

PORT OF HOUSTON AUTHORITY

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Port Authority at a Glance

The Port of Houston Authority has the dual mission of supporting the entire 52-mile Houston Ship Channel, with its more than 150 public and privately owned terminals and industrial facilities, and owning and operating a handful of these facilities. The scope of the Authority's responsibilities and the Channel is immense, with impacts reaching far beyond the Houston region. In 2011, activity along the Channel contributed to more than one million jobs and \$178 billion in total economic activity in Texas.

As a public governmental agency, the Authority performs the following key activities:

- acts as the federally designated local sponsor of the Channel, partnering with the U.S. Army Corps of Engineers to oversee development and maintenance of the federal waterway;
- owns and operates two container terminals and five public-use general cargo facilities;
- markets and develops trade opportunities for Authority facilities and the Channel generally;
- maintains police and fire departments to monitor and respond to security and safety threats, and partners with industry and governmental entities on security issues; and
- acts as the regulatory body for the Houston port pilots.

The Sunset Commission expressed frustration about the need for real change, through state involvement if necessary.

Summary

The Port of Houston Authority is not a broken organization, despite the image that has recently appeared through the harsh glare of the media spotlight. The Authority has certainly had its missteps and the negative attention and resulting Sunset review have been a needed wake-up call for the organization and the Port Commission that oversees it.

However, deeper concerns about the leadership of the Port Commission and the level of engagement by its local appointing entities led the Sunset Commission to send its own wake-up call, expressing its frustration about the need for real culture change, through greater state involvement if necessary. The Authority, local officials, and state leaders now have significant work to do to address these concerns and lead the way to meaningful change.

The Authority faces a period of growth bringing both opportunity and challenges as it coincides with increasingly scarce federal funds for maintenance of the Houston Ship Channel, and a need for alternative funding for infrastructure improvements. These challenges and the scale of the Channel's impact on the state's economy require the Authority to have the vision and the public's trust to do its job, which means constantly weighing its responsibilities as a governmental entity with the reality of its competitive operating environment.

The Sunset Commission's recommendations focus on restoring trust in the organization and helping it move ahead. In addition to major changes to its governance structure, the Sunset Commission proposed a number of reforms to improve the Authority's internal controls and modernize other aspects of its operations. While the Authority has already identified some of these areas for improvement and has begun work to address them, ultimately only a committed leadership can reset the culture of the organization to ensure these critical changes are meaningful and lasting.

Issue 1

Clear Actions Must be Taken to Restore Trust in the Port Commission's Ability to Carry Out Its Important Mission.

The Authority's basic governance structure has remained largely unchanged for nearly 100 years and does not reflect the Authority's significantly expanded modern scope and impact beyond its origins as a city-county entity. Recent media scandals have contributed to a tangible public skepticism about the Authority that ultimately must be addressed through the organization's governance and continued legislative oversight. A general lack of clarity in the Authority's enabling laws and governance practices creates additional confusion that also undermines confidence.

Recommendations

Change in Statute

1.1 Modernize the Commission's appointment structure by providing for a new Governor-appointed Commission and adding term limits for Commissioners.

This recommendation would maintain a seven-member Port Commission but would remove current members, change to a wholly Governor-appointed Commission, and impose term limits. The Governor would appoint five members from a list of no more than 20 names submitted by the Houston-Galveston Area Council (HGAC), and the remaining two members would represent the public not residing in the HGAC region. Commissioner terms would be lengthened from two to four years, with Commissioners limited to serving no more than three, four-year terms, or a total of 12 years.

Current members would not be eligible for new appointments, providing for a total membership change effective September 1, 2013. New appointments would be staggered with terms expiring in February of odd-numbered years. The Governor would designate the Chair of the Commission and appointees would be subject to Senate confirmation.

1.2 Require the Commission to develop and implement policies clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Authority's Executive Director and staff.

For too long, Commission members have inserted themselves into administrative matters normally carried out by an agency's staff, under its executive director. This recommendation, based on a standard

Sunset provision applied to state agencies, would require the Commission to clearly describe its role in policymaking and oversight of the organization and make the Executive Director and staff responsible for the day-to-day operations of the agency. This policy would adjust and clearly spell out, in one place, all relevant duties currently existing in various Authority laws, contracts, bylaws, and policies. The new policy would, among other factors, clearly establish the Executive Director as solely responsible for employment and personnel decisions.

1.3 Require standard best practices to promote ethics and good governance for the Commission and Authority staff.

This recommendation is based on a combination of best practices, general state laws, and standard Sunset provisions, and includes the following elements.

- **Standards of conduct and code of ethics.** The Commission would be required to adopt and abide by a formal policy governing standards of conduct and ethics for Commission members and employees.
- **Whistleblower policy.** The Commission would be required to adopt and maintain a whistleblower function according to standard best practices.
- **Governance policies.** The Commission would be required to adopt detailed policies comprehensively documenting its governing practices and make these policies available on its website.
- **Financial disclosure.** This recommendation would reinstate the application of personal financial disclosure requirements found in Chapter 572, Texas Government Code for Commission members.
- **Conflict of interest.** This recommendation would prohibit a person from serving as a member of the Commission if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Commission other than compensation or reimbursement authorized by law for Commission membership, attendance, or expenses. In addition, this recommendation would prohibit a person employed by or participating in the management of a business entity or other organization regulated by or receiving money from the Commission from being a member on the Commission.
- **Grounds for removal.** This recommendation would specify the grounds for removal for Commission members and the notification procedure for when a potential ground for removal exists.
- **Commissioner training.** This recommendation would require Commission member training to provide members with information regarding the legislation that created the Authority; its programs, functions, rules, and budget; the results of its most recent formal audits; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

1.4 Require another Sunset review of the Port of Houston Authority in four years.

The Authority would be subject to Sunset review but not abolishment, with the Sunset Commission providing recommendations to the 85th Legislature in 2017. The Authority would be required to pay the cost incurred by the Sunset Commission in performing the review.

Issue 2

The Authority Lacks a Proactive Public Engagement Strategy Necessary to Improve Stakeholder Trust.

To carry out its mission, the Authority needs public support, since it operates in the midst of a number of local communities and relies on government permits and taxpayer-supported bonds to expand and maintain its facilities. However, recent events highlight the Authority's lack of a comprehensive approach to engage its stakeholders, contributing to a pervasive cynicism about the Authority by the public that was apparent throughout the Sunset review.

Recommendations

Change in Statute

2.1 Require the Authority to develop and implement a policy to guide and encourage more meaningful stakeholder involvement efforts.

This recommendation would require the Authority to develop an official policy providing a clear structure for its overall approach to public involvement including a description of how the Authority would seek to engage stakeholders more proactively; specific actions it would take to go beyond minimum Open Meetings Act requirements; and strategies for how it would use its website to provide clear, updated information on issues of public concern.

2.2 Require the Authority to develop a standard process to receive, respond to, document, and analyze complaints.

The Authority would be required to develop policies and procedures to formally document and effectively manage complaints organization-wide. The Authority would maintain a system for receiving and acting on complaints, maintain documentation on all complaints, and periodically notify complaint parties of the status of complaints. The Authority would also be required to develop a standard form for the public to use when making a complaint, and make this form available on its website, along with clear information on what to expect once a complaint is filed, including timelines for response and resolution.

As part of this recommendation, the Authority would compile detailed statistics and analyze complaint information trends to get a clearer picture of the problems identified through the complaints received. This data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. Authority staff would report this information on a regular basis to senior management and the Commission.

Issue 3

A Formal and Comprehensive Strategic Planning Process Is Critical to the Authority's Future Success.

The Authority faces unique challenges as a public entity operating in a competitive environment, requiring it to constantly weigh its various and sometimes conflicting responsibilities as it plans for the future. Ongoing infrastructure financing challenges will require creative solutions and increased trust in the Authority's business practices, demanding a robust and well-documented planning

process. However, the Authority currently lacks such a developed process, despite its recent efforts at improvement.

Recommendation

Change in Statute

3.1 Require the Authority to create a comprehensive strategic planning process, including long-range strategies and shorter-range implementation plans tied to financial and capital planning.

This recommendation would require the Authority to develop a long-range strategic plan and shorter-range implementation plans, according to the following provisions.

- **Long-range strategic planning.** The Authority would develop a 10- to 20-year long-range plan containing its mission and values statement, and including standard elements of strategic plans. The Authority would identify and work with key internal and external stakeholders to get formal input on the plan, and the Commission would discuss and adopt the plan in an open meeting. The Authority would provide annual progress updates according to performance measures developed through the plan, and complete a comprehensive re-evaluation and update of the plan at least every five years.
- **Mid-range implementation, including five-year financial and capital plans.** The Authority would develop a mid-range plan to carry out the vision and strategies contained in the long range plan, including a five-year financial forecast and five-year capital plan. The capital plan would include a preliminary analysis and prioritization of each project's need. The financial plan would address future financial needs and financing options, and provide information about the relative cost of various options. Authority staff would prepare and present these documents to the Commission in an open meeting, but these plans would not require Commission approval.
- **Short-range budget and capital plan.** The Authority would develop a one-year capital plan with an associated financing plan, integrated with its existing budget, which would be adopted by the Commission in an open meeting. The Authority would include projects in the one-year capital plan only after a rigorous and documented process of analysis and approval.
- **Public information.** The Authority would make its long-range plan, five-year capital plan and financial forecast, and one-year budget and capital plan available on its website.

Issue 4

Unclear and Outdated Statutes Prevent the Authority From Having an Effective Internal Audit Function.

As a reflection of the Authority's historical connection to Harris County, statute designates the Harris County Auditor as the Authority's auditor, and prescribes specific duties aimed at reviewing individual financial transactions and performing a basic check on compliance with laws and policies. However, the Authority has never had a risk-based internal audit function including both financial and operational auditing, a standard oversight tool for both public and private sector organizations. Over the last two years, as the Authority has sought to establish an internal audit function, the County Auditor and the

Authority have come to an impasse in interpreting the proper role of each party due to ambiguous statutes that do not clearly define how the Authority's internal audit function should work.

Recommendations

Change in Statute

4.1 Require the Authority to establish an internal audit function following accepted internal auditing standards.

This recommendation would require the Authority to establish an internal audit function, similar to requirements of the Texas Internal Auditing Act and following standards developed by the Institute of Internal Auditors. Under this recommendation, the Authority's internal audit function would report to the Port Commission's Audit Task Force. The Commission would hire the chief audit executive, and approve a risk-based annual audit plan. This recommendation would require the Authority to provide its internal audit reports to the Harris County Auditor and other appointing entities upon request, and make its internal audit plan available on its website.

4.2 Authorize audit oversight of the Authority by the County based on risk and clarify related statutory provisions.

This recommendation would authorize the Harris County Auditor to perform financial audits of the Authority in an occasional oversight role, much like the role of the State Auditor's Office in auditing state agencies. The County Auditor would no longer have a day-to-day auditing function at the Authority. Statute would require any such audits of the Authority to be part of the County Auditor's overall risk assessment and annual audit plan for Harris County. Statute would continue to require the Authority to reimburse the County Auditor for any audits performed, at standard rates agreed to by the Authority and the County Auditor and updated periodically, in advance of any audits being scheduled or performed. This recommendation would remove the statutory designation of the Harris County Auditor as the Authority's auditor.

4.3 Repeal outdated provisions prescribing the Harris County Auditor's Authority-related audit duties.

This recommendation would repeal all session law and Texas Water Code audit-related provisions applying to the Port of Houston Authority. These provisions include requirements to pre-approve all Authority claims and contracts, certify funds availability, and prescribe inventory procedures. This recommendation would also repeal provisions for the County Auditor to monitor and audit the Promotion and Development Fund by ensuring the Authority stays within the 5 percent expenditure cap, auditing disbursements, and receiving monthly reports on expenditures. Audit of the Promotion and Development Fund would become part of the new internal audit function's ongoing responsibility.

Issue 5

Use of the Authority's Promotion and Development Fund Requires Additional Controls and Transparency to Avoid Future Controversy and Distraction.

Due to competitive business functions unique to a governmental entity and with clear statutory authorization, the Authority is certainly justified in spending its Promotion and Development (P&D) Fund for many purposes, such as lobbying for federal dredging dollars and travel to promote trade

development. However, some of the Authority's expenditures allowed under the P&D statute are unusual for governmental agencies and have repeatedly involved the Authority in various media exposés over the years, blemishing its reputation.

Despite these repeated controversies, the Authority has not yet set clearly defined purposes and strict parameters for uses of the Fund, and has not made sufficient efforts to ensure its use of the Fund is transparent both within the organization and to stakeholders and the public. The Authority also lacks basic controls to ensure ongoing accountability and efficiency of Commissioner and staff travel and expenses, typically paid from the Fund.

Recommendations

Change in Statute

5.1 Require the Port Commission to adopt comprehensive and publicly available policies and provide detailed reporting on the Authority's use of the P&D Fund.

The policies should, at a minimum:

- define acceptable uses of P&D funds with a more narrow, direct tie to the Authority's mission than current general statute and Authority policy provides;
- define a clear and consistent budget and process for requesting sponsorship funds by Commissioners, outside groups, and staff;
- define proper approval procedures for all types of P&D expenditures, including the proper level of approval or notification among staff, task forces, and the full Commission;
- require each approval to demonstrate the expected impact of the expense and how the expense meets the approved strategic direction for P&D funds previously adopted by the Commission;
- address how the Authority will handle any exceptions to established policies, and provide that any exceptions should be reported in the same manner as any other P&D expenditure;
- provide for evaluation of the policy's effectiveness and regular updates approved by the Commission in a public meeting; and
- provide for regular tracking and detailed reporting of all P&D expenditures to the full Commission and on the Authority's website, including detailed information about Commissioner travel, special uses of the Authority's resources including any public tour vessels, and all sponsorship and other similar spending. The reports would also contain year-to-date summary information on the Authority's P&D expenditures for different expenditure categories.

5.2 Require the Authority to adopt travel and expense policies to include generally accepted expenditure control elements with clear lines of accountability for both staff and Commissioners.

This recommendation would ensure the Authority revises existing policies to put in place additional controls on staff and Commission travel and other expenses to minimize the cost of these activities. In implementing this requirement, the Authority would establish specific travel spending guidelines such as per diem limits; authorize a documented process for handling exceptions from these limits when and if business needs require; limit or eliminate the use of cash advances in most cases; clarify expense report protocols in its travel and expense policies by requiring separation of Commissioner and staff

expense reports; and specifically prohibit use of P&D or any Authority funds for staff and Commission meals not part of approved Authority travel or part of a business-related function with outside parties.

Issue 6

Procurement at the Authority Lacks Consistent Practices to Ensure Fair, Cost-Effective Purchasing.

Procurement is a crucial function at the Authority, totaling \$122 million in 2011. Procurement practices at the organization have not matured to match this high level of expenditures. The Authority's organizational approach does not have a clear, central point to coordinate procurement oversight. Some long-standing policies and practices, such as those dealing with small business contracting and legal and lobby services, have not been systematically examined to determine their continuing relevance or structure.

Recommendations

Management Action

6.1 The Authority should take steps to better manage and align its organizational approach to procurements.

The Authority should establish a centralized procurement office to provide a clear point of coordination for its procurements and should move the small business procurement function into this new office. Consideration should be given to reducing involvement of the Legal Division in the procurement process and moving aspects of the Division's current responsibilities related to contract development to the new procurement office. Finally, the Authority needs to quickly complete its updated contracting rules and procedures, and improve centralized computerized procurement information to better track and manage procurements.

6.2 The Authority should review small business goals and selected functions.

The Authority should conduct a more structured evaluation of its 35 percent small business goal to determine its current reasonableness. The Authority should also move promotional functions from the Small Business Division to Public Affairs to keep the small business function focused on promoting small business contracting while shifting responsibility for promotional funding to the Authority's organizational unit most responsible for this function.

6.3 The Authority should eliminate or better manage ongoing professional services contracts.

The Authority should eliminate the outside Special Counsel and Litigation Counsel functions, which could be performed by the Authority's General Counsel at a savings of about \$282,600 annually. The Commission and staff should also take a more active approach to its lobby program, including annually evaluating the organization's lobby needs and the program's cost-effective approach.

6.4 The Authority should improve disclosure and communications policies for solicitations.

Staff involved in a procurement should complete nepotism and non-disclosure forms in writing to improve contracting transparency and fairness and avoid improper relationships with contractors. The

Commission should adopt policies prohibiting both staff and Commissioner communications with vendors during active solicitations to promote objective contracting decisions and send a clear message about the Commission's dedication to fair procurements.

6.5 The Authority should take steps to improve the evaluation and award of contracts.

The Authority should standardize the evaluation committee process to ensure a complete, fair, and consistent approach, regardless of which division is engaged in the contracting. The Commission should change procedures so that the Commission may only accept or reject a staff-recommended vendor in a procurement award. A clear up or down vote, as the Commission has used in the past, would eliminate the appearance of subjective decision making that could affect confidence in the Authority's contracting process. The Authority should also implement an appeals process for resolving vendor protests, and obtain systematic feedback and documentation about vendor performance at contract closeout to help in future procurements.

6.6 The Authority should establish a training program on conflicts of interest and other aspects of contracting.

The Authority should provide a systematic and ongoing training program for both Commission members and staff, given the importance of the procurement function to the Authority.

Issue 7

The Authority Could Reduce Injuries and Save Money by Implementing a More Proactive Safety Program.

The Authority has a basic responsibility to ensure the safety of its operations, which include high-risk activities involving specialized skills, heavy equipment, and hazardous material. However, the accident rate for its employees is unacceptably high in some areas, and recent incidents have caused the Authority to re-evaluate the strength of its safety program and its appropriate role in managing activities on its property. Despite ongoing efforts, the Authority's safety program is neither comprehensive nor complete. The Authority rarely exercises its broad enforcement powers beyond informal measures, and does not have standard, organization-wide safety policies or systems for monitoring, documenting, and reporting safety issues.

Recommendation

Management Action

7.1 The Authority should take aggressive steps to implement a coordinated and comprehensive safety program.

The Authority should take focused actions to finish developing a comprehensive, organization-wide safety program for the Authority's employees, tenants, and other users. The program should focus first on Authority employees, but should also actively address tenants and other outside users. The Authority should involve a wide range of both internal and external stakeholders in developing the safety program, and establish a clear organizational home to coordinate an active, Authority-wide safety program. The Authority should systematically address standard best practices when implementing the safety program, including instituting a return to work program. Finally, management should adopt timelines for developing and implementing the safety program to ensure quick and accountable implementation.

Issue 8

The Commission's Role as the Pilot Board to Regulate Houston Pilots Lacks Focused Oversight and Standard Best Practices for Licensing Functions.

Pilots serve a crucial role in ensuring safety and the continued flow of commerce along the Houston Ship Channel, which requires about 20,000 piloted ship movements per year. In the Commission's additional role as the Board of Pilot Commissioners for the Ports of Harris County, it approves pilot applicants and submissions for required state commissions, establishes pilotage rates, and investigates incidents involving pilots.

Pilot regulation is not like licensing for most occupations because it is closely intertwined with the Houston Pilots Association, which plays a large role in vetting pilot applicants, scheduling work assignments, providing training, and ultimately asserting more regulatory powers than the Pilot Board. The arrangement is not a significant cause for concern, but does result in concentrating information at the Association that the Board needs to effectively monitor the pilots and carry out its clear statutory responsibility to provide oversight.

Recommendation

Management Action

8.1 Direct the Port Commission, acting as the Pilot Board, to take a more active role in oversight of the Houston Pilots.

The Pilot Board should take action under its existing statutory authority to more actively address safety and public information needs related to pilots. The Pilot Board should amend its adopted Rules and Regulations governing pilots to clearly specify the information it needs to adequately oversee the Houston pilots, such as reporting of pilots' training and continuing education, and the results of any incident investigations involving pilots.

In particular, Authority staff should work with the Pilots Association to develop a formal fatigue mitigation program to educate pilots on best practices relating to rest guidelines and develop hours of service rules to prevent fatigue from extended work hours. Authority staff should also determine the appropriate information to submit to the Pilot Board regarding the program, including the reporting of pilot work records and logs and any fatigue mitigation program activities.

This recommendation also directs the Authority to conduct, at a minimum, statewide criminal history background checks during the pilot application and renewal process. The Pilot Board should adopt guidelines for using these criminal history checks according to the provisions in the Texas Occupations Code to help ensure that the consideration of past behavior relates to the duties and responsibilities of being a pilot.

Finally, this recommendation directs the Pilot Board to implement a complaint process regarding pilots as already required by statute and include information about the process and contact information on the Authority's website. The Pilot Board should also include information about its duties and oversight responsibilities on the Authority's website and in other appropriate Authority publications.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State since the Authority does not receive state appropriations. Specific impacts to the Authority are described below. In addition, Sunset recommendations for improvements to Promotion and Development Fund expenditures, procurement, and employee safety are expected to increase efficiency at the Authority resulting in significant savings, but the exact impact will depend on implementation.

Issue 1 — Paying the costs incurred by the Sunset Commission in conducting another review of the Authority in four years would result in a cost to the Authority of approximately \$280,000 during the 2016–17 biennium based on a preliminary analysis of the costs to conduct the current review.

Issue 4 — Eliminating the Harris County Auditor’s day-to-day audit functions at the Authority, and instead having the Authority establish its own in-house internal audit function would likely result in a net annual cost of approximately \$380,000 to the Authority.

Issue 6 — Eliminating the Commission’s Special Counsel and Litigation Counsel contracts would result in savings to the Authority of about \$282,600 per year if the Authority instead performed these functions in-house using current resources.

