

# SUNSET ADVISORY COMMISSION

Texas Real Estate Commission

Staff Report  
April 2006



# Sunset Advisory Commission

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*In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.*

TEXAS REAL ESTATE COMMISSION

SUNSET STAFF REPORT

APRIL 2006



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# SUMMARY

Buying and selling real estate generally involves licensed professionals assisting novice consumers to make a transaction. Most buyers and sellers make real estate transactions only a few times in their lives, creating a mismatch with the experience of salespersons and brokers. Without regulation, unscrupulous or ill-trained licensees, and other participants, could easily take advantage of this imbalance. The Legislature created the Real Estate License Act and regulation of real estate professionals, and other real estate-related providers, to ensure consumer protection.

Sunset staff evaluated the need for this regulation and the effectiveness of the Texas Real Estate Commission (TREC) in carrying out its duties. The review found that little has changed over the years in the structure of real estate transactions and the need to protect novice consumers. As such, the regulation is still needed. However, the review showed that the State and TREC need to improve their regulatory efforts, particularly in the area of enforcement. Since the agency's last Sunset review in 1991, standard practices for pursuing enforcement cases have changed significantly, and the agency has not kept up. Sunset staff identified numerous statutory impediments and agency practices that prevent the agency from more quickly and fairly addressing consumer complaints. TREC could improve its consumer protection function by using a stronger range of enforcement tools combined with an enhanced informal complaint resolution



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*The Sunset review focused  
on how TREC can  
improve its emphasis on  
consumer protection.*

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process. In addition, the agency could provide the public with improved information on real estate schools to help prospective students choose better performing schools.

Sunset staff also sought to conform TREC's regulatory activities with standard practices developed through 27 years of Sunset reviews. These changes would help the agency to provide better protection to consumers, to treat licensees more fairly, and to use its resources more effectively.

Finally, the Sunset review evaluated organizational alternatives to maintaining a separate agency for regulating real estate professionals. While other agencies, such as the Texas Department of Licensing and Regulation, may offer opportunities for increased efficiencies, no significant problems were identified at TREC to justify such restructuring. However, transferring the Texas Appraiser Licensing and Certification Board's functions to TREC would result in efficiencies for the Appraiser Board.

# Issues/Recommendations

## Issue 1

### **TREC's Enforcement Process Needs an Increased Focus on Consumer Protection.**

#### **Key Recommendations**

- ◆ Require the Commission to prioritize complaint investigations based on potential risk to consumers.
- ◆ Fully authorize TREC staff to open enforcement cases against licensees for violations of the licensing act and agency rules.
- ◆ Repeal the \$1,000 fine limit for practicing with an expired license, and increase administrative fines to a maximum of \$5,000 per day, per violation.
- ◆ Require the Commission to adopt a penalty matrix, in rules, that includes administrative fines and other sanctions against a licensee.

## Issue 2

### **The Enforcement Process is Outdated, Resulting in Delays and Wasted Agency Resources.**

#### **Key Recommendations**

- ◆ Require the Commission to implement a standard enforcement process including a structure for informal complaint resolution.
- ◆ Transfer the agency's Administrative Procedure Act hearings to the State Office of Administrative Hearings.

## Issue 3

### **Regulation of Private Real Estate Schools Should Better Ensure That Students Have Access to a Quality Education.**

#### **Key Recommendation**

- ◆ Require TREC to establish a minimum exam pass rate for re-accreditation of private real estate schools, and to provide information on individual school's pass rates to the public.

## Issue 4

### **Key Elements of the Commission's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.**

#### **Key Recommendations**

- ◆ Require the Commission to base delinquent license renewal fees on the standard renewal fee, and to conduct criminal background checks for all license renewals.
- ◆ Revise the Commission's enforcement activities by authorizing the agency to issue cease-and-desist orders, temporarily suspend licenses, and levy administrative penalties against residential service companies.
- ◆ Eliminate statutory fee caps.

## Issue 5

### **Texas Has a Continuing Need for the Real Estate Commission, Although Its Advisory Committee Structure Needs Strengthening.**

#### **Key Recommendations**

- ◆ Continue the Texas Real Estate Commission for 12 years.

- ◆ Remove the Commission's authority to delegate powers to committees, and authorize the Commission to create advisory committees as needed.
- ◆ Fully merge the Appraiser Board's functions with TREC while retaining the Appraiser Board as an independent regulatory authority.

## **Fiscal Implication Summary**

When fully implemented, the recommendations in this report would result in a gain of approximately \$78,400 annually to the General Revenue Fund. In addition, several recommendations will result in efficiencies for the agency, allowing them to re-direct significant resources, equal to about two staff positions, towards meeting their goals of issuing licenses and protecting consumer interests.

- ◆ Issue 2 – Implementing an informal complaint resolution process would free one staff annually. Transferring TREC's hearings to the State Office of Administrative Hearings would save the costs of one staff and associated administrative support.
- ◆ Issue 4 – Changing the basis on which the agency calculates late renewal penalties would result in a gain of about \$78,400 annually.

<i><b>Fiscal Year</b></i>	<i><b>Gain to the General Revenue Fund</b></i>
2008	\$78,400
2009	\$78,400
2010	\$78,400
2011	\$78,400
2012	\$78,400



# ISSUES

## *TREC's Enforcement Process Needs an Increased Focus on Consumer Protection.*

### Summary

#### Key Recommendations

- ◆ Require the Commission to prioritize complaint investigations based on potential risk to consumers.
- ◆ Fully authorize TREC staff to open enforcement cases against licensees for violations of the licensing act and agency rules.
- ◆ Repeal the \$1,000 fine limit for practicing with an expired license, and increase administrative fines to a maximum of \$5,000 per day, per violation.
- ◆ Require the Commission to adopt a penalty matrix, in rules, that includes administrative fines and other sanctions against a licensee.
- ◆ Revise TREC's enforcement activities by providing additional enforcement tools to increase consumer protection, and improving the way the agency processes complaints.

#### Key Findings

- ◆ The Commission's policies and statute create delays in resolving consumer complaints, placing the public at risk of harm.
- ◆ TREC lacks sufficient administrative penalty authority to deter violations of the licensing act and to hold licensees accountable for multiple violations.
- ◆ TREC lacks a penalty matrix with a full range of sanctions, making it difficult for the agency to fairly apply a range of penalties scaled to the severity of violations.

- ◆ Nonstandard enforcement provisions of TREC's statute and policies could reduce the agency's effectiveness in protecting consumers and providing fair treatment to licensees.

#### Conclusion

The Texas Real Estate Commission (TREC) regulates real estate licensees to protect consumers and to serve the needs of licensees. TREC accomplishes this regulation by investigating license applicants to ensure qualified persons enter the field, and by enforcing the licensing act to ensure that licensees carry out their fiduciary obligations to clients. Sunset staff evaluated TREC's enforcement authority, policies, and processes to determine whether it adequately balances consumer protection against the needs of licensees. In addition, staff assessed if TREC has adequate enforcement tools and complaint tracking processes identified by Sunset as standards common to occupational licensing agencies.

Staff concluded that the enforcement process needs to change to even the balance between licensees and consumers. The remedies are to require that TREC more quickly resolve consumer complaints, and to authorize the use of a wider range of enforcement tools to hold licensees more fairly accountable for violations.

## Support

### TREC enforces the Real Estate License Act to ensure licensees meet their fiduciary obligations to clients when providing services.

- ◆ TREC's enforcement division has 26 staff, including seven attorneys, four legal assistants, ten investigators, and administrative support. The

#### **Licensee Service Obligations**

By statute, brokers and salespersons must adhere to the following when providing services:

- ◆ negotiate the best possible transactions for clients;
- ◆ provide services competently and without negligence;
- ◆ provide services only when actively licensed;
- ◆ deposit client funds in an escrow account;
- ◆ disclose known defects in a property;
- ◆ disclose client representation;
- ◆ gain consent to act as an intermediary;
- ◆ ensure end dates on listing contracts; and
- ◆ use TREC-approved real estate forms.

division enforces TREC statutes and rules regulating about 137,000 real estate brokers, salespersons, and broker corporations. By law, licensees must place their client's best interests above their own, and carry out their duties with honesty and integrity. The textbox, *Licensee Service Obligations*, shows the standards licensees must meet when providing services to clients. In addition to regulating brokers and salespersons, TREC oversees inspectors, home warranty companies, and timeshare projects.

- ◆ The agency enforces the licensing act by investigating consumer and staff-initiated complaints, and starting enforcement cases if needed. By statute, staff must investigate consumer complaints. However, statute authorizes the Commission to direct staff to initiate enforcement cases only under specific circumstances, as shown in the textbox, *Staff Authority to Open Enforcement Cases*. Staff must request the Commission's approval to open any other cases, for example if staff discovers, while conducting an investigation, that a licensee not named in the original complaint defrauded a consumer. Enforcement division staff typically request permission to initiate complaints at regular Commission meetings, generally held every two months.

#### **Staff Authority to Open Enforcement Cases**

The Commission may authorize staff to open enforcement cases in the following instances:

- ◆ claims against the real estate recovery account;
- ◆ criminal conviction of licensees;
- ◆ writing bad checks to the agency;
- ◆ failure to complete continuing education; and
- ◆ failure to provide license renewal information.



*Brokers and salespersons must represent their client's best interests.*

- ◆ After opening enforcement cases, staff attorneys forward them to field investigators who file reports back to the central office after finishing their investigations. When investigating the cases, staff may issue citations to brokers for violations such as operating without a corporate license or failure to display consumer information in their office.

- ◆ In fiscal year 2005, the agency opened 4,585 enforcement cases, as shown in the chart, *TREC Enforcement Cases Opened*, and resolved 4,419 cases. About 44 percent of all enforcement cases involved licensing-related issues, such as not providing renewal information. The majority of cases involve real estate licensees, with the next most frequent involving home inspections, 85 cases, and home warranty companies, 37 cases.

In fiscal year 2005, TREC levied 1,400 sanctions against licensees, as shown in the chart, *TREC Disciplinary Actions*. Based on statutory authority to assess a maximum of \$1,000 per violation, per day, the agency collected \$69,150 in administrative penalties.

**TREC Disciplinary Actions – FY 2005**

Type of Action	Number	Percent
Advisory letter or reprimand	776	60%
Administrative penalty	220	17%
Cease and desist letter	80	7%
Probation of license	80	6%
Suspension of license	69	5%
Revocation of license	63	5%
<b>Total</b>	<b>1,295</b>	<b>100%</b>

**TREC Enforcement Cases Opened\* – FY 2005**

Type of Case	Number	Percent
License renewal information	1,123	24%
Non-jurisdictional issues	738	16%
Acting in a fraudulent or misleading manner	574	12%
License application inquiry	581	12%
Late continuing education	491	11%
Assessment of moral character	395	9%
Information requested / investigation	271	6%
Criminal offense	93	2%
Home inspection	85	2%
Practicing with expired license	77	1.5%
Re-opened – license expired during investigation	66	1.5%
Other	56	1%
Bad check written to agency	45	1%
<b>Total</b>	<b>4,585</b>	<b>100%</b>

\*Several licensees may be named as respondents in a case.

- ◆ Consumers harmed by licensees can recover damages and attorney’s fees from the Real Estate Recovery Trust Account. To file a claim, consumers must sue the licensee, and if the licensee cannot pay, request payment from the Account. In fiscal year 2005, the account had investments and cash balances of about \$2.4 million and paid eight claims totaling \$236,000. The Account receives its revenues primarily from investment returns, licensing fees, and fines.

**The Commission’s policies and statute create delays in resolving consumer complaints, placing the public at risk of harm.**

- ◆ TREC’s policies unfairly favor resolving licensing matters, such as not providing renewal information, over consumer cases.<sup>1</sup> TREC fails to appropriately prioritize the investigation of consumer complaints, which contributes to these cases going unresolved, sometimes for years. The chart, *TREC Aged Enforcement Cases*, shows cases still

**TREC Aged Enforcement Cases**

Age	Cases
4 years or more	1
3 to 4 years	4
2 to 3 years	48
1.5 to 2 years	113
1 to 1.5 years	71
6 months to 1 year	265
Source: TREC enforcement report 1/23/06	

open as of January 2006. The textbox, *Selective Sample of TREC Enforcement Cases*, shows how long TREC can take to resolve consumer cases and the type of harm caused. Leaving these complaints unresolved for long periods deprives consumers of timely redress, and creates undue risks for the public while licensees continue to practice.



*Some consumer complaints can remain unresolved by TREC for more than two years.*

#### **Selective Sample of TREC Enforcement Cases**

**Case #1 – 20 months to close case** – A salesperson provided TREC with information that a broker with a criminal history was recently found guilty of theft and incarcerated. While staff stated they would investigate the broker’s conviction, the only result in this case was reprimanding the broker for failure to disclose property defects.

**Case #2 – 20 months to close case** – After investigating a complaint against a real estate school and conducting an audit, TREC found multiple violations, including allowing students to grade their own exams. TREC obtained an agreed order with a \$3,000 fine. According to TREC staff, these were the worst violations found at a school, yet resolving the case still took 20 months.

**Case #3 – 15 months to close case** – The salesperson failed to include two lots in a sales contract as intended, resulting in the seller losing at least \$10,000 from closing on only one lot. The salesperson was given a six month suspension, probated for one year, and required to take additional continuing education courses.

**Case #4 – 14 months to close case** – A buyer gave a salesperson \$22,500 to close on a property, but the salesperson failed to draft closing documents and took the funds for personal use. While TREC revoked the salesperson’s license, the file did not show if the case was referred for criminal prosecution.

Source: TREC enforcement case files.



*TREC staff lack needed authority to open enforcement cases.*

- ◆ By policy, investigators must file 16 case reports every three months, or 64 annually.<sup>2</sup> Because this policy requires investigators to meet their report quotas, it contributes to closing cases based on expediency rather than severity of risk to consumers. This policy contributes to the Division working on easier enforcement cases, while more complex and potentially more harmful, consumer cases languish. However, the agency has made some progress by recently relaxing these quotas in an attempt to close old consumer enforcement cases.
- ◆ Statutory limitations on the Commission’s ability to authorize staff to initiate enforcement cases prevent staff from acting quickly to protect consumers. For example, under current law, when staff investigates a consumer complaint and finds that a licensee not named in the complaint committed a separate violation, staff cannot open a case against that licensee without the Commission’s approval. According to staff, this restriction hinders their ability to quickly and thoroughly enforce the licensing act when they uncover additional violations during an investigation. The ability for staff to open enforcement cases during investigations is important because consumers do not always name the correct licensees in complaints since several brokers

and salespersons can be involved in a transaction, and may carry out several different transactions relating to buying and selling property.

**TREC lacks sufficient administrative penalty authority to deter violations of the licensing act and hold licensees accountable for committing violations.**

- ◆ By statute, and policy, TREC’s administrative fine for carrying out real estate transactions with an expired license ranges from \$250 to a \$1,000 maximum. TREC applies this \$1,000 maximum fine regardless of the number of real estate transactions carried out, even though they could involve millions of dollars. The textbox, *Fines for Expired License Violations*, details this policy. This \$1,000 limit prohibits TREC staff from counting each transaction as a separate violation and holding licensees accountable accordingly. In addition, by limiting fines to this low amount, TREC does not sufficiently deter licensees from practicing illegally after failing to renew their license.

**Fines for Expired License Violations**  
TREC limits fines to a maximum of \$1000 in cases where brokers or salespersons continue to practice after their licenses expire, and later renew their license. TREC applies this limited fine to agreed orders where the licensee renewed within four years, showed no intentional misconduct, and where no consumer complaints were filed.

In 2001, the Commission limited fines in expired license cases because of concerns over fine amounts in cases such as the one discussed in the textbox, *TREC’s Largest Administrative Penalty*.<sup>3</sup> Under current law and policy, the licensee in this case would not be fined \$10,400, but rather only \$1,000. In fiscal year 2005, TREC opened 77 expired-license cases involving violations such as completing a sale while without a license, or sharing commissions with unlicensed persons. While TREC has authority to assess civil fines of up to \$4,000 for unlicensed activity, such as a person operating a real estate business without a license, the agency has not used this authority.

**TREC’s Largest Administrative Penalty**  
In 1999, TREC assessed its highest fine ever of \$10,400 for 52 separate violations, or \$200 per violation. TREC reached an agreed order with a broker who admitted to conducting 52 real estate transactions with her salesperson, whose license had expired.  
Source: TREC enforcement case file.

- ◆ The agency’s statutory limit on administrative penalties of \$1,000 per violation, per day, may not be adequate to deter violations of the licensing act, especially in comparison to fines TREC may assess against other entities it regulates. TREC may assess fines of up to \$10,000 against time share developers, and may seek civil penalties of up to \$50,000 against home warranty companies. Other state agencies regulating occupations have higher administrative penalties, such as the Texas Department of Licensing and Regulation (TDLR), which may assess up to \$5,000 per violation, per day, and the Texas Department of Savings and Mortgage Lending which may assess up to \$2,500 per violation.

**TREC lacks a penalty matrix with a full range of sanctions, making it difficult for the agency to fairly apply penalties scaled to the severity of violations.**

- ◆ The ability of an agency to apply a full range of penalties through the enforcement process gives agencies a powerful tool to encourage compliance

without having to revoke a license. However, TREC does not have a comprehensive penalty matrix to help ensure assessment of penalties in a fair, consistent, and systematic way. The textbox, *Inconsistent Use of Administrative Fines*, shows potentially unfair and inconsistent application of the same fine in two very different cases, one where a consumer lost a home, and another where a salesperson simply misrepresented himself as a broker. In contrast, TDLR has a penalty matrix with a range of sanctions, including fines, tied to specific violations of the licensing acts they administer. By using a well developed penalty matrix, TDLR is able to assess sanctions fairly and consistently against licensees that commit violations.



*The agency lacks a matrix to help ensure consistent penalty assessment.*

#### ***Inconsistent Use of Administrative Fines***

**Case #1. \$500 fine for violations resulting in a consumer losing a home** – A broker and a salesperson arranged for a buyer to assume the loan on a house, but failed to get the lender’s permission. As a result, the lender foreclosed and the buyer lost the house. The agency obtained agreed orders with a \$500 fine and probated suspension for the salesperson, and a probated suspension plus continuing education requirements for the broker.

**Case #2. \$500 fine for a salesperson representing himself as a broker** – Sellers complained that after listing the house, the salesperson made false claims, listed the house late, and wrongly disclosed a lower price. However, TREC only found that the licensee falsely represented himself as a broker, resulting in an agreed order with a \$500 fine and one month probated suspension.

Source: TREC enforcement case files.

### **TREC lacks authority to hold brokers and salespersons accountable for violations committed while licensed, but whose licenses expire during the enforcement process.**

- ◆ TREC stops its enforcement efforts after a person’s license expires because it lacks statutory authority to secure an enforcement order if needed. In some of these cases, the violations under investigation are significant, such as participating in mortgage fraud. By closing the case before completion, TREC is unable issue a final order with an administrative fine to deter the person from committing other violations in the future.

Closing an enforcement case prematurely results in wasting staff resources when staff later re-opens the case, should the person apply for a license in the future. In one case involving minor violations, TREC re-opened a 20-month old case against a broker who was re-applying for a license. The agency set an entire contested case hearing over minor violations involving only a few hundred dollars. Had the agency completed its original investigation, an enforcement order would have been in place for the person to comply with before being eligible for a new license.

- ◆ In 2005, the Legislature provided the Texas State Board of Pharmacy with jurisdiction over pharmacists whose licenses expired while subject to a pending investigation or disciplinary action, to hold these persons accountable for violations after their licenses expire.

**Nonstandard enforcement provisions of TREC’s statute and policies could reduce the agency’s effectiveness in protecting consumers and providing fair treatment to licensees.**

- ◆ **Refund authority.** TREC lacks authority to order refunds from licensees depriving consumers of a simple avenue for compensation when financially harmed. The goal of a refund is to allow a complainant to receive some or all of funds lost as a result of the act that caused the complaint. Currently a consumer’s only recourse for compensation is to sue a licensee and make a claim against the Real Estate Recovery Trust Account, even for damages involving a few thousand dollars or less.

The Account also pays plaintiffs attorney fees as part of claims. Requiring consumers to file lawsuits results in unnecessary costs to the Account from attorney fees. While attorney fees average about 16 percent of total damages paid, Sunset staff found that attorney fees for small claims can equal up to 350 percent of damages paid, as shown in the chart, *Sample of Attorney Fees Paid on Small Claims*.

**Sample of Attorney Fees Paid on Small Claims  
(Real Estate Recovery Trust Account)**

Damages Paid	Attorney Fees Paid	Percent of Fees to Damages
\$770	\$2,462	320%
\$834	\$2,500	300%
\$1,000	\$1,250	125%
\$1,850	\$6,500	351%
\$4,300	\$4,600	107%
\$11,000	\$39,000	354%
Source: TREC Commission Minutes 1999-2004		

Other state agencies have authority to order refunds or restitution. For example the Texas Department of Savings and Mortgage Lending negotiates restitution for consumers, returning about \$82,000 to consumers in fiscal year 2005.<sup>4</sup> In the same year, the Office of Consumer Credit Commissioner returned more than \$1.9 million to consumers wronged by licensees.<sup>5</sup>

- ◆ **Complaint and violation trend analysis.** Licensing agencies should analyze the source and types of violations and complaints to identify problem areas and trends. Identifying such trends can help the agency manage its resources more effectively, leading to greater protection of consumers. Additionally, the agency can use such information to create educational materials for licensees about common violations of statutes and rules. TREC does not have a method for performing this trend analysis, hindering its ability to provide better service to consumers and licensees. A formal system to analyze the sources and types of violations and complaints would lead to better enforcement and increased administrative efficiency.
- ◆ **Complaint and violation statistics.** Agencies should compile detailed statistics about complaints and violations by licensees. Agencies should document how they resolve complaints each year, and should report this information annually to their policymaking bodies. While TREC does track complaint information, and provides it regularly to the Commission, this information is of limited usefulness because it does not show resolution times by complaint type, such as consumer versus licensing-related, or aging of complaints at the end of the year.



*Because the agency cannot order refunds, consumers must file a lawsuit even for small claims.*

Until 2006, the agency counted certain licensing-related activities as complaints to meet its six-month complaint resolution performance measure. These activities included conducting moral character determinations, investigating new license applicants, and requesting additional licensing information. Also, the agency does not track the number of citations written by field investigators, or treat these as separate violations for potential enforcement action, even though these can involve operating a brokerage corporation with an expired license.

## Recommendations

### Change in Statute

#### **1.1 Require the Commission to prioritize complaint investigations based on potential risk to consumers.**

This recommendation would focus TREC on more quickly investigating consumer complaints and taking swifter action against licensees who violate the licensing act. Under this recommendation, TREC should create a risk-based approach to prioritizing and investigating complaints based on an initial assessment of the complaint. In creating this risk-based approach the Commission should consider several factors including:

- ◆ the degree of potential harm to the consumer;
- ◆ the potential for immediate harm to other consumers;
- ◆ the overall severity of the allegations in the complaint;
- ◆ the number of potential violations in the complaint;
- ◆ the number of licensees potentially involved in the complaint; and
- ◆ the previous complaint history of the licensee.

Based on these factors, and others as appropriate, agency staff would initially rank and prioritize investigation of consumer complaints. In addition, the Commission should revise its policies and procedures to reflect this emphasis on consumer protection, while at the same time appropriately balance the needs of licensees to ensure that new licensees can enter the profession in a reasonable amount of time after applying for a license.

#### **1.2 Fully authorize TREC staff to open enforcement cases against licensees for violations of the licensing act and agency rules.**

This recommendation allows the agency to more quickly, and fully, protect consumers by directly authorizing staff to open enforcement cases regarding any violation of the licensing act or TREC rules, based upon reasonable cause. Other state occupational and professional licensing agencies commonly have this authority to effectively enforce their statute and rules.

#### **1.3 Repeal the \$1,000 fine limit for practicing with an expired license, and increase administrative fines to a maximum of \$5,000 per day, per violation.**

This recommendation would provide the agency flexibility to more effectively deter licensees from committing violations and more appropriately hold licensees accountable who commit multiple violations of the licensing act. This recommendation would remove statutory language prohibiting TREC from

assessing an administrative penalty for each transaction carried out by a person with an expired license, if the licensee renewed within four years of the violation. This recommendation would also increase the administrative penalty cap to a maximum of \$5,000 per day, per violation. The Commission should use this new flexibility to assess appropriate penalties consistent with the severity and frequency of violations committed by real estate and home inspector licensees. This recommendation would not change TREC's penalty authority over timeshare developers, and Issue 4 of this report addresses penalty authority over residential service companies.

**1.4 Require the Commission to adopt a penalty matrix, in rule, that includes administrative fines and other sanctions against a licensee.**

This recommendation ensures that the Commission can consistently and fairly apply a full range of sanctions to licensees for violations of the licensing act and rules. The recommendation would require the Commission to develop a penalty matrix covering the range of possible violations by real estate licensees, home inspectors and education providers. This matrix should include a range of administrative penalties and sanctions against a licensee, such as revocation, suspension, and probation. The matrix should relate the appropriate fines and sanctions to different violations based on their severity, and should include increased penalties for repeat violations. Developing this penalty matrix in rule would require that it be published in the Texas Register, and adopted by the Commission after giving the public the opportunity to comment.

**1.5 Authorize final orders against a person who committed a violation while licensed, but whose license expires during the investigation.**

This recommendation would provide TREC an additional enforcement tool to more effectively hold a person accountable for violations, and allow the agency to conclude an investigation and obtain a final order without having to re-open the case at a later date. This recommendation would authorize TREC to assess an order against a person who was licensed when he committed a violation, but whose license expires during the investigation. Under this recommendation, the agency would be able to assess an administrative penalty against the former licensee, and require payment before considering the person for a new license.

**1.6 Authorize TREC to order refunds as part of the complaint settlement process.**

This recommendation would provide consumers with more recourse to settle complaints informally, without having to file a separate lawsuit and make a claim against the Recovery Account. Under this recommendation, the Commission would have the option to include restitution in an agreed order negotiated with the licensee. Restitution could include refunds of fees paid for real estate services, home inspections, or other real estate-related services and products regulated by the agency and would not include estimations of damages or harm.

## **Management Action**

**1.7 Direct the Commission to improve on its collection of complaint and violation statistics, and to develop a method for complaint trend analysis.**

This recommendation would direct the Commission to compile more useful information on complaint and violation statistics, reported to the Commission at least annually. The agency should compile this information in a useful format allowing staff to identify regulatory problem areas. TREC should not use non-jurisdictional complaints or licensing information requests in calculating its complaint resolution time frames. In addition to the detailed information the agency already collects, the agency should collect information such as:

- ◆ enforcement case resolution time frames by type of complaints for example, consumer complaints versus licensing-related complaints;
- ◆ the number, type, and age of all open complaints at the end of each fiscal year; and
- ◆ the number and type of non-jurisdictional complaints.

### **Fiscal Implication**

These recommendations would not have a fiscal impact to the State, as TREC would be able to implement changes to its current enforcement process with existing resources. While prioritizing investigation of consumer complaints over licensing-related issues could increase licensing time frames, other recommendations discussed in Issue 2 of this report would reduce overall time frames for complaint resolution, and identify resources that could be directed towards processing licensing applications. Increasing TREC's cap on administrative penalties would not result in a gain to the General Revenue Fund because these fines are deposited to the Real Estate Recovery Trust Account. While additional penalty revenues could result in a gain to the recovery trust account, the amount could not be estimated for this report. In addition, authorizing the Commission to order refunds to consumers could reduce claims, and associated attorney fees, paid from the recovery account. The recommendations relating to collection and analysis of complaint and violation data are procedural improvements on activities the agency already conducts that should require only minor costs to update the agency's enforcement database.

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<sup>1</sup> Texas Real Estate Commission (TREC), *Employee Performance Planning and Appraisal*, Revised June, 2004, un-numbered pages.

<sup>2</sup> TREC, *Enforcement Handbook*, Revised June 2005, p. 34.

<sup>3</sup> Memorandum from TREC staff to Commission members, January 2, 2003.

<sup>4</sup> Information provided by the Texas Department of Savings and Mortgage Lending.

<sup>5</sup> Information provided by the Office of Consumer Credit Commissioner.

## *The Enforcement Process is Outdated, Resulting in Delays and Wasted Agency Resources.*

### Summary

#### Key Recommendations

- ◆ Align TREC's hearing and administrative penalty processes.
- ◆ Require the Commission to implement a standard enforcement process including a structure for informal complaint resolution. This recommendation would require several statutory changes, including:
  - requiring the Commission to issue notices of violation that licensees must respond to;
  - authorizing the Commission to issue default enforcement orders; and
  - requiring the Commission to hold informal settlement conferences to resolve complaints.
- ◆ Transfer the agency's Administrative Procedure Act hearings to the State Office of Administrative Hearings.

#### Key Findings

- ◆ TREC's choice to use separate administrative and contested case hearing tracks prevents it from effectively sanctioning licensees who violate the Act.
- ◆ TREC's enforcement processes are outdated, lacking a structured informal complaint resolution process common to other state occupational licensing agencies.
- ◆ The agency's process for issuing orders in contested cases lack the independence and efficiencies that SOAH provides.

#### Conclusion

TREC carries out long-standing internal practices to enforce provisions of its enabling Act. Sunset staff evaluated TREC enforcement practices, including investigations, case management and hearings. The staff concluded that the agency's practices fail to meet common standards relating to consistency, fairness, and effectiveness. In addition, the statute itself creates inconsistencies between handling of administrative fines versus other sanctions. Finally, staff found that the State Office of Administrative Hearings (SOAH) could more independently and efficiently conduct TREC's contested case hearings.

## Support

**TREC enforces the Real Estate License Act and agency rules using two processes, one for assessing fines and one for suspending or revoking a license.**

- ◆ TREC enforcement staff investigate consumer and staff-initiated complaints, opening 4,585 enforcement cases in fiscal year 2005, as shown in the chart, *TREC Enforcement Cases*. These cases include consumer complaints, and administrative matters such as failing to complete

**TREC Enforcement Cases – FY 2005**

Type of Case	Number
Consumer	1,909
Administrative	1,710
Licensing	581
Moral Character Assessment	385
<b>Total</b>	<b>4,585</b>

continuing education or writing a bad check to the agency. After initial investigation, if reasonable cause exists that a violation occurred, staff opens

an enforcement case against the licensee and conducts a full investigation. If the investigation finds a violation, staff sends the licensee allegations with findings of fact, giving the person about two weeks to respond before setting a contested case hearing. For a visual picture of TREC's enforcement approach, please see the chart *Enforcement Processes* on page 19.

**TREC Disciplinary Actions – FY 2005**

Type of Action	Number	Percent
Advisory letter or reprimand	776	60%
Administrative penalty	220	17%
Cease and desist letter	87	7%
Probation of license	80	6%
Suspension of license	69	5%
Revocation of license	63	5%
<b>Total</b>	<b>1,295</b>	<b>100%</b>

As a result of these enforcement efforts, TREC took 1,295 actions in fiscal year 2005 as shown in the chart, *TREC Disciplinary Actions*, assessing \$69,150 in administrative fines.

- ◆ TREC chooses to administer its enforcement cases using two approaches, as shown in the chart, *TREC Enforcement Tracks*. The agency gained administrative penalty authority as a result of the 1991 Sunset review.

**TREC Enforcement Tracks**

	Contested Case Track	Administrative Penalty Track
Statutory Authority	The Commission appoints a judge to conduct hearings.	The Commission authorizes the Administrator to assess fines.
Penalties	TREC's judge may grant, deny, suspend, or revoke a license. No fines.	The Administrator may issue a violation report with fines only.
Informal Settlement	Agreed order negotiated before hearing.	Agreed order negotiated before hearing.
APA Hearings	Mandatory, a licensee is entitled to a hearing.	Mandatory if licensee does not respond to allegations.
Appeals	Request re-hearing before the Commission. Final appeal to district court.	Final appeal to district court.

However, TREC does not use this authority as intended, as discussed later in this issue. By law, TREC must offer a hearing to all those found in violation. TREC's Administrative Law Judge (ALJ) conducts all contested case hearings and issues all final orders. In fiscal year 2005, the ALJ adjudicated 139 hearings. The ALJ also reviews agreed orders, approving all 200 of these orders in fiscal year 2005.

- ◆ The Commission has a statutory role in the enforcement process, including authorizing investigation of many staff-initiated complaints, and considering requests for re-hearings of contested cases. When hearing these requests, the Commission may modify a final order based on the respondent's request, such as issuing a probated license rather than suspending it. In fiscal year 2005, the Commission granted four re-hearings, with two decisions overruled and two cases withdrawn. No TREC orders were appealed to district court.

**TREC's choice to use separate administrative and contested case hearing tracks prevents it from effectively sanctioning licensees who violate the Act.**

- ◆ TREC does not pursue both fines and licensing actions in a contested case hearing, depriving the agency of the opportunity to assess a combination of sanctions based on the nature and severity of the violations. TREC has not used its administrative penalty track as a strong alternative to revoking a broker's license as recommended by the Sunset Commission, and adopted by the Legislature in 1991.<sup>1</sup> In fiscal year 2005, the agency issued only 10 administrative fines through the formal statutory process. Those fines were all for failure to receive enough continuing education credits. However, the agency does assess administrative penalties in agreed orders, without using the statutory administrative penalty process.
- ◆ The ability to assess a fine against a broker, in lieu of revocation, is an important option because revoking a broker's license automatically inactivates the licenses of all salespersons working for the broker. While the ALJ could consider administrative penalties in contested cases, the agency has determined that the final orders on contested cases and administrative penalties would have to be issued separately. As a result, the agency simply chooses not to pursue a complaint under both enforcement tracks.

**TREC schedules all valid enforcement cases for hearings, including minor violations, limiting action on consumer-related violations.**

- ◆ TREC pursues minor enforcement cases through its hearings track, wasting valuable staff resources. This approach requires staff to prepare all cases as if they will proceed to a formal hearing, gathering evidence and documentation that might otherwise not be necessary for minor violations, such as not completing continuing education requirements on time. In fact, this staff effort could be used to address unresolved consumer complaint cases. As discussed in Issue 1, because TREC does not appropriately prioritize consumer complaints, they can go unresolved for several years. On an annual basis TREC expends about 2,400 staff hours, equal to one staff person, and \$31,000 in additional administrative costs just to set these minor cases for hearings.<sup>2</sup> In fiscal year 2005, 42 percent of all enforcement cases



*Since 1991,  
TREC has not  
made good use of  
its administrative  
penalty authority.*



*TREC wastes  
valuable resources  
by using formal  
hearings to pursue  
minor violations.*

involved these minor issues, as shown in the chart, *TREC Minor Enforcement Cases*.

**TREC Minor Enforcement Cases – FY 2005**

Type of Case	Number
Failure to provide licensing renewal information	1,123
Late continuing education	491
Failure to provide information - investigation	271
Writing a bad check to the agency	45
<b>Total</b>	<b>1,930</b>

- ◆ In comparison, TREC held only eight consumer-related enforcement hearings in fiscal year 2005 as shown in the chart, *TREC Contested Cases by Type*. By pursuing minor cases through the contested case track, the agency contributes to delaying actions on more serious consumer cases. Most regulatory licensing agencies handle minor cases informally much earlier in the process. For example, in one case observed by Sunset staff, TREC held a hearing to re-open a 20-month old complaint involving a few hundred dollars of a consumer’s funds, which could have been resolved informally much earlier. Without an effective settlement process, this case resulted in a full hearing, with both the complainant and respondent traveling to Austin to participate.

**TREC Contested Cases by Type – FY 2005**

Type of Case	Number
Licensing application denials	47
Late continuing education	37
Failure to provide licensing information	17
Writing a bad check to the agency	10
Assessment of moral character	10
Revocation - recovery account claim	10
Consumer complaint	8
<b>Total</b>	<b>139</b>

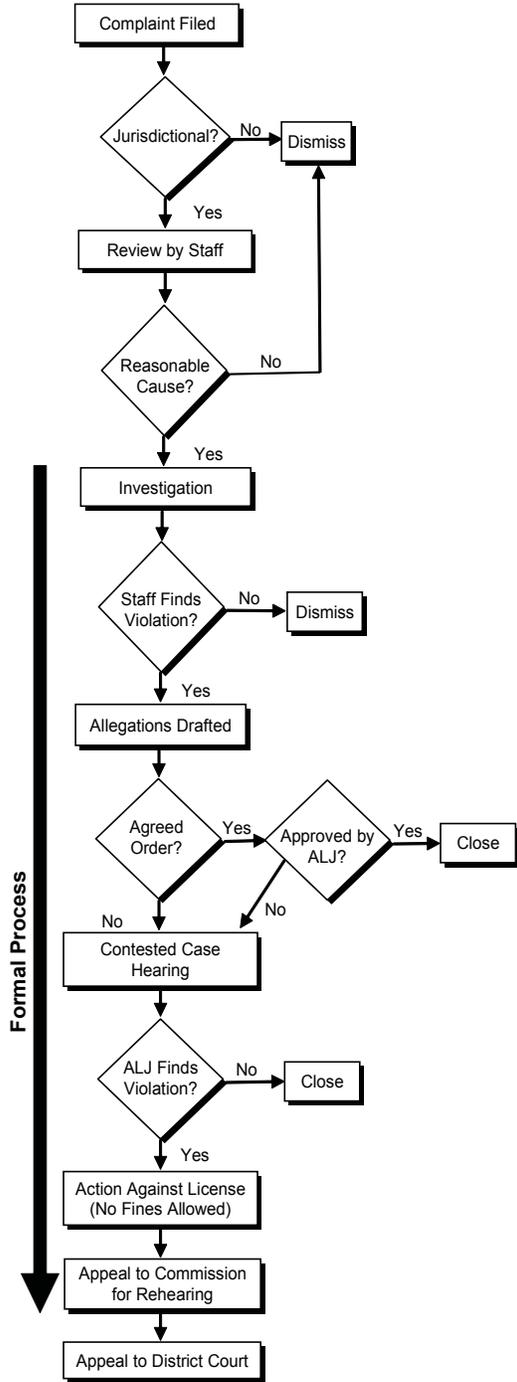
**TREC’s enforcement processes are outdated, lacking a structured informal complaint resolution process common to other state occupational licensing agencies.**

- ◆ The agency lacks the statutory ability and policies needed to resolve complaints informally, so that only the most serious and complex cases go to a formal hearing. The flow charts on page 19 compare TREC’s enforcement process to a standard process reflected in Sunset’s Occupational Licensing Model, and used by other agencies such as the Texas Department of Licensing and Regulation. As shown in these charts, TREC begins the formal process early on, in contrast to the standard, where formal processes begin only with referral of a case to SOAH.
- ◆ TREC lacks several components needed for effective and fair informal resolution of complaints. These missing pieces prevent TREC from more quickly resolving a majority of its enforcement cases. The components missing from TREC’s enforcement process include the following.

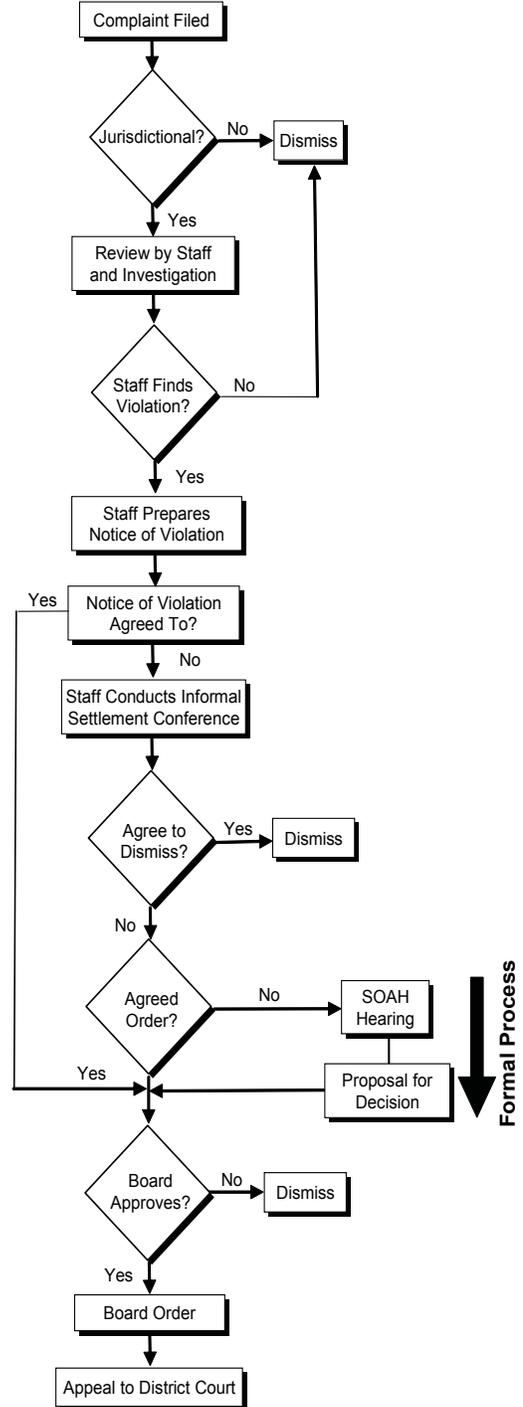
*Notices of Violation.* TREC’s current process of sending licensees allegations of violations with proposed sanctions, while useful, is not set in statute or rules. Staff lack authority to issue notices of violation, an approach common to other licensing agencies.

## Enforcement Processes

### TREC Enforcement Process Using Contested Cases



### Standard Enforcement Process Using Informal Resolution





*The agency lacks authority needed to effectively resolve enforcement cases informally.*

**Response Requirements.** Licensees also have no incentive to respond to allegations since the agency cannot require a response within a set period of time. Presently, licensees have no incentive to respond until they receive a notice for hearing from agency staff.

**Default Orders.** TREC does not have authority to issue a default order if a licensee does not respond to allegations of a violation since statute mandates that TREC offer a hearing to the licensee before taking an action. TREC must prepare to go to a formal hearing in all cases, regardless of how minor the violations.

**Informal Settlement Conferences.** TREC lacks policies and procedures guiding the informal settlement of enforcement cases, resulting in the risk of inconsistent and unfair dismissal of cases or negotiations of agreed orders. While the agency's Enforcement Director oversees agreed orders, unlike many other agencies, TREC does not use a committee of staff to discuss settlements or conduct negotiations with licensees to help ensure consistency. While staff attorneys sometimes consult with each other on agreed orders, they typically negotiate orders on an individual basis with the licensee. Staff also does not have easily usable, or searchable, information on prior disciplinary actions to guide settlements in agreed orders, or to propose sanctions in contested cases.

**Approval of Agreed Orders.** TREC's administrative law judge has the unusual role, compared to most licensing agencies, of adjudicating non-monetary sanction enforcement hearings for the Commission. Most agencies have the executive director approve and sign such orders, allowing ALJs to concentrate solely on the hearings process and avoid the appearance of a conflict of interest.

**The agency's process for issuing orders in contested cases lacks the independence and efficiencies that SOAH provides.**

- ◆ **Independence.** In 1991, the Legislature created the State Office of Administrative Hearings to conduct hearings for state agencies. The agency has 57 administrative law judges, who hear cases in Dallas, San Antonio, Houston, and Austin. In fiscal year 2005, SOAH conducted 34,130 hearings for 59 agencies. Since SOAH's creation, the Sunset Commission has routinely reviewed administrative hearings conducted by agencies to determine whether this function could be better performed by SOAH.

The majority of participants in TREC regulatory hearings - the ALJ who adjudicates the case, the attorneys who bring charges, and the staff who investigate the allegations - are all TREC employees. This relationship provides the opportunity for ex-parte communication and may create the perception to consumers that the hearings process and the ALJ's decisions are not independent or fair.

This perceived lack of independence would not exist if a judge employed by SOAH conducted the administrative hearings. The ALJ assigned to perform hearings for TREC would be housed at SOAH, separating the agency's role as a party in the hearings from the responsibility of conducting the hearing itself.

- ◆ **Efficiencies.** According to TREC, the agency spent an average of about \$284 per hearing in fiscal year 2005.<sup>3</sup> However, the agency calculated these costs by including 200 agreed orders approved by the ALJ and 84 hearings for minor cases, such as failure to complete continuing education and not providing renewal information. However, if TREC did not include agreed orders and minor cases in its calculations, the costs of conducting more typical licensing and consumer-related hearings would increase to about \$1,700 per hearing, as shown in the chart, *TREC and SOAH Hearings Cost Comparison*. In contrast, SOAH spends an average of about \$970 per hearing on cases involving occupational licensing, utilities, and environmental issues.<sup>4</sup> While these cost comparisons are approximate, and can vary based on the length and complexity of cases, TREC unnecessarily expends resources on minor cases that should be resolved informally, rather than going to a hearing.

**TREC and SOAH Hearings Cost Comparison**

Agency	Cost Per Hearing
SOAH hearings*	\$970
TREC licensing and consumer hearings**	\$1,700
*Estimated costs for SOAH hearings including cases such as licensing, utilities and environment. Excludes Texas driver license revocations.	
**Estimated cost per hearing based on TREC information.	

## Recommendations

### Change in Statute

#### 2.1 Align TREC's hearing and administrative penalty processes.

This recommendation would enable TREC to more easily investigate and administer cases through a single, consistent process. The recommendation would align several statutory provisions of TREC's contested case hearing and administrative penalty processes, including the Commission's ability to delegate hearings and final disposition authority to the agency's Administrator and the ALJ. The statute would primarily align the non-monetary sanction and hearing process with the more specific and recently structured, administrative penalty process contained in many state agencies' statutes. TREC should analyze all elements of its enforcement processes under the new statutory framework and align all elements to ensure rapid, fair, and complete administration and disposition of cases. As a result, in combination with Issue 1, consumers would see quicker disposition of complaints that often languish under the current process.

#### 2.2 Require the Commission to implement a standard enforcement process including a structure for informal complaint resolution.

This recommendation would modernize TREC's enforcement process and apply procedures for informal complaint resolution common to other state agencies. As a result, the majority of TREC's complaints cases would be closed much more quickly, and only the most serious enforcement cases would need a contested case hearing. The statute would require TREC to create an enforcement plan detailing a step-by-step informal complaint resolution process applied to all of the agency's licensees and regulated entities. As a model, TREC could look to the Texas Department of Licensing and Regulation, which

has such a plan detailed on its website. TREC should adopt the plan by agency rule, providing an opportunity for public comment. To implement this plan the following statutory changes are necessary.

- ◆ Require the Commission to issue notices of violation with proposed sanctions if warranted. Sanctions may include one or more of administrative penalties, actions against a license, and terms of probation.
- ◆ Provide the Commission authority to require licensees to respond to notices of violations within a specific timeframe, typically 20 days, to be set by rule.
- ◆ Require the Commission to issue default enforcement orders when licensees do not timely respond to notices of violation, or do not request a hearing.
- ◆ Require the Commission to hold informal settlement conferences to resolve complaints and negotiate agreed orders. At least two staff with expertise in the relevant regulatory area should participate in these conferences with the licensee or regulated entity. TREC may conduct conferences by telephone. TREC should also make its existing precedent information more readily usable to help guide agreed order proposals.

### **2.3 Transfer the agency's Administrative Procedure Act hearings to the State Office of Administrative Hearings.**

This recommendation would provide more independence for TREC's contested case hearings, and would improve the cost effectiveness of the hearings process, while still providing quality hearings. If the Commission adopts the recommendations in Issue 1 and Issue 2, the agency could hold significantly fewer hearings, reducing the need for an in-house administrative law judge and increasing the cost effectiveness of a transfer of hearings to SOAH.

In conducting hearings, SOAH would consider the Commission's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Commission would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. The Commission may reverse or modify the decision only if the judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions; the judge relied on a prior administrative decision that is incorrect or should be changed; or the Commission finds a technical error in a finding of fact that should be changed. Although SOAH may face an initial learning curve in hearing cases about TREC regulated professions and entities, the subject areas of TREC cases are not significantly more complex than the average cases currently brought before SOAH. In addition, this recommendation would not increase the agency's average time to close complaints. Other agencies whose hearings have been transferred to SOAH have not seen an increase in disposition time frames.

### **Fiscal Implication**

These recommendations would not have a fiscal impact to the State. However, these recommendations would result in TREC having additional resources, including two full-time staff positions, to re-direct towards resolving consumer complaints and ensuring timely licensure. Implementing an informal complaint resolution process would free approximately 2,400 staff hours, or one FTE, annually because staff would no longer set minor enforcement cases for administrative hearings.

Transferring adjudication of TREC's administrative hearings to SOAH would result in further savings, most of the costs of one staff position and associated administrative support, because the agency would no longer need its own ALJ. Under these recommendations, the number of cases that TREC would need to refer to hearings should decline from 139 in fiscal year 2005, to an estimated 20-30 hearings

in following years. The Legislature has appropriated a lump sum from General Revenue to SOAH for conducting other state agencies' hearings, with these agencies being included in a rider to SOAH's appropriations. Since this is not a large number of hearings, TREC should be added to SOAH's appropriations rider to cover these costs.

The recommendation also transfers the Texas Appraiser Licensing and Certification Board's hearings, which TREC conducts, to SOAH. However, this would have no significant fiscal impact because the Appraiser Board holds few hearings, and it is already listed under SOAH's appropriations rider that funds these hearings.

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<sup>1</sup> Texas Sunset Advisory Commission, Texas Real Estate Commission, (Austin, Texas, November 1990). p. 37.

<sup>2</sup> Texas Real Estate Commission (TREC), Enforcement Administrative Enforcement Cases Set for Hearing Monthly Estimate of Related Costs, provided to Sunset February, 2006.

<sup>3</sup> TREC, Hearings Cost Calculations FY 2005, provided to Sunset February, 2006.

<sup>4</sup> Telephone interview with State Office of Administrative Hearings staff (Austin, Texas, February 28, 2006).



## *Regulation of Private Real Estate Schools Should Better Ensure That Students Have Access to a Quality Education.*

### **Summary**

#### **Key Recommendations**

- ◆ Require TREC to establish a minimum exam pass rate for re-accreditation of private real estate schools.
- ◆ Require the Commission to publish exam pass rates for individual real estate schools, and provide this information to the public.
- ◆ Direct TREC staff to audit real estate schools based only on risk to consumers.

#### **Key Findings**

- ◆ The Commission regulates private schools that teach required courses, and provide continuing education.
- ◆ The Commission does not hold private real estate schools accountable for providing quality education outcomes.
- ◆ The Commission does not provide information to prospective students to assist them with choosing the best real estate school to attend.
- ◆ TREC wastes agency resources on ineffective audits.

#### **Conclusion**

The Real Estate License Act protects the public by accrediting private schools providing real estate courses and continuing education. In reviewing TREC's school licensing process, Sunset staff assessed how the Commission could produce information more useful to evaluating a school's ability to teach real estate courses. Staff concluded that current regulations do not go far enough to ensure that real estate and home inspector schools provide a quality education. Real estate students have limited access to information that would help them choose a quality course provider. Also, TREC spends agency resources on audits that do not effectively evaluate a school's quality and divert staff resources from more important investigations, such as consumer complaint cases.

## Support

### The Commission regulates private real estate schools that teach required courses, and provide continuing education.

- ◆ The Real Estate License Act requires the Commission to establish accreditation standards for real estate education programs and courses of study taught in Texas.<sup>1</sup> By statute, TREC regulates private real estate schools offering core real estate and continuing education courses (CE). However, the Commission does not regulate colleges or universities offering real estate courses. TREC currently regulates more than 50 private real estate and home inspector schools, and more than 250 continuing education providers. The agency also audits these providers, conducting 15 such audits in fiscal year 2005.

The Commission requires private schools and CE providers to apply for licensure and pay a fee, as shown in the chart, *Education Provider Licensing Fees*.

**Education Provider Licensing Fees**

School Licensure (5 years) .....	\$400
School Renewal (1 year) .....	\$200
C.E. Provider Licensure (2 years).....	\$400

Private schools must educate real estate students with competency, honesty, and integrity. To this end, schools must provide financial statements, course applications, instructor evaluation forms, and post a \$10,000 surety bond.

- ◆ To qualify for licensure, prospective licensees must complete at least 210 class-hours of coursework, paying about \$1000 for these classes. After completing the necessary coursework, applicants take a two-part licensing exam consisting of general real estate principles and Texas-specific laws. The general exam section tests the applicant's knowledge of items such as fiduciary responsibilities, contracts, real estate practices, and mortgage financing. The Texas portion of the exam tests knowledge of the licensing act and TREC rules. In fiscal year 2005, more than 20,000 students took the real estate salesperson licensing exam, and more than 1,400 students took the real estate broker licensing exam. Approximately 1,880 students took the home inspector licensing exam. Broker and salesperson examinees may take the exam an unlimited number of times, at a cost of \$59 for each attempt.

### The Commission does not hold private real estate schools accountable for providing quality education outcomes.

- ◆ TREC does not require real estate schools to meet a minimum exam pass rate, which contributes to students taking the licensing exam multiple times.

**Real Estate Examination Pass Rates – FY 2005**

	Salesperson	Broker	Home Inspector
Ist-time pass rate	55%	64%	37%
Overall pass rate	85%	94%	62%

Source: TREC Examination Activity (August 2005)

For example, in fiscal year 2005, 58 percent of all salesperson examinees repeatedly failed the licensing exam. In some cases, students take the exam up to 12 times, with one student taking it 51 times before passing. Repeated exam failures may indicate that some schools do not properly educate students for the exam. The chart, *Real Estate Examination Pass Rates*, shows the difference

between first-time exam pass rates and the eventual pass rate for individuals that repeatedly took the licensing exam during 2005.

- ◆ Other state agencies that regulate career schools, such as the Texas Education Agency, Texas Workforce Commission (TWC), and Texas Department of Licensing and Regulation, require schools to meet minimum pass rates to maintain approved status within the state. For example, TWC requires career schools to meet a 60 percent licensing exam pass rate to maintain their license.

Additionally, when schools fall below the minimum pass rate, TWC convenes a peer review committee comprised of educators and other members of the profession to assess the school's performance.<sup>2</sup> As a result of this assessment, the peer committee places the school on a corrective action plan. While TREC has access to the resources necessary to staff such a committee, the agency lacks such an oversight mechanism for the real estate schools it regulates.

**The Commission does not provide information to prospective students to assist them with choosing the best real estate school to attend.**

- ◆ TREC does not provide accurate pass rate information tied to schools, and denies students a means to evaluate which school may provide the best education for their money. The Commission reports real estate licensing exam pass rates for licensed salespersons as 85 percent, when in actuality only 55 percent of students pass the exam on the first attempt. The 85 percent pass rate reflects the number of students that eventually pass the exam.<sup>3</sup>

In contrast, real estate regulatory agencies in other states tie exam pass rates to individual schools, and generally provide students this information. For example, TREC contracts with a testing service to administer Texas' licensing exam. This same company also administers the licensing exam for 16 other states, of which 15 require the testing service to provide the state's regulatory agency with exam pass rates tied to corresponding education providers.

**TREC wastes agency resources on ineffective school audits.**

- ◆ TREC's audits do not provide useful information to aid agency staff in identifying low performing schools. Of more than 300 licensees, TREC opened only four complaints against schools and CE providers in fiscal year 2005. As a result, these audits divert valuable staff and investigative resources from more serious real estate-related consumer complaints. During a typical school audit, TREC staff review administrative details, such as class sign-in sheets and student-teacher evaluation forms. TREC staff also observe lectures to ensure that instructors follow certain classroom procedures. While TREC's audits allow agency investigators to see how a school operates, the audits are not based on any reliable indicators of the quality of real estate students the school is producing.



*One student took the salesperson licensing exam 51 times before passing.*



*Texas students do not have access to pass rates tied to specific schools.*

- ◆ TREC does not audit schools based on clear risk indicators or other standard methods of evaluation. TREC performs the majority of its school audits on a random basis, and rarely on the basis of formal complaints from students. When audits based on student complaints expose a problem school, TREC investigators rarely initiate an enforcement case against the school. Rather, investigators only issue an informal corrective action plan.

## Recommendations

### Change in Statute

#### **3.1 Require TREC to establish a minimum exam pass rate for re-accreditation of private real estate schools.**

This recommendation would provide a basic performance measure to help ensure that real estate and home inspector students are able to attend quality schools. Under this recommendation, the Commission would establish a minimum pass rate requirement for a school to be re-accredited by the Commission. The required first-time pass rate should be above the current 55 percent average exam pass rate. The minimum first-time pass rate percentage should be established by rule, with opportunity for public comment. The Commission should implement the requirement over two years, allowing schools the opportunity to adjust teaching methods and raise exam pass rates.

#### **3.2 Require the Commission to publish exam pass rates for individual real estate schools, and provide this information to the public.**

This recommendation would allow prospective students to make more informed choices before enrolling in a particular real estate school. Under this recommendation, the statute would require the Commission to post exam pass rates tied to individual schools on the agency's website. TREC would post all first-time pass rates for brokers, salespersons, and home inspectors according to the school the licensee last attended, along with the state-wide average pass rate for each licensee group.

#### **3.3 Authorize the Commission to establish an ad-hoc peer review committee to conduct assessments of low performing schools.**

This recommendation would allow the Commission to convene a peer review committee to conduct assessments of low performing schools, such as those having difficulty in meeting minimum exam pass rates. The committee would offer problem schools expert advice on improving their business practices or teaching methods. However, the committee would not have the authority to recommend sanctions or mandatory corrective actions. In the past, TREC has convened an education task force to review the overall regulations of schools, and TREC could draw from these participants and other professional expertise, such as the Texas Real Estate Research Center, located at Texas A&M University, to more specifically assess the performance of individual schools.

### Management Action

#### **3.4 Direct TREC staff to audit real estate schools based only on risk to consumers.**

This recommendation would direct TREC staff to perform unannounced audits only on schools where significant problems exist. For example, TREC staff should audit based on the submission of formal complaints or a repeated failure to meet defined performance measures, such as exam pass rates. This recommendation would allow TREC to redirect significant resources to more serious complaints that directly affect consumers.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the State. Because exam pass rates would be collected by the exam provider, TREC staff would only be responsible for posting data on the agency's website. By redirecting the agency's focus to perform risk-based audits rather than maintaining the agency's current methods, staff would have additional time and resources to focus on investigating more egregious real estate-related consumer complaints. Establishment of an ad-hoc peer review committee would not have a significant fiscal impact because the committee would be composed of only volunteers and only convene if a school is in need of additional guidance.

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<sup>1</sup> Texas Occupation Code, sec. 1101.301.

<sup>2</sup> Texas Education Code, sec. 13.156 (a) and (b).

<sup>3</sup> Texas Real Estate Commission, *Licensing and Education Division Examination Activity* (Austin, TX 2005).



## *Key Elements of the Commission's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.*

### **Summary**

#### **Key Recommendations**

- ◆ Require the Commission to base delinquent license renewal fees on the standard renewal fee, and to conduct criminal background checks for all license renewals.
- ◆ Revise the Commission's enforcement activities by authorizing the agency to issue cease-and-desist orders, temporarily suspend licenses, and levy administrative penalties against residential service companies.
- ◆ Eliminate statutory fee caps.
- ◆ TREC and agencies involved in the regulation of home appraisal, financing, and titling should develop an interagency agreement to address mortgage fraud and other illegal activities.

#### **Key Findings**

- ◆ Licensing provisions in the Commission's statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- ◆ Nonstandard enforcement provisions in TREC's statutes could reduce the agency's effectiveness in protecting consumers.
- ◆ Certain administrative provisions in TREC's statutes conflict with standard practice, potentially reducing the Commission's efficiency.

#### **Conclusion**

Over the past 27 years, Sunset staff has reviewed more than 90 occupational licensing agencies. In doing so, the staff has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing the Texas Real Estate Commission (TREC), staff found that various licensing, enforcement, and administrative processes do not match these model licensing standards. The Sunset review compared TREC's statutes, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified the changes needed to bring the Commission in line with the model standards.

## Support

### **Regulating occupations, such as real estate, requires common activities that the Sunset Commission has observed and documented over more than 27 years of reviews.**

- ◆ The mission of the Texas Real Estate Commission is to protect consumers by ensuring that real estate professionals properly carry out their fiduciary responsibilities to clients, are qualified and competent, and adhere to professional standards. To provide this protection, the Commission regulates about 137,500 real estate brokers, salespersons, and broker corporations. The Commission ensures compliance with statutes and rules affecting real estate professionals by investigating and resolving complaints and taking disciplinary action when necessary. In addition, TREC oversees home inspectors, home warranty companies, and time share projects.
- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, since the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 90 licensing agency reviews.
- ◆ Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for universal application. The following material highlights areas where the Commission's statutes and rules differ from these model standards, and describes the potential benefits of conforming with standard practices.



*Authorizing TREC to approve continuing education courses for home inspectors will help ensure that they can stay current in their field.*

### **Licensing provisions in the Commission's statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.**

- ◆ *Continuing education.* Proper protection of the public depends on practitioners having a working knowledge of recent developments and techniques in their profession. Continuing education (CE) provides a proven means of ensuring practitioners remain competent. State law requires continuing education for brokers, salespersons, and home inspectors. However, by statute the Commission approves CE courses for real estate licensees only, while home inspector CE courses consist of the same core courses required for a license. These core courses may not reflect changing construction standards or the latest industry technologies, reducing their usefulness as CE courses. Authorizing TREC to approve CE courses for home inspectors will help ensure that they can stay current in their field.
- ◆ *Late renewal penalties.* Licensees who fail to renew their licenses on time should pay a penalty set at a level that is reasonable to encourage timely payment, and relates to the cost of renewing licenses. The Commission currently charges licensees who renew late the same fees as new applicants,

and issues only a one-year renewal. In contrast, TREC issues a standard two-year license to brokers and salespersons who renew on time. A more fair practice would be to require delinquent licensees to pay a penalty that is based on the amount of the renewal fee, so that late fees would bear a relation to the renewal cost. Also, issuing delinquent licensees a two-year renewal, instead of a one-year renewal, would be more efficient for TREC.

- ◆ ***Criminal background.*** Criminal background checks during initial license application and renewal help protect the public. These checks are especially important for occupations in which licensees regularly enter people's homes, such as real estate. Currently, TREC automatically performs a background check on all license applications, but not on all renewals – only late renewals. Late renewals account for less than ten percent of all the agency's renewals. Performing background checks on all license renewals would protect consumers from individuals who have committed crimes that TREC deems directly related to the performance of their occupation.
- ◆ ***Compliance history.*** Agencies should be aware of a person's compliance history before issuing a new license to former licensee. Currently, TREC purges all records, including electronic records, on licensees inactive for eight or more years, even for persons with enforcement orders against them. Should one of these individuals apply for a license in the future, TREC would not have that person's compliance history. Other agencies such as the Texas Department of Licensing and Regulation and the Board of Nurse Examiners – both of which have large numbers of licensees – keep electronic records indefinitely. Requiring TREC to maintain some record of licensees with past violations, and checking those records before issuing new licenses, would help protect consumers.

**Nonstandard enforcement provisions in TREC's statutes could reduce the agency's effectiveness in protecting consumers.**

- ◆ ***Unlicensed activity.*** A licensing agency should have enforcement authority over its licensees and over persons engaged in unlicensed activity. In TREC's case, unlicensed activity could involve a person opening a broker's office without a TREC license. Cease-and-desist orders provide agencies with an enforcement tool to stop unlicensed activity; however, TREC lacks authority to issue these orders. Further, making violations of cease-and-desist orders subject to administrative penalties would help make them more enforceable. Because illegally practicing real estate can cause financial harm to the public, authorizing TREC to issue cease-and-desist orders, and assess administrative fines would allow the agency to better protect the public.
- ◆ ***Administrative penalty authority.*** The ability to impose a fine in an administrative process, rather than having to go through the court system, gives an agency a powerful tool to encourage compliance. While TREC has authority to seek civil penalties of up to \$50,000 against home warranty companies, the agency does not have authority to assess administrative penalties against these licensees. In contrast, the Commission currently has



*A licensing agency should have enforcement authority over its licensees and persons engaged in unlicensed activity.*

administrative penalty authority over all of its other licensees. Authorizing TREC to levy administrative penalties against these companies would strengthen its ability to punish violations of Commission statute and rules. See Issue 1 for further discussion of administrative penalties.

- ◆ *Temporary suspension.* Granting an agency authority to summarily suspend a license without an initial hearing is useful in situations where substantial harm can result if an activity is not stopped immediately. For example, TREC may discover commingling of client funds or irregularities in escrow accounts involving significant amounts of money while investigating licensees. However, while TREC pursues the enforcement case, the licensee may continue to misuse consumers' money. Authorizing a committee of Commission members to temporarily suspend a license, and to meet by telephone conference call under certain circumstances, would allow the Commission to act quickly to better protect the public in situations where continued practice constitutes harm to consumers.

**Certain administrative provisions in TREC's statutes conflict with standard practice, potentially reducing the Commission's efficiency.**



*Eliminating capped fee amounts in statute allows for greater administrative flexibility.*

- ◆ *Flexible fees.* The Legislature has established a practice in many programs of eliminating capped fee amounts in statute and allowing agencies to set fees by rule. This practice allows for greater administrative flexibility and is consistent with a provision in the General Appropriations Act that requires agencies to set fee amounts necessary to recover the cost of regulation. Limiting agency expenditures through the appropriations process discourages agencies from setting fees too high. The public has the opportunity to comment on proposed fees since the agency sets them in rule. Contrary to this approach, all of the Commission's licensing and administrative fees are capped by statute, limiting the agency's flexibility to set fees as needs change. For a complete list of these fees and statutory caps, see Appendix C of this report.
- ◆ *Coordination with other agencies.* Regulation of a complex industry is sometimes divided between agencies, making it important to coordinate their overlapping regulatory responsibilities, such as enforcement efforts. Staff from TREC, the Texas Appraiser Licensing and Certification Board, the Department of Savings and Mortgage Lending, and the Texas Department of Insurance have held informal discussions about mortgage fraud and other illegal activity involving their respective licensees. An interagency agreement that specifies the coordination of enforcement activities, and the referral of complaints between these agencies, would help them target their enforcement efforts to stop illegal activities involving licensees from their respective agencies.

## Recommendations

### Licensing

#### Change in Statute

##### **4.1 Authorize TREC to approve continuing education courses for inspectors.**

This recommendation would help TREC treat all its licensees equally by ensuring that home inspectors have a variety of relevant continuing education courses, and have access to education on new technologies and changes in the home inspection field.

##### **4.2 Require the Commission to base delinquent license renewal fees on the standard renewal fee.**

The renewal fee for licensees who are delinquent in renewing their licenses would be based on the standard renewal rate set by the Commission, rather than the fee for an original application. To renew a two-year license that has been expired for 90 days or less, the late renewal fee would be equal to 1-1/2 times the regular renewal fee. A two-year license that has been expired for more than 90 days, but less than one year, would pay a fee equal to two times the regular renewal fee. Licensees who have allowed their licenses to be expired for more than one year must obtain new licenses by complying with all requirements for obtaining an original license. Other fees the agency charges upon renewal – including the \$200 professional fee, and fees directed to the Texas Real Estate Research Center and Texas Online – would remain unaffected by this recommendation.

### Management Actions

##### **4.3 TREC should conduct criminal background checks for all license renewals.**

This recommendation would ensure that the Commission learns about any crimes committed by real estate professionals since becoming licensed, and provide the agency another tool to ensure protection of consumers.

##### **4.4 TREC should indefinitely maintain records of licensees with violation histories, and check these records when issuing new licenses.**

Under this recommendation, TREC would not purge the electronic records of licensees who have been inactive for eight years if they have a violation history. The agency would develop a method for maintaining, indefinitely, an electronic record of all licensees who have had final enforcement orders issued against them. The agency would also check these records before issuing a new license to ensure that no one with a history of severe violations receives a license.

### Enforcement

#### Change in Statute

##### **4.5 Authorize the Commission to issue cease-and-desist orders.**

The Commission would issue cease-and-desist orders when it receives a complaint or discovers an individual or entity practicing real estate without a license. This recommendation authorizes the Commission to assess administrative penalties against persons who violate these orders. The agency would still be authorized to refer these cases to local law enforcement agencies or the attorney general for prosecution. Cease-and-desist authority would help TREC better protect consumers from unlicensed real estate practice and standardize the agency's procedures with commonly applied licensing practices.

**4.6 Authorize the Commission to levy administrative penalties against residential service companies who violate agency statute and rules.**

This recommendation authorizes the Commission to levy an administrative penalty of up to \$5,000 per day, per violation of the Residential Service Company Act or TREC rules. The recommendation would strengthen the Commission’s ability to gain compliance for violations and standardize fine amounts across the agency’s regulated entities.

**4.7 Authorize the Commission to temporarily suspend a license.**

This recommendation authorizes the Commission to temporarily suspend a license upon determination, by a panel of three Commission members, that continued practice by the licensee threatens the public. This recommendation authorizes the panel to hold a meeting by teleconference under provisions in the Open Meetings Act if the threat is imminent, and convening the panel at one location is impossible for the timely action required. The Commission would also need to ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension. This recommendation would strengthen the Commission’s enforcement process and increase protection of the public against harm by enabling a faster response against serious violators.

**Administration**

**Change in Statute**

**4.8 Eliminate the agency’s licensing and administrative fee caps and authorize the Commission to set fees in rule.**

This recommendation would give the Commission greater flexibility to set fees as appropriate without statutory change. The recommendation would also give the Commission flexibility to set fees at the level necessary to recover program costs as conditions change. The Legislature would maintain control by setting spending levels in the General Appropriations Act. The recommendation does not affect the fees passed through to the Texas Real Estate Research Center.

**Management Action**

**4.9 The Commission, Appraiser’s Board, Department of Savings and Mortgage Lending, and Department of Insurance should develop an interagency agreement to coordinate their enforcement efforts.**

Under this recommendation, these agencies would jointly develop an interagency agreement that specifies how the agencies would refer non-jurisdictional complaints to the appropriate agency, and coordinate their enforcement efforts to address mortgage fraud and other illegal activities conducted by their respective licensees.

**Fiscal Implication**

Changing the basis on which the agency calculates late renewal penalties would result in a gain to the General Revenue Fund of approximately \$78,400 each year.

Requiring the agency to approve continuing education courses for inspectors, and to maintain records of all licensees with enforcement violations, would not have a fiscal impact, but would involve programming changes to the agency’s computer system. These changes could be accomplished with existing resources.

<i><b>Fiscal Year</b></i>	<i><b>Gain to the General Revenue Fund</b></i>
2008	\$78,400
2009	\$78,400
2010	\$78,400
2011	\$78,400
2012	\$78,400

The management action directing the Commission to conduct criminal history checks, through the Department of Public Safety, would not have a fiscal impact to the State, but would require the Commission to assess a \$1 fee for each license renewal to cover the cost of performing the check. The agency would conduct checks on approximately 72,000 renewals each year. If the agency determines that it needs additional resources to review criminal history records, it can request those funds through the legislative appropriations process.

Removing the fee caps currently in statute would provide the agency with greater flexibility to set fees to recover the costs of its regulation. While the agency would be able to increase its fees, the agency's budget, and thus fee amounts, would still be governed by the legislative appropriations process. Increased revenue that might result could not be estimated for this report.



## *Texas Has a Continuing Need for the Real Estate Commission, Although Its Advisory Committee Structure Needs Strengthening.*

### **Summary**

#### **Key Recommendations**

- ◆ Continue the Texas Real Estate Commission for 12 years.
- ◆ Remove the Commission's authority to delegate powers to committees, and authorize the Commission to create advisory committees as needed.
- ◆ Fully merge the Appraiser Board's functions with TREC while retaining the Appraiser Board as an independent regulatory authority.

#### **Key Findings**

- ◆ Texas has a continuing interest in regulating the real estate industry to protect consumers and ensure that licensees provide competent services.
- ◆ TREC's statute for its committees does not conform to standards for advisory committees.
- ◆ Separation of the Appraiser Board's operations from TREC prevents the Appraiser Board from operating efficiently.

#### **Conclusion**

Texas has a continuing need to regulate the real estate industry to protect consumers and ensure licensees place their clients' interests above their own, as required by law. In assessing the agency's overall effectiveness, Sunset staff found that TREC could reach a better balance between protecting consumers and meeting the needs of licensees. Recommendations in Issues 1 and 2 of this report address these concerns, requiring TREC to prioritize investigation of consumer complaints to more quickly resolve these issues.

Sunset staff also assessed how TREC could better integrate its advisory committees, and the functions of the Appraiser Board into the agency's overall structure. Sunset staff found that TREC lacks standard provisions for creating advisory committees as needed, and that the Appraiser Board's functions could be more effectively merged into TREC.

The Sunset review also evaluated the continuing need for a single, independent agency to perform this function. Sunset staff assessed whether TREC's responsibilities should be transferred to another agency. Sunset staff found that while other agencies currently perform similar functions, TREC has no specific problems to justify transfer of its functions to another state agency.

## Support

### TREC's mission is to protect the economic interests of the public by regulating the real estate industry.



*TREC's regulatory functions help ensure real estate licensees put their clients interests first.*

- ◆ The Commission protects consumers by ensuring real estate licensees honor their fiduciary obligations to clients, are qualified and competent, and adhere to professional standards. To accomplish this goal, the agency licenses more than 148,200 individuals and businesses, including 35,268 real estate brokers and 97,126 salespersons. The remainder includes broker corporations, private real estate schools, instructors, home inspectors, right-of-way agents, home warranty companies, and time share developers. Texas has been regulating the real estate industry since passing the first licensing act in 1939, and establishing TREC as a stand-alone agency in 1949.
- ◆ To carry out its mission, TREC administers and enforces the Real Estate License Act, the Real Estate Inspectors statute, the Residential Service Company (RSC) Act, and the Texas Timeshare Act. The agency ensures compliance with statute and rules by investigating complaints, opening enforcement cases, and taking disciplinary action when necessary. In fiscal year 2005, TREC opened 4,585 enforcement cases against licensees and closed 4,419 cases. The most common complaints were for failure to properly disclose client representation, and failure to carry out required fiduciary duties for clients. In the same year, TREC took more than 1,400 disciplinary actions and collected \$69,150 in administrative penalties.
- ◆ While the real estate and home inspector statute expire based on TREC's statutory Sunset date, the RSC and Timeshare acts lack these provisions. As a result, these acts and regulation of these entities would not automatically expire should the Legislature choose not to continue TREC.
- ◆ TREC also conducts its activities with the assistance of two statutorily created committees, the Texas Real Estate Inspector Committee, and the Texas Real Estate Broker-Lawyer Committee, as shown in the chart, *TREC Committees*.

#### TREC Committees

Name	Composition	Purpose
Texas Real Estate Inspector Committee	Nine professional inspectors appointed by the Commission, with a maximum of three real estate brokers.	Recommends rules on inspection standards and licensing requirements.
Texas Real Estate Broker-Lawyer Committee	Thirteen members, including six brokers appointed by the Commission, six attorneys appointed by the State Bar, and one public member appointed by the Governor.	Develops TREC-approved forms for use in real estate transactions.

- ◆ TREC's Administrator also serves as the Commissioner of the Texas Appraiser Licensing and Certification Board, which regulates real estate appraisers. By statute, the Appraiser Board is an independent subdivision of TREC. However, TREC conducts the Board's enforcement hearings and provides all of its administrative support such as information systems, accounting, and purchasing. In fiscal year 2005, the Appraiser Board operated with seven staff, and its appropriation was approximately \$485,000, with about \$340,000 supporting its operations, and about \$145,000 supporting the federal appraiser's registry. The textbox, *Texas Appraiser Licensing and Certification Board*, provides more detail on the Appraiser Board.

**Texas Appraiser Licensing and Certification Board**

**Board Membership** – Nine members, consisting of the executive secretary of the Texas Veterans' Land Board or his designee, four appraisers, and four public members. The Governor appoints members.

**Creation** – Established in 1991 by the Legislature to meet federal requirements for appraiser certification under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

**Purpose** – To license qualified individuals to serve as appraisers in federally related transactions and enforce the Texas Appraiser Licensing and Certification Act.

**Expiration** – The Appraiser's Board is not subject to Sunset review unless federal requirements for the Board expire.

**Texas has a continuing interest in regulating the real estate industry to protect consumers and ensure that licensees provide competent services.**

- ◆ Purchasing a home is one of the largest financial commitments consumers will make. Because real estate licensees advise clients on buying and selling homes, they should continue to be regulated by the State. The licensing act requires brokers and salespersons to place their clients' best interests above their own, and carry out their duties with honesty and integrity. Licensees can harm consumers by violating this fiduciary obligation, as shown in the textbox, *Examples of Potential Consumer Harm*.

**Examples of Potential Consumer Harm**

Real estate licensees can potentially harm consumers by:

- ◆ co-mingling client funds or defrauding clients;
- ◆ improperly disclosing personal or financial information that harms the client;
- ◆ failing to properly disclose to the client whom the broker represents;
- ◆ not meeting the terms of a contract, such as not listing a property timely;
- ◆ not disclosing defects in a property, or providing misleading information;
- ◆ providing improper advice that results in failed transactions; and
- ◆ providing services in a negligent or incompetent manner.

- ◆ TREC regulates other real estate-related individuals and businesses to ensure consumer protection, such as home inspectors, home warranty companies and timeshare developers. The agency ensures home inspectors meet minimum standards for providing home inspections, that home warranty companies honor their service contracts, and that timeshare property contracts include proper disclosures and required consumer "opt-out" provisions.

**TREC is generally effective as a stand-alone agency, but the agency could improve its consumer protection efforts.**

- ◆ TREC satisfactorily accomplishes its licensing functions. However, the agency could strike a better balance between protecting consumers and meeting the needs of licensees. Since the agency's last Sunset review 15 years ago, standards for resolving complaints informally have improved as reflected in Sunset's Occupational Licensing Model. Sunset staff found that much of TREC's enforcement process is outdated and does not incorporate key elements of an effective complaint resolution process. Because TREC relies on a cumbersome contested case process even for minor complaints, consumer issues can remain unresolved for long periods of time. This report addresses these problems in Issues 1 and 2.
- ◆ The Commission has no specific problems to justify the transfer of its functions to another state agency, such as the Texas Department of Licensing and Regulation. Sunset staff found opportunities for improved coordination between TREC and state agencies regulating the appraisal, financing, and titling of homes. However, staff did not find compelling problems to justify consolidation with any of these agencies, including the Texas Department of Savings and Mortgage Lending, which regulates mortgage brokers, and the Texas Department of Insurance, which regulates title companies.



*TREC has no specific performance problems to justify potential consolidation with another agency.*

**TREC's statute for its committees does not conform to standards for advisory committees.**

- ◆ By statute, the Commission may delegate additional powers and duties to the Inspector Committee and the Broker-Lawyer Committee. This authority to grant additional powers to committees does not align with standards for advisory committees and creates problems. For example, the Commission may delegate authority to conduct contested case hearings and issue final enforcement orders to the Inspector Committee. However, the Commission has never delegated these powers and duties, and in actuality the Inspector Committee functions in an advisory role. The Committee develops and recommends inspection standards for the Commission to discuss and adopt. The Broker-Lawyer Committee also functions in an advisory capacity by drafting real estate forms and presenting them to the Commission for discussion and approval.



*The Commission's ability to delegate powers to its committees is unusual and creates problems.*

A recent Attorney General's Opinion found that because statute authorizes TREC to delegate additional powers to the Inspector Committee, the Committee is subject to the Open Meetings Act. As a result, the Committee can only meet by teleconference under strictly limited circumstances or unless specifically authorized in statute.<sup>1</sup> This limitation imposes hardships on its members because they do not receive travel reimbursement for their services and must come at their own expense to meet in Austin.

- ◆ The Legislature has consistently shown interest in the proper structure of advisory committees. Chapter 2110, Government Code, outlines the requirements and responsibilities of state agency advisory committees. For example, the statute sets out the requirements for establishment, composition, reporting requirements, and evaluation of committee effectiveness. TREC's statute contains no similar provisions. The Commission also has no authority to create additional advisory committees as needed. Without clear authority to create advisory committees, the Commission is locked into its current statutorily created committee structure and cannot gain expertise by creating other committees when needed.

### **Separation of the Appraiser Board's operations from TREC prevents the Appraiser Board from operating more efficiently.**

- ◆ Sunset staff did not evaluate the Appraiser Board's operations because it is not subject to review unless federal requirements for the Appraiser Board expire. However, since TREC provides all of the Appraiser Board's administrative support, the review did assess the efficiency of this arrangement. Sunset found that keeping the Appraiser Board's licensing and enforcement operations separated from TREC's divisions is inefficient, preventing the Appraiser Board from benefiting from TREC's larger economy of scale. For example, the Appraiser Board's enforcement staff investigate licensees separately from TREC staff, depriving the Appraiser Board from the opportunity to take advantage of TREC's field investigators located in different state regions.

TREC's Administrator also serves as the Appraiser Board's Commissioner, supervising the day-to-day activities of the Appraiser Board's staff. However, because of the organizational structure, the Appraiser Board is unable to use TREC's existing management to supervise its employees. As a result, TREC's Administrator must directly supervise line staff, rather than using the agency's existing directors for licensing or enforcement.



*The Appraiser Board would operate more efficiently if fully merged with TREC.*

## **Recommendations**

### **Change in Statute**

#### **5.1 Continue the Texas Real Estate Commission for 12 years.**

This recommendation would continue the Commission as an independent agency responsible for regulating the real estate, home inspection, home warranty, and timeshare industries. Under this recommendation the Residential Service Company Act and the Texas Timeshare Act would be added to TREC's Sunset expiration clause in the agency's statute.

#### **5.2 Remove the Commission's authority to delegate decisionmaking powers to committees, and authorize the Commission to create advisory committees as needed.**

This recommendation would eliminate statutory language that authorizes the Commission to delegate powers and duties to its committees, aligning them with their actual advisory roles. The recommendation also authorizes the Commission to create advisory committees, as needed, to provide special expertise.

The Commission should adopt rules regarding its committees in compliance with Chapter 2110 of the Texas Government Code, including:

- ◆ the purpose, role, responsibility, and goals of the committees;
- ◆ the size and quorum requirement of the committees;
- ◆ qualifications of the members, such as experience or geographic location;
- ◆ the appointment procedures for the committees;
- ◆ the terms of service;
- ◆ training requirements;
- ◆ a process to regularly evaluate the need for each committee; and
- ◆ the requirement that the committees comply with the Open Meetings Act, with the exception recommended below.

### **5.3 Authorize TREC's advisory committees to meet by teleconference.**

This recommendation would allow TREC's committees to more effectively carry out their business by allowing them to hold general meetings by teleconference. Under this recommendation, teleconference meetings would be subject to the open meetings notice requirements.

### **5.4 Fully merge the Appraiser Board's staff functions with TREC, while retaining the Appraiser Board as an independent regulatory authority.**

Under this recommendation, TREC's Administrator would serve as the Appraiser Board's Commissioner, and Appraiser Board staff would be fully integrated into TREC's staff structure. TREC management would supervise Board staff, making its operations more efficient. This recommendation would not affect the Appraiser Board's status as an independent policymaking and regulatory body and it would continue to meet federal requirements for an independent state authority. Issue 2 of this report recommends transferring TREC's hearings to SOAH, which would also include Appraiser Board's hearings.

## **Fiscal Implication**

If the Legislature continues the current functions of TREC, using the existing organizational structure, the agency's annual appropriations of nearly \$4.26 million would continue to be required for its operation. This appropriation is entirely paid for by the licensing fees the agency collects. Overall the recommendations in this report would not have a significant fiscal impact to the State, as TREC would be able to implement these changes with existing resources. Transferring the Appraiser Board's functions to TREC would not have a significant fiscal impact, though some administrative efficiencies would result. Appraiser Board staff working within TREC would remain paid employees of the Appraiser Board, with TREC management being responsible for hiring and supervising Appraiser Board staff. In addition, the Appraiser Board's appropriations would continue to flow through TREC's specific Appraiser Board strategy as a separate line item in TREC's appropriations.

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<sup>1</sup> Op. Tex Att'y Gen. GA-0379 (2005).

**ACROSS-THE-BOARD RECOMMENDATIONS**



**Texas Real Estate Commission**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency’s policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency’s policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update and Modify	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.



# **Agency Information**

# Agency Information

## Agency at a Glance

The mission of the Texas Real Estate Commission (TREC) is to protect consumers' economic welfare by ensuring that licensees properly carry out their fiduciary responsibilities to clients, are qualified and competent, and adhere to professional standards. The State began regulating the real estate profession in 1939 with passage of the first licensing act, and later created the Commission in 1949. To accomplish its mission, TREC does the following:

- ◆ licenses real estate brokers, salespersons, home inspectors, and residential service companies;
- ◆ certifies right-of-way agents and registers timeshare projects;
- ◆ approves private real estate schools, courses, and instructors; and
- ◆ investigates and resolves complaints, taking disciplinary action when necessary to enforce the Commission's statutes and rules.



*The Commission was created to ensure that those who provide real estate services are qualified, competent, and professional.*

## Key Facts

**Funding.** In fiscal year 2005, the agency operated on a budget of about \$4.26 million and collected about \$18.6 million in revenues primarily from professional licensing fees. In fiscal year 2005, the Commission also transferred \$2.6 million in licensing fee revenues to the Texas Real Estate Research Center.

**Staffing.** The agency employs 66 people who work in Austin, and ten investigators who work from their homes in different state regions. TREC also provides administrative support to the seven staff of the Texas Appraiser Licensing and Certification Board, an independent entity with a budget of about \$480,000.

**Licensing.** In fiscal year 2005 the agency licensed 148,158 individuals and businesses, including 35,268 real estate brokers and 97,126 salespersons. The remainder include broker corporations, private real estate schools, instructors, home inspectors, right-of-way agents, home warranty companies and time share projects.

**Enforcement.** The Commission opened 4,585 enforcement cases in fiscal year 2005, and closed 4,419, with 1,909 initiated by complaints from consumers or licensees. The most common complaints were for failure to properly disclose client representation, and failure to carry out required fiduciary duties for clients.

## Major Events in Agency History

- 1949 The Legislature creates the Texas Real Estate Commission to regulate the real estate profession.
- 1979 The Legislature increases the size and composition of the Commission from six to nine members, adding three public members. The Commission begins regulating residential service companies that sell home warranties to consumers.
- 1981 The Commission begins regulating home inspectors by requiring inspectors to register with the agency.
- 1985 The Commission begins regulating timeshare developments by requiring registration of these projects with the agency.
- 1991 The Commission's regulation of real estate appraisers is transferred to the newly-created Texas Appraiser Licensing and Certification Board to meet federal requirements for an independent Board to oversee appraisers.
- 1998 The Commission begins regulating right-of-way agents who only deal in easements related to utilities, pipelines, and railroads.
- 2001 The Commission gains authority to prescribe the content of core and continuing education real estate courses.
- 2005 Real estate licensees must meet new levels of minimum service, which include requirements that licensees must present all offers to their clients and answer all questions asked by their clients.



*The State passed its first real estate licensing act in 1939.*

## Organization

### Policy Body

A nine-member policy body oversees the Texas Real Estate Commission. The Governor appoints members to serve staggered six-year terms, with

**Texas Real Estate Commission Policy Body**

Member	City	Qualification	Term Expiration
John S. Walton, Jr., Chair	Lubbock	Broker	2007
Elizabeth Leal, Vice Chair	El Paso	Broker	2009
James N. Austin, Jr.	Fort Worth	Broker	2005
Mary Frances Burleson	Sachse	Broker	2009
Ramon "Mick" Cantu	Houston	Public	2005
William H. Flores	Sugar Land	Public	2009
Louise E. Hull	Victoria	Broker	2007
Lawrence D. Jokl	Brownsville	Broker	2005
Paul Jordan	Georgetown	Public	2007

the advice and consent of the Senate, and selects the presiding officer. The Commission is composed of six licensed brokers and three public members, with a licensed broker as Chair. To serve on the Commission, broker members must have practiced in their occupation for five years immediately before appointment, and public members may not have regulatory ties to the agency. The chart, *Texas Real Estate Commission Policy Body*, provides information about each member.

The Commission is responsible for general administration of the agency; and sets policies and rules to carry out the provisions of the Real Estate License Act, the Real Estate Inspector statute, the Residential Service Company Act, and the Texas Timeshare Act. The Commission also hears appeals of decisions by the agency's Administrative Law Judge, including enforcement orders and denial of license applications. The Commission appoints an Administrator to oversee the daily operations of the agency and coordinate the activities of agency staff. The Commission usually meets every two months in Austin.



*The Commission  
can delegate  
additional powers  
to its Committees.*

**Committees**

The Commission receives assistance from two statutorily created committees, the Texas Real Estate Inspector Committee and the Texas Real Estate Broker-Lawyer Committee. These committees may have regulatory authority, if delegated by the Commission, and are subject to the Open Meetings Act. The chart, *TREC Committees*, shows the composition and purpose of the agency's two committees. Additionally, the Commission appoints two licensed brokers to the Department of Savings and Mortgage Lending's Mortgage Broker Advisory Committee.

**TREC Committees**

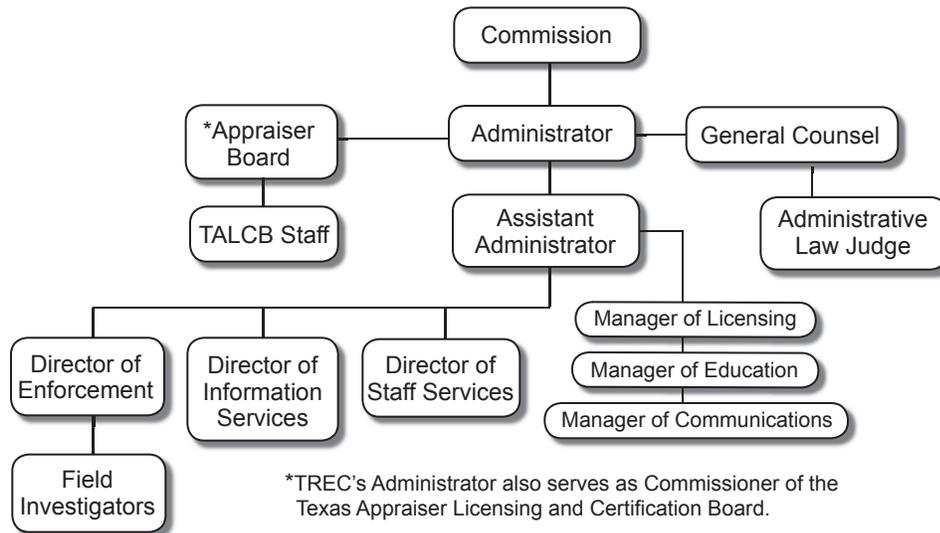
Name	Composition	Purpose
Texas Real Estate Inspector Committee	Nine professional inspectors appointed by the Commission, of which no more than three may also be licensed real estate brokers.	Recommends to the Commission rules on inspection standards, professional ethics, licensing requirements, and fees. The Committee may perform other duties based on authority delegated by the Commission.
Texas Real Estate Broker-Lawyer Committee	Thirteen members, including six brokers appointed by the Commission, six attorneys appointed by the President of the State Bar, and one public member appointed by the Governor.	Reviews and develops Commission-approved real estate forms licensees must use in transactions. The Committee may perform other duties based on authority delegated by the Commission.

**Staff**

The *Texas Real Estate Commission Organizational Chart*, shown on page 50, depicts the agency's structure. Of the agency's 76 full-time equivalent employees, 66 work at the agency's Austin headquarters, and ten investigators work from their homes covering different regions in the state. An additional seven staff support the Texas Appraiser Licensing and Certification Board, an independent entity located at the agency. The Real Estate Commission's Administrator also serves as the Appraiser Board's Commissioner.

Appendix A compares the agency's workforce composition to the minority civilian labor force. The agency has exceeded percentages for African-Americans and females in most categories, however has fallen short for Hispanics in administrative support and service maintenance job categories.

**Texas Real Estate Commission  
Organizational Chart**



**Funding**

**Revenues**

In fiscal year 2005, TREC generated revenues of approximately \$18.6 million through various fees and assessments. The Commission covers its administrative costs through licensing and renewal fees; and through appropriated receipts for services such as reviewing potential licensee’s moral character qualifications. The chart, *Texas Real Estate Commission Licensing Fees*, in Appendix C, shows all of TREC’s fees. The Commission also assesses administrative penalties against licensees for violations of agency statute and rules. In fiscal year 2005, these fines totaled \$69,150 and were deposited in the agency’s recovery funds, as discussed below. In addition, the Commission collected more than \$7 million in professional fees from licensees that goes to the General Revenue Fund, and \$282,661 for the Texas Online system. Revenue collected from these professional fees is not used to support the agency’s operations, but goes into General Revenue to be spent for other state purposes.



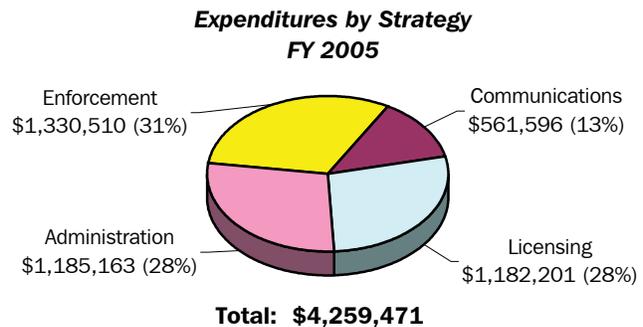
*The Real Estate Recovery Trust Account has investments and cash balances of about \$2.4 million.*

**Recovery Funds**

Licensees also pay fees into two recovery funds, the Real Estate Recovery Trust Account, and the Real Estate Inspection Recovery Fund, which reimburse aggrieved persons with a court order against a licensee who violated the Licensing Act. In fiscal year 2005, the Trust Account’s combined investment and cash balance was approximately \$2.4 million, and paid \$236,000 in claims. For the same year, the Inspection Recovery Fund’s balance was approximately \$662,000, and paid \$28,567 in claims. The Commission invests the Trust Account in United States Government Securities, and retains the Inspection Recovery Fund in the State Treasury where it earns interest.

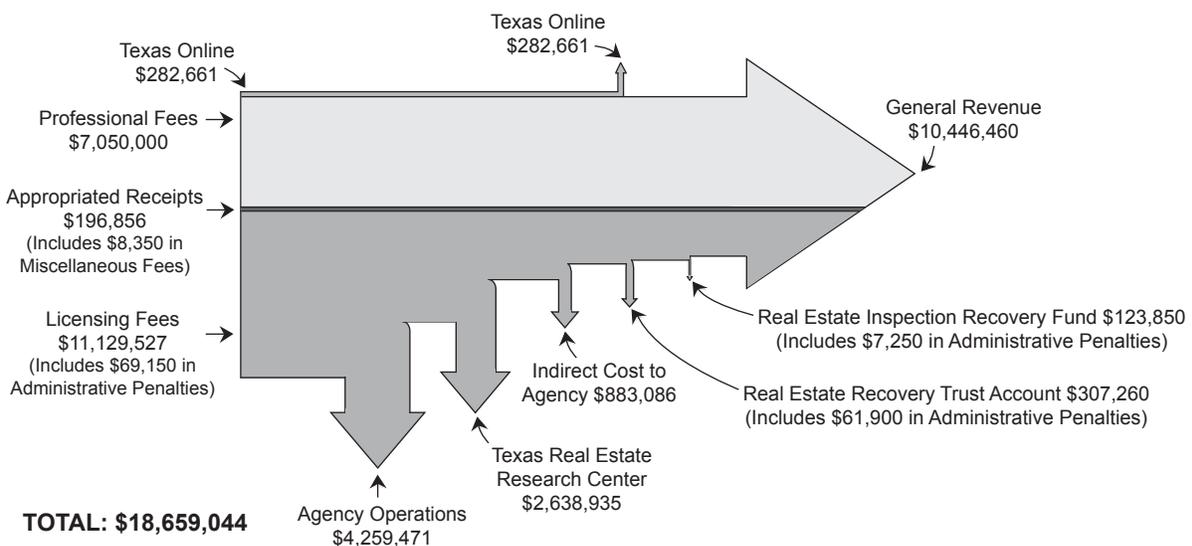
## Expenditures

In fiscal year 2005, the Commission spent \$4,259,471 in four areas as shown in the pie chart, *Expenditures by Strategy*. In addition, the Legislature directed TREC and other licensing agencies that are funded by fees to cover direct and indirect costs incurred by other agencies that provide services to the Commission. Examples of these costs include employee benefits paid by the Employees Retirement System, and accounting services provided by the Comptroller of Public Accounts. In 2005, these indirect costs totaled about \$883,000 for the Commission. The Real Estate License Act also requires TREC to transfer a portion of licensing and renewal fees, more than \$2.6 million in fiscal year 2005, to support the operations of the Texas Real Estate Research Center.



The chart, *Flow of Agency Revenues and Expenditures*, shows the overall impact of the agency's revenues and expenditures on the General Revenue Fund. Subtracting the agency's operating expenditures, direct and indirect costs, and transfers to the Texas Real Estate Research Center from total revenues generated, more than \$10.4 million flowed to the General Revenue Fund in fiscal year 2005.

**Flow of Agency Revenues and Expenditures  
Fiscal Year 2005**



Appendix B describes the Commission's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2003 to 2005. The Commission uses HUBs in categories of special trades, professional services, commodities, and other services. The Commission has consistently surpassed the goal for commodities and recently exceeded the goal for

professional services. However, the Commission has fallen short of the goals for special trades due to a lack of expenditures, and for other services due to re-classification of these expenditures based on audit recommendations by the Comptroller's office.

## Agency Operations

### Real Estate Regulations

The Commission seeks to protect consumers by ensuring that qualified individuals and businesses assist buyers and sellers with carrying out real estate transactions. To achieve this goal, TREC regulates more than 148,400 persons and businesses involved in real estate sales, home inspections, home warranties, and licensee education. The Commission's regulatory authority extends to sales of residential homes, commercial buildings, time shares, raw land, and rights of way. The Commission also approves private real estate schools, continuing education providers, and instructors. The chart, *TREC Regulation*, shows the different types and numbers of entities regulated by the agency.



*TREC regulates a wide range of real estate-related occupations and products.*

**TREC Regulation – FY 2005**  
(Includes Active and Inactive Licensees)

Individuals		
	Type	Number
Real Estate Broker	License	34,858
Non-resident Broker	License	410
Real Estate Salesperson	License	97,126
Professional Inspector	License	3,701
Real Estate Inspector	License	182
Apprentice Inspector	License	154
Right-of-Way Agent	Certification	942
Real Estate Instructor	Approval	2,346
Business*		
Broker Corporation or LLC**	License	5,169
Real Estate Branch Offices	License	2,648
Inspector Corporation or LLC	License	1
Residential Service Company	License	20
Right-of-Way	Certification	43
Timeshare Projects	Registration	271
Private Real Estate Schools and Continuing Education Providers	Approval	302

\*No inactive status for businesses.

\*\*Includes two real estate partnership licenses.

The Commission does not license or regulate mortgage loan providers, title companies, or appraisers. The Texas Department of Savings and Mortgage Lending, the Texas Department of Insurance, and the Texas Appraiser Licensing and Certification Board, respectively, regulate these occupations.

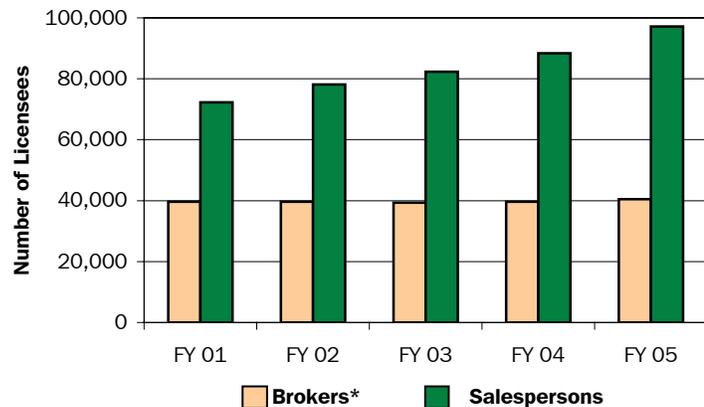
## Licensing & Examination

### Real Estate Brokers and Salespersons

In fiscal year 2005, TREC issued 18,643 broker and salesperson licenses. Over the past five fiscal years, the number of licensed salespersons has increased dramatically, while the number of brokers has stayed stable, as shown in the chart, *Licensed Brokers and Salespersons*.

Prospective licensees must submit an application, and meet the criteria shown in the chart, *Eligibility Requirements*. Upon meeting these qualifications a person may become a broker or salesperson by paying the fees shown in the chart, *Broker and Salesperson Licensing Fees*, in addition to other fees such as transcript evaluations or professional fees. Brokers and salespersons can provide the same real estate services. However, all salespersons must work for a sponsoring broker, who retains the salesperson's license. Additionally, all financial compensation such as commissions must be paid through the broker.

**Licensed Brokers and Salespersons**  
**FYs 2001-2005**  
*(Includes active and inactive licenses)*



\*Includes individuals and businesses.

### Eligibility Requirements

Broker License	<ul style="list-style-type: none"> <li>◆ Be at least 18 years of age, a legal resident, and of good moral character.</li> <li>◆ Have at least two years of experience as a salesperson during the previous three years.</li> <li>◆ 270 class hours of core real estate course and 630 hours of related courses.</li> <li>◆ Pass the State's broker real estate exam.</li> </ul>
Salesperson License	<ul style="list-style-type: none"> <li>◆ Be at least 18 years of age, a legal resident, and of good moral character.</li> <li>◆ Have 150 class hours of core real estate courses and 60 hours of additional core or related courses.</li> <li>◆ Pass the State's salesperson real estate exam.</li> <li>◆ Must be sponsored by a licensed broker to receive an active license.</li> </ul>

## Licensure

To be considered for licensure, individuals submit proof of course hours for evaluation by agency staff, who conducted more than 29,200 of these evaluations in fiscal year 2005. Upon qualifying, applicants must pass the agency's two-part exam consisting of general real estate principles and Texas-specific laws. The general portion tests an applicant's knowledge of fiduciary responsibilities to clients, contracts, practice of real estate, financing, market analysis, and land

### Broker and Salesperson Licensing Fees\*

Broker Application.....	\$75
Broker Renewal (2 year) .....	\$60
Salesperson Application .....	\$50
Salesperson Renewal (1 year)....	\$29.50
Salesperson Renewal (2 year).....	\$60

\*TREC revenue only

use. The state portion tests for knowledge of the Real Estate License Act and Commission rules. The agency does not administer a national exam, as states' regulation varies. Applicants may take the exam at 17 different locations in Texas and four in Louisiana.

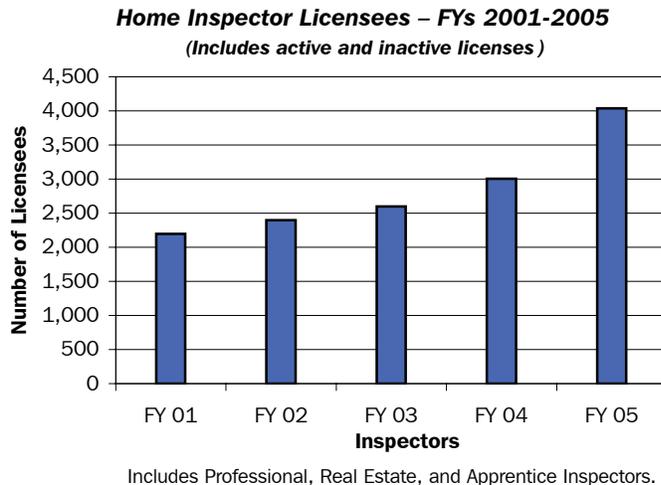
**Continuing Education**

A person may obtain a salesperson license with 210 class hours of education, and then meet Salesperson Annual Education (SAE) requirements. While under SAE, licensees must take a minimum of 60 hours of core real estate courses for the first annual renewal. After completing SAE with a total of 270 hours, TREC requires licensees to renew every two years. To renew, licensees must take 15 hours of Mandatory Continuing Education (MCE), of which at least six hours must include TREC's legal and ethics courses.

**Real Estate-Related Occupations and Businesses**

In addition to licensing real estate brokers and salespersons, TREC regulates and has enforcement authority over the following occupations and businesses.

**Home Inspectors.** In fiscal year 2005, TREC licensed 4,037 home inspectors. The chart, *Home Inspector Licensees*, shows the increase in these licensees



over the past five fiscal years. Persons may become a home inspector by moving up through three tiers, from apprentice, to real estate inspector, to professional inspector. However, these tiers can be bypassed through additional education requirements. Appendix D shows the specific education and experience requirements for each of these license tiers. Home inspectors provide a written opinion of a home's condition, including structural items, electrical items, plumbing, and mechanical systems. The Commission adopts standards of practice for home inspectors, and approves the home inspection report form that licensees must use when inspecting a home under contract.

**Residential Service Companies.** In fiscal year 2005, TREC licensed 20 residential service companies (RSCs), which typically provide warranty contracts to consumers buying an existing home. These contracts provide for repair or replacement of appliances, and electrical, plumbing, heating and air conditioning systems in the home. In fiscal year 2005, about 400,000 consumers held these service contracts, spending approximately \$160 million for these services.

**Timeshare Projects.** In fiscal year 2005, TREC registered 271 timeshare projects on the behalf of timeshare developers who register properties marketed in Texas, which can be located in Texas, out of state, or internationally. Timeshare interests purchased by consumers can be a property with deeded interest or

timeshare use such as a club membership. Texas' Timeshare Act requires that contracts signed by consumers provide a six day opt-out provision, and that timeshare developers provide a detailed disclosure statement to consumers. In addition to enforcing the Timeshare Act, TREC staff enforce the state's Contest and Gift Giveaway Act if timeshares are involved in promotional giveaways.

**Real Estate Education Providers**

To ensure real estate schools and instructors provide quality education to students, TREC approves private schools, continuing education providers, courses, and instructors. The chart, *Education Providers*, shows the type and number of providers the agency approves. The Commission does not regulate public institutions offering real estate courses, such as universities or community colleges.

**Education Providers – FY 2005**

Private Real Estate Schools .....	51
Private Continuing Education Providers.....	251
Real Estate Instructors .....	2,346

**Education Provider Approval**

To obtain TREC approval, applicants must apply and submit the following to TREC: course applications, instructor evaluation forms, information on class facilities, proposed fees, refund policies, and sample advertising. Additionally, private schools must provide a \$10,000 surety bond and financial statements. To be approved, providers must also pay a fee as shown in the chart *Education Provider Approval Fees*. Once approved, providers must send TREC student rosters showing if students passed or failed their classes.

**Education Provider Approval Fees**

School Applications (5 years).....	\$400
School Renewal (1 year) .....	\$200
Continuing Education Provider (2 years).....	\$400
Continuing Education Course Approval (2 years).....	\$100
Core Course Approval (2 years).....	\$0
Instructor Approval (5 years).....	\$25
Instructor Renewal (5 years).....	\$25

**Course Approval**

The agency approves core courses such as principles of real estate or contracts, by reviewing these courses to ensure they meet content requirements for the subject matter. For elective continuing education course approval, TREC requires only a statement describing the course's objective and how it applies to real estate licensees.

**Instructor Approval**

The Commission approves core course instructors in specific areas such as principles of real estate or residential inspection. To be approved as a core instructor, applicants must have five years of experience as a real estate licensee, and three years of teaching or training experience in a relevant field. To be approved to teach TREC's legal and ethics courses, instructors must be certified as having completed the training for these courses offered by the Texas Real Estate Research Center. To be approved as a continuing education instructor, applicants must register with TREC, and the agency checks the applicant's response on the application relating to moral character.

### Education Provider Audits

The agency conducts unannounced audits of schools to ensure providers maintain correct documentation and teach classes according to TREC's requirements. In fiscal year 2005, the agency conducted 15 audits of education providers. Administrative audits cover topics such as business hours, enrollment agreements, student records, attendance records, refund policies, and advertisements. Classroom audits require the investigator to observe the class, and monitor actual hours of instruction, mandated breaks, attendance, course content, and use of instructor evaluations.

### Enforcement

The Commission regulates the real estate profession by investigating complaints against licensed and unlicensed individuals and, if necessary, taking enforcement

**TREC Complaints – FY 2005\***

License Type	Complaints Opened	Complaints Resolved
Broker	1,839	2,080
Salesperson	3,181	3,425
Home Inspector	235	256
Real Estate Business	598	797
Right-of-Way Agent	6	3
Residential Service Company	38	34
Timeshare Developer	6	6
Real Estate School**	4	5
Instructor	3	2
Unlicensed Activity	69	92
<b>Total</b>	<b>5,979</b>	<b>6,700</b>

\* TREC includes complaints against multiple respondents in each enforcement case.

\*\*Includes continuing education providers.

action against those who violate statute or rules that govern the profession. The chart, *TREC Enforcement Process*, on page 57 depicts how the Commission processes complaints. When TREC receives a complaint against a salesperson, the agency automatically names the salesperson's sponsoring broker as a respondent in the case. In fiscal year 2005, the agency opened 4,585 enforcement cases against 5,979 respondents and resolved 4,419 cases against 6,700 respondents. See the chart, *TREC Complaints*, for more information about the number of complaints against individual respondents, by license type. The agency may initiate complaints and investigate complaints from the public.

Common complaints investigated include misrepresentation, false advertising, and non-disclosure. In addition to investigating complaints, staff investigators audit real estate schools and continuing education providers as previously discussed.

### Investigations

Once the Commission receives or opens a complaint, staff determine if it is jurisdictional, and may refer complaints not within TREC's jurisdiction, such

#### **TREC Investigations**

TREC field investigators may conduct the following activities when investigating complaints.

- ◆ Interview complainants, licensees, and other relevant parties.
- ◆ Review real estate transactions, financial accounts, contracts, and other documents.
- ◆ Assess claims about a property's condition or a home inspection conducted.
- ◆ Research court orders, criminal histories, or other documents.

as those against individuals licensed by other agencies, to the appropriate regulatory body. Complaints involving the unlicensed practice of real estate may be referred to the Attorney General's Office or local officials for prosecution.

Staff attorneys direct the investigation of complaints and assign cases to the agency's field investigators. When investigating a complaint, field investigators generally conduct the activities shown in the textbox, *TREC Investigations*, and report their findings to staff

attorneys. Based on these results, staff may dismiss the complaint based on lack of evidence, or continue with the case. Staff send the licensee an advisory letter in cases where a violation occurred that does not warrant further disciplinary action. If staff finds evidence of a more significant violation, the agency sends allegations to the licensee. The assigned staff attorney may negotiate an agreed order with the licensee, or set a date for an administrative hearing if no such agreement is reached or the licensee does not respond to the allegations. If there is no agreement or response, the staff will set a hearing and send notice to the respondent.

### Formal Hearings

Licensees who do not enter into an agreed order must continue to a hearing with the Commission's Administrative Law Judge (ALJ). The ALJ may dismiss the complaint, revoke or suspend the license, or set terms of probation for the licensee. If the licensee does not agree with the ALJ's order, the licensee can appeal to the full Commission or ALJ for a rehearing. If the Commission denies the rehearing, or if the licensee does not agree with the new decision, the licensee may appeal to district court.

### Sanctions

The agency can apply a variety of sanctions through its agreed orders, including reprimand, probation, administrative penalties, suspension, and revocation of a person's license. When deciding contested cases, the ALJ has authority to only take actions against the license, such as suspension or revocation, which may include terms of probation. Enforcement staff may assess administrative fines for violations using a separate enforcement process, or through an agreed order.

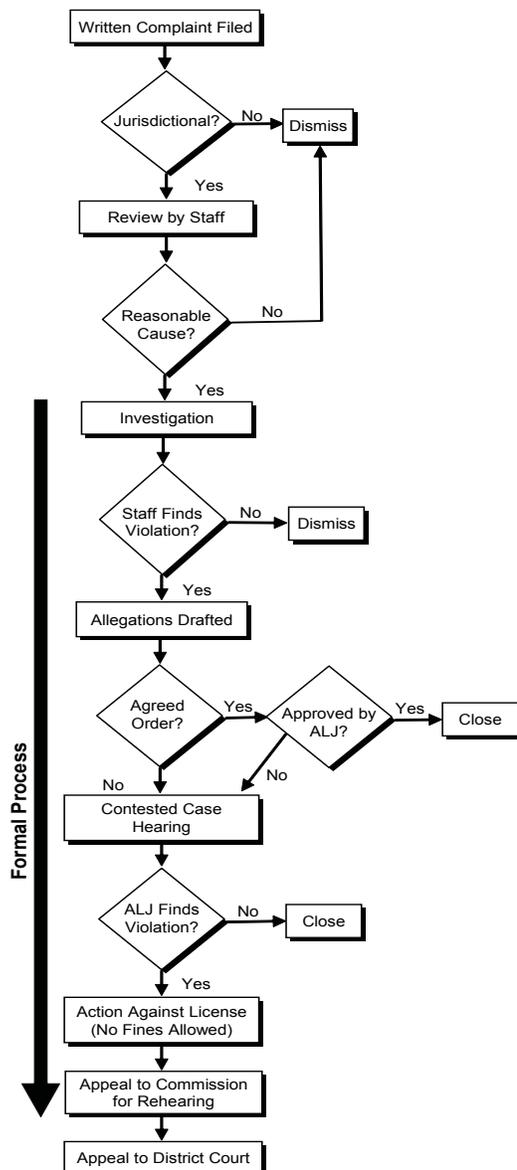
In fiscal year 2005, TREC took 1,295 disciplinary actions.

The most commonly applied sanctions are advisory letters, reprimands, and administrative penalties. The chart, *TREC Disciplinary Actions*, on the next page, shows the types of disciplinary actions taken by the Commission in fiscal year 2005. The agency assessed \$69,150 in fines for fiscal year 2005.

### Moral Character Determinations

The agency conducts Texas criminal history checks on license applications for brokers, salespersons, and home inspectors to ensure applicants meet TREC's moral character standards for honesty, integrity, and trustworthiness. The agency requires licensees to report criminal history on renewal applications, but only conducts background checks on late renewals. In addition, persons interested in obtaining a real estate license may request a moral character

**TREC Enforcement Process**



determination from TREC to find out if they meet these standards before obtaining the required education and applying for a license. In fiscal year 2005, TREC conducted 266 moral character determinations on request of prospective licensees.

**TREC Disciplinary Actions – FY 2005**

License Type	Type of Action						
	Advisory Letter	Reprimand	Administrative Penalty	Probation	Suspension	Revocation	Cease and Desist
Broker	207	52	66	32	31	18	3
Salesperson	282	91	100	27	26	41	2
Real Estate Business	76	25	32	12	11	3	0
Home Inspector	40	2	7	9	1	1	58
Right-of-Way Agent	1	0	1	0	0	0	2
Residential Service Company	0	0	0	0	0	0	0
Timeshare Developer	0	0	0	0	0	0	0
Real Estate School*	0	0	0	0	0	0	0
Instructor	0	0	0	0	0	0	0
Unlicensed Activity	0	0	14	0	0	0	22
<b>Total</b>	<b>606</b>	<b>170</b>	<b>220</b>	<b>80</b>	<b>69</b>	<b>63</b>	<b>87</b>

\* Includes continuing education providers.

**Communications**

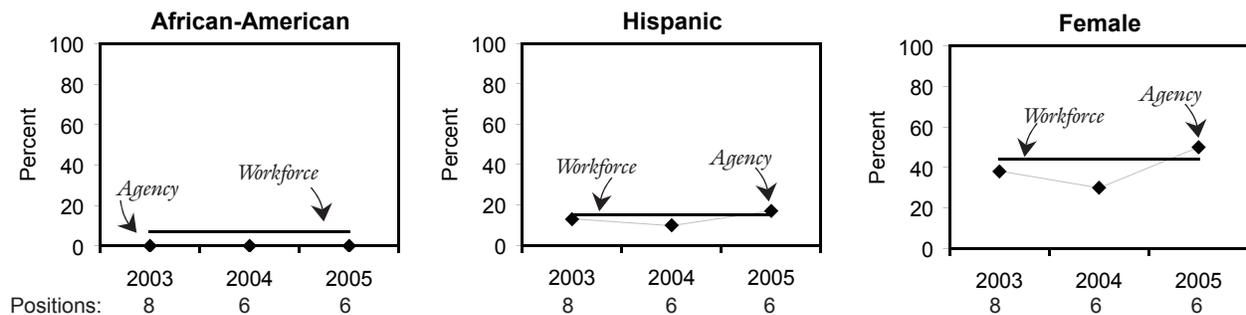
The agency’s Communications Department has nine staff that answer phone calls and respond to e-mails from licensees and the general public. Communications staff receive requests for information from licensees, those interested in becoming licensed, as well as complaints and questions from consumers. In fiscal year 2005, the Department answered more than 188,000 phone calls and received 7,574 e-mails.

# APPENDICES

## Equal Employment Opportunity Statistics 2003 to 2005

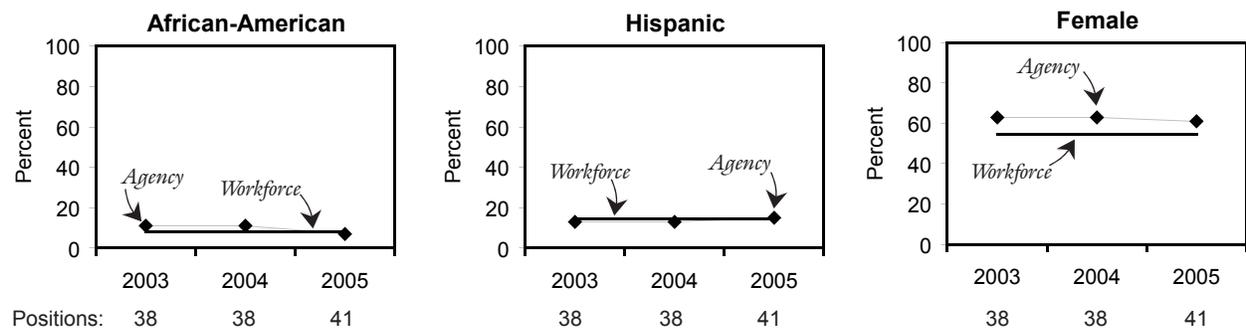
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Real Estate Commission employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2003 to 2005. Generally the agency has exceeded percentages for African-Americans and females in most categories, however, fell short for Hispanics in Administrative Support and Service/Maintenance. The agency has no Skilled Craft employees.

### Administration



The agency exceeded percentages for Hispanic and females in one of the three years, and fell short for African-Americans in all three years.

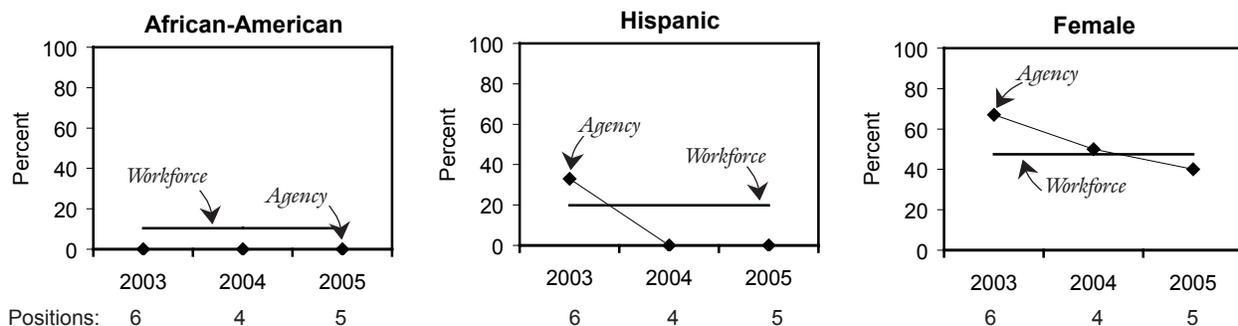
### Professional



The agency exceeded percentages for females, and met percentages for African-Americans and Hispanics in all three years.

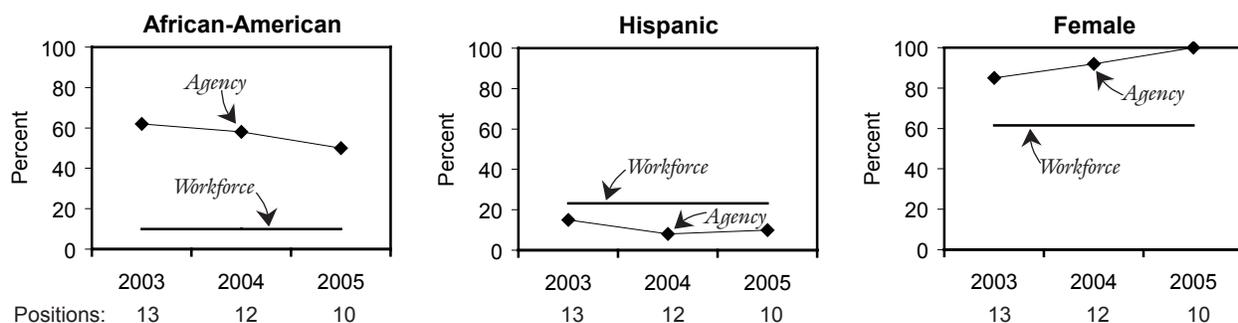
# Appendix A

## Technical



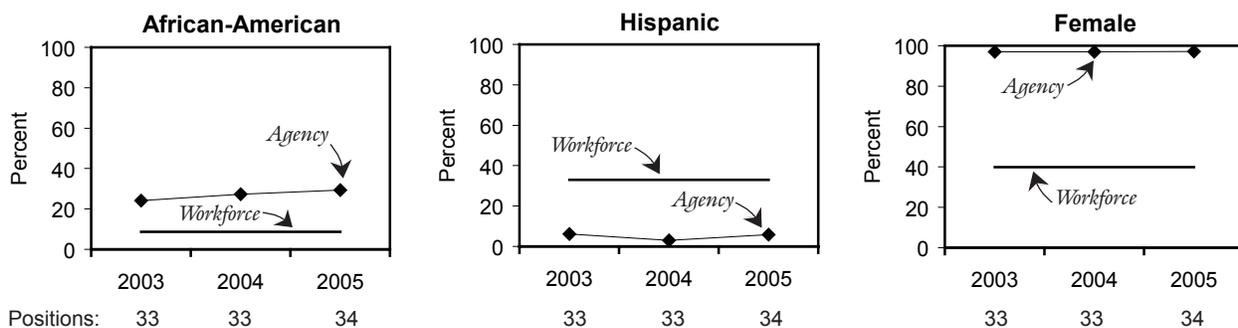
The agency exceeded percentages for females in two years, and for Hispanics in one year, and fell short for African-Americans in all three years. However, the agency had few employees in this category.

## Administrative Support



The agency exceeded percentages for African-Americans and females for all three years, but fell short for Hispanics in all three years.

## Service/Maintenance



The agency exceeded percentages for African-Americans and females for all three years, but fell short for Hispanics in all three years.

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

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



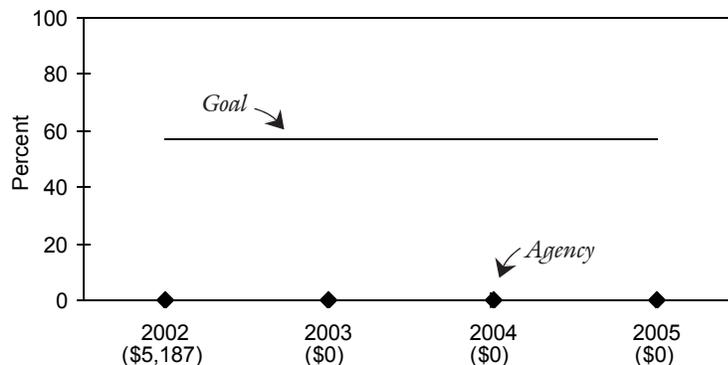
## Historically Underutilized Businesses Statistics

### 2002 to 2005

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

The following material shows trend information for the Texas Real Estate Commission's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2002 to 2005. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The Commission has consistently surpassed the goal for commodities and recently exceeded the goal for professional services. However, the Commission has fallen short of the goals for special trades due to a lack of expenditures, and for other services due to re-classification of these expenditures based on audit recommendations by the Comptroller's office.

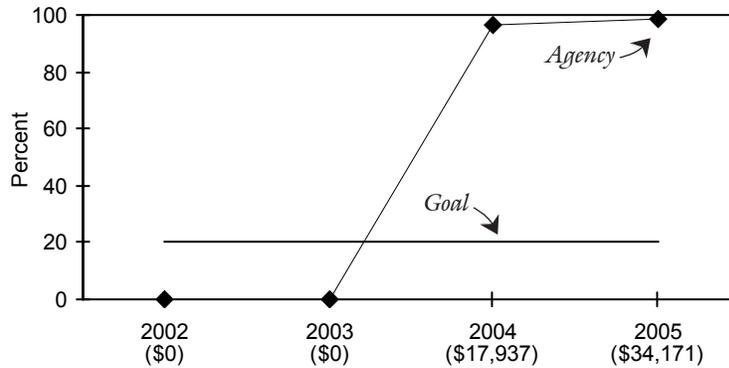
#### Special Trade



The Commission fell below the State goal for HUB purchasing of special trade services from 2002 to 2005, but for three of those years the agency had no expenditures in this category.

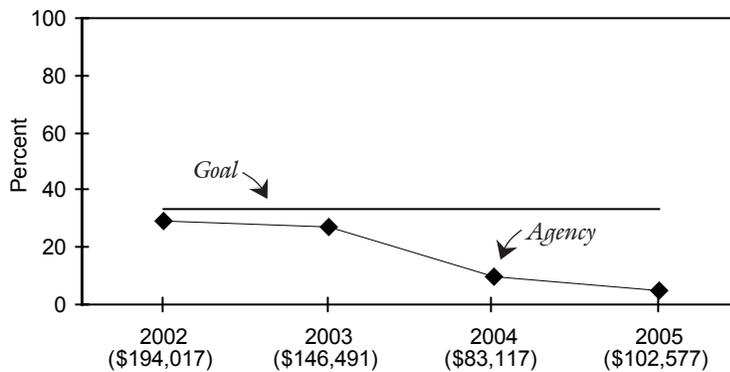
## Appendix B

### Professional Services



The Commission has exceeded the State goal for HUB purchasing of professional services in 2004 and 2005, when it had expenditures in this category.

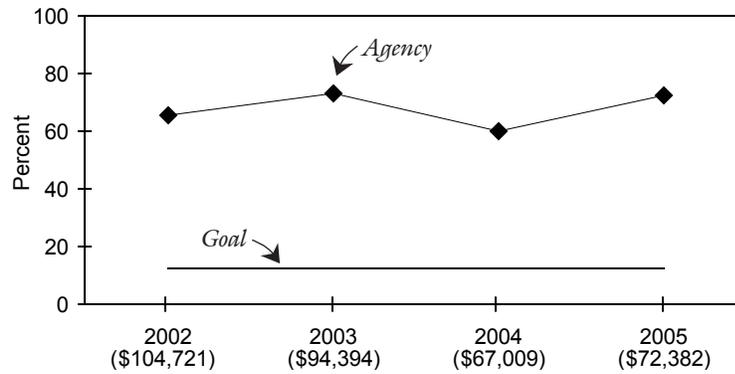
### Other Services



While the Commission was close to meeting the State goal for HUB purchasing of other services, due to reclassification of these expenditures based on audit recommendations from the Comptroller's Office, these expenditures declined in 2004 and 2005.

## Appendix B

### Commodities



The Commission has consistently exceeded the State goal for HUB purchasing of commodities from 2002 to 2005.

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<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.





### Texas Real Estate Commission Licensing Fees

|                                                                       | Fee               | Professional Fee  | Texas Online Fee | Texas Real Estate Research Center | Real Estate Recovery Trust Account | Real Estate Inspection Recovery Fund | Total Current Fee |
|-----------------------------------------------------------------------|-------------------|-------------------|------------------|-----------------------------------|------------------------------------|--------------------------------------|-------------------|
| <b>Annual Statutory Cap in (Bold)</b>                                 |                   |                   |                  |                                   |                                    |                                      |                   |
| <b>Real Estate Licensee</b>                                           |                   |                   |                  |                                   |                                    |                                      |                   |
| <b>Broker</b>                                                         |                   |                   |                  |                                   |                                    |                                      |                   |
| Original Application                                                  | 75 <b>(100)</b>   | 200 <b>(200)</b>  | 5 <b>(5)</b>     | 20 <b>(20)</b>                    | 10 <b>(10)</b>                     |                                      | 310               |
| Renewal (2-year)                                                      | 60 <b>(100)</b>   | 400* <b>(200)</b> | 7* <b>(5)</b>    | 40* <b>(20)</b>                   |                                    |                                      | 507               |
| Late Renewal (Expired)                                                | 75 <b>(100)</b>   | 200 <b>(200)</b>  | 5 <b>(5)</b>     | 20 <b>(20)</b>                    |                                    |                                      | 300               |
| Corporation                                                           | 75 <b>(100)</b>   |                   | 3 <b>(5)</b>     | 20 <b>(20)</b>                    | 10 <b>(10)</b>                     |                                      | 108               |
| Corporation Renewal (2-year)                                          | 60 <b>(100)</b>   |                   | 5 <b>(5)</b>     | 40* <b>(20)</b>                   |                                    |                                      | 105               |
| Corporation Late Renewal                                              | 75 <b>(100)</b>   |                   |                  | 20 <b>(20)</b>                    |                                    |                                      | 95                |
| Limited Liability Company (LLC)                                       | 75 <b>(100)</b>   |                   |                  | 20 <b>(20)</b>                    | 10 <b>(10)</b>                     |                                      | 105               |
| LLC Renewal (2-year)                                                  | 60 <b>(100)</b>   |                   | 3 <b>(5)</b>     | 40* <b>(20)</b>                   |                                    |                                      | 103               |
| Partnership Renewal (2 years)                                         | 60 <b>(100)</b>   |                   | 3 <b>(5)</b>     | 40* <b>(20)</b>                   |                                    |                                      | 103               |
| Request to Go Active                                                  | 20 <b>(20)</b>    |                   |                  |                                   |                                    |                                      | 20                |
| <b>Salesperson</b>                                                    |                   |                   |                  |                                   |                                    |                                      |                   |
| Original Application                                                  | 50 <b>(75)</b>    |                   | 2 <b>(5)</b>     | 17.50 <b>(17.50)</b>              | 10 <b>(10)</b>                     |                                      | 79.50             |
| Annual Education Renewal (1-year)                                     | 29.50 <b>(50)</b> |                   | 2 <b>(5)</b>     | 17.50 <b>(17.50)</b>              |                                    |                                      | 49                |
| Mandatory Continuing Education Renewal (2-year)                       | 60 <b>(100)</b>   |                   | 3 <b>(5)</b>     | 35* <b>(17.50)</b>                |                                    |                                      | 98                |
| Late Renewal (Expired)                                                | 50 <b>(75)</b>    |                   |                  | 17.50 <b>(17.50)</b>              |                                    |                                      | 67.50             |
| Change of Sponsor                                                     | 20 <b>(20)</b>    |                   |                  |                                   |                                    |                                      | 20                |
| Broker to Salesperson                                                 | 50 <b>(75)</b>    |                   |                  | 17.50 <b>(17.50)</b>              |                                    |                                      | 67.50             |
| <b>Right-of-Way</b>                                                   |                   |                   |                  |                                   |                                    |                                      |                   |
| Registration                                                          | 80 <b>(80)</b>    |                   |                  | 20 <b>(20)</b>                    | 50 <b>(50)</b>                     |                                      | 150               |
| Renewal                                                               | 80 <b>(80)</b>    |                   | 3 <b>(5)</b>     | 20 <b>(20)</b>                    | 50 <b>(50)</b>                     |                                      | 153               |
| <b>Branch Office for Broker/Corporation/Limited Liability Company</b> |                   |                   |                  |                                   |                                    |                                      |                   |
| Application                                                           | 20 <b>(20)</b>    |                   |                  |                                   |                                    |                                      | 20                |
| Renewal                                                               | 20 <b>(20)</b>    |                   |                  |                                   |                                    |                                      | 20                |
| Designated Office Change                                              | 20 <b>(20)</b>    |                   |                  |                                   |                                    |                                      | 20                |

\*TREC can charge up to twice the annual statutory cap for 2-year renewals.

## Appendix C

|                                       | Fee                        | Professional Fee | Texas Online Fee | Texas Real Estate Research Center | Real Estate Recovery Trust Account | Real Estate Inspection Recovery Fund | Total Current Fee   |
|---------------------------------------|----------------------------|------------------|------------------|-----------------------------------|------------------------------------|--------------------------------------|---------------------|
| <b>Annual Statutory Cap in (Bold)</b> |                            |                  |                  |                                   |                                    |                                      |                     |
| <b>Home Inspector Licensee</b>        |                            |                  |                  |                                   |                                    |                                      |                     |
| <b>Professional Inspector</b>         |                            |                  |                  |                                   |                                    |                                      |                     |
| Original Application                  | 60 <b>(150)</b>            |                  |                  |                                   |                                    | 100 <b>(200)</b>                     | 160                 |
| Renewal                               | 25 <b>(200)</b>            |                  | 2 <b>(5)</b>     |                                   |                                    |                                      | 27                  |
| <b>Real Estate Inspector</b>          |                            |                  |                  |                                   |                                    |                                      |                     |
| Original Application                  | 45 <b>(125)</b>            |                  |                  |                                   |                                    | 100 <b>(200)</b>                     | 145                 |
| Renewal                               | 25 <b>(175)</b>            |                  | 2 <b>(5)</b>     |                                   |                                    |                                      | 27                  |
| <b>Apprentice Inspector</b>           |                            |                  |                  |                                   |                                    |                                      |                     |
| Original Application                  | 35 <b>(75)</b>             |                  |                  |                                   |                                    | 100 <b>(200)</b>                     | 135                 |
| Renewal                               | 20 <b>(125)</b>            |                  | 2 <b>(5)</b>     |                                   |                                    |                                      | 22                  |
| <b>Professional Inspector</b>         |                            |                  |                  |                                   |                                    |                                      |                     |
| Corporation/LLC Original Application  | 10 <b>(150)</b>            |                  |                  |                                   |                                    |                                      | 10                  |
| Corporation/LLC Renewal               | 10 <b>(200)</b>            |                  |                  |                                   |                                    |                                      | 10                  |
| <b>Education Providers</b>            |                            |                  |                  |                                   |                                    |                                      |                     |
| <b>Private School</b>                 |                            |                  |                  |                                   |                                    |                                      |                     |
| Application (5 years)                 | 400 <b>(400)</b>           |                  |                  |                                   |                                    |                                      | 400                 |
| Provider Annual Fee                   | 200 <b>(200)</b>           |                  |                  |                                   |                                    |                                      | 200                 |
| <b>Continuing Education</b>           |                            |                  |                  |                                   |                                    |                                      |                     |
| Provider Application (2 years)        | 400 <b>(400)</b>           |                  |                  |                                   |                                    |                                      | 400                 |
| Course Application (2 years)          | 100 <b>(100)</b>           |                  |                  |                                   |                                    |                                      | 100                 |
| <b>Instructor</b>                     |                            |                  |                  |                                   |                                    |                                      |                     |
| Application (5 years)                 | 25 <b>(40)</b>             |                  |                  |                                   |                                    |                                      | 25                  |
| Renewal (5 years)                     | 25 <b>(40)</b>             |                  |                  |                                   |                                    |                                      | 25                  |
| <b>Residential Service Company</b>    |                            |                  |                  |                                   |                                    |                                      |                     |
| Application and Annual Report         | 3,500 <b>(3,500)</b>       |                  |                  |                                   |                                    |                                      | 3,500               |
| Evidence/Schedule                     | 250 <b>(500)</b>           |                  |                  |                                   |                                    |                                      | 250                 |
| <b>Timeshare Property</b>             |                            |                  |                  |                                   |                                    |                                      |                     |
| Registration                          | Formula <b>(500-2,500)</b> |                  |                  |                                   |                                    |                                      | Formula (500-2,500) |
| Amendment                             | Formula <b>(100-1,000)</b> |                  |                  |                                   |                                    |                                      | Formula (100-1,000) |

## Appendix C

|                                       | Fee              | Professional<br>Fee | Texas<br>Online<br>Fee | Texas<br>Real Estate<br>Research<br>Center | Real Estate<br>Recovery<br>Trust<br>Account | Real Estate<br>Inspection<br>Recovery<br>Fund | Total<br>Current<br>Fee |
|---------------------------------------|------------------|---------------------|------------------------|--------------------------------------------|---------------------------------------------|-----------------------------------------------|-------------------------|
| <b>Annual Statutory Cap in (Bold)</b> |                  |                     |                        |                                            |                                             |                                               |                         |
| <b>Other</b>                          |                  |                     |                        |                                            |                                             |                                               |                         |
| Continuing Education<br>Deficiency    | 200 <b>(200)</b> |                     |                        |                                            |                                             |                                               |                         |
| Moral Character<br>Determination      | 25 <b>(50)</b>   |                     |                        |                                            |                                             |                                               | 25                      |
| License History                       | 20 <b>(20)</b>   |                     |                        |                                            |                                             |                                               | 20                      |
| Exam Administrative<br>Fee            | 5                |                     |                        |                                            |                                             |                                               | 5                       |
| Duplicate License                     | 20 <b>(20)</b>   |                     |                        |                                            |                                             |                                               | 20                      |
| Change                                | 20 <b>(20)</b>   |                     |                        |                                            |                                             |                                               | 20                      |
| Returned Checks                       | 25 <b>(25)</b>   |                     |                        |                                            |                                             |                                               | 25                      |
| Transcript Evaluation                 | 20 <b>(20)</b>   |                     |                        |                                            |                                             |                                               | 200                     |



# Appendix D

| License Type                                                                                                                                                                                                                                                                          | Inspector License Eligibility Requirements*                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Professional Inspector                                                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>◆ Be at least 18 years of age, a legal resident, and of good moral character.</li> <li>◆ One year experience as real estate inspector during the previous two years, 128 class hours of core courses, and conducted 200 inspections, or;               <ul style="list-style-type: none"> <li>– completed 448 hours of core courses, or;</li> <li>– completed 128 hours of core courses, and have five years experience as a architect, engineer, or engineer-in-training, or;</li> <li>– completed 128 hours of core courses and have seven years experience inspecting, installing, or maintaining structural, mechanical, and electrical property systems.</li> </ul> </li> <li>◆ Pass the Professional Inspector licensing exam.</li> </ul> |
| Real Estate Inspector                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>◆ Be at least 18 years of age, a legal resident, and of good moral character.</li> <li>◆ Licensed as an Apprentice Inspector, performed at least 25 supervised inspections, and completed 90 class hours of core courses, or;               <ul style="list-style-type: none"> <li>– completed 90 class hours of core courses and have three years experience as an architect, engineer, or engineer-in-training, or;</li> <li>– completed 90 class hours of core courses and five years experience inspecting, installing, or maintaining structural, mechanical and electrical property systems.</li> </ul> </li> <li>◆ Pass the Real Estate Inspector licensing exam.</li> <li>◆ Sponsorship by a Professional Inspector.</li> </ul>         |
| Apprentice Inspector                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>◆ Be at least 18 years of age, a legal resident and of good moral character.</li> <li>◆ Sponsorship by a Professional Inspector.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>*TREC statute authorizes the Commission to “fast track” licensure by substituting relevant experience and additional education for home inspection experience, and to bypass the apprentice and real estate inspector tiers needed to be licensed as a professional inspector.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



## Staff Review Activities

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

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

- ◆ Interviewed the Commissioner of the Texas Appraiser Licensing and Certification Board, and staff from the State Office of Administrative Hearings, Department of Savings and Mortgage Lending, and Department of Insurance.
- ◆ Interviewed members of the Texas Real Estate Inspector Committee.
- ◆ Observed an agency audit of a private real estate school, and interviewed the school's director.
- ◆ Observed contested case hearings held by TREC.
- ◆ Attended agency strategic planning meetings.
- ◆ Conducted field visits and interviews with real estate brokers, salespersons, and home inspectors.



**SUNSET REVIEW OF THE  
TEXAS REAL ESTATE COMMISSION**

**Report Prepared By:**

**Christian Ninaud, Project Manager**

**Kelly Kennedy**

**Amy Trost**

**Dawn Roberson**

**Ken Levine, Project Supervisor**

**Joey Longley**

**Director**