

TEXAS RACING COMMISSION

STATUS REPORT

Table of Contents

	PAGE
STATUS REPORT SUMMARY	1
H.B. 1305 CONFERENCE COMMITTEE REPORT	3
ACROSS-THE-BOARD RECOMMENDATIONS	13
OTHER LEGISLATIVE MODIFICATIONS	15
BACKGROUND SECTION	17
EXCERPTS FROM STAFF REPORT - OCTOBER 1994	25

STATUS REPORT SUMMARY

Texas Racing Commission Status Report

Status Report Summary

The Texas Racing Commission and the Original Sunset Staff Review

Established upon voter approval in 1987, the Texas Racing Commission (TxRC) is responsible for ensuring fair wagering and safe racing in the state of Texas. The Commission is responsible for licensing racetracks and supervising all races involving bets. The Commission adopts rules and procedures for racing, licenses racetrack personnel, and enforces compliance with the Texas Racing Act and the Commission's rules.

The Sunset staff's original review of TxRC, conducted in 1994, included contact with representatives of the racing and breeding industry, in-depth interviews and meetings with agency staff, field work at racetracks, attendance at Racing Commission meetings, and surveys of other states with pari-mutuel racing. The review resulted in Sunset staff recommendations that focused on improving the structure and composition of the Commission, the regulation of racing, oversight of racetrack operations, and the accountability of funds distributed as industry incentives. The Sunset Commission adopted all of the staff recommendations which were included in the introduced versions of the Sunset legislation.

Legislative Action by the 74th Legislature

In May of 1995, the Sunset Commission's recommendations to the Legislature on the Racing Commission failed to become law. The Sunset bill for the Racing Commission, H.B. 1305, died on a point of order when House debate extended beyond the deadline for considering conference committee reports. The House was debating a provision authorizing off-track betting (OTB) that had been added on the Senate floor. Instead, the Legislature continued the Racing Commission for a two-year period in S.B. 374, which made several other changes to the Sunset Commission's review schedule.

Status Report on the Racing Commission

Since the last legislative session and the failure of H.B. 1305, Sunset staff has continued to monitor the Racing Commission and its activities. Staff did not conduct a second, full-scale review, but continued to meet with agency staff, attend board meetings, and discuss policy issues with those interested in the Sunset review. Staff also visited the newest racetrack facility currently under construction in north Texas.

In lieu of a staff report, Sunset staff provides this status report to provide an examination of H.B. 1305 and an update of current activities at TxRC. This report contains:

- a description of the contents of the Conference Committee Report, H.B. 1305;
- staff recommendations for further legislative action by the 75th Legislature;

- a listing of statutory changes, added by the Legislature, that were outside the scope of the original Sunset review;
- an update of agency background information; and
- the Sunset staff's original recommendations from the 1994 staff report.

Recommendations

Staff recommends that the Sunset Commission adopt the Commission's original recommendations as modified by the Legislature and reflected in the Conference Committee Report on the Sunset legislation for the Racing Commission. The Sunset Commission's provisions, as drafted in the Conference Committee Report, represent a sizeable legislative effort to develop workable changes and a consensus within an industry that often experiences difficulty in reaching common ground. The staff recommends that all other provisions that were outside the scope of Sunset, and added through the legislative process, be pursued through separate legislation. The Sunset recommendations, as contained in the Conference Committee Report, are summarized below.

1. Increase public membership on the Commission and remove requirements for the Commission to operate through separate sections representing horse and greyhound racing.
2. Focus Racing Commission activities on regulation of the industry, not promotion. Ensure that the Commission considers the effect of Commission actions on the industry.
3. Improve TxRC's racetrack inspection and enforcement activities.
4. Improve Racing Commission oversight of organizations receiving funds through the Texas Racing Act.
5. Improve the integrity and safety of racing by making the top regulatory officials at each track directly responsible to the state.
6. The Texas Racing Commission should recover costs of criminal history reports. Ensure that criminal history reports are forwarded from the Department of Public Safety to the Federal Bureau of Investigation.
7. Continue the Texas Racing Commission for six years.
8. Clarify language related to criminal offenses in the Texas Racing Act.

H.B. 1305
CONFERENCE COMMITTEE REPORT

Texas Racing Commission Status Report

H.B. 1305 Conference Committee Report

Sunset Recommendation

1. Prescribe public membership on the Commission and improve the operating structure.

Changes in Statute

Modify the composition of the Commission to include six public members who have general knowledge of business or agribusiness (retaining the two ex officio members).

Remove existing requirements for the Commission to operate through separately acting sections representing horse and greyhound racing.

Management Action

The Commission should work with a broad range of industry representatives during the development and review of rules and any other matters where outside expertise and early input would be helpful.

Update

In response to Sunset staff's management recommendation, the agency has established two advisory committees to assist the Commission in developing rules and policies. The Occupational Licensing Advisory Committee and the Pari-Mutuel Advisory Committee have reviewed rules, identified problem areas and suggested changes to current state racing regulations. The committees' memberships include various representatives of the racing industry providing broad-based input from those most affected by the Commission. According to the agency, advisory committee input has been useful in improving Commission policies and changing state rules and regulations.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission's recommendation with the following modifications.

Legislative Modifications

- Instead of six public members as originally recommended in the 1994 staff report, the conference committee report required four public members with general knowledge of business or agribusiness, one member with expertise in horse racing, and one member with expertise in greyhound racing.
- Authorized the Commission to establish a section of the Commission to review or propose rules to the whole Commission but required a majority vote of the members of the Commission for any decision.
- Required the Commission to hold a meeting on a proposed rule prior to publication of the proposed rule in the *Texas Register*. The agency must post a notice of a meeting on a proposed rule at each racetrack facility. The notice must include an agenda and a summary of the proposed rule. Also, required a copy of a proposed rule published in the *Texas Register* to be posted at each racetrack facility.
- Directed the Commission, in its review of the rules, to attempt to provide for uniform approaches to the regulation of horse and greyhound racing.

Staff Recommendation

Adopt the Sunset Commission's recommendation and include the legislative modifications listed above.

Fiscal Impact

This recommendation would not have a fiscal impact to the state.

Sunset Recommendation

- 2. Focus Racing Commission activities on regulation of the industry, not promotion.**

Changes in Statute

Clarify that the Texas Racing Commission is not responsible for promoting the racing industry.

Direct the Commerce Department to assume responsibility for the promotion of racing if the Legislature authorizes economic development funds for this purpose.

Update

No additional information.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission's recommendation with one modification.

Legislative Modification

- Directs the Commission to consider the effect of Commission actions on the state's agricultural industry and horse and greyhound breeding and training industries.

Staff Recommendation

Adopt the Sunset Commission's recommendation with the legislative modification.

Fiscal Impact

This recommendation would not result in a fiscal impact to the state.

Sunset Recommendation

3. Improve TxRC's racetrack inspection and enforcement activities.

Changes in Statute

Require the Commission to establish a standard method for conducting ongoing track compliance inspections including:

- issuing notices of violation
- requiring racetracks to submit a corrective action plan
- setting deadlines to correct violations
- timely reinspections of the facility
- requiring enforcement;

Authorize the agency to rescind race dates for violations of the Act or Commission rules; and

Require a racetrack licensee that does not comply with any portion of the compliance inspection program to appear before the Commission at a public meeting to consider the matter.

Management Action

Establish a standard method for overseeing the construction of racetrack facilities that includes improved inspection scheduling, structured progress reports, improved documentation and Commission approval of all changes throughout the project;

Increase efforts to employ a director of racing to supervise and coordinate the agency's inspection efforts;

Establish a system that requires stewards and judges to assist in conducting inspections and report the results to the agency on a routine basis; and

Report on racetrack inspections on a regular basis at the Commission's formal meetings.

Update

The agency has improved its racetrack inspection efforts and has hired a director of racing who is responsible for overseeing the track inspections. Stewards and judges are now assisting in track inspections to ensure compliance with state standards. The agency is currently planning the

development of standard inspection formats for implementation starting in 1997. However, racetrack inspection reports are not currently being provided at formal meetings of the Racing Commission.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission recommendation without modification.

Staff Recommendation

Adopt the Sunset Commission's recommendation.

Fiscal Impact

The Legislature appropriated additional funds for the 1996-1997 biennium to improve racetrack enforcement activities; consequently, no additional funds would be necessary to implement this recommendation.

Sunset Recommendation

4. Increase Texas Racing Commission oversight of programs funded through provisions of the Texas Racing Act.

Changes in Statute

Require TxRC to improve oversight of organizations receiving racing funds as follows:

- **require TxRC to work with the breed registries and any other organization, other than TCADA, receiving racing funds to determine appropriate performance measures to report and monitor;**
- **require annual independent audits including verification of performance reports be sent to TxRC;**
- **authorize TxRC to conduct a follow-up examination of an organization's records if necessary;**
- **authorize TxRC to withhold funds or to require a track to withhold funds if problems are found with expenditure or reporting of funds or performance; and**
- **require the Commission to adopt rules establishing criteria to recognize any organization that represents members of a segment of the racing industry in interactions between the organization and the Commission or a racetrack facility.**

Update

The amount of funds received by the state's breed registries for the Texas Bred Incentive Program has increased significantly. In fiscal year 1995, the amount of money awarded grew to \$4,413,663, an increase of more than \$1.2 million in a one-year time period. The increase is due to the significant growth in simulcasting and a new source of revenue authorized by the Racing Commission.

Because the Sunset bill failed to pass, the degree of oversight of racing industry organizations receiving appropriated funds remains basically unchanged. The Commission and the organizations receiving funds have not yet determined appropriate performance measures to assess the impact of funds being distributed. However, the Racing Commission does now require, by rule, that the breed registries be audited by an independent auditor on an annual basis. The breed registries are in compliance with this requirement.

In addition to the changes mentioned above, significant adjustments occurred in the state's horsemen's organization that represents the state's owners and trainers participating in pari-mutuel racing. The Commission recognized a new official horsemen's organization but did so without establishing any recognition criteria as was recommended by TxRC staff and the Sunset Commission.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission recommendation without modification.

Staff Recommendation

Adopt the Sunset Commission's recommendation.

Fiscal Impact

This recommendation would not result in a fiscal impact to the state. TxRC staff would need to increase its review efforts of financial and performance information submitted by the four approved breed registries and the newly recognized horsemen's organization.

Sunset Recommendation

- 5. Improve the integrity and safety of pari-mutuel racing by making the top regulatory officials at each track directly responsible to the state.

Change in Statute

Require that the Texas Racing Commission employ all stewards and judges.

Update

No additional information.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission's recommendation with two modifications.

Legislative Modifications

- Clarified the procedures for steward or judge selection by specifying that the Commission provide the racetrack with a list of six stewards or judges eligible to serve at the race meeting. Required the Commission to forward the list to the racetrack holding the race meeting and provide an opportunity for review and comment.
- Required the Commission to designate the stewards or judges, and the presiding steward or judge for each race meeting, after reviewing racetrack comments. Authorized the racetrack to submit evaluations of the stewards and judges following a race meeting and authorized the Commission to consider the evaluations in compiling other lists.

Staff Recommendation

Adopt the Sunset Commission's recommendation with the legislative modifications listed above. However, additional concerns about the impact of the legislative modifications have been identified. Agency staff indicates that maintaining a list of six stewards or judges is problematic, particularly with the closing of racetracks and associated reductions in staff.

Fiscal Impact

This recommendation will not result in a net fiscal impact to the state. Costs of the recommended change will be covered by increased track official fees paid by the racetracks.

Sunset Recommendation

6. The Texas Racing Commission should recover costs of criminal history reports.

Changes in Statute

Require the Texas Racing Commission to collect licensing fees that cover the cost of conducting criminal history checks.

Require the Commission to reimburse Department of Public Safety for the costs of criminal history reports.

Update

No additional information.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission's recommendation with two modifications.

Legislative Modifications

- Clarified the Department of Public Safety's (DPS) authority to request fingerprints of a person owning any interest in an application for a racetrack license.
- Clarified that fingerprints be forwarded to the Federal Bureau of Investigation by the Department of Public Safety for central collection to enhance use across state lines.

Staff Recommendation

Adopt the Sunset Commission's recommendation with the legislative modifications listed above.

Fiscal Impact

An estimated amount of \$850,000 in recovered costs would be collected by TxRC, for the biennium, and paid directly to DPS for state and federal criminal history checks. This increase in revenue would be additional funds for DPS and not an increase to the Racing Commission budget. Recovering the costs of background checks could increase license fees by approximately \$39 for new applicants and \$24 for licensees at their five-year anniversary.

Sunset Recommendation

- 7. Continue the Texas Racing Commission for six years to oversee pari-mutuel racing in Texas.

Change in Statute

Continue the Texas Racing Commission for a six-year period and require all rules to be evaluated and either readopted or repealed by January 1, 1998.

Management Action

The Commission and staff should consult with a broad cross-section of the racing industry during the evaluation and development of the rules.

Update

Using two new advisory committees composed of industry representatives, TxRC staff has been coordinating some reviews of current rules and policies. These reviews are resulting in proposals for change to Commission requirements particularly in the areas of pari-mutuel wagering and simulcasting.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission's recommendation with one modification.

Legislative Modification

- Required the Commission, in its review of all rules, to attempt to establish, to the extent feasible, uniform approaches to the regulation of horse racing and greyhound racing.

Staff Recommendation

Adopt the Sunset Commission's recommendation with the legislative modification listed above. This will result in a new Sunset date September 1, 2005.

Fiscal Impact

If the Legislature continues the current functions of TxRC using the existing organizational structure, its annual appropriation of about \$2.7 million would continue to be required for operation of the agency. TxRC also receives annually about \$6.7 million of pass-through funds for the Texas Bred Incentive Program and to pay track officials. The agency would continue to be self-supporting from a portion of wagers made at the tracks and from licensing fees. These revenues are deposited in the General Revenue Fund.

If the Racing Commission were abolished leaving no entity to license racetracks to operate, the General Revenue Fund would experience a loss of about \$7 million per year from the General Revenue Fund's share of pari-mutuel wagers.

Sunset Recommendation

- 8. Clarify language on the illegal influence of race outcome in Sec. 14.03 of the Texas Racing Act to remove ambiguity identified by local prosecutors enforcing the law.

Change in Statute

Improve drafting of Article 14 of the Texas Racing Act to revise vague, ambiguous, and unenforceable provisions related to criminal offenses.

Staff Comment

At the direction of the Sunset Commission, TxRC and DPS staff worked together to rewrite the criminal offense provisions of the Act. Legal counsels from each agency and the Texas Legislative Council drafted extensive revisions that were then included in the House Committee Substitute for H.B. 1305. These provisions are summarized in the right hand column with some modifications made during the legislative process.

Update

No additional information.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission's recommendation with four modifications.

Legislative Modifications

- Consolidated all criminal offenses into one article, separating them from rule violations. These include unlawful influence on racing, bribery, corrupt influence, pari-mutuel racing without a license, and offenses involving minors.
- Added several new criminal offenses such as illegal access to a racing facility, hindering a lawful search, forging a pari-mutuel ticket, and impersonating a license holder.
- Revised language to conform the Racing Act with the Texas Penal Code in areas such as touting, making false statements, bribery, and corrupt influences.
- Clarified the authority of TxRC and DPS to conduct a search and seize contraband.

Staff Recommendation

Adopt the Sunset Commission's recommendations with the legislative modifications listed above.

Sunset Recommendation

- 9. **Redefine statutory language prohibiting automatic banking machines at racetracks to more accurately refer to automatic teller machines.**

Change in Statute

Prohibit patrons from using automated methods for obtaining additional money while on the premises of a racetrack.

Update

No new additional information.

H.B. 1305, Conference Committee Report

The Conference Committee adopted the Sunset Commission's recommendation with one modification.

Legislative Modification

- Made an exception for a machine that uses an automated method to access only a person's checking account at a bank or other financial institution, including those requiring the presence of another person to initiate access. Required an association that allows such a machine at the racetrack to charge a fee of \$1 to be forwarded to the Commission. Required the Commission to adopt rules relating to the collection, reporting, and auditing of the transaction fee. The fees shall be sent to the Commission and credited to the General Revenue Fund to repay any debt owed by the Commission for its start-up costs, or if no amount is owed, deposited to the credit of the General Revenue Fund.

Staff Recommendation

Staff makes no recommendation in this area.

ACROSS-THE-BOARD RECOMMENDATIONS

Texas Racing Commission Status Report

Across-the-Board Recommendations

Across-the-Board Recommendations Included in H.B. 1305, Conference Committee Report
1. Require at least one-third public membership on state agency policymaking bodies.
2. Require specific provisions relating to conflicts of interest.
3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
5. Specify grounds for removal of a member of the policymaking body.
6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
7. Require training for members of policymaking bodies.
8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
9. Provide for public testimony at meetings of the policymaking body.
10. Provide for notification and information to the public concerning agency activities.
11. Require the agency to comply with the state's open meetings law and administrative procedures law.
12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
14. Require information to be maintained on complaints.
15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
16. Require development of an equal employment opportunity policy.
17. Require the agency to establish career ladders.
18. Require a system of merit pay based on documented employee performance.

Texas Racing Commission Status Report

Across-the-Board Recommendations

Across-the-Board Recommendations Included in H.B. 1305, Conference Committee Report
1. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
2. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
3. Authorize the staggered renewal of licenses.
4. Authorize agencies to use a full range of penalties.
5. Specify disciplinary hearing requirements.
6. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.

Staff Recommendation: Adopt the Sunset Commission's recommendations.

OTHER LEGISLATIVE MODIFICATIONS

Texas Racing Commission Status Report

Other Legislative Modifications in H.B. 1305 Conference Committee Report

Off-Track Betting

1. Authorized off-track betting (OTB) through registered simulcasting facilities by allowing each track to have two OTB sites. Required the Racing Commission to establish all OTB regulations before facilities could begin operating and required the Comptroller to certify that sufficient financial controls exist.
2. Provided the Racing Commission with full authority to regulate simulcast facilities including authority to take disciplinary action against racetracks for any violations.

Pari-Mutuel Racetrack Operations

3. Allowed sale of lottery tickets at racetracks.
4. Allowed cross-species simulcasting so that greyhound simulcast signals could be received by the horse tracks and horse simulcast signals could be received by the greyhound tracks.
5. Changed residency requirements for racetrack licensure so that if an applicant is a publicly traded company and the racetrack facility is within 100 miles of the Texas-Mexico border, the applicant would no longer have to be a Texas resident of 10 years, be incorporated within the state of Texas, or have the majority of corporate stock owned by Texas residents.
6. Allowed off-duty police officers employed as racetrack security officers to carry firearms at racetracks.

Other General Provisions

7. Changed the method that the Racing Commission uses to repay its general revenue debt by allowing the Comptroller to credit the Commission's debt balance in an amount equal to 20 percent of the state tax revenue generated by racing.
8. Required a two percent grant from the amount set aside for the state greyhound breed registry to go to a greyhound adoption service. Also, allowed the Commission to adopt standards relating to greyhound farms.
9. Authorized city-operated tracks to conduct an annual race meeting of not more than 16 days.
10. Eliminated exemption from criminal offense for a member of a recognized Texas Indian Tribe wagering on a greyhound or horse race, live or simulcast and not supervised by the Commission, conducted on an American Indian reservation or trust land.

Staff Recommendation: Staff recommends these changes be pursued through separate legislation.

BACKGROUND SECTION

Texas Racing Commission Status Report

Background Section

Agency History

In 1986, the 69th Legislature passed the Texas Racing Act to allow pari-mutuel wagering on horse and greyhound races in Texas, with approval by the voters in a statewide referendum. The voters approved pari-mutuel racing in November 1987. The Act created the Texas Racing Commission (TxRC) to regulate pari-mutuel racing and to encourage the economic and agricultural development effects of racing.

The Act set the state pari-mutuel tax rate at five percent of all money wagered at horse tracks and six percent at greyhound tracks. It also required licensure for both racetracks and persons involved with pari-mutuel racing, set minimum betting age, prohibited wagering by telephone or on credit, and made race animals and licensees subject to drug testing.

TxRC was granted law enforcement powers including the authority to award and suspend licenses and assess fines for violations of the Act or rules of the Commission.

Since its creation in 1986, TxRC has been responsible for:

- licensing racetracks and supervising every horse or greyhound race involving bets on the results;
- adopting rules and procedures for racing conduct;
- regulating and supervising everyone except patrons at each racetrack; and
- processing complaints and disciplining violators of the Racing Act or the Commission's rules.

Today, Texas is one of 44 states and the District of Columbia with legal pari-mutuel wagering. All of these states have created a government entity to regulate the industry.

The Legislature revised the Racing Act in 1991, lowering the state pari-mutuel tax and authorizing simulcast races televised from other locations, subject to Commission rules.

Polymaking Structure

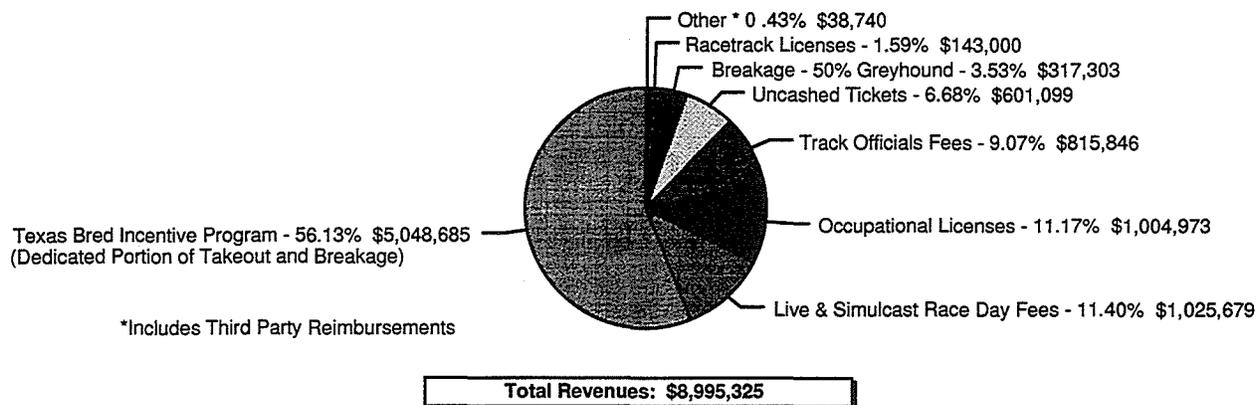
The Texas Racing Commission consists of eight members: six are appointed by the Governor with the advice and consent of the Senate, and two are ex officio members - the chair of the Texas Public Safety Commission and the Comptroller of Public Accounts.

Among the six appointed members, two must be licensed veterinarians, one specializing in the treatment of large animals and one in small animals. Two of the four other members must have horse racing knowledge or experience and the other two must have greyhound racing knowledge or experience.

These members, along with the large-animal veterinarian for horses and the small-animal veterinarian for greyhounds, comprise the two separate sections of the Commission. The two ex officio members sit on both sections. The six appointed members serve staggered six-year terms.

This structure divides the Commission into three decision-making bodies. On matters that apply to both horse and greyhound racing, the Commission acts as a single body. On matters relating primarily to horse or greyhound racing but not to each other, the Commission acts as two separate bodies.

**Sources of Revenue
Fiscal Year 1995**



The Act requires the Governor to designate the chair of the Commission. The Commission has adopted a rule for electing the vice-chair from the section of which the chair is not a member.

On average, the full Commission meets nine times a year, with each panel having an additional separate meeting. In fiscal year 1995, the Commission met five times and the individual panels did not meet.

Funding and Organization

TxRC is primarily funded by fees assessed on racetracks and occupational licensees. Because the Legislature intended racing regulation to both support itself financially and to generate state revenue, TxRC sets application, license, race day, and track officials' fees for racetracks at levels to cover its costs.

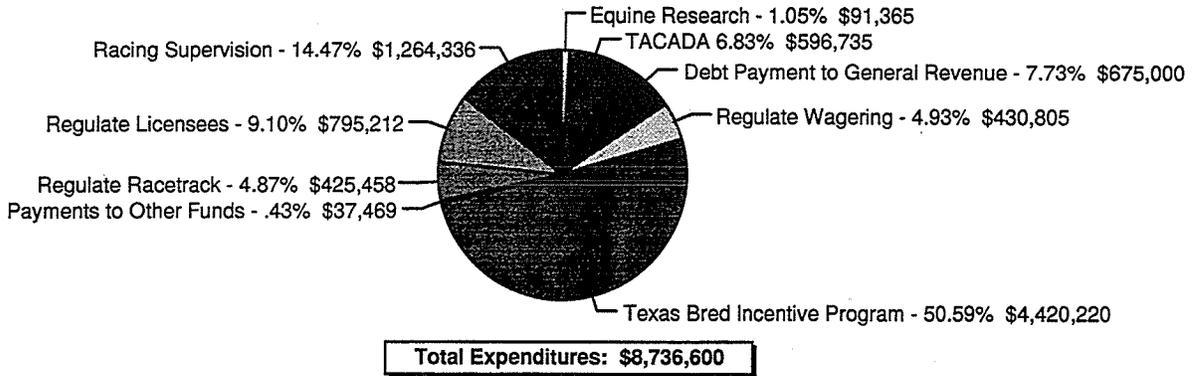
Another major source of funding for TxRC comes from 50 percent of the "breakage" obtained from the money bet on greyhound races. Breakage is the amount left over after payoffs to winning ticket holders are rounded down to the nearest dime. Revenue from uncashed winning tickets at horse and greyhound tracks, called "outs," pays for animal drug testing at the tracks.

TxRC also collects money from wagering at the tracks to pass on to breed registries for the promotion of Texas-bred race animals. All of the agency's revenues are deposited into the General Revenue Fund. The graph, *Sources of Revenue-Fiscal Year 1995*, displays this information.

TxRC implemented its five planning strategies with an annual budget of about \$7.3 million. Of this \$7.3 million, about \$4.4 million in pass-through funds is distributed through the Texas Bred Incentive Program. In addition, about \$1,989,000 was transferred from racing revenues to the Equine Research Account Advisory Committee, the Texas Commission on Alcohol and Drug Abuse, and general revenue fund. The graph, *Texas Racing Commission Expenditures-Fiscal Year 1995*, shows a breakdown of the agency's expenditures for each strategy. The chart, *Purchases from HUBs-Fiscal Year 1995*, shows participation of historically underutilized businesses (HUBs) in TxRC's contracts for goods and services in 1995.

Purchases from HUBs Fiscal Year 1995	
Total Purchases of Goods and Services	\$44,645
Total Spent with Certified HUBs	\$7,451
Percent Spent with Certified HUBs	16.7%
Statewide Average	15.9%
State Goal	30%

**Texas Racing Commission Expenditures
Fiscal Year 1995**



Although TxRC was intended to be self-supporting, the Legislature appropriated about \$8 million in general revenue funds to get the agency started. TxRC must reimburse general revenue for this start-up money, plus accrued interest. The chart, *Texas Racing Commission, General Revenue Payback*, shows TxRC's schedule of payments and the remaining balances through fiscal year 1995.

TxRC was staffed with 66 full-time equivalent employees in fiscal year 1995. The agency's central office in Austin housed 23 employees while the remaining 43 employees staffed the agency's field offices at the racetracks.

The central office supervises and coordinates the activities at and among the racetracks, maintains a database of licensing, regulation and wagering activities, and performs day-to-day administrative activities.

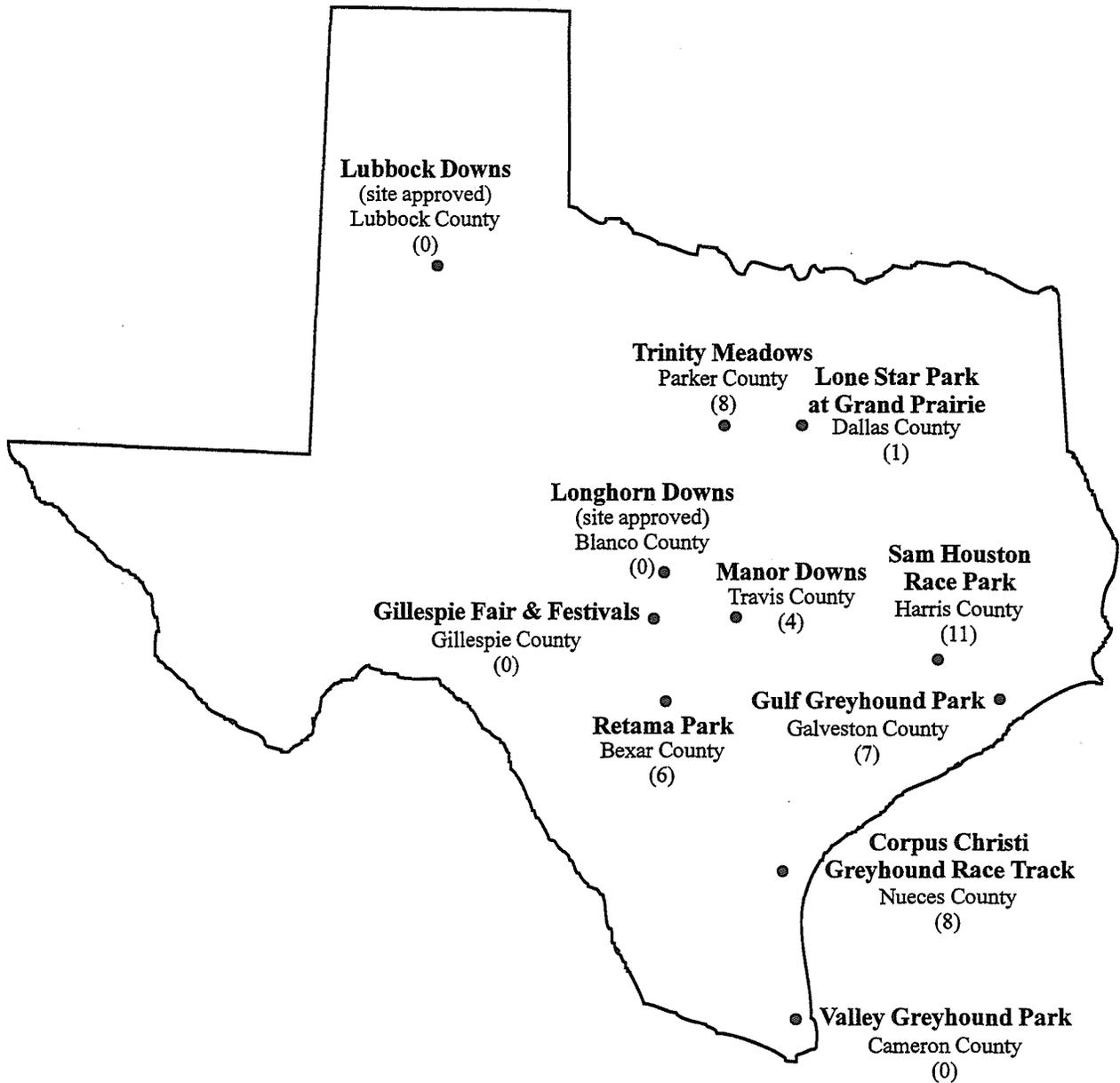
The staff in the seven permanent TxRC field offices perform on-site licensing, monitoring,

and enforcement functions at each of the racetracks. Field offices are located at all tracks except at the Gillespie County Fair which is staffed by seasonal employees of TxRC. The map, *Pari-Mutuel Racetracks*, shows the location of the TxRC field offices and the number of staff assigned to each one.

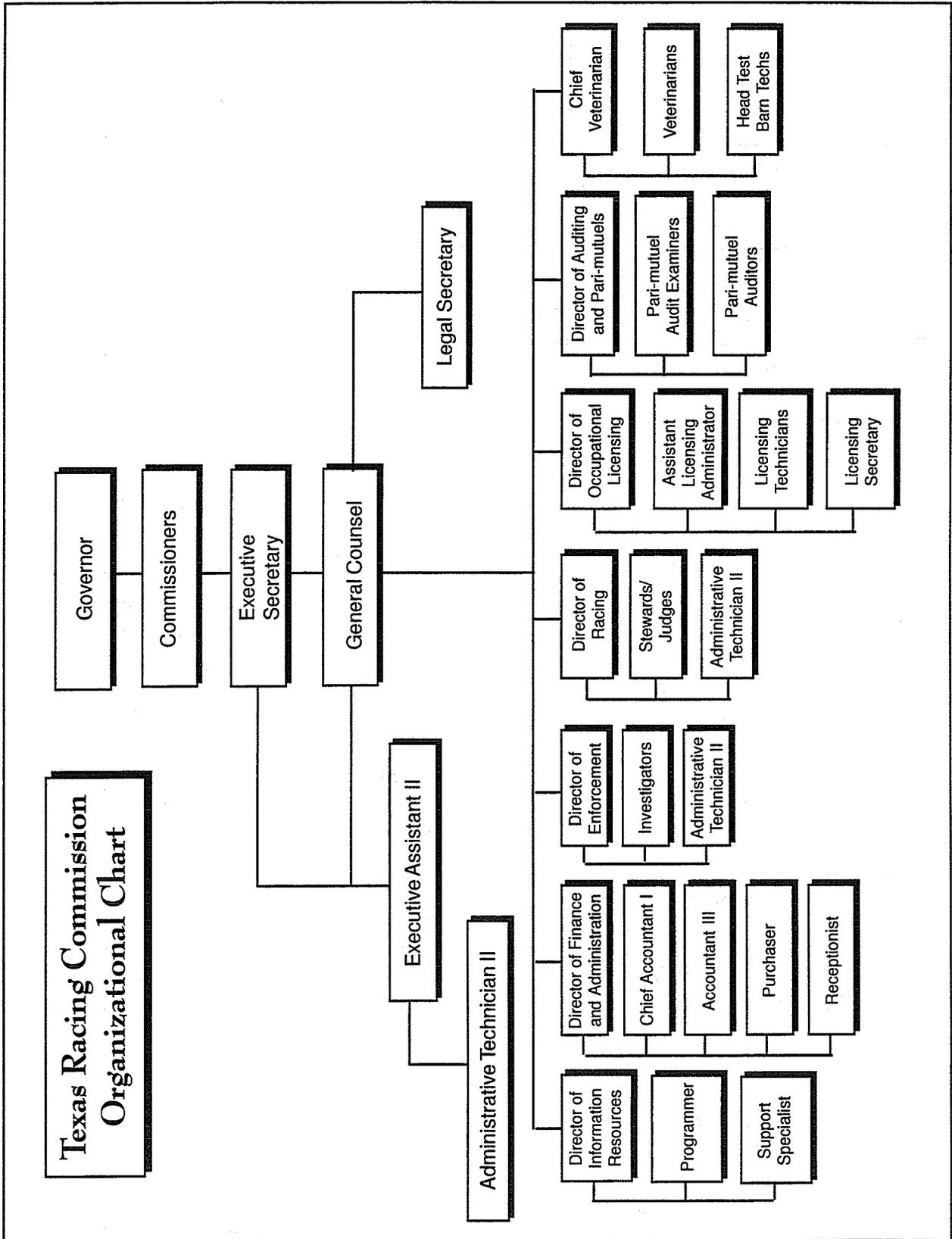
The organizational structure and allocation of staff among the agency's divisions is illustrated in the chart, *Texas Racing Commission Organizational Chart of Budgeted Positions*. A comparison of the agency's work force composition to the state's

Texas Racing Commission, General Revenue Payback							
Fiscal Year	Amount General Revenue Appropriated	Amount General Revenue Expended	Interest Rate	Interest Accrued	Amount Paid		Remaining Balance
					Principal	Interest	
88 TxRC	\$750,000	\$220,898	6.75%	\$25,206	0	0	\$445,307
88 DPS	\$500,000	\$199,203	12%				
89 TxRC	\$750,000	\$1,409,165	12%	\$246,708	\$420,101	\$78,337	\$3,465,172
89 DPS	\$2,500,000	\$1,862,430	12%				
90	\$3,031,228	\$2,247,022	12%	\$527,412	0	0	\$6,292,606
91	\$2,490,470	\$2,548,808	12%	\$815,162	0	0	\$9,603,576
92	0	0	12%	\$968,091	0	\$150,000	\$10,421,667
93	0	0	12%	\$968,091	0	\$150,000	\$11,239,758
94	0	0	6.75%	\$544,551	0	\$2,000,000	\$9,784,309
95	0	0	6.75%	\$544,551	0	\$675,000	\$9,653,860

Pari-Mutuel Racetracks of Texas



() indicates the number of TxRC staff at racetrack field offices



Equal Employment Opportunity Statistics Fiscal Year 1995							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	State Goal	Agency	State Goal	Agency	State Goal
Officials/Administration	5	0%	5%	0%	8%	40%	26%
Professional	55	0%	7%	3.64%	7%	32.93%	26%
Technical	1	0%	13%	0%	14%	0%	41%
Para-Professionals	14	0%	25%	7.14%	30%	71.43%	55%
Administrative Support	19	11.11%	16%	31.58%	17%	94.74%	84%

minority work force goals is shown in the chart, *Texas Racing Commission Equal Employment Opportunity Statistics, for fiscal year 1995.*

Agency Operations

TxRC has two main goals, identified in its strategic plan, that match the agency’s major functions: regulating racetracks and occupational licensees. To accomplish these goals, TxRC has five strategies that coincide with its primary operations. The agency regulates racetracks through three major strategies:

- overseeing racetrack operations;
- regulating pari-mutuel wagering; and
- supervising the Texas Bred Incentive Program.

TxRC principally regulates occupational licensees through two strategies:

- enforcing racing laws and rules against occupational licensees; and
- ensuring race animals are free of prohibited drugs and other substances.

These strategies are discussed in the following section.

Overseeing Racetrack Operations

TxRC works to ensure the integrity of racetrack operations by licensing only reputable persons to own and operate a racetrack. Racetrack license applications require detailed personal and financial

information about potential track owners and operators. The agency’s enforcement investigators work with the Texas Department of Public Safety to discover any criminal histories of applicants.

TxRC also reviews all contractors with whom the racetrack wants to do business,

so that organized crime does not infiltrate a track’s operations. The agency must also approve all contracts the track enters into, even after a racetrack license is issued. Overseeing racetracks also entails responding to patrons’ complaints about the facilities’ operations. In fiscal year 1995, the agency responded to 74 such complaints.

Regulating Pari-mutuel Wagering

Pari-mutuel wagering drives the Texas racing industry. Racetracks, race participants, and owners of Texas race animals all depend on the money bet at the track. If winning bettors do not receive prompt and accurate payment, they lose trust in pari-mutuel wagering and the racing industry loses its mainstay. To help ensure the integrity of the wagering system, TxRC’s pari-mutuel division regulates wagering at Texas racetracks. The division certifies the accuracy of the computer that keeps track of the bets and calculates the payoffs, called the totalisator machine. The agency’s pari-mutuel auditors monitor the transactions handled by pari-mutuel tellers, who take the bets, and the cashiers, who pay them off.

In addition, pari-mutuel auditors keep track of uncashed winning tickets -"outs"- the proceeds from which are primarily used to cover the costs of drug testing race animals, verify purse accounts to make sure winning entries get correct awards, and work with TxRC investigators to prevent illegal wagering at the track. The agency investigated 15

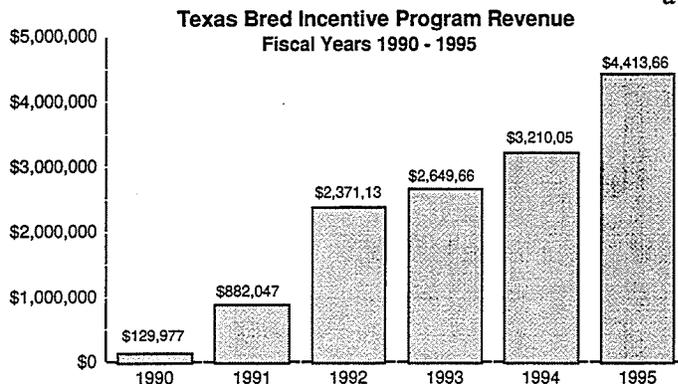
reports of illegal wagering in fiscal year 1995, disciplining or excluding eight persons for such violations.

Supervising the Texas Bred Incentive Program

The Texas Bred Incentive Program encourages the breeding of Texas race animals by supplementing purses won by race animals bred in Texas and offering special events called stakes races in which only Texas-bred animals run. The Texas-bred purse supplements are funded by breakage monies -- the amount left over after payoffs to winning ticket holders are rounded down to the nearest dime. Awards for Texas-bred stakes races are funded by a portion of special wagers known as exotics-bets placed on combinations of horses or greyhounds to finish in a certain order.

Breed registry organizations receive the breakage money from TxRC. Racetracks retain the portion of exotic wagers for the Texas-bred stakes races until those races are run. The breed registries distribute the purse supplements to owners and breeders of Texas-bred horses that have finished in the top three places of a race. For greyhounds, only the owner of the winning dog receives the incentive award. The pari-mutuel division audits the stakes-award accounts maintained by the racetracks.

The breed registry program continues to grow. As shown in the chart below, the amount of funds grew to more than \$4 million in fiscal year 1995.



Enforcing Racing Laws and Rules Against Occupational Licensees

TxRC licenses all racing participants, including jockeys, pari-mutuel tellers, concession workers, stable workers, and track security personnel. Occupational licensees must undergo fingerprinting and criminal history investigations. Once licensed, a person becomes subject to investigations and disciplinary actions for violating the Racing Act or TxRC's rules. Such violations may include a jockey's interfering with the running of a race or a pari-mutuel teller's taking bets after a race has started.

In such events, a board of racetrack officials—called stewards at horse tracks and racing judges at greyhound tracks—conducts hearings to determine whether an administrative fine or license suspension is appropriate. In fiscal year 1995, the boards of stewards and judges conducted 1,364 disciplinary hearings and issued 1,095 rulings against occupational licensees, suspending 268 occupational licenses.

Ensuring Race Animals are Free of Prohibited Drugs and Other Substances

Occupational licensees who are responsible for the race animals may be tempted to drug a horse or greyhound to give it a competitive edge. Trainers and kennel operators licensed by TxRC are the absolute insurers of an animal's condition. As a result, they are subject to disciplinary action when a horse or greyhound turns up with prohibited substances in its system. At each track, TxRC-employed veterinarians supervise the collection of blood or urine samples from race animals. TxRC generally tests the winners and other animals selected by the stewards or judges. The agency's enforcement investigators then oversee delivery of the samples to the sanctioned testing lab at Texas A&M University.

Where prohibited drugs or higher-than-allowed levels of legal medications are detected, the board of stewards or judges considers whether to take disciplinary action against the responsible occupational licensee. TxRC's veterinarians also decide whether race animals are healthy enough to compete or may be administered sanctioned medications.

In fiscal year 1995, 67 out of 24,141 greyhound samples and 91 out of 12,281 horse samples tested positive for unauthorized substances.

**EXCERPTS FROM STAFF REPORT
OCTOBER 1994**

ISSUE 1



PRESCRIBE PUBLIC MEMBERSHIP ON THE COMMISSION AND IMPROVE THE OPERATING STRUCTURE.

BACKGROUND

The Texas Racing Commission (TxRC) is an eight-member board. The Governor appoints six members with the consent of the Senate, and two members serve in an *ex officio*, voting capacity. The appointed members serve staggered six-year terms, and the *ex officio* members serve as long as they hold their other offices. The Governor designates the presiding officer.

Two of the appointed members must be veterinarians—one who specializes in treating small animals and another who specializes in large animals.

Of the remaining appointed members, two must have knowledge or experience in greyhound racing and two must have knowledge or experience in horse racing. The two *ex officio* members are the State Comptroller and the chair of the Texas Public Safety Commission.

The Commission is divided into two sections that deal separately with greyhound and horse racing matters. Two appointed members

with greyhound racing experience and the small-animal veterinarian make up the greyhound section, and the two members with horse racing experience and the large-animal veterinarian make up the horse section. The two *ex officio* members sit on both sections.

This structure divides the Commission into three decision-making bodies. On matters that apply to both horse and greyhound racing, the Commission acts as a single body. On matters that relate primarily to horse or greyhound racing but not the other, the Commission acts as two separate sections. Consequently, the Commission adopts rules and takes regulatory action without a full member vote.

The Commission must meet at least six times a year. On the average, the full Commission meets nine times a year, while the horse and greyhound sections meet separately about once a year. In fiscal year 1993, the Commission met seven times as a single body, and the horse section met twice by itself. The greyhound

The Commission is divided into two sections that deal separately with greyhound and horse racing matters.

With racetrack licensing largely over, the original reason for separating the Commission into two sections no longer applies.

section did not meet independently during fiscal year 1993.

The review focused on the effectiveness of a structure that separates the Commission into three decision-making bodies as well as the need for particular types of experience on the Commission.

FINDINGS

▼ Dividing the Commission into separately acting sections no longer serves a valid purpose.

▶ With racetrack licensing largely over, the original reason for separating the Commission into two sections—to balance the competing interests of the horse and greyhound industries—no longer applies.

▶ The Commission's initial duty in determining racetrack locations has been completed. The Racing Act limits the number and location of greyhound and Class 1 horse racetracks, and prevents the Commission from creating competition between them in the same county.

▶ The only greyhound and horse racetracks that could possibly be in competition with each other—the greyhound track in Galveston County and the Class 1 horse track in Harris County—are

already licensed and operating.

Persons in the racing industry have pointed to the Commission's decisions as to when the tracks may run their races as another potential area of conflict between horse and greyhound racing.

The Racing Act, however, guarantees that greyhound racing licensees may race virtually year round, so allocation of greyhound race dates is not an issue the Commission could decide to any horse track's detriment.

▶ Simulcast race days are not a source of conflict between greyhound and horse racing because the statute prohibits greyhound racetracks from receiving simulcasts of horse races, and vice-versa.

▶ For both greyhound and horse racing, the statute establishes the takeout—that is, the portions of the total amount wagered dedicated to the purses, breed registries, state tax, and racetracks. The Commission cannot affect the income of the participants in either the greyhound or horse racing industry by changing the takeout structure.

▼ No other state regulatory board or commission is

divided into separate sections.

▶ Although boards often use subcommittees to perform their work, the entire board generally makes final decisions based on the work of the subcommittees.

▶ In comparison to TxRC, several boards have divergent responsibilities, yet they still take action as a single unit.

- The Texas Animal Health Commission, composed of 12 members, is responsible for enforcing health standards for both traditional and exotic livestock. The regulatory efforts in these two areas are often quite different. However, that commission does not break into separate sections to make decisions in their different areas of responsibility.

- The Texas Parks and Wildlife Commission, made up of nine members, regulates varying areas of responsibility including state parks, historical sites, hunting, and fishing. Nevertheless, the commission is not divided among its various duties for the purpose of taking final actions.

- The Texas Board of Health, with six members, oversees diverse health-care programs, facilities, and

providers but is not partitioned into separate decision-making bodies.

▼ **The divided structure of the Commission has proven to be problematic.**

▶ The full Commission does not participate in facility licensing decisions. Each section consists of three appointed members and the two *ex officio* members or five in all. Three members of a section constitute a quorum. Consequently, two members out of an eight-member board could decide matters affecting a racetrack license worth millions of dollars.

▶ Three of the most important and controversial matters to come before the Commission were decided by section vote. These included the licensing of the Class 1 horse racetracks in the Dallas-Fort Worth and Houston areas and the licensing of the greyhound racetrack in Galveston County. Applications for these licenses resulted in hotly contested administrative hearings and numerous lawsuits.

Despite the need for full participation by all the commissioners, the two sections considered the greyhound and horse racetrack licenses separately, without the benefit

No other regulatory board or commission in Texas divides into separate sections to make policy decisions.

The separate panels have created inconsistent rules regarding simulcasting and involvement of industry representatives.

of all the members' experience and knowledge. The presiding officer of the whole Commission could not participate in the licensing proceedings for the Dallas-Fort Worth area Class 1 horse track because she was appointed to the greyhound section.

Although facility licensing activities of the TxRC are largely completed, additional matters regarding the regulation and viability of those tracks will continue to come before the TxRC.

▮ The separate panels have created inconsistent rules regarding simulcasting and involvement of industry representatives.

The horse section has adopted a rule setting minimum purses for simulcast races at the same level as purses for live races, but the greyhound section has not. Instead, minimum purses for simulcast greyhound races are set in contracts between the kennel operators and greyhound racetrack operators, with the approval of the greyhound section.

The horse section has also adopted rules requiring racetrack operators to negotiate with the official representative of horse owners and

trainers on all simulcasting matters. The greyhound section, however, has not adopted a similar rule.

▼ **Other states' racing commissions do not split into separate panels representing horse and greyhound racing.**

▮ A survey of the 19 pari-mutuel wagering states that authorize both horse and greyhound racing indicates that none divides its commission into separate panels.

▼ **The general public is not fully represented on the Commission.**

▮ All the appointed commissioners must either have knowledge or experience in pari-mutuel racing or be a licensed veterinarian.

▮ Although the two *ex officio* members act in the interests of the general public, they serve on the Commission to fill specific needs related to the oversight of pari-mutuel revenue and public safety concerns.

▼ **The lack of public members on the Commission is inconsistent with the Sunset Commission's across-the-board approach to require one-third public member-**

ship on state boards and commissions.

▶ The review could not identify any substantial reasons why the standard Sunset approach should not apply.

▶ Most other Texas state boards and commissions have public membership. Of 105 state boards and commissions analyzed, 77, or 73.3 percent, required some public membership. One-quarter of those bodies required all or a majority of their members to represent the general public.

▼ **Previous knowledge or experience in greyhound or horse racing or veterinary practice is not necessary to perform the Commission's regulatory duties.**

▶ Major duties such as rulemaking, allocating race days, and hearing appeals of disciplinary actions against licensees do not require racing experience or veterinary experience to make sound and fair decisions in the best interest of racing and the public.

The Commission has already promulgated the basic rules that the industry operates under, including rules regarding the safety of race animals.

Staff, in consultation with industry representatives, can provide the technical expertise that may be needed to fine tune the rules. For example, TxRC employs 12 licensed veterinarians.

In reviewing appeals of disciplinary actions, the main qualification should be impartiality, not affiliation with the industry being regulated.

▶ Experience in a particular industry being regulated is not usually required to serve on a regulatory board.

- The Texas Natural Resource Conservation Commission regulates air and water quality, water utility rates, and hazardous-waste disposal. Despite having duties in these complex areas, that commission is made up entirely of public members.

- The Texas Public Utilities Commission deals with highly technical matters in regulating electric and telephone utility rates. Yet, only public members serve on that body.

▼ **Other states provide public membership on their racing commissions.**

▶ Out of 14 major and neighboring pari-mutuel racing states surveyed, all but two require public member-

The main qualification should be impartiality, not affiliation with the industry being regulated.

ship on their racing commissions. Nine of those states require all or a majority of their members to represent the general public, without having specialized expertise or knowledge.

CONCLUSION

The present structure of the Texas Racing Commission is flawed. Overall, the Commission is structured to provide an opportunity for input by the regulated community. However, the standard approach in the state is to

provide expertise on boards and commissions only when necessary for decision making—not to allow for representation of regulated interests.

This flawed structure is aggravated by allowing the Commission to make decisions through separate sections that exclude some members of the Commission. With racetrack licensing largely finished, the reasons for regulating racing under this unusual structure no longer pertain.

Recommendations

Changes in Statute

- **Modify the composition of the Commission to include six public members who have general knowledge of business or agribusiness (retaining the two *ex officio* members).**
- **Remove existing requirements for the Commission to operate through separately acting sections representing horse and greyhound racing.**

Management Action

- **The Commission should work with a broad range of industry representatives during the development and review of rules and any other matters where outside expertise and early input would be helpful.**

This recommendation would change the Commission's membership to six public members, the Comptroller of Public Accounts, and the chair of the Texas Public Safety Commission. This approach would delete the requirements that four commissioners have knowledge or experience

particularly related to greyhound or horse racing and that two commissioners be veterinarians. Appointment of public members would not exclude persons with backgrounds in racing or veterinary practice from serving on the Commission, as long as they do not violate the usual conflict of interest provisions. The whole Commission would make

OCTOBER 1994

SUNSET STAFF REPORT ISSUE 1
TEXAS RACING COMMISSION

13

all decisions related to the regulation of pari-mutuel racing in Texas.

Concern has been expressed that the regulation of pari-mutuel racing is a complex area requiring special expertise. Yet, other pari-mutuel racing states have found public membership to be an asset in a rapidly changing industry. A commissioner who owns horses or raises greyhounds is not necessarily the person best equipped to deal with interstate simulcasting arrangements or intricate racetrack financing schemes.

When special expertise in the racing industry is needed, the Commission can rely on both its professional staff and the expertise available within the racing community. In addition, the 12 veterinarians on the Commission's staff will be available to provide input as needed. These veterinarians work with race animals on a day-to-day basis.

This recommendation would provide more uniform policymaking by the Commission. Instead of adopting divergent rules for horse and greyhound racing, a unified Commission would provide consistent regulation for the racing industry in Texas as a whole. Under the recommended approach, current members would be allowed to serve out their terms. Based on the current membership of the Commission, the terms of one horse section member and one greyhound section member will expire at the same time, thereby avoiding an imbalance between horse and greyhound members during the transition. TxRC veterinarians will continue to provide expert medical opinions to the Commission on animal health and safety issues.

FISCAL IMPACT

This recommendation would not have a fiscal impact to the state.

14

ISSUE 2



FOCUS RACING COMMISSION ACTIVITIES ON REGULATION OF THE INDUSTRY, NOT PROMOTION.

BACKGROUND

The Legislature created the Texas Racing Commission to regulate the pari-mutuel industry and at the same time to improve the state's economy. The Racing Act states that one of the purposes of the Act is to increase agricultural development and expand the economy through increased jobs and tourism.

State government has often played a role in helping industries get started and develop markets. Helping businesses start and grow profitably helps build the state's economic base and creates jobs for Texans.

Two agencies in Texas are responsible for promoting and marketing industries. The Texas Department of Commerce (Commerce) is the state's lead agency for economic development. With the exception of agriculture, which is promoted by the Texas Department of Agriculture (TDA), Commerce works with all industries in Texas.

TxRC is not directly involved in promoting the racing industry at this time. However, the Racing Act generally states that the intent

of legalizing the pari-mutuel industry was to help agricultural development and expand the economy. As a result, members of the racing industry have voiced interest in having the agency directly promote the industry.

This review examined the development of the racing industry in Texas to determine what role state government should have in promoting consumer participation in racing. The review also examined the importance of separating the roles of regulation from promotion.

FINDINGS

▼ **State economic development was a goal of the Legislature in adopting the Texas Racing Act.**

► The Legislature set out the following purpose in adopting the Texas Racing Act: "to encourage agriculture, the horse-breeding industry, the horse-racing industry, the greyhound breeding industry, tourism, and employment opportunities in the state related to (racing) and provide for strict regulation and

The Legislature created the Texas Racing Commission to both regulate the pari-mutuel industry and improve the state's economy.

control of pari-mutuel wagering in connection with that racing.”

▼ **When the Legislature wants specific marketing programs to help industries, it provides specific statutory direction to do so.**

► The Texas Racing Act presently contains no specific authority or program direction to operate promotional efforts.

► TxRC's original enabling legislation provided for a small portion of wagers to be used by an approved organization to promote interest in horse racing and to encourage research, promotion, and discussion of methods related to racing, breeding, and marketing of racehorses. Agency staff indicated that the racing industry could not agree on an organization to perform these activities. This provision was removed from statute in a 1991 revision of the Racing Act.

► Financially struggling racetracks, competition from the state lottery, and proposals for casino gambling have caused TxRC to closely review its statutory responsibilities to determine if marketing and promotion are part of its responsibilities as outlined

by the Legislature. The Racing Act includes general references to TxRC promotion and encouragement of the industry, but nothing specifically authorizes a promotional effort by the agency.

▼ **The TxRC's planning and budget documents show the agency's intent to become involved in promotion of the racing industry.**

► The TxRC has addressed the issue of promotion in its strategic plan and Legislative Appropriation Request (LAR). In its strategic plan, TxRC measures performance by the percentage increase in attendance and wagering at the racetrack. Both are measures of expansion of the industry instead of the agency's ability to effectively regulate the industry.

► The agency requested funds in the LAR to implement a public information program to increase public confidence in the industry. Again, this would be considered a promotional activity as opposed to a regulatory one.

▼ **State laws generally separate the functions of promoting and regulating an industry.**

► Regulatory and promotional roles are usually sepa-

rated by agency boundaries. For example, the Texas wine industry is regulated by the Texas Alcoholic Beverage Commission while Commerce and TDA promote the industry.

▼ While the state's efforts to promote and develop business are generally divided between Commerce and TDA, neither agency is clearly responsible for development of the racing industry.

▶ Racing as an industry could be defined as agricultural but is primarily tourism and business development.

▶ Discussions with Commerce staff indicate that Commerce has provided some services to racetracks and could assume additional duties for racetrack promotion. In 1994, Commerce administered a \$10.2 million Texas tourism promotion campaign funded by dedicated hotel/motel tax revenue.

CONCLUSION

The Legislature and the public authorized pari-mutuel racing to expand the economy and generate additional tax revenue. However, the racing industry has not met original projections for attendance and the revenues that patrons bring. As a result, TxRC has moved towards beginning some efforts to promote the racing industry.

However, the Legislature does not generally direct an agency to be both regulatory and promotional to avoid blurring the responsibilities of protecting the public with those of helping the industry.

Instead, the Legislature generally relies on Commerce and TDA to develop markets and promote industries. However, neither Commerce nor TDA have been assigned any responsibility for development of the racing industry.

Having both regulatory and promotional duties can blur the responsibilities of protecting the public versus helping the industry.

Recommendations

Changes in Statute

- Clarify that the Texas Racing Commission is not responsible for promoting the racing industry.
- Direct the Commerce Department to assume responsibility for the promotion of racing if the Legislature authorizes economic development funds for this purpose.

This recommendation would remove provisions in the Racing Act that can be interpreted to place TxRC in the position of both regulating and promoting the racing industry. If, at some time in the future, the Legislature determines that a portion of racing-related funds should be used for promoting the industry, Commerce would become involved depending on the type of promotional activity desired.

FISCAL IMPACT

This recommendation would not result in a fiscal impact to the state.

ISSUE 3



IMPROVE TxRC'S RACETRACK INSPECTION AND ENFORCEMENT ACTIVITIES.

BACKGROUND

Since 1987, the Texas Racing Commission has issued licenses for three greyhound tracks and twelve horse tracks. All of the greyhound tracks are operational. Five of the horse tracks are operational, one is under construction and two are actively planning construction. The remaining four tracks either went out of business or never opened.

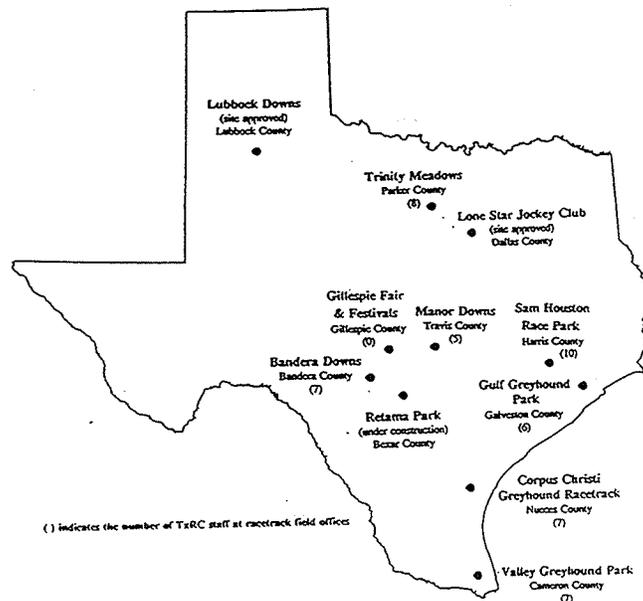
At the start of the licensing process, license applicants submit plans that describe the site, racetrack, public areas, utilities, and facilities for animals and people. The Commission has established minimum standards for design and construction of racetrack facilities.

After issuing the licenses, the Commission oversees actual construction of the tracks. TxRC oversight of track construction falls into two categories — approval of plan changes after construction begins and inspection of on-going construction. Having learned from overseeing the first tracks built, the enforcement staff is now performing more frequently scheduled inspections during construction, but there is no

consistent method of overseeing track construction.

TxRC enforcement staff investigators are currently responsible for conducting ongoing compliance inspections. The investigators conduct one broad inspection before a track opens and then usually before the start of each racing meet. These inspections check items ranging from the public address system, photofinish equipment, and lighting to track security, track length, and racing surface.

The executive secretary attempts to gain racetrack compliance by persistent contact and commissioner involvement.



Without prior approval, the view from the stewards booth at Sam Houston Race Park was compromised to accomodate a private suite next door.

Individual investigators or the director of enforcement write up, in memo form, the results of construction-phase and ongoing compliance inspections. Then, the executive secretary sends letters to the racetrack requesting corrective action. When problems arise, the executive secretary attempts to gain compliance by persistent contact with the racetrack and occasional commissioner involvement.

If compliance problems continue, TxRC is authorized to suspend or revoke a racetrack license or impose administrative penalties up to \$10,000 for failure to comply with the Act or Commission rules, including standards for construction and proper operation of tracks.

The following material illustrates three problem areas concerning oversight of the construction and operation of the state's pari-mutuel tracks. The three areas are:

- Oversight of the track construction process
- Inspection and monitoring of track facilities and operations
- Enforcement authority to achieve quick compliance when problems are found.

FINDINGS

- ▼ Neither the Act nor TxRC rules require monitoring of

construction and improvements.

► The agency has some oversight as a result of the broad authority provided in the Racing Act to generally oversee racing and racetracks. TxRC enforcement staff make periodic inspections of new construction sites, but the Act and the Commission's rules offer no facility inspection standards. The only related Commission rule requires the state or local fire marshal to certify the track prior to its first racing meet.

► Changes to racetrack plans and construction have been handled in a variety of ways. In some cases, Commissioners met in ad hoc subcommittees to consider allowing exemptions from the TxRC racetrack requirements.

This has occurred without benefit of a structured procedure to receive and review standard inspection reports with formal staff recommendations concerning the changes. In other instances, the executive secretary has approved plan changes.

- ▼ TxRC staff experienced significant problems with inspection and compliance during the construction

phase of the Sam Houston Race Park.

▶ Actual construction of Sam Houston Race Park differed significantly from the original plans. According to the TxRC staff, in some cases, changes made from the original plans resulted in less satisfactory design and construction than had been agreed to under the original agreements of the racetrack license.

For example, without prior approval, the stewards' booth at Sam Houston Race Park was significantly reduced in size to accommodate the enlargement of a private suite next door. This resulted in a restricted view of the racetrack by the stewards. At the request of the agency, the racetrack took corrective action, but the view remains compromised.

Sam Houston Race Park built 10 by 10 foot residences for stable area workers intended to house four people each. After construction, TxRC staff found the residences lacked air conditioners and insisted that the racetrack association correct the situation. In this case, the racetrack complied.

TxRC staff requested improved drainage in the test barn and stable areas of Sam

Houston Race Park. The racetrack installed above-ground, plastic drainage pipes, which is an uncommon and less-than-satisfactory approach. The agency recommended moving the pipes underground, but the racetrack has not yet complied. The TxRC has taken no action to force the track to meet this requirement.

▼ **The Act provides no direction for ongoing inspection of racetracks.**

▶ In terms of ongoing compliance inspections, TxRC is authorized, but not required, to inspect and verify that horse track racing surfaces meet standards. The racetrack surface for greyhounds is subject to periodic inspections, but again the inspections are not required. The rules only require inspections at greyhound tracks for starting boxes and kennels. Only the results of the kennel inspections must be reported.

▼ **The agency's approach to inspection of racetrack facilities does not meet generally accepted standards for inspection programs.**

▶ A review of the agency's procedures revealed that TxRC does not have staff

Comparison of TxRC Inspection Efforts to Standard Programs	
Weaknesses Identified	Standard Inspection Program
Lack of staff dedicated to the inspection function.	Staff inspectors focus exclusively on inspections and visit job sites frequently.
Sporadic inspection schedule.	Inspections are typically conducted on a standard schedule. For construction projects, every 30 days with occasional unscheduled inspections. For compliance inspections, a fixed schedule is established according to facility operations and need for oversight.
Lack of systematic inspection checklists.	Inspection checklists are designed and distributed to all parties for pre-construction, actual construction, post-construction, and operational stages.
Lack of standardized inspection reports.	Structured inspection reports with a standard format are used from project to project to assist in the supervision and monitoring of projects.
Failure to define the scope and level of detail for inspections.	Scope and level of detail in facility inspection reports determined by project documentation and physical plant. Standard documentation compiled by the facility for inspector review is recommended. Items usually include correspondence, contracts, permits, drawings, planning documents, payment requests, daily construction inspection reports and fiscal records. These items help standardize the level of detail sought during inspections.
Lack of well-documented central files.	Central inspection files for each project are compiled by inspectors and reviewed by supervisory staff. Files typically contain building specifications and plans, standard inspection reports, photographs, copies of selected contracts, and correspondence with facilities and relevant parties.
Lack of regular notification for change-orders during construction of the race-tracks.	Change-order requests are submitted to inspectors within a designated time period for agency approval or comment.
Lack of regular reporting to the agency and Commission on inspection results.	Inspectors submit weekly/bi-weekly reports on problems identified. Information is compiled into monthly reports for management and policymakers. Some state agencies include regular compliance reports and updates on board or commission agendas.

specifically dedicated to conducting compliance inspections. The enforcement staff investigators conduct facility inspections in addition to their standard investigative work.

The investigators' primary responsibility is to investigate areas such as race animal drug positives, illegal wagering, ticket fraud, and contraband such as narcotics, weapons, hypodermic needles, and electrical shocking devices.

Stewards and judges at the racetracks also inspect facilities but do not do so on a routine basis or in accordance with any standard method. Stewards and judges efforts are focused mainly on occupational licensees' compliance with state regulations.

► The review also showed that TxRC lacks many other standard elements found in other state agencies' inspection and compliance programs. These elements include timely inspections, standardized reporting, and notices of violation. A comparison of TxRC's inspection activities to other agencies is provided in the chart, *A Comparison of TxRC Inspection Efforts to Standard Programs*.

▼ **TxRC has not adequately used its existing enforcement authority to ensure race-track compliance with the Act or rules.**

► Numerous significant problems have been discovered, documented, and communicated to the tracks by agency staff. However, the Commission has taken only one action of record against a racetrack for violating TxRC rules and that was for false advertising. In this instance, the Commission ordered a \$10,000 probated penalty against the track and did not collect the fine. The Commission has not suspended or revoked a racetrack license or collected an administrative fine for noncompliance with state regulations.

► For example, since opening in 1990, the Commission has received numerous complaints about the condition of the backstretch area of Manor Downs where stalls and barn areas are located. The complaints deal with drainage; weed control; trash and muck disposal; fire alarms; and the condition of fences, barns, and roofs. TxRC continues to request that Manor Downs take action, but the problems persist.

► In 1991, rain flooded the track surface at Trinity Meadows and drainage proved inadequate. TxRC considered the situation a threat to the safety of the jockeys and horses. Agency staff considered prohibiting the stewards from attending work to keep the track from operating, rather than using their administrative penalty authority. However, the track voluntarily closed after the Jockey Guild refused to race until the problem subsided. Track surface and drainage continue to be a problem at Trinity Meadows.

▼ **The agency lacks an effective enforcement tool to achieve quick resolution of problems.**

► When problems occur that could impact the safety or fairness of the races, an administrative penalty or suspension of a license takes too long to adjudicate. The following examples illustrate situations where quick resolution of the problem would be desirable.

- Track surfaces may be unsafe for greyhounds or horses which can affect the outcome of a race as well as threaten the animals' well-being. In the case of horse racing, an unsafe

To date, the Commission has taken only one formal action against a racetrack licensee—a probated penalty for false advertising.

track also creates a hazard for jockeys.

- Drainage problems that cause standing water in barn or kennel areas that pose health hazards.
- Inappropriate handling of trash and manure can also create a hazard that needs immediate attention.
- Failed lighting on the track, in patron areas or on a track's backside, would also require prompt action.

▶ For immediate enforcement purposes, the executive secretary can write memos to the track and request compliance, can prevent state stewards and judges from coming to work, and threaten to begin action for administrative penalties or license suspension proceedings.

▶ With these limited enforcement tools at the agency level, the tracks promise to correct the violations but postpone making improvements while continuing to operate. A review of agency files revealed such problems. According to agency staff, these problems need to be solved more quickly to protect the health, safety and welfare of the public, race animals and occupational licensees.

▼ **Some of the track inspection and enforcement problems stem from the lack of a director of racing to oversee racetrack operations.**

▶ No person has direct responsibility for ensuring that tracks are constructed, inspected and operated within standards. Instead, these responsibilities are shifted to persons charged with other duties. Consequently, the executive secretary and director of enforcement have been performing the track oversight duties and supervising stewards, judges and staff investigators in efforts to gain racetrack compliance.

▶ Most other states' racing commissions place the responsibility for racetrack inspections with the commission's racing division, headed by a director of racing.

▶ Since the establishment of TxRC, the agency has had three directors of racing. The first one served 10 months from April 1989 to January of 1990. The second one served for four months from January 1990 to April 1990 and then became the executive secretary. The third racing director was employed from January 1992 to December 1993. The position has been vacant since.

CONCLUSION

TxRC staff has experienced significant problems in the oversight of racetrack construction and the regulation of general racetrack operations. The

problems stem from a lack of statutory direction in these areas, failure of the agency to set up a standard inspection program, and limited enforcement tools to take quick action when needed.

Recommendations

Changes in Statute

■ **Require the Commission to establish a standard method for conducting ongoing track compliance inspections including:**

- issuing notices of violation when problems are identified
- requiring racetrack submission of a corrective action plan for agency approval
- setting deadlines for tracks to correct violations
- provisions for timely reinspection of the facility

- setting specific enforcement actions for failure to take corrective action within Commission time-frames;

■ **Authorize the agency to rescind race dates for violations of the Act or Commission rules; and**

■ **Require a racetrack licensee that does not comply with any portion of the compliance inspection program to appear before the Commission at a public meeting to consider the matter.**

Management Action

■ **Establish a standard method for overseeing the construction of racetrack facilities that includes improved inspection scheduling, structured progress reports, improved documentation and Commission approval of all changes throughout the project;**

■ **Increase efforts to employ a director of racing to supervise and coordinate the agency's inspection efforts;**

■ **Establish a system that requires stewards and judges to assist in conducting inspections and report the results to the agency on a routine basis; and**

■ **Report on racetrack inspections on a regular basis at the Commission's formal meetings.**

This recommendation would improve TxRC's oversight and regulation of racetrack facilities by enhancing the agency's inspection program and providing additional enforcement authority. Compliance with Commission standards should occur more promptly because of a more integrated approach between staff and the Commission through set time-frames for track improvements.

The management recommendation directs the agency to ensure that personnel key to the regulation of racetrack operations are in place and that a system is established to provide for regular and routine inspection of racetracks. The results of the inspection should be made available to the Commission to alert them of any potential problems before they get out of hand.

FISCAL IMPACT

To allow the agency to adequately perform racetrack inspections and provide oversight, additional costs would be incurred for an inspector's salary, benefits, supplies, and travel. Since the agency is self-supporting through fees, the cost for this additional position and related expenses would be recovered and would not result in a fiscal impact to the state. The TxRC budget already includes funds for a director of racing position.

ISSUE 4

INCREASE TEXAS RACING COMMISSION OVERSIGHT OF PROGRAMS FUNDED THROUGH PROVISIONS OF THE TEXAS RACING ACT.

BACKGROUND

The Texas Racing Act allows certain deductions from track funds to be diverted to programs and activities that benefit the racing industry. Little is known about the impact of these funds and whether they are supporting or accomplishing the purposes for which they were intended.

The Act authorized TxRC to establish the Texas Bred Incentive Program (TBIP) to encourage the breeding of racehorses and greyhounds in Texas. The program is funded through a portion of bets made by racetrack patrons. The chart, *Texas Racing Commission Expenditures - Fiscal Year 1993*, shows TxRC expenditures. In addition, the two charts, *Texas Bred Incentive Program—Horse Racing - Fiscal Year 1993* on page 28, and *Greyhound Racing - Fiscal Year 1993* on page 30, illustrate the flow of funding for this program.

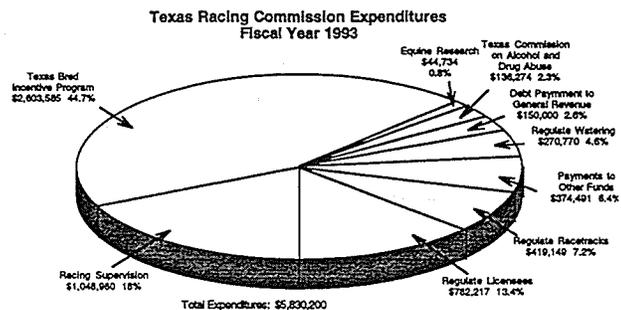
However, the limited information available does not show a significant impact related to breeding of Texas animals. For example, the number of people involved in raising greyhounds in the state has

stayed constant even with the incentive program flowing funds to breeders for several years. Information that assesses the impact of TBIP incentives on horse breeding is limited.

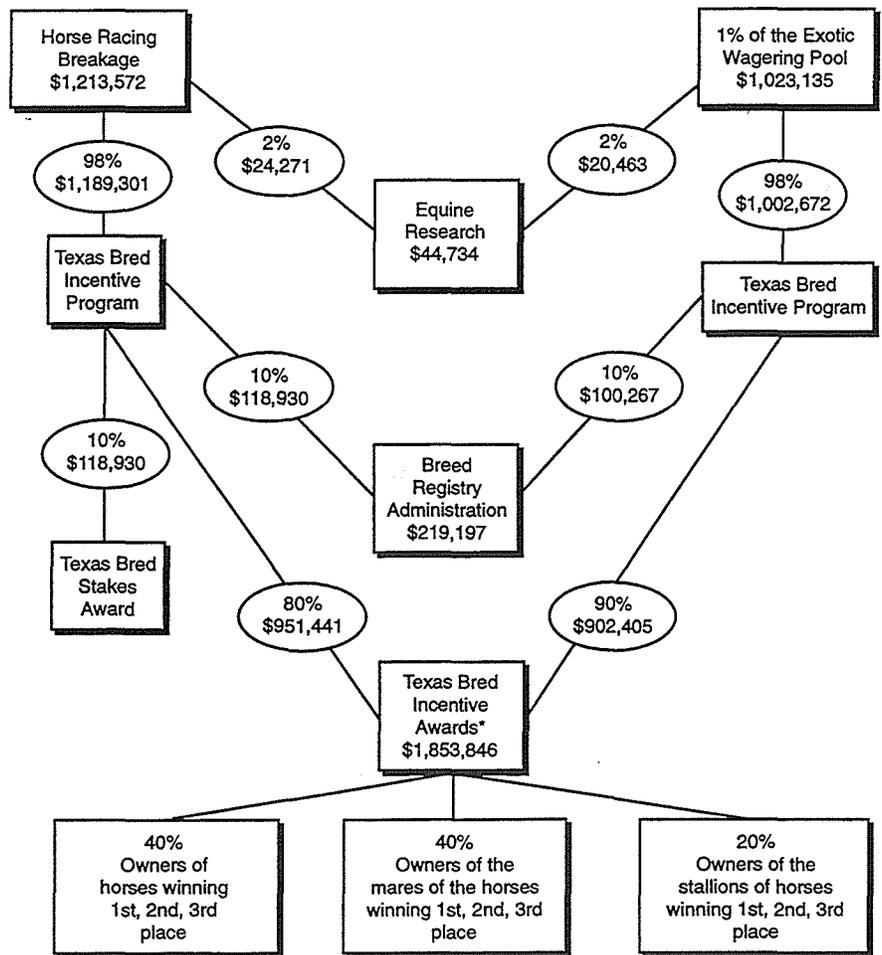
For horse racing, funding of the Texas Bred Incentive Program comes from two sources: (1) a portion of the *breakage*, or the money accumulated from rounding bet payoffs down to the nearest dime; (2) a part of the pool of money wagered on the outcome of two or three horses, often called the "exotic pool." This pool includes bets such as exactas and trifectas.

For greyhound racing, funding for the incentive program comes from half of the breakage and one percent of the exotic pool wagers.

Little is known about the impact of Texas bred incentive funding.



**Texas Bred Incentive Program
Horse Racing
Fiscal Year 1993**



*Breed registries administer the Texas Bred Incentive Awards.

The Texas Bred Incentive Program has two components. One part is funding for Texas Bred Stakes Awards that provides purse supplements to owners of horses and greyhounds for winning Texas Bred Stakes Races. Stakes races often require significant entry fees by animal owners and draw top performing race animals because of the much higher purses that the stakes award money provides. These races are restricted to Texas-bred horses or greyhounds only.

The larger part of the TBIP is the *Texas Bred Incentive Awards*. For horse racing, the program gives cash awards to owners of accredited Texas-bred horses that finish first (win), second (place), or third (show). Awards also go to owners of the mares and stallions of these winning horses.

The horse racetracks send the TBIP portion of the breakage and exotic wagers to TxRC for distribution to the breed registries. Breed registries are associations that verify and register an animal's breed and pedigree. Distribution of money to the breed registries is based on the proportion wagered on races of a particular breed. Since thoroughbreds and quarter horses start the large majority of races, these breed registries receive the majority of the money for the award program. The chart,

Breed Registry Receipts - Fiscal Year 1993 shows the distribution of funds among the breed registries.

All of the official Texas breed registries are designated in the Racing Act. Individual Texas breed registries administer the Texas Bred Incentive Program and distribute the awards. Four breed registries are currently administering this program: the Texas greyhound, thoroughbred, quarter horse, and arabian breeders associations. Other breeds eligible for the awards are Texas-bred appaloosa and paint horses. These registries are in the process of having their rules approved by TxRC.

Since 1991, the average amount of owner, breeder, and stallion awards earned in regular, non-stakes races by Texas-bred thoroughbred horses has been about \$832, and for quarter horses \$112.

For greyhound racing, the Texas Bred Incentive Program offers awards to owners of accredited

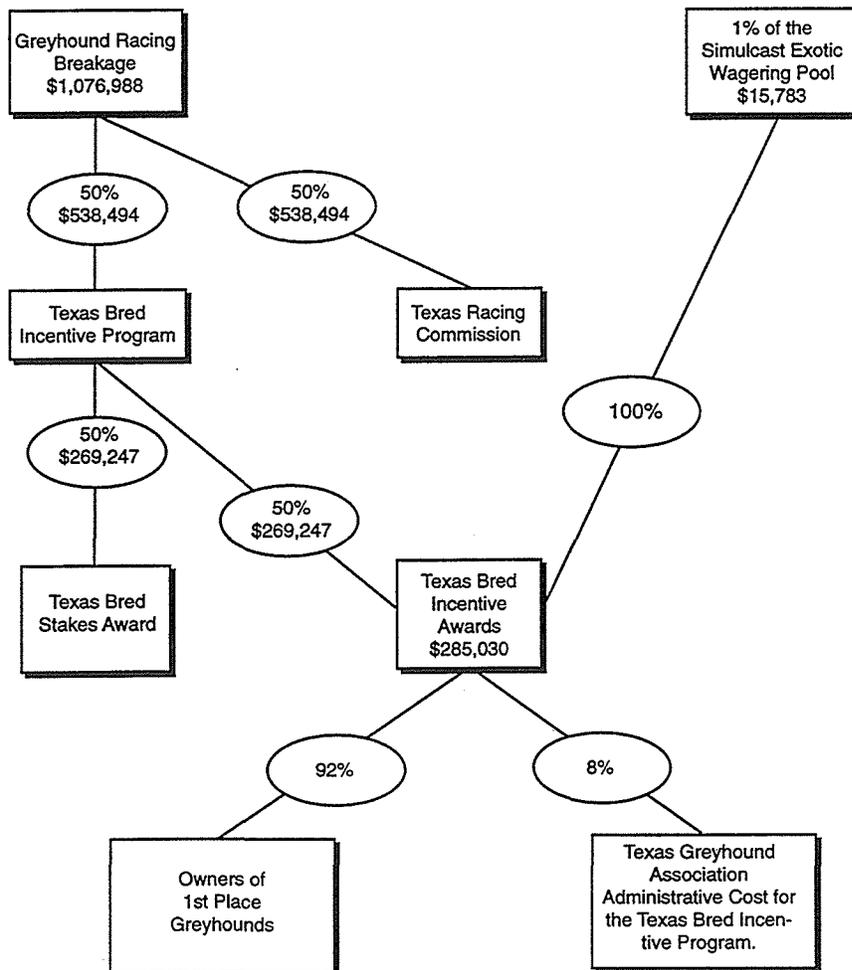
Average amount of awards is \$832 for Thoroughbreds; \$112 for Quarterhorses and \$28 for Greyhounds.

Breed Registry Receipts - Fiscal Year 1993

Horse Breeds	Texas Thoroughbred Breeders' Association	\$1,247,823
	Texas Quarter Horse Association	\$788,302
	Texas Arabian Breeders' Association	\$13,322
	Texas Paint Horse Breeders*	\$1,712
	Texas Appaloosa Breeders*	\$3,997
Greyhounds	Texas Greyhound Association	\$285,030
	Total	\$2,340,186

*These amounts are held by the TxRC due to lack of approved breed registries.

**Texas Bred Incentive Program
Greyhound Racing
Fiscal Year 1993**



Texas-bred greyhounds finishing in first place. The average amount of a greyhound award is about \$28. Greyhound awards are significantly lower than horse awards because the statute provides a smaller cut of race track funds. In addition, because greyhound tracks operate nearly year round, there are many more races and winning animals than horse racing's more limited schedule provides.

In fiscal year 1993, horse breed registries awarded about \$1.8 million in incentive awards. The Texas Greyhound Association awarded about \$285,000. About \$5,700 dedicated for Texas-bred appaloosa and paint horses is held by TxRC until the designated breed registry's rules are approved by TxRC.

The statute requires TxRC to distribute appropriate funds to breed registries and adopt rules relating to the accounting and audit of the funds. The review focused on TxRC's efforts to ensure proper use of the distributed money and to measure the performance and impact of the program.

FINDINGS

- ▼ TxRC has little information available to measure the effectiveness of the Texas Bred Incentive Program.

▶ The program has been operating since 1989 and horse breed registries have received more than \$7.8 million from TxRC to fund the Texas Bred Incentive Program. In comparison, the state has received \$8.7 million in tax revenue from horse racing, not including simulcasting, in the same time period.

▶ TxRC has adopted rules that only require annual financial statements from the breed registries. The registries voluntarily send copies of audits when available. These documents are reviewed by TxRC staff and kept on file. The documents do not contain information on program effectiveness.

- ▼ Although the breed registries maintain some performance information, it is not comprehensive or consistent.

▶ Information received from meetings with the breed registries revealed that they do collect some performance information. For example, one of the breed registries maintains information on the number of horses foaled in Texas and the number of stallions moving to Texas each year.

Since 1989, horse breed registries have received more than \$7.8 million for the Texas Bred Incentive Program.

Tracks deduct two percent of a horse owner's purse winnings for Texas Horsemen's Benevolent and Protective Association.

▶ The Breed Registries do not consistently maintain information needed to measure the effect of incentive funds.

▼ **The statute does not provide sufficient direction or authority to TxRC regarding the Texas Bred Incentive Program.**

▶ First, TxRC does not have specific statutory authority to monitor the use of funds and the statute does not direct TxRC to assess the effectiveness of the incentive programs administered by breed registries.

▶ In addition, TxRC does not have clear statutory authority to take actions if problems develop.

▼ **Requiring financial audits and information on the impact of the Texas Bred Incentive Program would increase its accountability.**

▶ Up to ten percent of Texas Bred Incentive Program funds received by horse breed registries can be used for administrative expenses. The statute does not limit administrative expenditures for the greyhound program. The Texas Greyhound Association reported about eight percent administrative expenses in

1993, which is similar to previous years. Although administrative expense information is submitted to TxRC, the information is not always audited and TxRC cannot determine its accuracy.

▶ Information on the performance of TBIP would provide the Legislature and the public with information regarding the effectiveness of the program.

▼ **Little financial or performance information is available on some of the other entities receiving funds generated from pari-mutuel wagering.**

▶ The Texas Horsemen's Benevolent and Protective Association (THBPA) receives funds as a result of contracts with pari-mutuel horse race-tracks. The Act allows tracks to deduct money from a horse owner's purse winnings for an organization of the horse owner's choice. The THBPA has entered into contracts with all the Texas tracks, except the Gillespie County Fair and Festivals Association, to receive the two percent of purse winnings unless the owner objects.

THBPA received about \$241,000 of funds statutorily dedicated to purses in 1993.

Using the purse money and other funds, THBPA paid about \$57,000 to assist track employees with medical and other expenses. The remainder of their funds are used for activities such as interacting with TxRC and the state Legislature to make changes to the Act and the Commission's rules that benefit Texas horsemen.

Although THBPA voluntarily sends copies of annual financial statements to TxRC, little information is available on the impact of their expenditures and TxRC has no authority to take action against the organization if problems are found.

▶ In comparison, tracks earn significant sums from wagers

and the TxRC has extensive oversight of the tracks' finances, management and ownership. The Texas Commission on Alcohol and Drug Abuse (TCADA) also receives money from racing. TCADA is subject to performance budgeting through the legislative appropriations process.

The State has the responsibility to examine the proper use of money it provides.

CONCLUSION

The state has a responsibility to examine the proper use and effectiveness of money it provides, whether to state agencies or to private entities. The Legislature authorized creation of the Texas Bred Incentive Program and developed a funding source for the program. However, little information is available to TxRC to ensure that the program is sound and meeting legislative objectives.

Recommendations

Changes in Statute

- **Require TxRC to improve oversight of organizations receiving racing funds as follows:**
 - Require TxRC to work with the breed registries and any other organization, other than TCADA, receiving racing funds to determine appropriate performance measures to report and monitor;
 - Require annual independent audits including verification of performance reports be sent to TxRC;
- Authorize TxRC to conduct a follow-up examination of an organization's records if necessary; and
- Authorize TxRC to withhold funds or to require a track to withhold funds if problems are found with expenditure or reporting of funds or performance.

This recommendation will help ensure that the Legislature and the public receive information regarding the effectiveness of the Texas Bred Incentive Program necessary to assess whether the program meets its legislative objectives. Breed

registries and other entities will be required to report financial and performance information to TxRC for evaluation. TxRC will have the authority to follow up on the audits and take actions if problems are found.

FISCAL IMPACT

This recommendation would not result in a fiscal impact to the state. TxRC staff would need to increase its review efforts of financial and performance information submitted by the four approved breed registries and the THBPA.



ISSUE 5

IMPROVE THE INTEGRITY AND SAFETY OF PARI-MUTUEL RACING BY MAKING THE TOP REGULATORY OFFICIALS AT EACH TRACK DIRECTLY RESPONSIBLE TO THE STATE.

BACKGROUND

Racetrack officials licensed by the Texas Racing Commission (TxRC) serve to ensure the integrity of horse and greyhound races. The highest-ranking officials at horse tracks are called stewards and at greyhound tracks, judges.

At each racetrack, three stewards or judges form a board. The presiding steward or judge is a TxRC employee. The remaining two are employees of the track.

The stewards and judges declare each race official and oversee the conduct of licensed race participants and racetrack workers.

Decisions on the fairness of a race and the discipline of a licensee are made by majority vote. As a result, the stewards or judges employed by the track can control the actions of the board.

In overseeing racing matters at a track, stewards and judges have both individual and collective powers and duties. For example, only one steward or judge is required to supervise the process

of qualifying race entries, thereby giving that single official the power to limit or expand the number of animals eligible to race.

As a panel, stewards or judges control pari-mutuel wagering at the racetrack. For instance, at the appropriate time after the horses or greyhounds are loaded into the starting gate or box, the stewards or judges order the pari-mutuel tellers to stop taking bets. Thus, the officials may hold the race animals at the start to allow long lines of patrons to finish placing their bets.

The highest-ranking officials at horse tracks are called stewards and at greyhound tracks, judges.

Legislative History of Who Employs the Stewards and Judges

Adopted in 1986 when the Legislature legalized pari-mutuel wagering, S.B. 15 by Senator O. H. ("Ike") Harris treated the employment of horse-racing stewards and greyhound-racing judges differently. On one hand, TxRC approved the hiring of the three stewards from a list of candidates submitted by the horse racetrack. On the other hand, TxRC appointed all three judges but paid only one of them; the greyhound track paid the other two officials. Under this scheme, the stewards and judges were unsure who their employer was.

In 1991, Sen. Harris sponsored a clarifying amendment adopted by the Legislature making one of the stewards and judges at each track the employee of TxRC and the other two the employees of the racetrack.

In 1993, the Senate passed another bill by Sen. Harris that would have made all three stewards and judges at each track the employees of TxRC. The House committee to which the bill was referred, however, did not report it out.

Two out of the three top regulatory officials at each track are not state employees.

To ensure fairness, stewards and judges watch each race through binoculars or on television monitors, looking for possible infractions of the rules. They may raise their own objections or consider objections by others, such as a jockey, trainer, or kennel operator, that one of the riders or animals interfered with the outcome of a race. If no infractions are alleged, they declare the race official soon after the finish and allow winning bettors to be paid.

The race is not declared official and winning ticket-holders are not paid until the stewards and judges have made an inquiry into any alleged infraction. If the officials confirm an infraction, they disqualify the violator and post a new order of finish.

The stewards and judges also exercise general authority and supervision over all occupational licensees at racetracks—from jockeys and grooms at horse tracks to kennel operators and starters at greyhound tracks.

In the event that a licensee violates the Racing Act or TxRC's rules, the stewards and judges have the power and duty to take disciplinary action. These officials may suspend an occupational license for up to one year, impose an administrative fine of up to \$5,000, and exclude or eject

persons from the racetrack premises. All these actions can be taken without the approval of the racing commissioners, though the Commission does hear appeals of stewards' and judges' rulings.

The review focused on the operation of the boards of stewards and judges as well as the relationships among the TxRC-employed steward or judge, the track-employed officials, and the racetrack managers at each racetrack.

FINDINGS

▼ **Although two of the three board members are not state employees, they may take actions against state-approved licensees.**

▮ In fiscal year 1993, stewards and judges issued 804 rulings affecting state licensees. Out of the total rulings, the stewards and judges suspended 293 licenses and levied \$6,650 in fines.

▮ Disciplinary action by a non-state employee inappropriately places state authority in the hands of those employees. Licensing is a power of state government that allows TxRC to limit or prohibit involvement in an occupation through the denial, suspension, or revocation of a license. The power to take disciplinary

action against an occupational licensee is inseparable from the government's licensing authority and should not be delegated to regulated entities, whose objectivity may be questioned on the grounds of conflict of interest and undue influence.

▼ **Allowing racetrack employees to issue rulings against a state-issued license is inconsistent with other state agencies' licensing and regulatory practices.**

▶ Disciplinary action against licenses issued by most state agencies can only be taken by an employee of that agency or an appointed state board or commission member. For example, only the State Board of Medical Examiners can take state disciplinary action against a physician. Private doctors who serve on a hospital's peer review committee may suspend physicians' hospital privileges but not their state-issued licenses.

▼ **Employment of stewards and judges by a racetrack can represent a conflict of interest because decisions made by stewards and judges can have a direct impact on a racetrack.**

▶ Racetrack management can directly or indirectly pressure

stewards and judges into making racing decisions to benefit the racetracks.

For example, the officials are responsible for ordering wager refunds that are sometimes necessary due to technical or human error. While track-employed stewards and judges may be reluctant to order refunds, state-employed stewards and judges can function more independently.

▶ State stewards and judges in Texas report that some licensees have received unwarranted leniency from track-employed officials. Stringent disciplinary action could have created negative publicity for the racetrack or reduced the availability and quality of race animals ridden or trained by the violator. Such consequences harm business at the racetrack by discouraging patrons from attending races.

▶ In a public meeting of TxRC, Commissioners criticized management at a horse racetrack for allegedly pressuring track-employed stewards to give a light penalty to a trainer who violated drug possession laws.

▶ The TxRC staff has issued verbal warnings to racetrack

Private racetrack employees are authorized to take administrative action against state-issued licenses.

When a racing association can terminate two of the three highest ranking regulatory officials at a racetrack, potential exists for inappropriate rulings and decisions.

associations about direct pressure applied to stewards and judges. In one incident, when a track-employed steward considered action against another racing official for unauthorized wagering at the track, the steward was told that the official was a friend of the track manager and that the track could always hire a new steward. Agency staff intervened, issued a verbal warning, and the disciplinary matter went forward.

▶ Racing officials in other states report similar instances of racetracks exerting pressure on stewards and judges. In one case, it was reported that track-employed stewards have delayed the start of races to allow additional betting to take place even though such delays can stress or tire a horse and unfairly affect the outcome of a race.

▶ Also, in other states, stewards have discovered the use of electrical shocking devices. Instead of reporting the violations to the state racing commission for investigation, the track-employed stewards reported the incidents to track management, who did not take action against the licensees.

▼ **The trend in other states is to require all or a majority of the board of stewards and judges to be state employees.**

▶ A survey of 14 major and neighboring racing states revealed that only three—Florida, Kentucky, and Louisiana—allow a majority of the stewards and judges to be track employees.

▶ In New York, private racing organizations employ two of the stewards at each racetrack, while the state employs the remaining one. Only the state-employed steward, however, has the authority to impose administrative fines or suspensions against occupational licensees.

CONCLUSION

When a racing association can terminate two of the three highest ranking regulatory officials at a racetrack, potential exists for inappropriate rulings and decisions. Although the state, through the Racing Commission, has the ultimate responsibility for ensuring that pari-mutuel racing is fair and safe, the key watchdogs in the system are the stewards and judges. Allowing racetracks to employ and supervise two out of the three principal racing officials on-site jeopardizes TxRC's duty to ensure the integrity of pari-mutuel racing. Not unexpectedly, track-

OCTOBER 1994

SUNSET STAFF REPORT ISSUE 5
TEXAS RACING COMMISSION

39

employed stewards and judges may be reluctant to take actions that have serious negative economic consequences for their employers. Additionally, track-employed stewards have a majority voice in disciplinary actions taken against persons holding a state-issued license.

Recommendation

Change in Statute

■ **Require that the Texas Racing Commission employ all stewards and judges.**

This recommendation will remove any potential conflict-of-interest for racing stewards and judges. An impartial board of stewards and judges would strengthen the state's effort to ensure safe and fair

pari-mutuel racing. All decisions to hire and fire stewards and judges would fall to TxRC, which would assume all day-to-day oversight of these racing officials' activities. TxRC should consult with tracks on individuals hired to help ensure that the agency hires qualified officials.

FISCAL IMPACT

This recommendation will not result in a net fiscal impact to the state. Costs of the recommended change will be covered by increased track official fees paid by the racetracks.

40

ISSUE 6

THE TEXAS RACING COMMISSION SHOULD RECOVER COSTS OF CRIMINAL HISTORY REPORTS.

BACKGROUND

The Texas Racing Act requires the Commission to license all individuals who participate in pari-mutuel racing, ranging from jockeys, trainers, and kennel operators, to concession workers and track managers.

In fiscal year 1993, the Commission issued 8,632 new and 7,642 renewed licenses for a total of 16,270 licenses issued.

License fees range from \$20 to \$75 per year depending on occupational category. For example, the license fee for parking attendant, veterinarian assistant, and stable foreman is \$20, while the license fee for racing industry representative, kennel owner, trainer, and jockey is \$75.

In fiscal year 1993, the Commission collected \$845,526 in occupational licensing fees and used these funds to cover the cost of administering the licensing program and regulating the activities of the licensees.

The Act requires license applicants to submit fingerprints with their initial license application. TxRC uses the fingerprints to conduct

federal and state criminal history checks.

TxRC staff sends two fingerprint cards to the Department of Public Safety (DPS). DPS processes one card for a state criminal history check and sends the other card to the Federal Bureau of Investigations (FBI) for a federal criminal history check. DPS reports that the cost of a state criminal history check is \$15, while the federal check costs \$24.

The Texas Racing Act authorizes the Commission to receive all arrest and conviction data including information maintained by the FBI.

Every five years, individuals are required to resubmit their fingerprints to TxRC along with their annual renewal application and fee. At that time, TxRC will conduct another

In fiscal year 1993, TxRC issued 16,270 licenses, and collected more than \$845,000 in occupational licensing fees.

Common Occupational Licensees
Fiscal Year 1993

Type of Licensee	Number Licensed
Texas A&M University Lab Staff	14
Exercise Riders	197
Farriers (Horseshoers)	71
Food Service Employees	1,131
Horse and Greyhound Owners	6,644
Horse and Greyhound Trainers	1,526
Jockeys	236
Jockeys' Agents	32
Kennel Owners	83
Kennel Helpers	264
Law Enforcement Personnel	267
Medical Staff	77
Pari-Mutuel Wagering Clerks	1,320
Racetrack Stewards and Judges	15
Racetrack Office Staff	93
Racing Officials	75
Security Officers	233
State Stewards and Judges	7
State Veterinarians	20
Totalisator Technicians	54
Racetrack Chaplains	8
Veterinarians	55

The Department of Public Safety absorbs the costs of performing criminal history checks for TxRC.

background check and send a fingerprint card to DPS for a federal criminal history check by the FBI.

A state criminal history check is not performed at the time of the five-year anniversary. Instead, DPS monitors the state crime records on a routine basis and notifies TxRC about any new arrests or convictions received for racing licensees.

TxRC enforcement staff uses the results of the criminal histories to identify any illegal behavior that could affect an individual's fitness to perform the duties associated with the license. Agency staff looks closely at offenses related to fraud, illegal gambling, homicide, burglary, robbery, theft, cruelty to animals, narcotics, and arson. The agency reviews the nature and seriousness of the crime as well as the extent to which a license affords the opportunity to engage in further criminal activity. Of all license applications and renewals received each year, about 18 percent of the individuals have criminal histories that need to be reviewed by agency staff.

FINDINGS

- ▼ **DPS absorbs all the direct costs of performing criminal history checks for TxRC.**
 - ▶ DPS spends an average of \$107,000 per year to check

state criminal histories for TxRC and pays the FBI an average of \$124,000 annually for federal criminal history checks. The state does not recover any of this \$231,000 from license applicants.

- ▶ The DPS does not request reimbursement for TxRC's criminal history checks because funding comes from the State Highway Fund specifically for this task.
- ▼ **Many of the other state agencies that require criminal history checks for licensing recover all or a portion of the cost from the license applicant.**
 - ▶ Noncriminal justice agencies that recover all or some of the costs of criminal history checks through license application fees include the Texas Lottery Commission, Office of the Banking Commissioner, Texas Department of Licensing and Regulation, Board of Law Examiners, Texas Department of Mental Health and Mental Retardation, and the State Board of Insurance.
 - ▶ Most criminal justice agencies do not perform licensing functions and therefore do not recover the costs of their criminal history information checks.

▼ **Costs to the state will increase when the TxRC begins to resubmit fingerprint cards to DPS for federal criminal history checks for licensees renewing their licenses after five years.**

▶ Because TxRC has only been issuing licenses since 1989, it has not incurred costs for any renewals. TxRC policy is to conduct new criminal history checks at the five-year anniversary of licensure. When a licensee who has been licensed for five years applies for renewal, the individual will be required to undergo another federal criminal history check. Monitoring of state criminal history is done on a routine basis by DPS and not tied to license renewal.

▶ Beginning in 1995, DPS will incur costs for federal criminal history checks on licensees who have reached their five-year anniversary. Based on agency estimates, the five-year checks will result in additional expenses to DPS of about \$385,000 over a five-year period.

▼ **Although TxRC has statutory authority to recover the costs of background checks, no incentive exists to do so**

because those costs are included in DPS' appropriation.

▶ The statute, along with the current general appropriations act, direct TxRC to recover the costs of providing services. However, the cost of performing background checks is included in the DPS budget and DPS does not charge TxRC for the checks.

CONCLUSION

Current practice in state government is that fees paid by licensees should cover the costs of regulation. Each year, DPS spends more than \$230,000 on state and federal criminal history record checks for new applicants. It is estimated that an additional expenditure of about \$385,000 will be necessary over the next five years to conduct federal criminal history checks on individuals renewing their licenses. Many other noncriminal justice agencies that require criminal history checks for licensing do recover some or all of the costs in an application fee. The TxRC currently recovers only the costs of its investigators who follow up on criminal histories.

Having TxRC recover the costs of criminal background checks would free up funds for law enforcement.

Recommendations

Changes in Statute

- **Require the Texas Racing Commission to collect licensing fees that cover the cost of conducting criminal history checks.**
- **Require the Commission to reimburse Department of Public Safety for the costs of criminal history reports.**

This approach would direct TxRC to reimburse DPS for costs of criminal history reports, thus allowing DPS to focus its resources on highway safety and reducing crime. In addition, the recommendation would allow TxRC to recover more of

the regulatory costs associated with racing. It would also make the agency's licensing program more consistent with other state agencies that use criminal history reports. The Commission would be required to set new and renewal licensing fees that reflect the cost of state and federal crime record checks. However, the Commission should continue to be required to base the license fees on the relative incomes or property interests of the various categories of licensees.

FISCAL IMPACT

This recommendation would require the agency to recover costs for state and federal criminal history checks and result in estimated additional revenue of about \$557,000 for the biennium, based on TxRC estimates of licensing activity. Recovering the costs of background checks could increase license fees by approximately \$39 for new applicants and \$24 for licensees at their five-year anniversary. Licensees with limited incomes would see lower

fee increases. These recovered costs would be collected by TxRC and deposited in the Texas Racing Commission Fund for eventual transfer to DPS as reimbursement for their expenses in conducting criminal history checks. Funds currently used by DPS to conduct TxRC crime record searches could be used for other public safety purposes including highway safety and fighting crime.

Fiscal Year	Gain to Texas Racing Commission Fund for Transfer to DPS
1996	\$257,000
1997	\$300,000
1998	\$274,000
1999	\$306,000
2000	\$406,000

ISSUE 7



CONTINUE THE TEXAS RACING COMMISSION FOR SIX YEARS TO OVERSEE PARI-MUTUEL RACING IN TEXAS.

BACKGROUND

Since its inception, TxRC has been responsible for:

- licensing racetracks and supervising every race meet involving wagering on the result of horse or greyhound racing;
- promulgating administrative rules and procedures for conducting horse or greyhound racing;
- regulating and supervising all persons and activities relating to the operation of racetracks, other than patrons; and
- processing complaints, imposing administrative penalties, and taking other disciplinary actions against violators of the Texas Racing Act or the Commission's rules.

Over the past five years, TxRC has primarily been licensing tracks and workers and overseeing track construction and initial operations. Over the next few years, the agency's role will move toward continuing operational oversight of the tracks and racing personnel.

To justify the continuation of an agency's functions, certain conditions should exist. A current and continuing need should exist for the state to provide the functions or services; the functions should not duplicate those currently provided by any other agency; and the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to any other state agency.

FINDINGS

▼ **The two main functions of TxRC, licensing and enforcement, are needed as long as Texas authorizes pari-mutuel racing.**

► The licensing function allows TxRC to check the backgrounds of all persons involved in pari-mutuel racing, from owners and trainers of race animals to people who sell food at the track. More than 43,000 people have been licensed by TxRC since 1989. People with a prior criminal history that raises a potential for criminal activity at the race-

Over the past five years, TxRC has primarily been licensing tracks and workers and overseeing track construction and initial operations.

tracks are excluded from licensure and may not work at the tracks. This approach is designed to ensure that racing is as fair and honest as possible.

- ▮ The enforcement function also attempts to ensure honest racing, as well as safeguard patrons, workers, and race animals. A large part of the enforcement activity is to guarantee the integrity and accuracy of wagering. Racing fans bet more than \$500 million on pari-mutuel racing in Texas during 1993. As a state authorized activity, the state has a responsibility to ensure that pari-mutuel wagering is above board.
- ▮ The enforcement function not only includes oversight of the wagering system, but also activities such as safety of facilities, ensuring that animals are not being given illegal drugs, and clean running of the races. TxRC sanctioned over 430 licensees for improper activities in fiscal year 1993.
- ▼ **While organizational structures may vary, most states use an agency similar to TxRC to regulate pari-mutuel racing.**
- ▮ Regulation of pari-mutuel racing in other states is generally administered through boards or commissions. Of the 44 states that regulate pari-mutuel racing, all but one use a commission or board structure to oversee the regulation. This figure includes states with significant racing activity such as Kentucky, Florida, New York, and California. Only Michigan uses a single commissioner for this purpose.
- ▼ **The review of agency functions did not show any workable alternatives for combining TxRC with another agency and achieve any substantial cost savings or other tangible benefits.**
- ▮ Placing the regulatory functions in a single agency ensures that oversight of the racing industry flows smoothly from examining licensees' background to ensuring that licensees conduct racing and pari-mutuel activities properly. Although an agency such as the DPS could handle some of the enforcement aspects of TxRC, much of the oversight of racing activities requires day-to-day on-site monitoring of the pari-mutuel betting system and actual conduct of the races. These are not typical duties of the DPS.

▶ Since a similar number of staff would be required to perform enforcement activities, little or no savings would occur from transferring enforcement functions to DPS.

▶ The Texas Lottery Commission operates the state's lottery system and regulates charitable bingo. The lottery is not a regulatory activity and, other than the fact that it is a type of gambling, has little similarity to oversight of pari-mutuel racing. The Lottery Commission began regulating bingo in 1994 after the function was transferred from the Texas Alcoholic Beverage Commission. Again, little similarity exists to regulation of pari-mutuel racing and no savings would result from combining these activities.

▶ Significant discussions have been taking place regarding expansion of Texas-approved gambling to some form of casino gambling. If such an expansion should occur, there is a potential that some operating efficiencies may be achievable through a single regulatory gaming agency. The issue of continuing an independent Racing Commission could be examined at that time.

▼ Little information about the economic impact of racing on Texas is available to fully evaluate the state's policies in this area.

▶ The available information shows that pari-mutuel racing has not met its projections of dollars wagered, income to the state, attendance, and winnings paid to owners of race animals. Racing proponents indicate that delays in getting tracks licensed, built and operating, together with competition from the state lottery, caused the failure to meet projections.

▶ To date, little data is available regarding pari-mutuel racing's impact on agribusiness, tourism, and job creation. Direct track employment is about 3,400 including seasonal and part-time workers, but no information has been collected as to the secondary impact on jobs such as restaurant and hotel employment related to track operations.

▶ The remainder of the tracks authorized in the Racing Act are expected to be operating in the next few years. Until that time, it is difficult to evaluate the full potential economic impact of pari-mutuel racing.

The issue of continuing an independent Racing Commission could be re-examined if Texas legalizes other major forms of gambling in the future.

Commission action has inserted a private organization into simulcasting decisions and other negotiations with the horse tracks.

▼ **Insufficient time has passed to determine the full impact and workability of TxRC rules.**

▮ As the racing industry has grown, the Commission has adopted extensive rules regulating racing. However, some rules have resulted in unexpected consequences and workability problems.

▮ TxRC may have created practical problems when it adopted a rule (§ 321.232) requiring racetracks to negotiate all simulcasting matters with "the officially recognized horsemen's organization in this state." The Act does not expressly authorize TxRC to officially recognize a single private organization to represent all the owners and trainers of race horses in negotiations with racetracks.

Adoption of this rule and subsequent official recognition of the Texas Horsemen's Benevolent and Protective Association (THBPA) have inserted a private organization into simulcasting decisions and other negotiations with the tracks. THBPA has been placed in a position to negotiate contracts with racetracks concerning matters beyond simulcasting. These contracts go so far as to require the

tracks to set aside 2 percent of purse funds for THBPA without specific approval of the purse winners. However, the Act prohibits a track from deducting purse winnings for dues or other payments except for an organization of the horse owner's choice. The chairman of the Commission recently requested an Attorney General's opinion on the legality of the 2 percent deduction.

The Commission's simulcast rule is also more restrictive than the federal Interstate Horseracing Act, which governs the transmission of simulcast signals across state lines. The federal law requires only the approval of the horsemen's organization in the state from which the simulcast originates (the sending state), not that of the horsemen in the state where the signal is received (the receiving state). By making Texas racetracks negotiate *all* simulcasting with the horsemen's organization, TxRC injects a requirement for simulcast signals that come into Texas that is not required under the federal act or discussed in the state statute.

▮ With one Class 1 horse track opening in the last few months and two others scheduled to open, the volume of

horse racing in the state is expected to increase dramatically. The openings will provide a practical test for the workability of the Commission's rules. As with any new venture, some adjustment will be needed.

CONCLUSION

The functions currently assigned to TxRC are appropriately placed in that agency. As long as the state authorizes pari-mutuel racing, a continuing need exists to regulate

racing activities. No other agencies were identified that could assume TxRC's functions with increased benefits to the state or with reduced costs. However, due to the pari-mutuel industry not yet achieving full operating status, significant changes in the industry may take place in the next few years that could require re-evaluation of the agency's policies and operations. In addition, problems exist with regard to the depth of rules adopted by the Commission that may also need to be re-evaluated in the future.

Recommendations

Change in Statute

- **Continue the Texas Racing Commission for a six-year period and require all rules to be evaluated and either re-adopted or repealed by January 1, 1998.**

This recommendation will provide the Legislature with an assessment of TxRC and policies regarding pari-mutuel racing in six years rather than the usual 12-year period for Sunset evaluations. At

the present time, the industry has not developed to the extent originally expected. Little information is available to evaluate many of the original expectations of pari-mutuel racing. A shorter Sunset review cycle of six years will provide the industry additional time to get off the ground and for the agency to move completely into a regulatory and oversight mode of operation.

Management Action

- **The Commission and staff should consult with a broad cross-section of the racing industry during the evaluation and development of the rules.**

As the racing industry moves into its next phase of development, the Commission must evaluate, correct, and refine its rules, which were developed

during the track licensing and construction phase. These refinements should also include an evaluation of whether each rule is fully consistent with authority provided in the Racing Act. Obtaining industry input during the process allows for meaningful interaction and assistance in developing rules that are both effective and workable.

FISCAL IMPACT

If the Legislature continues the current functions of TxRC using the existing organizational structure, its annual appropriations of about \$2.7 million would continue to be required for operation of the agency. TxRC also receives annually about \$2.8 million of pass-through funds for the Texas Bred Incentive Program and to pay track officials. The agency would continue to be self-supporting from

a portion of wagers made at the tracks and from licensing fees. These revenues are deposited in the Texas Racing Commission Fund.

If the Racing Commission were abolished leaving no entity to license racetracks to operate, the General Revenue Fund would experience a loss of about \$10 million per year from the General Revenue Fund's share of pari-mutuel wagers.

OCTOBER 1994

ACROSS-THE-BOARD RECOMMENDATIONS

TEXAS RACING COMMISSION

51

Texas Racing Commission	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Apply/Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Apply/Modify	2. Require specific provisions relating to conflicts of interest.
Apply	3. Prohibit persons required to register as a lobbyist from acting as general counsel to the agency or policymaking body or serving as a member of the policymaking body.
Apply	4. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Apply	7. Require the agency to establish career ladders.
Apply	8. Require a system of merit pay based on documented employee performance.
Apply/Modify	9. Provide for notification and information to the public concerning agency activities.
Apply/Modify	10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Apply	11. Require information to be maintained on complaints.
Apply	12. Require that all parties to written complaints be periodically informed in writing as to the status of the complaint.
Apply	13. Require development of an E.E.O. policy.
Apply	14. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	15. Provide for public testimony at meetings of the policymaking body.
Apply	16. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	17. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Update	18. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	19. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	20. Require training for members of policymaking bodies.

52

ACROSS-THE-BOARD RECOMMENDATIONS
TEXAS RACING COMMISSION

October 1994

Texas Racing Commission (cont.)	
Recommendations	Across-the-Board Provisions
B. LICENSING	
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Apply/Modify	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Apply	3. Provide an analysis, on request, to individuals failing the examination.
Apply	4. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	5. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	6. Authorize the staggered renewal of licenses.
Apply/Modify	7. Authorize agencies to use a full range of penalties.
Apply/Modify	8. Specify disciplinary hearing requirements.
Apply	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	10. Require the policymaking body to adopt a system of continuing education.

TEXAS RACING COMMISSION

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