opportunity to review, comment, and provide input on plans regarding future use and development of state properties. In establishing this process, TFC should promote constructive participation that provides critical perspectives necessary to balance competing needs. The process should include, at a minimum, the following elements:

- a clear approach and specific timeframes for obtaining input throughout the entire planning and development process from the public, stakeholders, and state agencies, including GLO, and specifically SPB and THC when the Capitol Complex is affected;
- specific timeframes for providing regular updates regarding planning and development efforts to the Commission;
- a public involvement policy that ensures the public and stakeholders have the opportunity to review and comment on any development plans well in advance of commission decisions; and
- confidentiality policies consistent with state open records laws.

Under this recommendation, TFC would follow the same planning process for all its properties as well as when it assists other state agencies with space development plans to ensure stakeholders and the public have ample opportunity to provide input on plans that may potentially impact them.

### **1.3 Require TFC to submit the Capitol Complex Master Plan to the State Preservation Board for review, comment, and possible action.**

In addition to involving SPB in the Capitol Complex planning and development process, this recommendation would require TFC to submit the draft Capitol Complex Master Plan to SPB for review and comment at least 90 days before the Commission is scheduled to discuss the Plan in a public meeting. This recommendation would authorize the Board to disapprove the Plan prior to the Commission's vote if it determines the goals or recommendations are not in the best interest of the State or the Capitol Complex. Absent a public vote by the Board to disapprove the Plan within 90 days, the Plan would be considered approved by SPB. For subsequent Plan updates, TFC would provide SPB a draft at least 60 days before the Commission discusses the Plan in a public meeting. Providing SPB a clear and substantial role in the Capitol Complex planning process would bring valuable expertise to the process and ensure a more coordinated approach to planning the Complex's future development.

#### **1.4 Require the State Preservation Board's long-range plan to conform to the Capitol Complex Master Plan.**

This recommendation would not require SPB to update its long-range plan at this time, but if SPB chooses to update its plan in the future, it would have to conform to the Capitol Complex Master Plan. This recommendation would allow SPB to continue focusing its long-range plan on the Capitol Building and grounds while ensuring any future planning or recommendations it makes do not conflict with the Capitol Complex Master Plan.

#### **1.5 Require TFC to submit the Capitol Complex Master Plan to the General Land Office for review and comment.**

In addition to involving GLO in the Capitol Complex planning and development process, this recommendation would require TFC to submit the draft Capitol Complex Master Plan to GLO for review and comment at least 90 days before the Commission is scheduled to discuss the Plan in a public meeting. For subsequent Plan updates, TFC would provide GLO a draft at least 60 days before the Commission discusses the Plan in a public meeting. Providing GLO a clear role in the Capitol Complex planning process would bring additional expertise to the process and ensure a more coordinated approach to planning the Complex's future development.

#### **1.6 Require the General Land Office to conform any recommendations on property within the Capitol Complex to the Capitol Complex Master Plan.**

This recommendation would not change GLO's statutory role in evaluating and appraising state properties. Rather, it would require GLO's recommendations to the Governor regarding the sale, lease, or development of a property to conform to the Capitol Complex Master Plan. Requiring GLO's recommendations to conform to the Plan would remove considerable uncertainty in the planning process that could affect the State's ability to effectively implement the Capitol Complex Master Plan by ensuring that any GLO recommendations work in concert with the Plan.

### ***Management Action***

#### **1.7 Direct TFC staff to present information to the Commission at least 30 days before the Commission votes on an item related to Austin area development.**

This recommendation would ensure the Commission has time to fully consider and deliberate before voting on an item related to the agency's efforts to develop Austin area properties. By placing a related item on a Commission meeting agenda for discussion purposes at least 30 days prior to voting, staff would be able to better prepare the Commission for its deliberations and fully address commissioner questions or concerns before proceeding with a vote. This recommendation would also ensure the public has the opportunity to provide meaningful comments to the Commission and for the Commission to have time to consider them before a vote is taken. Since the Commission meets almost monthly, this recommendation would not unduly restrict its ability to carry out its business in a timely manner.

### **Fiscal Implication**

The recommendation for TFC to develop a Capitol Complex Master Plan would not have a significant fiscal impact to the State. TFC currently has three staff dedicated to planning and already produces a Facilities Master Plan Report, which contains some components suitable for the Capitol Complex Master Plan. Further, TFC is in the process of hiring a design firm to complete a more detailed plan

related, in part, to the Capitol Complex that could also be used in the Capitol Complex Master Plan. Given these resources, TFC should be able to absorb any additional costs related to developing a Capitol Complex Master Plan within its existing budget.

- .....
- 1 Section 2166.102, Texas Government Code.
  - 2 Section 443.0071(b), Texas Government Code; Texas Facilities Commission, *Facilities Master Plan Report* (Austin: Texas Facilities Commission, 2011), p. 4.
  - 3 Texas Facilities Commission, *Facilities Master Plan Report 2012* (Austin: Texas Facilities Commission, 2012), p. 31.
  - 4 Sections 443.003, 443.007, and 443.0072, Texas Government Code.
  - 5 Section 443.007(3), Texas Government Code.
  - 6 Section 443.0071(a), Texas Government Code.
  - 7 3D International and Ford, Powell & Carson, *Texas Capitol Preservation and Extension: Master Plan and Historic Structures Report* (Austin, 1989).
  - 8 Section 443.0071(a)(3), Texas Government Code.
  - 9 Section 31.157, Texas Natural Resources Code.
  - 10 Section 31.159, Texas Natural Resources Code.
  - 11 Section 31.1571(g), Texas Natural Resources Code.
  - 12 Section 31.157(b), Texas Natural Resources Code.
  - 13 Sections 442.0072-442.0073, Texas Government Code.
  - 14 Section 442.0072(d), Texas Government Code.
  - 15 Texas Facilities Commission, *The Crossroads: A New State Campus*, executive summary.
  - 16 Texas Facilities Commission, *Facilities Master Plan Report 2012*, p. 5.
  - 17 3D International and Ford, Powell & Carson, p. VII.5.
  - 18 Section 31.1611, Texas Natural Resources Code.
  - 19 State of Iowa Department of Administrative Services & Capitol Planning Commission, *Iowa State Capitol Complex | Master Plan*, January 2010, accessed October 1, 2012, <http://das.gse.iowa.gov/statebldg/masterplan/MasterPlan2010.pdf>
  - 20 Wallace Roberts & Todd, LLC, *Virginia State Capitol Master Plan*, March 2005, accessed October 1, 2012, pp. 91-93, <http://www.dgs.virginia.gov/DivisionofEngineeringandBuildings/VirginiaStateCapitolMasterPlan/tabid/399/Default.aspx>.



# RESPONSES TO ISSUE 1

## Overall Agency Response to Issue 1

The Texas Facilities Commission (TFC) generally agrees with the recommendations in the staff report. TFC disagrees with several of the findings and statements of fact. The staff report acknowledges that TFC's planning efforts to date are within the agency's authority. The staff report, however, concludes without specification as follows:

1. Although TFC has informed stakeholders about its plans to develop the Capitol Complex, it has not effectively engaged them in the development process.
2. TFC's planning efforts have not been open and do not ensure adequate public input in the decision making process.
3. TFC has not regularly updated its Commission on specific Capitol Complex planning efforts.

Those conclusions in the staff report are inaccurate.

In the last three years, TFC has provided numerous briefings and updates to key stakeholders, including state leadership, legislative committees, state agencies, local government officials, civic groups, citizens, and the media. TFC staff has met individually with more than 100 state legislators, executive staff of multiple agencies, city council members and staff, and neighboring property owners.

TFC staff has regularly updated its Commission on the agency's specific Capitol Complex planning efforts, as reflected in official minutes of the Commission's meetings of April, August, and November of 2010, and January 2011. The 2011 Facilities Master Plan Report was made available for public review and comment, and comments were received on the Report at the November 2010 meeting, with action postponed until the January, 2011 meeting.

Additionally, since 2010, TFC staff has presented the "Briefing on State Facilities" and massing study in numerous public events in Austin attended by over 1,000 attendees. The Commission is also very mindful that, while planning and development of the Capitol Complex and other state-owned properties in the Austin area are of primary interest to local residents, these properties are held in trust on behalf of, and for the benefit of, all citizens of Texas who are also stakeholders in this process. TFC's current stewardship of the properties, including those within the Capitol Complex, is predicated upon a policy of compliance with present-day and historic legislative direction.

The Staff Report also acknowledges that repeated communications have taken place between the Commission and the General Land Office. Communication alone, regardless of how effective or extensive, may not be sufficient to reconcile inconsistent discretionary views between state agencies with different statutory mandates. The staff report recommendations under Issue 1 provide the appropriate legislative remedy necessary to address such issues. (Terry Keel, Executive Director – Texas Facilities Commission)

Note: TFC's formal response, available at [www.sunset.state.tx.us](http://www.sunset.state.tx.us) or upon request, includes additional detail regarding the agency's overall response to Issue 1.

## Recommendation 1.1

*Require TFC to develop and formally adopt a Capitol Complex Master Plan to guide decision making on the Complex's future development.*

### Agency Response to 1.1

TFC agrees with this recommendation with the following modification.

#### Agency Modification

1. Expand the scope of Recommendation 1.1 to require TFC to provide a strategic facility plan that includes all state-owned assets and leased facilities, and to routinely update the plan.

(Terry Keel, Executive Director – Texas Facilities Commission)

### Affected Agency Response to 1.1

The General Land Office (GLO) is generally supportive of the recommendations relating to GLO and Issue 1 of the report regarding the Capitol Complex Master Plan. (The Honorable Jerry Patterson, Commissioner – Texas General Land Office)

### For 1.1

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

### Against 1.1

None received.

## Recommendation 1.2

*Require TFC to develop and adopt, in rule, a comprehensive planning process that guides and ensures more meaningful public and stakeholder input for its planning and development responsibilities.*

### Agency Response to 1.2

TFC disagrees with this recommendation. Existing laws require public hearings providing multiple opportunities for public and stakeholder input. These opportunities are ensured by existing open meeting and public information statutes, hearings held by the Partnership Advisory Commission, hearings held by TFC identified in the P3 evaluation process, and any

hearings held by affected jurisdictions that review and comment on proposals, as required by the P3 Act. (Terry Keel, Executive Director – Texas Facilities Commission)

**Staff Comment:** This recommendation is not directed only at the P3 process, but at the agency's overall planning and the Capitol Complex Master Plan required under Recommendation 1.1. In particular, the planning process would include components and timeframes for affected state agency involvement, local government input, and public participation. The TFC adopted process would also include existing statutory provisions as well as additional detail and participation opportunities that go beyond minimum requirements.

### **Affected Agency Responses to 1.2**

The General Land Office is generally supportive of the recommendations relating to GLO and Issue 1 of the report regarding the Capitol Complex Master Plan. (The Honorable Jerry Patterson, Commissioner – Texas General Land Office)

The report references the Texas Historical Commission (THC) as a stakeholder agency with direct responsibility for five historic buildings in the Capitol Complex, and recommends that TFC involve THC in a comprehensive planning process that would guide decision making on the future development of the Capitol Complex. We welcome such participation. (Mark Wolfe, Executive Director – Texas Historical Commission)

### **For 1.2**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

### **Against 1.2**

None received.

## **Recommendation 1.3**

*Require TFC to submit the Capitol Complex Master Plan to the State Preservation Board for review, comment, and possible action.*

### **Agency Response to 1.3**

TFC agrees with this recommendation to formally involve the State Preservation Board in the Capitol Complex planning and development process through review and comment on the draft Capitol Complex Master Plan, with a public vote of the Board required in order for the Board to disapprove the Plan. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 1.3**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

David Lancaster, Senior Advocate – Texas Society of Architects, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 1.3**

None received.

**Recommendation 1.4**

*Require the State Preservation Board's long-range plan to conform to the Capitol Complex Master Plan.*

**Agency Response to 1.4**

TFC agrees with this recommendation, which will allow the Board to continue to focus its long-range plans on the Capitol Building and grounds while ensuring any future planning or recommendations of the Board do not conflict with the Capitol Complex Master Plan. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 1.4**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

David Lancaster, Senior Advocate – Texas Society of Architects, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 1.4**

None received.

## Recommendation 1.5

*Require TFC to submit the Capitol Complex Master Plan to the General Land Office for review and comment.*

### Agency Response to 1.5

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

### Affected Agency Responses to 1.5

The General Land Office is generally supportive of the recommendations relating to GLO and Issue 1 of the report regarding the Capitol Complex Master Plan. (The Honorable Jerry Patterson, Commissioner – Texas General Land Office)

The Texas Historical Commission recognizes that the report recommends that TFC submit drafts of its Capitol Complex Master Plan to the State Preservation Board and the General Land Office for review and comment. In the following modification, we respectfully suggest that THC be included at this stage of the planning process as well. This would permit THC to provide guidance with respect to the potential effect of any proposed development on the State's historic resources, or on historic properties outside of the State's ownership but adjacent to the Capitol Complex. This would also be consistent with several provisions of Government Code including Section 2166.254 (requiring that THC review the bids and qualifications for major repair of any state structure designated as a Recorded Texas Historic Landmark), Section 2167.003 (requiring that in leasing space for the use of a state agency, first consideration shall be given to historic structures), and Natural Resources Code Section 31.153 (requiring that each state agency report annually to the THC on all buildings acquired by the agency within the past year that are at least 45 years of age or that have become 45 years old since the previous year's report).

### Texas Historical Commission Modification

2. Require TFC to also submit the Capitol Complex Master Plan to the Texas Historical Commission for review and comment.

(Mark Wolfe, Executive Director – Texas Historical Commission)

### For 1.5

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

David Lancaster, Senior Advocate – Texas Society of Architects, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

### **Against 1.5**

None received.

## **Recommendation 1.6**

*Require the General Land Office to conform any recommendations on property within the Capitol Complex to the Capitol Complex Master Plan.*

### **Agency Response to 1.6**

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

### **Affected Agency Response to 1.6**

The General Land Office is generally supportive of the recommendations relating to GLO and Issue 1 of the report regarding the Capitol Complex Master Plan. GLO is currently required to review state-owned property and identify property that is not used or underutilized and make recommendations on the highest and best use and possible sale of a property. Over time, the State has recognized that some properties will not be sold and have exempted those from review, including properties within the Capitol Complex such as the Governor's Mansion, and properties controlled by the Historical Commission and State Preservation Board. As recommended in the following modification, the Capitol Complex should be added to this list. If GLO cannot recommend action on a property outside of the Capitol Complex Master Plan, there is no need for these properties to be evaluated outside of that process. This would be a waste of GLO resources.

### General Land Office Modification

3. Exempt the Capitol Complex from the state-owned properties GLO is required to evaluate and make recommendations on regarding highest and best use, and possible sale.

(The Honorable Jerry Patterson, Commissioner – Texas General Land Office)

### **For 1.6**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

David Lancaster, Senior Advocate – Texas Society of Architects, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 1.6**

None received.

**Recommendation 1.7**

*Direct TFC staff to present information to the Commission at least 30 days before the Commission votes on an item related to Austin area development.*

**Agency Response to 1.7**

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 1.7**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 1.7**

None received.

# COMMISSION DECISION ON ISSUE 1

(JANUARY 2013)

Adopted Recommendations 1.1 through 1.5 and Modification 3. Adopted Recommendation 1.7 as modified to direct TFC staff to present information to the Commission at least 30 days before the Commission votes on an item related to development of TFC property statewide.

# FINAL RESULTS ON ISSUE 1

(JULY 2013)

## **Legislative Action — S.B. 211**

**Recommendation 1.1** — Senate Bill 211 requires TFC to prepare a Capitol Complex Master Plan to guide decision making on the Complex's future development. The Legislature modified the Sunset Commission recommendation by extending the due date for the plan to April 1, 2016. The bill requires the plan to include, at a minimum:

- an overview and summary of previous Capitol Complex plans;
- a strategic vision and long-term goals;
- an analysis of Capitol Complex buildings and properties;
- detailed, site-specific proposals for development of buildings and properties for public purposes;
- an analysis and recommendations on design guidelines, infrastructure needs, and financing;
- timeframes for implementing the plan and projects; and
- consideration of options for meeting state space needs outside the Capitol Complex.

The Legislature modified the plan by removing specific requirements for the plan to consider private sector uses and financing, as well as analysis of real estate market conditions with the General Land Office's input. The bill requires the State Preservation Board, General Land Office, and Texas Historical Commission and other interested parties be included in each stage of developing the plan, which must be submitted to the Governor, Comptroller of Public Accounts, Lieutenant Governor, and Speaker of the House.

**Recommendation 1.2** — Senate Bill 211 requires TFC to develop and adopt, in rule, a comprehensive process for planning and developing its state properties, and for assisting state agencies with space development planning. The Legislature modified the Sunset recommendation by removing the requirement to involve the State Preservation Board and the Texas Historical Commission when

the Capitol Complex is affected. The bill requires TFC to adopt the planning process by January 1, 2014. The bill requires that the planning process include, at a minimum:

- a clear approach and specific timeframes for obtaining input from the public, stakeholders, and state agencies;
- specific timeframes for providing regular planning and development updates to the Commission;
- a policy that ensures the public and stakeholders have the opportunity for early review and comment on any development plans; and
- confidentiality policies consistent with state open records laws.

**Recommendation 1.3** — Senate Bill 211 requires TFC to submit the Capitol Complex Master Plan to the State Preservation Board for review and comment at least 90 days before the Commission is scheduled to discuss the plan in a public meeting. The bill authorizes SPB's Board, within 90 days of receiving the plan, to disapprove the plan by public vote before the Commission's vote if the Board determines the plan is not in the best interest of the State or the Capitol Complex. The bill stipulates that the Capitol Complex Master Plan, or a proposed update, is considered approved by the Board if it does not vote before 90 days of receiving the plan or 60 days of receiving an update.

**Recommendation 1.4** — Senate Bill 211 requires that if the State Preservation Board updates or modifies its long-range Master Plan for the Capitol and its grounds, the plan must conform to TFC's Capitol Complex Master Plan.

**Recommendation 1.5** — Senate Bill 211 requires TFC to submit the proposed Capitol Complex master plan, and any updates, to the General Land Office for review and comment at least 60 days, instead of 90 as recommended by the Sunset Commission, before the Commission is scheduled to discuss the plan or update in a public meeting.

**Modification 3** — Senate Bill 211 exempts the Capitol Complex from state-owned properties the General Land Office is required to evaluate and make recommendations on regarding highest and best use, and possible sale.

### ***Management Action***

**Recommendation 1.7** — Directs TFC staff to present information to the Commission at least 30 days before the Commission votes on an item related to development of TFC property statewide.



# ISSUE 2

## *TFC's Current Approach to Public-Private Partnerships Needs Additional Safeguards to Avoid Exposing the State to Significant Risks.*

### Background

The Texas Facilities Commission (TFC) conducts long-range planning for meeting the State's future needs for office space and facilities. To help meet this need, TFC is beginning to evaluate public-private partnership (P3) proposals for development projects on state-owned property within the Capitol Complex and in other areas. While the types and specifics of P3s vary widely, the accompanying textbox, *Public-Private Partnerships*, provides some key characteristics of P3s. According to TFC, public-private partnerships "are a financing tool, not a new source of funding."<sup>1</sup> Private investors rely on revenues such as public funds, lease payments, user fees, or shares of sales revenues to provide a return on their investment in a P3 project.

#### **Public-Private Partnerships (P3s)**

- A private entity performing a function normally undertaken by the public sector, such as constructing a new state building or water treatment facility.
- Cost-effective allocation of risks, responsibilities, and costs between the public and private sectors.
- A relationship governed by a long-term, performance-based contract.
- Government retains ownership and accountability for the asset and its ultimate service to the public.

Source: Maryland Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships. Final Report, January 2012.

TFC is engaging in P3s as authorized by the Public and Private Facilities and Infrastructure Act (P3 Act) passed by the Legislature in 2011.<sup>2</sup> The P3 Act authorizes governmental entities and political subdivisions of the state to enter into P3 agreements for the development of qualifying public works projects, such as buildings, hospitals, mass transit facilities, recreational facilities and infrastructure, and establishes processes for the execution of such agreements. The P3 Act excludes highways as eligible P3 projects. As required by the P3 Act, TFC has adopted P3 Guidelines that detail information required in proposals, minimum criteria for evaluating proposals, and public hearing requirements.<sup>3</sup>

#### **Partnership Advisory Commission**

The P3 Act created the Partnership Advisory Commission (PAC), composed of the following 11 members.

- the Chair of the Senate Finance Committee, or designee, and three Senators appointed by the Lieutenant Governor;
- the Chair of the House Appropriations Committee, or designee, and three Representatives appointed by the Speaker of the House; and
- three representatives of state agencies, appointed by the Governor.

The PAC may review and comment on a P3 proposal before the agency negotiates and finalizes a contract. The PAC must determine if the proposal creates state tax-supported debt, provide analysis of potential financial impacts of the proposal, and review policy aspects and business terms of the proposal. The submitting agency must report on the extent to which it addressed the PAC's recommendations in the interim or final contract.

Source: Chapter 2268, Texas Government Code.

TFC's Planning and Real Estate Management Division, with a staff of three, manages the P3 program, although TFC receives no specific appropriation for this function. The agency has only just started to review P3 proposals and has not yet fully evaluated or implemented a project. TFC may receive and evaluate solicited proposals by issuing a request for proposals that provides specifications about the type of facility desired, and unsolicited proposals where a proposer submits a development concept that is not tied to any agency-developed solicitation or need. After an initial staff review of the proposals, TFC's Executive Director decides which proposals to forward to the Commission for a decision on whether to have the agency conduct a conceptual evaluation. TFC's process for evaluating and carrying out a P3 project is expected to take a minimum of about 14 months, as detailed in the table, *Texas Facilities Commission Public-Private Partnership Evaluation and Implementation Timeline*. Before entering into a final P3 contract, TFC must submit the proposal for review and comment to the Partnership Advisory Commission (PAC), described in the textbox on the previous page. Ultimately, the Commission will vote whether or not to execute and implement a P3 contract.

**Texas Facilities Commission**  
**Public-Private Partnership Evaluation and Implementation Timeline**

Step	Months
1. Staff perform an initial review to accept or reject the proposal.	1
2. On recommendation of staff, and with approval of the Executive Director, proposal is accepted for conceptual evaluation, and posted on TFC's website and Texas.gov within 10 days. TFC's Oversight Committee completes conceptual evaluation of proposal and any competing proposals.	2.5
3. TFC's Oversight Committee prepares a recommendation to the Executive Director so that at a later meeting the Commission may vote to proceed or not with the original proposal, a competing proposal, or multiple proposals.	0.3
4. If the Commission votes to proceed, TFC staff issues a 60-day request for detailed proposals from private entities, which begins the detailed evaluation process.	2
5. TFC contracts for expertise to assist with detailed evaluations, meets with private entities to discuss proposals, and requests best and final proposals. TFC submits detailed proposal to the Partnership Advisory Commission (PAC) for review and comment within 45 days of accepting the proposal. TFC begins drafting an interim or comprehensive agreement (contract).	3
6. TFC receives any findings and recommendations on the proposal from the PAC and prepares a report addressing the PAC's recommendations.	1.5
7. TFC's Oversight Committee reviews final detailed proposal including any PAC recommendations, and contract negotiation details, and makes final a recommendation to the Commission.	1
8. TFC completes a P3 final contract with assistance from contracted consulting, legal and financial expertise.	2
9. No later than 30 days before entering into a P3 contract, TFC holds a public hearing. TFC provides the contract to the Commission for approval and posts it on the agency's website. TFC executes the P3 contract on approval of the Commission.	1
<b>Total</b>	<b>14.3</b>

## Findings

### **P3s can provide unique benefits, but because they involve valuable state assets and significant private investment, they can also pose large risks.**

Since December 2011, TFC has received unsolicited P3 proposals affecting nine locations, with a combined total project cost of about \$824 million, representing a significant potential financial risk for both the private partners and the State. If not implemented well, failure, such as default, could create problems for investors and may leave the State to pick up the pieces.<sup>4</sup> These proposed P3 projects involve five state-owned properties in the Austin-area and four sites outside of Travis County, listed in the textbox, *Unsolicited P3 Proposals Received by TFC*. To date, the Commission has only voted to move one proposal forward for conceptual evaluation — the planetarium and mixed-use development proposal.

#### ***Unsolicited P3 Proposals Received by TFC***

<b>Type and Location of Proposal</b>	<b>Date Received</b>
Mixed use development including grocery store on Bull Creek Road south of 45th Street in Austin	December 2011
Mixed use development and state office building on 51st and Guadalupe Streets in Austin	December 2011
Mixed use development on 11th Street and Congress Avenue in Austin	January 2012
Mixed use development, high rise, and planetarium on Congress Avenue and Martin Luther King Boulevard in Austin	March 2012
Four state office buildings located in counties outside of Travis County on sites not yet determined	May 2012
Mixed use development at 15th and Lavaca Street in Austin	June 2012

- Benefits of P3s.** Public-private partnerships can provide an array of benefits to the State compared to traditional methods of contracting. P3s allow for allocation of financial and operational risks among the partners best positioned to accept these risks.<sup>5</sup> P3s can also allow for use of advanced construction techniques, faster project delivery, and access to additional financing resources.<sup>6</sup> The General Land Office (GLO) has successfully completed public-private partnership projects, including the Central Market and Triangle developments in Austin, though these projects were completed under GLO's own statute, not the P3 Act. Agencies in other states have also successfully used P3s to construct new facilities such as headquarters and correctional facilities.<sup>7</sup>
- Risks of P3s.** Public-private partnerships can present significant risks to the State. P3s typically involve confidential information and closed negotiations that can contribute to an atmosphere of mistrust.<sup>8</sup> P3 projects and contracts are complex, requiring considerable expertise to ensure a project is feasible and provides measureable value to the public

that would not be available through traditional procurement methods.<sup>9</sup> Additional complexities that contribute to P3 risk include the need to effectively carry out property valuations, cost comparisons, financial analysis, revenue sharing estimates, and risk allocation. Contract administration for P3 projects presents challenges as well, as agencies must monitor performance long after a facility is built, including overseeing financial and lease performance requirements.<sup>10</sup> The risks inherent in P3 projects can create controversy, as in the case of Maryland's State Center development project, which is currently the subject of a lawsuit over alleged violations of state procurement statute.<sup>11</sup>

Other issues in this report address specific areas of risk related to TFC's implementation of P3s. Issue 1 discusses the need for a Capitol Complex Master Plan which P3 projects would be required to adhere to, and the need to improve TFC's process for meaningful stakeholder input on development initiatives, which would also include P3 projects. Issue 3 recommends applying several contract administration best practices to P3 projects and the agency's other contracts.

**TFC lacks a sufficiently robust approach to fully evaluate the benefits and risks of P3s to ensure that entering into such an agreement is the best option for the State.**

In considering any type of development on state property, the State should examine and compare all options to ensure best value, both with and without private sector involvement. Risk analysis is a key component of evaluating the financial and operational soundness of a P3 project to ensure the State's interests are protected. Numerous risk elements in P3 projects must be fully evaluated and safeguards negotiated in the contract to address financial, performance, operational, infrastructure, and market risks. The fundamental issue for financial soundness of a P3 is whether revenue streams can cover operations and debt service, and provide enough returns for the private partner to risk capital, as private partner success is vital to the overall success of the project.<sup>12</sup>

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*TFC is not required to conduct a value for money analysis to determine if a P3 project is the best approach.*

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- **No requirement for a value for money analysis.** The P3 Act requires a financial review and analysis of any P3 proposal, including a cost-benefit analysis. TFC's P3 Guidelines provide for evaluating numerous aspects of project costs and financing, such as cost-benefit to the State, the impact of debt on the State, and an estimated life-cycle cost analysis.<sup>13</sup> However, TFC's Office of Internal Audit (OIA) found that the Guidelines only address financial analysis in a general way, and that as the P3 process matures, more specific methodologies will be needed.<sup>14</sup>

A value for money (VfM) analysis is a key tool that allows for a comparison of the entire life-cycle cost of procuring through traditional public sector means versus a P3, and deciding which approach is better.<sup>15</sup> A VfM analysis can also consider the opportunity costs, or methods of maximizing revenues to the State from entering into a ground lease,

as compared to alternative uses of the property. Currently, TFC is not required to use a more comprehensive evaluation method, such as VfM, for comparing whether traditional government procurement methods or a P3 will provide best value for the State. A VfM method relies on comprehensive risk analysis and negotiating the shifting of risks to the private partner, which results in a greater value for money.<sup>16</sup>

TFC's OIA recognized and espoused the value of VfM in particular, because not all P3 proposals will have a competing proposal to be evaluated against, indicating a properly conducted VfM evaluation could show whether the selected procurement approach provides for the greatest return on taxpayer funds or assets.<sup>17</sup> Assumptions used in a proper VfM analysis should be reasonable and not overstated to favor P3 procurement.<sup>18</sup> These assumptions include the discount rate used to calculate the net present cost of a project, potential construction cost overruns, estimated project completion times, and future space needs.

- **Adequate expertise.** With only three staff dedicated to real estate management and P3 program activities, TFC lacks adequate staffing and the range of expertise needed to analyze, negotiate, and monitor P3 projects. These projects typically include very complex financing arrangements that can include debt issuance, sale and leaseback transactions, and private financing. State agencies must have adequate expertise, including expert financial, technical, and legal advice when entering into significant negotiations with more experienced private sector partners.<sup>19</sup>

OIA has raised concerns that without careful financial analysis, developers could earn excessive profits from a P3 project. According to OIA, developers typically expect a 9 percent return on investment on projects given a certain level of risk. However, the State is a low-risk business partner, and given this, should negotiate for lower rates of return.<sup>20</sup> For example, the State could negotiate to receive a portion of any additional fees private partners would charge users, such as a percentage of sales revenues in retail stores.

### **TFC's current P3 evaluation process does not fully ensure transparency and fairness.**

The need to keep certain proprietary information confidential is a necessary and accepted component of P3 projects. However, the P3 Act presents some difficulties when considering the appropriate balance between transparency and confidentiality. The P3 Act exempts from public disclosure information held by an agency, such as staff evaluations or other records prepared for the evaluation and negotiation of proposals, if disclosure would harm the State's negotiating stance. The P3 Act also protects the financial records and similar other information held by the private partner.<sup>21</sup> However, any lack of transparency or uncertainty, even the perception of it, in the P3 procurement process can weaken a proposal's chances, undermining general public support and reducing confidence in the process.<sup>22</sup> Given the importance of

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*TFC lacks the range of expertise needed for P3 projects.*

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*Lack of transparency in the procurement process can weaken a P3 proposal's chances.*

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transparency and accountability in conducting the State's business, Sunset staff identified areas where TFC should better ensure certain information is made public, without harming the agency's bargaining position.

- **Need for impartiality and fairness in screening proposals.** When considering such high-stakes ventures as P3s, objectivity of both the process and personnel are essential. The Commission relies on the Executive Director and staff to assess the merits of initial P3 proposals that meet submission requirements. The Executive Director and staff have unrestricted authority in recommending a P3 proposal to the Commission for further review, requiring significant safeguards to prevent even the perception that staff is filtering out proposals for Commission consideration. TFC lacks a sufficiently documented formal procedure for objectively carrying out initial review of proposals based on key criteria, and does not fully document justification for the recommendations to the Commission. As a result, the Commission cannot ensure that the initial review is fair, and that staff is not inappropriately or inadvertently influencing which proposals it will see for the first time.

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*TFC lacks a sufficiently documented process for screening P3 proposals.*

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TFC's current outside employment policies are not adequate to fully protect the State when working on large real estate and development projects the size of the proposed public-private partnerships. While TFC has an ethics policy that employees must sign, it does not prohibit staff from engaging in related outside employment, such as having a real estate practice, concurrent with their position at TFC. The ethics policy prohibits staff from engaging in self-enrichment, and prohibits family members, to the second degree of consanguinity, from receiving any compensation from TFC contracts.<sup>23</sup> While these prohibitions are an essential component of impartiality, they cannot prevent the appearance of or actual future conflicts that may arise. Clearly, prior employment in the real estate industry would provide useful expertise for the agency when engaging in the P3 process. However, having staff currently employed in the industry may create a perception of bias or conflict of interest that could be avoided through a stronger outside employment policy, particularly when working on the P3 development process.

- **Clear evaluation documentation.** TFC's Oversight Committee, which includes two Commission members, plays a critical role in the detailed evaluation and analysis of P3 proposals before they are submitted to the PAC for review and comment. TFC's P3 Guidelines do not specify how the Committee conducts and reports its evaluations to the Commission in a manner that ensures use of objective criteria and a standardized reporting format.
- **Meaningful stakeholder input.** The public should have sufficient time to analyze the details of a P3 project to ensure the public's interest is met.<sup>24</sup> Both the P3 Act and TFC's P3 Guidelines require the agency to make a copy of a P3 proposal publically available, and to hold a public hearing on the proposal no later than 30 days before the agency enters

into a contract.<sup>25</sup> However, this hearing requirement, while valuable, does not provide sufficient opportunity for the public to provide input in advance of the most critical phase — submittal of a detailed proposal evaluation to the PAC, and final negotiation of the contract. By the time TFC would hold a public hearing, the contract negotiation is close to final, rendering public input less meaningful and impactful. While the public may have the opportunity to comment on a proposal during a PAC meeting, questions exist as to whether or not the PAC is subject to the Open Meetings Act, as evidenced by a request from the PAC Chairman for an opinion on this issue from the Office of the Attorney General.<sup>26</sup>

- **Independent review by outside agencies.** P3 contracts involve valuable, irreplaceable state assets, but are subject to little review and oversight typical of the State's other large contracts. The P3 Act exempts P3 projects from most state procurement laws and contract management guidelines and rules, many of which serve as the basis for sound contracting practices in Texas.<sup>27</sup> TFC is also not required, and has no plans, to submit P3 contracts for review to oversight agencies that typically provide an additional level of objectivity and expertise to the State's contracting process, such as the Contract Advisory Team at the Comptroller of Public Accounts.

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*TFC does not provide timely and adequate opportunity for public input before finalizing a P3 contract.*

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### **Significant concerns about how quickly TFC is moving with P3 projects warrants a more deliberate approach.**

During the course of the review, Sunset staff heard significant concerns from the Legislature and stakeholders that TFC is moving too quickly with the P3 program, given the high stakes of these efforts, which can greatly impact the Capitol Complex and local communities. Also, in its meetings Commission members have expressed concerns about the public misunderstanding the program, which can contribute to lack of trust about TFC's intentions. At TFC's current pace, the PAC could be put in the position of reviewing its first major P3 proposal during the legislative session, a time that places great demands on members of the Legislature who also serve on the PAC. Further, as a major piece of legislation, the P3 Act may be modified during the upcoming session. A more deliberate approach to the P3 program is warranted.

### **The State lacks a documented approach for managing potential P3 revenues to ensure best use of these funds, and that TFC can recover its program costs.**

- **Managing P3 revenues.** One of TFC's goals is to generate significant non-tax revenues from P3 developments, for example, from leasing state-owned land.<sup>28</sup> However, the State has not yet decided an approach towards managing these funds, or to what purpose they may be put, raising significant policy issues yet to be fully considered. During the review, TFC indicated it could potentially use a portion of these funds to acquire new state-owned buildings or to hire needed expertise for the

agency's P3 program. Up-front lease payments TFC may receive from P3 developments can range in the tens-of-millions of dollars per project or substantially more if the agency opted to take these payments over the course of a long-term lease. Yet, the State lacks a policy for management and use of these revenues.

- **Fee and expenditure authority.** The P3 Act authorizes an agency to set reasonable fees to pay the costs of processing, reviewing, and evaluating proposals, including reasonable legal fees and fees for financial, technical, and other necessary advisors or consultants.<sup>29</sup> In policy, TFC set its P3 proposal review fee at \$5,000, however because TFC lacks appropriation authority to spend these revenues, it had to return \$30,000 in checks to the proposers. In addition, due to this lack of expenditure authority, TFC requires developers to directly pay professional consultants chosen by TFC.

## Recommendations

### *Change in Statute*

#### **2.1 Require TFC to include a complete and clearly documented process for evaluating P3 proposals in its P3 Guidelines, and make the evaluation results publicly available.**

Under this recommendation the Commission would amend its P3 Guidelines to include criteria and documentation, such as an evaluation matrix, to guide the initial review of all substantially complete P3 proposals received by the agency. The initial review criteria should include, at a minimum:

- the extent to which the project meets a public need;
- the extent to which the project meets the objectives and priorities of the agency, including aligning with agency plans, such as a Capitol Complex Master Plan;
- the overall feasibility of the project (technically and legally);
- the adequacy of the proposer's qualifications, experience, and financial capacity;
- any potentially unacceptable risks to the State; and
- whether an alternative delivery method makes sense.

As part of this recommendation, a summary of the initial review would be provided to the Commission, including any analysis and recommendations.

The P3 Guidelines would also require the Oversight Committee to report the results of its evaluation of any P3 proposals to the Commission and would specify the timeframes, procedures, and documentation required. This documentation would correspond with the proposal evaluation criteria currently specified in the P3 Guidelines. Under this recommendation, TFC would also be required to make P3 evaluation documents available on the agency's website, with any confidential information redacted.

## **2.2 Require TFC to use a value for money analysis to ensure the agency determines the best approach for developing state assets.**

This recommendation would require TFC to use a value for money assessment when evaluating P3 proposals to determine if the P3 approach is in the best long-term financial interest of the State, and if the project will provide a tangible public benefit. This analysis could also address the opportunity costs of alternative uses of a state-owned property, such as leasing the property for commercial development compared to constructing a building for state use. Under this recommendation, TFC would be required to conduct a thorough risk analysis of a proposed P3 project that identifies specific risks to be shared between the State and the private partner, and subjects these risks to negotiation in the contract. As a part of this recommendation, TFC would coordinate with OIA for review and comment on the reasonableness of assumptions used in the value for money analysis conducted for a P3 project. Using a value for money approach would help ensure TFC thoroughly evaluates the financial and qualitative benefits of a P3 project.

## **2.3 Require TFC to hold a public hearing on a P3 proposal before submitting it to the Partnership Advisory Commission, and to incorporate public comments into the proposal submission.**

TFC would hold a public hearing in advance of submitting a detailed proposal to the PAC for review. To encourage public input, TFC would post a copy of the detailed proposal on the agency's website in advance of the hearing; however, any confidential information could be redacted. TFC would incorporate public comments into the proposal submission and could provide any additional information or modify the proposal based on consideration of the public input. The Commission would still be required to hold a public hearing before finalizing the contract, as currently required by the P3 Act.

## **2.4 Require the Commission's P3 Guidelines to include policies on acquiring needed professional expertise to evaluate, negotiate, and oversee P3 proposals and contracts.**

Under this recommendation, TFC would amend its P3 Guidelines to specify types of professional expertise needed to effectively protect the State's interest when considering and implementing a P3 project. The P3 Guidelines would specify a range of expertise needed at each stage of the P3 process to carry out the evaluation of P3 proposals, assess and allocate risk, negotiate a contract, and continue to oversee the performance of the contract over its lifetime. This expertise should include financial, real estate, legal, and other expertise related to these activities and could be provided either by staff or outside experts. The Commission would use this information to determine the cost of its proposal fee which should be reasonable in comparison to the level of expertise required and may also include direct costs, such as staff time required to process a proposal.

## **2.5 Require TFC to submit each P3 contract to the Comptroller's Contract Advisory Team for review and comment before adoption by the Commission.**

TFC would be required to submit a copy of the final draft P3 contract to the Contract Advisory Team (CAT) for review and comment, including any recommendations, but not approval. The submission should also include a copy of the detailed proposal and executed agreement to allow for the review of the changes that resulted from the evaluation and negotiation process. The contract must be provided to CAT at least 60 days before the Commission is scheduled to vote on the approval of the contract. The CAT review would focus on contract management and administration best practices. The P3 Act already requires the Comptroller's Office to provide support to the PAC, thus CAT could benefit from

this expertise in its review.<sup>30</sup> TFC would document its response to any comments or recommendations received and provide this information to the Commission.

## **2.6 Specifically authorize TFC to charge a reasonable proposal fee to recover the costs of processing, reviewing, and evaluating P3 proposals.**

Under this recommendation, TFC would develop and adopt a fee schedule sufficient to recover the costs of the P3 review process. This fee would include, but not be limited to, the cost of processing, reviewing, and evaluating P3 proposals. This recommendation would ensure that TFC is able to use the proposal fee to hire or contract for the expertise needed to effectively evaluate P3 proposals. TFC should also consider ways to cover the agency's additional costs of negotiating, implementing, and overseeing an executed P3 contract throughout its duration, possibly through revenue generated from projects.

## **2.7 Prohibit outside employment of TFC P3 program staff in fields or activities related to their responsibilities at the agency.**

Under this recommendation, a TFC employee involved in the P3 process would be prohibited from engaging in outside employment that relates to their duties at the agency. TFC would ensure that it has sufficient information to determine whether any potential conflict of interest exists between an employee's duties and their outside employment, and that each employee is aware of and agrees in writing to the agency's ethics and conflict of interest policies. This recommendation would not prohibit other agency staff, such as engineers or maintenance workers from engaging in outside employment, to the extent allowed under current TFC policies.

### ***Management Action***

## **2.8 Direct the Commission to delay formal action on P3 proposals until after September 1, 2013.**

Under this recommendation, the Commission would suspend any formal action on P3 proposals until September 1, 2013, the normal effective date of legislation from the 83rd Session. This recommendation does not direct TFC to discontinue the P3 program or end its efforts at developing state assets. Rather, the recommendation would ensure TFC has sufficient time to develop and implement a successful P3 program, for example by ensuring that stakeholders have sufficient opportunity to participate, and that TFC conducts needed planning before approving any projects. In addition, the PAC would not be placed in a potentially untenable position of reviewing a major P3 proposal during session. The Legislature would have the opportunity to assess the overall approach to use of P3s for infrastructure in Texas, and make any needed changes to the P3 Act, as well as TFC's role, before moving forward on proposals that could affect the Capitol Complex and other areas.

## **2.9 Direct TFC to provide financial information and analysis related to any P3 revenues to the Legislative Budget Board.**

TFC would provide the Legislative Budget Board (LBB) information on any potential and actual revenues generated from P3 developments on a regular basis to ensure LBB is able to effectively monitor the State's financial interest in such projects. TFC would also provide LBB with any financial analysis, forecasts, or other related information resulting from the evaluation and implementation of P3 projects. This recommendation would ensure LBB is kept actively informed of the financial status of P3 developments and has information needed to provide direction or make any needed recommendations regarding the use and management of revenue generated from P3s.

## Fiscal Implication

These recommendations have the potential for a significant positive fiscal impact to the State. The development of a clear, objective, and consistent process to evaluate P3 proposals, acquiring the skills to successfully negotiate favorable P3 contracts, and receiving the resulting benefits have significant financial potential. This potential will likely be tapped in the next five fiscal years, but the amounts cannot be estimated. Authorizing TFC to charge fees to developers to cover the costs of reviewing proposals would offset these costs for the State.

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<sup>1</sup> Texas Facilities Commission, Office of Internal Audit Management Letter *Review of "Public-Private Partnerships,"* January 2012.

<sup>2</sup> Chapter 2267, Texas Government Code.

<sup>3</sup> Texas Facilities Commission, *Public-Private Partnership Guidelines* (Austin: Texas Facilities Commission, October 2012).

<sup>4</sup> Urban Land Institute, *Ten Principles for Successful Public-Private Partnerships* (Washington: Urban Land Institute, 2005), p. 13.

<sup>5</sup> "Public Private Partnerships," Canadian Council for Public-Private Partnerships, accessed September 3, 2012, <http://www.gnb.ca/0158/reports/protocol/protocol.htm>.

- <sup>6</sup> Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships, *Final Report to the Governor and General Assembly* (Annapolis: Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships, January 6, 2012), p.11.
- <sup>7</sup> “Arizona Game and Fish Department Headquarters,” The National Council for Public-Private Partnerships, accessed October 1, 2012, <http://www.ncppp.org/cases/AZGameFish.shtml>; “Green Rock and Pocahontas Correctional Centers,” The National Council for Public-Private Partnerships, accessed October 1, 2012, [http://www.ncppp.org/cases/Greenrock\\_0904.shtml](http://www.ncppp.org/cases/Greenrock_0904.shtml).
- <sup>8</sup> “How PPPs Work,” The National Council for Public-Private Partnerships, accessed September 9, 2012, <http://www.ncppp.org/howpart/index.shtml#define>.
- <sup>9</sup> Texas P3 Association, *Model PPFI Guidelines for Texas Boards, Commission, Departments and Agencies* (Austin: Texas P3 Association, January 2012), p.5.
- <sup>10</sup> “Public Private Partnerships,” Canadian Council for Public-Private Partnerships.
- <sup>11</sup> “Crying Wolf in the State Center Suit,” *Baltimore Sun*, March 27, 2012, [http://articles.baltimoresun.com/2012-03-27/news/bs-ed-state-center-20120327\\_1\\_state-center-competitive-bidding-laws-workers](http://articles.baltimoresun.com/2012-03-27/news/bs-ed-state-center-20120327_1_state-center-competitive-bidding-laws-workers).
- <sup>12</sup> Urban Land Institute, *Ten Principles*, p. 2; Darrin Grimsey and Mervyn K. Lewis, “Evaluating the Risks of Public-Private Partnerships for Infrastructure Projects,” *International Journal of Project Management* 20 (February 2002): 107-118.
- <sup>13</sup> Texas Facilities Commission, *Public-Private Partnership Guidelines*, pp. 20-22.
- <sup>14</sup> Texas Facilities Commission, *Review of “Public-Private Partnerships,”* p. 4.
- <sup>15</sup> Dawn Bidne et al., *The Value for Money Analysis: A Guide for More Effective PSC and PPP Evaluation*, undated, p. 21.
- <sup>16</sup> *Ibid*, p. 15.
- <sup>17</sup> Texas Facilities Commission, Office of Internal Audit Management Letter Review of “*Interest Rates and Public-Private Partnerships*,” March 2012.
- <sup>18</sup> Legislative Analyst’s Office, *Maximizing State Benefits From Public-Private Partnerships*, accessed November 8, 2012, [http://lao.ca.gov/reports/2012/trns/partnerships/P3\\_110712.pdf](http://lao.ca.gov/reports/2012/trns/partnerships/P3_110712.pdf)
- <sup>19</sup> *Ibid*, p. 2.
- <sup>20</sup> Texas Facilities Commission, *Review of “Public-Private Partnerships,”* p. 6.
- <sup>21</sup> Section 552.153, Texas Government Code.
- <sup>22</sup> National Conference of State Legislatures, *Public-Private Partnerships for Transportation: A Toolkit for Legislators*, (Denver and Washington, D.C: National Conference of State Legislatures, 2010), p. 32.
- <sup>23</sup> Texas Facilities Commission, *Human Resources Employment Manual Ethics Policy and Ethics Compliance Statement* (Austin: Texas Facilities Commission).
- <sup>24</sup> Regional Plan Association, *Proceed with Caution: Ground Rules for Public Private Partnerships in New Jersey*, White Paper (Princeton: Regional Plan Association, January 8, 2007), p. 4, accessed September 5, 2012, <http://www.rpa.org/pdf/rpapp01082007.pdf>.
- <sup>25</sup> Texas Facilities Commission, *Public-Private Partnership Guidelines*, p. 26.
- <sup>26</sup> Letter from the Honorable Jim Murphy to the Office of the Attorney General, October 2012, accessed October 30, 2012, <https://www.oag.state.tx.us/opinions/opinions/50abbott/rq/2012/pdf/RQ1093GA.pdf>.
- <sup>27</sup> Section 2267.065, Texas Government Code.
- <sup>28</sup> Texas Facilities Commission, *Agency Strategic Plan Fiscal Years 2013–2017* (Austin: Texas Facilities Commission, July 2012), p. 10.
- <sup>29</sup> Section 2267.053(d), Texas Government Code.
- <sup>30</sup> Section 2268.056(c) and (d), Texas Government Code.

## RESPONSES TO ISSUE 2

### Overall Agency Response to Issue 2

The Texas Facilities Commission generally agrees with the staff report recommendations, with certain exceptions noted below.

The Staff Report identifies the need to amend Chapter 2267 of the Texas Government Code, entitled the Public and Private Facilities and Infrastructure (“P3 Act”). While the staff report acknowledges that TFC is engaging in P3s as authorized by the P3 Act, the staff report states that “TFC has put the cart before the horse, stepping into these efforts without adequate guidance, planning, and resources needed to ensure protection of the State’s best interest.... Further, TFC’s decision to use public-private partnerships to develop the Complex is moving forward without sufficient guidelines, expertise, and funding for effective consideration of these multi-faceted agreements.” TFC respectfully disagrees with these statements.

TFC began preparing a comprehensive asset management and development strategy in late 2009 and a facilities master plan was subsequently adopted by TFC in 2011. Since passage of the P3 Act in 2011, TFC has taken many steps to methodically develop a framework and process for evaluating and managing P3 projects as contemplated in the legislation and that will protect the State’s interest. One of the first of these steps was TFC’s adoption of the P3 Guidelines in open meeting.

The P3 Guidelines adopted by TFC following passage of the legislation comply with and are more comprehensive than the requirements of the P3 Act. Had TFC implemented substantially more restrictive guidelines or requirements than those provide by the Act, it may have given rise to concerns that TFC was overstepping the boundaries of legislative intent. Additionally, since adoption of the P3 Guidelines under the P3 Act, TFC has not issued any solicitations for P3 projects and has only posted one unsolicited proposal for conceptual evaluation.

TFC recognizes, as does the staff report, that P3s require additional resources. TFC has engaged staff with the necessary skills and industry expertise as well as contracted for professional advisory and technical services as needed. TFC is currently soliciting technical and advisory resources for the Capitol Area Development Study to analyze the development feasibility. The analysis include: legal and regulatory analysis, market and competitive analysis, location and site analysis, and financial analysis that as part of the Study will culminate in a Development and Feasibility and Residual Land Valuation Report. The results of development feasibility analysis will guide future planning efforts and evaluation of proposals. (Terry Keel, Executive Director – Texas Facilities Commission)

Note: TFC’s formal response, available at [www.sunset.state.tx.us](http://www.sunset.state.tx.us) or upon request, includes additional detail regarding the agency’s overall response to Issue 2.

**Staff Comment:** Because of the sensitive and impactful nature of development of state properties in the Capitol Complex, Austin, as well as other parts of the state, the recommendations contained in Issue 2 of the staff report would apply to TFC’s statute and would not change the P3 Act itself. Other governmental agencies under the P3 Act could act similarly, as long as they remained in compliance with that Act.

**Recommendation 2.1**

*Require TFC to include a complete and clearly documented process for evaluating P3 proposals in its P3 Guidelines, and make the evaluation results publicly available.*

**Agency Response to 2.1**

TFC agrees with this recommendation. As required by the P3 Act, TFC's current evaluation process as set out in its P3 Guidelines satisfies this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 2.1**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.1**

None received.

**Recommendation 2.2**

*Require TFC to use a value for money analysis to ensure the agency determines the best approach for developing state assets.*

**Agency Response to 2.2**

TFC disagrees with this recommendation, for the reason that a value for money analysis (VfM) should not be the only available methodology. A financial analysis that includes a cost benefit analysis and life cycle cost analysis is required by statute. A VfM analysis is one methodology, but the phrase has an industry specific connotation. Each business case analysis will be different. A VfM would not be appropriate in all cases and should be considered as one of many analytical tools. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 2.2**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.2**

None received.

**Recommendation 2.3**

*Require TFC to hold a public hearing on a P3 proposal before submitting it to the Partnership Advisory Commission, and to incorporate public comments into the proposal submission.*

**Agency Response to 2.3**

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 2.3**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.3**

None received.

**Recommendation 2.4**

*Require the Commission's P3 Guidelines to include policies on acquiring needed professional expertise to evaluate, negotiate, and oversee P3 proposals and contracts.*

**Agency Response to 2.4**

TFC disagrees with this recommendation. The P3 Guidelines direct the private entities in submitting proposals. The authority to acquire needed expertise is currently in the Texas Government Code Chapter 2267. Furthermore, each P3 proposal or qualifying project is unique. The scope of work for the necessary advisors or consultants is drafted specific to each proposal or qualifying project and follows TFC's internal policies and statutory purchasing requirements.

**Agency Modification**

1. Require TFC to include these policies in its internal operating policies and procedures rather than its P3 Guidelines.

(Terry Keel, Executive Director – Texas Facilities Commission)

**For 2.4**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

David Lancaster, Senior Advocate – Texas Society of Architects, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.4**

None received.

## Recommendation 2.5

*Require TFC to submit each P3 contract to the Comptroller's Contract Advisory Team for review and comment before adoption by the Commission.*

### Agency Response to 2.5

TFC disagrees with this recommendation, as the Comptroller's Contract Advisory Team (CAT) is not qualified to review and comment on a P3 contract. CAT reviews and comments on large contracts for goods and services, not real estate contracts such as a comprehensive agreement for P3 projects. TFC believes review and comment by the Office of the Attorney General would be more meaningful and appropriate.

### Agency Modification

2. Require TFC to submit its P3 contracts to the Office of the Attorney General for review, instead of the Comptroller's Contract Advisory Team.

(Terry Keel, Executive Director – Texas Facilities Commission)

### For 2.5

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

### Against 2.5

None received.

## Recommendation 2.6

*Specifically authorize TFC to charge a reasonable proposal fee to recover the costs of processing, reviewing, and evaluating P3 proposals.*

### Agency Response to 2.6

TFC agrees with this recommendation which would also provide TFC with required appropriation authority to ensure TFC is able to use the collected fees to hire or contract for the expertise needed to effectively evaluate P3 proposals. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 2.6**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.6**

None received.

**Modification**

3. Authorize TFC to charge a reasonable proposal fee to recover the costs of processing, reviewing, and evaluating only unsolicited P3 proposals. (David Lancaster, Senior Advocate – Texas Society of Architects, Austin)

**Recommendation 2.7**

*Prohibit outside employment of TFC P3 program staff in fields or activities related to their responsibilities at the agency.*

**Agency Response to 2.7**

TFC does not view this recommendation as appropriate to have been included in the staff report.

The P3 Act is a state law applicable to nearly all state agencies as well as multiple levels of local governments. If attention is to be directed towards an undefined conflict of interest related to the subject, it should be addressed as a state policy matter applicable and directed to all state agencies and political subdivisions. Furthermore, TFC believes it benefits from professional employees, such as real estate professionals, who maintain their skill in the private sector where that outside employment does not constitute a conflict of interest with their state job. Moreover, the staff report identifies no actual conflict that exists at TFC but suggests the need for TFC to “ensure it has sufficient information to determine whether any potential conflict of interest exists between an employee’s duties and their outside employment, and that each employee is aware of and agrees in writing to the agency’s ethics and conflict of interest policies.” In fact, this suggestion in the staff report is already TFC’s current practice. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 2.7**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

David Lancaster, Senior Advocate – Texas Society of Architects, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.7**

None received.

**Modifications**

4. Require TFC to establish a “revolving door” limitation on a TFC employee being later hired by a developer awarded a P3 project. (David Lancaster, Senior Advocate – Texas Society of Architects, Austin)
5. Prohibit TFC staff from dealing in insider information, including the purchase of property slated to benefit from a P3 before the bid is acknowledged. (Joseph Reynolds, Austin)

**Recommendation 2.8**

*Direct the Commission to delay formal action on P3 proposals until after September 1, 2013.*

**Agency Response to 2.8**

TFC defers to the will of the Partnership Advisory Commission and the Legislature on this recommendation. It should be noted that the staff report has not accounted for substantial criticism from the private sector for what some perceive as a process that is already too slow. This recommendation has no adverse impact provided that “formal action” is defined as TFC’s approval of a comprehensive agreement. (Terry Keel, Executive Director – Texas Facilities Commission)

**Staff Comment:** Under this recommendation “formal action” would mean any vote by the Commission affecting the review, evaluation, or approval of a solicited or unsolicited P3 proposal or contract.

**For 2.8**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.8**

None received.

**Modifications**

6. Direct the Commission to delay action on certain P3 proposals until after the Capitol Complex Master Plan is completed and approved. (David Lancaster, Senior Advocate – Texas Society of Architects, Austin)
7. Exempt the Texas Science and Technology Museum proposal currently under consideration by the Texas Facilities Commission from Recommendation 2.8. (Torvald Hessel, Executive Director – Texas Science and Technology Museum, Austin)

**Recommendation 2.9**

*Direct TFC to provide financial information and analysis related to any P3 revenues to the Legislative Budget Board.*

**Agency Response to 2.9**

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 2.9**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Joseph Reynolds, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 2.9**

None received.

## COMMISSION DECISION ON ISSUE 2

(JANUARY 2013)

Adopted Recommendations 2.1, 2.3, and 2.4 through 2.9. Adopted Recommendation 2.2 as modified to require TFC to use a value for money analysis as recommended, but authorizes TFC to use an alternative analysis methodology if a value for money analysis is not appropriate for a specific proposal. Under this recommendation:

- TFC must document in writing to the Commission the reasons for using an alternative methodology for that proposal.
- TFC would coordinate with its Office of Internal Audit for review and comment on the appropriateness of assumptions used in any type of analysis used.

## FINAL RESULTS ON ISSUE 2

(JULY 2013)

### ***Legislative Action — S.B. 211***

**Recommendation 2.1** — Senate Bill 211 requires TFC to amend its P3 Guidelines to include criteria and documentation to guide the initial review of P3 proposals, and adopt these Guidelines by January 1, 2014. The Legislature modified the Sunset recommendation by adding two new review criteria to ensure projects align with TFC's design guidelines and any zoning requirements. The bill requires this criteria to include, at a minimum:

- the extent to which the project meets a public need;
- the extent to which the project meets TFC's objectives and priorities, including aligning with design guidelines or zoning requirements, and the Capitol Complex master plan;
- the technical and legal feasibility of the project;
- the adequacy of the submitter's qualifications, experience, and financial capacity;

- any potentially unacceptable risks to the State; and
- whether an alternative delivery method is feasible and more effectively meets the state's goals.

The bill requires a summary of the initial review be provided to the Commission, including any analysis and recommendations. The bill requires TFC's Oversight Committee to report the results of its evaluation of projects to the Commission. The Legislature modified the requirement for TFC to post the Oversight Committee's reports online to stipulate this occur after negotiating a comprehensive agreement but before finalizing the agreement.

**Recommendation 2.2** — Senate Bill 211 requires the Commission to use a value for money analysis to evaluate a P3 project proposal for purposes of conducting a thorough risk analysis, determining if the proposal is in the best long-term financial interest of the State, and if the project will provide a tangible public benefit. The bill authorizes TFC to use an alternative analysis methodology if more appropriate for a specific proposal. The bill requires staff to report to the Commission the reasons for using an alternative analysis methodology. The bill also requires TFC to coordinate with its Office of Internal Audit for review and comment on the appropriateness of assumptions used in an analysis.

**Recommendation 2.3** — Senate Bill 211 requires TFC to hold a public hearing on a P3 proposal before submitting it to the PAC, to modify the proposal as appropriate based on public comments, and to submit these comments to the PAC. The bill requires TFC to post a copy of the detailed proposal on the agency's website in advance of the hearing with information considered confidential under the P3 Act redacted.

**Recommendation 2.4** — Senate Bill 211 requires TFC's P3 Guidelines to specify the types of professional expertise needed, such as financial, real estate, design, and legal to effectively protect the state's interest when considering and implementing a project, and specify the range of professional expertise needed to evaluate a proposal at each stage of the project, including evaluation, financial analysis, risk allocation, design review, contract negotiation, and contract monitoring. The Legislature modified this recommendation to add design expertise to the range of professional expertise needed to evaluate and implement a project.

**Recommendation 2.5** — Senate Bill 211 requires TFC to submit each P3 contract to the Comptroller's Contract Advisory Team (CAT) for review and comment at least 60 days before adoption by the Commission. The bill requires that TFC provide to CAT documentation of the modifications to a project made during TFC's evaluation and negotiation processes, including copies of the draft proposals and contracts. The bill requires CAT review to focus on contract management and administration best practices. The bill also requires CAT to provide written comments and recommendations to TFC, who must provide the Commission a copy of these comments as well as the staff's response to them.

**Recommendation 2.6** — Senate Bill 211 authorizes TFC to charge a proposal fee to cover the costs of processing, reviewing, and evaluating a qualifying project. The bill requires TFC to use information on needed expertise to determine the amount of the fee, which may include direct agency costs. The bill authorizes TFC to use collected fee revenues to hire or contract with persons who have the expertise necessary to evaluate proposals. The bill requires TFC to develop a schedule for these fees by January 1, 2014.

**Recommendation 2.7** — Senate Bill 211 prohibits outside employment of TFC P3 program staff in fields or activities related to their responsibilities at the agency. The bill requires TFC to have sufficient information to determine if any potential conflict of interest exists between an employee's duties and their outside employment, and that each employee is aware of and agrees to the agency's ethics and conflict of interest policies in writing. The bill does not prohibit additional employment for TFC employees whose duties are not related to P3 projects.

### ***Management Action***

**Recommendation 2.8** — Directs the Commission to delay formal action on P3 proposals until after September 1, 2013. The Legislature expanded on this nonstatutory recommendation by passing H.B. 3436, which statutorily prohibits any state entity, with the exception of higher education, from entering into a final P3 comprehensive agreement before September 1, 2014.

**Recommendation 2.9** — Directs TFC to provide financial information and analysis related to any P3 revenues to the Legislative Budget Board on a regular basis, including revenues generated from P3 developments.



# ISSUE 3

## *TFC's Contracting Functions Lack Standard Elements Necessary to Improve Contract Transparency and Management.*

### Background

The Texas Facilities Commission (TFC) has a long history of contracting for large construction-related projects such as building facilities for itself or client agencies, and carrying out major deferred maintenance projects. However, over the last decade, TFC has become more dependent on contracts to carry out its duties related to maintaining state buildings and properties. In some cases TFC has outsourced to gain efficiencies, such as outsourcing custodial services, and in others TFC needed to procure services it cannot perform in-house due to limitations in funding or expertise, such as some plumbing repair work.

In fiscal year 2011, TFC spent \$37 million, or 51 percent of its \$72.4 million budget, on contracts. About \$17.8 million of these expenditures were for deferred maintenance contracts. In this same year, TFC also managed almost \$49 million in expenditures paid by other agencies for TFC-managed construction projects. Overall, TFC currently manages construction projects equal to about \$316 million in total value, with expenditures spread over multiple years and tied to numerous contracts.

The agency's procurement and contracting functions are mostly centralized. The procurement program has four staff that assist the agency's other programs with the planning, solicitation, and awarding of contracts. The Legal Division also has four staff who handle contract drafting, finalization, and close-out. In the Facilities Design and Construction (FDC) Division, project managers bear most of the responsibility for identifying contracting needs and overseeing the work of contractors such as architects, engineers, and construction companies.

The Sunset Commission has documented contracting best practices covering all aspects of contracting, including development of requests for proposals, procurement, management, and close out. Sunset staff uses these best practices for guidance when evaluating the effectiveness of an agency's contracting policies and procedures. While these best practices apply generally to all state agencies, significant risk in TFC's facilities design, construction and deferred maintenance functions, including the recent authority to use public-private partnerships, requires focusing the application of these standards on key contracting areas.

### Findings

#### **TFC's decisions regarding its use of different contracting methods has limited competition, delayed projects, and increased costs.**

Agencies should use competitive methods of procurement whenever possible. Competition among bidders helps ensure agencies get best value for their spending. In several instances, the agency's choice of contracting methods has led to decreased competition and contract management problems primarily due to TFC not having clear guidelines, as described on the following page.

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*TFC does not provide written justification when selecting a construction project delivery method.*

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- **Choice of contracting methods.** While TFC competitively procures most contracts, its policies for selecting project delivery methods for its outsourced projects are incomplete. The contracting method determines how an agency will manage a project, and should be tailored to each project's complexity and inherent risk. Currently, the Commission has delegated the selection of a contracting method to the Executive Director who approves each method, by project, before the solicitation is issued. TFC can use several types of contracting methods for construction projects, including lowest and best bid, design-build, design-bid-build, construction manager-at-risk, competitive sealed proposal, and construction manager-agent. The agency can use requests for qualifications, indefinite delivery/indefinite quantity (IDIQ) contracts, and interagency contracts (IACs) to procure professional services.

For construction projects, Commission policies set the criteria to be used by staff to determine which contracting method should be used, including complexity of the project; timing requirements; scope and site specific issues; budget requirements and timing of the funds; and internal and external resource requirements. However, the policies do not specify which method is best in each situation, and do not require agency staff to document and report reasons for using one method over another. For example, TFC could not provide documentation showing why it used a competitive sealed proposal for its project to construct the new Texas School for the Blind and Visually Impaired campus. TFC staff believes the agency could have avoided some delays and extra costs, such as for incorrectly installed electrical work, if it had used a construction manager-at-risk contract.

- **Use of indefinite delivery/indefinite quantity contracts.** The agency typically uses IDIQs to contract for professional services — usually costing less than \$25,000 — associated with planning, such as engineering and design, and small construction projects. In addition, IDIQs expedite procurement of professional services for projects presenting an urgent need, defined by the agency as:
  - a situation in which a delay of action could have a detrimental effect on the agency or client agency;
  - a situation in which an imminent threat to public health and safety exists; or
  - a reasonably unforeseeable situation.

TFC issues IDIQs through the normal procurement process, but instead of hiring a contractor for a specific amount of work, the agency contracts with numerous contractors for two years to remain on call as needed by the agency. In this way, the agency does not have to go through the more lengthy procurement process every time a need for certain professional services arises, such as the renovation of a bathroom. Instead, when a

need arises, a selection team chooses one of the IDIQ contractors based on geographic service area, relevant experience, familiarity of the firm with the using agency, past performance, and equity of assignments based on dollar amounts. For services that exceed \$25,000, the agency must document why the contractor was selected as the most qualified and how the selection satisfies the urgent need requirement.

TFC has used IDIQ contracts in cases where a more competitive request for qualifications process would have been better. For instance, in late 2009, TFC had to re-bid for design work to build a specialized lab after learning that the original IDIQ contractor chosen for the project was not qualified and missed some code requirements. More recently, TFC canceled a Commission-approved IDIQ procurement related to the development of several underused state-owned properties, some within the Capitol Complex. According to TFC staff, the agency realized after-the-fact that using an IDIQ contract was inappropriate, and has now issued a formal request for qualifications for this project.

- **Questionable use of interagency contracts for procurements.** Typically, agencies use IACs for projects or agreements with another agency or local governmental entity when competition is not necessary or will not achieve best value for the State. TFC, for instance, uses an IAC to specify its arrangement to provide the Texas Commission on Environmental Quality with facility management services. TFC tends to use IACs only when providing services to another agency, but in 2010, chose to enter into a \$1.7 million IAC with an energy laboratory at a Texas university to procure energy management services intended to help reduce utility costs at some TFC facilities. Agency staff chose to execute an IAC to move quickly, even though in hindsight staff indicated the project was likely better suited to a competitive procurement. The lab did not perform the agreed work and TFC experienced difficulties enforcing the IAC because it lacked a well-defined statement of work, which might have been avoided with a competitively procured contract. Ultimately, TFC terminated the contract in 2011, after spending \$400,000, and completed the work itself. If the Commission had a policy limiting the use of IACs for the agency's high-dollar procurements, except in emergencies, it could limit the risk of committing these costly errors.
- **Questionable use of bundled contracts for major, complex projects.** As a general practice, agencies should have flexibility to structure their contracts to provide the most protection against risk and receive best value for the State, while still adhering to competitive bidding requirements in statute. TFC uses bundled contracts to combine several like-projects under one large contract. This allows TFC to achieve economies of scale and complete the projects faster since each individual project does not have to go through the procurement process. However, TFC does not have a policy defining the appropriate limits of bundled contracts to ensure effective project management.

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*TFC has used interagency contracts for work better suited for a competitive bid.*

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In 2008, TFC bundled \$48 million of deferred maintenance work into one large, competitively-procured contract for multiple years. According to TFC, bundling this many projects was not effective and contributed to significant project management problems, as described further in Issue 4 of this report. The Commission could avoid these problems by developing a policy restricting bundled contracts to a more manageable scope of work and dollar amount.

**The Commission needs to strengthen its procedures for soliciting and awarding contracts to increase transparency and reduce risks to the State.**

Generally, the contracting process begins with determining the service(s) needed, soliciting and evaluating bids, and awarding the contract. When done properly according to best practices, this process is transparent and reduces risks to the State. The following standard practices are missing from the agency's contract solicitations, evaluation and award, and administration.

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*TFC does not clearly document its risk analysis for large construction contracts.*

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- **No formal risk and needs assessment.** Before beginning the solicitation process, an agency should perform a risk and needs assessment to determine the financial and managerial resources needed for a contract. TFC performs some risk and needs analysis for contracts, but lacks a formal, sufficiently documented approach. For instance, TFC does extensive preliminary analysis for major construction and deferred maintenance projects, and continues to reassess risk throughout the design and construction process. However, staff does not consistently and clearly document risk management in contracting files. Documenting risk and needs assessment would help the agency develop a plan to manage those risks, assists contract administrators in monitoring contractors, and provide a method to evaluate contract management performance.
- **Lack of documentation on Contract Advisory Team recommendations.** Statute requires agencies to submit all solicitations of \$1 million or more for review to the Contract Advisory Team (CAT) in the Comptroller's Office. Agencies receive CAT recommendations to improve these solicitations, but implementation is optional. TFC submits required solicitations to CAT, but does not document its rationale for implementing CAT recommendations. On one project, CAT recommended that TFC pay a contractor based on cost-plus rather than the flat percentage fee TFC proposed; TFC disagreed, but had no documentation in the contract files explaining the agency's reasoning for not following the CAT recommendation.
- **Inadequate review of insurance requirements.** Contract documents should include standard elements that account for risk, and agencies should ensure that winning bidders meet all terms before issuing the contract. In many cases, such as for major construction contracts, TFC requires contractors to carry certain types of insurance to protect

the contractor and State from risk. However, TFC lacks a centralized, consistent process for verifying that contractors carry and renew correct types of insurance.

While TFC has not experienced major financial losses due to shortfalls in contractor insurance, it has discovered that a significant number of contractors lack proper insurance coverage. The agency is making a concerted effort to monitor contractor insurance, but relies on various staff to conduct these reviews, many of whom do not have needed expertise. The Legal Division plays a major role in approving insurance before issuing contracts or contract amendments, and in tracking insurance renewals, but still depends on contract administrators to assist with reviewing specific insurance policies.

- **Insufficient documentation on contract negotiation.** An agency should have a negotiation plan and thoroughly document outcomes to allow management to assess negotiation performance. Although TFC appears to plan for negotiations, and always includes at least two staff in negotiations as a best practice, it does not document its negotiation plans in contracting files or report on the effectiveness of its negotiations. Far from being a mundane clerical task, reporting such information helps management and Commission members evaluate the agency's negotiation success.

### **The agency's contracting functions lack elements commonly applied to state agencies to improve contract administration.**

An agency may have the best contract possible, but if it does not administer the contract effectively it can encounter many problems. Contract administration encompasses elements such as planning and training for administration, monitoring compliance, and closing out contracts. The following material provides information on areas where the agency could improve its contract administration functions to better align with best practices.

- **No contract administration plans.** A contract administration plan is a best practice that requires agencies to plan the strategy and resources needed to ensure contracts accomplish their goals. While program areas within TFC have some procedures for managing competitive contracts, the agency does not develop formal administration plans for most of its contracts. The Facilities Design and Construction Division (FDC), for example, has general guidelines such as its Uniform General Conditions and Architect/Engineer manuals, but does not always clearly document administration plans for specific projects. Without these plans, project managers may have difficulty monitoring contractor performance, especially when a new project manager takes over a project due to staff turnover. Since 2007, 11 FDC project managers have left the agency, with four leaving in 2011 mostly due to budget cuts. Contract administration plans would also give management a point of comparison to evaluate contract administration performance.

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*TFC lacks a centralized, efficient approach for reviewing contractor insurance requirements.*

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*Significant project manager turnover has impacted TFC.*

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- **Insufficient training on contract administration.** Contract managers of agencies engaging in contracting should receive training in contract administration, as well as other aspects of contracting. While TFC provides training on the procurement and legal aspects of contracting to most contract administrators and purchasing staff, it does not require contract administrators to attend this training, and does not tailor training to the needs of every program area. Providing more consistent and specialized training could help mitigate the loss of expertise caused by turnover of project managers.
- **Contract monitoring deficiencies.** Monitoring contractor performance is crucial to ensuring the State receives contracted goods and services on time and on budget. Some TFC contracts have detailed performance measures and monitoring requirements. However, the review found that TFC still lacks documentation, monitoring plans, and tools needed to ensure better oversight of its key contracts.

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*TFC does not provide specialized training to its contract administrators.*

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Inadequate monitoring information and reporting. TFC does not always document its monitoring efforts in a timely manner or keep this information in a centralized location, limiting staff's ability to effectively track contractor performance. For example, the FDC system for managing large projects, Impact, does not interface with TFC's accounting system and does not automatically update schedules, requiring staff to repeatedly update data in multiple systems. As a result, basic management information such as a project's budget and timeframes are not consistently or accurately tracked in Impact.

Inadequate monitoring provisions in childcare contract. Requiring contractors to undergo monitoring not specified in a contract can be, in extreme cases, grounds for legal challenge.<sup>1</sup> TFC's childcare contract for the state childcare center in the Capitol Complex does not clearly state how TFC will monitor operator performance, for example by requiring monthly reports or setting frequencies for inspections or financial audits. The operator has also experienced difficulty with maintaining contractually required state and national accreditations.<sup>2</sup> While TFC works informally with the operator to address issues such as accreditation, the contract only provides for termination due to nonperformance instead of a range of sanctions and a corrective action plan to help ensure the contractor takes steps to regain compliance.

Lack of needed monitoring tools. FDC does not make consistent use of building commissioning, a best practice and tool for monitoring construction projects. Building commissioning firms verify that contractors construct all building systems, such as HVAC, plumbing and electrical, according to building and design specifications. TFC could have avoided significant problems if it had used commissioning for its 2006 multi-million dollar Texas School for the Blind and Visually Impaired project. For example, a contractor on the project incorrectly

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*TFC does not regularly use building commissioning, which can help prevent serious problems on site.*

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installed an electrical system, which started a fire, creating significant risk of serious injury on the site. As a result of this incident, TFC later hired an engineer to inspect all of the contractor's electrical work.

- **No assessment of performance during contract closeout.** An agency should formally close out a contract, evaluate the overall success of the contract, and report results to the agency's board. TFC does not have a formal process for evaluating the success of its contracts. For example, the FDC division reports contract change orders and project updates to the Commission, but does not use this information to assess the overall success of the contract. This type of analysis is important because TFC construction projects may change significantly even though they appear within budget and on time. Changes to TFC's contract to provide the Teacher Retirement System (TRS) building with security and elevator upgrades increased final costs by 41 percent, but TFC's performance measure showed this project as within budget because TRS increased the project's scope.
- **No centralized master contracting files.** As a general practice, agencies should keep all contracting-related files together in a centralized location to make contract management easier and improve oversight of contracting functions. By comparison, TFC does not typically assemble master contracting files that include all stages of the contracting process from planning to closeout. Typically, TFC splits some documentation between the procurement and legal programs. A third group of documents for large construction projects remains with the FDC division.

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*TFC does not have a formal process to clearly explain whether construction projects are on time and within budget.*

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### **TFC's use of public-private partnerships presents the potential for new contracting risks to the State.**

With the passage of the Public and Private Facilities and Infrastructure Act in 2011, TFC could be entering into public-private partnership agreements for potentially significant redevelopment in the Capitol Complex and other areas.<sup>3</sup> These efforts will involve very different and highly complex contractual agreements which will require a new level of contract planning, negotiation and oversight beyond that normally associated with construction and maintenance contracts. Issue 2 of this report addresses some of the risks associated with these public-private partnerships in more detail. However, TFC could apply selected contract management best practices and standards as recommended in this issue to ensure it is best prepared to meet the increasing demands, and risks, these new types of contracts will place on the agency.

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*P3s will require a new level of contract negotiation and oversight from TFC.*

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## Recommendations

### *Management Action*

#### **3.1 Direct the Commission to formally adopt policies on contracting methods and indefinite delivery/indefinite quantity contracts in a public meeting.**

This recommendation directs the Commission to adopt a more detailed policy on selecting project delivery methods and on issuing indefinite delivery/indefinite quantity contracts in an open meeting. For its project delivery policy, the Commission should specify the circumstances when one delivery method is more appropriate than another. Staff would report information justifying the recommended method to the Commission, and could include it in the contracting reports staff currently provides to the Commission for approval.

The policy on IDIQ contracts should require the Commission to approve IDIQ assignments over \$25,000, and staff to report specific reasons for why an assignment is urgent, making the process more transparent and ensuring the use of these contracts constitutes an emergency.

#### **3.2 Direct TFC to revise its policy on the use of interagency contracts and develop a policy for bundled contracts.**

Under this recommendation, TFC would revise its policy on interagency contracts to restrict their use for procurements under \$100,000 except in emergencies. The Commission should approve any contracts over that amount and staff should report justification as to why the contract is an emergency. TFC should also develop general guidelines for the use of bundled contracts and criteria on the appropriate scope and price for such contracts. This recommendation would not prohibit TFC from using bundled contracts, such as for deferred maintenance work, but would help ensure appropriate competition is maintained.

#### **3.3 TFC should improve its procedures for soliciting and awarding contracts, including performing risk and needs assessments and documenting needed information.**

This recommendation directs the agency to implement the following improvements to better guide agency staff and provide needed information to the Commission regarding the solicitation and awarding of contracts.

- **Risk and needs assessment.** TFC would perform a risk and needs assessment for each contract and clearly document this analysis in the contract files. For large construction contracts, staff could use the risk analysis it already performs but would need to develop a template or form to record this information in the centralized contract files. This recommendation would provide contract administrators with more useful documentation to assist them in effectively overseeing contracts.
- **Contract Advisory Team recommendations.** TFC's procurement staff should clearly document CAT recommendations, indicate which ones were implemented, and give a written explanation for any not adopted. This documentation would be included in the master contract files.
- **Insurance requirements review.** TFC should develop a centralized insurance review function performed by staff qualified in reviewing insurance policies and coverages. While these staff would help review coverage requirements for all program areas, contract administrators in each program area would remain involved in determining insurance requirements relating to their function and help monitor these requirements.

- **Negotiation plans and outcomes.** TFC should develop a written negotiation plan before each negotiation and document negotiation outcomes. Staff would use this information to evaluate the negotiation outcomes compared to the original plans, and report this analysis to the Commission on a regular basis. This analysis would not need to reveal specific details about the agency's negotiation strategy, which could harm the agency's leverage in negotiating contracts, but could present more general information on whether the negotiations met certain goals and if not, possible reasons why.

### **3.4 Direct TFC to apply certain contracting standards to better align its contract administration procedures with commonly accepted best practices.**

Under this recommendation, TFC should implement the following standards to improve its contract administration and close out procedures.

- **Administration plans.** The agency should develop administration plans for each of its contracts. These plans would include standard elements, such as identification of risk areas, monitoring plans, communication plans, and other elements necessary to administer the contract. These plans should be clear enough to benefit a newly assigned contract administrator to help ensure continuity. With a template, each program area could tailor the length and specifics of these plans to their needs, accounting for the complexity and risk of a contract.
- **Training.** TFC should develop a written policy requiring all contract administrators, procurement staff, and legal staff dealing with contracts to receive contract training. Besides providing general training on the procurement and legal aspects of contracting, as the agency does now, TFC would develop contract administration training specifically geared toward each program area with responsibilities over contracts.
- **Documentation and reporting on monitoring efforts.** Each TFC program area would timely update and document contract monitoring efforts, including contract monitoring plans and any correspondence or information related to contract sanctions. TFC should retain this information in its centralized contract files as discussed in the recommendation below.
- **Use of building commissioning.** The agency should develop criteria for determining whether to use building commissioning for each TFC or client agency project. These criteria should include risk-based analysis to factor in size and complexity of a project. In developing these criteria and using commissioning, TFC could consult with and use resources from organizations with expertise in this area, such as the Building Commissioning Association.
- **Close out.** TFC should establish procedures where staff in each program area would assess overall contractor and agency performance at contract closeout, including lessons learned, and report this information on major contracts to the Commission. Specifically, FDC should perform a comprehensive evaluation of change orders and amendments for its completed and active contracts, including time extensions and unforeseen circumstances, and explain significant changes. This recommendation would not change TFC's performance measure on project completion, but would require FDC to report a summary of any significant changes, including those outside of TFC's control. With this information the agency could improve its contract management and also better use contractor performance data in future procurements.
- **Master files.** TFC should develop centralized master files for contracts, including FDC contracts, whether electronic or not, including documentation of the contracting process from initial planning to final close out and assessment. Agency staff could consult with the Comptroller's Office on appropriate information to include in these files.

- **Vendor oversight.** TFC should revise its childcare center contract to include a clear contract monitoring plan and a range of sanctions. The monitoring plan would specify the frequency of any TFC inspections and reporting requirements, and should include the review of state inspection reports and accreditation requirements. The range of sanctions should include a corrective action plan.

### **3.5 TFC should develop a policy to apply contracting standards to P3 contracts when applicable.**

This recommendation would not change the current P3 statute, which exempts agencies from most procurement requirements and standards, but would direct TFC to develop a policy for ensuring the application of any applicable contracting best practices to P3 contracts. This recommendation applies particularly to the need for thorough procedures and documentation relating to planning, risk assessment, performance measures, and ongoing contract oversight, including lease agreement performance.

## **Fiscal Implication**

While these recommendations would not have a fiscal impact to the State, they would decrease financial risk associated with TFC contracts. TFC could incorporate additional contract administration training within its current contract training program and has staff qualified to write the new curriculum. Costs associated with implementing building commissioning could be absorbed within the budgets for each construction project. Other improvements to contract policies and administration would not have a cost for development and adoption.

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<sup>1</sup> Texas Comptroller's Procurement and Support Services Division, *State of Texas Contract Management Guide* (Austin: TPASS, 2012), p. 48.

<sup>2</sup> The childcare center contract requires the operator to obtain state accreditations, such as the Texas Rising Star Accreditation, and at least one national accreditation, such as from the National Association for the Education of Young Children.

<sup>3</sup> S.B. 1048, 82nd Texas Legislature, Regular Session, 2011.

# RESPONSES TO ISSUE 3

## Overall Agency Response to Issue 3

The Texas Facilities Commission generally agrees with the recommendations with exceptions noted below. The staff report identifies the need to implement best practice guidelines for TFC's contract management processes. Implementing best practice guidelines will further ensure TFC's contracting function achieves best value for the State. (Terry Keel, Executive Director – Texas Facilities Commission)

Note: TFC's formal response, available at [www.sunset.state.tx.us](http://www.sunset.state.tx.us) or upon request, includes additional detail regarding the agency's response to Issue 3.

## Recommendation 3.1

*Direct the Commission to formally adopt policies on contracting methods and indefinite delivery/indefinite quantity contracts in a public meeting.*

### Agency Response to 3.1

TFC disagrees with this recommendation. TFC currently has in place policies on contracting methods and the use of indefinite delivery/indefinite quantity (IDIQ) contracts, all of which were drafted with Commission participation and formally adopted in an open meeting. Since the Commission is a citizen commission and generally meets once a month, although only required by statute to meet four times a year, TFC feels that the use of IDIQs for the limited circumstances set forth in current Commission-approved policy allows the agency to provide services timely and to address emergencies. These contracts allow TFC to procure design professional services almost immediately when warranted by circumstances, facilitating prompt response to unforeseen conditions and conditions affecting tenant life safety and continuity of state government operations. These lawful procurement methods allow TFC to avoid excessive expenditures that can result from delayed action in resolving this urgent category of issues.

TFC agrees that better definition of various procurement methods could strengthen the process and a review of the agency's procurement workflow is currently underway. Current training and procedures are also being reviewed to more clearly define and document the factors behind decisions to use a particular procurement method. While TFC believes current training and procedures ensure adequate compliance with procurement regulations and goals, additional internal controls currently in development will further ensure the best procurement method is applied in all circumstances. (Terry Keel, Executive Director – Texas Facilities Commission)

### For 3.1

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 3.1**

None received.

**Recommendation 3.2**

*Direct TFC to revise its policy on the use of interagency contracts and develop a policy for bundled contracts.*

**Agency Response to 3.2**

TFC agrees with this recommendation. There is a strategic process to follow when planning the implementation of capital improvements that promote both healthy competition and good value results for state construction contracts. One of those steps is evaluating the scope of work for any set or category of authorized initiatives to determine how best to combine, segregate, and phase the work to obtain maximum bid participation, manage risk, and efficiently accomplish the work. A previous biennial authorization of deferred maintenance funding for TFC was bundled into a single construction contract on what appeared to be the sole criteria of the funding authorization itself. While the resulting contractor performed admirably and this single contract award relieved the project management staff from numerous additional procurement activities while managing a substantial burden of other agency projects, additional opportunity could have been afforded to the construction community that could possibly have resulted in more competitive pricing. It is important to note, however, that the construction manager-at-risk project delivery method utilized for this contract did afford competitive bidding at the subcontractor level for every phase of the project. This included good-faith effort for HUB participation and full evaluation of the subcontractor bids and qualifications to ensure best value was delivered for the State. The subcontract pricing is where the vast majority of the project cost resides and the only costs that were not rebid for each initiative was the construction manager's fee and general conditions, or essentially his cost for managing the work. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 3.2**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 3.2**

None received.

**Recommendation 3.3**

*TFC should improve its procedures for soliciting and awarding contracts, including performing risk and needs assessments and documenting needed information.*

**Agency Response to 3.3**

TFC agrees with this recommendation.

- Risk and needs assessment. Building on the agency's current practice of extensive preliminary analysis and reassessment of risk throughout the design and construction process, further development and documentation of clear risk and needs assessments in contracting files will assist agency contract administrators in more effectively overseeing the agency's contracts and provide an improved method to evaluate contract management performance.
- Contract Advisory Team recommendations. Consistent documentation on the implementation of CAT recommendations will provide a useful tool during future procurements.
- Insurance requirements review. Centralizing the agency's ongoing insurance review function by qualified staff will further ensure potential risk to the state is mitigated.
- Negotiation plans and outcomes. The development of clear negotiation plans and documentation of negotiation outcomes will enable the staff to provide useful, informative reports to agency leadership.

(Terry Keel, Executive Director – Texas Facilities Commission)

**For 3.3**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 3.3**

None received.

### **Recommendation 3.4**

*Direct TFC to apply certain contracting standards to better align its contract administration procedures with commonly accepted best practices.*

#### **Agency Response to 3.4**

TFC agrees with this recommendation.

- Administration plans. Developing administration plans for each of the agency's contracts will not only help current contract administrators but will provide continuity to the agency's contract administrations in the event of staff turnover.
- Training. Providing contract administration training will provide staff with the tools necessary to provide efficient, effective contract oversight.
- Documentation and reporting on monitoring efforts. Clear documentation and improved centralization of contract files will help the agency mitigate potential risks more effectively, better assist contract administrators in monitoring contractors, and provide an improved method to evaluate contract management performance.
- Use of building commissioning. The development of criteria for determining when it is appropriate to use commissioning for a TFC or client agency project will enable the agency to better monitor construction projects and ensure projects are completed according to building and design specifications.
- Close out. Detailed contract close out, including contractor and agency performance assessments, will improve the agency's overall contract management as well as provide useful performance data during future procurements.
- Master files. Maintaining centralized master contracting files that include all stages of the contracting process will improve overall oversight of contract functions and make contract management easier for the agency.
- Vendor oversight. Monitoring contractor performance will enable the agency to ensure the contractor is performing all duties in accordance with the contract and allow the agency to mitigate and address any developing problems or issues.

(Terry Keel, Executive Director – Texas Facilities Commission)

#### **For 3.4**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 3.4**

None received.

**Recommendation 3.5**

*TFC should develop a policy to apply contracting standards to P3 contracts when applicable.*

**Agency Response to 3.5**

TFC agrees with this recommendation to develop a policy for ensuring the application of any applicable contracting best practices to P3 contracts, while leaving unchanged the current provision of the P3 statute that exempts agencies from most procurement requirements and standards. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 3.5**

Rebecca Cody – Bull Creek Road Coalition, Austin

Donna Edgar – Bull Creek Road Coalition and Highland Park West Balcones Area Neighborhood Association, Austin

Carl Hehmsoth – Oakmont Heights Neighborhood Association, Austin

Eileen Keller – Bull Creek Road Coalition, Austin

Leslie Pool, Austin

Sara Speights – Bull Creek Road Coalition, Austin

**Against 3.5**

None received.

# COMMISSION DECISION ON ISSUE 3

(JANUARY 2013)

Adopted Recommendations 3.1 through 3.5.

## FINAL RESULTS ON ISSUE 3

(JULY 2013)

### *Management Action*

**Recommendation 3.1** — Directs the Commission to formally adopt policies on contracting methods and indefinite delivery/indefinite quantity contracts in a public meeting.

**Recommendation 3.2** — Directs TFC to revise its policy on the use of interagency contracts and develop a policy for bundled contracts.

**Recommendation 3.3** — TFC should improve its procedures for soliciting and awarding contracts, including performing risk and needs assessments and documenting needed information. This recommendation directs TFC to implement improvements related to risk and needs assessment; CAT recommendations; review of insurance requirements; and negotiation plans and outcomes.

**Recommendation 3.4** — Directs TFC to apply certain contracting standards to better align its contract administration procedures with commonly accepted best practices. This recommendation directs TFC to implement improvements related to administration plans, training, documentation and reporting on monitoring efforts, use of building commissioning, close out, master files, and vendor oversight.

**Recommendation 3.5** — TFC should develop a policy to apply contracting standards and best practices to P3 contracts when applicable, including thorough procedures and documentation relating to planning, risk assessment, performance measures, and contract oversight.

# ISSUE 4

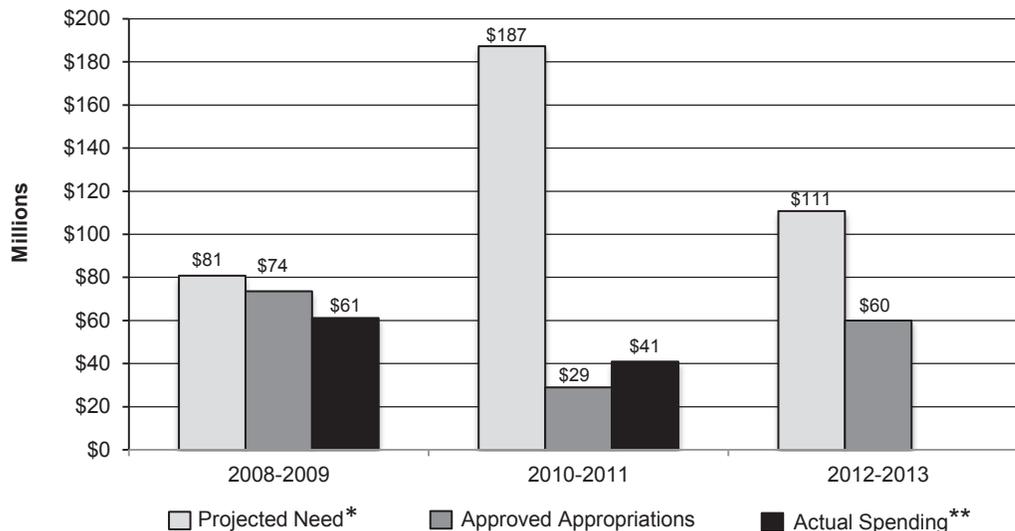
## *TFC Struggles to Effectively Plan for and Manage Its Deferred Maintenance Needs.*

### Background

To fulfill its responsibility for operations and maintenance of the state buildings under its control, the Texas Facilities Commission (TFC) performs preventative maintenance, routine maintenance, and deferred maintenance. The deferred maintenance program is the primary way the agency addresses large-scale maintenance and capital needs, including emergency repairs; delayed repairs, renovations, and renewals of equipment and building systems; and other predictable maintenance and repairs.

Until 2006, when TFC commissioned a study of its deferred maintenance needs, the agency addressed these needs in a piecemeal fashion without a long-term comprehensive strategy. The study estimated that eliminating the backlog of deferred maintenance needs would cost about \$403 million, or an average of about \$40 million a year over 10 years.<sup>1</sup> TFC also estimated that addressing predictable capital improvements on-time, instead of delaying them, would cost another \$476 million. For fiscal years 2008 through 2013, TFC has received approval for about \$163 million in bond appropriations to address deferred maintenance — less than half the \$379 million needed for the backlog during that period, as shown in the graph, *TFC Biennial Deferred Maintenance Bond Spending*.

***TFC Biennial Deferred Maintenance Bond Spending  
FYs 2008–2013***



\* Projections of the funding needed to eliminate the deferred maintenance backlog within 10 years, based on TFC's 2006 deferred maintenance study.

\*\* Actual spending includes carry-over appropriations from previous years.

The deferred maintenance program has no dedicated staff and instead relies on six of the agency's 10 construction project managers who split their time between deferred maintenance and other construction programs. TFC recovers the cost for project management through fees charged to its client agencies and amounts built in to its deferred maintenance projects, which are funded with General Obligation bonds. The Texas Public Finance Authority (TPFA) issues and monitors these bonds. In fiscal year 2011, the agency spent about \$19.1 million in bond money on 77 deferred maintenance projects, completing 26.

## Findings

### **TFC does not have the information necessary to effectively manage or assess performance of its deferred maintenance program.**

Old, worn, failing, or under-maintained equipment and building systems, such as fire suppression and electrical systems, can increase safety risks and lead to increased costs associated with emergency replacements. In just the past two years, the State has incurred large costs to deal with emergent situations from the deterioration of state office buildings. In two high-profile cases, the Moreton and Lyndon B. Johnson buildings experienced failures of their concrete exteriors, potentially endangering state employees and the public. Major state office buildings throughout the Austin area have significant life/safety maintenance needs. For example, TFC has dealt with the repair and replacement of outdated and failing elevators at the William B. Travis building, and several other buildings. Other key outdated and failing systems that need replacement include fire alarms, suppression systems, and electrical equipment such as switchboards. Other needed work includes upgrading and replacing chilled and hot water systems in the Stephen F. Austin building, which if they fail, could cut off the supply of this water to other buildings in the area.

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*Recent examples of concrete falling from state buildings shows why TFC needs robust maintenance and capital planning.*

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While deferred maintenance involves millions of dollars of funding and numerous contracts, TFC does not have staff specifically dedicated to this major function. Instead, TFC relies on its FDC staff to oversee deferred maintenance as well as other construction projects, including major projects for client agencies such as the Texas Department of Public Safety and the Texas School for the Blind and Visually Impaired. As a result, TFC risks not placing sufficient focus on deferred maintenance, letting it take a back seat to other construction needs.

TFC's organizational decision, however, is somewhat understandable. As with most agencies, TFC has absorbed budget cuts due to the subpar economy, placing greater pressure on the agency to effectively manage the resources it does have. Also, even with the money it has spent on deferred maintenance, the agency estimates it would still need more than \$400 million to tackle its backlog of needs. Although these budget pressures are significant and limit what TFC can do, the agency does not make the best use of the resources it has to manage its deferred maintenance program.

- **Inaccurate and unreliable data on building conditions.** The agency's database for storing data and cost estimates for deferred maintenance needs, called Comet, does not contain accurate information needed to identify health and safety risks. TFC relies on Comet to estimate the condition of its buildings and equipment and uses another database, Impact, for the actual management of deferred maintenance-related construction. Because these two systems do not interconnect, staff must re-enter information from the Comet system into the Impact system, or vice versa. This disconnect has led to inaccurate assessments of building conditions. While responding to a Sunset staff data request, TFC discovered that Comet was showing an overall improvement in the condition of its facilities since 2006, when in fact the overall condition had worsened from a score of 27.2 percent to 28.9 percent, with lower scores indicating a better condition. To address deficiencies in its database systems, TFC has requested \$2.6 million for a new integrated information system in its 2014–2015 Legislative Appropriations Request.<sup>2</sup>
- **Limited and inaccurate project management data.** TFC has been unable to produce adequate information about major deferred maintenance project changes, even though TPFA and LBB require the agency to track and report status updates on previously approved projects. In 2007, the Legislature approved about \$74 million in bonds to fund deferred maintenance projects for the fiscal year 2008–2009 biennium, with few restrictions on the use of those funds. To gain cost efficiencies, TFC bundled \$48 million worth of projects into one large construction contract and initially proposed completing the package in about two years. Later, however, TFC expanded the number of projects from 26 to 103 and extended the contract to five years. Sunset staff requested specific management information on why the agency added all these projects, but TFC could not readily provide it. TFC also could not provide accurate, updated budgetary information verifying how much it diverted to each additional project, even though the agency states that the additional projects were paid for with cost-savings from the original projects.
- **No performance data.** TFC does not have the data to properly evaluate its performance at managing deferred maintenance construction. Without such information, it is difficult to understand methods that work well to apply to future projects. When Sunset staff requested budget and timeline information on current and past deferred maintenance projects, TFC had difficulty providing it. For example, TFC could not produce timely information clearly showing variances between a project's original budget or projected end date at the time of legislative approval and the actual budget and end date, to help assess whether these projects are being completed on time or within budget. TFC's Office of Internal Audit recognizes this significant area of risk, and added to its fiscal year 2013 Audit plan a review of TFC's construction and deferred maintenance projects, including delivering projects on time, within budget, and with required deliverables.<sup>3</sup>

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*TFC's information on the condition of its buildings is not up to date, leading to inaccuracies.*

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*TFC could not provide clear justification for why it made major changes to a 2008 deferred maintenance contract.*

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*TFC does not have a separate planning process or budget for emergencies.*

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- **Lacks comprehensive information on future needs.** TFC's information on its maintenance and capital needs is inadequate and disjointed, limiting the agency's ability to effectively plan for future needs and allocate agency resources accordingly. State agencies with significant building management functions similar to TFC, such as the Texas Department of Criminal Justice and the Texas Department of Transportation have more formal processes for planning, prioritizing, and budgeting for their capital repair and replacement needs. Currently, TFC updates information only on the most critical life/safety deferred maintenance projects, neglecting less-critical needs and other predictable needs. For example, TFC does not regularly update or budget for future capital improvement needs, which if left unaddressed, will increase the deferred maintenance backlog, leading to more health and safety risks. Also, when Sunset staff requested a list of less-critical deferred maintenance needs, TFC could not quickly provide this information because of outdated data.

TFC also does not have a separate planning process or budget for emergencies. Inadequate emergency planning can cause delays in fixing health and safety hazards, usually resulting in higher costs and potential serious harm. Occasionally, the agency has difficulty securing funds needed for emergency projects that have significant life/safety risks, such as the falling concrete from the Lyndon B. Johnson Building. TFC struggled to identify a source of funds for these repairs and eventually reprioritized projects and used unspent bond financing carried over from previous years. While emergencies will happen and funding will always be tight, the agency should have a process for quickly quantifying the risk, and identifying solutions and potential funding sources for presentation to the Commission and the Legislature.

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*TFC lacks the information to fully inform the Legislature of its deferred maintenance needs to reduce increasing costs.*

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- **Insufficient reporting to the Legislature.** Lack of accurate and reliable information has led to conflicting messages about TFC's deferred maintenance needs. In fiscal year 2006, about \$41 million in deferred maintenance projects fell into the critical life/safety category, decreasing to about \$27 million in fiscal year 2012, indicating improvement.<sup>4</sup> Yet according to TFC, the overall condition of its building inventory has worsened as further delays in addressing the deferred maintenance backlog contribute to an "exponential increase" in the severity and cost of those projects.<sup>5</sup>

These seemingly contradictory statements point to TFC's overall inability to effectively plan for and accurately inform the Legislature about deferred maintenance needs. Because of the high risk involved if the State does not manage building repairs effectively, the Legislature has shown a desire for more oversight of deferred maintenance spending during the last few sessions. For instance, the LBB has put more restrictions on the use of deferred maintenance bond funds and requires TFC to provide a list of new deferred maintenance needs in its Legislative Appropriations

Request instead of much later in the appropriations process. If, however, the Legislature requested information from TFC on its capital or non-critical deferred maintenance needs, that information would take a long time to produce or in some cases be unavailable, since the agency must manually reconcile information from the different databases, as discussed above. TFC would also have difficulty showing the Legislature how it has used funding to reduce the deferred maintenance backlog because it cannot readily produce accurate project management data or information on building conditions.

## Recommendations

### *Change in Statute*

#### **4.1 Require TFC to develop and regularly update a comprehensive plan for all of its maintenance and capital improvement needs.**

Under this recommendation, TFC would develop a comprehensive planning process for its capital and maintenance needs. This plan would combine information on capital need and both critical and non-critical maintenance needs into a cohesive strategy to ensure the agency can identify and predict current and future needs.

- **Deferred maintenance needs.** TFC should regularly update its full list of deferred maintenance needs — including lower priority, non-health and safety projects — and use this information to develop a comprehensive plan for how it will address these needs. This plan should account for the completion of high-priority projects, the addition of other maintenance needs to the list, and the rate at which lower-priority items will become higher-priority, allowing the agency to adequately predict future funding and resource needs for deferred maintenance.
- **Capital improvement needs.** The plan would include a list of all predictable capital improvement needs, the date to address them on time, and an estimate of costs. TFC would develop definitions of capital improvement and deferred maintenance to distinguish between these two types of needs.
- **Emergency needs.** TFC would plan for potential emergency projects on a biennial basis. As part of this plan, the agency would identify in advance, a potential pool of bonds or other funds, such as bond interest, that could be used to address emergency repair or replacement needs in consultation with LBB.

Under this recommendation, for purposes of the agency's internal management, each element in this comprehensive plan would include a prioritized list of projects with an estimate of individual and aggregate project costs. The plan should also show prioritized projects by facility. The agency would include this comprehensive plan in its Facilities Master Plan, and should update it on a regular basis, such as every biennium. The agency should report this information to the Commission and Legislature, possibly through its Legislative Appropriations Request to tie these needs to the expected level of needed funding.

## **Management Action**

### **4.2 Direct TFC to better track and report management and performance data about its deferred maintenance program and the condition of its building systems.**

This recommendation would direct TFC to collect accurate, up-to-date information on budgetary and project changes to deferred maintenance projects, including justification for why these changes were made. This information would not take the place of TFC's change order reports to its Commission, but rather, could supplement that information. This information should include a comparison of the contract amount before and after any significant changes as defined by TFC; the source of funds used to finance the changes; and for project changes requiring approval from the Commission, justification as to why these changes were necessary. TFC would continue to report this information to TPFA and LBB monthly.

TFC should also develop and track up-to-date data on project budgets and timelines for completion after receiving appropriations for deferred maintenance. Upon project completion, TFC should analyze its performance and report information showing the projects that finished within the original budget and timeline, and explain any variances, including those outside the agency's control such as for bad weather. The agency would report updates with this performance information to its Commission, the Legislature, and LBB, and include the information in its Facilities Master Plan.

TFC should more regularly track and update information on the condition of its building systems even if it does not identify funding or receive appropriations for a new information technology system.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the State. Recommendations 4.1 and 4.2 are presently within TFC areas of responsibility and could be accomplished within TFC's current budget. However, if TFC determines additional funding would improve the implementation of these recommendations, it could consider raising its current deferred maintenance fees to cover any additional costs.

<sup>1</sup> 3D/International, *TBPC Assessment Condition Report* (Austin: Texas Building and Procurement Commission, 2006), p. 23.

<sup>2</sup> Texas Facilities Commission, *Legislative Appropriations Request for Fiscal Years 2014 and 2015* (Austin: Texas Facilities Commission, August 23, 2012), Schedule 4.A, p. 7.

<sup>3</sup> Texas Facilities Commission, Office of Internal Audit *Fiscal Year 2013 Audit Plan* (Austin: Texas Facilities Commission, October 2012), p. 3.

<sup>4</sup> The \$27 million in projects is not all from 2006 because TFC has finished some of the original projects and added others.

<sup>5</sup> Texas Facilities Commission, *Legislative Appropriations Request*.

# RESPONSES TO ISSUE 4

## Overall Agency Response to Issue 4

The Texas Facilities Commission agrees with the recommendations. The staff report identifies the need for updated analytical tools and database systems in order to provide the information necessary to more effectively manage and assess performance of the agency's deferred maintenance program. TFC agrees that equipment and building systems must be updated and recognizes the need for updated analysis and information management for the deferred maintenance program. To address deficiencies in the agency's database systems, TFC has requested additional funding in its 2014–2015 Legislative Appropriations Request under an exceptional item related to a new integrated information system. (Terry Keel, Executive Director – Texas Facilities Commission)

## Recommendation 4.1

*Require TFC to develop and regularly update a comprehensive plan for all of its maintenance and capital improvement needs.*

### Agency Response to 4.1

TFC agrees with this recommendation. TFC has comprehensive data on future needs but agrees this data needs to be updated systematically and that this data could be improved through integrated data management systems that will automate the process and provide more timely analysis and reporting capabilities. TFC is of the opinion that there is a fiscal impact related to implementation of this recommendation and has requested \$2.6 million for a new integrated information system in its 2014–2015 Legislative Appropriations Request. Additionally, to implement Recommendation 4.1 effectively, TFC is of the opinion that additional FTEs or funds to procure professional services are needed. Since January 1, 2010, TFC has responded to the need to cut state spending. TFC reduced its agency employee workforce by 20 percent by the end of fiscal year 2011. Additionally, other costs saving measures have made it possible for TFC to absorb a \$2.5 million General Revenue reduction in appropriations from the 2010–11 biennium to the 2012–13 biennium, all while continuing to meet and exceed its delivery of services to the public and our client agencies. If no appropriations are provided to fund additional staffing or professional services needs, TFC will need to raise its current fees to cover the expense.

- Deferred maintenance needs. Developing an improved comprehensive planning process that combines the agency's capital renewal needs and critical and non-critical maintenance needs will provide agency management with the improved tools needed to more adequately forecast future funding and resource needs for deferred maintenance.
- Capital improvement needs. Maintaining an updated list of prioritized and imminent capital improvement needs will assist management in formulating its legislative appropriations requests as future funding needs will be readily identified based on updated information.

- Emergency needs. Identifying potential funding sources in consultation with the Legislative Budget Board will significantly reduce agency response time when faced with emergency projects.

(Terry Keel, Executive Director – Texas Facilities Commission)

**For 4.1**

None received.

**Against 4.1**

None received.

**Recommendation 4.2**

*Direct TFC to better track and report management and performance data about its deferred maintenance program and the condition of its building systems.*

**Agency Response to 4.2**

TFC agrees with this recommendation. As stated in the agency response to Recommendation 4.1, TFC is of the opinion that there is a fiscal impact related to implementation of this recommendation and has requested \$2.6 million for a new integrated information system in its 2014–2015 Legislative Appropriations Request. (Terry Keel, Executive Director – Texas Facilities Commission)

**For 4.2**

None received.

**Against 4.2**

None received.

# COMMISSION DECISION ON ISSUE 4

(JANUARY 2013)

Adopted Recommendations 4.1 and 4.2.

# FINAL RESULTS ON ISSUE 4

(JULY 2013)

## ***Legislative Action — S.B. 211***

**Recommendation 4.1** — Senate Bill 211 requires TFC to develop and regularly update a comprehensive capital improvement and deferred maintenance plan, no later than January 1, 2014. The bill also requires the plan to clearly define the capital improvement needs, and critical and non-critical maintenance needs of state buildings. The bill requires the plan to include:

- a prioritized and regularly updated list of deferred maintenance projects;
- a plan for addressing the projects;
- an accounting for the completion of high-priority projects;
- estimates of when lower-priority projects may become higher priority;
- additional maintenance projects;
- a list of capital improvement projects, including timeframes and a costs;
- a plan for responding to and paying for emergency repairs and replacements, and
- a prioritized list of projects by state agency facility that includes project cost and aggregate costs.

## ***Management Action***

**Recommendation 4.2** — Directs TFC to better track and report management and performance data about its deferred maintenance program and the condition of its building systems.



# ISSUE 5

## *The Texas Facilities Commission's Statute Contains Inefficient Reporting Requirements and Does Not Reflect Standard Elements of Sunset Reviews.*

### Background

Over the years, Sunset reviews have come to encompass an increasing number of standard elements either from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions typically imposed on state agencies. The following material summarizes Sunset staff's analysis of applicable standard elements for the Texas Facilities Commission (TFC).

- **Reporting requirements.** The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.<sup>1</sup> The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reports required by the General Appropriations Act, including by rider, are included as a matter of law, but under a presumption that the appropriations committees have vetted these requirements each biennium. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports.
- **Sunset Across-the-Board provisions.** The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These Across-the-Board Recommendations (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.
- **Equal Employment Opportunities and Historically Underutilized Businesses.** The Sunset Act requires the Sunset Commission and its staff to consider agencies' compliance with applicable federal and state requirements regarding equal employment opportunity (EEO) and historically underutilized businesses (HUBs).<sup>2</sup> Staff routinely evaluates agency performance regarding these requirements in the course of a Sunset review, but only reports deficiencies significant enough to merit attention.

## Findings

### Several of the agency's reporting requirements have differing due dates and recipients that inhibit consistent and efficient reporting.

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*Statute does not require TFC to submit its Facilities Master Plan to the Lieutenant Governor and Speaker of the House.*

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State law requires TFC to produce 21 reports that are specific to the agency and meet the parameters described above. Appendix B lists all of the agency's reporting requirements and Sunset staff's analysis of their need.

While the information in these reports continues to be useful, several of the reports pertain to the same topic and include similar information, but have different statutory due dates and recipients. Aligning the due dates and recipients of some of these would allow TFC to consolidate the information and reduce the number of reports it is required to produce, while continuing to provide the needed information.

- **State facilities information.** Statute requires TFC to produce several reports relating to state facilities including separate reports on Improvements and Repairs to State Buildings; State Buildings — Status and Construction Costs; and [state office] Space Needs. In practice, TFC includes the information required by each of these discrete reports in its separately required Long-Range Plan for State Agency Space Needs, published as the Facilities Master Plan (FMP) Report, even though statute prescribes different, conflicting due dates for each of these reports. The FMP's due date of July 1 of each even-numbered year ensures that the Governor, Comptroller of Public Accounts, and the Legislative Budget Board (LBB) receive the FMP in advance of the State's budget development cycle to aid with decision making. These reports also have different statutory recipients leading to inconsistent reporting of information. Statute does not include the Lieutenant Governor and Speaker of the House of Representatives as recipients of the FMP although it does specify them as required recipients of the other reports.
- **State parking program information.** Statute requires TFC to produce two separate reports on state parking programs — Report on Lease of Space in State-Owned Parking Lots and Garages; and Report on Parking Programs. These reports have different due dates and recipients preventing the agency from more efficiently conveying this related information in a single report.

### TFC's statute does not reflect standard language typically applied across-the-board during Sunset reviews.

The agency's statute does not include a standard provision relating to alternative rulemaking and dispute resolution that the Sunset Commission routinely applies to agencies under review. While the Commission has adopted by reference the rules of the Office of the Attorney General relating to mediation and resolution of contracting disputes, a change in law is still needed to apply this provision to the agency's statute.<sup>3</sup>

## **TFC has not met EEO statewide civilian workforce percentages in certain categories for the last three years.**

The agency fell below statewide civilian workforce percentages for women in the skilled craft job category and for African-Americans in the administration job category during the last three fiscal years. TFC indicates that it has difficulty meeting the civilian workforce percentages in the skilled craft job category because the pool of qualified female applicants is limited, which is reflected in the overall larger male workforce pool for skilled craft jobs such as plumbers, electricians, carpenters, boiler operators, and building technicians.

For the administration category, TFC attributes this situation primarily to high turnover in this category. Appendix C shows TFC's EEO performance in each job category for fiscal years 2009 to 2011.

## **Recommendations**

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

#### **5.1 Continue all of TFC's reporting requirements, but align the due dates and recipients of selected reports to allow for report consolidation.**

This recommendation would continue all of TFC's reporting requirements, but would align the due dates of the Report on Improvements and Repairs to State Buildings, State Buildings — Status and Construction Costs, and Report on Space Needs with the Facilities Master Plan Report due date of July 1 of even-numbered years. Aligning these dates would allow TFC to continue to effectively provide this information in a single report. In addition, this recommendation would make the recipients of these reports consistent, to include the Governor, Comptroller of Public Accounts, Lieutenant Governor, Speaker of the House, and LBB. This recommendation would also align the due dates of the Report on Parking Programs and the Report on Lease of Space in State-Owned Parking Lots and Garages to December 1 of each even-numbered year, as well as the recipients to include both the Legislature and LBB. Appendix B provides additional detail on the specific changes needed to each of these reports. Finally, to comply with a recent change in law, TFC should provide all reports to the Legislature in electronic format only.

#### **5.2 Apply the standard Sunset across-the-board requirement for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.**

This recommendation would ensure the Commission adopts a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. TFC would also coordinate implementation of the policy, providing training as needed and collect data concerning the effectiveness of these procedures. This recommendation would not require additional staffing or other expenses.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the State.

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<sup>1</sup> Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

<sup>2</sup> Section 325.011(9), Texas Government Code.

<sup>3</sup> T.A.C. Section 111.31-32.

# RESPONSES TO ISSUE 5

## Overall Agency Response to Issue 5

The Texas Facilities Commission agrees with the recommendations. The staff report identifies standard policy directives missing from TFC's statute that are designed to ensure open, responsive, and effective government. TFC agrees that current reporting requirements are repetitive and inefficient. (Terry Keel, Executive Director – Texas Facilities Commission)

## Recommendation 5.1

*Continue all of TFC's reporting requirements, but align the due dates and recipients of selected reports to allow for report consolidation.*

### Agency Response to 5.1

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

### For 5.1

None received.

### Against 5.1

None received.

## Recommendation 5.2

*Apply the standard Sunset across-the-board requirement for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.*

### Agency Response to 5.2

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

### For 5.2

None received.

### Against 5.2

None received.

# COMMISSION DECISION ON ISSUE 5

(JANUARY 2013)

Adopted Recommendations 5.1 and 5.2.

## FINAL RESULTS ON ISSUE 5

(JULY 2013)

### ***Legislative Action — S.B. 211***

**Recommendation 5.1** — Senate Bill 211 continues all of TFC's reporting requirements, but aligns the due dates of the Report on Improvements and Repairs to State Buildings, State Buildings – Status and Construction Costs, and Report on Space Needs – with the Facilities Master Plan Report due date of July 1 of even-numbered years. The bill also aligns the due dates of the Report on Parking Programs and the Report on Lease of Space in State-Owned Parking Lots and Garages to December 1 of even-numbered years; and aligns the recipients of these reports to include the Governor, Comptroller of Public Accounts, Lieutenant Governor, and Speaker of the House, and Legislative Budget Board. The bill requires these reports be submitted electronically.

**Recommendation 5.2** — Senate Bill 211 applies the standard Sunset Across-the-Board recommendation for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

# ISSUE 6

## *The State Has a Continuing Need for the Texas Facilities Commission.*

### Background

The origins of the Texas Facilities Commission (TFC) date back to 1919 with the State Board of Control, which the Legislature created to consolidate many of the State's administrative functions such as purchase of supplies and construction of State office buildings. Since that time, the agency has gone through many changes, the most recent shown in Appendix D, *Transfer of Texas Facilities Commission Functions 2001 to 2007*.

Currently, TFC's mission and primary responsibilities focus on state facilities planning and management. To carry out these responsibilities, TFC's key activities include:

- maintaining, operating, and managing state-owned buildings, grounds, and properties;
- managing state agency construction and deferred maintenance projects; and
- assisting state agencies with their office space needs by managing leases.

TFC manages 130 state-owned facilities and leases totaling 25.5 million square feet of space, housing about 60,000 employees of 103 state agencies located throughout 288 Texas cities.<sup>1</sup> In Travis County, TFC manages 34 buildings in numerous Capitol, North Austin, North Austin Park 35, and William P. Hobby complexes. The map in Appendix E, *Texas Facilities Commission Buildings and Leased Space*, shows locations where TFC manages State-owned buildings outside of Austin and counties where TFC manages more than 50,000 square feet of leased space.

### Findings

#### **Texas has a continuing need to provide for consolidated and cost-effective planning, management, and maintenance of state facilities.**

An ongoing need exists to manage the buildings, parking, and associated infrastructure that support state government operations. TFC's facilities and land are a significant State asset with a market value of more than \$833 million.<sup>2</sup> The State continues to need an agency with the expertise to manage and preserve the value of these assets. Also, as buildings and infrastructure age, the State must continue to ensure they remain safe, as evidenced by recent problems with concrete cladding on two office buildings, as well as the mitigation of risks associated with aging electrical equipment, fire protection systems, and elevators.

The Legislature has focused TFC on providing services for a wide range of agencies. By centralizing facilities-related duties within TFC, state agencies can focus on carrying out their respective missions, at less cost to the State,

precluding these agencies from performing duplicative functions. TFC provides the following key services that support the operations of state agencies.

- **Planning and real estate management.** The Facilities Commission strategically plans for the design, operation, and management of state assets through its Facilities Master Plan Report, providing approaches for the State to cost-effectively meet the ongoing needs of state government. The agency is currently considering options for developing the Capitol Complex and other properties through the use of public-private partnership proposals authorized by the Legislature in 2011. Issues 1 and 2 in this report provide more information on these development efforts.

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*While administratively attached to TFC, the Texas State Cemetery is not subject to Sunset review.*

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#### **Texas State Cemetery**

Established in 1851, the Texas State Cemetery is the final resting place for notable state officials, veterans, and others. The Cemetery is governed by a six-member Committee consisting of three members appointed by the Governor, and three non-voting members, one each appointed by the Texas Facilities Commission, Texas Parks and Wildlife Commission, and Texas Historical Commission. The Cemetery has eight staff, and spent \$527,300 on its operations in fiscal year 2011. The Cemetery is administratively attached to the Texas Facilities Commission, but is not subject to Sunset review.

- **Leasing.** TFC provides leasing services to agencies statewide, including large agencies such as the Health and Human Services Commission that make up about half of TFC's leasing portfolio. TFC manages over 1,000 leases totaling about 10.8 million square feet that costs the State about \$154 million annually, including 2.8 million square feet of space in Travis County costing about \$38 million annually. TFC plans to reduce the amount of leased space by consolidating 230 leases in nine cities into 17 centralized sites over the next six years.
- **Facilities management.** TFC provides facilities management services for buildings under its control, as well as for agencies statutorily required to use TFC for these services. Facilities management includes maintenance, custodial services, grounds keeping, pest control, recycling, security, and office improvements. In Austin, eight TFC property managers serve as liaisons to help ensure TFC meets the needs of tenant agencies, while TFC contracts out facilities management services for its buildings outside of Austin. The agency also operates and maintains significant infrastructure that delivers chilled water and heat to the Capitol and other buildings on the Capitol grounds.
- **Facilities Design and Construction.** TFC provides design and construction services to state agencies, including project analysis, budgeting, procurement, project management, inspection, and final close out. Currently, TFC has more than \$316 million in active design and construction projects, including 11 projects for the Department of Public

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*TFC plans to consolidate 230 leases in nine cities into 17 sites over the next six years.*

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Safety valued at \$124.3 million, five projects for the Department of State Health Services valued at \$56.6 million, and three projects for the Texas School for the Blind and Visually Impaired valued at \$34.4 million. Major construction projects can take several years to complete and TFC has successfully finished large projects such as building new DPS crime labs in Austin, Houston, and Tyler.

- **Deferred maintenance.** TFC manages a significant portion of the State's overall deferred maintenance needs critical to ensuring safety and protecting the State's investments. Successful TFC deferred maintenance projects include a \$24.4 million renovation of the Stephen F. Austin Building and a \$2.4 million repair of electrical and HVAC systems in the William B. Travis Building. However, despite spending about \$110 million in general obligation bonds from 2007 to 2011, the \$403 million cost of addressing deferred maintenance backlogs, identified in 2006, has not decreased significantly.<sup>3</sup> Currently, TFC focuses only on addressing critical life/safety projects, noting that funding constraints have escalated more deferred maintenance projects into the critical category, significantly increasing costs.<sup>4</sup>

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*TFC focuses its deferred maintenance efforts on critical life/safety projects.*

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### **No substantial benefits would result from transferring TFC's statewide functions to another agency at this time.**

No other agency performs the extensive property management, construction, and deferred maintenance functions that TFC performs for the significant number and type of properties under its jurisdiction and for other client agencies.

The State Preservation Board (SPB) has property management and maintenance functions; however, SPB's expertise lies in preserving and maintaining historical buildings such as the Capitol and Governor's Mansion, as well as other buildings and monuments on the Capitol Grounds. Other SPB functions are quite unlike TFC's, such as operating the Bob Bullock Texas State History Museum; cafés, and gift shops.

The General Land Office (GLO) has a range of property-related duties geared towards supporting the Permanent School Fund. These duties include identifying and selling underutilized state lands, managing mineral leases on state lands, protecting coastal beaches, and building veteran's retirement homes. However, GLO does not have experience in operating and maintaining numerous large state buildings, or providing facilities and construction management services to client agencies.

Two other entities that provide administrative support services to state agencies are the Department of Information Resources (DIR) and the Comptroller of Public Account's Texas Procurement and Support Services Division (Division), both currently under Sunset review. DIR provides information technology products and services to state agencies and other voluntary customers by procuring and administering state contracts. The

Division manages statewide commodities and services contracts, administers the State's Historically Underutilized Businesses program, and conducts contract manager training and certification. No overlap or duplication of functions exists between these entities.

Texas has not chosen a centralized approach towards managing the administrative support needs of state agencies. While TFC provides services to many state agencies, several large agencies with significant statewide presence such as the Texas Department of Transportation, Department of Criminal Justice, and Juvenile Justice Department are exempt from TFC's jurisdiction and carry out their own facilities-related functions. Additionally, statute provides more than 200 delegations or exemptions from DIR and Division purchasing requirements.<sup>5</sup> Further consideration of the efficiency of this decentralized approach is discussed in the DIR and Division Sunset report.

## Recommendation

### *Change in Statute*

#### **6.1 Continue the Texas Facilities Commission for eight years to align its review with other state agencies that provide administrative support services in Texas.**

This recommendation would continue the Texas Facilities Commission as an independent agency for eight years. Continuing TFC for eight years rather than the standard 12-year Sunset review period would align TFC's Sunset date with the recommended next Sunset dates of DIR and the Division to allow for a comprehensive review of the State's overall approach to providing administrative support services.

## Fiscal Implication

If the Legislature continues the Texas Facilities Commission, an annual appropriation of about \$49.5 million in general revenue, general revenue dedicated funds, interagency contract revenues, and appropriated receipts would be needed for its operations. This amount includes about \$550,000 annually for the Texas State Cemetery which is administratively attached to TFC. These estimated appropriations do not include any general obligation bond funding the Legislature may appropriate to TFC for deferred maintenance projects.

<sup>1</sup> Texas Facilities Commission, *Facilities Master Plan Report 2012* (Austin: Texas Facilities Commission, 2012), pp. 8-12.

<sup>2</sup> Texas General Land Office, *Real Property Evaluation Reports* (Austin: Texas General Land Office, September 2012), pp. 112-114.

<sup>3</sup> Texas Facilities Commission, *Agency Strategic Plan Fiscal Years 2013-2017* (Austin: Texas Facilities Commission, July 2012), p. 23.

<sup>4</sup> Texas Facilities Commission, *Legislative Appropriation's Request for Fiscal Years 2014-15* (Austin: Texas Facilities Commission, August 2012), p. 4.

<sup>5</sup> Comptroller of Public Accounts, *Spend Pattern Assessment Final Report* (Austin: Comptroller of Public Accounts, 2010), p. 3.

# RESPONSES TO ISSUE 6

## **Overall Agency Response to Issue 6**

The Texas Facilities Commission agrees with the recommendation. The staff report identifies the State's continuing need for a consolidated and cost effective planning, management, and maintenance of state facilities. TFC agrees that this agency is best suited to provide these services for the State of Texas. (Terry Keel, Executive Director – Texas Facilities Commission)

## **Recommendation 6.1**

*Continue the Texas Facilities Commission for eight years to align its review with other state agencies that provide administrative support services in Texas.*

### **Agency Response to 6.1**

TFC agrees with this recommendation. (Terry Keel, Executive Director – Texas Facilities Commission)

### **For 6.1**

The Honorable Lee Leffingwell, Mayor – Austin

The Honorable Sheryl Cole, Mayor Pro Tem; City Council Member, Place 6 – Austin

The Honorable William Spelman, City Council Member, Place 5 – Austin

David Lancaster, Senior Advocate – Texas Society of Architects, Austin

### **Against 6.1**

None received.

# COMMISSION DECISION ON ISSUE 6

(JANUARY 2013)

Adopted Recommendation 6.1.

# FINAL RESULTS ON ISSUE 6

(JULY 2013)

## *Legislative Action*

**Recommendation 6.1** — The Legislature adopted through separate legislation, House Bill 1675, a provision to continue TFC until 2015 and place the agency under a limited-scope Sunset review in the 2014-15 biennium. The bill limits the review to the appropriateness of the recommendations made by the Sunset Commission to the 83rd Legislature.

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**NEW ISSUES**

# NEW ISSUES

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

7. Require TFC to coordinate the Capitol Complex Master Plan with the City of Austin's and University of Texas' master plans. (David Lancaster, Senior Advocate – Texas Society of Architects, Austin)
8. Require TFC to consistently apply guidelines to all P3 projects, regardless of state or local subdivision. (David Lancaster, Senior Advocate – Texas Society of Architects, Austin)
9. For solicited P3 proposals, require TFC to limit the number of finalists to three and to consider providing a stipend to the two non-selected finalists to offset the significant costs of submitting the type of detailed response required in the design projects of the scope envisioned. (David Lancaster, Senior Advocate – Texas Society of Architects, Austin)
10. Require TFC to adopt a sliding scale for the number of days allowable to solicit competing proposals for an unsolicited P3 proposal, to provide a longer response time for larger or more complex projects and allow for true competition. (David Lancaster, Senior Advocate – Texas Society of Architects, Austin)

**Staff Comment:** TFC currently allows at least 45 days to solicit other competing proposals for an unsolicited P3 proposal.

11. Require TFC to operate its P3 process through rules, not guidelines. (Joseph Reynolds, Austin)
12. Require TFC to operate P3 projects in a manner consistent with the Texas Public Information Act, and if necessary, amend the P3 Act to accomplish this. (Joseph Reynolds, Austin)
13. Require selected and approved P3 bids to conform to any project or property plan. If a plan is in place, projects not consistent should be clearly rejected. (Joseph Reynolds, Austin)
14. Require the selection criteria for evaluating and accepting P3 bids to include an analysis of the ability of the bidder to perform the stated function for the life of the public need. Projects must include a provision for handling failure and a way of determining if failure has occurred. Any TFC P3 project must have a ready, pre-negotiated process for assessing failure and a remedy, such as replacing the private partner by another viable one. (Joseph Reynolds, Austin)
15. Require TFC to have a management mechanism to monitor every P3 over its lifespan and to detect and correct problems. (Joseph Reynolds, Austin)
16. Specifically prohibit TFC staff from other forms of corruption, such as dealing insider information, including the purchase of property slated to benefit from a P3 before a bid is acknowledged. (Joseph Reynolds, Austin)

17. Require TFC to have specific development objectives in place for projects or sites before accepting or entertaining bids. (Joseph Reynolds, Austin)
18. As requirements for a project are developed and as plans are made to open a site to development, require TFC to engage immediately affected neighbors and the users or beneficiaries of a facility. Require TFC to hold public project hearings at the site of the project and for projects around the state, require TFC to hold local public hearings. Require TFC to account for comments received in the project. (Joseph Reynolds, Austin)
19. Require TFC to adhere to the local land development codes and other relevant regulation when a real estate development uses a ground lease; and apply GLO's real estate development policy and regulations to TFC. (Joseph Reynolds, Austin)
20. Require TFC to use GLO's process for land development as a guide and set up the same process for P3 projects at TFC. (Sara Speights – Bull Creek Road Coalition, Austin)
21. Require TFC to partner with GLO to receive information needed for appraisal and determination of highest and best use for state lands. (Sara Speights – Bull Creek Road Coalition, Austin)

**New Issues 22 through 34 would apply to Texas Government Code Chapter 2267, Public and Private Facilities and Infrastructure and Chapter 2268, Partnership Advisory Commission. These new issues would affect the overall approach to implementing public-private partnership projects for all eligible governmental entities under these chapters of the Texas Government Code.**

22. Create a review board of three elected state officials and two local elected officials to resolve issues between the state and local jurisdictions, for development of state-owned land only. (Sara Speights – Bull Creek Road Coalition, Austin)
23. Abolish the Partnership Advisory Commission since it is only advisory. (Sara Speights – Bull Creek Road Coalition, Austin)
24. If the Partnership Advisory Commission is retained, limit its role to state projects only; cities or counties should not be required to bring their P3 projects to the Commission. (Sara Speights – Bull Creek Road Coalition, Austin)
25. If the Partnership Advisory Commission is retained, either provide it meaningful decision-making authority over P3 developments, or transfer authority for implementation of Chapters 2267 and 2268 to an agency headed by an elected official. (Sara Speights – Bull Creek Road Coalition, Austin)
26. Limit the use of P3 developments to only those projects that include primarily essential government functions. (Sara Speights – Bull Creek Road Coalition, Austin)
27. Define “public use or purpose” to mean only essential government functions and services in the P3 statute. (Sara Speights – Bull Creek Road Coalition, Austin)
28. Clearly define “trade secrets” in the P3 statute. (Sara Speights – Bull Creek Road Coalition, Austin)

29. Limit P3 exemptions from open records to only trade secrets and company financial information. (Sara Speights – Bull Creek Road Coalition, Austin)

**Staff Comment:** The P3 Act (Section 2267.066, Texas Government Code) provides that trade secrets, financial records, or other records of a private entity or the contracting person excepted from disclosure under the Public Information Act (Section 552.101, Texas Government Code) may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person.

30. Require procedures to follow in all state land developments to be in rule, subject to the Administrative Procedures Act. (Sara Speights – Bull Creek Road Coalition, Austin)
31. Require a state agency using the P3 process to develop a set of criteria for the governmental purpose part of the project on a specific tract of state land. Require the agency to submit draft project criteria for review by stakeholder state agencies, local municipal planning authorities, and the public. Require approval of the final project criteria by the governing body of the state agency after having reviewed all the comments from outside the agency. (Sara Speights – Bull Creek Road Coalition, Austin)
32. Require an agency to accept only solicited proposals on published requests for proposals with final project criteria. (Sara Speights – Bull Creek Road Coalition, Austin)
33. Add a section to the P3 statute similar to the one for GLO (Section 31.161-167, Texas Natural Resources Code) that requires projects that include commercial development to meet local land use development regulations and ordinances as long as they are not detrimental to the interest of the state as determined by the governing body of the state agency. (Sara Speights – Bull Creek Road Coalition, Austin)
34. Prohibit public employees (and their immediate family members) of agencies using the P3 process from also engaging in employment or business with an entity either bidding on a project or functioning as a consultant to a bidding entity. (Sara Speights – Bull Creek Road Coalition, Austin)

## COMMISSION DECISION ON NEW ISSUES (JANUARY 2013)

The Commission did not adopt any new issues.

## FINAL RESULTS ON NEW ISSUES (JULY 2013)

### *Legislative Action*

No action needed. (No new issues adopted by the Commission.)

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**PROVISIONS ADDED BY THE  
LEGISLATURE**

# PROVISIONS ADDED BY THE LEGISLATURE

## ***Legislative Action — S.B. 211***

### **Development of the Capitol Complex and State Land**

- **Requires the Legislature to authorize, and the PAC to approve, P3 projects within the Capitol Complex.**

Senate Bill 211 specifies that the Commission may develop or operate a P3 project in the Capitol Complex only if the Legislature authorizes the project through legislation and the Partnership Advisory Commission approves the project before the agency enters into a comprehensive agreement for its development. Except for specific projects approved by the Legislature, the bill exempts properties located in the Capitol Complex from development under the P3 Act. This same provision was adopted in separate legislation, S.B. 894.

- **Prohibits TFC from selling or leasing properties in the Capitol Complex.**

Senate Bill 211 prohibits the Commission from leasing, selling, or disposing of real property or an interest in real property located in the Capitol Complex. This prohibition does not affect TFC's authority to lease space in state office buildings and parking garages. This provision was also adopted in separate legislation, S.B. 894.

- **Ensures TFC Commission members receive advance notice of development projects in municipalities.**

Senate Bill 211 requires that for development or improvement projects in a municipality, TFC must place the project on a Commission meeting agenda at least 30 days before the Commission votes on the project. The bill requires staff to provide Commission members with sufficient project information to enable members to adequately prepare and address any questions and concerns.

- **Clarifies that Chapter 2166, Government Code, relating to construction and acquisition of state buildings applies to property bought and sold for state purposes.**

### **P3 Projects**

- **Changes the authority and functions of the Partnership Advisory Commission.**

Senate Bill 211 requires the PAC, by majority vote in a public hearing, to approve or comment on the Capitol Complex Master Plan, and any updates, before review and potential action by the State Preservation Board (SPB). Senate Bill 211 subjects the PAC to the Open Meetings Act and requires it to approve or disapprove P3 proposals in public hearings. The bill authorizes the PAC to provide findings and recommendations to the responsible governmental entity. The bill prohibits the responsible governmental entity from negotiating an agreement for any proposal disapproved by the PAC.

Senate Bill 211 requires state entities to provide submit P3 guidelines for PAC approval before being authorized to request or consider a proposal. The bill requires the PAC to prescribe

procedures for submitting guidelines for approval, and requires the PAC to complete its review of guidelines within 60 days. The bill requires state entities to provide the PAC draft agreements before completing negotiation of final comprehensive agreements. The bill also requires the PAC to provide recommendations on the P3 Act to the Legislature by December 1, 2016.

Senate Bill 211 requires TFC to provide professional, technical, financial, and ongoing contract monitoring support to the Partnership Advisory Commission, and authorizes the costs for these services to be recovered from fees charged by the agency to proposers. The bill requires TFC to assign staff and contracted advisors as needed to perform these duties.

- **Ensures protection of the State's interests over those of private partners.**

Senate Bill 211 specifies that a comprehensive agreement that encumbers, mortgages, or creates a lien cannot extend to the State's fee simple interest or rights to the property. The bill requires a holder of debt to acknowledge that a mortgage or lien is subordinate to the State's interests and rights under the agreement.

- **Authorizes development plans for P3 projects to comply with local zoning and land use regulations and establishes a Board of Review for appeals.**

Senate Bill 211 authorizes state entities to create development plans, and creates a Board of Review to address issues involving proposed developments, including application of local zoning regulations to state properties, and issue a final development plan. Senate Bill 211 creates a five-member Board of Review, composed of the Land Commissioner, the mayor of the municipality where the property is located, the local county judge where the property is located, the executive director of the state entity involved, and one member appointed by the Governor.

Senate Bill 211 authorizes state entities intending to develop or operate a P3 project to create a development plan for the purpose of conserving and enhancing the value of state properties. The bill specifies that the plan must address local land use ordinances, needed zoning, and other criteria, and that the plan must comply with existing property rules and regulations to the extent these are not detrimental to the State's interest as determined by the Board of Review.

The bill requires a state entity to notify local governments of a proposed development plan, and provides for public hearings. The bill requires the state entity to prepare a summary of information and testimony presented at a public hearing, and allows the results to be incorporated into the plan. The bill authorizes the state entity to adopt rules governing the development plan and hearing process.

Senate Bill 211 requires the development plan be submitted to the local government having jurisdiction over the property in question for consideration. The bill requires the local government to accept or reject the plan, and specifies the plan may only be rejected on the grounds it does not comply with local ordinances and land use regulations. If the plan is rejected, the local government must specifically identify any ordinances the plan conflicts with, and propose modifications that will bring it into compliance with those ordinances. The bill authorizes the state entity to modify the plan to conform to local ordinances and resubmit it, or apply for any needed rezoning or variances from the local government. The bill specifies the local government has 120 days to take action on a rezoning or variance request and failure to act is considered an approval of the request.

If the local government denies a rezoning request by the state entity, S.B. 211 specifies the matter may be appealed to the Board of Review. The bill requires the Board of Review to hold at least one public hearing to consider the development plan, to be held according to General Land Office rules. The bill specifies that if the Board of Review determines that local zoning requirements are detrimental to the State's best interest, the Board shall establish a development plan to govern the use of the property. If substantial progress is not made toward development of the property within five years under this plan, local development policies and procedures become applicable unless the Board of Review promulgates a new plan. The bill specifies that a development plan promulgated by the Board of Review and any plan accepted by a local government is final and binding on all parties, unless revised by the Board of Review. However, if the state entity does not receive a bid or solicitation for the property, the bill authorizes the state entity to revise the development plan to conserve and enhance the value and marketability of the property.

Senate Bill 211 prohibits local governments from charging application, filing, or other fees or assessments to the State for consideration of the plan or the application for rezoning or variance. The bill also prohibits local governments from requiring the submission of architectural, engineering, or impact studies be completed at state expense before considering the plan or application for rezoning or variance.

- **Creates new criteria for a P3 project's purpose and evaluation.**

Senate Bill 211 requires P3 proposals to include a statement of public purpose and explanation of the extent that the proposal complies with the best value determination process also created in S.B. 211. The bill also requires a state agency to declare the project's public purpose in the comprehensive agreement. The bill authorizes agencies to consider overall quality, conformity with community plans, historical significance, and environmental impact as factors an agency may consider in evaluating a P3 proposal.

- **Creates new requirements for state and local government P3 Guidelines.**

Senate Bill 211 requires a state entity's P3 Guidelines to ensure that, for a project to improve real property, the entity evaluates the project's design quality, life-cycle costs, and relationship to any relevant comprehensive planning or zoning requirements. For local governments, the bill requires political subdivisions' P3 Guidelines to include the same provisions as state entities must include. The bill specifies that a local government's P3 Guidelines, for projects costing more than \$5 million, must require a review of the project analysis by a professional architect, engineer, and accountant. The bill specifies if the governmental entity chooses to have its employees perform the analysis, the employees must be similarly qualified as these professionals.

- **Clarifies specific information in P3 proposals that is subject to public disclosure.**

Senate Bill 211 excludes proprietary information and work products of a P3 proposer from disclosure until after submission of the proposal to the PAC, where certain information is protected only if expressly excepted from the Open Records Act. The bill specifies that records, trade secrets, and work products of proposers are excepted from disclosure if that information would provide a competing proposer an unjust advantage. The bill adds information provided by a private entity submitting a proposal to the types of confidential information a responsible governmental entity must take actions to protect.

- **Creates new requirements for public hearings and notice of P3 proposals.**

Senate Bill 211 requires a public hearing on the final version of the comprehensive agreement no later than 10 days before entering into the contract. The bill also requires that the public hearing for a P3 proposal be held in the area where the project will be performed. The bill specifies that a private entity whose proposal is accepted for conceptual state evaluation, instead of the person submitting the proposal, notify affected jurisdictions by providing the proposal.

- **Establishes P3 conflict of interest and employment prohibition requirements.**

Senate Bill 211 prohibits a public employee or relative from receiving benefits from a person entering into a comprehensive agreement with a governmental entity. The bill prohibits hiring of a former public employee, or entering into a consulting contract, until one year after leaving public employment. The bill also prohibits outside employment of staff of a responsible governmental entity in fields or activities related to their responsibilities at the agency.

- **Changes the P3 procurement process and clarifies definitions.**

Senate Bill 211 allows up to 180 days for a governmental entity to accept competing proposals, or longer for large-scale projects. The bill requires a governmental entity that accepts an unsolicited proposal for a project to select the contracting person through competitive means, such as a Request for Proposal. The bill allows that in a comprehensive agreement a person may not be required to provide final design documents before entering into the agreement. Clarifies definitions in the P3 Act, including revenues, improvements, private entity, property, proposer, and qualifying project.

### **Deferred Maintenance**

- **Transfers facilities maintenance services for the Texas School for the Blind and Visually Impaired and Texas School for the Deaf to TFC.**

Senate Bill 211 requires the Commission to provide services including facilities construction, reconfiguration, cabling, any other services as provided by a memorandum of understanding between each school's Board and the Commission. The bill specifies that no later than January 1, 2014, the powers, duties, functions, programs, and activities of the Schools related to maintenance of physical facilities are transferred to the Commission.

### **Other**

- **Specifies parking program revenues may be appropriated only to TFC.**

Senate Bill 211 provides that revenues from private commercial leasing of state parking, in an amount equal to program costs, including costs of trash collection, grounds and property maintenance, and remedying damage to state property, may be appropriated only to the Commission.

- **Prohibits disposal of state surplus property for two years.**

Senate Bill 211 prohibits all political subdivisions and assistance organizations that obtain surplus property through a direct transfer from a state agency from disposing of the property for two years. The bill requires that an entity violating this prohibition remit to TFC any proceeds from the disposal, unless authorized by TFC. The bill allows a recipient assistance organization to dispose of data processing equipment only by transfer back to a school district.

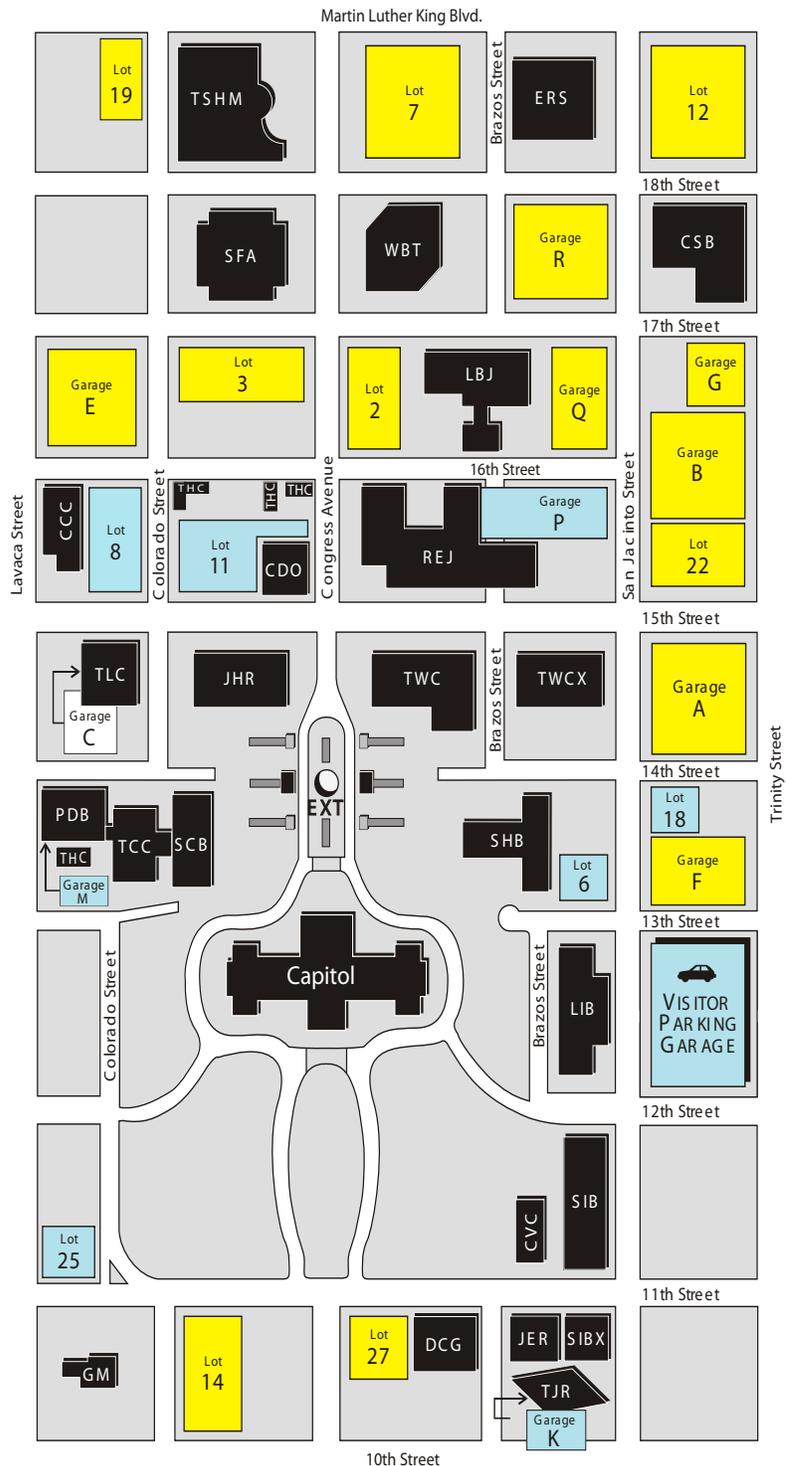
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## APPENDICES

# APPENDIX A

## Capitol Complex Map\*

- CCC Capitol Complex Child Care Center
- CVC Capitol Visitors Center
- CDO Capitol District Office
- CSB Central Services Building
- DCG Dewitt C. Greer Building
- ERS Employee Retirement System
- EXT Capitol Extension (Underground)
- GM Governor's Mansion
- JER James Earl Rudder Building
- JHR John H. Reagan Building
- LBJ Lyndon B. Johnson Building
- LIB Lorenzo de Zavala State Archives and Library
- PDB Price Daniel Sr. Building
- REJ Robert E. Johnson Building
- SCB Supreme Court Building
- SFA Stephen F. Austin Building
- SHB Sam Houston Building
- SIB State Insurance Building
- SIBX State Insurance Building Annex
- TCC Tom C. Clark Building
- TJR Thomas Jefferson Rusk Building
- THC Texas Historical Commission
- TSHM Bob Bullock Texas State History Museum
- TWC Texas Workforce Commission
- TWCX Texas Workforce Commission Annex
- TLC Texas Law Center
- WBT William B. Travis Building



\*Map provided by Texas Department of Public Safety



# APPENDIX B

## Texas Facilities Commission Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Report on Improvements and Repairs to State Buildings	Section 2165.055, Texas Government Code	Requires the Commission to biennially report on improvements, repairs, and expenditures for all properties under its control.	Governor	Continue and modify by changing the due date and recipients to be consistent with similar reports.
2. State Buildings—Status and Construction Costs	Section 2166.101, Texas Government Code	Requires the Commission to biennially report information on state-owned buildings including year of completion, construction type, size, use, and general condition.	Governor, Comptroller of Public Accounts, Legislative Budget Board	Continue and modify by changing the due date and recipients to be consistent with similar reports.
3. Space Needs – State Agency Long-Range Plan  <i>Published as the Facilities Master Plan Report (FMP)</i>	Section 2166.102(b) (c), Texas Government Code	Requires the Commission, before July 1 of each even-numbered year, to prepare a master facilities plan that includes projections for needed office space, reporting on the condition of Commission buildings, analysis of reliance on leased space, analysis of the benefits of building, buying or leasing space, and analysis of market conditions affecting the cost of constructing or leasing buildings.	Governor, Comptroller of Public Accounts, Legislative Budget Board	Continue and modify by changing the recipients to be consistent with similar reports.
4. Report on Space Needs	Section 2166.103, Texas Government Code	Requires the Commission to biennially report on counties in which more than 50,000 square feet of office space is needed, and the Commission's recommendations for meeting that need.	Governor, Lieutenant Governor, Speaker of the House of Representatives, Legislative Budget Board	Continue and modify by changing the due date and recipients to be consistent with similar reports.
5. Report on Parking Programs	Section 2165.2046, Texas Government Code	Requires the Commission to report on the effectiveness of its parking programs, including revenues, costs, usage statistics, and recommendations to modify the program and increase revenues.	Legislative Budget Board	Continue and modify by changing the due date and recipients to be consistent with similar reports.
6. Report on Lease of Space in State-Owned Parking Lots and Garages	Section 2165.2035, Texas Government Code	Requires the Commission to biennially report on the effectiveness of its program to make Austin-area stated parking lots and garages available for private commercial use.	Legislature, Legislative Budget Board	Continue and modify by changing the due date and recipients to be consistent with similar reports.

## Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
7. Child Care Program Report	Section 663.052, Texas Government Code	Requires the Commission to report each legislative session on the development and progress of its child care program and describe additional services needed by state employees.	Legislature	Continue
8. Reports of Efforts to Collocate Administrative Office Space	Section 2165.1061(f), Texas Government Code	Requires the Commission to biennially report on its efforts to work with agencies to collocate office space, including reporting on the costs and benefits of proposed collocations by July 1 of even-numbered years.	Governor, Comptroller of Public Accounts, Legislative Budget Board	Continue
9. Report on Administrative Office Space in Travis County	Section 2165.1061(h), Texas Government Code	Requires the Commission to study and biennially report on each state agency's administrative office space in Travis County by July 1 of even-numbered years.	Governor, Comptroller of Public Accounts, Legislative Budget Board	Continue
10. Report on Air Monitoring Related to Asbestos Abatement	Section 2165.303, Texas Government Code	Requires the Commission to report, as needed, the findings and results obtained from air monitoring related to asbestos abatement.	Department of State Health Services, State Office of Risk Management	Continue
11. Biennial Report on Requested Projects	Section 2166.104, Texas Government Code	Requires the Commission to biennially report on all projects requested by state agencies.	Governor, Legislative Budget Board	Continue
12. Contract Notification	Section 2166.2551, Texas Government Code	Requires the Commission, or agency exempt from Government Code Chapter 2166, to report a construction contract that exceeds \$14,000 including an amendment, modification, renewal, or extension no later than 10 days after entering into the contract.	Legislative Budget Board	Continue
13. Small Contractor Participation Assistance Program Report	Section 2166.259(b-2), Texas Government Code	Requires the Commission to annually report on the activities and progress of the program.	Governor, Lieutenant Governor, Speaker of the House of Representatives	Continue
14. Report on Non-Compliance with Leasing Requirements	Section 2167.105, Texas Government Code	Requires the Commission to report, as needed, if a state agency has not complied with Commission rules or state law relating to leasing requirements.	Governor, Lieutenant Governor, Speaker of the House of Representatives, Board or Administrator of noncompliant agency	Continue
15. Reports on Violations in the Disposal of Salvage or Surplus Property	Section 2175.065(d), Texas Government Code	Requires the Commission to report, as needed, if an agency has violated statute or rule related to disposal of salvage or surplus property.	Legislative Budget Board	Continue

## Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
16. Notice of Salvage or Surplus Property	Section 2175.183 Texas Government Code	Requires the Commission to inform agencies and program participants about the Comptroller of Public Account's website that lists salvage or surplus property.	State agencies, political subdivisions, assistance organizations	Continue
17. Report of Salvage or Surplus Property Sale	Section 2175.190(a) Texas Government Code	Requires the Commission to report, as needed, the sale and price of salvage or surplus property sold.	Comptroller of Public Accounts, agency that owned the property	Continue
18. State Surplus Property Program Performance Report	Rider 15(c), page IX-37, Article I (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Commission to annually report on the performance of the Surplus Property Program including a five-year history of sales and distribution of proceeds; direct and indirect operational costs; and value of surplus property by sales method.	Governor, Legislative Budget Board	Continue
19. Personal Residences Expenditure Report	Page IX-47, Article IX (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Commission to report expenditures exceeding \$25,000 in aggregate for the biennium, for purchasing, remodeling, or repairing any personal residence or living quarters.	Governor, Legislative Budget Board	Continue
20. Report on Emergency Leases	Page IX-50, Article IX (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Commission to report quarterly on emergency leases and the status of progress on terminating emergency leases.	Governor, Legislative Budget Board	Continue
21. Lease Prepayment Report	Page IX-50, Article IX (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Commission to report within 30 days of executing a lease on the amount of savings resulting from an early payment discount.	Governor, Legislative Budget Board	Continue

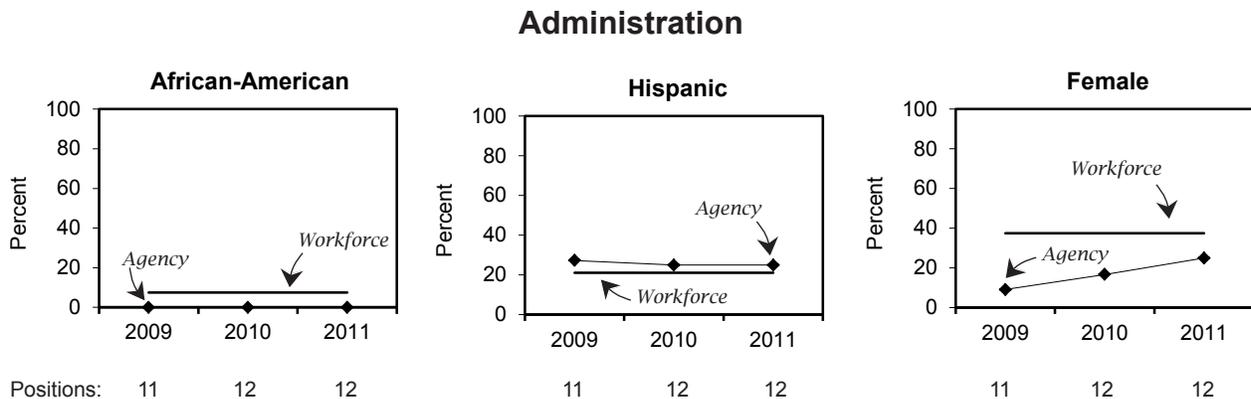


# APPENDIX C

## Equal Employment Opportunity Statistics 2009 to 2011

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Facilities Commission.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2009 to 2011.

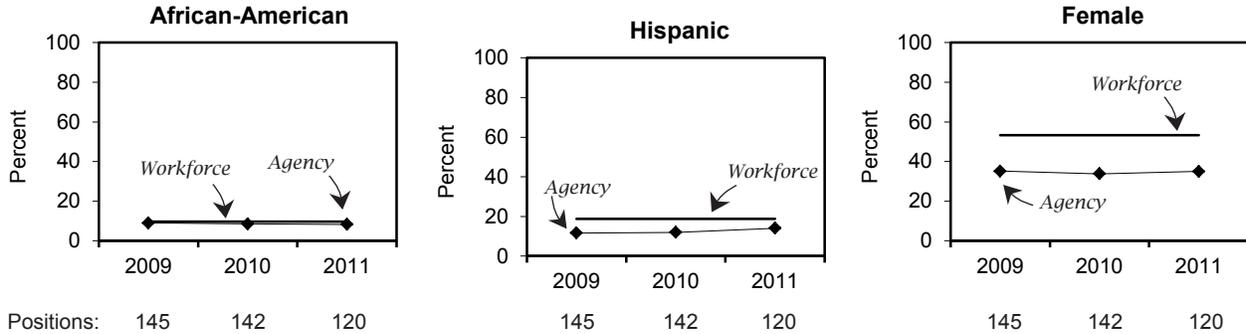
The Texas Facilities Commission fell well short of the civilian workforce percentages for African-Americans in the administration category and for women in the skilled craft category, having no African American or women employees in these two categories in each of the last three fiscal years. TFC attributes the lack of female employees in the skilled craft category to the limited pool of female applicants for skilled craft jobs such as plumbers, electricians, and carpenters. For the administration category, TFC indicates that high turnover impacted the agency's workforce percentages.



The agency consistently exceeded the civilian workforce percentages for Hispanics in this category, but fell below the percentages for African-Americans and females in the last three fiscal years.

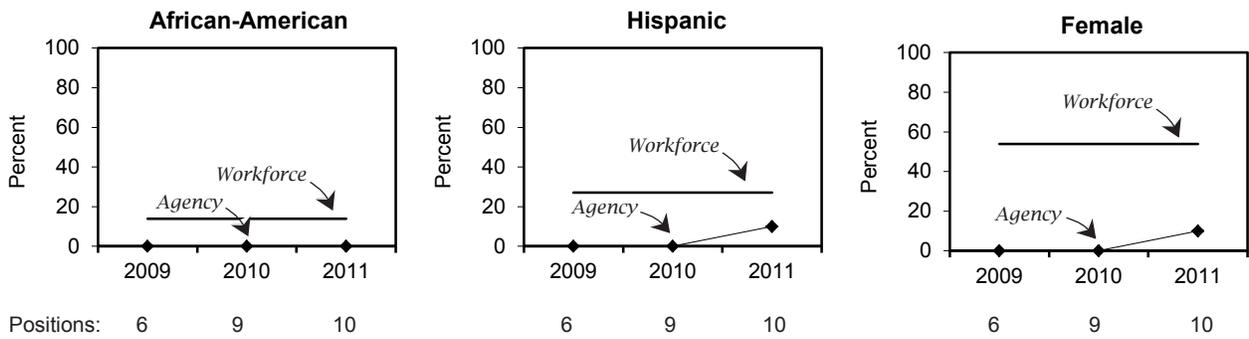
## Appendix C

### Professional



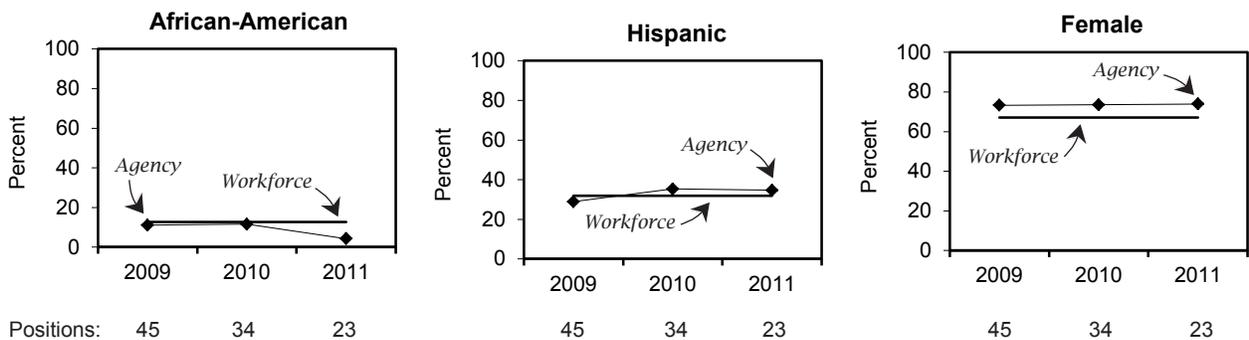
In the area of the agency with the most employees, the agency nearly met the civilian workforce percentages for African-Americans, but fell well below the percentages for females.

### Technical



The agency fell well below the civilian workforce percentages in all three groups in the last three fiscal years, but has few employees in this category.

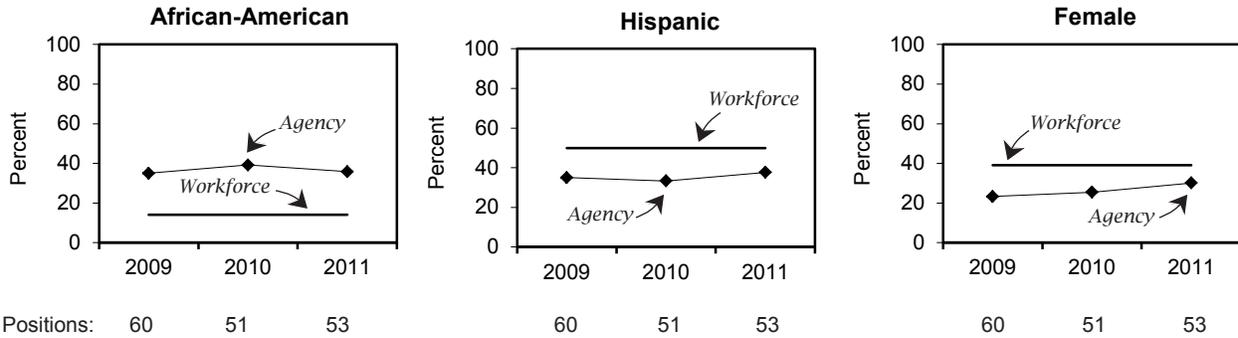
### Administrative Support



The agency fell below the civilian workforce percentages for African-Americans in each of the last three fiscal years and for Hispanics in 2009, but consistently exceeded the statewide average for females in all three fiscal years.

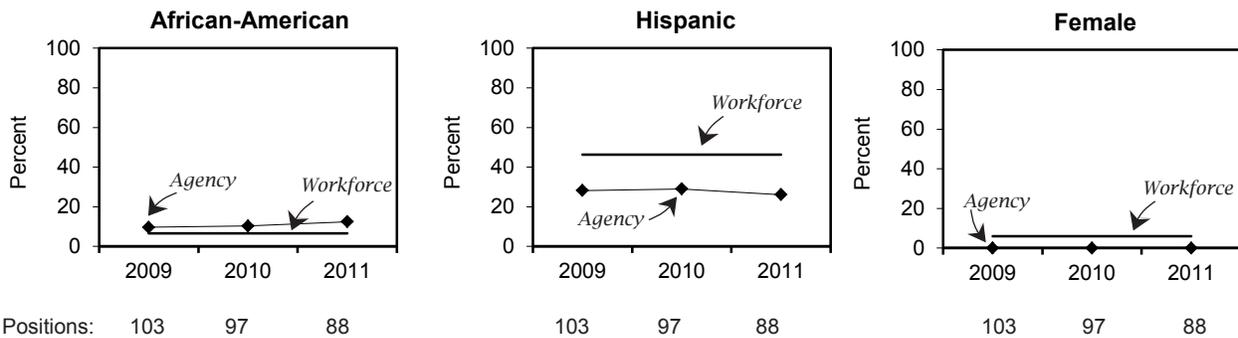
## Appendix C

### Service/Maintenance



The agency consistently exceeded the civilian workforce percentages for African-Americans, but fell below the statewide average for Hispanics and females in the last three fiscal years.

### Skilled Craft



The agency consistently exceeded the civilian workforce percentages for African-Americans for all three fiscal years, but fell significantly below the statewide average for Hispanics and females, having no female employees in this category for all three years.

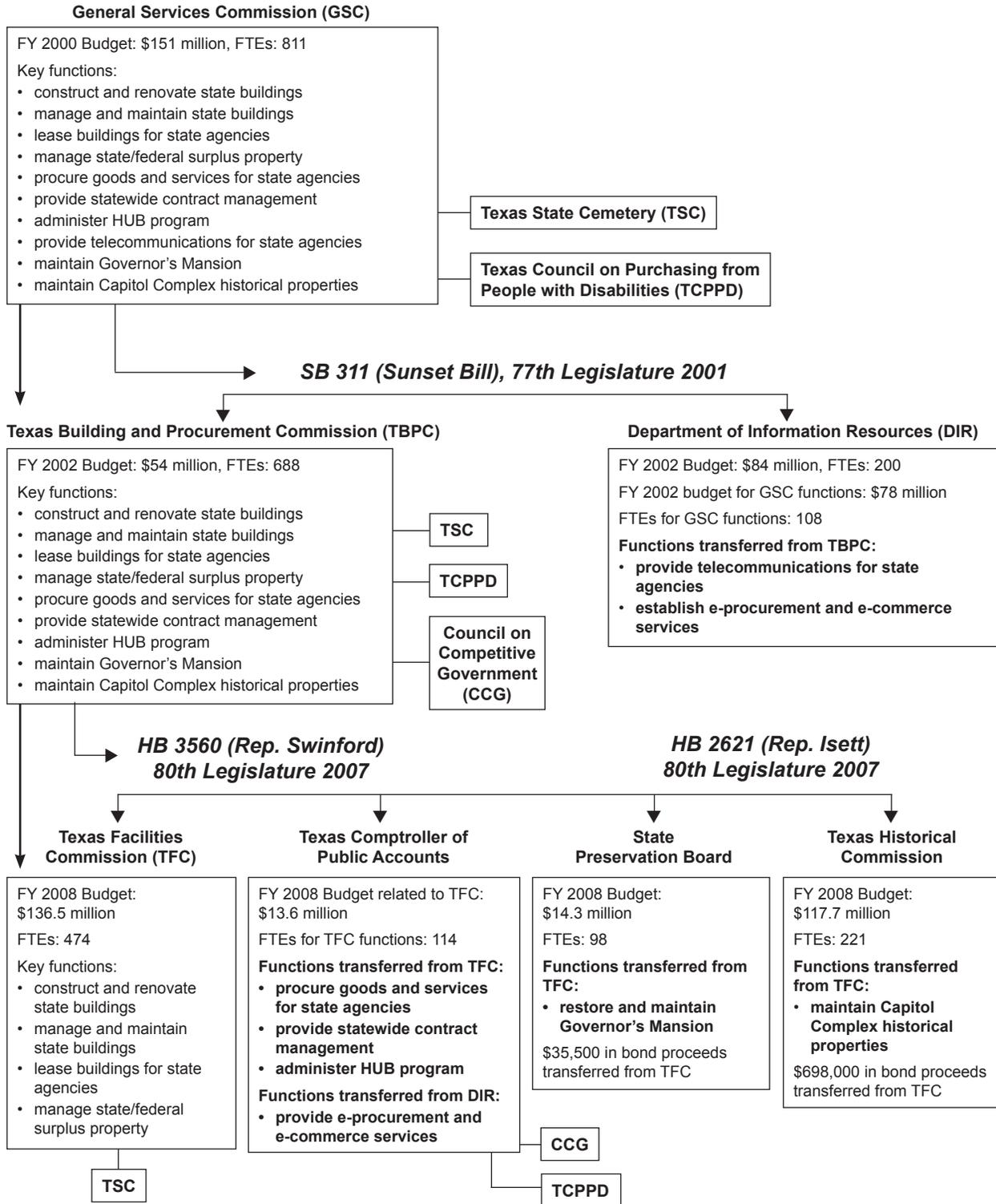
<sup>1</sup> Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.



# APPENDIX D

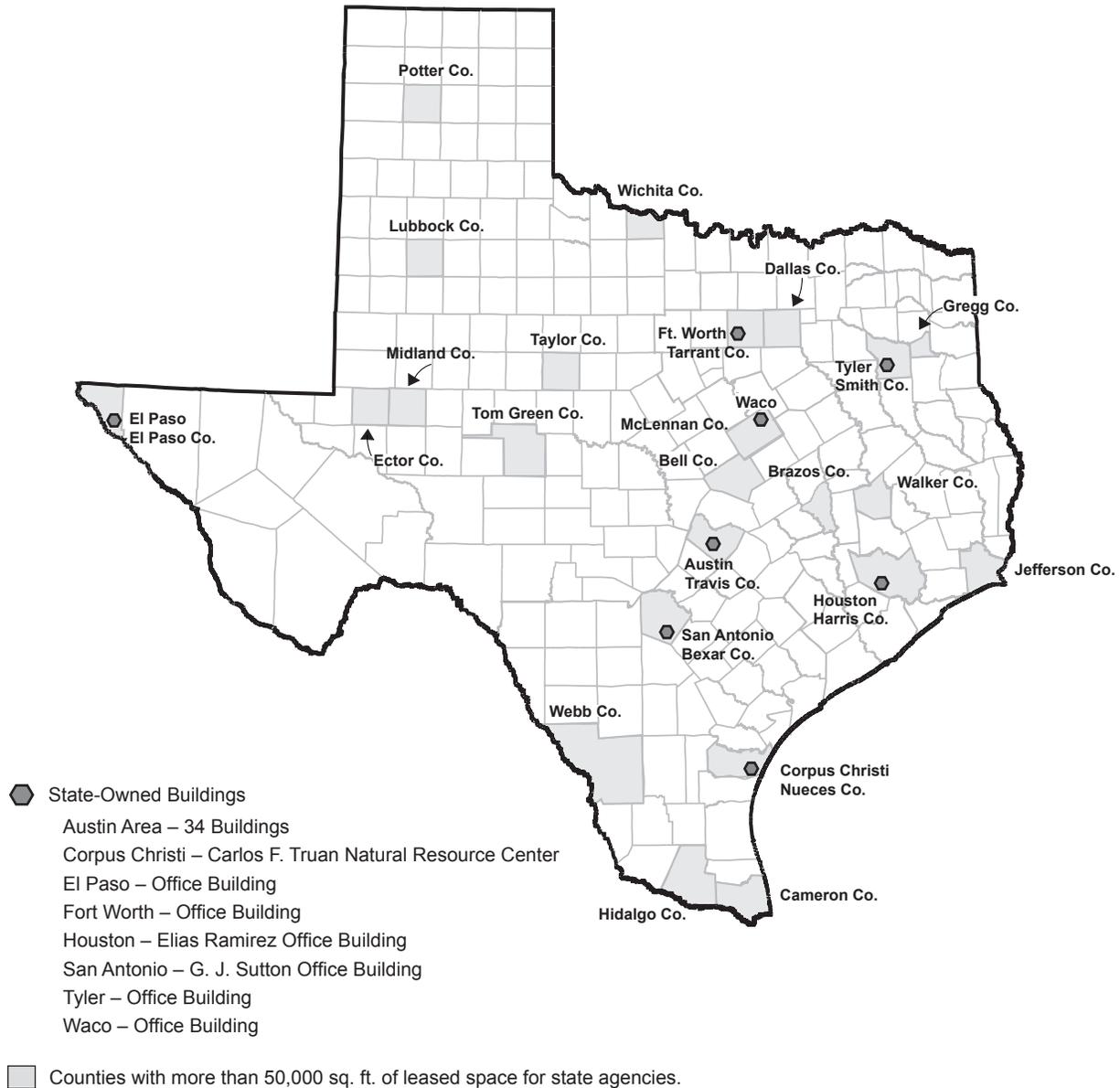
## Transfer of Texas Facilities Commission Functions 2001 to 2007





# APPENDIX E

## Texas Facilities Commission Buildings and Leased Space





# APPENDIX F

## ***Staff Review Activities***

During the review of the Texas Facilities Commission (TFC), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended Commission meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this agency.

- Conducted a survey of approximately 200 client agencies, vendors, and stakeholders.
- Interviewed staff from the Office of the Attorney General, Texas Commission on Environmental Quality, Texas General Land Office, Texas Health and Human Services Commission, Texas Historical Commission, State Preservation Board, and Texas State Library and Archives.
- Toured several TFC facilities, including the Capitol Complex Central Physical Plant, Department of State Health Services Austin Lab, Hobby Building, Lyndon B. Johnson Building, Stephen F. Austin Building, and the Austin Surplus Property Warehouse.
- Toured several TFC-managed construction and renovation project sites, including the Texas Department of Public Safety Austin Crime Lab, Texas School for the Blind and Visually Impaired campus, and the Robert E. Moreton Building.
- Met with the staff of and toured the Texas State Cemetery and French Legation.



# Sunset Staff Review of the *Texas Facilities Commission*

————— *Report Prepared By* —————

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