

# SUNSET ADVISORY COMMISSION

FINAL REPORT  
WITH LEGISLATIVE ACTION

*Office of  
Fire Fighters' Pension  
Commissioner*

JULY 2013



# *Sunset Advisory Commission*

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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.*

**OFFICE OF FIRE FIGHTERS'  
PENSION COMMISSIONER**

**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, July 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, August 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, November 2012* – 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, November 2012* – 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* – Summarizes the final results of an agency’s Sunset review, including 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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# SUMMARY

# SUMMARY

No one quibbles with the essential nature of firefighters' jobs. Thus, to question the need for the Office of Fire Fighters' Pension Commissioner (Office) is *not* an attack on firefighters or on their pensions established under the Texas Local Fire Fighters' Retirement Act (TLFFRA). The question is instead an acknowledgment that times have changed for these systems, both in terms of State financial support the systems no longer receive and their own strengthened ability to fend for themselves. The question of the need for the Office also enables consideration of the appropriate State role in what amounts to special treatment for this one class of firefighter pension systems out of all local pension systems and, in fact, out of all local firefighter systems not under TLFFRA.

Established in 1937, the Office had the sole mission of providing both financial and administrative assistance to local firefighter pension systems for paid and volunteer departments under TLFFRA. In 1977, the Legislature provided for the Commissioner to administer a pension system for volunteer firefighters and emergency services personnel under what is now known as the Texas Emergency Services Retirement System (TESRS).

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*Many Office activities are an anachronism from when the Commissioner oversaw the spending of State funds.*

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The Office's role in TLFFRA has diminished over time due to legislative changes and the growing independence of these systems. When the State stopped providing financial assistance to these systems in 1988, it removed the primary reason for Commissioner oversight. Many of the activities that remain are essentially an anachronism from the time when the Commissioner's oversight ensured the proper spending of State funds and compliance with state law. Other activities reflect a unique benefit for these local systems that is increasingly difficult to justify given the ability of TLFFRA systems either to operate successfully on their own or to pursue other suitable alternatives to their current pension systems. In addition, with 121 systems representing both paid and volunteer departments under TLFFRA, the Commissioner works with only a subset of the overall fire service in Texas.<sup>1</sup>

Clearly these TLFFRA systems still find value in having a Commissioner that represents their interests before the Legislature and that assists these systems in administering their local funds. Understandably, many will want to keep the Office. Sunset staff recognizes the value they place on having a single point of contact on pension matters, but ultimately could not justify the continuing need for the Commissioner's functions under TLFFRA. The systems and the firefighters' pensions themselves would not, however, be significantly affected by the change.

As a statewide pension fund for some 214 local volunteer fire and emergency services departments, TESRS is distinct from the locally-operated TLFFRA systems. TESRS has its own Governor-appointed Board of Trustees

responsible for managing the TESRS Fund and benefits, while the Commissioner administers the system. The unique structure of having two Governor-appointed entities complicates accountability for oversight and administration of the Fund. TESRS needs to operate in the mode of other statewide funds, with its own administrator and staff, rather than relying on a separately appointed Commissioner.

The Sunset staff also found that the pension structure for TESRS creates the potential for greater liabilities to the State, justifying the need for more detailed financial information and audits of the system's actuarial data. Additional changes are targeted to improve the agency's contracting activities. The following material summarizes Sunset staff's recommendations on the Office of Fire Fighters' Pension Commissioner.

## Issues and Recommendations

### *Issue 1*

#### **While the State Needs a Pension System for Volunteer Emergency Services Personnel, the Office of Fire Fighters' Pension Commissioner Is Not Necessary.**

Services provided by volunteer and paid fire departments are essential. However, state assistance for pension systems under the Texas Local Fire Fighters' Retirement Act (TLFFRA) is no longer needed. The Office's limited monitoring and assistance functions, such as reviewing benefits and providing technical assistance, are but vestiges of the Commissioner's original responsibilities to provide State funding to local TLFFRA systems and ensure proper use of these funds and compliance with statute. What remains at the Office is a mix of activities of questionable need – reviewing pension plan information that is more appropriate for the Pension Review Board's oversight for financial and actuarial soundness; reviewing benefits by these systems that is much the same as checking their math; deciding benefit appeals that already occur at the State Office of Administrative Hearings; issuing legal interpretations that do not have the force of law; and providing these firefighter systems educational seminars that, while beneficial, could be provided in other ways. Further, the TLFFRA statute provides a framework for these systems that offers safeguards for their long-term operation. Paid systems have grown self-sustainable while volunteer systems have other options such as transferring to the Texas Emergency Services Retirement System (TESRS).

The State continues to need TESRS, but a separate Governor-appointed Commissioner is not needed to administer that system. Unlike TESRS, most Texas statewide pension systems hire an executive director and do not have two Governor-appointed oversight entities, a cumbersome arrangement that lacks a clear accountability structure. In addition, the Commissioner's position is not needed to decide TESRS benefit appeals since the state Board of Trustees already has final authority over appeals. Last, the review concluded that TESRS justifies the need for continuing Sunset review.

#### **Key Recommendations**

- Abolish the Commissioner's position and make TESRS subject to Sunset review every 12 years.
- Eliminate the Office's authority to collect reports from TLFFRA pension systems and its authority to conduct seminars or workshops.
- Eliminate the Commissioner's authority to hear TLFFRA and TESRS appeals on benefit decisions, and direct the Office to cease issuing legal interpretations.

## *Issue 2*

### **The Texas Emergency Services Retirement System Lacks Transparency and Oversight Needed to Minimize the State's Financial Risk.**

The Texas Emergency Services Retirement System (TESRS) provides pension benefits for volunteer firefighters and emergency services personnel paid for by the local governments sponsoring these entities. However, the system relies on the State to fund most administrative costs and to cover investment losses, posing the risk of significant ongoing State financial obligations. Since 2002, the State has paid \$12.8 million in TESRS Fund contributions and administrative costs mostly to cover investment losses.

The unique structure of TESRS warrants greater oversight, verification, and reporting on the Fund to ensure the Legislature has accurate and timely information needed to make funding decisions. The Board has significant flexibility to structure the pension in ways that can potentially result in increased costs to the state budget. Because statute requires the State to make a contribution when the system cannot cover future unfunded costs and allows the Board to assume ongoing maximum State contributions into the future, the Board does not have an incentive to reduce the State's financial risk. Also, TESRS statute does not require the system to perform audits of its actuarial valuations or assumptions on a regular basis, though other Texas statewide pension systems have this requirement.

#### **Key Recommendations**

- Require the Board to provide the Legislature with a range of options for meeting the State's contribution requirement should the Fund experience significant losses or increased liabilities.
- Require the TESRS actuarial valuation to include detailed information on the impact of assuming both a full State contribution and no State contribution.
- Require the Board to regularly conduct actuarial audits and experience studies to ensure accurate pension assumptions and valuations.

## *Issue 3*

### **The Office Lacks a Consistent Approach to Contract Management and Oversight.**

In reviewing the Office, Sunset staff applied key contracting best practices to evaluate any deficiencies in this area. The Office, like many small agencies, does not have needed management and oversight controls in place to guide contracting, which it uses infrequently yet supports critical functions for administering its pension system. Applying a few basic contracting practices could help the agency avoid having to spend time and resources to fix problems resulting from inadequate contract management and poor contractor performance. The Office has not taken advantage of training to prepare key staff to effectively manage contracts. Also, the TESRS Board has not adopted the Comptroller's historically underutilized businesses (HUB) rules.

#### **Key Recommendations**

- Require the agency to adopt a clear policy on contract management and oversight, and direct staff to attend contract management training provided by the Comptroller's Office.
- Direct the Board to adopt a rule containing the Comptroller's HUB rules.

## Issue 4

### The Texas Emergency Services Retirement System Statute Does Not Reflect Standard Elements of Sunset Reviews.

The Sunset Commission has developed Across-the-Board Recommendations (ATBs) containing “good government” standards that it applies to all state agencies under review. The Office’s significant role in administering TESRS, and the State’s financial stake in that system, make a review of TESRS’ conformance with ATBs appropriate. Six of these ATBs are missing from TESRS statute and should be applied. In addition, the Texas Sunset Act requires the Commission to consider if statutory reporting requirements, imposed by law on agencies under review, should be continued or abolished. Sunset staff determined two TESRS reports should be continued because state law requires them of all public retirement systems.

#### Key Recommendations

- Update and apply standard Across-the-Board Recommendations to TESRS statute.
- Continue the TESRS annual financial report and actuarial valuation measuring the soundness of the TESRS Fund.

### Fiscal Implication Summary

**Issue 1** – The recommendation to eliminate the Office would have a positive fiscal impact to the State, resulting in the reduction of 3.5 employees currently associated with TLFFRA functions and annual savings of about \$173,000 to the General Revenue Fund. TESRS would require continuing the approximately \$500,000 in annual general revenue appropriations it receives for administrative costs.

**Issue 2** – These recommendations would have costs to TESRS associated with conducting actuarial audits and experience studies. For a fund the size of TESRS, these costs would be estimated at approximately \$25,000 for the audit and \$50,000 for the experience study. However, the recommendation would only require these actions every five years, paid from the pension fund.

#### Office of Fire Fighters’ Pension Commissioner

Fiscal Year	Savings to the General Revenue Fund	Changes in FTEs From FY 2013
2014	\$173,000	-3.5
2015	\$173,000	-3.5
2016	\$173,000	-3.5
2017	\$173,000	-3.5
2018	\$173,000	-3.5

.....  
<sup>1</sup> The Commissioner does not have authority to monitor or assist almost 1,200 volunteer departments, or the other part-paid and paid firefighter pension systems in the state that are not under TLFFRA or TESRS, including the six largest firefighter systems in the state that are organized under their own state laws: Austin, Dallas, El Paso, Fort Worth, Houston, and San Antonio.

## SUMMARY OF FINAL RESULTS

### *S.B. 220 Birdwell (Anchia)*

A central tenet of the Sunset process is that over time almost every state agency, no matter how obscure, has its time in the spotlight, where it must answer hard questions about what it does and why and whether it is needed or if other approaches could better meet the same objectives. For the Office of Fire Fighters' Pension Commissioner, a small agency created in 1937 to provide assistance, training, and other services to local firefighter pension plans, the answers initially seem obvious. Some functions, like providing state financial assistance to these local plans has long since ceased. Other activities, like meaningful financial or actuarial oversight, training, and hearing appeals of decisions by local plans largely occur through other agencies. Technical assistance and advocacy provided by a state agency to these local plans — however worthy — looks unfair and vaguely inappropriate. With this view, the Sunset Commission recommended that the Office and its functions with regard to these local firefighter retirement plans were not needed.

In the course of the legislative session, the answer became a little more nuanced. The Legislature did not see the Office so much as an anachronism whose duplicative functions were not needed, as it did an extra player that itself was not needed to provide the activities for these local firefighter plans that could be capably provided elsewhere. Senate Bill 220, the Sunset bill for the Office, reflects this subtle shift by not just abolishing the Office, but also providing for accommodating its training and assistance functions and its role as an intermediary for benefit appeals from local plans at the Pension Review Board. Under the bill, the Board is to designate a point of contact to assist these local retirement plans and serve as a conduit between local plans and the State of Office of Administrative Hearings, which will decide these appeals.

The Sunset experience for the other Office activity related to the Texas Emergency Services Retirement System (TESRS) follows a more linear narrative. The Fire Fighters' Pension Commissioner's responsibility to administer TESRS was never a good fit, given TESRS' own Governor-appointed Board of Trustees responsible for managing the fund and benefits. Senate Bill 220 eliminates the Commissioner's involvement, makes TESRS an independent entity with the authority to hire its own staff, and makes TESRS subject to future Sunset review. The bill also increases oversight of the TESRS Board's spending of state funds by requiring the Board to report more detailed information about TESRS' actuarial valuation to the Legislature and state leadership, and to conduct certain actuarial audits as a best practice. Increased legislative oversight will help minimize Board decisions that could increase the State's liability and costs from the system.

The Legislature also adopted provisions in Senate Bill 1, the appropriations bill, to ensure that the needed transfer of funds to continue the identified activities in the absence of the Office. Senate Bill 1 provides funding directly to TESRS to cover its own administrative costs and provides funding to the Pension Review Board to provide for the single point of contact for local firefighter plans. The bill also ensures that the State Office of Administrative Hearings continues to receive funding for appeals of benefit decisions from local plans.

The following material describes the results of the review of the Office of Fire Fighters' Pension Commissioner and notes which provisions are management directives not requiring statutory change and which changes are in appropriation.

### **Abolishment**

- Abolishes the Office of Fire Fighters' Pension Commissioner both in its roles for local firefighter retirement systems and for administering TESRS.
- Eliminates the Office's authority to collect reports from local firefighter retirement systems.
- Eliminates the Commissioner's role in hearing benefit appeals from local firefighter systems and the TESRS Board and establishes processes at the Pension Review Board and the TESRS Board for handling these appeals.
- Eliminates the Office's authority to conduct seminars or workshops.
- Requires the State Pension Review Board to provide technical assistance, training and information to boards of trustees of local firefighter retirement systems.

### **TESRS Oversight and Administration**

- Authorizes the Governor to appoint a retiree to one of the current six TESRS board member positions reserved for active members.
- Makes TESRS subject to Sunset review every 12 years.
- Provides a direct appropriation to TESRS for staffing and administration. (S.B. 1)
- Updates and applies standard Sunset Across-the-Board recommendations to TESRS statute.

### **TESRS Funding**

- Requires the TESRS Board to provide the Legislature with a range of options for meeting the State's contribution requirement should the Fund experience significant losses or increased liabilities.
- Requires the TESRS actuarial valuation to include detailed information on the impact of assuming both a full state contribution and no state contribution.
- Requires the TESRS Board to regularly conduct actuarial audits and experience studies to ensure accurate pension assumptions and valuation.

### **TESRS Contracting**

- Requires TESRS to adopt a clear policy on contract management and oversight.
- The TESRS Board should designate staff to participate in contract management and oversight training. (management action – nonstatutory)
- The TESRS Board should adopt a rule containing the Comptroller's Historically Underutilized Businesses rules. (management action – nonstatutory)

**Fiscal Implication**

Senate Bill 220 will result in net savings to General Revenue of \$173,838 over the biennium, and the reduction of 2.5 staff. Initial savings of \$346,000 biennially were reduced by the cost of the Pension Review Board designating a staff person to work with local fire fighter plans.



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**OFFICE AT A GLANCE**  
**JULY 2012**

# OFFICE AT A GLANCE

Created in 1937, the Office of Fire Fighters' Pension Commissioner (Office) assists and represents the pension and retirement interests of firefighters and volunteer emergency services personnel. The Office monitors and assists pension systems operating under the Texas Local Fire Fighters' Retirement Act (TLFFRA) in the following ways:

- requires annual reporting from local fire department pension systems and reviews pension benefits;
- decides pension member appeals of benefit decisions by local pension boards;
- provides technical assistance and legal interpretations of statute and other aspects of systems; and
- conducts training for local board trustees through its annual TLFFRA educational conference and peer review workshop.

The Office also administers the Texas Emergency Services Retirement System (TESRS), created in 1977 to provide retirement as well as death and disability benefits to volunteer firefighters and emergency services personnel. For a comparison of benefits and eligibility requirements for TLFFRA and TESRS, see Appendix A.

## Key Facts

- **Commissioner.** The Commissioner is appointed by the Governor with the consent of the Senate for a four-year term. The Commissioner sets policy and manages the Office's efforts to assist certain paid and volunteer fire departments under TLFFRA. The Commissioner also serves as the administrator of TESRS, while a separate, Governor-appointed Board of Trustees (Board) sets policy and manages the system's assets.
- **Funding.** The Office operated on a total budget in fiscal year 2011 of about \$683,000, with about \$486,000 spent on administration of TESRS and about \$197,000 for TLFFRA assistance. Almost all the Office's funding comes from General Revenue, with about \$27,550 in revenue collected from fees for the Office's annual TLFFRA conference and \$10,500 in fees for late filing of reports from local pension boards participating in TESRS in fiscal year 2011.
- **Staffing.** In fiscal year 2011, the Office employed 8.5 staff, all located in Austin. The Office employs 3.5 staff for its TLFFRA-related duties and five staff for administration of TESRS.
- **TLFFRA Monitoring.** The Office monitors and assists locally managed pension systems for 121 paid, part-paid, and volunteer fire departments. These systems distributed almost \$3.5 million in benefits to 3,594 paid members and 757 volunteer members in fiscal year 2011, and held a combined \$1.3 billion in assets at the end of fiscal year 2010.<sup>1</sup> Each of the local pension systems is self-administered under the terms of the statute with its own board of trustees, and do not rely on state funding. Appendix B lists these TLFFRA systems and shows the total employee, retiree, and beneficiary members, and assets for each fund.

Statute provides for the Commissioner to monitor and assist these local pensions through reporting of financial and other system information. As part of this assistance function, the Office reviews

pension benefits and decides appeals of the local boards' benefit decisions. The Office assists local TLFFRA boards by providing legal interpretations of statute and other matters relating to system operations. The Office also provides technical and administrative assistance for services such as contracting and management of pension systems. Lastly, the Office provides training for board trustees and staff through an annual TLFFRA conference and a peer review workshop. In fiscal year 2011, the Office issued 12 legal interpretations, decided 4 appeals, and trained 251 trustees at its educational seminars.

- **TESRS Administration.** The Commissioner oversees the distribution of system benefits, collects revenue from participating departments, may request and administer appropriated funds, and may recover fraudulently acquired benefits.<sup>2</sup> The Office administered \$3 million in retirement, disability, and death benefits to 2,277 retired volunteer firefighters and emergency service personnel and their beneficiaries in fiscal year 2011.<sup>3</sup> The total number of active members and beneficiaries at that time was 6,496. The Office also provides administrative services, such as contracting and records management, oversees appeals of benefit decisions, and participates in decisions on disability benefits.

The TESRS Board has nine members, appointed by the Governor, with six representing the members of the pension system and three having experience in the fields of finance, securities investment, or pension administration. The Board hires experts to manage and invest the Fund's assets; adopts rules; and sets policy on service requirements, local government contributions, and benefit levels.

At the end of fiscal year 2011, the pension Fund held \$62.5 million in assets. In addition to appropriations for the Office's administration of TESRS, the State by statute, must appropriate additional money to the pension Fund to ensure its actuarial soundness.<sup>4</sup>

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<sup>1</sup> Office of Fire Fighters' Pension Commissioner, *Audited Annual Financial Report for the Year Ended August 31, 2011* (Austin, TX: Office of Fire Fighters' Pension Commissioner, 2011), p.5.

<sup>2</sup> Section 865.010, Texas Government Code.

<sup>3</sup> Office of Fire Fighters' Pension Commissioner, *Audited Annual Financial Report*, p. 5.

<sup>4</sup> Section 865.015, Texas Government Code. To make the TESRS Fund sound, statute requires the State to contribute up to one-third of the amount contributed by local governing bodies in a given year.

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# ISSUES

# ISSUE 1

## *While the State Needs a Pension System for Volunteer Emergency Services Personnel, the Office of Fire Fighters' Pension Commissioner Is Not Necessary.*

### Background

The State's involvement in firefighter pensions goes back 75 years, and predates many of the statewide pension systems for teachers, and state, municipal, county, and district employees. The State established the Office of Fire Fighters' Pension Commissioner (Office) in 1937 to oversee locally administered pension systems for paid and volunteer firefighters, later named the Texas Local Fire Fighters' Retirement Act (TLFFRA). In 2001, the Constitution was amended to authorize four-year terms for the Commissioner, if the position exists.<sup>1</sup> Currently, 38 paid, 80 volunteer, and three part-paid part-volunteer departments operate individual pension systems under TLFFRA, administering more than \$1.3 billion in assets. The Office's TLFFRA functions include reviewing pension data, providing technical assistance, drafting legal interpretations of statute and other pension matters, hearing benefit appeals, and training pension trustees through its annual educational conference and its peer review workshop.

In 1977, the State established a separate statewide pension fund exclusively for volunteer firefighters and gave the Commissioner authority to administer benefits, with a separate, Governor-appointed Board of Trustees setting policy and managing fund assets. That Fund later became the Texas Emergency Services Retirement System (TESRS) and its membership expanded to include emergency services personnel. The TESRS Board managed \$62.5 million in assets for 214 volunteer and emergency services departments in fiscal year 2011. The Office administers the system by collecting pension contributions from local governments, paying benefits, and providing administrative support to the statewide Board that oversees the Fund.

The Office has 3.5 employees for its TLFFRA duties and five for its TESRS responsibilities. In fiscal year 2011, the Office spent about \$197,000 on its TLFFRA functions and about \$486,000 on TESRS administration.

### Findings

#### **State assistance for local TLFFRA firefighter pension systems is not needed to ensure their sound operation.**

- **As systems operating under TLFFRA have evolved, the State's role is difficult to justify.** Originally, the Office and the Commissioner played an active role in overseeing and assisting local firefighter pension systems because the State supported these systems financially, and relied on the Commissioner to ensure that State funds were appropriately spent.<sup>2</sup> However, in 1988, State funding for TLFFRA pensions ended, and in 1999, the Legislature gave these pensions authority to pay their administrative costs out of fund assets.<sup>3</sup> With these changes, the Commissioner's

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*State funding for TLFFRA pensions ended in 1988.*

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oversight role has become much more of an assistance role. The Commissioner has limited enforcement authority and essentially cannot ensure compliance by these systems because the threat of withholding State financial assistance no longer exists.<sup>4</sup> The assistance function that remains is largely a benefit to the firefighter systems organized under TLFFRA, and does not extend to the six largest paid firefighter systems in the state organized under their own state law, nor to almost 1,200 volunteer departments that have opted not to have TLFFRA pensions for their firefighters. The State interest in maintaining such a benefit for a small subset of the state's fire service is minimal.

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*The Office's assistance to TLFFRA systems does not extend to the largest paid firefighter systems.*

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- **TLFFRA systems can operate without State assistance.** While firefighters understandably value having their own dedicated State assistance function related to pension matters, the State does not provide such targeted pension assistance to other local public safety employees, or even other firefighters not covered under TLFFRA. Further, the ability of paid departments' retirement systems to manage their own affairs and the existence of a statewide pension system for volunteer departments mitigates the need for State assistance with operations. The following material further explains why TLFFRA systems no longer require State assistance.

TLFFRA statute provides protections for pension systems. The TLFFRA statute specifies the makeup of local boards of trustees that oversee these systems, giving a significant voice to members of the systems.<sup>5</sup> TLFFRA itself is not a pension system. Unlike statewide pension systems such as the Texas Municipal Retirement System, the Texas County and District Retirement System, or even TESRS, systems under TLFFRA do not pool their assets, nor do they have a statewide board or the Legislature determining their benefit structures. Instead, the statute establishes minimum contribution levels, retirement eligibility standards, and service credit awards, and gives each system the flexibility to determine its pension structure beyond these bare minimums. TLFFRA also protects benefits by requiring any change to benefits and eligibility to be approved by the local board, the board's actuary, and a vote of the members of the system.<sup>6</sup> Finally, just by existing in state laws, the TLFFRA statute provides a measure of protection to pension systems from sudden or even capricious change because of the time and effort required to achieve legislative change.

TLFFRA systems for paid firefighters are basically self-sufficient. Over time, paid TLFFRA pension systems have become self-sustainable. As of fiscal year 2010, every paid TLFFRA pension had assets of \$2 million or more, with several departments managing assets of more than \$100 million. All paid TLFFRA departments operate their pensions on an independent basis, with assistance from investment supervisors and fund managers, actuaries, and some with full-time pension administrators. These TLFFRA systems are also subject to the same kind of State financial and actuarial oversight as any local pension system, except that

those other systems do not need technical assistance from the State to operate effectively, and neither do these TLFFRA systems.

TLFFRA systems for volunteer firefighters have other options. Since the creation of a separate retirement system for volunteer firefighters and emergency services personnel, 113 TLFFRA volunteer systems have entered TESRS, leaving 80 volunteer systems still under TLFFRA. Of these systems, more than 70 are not traditional defined benefit systems with funds in trust to pay benefits. Instead, the sponsoring entity must pay benefits out of their budgets as they become due.

These “pay-as-you-go” TLFFRA systems do not need assistance on pension matters because essentially they have little to no pension assets. They may instead need assistance determining eligibility and benefit levels because of their own difficulty maintaining records. The available evidence, however, indicates that this is a rare occurrence and not enough to justify the Commissioner’s continuing role.<sup>7</sup> Of greater consequence to them is the option to join TESRS, which was established to serve their retirement interests, as discussed below. However, the State does not regulate these volunteer TLFFRA systems, and even with the option of receiving more state assistance under TESRS than under TLFFRA, many choose to continue to operate independently.

- **The Office’s TLFFRA functions provide little benefit and significant duplication.**

Reporting requirements. All TLFFRA pension systems must report the same type of information to the Office that they report to the Pension Review Board (PRB), with a few exceptions. For instance, in lieu of submitting some financial information to PRB, like an audited financial report, local TLFFRA systems with less than \$50,000 in assets may submit the annual report they send to the Office.<sup>8</sup> Also, the Office reviews reports from local TLFFRA boards listing benefit decisions, something PRB does not receive, yet the agency lacks the ability to enforce benefit corrections if it finds errors. For a list of duplicative reporting requirements see the textbox, *Duplicative TLFFRA Reporting to the Office and Pension Review Board*. Sending these reports to both agencies is a waste of resources that serves no useful purpose. While the Office reviews and reconciles financial information for TLFFRA systems, and compiles it in an annual TLFFRA report, the Office does not provide the level of financial and actuarial analysis that is more squarely under the responsibility and expertise of PRB. Ultimately, the state does not need a separate agency that monitors only TLFFRA systems when PRB already collects and monitors financial information

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*Many volunteer TLFFRA systems have entered the State’s emergency services retirement system.*

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***Duplicative TLFFRA Reporting to the Office and Pension Review Board***

- contact information
- members of local board of trustees
- name of pension administrator
- assets, revenues, and benefit payments
- number of pension members
- pension plan document
- investment policy
- annual audited financial report
- actuarial valuation report

on all public retirement systems, and has an actuary on staff that analyzes pensions' financial data to highlight potential problems for further action.

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*Paid TLFFRA systems can administer educational conferences without the Office.*

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Educational seminars. Having a state agency to organize an annual meeting is not necessary. The Office provides training to trustees and staff operating TLFFRA pension systems through its annual conference and peer review workshop. While the Office's educational seminars are well attended and well received by TLFFRA paid systems, these are activities that these systems have demonstrated the ability to administer on their own without the Office. In fiscal year 2011, about 200 people attended the conference and 51 attended the workshop.

TLFFRA paid departments have taken a more active role in planning the Office's educational seminars. For example, they play a significant role in planning the annual peer review workshop, with many of the presentations given by TLFFRA trustees, and actuaries or attorneys that work for these systems. TLFFRA volunteer systems, as small and predominantly pay-as-you-go systems, generally do not participate in these educational offerings, which are geared more toward the needs of larger paid systems.

Benefit appeals. The Commissioner's role in the TLFFRA appeals process is not necessary to settle local pension disputes. Under TLFFRA, when a member feels aggrieved by a local board decision about benefits or eligibility, that member has the opportunity to appeal the decision to the Commissioner.<sup>9</sup> The case goes before the State Office of Administrative Hearings (SOAH) as a de novo hearing, and the SOAH judge issues a Proposal for Decision to the Commissioner who makes the final decision. SOAH receives funding for these cases as part of its general appropriations.<sup>10</sup> Since 2007, the Office has only handled 12 appeals.

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*SOAH can continue to decide benefit appeals without the Commissioner.*

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These appeals are a benefit for members of TLFFRA systems who would otherwise have to pursue appeals in Court. The appeals process, however, does not rely on the Commissioner, who is not a party to the case as is usually the situation for state agencies. SOAH hears and decides other matters for local entities, with no state agency involvement and an administrative law judge making the final decision.<sup>11</sup> In addition, SOAH already hears these TLFFRA cases and could continue to do so without the involvement of the Commissioner.

Legal interpretations. The Commissioner's legal interpretations are a form of technical assistance that is not necessary and more appropriately obtained elsewhere. TLFFRA trustees or members may contact the Office and request a legal interpretation regarding their pension or the Act. In fiscal year 2011, the Office issued 12 legal interpretations on matters ranging from benefit eligibility to guidance for qualifying a domestic relations order. The Commissioner issues these interpretations as Commissioner Opinions, made to appear as legal documents, but not authorized in statute and not legally binding. Ultimately, these

interpretations serve as a way for the Commissioner to answer questions about TLFFRA and other pension matters. However, interpreting statute for local entities not funded or regulated by the State is not a standard state function.

**The State has a continuing interest in administering a retirement system for volunteer emergency services personnel, but does not need a separate, Governor-appointed commissioner to do it.**

- **Important assistance for firefighters.** Providing retirement as well as death and disability benefits serves as a recruitment and retention tool for volunteer firefighters and emergency services personnel who are vital parts of the State's fire and emergency response service. Through TESRS, the State has recognized the need to assist volunteer personnel by administering this system for 214 departments, and 6,496 active members, retirees, and their beneficiaries. By pooling the assets of its member departments, TESRS provides a more cost-effective alternative to having each department administer its own system under TLFFRA. TESRS is able to pay a larger benefit at a lower cost to local governments.
- **Unwieldy and unnecessary structure.** Having both a Governor-appointed Board and Commissioner oversee TESRS disrupts the standard lines of responsibility and accountability between the oversight body and the staff it relies on for operations. The TESRS Board oversees the investment of the Fund and sets policy on service requirements, local government contributions, and benefit levels. The Commissioner oversees the Office, which dedicates five staff to administer TESRS through the collection of contributions, payment of benefits, and other support functions. A more common and workable approach for retirement systems and state agencies is to have the oversight body hire a director responsible for the day-to-day operations.

The Commissioner is also not needed to provide appeals of TESRS benefits. Although TESRS is a statewide pension system, statute gives flexibility to local boards to make some benefit and eligibility decisions for local volunteer firefighters and allows volunteer firefighters to appeal decisions of local boards to the Commissioner. The Commissioner's decision can then be appealed to the statewide TESRS Board.<sup>12</sup> Such appeals are rare, with none occurring in the last three years. However, the TESRS Board is already the final decision maker and could decide appeals without the Commissioner as an intermediary. No other statewide pension system has a separate formal appeals process that must occur before an appeal to the board.<sup>13</sup> A more standard approach is for these kinds of appeals to be heard by SOAH, with the state oversight board making the final decision.

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*No TESRS benefit decisions have been appealed in the last three years.*

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- **Need for continuing TESRS oversight.** TESRS serves an important function in providing a system of benefits to volunteers who are vital to the safety of many Texans. The Sunset review did not identify a better organizational alternative for this System. However, as a statewide system that receives State funding, TESRS presents a level of risk that justifies continuing legislative oversight through Sunset review. In addition, Issue two of this report explores this risk and ways to mitigate it in more detail.

### **The Office has had difficulty managing itself and the programs it administers.**

Small agencies inherently have difficulty meeting requirements common to all state agencies in addition to meeting their primary responsibilities. This difficulty can lead to problems in areas such as contracting, performance monitoring, and simple management controls.

For the Office, this situation is magnified by the fact that it essentially has the responsibilities of two agencies in managing both TLFFRA and TESRS functions. For example, the Commissioner has recently severed the Office's relationship with a TLFFRA nonprofit, which has assisted with the Office's educational seminars since 2006, because of concerns about the proper control and possible misuse of state funds.<sup>14</sup> Regarding its TESRS duties, the Office has recently encountered significant deficiencies with its data systems, threatening the accuracy of information used in its actuarial valuations and possibly affecting the calculation of benefits.<sup>15</sup> These kinds of difficulties seriously call into question the need to continue small agencies that cannot effectively perform the functions entrusted to them.

### **While other states may have retirement systems for firefighters, none has a separate agency like the Office for assisting local firefighter pensions.**

No other state has an agency that provides assistance to local firefighter pensions.<sup>16</sup> Most other states have pension benefits for firefighters, either through a statewide or local pension system, but only 15 states provide some sort of statewide pension benefit for volunteer firefighters.

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*The Office has encountered significant deficiencies with its TESRS data systems.*

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## **Recommendations**

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

#### **1.1 Abolish the Commissioner's position and make TESRS subject to Sunset review every 12 years.**

This recommendation would repeal references to the Pension Commissioner in both the TLFFRA and TESRS statutes and replace the Commissioner's position in administering TESRS with an executive director. The recommendation would not repeal TLFFRA or TESRS statute, but only references to the Commissioner, and would also not repeal the constitutional provision providing for the Commissioner's

four year term, since it applies only “if” the Legislature authorizes a Commissioner. Under this recommendation, the Commissioner’s term would end when the Sunset bill abolishing the position takes effect in September 2013. Language would be added to statute to authorize the TESRS Board to hire the executive director and staff, as it sees fit, and make it subject to the appropriations process, as it currently is through the Office. In addition, this recommendation would require the TESRS Board to undergo Sunset review in 12 years to ensure ongoing oversight.

### **1.2 Eliminate the Office’s authority to collect reports from TLFFRA pension systems.**

This recommendation would repeal the statutory provisions relating to the Office collecting reports from TLFFRA systems, including those on pension finances, investment policy, changes to the system plan design document, audited financial statements, and actuarial valuations. Because TLFFRA systems would no longer submit an annual report to the Office, the provision exempting those with less than \$50,000 in assets from the Pension Review Board’s (PRB) reporting requirements would be repealed. A separate recommendation in the 2012 Sunset report on PRB proposes to alter requirements for those systems. PRB would continue to receive reports, monitor their financial and actuarial condition, and provide guidance when requested, as currently authorized in statute.

### **1.3 Eliminate the Commissioner’s authority to hear TLFFRA and TESRS appeals on benefit decisions.**

This recommendation would repeal statutory provisions authorizing the Commissioner to hear appeals on TLFFRA and TESRS decisions. Members of TLFFRA systems would instead appeal these decisions directly to SOAH, with an administrative law judge making the final decision. Appeals for TESRS members would be heard at SOAH, with final decisions made by the statewide Board, as is the practice with Texas’ other statewide pension systems. Also, like other statewide pension systems, a provision would be added to statute authorizing TESRS members to further appeal TESRS Board appeal decisions to district court.

### **1.4 Eliminate the Office’s authority to conduct seminars or workshops.**

This recommendation would repeal the Office’s statutory authority to administer seminars and workshops. Under this change, TLFFRA systems would be able to take over full administration of these seminars. Trustees and staff of TLFFRA pensions could also continue to receive training through the certification classes and conferences provided by other organizations such as the Texas Association of Public Employee Retirement Systems, and PRB.

## ***Management Action***

### **1.5 Direct the Office to cease issuing legal interpretations.**

The Office should be directed to immediately stop issuing legal interpretations. TLFFRA boards of trustees are able to seek legal advice from their retained attorneys.

## **Fiscal Implication**

These recommendations would have a positive fiscal impact to the State, resulting in the reduction of 3.5 employees currently associated with TLFFRA functions. Total savings to the General Revenue Fund would be approximately \$173,000, the amount normally appropriated for the administration

of TLFFRA functions minus the \$24,000 in appropriated fees for the TLFFRA conference. Since TESRS would continue to operate, it would continue to need the more than \$500,000 in annual general revenue appropriations it currently receives for administrative costs.

**Office of Fire Fighters' Pension Commissioner**

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Changes in FTEs From FY 2013</b>
2014	\$173,000	-3.5
2015	\$173,000	-3.5
2016	\$173,000	-3.5
2017	\$173,000	-3.5
2018	\$173,000	-3.5

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<sup>1</sup> Section 67-g, Article XVI, Texas Constitution.

<sup>2</sup> H.B. 258, 45th Texas Legislature, Regular Session, 1937.

<sup>3</sup> Acts of the 69th Legislature, Regular Session, 1985 (the General Appropriations Act.); H.B. 2522, 76th Texas Legislature, Regular Session, 1999.

<sup>4</sup> The Commissioner does have subpoena and writ of mandamus authority to compel local TLFFRA pensions to provide evidence of compliance with the TLFFRA statute, but has never used this authority; Article 6243e, Section 18A, Vernon's Texas Civil Statutes.

<sup>5</sup> Article 6243e, Section 19, Vernon's Texas Civil Statutes.

<sup>6</sup> Article 6243e, Section 7(b) (1) & (2), Vernon's Texas Civil Statutes.

<sup>7</sup> The Office indicated that it has attempted to provide volunteer TLFFRA systems with assistance determining benefits because of faulty recordkeeping five times in the last two years.

<sup>8</sup> Section 802.103(c), Texas Government Code.

<sup>9</sup> Article 6243e, Section 22, Vernon's Texas Civil Statutes.

<sup>10</sup> Article VIII, Rider 7, p. VIII-4, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act.).

<sup>11</sup> Section 1701, Texas Occupations Code.

<sup>12</sup> Section 864.016, Texas Government Code.

<sup>13</sup> In some instances, other statewide pension systems do allow for an informal process to appeal or dispute benefit and eligibility decisions, but this happens at the management level and is not an official board ruling.

<sup>14</sup> Letter from Commissioner Sherri Walker to TLFFRA Conference Sponsors, May 2012.

<sup>15</sup> State Auditor's Office, *The Audit of the Office of the Fire Fighters' Pension Commissioner's Fiscal Year 2011 Financial Statements* (Austin: State Auditor's Office, January 2012), Report No. 12-013, p.1; and, Texas Emergency Services Retirement System, *Actuarial Valuation as of August, 31, 2010* (Austin, TX: Rudd and Wisdom, Inc., revised April 28, 2011) page unnumbered.

<sup>16</sup> Arkansas has a Fire and Police Pension Review Board that oversees local fire and police pension systems, but unlike the Office it has authority to enforce state law by withholding the state's financial assistance to these systems. Also, the Arkansas board does not provide assistance, such as educational seminars, legal opinions, or appeals of benefit and eligibility decisions of local boards.

# RESPONSES TO ISSUE 1

## Overall Agency Response to Issue 1

Upon reviewing the report prepared by the staff of the Sunset Advisory Commission (SAC) relating to FFPC, it appears that the SAC staff perhaps has a misunderstanding of the Commissioner's role with regard to the Texas Local Fire Fighters' Retirement Act (TLFFRA) pension plans and the Texas Emergency Services Retirement System (TESRS) and with regard to the history, structure and needs of Texas pension systems.

This has resulted in recommendations that promise to be harmful to the TLFFRA Plans, more costly to the State of Texas and individual cities, and potentially devastating to local fire fighters. No one believes that this is the intention of the SAC staff; however, the recommendations included in this report will create hardship and financial burden across the board.

The Pension Review Board (PRB) has been recommended in the SAC staff report as an alternative for some duties performed by the Commissioner. The FFPC and the PRB have very different functions and limitations. Recommendations to move functions from the FFPC to the PRB are not feasible, and would create a serious conflict of interest for the Legislators who sit on the PRB with regard to the separation of powers. These issues were raised to the SAC staff. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

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

## Recommendation 1.1

*Abolish the Commissioner's position and make TESRS subject to Sunset review every 12 years.*

### Agency Response to 1.1

The SAC staff states in the title of this section that, "...the Office of Fire Fighters' Pension Commissioner is Not Necessary." If there was ever a time in the history of pension plans in the United States and Texas that appropriate oversight and support of pension plans is needed, it is now. Contrary to the impression given in the SAC report, the Commissioner's role has never been primarily to be the over-seer of "spending of state grant money." Previous state grant money was acquired through the Appropriations process and deposited directly into the TLFFRA plan's trust fund account. No local spending or monitoring would have been possible or necessary. If anything, the Commissioner acted as an advocate for these plans before the Legislature. This is identical to the function the Commissioner performs today, except that the state has ceased offering local subsidy grants for state budgetary reasons. Therefore, the Commissioner's role has not diminished. The state's ability to offer grants to these trust funds has.

The Commissioner's Office allows local plans to keep their costs down by providing valuable support to the local administrators and board members. Evaluating benefit determinations

prevents errors at the local level, and reduces the need for a “correction of errors” action by the board, which helps prevent future disputes between member and board. The FFPC has highly qualified staff to support local boards regarding every aspect of their plans. The agency has saved departments tens of thousands of dollars by examination of their plans. Stripping the local boards of these necessary checks and balances would result in higher costs to the boards, which in turn, results in costs to the city or other political subdivision.

Errors that go unchecked and uncorrected could cause the pension plan to be deemed disqualified by the Internal Revenue Service. Disqualification by the IRS exposes the pension plan to the assessment of penalties and fees. These fees are substantial, imposed daily, and would be the financial burden of the city or political subdivision, thus possibly creating pressure for the State’s intervention. Many fire fighter pension plans with their own direct statute in state law were created because of local conflicts between the fund and city. Historically these matters were politically charged, uncomfortable and could have been prevented.

The Commissioner is the only safeguard TLFFRA pension plans have with respect to checks and balances on compliance. The Pension Review Board does not have the ability to offer the same level of oversight and protection to TLFFRA due to the PRB staff’s having no pension plan administration experience, and their limited permissible scope as a state agency, not fully in the executive branch, and therefore, not able to regulate directly since its board includes members of the Legislature.

The PRB was never intended to be an oversight authority as has been suggested, but rather the much needed analytical body the state uses for information. Because of the PRB’s very different function and intended purpose, providing the services needed to TLFFRA plans would not be within its structured guidelines. In addition, it would place the Legislators appointed by the Leadership in the position of crossing constitutional and legal boundaries. Legislators may not assist in the administration or oversight to an entity (pension plan) it has legislative authority over. They also may not rule on questions of law (appeals) posed by the plans. This is a valid conflict of interest and violation in the separation of Legislative and Administrative powers. This is the very basics of state government.

In applying the intended purpose of the Sunset process to the TESRS system, or to the role of the Commissioner for the TESRS system and TLFFRA plans, it appears unnecessary, costly and counterproductive to subject them to further Sunset Review. The Commissioner’s Office and the TESRS plan undergo thorough audits every year by the Texas State Auditor. TLFFRA plans undergo an independent yearly audit of the pension plan that is separate and apart from the city’s audit. The Legislature receives reports annually as to the financial status of the TESRS and TLFFRA plans from the Commissioner. An actuarial analysis is conducted on the TESRS system and each TLFFRA fund every two years. The very obvious need to continue TESRS benefits for volunteer fire fighters and state management should not be in question, nor should the cost-effective and vital role the Commissioner plays regarding the TESRS State Board, the TESRS system (with 214 member departments), and 122 individual TLFFRA pension plans.

Based on the level of current legislative and financial monitoring for TLFFRA and TESRS, it would be counterproductive on all levels to review the TESRS system every 12 years, as well as discontinue the role of the Commissioner to both TESRS and TLFFRA.

The suggested revenue saved by the dissolution of the Commissioner's Office, abandonment of the TLFFRA pension plans and redundant requirements of the TESRS Board are misleading. The proposed savings to the State regarding TLFFRA is estimated at \$173,000 per year. Not only is that misleading, it could result in future costs to the State. Any cost savings the State would receive initially would result in passing those costs on to local governments. Abandoning the TLFFRA plans as suggested, could create financial hardships for cities. In times of financial constraints, it has been the State that has assisted local entities. Under these recommendations, the PRB could be challenged legally with regard to conflicts of interest and separation of powers because it has assumed roles presently performed by the Commissioner. The PRB could be held financially responsible.

Restructuring of staff would result in a hardship to the operation of TESRS. Additional staff would be needed to perform agency and trust fund functions. Any added costs to the system would presently increase the actuarial unfunded status. Such a burden, when the need for the State's contribution has already been triggered, would only increase the required state contribution under the staff proposal. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

**Note:** The Office's formal response, available at [www.sunset.state.tx.us](http://www.sunset.state.tx.us) or upon request, includes additional detail regarding its response to Recommendation 1.1.

**Staff Comment:** The Sunset staff report does not recommend transferring any of the Office's functions to the Pension Review Board (PRB). The report concludes the State does not need the Office to provide additional monitoring and assistance to these firefighter pensions because current PRB authority is adequate. If the Office is abolished, firefighter pension systems operating under the Texas Local Fire Fighters' Retirement Act could still receive assistance and training that is already available from PRB under PRB's current authority.

#### **For 1.1**

None received.

#### **Against 1.1**

Andy Barboza, Chairman – Corpus Christi Fire Fighters' Retirement System

Cecil Barton, Chairman – University Park Firemen's Relief and Retirement Fund

Heidle Baskin, Chairman – Irving Firemen's Relief and Retirement Fund

Chuck Campbell, Attorney – Austin, TX

Scott Falltrick, Chairman – Travis County Emergency Services District #6 Firefighters' Relief and Retirement Fund

Ken Gold, Secretary – Denton Firemen's Relief and Retirement Fund

James Mullicane, Chairman – Tyler Firemen's Relief and Retirement Fund

David Stacy, Vice-Chairman – Midland Firemen's Relief and Retirement Fund

205 Active and Retired Members of the Beaumont Firemen's Relief & Retirement Fund

### **Modification**

1. Make the Texas Emergency Services Retirement System a standalone organization, similar to TMRS and TCDRS, whose board members are tasked with operating as fiduciaries solely in the interest of the plan, with administrative costs paid from fund assets. TESRS would still rely on the Legislature for updating statutes and oversight. (Keith Brainard – Georgetown)

### **Recommendation 1.2**

*Eliminate the Office's authority to collect reports from TLFFRA pension systems.*

#### **Agency Response to 1.2**

The Commissioner provides a much broader service than simply collecting reports from the TLFFRA plans. The FFPC was not created to be a clearinghouse for information and has never served that purpose. The Commissioner has a statutory duty, and the required authority, to determine the types of reports and information which TLFFRA board of trustees must submit to determine compliance. However, the submission of data does not mean a TLFFRA pension plan will be found in compliance. The information is carefully examined and reconciled. This scrutiny is a protection measure for each system and the state. In performing this detailed analysis, the agency has discovered many errors, and some that resulted in a pension plan recovering substantial amounts of money. These reports are also indicators as to the pension plans' economic status and whether there is need for the Commissioner to provide corrective solutions.

The TLFFRA pension plans' reports that are submitted to the Commissioner are amassed into a comprehensive annual report that illustrates the financial information for each TLFFRA pension plan. The Commissioner prepares this report for the Governor; however, its popularity has made it in demand for those in state and local government working with pension and financial matters. This is an excellent tool for the TLFFRA boards of trustees to determine their performance and ranking among each other, and as a whole. Disregarding the report's importance suggests not understanding the gravity of the pension climate nationally or statewide. It also suggests not understanding the need for such information. To view the annual TLFFRA report as unnecessary data collection and not a responsible approach to financial structure, is concerning. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

#### **For 1.2**

None received.

#### **Against 1.2**

Andy Barboza, Chairman – Corpus Christi Fire Fighters' Retirement System

Cecil Barton, Chairman – University Park Firefighters' Relief and Retirement Fund

Heidle Baskin, Chairman – Irving Firemen's Relief and Retirement Fund

Chuck Campbell, Attorney – Austin, TX

Scott Falltrick, Chairman – Travis County Emergency Services District #6 Fire Fighters’ Relief and Retirement Fund

Ken Gold, Secretary – Denton Firemen’s Relief and Retirement Fund

James Mullicane, Chairman – Tyler Firemen’s Relief and Retirement Fund

David Stacy, Vice-Chairman – Midland Firemen’s Relief and Retirement Fund

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### **Recommendation 1.3**

*Eliminate the Commissioner’s authority to hear TLFFRA and TESRS appeals on benefit decisions.*

#### **Agency Response to 1.3**

Removing the TLFFRA appeals process from the Commissioner will result in significant costs to the individual fire fighter, the pension trust fund and the city or political subdivision. The process for all parties will become much lengthier.

The SAC staff suggests that a fire fighter go directly to SOAH for an appeal, “where the appeals already occur.” Currently, SOAH receives cases referred by a state agency, which then is responsible, based on its familiarity with the applicable law (in this instance, a different plan design for almost every TLFFRA plan), for making a decision after the SOAH hearing. That decision is then appealable to district court under the Administrative Procedure Act. SOAH also has authority, for a fee, and under a contract, to take a case “voluntarily” submitted by any governmental entity. One might reasonably assume that SAC staff is suggesting that SOAH would issue a decision in such a case, not merely a proposal for decision, as is the practice under current law. The statutory change could be seen as a very controversial expansion of SOAH powers. If SOAH powers are not expanded, it is doubtful that a local board would pay a fee for the possibility of having its decision overturned. In that case, a firefighter would be left with no remedy — no state hearing or review of a local board decision and no possibility of court appeal. This is probably not a conclusion the Legislature would intend. There is no other state agency besides the Office of the Commissioner, with the knowledge of the applicable law and plan documents to make a determination on which access to court, is now predicated. For the reasons stated previously in this response, the PRB is not an option.

Although the SAC staff recommendation may not intend to take away a fire fighter’s right to ultimate judicial review, it most definitely does. Alternatively, it grants an agency designed to conduct administrative hearings for determinations by other state agencies powers and authority it has never been granted, which could be a very consequential precedent for other state agencies.

Local government could face individual litigation resulting from the inability of a fire fighter to receive fair and just treatment under the appeals process. Normal appeals processes would result in attorney’s fees and court costs for the local government and fire fighter. (Sherri Walker, Commissioner – Office of Fire Fighters’ Pension Commissioner)

**Staff Comment:** Removing the Commissioner from the appeals process should make appeals shorter by removing the extra steps required for the Commissioner to review SOAH's proposal for decision and to make a final determination. SOAH's decision in these cases would take the place of the Commissioner's under the same Administrative Procedure Act provisions that apply to the Commissioner, and would not remove a firefighter's right to judicial review. Because the Office would no longer refer appeals to SOAH, this recommendation would change statute to provide for local boards under the Texas Local Fire Fighters' Retirement Act and the TESRS Board to refer cases directly to SOAH. The recommendation would, however, need to be modified as noted below to clarify how these cases at SOAH would be paid for if the Office were abolished. This recommendation is not an expansion of SOAH's power. SOAH already has authority to make final decisions in cases, including cases from local entities.

#### Sunset Staff Modification

2. As a change in appropriations, provide for SOAH to receive General Revenue funding to conduct hearings referred to it from TLFFRA systems and from the TESRS Board. Under this change, SOAH would continue to receive General Revenue to cover the cost of TLFFRA and TESRS hearings, as it does currently, so that neither the pension systems nor the firefighters would incur additional costs.

#### **For 1.3**

None received.

#### **Against 1.3**

Andy Barboza, Chairman – Corpus Christi Fire Fighters' Retirement System

Cecil Barton, Chairman – University Park Firefighters' Relief and Retirement Fund

Heidle Baskin, Chairman – Irving Firemen's Relief and Retirement Fund

Chuck Campbell, Attorney – Austin, TX

Scott Falltrick, Chairman – Travis County Emergency Services District #6 Fire Fighters' Relief and Retirement Fund

Ken Gold, Secretary – Denton Firemen's Relief and Retirement Fund

James Mullicane, Chairman – Tyler Firemen's Relief and Retirement Fund

David Stacy, Vice-Chairman – Midland Firemen's Relief and Retirement Fund

205 Active and Retired Members of the Beaumont Firemen's Relief & Retirement Fund

## **Recommendation 1.4**

*Eliminate the Office's authority to conduct seminars or workshops.*

### **Agency Response to 1.4**

The Commissioner is charged with providing education to both TLFFRA local boards and TESRS state board fiduciaries. This is an indispensable duty for the Commissioner. Providing appropriate education is vital due to the complex and ever-changing legal requirements placed on fiduciaries and pension plans. Maintaining compliance with federal and state standards can be an intricate process. The educational format provided by the FFPC is designed specifically for the fire fighters' pension plans. This is very important because of the size of the TLFFRA and TESRS pension plans, and the hazardous nature of a fire fighter's work can make the issues of TLFFRA and TESRS very different from those of the public pension systems.

The SAC staff commented that the Commissioner "works with only a subset of the overall fire service in Texas." That is an incorrect statement. Fire fighter trustees from across Texas attend the conference training provided by the Commissioner. Many of these trustees are not part of TLFFRA plans, but from municipal or state systems. The Commissioner confers and works with all local and state fire fighter pension systems for the betterment of Texas pension plans and the TESRS and TLFFRA systems. An accurate statement would have been, "the Commissioner is not the statutory authority to which the other fire fighter systems report." Regardless, assisting a fellow plan or working together for the general good is commonplace by the Commissioner.

If the fire fighters were to "fend for themselves" as the report suggests, it would create problems on many levels. Most departments, including those with plan assets of less than several million dollars, do not have the necessary staff or time required to devote to this enormous planning task. The non-profit association referred to in the report does not provide an adequate alternative. Because of this, it is quite likely that the fend-for-itself TLFFRA plan would receive its primary training from vendors. Vendor-based education does not ensure an unbiased approach or that necessary material is covered. This can also be called into question for ethical reasons. TLFFRA trustees adopt and maintain strong ethical standards regarding their systems and conduct. Although unintentional, the SAC staff report sets them up for very possible conflicts of interest or public ridicule. It also diminishes the safeguards provided by the Commissioner; that all educational experiences are in the TLFFRA plans' best interest.

Stripping the intended fundamental support system from underneath an entity created by the Legislature is a formula for failure. Education is the foundation of success. Knowledge is power. The state does not pay any funds toward the educational opportunities provided by the Commissioner to the TLFFRA trustees. This education is paid for by registration fees charged to attend educational events. The registration money is deposited into the State Treasury and appropriated back to the agency with the specific purpose to provide education. The current Commissioner has worked closely with the Office of the Comptroller, State Auditor's Office, Office of the Attorney General, and the Texas Leadership to ensure this funding function is conducted appropriately and in compliance with the law. It would be ironic for the Sunset Commission to impose the additional educational costs on relatively small, predominately rural

TLFFRA plans — paid, part-paid or volunteer — at a time when Legislative committees are investigating ways to provide greater resources to these entities for the purpose of fighting wildfires.

As the appointed state officer for the TLFFRA pension systems, maintaining the Commissioner's ability to offer quality educational support is in the best interest of the state, city, TLFFRA plans and individual fire fighter. Suggesting that the Commissioner cease all educational assistance to fire fighter trustees and discontinues reporting, flies in the face of the support and message the Legislators of 1937 gave firemen (and teachers). The recommendation indicates an attitude of complacency. From 1937 forward, the Legislature considered protecting these public servants' futures and providing assistance a responsibility. These are local employees and service providers who have statewide effect.

The SAC staff recommendation is one that creates no winners, yet creates the likelihood for many losers. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

#### **For 1.4**

None received.

#### **Against 1.4**

Andy Barboza, Chairman – Corpus Christi Fire Fighters' Retirement System

Cecil Barton, Chairman – University Park Firefighters' Relief and Retirement Fund

Heidle Baskin, Chairman – Irving Firemen's Relief and Retirement Fund

Chuck Campbell, Attorney – Austin, TX

Scott Falltrick, Chairman – Travis County Emergency Services District #6 Fire Fighters' Relief and Retirement Fund

Ken Gold, Secretary – Denton Firemen's Relief and Retirement Fund

James Mullicane, Chairman – Tyler Firemen's Relief and Retirement Fund

David Stacy, Vice-Chairman – Midland Firemen's Relief and Retirement Fund

205 Active and Retired Members of the Beaumont Firemen's Relief & Retirement Fund

### **Recommendation 1.5**

*Direct the Office to cease issuing legal interpretations.*

#### **Agency Response to 1.5**

The Commissioner never sought the right to issue Opinions. All questions of law were previously directed to the Office of the Attorney General (OAG). The Opinion Requests from the fire fighters proved very time consuming due to the number of requests received and the research required. The Attorney General deemed the Commissioner, being an appointed state officer, as the appropriate entity with which to file the Opinion Requests. An attorney from the

OAG has been assigned specifically for the Commissioner. The Commissioner, in conjunction with the counsel of the Attorney General, will issue the Opinion as a “Commissioner Opinion.”

Removing the ability of the Commissioner to issue opinions may reinstate the initial problem that caused significant issues for the Office of the Attorney General. The SAC staff suggests the Commissioner is acting outside of her legal authority regarding Appeals and Opinions. It should be noted that the Commissioner has no authority to hire an attorney for assistance without obtaining permission to do so from the Attorney General. The Commissioner consults with the OAG counsel regarding each appeals case and opinion.

The Attorney General has provided appropriate legal representation. Should more direct in-house legal counsel be needed, permission from the Attorney General and Legislature would be needed to approve the necessity and funding. SAC staff has deemed the Opinions to “have no force of law.” A court of law is perhaps best to determine what constitutes the force of law. (Sherrri Walker, Commissioner – Office of Fire Fighters’ Pension Commissioner)

*Staff Comment:* The staff report does not suggest that these opinions are illegal, just that they “appear as legal documents” when they should only be presented as a way for the Commissioner to “answer questions about TLFFRA and other pension matters,” and that they are not “legally binding.”

#### **For 1.5**

None received.

#### **Against 1.5**

Andy Barboza, Chairman – Corpus Christi Fire Fighters’ Retirement System

Cecil Barton, Chairman – University Park Firefighters’ Relief and Retirement Fund

Heidle Baskin, Chairman – Irving Firemen’s Relief and Retirement Fund

Chuck Campbell, Attorney – Austin, TX

Scott Falltrick, Chairman – Travis County Emergency Services District #6 Fire Fighters’ Relief and Retirement Fund

Ken Gold, Secretary – Denton Firemen’s Relief and Retirement Fund

James Mullicane, Chairman – Tyler Firemen’s Relief and Retirement Fund

David Stacy, Vice-Chairman – Midland Firemen’s Relief and Retirement Fund

205 Active and Retired Members of the Beaumont Firemen’s Relief & Retirement Fund

# COMMISSION DECISION ON ISSUE 1

(NOVEMBER 2012)

Adopted Recommendations 1.1, 1.2, 1.3 with Modification 2, 1.4, and 1.5.

## FINAL RESULTS ON ISSUE 1

(JULY 2013)

### ***Legislative Action — S.B. 220***

**Recommendation 1.1** — Senate Bill 220 abolishes the Office of Fire Fighters' Pension Commissioner, including its role in TLFFRA and TESRS, and provides for TESRS to hire its own executive director and staff. The bill also makes the TESRS Board subject to Sunset review, but not abolishment, in 2025 and every 12 years thereafter.

**Recommendation 1.2** — Senate Bill 220 removes the requirement for local boards of trustees under TLFFRA to submit investment policies and other reports to the Commissioner, and adds a requirement that local boards send these investment policies to the Pension Review Board.

**Recommendation 1.3 with Modification 2** — Senate Bill 220 removes the Commissioner from the appeals process for benefit decisions under TESRS and provides for decisions by the TESRS Board instead, with final decisions subject to judicial review under the substantial evidence standard. The Legislature modified the Sunset provision to require TLFFRA participants to send a notice of appeal to the Pension Review Board, instead of directly appealing to SOAH, and specifies that PRB will administratively refer these appeals to SOAH, with SOAH having exclusive authority to decide appeals. Senate Bill 1 replaces the Office with PRB in the list of agencies for which SOAH will receive lump-sum General Revenue funding.

**Recommendation 1.4** — The bill eliminates the Office's authority to conduct seminars and workshops for TLFFRA pensions.

### ***Management Action***

**Recommendation 1.5** — The Office should cease issuing legal interpretations. This management action does not apply since Senate Bill 220 abolishes the Office.

## ISSUE 2

### *The Texas Emergency Services Retirement System Lacks Transparency and Oversight Needed to Minimize the State's Financial Risk.*

#### Background

In 1977, the Legislature created the Texas Statewide Volunteer Fire Fighter's Act, a public pension fund for volunteer firefighters administered by the Office of Fire Fighters' Pension Commissioner (Office). In 1997, the Legislature expanded the system to include volunteer emergency services personnel, changing its name to the Texas Emergency Services Retirement System (TESRS). The textbox, *Texas Emergency Services Retirement System*, provides more details on TESRS.

#### ***Texas Emergency Services Retirement System***

In fiscal year 2011, the system had \$62.5 million in assets, and as of the last valuation in 2010, was actuarially sound with a funding period of 30 years, a funded ratio of 78.9 percent, and an unfunded liability of \$17.1 million. For fiscal year 2011, the Fund's investment rate of return was 15.1 percent, and its 10-year average return was 4.8 percent.

The system pays about \$3 million in benefits annually to about 2,270 beneficiaries out of about 6,496 participants. Statewide, 214 departments participate in the system. Local boards decide eligibility, benefit payments, and contribution levels of at least \$36 monthly per member, paid by the governing entity.

Pension benefits include:

- \$216 a month minimum annuity;
- \$400 a month minimum disability;
- \$60,000 lump sum on-duty death; and
- on-duty death, off-duty death, and survivor benefits.

Sources: Fire Fighters' Pension Commissioner, *Audited Annual Financial Report for the Year Ended August, 31, 2011*, and *Texas Emergency Services Retirement System Actuarial Valuation – August 31, 2010* (Revised: April 28, 2011).

A Governor-appointed nine-member Board of Trustees (Board) oversees the system, and contracts for needed investment and actuarial services, paid from Fund assets. The Commissioner administers the system and requests State funds to support it. Five of the Office's staff carry out day-to-day activities such as collecting local contributions and disbursing benefits, spending \$486,000 in General Revenue on these activities in fiscal year 2011. In the same year, the Board spent \$135,150 from the Fund to cover the remaining administrative costs.

Statute requires the State to contribute the amount necessary to make the system actuarially sound each year, except that the State contribution may not exceed one-third of the total of all contributions by local governing bodies in a particular year.<sup>1</sup> Statute defines "actuarially sound" as having sufficient contributions so that the system can eliminate its unfunded liability within a 30 year period or less.<sup>2</sup> This is also known as the amortization, or funding, period.

## Findings

### In recent years, State costs to keep the system sound have increased significantly, and more costs are on the horizon.

Due to economic downturns since 2000, the TESRS Fund has encountered difficulty in maintaining actuarial soundness as measured by the 30-year funding period. Beginning in 2002, the system reported a \$13.2 million unfunded liability, pushing the funding period beyond the acceptable 30-year period to cover this unfunded liability.<sup>3</sup> As a result, since fiscal year 2006, the State has contributed \$10.2 million in General Revenue to shore up the system. Last session, the Office further requested an additional \$1.8 million in contributions to the Fund for fiscal years 2012–13, but did not receive it. In 2010, the system’s actuary concluded the Fund will continue to need State contributions for the next 12 years to make the system actuarially sound.<sup>4</sup>

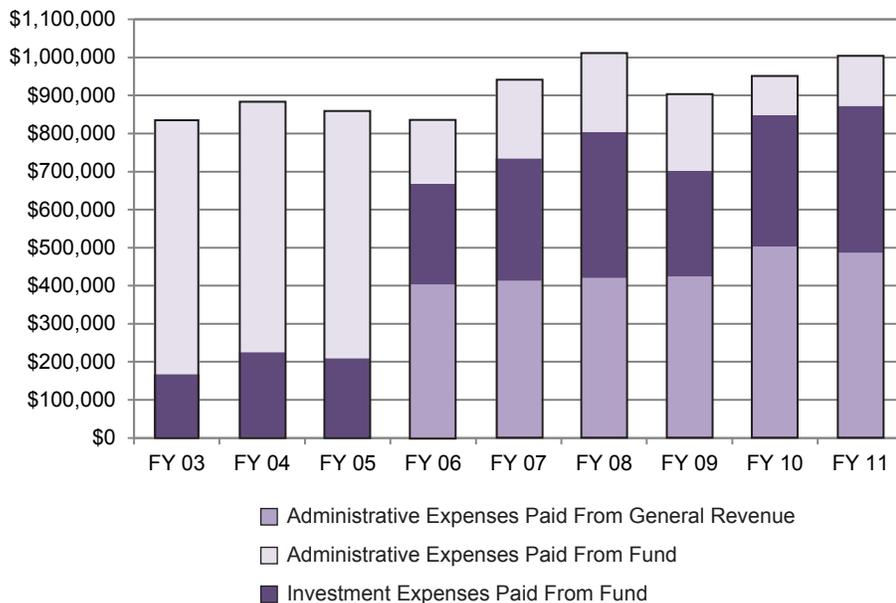
In addition to these contributions to keep the system sound, the State has spent about \$2.6 million since fiscal year 2006 to cover TESRS’ administrative costs. As the graph *TESRS Administrative Expenses* shows, General Revenue appropriations began in fiscal year 2006 with about \$400,000. By fiscal year 2011, General Revenue appropriations had climbed to about \$500,000 covering about half of the system’s administrative expenses.

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*Since fiscal year 2006, the State has provided \$12.8 million for contributions and administrative costs to keep TESRS sound.*

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**TESRS Administrative Expenses  
FYs 2003 – 2011**



### TESRS’ funding structure results in the State bearing the financial risk for the system.

- **Increasing TESRS local contributions increases the State’s financial obligations.** TESRS has a unique benefit structure in which a retiree’s monthly benefit is six times the average local contribution rate per

member over the member's life of service. For example, a member at the minimum local contribution rate of \$36 per month would receive a monthly retirement benefit of \$216. Due to this multiplier effect, increases in local contributions magnify increases in accrued benefits. Under current Board practice, local contributions are as high as almost \$300 per month, with a monthly benefit of almost \$1,800. Higher benefit levels increase the State's liability for the Fund. Also, because the State's contribution is tied to the annual local contribution, any increases in local contributions automatically increase the State's contribution when the Fund is unsound.

Most systems are designed so that increases in contributions, either from the employer or employee, do not automatically increase benefits. Based on actuarial analyses, these systems adjust contributions and benefits as needed to prefund benefits and protect against investment losses. For example, boards of trustees for systems under the Texas Local Fire Fighters Retirement Act adjust contributions or benefits to keep their pensions sound, and do not rely on State contributions.<sup>5</sup> However, the TESRS system cannot adjust local contributions to make the Fund sound because the current benefit formula ensures that increased contributions are offset by higher benefit amounts. Barring significant benefit reductions, such as reducing the benefit multiplier from six to five, only the State's contribution can offset future pension costs that make the Fund unsound.

- **No shared risk for investment losses.** The Board relies on the State to cover investment losses that make the Fund unsound, with local governments and members not sharing in the financial risks of TESRS. In contrast, other public systems share investment risks between local governments and employees, and do not rely on State funding to cover losses. Under these other plans, if a local government cannot make required contributions, it must reduce benefits, increase employee contributions, or both to keep the pension sound.

**Statute creates an incentive for the Board to rely on maximum State contributions, instead of structuring the system to minimize liabilities and the need for State funding.**

- **Assumption of ongoing State contributions.** The assumption of maximum State contributions up to the annual cap allows the Board potentially to design the system to increase benefits without regard to unfunded liabilities because of the ongoing promise of State funding. Thus, the Legislature needs to be aware of the potential impacts and long-term sustainability of such an arrangement.

After TESRS' financial difficulties in the last decade became apparent, the Legislature, in 2005, gave the Board flexibility to make pension changes needed to ensure the Fund's financial soundness.<sup>6</sup> However, the legislation also allowed the Board to assume ongoing maximum State contributions when restructuring the system. As a result, the Board lacks the incentive

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*TESRS provides a monthly benefit that is six times the local contribution per member.*

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*The State bears all the risk for TESRS' investment losses.*

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to minimize State pension costs in the plan design. The Legislative Budget Board raised a concern that allowing the Board to assume maximum State contributions when determining actuarial soundness could actually increase State costs.<sup>7</sup> When the Fund is unsound, the Board can assume the State will make maximum contributions, even before receiving an appropriation, and only later consider changing benefit levels to address the problem. No other Texas statewide pension system has this luxury of assuming increased State contributions if the system is unsound, but can only factor in increased employer contributions after they have been appropriated.

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*TESRS Board decisions on benefits can affect the state budget.*

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- **Effect of Board decisions on the State budget.** By linking State contributions to benefit levels, the Legislature has effectively given the TESRS Board the authority to make decisions that can affect the State budget. The 2005 changes were supposed to give the Board flexibility to structure the system on a more financially sound basis.<sup>8</sup> However, in 2006 the Board reviewed numerous contribution and benefit options and the effect of each on the Fund's financial soundness, ultimately choosing a mix of benefit increases and decreases that while making the Fund sound had the overall effect of increasing the Fund's liability, thus increasing State costs. Regardless of how well the decision balanced the need for benefit increases with concern for State spending, the Legislature needs to be aware of such considerations.

#### **Lack of needed information for overseeing pension administration contributes to the State's financial risks.**

When reviewing the administration of TESRS, several problems stand out that could make it difficult for the Legislature to accurately anticipate the Fund's financial needs.

- **Lack of pension funding options.** The 2010 actuarial valuation concluded that the system is sound, because it assumes about \$1 million annually in State contributions until fiscal year 2023, and indefinite State funding of most administrative costs.<sup>9</sup> While the valuation includes a line item for required local contributions without a State contribution, this option is buried in the tables and a corresponding funding period not shown. Also, the valuation does not provide a range of contribution and benefit options that could better assist the Legislature with deciding a State contribution amount.
- **Lack of additional oversight tools.** State law generally requires public pension systems with at least \$100 million in assets to conduct independent audits of actuarial valuations every five years.<sup>10</sup> TESRS does not meet this threshold in terms of asset value, but its reliance and impact on State funds may justify the need for additional oversight. The Board voluntarily conducted an audit of its valuation and services provided by its contracted actuary in 2007, but statute does not require these audits. This extra level of independent oversight may have prevented the significant

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*TESRS' actuarial valuation does not provide enough information to decide appropriate state contributions.*

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problems with the Board's previous actuary in 2002. In addition, pension systems such as the Texas Municipal Retirement System have statutory requirements to conduct experience studies at least every five years, to help ensure that actuarial assumptions and valuations are correct or revised as needed.<sup>11</sup> While the Board has conducted experience studies in the past, this is not a statutory requirement for the Board to ensure the accuracy of its actuarial assumptions.

- **Inaccurate and revised actuarial information.** The TESRS Board has experienced some difficulty with its actuarial information, going back to its 2002 valuation that contained significant discrepancies and obscured problems with the Fund that required funding to correct. In addition, the 2010 valuation required revision due to data corrections that increased benefit costs. Occasionally the actuarial valuation must further be revised due to market conditions, as was the case with the 2008 valuation which required revision due to significant investment losses. Accurate actuarial information is essential for the proper management and oversight of any pension fund.

## Recommendations

### *Change in Statute*

#### **2.1 Require the Board to provide the Legislature with a range of options for meeting the State's contribution requirement should the Fund experience significant losses or increased liabilities.**

Under this recommendation, the Board would provide the Legislature information on different pension contribution and benefit structures if the Fund experiences a significant decrease in assets, or increase in unfunded liabilities that make the Fund unsound even with maximum State contributions. The Board would also report actuarial options to the Legislature anytime it decides to change benefits or contributions on its own initiative, and for significant changes to the actuarial valuation. The Board would send an electronic copy of the actuarial analysis of the options discussed above to the Governor, the Lieutenant Governor, Speaker, Legislative Budget Board, and the Pension Review Board.

Information provided to the Legislature should include analysis of how different changes to contributions and benefits could affect the Fund's financial liabilities, the State's potential contribution, and need for continuing appropriations to pay administrative costs. This recommendation would not change current statutory requirements for State contributions to the plan.

By including this information as part of the Board's appropriation's request, if available at that time, or as otherwise needed, such as at the start of Session, the Legislature would have more detailed information and analysis needed to consider actions to ensure the Fund remains actuarially sound while minimizing State costs.

#### **2.2 Require the TESRS actuarial valuation to include detailed information on the impact of assuming both a full State contribution and no State contribution.**

Under this recommendation, the actuarial valuation would clearly show the fiscal implications of assuming no State contributions and full State contributions to the Fund, including funding for

administrative costs. This information should show the fiscal implications of both scenarios, including the number of years needed to amortize the unfunded liabilities. This recommendation would not change the Board's authority to assume maximum State contributions when determining the benefit formula. As a result of this recommendation, the Legislature would be able to more clearly see the financial status of the Fund with, or without, the required State contribution and administrative funding, to aid in its decision making.

### **2.3 Require the Board to regularly conduct actuarial audits and experience studies to ensure accurate pension assumptions and valuations.**

This recommendation would specify that the Board must conduct an audit of its actuarial valuation, similar to that conducted in 2007, and an experience study, at least every five years. As a result of this recommendation, the Board would be better positioned to oversee the ongoing financial soundness of the pension plan by ensuring that its actuarial valuations and procedures are correct, and that actuarial assumptions and pension plan structure are revised in light of the plan's actual experience.

## **Fiscal Implication**

These recommendations would have costs associated with conducting actuarial audits and experience studies. For a fund the size of TESRS, these costs would be estimated at approximately \$25,000 for the audit and \$50,000 for the experience study. However, these actions would only be required once every five years and could be paid from the pension fund. Providing additional information regarding State contributions, as described in Recommendation 2.1, would be accomplished within existing Board resources because the Board already budgets for actuarial updates for legislative purposes. This analysis would be on an as-needed basis, such as when the regular actuarial valuation needs revision due to financial changes in the Fund's status.

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<sup>1</sup> Section 865.015, Texas Government Code.

<sup>2</sup> Section 865.001, Texas Government Code.

<sup>3</sup> Texas Statewide Emergency Services Personnel Retirement Fund, *Actuarial Valuation Report as of August 31, 2002* (Austin, TX: Rudd and Wisdom, Inc., 2003) pages unnumbered.

<sup>4</sup> Texas Emergency Services Retirement System, *Actuarial Valuation as of August 31, 2010* (Austin, TX: Rudd and Wisdom, Inc., revised April 28, 2011) p. 2.4.

<sup>5</sup> Article 6243e, Section 7(b), Texas Local Fire Fighters Retirement Act, Vernon's Civil Statutes.

<sup>6</sup> S.B. 522, 79th Texas Legislature, Regular Session, 2005.

<sup>7</sup> Legislative Budget Board, Actuarial Impact Statement, 79th Legislative Session, Senate Bill 522, Armbrister, Committee Report, 2nd House, April 21, 2005.

<sup>8</sup> Legislative Budget Board, Fiscal Note, 79th Legislative Session, Senate Bill 522, Armbrister, Committee Report, 2nd House, April 21, 2005.

<sup>9</sup> TESRS, *Actuarial Valuation as of August 31, 2010*, p. 2.1.

<sup>10</sup> Section 802.1012, Texas Government Code.

<sup>11</sup> Section 855.205, Texas Government Code.

# RESPONSES TO ISSUE 2

## Recommendation 2.1

*Require the Board to provide the Legislature with a range of options for meeting the State's contribution requirement should the Fund experience significant losses or increased liabilities.*

### Agency Response to 2.1

This recommendation is a current practice that takes place each legislative budget cycle regardless of the actuarial status of the TESRS pension system. The system's actuarial funding status and funding responsibilities are current practices the board fulfills each board meeting.

At every quarterly board meeting, the board receives an update from the contracted actuary. No board action regarding the system is ever voted on until the financial implications to the trust fund are disclosed and evaluated. The actuary reports on the system's status, changes that may have occurred, and discussion of cause and effect. It is not uncommon for the state board to request a cost study regarding a future matter in an effort for preparation on their part. The actuary also works daily with the agency staff and Commissioner regarding cost studies as well as the overall system. This close monitoring of the pension system allows the state board to stay proactive in their approach to their fiduciary responsibility.

The Commissioner works directly with the Legislature regarding the TESRS system on behalf of the Board. Open communication between the Leadership and the System has been commonplace. This communication includes solutions during times of unfunded liability. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

**Staff Comment:** The TESRS Board does routinely provide the Legislature with actuarial analysis of the TESRS Fund and on occasion may conduct a one-time cost study. However, due to the State's significant liability for the Fund, the Legislature needs more information than it currently receives to minimize the cost to the State. Specifically, the Sunset staff recommendation would formalize in statute when the Board must provide the Legislature and State leadership an actuarial analysis on options for changing the pension's contribution and benefit structure, something the Board did in 2006, but is not required to do routinely.

### For 2.1

None received.

### Against 2.1

None received.

## Recommendation 2.2

*Require the TESRS actuarial valuation to include detailed information on the impact of assuming both a full State contribution and no State contribution.*

### Agency Response to 2.2

This recommendation has been an on-going standard practice for the Board in the performance of their fiduciary responsibilities and a standard projection from the system's actuary. When an actuarial analysis is performed, all factors and implications regarding the system must be considered. That includes statutory implications. Under current state law, the state has a responsibility to contribute an amount not to exceed one-third of all participants' contributions each year, as long as necessary, if the trust fund is found to be actuarially unsound. An actuary must take that into account in making assumptions for the valuation. If the fund is deemed unfunded according to the 30-year UAAL standard of compliance, the need for the state contribution would be triggered. The calculations and projections from the actuary would include the current status of the fund and the possible scenarios moving forward with and without state funding. Options relating to that funding would also be outlined to show the projected timeframe the fund would rebound if the contribution were done in a lump sum payment, over a period of years, or receiving no payment at all.

The Governor, Legislature and LBB are informed regarding the financial health and well-being of the TESRS and TLFFRA plans. The Commissioner testifies before the Legislature and presents the funding status and scenarios regarding TESRS and TLFFRA. This being a necessary step the Board already takes, the inclusion of this recommendation appears be unnecessary. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

**Staff Comment:** The Legislature needs more information about the TESRS Fund due to the fact that the State bears all the risk. The 2010 TESRS actuarial valuation did present actuarial information about the soundness of the fund without State contributions, but this option, as stated in the staff report, was "buried in the tables and a corresponding funding period not shown." This recommendation would statutorily require the TESRS actuarial valuation to show fund soundness with and without State contributions, something statute does not require now, and to present this information in a clearer format.

### For 2.2

None received.

### Against 2.2

None received.

## Recommendation 2.3

*Require the Board to regularly conduct actuarial audits and experience studies to ensure accurate pension assumptions and valuations.*

### Agency Response to 2.3

This recommendation of the SAC staff seems to be due to an incident that occurred in 2002 in which the contracted actuary for the TESRS pension system reported unreliable results that affected the system's actuarial standing. It should be noted that it was the Board who suspected the discrepancy and secured an outside audit to do a peer review audit of the contracted actuary. The Board's suspicions were confirmed that the valuation was incorrect and the contracted actuary was held monetarily liable.

The purpose of the TESRS Board having appointees with statutorily defined expertise is for the protection of the system. As you will note from the incident mentioned above, the Board for this system is quite knowledgeable and astute. That is due to the appointments made by the Governor and the dedication to their fiduciary duties. The Board authorized another actuarial audit in 2007 to follow up on the change in actuaries in 2003. In addition, the Board authorized an experience study in 2008, one of the recommendations that came out of the 2007 actuarial audit. The Board has always been proactive in its involvement with the trust fund and the TESRS system has flourished under their care.

To require actuarial audits and experience studies without due cause would be a costly encumbrance to the fund. Presently, yearly audits of the system and agency are conducted by the Texas State Auditor and valuations are performed every two years. To require additional review would be unusual as compared to other pension plans of its size, costly because one actuarial audit can be \$50,000 and counterproductive to efficiency because the FFPC staff are required for each of these proposed options to provide data, and the agency is currently understaffed and would not have the manpower or agency budget to regularly take on this additional burden.

This recommendation is costly to the fund and agency as well as unnecessary due to the expertise and current review practice the TESRS Board already undertakes. The TESRS Board is well aware that current state law will require periodic actuarial audits when the fund assets reach \$100 million and will take the appropriate action when the triggering mechanism in current law is reached. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

**Staff Comment:** Despite the Fund's relatively small size, the potential liability to the State justifies the need for greater scrutiny through actuarial audits and experience studies, similar to requirements for other statewide pension systems. Also, since these additional reports would only be required once every 5 years, the financial burden on the Fund would be minimized.

### For 2.3

None received.

### Against 2.3

None received.

# COMMISSION DECISION ON ISSUE 2

(NOVEMBER 2012)

Adopted Recommendations 2.1 through 2.3.

# FINAL RESULTS ON ISSUE 2

(JULY 2013)

## ***Legislative Action — S.B. 220***

**Recommendation 2.1** — Senate Bill 220 requires the TESRS Board to report to the State leadership, LBB, and Pension Review Board if the TESRS fund experiences significant changes to its actuarial valuation or contributions or benefits, or if its actuarial valuation is incorrect. The report must cover the effect of alternative contribution and benefit structures on the actuarial valuation.

**Recommendation 2.2** — The bill requires the TESRS actuarial valuation to include detailed information on the impact of assuming both a full state contribution and no state contribution to the fund.

**Recommendation 2.3** — Senate Bill 220 requires the TESRS Board to conduct actuarial audits and experience studies at least every five years but they are not required to be conducted concurrently.

# ISSUE 3

## *The Office Lacks a Consistent Approach to Contract Management and Oversight.*

### Background

The Office of Fire Fighters' Pension Commissioner (Office) contracts for basic administrative support such as accounting and information technology, and until recently for assistance with the Texas Local Fire Fighters' Retirement Act (TLFFRA) annual educational conference. The Commissioner also jointly signs contracts that the Texas Emergency Services Retirement System (TESRS) Board of Trustees uses for professional services such as an actuarial valuation, investment management, and system supervision. In fiscal year 2011, the Office spent about \$700,300 on contracts, \$550,000 of which were TESRS-related and paid using TESRS Fund assets. The Office paid remaining contracting costs of about \$150,300 with general revenue appropriations.

While the TESRS Board approves the pension system contracts, the Commissioner is primarily responsible for management and oversight of TESRS and Office contractors, which includes those providing critical support to the TESRS information systems. Office staff also assists with aspects of contracting, such as developing proposals and reviewing proposed contracts. The Office's representative from the Attorney General's Office also reviews key contracts before finalization.

The Sunset Advisory 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, the Office's small size and staffing limitations require focusing the application of these standards on key areas of concern.

### Findings

#### **As a small agency administering and assisting complex public pension systems, the Office struggles to effectively manage and oversee certain contracts.**

The Office struggles to use a consistent, documented approach towards managing contracts. To an extent, this struggle relates to the difficulties of any small agency to have the management controls and oversight processes in place to guide a contracting function it uses only intermittently. Contracting requires a bureaucratic effort that is inherently harder on small agencies than large agencies to fulfill. By the nature of their small size, however, these agencies need to contract for certain activities because of the difficulty of developing in-house expertise to perform specialized functions.

While the Commissioner has terminated problem contracts, the lack of just a few basic contracting practices has caused the Office to spend additional time and resources to remediate problems resulting from inadequate contract

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*A lack of some basic contracting practices has caused the Office problems.*

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management and poor contractor performance. Sunset staff did not find problems with TESRS professional services contracts, but because the TESRS Board relies on the Office for its staff support, it also relies on the Office's contracts for its administrative support and information technology needs, thus the Office's contracting difficulties affect the Board. The following material provides more information about the problem areas the Office has encountered in its contracting activities.

- **Contracting objectives and constraints.** Before making a decision to contract an activity, an agency should have a process in place to identify the need for the contract and any objectives, risks, or constraints associated with the activity. Without being clear about what it wants from a contract and the possible drawbacks from such a contract, an agency risks entering into a continuing arrangement that may not be in its best interest. The Office has recently ended a long-standing contracting arrangement for planning and organizing its annual TLFFRA educational conference. This contract was designed to take advantage of funding opportunities from a nonprofit foundation comprising TLFFRA departments. The Commissioner cancelled the contract because of concerns about inadequate financial controls and potential for misuse of State funds.
- **Contracting expertise.** Contract managers and directors of agencies engaging in contracting should receive contract training to prepare them for the proper use and potential pitfalls of contracting. In particular, small agencies without much contracting experience risk encountering problems that can turn the promise of contracting into a curse if they do not have some basic understanding of how to do it. The Office has not designated a person with primary contracting responsibilities and taken advantage of contract management training opportunities to assist in this area.
- **Historically underutilized businesses.** An agency should make a good faith effort to use historically underutilized businesses (HUBs) in its contracts. The Sunset Act also requires an evaluation of agencies' compliance with state law and applicable rules regarding HUB purchasing guidelines and programs. While Sunset staff routinely evaluates agency performance regarding these requirements in the course of a Sunset review, staff only reports deficiencies significant enough to merit attention.

State law requires that Texas agencies adopt HUB rules developed by the Comptroller's Office.<sup>1</sup> The TESRS Board has rulemaking authority but has not adopted the Comptroller's HUB rules, though the Office has a formal written policy for applying HUB guidelines to its TLFFRA and TESRS contracting.

From fiscal year 2009 to 2011, none of the Office's spending for professional services was with HUBs, and its HUB spending for other services was well below the statewide goal. The agency claims that it does not meet these goals because of the specialized nature of the professional

and other services it acquires, and the fact that many of its vendors are out of state, making them ineligible to become HUB certified. Also, in fiscal year 2011 the Office only had two contracts listed under professional services, limiting the agency's opportunities to choose HUB vendors, and one of these was its accountant, which is out of state. The Office's experience with HUB spending in these categories is comparable with the experience of the Employees Retirement System, though it lags behind the experience of the Teacher Retirement System. Appendix C shows actual HUB spending in all categories over the last three years.

- **Contract management and oversight.** An agency should monitor contractor performance on major contracts, communicating with the contractor to ensure that problems are addressed. Inadequate contract management threatens to let problems and poor performance by contractors go unchecked, undermining the quality of the final product and ultimately preventing the agency from getting what it paid for. The Office's difficulty in monitoring and overseeing a recent information technology contract has contributed to a situation in which unreliable pension data required a revision of the TESRS Board's 2010 actuarial valuation. A separate contract raised concerns about possible inappropriate use of state resources.

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*The Office's contracting problems have contributed to inaccurate pension data.*

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### **The Comptroller's Office provides contract management expertise, resources, and training that can benefit state agencies.**

The Comptroller's Contract Management Office assists State agencies, universities, and others with day-to-day contract management and oversight. The Comptroller's Office helps manage State contracts according to best practices and to ensure adherence to the State's Contract Management Guide.<sup>2</sup> While focused more on state procurement, the Comptroller's Office provides technical assistance for all contracting, including professional services. The Comptroller's Office offers courses on contract manager responsibilities, including solicitation, documentation, monitoring, dispute resolution, and close out. The Comptroller's Office also offers seminars on contracting best practices, and informal "brown bag" contracting discussions.

## **Recommendations**

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

#### **3.1 Require the agency to adopt a clear policy on contract management and oversight.**

Under this recommendation, the agency should adopt a written policy, including procedures, to guide agency staff in managing and administering contracts. This policy would include procedures for the following elements:

- planning for contracting needs and developing solicitation documents;
- reviewing, evaluating, and awarding contract proposals;

- managing and approving contract changes;
- identifying performance issues and resolving contract disputes;
- monitoring contract expenditures;
- closing out contracts; and
- maintaining centralized information on all contracts.

In implementing this recommendation, the agency should designate one person as the central point of contact between the agency and contractors. As a result of this recommendation, the agency would ensure that staff has a basic framework, and clear division of responsibilities, for contract management and oversight. In developing this policy and associated procedures, the agency should consult with the Comptroller's Office for guidance on best practices. This recommendation would apply to the TESRS Board, but could also apply to the Office if the Legislature chooses not to abolish it as a separate entity, as recommended in Issue 1 of this report.

## **Management Action**

### **3.2 Direct the agency to participate in contract management and oversight training.**

Under this recommendation, the agency should designate one staff person to attend contract management and oversight classes such as those offered by the Comptroller's Office. The agency could determine the number of classes to take and frequency as staff turnover warrants. The agency should also take advantage of contracting seminars offered by the Comptroller's Office. This recommendation would apply to the TESRS Board, but could also apply to the Office if the Legislature chooses not to abolish it as a separate entity, as recommended in Issue 1 of this report. This recommendation would help ensure that staff has a basic understanding of contracting best practices to help avoid the recurrence of problems.

### **3.3 Direct the Board to adopt a rule containing the Comptroller's HUB rules.**

Under this recommendation, the Board would adopt a rule containing the Comptroller's HUB rules.<sup>3</sup> This rule would include the requirement that contracts over \$100,000 have a HUB subcontracting plan, where appropriate. This recommendation would apply to the TESRS Board, but could also apply to the Office if the Legislature chooses not to abolish it as a separate entity, as recommended in Issue 1 of this report.

## **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the State or TESRS Fund. Contract management classes cost about \$375 for two-day sessions and the Board could absorb these costs within its existing budget.

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<sup>1</sup> Section 2161.003, Texas Government Code.

<sup>2</sup> "TPASS Contract Management Office," Texas Comptroller of Public Accounts, accessed June 11, 2012, <http://www.window.state.tx.us/procurement/prog/cmo/>.

<sup>3</sup> 34 T.A.C. Chapter 20, Subchapter B.

# RESPONSES TO ISSUE 3

## Recommendation 3.1

*Require the agency to adopt a clear policy on contract management and oversight.*

### Agency Response to 3.1

Under the previous administration, contracts and files were not always appropriately maintained, reviewed, paid or audited for performance.

Upon appointment, the new Commissioner reviewed and amended contracting procedures. Appropriate state policies are now followed before letting a contract, counsel from the Attorney General's Office reviews contracts, a staff member is designated as responsible for contract oversight/management and contractor performance review is conducted regularly. The Commissioner has discontinued contracts that were not entered into or conducted ethically, legally appropriate, or the vendor failed to fulfill their responsibility. Under new procedures, a contractor's invoice for payment of services is audited for accuracy and performance before payment is made. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

### For 3.1

None received.

### Against 3.1

None received.

## Recommendation 3.2

*Direct the agency to participate in contract management and oversight training.*

### Agency Response to 3.2

The agency works closely with the Comptroller's Office for compliance and efficiency purposes and does not object to contract management training. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

### For 3.2

None received.

### Against 3.2

None received.

**Recommendation 3.3**

*Direct the Board to adopt a rule containing the Comptroller's HUB rules.*

**Agency Response to 3.3**

The Board enters into contracts through the FFPC agency. Through authority granted to the Commissioner by rule of the TESRS Board and as Administrator of the TESRS system, the Commissioner contracts with vendors in conjunction with the Chairman of the Board regarding the TESRS system. The agency has an established HUB policy that it follows. Because the agency follows a HUB policy and contracts regarding the trust fund are entered in conjunction with the Chairman, Commissioner, and the vendor, the Board is operating under a HUB policy.

Due to the nature of contracting procedures for the TESRS Board, the HUB policy adopted by the agency is applied to all contracts. Adopting a HUB policy independently would be redundant, however, acceptable. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

**For 3.3**

None received.

**Against 3.3**

None received.

# COMMISSION DECISION ON ISSUE 3

(NOVEMBER 2012)

Adopted Recommendations 3.1 through 3.3.

## FINAL RESULTS ON ISSUE 3

(JULY 2013)

### ***Legislative Action — S.B. 220***

**Recommendation 3.1** — Senate Bill 220 requires the TESRS Board to adopt a written policy on contract management and oversight and provides minimum requirements for the policy.

### ***Management Action***

**Recommendation 3.2** — The TESRS Board should designate staff to participate in contract management and oversight training.

**Recommendation 3.3** — The TESRS Board should adopt a rule containing the Comptroller's Historically Underutilized Business rules.



# ISSUE 4

## *The Texas Emergency Services Retirement System Statute 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, or 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 highlights the changes needed to conform the Texas Emergency Services Retirement System (TESRS) statute to Sunset Across-the-Board Recommendations and to address the need for reporting requirements imposed on the Office of Fire Fighters' Pension Commissioner (Office).

- **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.
- **Reporting requirements.** The Texas Sunset Act requires the Sunset Commission, in conducting reviews of state agencies, to consider if reporting requirements imposed on them by law need 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.

### Findings

#### **The TESRS statute does not reflect standard language typically applied across the board during Sunset reviews.**

While statute specifically makes the Office subject to review under the Sunset Act, its significant role in administering TESRS and the State's financial stake in that system necessitate a review of the TESRS statute and Board of Trustees (Board) as well, including conformance with the Sunset Commission's ATBs. These standards are appropriate regardless of the decision as to the continuation of the Office as discussed in Issue 1 of this report. Each missing provision is discussed in more detail below.

- **Conflict of interest.** While the TESRS statute has general provisions prohibiting conflicts of interests for the system's Board, it does not contain provisions specifically prohibiting Board members and high-

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*The TESRS statute does not prohibit Board members from being employed by a trade association.*

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ranking employees from being a paid employee or consultant of a trade association. These provisions would help ensure that decisions are made solely in the public's interest.

- **Board member training.** The TESRS statute does not specify the type of training and information Board members need to properly discharge their duties. Specifying this training in law would help ensure both its scope and continuance.
- **Policymaking and staff functions.** The TESRS statute does not provide for separating the policymaking functions of the Board from the day-to-day administrative functions of TESRS management. Such a provision would help provide further clarity on the roles for the Board and Commissioner, or administrator of the system, to prevent conflicts over policymaking authority.
- **Public testimony.** The TESRS statute does not provide an opportunity for the public to appear and speak before the Board, though the Board does so at its meetings. Adding it to law would ensure this process continues, thereby protecting the opportunity for additional information and perspective to improve the overall decision-making process.
- **Complaint information.** The TESRS statute does not require the Board to maintain complete information on complaints, though statute requires the Office to collect complaint information, which could include complaints on the TESRS system. Regardless of the possible disposition of the Office as discussed in Issue 1 of this report, putting the complaint process in TESRS statute would help protect pension members by ensuring that problems will be addressed in a timely fashion, and provide an avenue for feedback on TESRS' administration and the operation of the local and statewide TESRS boards.

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*Requiring the TESRS Board to adopt policies separating its duties from administration would prevent confusion about its authority.*

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### **The Office has two reports that are still necessary.**

The TESRS statute requires the Office to produce two reports, including the TESRS audited financial report and the TESRS actuarial valuation, which is an analysis of the financial soundness of the system. Sunset staff found these two reports should be continued because they are required for all public retirement systems in Texas.

## **Recommendations**

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

#### **4.1 Update and apply standard Across-the-Board Recommendations to TESRS statute.**

- **Conflict of Interest.** This recommendation would prohibit a person from serving as a TESRS Board member or high-level TESRS employee if the person or person's spouse is an officer, employee, or paid consultant of a professional trade association for firefighters or public retirement

systems. Any current Board members falling under this description would be allowed to serve out their term.

- **Board member training.** This recommendation would require Board members to receive training and clearly establish the type of information to be included. The training would need to provide Board members with information regarding the legislation that created the Board; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.
- **Separation of duties.** Under this recommendation, the Board must adopt policies clearly defining its role of setting policy separate from staff responsibilities.
- **Public testimony.** This provision would add specific statutory language to ensure the opportunity for public input to the Board on issues under its jurisdiction.
- **Complaint information.** This recommendation would require the Board to maintain a system for acting on complaints and make information available regarding its complaint procedures. The Board must also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints.

#### 4.2 Continue the TESRS reports.

This recommendation would continue the two reports currently required of TESRS because they provide information useful to both TESRS and the public. To comply with a recent change in law, the reports to the Legislature should be provided in an electronic format only.

## 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.



# RESPONSES TO ISSUE 4

## Recommendation 4.1

*Update and apply standard Across-the-Board Recommendations to TESRS statute.*

### Agency Response to 4.1

This recommendation is assuming the FFPC is like every other state agency in structure and responsibility. In fact, it is not. It is purposefully structured to provide “good government standards” in a fair and reasonable manner to two separate pension programs simultaneously.

### Conflict of Interest

The TESRS Board is an appointed body, held to specific ethical standards including the filing of financial statements. Applying more stringent requirements upon the candidates could have the effect of limiting the pool of qualified candidates, as for example, the trustees whose statutory qualifications are derived from the types of expertise that could be prohibited under this provision during board service. The TESRS Board’s expertise is attributable in part, to the fact that some trustees are required to be other than members of the system or just public citizens. A board with fiduciary duties is arguably much different from an occupational licensing body.

### Board Member Training

The training suggested is already part of the Board’s standard protocol. The Commissioner is charged in statute with ensuring the TESRS Board members receive the necessary training to perform their function. This is a current and standard practice of the Commissioner. Upon appointment to the Board, members are required to take training regarding their responsibilities as fiduciaries to the system. Educational requirements encompassing the areas mentioned in this recommendation are already provided to the Board. Training for the Open Meetings Act and Public Information Act are already required as an appointee and State official. The Open Meetings and Public Information Act training are also provided at each TLFFRA educational conference for those trustees. Educational opportunities for continuing education are provided to the Board at every Board meeting. The TESRS Board has performed and excelled due to their commitment to education, utilization of experience and the Commissioner’s assistance and working relationship. Training for board members, as suggested, would add additional costs to the system and State.

### Separation of Duties

The roles of the TESRS Board and the Commissioner are clearly defined in statute currently. No confusion regarding responsibilities has occurred.

### Public Testimony

It would be redundant and unnecessary for the TESRS statute to require public testimony. TESRS is a state public board required to follow all posting and open meetings regulations. The Board follows Robert's Rules of Order, as does the Legislature. Public posting of the board meeting is sufficient notice to the public for testimony. This is no different from a legislative committee posting for a hearing. Public meetings are subject to public comment.

### Complaint Information

The complaint process is an administrative function, and as such, would fall under the agency's responsibility to maintain and record. Any complaint regarding the system or the Board would be filed and maintained under the agency. Should the Board be required to maintain complaint information, the agency is the administrative entity to do so. This recommendation would create a duplication of work; one in the name of the Board and one in the name of the Commissioner. Staffing for TESRS is limited and creating more paperwork to record the same complaint is counterproductive. The Board's and Commissioner's responsibilities, duties and job expectations are clearly defined in statute.

(Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

**Staff Comment:** As a general practice, the Sunset Commission has directed Sunset staff to apply its Across-the-Board Recommendations to all agencies and entities under Sunset review. By applying these provisions specifically to the Board, these recommendations would ensure that these practices continue, regardless of the Board's relationship with the Office. If the Office continues to function in its current role of administering the TESRS fund, these provisions would simply clarify the existing relationship.

#### **For 4.1**

None received.

#### **Against 4.1**

None received.

## **Recommendation 4.2**

*Continue the TESRS reports.*

### **Agency Response to 4.2**

No disagreement as this is already statutorily required. (Sherri Walker, Commissioner – Office of Fire Fighters' Pension Commissioner)

#### **For 4.2**

None received.

#### **Against 4.2**

None received.

# COMMISSION DECISION ON ISSUE 4

(NOVEMBER 2012)

Adopted Recommendations 4.1 and 4.2.

# FINAL RESULTS ON ISSUE 4

(JULY 2013)

## ***Legislative Action — S.B. 220***

**Recommendation 4.1** — Senate Bill 220 adds standard Sunset language prohibiting a person from serving as a TESRS Board member or high-level agency employee if the person, or the person's spouse, is an officer, employee, or paid consultant of a Texas trade association in the field of emergency services, firefighting, or public retirement systems. The bill also prohibits a person from serving as a trustee or general counsel to the State Board if the person is registered as a lobbyist. The bill provides that these changes do not apply to members of the Board serving on the Board immediately before September 1, 2013, and allows them to serve out the remainder of their terms. The bill also adds standard Sunset language requiring members of the TESRS Board to complete specified training before assuming their duties; requiring the TESRS Board to separate its policymaking duties from the system's management functions; requiring the TESRS Board to give the public a reasonable opportunity to present issues under the Board's jurisdiction; and requiring the TESRS Board to maintain information on all complaints, make information available on complaint procedures, and notify the parties about the status of complaints.

**Recommendation 4.2** — Although no statutory change was necessary through Senate Bill 220, the Sunset Commission adopted this recommendation which continues the existing requirements in law for the two TESRS reports.



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**NEW ISSUES**

# NEW ISSUES

None received.



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**PROVISIONS ADDED BY THE  
LEGISLATURE**

# PROVISIONS ADDED BY THE LEGISLATURE

## ***Legislative Action — S.B. 220***

- **Retiree on the TESRS Board.**

Senate Bill 220 authorizes the Governor to appoint a retiree to one of the current six board member positions reserved for active members.

- **Training and assistance to local firefighter plans.**

Senate Bill 220 requires the Pension Review Board to provide technical assistance, training and information to members of the boards of trustees of TLFFRA plans. The training must be designed to meet the specific needs of those board members, including members of small-to-medium-sized plans. The bill requires the Board, to the extent resources are available, to designate one person to specialize in providing the required assistance, training, and information to these TLFFRA plans.



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# APPENDICES

# APPENDIX A

## ***Texas Firefighter Pensions Monitored by the Office of Fire Fighters' Pension Commissioner***

Generally, Texas statute establishes local pensions for paid and volunteer firefighters through the Texas Local Fire Fighters' Retirement Act (TLFFRA), and a statewide pension system for volunteer firefighters and emergency services personnel through the Texas Emergency Services Retirement System (TESRS).<sup>1</sup> The chart below shows the basic benefit structures for both.

<b>Benefit</b>	<b>TLFFRA Benefits for Paid Departments</b>	<b>TLFFRA Benefits for Volunteer Departments</b>	<b>TESRS Benefits for Volunteer Departments</b>
<b>Full Pension Requirements</b>	Age 55 and 20 years of credited service	Age 55 and 20 years of credited service	Age 55 and 15 years of credited service
<b>Vesting Period</b>	Most require 20 years of service	Most require 20 years of service	100 percent eligible at 55 years old and 15 years of service. Fifty percent vesting at 10 years, increasing 10 percent annually until reaching 15 years and 100 percent vesting.
<b>Member or Local Government Contribution</b>	Varies – the minimum match by local government is 12 percent of gross monthly salary. The average match is 16.15 percent.  Firefighters contribute an average of 12.62 percent of gross monthly salary.	Varies – the average annual contribution per department by local government is \$4,238.	Varies – \$36 minimum monthly contribution per member by local government, and as high as \$290 per month.
<b>Retirement Benefit Minimum</b>	\$100 a month	\$25 a month	\$216 a month For service beyond 15 years, an additional 6.2 percent of the annuity compounded annually.
<b>Disability Minimum</b>	\$100 a month	\$25 a month	\$300 a month, plus \$50 for every \$12 contribution increase.
<b>Death – On Duty Lump Sum</b>	Benefit varies as set by local board	Benefit varies as set by local board.	\$60,000 regardless of length of service
<b>Death – On Duty Pension Minimum</b>	\$100 a month to surviving spouse and \$20 a month to guardian of minor	\$16.67 a month to surviving spouse and \$6 a month to guardian of minor	Two-thirds of the retirement annuity to the surviving spouse.
<b>Death – Off Duty Lump Sum</b>	Benefit varies as set by local board	Benefit varies as set by local board	Benefit is the amount contributed on the decedent's behalf, or the amount that would have been contributed after 15 years of service, whichever is greater.
<b>Death – Off Duty Pension</b>	Benefit varies as set by local board	Benefit varies as set by local board	Two-thirds of the retirement annuity to the surviving spouse.

## *Appendix A*

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<sup>1</sup> Article 6243e, Vernon's Texas Civil Statutes; Sections 861–865, Texas Government Code.

# APPENDIX B

## *List of Texas Local Fire Fighters' Retirement Act Pension Systems*

The Office of Fire Fighters' Pension Commissioner (Office) monitors and assists paid, part-paid, and volunteer pension systems under the Texas Local Fire Fighters' Retirement Act (TLFFRA). The two tables below divide these systems by department type and provide the total number of employee and retiree members and net assets after subtracting administrative expenses.<sup>1</sup> The data is provided by the State Pension Review Board.

<b>Paid and Part-Paid TLFFRA Systems</b>	<b>Membership</b>	<b>Total Assets</b>
<b>Total for Paid and Part-paid Systems</b>	<b>8,260</b>	<b>\$1,377,794,445</b>
Lubbock Fire Pension Fund	612	\$150,565,100
Irving Firemen's Relief & Retirement Fund	452	\$125,139,063
Amarillo Firemen's Relief & Retirement Fund	433	\$115,866,425
Corpus Christi Fire Fighters' Retirement System	697	\$101,080,549
Beaumont Firemen's Relief & Retirement Fund	381	\$86,352,765
Laredo Firefighters Retirement System	506	\$84,080,924
Midland Firemen's Relief & Retirement Fund	319	\$68,514,410
Denton Firemen's Relief & Retirement Fund	222	\$50,006,018
San Angelo Firemen's Relief & Retirement Fund	300	\$49,087,894
Abilene Firemen's Relief & Retirement Fund	323	\$43,871,253
Odessa Firemen's Relief & Retirement Fund	337	\$42,764,055
Longview Firemen's Relief & Retirement Fund	280	\$41,675,937
Wichita Falls Firemen's Relief & Retirement Fund	255	\$35,987,068
Galveston Firefighter's Relief & Retirement Fund	197	\$35,222,659
McAllen Firemen's Relief & Retirement Fund	243	\$32,426,570
Tyler Firemen's Relief & Retirement Fund	238	\$31,661,403
Temple Firemen's Relief & Retirement Fund	168	\$30,334,836
Port Arthur Firemen's Relief & Retirement Fund	167	\$30,311,331
Killeen Firemen's Relief & Retirement Fund (part-paid)	248	\$23,837,183
Texarkana Firemen's Relief & Retirement Fund	129	\$23,805,017
Harlingen Firemen's Relief & Retirement Fund	106	\$20,822,002
Cleburne Firemen's Relief & Retirement Fund	84	\$14,237,414
Conroe Fire Fighters' Retirement Fund	104	\$13,549,384
Texas City Firemen's Relief & Retirement Fund	119	\$13,460,752
Denison Firemen's Relief & Retirement Fund	101	\$12,599,808

## **Appendix B**

<b>Paid and Part-Paid TLFRA Systems</b>	<b>Membership</b>	<b>Total Assets</b>
Greenville Firemen's Relief & Retirement Fund	122	\$11,266,214
Lufkin Firemen's Relief & Retirement Fund	131	\$9,950,651
Big Spring Firemen's Relief & Retirement Fund	100	\$9,704,476
Orange Firemen's Relief & Retirement Fund	71	\$8,563,461
Waxahachie Firemen's Relief & Retirement Fund	77	\$8,003,952
University Park Firemen's Relief & Retirement Fund	75	\$7,536,196
Sweetwater Firemen's Relief & Retirement Fund	49	\$7,103,229
Corsicana Firemen's Relief & Retirement Fund	81	\$6,305,623
Paris Firefighters' Relief & Retirement Fund	92	\$6,271,702
Weslaco Firemen's Relief & Retirement Fund (part-paid)	92	\$5,979,894
Marshall Firemen's Relief & Retirement Fund	85	\$5,576,458
Plainview Firemen's Relief & Retirement Fund	64	\$4,599,725
Brownwood Firemen's Relief & Retirement Fund	58	\$2,628,393
Atlanta Firemen's Relief & Retirement Fund (part-paid)	49	\$2,579,155
San Benito Firemen's Pension Fund	30	\$2,390,348
Travis County ESD #6 Firefighter's Relief & Retirement Fund	63	\$2,075,147

## **Appendix B**

<b>Volunteer TLFFRA Systems</b>	<b>Membership</b>	<b>Total Assets</b>
<b>Total for Volunteer Systems</b>	<b>1,972</b>	<b>\$2,622,208</b>
Edinburg Firemen's Relief & Retirement	42	\$1,510,912
Pecos City Firemen's Relief & Retirement Fund	63	\$166,096
Taft Firemen's Relief & Retirement Fund	12	\$143,034
Henrietta Firemen's Relief & Retirement Fund	38	\$112,216
Silsbee Firemen's Relief & Retirement Fund	40	\$95,123
Elsa Firemen's Relief & Retirement Fund	33	\$57,354
Decatur Firemen's Relief & Retirement Fund	29	\$52,743
Sealy Firemen's Relief & Retirement Fund	36	\$46,628
Rusk Firemen's Relief & Retirement Fund	38	\$44,995
Franklin Firemen's Relief & Retirement Fund	15	\$43,449
Smithville Firemen's Relief & Retirement Fund	37	\$42,600
Kaufman Fireman's Relief & Retirement Fund	32	\$39,748
Bronte Firemen's Relief & Retirement Fund	10	\$34,822
Navasota Firemen's Relief & Retirement Fund	15	\$33,311
Robert Lee Firemen's Relief & Retirement Fund	31	\$28,665
Silverton Firemen's Relief & Retirement Fund	16	\$28,495
Belton Firemen's Relief & Retirement Fund	11	\$25,073
Bay City Firemen's Relief & Retirement Fund	39	\$23,812
Los Fresnos Firemen's Relief & Retirement Fund	39	\$21,749
Goldthwaite Firemen's Relief & Retirement Fund	46	\$19,741
Nocona Firemen's Relief & Retirement Fund	38	\$19,355
Mason Firemen's Relief & Retirement Fund	23	\$19,145
De Kalb Firemen's Relief & Retirement Fund	29	\$17,249
Hughes Springs Firemen's Relief & Retirement Fund	25	\$16,493
Commerce Firemen's Relief & Retirement Fund	17	\$14,121
Comanche Firemen's Relief & Retirement Fund	39	\$13,183
Monahans Volunteer Firemen's Relief & Retirement Fund	35	\$8,814
Floresville Firemen's Relief & Retirement Fund	49	\$8,339
White Deer Volunteer Firemen's Relief & Retirement Fund	31	\$5,168
Runge Firemen's Relief & Retirement Fund	33	\$4,821
Caddo Mills Volunteer Firemen's Relief & Retirement	44	\$4,513
Valley Mills Firemen's Relief & Retirement Fund	36	\$4,443

## **Appendix B**

<b>Volunteer TLFFRA Systems</b>	<b>Membership</b>	<b>Total Assets</b>
Colorado City Firemen's Relief & Retirement Fund	21	\$4,278
Henderson Firemen's Relief & Retirement Fund	20	\$4,225
Paducah Firemen's Relief & Retirement Fund	20	\$3,309
Cooper Volunteer Firemen's Relief & Retirement Fund	34	\$3,042
Olney Firemen's Relief & Retirement Fund	55	\$2,140
Arlington Firemen's Relief & Retirement Fund	4	\$1,852
Three Rivers Firemen's Relief & Retirement Fund	20	\$1,780
Kenedy Volunteer Firemen's Relief & Retirement Fund	26	\$1,030
Ralls Firemen's Relief & Retirement Fund	19	\$893
Memphis Firemen's Relief & Retirement Fund	18	\$824
Beeville Firemen's Relief & Retirement Fund	46	\$818
Gatesville Volunteer Firemen's Relief & Retirement Fund	14	\$757
Chillicothe Firemen's Relief & Retirement Fund	38	\$653
Winters Firemen's Relief & Retirement Fund	44	\$614
Junction Firemen's Relief & Retirement Fund	40	\$512
McLean Firemen's Relief & Retirement Fund	15	\$469
Pittsburg Firemen's Relief & Retirement Fund	7	\$322
Ennis Firemen's Relief & Retirement Fund	2	\$219
Cisco Firemen's Relief & Retirement Fund	36	\$185
Port Lavaca Firemen's Relief & Retirement Fund	14	\$80
Mount Pleasant Firemen's Relief & Retirement Fund	10	\$70
Robstown Firemen's Relief & Retirement Fund	8	\$59
Karnes City Firemen's Relief & Retirement Fund	4	\$46
Throckmorton Firemen's Relief & Retirement Fund	26	\$20
Grapeland Firemen's Relief & Retirement Fund	40	\$18
Benavides Firemen's Relief & Retirement Fund	4	\$0
Bowie Volunteer Firemen's Relief & Retirement Fund	36	\$0
Clifton Firemen's Relief & Retirement Fund	42	\$0
Cockrell Hill Firemen's Relief & Retirement Fund	8	\$0
Donna Firemen's Relief & Retirement Fund	38	\$0
Eden Firemen's Relief & Retirement Fund	15	\$0
Granger Firemen's Pension Fund	5	\$0
Hamlin Firemen's Pension	9	\$0

## **Appendix B**

<b>Volunteer TLFFRA Systems</b>	<b>Membership</b>	<b>Total Assets</b>
Hemphill Firemen's Relief & Retirement Fund	11	\$0
Jacksboro Volunteer Fire Department	25	\$0
Lampasas Firemen's Relief & Retirement Fund	13	\$0
Leonard Volunteer Firemen's Relief & Retirement Fund	32	\$0
McGregor Firemen's Relief & Retirement Fund	27	\$0
Muenster Volunteer Firemen Relief & Retirement Fund	35	\$0
Rockdale Firemen's Relief & Retirement Fund	54	\$0
Stephenville Firemen's Relief & Retirement Fund	15	\$0
Sulphur Springs Firemen's Relief & Retirement Fund	5	\$0
Tulia Firemen's Relief & Retirement Fund	26	\$0
Weatherford Firemen's Relief & Retirement Fund	8	\$0

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<sup>1</sup> These tables reflect 117 TLFFRA systems, and leave out some of the other TLFFRA systems that the Pension Review Board reports are closed and not accepting new members. By comparison, the Office of Fire Fighters' Pension Commissioner reports 121 TLFFRA systems are open to new members.



# APPENDIX C

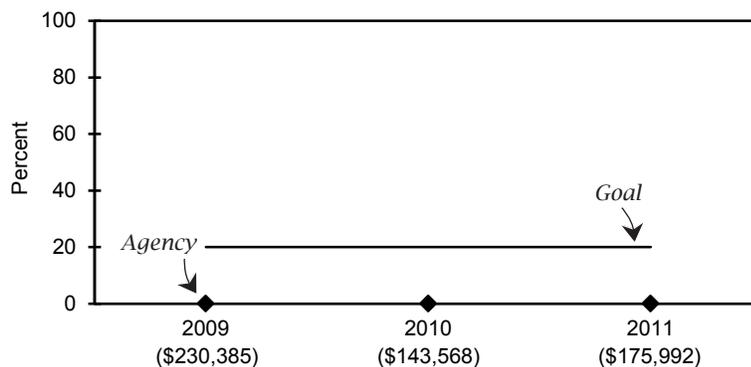
## *Historically Underutilized Businesses Statistics 2009 to 2011*

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Office of Fire Fighters' Pension Commissioner's use of HUBs in purchasing goods and services. The Office maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of Office spending with HUBs in each purchasing category from 2009 to 2011. Finally, the number in parentheses under each year shows the total amount the Office spent in each purchasing category.

The Office has consistently missed HUB goals in two categories. From fiscal year 2009 to 2011, none of the Office's spending for professional services was with HUBs, and its HUB spending for other services was well below the statewide goal. The Office claims that it does not meet these goals because of the specialized nature of the professional and other services it acquires, and the fact that many of its vendors are out of state, making them ineligible to become HUB certified. Also, in fiscal year 2011 the Office only had two contracts listed under professional services, limiting the agency's opportunities to choose HUB vendors, and one of these was its accountant, which is out of state. The Office's experience with HUB spending in these categories is comparable with the experience of the Employees Retirement System, though it lags behind the experience of the Teacher Retirement System.

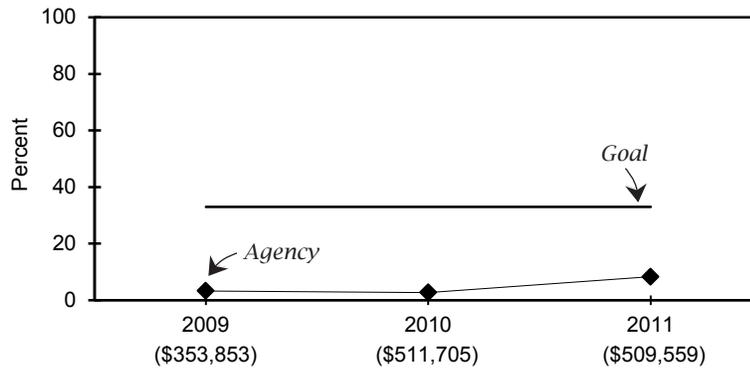
### Professional Services



None of the Office's spending on professional services was with HUBs.

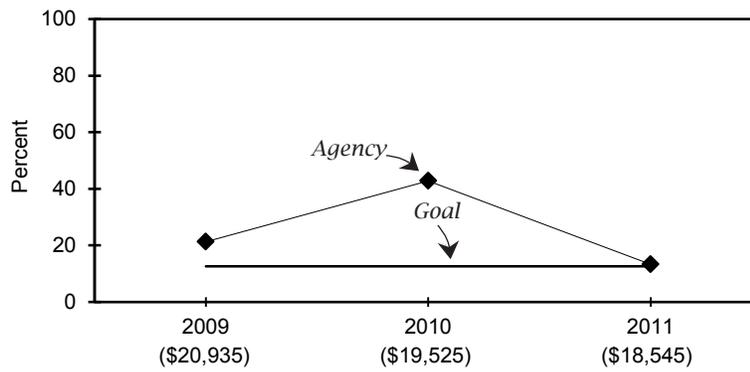
## Appendix C

### Other Services



Purchases for other services fell significantly below State purchasing goals.

### Commodities



The Office exceeded State purchasing goals for commodities each fiscal year.

# APPENDIX D

## ***Staff Review Activities***

During the review of the Office of Fire Fighters' Pension Commissioner, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with Office personnel; attended meetings of the Texas Emergency Services Retirement System Board of Trustees; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed Office documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

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

- Attended educational conferences for the Texas Local Fire Fighters' Retirement Act and the Texas Association of Public Employee Retirement Systems.
- Interviewed, and surveyed, members of Texas Local Fire Fighters' Retirement Act boards of trustees and members of the Texas Emergency Services Retirement System Board of Trustees.
- Interviewed staff of the Office of the Attorney General, Comptroller of Public Accounts, Legislative Budget Board, and state retirement systems.
- Interviewed professionals with expertise in the Texas Local Fire Fighters' Retirement Act and Texas Emergency Services Retirement System.



# Sunset Staff Review of the *Office of Fire Fighters' Pension Commissioner*

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