



Sunset Advisory Commission

Report to the 79th Legislature

February 2005



SUNSET ADVISORY COMMISSION

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February 11, 2005

The Honorable Rick Perry
Governor of Texas

The Honorable David Dewhurst
Lieutenant Governor of Texas

The Honorable Tom Craddick
Speaker, Texas House of Representatives

Honorable Members of the 79th Legislature
Assembled in Regular Session

Ladies and Gentlemen:

The Sunset Advisory Commission is directed by statute to periodically review and evaluate the performance of specified agencies; recommend the abolition or continuation of these agencies; propose needed statutory changes or management improvements to the operations of the agencies; and develop legislation necessary to implement any proposed changes.

Between September 2003 and January 2005, the Sunset Commission has worked to develop recommendations for the 30 agencies scheduled for Sunset review. During this 17-month period, the Commission held numerous public meetings to hear presentations of its staff's reviews, heard testimony on the results of those reviews and other issues raised, and made decisions on recommendations regarding the agencies reviewed. These recommendations will improve agencies' operations, result in cost savings, and position these agencies to better serve the people of Texas.

The Sunset Advisory Commission is pleased to forward to you its findings and recommendations with this report. We hope you will find it useful as you make decisions concerning the agencies subject to Sunset review this cycle.

Respectfully submitted,

Representative Burt Solomons
Chair
Sunset Advisory Commission

Senator Jane Nelson
Vice Chair
Sunset Advisory Commission



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INTRODUCTION



Introduction

The Sunset law in Texas, enacted more than 25 years ago, provides for the periodic review of the efficiency and effectiveness of state agency operations and policies. The Sunset process works by imposing a date upon which an agency is abolished, unless the Legislature passes a bill to continue its operations. An agency under review must first prove to the Legislature that it is still needed. Then, legislation reauthorizing the agency and its functions must be passed and signed by the Governor. Unless all of these things occur, the agency is automatically abolished after a one-year wind down period.

The 79th Legislative Session

For the 79th Legislative Session, 30 agencies are under Sunset review. Among the agencies to be considered by the Legislature this session are the Texas Education Agency; and several major regulatory agencies, such as the Texas Workers' Compensation Commission, Public Utility Commission, Texas Alcoholic Beverage Commission, and the Board of Medical Examiners.

Results of Sunset Commission Reviews

As a result of its deliberations, the Sunset Commission recommends that the 79th Legislature pass legislation continuing 24 of the 30 agencies under review, with significant improvements to each agency continued. The Commission recommends abolishing three agencies – the Texas Film Industry Development Loan Guarantee Program, Telecommunications Infrastructure Fund Board, and Texas Workers' Compensation Commission; and merging the Texas State Board of Barber Examiners and Texas Cosmetology Commission. The Commission makes no recommendations relating to the Windham School District. The Commission also considered a staff proposal, the Licensing Reorganization Project, to consolidate some of the State's health licensing agencies into a new umbrella agency. The Commission recommended instead to continue all of the health licensing agencies with their existing organizational structure.

Altogether, the Sunset Commission adopted 406 recommendations to improve agencies' operations, use available funds more efficiently, and position these agencies to better serve the people of Texas. The chart on page 9 summarizes the Sunset Commission's decisions regarding the continuation of the agencies under review, provides the estimated two-year fiscal impact of recommended changes, and lists the members of the Legislature who will author each Sunset bill. Overall, in fiscal years 2006 to 2007, the Sunset Commission's recommendations would result in a positive fiscal impact to the State of more than \$61.3 million, and a reduction of 133 full-time employee positions.

Guide to This Report

The main body of this report, the Sunset Commission Recommendations, describes the recommendations for each agency under Sunset review, including information on the fiscal implications of each recommendation. More detailed information on many of these recommended changes can be found in the original Sunset staff report on a particular agency, available on the Commission's Web site, or by contacting Sunset staff directly. In addition to the agency-specific recommendations, the Sunset Commission applied its across-the-board recommendations to each of the agencies reviewed. These recommendations are a set of standard provisions developed by the

Commission over time as it has identified common problems during reviews of agencies. The section on the across-the-board recommendations briefly explains each of these provisions, followed by a chart detailing how they were applied to the agencies under review.

This report also includes an update on the status of agencies' implementation of Sunset legislation from 2003. The Sunset Act charges the Commission with reviewing the way each agency implements the provisions of its Sunset bill. In 2003, the 78th Legislature passed 23 bills containing the majority of changes recommended by the Sunset Commission. Overall, 94 percent of these changes have been implemented. Finally, this report also includes two appendices — a list of agencies scheduled for Sunset review in 2007 and a summary of the Texas Sunset Act.

SUMMARY OF SUNSET RECOMMENDATIONS
TO THE 79TH LEGISLATURE



Summary of Sunset Recommendations

Alcoholic Beverage Commission, Texas (page 11)

1. Update TABC's Mission and Strategic Planning Process to Better Reflect Today's Alcoholic Beverage Regulatory Environment.
2. Improve TABC's Management of Its Enforcement Activities to Best Protect the Public's Safety.
3. Reduce Regulation of Certain Business Practices That Serve No Consumer Interest, Impose Unnecessary Costs on the Industry, and Create Excessive Burdens for the Agency.
4. Require TABC to Develop a Formal Process for Making and Communicating Policy Decisions Regarding Marketing Practices Regulations.
5. Require the Agency to Create a More Formal and Consistent Approach to Investigating and Resolving Complaints Against Its Employees.
6. Establish a Joint Interim Committee to Study Revision of the Regulatory Structure of Alcoholic Beverages in Texas.
7. Allow Licenses to be Renewed Every Two Years for Establishments With No Violations.
8. Provide for Online License Application and Renewal.
9. Require Establishments That Serve Alcohol to Post Signs Warning the Public of the Risks of Drinking Alcohol During Pregnancy.
10. Conform TABC's Process for Handling Forfeiture Lawsuits With That Used by Other Law Enforcement Agencies in Texas.
11. Continue TABC for Six Years.

Barber Examiners, Texas State Board of Cosmetology Commission, Texas (page 27)

1. Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and Merge the Agencies' Functions Into a New Agency, the Texas Board of Barbering and Cosmetology, Giving the New Agency a Sunset date of September 1, 2009.
2. Reduce the Level of Regulation of Barbers and Cosmetologists, Including Requiring Inspection Efforts to be Risk-Based, Focusing on Sanitation Violations.
3. Discontinue Use of Practical Examinations Required for Licensure of Barbers and Cosmetologists.
4. Conform Key Elements of the Regulation of Barbers and Cosmetologists to Commonly Applied Licensing Practices.
5. Require Cosmetology Nail Salons to Use Autoclaves to Sanitize Instruments.

Chiropractic Examiners, Texas Board of (page 39)

1. Require the Board to Clarify Scope of Practice Questions Through Rules Developed With Early Stakeholder Input and in Compliance With Applicable Attorney General Opinions.
2. Strengthen the Board's Enforcement Program to Enable It to More Effectively Resolve Complaints.
3. Conform Elements of the Board's Licensing Functions to Commonly Applied Licensing Practices.

4. Increase the Number of Undergraduate Hours Required for Licensure as a Chiropractor.
5. Limit Applicants to Three Attempts to Pass the Chiropractic Jurisprudence Exam.
6. Continue the Texas Board of Chiropractic Examiners for 12 Years.

Education Agency, Texas (page 49)

1. Require TEA to Develop and Implement a Comprehensive, Integrated Framework for School District and Charter School Monitoring and Interventions.
2. Require TEA to Implement a Financial Accountability Rating System for Charter Schools, and Monitor Charter Schools That Do Not Receive Accountability Ratings.
3. Require TEA to Close a Charter School, Revoke Its Charter, and/or Deny Renewal If the Charter School Fails to Achieve Accreditation Standards for Three Years.
4. Authorize the Commissioner of Education to Specify by Rule the Process for Appeals Involving Accreditation Ratings and Sanctions.
5. Require TEA to Make Every Effort to Decrease the Incorrect and Unfair Administration of the Texas Assessment of Knowledge and Skills Test.
6. Require TEA to Implement Performance-Based Grants to Ensure Grant Funds Are Effectively Spent.
7. Provide Strategies for Lowering Textbook Costs and for Ensuring the Highest Quality Textbook Content.
8. Request the Legislature to Consider, Through the Appropriative Process, Restoring Funds to Allow the Commissioner to Order Textbooks for Up to 110 Percent of a District's Maximum Attendance.
9. Require TEA and Education Service Centers to Collect and Disseminate Best Practices Information.
10. Transfer the Private Driver Training Program to the Texas Department of Licensing and Regulation.
11. Transfer Responsibility for Special Education Due Process Hearings to the State Office of Administrative Hearings.
12. Direct TEA to Develop and Implement a Comprehensive, Integrated Framework of Data Linking Class Size Waiver Data to Public Education Information Management System (PEIMS) Data.
13. Direct TEA to Assess and Minimize Paperwork Requirements When Implementing New Rules.
14. Extend the Deadline to Allow TEA and the Texas Workforce Commission to Develop a Workplace Literacy and Basic Skills Curriculum.
15. Continue the Texas Education Agency for 12 Years.

Educator Certification, State Board for (page 65)

1. Continue the State Board for Educator Certification for 12 Years.
2. Expand the State Board Of Education's Authority Over SBEC Rules, and Improve Stakeholder Involvement in the Rule Development Process.
3. Provide Further Improvements to SBEC's Process of Conducting Criminal Records Checks.
4. Require SBEC to Adopt Rules Ensuring Comprehensive Disciplinary Investigations.

5. Provide SBEC Statutory Authority Over Teaching Permits, Waivers, Educational Diagnosticians and Ability to Accept Gifts, Donations, and Non-Federal Grants.
6. Conform Key Elements of SBEC's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Electric Utility Restructuring Legislative Oversight Committee (page 75)

1. Remove the Sunset Provision for the Electric Utility Restructuring Legislative Oversight Committee.

Film Industry Development Loan Guarantee Program, Texas (page 77)

1. Abolish the Texas Film Industry Development Loan Guarantee Program.

Guaranteed Student Loan Corporation, Texas (page 79)

1. Continue the Texas Guaranteed Student Loan Corporation for 12 Years, and Increase the Size of TG's Board From 10 to 11 Members.
2. Require TG's Internal Auditor to Report to the Board of Directors.
3. Require Relevant State Agencies to Coordinate with TG on Outreach Activities Tied to Financial Aid for Higher Education, and Direct TG to Report to the Legislature on the Demand for Financial Aid in Texas.
4. Require TG to Better Identify and Exchange Data With Licensing Agencies on Licensees With Defaulted Student Loans.

Lottery Commission, Texas (page 85)

1. Continue the Texas Lottery Commission for 12 Years.
2. Increase the Commission's Size From Three to Five Public Members.
3. Require the Commission to Approve All Major Financial Decisions and Develop a Comprehensive Business Plan.
4. Require the Bingo Advisory Committee to Develop a Work Plan to Effectively Advise the Lottery Commission.
5. Abolish Regulation of System Service Providers.
6. Conform Key Elements of the State Lottery Act and the Bingo Enabling Act to Commonly Applied Licensing Practices.
7. Require the Lottery Commission to Comply with Consumer Information and Protection Laws.

Medical Examiners, Texas State Board of (page 95)

Physician Assistant Examiners, Texas State Board of Acupuncture Examiners, Texas State Board of

1. Require the Board to Provide Stakeholders With Meaningful Opportunities for Input Into the Rulemaking Process.
2. Update the Boards' Licensing Process to Ensure Fair, Consistent Decisions.
3. Provide Further Improvements to the Medical Board's Investigations Process to Better Protect the Public.
4. Define Clear Roles, Responsibilities, and Authority for the Boards' Informal Hearings Process.
5. Clarify the Language Regarding the Use of Peer Review Documents in Formal Hearings by the Board and the State Office of Administrative Hearings.

6. Ensure That Private, Nondisciplinary Rehabilitation Orders Provide Adequate Public Protection.
7. Require Physicians Who Use Moderate Sedation in Outpatient Settings to Comply With the Board's Safety Requirements.
8. Strengthen the Acupuncture Board's Licensing and Enforcement Authority, and Clarify That the Board Does Not Approve Acupuncture Schools.
9. Provide the Medical Board With a Streamlined, Flexible Process for Regulating Prescriptive Delegation Authority.
10. Conform Key Elements of the Boards' Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
11. Prohibit Medical Board Members From Using Information Obtained Through Their Duties for Personal Gain.
12. Require the Medical Board to Publish Updated or Corrected Disciplinary Actions.
13. Clarify the Medical Board's Authority to Modify a Proposal for Decision Received From the State Office of Administrative Hearings.
14. Continue the Medical Board for 12 Years and Eliminate the Separate Sunset Dates for the Physician Assistant and Acupuncture Boards.

Optometry Board, Texas (page 119)

1. Modify the State's Contact Lens Prescription Act to Increase Consumers Access to Prescriptions and Provide a Greater Range of Purchasing Choices.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
3. Continue the Texas Optometry Board for 12 Years.

Pharmacy, Texas State Board of (page 127)

1. Strengthen the Board's Ability to Regulate Out-of-State Pharmacies.
2. Update the Board's Enforcement Authority to Address Needs Created by Changes in the Pharmacy Industry.
3. Authorize the Board to Access Sales and Pricing Data During Investigations That Resulted From a Complaint or Previously Failed Inspection.
4. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
5. Allow for a Greater Range of Disciplinary Sanctions for Pharmacy Technicians.
6. Authorize the Board to Register and Discipline Pharmacy Technician Trainees.
7. Give Pharmacists the Option of Making Their Home Address Confidential.
8. Continue the Texas State Board of Pharmacy for 12 Years.

Podiatric Medical Examiners, Texas State Board of (page 139)

1. Continue the Texas State Board of Podiatric Medical Examiners for 12 Years.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Agency Practices.

Psychologists, Texas State Board of Examiners of (page 145)

1. Discontinue the Board's Oral Examination of Candidates for Licensure as Psychologists.
2. Abolish the Psychological Associate Advisory Committee and Require the Board to Seek Input From All Licensee Groups and Stakeholders Early in Its Rule Development Process.
3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
4. Authorize the Board to Participate in Quarterly Criminal Record Checks Conducted by the Department of Public Safety.
5. Continue the Texas State Board of Examiners of Psychologists for 12 Years.

Public Utility Commission of Texas (page 153)

1. Clarify PUC's Oversight Authority Over the Electric Reliability Council of Texas and Add Two Independent Members to the ERCOT Board.
2. Require ERCOT to Perform Market Monitoring Through a Contract With a Private Company Selected By PUC.
3. Eliminate the Requirement for Telecommunications Utilities to File the *Report of Certain Expenses* and Require PUC to Evaluate the Necessity of Other Required Reports.
4. Increase PUC's Maximum Administrative Penalty from \$5,000 to \$25,000 for the Most Serious Violations.
5. Expand the Use of the System Benefit Fund to Assist Needy Patients on Life Support or With Serious Health Problems Who Are Threatened with Disconnection for Nonpayment.
6. Direct PUC to Establish Reasonable Time Limits for Electricity Service Transfers, Initiations, and Disconnections.
7. Direct PUC to Penalize Parties Responsible for Unreasonable Delays in Switching or Billing of Electricity Consumers.
8. Continue the Public Utility Commission of Texas for Six Years.

Public Utility Counsel, Office of (page 163)

1. Continue OPUC for Six Years, and Require Increased Consumer Input and Legislative Oversight.

Regional Education Service Centers (page 167)

1. Continue the Education Service Centers by Repealing the Sunset Review Clause.
2. Direct the Commissioner of Education, by Rule, to Require ESC Board of Directors Training.

State Health Services, Texas Department of (page 171)

**Dietitians, Texas State Board of Examiners of
Marriage and Family Therapists, Texas State Board of Examiners of
Midwifery Board, Texas
Perfusionists, Texas State Board of Examiners of
Professional Counselors, Texas State Board of Examiners of
Social Worker Examiners, Texas State Board of**

1. Replace the Independent, Governor-Appointed Perfusionist Board With an Advisory Committee.
2. Eliminate the Texas-Specific Exam for Professional Counselors and Update Other Licensing Requirements to Improve Interstate Movement of Professional Counselors.

3. Conform Key Elements of the Boards' Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
4. Change the Statutory Designation of Documented Midwife to Licensed Midwife.
5. Add Greater Representation of Midwives to the Midwifery Board.
6. Continue Regulation of Dietitians, Marriage and Family Therapists, Midwives, Perfusionists, Professional Counselors, and Social Workers With Independent Boards or Advisory Committees at the Department of State Health Services for 12 Years.

Telecommunications Infrastructure Fund Board (page 185)

1. Abolish the Telecommunications Infrastructure Fund Board and Its Enabling Legislation.

Veterinary Medical Examiners, Texas State Board of (page 187)

1. Strengthen the Board's Continuing Education Program to Better Ensure Licensees Keep Current With Industry Standards and Practices.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
3. Continue the Texas State Board of Veterinary Medical Examiners for 12 Years.

Windham School District (page 195)

The Sunset Commission Took No Action on the Windham School District.

Workers' Compensation Commission, Texas (page 197)

1. Abolish the Texas Workers' Compensation Commission, Transferring Functions to the Department of Insurance, Texas Workforce Commission, and Newly Created Office of Employee Assistance, Streamline Dispute Resolution and Improve the Oversight of the Workers' Compensation System.
2. Authorize Delivery of Workers' Compensation Health Care Through Networks Operated Similarly to Current Group Health Insurance to Improve Injured Workers' Health-Care Outcomes and Better Contain Costs.
3. Enhance the Delivery and Quality of Benefits for Injured Workers to Focus on Improving Outcomes for Return to Work.

79th Session Sunset Summary Information

Agency or Statutory Provision	Action	Two-Year Net Fiscal Impact	Bill Author		
			Senate	House	
Alcoholic Beverage Commission, Texas	Continue	No Impact	Whitmire	Hamric	
Barber Examiners, Texas State Board of Cosmetology Commission, Texas	Abolish/Merge	\$1,172,760	Whitmire	Hamric	
Chiropractic Examiners, Texas Board of	Continue	(\$11,200)	Nelson	Solomons	
Education Agency, Texas	Continue	\$10,390,180	Jackson	Grusendorf	
Educator Certification, State Board for	Continue	No Impact	Shapleigh	Grusendorf	
Electric Utility Restructuring Legislative Oversight Committee	Continue	No Impact	No Legislation		
Film Industry Development Loan Guarantee Program, Texas	Abolish	No Impact	No Legislation		
Guaranteed Student Loan Corporation, Texas	Continue	No Impact	Carona	B. Cook	
Lottery Commission, Texas	Continue	No Impact	Jackson	Hamric	
Medical Examiners, Texas State Board of Physician Assistant Examiners, Texas State Board of Acupuncture Examiners, Texas State Board of	Continue	(\$252,510)	Nelson	Solomons	
Optometry Board, Texas	Continue	\$25,400	Shapleigh	Solomons	
Pharmacy, Texas State Board of	Continue	\$4,800,000	Whitmire	Truitt	
Podiatric Medical Examiners, Texas State Board of	Continue	\$640	Nelson	Hamric	
Psychologists, Texas State Board of Examiners of	Continue	(\$48,570)	Jackson	Truitt	
Public Utility Commission of Texas	Continue	No Impact	Nelson	P. King	
Public Utility Counsel, Office of	Continue	No Impact	Nelson	P. King	
Regional Education Service Centers	Continue	No Impact	No Legislation ¹		
Department of State Health Services	Dietitians, Texas State Board of Examiners of	Continue	\$1,600	Shapleigh	Truitt
	Marriage and Family Therapists, Texas State Board of Examiners of	Continue	No Impact	Whitmire	Truitt
	Midwifery Board, Texas	Continue	\$1,800	Shapleigh	Truitt
	Perfusionists, Texas State Board of Examiners of ²	Continue	\$3,200	Nelson	Truitt
	Professional Counselors, Texas State Board of Examiners of	Continue	No Impact	Carona	Truitt
	Social Worker Examiners, Texas State Board of	Continue	No Impact	Shapleigh	Truitt
Telecommunications Infrastructure Fund Board	Abolish	No Impact	No Legislation		
Veterinary Medical Examiners, Texas State Board of	Continue	\$35,600	Jackson	B. Cook	
Windham School District	No Action	No Impact	No Legislation		
Workers' Compensation Commission, Texas	Abolish	\$45,272,280	Nelson	Solomons	
Fiscal Impact Total		\$61,391,180			

¹ Part of TEA bill

² Replace Board with advisory committee

SUNSET COMMISSION
RECOMMENDATIONS



Texas Alcoholic Beverage Commission

Agency at a Glance

The Texas Alcoholic Beverage Commission (TABC) regulates all phases of the alcoholic beverage industry to ensure the protection of the welfare, health, peace, temperance, and safety of the people of Texas. The Legislature created the agency, originally called the Liquor Control Board, in 1935, in response to the repeal of Prohibition. Today, the agency endeavors to protect the people of Texas while facilitating fairness, balanced competition, and responsible behavior in the alcoholic beverage industry through voluntary compliance. To accomplish its mission, the Commission:

- licenses alcoholic beverage manufacturers, wholesalers, and retailers;
- enforces administrative and criminal laws in the Alcoholic Beverage Code;
- collects taxes on alcoholic beverages; and
- provides educational programs to address issues such as underage drinking.



For additional information, please contact Karen Latta at 512-463-1273.

Key Facts

- **Funding.** The agency spent more than \$29.5 million for its operations in fiscal year 2004 – all of which came from licensing fees and surcharges.
- **Staffing.** In fiscal year 2004, the agency had 568 employees, including 237 commissioned law enforcement officers. About a quarter of these employees are located at the Headquarters in Austin, and the rest work in the agency's many field offices around the state and ports of entry along the Mexico border.
- **Licensing.** The agency issued or renewed more than 98,000 licenses in fiscal year 2004, including more than 67,000 retailer, 880 wholesaler, and 1,700 manufacturer licenses. Some businesses require more than one license to operate, and so the agency actually licensed approximately 39,150 locations that year.
- **Enforcement.** In fiscal year 2004, the agency found 12,728 administrative violations and issued citations for 19,014 criminal violations. As a result, the agency collected \$2.6 million in fines, temporarily suspended licenses for 2,789 violations, and cancelled licenses for 206 violations, among other enforcement actions. The agency also received 5,786 complaints and resolved 5,619.
- **Tax Collection.** In fiscal year 2004, TABC collected more than \$169 million in excise, personal importation, airline and passenger train taxes, and associated fees on alcoholic beverages.

- **Education.** The agency presented its educational programs to more than 350,000 people in fiscal year 2004, including school children, college students, local law enforcement personnel, civic and community group members, and licensed businesses. In that same year, the agency received \$515,283 in federal grants for educational and enforcement programs.

Commission Members (3)

John T. Steen, Jr., Chair (San Antonio)
Gail Madden (Dallas)
Jose Cuevas, Jr. (Midland)

Agency Head

Alan Steen, Administrator
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Recommendations

1. Update TABC's Mission and Strategic Planning Process to Better Reflect Today's Alcoholic Beverage Regulatory Environment.
2. Improve TABC's Management of Its Enforcement Activities to Best Protect the Public's Safety.
3. Reduce Regulation of Certain Business Practices That Serve No Consumer Interest, Impose Unnecessary Costs on the Industry, and Create Excessive Burdens for the Agency.
4. Require TABC to Develop a Formal Process for Making and Communicating Policy Decisions Regarding Marketing Practices Regulations.
5. Require the Agency to Create a More Formal and Consistent Approach to Investigating and Resolving Complaints Against Its Employees.
6. Establish a Joint Interim Committee to Study Revision of the Regulatory Structure of Alcoholic Beverages in Texas.
7. Allow Licenses to be Renewed Every Two Years for Establishments With No Violations.
8. Provide for Online License Application and Renewal.
9. Require Establishments That Serve Alcohol to Post Signs Warning the Public of the Risks of Drinking Alcohol During Pregnancy.
10. Conform TABC's Process for Handling Forfeiture Lawsuits With That Used by Other Law Enforcement Agencies in Texas.
11. Continue TABC for Six Years.

Issue 1

TABC Lacks the Clear Focus and Strategic Direction Needed in Today's Alcoholic Beverage Regulatory Environment.

Key Findings

- The agency's statutory mission has not kept pace with changes in the industry it regulates or social concerns regarding alcohol.
- TABC's strategic planning process does not reflect or address the evolving needs of the agency.
- The agency lacks key management tools necessary to support its strategic planning process.

The Alcoholic Beverage Code does not reflect the modern environment in which TABC operates. The Code also does not provide clear guidance to the agency on what its priorities or strategic direction should be. Without such direction, TABC has had difficulty focusing its efforts on issues with the greatest impact on public safety. In addition, the agency lacks a comprehensive strategic planning process to help guide its daily activities and measure its progress toward meeting specific goals and objectives.

Recommendations

Change in Statute

1.1 Update TABC's mission to better reflect today's alcoholic beverage regulatory environment and the agency's role in public safety issues.

This recommendation would better define the agency's mission in statute by updating the existing language to focus the agency on:

- protecting the public safety by deterring and detecting violations of the law;
- promoting legal and responsible alcohol consumption;
- ensuring fair competition within the alcoholic beverage industry;
- ensuring consistent, predictable, and timely enforcement of the law;
- ensuring a consistent, predictable, and timely licensing process;
- promoting and fostering voluntary compliance with the law; and
- communicating the requirements of the law clearly and consistently.

Management Action

1.2 TABC should improve its strategic planning process so that it helps prioritize the agency's activities and measures its progress toward meeting its goals.

TABC should incorporate the following activities into its strategic planning process.

- TABC should work with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy to change its strategic plan and performance measures as necessary to carry out the mission laid out in Recommendation 1.1. The goals should relate directly to that mission and the measures should be designed to provide an accurate picture of the effort being measured.

The measures should not only capture the agency's activities but should also assess the effect in terms of outcomes.

- TABC should develop region-specific goals as building blocks for the agency's strategic plan. Each region should use local input to determine the priorities for attention and to best allocate resources.
- TABC should establish procedures to monitor progress in meeting its statewide and region specific strategic goals, and identify organizational and operational changes as needed to address problems that may arise with meeting its goals.

1.3 The agency should focus more effort on research and data collection to better support its mission and goals.

The agency should place a higher focus on collecting and analyzing data related to issues affecting TABC's mission, such as traffic accidents involving alcohol, trends in binge drinking on college campuses, and how changes in the economy will affect the sale of alcohol and the number of licensed retailers. Such data should be collected and analyzed on a regional basis to help TABC's management make decisions about how best to allocate resources.

1.4 TABC should evaluate alternative approaches for administering its educational programs to better support its mission and goals.

The agency should develop a detailed plan to guide its administration of existing programs and implementation of new ones. In creating this plan, the agency could consider consolidating the following duties and dedicating staff who are specialists in educational programs to perform these functions:

- developing educational programs and materials for specific groups, including school-aged children, college-aged adults, pregnant women, community groups, regulated businesses, and others;
- seeking out and applying for grants to fund the agency's educational programs;
- administering the agency's existing grant programs, in which the agency gives money to community groups for their own programs;
- administering the seller/server training program; and
- seeking opportunities to enhance TABC's outreach through its educational programs.

Issue 2

TABC Does Not Manage Its Enforcement Activities to Best Protect the Public's Safety.

Key Findings

- TABC's current penalty structure limits the agency's ability to effectively deter illegal activities or ensure fairness and consistency in the penalties it assesses.
- The agency does not prioritize its enforcement activities to focus on the most serious public safety issues.

- TABC does not effectively measure its performance on enforcement activities or ensure that regions consistently follow Headquarter’s directives.
- The agency does not have an effective and reliable system to manage complaints from the public and other sources.
- TABC does not maximize the time its enforcement agents spend on enforcement activities.

TABC performs a variety of enforcement activities to protect the public’s safety and ensure compliance with alcoholic beverage regulations. However, TABC lacks the necessary procedures and oversight to ensure fair, consistent, and effective enforcement of the law. Although the agency’s enforcement staff are located throughout the state in 52 field offices, they do not have detailed procedures in place for assessing penalties, handling complaints, conducting investigations, and overseeing regional operations. The agency does not focus its enforcement activities on the most serious risks to the public. In addition, the agency does not sufficiently track and analyze the right information to have a clear picture of the problems facing the state and each region.

Recommendations

Change in Statute

2.1 Require TABC to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.

This recommendation would require TABC to replace its existing standard penalty chart with one that reflects its full penalty authority and provides more complete guidance in assessing penalties. The agency’s schedule of sanctions should include both the number of days of suspension for a particular violation and the corresponding fine amount. In developing the schedule, the agency needs to reflect the range of fines it can assess, from \$150 to \$25,000, according to the seriousness of the offense, the history of compliance, and other criteria set forth in the Alcoholic Beverage Code. The agency’s schedule should address the most common types of violations, including those that apply to wholesalers and manufacturers.

The schedule of sanctions should allow for deviations due to mitigating or aggravating factors. However, the agency should develop clear policies to guide its staff in evaluating mitigating or aggravating factors in different circumstances, and how these factors could affect the penalty assessment. As part of this recommendation, the agency should require staff to report to Headquarters for approval of all cases in which executive management determines such approval is needed to allow deviation from the schedule.

2.2 Require TABC to develop a risk-based approach to enforcement and to better measure the impact of its enforcement activities on public safety.

This recommendation would require the agency to develop policies and procedures for more effectively conducting and overseeing its enforcement activities according to the following provisions.

- Require TABC to develop a risk-based approach to conducting its enforcement activities by focusing on detecting serious violations with an impact on public safety, and monitoring businesses with a history of complaints and violations, and any other factors the agency deems important.
- Require TABC to develop benchmarks and goals to track key enforcement activities and their results. The agency should track the number of enforcement activities by type, the number of violations detected from each activity, the amount of time spent on specific enforcement activities,

and any other information determined necessary by executive management. TABC should also make use of this and other information to compare regional performance and determine best practices.

- Require TABC to track and analyze the nature of violations detected, their disposition, and the businesses that produce the most serious violations, statewide and per region. The agency would compile detailed statistics and analyze trends to get a clearer picture of problems facing the State. The agency would summarize these statistics and trends for executive management on a monthly basis and on a quarterly basis for its Board, as well as making this information available on its Web site.

2.3 Require TABC to develop standard procedures for handling complaints and for tracking and analyzing complaint data.

This recommendation would require the agency to develop policies and procedures for effectively managing the complaints the agency receives according to the following provisions.

- Require the Commission to adopt rules that clearly define the agency's complaint process from receipt to disposition.
- Require the agency to address complaints according to risk by placing complaints in priority order so that the agency handles the most serious problems first.
- Require TABC to develop a standard form for the public to make a complaint against an establishment. The complaint form should be available to the public on the agency's Web site.
- Require TABC to compile detailed statistics and analyze trends on complaint information to get a clearer picture of problems people have with its licensees. This complaint data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. The agency should also track this information on a regional basis. The agency should report this information monthly to executive management and quarterly to the Commission. As part of this recommendation, TABC should make general information about the nature and disposition of complaints available on its Web site.

Management Action

2.4 TABC should better define its performance measures to more accurately reflect the agency's enforcement activities.

TABC should work with the Legislative Budget Board and Governor's Office of Budget, Planning, and Policy to redefine its performance measures related to its enforcement activities. As part of this recommendation, the agency could consider creating additional performance measures to more specifically measure its various enforcement activities, such as stings, complaint investigations, and routine inspections. Alternatively, the agency could simply redefine its current performance measures so that it applies to all enforcement activities, not just inspections. TABC should also ensure agents accurately account for their enforcement activities to avoid double-counting and other practices that inaccurately reflect the agency's performance.

2.5 The agency should develop standard procedures for conducting routine inspections of licensed establishments that include the use of a checklist and non-commissioned staff.

TABC should develop standard procedures for conducting routine on-premise inspections, including the use of a checklist of the types of violations staff should check, to ensure that they consistently and thoroughly inspect each establishment. The agency should also consider using non-commissioned staff to conduct routine inspections.

2.6 TABC should develop and implement a plan to increase the time its agents spend on enforcement activities.

TABC should develop a plan by September 1, 2006 for increasing the time its agents spend on enforcement activities. This plan should include strategies to reduce time spent on licensing and administrative activities and for using non-commissioned staff to perform routine inspections, as mentioned in Recommendation 2.5. In developing the plan, the agency should consider conducting an analysis of its enforcement staffing in each office to determine the cost-effectiveness of reorganizational alternatives, using input from the regions and the agency's internal auditor. The agency could evaluate different options, such as redirecting some of its existing compliance and licensing staff or requesting additional resources from the Legislature to hire non-commissioned staff to perform a portion of these licensing or inspection duties.

2.7 The agency should update its enforcement policies and procedures manual.

TABC should incorporate all of its current enforcement policies and procedural directives, communicated either verbally or through e-mails and memoranda, into its enforcement manual by March 1, 2006.

Issue 3

Over-Regulation of Certain Business Practices Serves No Consumer Interest, Imposes Unnecessary Costs on the Industry, and Creates Excessive Burdens for the Agency.

Key Findings

- Restricting the size of beer containers sold in Texas serves no clear consumer or state interest, and imposes unnecessary costs and limitations on the industry.
- Much of TABC's new product approval process duplicates federal processes, serves no clear public health purpose, and creates unnecessary delays in getting products to market.
- TABC's oversight of payments for alcoholic beverages between liquor and wine distributors and retailers is inefficient.

TABC enforces a broad range of regulations regarding the production, approval, and distribution of alcoholic beverages. However, TABC's oversight of certain industry business practices is duplicative of federal oversight, unnecessarily burdensome on the agency, and not clearly tied to public safety or consumer interests.

Recommendations

Change in Statute

3.1 Eliminate restrictions on the size of beer containers that can legally be sold in Texas.

This recommendation would eliminate the requirements that beer only be sold in specific container sizes. This change would result in savings to businesses that would no longer have to produce products sized only for the Texas market. Brewers could then decide which beers to sell in Texas based on consumer preference, without having to consider if the container size meets state requirements that serve no health or safety purpose.

3.2 Eliminate label approval and testing for liquor and wine, and instead authorize TABC to register federal certificates of approval for these products.

This recommendation would eliminate statutory requirements for state approval of liquor labels, and clearly authorize TABC to accept federal approvals for liquor and wine instead. This change would eliminate unnecessary duplication with federal oversight and reduce delays to business in getting products to market.

3.3 Eliminate testing for beer, and instead require manufacturers to submit laboratory analyses of their products to TABC.

This recommendation would eliminate the requirement that the agency perform chemical analyses of all new beer products. Instead, beer manufacturers would submit to TABC analyses from laboratories certified by the federal Alcohol and Tobacco Tax and Trade Bureau indicating the alcohol content of their products. TABC would still approve all beer labels since Texas has additional labeling requirements that go beyond federal regulations.

3.4 Eliminate fees set in statute for the approval of new alcoholic beverage products.

This recommendation would remove the \$25 fee set in statute for the approval of liquor and wine, and add language that the fee should be set to cover the costs of regulation, including implementing a label registration program. This recommendation would also eliminate the fee set in statute for the testing and approval of beer, for which the agency would set a fee to cover costs.

3.5 Allow distributors to report retailers who are delinquent in making payments for liquor and wine by e-mail or other means authorized by the agency.

This recommendation would modify requirements for liquor and wine distributors to report in writing delinquent retailers who have not paid within two days of the maximum 25 days allowed for credit, and allow for alternative means, such as e-mail or fax, for providing this information to the agency.

Management Action

3.6 TABC should work toward phasing out the paper-based delinquency list.

The Commission should move toward reducing the use, and mailing, of the paper-based delinquency list used for administration of credit law. Under this recommendation, after March 2006, distributors would receive the list by e-mail, or access the current list maintained on the agency's Web site, to

ensure that they do not make deliveries to delinquent retailers. After this date, the agency should provide the paper-based list only on a distributor's request, and charge a fee to recover the costs of providing the list by mail.

Issue 4

TABC Lacks an Effective Approach for Resolving Key Marketing Practices Regulatory Issues, Resulting in Inconsistent Enforcement and Unnecessary Costs to the Industry.

Key Findings

- The agency faces difficulties in consistently and reliably interpreting regulations governing the promotion and marketing of alcoholic beverages.
- TABC lacks an effective means for deciding and communicating interpretations of law, or changes in policy, regarding restrictions on the marketing of alcohol.
- TABC's inconsistent approach to addressing marketing practices issues results in regulatory problems going unresolved for many years.
- The agency's lack of consistency in providing the industry with regulatory guidance results in unnecessary costs to the industry and unfair enforcement.

TABC enforces a range of regulations regarding the marketing and promotion of alcoholic beverages. The agency struggles to formulate, and communicate to the industry, important regulatory policies, affecting its ability to consistently enforce the law and depriving the industry of needed information on regulatory policies to help it comply with the law.

Recommendation

Change in Statute

4.1 Require TABC to develop a formal process for making policy decisions regarding marketing practices regulations, and for communicating these decisions to agency staff and the industry.

To develop a process to improve decisionmaking regarding marketing practices regulatory issues, the agency should consider assembling an ad-hoc working group composed of equal representation from the manufacturer, distributor, and retail tiers of the industry for liquor, beer, and wine. On an as-needed basis, TABC staff could convene the group to discuss marketing practices regulatory issues and to provide input for the drafting of marketing practice policies.

To improve communications with staff and the regulated community, the agency should document its decisions by using a precedents manual, or drafting formal advisories, and making these documents available to regional staff, as well as to industry members, through the agency's Web site, e-mail, and agency publications.

TABC Lacks a Consistent and Formal Approach to Investigating and Resolving Complaints Against Its Employees.

Key Findings

- Despite the importance of a well-defined internal affairs function, TABC's laws, rules, and policies do not provide adequate guidance regarding its handling of personnel complaints.
- TABC does not track, analyze, or report statistical information on complaints that could help the agency identify and correct problems.

As a law enforcement agency, TABC must ensure that its employees maintain high standards of conduct by quickly and impartially investigating any complaints that allege misconduct on the part of an employee. In response to severe corruption problems among TABC employees in the late 1980s, the agency created an internal affairs function. However, having no statutory or other formal basis for existence, and no written policies and procedures, that function has come and gone over the years according to the management style of the agency's administrators.

Recommendations

Change in Statute

- 5.1 Require TABC to maintain an internal affairs function to ensure fair, effective, and impartial investigations of alleged misconduct by law enforcement officers and other employees.**

This recommendation would establish TABC's internal affairs function in statute, with original jurisdiction over all personnel complaints. The Commission, by rule, should outline general guidelines to inform the public of how to file a complaint and what steps the agency will take to address that complaint. The Administrator should appoint and directly oversee the head of internal affairs.

- 5.2 Require the agency to track and report complaint information to the Administrator and the Commission on a regular basis.**

This recommendation would require the internal affairs staff to report at least monthly to the Administrator information about the nature and status of each complaint. It would also require the staff to report to the Commission quarterly a summary of information relating to investigations, including analysis of the number, type, and outcome of investigations, trend information, and recommendations to avoid future complaints.

Management Action

- 5.3 TABC should develop policies and procedures to guide its internal affairs process.**

These procedures should include information on each step of the process, with timeframes for the investigation, disciplinary action, and appeal of complaints. In addition, the agency would need to develop a schedule of sanctions to guide supervisors in more consistently disciplining employees according to the type and severity of the misconduct. TABC should publish all of this information in its employee handbook so it is available to the entire staff and develop standard reporting forms as

appropriate to guide the process. Additionally, the internal affairs staff should update division directors in writing on the status of complaints affecting their employees at least monthly to keep them informed and to ensure investigations are conducted in a timely manner.

Issue 6

Texas' System of Alcoholic Beverage Regulation Is Based on Prohibition-Era Concerns and Is In Need of Revision.

The Legislature created TABC in 1935, following the repeal of Prohibition, to very tightly regulate the alcoholic beverage industry. Fear of large scale corruption and uncontrolled consumption led to a system in which TABC heavily regulates all aspects of the industry. Concerns today focus more on fair and balanced competition, responsible drinking, and reduced government regulation; yet both TABC and the Alcoholic Beverage Code continue to reflect much of the strong controls in place since the post-Prohibition era. While the State still has an interest in regulating the alcoholic beverage industry, TABC and the Code are in clear need of modernization.

Recommendation

Change in Statute

6.1 Require the Legislature to establish a joint interim committee to study revision of the regulatory structure of alcoholic beverages in Texas.

The study should include at least the following:

- placing all responsibility for assessing and collecting taxes with the Comptroller;
- licensing only persons or entities that produce, manufacture, brew or distill regulated substances; or sell regulated substances to the public;
- placing all responsibility for the issuance and renewal of licenses with the Texas Department of Licensing and Regulation;
- charging TABC with enforcing all laws, rules, and regulations applicable to alcoholic beverages to foster, protect, and maintain the health and safety of the citizens of the State of Texas; and to promote open markets and competition in the sale of alcoholic beverages; and
- abolishing provisions in the Code related to marketing practices and retailer independence, and instead authorize TABC to adopt and enforce regulations on those subjects similar to the regulations promulgated by the Alcohol and Tobacco Tax and Trade Bureau for liquor, beer, and wine.

The Lieutenant Governor and Speaker of the House of Representatives would determine the composition of the interim committee. The committee should report its findings and recommendations to the Governor, Lieutenant Governor, and Speaker of the House by January 1, 2007.

Issue 7

Requiring Annual Renewal of All Alcoholic Beverage Licenses Places an Administrative Burden on the Industry and the Agency.

TABC issues 64 different licenses to businesses that manufacture, distribute, and sell alcoholic beverages, and to individuals that represent these businesses. Each year, the agency processes applications or renewals for more than 96,000 licenses. By statute, all licenses must be renewed annually, creating an administrative burden on licensees who must complete the renewal forms and on the agency which must process those forms.

Recommendation

Change in Statute

7.1 Allow licenses to be renewed every two years for establishments with no violations.

This recommendation would allow licensees who have had no violations in the previous year the option of renewing their licenses every two years, rather than annually. The agency would determine whether licensees are eligible for biennial renewal based on their compliance history over the past year. To avoid any revenue loss to the State, licensees eligible for biennial renewal would pay double the current annual licensing fees and surcharges every two years.

Issue 8

TABC's Paper-Intensive Licensing Process Creates Delays for Business.

Currently, applicants seeking a license from TABC must submit paper-based forms to their local TABC office to start the licensing process. During this process, agency staff interview applicants, perform background checks, and review applications for completeness. Once an application is complete, local TABC staff forward it to Headquarters for final processing and issuance of the license. This process can take several months from the filing of an application to receipt of a license.

Recommendation

Change in Statute

8.1 Direct TABC to reduce delays in the licensing process by providing for online license application, renewal, and payment of fees.

This recommendation would ensure that licensees have access to an automated system that reduces delays in the licensing process by making license applications available online. Licensees could use the automated system to renew their licenses, check the status of license applications and renewals, and pay licensing fees.

Issue 9

The State Has Not Made Sufficient Efforts to Inform the Public of the Health Risks of Drinking Alcohol During Pregnancy.

TABC regulates all phases of the alcoholic beverage industry to ensure protection of the welfare, health, peace, temperance, and safety of all Texans. A Texas Department of State Health Services survey showed that 40 to 50 percent of women do not connect the use of alcohol with birth defects. Although twenty-two other states require establishments that sell alcohol to post health warning signs about the risks of drinking alcohol during pregnancy, Texas has no similar requirement.

Recommendation

Change in Statute

- 9.1 Require TABC to develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform and remind the public of the risks of drinking alcohol during pregnancy.**

This recommendation would require TABC to adopt rules that require establishments selling alcohol for on-premise consumption, such as restaurants and bars, to post signs on men's and women's bathroom doors that remind the public of the health risks posed to unborn children when pregnant women drink alcohol.

Issue 10

The Alcoholic Beverage Code Does Not Conform to Other Texas Statutes With Respect to the Sale of Seized Property.

In the course of its law enforcement activities, TABC may seize illegal alcoholic beverages and other property. The Alcoholic Beverage Code directs TABC to deal with seized property in a way that is different from the process used by other law enforcement agencies, as guided by the Code of Criminal Procedure. One key difference is that TABC cannot use proceeds from the sale of seized alcoholic beverages to pay for the costs of forfeiture lawsuits, which establish the State's right to illegal property. As a result, TABC is unable to file forfeiture lawsuits because the agency has no way of paying for the court costs associated with these suits.

Recommendation

Change in Statute

- 10.1 Amend the Alcoholic Beverage Code to require forfeiture suits filed due to seized alcoholic beverages to be conducted according to the provisions of the Code of Criminal Procedure.**

This recommendation would allow TABC to use funds gained through the sale of seized alcoholic beverages to help defray the costs of forfeiture lawsuits, thereby conforming TABC's procedures to those of other law enforcement agencies. As part of this recommendation, the statute should also be changed to clarify that seized alcoholic beverages deemed by the manufacturer or wholesaler to be

inappropriate for sale to a consumer should be destroyed, including those that are damaged or beyond the “code date” affixed by the manufacturer.

Issue 11

Texas Has a Continuing Need for the Texas Alcoholic Beverage Commission.

Key Findings

- Texas has a clear and continuing interest in regulating the alcoholic beverage industry.
- TABC is the most appropriate agency to regulate the alcoholic beverage industry.
- The Legislature needs to make significant improvements to the Alcoholic Beverage Code and to the agency’s operations.
- While organizational structures vary, all states regulate the production, distribution, and sale of alcoholic beverages.

The Texas Alcoholic Beverage Commission’s responsibilities – regulating the production, distribution, and sale of alcoholic beverages, enforcing state laws regarding alcohol, and collecting taxes – are important to the State. While the Sunset Commission identified needed improvements to the agency’s operations, TABC is unique in its ability to focus solely on the regulation of the alcoholic beverage industry and its specialized expertise in the state’s complex alcoholic beverage laws.

Recommendation

Change in Statute

11.1 Continue the Texas Alcoholic Beverage Commission for six years.

This recommendation would continue the Texas Alcoholic Beverage Commission as an independent agency, responsible for regulating the alcoholic beverage industry, until 2011. Continuing TABC for only six years, rather than the standard 12 years, would allow the Legislature to assess the agency’s progress in improving its operations and the impact of the revision of the alcoholic beverage regulatory structure recommended in Issue 6.

Fiscal Implication Summary

Several recommendations regarding the Texas Alcoholic Beverage Commission will have a fiscal impact to the State. These recommendations are discussed below.

- **Issue 2** – The management recommendation directing TABC to develop a plan to increase the time its agents spend on enforcement activities could have a fiscal impact to the State, depending on how the agency approaches the problem, and if any additional costs can be covered by fees paid by the industry. The agency should develop and implement the plan according to its available resources and whatever additional resources the Legislature appropriates for this purpose.

- **Issue 3** – Removing container size restrictions for beer could increase fee revenues due to increased product approvals, however reduced wine label approvals may offset these gains. The agency should also realize a reduction in staff workload by no longer testing products or reviewing labels. The agency would be able to adjust its label approval fees to recover the cost of this regulation. The management action directing the agency to phase out the paper-based delinquency list could save \$12,000 a year, once fully implemented. The agency could redirect these savings to other programs or reduce licensing fees.
- **Issue 7** – Authorizing biennial renewals of alcoholic beverage licenses would not cause a loss of revenue to the State because licensees would be required to pay double the current annual fees. This change could result in some administrative savings to the agency, but the savings would not be significant.
- **Issue 9** – Requiring the state’s approximately 21,000 bars and restaurants to post health warning signs concerning the consumption of alcohol by pregnant women would cost the State about \$29,000 a year to print and distribute the signs. The agency could recoup these costs through a slight increase in licensing fees or by imposing a small charge for each sign.
- **Issue 10** – Allowing TABC to use proceeds gained through the sale of seized alcoholic beverages to help cover court costs for forfeiture lawsuits could result in a small loss to the General Revenue Fund as money is diverted to pay for the suits. The fiscal impact could not be estimated since TABC has not filed a forfeiture lawsuit in recent history, and so it cannot estimate the cost of such suits. Further, while the agency seized approximately \$111,000 worth of property in 2003 and \$88,000 in 2004, it cannot estimate how much property it will seize in the future.



Texas State Board of Barber Examiners Texas Cosmetology Commission

Agency at a Glance – Texas State Board of Barber Examiners

The Texas State Board of Barber Examiners (Board) regulates barbers to protect the health and safety of the public. Regulation of barbers began in 1921, when persons owning or operating barbershops were required to register with the Texas State Board of Health. In 1929, the Legislature expanded the regulation, creating the Texas State Board of Barber Examiners, and establishing licensure for barbers, barbershops, and schools.

The Board's main functions include:

- licensing barbers, manicurists, barber technicians, and barber instructors, and permitting barber schools, barbershops, manicurist shops, and booth rentals;
- administering the state written and practical barbering exams;
- conducting routine inspections and investigating complaints against barbers, barbershops, and barber schools; and
- enforcing the Barber Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Board operated with a \$592,450 budget and collected about \$1.1 million in revenue, mostly from licensing and examination fees.
- **Staffing.** The Board currently has 13 full-time equivalent positions.
- **Licensing.** The Board regulates about 13,150 barbers, manicurists, technicians, students, and instructors, 32 barber schools, about 5,300 shops, and 2,700 booth rentals.
- **Enforcement.** The Board performs routine inspections and investigates consumer complaints, taking enforcement actions when necessary. In fiscal year 2004, the Board reported inspecting about 15,102 entities and 28,121 individuals, and received 124 complaints. The Board issued 396 sanctions.



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Texas State Board of Barber Examiners Members (7)

William H. Kuykendall, J.D., Chair (Austin)
Ronald Brown, Vice Chair (Dripping Springs)
Mary Lou Daughtrey (Tyler)
James H. Dickerson, Jr., J.D. (Lake Jackson)

San Juana “Janie” Garza (Mercedes)
Terissa Johnson (Sanger)
Janis Wiggins (Junction)

Agency Head

Glenn Parker, Executive Director
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Agency at a Glance – Texas Cosmetology Commission

The Texas Cosmetology Commission (Commission) regulates cosmetologists to protect the health and safety of the public. Regulation of cosmetologists began in 1935, when the Legislature created the State Board of Hairdressers and Cosmetologists. In 1971, the Legislature replaced this Board with the Texas Cosmetology Commission.

To accomplish its mission, the Commission licenses cosmetology operators and other specialists, cosmetology instructors, schools, and salons, and regulates their activities through enforcement.

The Commission’s main functions include:

- licensing cosmetology operators, instructors, independent contractors, manicurists, and other specialists, as well as issuing permits to schools and salons;
- administering written and practical exams for prospective licensees;
- conducting inspections and investigating complaints against individual licensees, schools, and shops; and
- enforcing the Cosmetology Act and Commission rules, and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Commission operated with a budget of about \$2.3 million and collected about \$9.4 million in revenue, mostly from licensing and examination fees.
- **Staffing.** The Commission currently has 42 full-time equivalent positions.
- **Licensing and Registration.** The Commission regulates about 151,500 operators, specialists, instructors, and students, 366 schools, and about 26,200 salons.
- **Enforcement.** The Commission performs routine inspections, investigates consumer complaints, and takes enforcement actions when necessary. In fiscal year 2004, the Commission reports it inspected about 20,260 facilities and 35,900 individuals, and received 184 complaints. The Commission issued 7,836 sanctions.

Texas Cosmetology Commission Members (7)

Helen Quiram, Chair (Waco)
Leif Christiansen (Spring)
Esther Camacho, Ex Officio,
Texas Education Agency (Austin)

Heliana Kiessling (Friendswood)
Philip Lapp (Weatherford)
Lucinda Sandoval (Edinburg)
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Recommendations

The Sunset Advisory Commission considered the Texas State Board of Barber Examiners and the Texas Cosmetology Commission together, recommended the agencies be merged, and made the same recommendations regarding the regulation of both occupations, as described below.

1. Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and Merge the Agencies' Functions Into a New Agency, the Texas Board of Barbering and Cosmetology, Giving the New Agency a Sunset date of September 1, 2009.
2. Reduce the Level of Regulation of Barbers and Cosmetologists, Including Requiring Inspection Efforts to be Risk-Based, Focusing on Sanitation Violations.
3. Discontinue Use of Practical Examinations Required for Licensure of Barbers and Cosmetologists.
4. Conform Key Elements of the Regulation of Barbers and Cosmetologists to Commonly Applied Licensing Practices.
5. Require Cosmetology Nail Salons to Use Autoclaves to Sanitize Instruments.

The Barber Board and the Cosmetology Commission Have Not Effectively Carried Out Their Regulatory Duties.

Key Findings

- The Legislature has charged the Barber Board and the Cosmetology Commission with regulating barbers and cosmetologists to protect the public, but the Board and Commission have not effectively carried out their required regulatory duties.
- State audits of both agencies have identified significant financial problems, including the State Auditor's Office finding of gross fiscal mismanagement at the Texas Cosmetology Commission.
- The agencies cannot provide the basic information necessary to ensure effective regulation of cosmetologists and barbers.

The Legislature has charged the Texas State Board of Barber Examiners and the Texas Cosmetology Commission with regulating barbers and cosmetologists for protection of the public's health. The independent agencies have not effectively carried out their duties as shown by the significant problems with the agencies' licensing and enforcement functions, as well as the agencies' ability to fulfill the basic functions of a state agency.

Recommendations

Change in Statute

- 1.1 Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and create a new agency, the Texas Board of Barbering and Cosmetology, to administer the agencies' regulatory functions.**

This recommendation would abolish the independent policymaking bodies, create one new policymaking body, and merge the agencies' functions into the new agency, the Texas Board of Barbering and Cosmetology.

- 1.2 Give the new Board a Sunset date of September 1, 2009 and require a limited-scope Sunset review of the new agency in the Fall of 2008 to evaluate whether significant progress has been made in addressing problems identified in the previous reviews.**

This recommendation gives the Board a Sunset date of September 1, 2009 to give the new agency an opportunity to establish itself before its next Sunset review. The recommendation limits the scope of the next Sunset review to evaluate whether significant progress has been made in addressing problems identified in the previous reviews. Despite the limited scope of the review, the Sunset Commission would be able to include any recommendations it considers appropriate in its Report to the Legislature in 2009.

- 1.3 Require the new Board to be composed of nine members appointed by the Governor.**

This recommendation creates a new Board for the agency, consisting of three public members, one barber member, one barbershop owner member, one barber school owner member, one cosmetologist member, one cosmetology salon owner member, and one cosmetology school owner member.

1.4 Require the Governor to designate a public member to serve as Chair of the Board.

This recommendation ensures that a public member of the Board will serve as Chair.

1.5 Require the newly created Board to hire one new executive director to carry out the operations of the agency.

The recommendation ensures that the new board has one individual responsible for operations at the agency. Current executive directors of the two agencies would not be eligible to serve as the executive director of the new agency.

1.6 Direct the new agency to develop and implement a business improvement plan that demonstrates commitment to and results in significant improvement.

The business improvement plan should demonstrate commitment to and results in significant improvement in the following areas:

- elimination of any backlogs in inspection and enforcement, including resolution of complaints and pending enforcement cases; and
- implementation of legislation passed by the 79th Legislature, management recommendations by the Sunset Commission, and recommendations of the State Auditor's Office.

1.7 Require reports on the implementation of the business improvement plan to the Sunset Commission, on a quarterly basis, beginning September 1, 2005.

The recommendation requires the new agency to submit reports that demonstrate business improvement on a quarterly basis, beginning September 1, 2005.

1.8 Require the State Auditor's Office to monitor the business improvement plan and conduct a follow-up audit to evaluate compliance with its past recommendations.

The recommendation requires the State Auditor to monitor the business improvement plan and conduct a one-time follow-up audit of the new agency to ensure compliance with the State Auditor's past recommendations.

Issue 2

The Over-Regulation of Barbering and Cosmetology Does Not Protect the Public and Wastes State Resources.

Key Findings

- The Texas Sunset Act requires an evaluation of less restrictive methods of regulation that could adequately protect the public.
- The agencies' inspection programs waste agency resources without significantly protecting public health and safety.

- The Barber Board requirement that all licensees obtain a health certificate serves no public protection function.

The Barber Board and the Cosmetology Commission regulate barbers and cosmetologists in the state, ostensibly to protect the public's health and safety. The agencies follow several practices that do not enhance health and safety in Texas, but instead waste the agencies' limited resources. Eliminating the unnecessary practices reduces the over-regulation of the occupations, and allows the agencies to better target their resources.

Recommendations

Change in Statute

2.1 Require barber and cosmetology inspection efforts to be risk based, focusing on sanitation violations.

Instead of the agencies' current programs of routine inspections, this recommendation would focus limited resources on inspection of facilities that require the most attention — those that violate sanitation rules. The risk assessment methodology should include a requirement that each facility receives an inspection at least every two years. Inspections upon complaint, and initial inspections of new schools and salons would continue. The cost of all initial inspections should be included in the new establishment's licensing fee.

2.2 Eliminate the barber health certificate requirement.

This recommendation would eliminate an unnecessary burden for licensees by removing the current requirement that barbers, barber technicians, manicurists, and barber instructors must submit a health certificate upon initial licensure and renewal.

2.3 Require barber and cosmetology schools, not the agencies, to maintain student records.

Both agencies currently keep extensive records of student information. Schools, and not state agencies, generally retain student transcripts. The recommendation would prohibit the agency from keeping student transcripts and records beyond other state requirements for document retention.

Issue 3

Practical Exams for Prospective Barbers and Cosmetologists are Unnecessary Requirements for Licensure That Do Not Protect the Public.

Key Findings

- To obtain a barber or cosmetologist license, the agencies require applicants to complete extensive training hours followed by passage of written and practical exams.
- Practical exams pose unnecessary barriers to licensure that provide no health and safety benefits to the public.

Among other extensive requirements for licensure, the Barber Board and the Cosmetology Commission require passage of a practical exam that is both unnecessary to ensure compliance with sanitation requirements and burdensome for the applicant. The exam tests applicants on aspects of

the barber and cosmetology occupations that aren't regulated by the state for public protection. Further, the agencies' other requirements for licensure, such as a written exam, already ensure that licensees have the ability to comply with applicable laws and give acceptable service to consumers.

Recommendation

Change in Statute

3.1 Discontinue use of practical examinations required for licensure of barbers and cosmetologists.

This recommendation would remove the requirement and authority for barber and cosmetology practical exams. Barber and cosmetology students would continue to be required to meet all applicable age, education, and course work requirements before being eligible to sit for the written exam. The requirement for students to pass the written exam before being licensed would continue. This change would apply to all categories of licenses that require exams.

Issue 4

Key Elements of Barber and Cosmetology Licensing and Regulation Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the agencies' statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agencies' ability to protect consumers.
- Nonstandard enforcement provisions of the agencies' statutes could reduce the agencies' effectiveness in providing licensees fair treatment, and protecting consumers.
- Setting fee caps in statute reduces the Barber Board's administrative efficiency and flexibility to adapt to changing circumstances.

Various licensing and enforcement processes in the Barbering and Cosmetology Acts do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 80 occupational licensing reviews over the last 25 years. For example, the lack of guidelines for informal settlement conferences may result in inconsistent or unfair resolution of violations. A comparison of the agencies' statutes, rules, and practices to the model licensing standards identified variations needing change to bring the agencies in line with model standards and increase the agencies' ability to serve the public and increase efficiency of operations.

Recommendations

Licensing

Change in Statute

4.1 Authorize provisional barber licenses.

This recommendation would ensure that persons applying for a Texas barbering license who hold a current license from another state would be able to practice while waiting for evaluation of their application. The Barber Act would authorize issuance of a provisional license to an applicant who

holds a license substantially equivalent to current requirements, or has passed a recognized examination. The provisional license would be valid until approval or denial of the application, which must be completed within 180 days.

4.2 Remove specific license renewal dates in the Barber Act.

This recommendation would ensure that specific statutory provisions relating to renewal dates do not conflict with the current authority to stagger license renewals. Conforming these statutes will result in greater administrative efficiency and provide more convenient service to licensees.

4.3 Authorize denial of license renewals based on outstanding administrative fines.

This recommendation would provide for clear statutory authority to deny barber and cosmetology license renewals for licensees who do not pay their administrative fines. Making this authority explicit will help ensure fair treatment to all license holders, and ensure licensees have good standing before renewing their licenses.

4.4 Establish standard time frames and penalties for late license renewal, including requiring a barber or cosmetology licensee delinquent in renewal for one year or more to be reexamined.

This provision is aimed at ensuring comparable treatment for all licensees, regardless of their regulated profession. This provision also clarifies that a person whose license has expired may not engage in activities that require a license until the license has been renewed.

Management Action

4.5 The Board should eliminate notarization requirements for individuals applying for examinations or licensure.

This recommendation would remove requirements to notarize barber and cosmetology applications and would direct acceptance of applications that are not notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications.

Enforcement

Change in Statute

4.6 Require development of a method for violation and complaint trend analysis.

This recommendation would require development of methods for analyzing the sources and types of barber and cosmetology complaints and violations. The agency should categorize complaints and violations by types, such as late renewals, late fee payments, unsanitary practices, and others. The agency would conduct analysis of complaints and violations looking for trends which need attention, or where technical assistance may help reduce the number of complaints or violations. Developing a method to analyze complaints will provide improved information regarding the nature of complaints, leading to stronger enforcement and greater administrative efficiency.

4.7 Require compilation of detailed statistics on violations and complaints and report annually.

This recommendation would provide a broader picture of the public's problems with barbering and cosmetology by requiring compilation of detailed violation and complaint statistics. These statistics should include:

- the average time to close a complaint or violation from the time the agencies receive the complaint, or write a violation, until resolution of the complaint or violation by final order or sanction;
- the origin, reason, and basis for the complaint or violation;
- the outcome of the complaints or violations including the number dismissed, the reason for dismissal, and the number resulting in disciplinary action;
- the number of non-jurisdictional complaints; and
- the number and type of all open cases at year's end.

4.8 Require adoption of guidelines for informal settlement conferences.

This recommendation would ensure development and adoption of guidelines for barber and cosmetology informal settlement conferences. The guidelines would ensure more fair and consistent treatment of licensees when negotiating the disposition of enforcement actions.

4.9 Remove the requirement that automatically schedules hearings at the State Office of Administrative Hearings for both barber and cosmetology licensees who fail to respond to notices of violations from the agency.

This recommendation would remove the language that requires the executive director to set a hearing and give written notice of the hearing to the person, if a person fails to respond to a notice of violation in a timely manner. The recommendation will preserve a person's due process by allowing the person to request a hearing, but would not require that the agency schedule a hearing if the respondent does not respond to the notice of violation.

4.10 Standardize language on administrative sanctions to specify a full range of penalties to allow the agency to probate a suspended license. Require the agency to have clear probation standards in rule if it uses probation as a sanction.

This recommendation would include probation as an administrative sanction on a license holder and would require the agency to develop, in rule, clear probation standards, including procedures for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress.

4.11 Update language on complaints to require the agency to adopt procedures for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.

This recommendation would require the agency to adopt procedures outlining the entire complaint process including receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.

Management Action

4.12 The Board should eliminate the requirement that complaints filed with the agency be notarized.

The agency should accept unnotarized complaints, which would make filing a complaint more convenient for the public. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these complaints.

4.13 The agency should establish a policy for making only final enforcement information available to the public.

The agency should establish a policy for making information about only final enforcement actions available to the public. This policy would protect licensees by ensuring that the public does not have access to information about ongoing, and potentially groundless enforcement proceedings.

Administration

Change in Statute

4.14 Direct the agency to develop a method for responding to and documenting non-jurisdictional complaints.

This recommendation would direct the agency to follow through with non-jurisdictional complaints by sending the complainant a letter closing the complaint, and require the agency to document its actions when responding to non-jurisdictional complaints. This policy would increase the agency's administrative efficiency and ensure that the agency adequately addresses concerns raised by the public.

4.15 Eliminate fee caps in the Barber Act.

This recommendation would give flexibility to set barber 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.

Issue 5 _____

The Cosmetology Act Does Not Require Effective Sanitization of Instruments in Nail Salons.

Currently, the Texas Cosmetology Commission requires cosmetology instruments to be sanitized by being submersed in hospital grade, EPA-registered disinfectant solution for ten minutes. The Sunset Commission received testimony that current regulatory efforts to ensure sanitation of instruments used in nail salons are not sufficient to prevent the spread of infections.

5.1 Require cosmetology nail salons to use autoclaves to sanitize instruments.

Autoclaves go beyond sanitization to sterilize instruments, ensuring that they are free from microorganisms that may spread bacteria or infections. The recommendation requires that cosmetology nail salons have autoclaves available to sterilize instruments.

Fiscal Implication Summary _____

Several recommendations regarding the Texas State Board of Barber Examiners and Texas Cosmetology Commission would have a fiscal impact to the State. The fiscal impact of each of the recommendations is summarized below, followed by a five-year summary chart for each of the agencies.

- **Issue 1** – Abolishing the independent policymaking bodies and merging the agencies together would result in an annual savings of about \$127,800 by reducing the number of full-time equivalent positions assigned to the Cosmetology Commission by two.
- **Issue 2** – Reducing the level of regulation for both barbers and cosmetologists by focusing inspections on sanitation violations would result in a positive fiscal impact to the State, saving \$123,000 annually related to the Barber Board and \$205,000 annually related to the Cosmetology Commission by reducing related staff. The recommendations would reduce Board staff by three and by five from the Commission.
- **Issue 3** – Discontinuing the use of practical exams for both agencies will result in an annual savings of \$4,700 from the Board and \$125,880 from the Commission, reducing the number of full-time equivalents related to cosmetology by three.

<i>Texas State Board of Barber Examiners</i>		
<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in FTEs from FY 2005</i>
2006	\$127,700	-3
2007	\$127,700	-3
2008	\$127,700	-3
2009	\$127,700	-3
2010	\$127,700	-3

<i>Texas Cosmetology Commission</i>		
<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in FTEs from FY 2005</i>
2006	\$458,680	-10
2007	\$458,680	-10
2008	\$458,680	-10
2009	\$458,680	-10
2010	\$458,680	-10



Texas Board of Chiropractic Examiners

Agency at a Glance

The mission of the Texas Board of Chiropractic Examiners is to protect the public's health, safety, and economic welfare by ensuring that chiropractic professionals are qualified and competent, and adhere to established professional standards. The State began regulating chiropractors in 1949 when the Legislature passed the Chiropractic Act and established the Board as an independent agency. To accomplish its mission, the Board:

- licenses chiropractors, registers chiropractic radiological technicians, and approves continuing professional education programs;
- registers chiropractic facilities; and
- investigates and resolves complaints, taking disciplinary action when necessary to enforce the Board's statute and rules.

Key Facts

- **Funding.** In fiscal year 2004, the agency operated on a \$340,220 budget and collected about \$1.8 million in revenue from professional and licensing fees and fines.
- **Staffing.** The agency employs six people, all of whom work in Austin.
- **Licensing and Registration.** The Board licensed 4,646 chiropractors, and registered 2,625 facilities and 108 radiological technicians in fiscal year 2004.
- **Enforcement.** In fiscal year 2004, the Board received 347 complaints from the public, initiated 245 complaints mostly for administrative violations, and resolved a total of 317. Some of the most common complaints submitted to the agency include billing complaints, such as billing for services not rendered and overcharging, unprofessional conduct, inefficient practice, and false or deceptive advertising.



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Board Members (9)

Sandra Jensen, D.C., President (Farmers Branch)
Robert Coburn, D.C., Vice President (West Columbia)
Marcia Daughtrey (Tyler)
Paul Dickerson (Houston)
Narciso Escareno (Brownsville)

Serge Francois, D.C. (Dallas)
Scott Isdale, D.C. (Killeen)
Steve Minors, D.C. (Austin)
David Sime, D.C. (El Paso)

Agency Head

Sandra Smith, Executive Director
(512) 305-6706

Recommendations

1. Require the Board to Clarify Scope of Practice Questions Through Rules Developed With Early Stakeholder Input and in Compliance With Applicable Attorney General Opinions.
2. Strengthen the Board's Enforcement Program to Enable It to More Effectively Resolve Complaints.
3. Conform Elements of the Board's Licensing Functions to Commonly Applied Licensing Practices.
4. Increase the Number of Undergraduate Hours Required for Licensure as a Chiropractor.
5. Limit Applicants to Three Attempts to Pass the Chiropractic Jurisprudence Exam.
6. Continue the Texas Board of Chiropractic Examiners for 12 Years.

Issue 1

The Board's Use of Opinions to Define Scope of Practice Does Not Conform to the State's Standard Process and Fails to Achieve Its Stated Intent.

Key Findings

- The nature of chiropractic raises questions about what is and should be the appropriate scope of practice for chiropractors, under the law.
- The Board's process for defining scope of practice does not conform to standard State processes for addressing these issues, and ultimately fails to clarify the scope of chiropractic practice.
- The Board has a history of acting unilaterally to expand scope of practice in a way that seems to indicate a greater interest in promoting the profession than following the law and protecting patients.

While regulatory boards need to be able to reasonably interpret their statute to regulate the profession as the Legislature had intended, their processes should be open and objective to ensure the quality and acceptance of decisions. The Board's process of issuing opinions is not an appropriate way to define scope of practice. Using this non-inclusive process, the Board has essentially acted on its own to define the scope of chiropractic practice, ignoring Attorney General's opinions, and not fully complying with legislative mandates and recommendations by elected officials.

Recommendations

Change in Statute

1.1 Require the Board to adopt rules that clarify practices within and outside the scope of chiropractic practice, using early stakeholder input and following common definitions from the Medical Practice Act.

This recommendation would require the Board to cease its practice of issuing Board opinions and instead follow the State's rulemaking process for clarifying scope of practice issues. Specifically, the Board would clearly define the practices and technology that chiropractors can and cannot use to diagnose and treat patients by rule, using the input of stakeholders early in the rulemaking process. The recommendation would require the Board to submit all of its previous Board opinions to this rulemaking process. As part of this process, the Board would determine whether additional training or certification is required to practice certain procedures and use certain equipment.

This change would also require the Board to develop guidelines for the use of early stakeholder input so that it may benefit from the expertise of other interested parties, including those from other related health-care professions. The Board would still be required to publish the proposed rules according to the Administrative Procedure Act and allow the public an opportunity to oppose the rules or suggest alternatives during the comment period.

This recommendation would also conform the Chiropractic Act's definitions with applicable definitions of the Medical Practice Act to define treatments as allowed and prohibited under a chiropractor's scope of practice. These definitions include surgical procedure, controlled substance, and dangerous drug.

1.2 Repeal the Advisory Commission in statute.

This recommendation would repeal the multi-disciplinary advisory commission that had been established to advise the Board on new and experimental practices within the meaning of chiropractic. Because the advisory commission has not met in the past six years, and has not been reauthorized by the Board, it has expired under the terms of the Government Code.

Management Action

1.3 The Board should comply with the Attorney General opinion on needle electromyogram, and inform chiropractors that this procedure is not within their scope.

The Board should retract its opinions on needle electromyogram (EMG) and inform chiropractors that this procedure is not within their scope of practice, as the statute is currently worded. The Board should also enforce the Act against chiropractors who violate the Board's statute by using needle EMG on patients. The Board should seek clarification from the Attorney General as to whether chiropractors may interpret the results of needle EMGs.

1.4 The Board should discontinue its Technical Standards Committee, and ensure adequate public membership on its Rules Committee.

The Board would eliminate the Technical Standards Committee under the requirement to address all scope of practice questions by adopting rules using early stakeholder involvement. The Board's Rules Committee would address these scope of practice questions and should have at least one-third public membership to help with this duty.

Issue 2

The Board's Enforcement Program Has Not Kept Up With the Growth of the Profession.

Key Findings

- The Chiropractic Board lacks the necessary resources and tools to adequately enforce the Chiropractic Act and ensure a sound enforcement program and quality customer service.
- The Board does not appear to adequately address serious violations of the Chiropractic Act, including fraud by chiropractors involved in third-party payer systems.
- The Board has not taken advantage of chiropractic peer review committees, which are underused, largely unknown, and operate with little oversight.

The Board continues to face difficulties in protecting patients through its enforcement efforts. Specifically, limited staff and enforcement tools, lack of focus on resolving serious allegations against chiropractors, and minimal cooperation between the Board and other state agencies have led to infrequent and weak disciplinary actions on non-administrative complaints.

Recommendations

Change in Statute

2.1 Authorize the Board to conduct inspections as part of its complaint investigation process.

This recommendation would authorize the Board to inspect the premises of a licensee or registrant on an unannounced basis during reasonable business hours, as part of the Board's investigation of complaints. The Board would be able to inspect facilities and review patient and third-party billing records as necessary to investigate a complaint. This recommendation would not establish a routine inspection process for chiropractic facilities.

2.2 Authorize the Board to issue cease-and-desist orders.

Allowing the Board to issue cease-and-desist orders would enable the Board to move more quickly to stop unlicensed activity that threatens the public's health and safety. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease-and-desist orders.

2.3 Authorize the Board to require refunds as part of the settlement conference process.

This recommendation would allow the Board to include refunds as part of an informal settlement conference. Refunds would be limited to the amount the consumer paid to a chiropractor, and would not include an estimation of other damages or harm.

2.4 Require the Board to investigate complaints according to risk.

This recommendation would require the Board to place complaints in priority order so that the agency handles the most serious problems first. This recommendation would also require the Board to take into account the number of years during which a complaint has been pending as a factor for prioritizing complaints.

2.5 Require the Board to adopt a disciplinary policy with respect to fraud, and to cooperate with the Texas Department of Insurance to improve the sharing of relevant enforcement information.

The Board would be required to adopt a stricter policy on fraud, especially with respect to insurance and workers' compensation fraud. It would also be required to cooperate with the Texas Department of Insurance (TDI) in conducting investigations, providing information relevant to the investigation, investigating cases together and collaborating on appropriate disciplinary action whenever possible. Both the Board and TDI would be required to track cases they refer to each other. The Board would also report information on its insurance cases, including workers' compensation, to the Legislature annually.

2.6 Authorize the local peer review committee members to assist the Board in investigating complaint cases that require a standard of care review.

The responsibilities of the local peer review committees would be expanded to include providing advice and expertise in complaint investigations related to standard of care, while maintaining their ability to mediate medical necessity and billing disputes. The Board would be required to make new appointments to the local and executive peer review committees by January 1, 2006, and every three

years thereafter. The Board would appoint these committees with input from local chiropractic associations, but would no longer rely solely on a list of nominees from these associations. The Board would be required to develop rules governing the eligibility requirements to serve on a peer review committee, including having a clean disciplinary record and an acceptable utilization record in the various insurance systems. Before reviewing standard of care complaints, committee members must be trained on how to investigate cases in accordance with the Chiropractic Act and Board rules.

This recommendation would require the Board to develop a process to refer standard of care complaints and billing disputes to the peer review committees, with input from the executive committee. For standard of care cases, the committees would review records and evidence collected by agency staff during the investigation, and would report their findings to the Board, indicating whether standard of care was met in a complaint against a licensee, the applicable standard of care, and the clinical basis for the determination. Depending on the specific requirements of a case, the agency may request a committee member to attend an informal conference or testify at a contested case hearing. Committee members would be immune from civil liability for any damage caused in the performance of their duties, including the review of standard of care complaints, in absence of fraud, conspiracy, or malice.

This recommendation would direct the Board to provide public access to information on local peer review committees on its Web site. The information should include a description of the committees' services and the type of issues mediated by the committees. The executive committee would report annually to the Board on the cases mediated by the local peer review committees. The information should include the number of cases referred to the committees, broken down by type, and the number of cases resolved and the outcome of each case.

2.7 Specify that the practice of chiropractic while under the influence of drugs or alcohol is a state jail felony.

This recommendation would conform penalties in the Chiropractic Act for chiropractors practicing while intoxicated to penalties for physicians in the Texas Medical Practice Act.

2.8 Prohibit the same type of practices by chiropractors that are currently prohibited of physicians in the Texas Medical Practice Act.

This recommendation would conform the Chiropractic Act with provisions in the Medical Practice Act to prohibit chiropractors from performing the same acts prohibited of physicians, such as fraudulent practices, unprofessional or dishonorable conduct, or other practices to deceive and defraud the public.

2.9 Require the suspension or revocation of a chiropractor's license for conviction of the same offenses applied to physicians in the Medical Practice Act.

This recommendation would conform the Chiropractic Act with provisions in the Medical Practice Act to require the Chiropractic Board to suspend or revoke licenses for the same types of convictions, such as felonies, assaults, sex crimes, and drug offenses, that the Medical Board would use to suspend or revoke a physician.

2.10 Require medical malpractice settlements and expert witness reports to be submitted to the Board.

This recommendation would require the Texas Department of Insurance to share with the Board information it collects on medical malpractice settlements. It would also require insurers that have

filed expert witness reports in a malpractice action against a chiropractor to submit these reports to the Board. These reporting requirements would bring the Chiropractic Board more in line with reporting requirements of the Medical Board.

Management Action

2.11 The Board should hire additional enforcement staff to assist in its enforcement activities.

Through the appropriation process, the Board should seek an increase in its authorized full-time equivalent employees and additional funding to hire two additional level I enforcement staff to investigate complaints and perform on-site inspections. The Board should increase its fees to cover these costs.

2.12 The Board and TWCC should start actively cooperating with each other, as required by law.

The Board and the Texas Worker's Compensation Commission (TWCC) should work out the details of recent legislation requiring the two agencies to work together in enforcement, and start sharing information. The agencies should refer cases to each other, investigate cases together, share investigative notes, and collaborate on appropriate disciplinary action whenever possible. Both the Board and TWCC should track cases they refer to each other.

2.13 The Board should make enforcement information important to consumers readily available.

The Board should post information about disciplinary actions on its Web site in a format that consumers may access easily. Increasing accessibility could include creating an alphabetical listing of the names of all licensees who had disciplinary action taken against them, including the type of sanctions and date when the sanction was ordered. The Board should make the Health Professions Council's toll-free line more easily accessible on its Web site by including it with the Board's contact information. The Board should also notify parties to a complaint in a user-friendly way, such as by telephone or e-mail, regarding when and where their complaint will be heard by the enforcement committee and the full Board.

2.14 The Board should track denied licenses and denied license renewals.

The Board should track denials of new licenses and license renewals, to help the Board quickly identify people previously found to be unsuitable, who may be reapplying for a license.

Issue 3

Elements of the Board's Licensing Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Finding

- Some of the Board's licensing provisions do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.

Some of the Board's licensing processes do not match model licensing standards developed by Sunset staff from experience gained through more than 80 occupational licensing reviews over the last 25

years. Enforcement provisions that vary from these model standards have been incorporated into Issue 2, regarding the Board's enforcement program.

Recommendations

Licensing

Change in Statute

- 3.1 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.**

Ensuring that the Board makes reasonable accommodations for its exams would provide equal opportunity and access to all qualified applicants. The Board would need to work with the national testing organization to ensure that these rules are followed.

- 3.2 Change the basis for the Board's late renewal penalties.**

The renewal fee for chiropractors who are delinquent in renewing their licenses would be based on the normal renewal fee set by the Board, and not the examination fee. A person whose license has been expired for 90 days or less would pay a renewal fee equal to 1-1/2 times the renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year would pay an amount equal to twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on chiropractors.

Management Action

- 3.3 The Board should eliminate the Executive Director's role from the license denial process.**

This recommendation would eliminate an applicant's ability to appeal a license denial to the Executive Director, thereby leaving the State Office of Administrative Hearings as the appropriate outlet for an appeal.

Issue 4 ---

Statutory Requirements for License Eligibility Do Not Reflect National Standards.

The Texas Chiropractic Act requires applicants for chiropractic licenses to complete 60 credit hours of non-chiropractic, undergraduate studies to be eligible for a license. However, the Council on Chiropractic Education, the accreditation board for chiropractic colleges recognized by the U.S. Department of Education, has recently increased the number of undergraduate credit hours required of chiropractic college applicants to 90.

Recommendation

Change in Statute

4.1 Increase the number of undergraduate hours statutorily required to be licensed as a chiropractor.

This recommendation would amend the Chiropractic Act to increase the number of undergraduate hours required for licensure from 60 to 90 credit hours, as required by the Council on Chiropractic Education, the accreditation body for chiropractic schools. The Board would be able to require a different number of semester hours based on a requirement of a recognized accreditation organization.

Issue 5

The Unlimited Opportunity for License Applicants to Retake the Board's Jurisprudence Exam Does Not Promote Public Protection.

The Texas Chiropractic Act requires the Board to limit the number of times an applicant may retake an examination, but the Board has not adopted rules. Allowing applicants to keep taking the Board's exam indefinitely until successful completion does not best protect the public's interest.

Recommendation

Change in Statute

5.1 Limit the number of times an applicant has to pass the chiropractic jurisprudence exam.

This recommendation would limit the number of retakes of the Board's jurisprudence exam by a license applicant to three attempts, and further help the Board keep unqualified applicants from becoming licensed.

Issue 6

Texas Has a Continuing Need for the Texas Board of Chiropractic Examiners.

Key Findings

- Texas has a continuing interest in licensing and regulating chiropractors.
- The Texas Board of Chiropractic Examiners protects the public by ensuring that qualified individuals practice chiropractic.

Because chiropractic involves the hands-on treatment of patients, generally by manipulating delicate body structures, such as the spine and joints, it has the potential to harm the public's health and safety. Additionally, because of the role chiropractors play in various insurance plans, unethical practice can affect the public's welfare. To protect the public safety and welfare, the need exists for the continued licensing and regulation of chiropractors in Texas.

Recommendation

Change in Statute

6.1 Continue the Texas Board of Chiropractic Examiners for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

The recommendations regarding the Texas Board of Chiropractic Examiners would result in a net cost to the State of \$5,600. The recommendations are discussed below, followed by a five-year summary chart.

- **Issue 2** – Hiring two additional enforcement staff would result in a cost to the State of \$87,600 in fiscal year 2006, and \$84,600 each year thereafter. These costs would be largely offset by a fee increase among the Board's regulated population. Approximately \$5,600 would be needed annually to compensate the Board-appointed peer review committees.

<i>Fiscal Year</i>	<i>Cost to the General Revenue Fund</i>	<i>Gain to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>	<i>Change in FTEs from FY 2005</i>
2006	\$87,600	\$82,000	(\$5,600)	+ 2
2007	\$84,600	\$79,000	(\$5,600)	+ 2
2008	\$84,600	\$79,000	(\$5,600)	+ 2
2009	\$84,600	\$79,000	(\$5,600)	+ 2
2010	\$84,600	\$79,000	(\$5,600)	+ 2



Agency at a Glance

The Legislature created the Central Education Agency in 1949 consisting of the State Board of Education (SBOE), the state Commissioner of Education, and the State Department of Education. In 1995, the Legislature abolished the Central Education Agency and transferred its duties to the Texas Education Agency (TEA), and specified powers and duties for the Commissioner of Education, and SBOE separately. TEA's current mission is to provide leadership, guidance, and resources to help schools meet the educational needs of all students. To accomplish its mission, the agency:

- develops student educational program standards based on statewide curriculum requirements, the Texas Essential Knowledge and Skills (TEKS), set by SBOE;
- administers statewide student assessments, including the Texas Assessment of Knowledge and Skills (TAKS);
- develops and manages the state and federal performance accountability systems using student results from the statewide assessments;
- distributes and ensures proper use of state and federal funding to public schools, including managing the school district financial accountability rating system;
- monitors school districts, charter schools, and Education Service Centers (ESCs) for compliance with state and federal regulations, financial accountability, and data quality; and
- coordinates efforts leading to SBOE adoption of textbooks, as well as the purchase and distribution of these textbooks to school districts for use by Texas schoolchildren.

Key Facts

- **Public Education System.** The statewide public education system serves more than four million students at more than 7,700 campuses located in 1,037 independent school districts and 204 charter schools.
- **Reorganization.** In September 2003, TEA underwent major downsizing and reorganization as a result of the state's budget crisis that reduced TEA's operating budget by about \$40 million and its total number of full-time equivalents by approximately 200. The reorganization was designed to make the agency operate more efficiently, and to focus more on results, rather than processes.



*For additional
information,
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- **Funding.** The Legislature appropriated about \$15 billion in fiscal year 2004 for public school programs and TEA administration. TEA distributed the majority of the funds, about \$10 billion, to schools through the Foundation School Program to provide all students a quality education. About \$68 million went to support the operations of the agency.
- **Staffing.** The agency is authorized to employ a total of 766 employees, but because of budget constraints currently employs only about 630 after its downsizing and reorganization efforts. The employees are all located in Austin.
- **Student Assessment.** TEA oversees a \$55 million contract to manage and oversee the development and administration of the TAKS and other statewide tests.
- **Accountability.** TEA develops and manages both the state and federal performance accountability systems that rate schools based on their ability to improve student performance.

Agency Head

Dr. Shirley J. Neeley, Commissioner of Education
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Recommendations

1. Require TEA to Develop and Implement a Comprehensive, Integrated Framework for School District and Charter School Monitoring and Interventions.
2. Require TEA to Implement a Financial Accountability Rating System for Charter Schools, and Monitor Charter Schools That Do Not Receive Accountability Ratings.
3. Require TEA to Close a Charter School, Revoke Its Charter, and/or Deny Renewal If the Charter School Fails to Achieve Accreditation Standards for Three Years.
4. Authorize the Commissioner of Education to Specify by Rule the Process for Appeals Involving Accreditation Ratings and Sanctions.
5. Require TEA to Make Every Effort to Decrease the Incorrect and Unfair Administration of the Texas Assessment of Knowledge and Skills Test.
6. Require TEA to Implement Performance-Based Grants to Ensure Grant Funds Are Effectively Spent.
7. Provide Strategies for Lowering Textbook Costs and for Ensuring the Highest Quality Textbook Content.
8. Request the Legislature to Consider, Through the Appropriative Process, Restoring Funds to Allow the Commissioner to Order Textbooks for Up to 110 Percent of a District's Maximum Attendance.
9. Require TEA and ESCs to Collect and Disseminate Best Practices Information.
10. Transfer the Private Driver Training Program to the Texas Department of Licensing and Regulation.
11. Transfer Responsibility for Special Education Due Process Hearings to the State Office of Administrative Hearings.

12. Direct TEA to Develop and Implement a Comprehensive, Integrated Framework of Data Linking Class Size Waiver Data to Public Education Information Management System (PEIMS) Data.
13. Direct TEA to Assess and Minimize Paperwork Requirements When Implementing New Rules.
14. Extend the Deadline to Allow TEA and the Texas Workforce Commission to Develop a Workplace Literacy and Basic Skills Curriculum.
15. Continue the Texas Education Agency for 12 Years.

Issue 1

TEA Does Not Systematically Evaluate School Districts and Charter Schools to Ensure Overall Academic and Fiscal Effectiveness.

Key Findings

- TEA's current monitoring functions are not coordinated agencywide, and do not provide a complete picture of a school district's or charter school's overall effectiveness.
- TEA does not systematically identify problems across agency programs and intervene appropriately to ensure school districts and charter schools are fiscally responsible and providing a quality education.

As the State's education agency, TEA is responsible for ensuring school districts and charter schools provide schoolchildren a quality education and that taxpayers' public education dollars are properly spent. However, TEA does not coordinate monitoring results from its different divisions to best use this information in evaluating the overall effectiveness of school districts and charter schools. Without such a coordinated monitoring system, TEA cannot quickly identify multi-faceted problems and determine appropriate levels of intervention.

Recommendations

Change in Statute

- 1.1 Require TEA to develop and implement a comprehensive, integrated framework for school district and charter school monitoring and interventions.**
- 1.2 Require TEA to develop a matrix of minimum standards and resulting interventions and sanctions for school districts and charter schools.**

These recommendations would provide TEA clear statutory authority and direction to develop and implement a comprehensive, integrated framework for monitoring and interventions, to ensure school districts and charter schools provide students an adequate education, properly spend public education dollars, and comply with state and federal requirements.

The framework would include clear performance expectations, incorporating program effectiveness and data integrity indicators, as well as other measures of effectiveness such as fiscal compliance; state and federal accountability; and previous compliance history to provide a comprehensive

assessment of each school district and charter school. The matrix would identify a range of interventions and sanctions available when performance expectations are not met.

Requiring TEA to monitor school districts and charter schools, and determine appropriate interventions through this framework would help the agency identify problems in districts and charter schools sooner, and intervene in a timely manner, before jeopardizing students' education or public education dollars.

Issue 2

TEA Cannot Ensure Charter Schools Effectively Educate Students or Properly Use State Funds.

Key Findings

- TEA does not provide timely, effective oversight of charter schools.
- Without adequate, periodic assessment, some charter schools have gone bankrupt and may have inappropriately used state funds.

While charter schools are not subject to many of the rules and regulations applied to traditional schools, the State still has a strong interest in seeing charter school students succeed, and in ensuring that taxpayer dollars are properly spent. TEA has very little ability to hold charter schools accountable for expending state funds. Given some notable financial failures of charter schools, this lack of oversight is inappropriate. In addition, TEA lacks the authority and direction to judge the effectiveness of schools; and to focus assistance, and if necessary enforcement action, on those schools that place children at educational risk. TEA has also fallen behind in determining accountability ratings for certain charter schools. As a result, TEA oversight of these schools has been limited, preventing TEA, school officials, and parents from having an accurate picture of school and student success.

Recommendations

Change in Statute

2.1 Require TEA to implement a financial accountability rating system for charter schools.

This recommendation would provide financial monitoring and accountability similar to Financial Integrity Rating System of Texas (FIRST) audits in traditional schools. TEA would adopt a financial accountability rating system specifically for charter schools, taking into account the differences in funding and expenditures between charter and traditional schools. The financial accountability rating system would encourage charter schools to better manage their finances to provide the maximum allocation possible for direct instructional purposes.

2.2 Direct TEA to closely monitor charter schools that do not receive accountability ratings.

This recommendation would require TEA to monitor TAKS scores, dropout data, and high school completion rates for charter schools that will not receive accountability ratings for two or more consecutive years. Although TEA would not formally rate the schools under the state accountability system, TEA would be apprised of necessary performance information. This recommendation would

be an instructional provision expiring September 1, 2007. Monitoring this available data fills an information gap when formal accountability ratings are not available.

Issue 3

TEA Lacks Clear Statutory Authority to Impose Sanctions for Consistently Low-Performing Charter Schools.

TEA lacks clear authority to impose sanctions on charter schools in a timely manner, including specific authority to close a charter school and revoke or non-renew its charter if it is consistently low-performing. TEA has never denied renewal of a charter, even though some charter schools have been low-performing for several years.

Recommendation

Change in Statute

3.1 Require TEA to close a charter school, revoke its charter, and/or deny renewal if the charter school fails to achieve accreditation standards for three years.

A charter school that fails to obtain accountability ratings above the minimum level for three years in a row would be closed, and TEA would revoke or deny renewal of its charter if it is up for renewal at that time. For purposes of this recommendation, accountability ratings include both the state and alternative accountability ratings. Therefore, failing to achieve accreditation standards would mean failing to obtain a classification above the minimum level of *needs peer review* or *unacceptable*.

Issue 4

TEA Lacks Clear Statutory Authority Regarding Appeals of Accreditation Status and Sanctions.

TEA currently lacks clear statutory authority regarding the procedure for a charter school or school district to appeal accreditation status and resulting sanctions. Specifically, the current law is ambiguous as to whether accreditation ratings and sanctions may be appealed to the Commissioner of Education or litigated in district court.

Recommendation

Change in Statute

4.1 Authorize the Commissioner of Education to specify by rule the process for providing appeal opportunities involving accreditation ratings and sanctions.

The Commissioner of Education would specify in rule the procedures for appeals regarding accreditation ratings and sanctions under the Public School System Accountability statute. A clear appeal process would enable TEA to timely address challenges involving accreditation ratings and sanctions, and provide notice to appellants of the appropriate procedure.

Issue 5

TEA Needs to Improve Its Security of the Statewide Student Assessment Test.

TEA manages and oversees the development and administration of the statewide student assessment test, the Texas Assessment of Knowledge and Skills. The agency is responsible for ensuring the security of the test in its administration and grading. However, recent news stories have questioned the accuracy of test results at more than 200 Texas schools, raising concerns about the agency's testing security system, including its ability to monitor and detect testing irregularities.

Recommendation

Change in Statute

- 5.1 Require TEA to make every effort to decrease the incorrect and unfair administration of the Texas Assessment of Knowledge and Skills, and to report annually on the status of incorrect administration as well as progress toward reducing its prevalence.**

This recommendation would require TEA to establish adequate security protocols relating to administration of student assessments to decrease any incorrect or unfair administration that may be occurring. The agency would be required to provide a report by December 31 of each year to the Legislature, Lieutenant Governor, Speaker of the House of Representatives, and relevant legislative oversight committees regarding the status of its efforts to improve testing security.

Issue 6

TEA's Grant System Is Inefficient and Does Not Regularly Assess Impact on Student Achievement.

Key Findings

- TEA lacks the information necessary to determine whether grant funding is positively impacting student achievement.
- Without comprehensive performance and spending information, lawmakers, districts, and TEA cannot effectively target funding to grant programs and activities that actually improve student success.
- Districts do not receive enough guidance to build highly effective, targeted grant programs.

The State provides more than \$3 billion in grants to public schools through 73 state and federal programs. Grant programs allow the State to target resources to address specific problems or student groups that need additional help to achieve academic success. TEA lacks the necessary information to effectively assess how schools use these grant funds and the resulting impact on student performance. Without this information, TEA, lawmakers, and others cannot effectively ensure the use of funds supports the grants' objective and ultimately improves the academic success of students they are intended to help.

Recommendations

Change in Statute

6.1 Require TEA to implement performance-based grants and report annually on their impact on student achievement.

This recommendation would require TEA to ensure grant activities and funding clearly support student achievement outcomes. To ensure a smooth transition, this recommendation would be phased in over four years. TEA would collect grant performance and spending information and use this information to regularly assess and report to the Legislature on the impact of grant funds on student achievement.

TEA should make recommendations to the Legislature on changes needed for more effective use of state and federal grant funds such as whether to eliminate or modify ineffective programs; expand effective programs to other schools; or consolidate similar programs to maximize efficiencies. Regular reporting by TEA of the impact of grant funding on student achievement will provide lawmakers and school districts with the information needed to maximize limited resources by targeting funding towards the most effective grant programs and activities.

TEA would also review and modify agency policies, procedures, and reporting requirements to streamline the grant application, award, and reporting processes to make it easier for school districts to access state-funded grants.

6.2 Require TEA to disseminate grant program data to the Education Service Centers to analyze and provide best practice information to school districts.

This recommendation would ensure all school districts, even those not receiving grant funding, have the opportunity to benefit from the State's investment. TEA would disseminate data from its grant programs, including grant spending and performance information, to the Education Service Centers, which would identify successful grant programs, and disseminate that information to school districts.

Management Action

6.3 TEA should make every effort to ensure that additional reporting and more administrative burdens are not added to school districts when making changes to the grant application process.

Changes to reporting requirements can cause administrative problems for school districts. TEA should carefully consider administrative burdens such as time, cost, and labor before adding requirements for districts to complete grant applications.

6.4 TEA should make all grant application and award processes available online by 2007.

This recommendation would ensure TEA has a deadline for completing a full transition of all grant programs to its e-Grants system.

TEA's Administration of the Textbook System Does Not Ensure the Highest Quality Textbooks at the Best Value to the State.

Key Findings

- The textbook process does not maximize the use of the State's textbook funds.
- TEA's textbook review process does not ensure textbooks adequately cover the required TEKS elements.

TEA must provide Texas school districts with the highest-quality, up-to-date textbooks that fully cover required Texas Essential Knowledge and Skills (TEKS) curriculum elements and are free from factual errors. However, the agency does not currently maximize the use of the State's textbook funds. Specifically, TEA does not encourage competition in textbook pricing, resulting in the State paying maximum price for most textbooks, including those that contain as little as 51 percent of the required curriculum elements. Further, the textbook review process does not fully ensure textbooks cover the required curriculum elements and are free from factual errors.

Recommendations

Change in Statute

7.1 Authorize the agency to establish a statewide textbook credit system.

This recommendation would provide for a statewide textbook credit system as a voluntary incentive for all school districts and charter schools throughout the state to examine the price of textbooks as a factor when selecting books for their schools. Districts and charter schools choosing less expensive books would receive 50 percent of the difference between the book's price and the maximum cost, to be used to purchase additional instructional materials of the district's choice. The State would retain the other half of the difference in the state textbook fund. A statewide textbook credit system would also enhance competition by providing an incentive for publishers to consider developing and offering textbooks at lower costs.

7.2 Require TEA to recommend a prorated maximum cost for nonconforming textbooks to SBOE.

This recommendation would require the agency to estimate a cost limit that is prorated downward to account for the missing TEKS curriculum elements in nonconforming textbooks. TEA staff should recommend this prorated maximum cost to SBOE along with the maximum cost suggestion for conforming textbooks. SBOE will retain the authority to adopt the maximum cost the State will pay for textbooks, but would have additional information available on which to base the price of nonconforming textbooks to maximize the use of the State's textbook funds.

Management Action

7.3 The agency should work with SBOE to ensure the development of clear guidelines for determining adequate TEKS coverage in textbooks.

The agency should work with SBOE to ensure clear and consistent guidelines for determining full TEKS coverage in textbooks, to increase the effectiveness of the textbook review process. TEA

should make clear coverage guidelines available to publishers during preliminary discussions regarding books scheduled for adoption in 2008.

7.4 The Commissioner should include a majority of subject area experts on each textbook review panel for all curriculum areas.

The Commissioner of Education, when appointing the members of the state textbook review panels, should include a majority of academic or professional experts on each panel evaluating textbooks in both the foundation and enrichment curriculum areas.

7.5 TEA should expand its current processes for updating textbooks.

TEA should evaluate the best method to allow publishers of textbooks in all curriculum areas to update textbooks as necessary between adoptions to help ensure that all Texas students have access to high quality, current textbooks. TEA staff should work with an ad hoc committee of interested stakeholders to develop an expanded plan of integrating updates into Texas textbooks. TEA should establish a method for the agency and, if appropriate, SBOE, to review and adopt updates.

Issue 8

TEA Does Not Order Sufficient Textbooks for School Districts Experiencing Substantial Growth.

TEA orders textbooks for Texas school districts based on the district's maximum attendance for the previous school year, adding a small percentage to account for possible transfer students or unanticipated district growth. Statute authorizes the Commissioner to order textbooks for up to 110 percent of a district's maximum attendance, with the ability to order a smaller amount if necessary. In 2003 the Commissioner reduced that amount to 103 percent as a budgetary consideration. Consequently, some school districts that experience unanticipated growth or numerous transfers report a shortage of textbooks for their students, particularly in the first few weeks of a new school year.

Recommendation

Change in Appropriations

8.1 The Sunset Commission suggests that the Legislature, through the appropriative process, consider restoring funds to allow the Commissioner of Education to order textbooks for up to 110 percent of a district's maximum attendance.

This recommendation would help ensure that all school districts and charter schools receive enough textbooks for all their students on the first day of school. If the Legislature provides additional funding, the Commissioner could restore the textbooks order amount from 103 percent to 110 percent of the previous year's maximum daily attendance.

TEA and ESCs Need to Expand Efforts at Providing Best Practices Information to Schools and Districts.

Key Findings

- Without best practices information, school districts spend significant resources to find and develop ways to implement their own individual programs.
- TEA has not effectively provided districts with best practice direction in accessing quality online instruction.
- TEA's Web site design is cumbersome, making access to recent information difficult.

Schools rely on TEA, often through the Education Service Centers (ESCs), to provide statewide leadership regarding all aspects of education. With reduced on-site visits, TEA can no longer provide hands-on assistance to schools, and districts are duplicating efforts by seeking costly assistance from various sources.

Recommendations

Change in Statute

9.1 Require TEA and ESCs to partner to collect and disseminate best practices information.

This recommendation would require TEA and ESCs to collect best practices information and make the information easily accessible. TEA and ESCs would enter into a Memorandum of Understanding (MOU) setting out the duties of each of the entities, as well as develop incentives for schools that successfully adopt and deploy best practices. TEA and ESCs, with the assistance of districts, teachers, education experts, and administrators, would identify best practices information. Best practices information would include information about available programs, products, and policies; specific examples of what works; as well as any other resources available to assist schools and ensure compliance. TEA and ESCs would not evaluate or endorse the best practices, only make the information available, acknowledging that the programs, products, or policies worked for others.

9.2 Require TEA and ESCs to investigate effective uses of online courses and communicate best practices concerning the use of such courses.

As set forth in the MOU described in Recommendation 9.1, TEA and ESCs would also provide best practices information to school districts and charter schools to facilitate the use of online instruction. TEA and ESCs would provide information to help schools investigate the quality of online courses, how online courses can provide curriculum solutions, and information about available funding sources for types of online instruction.

Management Action

9.3 TEA should improve its Web site to be more user-friendly.

TEA should conduct a review of its current Web site, focusing on improvements to make the site more user-friendly, and to make the information available on the site more easily searchable and accessible. For example, the TEA Web site should have individual portals on its home page for different users, such as students, parents, teachers, and administrators.

Regulation of Private Driver Training Programs Is Not an Appropriate Duty of TEA.

Key Findings

- The regulation of a private industry does not fit with TEA's core purpose and functions.
- Transferring the Driver Training program to TDLR would increase administrative efficiency.
- Nonstandard licensing and enforcement provisions of the driver training statute could reduce the program's effectiveness in protecting consumers.

TEA's Driver Training program regulates 983 commercial driver education and driving safety schools, and 3,505 private driver education and driving safety instructors. The regulation of the private driver training industry, including ensuring a fair, competitive business environment, is outside of TEA's main functions and strains the agency's already limited resources. Additionally, variations from model licensing standards relating to licensure qualification, complaint filing, and flexible fees exist in the Driver Training program.

Recommendations

Change in Statute

10.1 Transfer the private Driver Training program to the Texas Department of Licensing and Regulation.

This recommendation would eliminate the Driver Training division at TEA and transfer its functions to the Texas Department of Licensing and Regulation (TDLR). Licensing processes for driver training entities would conform closely to the State's preferred regulatory functions for licensing agencies. In-school driver education functions would remain at TEA.

10.2 Require driver training schools to provide all students with the Driver Training program's Web site address for complaint filing.

This recommendation would expand the required information that driver training schools must provide to their students in the event the student has a complaint about the school, course provider, or instructor. Direction to the Driver Training program Web site would allow driver training students to easily ascertain the method of filing a complaint against a driver training entity.

10.3 Eliminate fee caps in the Driver Training program statute.

This recommendation would provide more flexibility to TDLR to set licensing fees at a level necessary to recover program costs. All fees would be set by rule, allowing for public comment on any fee adjustments. The Legislature would maintain control over fees by setting spending levels in the General Appropriations Act.

Management Action

10.4 TDLR should develop and issue licensing guidelines regarding criminal activity.

The Driver Training program should comply with Chapter 53, Occupations Code, “Consequences of Criminal Conviction” which directs licensing authorities to issue guidelines relating to licensing qualifications. Guidelines must state the reasons a particular crime is considered to relate to the licenses issued and include any other factors that affect the decisions of the licensing authority.

Issue 11

An Appearance of Bias Exists in the Current Special Education Due Process Hearings Administered by TEA.

TEA administers due process hearings under the federal Individuals with Disabilities Education Act (IDEA), which entitles parents of special education students to a hearing regarding any violation of IDEA. Specifically, the purpose of these hearings is to hear and resolve disputes between parents of children with disabilities and school districts regarding the provision of a free appropriate public education. To administer these special education due process hearings, TEA contracts with private attorneys to act as hearing officers. Many parents expressed concern that the hearing officers have conflicts of interest with and are biased in favor of school districts. While Sunset staff could not prove a bias exists, the Sunset Commission was concerned with the appearance of bias and possible conflicts of interest.

Recommendation

Change in Statute

11.1 Transfer responsibility for conducting special education due process hearings to the State Office of Administrative Hearings.

Transferring the special education due process hearings from TEA to the State Office of Administrative Hearings (SOAH) would negate any appearance of bias. SOAH would conduct the special education due process hearings in accordance with IDEA and have final decisionmaking authority in these hearings. TEA would still receive IDEA funding for the hearings, but would transfer the funds to SOAH for administration of the hearing process. Recent studies show that having SOAH perform these hearings would cost less than the current approach of using private attorneys as hearing officers. SOAH would ensure its hearing officers are competent in special education law, as well as coordinate with TEA to develop a transition plan for cases already filed.

Issue 12

TEA Does Not Have the Information Necessary to Make Informed Decisions on Class Size Waivers.

State law requires school districts to maintain a 22-1 student to teacher ratio in all classrooms serving kindergarten through fourth grade. If a school district or campus has classrooms with more than 22 students per teacher, the district or campus must request a waiver from the Commissioner of Education each semester the cap is exceeded.

TEA's waiver unit collects data regarding the number of districts that receive class-size waivers and the number of classrooms affected by the waiver. However, the waiver unit does not receive information on the number of excess students in each classroom. TEA also collects class size data in the Public Education Information Management System (PEIMS). This data includes class size averages by grade and subject as well as the number of students per teacher. However, this information is not linked to the data collected by the waiver unit, and is not considered when granting a class size waiver.

Recommendation

Management Action

12.1 TEA should develop and implement a comprehensive, integrated framework of data linking class size waiver data to PEIMS data.

Developing a comprehensive framework of data by linking class size waiver data to the PEIMS data would reduce duplication, allow the agency to cross check waiver data submitted by school districts, and provide more accurate and thorough data for the Commissioner to consider in deciding whether to grant a class size waiver.

All waiver data should be linked to the PEIMS data already collected by the agency, allowing TEA to cross check the data submitted by school districts. The agency should also consider including data on how many students are in a class, the excess number of students over the 22-1 ratio in each class, how the students in these classes are performing, and what subject is being taught in these classes.

Issue 13

TEA Does Not Assess Paperwork Requirements When Implementing New Rules.

A common complaint of educators is the amount of paperwork they must complete, which takes away from valuable instructional or planning time. TEA does not always evaluate the burden imposed by paperwork when developing new rules, nor does the agency attempt to minimize paperwork requirements. Many of TEA's rules require extensive documentation, and the agency does not always consider using information that is already required and reported for other purposes. Instead, the agency requires additional documentation to meet the requirements of each new rule.

Recommendation

Change in Statute

13.1 Require TEA, when implementing new rules, to assess the additional paperwork requirements the rules would potentially impose upon educators.

Under this recommendation, TEA would assess the paperwork requirements of each new proposed rule, and if possible, attempt to minimize the amount of paperwork educators are required to complete. This assessment would become a standard component of TEA's rule development process. If TEA finds that a new rule would impose additional paperwork requirements, TEA should revise the rule to minimize such paperwork requirements.

Issue 14

TEA and TWC Have Not Developed a Workplace Literacy and Basic Skills Curriculum as Directed by the 78th Legislature in 2003.

A provision in SB 280 from the 78th Legislature required TEA to use existing funds to contract with the Texas Workforce Commission (TWC) for the development of a demand-driven workplace literacy and basic skills curriculum. This curriculum was to assist local workforce development boards to equip workers and job seekers with the educational skills necessary to compete for current and emerging jobs in the state. The legislation directed TWC to develop and test the curriculum within targeted industry sectors no later than September 1, 2005, when the requirement expires. However, as of January 2005, the agencies have failed to implement an agreement. As a result, TEA has not provided the project funding for TWC to develop this curriculum.

Recommendations

Change in Statute

14.1 Extend the statutory expiration date for the workplace literacy curriculum to September 1, 2007.

Extending the expiration date would maintain the statutory requirement for TWC, under contract with TEA, to develop a workplace literacy curriculum as previously directed by the Legislature. Both agencies should take the necessary steps to implement the required contract no later than October 1, 2005 and begin the project as soon as possible.

Management Action

14.2 TEA and TWC should submit quarterly reports to the Sunset Commission detailing the agencies' progress implementing the workplace literacy curriculum provision.

This recommendation would ensure that both agencies keep the Sunset Commission informed on the progress towards funding and developing a workplace literacy curriculum as required by Recommendation 14.1. TEA and TWC should submit quarterly reports detailing the agencies' progress beginning in March 2005 until the project's completion in 2007.

Issue 15

Texas Has a Continuing Need for the Texas Education Agency.

Key Findings

- The Texas Education Agency's mission is to provide leadership, guidance, and resources to help schools meet the educational needs of all students.
- Texas has a constitutional mandate to oversee and support the state public education system.

Ensuring the provision of public education is a state responsibility. The Texas Constitution requires the Legislature "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." As such, the State must provide an efficient approach to

public education that ensures each student has access to programs and services that are appropriate to the student's educational needs. TEA ensures the public education system, including 1,037 independent school districts and 204 charter schools, provides a quality education that results in student academic success.

Recommendation

Change in Statute

15.1 Continue the Texas Education Agency for 12 years.

This recommendation would continue TEA until 2017, as the agency responsible for supporting and overseeing the State's public education system. The agency would continue to carry out its mission to provide leadership, guidance, and resources to help schools meet the educational needs of all students. Additionally, TEA would continue to receive and distribute federal education dollars, and carry out the accompanying requirements, including managing the federal accountability system under the No Child Left Behind Act.

Fiscal Implication Summary

The recommendations regarding the Texas Education Agency would result in a positive fiscal impact to the State. These recommendations are summarized below, followed by a five-year summary chart.

- **Issue 7** – Establishing a statewide textbook credit system would generate an estimated annual savings of \$4.8 million to the State Textbook Fund.
- **Issue 10** – Transferring the Driver Training program from TEA to the Texas Department of Licensing and Regulation would result in administrative savings of \$145,525 and a reduction of three employees.
- **Issue 11** – Transferring administration of TEA's special education due process hearings to the State Office of Administrative Hearings would result in a savings of \$249,565 in federal Individuals with Disabilities Education Act funding. TEA would retain these savings to be used for other special education and related services provided to students with disabilities, such as compliance monitoring. These funds would be used to supplement, not supplant special education funds.

Two other recommendations could conceivably result in additional savings to the State and local school districts. Issue 6 recommends streamlining the administrative requirements for grant programs TEA oversees. Reducing the amount school districts spend on administrative costs by just 0.5 percent would result in a local savings of almost \$15 million that would be available for local school districts to provide more services to schoolchildren. Recommending a prorated price for nonconforming textbooks, as discussed in Issue 7, could result in a savings of up to \$3.6 million per year to the State based on previous expenditures for nonconforming textbooks. However, the recommendation does not *require* the State Board of Education to prorate the prices.

<i>Fiscal Year</i>	<i>Savings to the State Textbook Fund</i>	<i>Savings to the General Revenue Fund</i>	<i>Savings to Federal Education Funds*</i>	<i>Change in FTEs from FY 2005</i>
2006	\$4,800,000	\$145,525	\$249,565	-3
2007	\$4,800,000	\$145,525	\$249,565	-3
2008	\$4,800,000	\$145,525	\$249,565	-3
2009	\$4,800,000	\$145,525	\$249,565	-3
2010	\$4,800,000	\$145,525	\$249,565	-3
* TEA would retain the savings to federal education funds to be used for other special education services.				



State Board for Educator Certification

Special Purpose Review

The State Board for Educator Certification underwent a full Sunset review for the 2003 Legislature. The legislation containing the Sunset Commission's recommendations, including to continue SBEC for 12 years, did not pass. Instead, the Legislature continued the agency for two years and required a special-purpose review focused on the appropriateness of the Sunset Commission's 2003 recommendations. The Sunset Commission recommendations from that special-purpose review are contained in this material.

Agency at a Glance

The State Board for Educator Certification (SBEC) oversees the preparation and regulation of public school educators. The Legislature created SBEC in 1995 in a rewrite of the Texas Education Code. Before 1995, the Texas Education Agency (TEA) was responsible for teacher certification. The State Board of Education (SBOE) has a continued role with the profession through its veto authority over SBEC rule proposals.

SBEC's major functions include:

- ensuring the quality of educators upon entry into the teaching profession through testing, certification, and the accreditation of educator preparation programs;
- enforcing the professional standards of conduct;
- creating and promoting strategies for the recruitment and retention of educators in the public school system; and
- promoting continuous professional development of educators.

Key Facts

- **Funding.** In fiscal year 2004, SBEC operated with an annual budget of \$17.5 million. For the first time since its creation the agency generates sufficient revenue, mostly through fees, to cover the cost of running the agency.
- **Staffing.** SBEC employed 63 staff in fiscal year 2004, all of whom work in Austin.
- **Accountability.** SBEC has approved 127 Texas educator preparation programs. All the programs are rated "accredited," meaning a program has met all SBEC accountability standards.



For additional information, please contact Charles Sallee at 512-463-1300.

- **Certifications.** In fiscal year 2004, more than 253,000 individuals were certified as Texas educators; approximately 21,857 of those were new teachers. About 84 percent of all teachers are assigned to positions they are fully certified to teach.
- **Professional Discipline.** In fiscal year 2004, SBEC received a total of 1,127 jurisdictional complaints and issued disciplinary action in 37 percent of the cases. The recidivism rate of sanctioned educators was zero.

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Agency Head

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Recommendations

1. Continue the State Board for Educator Certification for 12 Years.
2. Expand SBOE's Authority Over SBEC Rules, and Improve Stakeholder Involvement in the Rule Development Process.
3. Provide Further Improvements to SBEC's Process of Conducting Criminal Records Checks.
4. Require SBEC to Adopt Rules Ensuring Comprehensive Disciplinary Investigations.
5. Provide SBEC Statutory Authority Over Teaching Permits, Waivers, Educational Diagnosticians and Ability to Accept Gifts, Donations, and Non-Federal Grants.
6. Conform Key Elements of SBEC's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Issue 1

Texas Has a Continuing Need for the State Board for Educator Certification.

Key Findings

- No significant changes have occurred to affect the 2003 Sunset Commission recommendation to continue SBEC.
- SBEC and TEA have implemented an agreement to consolidate administrative functions and services as required by the Legislature.

Texas has a continuing need to ensure that elementary and secondary public schools have access to well prepared educators. The Legislature and the federal government have set high standards and expectations for student achievement that require better prepared and qualified teachers to ensure students are successful in the classroom.

In 2003, the Legislature directed SBEC and TEA to consolidate administrative functions and services, and directed the Sunset Commission to evaluate the agencies' compliance with this directive. The agencies formalized an agreement to consolidate administrative functions in December 2004. The agreement transfers SBEC's accounting and budget; human resources and payroll; general counsel legal services; purchasing and contracts, including HUB coordination, central supply, and printing services; and information technology functions to TEA. Under the agreement, SBEC will pay TEA for the cost, estimated at \$1.1 million, of the administrative functions and associated 20 employees.

Recommendation

Change in Statute

1.1 Continue the State Board for Educator Certification for 12 years.

This recommendation would continue the State Board for Educator Certification as an independent agency responsible for the preparation, certification, and discipline of educators. SBEC would remain administratively attached to TEA as required by the Legislature in 2003.

Issue 2

SBEC's Rulemaking Process Does Not Effectively Ensure Stakeholder Input.

Key Finding

- No significant changes have occurred to affect the 2003 Sunset Commission recommendations to expand the State Board of Education's authority over SBEC rules, and to ensure the early involvement of stakeholders in developing rules.

The State Board of Education has authority to reject, but not modify, rules proposed by SBEC. In 2003, the Sunset Commission found that SBOE should have better means to provide input on rules governing certification of educators. SBOE still lacks the authority to veto only the unacceptable portions of SBEC proposed rules, and let the remaining acceptable portions go into effect. The Sunset Commission also found that SBEC did not consistently have a practice of including the input of educators in the development of rules, before proposing them to SBOE.

Recommendations

Change in Statute

2.1 Expand the State Board of Education's authority to allow it to reject portions of SBEC rules.

This recommendation would provide SBOE with better means to exercise its oversight of education policy. The recommendation would authorize SBOE to reject all or part of an SBEC rule proposal, or take no action and allow the rule to go into effect. As in current law, SBOE would need a two-thirds vote of members present to take action on an SBEC rule.

2.2 Require SBEC to develop guidelines for the early involvement of stakeholders in its rulemaking process.

Guidelines for developing rule proposals would ensure all interested parties have an opportunity to participate early in the development of SBEC's rules, and provide the education community with an opportunity for a stronger role in the rule development. The process would include methods for SBEC to follow to obtain the early advice and opinions of interest groups affected by a proposed rule, before it is published. At a minimum, the guidelines must include appropriate TEA staff and establish a means of identifying persons affected, including educators, other state agency personnel, school district administrators, and, if applicable, parents. SBEC should also develop a method to respond to stakeholder input, similar to response requirements on rulemaking in the Administrative Procedure Act.

Issue 3

SBEC Has Taken Steps to Implement National Criminal History Checks, but Changes Are Still Needed to Address Delays in Certification of Educators.

Key Findings

- While SBEC has taken steps to implement many of the 2003 Sunset Commission recommendations, statutory changes are still appropriate and necessary to ensure the criminal history check process continues.
- Prospective educators experience delays in obtaining the results of their criminal history checks and, therefore, their education credentials.

In 2003, the Sunset Commission concluded that SBEC's limited background searches might allow unsuitable individuals to teach Texas schoolchildren, and made a series of recommendations regarding fingerprinting and conducting national criminal history background checks of applicants for educator certification. SBEC has taken some steps to implement these recommendations, but has experienced implementation difficulties, resulting in extensive delays for educators applying for certification.

Recommendations

Change in Statute

3.1 Require SBEC to collect fingerprints and conduct national criminal history checks of all applicants for educator certification.

This recommendation would ensure that SBEC continues to collect fingerprints from applicants for educator certification. This recommendation would also ensure that SBEC continues to use the fingerprints to access both state and national criminal history databases to fully determine the suitability of applicants for educator certification.

3.2 Require SBEC to adopt rules setting fees for fingerprinting and national criminal history checks.

This recommendation would ensure that the costs of fingerprint-based criminal history checks for educator certification applicants are paid by the applicant. The fee should be sufficient to include the costs of submitting the fingerprints to the Department of Public Safety (DPS) and the FBI. The current rule sets the fee at \$45, but any future changes to the fingerprint process may result in a modification to the fee. The Board should have statutory authority to make such adjustments as necessary as the criminal history check process evolves.

3.3 Authorize SBEC to retain educators' fingerprints at the Department of Public Safety.

This recommendation would provide for a database of educators' fingerprints linking the records to the state criminal history database, allowing DPS to notify SBEC of criminal activity by educators in the future. Upon such notification, SBEC would open an investigation into that educator's continued suitability for certification.

3.4 Require SBEC to develop information on situations that may prevent certification, for distribution to all students in educator preparation programs.

The Sunset Commission included this recommendation as a non-statutory management action in 2003, however, SBEC has not implemented the recommendation and students in preparation programs remain unaware of situations that could prevent certification. SBEC would assist educator preparation programs in providing standard information to students to help ensure that an individual with a criminal history that might prevent certification does not invest unnecessary time and expense toward the possibly unreachable goal of an educator certificate.

3.5 Authorize SBEC to allow students in educator preparation programs to begin the criminal history check process before completing the preparation program.

This recommendation would reduce the delays for prospective educators seeking certification by allowing students in educator preparation programs to begin the background check process at the beginning of their final semester in a university or alternative certification program. The fingerprint retention database at DPS would ensure that SBEC knew of any criminal activity occurring between the completion of the background check and final certification.

Management Action

3.6 SBEC should extend background checks to all currently certified or credentialed educators by using Social Security numbers to search all available criminal conviction databases.

This recommendation would allow SBEC to expand its methods of conducting criminal history checks on current educators, to include the use of Social Security numbers to search all state and federal criminal conviction databases for any indication of criminal activity on the part of Texas educators.

Issue 4

SBEC Rules Do Not Ensure Consistent Prioritization, Investigation, and Resolution of Disciplinary Complaints Against Educators.

Key Findings

- SBEC oversees the certification and regulation of educators to ensure the highest standards of professional conduct among certified individuals.
- SBEC has not adopted rules to implement the Sunset Commission's 2003 recommendations to improve complaint investigations, and statutory changes are still appropriate.

In 2003, the Sunset Commission recommended that the Board adopt rules outlining and clarifying the process for addressing disciplinary violations, to ensure a more consistent and transparent process for investigating educators; and that SBEC include educators in the development of the rules. The Board has not adopted rules to address this issue, therefore, these recommendations remain appropriate.

Recommendations

Change in Statute

4.1 Require the Board to propose rules outlining the process for investigating disciplinary violations.

This recommendation would require SBEC to propose rules for a complete investigation process for complaints regarding traditional disciplinary violations. The rules should define time frames for all actions and notification requirements. The rules should also define case severity to ensure prioritization of investigations is risk-based.

Management Action

4.2 SBEC should include educators in the development of the new disciplinary process rules.

SBEC should provide stakeholders with adequate opportunities to participate in the development of all rules affecting the education profession in Texas. Given the potential for misconceptions regarding the investigation and resolution of complaints regarding educator misconduct, SBEC should fully include the education community in the early development of rules affecting the disciplinary process.

Issue 5

SBEC Does Not Have Statutory Authority Over Some Permits, Waivers, and Diagnosticians, Limiting Its Ability to Carry Out Its Mission.

Key Finding

- No significant changes have occurred to affect the Sunset Commission's 2003 recommendations to consolidate oversight of teaching permits and certification waivers at SBEC; require persons employed as educational diagnosticians to hold an SBEC-issued certificate; and authorize SBEC to accept non-federal grants, gifts, and donations.

The Commissioner of Education has authority to approve a school district teaching permit to allow a degreed, but non-certified, individual to teach Texas school children. The Commissioner may also issue certification waivers to school districts, which allow certified individuals to teach outside their area of certification.

The Sunset Commission found that allowing another agency to authorize an educator to teach without a certificate, or to teach outside their area of certification, prevents SBEC from fully carrying out its responsibility of ensuring that only competent, quality educators are teaching in Texas classrooms. In addition, school districts are not required to verify that a certified person is not available before receiving a waiver of statutory requirements to hire certified teachers.

Finally, the Sunset Commission found educational diagnosticians are not statutorily required to hold an SBEC-issued certificate. In addition, SBEC lacks the authority necessary to accept certain funds.

Recommendations

Change in Statute

- 5.1 Transfer responsibility for approving school district teaching permits, which allow non-certified individuals to be hired by a school district, from the Commissioner of Education to SBEC.**

This recommendation would ensure that SBEC has oversight and responsibility for permitting or certifying all individuals teaching in Texas public schools. Individuals that school districts employ under a school district teaching permit would have to undergo a fingerprint-based national criminal history background check by SBEC.

- 5.2 Transfer responsibility for issuing certification waivers, which allow certified teachers to teach outside their area of certification, from the Commissioner of Education to SBEC.**

This recommendation would provide SBEC the responsibility for allowing educators to teach outside their certification areas. SBEC would have the authority to disallow a waiver if it was not in the best interest of the students.

5.3 Add educational diagnosticians to the statutory list of educators required to hold an SBEC-issued certificate in that specialty to be employed in public schools.

Educational diagnosticians diagnose the learning capabilities of Texas students. This recommendation would ensure that all individuals providing educational diagnostic services are certified by SBEC. The recommendation would not change the State's minimum salary schedule for teachers.

5.4 Authorize SBEC to accept gifts, donations, and non-federal grants.

This recommendation would allow SBEC to accept all gifts, donations, and non-federal grants to use to further the agency's programs and functions.

Management Action

5.5 SBEC should require a school district to verify that a certified person is not available within that district before granting a waiver to that district.

This recommendation would ensure that districts make an effort to hire certified teachers before seeking a waiver of certification requirements. Under waiver authority transferred to SBEC in Recommendation 5.2, SBEC should develop methods to verify school districts' efforts to hire certified teachers before granting certification waivers.

Issue 6

Key Elements of SBEC's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Finding

- No significant changes have occurred to affect the Sunset Commission's 2003 recommendations concerning SBEC's standard licensing functions, and they are still appropriate.

In 2003, the Sunset Commission made a series of recommendations concerning SBEC's licensing functions, formerly known as licensing across-the-board recommendations. SBEC's statutes do not meet several commonly applied practices for its licensing and regulatory functions.

Recommendations

Licensing

Change in Statute

6.1 Require standard time frames for certificate holders who are delinquent in renewal of certificates.

Variations occur among licensing agency requirements concerning the number of days a license renewal may be delinquent before penalties are brought into effect. This recommendation is aimed at ensuring comparable treatment for all licensees, regardless of their regulated profession. This recommendation also clarifies that a person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

6.2 Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.

This recommendation ensures the timely reporting of examination results. The timely notification is important to those persons whose future plans are contingent on their examination scores. This provision also ensures that examinees are informed of the reasons for failing the examination.

6.3 Authorize SBEC to issue provisional certificates to applicants who hold a current certificate in another state.

Provisional licenses allow license applicants who hold a license in another state to practice in Texas while their credentials are being evaluated. SBEC is currently reviewing the licensing exams for all other states to determine which certification requirements are equivalent to Texas'. In the meantime, SBEC issues temporary certificates to educators from other states while they are waiting to take and pass Texas' certification exams, so that they may work in public schools. This recommendation would allow SBEC to continue to issue temporary certificates to out-of-state applicants from states whose tests have not yet been assessed.

6.4 Authorize the staggered renewal of licenses.

This recommendation would encourage the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. The staggering procedure improves the efficient use of agency personnel by establishing a uniform workload throughout the year, eliminating backlogs in licensing efforts and the need for seasonal employees.

Enforcement

Change in Statute

6.5 Authorize SBEC to use a full range of penalties.

As a general principle, an agency's range of penalties should conform to the seriousness of the offenses presented to the agency. However, in many cases licensing agencies are not given a sufficient range of penalties. This recommendation is intended to ensure that the appropriate sanctions for offenses are available to SBEC. The general range of sanctions includes probation, suspension, revocation, or refusal to renew a certificate or reprimand a certificate holder.

Fiscal Implication Summary

The recommendations would have no net fiscal impact to the State, as discussed below.

- **Issue 5** – Transferring authority over issuing school district teaching permits would have no net fiscal impact. Individuals seeking permits would have to pay the \$45 fee to cover the costs of SBEC's criminal history check process. Because of the small number of applicants, any increased workload related to increased enforcement efforts would not require additional staff.



Electric Utility Restructuring Legislative Oversight Committee

Agency at a Glance

In 1999, as part of the introduction of competition into the electricity market, the Legislature created the Electric Utility Restructuring Legislative Oversight Committee to oversee the implementation of competition. The Committee:

- monitors the effectiveness of utility restructuring, including the fairness of rates and reliability of service;
- studies the effect of stranded costs, market power, and regulation of competition; and
- may comment on proposed PUC rules related to electric competition.



For additional information, please contact Steve Hopson at 512-463-1300.

Committee Members (6)

The Committee is composed of six members including the Chair of the House Committee on Regulated Industries and two other House members appointed by the Speaker, and three Senators appointed by the Lieutenant Governor. Current members include:

Representative Phil King (Co-Chair)	Senator Troy Fraser (Co-Chair)
Representative Todd Baxter	Senator Jane Nelson
Representative Harold Dutton	Senator John Whitmire

Recommendation

1. Remove the Sunset Provision for the Electric Utility Restructuring Legislative Oversight Committee.

Issue 1

Remove the Electric Utility Restructuring Legislative Oversight Committee From Sunset Review.

Key Finding

- While the Committee has successfully overseen implementation of legislation on electric competition, the Legislature should be free to establish its own committee structure without review by the Sunset Commission.

Recommendation

Change in Statute

- 1.1 Remove the Sunset provision for the Electric Utility Restructuring Legislative Oversight Committee.**

Removing the Sunset provision would allow the Legislature to determine the proper structure of this Committee without being subject to review or abolishment under the Sunset Act.

Fiscal Implication Summary

The recommendation on the Electric Utility Restructuring Legislative Oversight Committee would not have a fiscal impact to the State.



Texas Film Industry Development Loan Guarantee Program

Agency at a Glance

The Legislature created the Texas Film Industry Development Loan Guarantee Program (Program) in 1999 to facilitate the production of films in Texas and to further develop the Texas film industry by encouraging private lenders to make loans for Texas film productions. The Program authorized the Comptroller of Public Accounts to issue guarantees to private lenders for the repayment of such loans, under certain conditions. However, the Program never received an appropriation and guaranteed no loans, rendering it effectively inactive.

Key Facts

- **Funding.** The Legislature has never appropriated the Program any funds since its creation in 1999.
- **Staff.** The Program has no staff.

Agency Head

Carole Keeton Strayhorn, Comptroller of Public Accounts
(512) 463-4000

Recommendation

1. Abolish the Texas Film Industry Development Loan Guarantee Program.



For additional information, please contact Ken Levine at 512-463-1300.

Issue 1

The Texas Film Industry Development Loan Guarantee Program Does Not Serve Its Statutory Purpose.

Key Finding

- The Texas Film Industry Development Loan Guarantee Program has guaranteed no loans since its inception.

While the Legislature created the Texas Film Industry Development Loan Guarantee Program to foster film production in Texas, the Program has never been active. Although some effort was made to implement the Program soon after its creation in 1999, the Program has received no appropriations and has guaranteed no loans.

Recommendation

Change in Statute

1.1 Abolish the Texas Film Industry Development Loan Guarantee Program.

Under this recommendation, no legislation would be needed to abolish the Program as it would automatically be abolished and its statute would expire on its Sunset date of September 1, 2005. Because the Program has no funds, the standard one-year period for an abolished agency to conclude its affairs would be unnecessary.

Fiscal Implication Summary

This recommendation would have no fiscal impact on the State because the Program receives no funds from the State.



Texas Guaranteed Student Loan Corporation

Agency at a Glance

The Federal Family Education Loan Program (FFELP), administered by the Department of Education, encourages private lenders to make loans to students and their parents to help pay for the cost of postsecondary education. To encourage lenders to participate in the program without requiring collateral or proof of creditworthiness from the student, the Department of Education protects the lender from financial loss by guaranteeing the repayment of the loan. The Texas Guaranteed Student Loan Corporation (TG) serves as the FFELP administrator in Texas, guaranteeing loans on behalf of the federal government; however, TG does not make loans. Established by the Legislature as a public, nonprofit corporation in 1979, TG's major functions include:

- issuing guarantees to private lenders for the repayment of FFELP loans;
- helping borrowers avoid loan delinquency and default through up-front education and awareness of loan repayment obligations;
- reimbursing lenders for loans that are not paid in full by the borrower;
- collecting from borrowers who have defaulted on their loans;
- overseeing schools and lenders participating in FFELP to ensure compliance with federal regulations; and
- serving as the central clearinghouse for FFELP student loan and financial aid information for students, parents, schools, and lenders in Texas.

Key Facts

- **Funding.** As a public, nonprofit corporation, TG receives no state funding. In fiscal year 2004, TG generated \$130.8 million in operating revenue, mostly derived from administrative fees paid by the Department of Education for FFELP loan guarantee functions. Of this amount, TG spent about \$74 million on student loan activities and related administrative functions.
- **Staffing.** TG has a staff of 578 employees, most of whom are based in its corporate headquarters in Round Rock.
- **Loan Guarantee Operations.** In fiscal year 2004, TG guaranteed 516,000 FFELP loans totaling more than \$2.8 billion. On average, loans guaranteed by TG that year totaled \$3,097 for undergraduates, and \$6,744 for graduate borrowers. Since its creation, TG has guaranteed more than \$33.8 billion in FFELP loans that were issued to 2.6 million postsecondary education students.



For additional information, please contact Lori Hartman at 512-936-2694.

- **Default Prevention Activities.** The typical student leaving school has a median student loan debt of \$8,125. TG provides borrowers with a variety of resources to help them track loan balances, manage debt, and understand and meet their loan repayment obligations. In fiscal year 2004, TG helped to resolve more than 91 percent of all loan delinquencies reported by lenders.
- **Claim Payments.** When a borrower does not repay a loan in full to the lender, TG reimburses the lender for most of its loss. In fiscal year 2004, TG paid 60,500 claims to lenders totaling \$303 million. These claims were for bankruptcy, disability or death, as well as default. TG's loan default rate is currently 7 percent, down from 17 percent 10 years ago.
- **Collections.** In fiscal year 2004, TG collected \$285 million in defaulted loans on behalf of the federal government, and assisted another 2,291 borrowers in rehabilitating their defaulted loans.
- **Outreach.** TG serves as a resource to students and their parents, schools, lenders, and the public. Last year, TG's Customer Assistance call center received about 150,000 telephone inquiries, and fielded more than 12,000 calls to the Texas Financial Aid Information Center hotline.
- **Compliance.** TG approves schools and lenders for FFELP participation at TG, and conducts reviews to ensure their continued compliance with federal regulations. Currently, TG works with about 775 schools and 300 lenders.

Board Members (10)

Ruben Esquivel, Chair (Dallas)	Jerry Don Miller, Ph.D. (Canyon)
Albon Head, Jr., Vice Chair (Fort Worth)	Jane Phipps (San Antonio)
Tommy J. Brooks (Houston)	Grace Shore (Longview)
Morgan Howard (Bryan)	Carole Keeton Strayhorn,
Jorja Kimball (College Station)	Comptroller of Public Accounts (Austin)
James Langabeer (Edinburg)	

Agency Head

Sue McMillin, President and Chief Executive Officer
(512) 219-4949

Recommendations

1. Continue the Texas Guaranteed Student Loan Corporation for 12 Years, and Increase the Size of TG's Board From 10 to 11 Members.
2. Require TG's Internal Auditor to Report to the Board of Directors.
3. Require Relevant State Agencies to Coordinate with TG on Outreach Activities Tied to Financial Aid for Higher Education, and Direct TG to Report to the Legislature on the Demand for Financial Aid in Texas.
4. Require TG to Better Identify and Exchange Data With Licensing Agencies on Licensees With Defaulted Student Loans.

Issue 1

Texas Has a Continuing Need for the Texas Guaranteed Student Loan Corporation, but the Current Size of TG's Board Does Not Comply With the Texas Constitution.

Key Findings

- The Legislature created the Texas Guaranteed Student Loan Corporation (TG) to administer the Federal Family Education Loan Program in Texas, and TG functions effectively in this role.
- Texas has a clear and continuing interest in having a guaranty agency to administer the Federal Family Education Loan Program (FFELP) for the State.
- The size of TG's Board does not comply with the Texas Constitution.

Texas has a continuing interest in having a guaranty agency to administer FFELP for the State. As the State's FFELP administrator, TG plays an important role in helping to remove financial barriers to postsecondary education and increasing students' awareness of educational and financial aid opportunities. With the increasing cost of tuition, Texas students rely heavily on FFELP loans to fund their education. TG's loan guarantees, on behalf of the federal government, help to encourage lenders to make loans to students. Overall, TG's structure and operations work well, providing significant benefits to the State and the students who obtain loans through this program. However, the current size of TG's Board does not comply with the requirement in the Texas Constitution for boards to be composed of odd numbers.

Recommendations

Change in Statute

1.1 Continue the Texas Guaranteed Student Loan Corporation for 12 years.

This recommendation would continue the Texas Guaranteed Student Loan Corporation as the entity responsible for administering the Federal Family Education Loan Program in Texas.

1.2 Increase the size of the Texas Guaranteed Student Loan Corporation's Board from 10 to 11 members.

This recommendation would increase TG's Board from 10 to 11 members, by adding a member from the faculty or administration of an eligible postsecondary educational institution. Under this change, the Governor would appoint 10 members, including five members with knowledge or experience in finance, four members from the faculty or school administration, and one member who is a full-time student enrolled at a postsecondary educational institution. The Comptroller of Public Accounts would continue to serve as a permanent, ex officio, voting member. This change would bring the Board into compliance with the constitutional requirement for state boards to have an odd number of members.

Issue 2

TG's Internal Auditor Lacks a Direct Link to the Board.

Key Findings

- TG's Chief Executive Officer has direct authority over the Internal Auditor.
- Without a direct link to the Board, the effectiveness of TG's Internal Auditor could be weakened.
- State law requires internal auditors at state agencies to report to their governing boards.
- Emerging standards in the private sector call for auditors to report to the audit committee of the board of directors.

State law requires TG's Internal Auditor to report to the Chief Executive Officer (CEO), giving the CEO direct authority over the Internal Auditor. Although this reporting structure has worked well in the past, as TG's CEO and senior management team are supportive of the internal audit function, this reporting structure does not afford the Internal Auditor the independence necessary to carry out required functions absent the support of management. The reporting structure is also contrary to state agency requirements and private sector best practices, which, over the past several years, have moved toward requiring the Internal Auditor to report to the governing board or a subcommittee of the board.

Recommendation

Change in Statute

2.1 Require TG's Internal Auditor to report to the Board of Directors.

This recommendation would change the current reporting structure, which requires the Internal Auditor to report to TG's CEO, to instead require the Internal Auditor to report to the Board. The Board could also opt to have the Internal Auditor report to a designated subcommittee of the Board. TG's Board would have the authority to hire and fire the Internal Auditor and would approve the Internal Auditor's budget, staffing level, and audit plans. TG's CEO would continue to provide administrative day-to-day support. The Internal Auditor would also continue to work closely with TG's CEO and senior management team to address audit related activities, and would report on the progress and results of audits at Board meetings.

Issue 3

Texas Lacks a Structure for Maximizing Its Resources, in Conjunction With TG's, to Increase Awareness About Higher Education and Financial Aid Opportunities.

Key Findings

- TG performs many outreach activities to increase awareness about higher education and financial aid opportunities.
- The Texas Higher Education Coordinating Board (Coordinating Board) and the Texas Education Agency (TEA) also conduct higher education and financial aid outreach.

- Despite these outreach efforts to help increase awareness of financial aid opportunities, most Texas students still rank cost as the major barrier to higher education.
- Texas lacks a mechanism for maximizing its resources, in conjunction with TG's, to increase awareness about higher education and financial aid opportunities.

State law currently charges TG with coordinating with TEA and the Coordinating Board on activities designed to increase awareness of higher education and financial aid. Although TG and the Coordinating Board collaborate on outreach activities, TG lacks a formal mechanism for coordinating its activities with other state agencies that perform similar functions, thereby increasing the potential for duplication or gaps. Such coordination is critical to meet the State's goal of increasing college enrollment by 500,000 students by 2015.

Recommendation

Change in Statute

- 3.1 Require state agencies that conduct financial aid outreach activities tied to higher education to coordinate with TG to maximize resources and avoid duplication, and direct TG to report regularly to the Legislature on the demand for student financial aid in Texas.**

This recommendation would require all state agencies that conduct higher education and financial aid outreach activities to have a memorandum of understanding with TG. This requirement would help ensure that TG and the state agencies make the most of limited resources and identify and eliminate areas of overlap. These changes would also help ensure that the State presents a unified message to Texans about the benefits of higher education. Additionally, having TG report to the Legislature in December of each even-numbered year would ensure that the Legislature has the most up-to-date information about the demand for student financial aid in Texas before the start of each legislative session.

Issue 4

Problems With Identifying and Exchanging Data With Licensing Agencies Limit TG's Ability to Collect From Licensees With Defaulted Loans.

Key Findings

- To assist TG in collecting on defaulted student loans, state law authorizes TG to work with state agencies to deny the renewal of professional and occupational licenses until licensees enter into repayment with TG.
- Current law places the burden of identifying licensees with defaulted student loans on the licensing agencies instead of TG, even though TG has a greater interest in, and resources for, administering the data matches.
- Some agencies may not be participating in this program because TG has not identified them as having a licensing function.

The Legislature has authorized TG to work with state agencies to identify professional and occupational licensees who have defaulted on their student loans, and to deny the renewal of their licenses until

they enter into a repayment agreement with TG. However, current law inappropriately places the burden of identifying licensees with defaulted student loans on the licensing agencies, instead of TG. Further, TG has not identified all potential state licensing functions for inclusion in its search for licensees with defaulted loans. This results in missed opportunities for collections and unfairly applies this tool to some professions, but not to others.

Recommendations

Change in Statute

- 4.1 Require licensing agencies to provide TG with lists of licensees so that TG can identify individuals with defaulted student loans, rather than requiring the licensing agencies to identify these individuals.**

This recommendation would require licensing agencies to prepare a list, in written or electronic format, of licensees and provide that list to TG annually. TG would use the list to identify individuals with defaulted student loans guaranteed by TG, and would then notify the appropriate agency of any matches. The licensing agency would be responsible for denying the license renewal application of any licensee with a defaulted student loan. These changes would appropriately place the responsibility for conducting the matching process on TG, rather than the licensing agencies, since TG has a greater interest in identifying individuals with defaulted student loans.

Management Action

- 4.2 TG should compile a more comprehensive list of licensing agencies for inclusion in its search for professional and occupational licensees with defaulted student loans.**

Under this recommendation, TG would develop a more comprehensive list of agencies with licensing functions that are subject to this requirement. TG should update its list at least biennially, which would capture any agencies or licensing functions that have recently been created or reorganized by the Legislature. This would afford TG additional opportunities to identify licensees with defaulted student loans, and ensure that all the State's licensees are held equally accountable.

Fiscal Implication Summary

Because TG does not receive General Revenue appropriations, these recommendations would have no fiscal impact to the State. One recommendation offered in Issue 1 would result in a cost to TG, as summarized below.

- **Issue 1** – Increasing the size of TG's Board from 10 to 11 members would result in an annual cost to TG of approximately \$1,240 for Board member travel expenses.



Texas Lottery Commission

Special Purpose Review

The Texas Lottery Commission underwent Sunset review in 2002, and the Sunset Commission forwarded 24 recommendations to improve the agency to the Legislature in 2003. However, the Sunset legislation did not pass. Instead, the Legislature continued the Lottery Commission for two years and required a follow-up Sunset review to focus on the appropriateness of the Sunset Commission's 2003 recommendations. The results of that special purpose review are contained in this material.

Agency at a Glance

In 1991, Texas voters approved a constitutional amendment authorizing a state lottery. In 1993, the Legislature created the Texas Lottery Commission (the Commission) to assume the administration of the lottery and also transferred the administration of the Bingo Enabling Act to the new agency. Today, the Commission administers and markets the state lottery and regulates the charitable bingo industry through licensing and enforcement.



*For additional
information,
please contact
Karen Latta at
512-463-1273.*

Key Facts

- **Funding.** The Commission operated with a budget of \$209.7 million in fiscal year 2004 – all of which came from lottery proceeds and bingo licensing fees.
- **Lottery Revenue.** In fiscal year 2004, the lottery generated about \$3.5 billion in revenue, of which \$1 billion was transferred to the Foundation School Fund. During that same year, the agency transferred unclaimed prize money totaling \$41.5 million to accounts benefitting health care services and to the General Revenue Fund. The remainder of the proceeds pay for prizes, the agency's administrative costs, and retailer commissions. Since its inception, the Texas Lottery has transferred \$11.8 billion dollars to the State.
- **Bingo Revenue.** In calendar year 2004, charitable bingo generated \$456 million in revenue, of which \$23 million was distributed for charitable purposes. Also in that year, the Commission collected about \$26 million in prize fees, licensing fees, and rental taxes from the conduct of bingo.
- **Staffing.** The Commission has 325 full-time equivalent positions. Nearly three-quarters of the positions are located in the Austin headquarters and the rest are in the Commission's 16 claim centers and five regional offices.
- **Licensing.** The Commission regulates approximately 16,450 lottery retailers, 1,330 bingo conductors, 433 bingo lessors, 15 bingo equipment manufacturers, and 16 bingo equipment distributors.

- **Enforcement.** In fiscal year 2004, the agency received 807 complaints for both lottery and bingo, resolved 838 complaints, inspected 135 licensed lottery retailers, and inspected and audited 1,232 bingo licensees and applicants. Additionally, the Commission issued 325 agency orders resulting in sanctions.
- **Contracts.** The Commission outsources many key lottery functions including lottery games operation. The contracted lottery operator, GTECH Corporation, is responsible for providing lottery information technology systems, equipment, and sales staffing. In fiscal year 2004, the Commission spent about \$93.5 million on this contract. The Commission's other major contracts include advertising services and instant ticket manufacturing.

Commission Members (3)

C. Tom Clowe, Jr., Chair (Waco)
 James A. Cox, Jr. (Austin)
 Rolando Olvera (Brownsville)

Agency Head

Reagan E. Greer, Executive Director
 (512) 344-5000

Recommendations

1. Continue the Texas Lottery Commission for 12 Years.
2. Increase the Commission's Size From Three to Five Public Members.
3. Require the Commission to Approve All Major Financial Decisions and Develop a Comprehensive Business Plan.
4. Require the Bingo Advisory Committee to Develop a Work Plan to Effectively Advise the Lottery Commission.
5. Abolish Regulation of System Service Providers.
6. Conform Key Elements of the State Lottery Act and the Bingo Enabling Act to Commonly Applied Licensing Practices.
7. Require the Lottery Commission to Comply with Consumer Information and Protection Laws.

Issue 1

Texas Has a Continuing Need for the Texas Lottery Commission.

Key Finding

- No significant changes have occurred to affect the Sunset Commission's 2003 recommendation to continue the agency.

Texas has a continuing need to ensure the effective administration and operation of the lottery and regulation of bingo. These games constitute gambling and require close supervision by the State. The games also are important sources of revenue for the State, local jurisdictions, and local charities. The Lottery Commission is responsible for maximizing lottery revenue and ensuring bingo revenue is spent on authorized purposes.

Recommendation

Change in Statute

1.1 Continue the Texas Lottery Commission for 12 years.

This recommendation would continue the Texas Lottery Commission as the agency responsible for administering and marketing the state lottery and regulating charitable bingo until 2017.

Issue 2

The Small Size of the Texas Lottery Commission Limits Its Effectiveness and Communication Among Its Members.

Key Finding

- No significant changes have occurred to affect the Sunset Commission's 2003 recommendation to increase the size of the Lottery Commission.

The work of the Texas Lottery Commission in operating the lottery and regulating charitable bingo is hampered by its small size. As a three-member, part-time policy body, members of the Commission cannot informally discuss the work of the agency without violating the Open Meetings Act. The Commission also cannot form subcommittees to help it oversee the agency.

Recommendation

Change in Statute

2.1 Expand the Texas Lottery Commission from three to five public members.

This recommendation would increase the size of the Lottery Commission by two members. Commissioners would continue to serve on a part-time basis and one member would still be required to have experience in the bingo industry. The Commission would still be subject to the Open Meetings Act when a quorum of its members deliberate and make decisions concerning the agency. However, with an expanded Commission, two members would be able to have informal discussions and share

ideas concerning the agency. Further, with more members, the Commission should consider creating subcommittees to oversee bingo regulation, procurement practices, and any other functional areas needing a high level of oversight.

Issue 3

The Lottery Commission's Analysis and Approval of Major Financial Decisions Could Be Strengthened.

Key Findings

- The agency has made a sincere effort to implement the 2003 Sunset Commission recommendations regarding its analysis of major financial decisions, but statutory changes are still needed.
- The agency should perform additional analysis of expenditures once they have been made.

In 2003, the Sunset Commission found that the agency, lacking cost-benefit comparisons and relying on insufficient or inaccurate data, did not thoroughly analyze several new expenditures before approving them. Further, the State Lottery Act does not grant the Lottery Commission specific approval authority for contracts.

Recommendations

Change in Statute

3.1 Require the Commission to review and approve all major expenditures.

This recommendation would give procurement authority to the Commission, which could delegate certain procurement duties to the Executive Director. This authority is typical for most state boards and commissions. All major procurements would require Commission review and approval. The Commission would determine, by rule, which procurements would be considered major, based on the cumulative value of the contract, as well as other relevant factors.

3.2 Require the agency to develop a comprehensive business plan.

The Lottery Commission's major initiatives should be guided by a comprehensive business plan to ensure their cost effectiveness. The business plan should include a specific description of each program, key management information, accurate financial data, and a detailed financial management plan. The Commission should review the business plan at least annually to assess the overall performance and value of each project. Projects that fail to meet financial objectives should be adjusted or terminated. This recommendation will build on recent efforts by the agency and ensure that business planning continues in the future.

Management Action

3.3 The agency should use its cost-benefit analyses as a benchmark to judge the ongoing effectiveness of its expenditures.

Since the agency has begun performing cost-benefit analyses of major expenditures, it should use this information to determine whether those expenditures are achieving their original objectives once underway. Further, by comparing a program's original expectations to its ongoing performance, the agency will be able to judge the accuracy of the projections provided in its cost-benefit analyses.

Issue 4

The Bingo Advisory Committee Has Progressed, but Needs Continued Improvement to Effectively Advise the Commission on Bingo Regulation in Texas.

Key Finding

- The Lottery Commission has implemented most of the 2003 Sunset Commission recommendations aimed at improving the Committee, but some statutory changes are still needed.

The purpose of the Bingo Advisory Committee (BAC) is to advise the Lottery Commission on the needs and problems of the charitable bingo industry. In 2003, the Sunset Commission found that BAC was ineffective at providing the Lottery Commission with useful feedback, and that its membership structure limited its ability to focus on significant issues. Consequently, the Sunset Commission made several recommendations to improve BAC's effectiveness and ability to serve as a useful resource to the Lottery Commission. Though the Lottery Commission has implemented many of these recommendations, it still needs statutory authority to effect all the changes envisioned by the Sunset Commission.

Recommendations

Change in Statute

- 4.1 Require the Bingo Advisory Committee to develop an annual work plan and make recommendations to the Lottery Commission that identify specific issues that need addressing.**

This recommendation requires BAC to develop a yearly work plan that would detail its objectives and issues it would like to address during the year. This work plan should be formally approved by the Lottery Commission in a public meeting. The issues addressed by BAC should include assessing how trends in the charitable bingo industry relate to Commission regulation, reviewing bingo rules for needed changes, additions, or deletions, and addressing other issues as determined by the Commission. At year's end, BAC should assess its accomplishments, identify opportunities to improve the way the agency regulates charitable bingo, and develop specific recommendations for Commission action.

- 4.2 Eliminate the statutory designation of a slot for a system service provider on the advisory committee.**

Since the agency does not license any system service providers, this recommendation would eliminate an unnecessary slot on the Bingo Advisory Committee. The Commission could fill this position with a person representing the general public or another license group.

Issue 5

State Oversight of System Service Providers Is No Longer Needed.

Key Finding

- Regulating system service providers continues to offer little benefit to the State or the public.

The Commission licenses system service providers (SSPs), who provide tracking and accounting programs to bingo conductors. Since SSP licensure began in 1995, the Commission has licensed only four SSPs. Currently, the Commission does not regulate any SSPs. The objectives of SSP regulations have not been realized and the regulation is not needed.

Recommendation

Change in Statute

5.1 Abolish regulation of system service providers.

This recommendation would abolish the licensing requirements for system service providers and the regulation of the automated bingo services that they provide.

Issue 6

Key Elements of the State Lottery Act and the Bingo Enabling Act Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- The Lottery Commission has taken steps to implement many of the 2003 Sunset Commission recommendations, but still needs statutory authority for many of the needed changes.
- Licensing provisions in the Bingo Enabling Act do not follow model licensing practices, affecting the fair treatment of licensees and limiting public protection.
- Nonstandard enforcement provisions of the State Lottery Act and the Bingo Enabling Act potentially reduce the agency's effectiveness regarding public protection and the safeguarding of state revenue.

Various processes in the State Lottery Act and the Bingo Enabling Act do not match model licensing standards developed by Sunset staff from experience gained through more than 80 occupational licensing reviews over the last 25 years. By bringing the acts into conformity with model licensing standards, the Lottery Commission will be better able to ensure the fair treatment of licensees, protect the public, and safeguard state and charitable revenue. Though the Lottery Commission has taken steps to implement many of the 2003 Sunset Commission recommendations, it still needs statutory authority for many changes.

Recommendations

Licensing

Change in Statute

6.1 Require the agency to adopt clear qualifications for bingo licensure.

This recommendation would require the agency to develop, through rule, comprehensive licensing qualifications. By listing specific qualifications for licensure, licensees and the public are provided sufficient notice of licensing requirements. Guidelines would also assist the agency in consistent licensing, and provide a sound basis for license denials and other enforcement matters.

6.2 Eliminate statutory requirements governing the length of time bingo conductors must be in existence to be eligible for a license.

This recommendation would eliminate varying existence requirements for conductors currently in statute. Instead, the statute would require the Commission to adopt rules establishing standard time periods for the existence of all types of conductors. This change would ensure organizations are legitimate and established, and eliminate inconsistent standards for different types of organizations.

6.3 Require the agency to create a standard bingo license renewal process.

This recommendation would require the Commission, through rule, to document its renewal process from submission to completion. The Commission would adopt provisions addressing license renewals for all licensees to ensure continued competency of the licensee. These guidelines will provide notice, maintain consistency, and designate standard renewal practices.

6.4 Require the agency to consider compliance history before renewing bingo licenses and authorize denial of license renewals based on outstanding administrative sanctions.

This recommendation would require the agency to consider compliance history before all license renewals, providing the agency statutory authority to deny renewals based on the licensee's outstanding noncompliance with an existing agency enforcement action. Considering compliance history before license renewals will ensure timely resolution of any compliance issues and also increase accountability.

Management Action

6.5 The agency should increase oversight of temporary bingo licenses where appropriate.

The Lottery Commission should consider subjecting temporary licenses to the same oversight requirements provided in statute for standard licenses, where appropriate.

Enforcement

Change in Statute

6.6 Require the agency to analyze sources and types of all complaints to identify and address problem areas and trends.

This recommendation would require the agency to analyze its reported complaint activity to identify any trends or issues concerning certain violations. The agency could use this information to educate its licensees, focus on common problems, and possibly change regulatory language to address new concerns.

6.7 Provide statutory language to ensure all complaints are investigated in a reasonable amount of time.

This recommendation would help ensure speedy resolution of complaints by requiring investigations to be completed in a reasonable amount of time, which should be defined by the Commission in rule. Though a current internal policy encourages timely resolution, statutory language would formalize adherence to reasonable time requirements, and provide public notice of expected time frames for resolution.

6.8 Require the agency to adopt clear standards of conduct for bingo licensees.

This recommendation would require the Commission to adopt, by rule, standards of conduct developed by the agency. Comprehensive standards of conduct would include ethical standards and appropriate behavior for bingo licensees. This recommendation would give notice to both the public and licensees of appropriate standards of practice, and provide greater enforcement authority for the agency to act on various complaints. Adopting standards through the rulemaking process provides bingo licensees and the public an opportunity to participate in the development of these rules.

6.9 Provide the Commission with authority to put suspended bingo licensees on probation.

This recommendation would give the Commission a full range of administrative sanctions for its bingo licensees, allowing the agency to put a suspended licensee on probation. If the agency chooses to use probation as a sanction, it should have clear probation standards in rule, including procedures for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress.

6.10 Require the Commission to adopt rules governing all bingo compliance monitoring and enforcement procedures.

This recommendation would require the Lottery Commission to develop rules that provide a framework for its compliance monitoring efforts, such as audits and inspections, and enforcement activities. The recommendation would also require the Commission to develop, by rule, timelines for resolutions of violations found in audits. Licensees would have to prove that they have taken corrective measures or be subject to sanctions within the established timelines.

6.11 Require the Commission to adopt a schedule of sanctions for bingo enforcement actions in rule.

The recommendation would direct the agency to develop a penalty structure, by rule, to guide the application of administrative penalties against licensees for failing to comply with the statute and rules. Such a penalty structure would ensure the appropriate application of penalties to each violation. The Commission would develop a list to define or summarize the most common violations, and a schedule of penalties tied to the seriousness and frequency of particular offenses. The penalty structure would allow for deviations if mitigating circumstances are involved, for which the Commission would need to clearly establish reasons.

6.12 Expand the Lottery Commission's authority to temporarily suspend bingo licenses to prevent financial losses to the State.

This recommendation would amend the agency's existing temporary suspension authority to include the ability to temporarily suspend a bingo license in instances where action is necessary to prevent financial loss to the State. For example, the Bingo Division Director could issue a temporary

suspension order if a licensee fails to remit quarterly taxes or prize fee payments to the agency. To implement this recommendation, the Commission would be required to adopt rules governing the use of its temporary suspension authority.

Issue 7

The Lottery Commission Should Ensure That It Complies with All Consumer Information and Protection Laws.

Key Finding

- The Lottery Commission's main function is to sell its lottery products to the public to generate revenue for the State.

In fiscal year 2004, the agency spent \$38.5 million to advertise and market its lottery products, including online games and scratch off tickets, resulting in \$3.5 billion in sales. Considering the large number of players and the fact that its games are based on random drawings and chance, the agency needs to ensure that it is providing accurate information to consumers, including the odds of winning and estimated jackpots.

Recommendation

Change in Statute

- 7.1 Require the Lottery Commission to comply with and adhere to existing relevant and applicable laws regarding consumer information and protection.**

This recommendation would help to ensure that the Commission provides accurate information about its products to consumers.

Fiscal Implication Summary

Several recommendations regarding the Texas Lottery Commission would have a fiscal impact to the State. These recommendations are discussed below.

- **Issue 2** – Expanding the Commission would result in additional travel expenses for two new members. The agency should use its administrative allocation of lottery revenue to pay the estimated \$3,200 per year in travel expenses for the new Commission members.
- **Issue 3** – Requiring the agency to develop a comprehensive business plan and requiring the Commission to review and approve all major expenditures could have a positive fiscal impact to the State by better ensuring all costs are reasonable and necessary. However, the amount of potential savings could not be estimated.
- **Issue 6** – Allowing the Commission to temporarily suspend a bingo license when tax revenue is at stake may result in fewer losses to the State. However, the number of suspensions is not known and the savings could not be estimated.



Texas State Board of Medical Examiners Texas State Board of Physician Assistant Examiners Texas State Board of Acupuncture Examiners

Agency at a Glance

To ensure that Texans receive safe and quality medical care, the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners regulate medical practitioners in Texas. The State first began regulating the practice of medicine in 1837, when the Legislature created the Board of Medical Censors. In 1907, the Legislature passed the Texas Medical Practice Act and established the Medical Board to regulate physicians. In 1993, the Legislature passed the Physician Assistant Licensing Act and established the Physician Assistant Board. Also in 1993, the Legislature created the Acupuncture Board and began regulating the practice of acupuncture in Texas. The boards' main functions include:

- licensing qualified physicians, physician assistants, acupuncturists, and surgical assistants;
- issuing permits to and certifying other providers of medical care, such as physicians-in-training, acudetox specialists, and nonprofit health-care entities;
- investigating and resolving complaints, and taking disciplinary action when necessary to enforce the boards' statutes and rules; and
- monitoring compliance with disciplinary orders.

Key Facts

- **Funding.** In fiscal year 2004, the agency operated with a budget of \$8,324,346, about a 50 percent increase over the fiscal year 2003 budget. This increase is due to additional funding the agency received for its enforcement efforts. These additional funds come from an \$80 surcharge paid by each licensed physician. In addition, the agency collected about \$25 million in professional and licensing fees and fines in fiscal year 2004. All agency costs are covered by licensing fees collected from the professions.
- **Staffing.** The agency has a staff of 133 employees, with 105 based in Austin and 28 based in field offices throughout the state.
- **Licensing.** The boards regulated 55,993 physicians, 6,544 physicians-in-training, 3,453 physician assistants, 693 acupuncturists, and 259 surgical assistants in fiscal year 2004. These numbers include 2,338 new physician licenses, 2,492 new physician-in-training licenses, 380 new physician assistant licenses, 80 new acupuncturist licenses, and 96 new surgical assistant licenses issued that year.


 For additional
 information,
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 Meredith
 Whitten at
 512-936-2692.

- **Enforcement.** The boards received 6,090 complaints in fiscal year 2004. Of these, 1,900 were jurisdictional. That year, the boards resolved 1,755 complaints, with 287 resulting in sanctions against a licensee.

Texas State Board of Medical Examiners Members (19)

Lee S. Anderson, M.D., President (Fort Worth)	Eddie J. Miles, Jr. (San Antonio)
Larry Price, D.O., Vice President (Richardson)	Keith E. Miller, M.D. (Center)
Jose M. Benavides, M.D. (San Antonio)	Elvira Pascua-Lim, M.D. (Lubbock)
Patricia S. Blackwell (Midland)	John W. Pate, Jr., M.D. (El Paso)
Christine L. Canterbury, M.D. (Corpus Christi)	Annette P. Raggette (Austin)
Melinda S. Fredricks (Conroe)	Nancy M. Seliger (Amarillo)
David E. Garza, D.O. (Laredo)	Paulette B. Southard (Alice)
Roberta M. Kalafut, D.O. (Abilene)	Timothy J. Turner (Houston)
Amanullah Khan, M.D. (Dallas)	Vacancy
Thomas D. Kirksey, M.D. (Austin)	

Texas State Board of Physician Assistant Examiners Members (9)

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Michael H. Belgard, PA-C (San Augustine)	Dwight M. Deter, PA-C (El Paso)
G. Al Bendeck, PA-C (Slaton)	Tony G. Hedges, D.O. (Littlefield)
Stephen H. Benold, M.D. (Georgetown)	Vacancy
Margaret K. Bentley (DeSoto)	

Texas State Board of Acupuncture Examiners Members (9)

Everett G. Heinze, Jr., M.D., Presiding Officer (Austin)	Hoang Xiong Ho, L.Ac. (San Antonio)
Meng-Sheng Linda Lin, L.Ac., Assistant Presiding Officer (Richardson)	Dee Ann Newbold, L.Ac. (Austin)
Sheng Ting (Sam) Chen (Austin)	Terry Glenn Rascoe, M.D. (Temple)
Pedro (Pete) V. Garcia (Frisco)	Claire H. Smith (Dallas)
	Vacancy

Agency Head

Donald W. Patrick, M.D., J.D., Executive Director
(512) 305-7011

Recommendations

1. Require the Board to Provide Stakeholders With Meaningful Opportunities for Input Into the Rulemaking Process.
2. Update the Boards' Licensing Process to Ensure Fair, Consistent Decisions.
3. Provide Further Improvements to the Medical Board's Investigations Process to Better Protect the Public.
4. Define Clear Roles, Responsibilities, and Authority for the Boards' Informal Hearings Process.
5. Clarify the Language Regarding the Use of Peer Review Documents in Formal Hearings by the Board and the State Office of Administrative Hearings.

6. Ensure That Private, Nondisciplinary Rehabilitation Orders Provide Adequate Public Protection.
7. Require Physicians Who Use Moderate Sedation in Outpatient Settings to Comply With the Board's Safety Requirements.
8. Strengthen the Acupuncture Board's Licensing and Enforcement Authority, and Clarify That the Board Does Not Approve Acupuncture Schools.
9. Provide the Medical Board With a Streamlined, Flexible Process for Regulating Prescriptive Delegation Authority.
10. Conform Key Elements of the Boards' Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
11. Prohibit Medical Board Members From Using Information Obtained Through Their Duties for Personal Gain.
12. Require the Medical Board to Publish Updated or Corrected Disciplinary Actions.
13. Clarify the Medical Board's Authority to Modify a Proposal for Decision Received From the State Office of Administrative Hearings.
14. Continue the Medical Board for 12 Years and Eliminate the Separate Sunset Dates for the Physician Assistant and Acupuncture Boards.

Issue 1

Limited Stakeholder Involvement Affects the Boards' Rulemaking and Policymaking Processes.

Key Findings

- The Medical Board's rules define how it regulates the practice of medicine in Texas and enforces statutes regarding physicians, physician assistants, and acupuncturists.
- The Board's limited use of stakeholders in rule development, or in efforts to publicize adopted rules, hampers its ability to make sound regulatory decisions.
- The Board's public hearings process does not provide meaningful opportunities for public comment or an adequate record of deliberations.
- Other state agencies have developed more effective processes for soliciting stakeholder input during rule and policy development.

The rules adopted by the Texas State Board of Medical Examiners have an impact on a variety of stakeholders. These stakeholders – including licensees, educators, other health-care practitioners, hospitals, and other state agencies – have a vested interest in providing input and feedback to the Medical Board as it develops its rules. As such, the Board could be more active in reaching out to stakeholders when developing rules. While some responsibility lies with stakeholders to participate in the rulemaking process, the Board could also provide more opportunities for stakeholders to address the Board with their concerns. The Medical Board also has oversight over the Physician Assistant and Acupuncture boards' rulemaking process, but has not clarified the process for the public to provide comments regarding issues related to these two boards. As a result, the public does not have meaningful opportunities for input and interaction with the boards, and the boards

have a limited ability to make well-informed decisions, address stakeholder concerns, and efficiently establish rules and policies.

Recommendations

Change in Statute

1.1 Require the boards to develop guidelines for the early involvement of stakeholders in its rulemaking process.

The boards would develop a process for providing stakeholders with the opportunity for a stronger role in the development of rules, before formal proposal in the *Texas Register*. Allowing stakeholders who would be most affected by a proposed rule to provide advice and opinions earlier in the process would result in better rules that take the perspectives of all license groups into consideration. Because the Physician Assistant and Acupuncture boards do not have independent rulemaking authority, the Medical Board would approve the boards' proposed rules. However, because the debate and detailed discussion related to physician assistants and acupuncturists occurs at these boards' meetings, the Physician Assistant and Acupuncture boards should seek stakeholder input when developing rules to propose to the Medical Board. In addition, the Board would accept comments regarding rules recommended by the Physician Assistant and Acupuncture boards when those rules are being considered by the Medical Board. Once the Medical Board receives input, it would still publish the proposed rules according to the Administrative Procedure Act, and allow the public an opportunity to oppose the rules or suggest alternatives during the comment period. Each board should use its judgment in determining which issues would benefit from early stakeholder involvement, as the boards would not need to seek input on every proposed rule.

Management Action

1.2 The Board should withdraw or repeal rules it does not intend to enforce.

The Board should withdraw proposed rules or repeal adopted rules that it does not intend to enforce while negotiating with stakeholders. The Board should withdraw or repeal these rules in a timely manner so that licensees and other stakeholders would have a clear understanding of the Board's regulatory requirements and so that the Board effectively enforces its statutes and Board rules.

1.3 The Board should ensure that the public has an opportunity to testify or appear before the Board.

This recommendation would provide the public with a reasonable opportunity to address the Physician Assistant and Acupuncture boards at a public meeting. The boards would set deadlines for interested parties to provide notification of their intent to appear *after* the meeting agendas have been made public and would allow individuals to testify if good cause exists for why they did not notify the boards. This change would allow individuals to make an informed decision about whether they want to appear, and would enable the boards to adequately plan for the amount of public testimony they will receive at meetings.

1.4 The Board should consider recording Board subcommittee and full Board meetings.

Although by publishing meeting minutes the Board complies with record-keeping provisions in the Administrative Procedure Act, the Board should consider recording meetings of full Board and subcommittee meetings for the Medical, Physician Assistant, and Acupuncture boards. Because of

the complex nature of many issues discussed by the boards, audio recordings of the debates and activities at these meetings would provide each board with a more complete record of the board's decisions.

1.5 The Board should notify stakeholders of adopted rules.

The Board would develop a better process for notifying identified stakeholders or individuals who have expressed interest in certain issues addressed by any of the boards when rules that relate to their areas of interest have been adopted. While some onus is on stakeholders to stay abreast of the Board's policies and rules, taking steps to inform stakeholders about new rules would improve the likelihood that stakeholders are aware of new and updated rules.

Issue 2

Some of the Boards' Licensing Processes Lack Structure Needed to Ensure Consistent Decisions.

Key Findings

- The Medical, Physician Assistant, and Acupuncture boards assess all candidates for licensure to ensure that the public will receive quality medical services.
- Lack of guidelines for evaluating applicants' mental and physical health disorders may cause inconsistent decisions, place undue burden on applicants, and result in less public protection.
- Provisions in the Medical Practice Act regarding exam attempts treat applicants inconsistently.
- The Medical Board has no options for licensing physicians who want to practice medicine strictly in an administrative setting.

Through their licensing decisions, the Medical, Physician Assistant, and Acupuncture boards ensure that only qualified medical professionals practice in Texas. However, because the boards have not established standards to guide their licensing decisions, some of the boards' licensing policies may place an undue burden on applicants and could result in inconsistent licensing decisions. Additionally, provisions regarding exam attempts in the Medical Practice Act treat applicants inconsistently, and may allow less qualified applicants to get licensed. Finally, the Medical Board lacks options for licensing physicians who want to practice medicine only in an administrative setting and an institutional medical license for foreign medical graduates.

Recommendations

Change in Statute

2.1 Require the boards to develop guidelines, by rule, for evaluating applicants' mental and physical health disorders.

The Medical, Physician Assistant, and Acupuncture boards would eliminate the practice that self-reported or other diagnosis of a psychiatric or medical disorder alone serve as a stimulus for an independent medical or psychiatric examination. Instead, the circumstances for evaluations would also be based upon mutually agreed-upon guidelines for evaluating mental and physical health, alcohol and substance abuse, and professional behavior problems, developed by each board with its

associated stakeholders. When developing the rules, the boards should avoid requiring applicants to meet with a specific type of physician to conduct an evaluation, unless medically indicated, or to undergo evaluations outside the city in which they work or live. Exceptions could be established for applicants who live in an area with a limited number of physicians to ensure that an applicant would receive an evaluation from someone other than a treating physician.

2.2 Eliminate the medical licensing exam attempt exceptions from the Medical Practice Act and clarify the number of exam attempts for doctor of osteopathy applicants.

This recommendation would remove from the Medical Practice Act the current exceptions to the number of allowed licensing examination attempts. All applicants would be required to complete each of the three licensing exam sections within three attempts, within seven years of passing the first examination section. For doctor of osteopathy applicants, the number of exam attempts would not apply separately to the Comprehensive Osteopathic Medical Licensing Examination and the U.S. Medical Licensing Examination. The Board would establish by rule the combination of examination section attempts for both of the exams that would satisfy licensure eligibility requirements, thus ensuring that a doctor of osteopathy applicant has the same number of exam attempts as a doctor of medicine.

2.3 Authorize the Medical Board to award a limited license for the practice of administrative medicine.

The Board would be able to award a medical license limited in scope to the practice of administrative medicine, obviating the need to use a nondisciplinary order as part of the license. Physicians would still need to meet licensing requirements, such as education and examination qualifications, fee payment, and continuing medical education, to receive a limited practice license, as specified in Board rule. Any physician wishing to practice clinical medicine after being on a limited license would need to prove clinical competence to practice, including the passage of any examinations the Board deems necessary to test fitness to practice.

2.4 Authorize the Medical Board to issue an institutional medical license to foreign medical graduates.

The Board would issue and renew an institutional medical license to any foreign medical graduate who has extensive and verifiable specific academic or clinical qualifications and achievements, as long as the individual has been recommended, endorsed, and specifically requested by the president or dean of an accredited Texas medical school. The license would remain valid as long as employment as a physician at the requesting medical school continues.

Management Action

2.5 The Medical Board should work with residency programs and other stakeholders when developing guidelines for evaluating applicants' risk for behavior likely to result in poor practice.

This recommendation establishes a working group comprising representatives from the Medical Board and Texas Graduate Medical Education programs to develop guidelines for evaluating applicants' risk for behaviors likely to result in poor medical practice and problems requiring action by the Board. The Physician Assistant and Acupuncture boards would also consult with stakeholders when developing guidelines to identify behaviors that would result in applicants' poor professional practice and problems requiring board action.

The Medical Board's Investigations Process Needs Further Improvement to Better Protect the Public.

Key Findings

- The Board's investigation process has changed as a result of recent legislative directives.
- Limitations in the way the Board uses its experts and protects them from legal challenge threaten the quality of standard-of-care reviews.
- The Board lacks clear direction with regard to meeting its investigation time frames.

With statutory directives and additional resources provided by the Legislature in 2003, the Medical Board's investigation process has significantly improved. The Board has implemented all of the required provisions, including a 180-day deadline for complaint investigations, the development of a pool of nearly 400 expert panelists to assist the Board with complaints regarding medical competency, and a system for prioritizing quality of care, impaired physician, and sexual misconduct cases. Further improvements to the Board's investigation process would help maintain the quality of standard-of-care reviews by Board experts, and ensure timely completion of investigations in accordance with the Legislature's directives.

Recommendations

Change in Statute

3.1 Require the Board to use at least two expert panelists for each standard-of-care investigation.

The Board would be required to get a review from at least two expert panelists before recommending a case be dismissed, as it currently does for cases in which the first reviewer finds that a standard-of-care violation has occurred. Doing so would prevent cases from being dismissed on the basis of one expert panelist's opinion. Using two expert panelists would require cases currently reviewed by just one panelist to be sent to a second, and possibly a third, panelist in instances when the first and second panelist disagree as to whether a standard-of-care violation occurred.

3.2 Direct the Board to develop additional qualifications and service restrictions for its experts.

The Board would adopt rules to address the length of time that a physician may serve as an expert panelist, develop grounds for removal from service, establish how experts should handle conflicts of interest related to standard-of-care cases, and establish the random selection of expert panelists for quality-of-care cases. To serve, experts also must have necessary expertise and clear a conflict-of-interest review. Grounds for removal from service would include being repeatedly delinquent in reviewing complaints and submitting reports to the Board.

3.3 Clarify the legal protections of Board expert panelists and consultants.

Providing expert panelists and consultants immunity from suit and judgment would help ensure that the Board is able to secure physicians to assist it in the evaluation of medical competency cases, as required by the Medical Practice Act. Protections should not apply in situations where services provided to the Board were fraudulent or with malice. Additionally, statute would clarify that expert

panelists and consultants are represented by the Office of the Attorney General in the event of a lawsuit related to good-faith services provided to the Board.

3.4 Authorize the Board to use up to 30 days to evaluate incoming complaints.

Authorizing the Board to use up to 30 days to evaluate complaints, before complaints are officially filed, would allow the Board to dismiss nonjurisdictional and frivolous complaints. If the Board takes more than 30 days to conduct this initial review, the 180-day deadline to complete investigations would start. Dismissing nonsubstantive complaints would ensure that agency resources get directed to cases more likely to result in a violation of the Medical Practice Act.

3.5 Clarify the consequences of not meeting the 180-day investigation requirement.

The Board would be required to notify all parties to a complaint if, for any reason, an investigation extends beyond the 180-day deadline. Investigations going beyond 180 days should also be reported, along with reasons, in the Board's annual report to the Legislature, in addition to listing cases more than one year old. Additionally, statute should clarify that complaints may not be dismissed solely because they have not been set for a hearing within 180 days.

3.6 Require the Board to develop additional definitions of good cause for extending an investigation.

Requiring the Board to further define good cause in rule would lead to a better understanding among staff, licensees, and the public of the reasons a Board investigation may go beyond 180 days. The Board should include internal circumstances that may affect an investigation's time line, such as the extended illness of a staff investigator or an expert panelist's delinquency in reviewing and submitting a report to the Board.

Management Action

3.7 The Board should make an effort to use more expert panelists who reside outside the Austin area.

The Board would avoid repeated preferential selection of expert physician panel members by developing, by rule, the method for which it would rotate through the expert physician panelists, taking into account issues such as a lack of experts in a particular specialty or a high number of complaints. In all instances, the Board would still match the respondent's specialty to that of an expert panelist.

Issue 4

The Boards Have Not Established Clear Guidelines to Govern the Informal Hearings Process.

Key Findings

- The boards resolve many disciplinary cases through informal hearings.
- The roles of staff and panel members in hearings has not been defined.
- The role and responsibilities of the District Review Committees are not clear.

- The composition of the boards' informal hearing panels does not ensure balanced representation.
- The boards are limited in their ability to quickly resolve nonmedical complaints.
- The boards inappropriately consider complaints that have not resulted in sanctions.

The informal hearings process is a key part of the Medical, Physician Assistant, and Acupuncture boards' enforcement process, as the majority of the boards' disciplinary actions result from informal hearings. Board members, staff, and other designated participants play significant roles in these hearings. However, the roles and responsibilities of these participants, as well as the makeup of the panels that hear complaints at the informal hearing level, have not been clearly defined. In addition, staff does not have authority to handle administrative, nonmedical complaints, resulting in some complaints unnecessarily going through the informal hearings process.

Recommendations

Change in Statute

4.1 Clarify the roles and responsibilities of participants in informal hearings.

The roles and responsibilities of informal hearings participants – including board members, District Review Committee (DRC) members, and all appropriate staff – would be defined in statute to ensure fairness and consistency in the process. The Medical, Physician Assistant, and Acupuncture boards would ensure that all participants are aware of their required tasks, as well as their limitations during informal hearings.

4.2 Clarify the District Review Committees' role in statute.

This recommendation would clarify that DRC members assist the Medical Board in the informal settlement conference process. The Medical Board would retain authority to adopt rules assigning additional duties to the District Review Committees, as long as the rules do not conflict with other statutory provisions.

4.3 Clarify eligibility requirements and establish conflict of interest, grounds for removal, and training requirements for District Review Committee members.

Statutory provisions for conflict of interest, grounds for removal, and training that apply to Medical Board members would be reflected for DRC members as well. In addition, physician members who serve on the District Review Committees and are involved in standard-of-care cases would be required to meet the same qualifications, as defined by the Medical Board, as physicians who serve on the Board's expert physician panel.

4.4 Require at least two panelists in all informal hearings.

A minimum of two panelists – including at least one physician – would serve on all informal settlement conference panels that deliberate on disciplinary cases to determine if a violation occurred. However, if a respondent waives this requirement, the boards may conduct the informal hearing with one panel member. Physician panelists must have qualifications comparable to physicians serving on the Medical Board's expert physician panel. This recommendation would also apply to informal hearings requesting a modification or termination of an order, but does not apply to hearings for showing compliance with a Board order.

4.5 Require the boards to include one public member in the informal settlement process.

The boards would include at least one public member in their informal settlement conferences. These conferences help the boards determine whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process. For the Medical Board, the public member could be a Board member or a member of one of the District Review Committees.

4.6 Increase the number of public members on the District Review Committees.

This recommendation would add two additional public members to each District Review Committee, bringing each committee's composition to seven Governor-appointed members – three doctors of medicine, one doctor of osteopathic medicine, and three public members. Because DRC members' primary role is to serve on informal settlement conference (ISC) panels for the Medical Board, increasing the number of public members on the District Review Committees would provide the Board with a larger pool to draw from for informal hearings without increasing the size of the Medical Board.

4.7 Authorize staff to settle nonmedical complaints.

Staff would have authority to resolve cases involving nonmedical and administrative violations, subject to delegation by the boards. Staff would dismiss these complaints, subject to review by the boards at their public meeting, or refer the matter directly to a settlement conference. Staff would recommend enforcement action, which the licensee could accept or reject. The boards would retain final decisionmaking authority over the staff's recommendations, and the licensee would always retain the right to request that the case be heard at an informal settlement conference.

4.8 Require the Board to provide licensees scheduled for an informal hearing with information regarding the grounds for the hearing.

The Medical Board would provide licensees with the information used by the Board as the basis of a complaint for which an informal hearing has been scheduled. The Board must provide this information at least 30 days before the informal hearing, unless the Board shows cause for the delay. If the Board does not provide the information to the physician at least 30 days before the hearing, the licensee may use the delay as grounds for rescheduling the hearing.

Management Action

4.9 The boards generally should not consider previously dismissed complaints when deliberating on disciplinary actions.

Although previously dismissed complaints are maintained in a licensee's record, the boards should not consider them when deliberating on a current complaint, except when the nature of previous dismissals involves a similar type of complaint that is relevant to the current complaint. However, informal hearing panel members would continue to be able to consider a licensee's previous history of all *violations* when determining sanctions for a current violation.

4.10 The Medical Board should improve its communication with District Review Committee members.

The Medical Board should develop a more formal, consistent process for communicating with District Review Committee members. Because DRC members play a significant role in the Medical Board's

informal hearings process, they could benefit from receiving timely updates regarding the ISCs in which they participated. Providing information such as the Board's final decision on a case, the results of a SOAH hearing, and the reasons for any modifications to an ISC panel's recommendation would allow DRC members to have a better understanding of the Board's priorities, the level of evidence needed to indicate a violation of statute or Board rules occurred, and the appropriate sanction level for types of violations.

4.11 The Medical Board should require at least one member from each informal settlement conference panel to attend Board meetings.

The Medical Board should require at least one member from an ISC panel to attend the full Board meeting when a case the panel heard is on the agenda. This would ensure that the Board members who did not serve on the ISC panel are able to get a complete picture about the case, including how the panel arrived at its decision. In the event that only DRC members sat on the ISC panel, the Board should require the panelists to either attend the full Board meeting or be available via teleconference. This recommendation does not require that a Board member attend each ISC.

4.12 The Medical Board should adopt rules to prohibit communication between Board members and staff regarding open enforcement cases.

Under this recommendation, the Medical Board would establish rules prohibiting ex parte communication between Board members and agency staff regarding enforcement cases actively under consideration by Board members, including while the case is at the State Office of Administrative Hearings.

4.13 The Medical Board should attempt to resolve enforcement cases informally.

The Medical Board should make a good-faith effort to resolve complaints through the informal hearings process before proceeding with a contested case at the State Office of Administrative Hearings.

Issue 5

The Board Cannot Enforce Provisions of the Medical Practice Act Relating to Medical Peer Review.

Key Findings

- Peer review actions against a physician are grounds for disciplinary action by the Medical Board.
- Statute is not clear on the Board's authority to use peer review information in disciplinary hearings, causing the Board to miss an opportunity to discipline physicians for violations of the Medical Practice Act.

Medical peer review provides a valuable process for physicians and other health-care practitioners to monitor and evaluate physicians' qualifications, professional conduct, and patient care. As the professionals who work most closely with a physician, other licensed physicians and medical staff have the best opportunity to identify known or suspected problems and to make recommendations to improve the quality of medical care.

The Medical Practice Act requires a health-care facility or medical peer review committee to report to the Medical Board certain adverse actions taken against a physician's privileges to practice because

of unprofessional conduct or professional incompetence that was likely to harm the public. Such actions are to be considered violations of the Medical Practice Act, subject to discipline by the Medical Board, upon finding that the actions were appropriate and reasonable. However, the Board has difficulty enforcing these provisions because statute does not clearly allow the Board to disclose peer review documents in a contested case hearing.

Recommendations

Change in Statute

5.1 Clarify the Board's ability to disclose peer review documents in disciplinary hearings, subject to confidentiality at the Board and at the State Office of Administrative Hearings.

This recommendation would clarify that the Board's current authority to disclose peer review documents in disciplinary hearings extends to formal contested case hearings before the State Office of Administrative Hearings (SOAH). It would also clarify that peer review documents shall remain confidential at the Board and at SOAH. Although the Board would be able to disclose peer review documents at SOAH, peer review documents would not be available for discovery or court subpoena and may not be introduced into evidence in any action for damages, including a medical professional liability action.

5.2 Clarify that medical records otherwise available are not confidential.

This recommendation would clarify that records, such as a patients' medical records, that are available to the Board through means other than a peer review committee's records are not privileged and confidential, even if the medical records are used in peer review proceedings.

5.3 Clarify the scope of the hearing, standard of review, and burden of proof for formal disciplinary proceedings in which peer review action is the sole ground alleged for disciplinary action.

This recommendation would provide guidance to administrative law judges at the State Office of Administrative Hearings in determining whether an action taken by a peer review committee was appropriate in contested cases where peer review action is the sole ground alleged for disciplinary action. Guidance would also include how SOAH should evaluate peer review documents that support the committee's action.

5.4 Clarify that the appropriate use of peer review information in contested case hearings at SOAH is the basis for the opinion of an expert witness called by the Board.

Peer review action would be one element of proof in a contested case, as it would not serve as a substitute for required evidentiary proof of the facts supporting the alleged violation. Members of the peer review committee would not be subject to subpoena or discovery in the contested case hearing at SOAH.

5.5 Direct the Medical Board to investigate complaints regarding misuse of the peer review process.

The Medical Board would have clear authority to review complaints regarding misuse of the peer review process, including fraud and malicious conduct. The Board would investigate these complaints the same way it handles other complaints.

The Medical Board's Private Rehabilitation Order Does Not Adequately Provide Public Protection.

Key Findings

- The Board issues rehabilitation orders to applicants and licensees with impairment issues.
- The use of private rehabilitation orders does not protect the public when it shields standard-of-care violations.
- The role of county medical societies and other professional organizations in the Board's compliance program is unclear.
- Other health licensing agencies' rehabilitation orders provide better public protection.

Both the Legislature and the Board have established addressing impaired physicians as a priority. To encourage practitioners to report their impairment, the Board offers private, nondisciplinary rehabilitation orders to applicants and licensees who meet certain requirements. However, the Board may issue a private order to a physician, even if that physician also violated the standard of care. As a result, the public's knowledge of the violation is limited. While private rehabilitation orders serve as a valuable incentive to seek treatment for impairment, the Board should limit use to those physicians who have not harmed the public by violating a standard of care. Also, while professional organizations can serve as a significant resource in the Board's efforts to monitor a physician's rehabilitation, the Board does not provide clear direction to these entities. As a result, these organizations may be unsure of the Board's expectations, thus affecting the Board's ability to ensure that impaired physicians get needed treatment and to accurately monitor licensees under rehabilitation orders.

Recommendations

Change in Statute

6.1 Restrict nondisciplinary rehabilitation orders to impaired physicians who have not also violated the standard of care.

Applicants and licensees with a current condition or history of substance or alcohol abuse would be eligible for a private, nondisciplinary order only if the licensee has not violated the standard of care as a result of the impairment. If the Board receives a valid complaint related to the physician's impairment before the physician signs an agreed private rehabilitation order, the physician is not eligible for the private order. In addition to physicians, this recommendation would also apply to physicians-in-training, physician assistants, acupuncturists, and surgical assistants.

6.2 Require the Board to define the roles and responsibilities for professional associations in rehabilitation orders.

The Board would clarify its expectations of county medical societies and other professional associations in a physician's rehabilitation. Among other things, the Board should clearly state the type of information to be reported, the frequency of the reports, and the format the association should use to submit the reports to the Board, and any other relevant requests. This recommendation would

also apply to surgical assistants licensed by the Medical Board, and licensees of the Physician Assistant and Acupuncture boards.

Issue 7

Exemptions From Office-Based Anesthesia Regulation Potentially Place the Public at Risk.

Key Findings

- The Medical Board regulates physicians' use of anesthesia to ensure the quality and safety of office-based surgery.
- Lack of regulation of moderate anesthesia places the public at risk of bodily injury or death.
- Exempting physicians from regulation of moderate sedation is inconsistent with other Texas health-care practices and other states' medical practice laws.

Because the volume and complexity of surgical procedures performed in outpatient settings has increased, the Medical Board regulates physicians who provide office-based anesthesia to ensure public safety. Physicians who administer office-based anesthesia must register with the Board and follow strict safety guidelines regarding anesthesia administration, including the maintenance of emergency supplies and equipment and transportation agreements with local emergency services. Several exemptions to regulation requirements exist, most of which relate to facilities licensed by another entity. However, exempting physicians who use moderate sedation potentially reduces the Board's ability to protect the public. Patients who receive moderate sedation from exempt physicians for surgery and other invasive procedures in an outpatient setting are at risk because such physicians do not have to follow the Board's safety guidelines and may be unprepared to handle unforeseen emergencies.

Recommendation

Change in Statute

7.1 Remove the statutory exemption for physicians who use moderate sedation in outpatient settings.

Physicians who use certain drugs for moderate sedation in an outpatient setting would no longer be exempt from the Medical Board's regulations and would be required to register with the Board and comply with Board rules regarding minimum standards for providing anesthesia services. The Board would have authority to discipline those physicians who violate office-based anesthesia rules. All other exemptions, such as outpatient settings where local anesthesia is used, and licensed and accredited facilities, would not be affected by this recommendation and would remain in place. Requiring physicians who use moderate sedation to register with the Board would ensure that surgery and invasive procedures performed by a physician in an outpatient setting are subject to similar safety standards as those performed in a hospital or ambulatory surgical center, or even a dental office, which would ultimately make the Board better able to protect the public.

The Diffusion of Authority for Regulating Acupuncture Causes Inefficiency and May Affect the State's Ability to Protect the Public.

Key Findings

- The Acupuncture and Medical boards share responsibility for the regulation of acupuncture in Texas.
- Medical Board oversight of acupuncture licensing and enforcement actions does not provide added public protection and creates an unnecessary layer of regulation.
- The Acupuncture Board lacks authority to protect the public from immediate danger.
- The Acupuncture Board's process for approving continuing education is inconsistent and time-consuming.
- The authority to approve degree programs at Texas acupuncture schools is unclear.

The Texas State Board of Acupuncture Examiners has the responsibility for protecting public safety by ensuring that acupuncturists are qualified and competent practitioners. However, the Acupuncture Board does not have final approval authority for licensing and enforcement activities, as this rests with the Medical Board. This delays licensing and enforcement actions and wastes resources. The Acupuncture Board also approves all continuing education courses and, until recently, acupuncture degree programs in the state.

Recommendations

Change in Statute

8.1 Authorize the Acupuncture Board to approve licensing and enforcement actions.

The Acupuncture Board would approve applications for licensure and finalize enforcement actions without needing the Medical Board's approval. The Medical Board would maintain oversight of the Acupuncture Board's rulemaking process.

8.2 Strengthen the Acupuncture Board's enforcement authority to include summary suspension and cease-and-desist orders.

The Acupuncture Board would have authority to temporarily suspend a license without holding an initial hearing or Medical Board approval. Doing so would allow the Acupuncture Board to immediately stop activity that could harm the public. Also, the Acupuncture Board, without Medical Board approval, would be allowed to issue cease-and-desist orders. Cease-and-desist authority would enable the Board to move more quickly to stop unlicensed activity that threatens the health and safety of the public.

8.3 Streamline the Acupuncture Board's process for approving continuing education.

The Acupuncture Board would establish guidelines for preferred providers and course content using other state agencies and other acupuncture licensing boards' methods as a model. Once guidelines

for approval are established, agency staff would approve course applications, and would refer any questionable applications to the Board for review and final approval.

8.4 Clarify that the Texas Higher Education Coordinating Board has the authority to approve degree programs for acupuncture schools in Texas.

The Texas Higher Education Coordinating Board would have the authority to approve Texas acupuncture schools and their degree programs. The Acupuncture Board would maintain the authority to establish education requirements for licensure.

8.5 Require the presiding officer of the Acupuncture Board to be a licensed acupuncturist.

When selecting the presiding officer of the Acupuncture Board, the Governor would choose from the four licensed acupuncturists required on the Board.

Issue 9

The Medical Board Needs Flexibility in How It Regulates the Delegation of Prescription Authority by Physicians.

Key Findings

- Physicians can delegate prescriptive authority to physician assistants and advanced nurse practitioners.
- The Board's authority to waive prescriptive delegation requirements is scheduled to expire.
- Registering prescriptive delegation authority with the Medical Board provides no useful information.

By delegating prescriptive authority to physician assistants and advanced nurse practitioners, physicians can provide increased access to care. The Medical Practice Act establishes requirements for prescriptive delegation, and allows the Board to waive some of the supervision requirements. The Prescriptive Delegation Waiver Committee, an advisory committee to the Medical Board, currently reviews requests for waivers and makes recommendations to the Board. However, both the Board's authority to waive and the committee expire in 2005. In addition, requiring practitioners to register prescriptive authority with the Board is not necessary to protect the public.

Recommendations

Change in Statute

9.1 Continue the Board's authority to waive prescriptive delegation requirements.

This recommendation would remove the expiration date for Board waiver of delegation requirements. The Board would continue to be able to waive site and supervision requirements for physicians who delegate prescriptive authority to physician assistants and advanced nurse practitioners. However, the Prescriptive Delegation Waiver Committee would expire and the Medical Board would assume this responsibility through its committee structure.

9.2 Eliminate the prescriptive delegation registration requirement and authorize the Board to establish rules that require physicians to record delegation.

Physicians, physician assistants, and advanced nurse practitioners would no longer be required to register their intent to practice or to supervise delegated prescriptive authority with the Board. Physicians who delegate prescriptive authority would be required to document in their own records when prescriptive authority is delegated, and the Board would have access to this information if needed for an investigation.

Issue 10

Key Elements of the Boards' Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the boards' statutes do not follow model practices and could potentially affect the fair treatment of licensees and the agency's ability to protect consumers.
- Nonstandard enforcement provisions of the boards' statute could reduce the agency's effectiveness in protecting consumers.
- Certain policy body and administrative requirements of the boards' statute could reduce the boards' efficiency and flexibility to adapt to changing circumstances.

Various licensing, enforcement, and administrative processes in the Medical, Physician Assistant, and Acupuncture boards' statutes do not match model licensing standards developed by the Sunset Commission from experience gained through more than 80 occupational licensing reviews over the last 25 years. For example, prohibiting medical faculty members from serving on the Medical Board prevents qualified members of the medical profession from serving on the policy body. A comparison of the Board's statute, rules, and practices with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other agencies.

Recommendations

Licensing

Change in Statute

10.1 Require physician assistant and acupuncture applicants to pass a jurisprudence exam as a condition for licensure.

This recommendation builds upon existing licensure requirements by requiring physician assistant and acupuncture applicants to pass a jurisprudence exam to be eligible for licensure. The Physician Assistant and Acupuncture boards would each need to develop an examination based on their licensing act and rules, and other applicable state laws and regulations affecting professional practice. The boards would also establish rules regarding examination development, fees, administration, re-examination, grading, and notice of results. The requirement to pass the jurisprudence exam would only apply to individuals who apply for licensure on or after September 1, 2006; individuals licensed before then would be exempt from passing the jurisprudence exam.

10.2 Clarify that the Medical, Physician Assistant, and Acupuncture boards must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the Medical, Physician Assistant, and Acupuncture boards' authority to adopt rules that follow the general guidelines in Chapter 53 of the Occupations Code by specifically requiring the boards to develop rules, under the provisions in Chapter 53, defining which crimes affect licensees' ability to practice. This recommendation would not affect the changes made last session authorizing the Medical Board to refuse to license or to take disciplinary action against physicians placed on deferred adjudication for felonies or certain misdemeanors. Because the Physician Assistant and Acupuncture boards do not have final rulemaking authority, these boards would recommend rules to the Medical Board for approval.

10.3 Authorize staff to issue licenses to qualified physician, physician assistant, and acupuncture applicants.

Staff would have authority to issue permanent physician, physician assistant, and acupuncture licenses to individuals who meet all licensing requirements without needing formal board approval. However, staff would forward applications that do not clearly meet licensing requirements to the appropriate board for further consideration. Because surgical assistant licenses fall under the Medical Board's jurisdiction, staff would have authority to issue these licenses as well. The Board would adjust license fees to compensate for any lost revenue caused by eliminating temporary licenses.

10.4 Clarify the Physician Assistant Board's responsibility to establish a system of continuing medical education.

The Physician Assistant Board would have clearer statutory authority to adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. Specifically, the Board would adopt and administer rules that:

- establish the number of hours of continuing medical education the Board determines appropriate as a prerequisite to the renewal of a license;
- require at least one-half of the hours to be Board approved; and
- adopt a process to assess a license holder's participation in continuing medical education courses.

10.5 Change the basis for the Physician Assistant Board's late-renewal penalties.

The renewal fee for physician assistants who are delinquent in renewing their license would be based on the normal renewal rate set by the Board, not the examination fee. To renew a license that has been expired for 90 days or less, the renewal fee would equal 1-1/2 times the standard renewal fee. If the license has been expired for more than 90 days, but less than one year, the renewal fee would equal two times the standard renewal fee. This would bring the Physician Assistant Board in line with statutory requirements for the Medical and Acupuncture boards.

10.6 Authorize the Medical and Physician Assistant boards to adopt a system under which physician and physician assistant licenses expire on various dates during the year.

The Medical and Physician Assistant boards would establish, by rule, a license renewal system under which licenses expire on various dates during the year. This change would replace the requirement for the Medical Board to renew physicians' licenses at the end of their birth month, and it would

provide new authority to the Physician Assistant Board to stagger its renewals. Because the Medical Board oversees the Physician Assistant Board's rulemaking process, the Physician Assistant Board would recommend its rules to the Medical Board.

Management Action

10.7 The Medical Board should discontinue its practice of requiring applicants to appear before the Board for a personal interview.

The Medical Board should no longer require physician applicants to travel to Austin to prove their identity and the authenticity of their original medical school diploma, particularly if staff can verify the information through primary sources. The Board already receives primary source verification of applicants' medical school education from transcripts sent directly to the Board from medical schools. The Board would not be prohibited from requiring applicants to make a personal appearance, but should only do so when staff cannot verify vital information through an independent source.

Enforcement

Change in Statute

10.8 Authorize the Acupuncture Board to refuse to renew a license and allow the Physician Assistant and Acupuncture boards to accept the voluntary surrender of a license.

The Acupuncture Board would have the full range of penalties available for disciplinary actions against an acupuncturist who violates state law or Board rules. In developing its standard penalty matrix, the Acupuncture Board would incorporate refusal to renew a license into its disciplinary options. Doing so would allow the Board to better apply the appropriate sanction for offenses, such as failure to pay an administrative fine. This recommendation also would clarify that the Physician Assistant and Acupuncture boards have authority to accept the voluntary surrender of a license. The boards would recommend rules to the Medical Board that outline how the boards determine whether a practitioner is competent to return to practice.

10.9 Authorize the boards to require refunds as part of the agreed settlement process.

The Medical, Physician Assistant, and Acupuncture boards would be allowed to include refunds as part of an agreed order reached in an informal settlement conference on a complaint. This authority would be limited to ordering a refund not to exceed the amount the complainant paid for services. Any refund order would not include an estimation of other damages or harm and must be agreed to by the licensee. The refund may be in lieu of or in addition to other sanctions against a licensee.

10.10 Authorize the Medical and Physician Assistant boards to issue cease-and-desist orders.

Cease-and-desist authority would enable the boards to move more quickly to stop unlicensed activity that threatens the health and safety of the public. The boards would also have authority to assess administrative penalties against individuals who violate cease-and-desist orders. The Acupuncture Board's ability to issue cease-and-desist orders is addressed in Issue 8.

Policy Body & Administration

Change in Statute

10.11 Allow medical faculty members to be eligible to serve on the Medical Board.

The statutory prohibition against salaried faculty members at a college of medicine serving on the Medical Board would be removed. To be eligible for appointment to the Board, a faculty member would have to satisfy the qualifications outlined in the Medical Practice Act, including conflict-of-interest provisions.

10.12 Clarify that the Senate must confirm appointments to the Physician Assistant and Acupuncture boards.

This recommendation would establish current practice in statute and ensure that future appoints to the Physician Assistant and Acupuncture boards are approved by the Senate in the same process as other Governor appointees.

10.13 Authorize the Physician Assistant Board to establish a fee for individuals who hold an inactive license.

The Physician Assistant Board would set a renewal fee for its inactive licenses. In addition, the Board would establish a time limit for physician assistants to hold an inactive license. Because the Medical Board oversees the Physician Assistant Board's rulemaking process, the Medical Board would have final approval of any fees and time limitations for the license.

10.14 Require the Acupuncture Board to recommend licensing and other fees to the Medical Board.

The Acupuncture Board would propose rules establishing licensing and other fees to regulate acupuncturists. All rules regarding fee levels proposed by the Acupuncture Board would be approved by the Medical Board, which has rulemaking oversight for the Acupuncture Board. However, the Acupuncture Board would play a more significant role in determining what fees are appropriate to regulate acupuncturists in Texas.

Issue 11

Medical Board Members Have Access to Information That Could Potentially Be Used for Personal Advancement or Gain.

Physician members of the Medical Board and physicians acting as Board agents have access to confidential information, such as the number or nature of complaints against another physician, that could potentially be used by the Board member or agent for personal benefit or to harm the career or medical practice of a competitor. Although the Texas Penal Code makes it an offense for public servants to misuse official information to obtain personal benefit or for intent to harm or defraud another, the Medical Practice Act does not prohibit Board members or agents from using or disclosing confidential information to obtain benefit or to harm another.

Recommendation

Change in Statute

11.1 Prohibit physicians from using information acquired from Medical Board duties for personal advancement or gain.

This recommendation would prohibit physicians on the Medical Board or physicians acting as agents of the Board from using information acquired through their Board duties for the advancement of their personal medical practice, or for assisting in the advancement or gain of any other physician or affiliate.

Issue 12

The Medical Board Does Not Publish Reversals of or Errors Related to Its Disciplinary Actions.

The Medical Board currently publishes its disciplinary actions on its Web site and in its newsletters. However, if the Board reverses a disciplinary action because of a decision made by the State Office of Administrative Hearings or by district court, or if the Board finds any errors in its disciplinary decisions, the Board does not subsequently post corrections or acknowledge errors on its Web site or in its newsletters.

Recommendation

Change in Statute

12.1 Require the Medical Board to publish any corrections or reversals of Board disciplinary decisions.

The Board would publish acknowledgments of any errors or reversals related to its disciplinary actions with equal presentation and prominence as the originally published action, and in a form approved by the physician and the physician's lawyer or arbitrator.

Issue 13

The Medical Practice Act Does Not Provide Clear Direction on the Medical Board's Ability to Modify Findings or Rulings Made by the State Office of Administrative Hearings.

For enforcement cases that the Medical Board cannot resolve through informal hearings, the Board files the case at the State Office of Administrative Hearings, where an administrative law judge hears the case in a formal hearing. The administrative law judge then reports the findings of fact and conclusions of law, including recommendations for sanctions, to the Board. While the Administrative Procedure Act outlines the requirements an agency must meet before the agency can change a judge's findings or conclusions, the Medical Practice Act does not prohibit such guidance for the Board in considering proposals for decision submitted by a SOAH judge in a contested case.

Recommendation

Change in Statute

13.1 Clarify that the Medical Board must adhere to the provisions of the Administrative Procedure Act when acting on rulings by the State Office of Administrative Hearings.

This recommendation clarifies that the Medical Board may only change a finding of fact or conclusion of law, or modify or vacate an order made by an administrative law judge at the State Office of Administrative Hearings under certain provisions outlined in the Administrative Procedure Act. Specifically, the Board must determine that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided by the agency, or prior administrative decisions; that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or that a technical error in a finding of fact should be changed. The Board would be required to state in writing the specific reason and legal basis for any changes made.

Issue 14

Texas Has a Continuing Need for the Boards That Regulate Physicians, Physician Assistants, and Acupuncturists.

Key Findings

- The Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners seek to protect the public by ensuring that only qualified physicians, physician assistants, and acupuncturists practice in Texas.
- Texas has a continuing need for regulating physicians, physician assistants, and acupuncturists.
- The existing name of the Board of Medical Examiners does not accurately reflect the Board's current responsibilities and operations.

The State of Texas recognized the need to protect the health, safety and welfare of Texans more than a century ago, when the State began regulating physicians. As the practice of medicine has evolved, the State strengthened its regulation of physicians, who play a pivotal role in diagnosing and treating disease and injury and establishing preventative health care for Texans. Likewise, as the physician assistant profession grew, the State began regulating these key health-care practitioners. And, as the practice of acupuncture became more common in the United States as well as Texas, the State saw the need to ensure that acupuncturists are qualified to practice. Because Texans should have confidence that their health-care practitioners are competent, meet established standards, and are held accountable for their actions, the State has a continuing need in regulating physicians, physician assistants, and acupuncturists. In addition, the current name of the Board of Medical Examiners creates confusion for consumers and other stakeholders, as the name reflects the agency's historic function of administering licensing examinations for physicians, and also implies that the Board solely regulates medical examiners, or coroners.

Recommendations

Change in Statute

14.1 Continue the Texas State Board of Medical Examiners for 12 years, but change its name to the Texas Medical Board.

Under this recommendation, the Medical Board would be continued for 12 years, although to better reflect and communicate the Board's responsibilities, the name would change from the Texas State Board of Medical Examiners to the Texas Medical Board.

14.2 Continue the Texas State Board of Physician Assistant Examiners and Texas State Board of Acupuncture Examiners for 12 years, but remove their separate Sunset dates.

The Texas State Board of Physician Assistants and Texas State Board of Acupuncture Examiners would continue with their existing names as advisory boards under the Medical Board, but their separate Sunset dates would be eliminated. As a result, future Sunset reviews of these two boards would be conducted in conjunction with reviews of the Medical Board.

Fiscal Implication Summary

Several recommendations regarding the boards would have a fiscal impact to the State. The fiscal impact of the recommendations is summarized below:

- **Issue 3** – Requiring the Board to use at least two expert panelists for each standard-of-care investigation would cost \$218,000 per year for the additional panelist's review as well as mailing and copying costs.
- **Issue 4** – Increasing the number of District Review Committee members by eight and requiring committee members to receive training would have a minimal cost, depending on the type of training the Medical Board requires, but these costs would not be significant.
- **Issue 10** – Creating a statutory basis for the Physician Assistant Board's late-renewal penalty would result in a gain of \$3,745 annually. Establishing a renewal fee for the physician inactive license would result in a small, positive fiscal impact as well. Authorizing staff to issue licenses, and thus eliminating the need for temporary licenses, would result in a one-time gain in revenue of \$400,000 in fiscal year 2006 by speeding up the payment of the permanent license fee in the first year of implementation. The agency would experience a loss of \$120,000 that same year and each subsequent year, resulting from the elimination of the temporary fee. The agency also would experience an annual savings of about \$8,000 each year because of reduced administrative effort in processing these temporary licenses.

<i>Fiscal Year</i>	<i>Cost to the General Revenue Fund</i>	<i>Loss to the General Revenue Fund</i>	<i>Savings to the General Revenue Fund</i>	<i>Gain to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>
2006	\$218,000	\$120,000	\$8,000	\$403,745	\$73,745
2007	\$218,000	\$120,000	\$8,000	\$3,745	(\$326,255)
2008	\$218,000	\$120,000	\$8,000	\$3,745	(\$326,255)
2009	\$218,000	\$120,000	\$8,000	\$3,745	(\$326,255)
2010	\$218,000	\$120,000	\$8,000	\$3,745	(\$326,255)



Texas Optometry Board

Agency at a Glance

To ensure the eye health of Texans, the Texas Optometry Board (the Board) has regulated the State's optometry profession since its creation in 1921. The Board meets its mission by:

- licensing optometrists, therapeutic optometrists, and glaucoma specialists;
- enforcing key provisions of the state's Contact Lens Prescription Act;
- regulating separations between optometry practices and retail optical dispensing; and
- investigating and resolving complaints, including taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Board operated on a \$372,000 budget and collected more than \$1 million in revenues from professional and licensing fees and fines. The Board also passed through \$83,448 in licensing fee revenues to support the University of Houston's College of Optometry.
- **Staffing.** The agency employs seven people, all of whom work in Austin.
- **Licensing.** In fiscal year 2004, the Board licensed 3,384 individuals to practice optometry. Of these individuals, 1,358 are also dually licensed as therapeutic optometrists and glaucoma specialists.
- **Inspections.** Board staff inspect optometry practices to check patient exam records, ensure availability of complaint information, and to check separation of patient services from optical dispensing. In fiscal year 2004, the Board conducted 60 of these inspections.
- **Enforcement.** The Board received 148 complaints in fiscal year 2004, and resolved 148, with 139 initiated by consumers. Of the complaints submitted by the public, the most common are for failure to provide a contact lens prescription, incorrect prescription, or failure to diagnose a disease.



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Board Members (9)

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Ann Appling Bradford (Midland)
Judy McClendon Eidson (San Antonio)
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Sharon L. Johnson, O.D. (Arlington)
Randall Reichle, O.D. (Houston)
Elsa Silva (El Paso)

Agency Head

Chris Kloeris, Executive Director
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Recommendations

1. **Modify the State's Contact Lens Prescription Act to Increase Consumers Access to Prescriptions and Provide a Greater Range of Purchasing Choices.**
2. **Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.**
3. **Continue the Texas Optometry Board for 12 Years.**

Issue 1

The Texas Optometry Board Lacks Adequate Authority to Address Concerns About Contact Lens Prescriptions, as Currently Required by Federal Law.

Key Findings

- The State's Contact Lens Prescription Act does not adequately authorize the Board to address complaints regarding contact lens prescriptions, and limits consumers from purchasing lenses in a more competitive market.
- State law does not provide safeguards against contact lens sellers potentially circumventing the authority of the prescriber.

State law governing consumer access to contact lens prescriptions has not kept up with federal law, enforced by the Federal Trade Commission. Federal law requires the release of contact lens prescriptions, superceding state requirements that prescriptions be released only on request of the patient. Because the Board does not have clear authority to enforce the requirements of federal law, consumers have little recourse when seeking to address concerns about access to contact lens prescriptions. State laws governing the verification of these prescriptions may also harm consumer's ability to purchase lenses from a greater range of retail sellers. Because state law does not go as far as federal law regarding the release of contact lens prescriptions, it also does not provide needed safeguards against contact lens sellers manipulating the system to circumvent the authority of the prescribing optometrist or ophthalmologist.

Recommendation

Change in Statute

- 1.1 Conform the State's Contact Lens Prescription Act with federal regulations governing the release and verification of contact lens prescriptions, and ensure protection of consumer's eye health when purchasing lenses from dispensers.**

This recommendation would align the State's regulation of contact lens prescriptions with the federal Fairness to Contact Lens Consumers Act. Specifically, changes would include:

- requiring prescribers to give patients their prescription without having to ask for it;
- eliminating requirements for a contact lens dispenser to fill a prescription only on receipt of an original prescription;
- authorizing verification of a contact lens prescription between a dispenser and a prescriber, to occur within eight business hours by the prescriber;
- prohibiting a dispenser from altering a prescription, and allowing a dispenser to substitute only the identical contact lens sold by the manufacturer under different labels; and
- eliminating requirements for the number of contact lenses to be written on a prescription.

Under this recommendation, patients would have greater access to their contact lens prescriptions, and sellers would be able to fill prescriptions received electronically or by other communication, subject to verification by the prescriber that the prescription is correct. In addition, the health of

patients would be protected by prohibiting sellers from altering a prescription and by allowing the seller to substitute one brand of lens for a different brand only if it is the same contact lens prescribed. The Board would have clear authority to address consumer complaints regarding access to their prescriptions, and would enforce provisions regarding release and verification of a prescription by optometrists.

The Board would work with the Texas Department of State Health Services, the State Board of Medical Examiners, and the Board of Pharmacy to ensure the consistent application of these new requirements in each agency's regulatory program. The Department would enforce provisions regarding verification requests from permitted contact lens dispensers, as well as requirements for the substitution of lenses sold to consumers.

Issue 2

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

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agency's ability to protect consumers.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.

Various licensing and enforcement processes in the Texas Optometry Act, and in the Board's rules, do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 80 Sunset reviews of occupational licensing agencies in 25 years. For example, the lack of a full range of penalties may affect the agency's ability to protect the public from practitioners who violate the law and Board rules. Comparing the Board's regulatory practices and statute to these licensing standards identified variations and needed changes to bring them in line with model standards.

Recommendations

Licensing

Change in Statute

2.1 Require the Board to change its method for calculating late renewal penalties.

The renewal fee for optometrists who are delinquent in renewing their licenses would be based on the normal renewal rate set by the Board, not the examination fee. A person whose license has been expired for 90 days or less would pay a renewal fee equal to 1-1/2 times the renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year, would pay an amount equal to twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on optometrists.

2.2 Eliminate the statutory authority for oral exams in the Board's statute.

This recommendation would remove the authority to use oral exams from its statute, since this language is obsolete and does not conform to model examination procedures.

Management Action

2.3 The Board should contract with an external entity for jurisprudence examination administration, if found to be cost effective.

The Board would develop a request for proposal to determine whether an external entity could administer its jurisprudence examination more efficiently and cost effectively than staff. In determining whether to contract for exam administration, the Board should consider the advantages and disadvantages to licensees, such as frequency of testing opportunities and exam locations.

Enforcement

Change in Statute

2.4 Authorize the Board to conduct inspections for compliance purposes, and as part of the complaint investigation process.

This recommendation would authorize the Board to inspect the premises of a licensee on an unannounced basis during reasonable business hours, as part of the Board's audits and complaint investigations.

2.5 Require the Board to process as complaints all violations found during inspections.

The Board would open formal complaints for any violation of its statutes or rules found during an onsite inspection of an optometrist's patient records and office. By integrating the agency's inspection complaints into the same process as all other complaints, the Board would provide a more accurate portrayal of its overall enforcement performance.

2.6 Require the Board to investigate complaints according to risk.

This recommendation would require the Board to handle complaints according to a more relevant priority system than currently used by the agency. Addressing complaints based on seriousness would ensure that the agency places attention on its most serious cases first and makes more effective use of its investigative resources.

2.7 Authorize staff to process complaints that do not require professional expertise.

The Board's staff would be clearly authorized to dismiss cases or to recommend enforcement action on cases that do not require professional expertise, or are not directly related to patient care. For example, staff would be able to dismiss cases if the investigation shows that no violation occurred, or if the complaint was non-jurisdictional. Additionally, staff would be able to recommend enforcement action, including administrative fines, which the licensee may accept or reject, and have the matter considered by an informal settlement conference of Board members. All proposed orders would still need final approval by the full Board.

2.8 Require that at least two optometrist members of the Board review complaints requiring professional expertise.

This recommendation would require the Board to provide for at least two optometrist members of the Board to review all complaints requiring optometric expertise, and to decide whether to dismiss a case or refer it to an informal settlement conference. If the two members differ on how to proceed, the complaint would automatically be referred to a settlement conference. Board members who

review a complaint would also conduct any subsequent settlement conference, and recuse themselves from voting on disciplinary action concerning that case at a full Board meeting.

2.9 Require the Board to include one of its public members in the informal settlement process.

Requiring the Board to include at least one public member in its informal settlement conferences would ensure that consumer interests are properly represented in determining whether a violation occurred and what action to take.

2.10 Require the Board to adopt an administrative penalty matrix in agency procedures or rules.

This recommendation would ensure that the Board develops administrative penalty amounts that relate appropriately to different violations of the Board's Acts or rules. By requiring the Board to adopt the matrix in rule, the public would have the opportunity to comment.

2.11 Authorize the Board to require a refund as part of the settlement process.

The Board would be allowed to include a refund as a part of an agreed order reached in an informal settlement conference on a complaint. Refunds would be limited to the amount the complainant paid for their eye exam, eyeglasses, or contacts lenses, and would not include an estimation of other damages or harm.

2.12 Prohibit the Board from requiring additional practice authority as part of a sanction.

The Board would no longer be able to allow licensees to obtain additional practice authority as part of a disciplinary action. Instead, continued practice would have to be conditioned on satisfactory completion of remedial continuing education, or appropriate practice restrictions, before the licensee would be eligible for expanded authority.

2.13 Authorize the Board to temporarily suspend a license.

The Board would be authorized to temporarily suspend an optometrist's license upon determination by a committee of the Board that continued practice by the optometrist threatens the public welfare. Action by a panel of three Board members would be required to temporarily suspend an optometry license, and could occur by telephone conference. The Board would also ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension.

2.14 Authorize the Board to issue cease-and-desist orders.

Providing the Board with cease-and-desist authority would enable the Board to move more quickly to stop unlicensed activity that threatens the public's health and safety. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease-and-desist orders.

Management Action

2.15 The Board should make its complaint form available on its Web site in an easily accessible format.

Making a complaint form available on the Board's Web site will help the public more easily prepare and file complaints.

2.16 The Board should use its informal settlement process to develop agreed orders.

The Board should provide sufficient opportunity for a respondent to indicate whether the terms of a proposed order are acceptable, rather than simply stating its recommended disciplinary action. If a respondent does not agree to a proposed order, the participants in an informal settlement conference should attempt to negotiate for terms that both the Board and the respondent can agree to.

2.17 The Board should share prescription-related enforcement cases with appropriate law enforcement agencies.

The Board should share its disciplinary actions resulting from prescription drug violations with the Controlled Substance Registration Program at the Texas Department of Public Safety, and the federal Drug Enforcement Administration. The Board should also coordinate its complaints investigations with these law enforcement agencies to take advantage of the assistance they can provide.

Issue 3

Texas Has a Continuing Need for the Texas Optometry Board.

Key Findings

- Texas has a continuing interest in licensing and regulating optometrists.
- The Texas Optometry Board protects the public by ensuring that qualified individuals practice optometry.

Optometrists play a vital role in ensuring that Texans can see. Texans rely on optometrists for routine eye exams, prescriptions for corrective lenses, monitoring of conditions such as cataracts and macular degeneration, and for treatment of specific conditions such as glaucoma. In addition, certain optometrists may prescribe drugs, including controlled substances. Such services can potentially harm the public's health and safety, and should be regulated by the State.

Recommendation

Change in Statute

3.1 Continue the Texas Optometry Board for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

One recommendation would have a fiscal impact to the State, as summarized below.

- **Issue 2** – Changing the basis on which the Board assesses late renewal penalties would result in a revenue gain to the State of about \$12,700 annually. Applying other licensing and enforcement procedural improvements, and updating the agency's licensing database, would have a negligible cost.

<i>Fiscal Year</i>	<i>Gain to the General Revenue Fund</i>
2006	\$12,700
2007	\$12,700
2008	\$12,700
2009	\$12,700
2010	\$12,700



Texas State Board of Pharmacy

Agency at a Glance

The Texas State Board of Pharmacy protects the public by ensuring that Texans receive safe and quality pharmaceutical care. The Board accomplishes this mission by regulating the practice of pharmacy, the operation of pharmacies, and the distribution of prescription drugs.

The State of Texas began regulating pharmacists more than a century ago, when the Legislature established district boards of pharmaceutical examiners to certify pharmacists. In 1907, the Legislature passed the Texas Pharmacy Act and established the Texas State Board of Pharmacy as an independent state regulatory board. The Board's main functions include:

- licensing qualified individuals to practice pharmacy or operate a pharmacy, and registering pharmacist-interns, preceptors, and pharmacy technicians;
- regulating the delivery or distribution of prescription drugs or devices;
- setting standards regarding the practice of pharmacy, including recognizing and approving pharmacy school degree requirements;
- investigating and resolving complaints against pharmacists and pharmacies; and
- enforcing the Texas Pharmacy Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Board operated with a budget of about \$3.2 million. All costs are covered by licensing fees collected from the industry.
- **Staffing.** The Board has a staff of 48, with 38 based in Austin and the remaining 10 in the field across the state.
- **Licensing.** The Board regulated 22,111 pharmacists, 6,014 pharmacies, and 1,579 pharmacist-interns in fiscal year 2004. The Board also registered 22,164 pharmacy technicians in fiscal year 2004, the first full year of regulation.
- **Enforcement.** The Board received 4,436 jurisdictional complaints in fiscal year 2004, and resolved 2,982. Of the resolved complaints, 466 resulted in disciplinary action, with the largest category of complaints relating to dispensing errors. The remaining complaints were dismissed or referred to another board, such as the Medical Board.



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Board Members (9)

Oren M. Peacock, Jr., R.Ph., President (Sachse)
W. Michael Brimberry, R.Ph., M.B.A.,
Vice President (Austin)
Roger W. Anderson, R.Ph., Dr. P.H. (Houston)
Juliette F. Bartlett-Pack, Ph.D. (Houston)
Kim A. Caldwell, R.Ph. (Plano)

Rosemary Forester Combs (El Paso)
W. Benjamin Fry, R.Ph., FIACP, FACA
(San Benito)
Doyle E. High, R.Ph. (Haskell)
Marcelo Laijas (Floresville)

Agency Head

Gay Dodson, R.Ph., Executive Director
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Recommendations

1. Strengthen the Board's Ability to Regulate Out-of-State Pharmacies.
2. Update the Board's Enforcement Authority to Address Needs Created by Changes in the Pharmacy Industry.
3. Authorize the Board to Access Sales and Pricing Data During Investigations That Resulted From a Complaint or Previously Failed Inspection.
4. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
5. Allow for a Greater Range of Disciplinary Sanctions for Pharmacy Technicians.
6. Authorize the Board to Register and Discipline Pharmacy Technician Trainees.
7. Give Pharmacists the Option of Making Their Home Address Confidential.
8. Continue the Texas State Board of Pharmacy for 12 Years.

The Board's Authority to Regulate Out-of-State Pharmacies Has Not Kept Pace With Changes in Technology.

Key Findings

- Technology has changed how consumers buy their prescription drugs and how regulators do their job.
- Buying drugs online can harm consumers, who may not be aware of the legitimacy of an Internet pharmacy.
- Minimal regulation of out-of-state pharmacies creates an environment for illegal activity.
- The Board cannot hold out-of-state pharmacies to the same licensing standards as Texas-based pharmacies.
- The Board has limited ability to discipline out-of-state pharmacies that violate state law.

Texas established its framework for regulating the pharmacy profession at a time when most consumers purchased their prescription drugs at a pharmacy around the corner. Today, however, many consumers' prescriptions are filled by pharmacies across the country. Although technological strides, such as the Internet, offer great benefits to consumers, they also pose hazards. Without adequate regulation of these distant pharmacies, consumers are at risk of getting unsafe or inappropriate medications, not receiving appropriate oversight from healthcare professionals, or having illegal access to prescription drugs. The Texas Pharmacy Act has not kept pace with recent technological advancements, limiting the Board's ability to regulate out-of-state pharmacies – including Internet pharmacies – that provide prescription drugs to Texans.

Recommendations

Change in Statute

1.1 Require out-of-state pharmacies to meet the same standards for licensure as Texas-based pharmacies.

Under this recommendation, a pharmacy located outside of Texas would have to meet comparable standards as Texas-based pharmacies to receive a license from the Board. The Board would adopt rules outlining the requirements for licensure, which should include proof of credit worthiness and an inspection report that is no more than two years old. In addition, to maintain the license, a pharmacy must have on file with the Board an inspection report that is no more than three years old at any time. The Board should adopt rules that allow for a pharmacy located out of state to submit an inspection report conducted by an entity other than the pharmacy board in the pharmacy's state of physical location. This would ensure that should another state not have comparable inspection procedures to those in Texas, an out-of-state pharmacy would still be able to meet Texas' licensing requirements.

1.2 Clarify that the grounds for disciplinary action for out-of-state pharmacies include the same grounds as for Texas-based pharmacies.

The disciplinary grounds for out-of-state pharmacies would mirror those outlined in the Texas Pharmacy Act for in-state pharmacies, in addition to the grounds that already exist for out-of-state

pharmacies. For example, the Board would have authority to discipline an applicant for or holder of an out-of-state – or Class E – pharmacy license for allowing an employee who is not a pharmacist to practice pharmacy or for failing to establish effective controls against drug diversion.

1.3 Authorize the Board to take disciplinary action on a pharmacy's license based on the action of another state board of pharmacy.

This recommendation would allow the Board to take disciplinary action against a pharmacy licensed in Texas when that pharmacy has been subject to disciplinary action by another jurisdiction's regulatory agency. As a result, the Board would be able to take disciplinary action without having to independently prove the merits of the case, based on the due process the pharmacy owner received in another state, as long as the violation is also a violation of Texas law. This change would make disciplinary grounds for pharmacies more consistent with those for pharmacists.

1.4 Authorize the Board to initiate disciplinary action against an out-of-state pharmacy at any time.

This recommendation would remove the time frames that the Board must adhere to before initiating disciplinary action against an out-of-state pharmacy that allegedly violated the Texas Pharmacy Act. As a result, the Board would not have to wait to see if the regulatory board in the state in which the pharmacy is located takes disciplinary action against the pharmacy first. The Board would still be required to notify the other state pharmacy board about the alleged action, but action by the Texas Board would not be dependent on the other state's action.

1.5 Require pharmacies that use an Internet site to post information on filing a complaint with the Board.

A pharmacy that sells or distributes prescription drugs or devices through an Internet site would be required to include information about how to file a complaint with the Board on the site. The site would specifically mention complaints, so that consumers would be able to easily discern how to contact the Board. The online pharmacy would be able to include a general statement about filing complaints on its home page, but specific information about contacting the Texas Board would be no more than two links from the home page. At a minimum, the information would include the Board's phone number, address, and Web address.

1.6 Establish that a pharmacist or pharmacy may only distribute a prescription drug or device if a valid practitioner-patient relationship exists.

This recommendation would codify the Board's current requirement that pharmacists and pharmacies may not dispense prescription drugs or devices if a valid practitioner-patient relationship does not exist. Because the Texas State Board of Medical Examiners has jurisdiction over physicians, the Pharmacy Board would base any decisions or actions on the definition of practitioner-patient relationship established by the Medical Board.

1.7 Require the Board to list Internet pharmacies licensed in Texas on its Web site.

To provide consumers with simple, easy-to-obtain information about Internet pharmacies licensed in Texas, the Board would post a list of those pharmacies on the agency's Web site. The list should include the pharmacy's name, license number, and state of physical location. This list would be in addition to the Board's licensure verification database.

The Texas Pharmacy Act Does Not Give the Board Adequate Authority to Fully Protect the Public.

Key Findings

- The grounds for disciplining a licensee under the Texas Pharmacy Act do not account for changes in the pharmacy environment.
- Certain statutory restrictions on the Board's sanction authority prevent it from rapidly responding to changes in the pharmacy industry.
- The Board's authority to find violations and sanction licensees is inconsistent with other Texas health-care practitioners and other states' pharmacy laws.

The Board seeks to protect the public through its enforcement efforts. However, current statutory constraints do not permit the Board to address emerging enforcement needs created by changes and advancements in the pharmacy industry. Industry forces create an evolving pharmacy environment requiring enforcement measures responsive to these changes. To continue protecting the public from unsafe pharmacy practices, the Board's statutory enforcement authority must also change to address new threats to public safety.

Recommendations

Change in Statute

2.1 Hold pharmacists accountable for oversight of activities delegated to technicians.

This recommendation would add disciplinary grounds to the Texas Pharmacy Act for inadequate pharmacist supervision of a pharmacy technician, ensuring that a pharmacist who delegates tasks to a technician oversees the work appropriately. If a pharmacist fails to adequately supervise delegated activities or delegates inappropriately, the Board would have grounds to take disciplinary action against the pharmacist. This recommendation would not change the supervisory relationship between pharmacists and technicians, which is already in statute. It also would not affect existing grounds for taking disciplinary action against pharmacy technicians, such as for fraud in becoming registered and violation of drug laws.

2.2 Clarify that a pharmacist or pharmacy that does not comply with a Board rule or order is in violation of the Texas Pharmacy Act and is subject to disciplinary action by the Board.

This recommendation would clarify that the Board may take disciplinary actions against a licensee who does not comply with Board rules or orders. Specifically, rule violations would be subject to the full range of sanctions available to the Board, allowing it to impose more significant sanctions, such as revocation, for serious rules violations. Violations of Board orders would be subject to penalties to provide the Board with needed authority to ensure sanctioned licensees comply with orders. This recommendation would also include clarification that Board orders include the confidential orders or contracts entered into through the Pharmacy Recovery Network peer assistance program.

2.3 Permit the Board to discipline a pharmacist or pharmacy owner who receives deferred adjudication for any felony or for a misdemeanor under any statute governing the practice of pharmacy.

This recommendation would permit the Board to discipline a pharmacist who receives deferred adjudication for any felony or for misdemeanors involving moral turpitude or that relate to statutes affecting the practice of pharmacy, including the Controlled Substances Act, the Dangerous Drug Act, and the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. This change would cover offenses such as forging or altering a prescription and misdemeanor drug possessions. It would also bring the Board's ability to discipline pharmacists and pharmacy owners in line with the Medical Board's authority to discipline practitioners who receive deferred adjudication for relevant offenses.

2.4 Permit the Board to take action against a pharmacist license based on any action of another state board.

Under this recommendation, the Board would be able to apply sanctions to a Texas licensee who violates Texas pharmacy law based on a sanction or order in another state. The Board would be able to impose the full range of sanctions on the licensee without having to prove a case already prosecuted in another state.

2.5 Expand the Board's authority to discipline a pharmacy owner or pharmacist to include drug shortages.

The Board would be able to hold a pharmacist or pharmacy owner accountable for the more significant offense of drug audit shortages, rather than the currently available finding of inadequate record keeping. The Board could determine whether the licensee is accountable for the loss of controlled substances and apply a more severe penalty in cases where the public may be at greater risk.

Issue 3

The Board Does Not Have Access to Key Sales and Pricing Information Needed to Prosecute Illegal Activity.

Key Findings

- The Board investigates complaints alleging violation of pharmacy laws and Board policies.
- The Board's lack of access to sales and pricing data hampers its ability to enforce state law and prosecute illegal activity.
- Other states have access to a pharmacy's sales and pricing data, which enhances their enforcement activities.

The Board uses inspections as a tool to ensure that pharmacies and pharmacists comply with state laws. While most inspections are routine checks, some result from complaints received by the Board or problems discovered during previous inspections. During any inspection, the Board is prohibited from accessing sales and pricing information, even though such information may be crucial to proving a complaint the Board is investigating or confirming a violation found during a previous inspection. As a result, the Board is unable to aggressively pursue cases against pharmacists and pharmacies that commit fraud or dispense drugs illegally.

Recommendation

Change in Statute

3.1 Authorize the Board to access sales and pricing data during investigations that resulted from a complaint or previously failed inspection.

This recommendation would remove the limitation on the Board's access to sales and pricing data, enabling the Board to more effectively enforce state laws and prosecute pharmacies engaged in illegal activity. However, the Board would be authorized to access this information only when the Board has reasonable cause to investigate a pharmacy or pharmacist for illegally dispensing drugs or for violating a provision of the Texas Pharmacy Act or Board rules, such as fraud cases. To protect a pharmacy's business practices, any sales and pricing data collected by the Board would remain confidential during an investigation and in cases where no violation is found. The data would be subject to public information only if it is used in a disciplinary action by the Board.

Issue 4

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

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the consumer.
- Certain administrative provisions of the Board's statute could reduce the Board's efficiency and flexibility to adapt to changing circumstances.

Various licensing, enforcement, and administrative processes in the Texas Pharmacy Act do not match model licensing standards developed by the Sunset Commission from experience gained through more than 80 occupational licensing reviews over the last 25 years. For example, the lack of a full range of penalties may affect the agency's ability to protect the public from practitioners who violate the law and Board rules. A comparison of the Board's statute, rules, and practices with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other agencies.

Recommendations

Licensing

Change in Statute

4.1 Require the Board to adopt procedures to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

Ensuring that the Board makes reasonable accommodations for its licensing exams would provide equal opportunity and access to all qualified applicants. The Board would need to work with the national testing organization to ensure that these rules are followed.

4.2 Authorize the Board to establish policies regarding nonrefundable testing fees.

The Board would have the authority to retain all or part of examination processing fees should an applicant withdraw from an exam without reasonable advance notice or a satisfactory excuse, such as an emergency.

4.3 Simplify the process for a pharmacist who holds an active license in another state to be licensed in Texas.

This recommendation would provide for the Board to issue a license to a pharmacist who has passed any exams required by the Board, is licensed in good standing as a pharmacist in another state that has licensing requirements substantially equivalent to Texas, and meets other statutory requirements. The Board would no longer require a pharmacist to provide proof of an active license from the state in which the pharmacist was originally licensed.

4.4 Base delinquent license renewal fees on the Board's normally required renewal fee.

The renewal fee for pharmacists and pharmacies who are delinquent in renewing their license would be based on the normal renewal rate set by the Board, not the examination fee. To renew a license that has been expired for 90 days or less, the renewal fee would equal 1-1/2 times the standard renewal fee. If the license has been expired for more than 90 days, but less than one year, the renewal fee would equal two times the standard renewal fee.

Enforcement

Change in Statute

4.5 Authorize staff to dismiss baseless cases.

Under this recommendation, staff would have the ability to dismiss cases if the investigation shows no violation occurred or if the complaint does not fall under the Board's jurisdiction. Staff would regularly report administratively dismissed complaints to Board members at the Board's public meetings.

4.6 Increase the amount of the Board's administrative penalty authority and require the Board to adopt an administrative penalty matrix in rule.

The amount of an administrative penalty the Board would be able to impose on an individual who violates the Texas Pharmacy Act or Board rule would be increased from \$2,500 to \$5,000 per violation per day. The Board would also be required to adopt an administrative penalty matrix in rule to ensure that sanctions appropriately relate to violations, and that the public would have the opportunity to comment.

4.7 Remove the requirement that a majority of Board members must approve temporary suspension of a license and provide for the temporary suspension of pharmacies' licenses.

Under this recommendation, a panel of three Board members – and not a majority of five members – would be required to temporarily suspend a pharmacist or a pharmacy license. In addition, temporary suspension authority would be extended to include pharmacies, filling a gap in the Board's enforcement authority. The disciplinary panel would be authorized to hold a meeting by telephone conference call

if immediate action is required and convening of the panel at one location is inconvenient for any member of the panel.

4.8 Authorize the Board to use cease-and-desist orders with regard to practicing pharmacy without a license.

Allowing the Board to issue cease-and-desist orders would enable it to move more quickly to stop unlicensed activity that threatens the public's health and safety. The Board should consider unauthorized practice cases as jurisdictional, and direct investigators to pursue and follow up with unlicensed individuals to ensure compliance. The Board could also assess administrative penalties against violators of these orders. In addition, the Act would be clarified to state that the Attorney General, not the Board, petitions district court for an injunction.

Policy Body

Change in Statute

4.9 Allow pharmacy faculty members to be eligible to serve on the Board.

This recommendation would remove the statutory prohibition against salaried faculty members at a college of pharmacy from serving on the Board as a pharmacist member. To be eligible to serve in one of the six pharmacist positions on the Board, a faculty member would have to meet the qualifications outlined in the Texas Pharmacy Act, including being actively practicing pharmacy.

4.10 Authorize Board members to receive reimbursement for travel expenses.

This recommendation would remove the conflict between the Texas Pharmacy Act and the General Appropriations Act. As a result, Board members would have clear statutory authority to receive reimbursement for all travel expenses, including transportation, meals, and lodging expenses, incurred while conducting Board business.

4.11 Require the Board to establish guidelines for Board subcommittees.

This recommendation would direct the Board to establish formal policies outlining the structure, role, and responsibilities of subcommittees consisting of Board members, thus ensuring the committees operate consistently.

4.12 Eliminate the Pharmacy Board Operating Account.

Under this recommendation, the Board's dedicated account would be removed. The Board would deposit all funds into and receive appropriations from the General Revenue Fund.

Issue 5 _____

The Board Does Not Have a Full Range of Sanctions Available for Disciplining Pharmacy Technicians.

The Board registers pharmacy technicians, who perform tasks related to the preparation of a prescription under the direct supervision of a pharmacist. Duties include preparing and packaging drug orders, affixing labels to prescription containers, and reconstituting medications. Currently, the Texas Pharmacy Act allows the Board to deny, suspend, or revoke a pharmacy technician's registration based on various disciplinary grounds. However, the Act outlines eight actions the Board can take

against a pharmacist's license. The lack of a broader range of sanctions for pharmacy technicians forces the Board to treat pharmacists and pharmacy technicians differently even when similar violations have occurred.

Recommendation

Change in Statute

5.1 Allow for a greater range of disciplinary sanctions for pharmacy technicians.

Under this recommendation, the Board would have a broader range of sanctions available when disciplining pharmacy technicians. In addition to the Board's current authority to refuse to issue or renew, suspend, or revoke a pharmacy technician's license, the Board would also be authorized to restrict, reprimand, and retire a pharmacy technician's license, impose an administrative penalty against a pharmacy technician, and place the pharmacy technician's license on probation. Doing so would bring the range of disciplinary sanctions for pharmacy technicians in line with those for pharmacists.

Issue 6

The Board Does Not Have Authority to Regulate Pharmacy Technician Trainees.

To become registered as a pharmacy technician, an individual must pass a Board-approved pharmacy technician certification exam. Most pharmacy technician trainees work in a pharmacy while studying to take this exam. The time for the trainee to study, take the exam, and receive exam results may be up to one year. During this time, the pharmacy technician trainee has access to prescription drugs and controlled substances in the pharmacy, and the Board believes that pharmacy technician trainees have been responsible for stealing controlled substances during this period. However, the Board has no authority to discipline pharmacy technician trainees until after they have passed the certification exam and become registered pharmacy technicians.

Recommendation

Change in Statute

6.1 Require registration for pharmacy technician trainees and authorize the Board to take disciplinary action.

Under this recommendation, the Board would be authorized to register individuals while they are working in a pharmacy as a pharmacy technician-in-training, similar to the registration method the Board currently uses for pharmacist-interns. This would allow the Board to identify pharmacy technician trainees and refuse to issue a license or restrict, suspend, or revoke their license if they violate state laws or Board rules.

Issue 7

Disclosing a Pharmacist's Home Address Serves No Valuable Purpose.

The Board collects a pharmacist's home address in addition to a pharmacist's business address because the home address provides the agency an alternate means of contacting the licensee. Also, because a pharmacist may change employment, the home address provides a more consistent means for agency staff to communicate with the licensee. However, state law does not allow the Board to withhold a licensee's home address from public disclosure. Disclosing this information, though, could affect a pharmacist's safety and serves no valuable purpose, as a pharmacist's business address is public information.

Recommendation

Change in Statute

7.1 Give pharmacists the option of making their home address confidential.

Under this recommendation, pharmacists would have the option of making their home address confidential, and the Board would be prohibited from releasing the information under the Texas Public Information Act. As a result, the Board would not post a pharmacist's or pharmacy owner's home address on its Web site or in its licensure verification database. Instead, the Board would be able to maintain an address of record or business address that would be subject to public disclosure.

Issue 8

Texas Has a Continuing Need for the Texas State Board of Pharmacy.

Key Findings

- Texas has a continuing interest in licensing and regulating the practice of pharmacy.
- The Texas State Board of Pharmacy protects the public by ensuring that qualified individuals practice pharmacy.

Although prescription drugs cure and treat an increasing number of ailments in the population, they also pose a risk if not taken correctly and under proper supervision. Pharmacists counsel patients about new prescriptions, an important service given the expanding number of new drugs and the heightened risk of adverse outcomes from interactions of different drugs. High-cost drugs create incentives for illegal activities around pharmacy, such as theft and counterfeiting, creating another critical area of oversight for the Board.

Recommendation

Change in Statute

8.1 Continue the Texas State Board of Pharmacy for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

One recommendation regarding the Texas State Board of Pharmacy would have a fiscal impact to the State. The fiscal impact of the recommendation is summarized below.

- **Issue 4** – Eliminating the Pharmacy Board Operating Account would result in about \$4.8 million being available in the General Revenue Fund, instead of within a dedicated account in General Revenue.



Texas State Board of Podiatric Medical Examiners

Agency at a Glance

The mission of the Texas State Board of Podiatric Medical Examiners is to protect the public by ensuring that those who provide podiatric services are qualified, competent, and adhere to established professional standards. The State began regulating the practice of podiatry in 1923 through the Board of Chiropody Examiners within the Board of Medical Examiners. It became an independent agency in 1939 and, in 1967, the Legislature changed the name of the agency to more accurately reflect its responsibility to regulate podiatry instead of chiropody. In 1995, the Legislature gave the agency its current name of Board of Podiatric Medical Examiners.

To accomplish its mission, the Board:

- licenses qualified podiatrists and registers podiatric medical radiologic technologists;
- ensures compliance with the Podiatric Medical Practice Act and Board rules by investigating and resolving complaints alleging illegal or incompetent practice of podiatry, and by taking disciplinary action when necessary; and
- provides information to the public.

Key Facts

- **Funding.** In fiscal year 2004, the Board operated on a \$205,000 budget and collected about \$390,000 in revenue from licensing and examination fees.
- **Staffing.** The Board currently has four staff, up from two in fiscal year 2004, all based in Austin.
- **Licensing.** The Board regulates about 850 podiatrists and 325 podiatric medical radiologic technicians.
- **Enforcement.** In fiscal year 2004, the Board resolved 107 complaints from the public, insurance companies, other government agencies, and those initiated by the Board.



For additional information, please contact Amy Trost at 512-463-1275.

Board Members (9)

Bradford Glass, DPM, President (Midland)
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Carol Lee Roberts Baker (Houston)
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Matthew Washington (Missouri City)

Agency Head

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Recommendations

1. Continue the Texas State Board of Podiatric Medical Examiners for 12 Years.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Agency Practices.

Issue 1

Texas Has A Continuing Need for the Texas State Board of Podiatric Medical Examiners.

Key Findings

- Texas has a continuing interest in licensing and regulating podiatrists.
- The Texas State Board of Podiatric Medical Examiners protects the public by ensuring that qualified individuals practice podiatry.

Over the last 50 years, podiatry has evolved into a complex profession, with podiatrists now having full prescriptive authority, performing surgery, and admitting patients to hospitals. Only medical and osteopathic doctors also have these same privileges. The Board receives complaints of serious allegations against podiatrists, including death, fraud, and substance abuse. To protect the public safety and welfare, the need exists for the continued licensing and regulation of podiatry in Texas.

Recommendation

Change in Statute

1.1 Continue the Texas State Board of Podiatric Medical Examiners for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Issue 2

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

Key Findings

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

Over the past 25 years, the Sunset Commission has reviewed more than 80 occupational licensing agencies, and in doing so, has identified common standards among them. For example, lack of a full range of penalties may affect the agency's ability to protect the public from practitioners who violate the law and Board rules. A comparison of the Board's statute, rules, and practice with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with model standards.

Recommendations

Licensing

Change in Statute

- 2.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.**

This recommendation would require the Board to develop rules that follow the general guidelines in Chapter 53 of the Occupations Code, regarding the type of criminal convictions that affect the licensee's ability to practice podiatry and should have a bearing on licensing and disciplinary decisions.

- 2.2 Simplify the process for a podiatrist who holds an active license in another state to be licensed in Texas.**

This recommendation would add a statutory provision that permits a podiatrist to receive a Texas license if the podiatrist holds an active, unencumbered license in another state and complies with other statutory licensing requirements, including taking the jurisprudence examination. The Board would not be required to issue a license, but must ensure that out-of-state applicants meet substantially the same licensing requirements as Texas podiatrists.

- 2.3 Base delinquent license renewal fees on the Board's normally required renewal fee.**

The renewal fee for podiatrists who are delinquent in renewing their licenses would be based on the normal renewal fee set by the Board, not the examination fee. A person whose license has been expired for 90 days or less would pay a renewal fee equal to 1-1/2 times the standard renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year, would pay an amount equal to two times the standard renewal fee.

Management Action

- 2.4 The Board should contract with an external entity for jurisprudence examination administration, if found to be cost effective.**

The Board would develop a request for proposal to determine whether an external entity could administer its jurisprudence examination more efficiently and cost effectively than staff. In determining whether to contract for exam administration, the Board should consider advantages and disadvantages to licensees, such as more frequent testing opportunities and exam locations.

- 2.5 The Board should consider implementing staggered license renewals.**

Under this recommendation the Board should strongly consider switching to staggered renewals, taking into account the tremendous burden on staff of the current approach. In considering whether to stagger renewals, the Board should take into account the effects of the increasing number of licensees who renew their licenses through Texas Online. If adopted, the Board would then create a system in which licenses expire on a licensee's birthday for podiatrists, at a minimum. If beneficial, the Board would also stagger renewals for radiologic technicians.

Enforcement

Change in Statute

2.6 Authorize the Board to conduct inspections of podiatrists' premises in the course of an investigation, or to determine compliance with a Board order.

Under this recommendation, the Board would be able to inspect – on an unannounced basis during reasonable business hours – the offices or clinics of podiatrists in response to a complaint and in the course of an investigation, or to determine compliance with a Board order.

2.7 Require the Board to include one of its public members in the informal settlement process.

Requiring the Board to include at least one public member in its informal settlement conferences would ensure consumer interests are properly represented in determining whether a violation occurred and what action to take.

2.8 Increase the amount of the Board's administrative penalty authority, and require the Board to adopt an administrative penalty matrix in rule.

The amount of an administrative penalty the Board would be able to impose on an individual who violates the podiatry statute or Board rule would be increased from \$2,500 to \$5,000 per violation per day. This recommendation reflects the significant amounts of money that can be involved in cases of fraud and would pose as a larger deterrent than the existing penalty amount. The Board would be required to adopt an administrative penalty matrix in agency rules to ensure that the Board develops administrative penalty sanctions that appropriately relate to different violations of the Board's Act or rules.

2.9 Authorize the Board to temporarily suspend a license under certain circumstances.

The Board would be authorized to temporarily suspend a podiatrist's license upon determination by a committee of the Board that continued practice by the podiatrist threatens the public welfare. Action by a panel of three Board members would be required to temporarily suspend a podiatry license, and could occur by telephone conference call. The Board would also ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension.

2.10 Authorize the Board to require a refund as part of the settlement conference process.

The Board would be allowed under this recommendation to include refunds as part of an informal settlement conference. Refunds would be limited to the amount the consumer paid the podiatrist, and would not include an estimation of other damages or harm.

2.11 Authorize the Board to issue cease-and-desist orders.

Allowing the Board to issue cease-and-desist orders would enable it to move more quickly to stop unlicensed activity that threatens the health and safety of the public. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease-and-desist orders.

Administration

Change in Statute

2.12 Authorize Board members to receive reimbursement for travel expenses.

This recommendation would remove the conflict between the Podiatry statute and the General Appropriations Act. As a result, Board members would have clear authority to receive reimbursement for all travel expenses, including transportation, meals, and lodging expenses, incurred while conducting Board business.

2.13 Prohibit Board members from serving as voting members on task forces or advisory committees.

This recommendation would prevent Board members from serving as voting members of task forces or advisory committees that develop recommendations to the Board and then voting on the recommendations while serving on the Board.

Fiscal Implication Summary

Two recommendations would have a small fiscal impact to the State. These impacts are summarized below.

- **Issue 2** – Basing late license renewal fees on the cost of the renewal, rather than the cost of the licensing exam, would result in an estimated annual revenue gain of \$6,000 because the renewal fee is higher than the examination fee. The Board would need \$820 a year to cover travel costs associated with requiring a public member to attend informal conferences. Authorizing Board members to receive reimbursement for meals and lodging could cost the Board \$3,960 annually.

<i>Fiscal Year</i>	<i>Cost to the General Revenue Fund</i>	<i>Gain to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>
2006	\$4,780	\$5,100	\$320
2007	\$4,780	\$5,100	\$320
2008	\$4,780	\$5,100	\$320
2009	\$4,780	\$5,100	\$320
2010	\$4,780	\$5,100	\$320



Texas State Board of Examiners of Psychologists

Agency at a Glance

The mission of the Texas State Board of Examiners of Psychologists is to protect the public by ensuring that those who provide psychological services are qualified, competent, and adhere to established professional standards. To accomplish its mission, the Board:

- licenses qualified psychologists, provisionally licensed psychologists, psychological associates, and specialists in school psychology;
- ensures compliance with the Psychologists' Licensing Act and Board rules by investigating and resolving complaints alleging illegal or incompetent practice of psychology, and by taking disciplinary action when necessary; and
- provides information to licensees and the public.

Key Facts

- **Funding.** In fiscal year 2004, the Board spent \$658,272, funded primarily from licensing and examination fees.
- **Staffing.** The Board has 12 staff, all based in Austin.
- **Licensing.** The Board regulates 3,276 psychologists, and more than 3,500 other psychology professionals. In fiscal year 2004, the Board issued 426 new licenses and renewed 6,795 existing licenses. Approximately 1,000 people hold more than one type of license from the Board.
- **Enforcement.** The Board received 105 complaints from the public in fiscal year 2004. That same year, the Board initiated 68 complaints. The Board resolved 149 complaints in fiscal year 2004, with 22 resulting in sanctions against a licensee.



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Board Members (9)

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Agency Head

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Recommendations

1. Discontinue the Board's Oral Examination of Candidates for Licensure as Psychologists.
2. Abolish the Psychological Associate Advisory Committee and Require the Board to Seek Input From All Licensee Groups and Stakeholders Early in Its Rule Development Process.
3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
4. Authorize the Board to Participate in Quarterly Criminal Record Checks Conducted by the Department of Public Safety.
5. Continue the Texas State Board of Examiners of Psychologists for 12 Years.

Issue 1

The Board's Oral Examination of Psychologist Candidates Has Minimal Public Protection Value.

Key Findings

- The oral examination adds little evaluation value beyond other Board licensing requirements, and creates an undue burden on candidates.
- The oral exam's questionable validity and administration introduces subjectivity into the licensing process.
- The use of oral examinations by psychology boards has decreased nationwide.

In addition to ensuring that individuals meet education, experience, and written examination requirements to independently practice psychology, the Psychology Board administers an oral examination as the last major step in its licensing process. However, other licensing requirements adequately ensure a person's competence to practice psychology in Texas, while the oral exam does not provide an accurate assessment of candidates' abilities, and may be an unnecessary barrier to licensure. Additionally, an increasing number of states have eliminated the oral exam requirement for psychology licensure because of concerns about the validity and reliability of oral exams.

Recommendation

Change in Statute

1.1 Discontinue the Board's oral examination of candidates for licensure as psychologists.

This recommendation would eliminate the requirement for a candidate to pass an oral examination to prove minimal competence in psychological practice, and remove a subjective process from psychology licensing. To be licensed, a candidate would still need to submit proof of completion of a doctorate degree in psychology, two years of supervised experience, passing scores from the national written and Texas jurisprudence exams, and three reference letters from licensed psychologists.

Issue 2

The Psychological Associate Advisory Committee Is Not Needed to Advise the Board on the Interests of Psychological Associates in Texas.

Key Findings

- The Psychological Associate Advisory Committee does not provide a useful service to the Board.
- The Board's rulemaking process could provide greater opportunities for input from affected groups.

The Legislature created the Psychological Associate Advisory Committee in 1991 to represent the concerns of psychological associates before the Board. The Committee's statutory responsibilities

are limited to the point that it cannot provide ongoing assistance to the Board, and the Board has made few changes to its rules as a result of the Committee's work. The Board would be better served by seeking input from all stakeholders early in the rule development process.

Recommendations

Change in Statute

2.1 Abolish the Psychological Associate Advisory Committee.

This recommendation would abolish the Committee and remove the requirement for the Governor to appoint its members. The Governor would continue to appoint two psychological associate members to the Board, thus maintaining representation of this license group. This recommendation would not change psychological associates' scope of practice, including the requirement for supervision by licensed psychologists.

2.2 Require the Board to develop guidelines for the early involvement of stakeholders in its rulemaking process.

The Board should provide psychology professionals in all license groups with the opportunity for a stronger role in the development of rules, before formal proposal in the *Texas Register*. This process would be more effective in providing input to the Board than the Psychological Associate Advisory Committee. Allowing stakeholders who will be most affected by a proposed rule to provide advice and opinions earlier in the process will result in better rules that take the perspectives of all license groups into consideration. Once the Board receives early input, it would still publish proposed rules according to the Administrative Procedure Act, and allow the public an opportunity to oppose the rules or suggest alternatives during the comment period.

Issue 3

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

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agency's ability to protect consumers.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.

Over the past 25 years, the Sunset Commission has reviewed more than 80 occupational licensing agencies, and in doing so, has identified common standards among them. A comparison of the Board's statute, rules, and practice with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other licensing agencies.

Recommendations

Licensing

Change in Statute

- 3.1 Allow qualified psychology professionals from other states to apply for licensure in Texas through a streamlined process without meeting minimum practice requirements, as long as they meet all other licensing requirements.**

This recommendation would prohibit the Board from placing additional requirements on already-licensed, independently practicing applicants from other states who have not practiced for a specific length of time before seeking licensure in Texas. Psychology professionals in good standing with other boards should be allowed to seek a license in Texas through the same abbreviated process as other already-licensed, out-of-state applicants with a specific number of years of independent practice experience. These applicants would still be required to meet Texas' licensing requirements, including passing the jurisprudence exam.

- 3.2 Provide an exemption from the provisional license supervision requirement for applicants who are already licensed to practice independently in other states.**

Allowing qualified psychologists from other states to practice independently in Texas while the Board processes their applications would remove a barrier to entry into the profession. As long as a psychologist has a license to practice independently, is in good standing in another state, and meets Texas' licensing requirements, the Board should allow independent practice in Texas. Even without supervision, provisionally licensed psychologists still practice under the authority of the Board and are subject to enforcement action.

- 3.3 Authorize the Board to accept all national credentials as proof of meeting basic licensing requirements.**

This recommendation would streamline the licensing process for qualified psychology professionals moving to Texas from other states. Rather than requiring applicants to resubmit documentation of their education and experience, the Board would verify the information with the credentialing organization. However, the Board should reserve the right to reject an applicant's credentials if it feels the credentials do not provide proof of the minimum licensing requirements. Also, the Board would still require an out-of-state applicant to pass the jurisprudence exam.

- 3.4 Authorize the Board to grant temporary privileges to psychology professionals from other states who wish to practice in Texas for a short, specified period of time.**

This recommendation would allow qualified psychology professionals from other states to practice temporarily in Texas. In granting these temporary privileges, the Board should confirm that applicants are licensed in good standing in their state of origin, and specify the time period in which they may practice in Texas. The Board may charge a processing fee to recover the administrative costs of providing temporary privileges, and would be able to take enforcement action should complaints arise.

3.5 Change the basis for the Board's late renewal penalties.

This recommendation would require the Board to use the standard renewal fee as the basis for its late renewal penalties, rather than the cost of the exams required for licensure. For example, the Board would charge a person whose license has been expired for 90 days or less the standard renewal fee plus a penalty equal to 1-1/2 times the renewal fee. For those whose licenses have been expired for more than 90 days, but less than one year, the Board would charge the standard renewal fee plus a penalty of twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on psychologists.

Enforcement

Change in Statute

3.6 Require the Board to develop a system for complaint trend analysis.

Requiring the Board to analyze the sources and types of complaints it receives should lead to stronger enforcement, a better understanding among licensees of the Board's law and rules, and greater administrative efficiency. The type of information the Board should analyze includes the reason or basis for each complaint; the outcome of each case and what type of disciplinary action was taken, if any; and the nature of and action taken on complaints that are nonjurisdictional.

3.7 Require the Board to investigate complaints according to risk.

This recommendation would require the Board to handle complaints according to a more relevant priority system than currently used by the agency. Addressing complaints based on seriousness would ensure that the agency places attention on its most serious cases first and makes more effective use of its investigative resources.

3.8 Require the Board to include one of its public members in the informal settlement process.

This recommendation would ensure that the Board includes at least one public member in its informal settlement conferences. These conferences help the Board determine whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process.

3.9 Require the Board to adopt a more specific schedule of sanctions in rule.

This recommendation would require the Board to establish, in rule, a schedule to use when determining sanctions for violators, and to ensure that these actions relate appropriately to different violations of the Psychologists' Licensing Act and Board rules. The schedule should cover all possible sanctions, and take into account factors including the licensee's compliance history, seriousness of the violation, or the threat to the public's health and safety. By requiring the Board to adopt the schedule in rule, the public would have opportunity to comment and licensees would better understand the potential consequences of violations.

3.10 Authorize the Board to require a refund as part of the settlement process.

Under this recommendation, the Board would be allowed to include a refund as a part of an agreed order reached in an informal settlement conference. Refunds would be limited to the amount the complainant paid for their psychological services, and would not include an estimation of other damages or harm. The refund may be in lieu of or in addition to a separate Board order for sanctions against a licensee.

Management Action

3.11 The Board should post information about disciplinary orders and sanctions on its Web site in a format that consumers may access easily.

Under this recommendation, consumers would have improved access to disciplinary information. In addition to helping the public, this listing may reduce the amount of time staff must dedicate to handling consumer inquiries.

3.12 The Board should provide explanations of its complaint dismissals to complainants and respondents.

The Board should provide sufficient information to a complainant and respondent as to why it dismissed a complaint. Rather than simply stating that it found no violation, the Board should provide an explanation of its decision, including a summary of its findings.

Issue 4

The Board Cannot Perform Regular Criminal Record Checks of Its Licensees.

The Psychology Board currently conducts a criminal record check of each applicant for a license, allowing it to eliminate individuals who would pose a threat to the public. However, the Board has no process for identifying licensees who have developed a criminal record after licensure, and can only learn of licensees' criminal activities through allegations raised in consumer complaints.

Recommendation

Change in Statute

4.1 Authorize the Board to participate in the quarterly criminal record checks conducted by the Department of Public Safety.

This recommendation would include the Psychology Board with the Medical, Dental, Podiatric Medical, and Pharmacy boards as agencies receiving quarterly criminal record checks of licensees by the Department of Public Safety. Allowing the Board to participate in quarterly record checks would help the Board more actively identify licensees who may be a threat to public safety.

Issue 5

Texas Has a Continuing Need for the Texas State Board of Examiners of Psychologists.

Key Findings

- Texas has a continuing interest in licensing and regulating psychological service providers.
- The Texas State Board of Examiners of Psychologists protects the public by ensuring that qualified individuals practice psychology.

Many Texans use psychological services, but the provision of such services can place the public at risk. Incompetent or unethical practice can potentially harm the mental health of psychological

service providers' vulnerable client base – children, the elderly, and individuals with mental illness or emotional distress. Additionally, the dependent nature of the psychological service provider-client relationship can put clients at risk of emotional, financial, or sexual exploitation. To protect the public safety and welfare, the need exists for the continued licensing and regulation of psychological practitioners in Texas.

Recommendation

Change in Statute

5.1 Continue the Texas State Board of Examiners of Psychologists for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

The recommendations regarding the Texas State Board of Examiners of Psychologists would result in a fiscal impact to the State. These recommendations are discussed below, followed by a five-year summary chart.

- **Issue 1** – Eliminating the oral exam would result in a net loss of examination fees of \$18,100 a year.
- **Issue 3** – Changing the basis on which the agency assesses late renewal fees would result in a loss of about \$6,185 per year. The cost of requiring the Board to grant temporary privileges to out-of-state psychological professionals would be offset by a fee the Board would charge to cover its administrative costs. Applying other licensing and enforcement procedural improvements would require costs to update the agency's licensing database, but any costs would be offset by licensing fees.

<i>Fiscal Year</i>	<i>Loss to the General Revenue Fund</i>
2006	\$24,285
2007	\$24,285
2008	\$24,285
2009	\$24,285
2010	\$24,285



Public Utility Commission of Texas

Agency at a Glance

The Public Utility Commission (PUC) oversees electric and telecommunications companies to ensure Texas consumers have access to high-quality, competitive utility services. Established by the Legislature in 1975, PUC was originally created to regulate rates and services of monopoly utility service providers. Significant changes in both industries have shifted PUC's primary focus towards oversight through rulemakings and enforcement, and away from regulation of rates and services. PUC's major functions include:

- overseeing and fostering fair competition in the wholesale and retail electricity and telecommunications markets;
- regulating the rates and services of investor-owned electric utilities in areas of the state not subject to retail competition, transmission and distribution utilities in competitive areas, and incumbent local exchange companies that have not elected incentive regulation;
- helping consumers resolve complaints, and enforcing compliance with statutory requirements, agency rules and policies;
- administering discount electricity and telephone service programs for certain low-income and rural customers; and
- monitoring and participating in federal activities that affect the regulation of the electricity and telecommunications industries in Texas.



For additional information, please contact Steve Hopson at 512-463-1300.

Key Facts

- **Funding.** PUC received a total of \$109.9 million in fiscal year 2004. Of this total, more than \$97 million passed through the agency to utilities to provide discounts for low-income electricity consumers in areas with competition. These discounts are funded through fees charged to customers in those same areas.
- **Staffing.** The Commission has 211 employees, all based in Austin.
- **Electric Companies.** In the 75 percent of the state open to competition, PUC has registered 111 power generation companies, licensed 83 retail electric providers, and regulates the rates and services of six transmission and distribution utilities. PUC also oversees the Electric Reliability Council of Texas (ERCOT) – the independent system operator that coordinates activities of these participants in the deregulated electric market. In areas of the state not yet open to competition, PUC regulates the rates, services, and service quality of investor-owned electric utilities. In fiscal year 2004, PUC conducted 34 electric rate cases.

- **Telephone Companies.** PUC certifies providers of local telephone service, ensures that competitive companies have equal access to the telephone network, and monitors the quality of telephone services provided by Incumbent Local Exchange Companies, or ILECs. Currently, 63 companies operate as ILECs and 487 operate as Competitive Local Exchange Carriers, or CLECs. PUC also continues to regulate the rates and services of ILECs that have not elected into incentive regulation, conducting 17 telephone rate cases in 2004.
- **Rulemaking, Arbitrations, and Contested Cases.** PUC establishes rules for the electric and telephone markets and settles disputes between companies through arbitrations and contested case proceedings. In fiscal year 2004, PUC adopted 59 new or modified rules.
- **Customer Protection and Enforcement.** PUC educates the public about electricity and local telephone services, and assists customers with complaints. In fiscal year 2004, PUC received about 129,960 customer calls, and informally resolved about 20,500 complaints. PUC also takes formal enforcement action against violators of the Public Utility Regulatory Act and PUC rules, including violators of the Texas No Call List. In fiscal year 2004, PUC assessed \$1.5 million in penalties against electric and telecommunications companies in Texas and obtained \$2.6 million in refunds and credits for customers.
- **Assistance Programs.** PUC administers several programs to help ensure access to basic utility services. The Low-Income Discount Program provides discounts for about 700,000 low-income electricity customers in areas open to competition, funded through fees charged to customers in those areas. The Universal Service Fund offsets the high cost of telephone service in rural areas of the state, and is funded through fees on telecommunications providers. Relay Texas provides telecommunications services for people with speech and hearing impairments.

Commission Members (3)

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Julie Parsley (Austin)

Barry Smitherman (Austin)

Agency Head

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Recommendations

1. Clarify PUC's Oversight Authority Over the Electric Reliability Council of Texas and Add Two Independent Members to the ERCOT Board.
2. Require ERCOT to Perform Market Monitoring Through a Contract With a Private Company Selected By PUC.
3. Eliminate the Requirement for Telecommunications Utilities to File the *Report of Certain Expenses* and Require PUC to Evaluate the Necessity of Other Required Reports.
4. Increase PUC's Maximum Administrative Penalty from \$5,000 to \$25,000 for the Most Serious Violations.
5. Expand the Use of the System Benefit Fund to Assist Needy Patients on Life Support or With Serious Health Problems Who Are Threatened with Disconnection for Nonpayment.

6. Direct PUC to Establish Reasonable Time Limits for Electricity Service Transfers, Initiations, and Disconnections.
7. Direct PUC to Penalize Parties Responsible for Unreasonable Delays in Switching or Billing of Electricity Consumers.
8. Continue the Public Utility Commission of Texas for Six Years.

Issue 1

The Electric Reliability Council of Texas Lacks Certain Standard Components for Ensuring Independence and Accountability.

Key Findings

- The Electric Reliability Council of Texas (ERCOT) performs numerous public functions in the electric market using funds derived from ratepayers.
- Unlike other Independent System Operator boards, the ERCOT Board still includes a large number of industry representatives, whose direct involvement in the market may lead to conflicts of interest.
- ERCOT's budget and debt are growing significantly, yet PUC reports that ERCOT's fee requests lack the necessary detail for PUC to effectively evaluate the reasonableness of the requests.
- ERCOT posts meeting notices on its Web site, but does not follow the requirements of the Open Meetings Act, potentially limiting the opportunity for public input.

While operating with funds authorized by the Legislature, ERCOT lacks many of the standard components for ensuring accountability. ERCOT is not fully accountable to PUC for its rapidly growing expenditures, debt, and fees. In addition, unlike all other Independent System Operators nationwide, the ERCOT Board still includes a majority of industry representatives, which raises questions of conflicts of interest.

Recommendations

Change in Statute

1.1 Clarify PUC's complete oversight authority over all facets of the Electric Reliability Council of Texas' finances, budget, and operations.

This recommendation would clearly set forth in statute ERCOT's accountability to PUC by amplifying current statutory provisions granting PUC authority to certify ERCOT as the Independent System Operator. Implementation of this recommendation would clearly grant PUC oversight authority over all facets of ERCOT's finances, budget, and operations.

1.2 Add two independent members to the ERCOT Board and provide that the ERCOT Chair must be an independent member.

To ensure greater independence of the ERCOT Board from electricity market players, this recommendation adds two independent members to the ERCOT Board, increasing its size to 16 members, five of which would be independent members. The two new members would be chosen by ERCOT stakeholders through the same process used to select the three current, independent

Board members, including requirements to meet specific professional criteria in ERCOT's bylaws used to select current independent members. The members would serve three-year, staggered terms and the effective date for implementation of the new Board would be September 1, 2006.

1.3 Require ERCOT Board members to disclose any conflicts of interest and recuse themselves from any vote directly related to those interests.

To reduce potential conflicts of interest of ERCOT Board members, this recommendation requires Board members to disclose conflicts of interest, and prohibits members from voting on any matter in which they or their company would directly benefit.

1.4 Grant PUC clear authority to require ERCOT to submit detailed financial information needed to scrutinize ERCOT's fee requests.

To enable PUC to exert greater scrutiny over ERCOT's budget, this recommendation would clarify the statute to ensure that PUC may require ERCOT to provide sufficiently detailed information to effectively evaluate the reasonableness of fee requests. PUC would closely scrutinize ERCOT's cost efficiency, salaries and benefits, and use of debt financing. ERCOT would be required to provide this information in a time frame prescribed by PUC.

1.5 Require ERCOT Board meetings to be open.

To ensure that the work of ERCOT is fully open to the public, this recommendation would require advance public notice and posting of agendas of ERCOT Board meetings in a manner similar to the Open Meetings Act, without actually making the Board subject to that Act or the Public Information Act. Anyone interested in the activities of ERCOT could find out about the meetings in advance and have the opportunity to attend. The Board would be permitted to enter into executive session to address sensitive matters, such as security of the electric grid, confidential personnel information, contracts, and lawsuits.

Issue 2

PUC's Market Oversight Function Cannot Adequately Address Manipulations of the Wholesale Electric Market.

Key Findings

- Market manipulations, if left unchecked, can significantly increase electricity costs and erode confidence in a competitive market.
- PUC cannot effectively discover and correct market manipulations before they become severe.
- Limited monitoring impairs PUC's ability to prosecute and deter manipulations of the wholesale electric market, potentially increasing electricity costs by millions of dollars.

The Legislature charged PUC with oversight of the wholesale electric market to discover, correct, and prevent potential market manipulations that can add millions of dollars to the bills of electricity consumers. However, resource constraints prevent PUC from effectively monitoring the market, limiting PUC's ability to quickly identify manipulations, prosecute suspected manipulators, and deter participants from manipulating the market in the future.

Recommendations

Change in Statute

2.1 Require ERCOT to contract with, fund, and support the operations of a private company to perform market monitoring.

To more effectively monitor market participant behavior and establish a stable funding source, this recommendation would transfer the market monitoring function from PUC's Market Oversight Division to a monitoring unit based at ERCOT. ERCOT would pay for the monitoring unit through its system administrator fee, and provide the monitoring staff with full access to the main operations center and other support, as needed.

2.2 Require PUC to select the monitoring company, define the company's monitoring responsibilities, and set standards for funding, staff qualifications, and ethical conduct.

To maintain independence of the market monitor from market participants, this recommendation solidifies PUC's oversight of the monitoring function. PUC would ensure that the monitoring unit has the resources, expertise, and authority to effectively monitor the wholesale market. To allow ERCOT to provide input on how monitoring funds are spent, PUC would consult with a subcommittee of independent ERCOT board members when setting budget and staffing requirements. However, the independent market monitor would report directly to the PUC Commissioners. PUC would establish ethical standards to ensure that monitoring staff maintain professional and financial independence from market participants.

2.3 Require the market monitoring company to report potential violations of PUC or ERCOT rules or other potential market manipulations to PUC.

This recommendation would ensure that PUC receives the information it needs to investigate and prosecute suspected market manipulations on a timely basis. Monitoring staff would have unrestricted authority to communicate with PUC Commissioners or designated staff.

2.4 Require the market monitoring company to submit an annual report to PUC and ERCOT identifying market design flaws, and recommending methods to fix the flaws.

This recommendation would allow PUC and ERCOT to improve the wholesale market design based on the extensive experience gained by monitoring staff. Improvements in market design should help to prevent future market manipulations. PUC and ERCOT should review the report and evaluate the need to adopt changes to PUC and ERCOT rules based on the recommendations in the report.

Issue 3

PUC Requires Telephone Utilities to File Reports That May Not Be Needed in Today's Regulatory Environment.

Key Findings

- Many of PUC's reporting requirements are burdensome to telecommunications companies, may result in increased costs to consumers, and are not needed under incentive regulation.

- The Legislature has shown interest in reducing unnecessary regulatory burdens on companies.
- Other federal and state agencies have successfully worked with the industries they regulate to reduce unnecessary regulations and cut costs.

PUC requires telecommunications utilities to submit numerous reports covering a broad range of information. Many of these reporting requirements were initiated during the era of rate regulation when PUC needed a great deal of information about the earnings and spending patterns of companies. The Sunset Act requires the Sunset Commission, when assessing an agency's functions, to consider alternative or less restrictive methods of regulation while still adequately protecting the public.

Recommendations

Change in Statute

3.1 Eliminate the requirement for telecommunications utilities to file the *Report of Certain Expenses*.

This recommendation is intended to reduce the burden of PUC's reporting requirements on telecommunications utilities while still adequately protecting the public by eliminating the statutory provision that authorizes PUC to require telecommunications utilities to annually report expenditures relating to business gifts, entertainment, advertising, and public relations. As part of this recommendation, PUC would also repeal any related rules. Eliminating this provision would relieve telecommunications utilities — such as Incumbent Local Exchange Companies that have elected into incentive regulation — from the burden of preparing and submitting this report to PUC on an annual basis, but would not prevent PUC from collecting this information from rate regulated companies using the agency's general statutory authority.

3.2 Require PUC to conduct a one-time review of its reporting requirements for telecommunications utilities to determine the ongoing need for the required reports.

Because many of PUC's reporting requirements are found in agency rule, not statute, this recommendation would require PUC to conduct a one-time, comprehensive review of all reporting requirements in PUC rules and in statute. The review should include an examination of the continuing necessity and use of the information collected, and should be completed by September 2006. During this process, PUC, with the assistance of interested parties, would establish criteria for how and when reports would be used, and would ensure requested information does not duplicate other reports. PUC would be directed to eliminate unnecessary reports that are required in rule and to streamline requirements for reports that continue to be needed.

Management Action

3.3 PUC should consider the burden of new reporting requirements on telecommunications utilities before adopting new rules regarding reporting.

When writing new rules, PUC should weigh the need for new reporting requirements against the burden imposed upon the utility.

Issue 4

PUC's Administrative Penalty Authority Is Inadequate to Address Violations of PURA by Wholesale Electricity and Telecommunications Providers.

Key Findings

- PUC's administrative penalty authority is inadequate to address violations in the competitive wholesale electric and telecommunications markets.
- Other state public utility commissions have greater administrative penalty authority.
- Other Texas state agencies have greater administrative penalty authority.

The Public Utility Commission seeks to protect consumers through enforcement of the Public Utility Regulatory Act and agency rules. While the Legislature increased PUC's maximum administrative fine from \$1,000 to \$5,000 as part of the introduction of competition into the telephone industry in 1995, this fine may not be an adequate deterrent to wholesale electricity and telecommunications providers.

Recommendation

Change in Statute

- 4.1 Increase PUC's maximum administrative penalty from \$5,000 to \$25,000 per day, per violation; with only the highest class, consisting of the most serious violations, resulting in penalties exceeding \$5,000.**

To more effectively address and deter violations by electric and telecommunications utilities operating in a deregulated environment, this recommendation would increase the statutory cap on administrative penalties, permitting the Commission to take stronger action. PUC would be required to develop, by rule, a series of classes of violations with ranges of administrative penalty amounts for each class of violation. However only the most serious violations would result in penalties exceeding \$5,000 per day, per violation.

Issue 5

PUC Lacks Authority to Make One-Time Payments of Utility Bills for Needy Patients on Life Support Through the System Benefit Fund.

Current law establishes purposes for which funds in the System Benefit Fund may be used. These purposes include assisting low-income electricity customers by providing discounts on the rate paid for electricity. However, needy, seriously ill consumers who are in danger of being disconnected for nonpayment of their electricity bills are not included within the permissible purposes for use of the funds.

Recommendation

Change in Statute

- 5.1 Expand the use of the System Benefit Fund to assist needy patients on life support or with serious health problems who are threatened with disconnection for nonpayment.**

This recommendation adds an additional purpose for which funds in the System Benefit Fund may be used. Providing one-time, electricity bill payments to needy, seriously ill consumers who are in danger of being disconnected for nonpayment of their electricity bills is consistent with the original purpose of the System Benefit Fund.

Issue 6

PUC Has Not Established Reasonable Time Limits for Electricity Service Transfers, Initiations, and Disconnections.

As the deregulation of the electricity market has created additional companies that are responsible for generation, transmission, and retail sale of electricity, consumers are not always able to get new electricity service, transfers of service to new addresses, and disconnection orders processed in a timely fashion. PUC currently has no established guidelines to judge whether the time frames for these service changes are reasonable.

Recommendation

Management Action

- 6.1 PUC should establish a rulemaking proceeding to develop reasonable time limits for electricity service transfers, initiations, and disconnections.**

This recommendation would ensure that PUC establishes guidelines for reasonable time limits for service transfers, new service, and disconnections of service for electricity consumers.

Issue 7

PUC Does Not Adequately Penalize Parties Responsible for Unreasonable Delays in Switching or Billing of Electricity Consumers.

Electricity consumers are not always able to get changes in their electricity service processed in a timely fashion and PUC does not always take adequate enforcement actions against parties who create these unreasonable delays.

Recommendation

Management Action

- 7.1 PUC should devote greater resources towards determining and penalizing parties responsible for unreasonable switching or billing delays.**

To better protect electricity consumers in a competitive environment, PUC should make a greater effort towards finding and penalizing persons or companies that create unnecessary roadblocks for electricity consumers to change providers or to receive timely bills.

Issue 8

Texas Has a Continuing Need for the Public Utility Commission.

Key Findings

- Texas has a clear and continuing interest in regulating the electric and telecommunications industries.
- PUC effectively accomplishes its mission in overseeing public utilities.
- PUC is the most appropriate agency to regulate electric and telephone utilities.
- Most other states regulate the telecommunications and electric industries through a structure similar to the Public Utility Commission.

The Public Utility Commission's mission – to protect customers, foster competition, and promote high quality infrastructure in the electric and telecommunications industries – is important to the State. As the Legislature has transitioned these industries from single, integrated monopolies with defined service areas to a competitive environment, PUC's role in enforcing state laws and rules has proved to be important in ensuring that companies compete fairly and obey state and federal law and rules.

Recommendation

Change in Statute

8.1 Continue the Public Utility Commission of Texas for six years.

This recommendation would continue PUC as an independent agency, responsible for protecting electricity and telephone customers and enforcing the rules of competition for these industries. A six-year Sunset date will ensure the Legislature has an earlier opportunity to review the agency's progress in overseeing these rapidly changing industries. The agency would also continue its effort to bring the benefits of competition in the electric and telecommunications industries to the citizens of Texas.

Fiscal Implication Summary

These recommendations would not have a significant fiscal impact to the General Revenue Fund. However, two of these recommendations would result in a cost of about \$1.55 million to the Electric Reliability Council of Texas, a private, non-profit corporation that operates outside the appropriations process. The specific fiscal impact of these recommendations is summarized below.

- **Issue 1** – Adding two new independent members to the ERCOT Board would not have a fiscal impact to the State. However, beginning on the effective date of this recommendation, September 2006, ERCOT would incur total costs of \$150,000 per year to compensate the new, independent Board members.

- **Issue 2** – Transferring responsibility for conducting wholesale electric market monitoring to ERCOT would not have a fiscal impact to the State. However, to conduct an adequate market monitoring function, ERCOT would incur a cost of \$1.4 million per year for six to seven employees, analytical software, and other capital expenses.



Office of Public Utility Counsel

Agency at a Glance

The Office of Public Utility Counsel (OPUC) represents the interests of residential and small commercial consumers to help ensure just and reasonable rates for electricity and telephone services. The Legislature created OPUC in 1983 in response to concerns that residential and small commercial ratepayers were not being adequately represented in utility rate proceedings that ultimately affected them. To accomplish its mission, the Office of Public Utility Counsel:

- appears in contested cases before the State Office of Administrative Hearings (SOAH) and Public Utility Commission (PUC);
- participates in rulemakings and projects at PUC;
- advocates on behalf of consumers in federal regulatory proceedings;
- intervenes in state and federal court cases; and
- represents consumers at the Electric Reliability Council of Texas (ERCOT), serving as a voting member of the Board of Directors.



For additional information, please contact Janelle Collier at 512-936-6553.

Key Facts

- **Funding.** In fiscal year 2004, OPUC operated on a \$1.6 million budget, with \$1.3 million from the General Revenue Fund and about \$300,000 from the System Benefit Fund (SBF). SBF is financed by a fee paid by electricity consumers in competitive areas of the state.
- **Staffing.** The Office of Public Utility Counsel has 19 employees, all of whom work in Austin.
- **Rate Cases and Contested Cases.** OPUC's participation in contested cases has increased in recent years. However, OPUC's participation in rate cases at PUC has declined due to the advent of competition in the electric and telecommunications industries. In fiscal year 2003, OPUC appeared in 77 contested cases and five rate cases.
- **Rulemakings.** OPUC participates in rulemakings at PUC. OPUC participated in 38 different rulemakings in fiscal year 2003.
- **Court Cases.** Appeals of PUC rulings are held in district court, while federal appeals occur in various circuit courts across the country. In fiscal year 2003, OPUC participated in 50 court cases, all involving electric issues.
- **Federal Proceedings.** OPUC advocates on behalf of telecommunications consumers at the Federal Communications Commission (FCC) and electricity consumers at the Federal Energy Regulatory Commission (FERC). OPUC participated in 22 FCC proceedings and two FERC proceedings in fiscal year 2003.

- **ERCOT.** The Public Counsel represents consumers on the ERCOT Board. In fiscal year 2003, OPUC staff spent almost 3,000 hours attending ERCOT meetings and participated in the development of 92 ERCOT protocols.

Agency Head

Suzi Ray McClellan, Public Counsel
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Recommendation

1. **Continue OPUC for Six Years, and Require Increased Consumer Input and Legislative Oversight.**

While Texas Continues to Need an Independent Consumer Advocate, Better Oversight is Needed to Ensure Accountability to the Legislature and Consumers.

The introduction of competition in both the electric and telecommunications industries has significantly changed utility regulation in Texas. As rate regulation of monopoly utilities by PUC has shifted largely to oversight of competitive markets through rulemaking, consumer protection, and enforcement, the role and duties of OPUC have also changed. With so many significant changes, the Legislature needs to reevaluate OPUC's mission when competition has been more fully implemented. In addition, while needed, several concerns about OPUC's accountability should be addressed. OPUC lacks clear performance measures to accurately depict its impact on residential and small commercial consumers. Although OPUC is designed to represent consumers, it has no formal method to solicit input. Finally, OPUC has no formal method for determining the most effective use of its resources in pursuing intervention.

Recommendations

Change in Statute

1.1 Continue OPUC for six years.

A shorter Sunset date would allow the Legislature to reevaluate the ongoing need for an independent consumer advocate when competition is more fully implemented. OPUC would have six years in which to operate, improve its accountability to both the Legislature and the consumers it represents, and the Legislature would evaluate the agency's need in the 2011 legislative session, coinciding with the Sunset review of PUC.

1.2 Require OPUC to annually report its performance to the Legislature.

OPUC would be required to report the number of hours billed, a breakdown of time spent, the types of activities conducted, the number and type of staff positions, and its success rate on appeals. The report would be sent to the appropriate standing committees, House Appropriations Committee, Senate Finance Committee, and the Sunset Advisory Commission.

1.3 Direct the State Auditor's Office to audit OPUC's current performance measures.

SAO would evaluate OPUC's current performance measures to determine the accuracy of the calculations, and if the current measures accurately depict the impact of OPUC. The audit would include all measures, especially the reported bill savings.

1.4 Require OPUC to obtain consumer input through an annual stakeholder meeting.

Under this recommendation, OPUC would be required to have an annual stakeholder meeting to obtain input directly from the consumers it represents. OPUC would receive public comment on its functions and effectiveness, and input to assist the Office in developing a plan outlining its priorities. To provide sufficient notice, the meeting would be posted in the *Texas Register*.

Management Action

1.5 The Office of Public Utility Counsel should perform a cost-benefit analysis before intervention.

Before intervening, OPUC should perform an internal cost-benefit analysis including chance of success, time to be spent, anticipated cost, and consumers' interests and benefits. The analysis would contain information relating to reasonably anticipated litigation involving a governmental body, and therefore would be protected from disclosure under the Public Information Act.

1.6 The Office of Public Utility Counsel should use the Office of the Attorney General as a resource for evaluating the potential costs and benefits of participating in various proceedings.

Though OPUC currently already has the ability to consult with the Office of the Attorney General (OAG), this recommendation would encourage OPUC to take greater advantage of OAG's expertise in determining whether to pursue intervention.

Fiscal Implication Summary ---

These recommendations would result in no fiscal impact to the State.



Regional Education Service Centers

In 2003, the Legislature passed Senate Bill 929, subjecting the state's 20 Regional Education Service Centers (ESCs) to review and abolishment under the Sunset Act. To assist the Sunset Commission in its review, the Legislature required what is now the Legislative Budget Board's (LBB) School Performance Review division to contract with a consultant for a comprehensive audit of ESCs, and report the results of the review to the Sunset Commission. The legislation established specific audit criteria for the review of the ESCs, shown in the textbox *Education Service Centers*, to help determine the following:

- whether any services provided by an ESC could be provided at a lower cost by an alternative service provider;
- whether state appropriations to ESCs are adequate and should continue to be made;
- whether a separate system of Texas Education Agency (TEA) field offices would be appropriate or whether any functions should be transferred to TEA; and
- whether support requirements to school districts could be decreased through business processes or application redesigns.

<p><i>Education Service Centers</i> Audit Criteria</p> <p>Senate Bill 929 required a detailed analysis and review of ESCs based on the following elements:</p> <ul style="list-style-type: none"> • all services provided, including the percentage of school districts using the service and the cost of providing the service; • support functions to school districts; • financial condition and funding sources; • governance structures; and • the number and geographic distribution of ESCs.
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For additional information, please contact Jennifer Jones at 512-463-1291.

LBB contracted with MGT of America, Inc. (MGT) to perform the performance audit of the 20 ESCs. MGT and LBB completed the performance audit of the Education Service Centers in December and reported their findings and recommendations to the Sunset Commission. The three-volume performance audit can be accessed online at www.lbb.state.tx.us/TSPRP/PublicEd_Documents.htm. The Sunset Commission directed Sunset Staff to forward the LBB/MGT recommendations to the Senate Education and House Public Education Committees for their consideration, and adopted the following recommendations.

Recommendations

1. Continue the Education Service Centers by Repealing the Sunset Review Clause.
2. Direct the Commissioner of Education, by Rule, to Require ESC Board of Directors Training.

Issue 1

Texas Has A Continuing Need for the Regional Education Service Centers.

The 20 Regional Education Service Centers play an integral role in the State public education system. ESCs assist Texas school districts and charter schools, as well as TEA, by providing training, technical assistance, administrative support, and other collaborative services aimed at strengthening educational programs and improving student performance. ESCs design their products and services to meet the needs of local school districts, charter schools, teachers, and administrators in each region of the state. Additionally, ESCs enable school districts to operate more efficiently and economically by offering services that many small districts would be unable to afford individually, including cooperative purchasing and technology support.

Recommendation

Change in Statute

1.1 Continue the Regional Education Service Centers.

This recommendation would continue the Regional Education Service Centers by repealing the Sunset review clause. The Sunset Commission would evaluate ESCs as part of the next Sunset review of TEA.

Issue 2

ESC Boards of Directors Do Not Receive Board Member Training.

A seven-member board of directors governs each of the 20 Regional Education Service Centers. The local school district board of trustees in each education service center region elects the board of directors to a three-year term. Additionally, if at least one open-enrollment charter school is located in an education service center region, the Commissioner of Education appoints a representative of the open-enrollment charter schools in that region to serve as a non-voting member for a one-year term. The boards develop policies regarding center management and operation, programs and services to be offered, and financial support.

Although most school district board members must be involved in board development or other related forms of training, no such training is required of ESC board members. Without adequate information and training, some members may not be able to properly perform their duties.

Recommendation

Change in Statute

2.1 Direct the Commissioner of Education, by rule, to require ESC board of directors training.

This recommendation would require ESC boards of directors to receive board member training. Under this recommendation, TEA would develop a standard curriculum that provides ESC board members with training necessary to effectively handle the duties of their position. For example, the training curriculum could cover the Texas Education Code, Commissioner's rules, updates on state

and federal legislation and rules, board roles and functions, and ESC statewide and regional strategic planning. The statute would direct the Commissioner to require all ESC board members to receive this training within a specified time period after appointment. The training should be similar to training provided to school district board members.

Fiscal Implication Summary

These recommendations would have no fiscal impact to the State.



Texas Department of State Health Services

Texas State Board of Examiners of Dietitians

Texas State Board of Examiners of Marriage and Family Therapists

Texas Midwifery Board

Texas State Board of Examiners of Perfusionists

Texas State Board of Examiners of Professional Counselors

Texas State Board of Social Worker Examiners

Agency at a Glance

The state boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers are housed within the Department of State Health Services (DSHS), which serves as an umbrella licensing agency for these and other health licensing programs. Each board, with the exception of the Midwifery Board, is an independent Governor-appointed board that creates rules to enforce the Acts and determine appropriate administrative penalties for licensees who violate laws or rules. DSHS provides all administrative services and staff to license applicants, and process complaints and administrative penalties. The Midwifery Board serves as an advisory board and is appointed by the Health and Human Services Commission Executive Commissioner. Proposed rules must be approved by the State Health Services Council (SHSC) and the Executive Commissioner before adoption by the Midwifery Board.

All the boards seek to protect the public by ensuring that these health service licensees are qualified, competent, and adhere to established professional standards. The table, *Persons Licensed by DSHS Health Licensing Boards*, lists the number of licensees under each board's jurisdiction.

<i>Persons Licensed by DSHS Health Licensing Boards - FY 2004</i>	
<i>Board</i>	<i>Licensees</i>
Dietitian	3,697
Marriage and Family Therapist	2,944
Midwifery	165
Perfusionist	299
Professional Counselor	16,247
Social Worker	21,260



For additional information, please contact Steve Hopson at 512-463-1300.

Key Facts

- **DSHS Functions.** The Department of State Health Services has adopted a functional organization approach to servicing the six health licensing boards under Sunset review. Under this approach DSHS provides consolidated services for licensing, enforcement, and board support rather than dedicating specific staff that work only on a single licensing program. DSHS assigns 21 full-time employees to these boards with a total budget of \$1.4 million.

- **Dietitians.** The 3,700 dietitians licensed by the State Board of Examiners of Dietitians are experts in nutrition science who specialize in menu planning, supervision of food preparation, diet therapy, nutrition research, counseling, and nutrition education. The Licensed Dietitian Act is a title act that restricts providers of nutritional advice from referring to themselves as licensed or registered dietitians unless they are licensed by the Dietitian Board or registered by the Commission on Dietetic Registration. The Dietitian Board received two complaints in fiscal year 2004.
- **Marriage and Family Therapists.** The State Board of Examiners of Marriage and Family Therapists licenses about 3,000 marriage and family therapists who are mental health professionals trained in psychotherapy and family systems. The approach to this profession renders therapeutic services to individual clients or groups, and involves the application of family systems theories. About 90 percent of marriage and family therapists also hold a license as a professional counselor or social worker. Religious practitioners and other licensed professionals such as doctors, nurses, and social workers are not required to be licensed by the Marriage and Family Therapist Board to perform counseling. The Marriage and Family Therapist Board received 45 complaints in fiscal year 2004.
- **Midwives.** Midwives deliver babies at the mother's home or at licensed birthing centers using a non-medical model of care that de-emphasizes medical intervention. The Texas Midwifery Board licenses 165 direct entry, documented midwives while the Board of Nurse Examiners licenses certified nurse midwives. The Midwifery Board also licenses the three midwifery education programs in Texas and received 24 complaints concerning midwives in fiscal year 2004.
- **Perfusionists.** Perfusionists operate cardiopulmonary bypass equipment to maintain and monitor a patient's vital heart and lung functions during open-heart surgeries. The State Board of Examiners of Perfusionists licensed about 300 perfusionists and received no complaints in fiscal year 2004. The Perfusionist Board requires all licensees to be certified by the American Board of Cardiopulmonary Perfusion.
- **Licensed Professional Counselors.** The 16,300 counselors licensed by the State Board of Examiners of Professional Counselors use their specialized training in psychotherapy, human development, and counseling, to diagnose and treat mental and emotional disorders, assist individual clients to overcome life challenges and promote wellness, personal growth, and career development. Religious practitioners and other licensed professionals such as doctors, nurses, and social workers are not required to be licensed by this board to perform counseling. The Professional Counselor Board received 162 complaints in fiscal year 2004.
- **Social Workers.** The State Board of Social Worker Examiners licenses about 22,000 social workers who apply the theory, knowledge, methods, and ethics of social work to restore or enhance the functioning of individuals, couples, families, groups, organizations, and communities. Social workers apply social work values, principles, and methods, that include assessment, evaluation, case management, counseling, marriage and family therapy, and psychotherapy. The Social Worker Board received 111 complaints in fiscal year 2004.

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Carrie Yeats, LMSW (Lubbock)

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Recommendations

1. Replace the Independent, Governor-Appointed Perfusionist Board With an Advisory Committee.
2. Eliminate the Texas-Specific Exam for Professional Counselors and Update Other Licensing Requirements to Improve Interstate Movement of Professional Counselors.
3. Conform Key Elements of the Boards' Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
4. Change the Statutory Designation of Documented Midwife to Licensed Midwife.
5. Add Greater Representation of Midwives to the Midwifery Board.
6. Continue Regulation of Dietitians, Marriage and Family Therapists, Midwives, Perfusionists, Professional Counselors, and Social Workers With Independent Boards or Advisory Committees at the Department of State Health Services for 12 Years.

Issue 1

The Regulation of Perfusion Does Not Require an Independent Policy Board to Oversee the Profession.

Key Findings

- Functions of the Perfusionist Board are not needed to protect public health and safety.
- The limited activities of the Perfusionist Board are highlighted by the Board's infrequent, short meetings.
- Other licensing programs gain needed expertise through advisory committees rather than through an independent board.

The Texas State Board of Examiners of Perfusionists is an independent, Governor-appointed board within the Department of State Health Services (DSHS). The Perfusionist Board's licensing process is handled by DSHS, the rules governing the practice of perfusion are written and need few updates, and the Board hears few enforcement cases. This limited workload results in the need for infrequent, short meetings. Because the Perfusionist Board has largely achieved its original objectives, the Board is not needed as currently constituted to oversee the profession.

Recommendation

Change in Statute

1.1 Replace the independent, Governor-appointed Perfusionist Board with an advisory committee.

This recommendation would abolish the current Perfusionist Board, eliminating the nine unnecessary gubernatorial appointments, and create an advisory committee in its place. The five-member Perfusionist advisory committee would be appointed by the State Health Services Council and give advice to the Executive Commissioner of the Health and Human Services Commission on rulemakings and enforcement actions, when needed.

Issue 2

The Licensed Professional Counselor Act Limits the Ability of Professional Counselors to Practice in Other States.

Key Findings

- State regulation of professional counseling controls who may provide counseling services in Texas.
- State regulations limit the ability of Texas professional counselors to practice in other states.
- Out-of-state licensees find it difficult to gain Texas licensure.
- Other states that license professional counselors use a national exam and have begun to achieve greater portability of professional counselor licenses.

The Licensed Professional Counselor Act seeks to protect the public through licensing requirements for professional counselors. However, current licensing requirements impair national portability — the ability of Texas licensees to transfer their license easily to other states, and out-of-state licensees to gain licensure in Texas.

Recommendations

Change in Statute

2.1 Remove the Professional Counselor Board's authority to develop a separate state exam.

This recommendation would increase national portability for Texas licensees who wish to be licensed in another state, and for out-of-state licensees who seek licensure in Texas by removing the Professional Counselor Board's authority to write its own exam, and requiring the Board to contract with a nationally recognized organization to develop and administer the exam.

2.2 Remove the statutory provision that requires a licensed professional counselor to have 48 graduate hours to qualify for a license.

Under this recommendation the Professional Counselor Board would have authority to determine the number of graduate hours necessary for licensure. The current requirements for applicants to have a graduate degree with 48 hours from an accredited institution of higher education would be removed to grant the Board flexibility to change the number of required hours to track national trends. The law would still require applicants to have a graduate degree with a 3,000 clock hour supervised internship.

Management Action

2.3 The Professional Counselor Board should replace the Texas exam with a national exam administered by the National Board of Certified Counselors.

This recommendation would instruct the Professional Counselor Board to consider using a national exam administered by the National Board of Certified Counselors (NBCC). NBCC has two exams, but Texas should consider using the exam that tests the core principles, as that exam most closely matches the content of the current state exam. Since most of the 47 other states that license professional counselors also use this exam, and it would allow for greater portability of the license.

2.4 The Professional Counselor Board should simplify the process for a licensed professional counselor, who holds an active license in another state, to be licensed in Texas.

This recommendation would direct the Professional Counselor Board to create rules increasing the portability of licensees into the State while ensuring that licensees possess sufficient qualifications to justify the license. The Board should consider accepting a graduate degree regardless of the number of graduate hours from out-of-state applicants currently licensed in their state of origin, if the Board determines the applicant possesses sufficient qualifications to justify a waiver. The number of graduate hours required for licensure has increased in many states since the creation of the license, and this recommendation would allow out-of-state applicants to transfer their licenses easily without returning to school to earn additional graduate hours.

Key Elements of the Boards' Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the boards' statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and the boards' ability to protect consumers.
- Nonstandard enforcement provisions of the boards' statutes could reduce the boards' effectiveness in protecting consumers.
- Certain administrative provisions of the boards' statutes conflict with standard practice, potentially reducing the boards' efficiency.

Over the past 25 years, the Sunset Commission has reviewed more than 80 occupational licensing agencies, and has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. Various licensing, enforcement, and administrative processes of the boards that license dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers do not match these model licensing standards statutes, rules, and practices. For example, the lack of some enforcement tools for these boards may affect the State's ability to protect the public from practitioners who violate state laws or board rules. Comparing these boards' regulatory practices and statutes to these licensing standards identified variations and needed changes to bring them in line with model standards.

Recommendations

Licensing

Change in Statute

3.1 Clarify that the six boards must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the six boards' authority regarding rules that follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by requiring them to develop rules defining the specific crimes they believe affect a potential licensee's ability to practice. As advisory boards on rules, the Midwifery and Perfusionist boards would develop these rules for final approval by the Executive Commissioner of the Health and Human Services Commission.

3.2 Remove exemptions from temporary licensure requirements from the Licensed Professional Counselor Act.

This recommendation would remove two provisions permitting the issuance of temporary permits to applicants who have not completed the required number of graduate semester hours. The first provision allows a person to receive a temporary license to practice art therapy before completing the required number of graduate hours, while the second provision permits a person to complete the required hours while simultaneously completing the supervised internship. These changes would clarify that the Professional Counselor Board has the authority to issue a temporary license only if the applicant has met specified educational requirements.

3.3 Remove subjective examination provisions from the Marriage and Family Therapist and Professional Counselor boards' statutes.

This recommendation would remove the authority for the Marriage and Family Therapist and the Professional Counselor boards to use a field exam, and remove the Marriage and Family Therapist Board's authority to use an oral exam. To qualify for a license, the boards would require passage of a written exam.

3.4 Require applicants to the six boards to pass a jurisprudence exam as a condition of licensure.

This recommendation builds on existing licensure requirements by requiring all of the boards' applicants to pass a jurisprudence exam to be eligible for licensure. The boards would need to develop an examination based on their licensing act and rules, and other applicable state laws and regulations affecting professional practice. The boards would have the flexibility to design and administer the exams to minimize impact on the licensees. The boards would also develop rules regarding examination development, fees, administration, re-examination, grading, and notice of results.

3.5 Require the Midwifery Board to provide timely notice of exam results.

The Midwifery Board would be required to provide timely notice of exam results and analysis to individuals failing the exam. The change would require the boards to notify examinees of their results not later than 30 days after they took the exam, or 14 days after receiving the results from a testing service.

3.6 Remove exemptions from the Marriage and Family Therapist, Perfusionist, Licensed Professional Counselor, and Social Worker acts for non-Texas residents to practice without temporary licensure.

This recommendation would prevent unlicensed marriage and family therapists, perfusionists, licensed professional counselors, and social workers from practicing in the state without receiving a temporary license to ensure minimum competency to practice. Practitioners from other states would no longer be able to practice in Texas without qualifying under state law.

3.7 Require the boards to base delinquent license renewal fees on the normally required renewal fee, and require midwives and perfusionists whose licenses are delinquent more than one year to reapply for licensure.

The renewal fee for the six boards' licensees who are delinquent in renewing their licenses would be based on the normal renewal rate set by the boards, not the examination fee. To renew a license that has been expired for 90 days or less, the renewal fee would be equal to 1-1/4 times the renewal fee, which would account for the increased fee that will result from a pending change to biennial renewals. If the license has been expired for more than 90 days, but less than one year, the renewal fee would equal 1-1/2 times the renewal fee. Also, midwives and perfusionists who have allowed their licenses to be expired for one year or more may not renew but must obtain a new license by complying with all requirements for obtaining an original license. These recommendations would not be implemented until September 1, 2007, to allow full implementation of the current shift to biennial renewal. Further, because of fiscal considerations, the Social Worker Board statute would need to specify that the current late renewal fee would remain in effect until such time that the new renewal fee approach would result in an increased late fee.

Enforcement

Change in Statute

3.8 Limit the Midwifery Board from having rules restricting advertising or competitive bidding by a license holder.

Adding this former Sunset across-the-board recommendation to the Midwifery Act would prohibit the Board from having rules that restrict licensees' advertising or competitive bidding except to prohibit false, misleading, or deceptive practices.

3.9 Require the boards to include a public member on complaint committees.

Under this recommendation, the boards would be required in statute to include a public member on board committees that review enforcement cases. While all of the boards currently meet this requirement, enacting the provision in statute would ensure its continuation. This requirement would not apply to the Perfusionist Board as its enforcement will be handled administratively by the Department of State Health Services as overseen by the Executive Commissioner of the Health and Human Services Commission.

3.10 Authorize the Dietitian, Marriage and Family Therapist, Midwifery, Perfusionist, and Social Worker boards to refuse to renew a license as an administrative sanction.

This recommendation would add an extra enforcement tool for these five boards, allowing the boards to better fit punishments to infractions. This recommendation would also provide for clear authority to deny license renewal for those who do not pay outstanding administrative fines.

3.11 Increase the maximum administrative penalty of the Marriage and Family Therapist, Midwifery, and Social Worker boards to \$5,000 per violation, per day.

This recommendation would make all six boards' maximum administrative penalty amount uniform by increasing the three boards' amounts to \$5,000 per violation, per day. As a cap, the maximum penalty would be applied only to the most serious offenses.

3.12 Require the Dietitian, Perfusionist, and Professional Counselor boards to have penalty matrices with dollar amounts associated with violations.

The Dietitian Board would be required to adopt a penalty matrix in rule, including dollar amounts tied to each violation. The Executive Commissioner of the Health and Human Services Commission would be required to adopt a similar rule for the Perfusionist Board. The Professional Counselor and Social Worker boards would be required to modify their existing matrices to include the dollar amounts.

3.13 Authorize the boards to require refunds as part of the settlement conference process.

The boards would be allowed under this recommendation to include refunds as part of an informal settlement conference on a disciplinary case. Authority would be limited to ordering a refund not to exceed the amount the consumer paid the licensee. Any refund offer would not include an estimation of other damages or harm. The refund may be in lieu of, or in addition to, a separate board order assessing an administrative penalty.

3.14 Authorize the Dietitian Board to seek an injunction against persons holding themselves out as dietitians without a license.

Under this recommendation, the Dietitian Board would be able to seek an injunction, through the Attorney General in district court, against individuals who use the title of licensed dietitian without being duly licensed by the Board.

3.15 Authorize the six boards to issue cease-and-desist orders against unlicensed activity.

The boards would issue cease-and-desist letters when they receive complaints or otherwise learn of an individual practicing or using a title without a license. This recommendation would also authorize the boards to assess administrative penalties against persons who violate cease-and-desist orders. The boards would still be authorized to refer these cases to local law enforcement agencies or the attorney general for prosecution.

Management Action

3.16 The boards should use complaint trend analysis to address recurring problems.

The boards would be required to use complaint trend analyses already compiled by Department of State Health Services to target their resources toward recurring problems. The boards should also include non-jurisdictional complaints in the trend analyses to get a complete picture of the public's problems with these general areas of regulation.

3.17 The Midwifery and Social Worker boards should establish, by rule, methods to notify consumers about the boards for complaint purposes.

The Midwifery and Social Worker boards should develop more specific rules, as currently required by statute, to notify consumers about their boards in case of complaints against licensees. The statutes specify that notification must include the name, mailing address, and telephone number of the boards; and may be placed on registration forms, signs in licensees' offices, or on bills for services.

Administration

Change in Statute

3.18 Remove provisions allowing board members to receive payments for attendance at meetings.

This recommendation would remove obsolete provisions permitting Dietitian, Marriage and Family Therapist, Midwifery, Perfusion, and Professional Counselor board members to receive payments for each board meeting attended.

3.19 Clarify the boards' authority to appoint board committees, but only comprised of board members, and remove statutory authority for the Professional Counselor Board to delegate its authority to a single member.

This recommendation would establish that while the boards may have committees, they may only consist of board members. The recommendation would also delete a provision permitting the Professional Counselor Board to delegate authority to one member. As an advisory board, the Perfusionist Advisory Committee would not be subject to this recommendation.

Management Action

3.20 The boards should improve the information they provide to the public.

This recommendation would require the boards to distribute information about their professions, produced by the boards, to consumers, both in print and online. In addition, the Marriage and Family Therapist, Professional Counselor, and Social Worker boards would produce a brochure, separate from those describing individual boards, explaining the differences between the three mental health fields. The brochure would not specify which profession's services are most appropriate to a particular consumer's needs. Finally, this recommendation would require the boards to assess their public information annually to ensure that it remains current and accurate enough to be of assistance to consumers and the general public.

Issue 4

The Statutory Designation of Documented Midwife May Confuse the Public.

To provide midwifery services in Texas as a documented midwife, a person must meet education, examination, and renewal requirements similar to other licensed professionals. While the regulation of documented midwives reaches a level typical of full licensure, the term, documented midwife, may confuse consumers and the public regarding the level of regulation. No other state refers to its licensed midwives as documented midwives.

Recommendation

Change in Statute

4.1 Change the title documented midwife to licensed midwife.

Under this recommendation, all references in the Midwifery Act to a documented midwife would be changed to a licensed midwife. References to documentation would also be changed to licensure.

Issue 5

Midwives Have Insufficient Representation on the Midwifery Board.

The Midwifery Board is currently composed of three documented midwives; one certified nurse-midwife; one obstetrician/gynecologist; one family practitioner or pediatrician; and three public members, one of whom must be the parent of a child born with the assistance of a midwife. Not having a majority of licensees on the Board is uncommon among Texas licensing boards, and because only one midwife member sits on each Board committee, midwifery representation is lost if the member is unable to attend committee meetings. In addition, the Midwifery Act contains an unclear restriction against more than one of the three midwives on the Board from being a licensed health care professional.

Recommendations

Change in Statute

5.1 Increase the number of midwife positions on the Board from three to five.

This recommendation would eliminate the certified nurse-midwife and one public member from the Board, to be replaced with two midwife members. The new Board composition would include five midwives; one physician who is a certified obstetrician/gynecologist; one physician who is a certified family practitioner or pediatrician; and two public members, one of whom is a parent of a child born with the assistance of a midwife.

5.2 Remove the prohibition against more than one midwifery Board member being a licensed health care professional.

This recommendation would delete an unclear provision from the Midwifery Act, as all documented midwives are licensed health care professionals.

Issue 6

Texas Should Continue Regulating Dietitians, Marriage and Family Therapists, Midwives, Perfusionists, Professional Counselors, and Social Workers With Independent Boards or Advisory Committees at the Department of State Health Services.

Key Findings

- Texas has a continuing interest in regulating the practice of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers.
- The boards that regulate dietitians, marriage and family therapists, midwives, licensed professional counselors, and social workers protect the public by ensuring that only qualified practitioners may perform this work in Texas.

The regulation of health professions by the Texas Department of State Health Services is designed to ensure the qualifications of practitioners in the State's health care system. The Sunset Commission reviewed boards for six of these professions. Dietitians provide for medical dietary needs in institutional and other settings. Midwives provide an alternative to the medical model of childbirth. Perfusionists operate complex heart-lung machines in open-heart surgery. Licensed professional counselors, social workers, and marriage and family therapists provide a range of psychotherapy and counseling services in a variety of settings. Texans need to have confidence that these health-care practitioners are competent, meet established standards, and are held accountable for their actions.

Recommendation

Change in Statute

6.1 Continue regulation of dietitians, marriage and family therapists, midwives, perfusionists, licensed professional counselors, and social workers at the Department of State Health Services.

Under this recommendation, the statutes that authorize the licensing of the six health-care professions would be continued for 12 years under the administrative umbrella provided by the Department of State Health Services. As detailed in Issue 1, the State Board of Examiners of Perfusionists, would be replaced with a Perfusionist Advisory Committee. The boards regulating dietitians, marriage and family therapists, midwives, licensed professional counselors, and social workers would continue as currently configured.

Fiscal Implication Summary

Several recommendations on the six boards would have a fiscal impact to the State. The fiscal impact is summarized below.

- **Issue 1** – Funding travel expenses for five advisory committee members would cost about \$2,000 annually. Eliminating nine board member travel expenses would result in savings to the General Revenue Fund of \$3,600.
- **Issue 3** – Adjusting late renewal penalties would result in a loss to the General Revenue Fund of about \$25,600 annually beginning in 2008. Eliminating the payments to Midwifery Board members for attending their semi-annual meetings would save the State \$900 annually. Eliminating per diem payments to Dietitian Board members would result in \$800 in savings to the State.

<i>Fiscal Year</i>	<i>Cost to the General Revenue Fund</i>	<i>Savings to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>
2006	\$2,000	\$5,300	\$3,300
2007	\$2,000	\$5,300	\$3,300
2008	\$27,600	\$5,300	(\$22,300)
2009	\$27,600	\$5,300	(\$22,300)
2010	\$27,600	\$5,300	(\$22,300)



Telecommunications Infrastructure Fund Board

Agency at a Glance

In 1995, the Legislature created the Telecommunications Infrastructure Fund Board to oversee the administration of grants from the Telecommunications Infrastructure Fund. While active, the Fund:

- raised \$1.75 billion in assessments on telecommunications providers; and
- funded more than 11,000 grants to assist public schools, institutions of higher education, public libraries, and nonprofit healthcare facilities in establishing telecommunications projects.

In 2003, as the Fund neared its statutory cap, the Legislature determined that no new grant monies would be awarded from the Fund and the Governor eliminated the Board's oversight function, temporarily transferring remaining grant management duties to another state agency. The Board is no longer operational.

Recommendation

1. Abolish the Telecommunications Infrastructure Fund Board and Its Enabling Legislation.



For additional information, please contact Steve Hopson at 512-463-1300.

Issue 1

The Telecommunications Infrastructure Fund Board Is No Longer Operational and Should Be Allowed to Expire Under the Sunset Act.

Key Findings

- The State's leadership has recently taken action to phase out the Board's functions.
- The Board has fulfilled its role and is no longer needed.

The Legislature created the Telecommunications Infrastructure Fund Board to oversee the administration of grants and loans from the Telecommunications Infrastructure Fund. The Fund was originally set to raise \$1.5 billion, over 10 years, from assessments on telecommunications providers, but, in 2003, the Legislature raised the assessment cap to \$1.75 billion. The Board made more than 11,000 grants, for computers and high-speed Internet connections, to Texas school districts, nonprofit hospitals, and health centers.

In 2003, the Governor eliminated the Board's funding and transferred its remaining duties to another state agency. As such, the Board is no longer operational.

Recommendation

Change in Statute

1.1 Abolish the Telecommunications Infrastructure Fund Board and its related enabling legislation.

Under this recommendation, no legislation is needed to abolish the Board and remove the related subchapter from statute, as it will happen automatically under the Sunset Act on September 1, 2005. Because the Board is no longer active, no further action is needed to close down the Board's operations.

Fiscal Implication Summary

The recommendation on the Telecommunications Infrastructure Fund Board would not have a fiscal impact to the State, as the Governor eliminated the Board's funding in 2003.



Texas State Board of Veterinary Medical Examiners

Agency at a Glance

To ensure that safe and quality veterinary services are provided to the citizens of Texas and their animals, the Texas State Board of Veterinary Medical Examiners regulates the practice of veterinary medicine in Texas. The State began regulating veterinarians in 1911, when the Legislature created the Veterinary Licensing Act and established the Board. The Board's main functions include:

- licensing qualified individuals to practice veterinary medicine in Texas;
- setting standards regarding the practice of veterinary medicine; and
- enforcing the Veterinary Licensing Act and Board rules, which includes investigating and resolving complaints against both licensed and unlicensed individuals, and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Board operated with a budget of \$613,145 and collected more than \$1.7 million in revenues from professional and licensing fees and fines.
- **Staffing.** The Board has a staff of 11, all based in Austin.
- **Licensing.** The Board regulates 6,760 veterinarians, including about 1,400 that live outside of Texas. In fiscal year 2004, the Board issued 289 new licenses.
- **Enforcement.** In fiscal year 2004, the Board received 339 jurisdictional complaints and resolved 308. Of the resolved complaints, 42 resulted in disciplinary action, with the largest category of complaints relating to standard of care.



*For additional
information,
please contact
Meredith
Whitten at
512-936-2692.*

Board Members (9)

Gary C. Brantley, DVM, President (Richardson)
Robert L. Lastovica, DVM, Vice President
(Fredericksburg)
Bud E. Alldredge Jr., DVM (Sweetwater)
Mario A. Escobar (Crystal City)

Guy W. Johnsen, DVM (El Paso)
J. Lynn Lawhon, DVM (Abilene)
Paul Martinez (Sonora)
Dee A. Pederson, DVM (Austin)
Dawn E. Reveley (Blanco)

Agency Head

Ron Allen, Executive Director
(512) 305-7555

Recommendations

1. Strengthen the Board's Continuing Education Program to Better Ensure Licensees Keep Current With Industry Standards and Practices.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
3. Continue the Texas State Board of Veterinary Medical Examiners for 12 Years.

Continuing Education Efforts Lack Controls to Ensure the Benefits Intended From Enhanced Professional Competence.

Key Findings

- Continuing education (CE) keeps licensed veterinarians abreast of current industry practices and recent technological developments, which enhances public protection.
- Opportunities for licensees to circumvent the Board's continuing education requirements may reduce the effectiveness of the Board's CE program.
- Other regulatory agencies have established more effective continuing education programs.

Because industry standards change as improvements in technology and medical treatment are developed, the Board requires veterinarians to complete continuing education every year. Doing so allows veterinarians to stay abreast of current best practices and provide better veterinary medical service, as well as brings the Board in line with practices at other regulatory agencies. However, limitations in the Board's ability to monitor CE compliance, require veterinarians to make up missed CE hours, and use continuing education as an enforcement tool stunt the effectiveness of the Board's CE program.

Recommendations

Change in Statute

1.1 Require the Board to check veterinarians' compliance with continuing education through the licensing process.

The Board's primary method for checking that veterinarians have obtained the mandatory hours of continuing education would be through a random audit of license renewals. Those licensees randomly selected would send their proof of CE completion to the Board, which would accept verifiable certificates for individual CE courses as proof of attendance, and discontinue the practice of allowing veterinarians to list all courses on one presigned form. The Board would focus its CE-monitoring efforts through its licensing functions instead of inspections, providing a more equitable system of checking for CE compliance, and freeing investigators to focus on more imminent threats, such as controlled substance and sanitation violations.

1.2 Authorize the Board to require a licensee to take more than the annual number of continuing education hours as part of a disciplinary action.

This recommendation would remove the provision in the Veterinary Licensing Act that limits the Board from requiring a licensee to take more than 17 hours of continuing education in any one year. As a result, the Board would have authority to require veterinarians who violated the Board's CE requirements to make up the missing hours in subsequent years, ensuring that they receive the valuable continuing education required of them. In addition, the Board would be able to specify that a veterinarian take continuing education beyond the standard requirement as part of a disciplinary action, giving the Board an avenue to see that veterinarians address identified concerns.

Management Action

1.3 The Board should explore and implement ways to ensure that continuing education providers comply with minimum standards established by the Board.

Approaches explored should include the following:

- staff or Board-member site visits and monitoring;
- regular submission of records, such as sign-in and sign-out logs;
- providing guidelines to CE providers regarding the types of acceptable certificates of completion; and
- other methods established by the Board.

The Board would establish methods for making sure that continuing education courses cover the topics and meet the class length advertised to licensees and the Board, that providers have a method for recording and verifying attendance, and that providers give certificates of completion at the end of the course. The Board would work with CE providers to make them aware of the Board's requirements and standards. As needed, Board members and staff would make site visits to continuing education courses, particularly if the Board receives a complaint regarding a specific course or provider. Providers who do not meet these standards would be subject to removal from the Board's list of acceptable continuing education providers.

Issue 2

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

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agency's ability to protect consumers.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.

Various licensing, enforcement, and administrative processes in the Veterinary Licensing Act do not match model licensing standards developed by the Sunset Commission from experience gained through more than 80 occupational licensing reviews over the last 25 years. For example, the Board's process for reviewing and settling complaints does not provide the broad perspective needed to ensure sound decisions that protect consumers. A comparison of the Board's statute, rules, and practices with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with model standards.

Recommendations

Licensing

Change in Statute

2.1 Eliminate the statutory authority for oral exams in the Board's statute.

This recommendation would remove the Board's authority to use oral exams from its statute because this language is obsolete and does not conform to model examination procedures.

2.2 Require the Board to establish a policy for refunding examination fees.

This recommendation would authorize the Board to retain all or part of examination fees should an applicant withdraw from an exam without reasonable advance notice or a satisfactory excuse, such as an emergency. The Board would need to develop a rule to define the reasonable notification period and the emergencies that would warrant a refund.

2.3 Provide an exemption from the provisional license supervision requirement for applicants who are already licensed to practice independently in other states.

Allowing qualified veterinarians from other states to practice independently in Texas while the Board processes their applications would remove a barrier to entry into the profession. As long as a veterinarian has a license to practice independently, is in good standing in another state, and meets Texas' licensing requirements, the Board should allow independent practice in Texas.

2.4 Change the basis for the Board's late renewal penalties.

The renewal fee for veterinarians who are delinquent in renewing their licenses would be based on the normal renewal fee set by the Board, not the examination fee. A person whose license has been expired for 90 days or less would pay a renewal fee equal to 1-1/2 times the renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year, would pay an amount equal to twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on veterinarians.

Enforcement

Change in Statute

2.5 Require at least two veterinarian Board members to review complaints and attend informal settlement conferences that require professional expertise, and authorize staff to settle administrative complaints.

This recommendation would require the Board to submit all complaints that may require the expertise of a practitioner to at least two veterinarian members of the Board to review and decide whether to dismiss or to refer the matter directly to an informal settlement conference. In the event the two Board members differ on how to proceed, the complaint would automatically be referred to the Board's enforcement committee for a settlement conference. If a settlement conference is needed, the two veterinarian Board members would participate. All proposed and agreed orders recommended in settlement conference would still need to receive final approval by the full Board.

This recommendation would also authorize staff to resolve cases involving nontechnical and administrative violations. Staff would have the ability to dismiss these complaints, subject to review by the Board at its public meeting, or refer the matter directly to a settlement conference conducted by either a committee of staff or a committee of Board members. All proposed orders must still receive final approval by the full Board.

2.6 Require the Board to include one of its public members in the informal settlement process.

Requiring the Board to include at least one public member in its informal settlement conferences would ensure consumer interests are properly represented in determining whether a violation occurred and what action to take.

2.7 Authorize the Board to set penalties at a level that match the egregiousness of each drug-related felony conviction.

This recommendation would give the Board the discretion to determine appropriate sanctions against licensees with drug-related felonies by considering each case on its own merits, as opposed to the automatic suspension or revocation of a license currently required by the Act.

2.8 Clarify the Board's administrative penalty authority.

This change removes the statutory provisions for a Board subcommittee to recommend the amount of administrative penalties, and for the Board to impose a civil penalty. Instead, the Board would assess administrative penalties in the same way as it does for other enforcement actions. The Board would retain the option to seek civil penalties for unlicensed practice through the courts.

The recommendation also increases the amount of an administrative penalty the Board would be able to impose on an individual who violates the Veterinary Licensing Act or Board rules from \$2,500 to \$5,000 per violation per day, the same as for violations that involve controlled substances.

2.9 Authorize the Board to require a refund as part of the settlement process.

The Board would be allowed to include refunds as part of an agreed order reached in an informal settlement conference on a complaint. Refunds would be limited to the amount the complainant paid for services, and would not include an estimation of other damages or harm.

2.10 Authorize the Board to issue cease-and-desist orders.

Providing the Board with cease-and-desist authority would enable the Board to move more quickly to stop unlicensed activity that threatens the health and safety of the public and their animals. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease-and-desist orders.

2.11 Require the Board to adopt formal policies that focus the Board on resolving complaints and prioritize complaints according to risk.

This recommendation would require the Board to adopt a formal policy that would focus its enforcement efforts on investigating complaints as opposed to performing compliance inspections. For example, the Board should consider whether it is meeting its target for complaint resolution time or if its caseload of pending complaints is reasonable when planning for compliance inspections. This recommendation would also require the Board to place complaints in priority order so that the agency handles the most serious problems first.

Management Action

2.12 The Board should post information about disciplinary orders and sanctions on its Web site in a format that consumers may access easily.

Increasing accessibility could include creating a searchable database of practitioners showing disciplinary history or listing licensees who have had disciplinary action taken against them, including the type of sanction and violation, and the date the sanction was ordered. In addition to helping the public, this listing may reduce the amount of time staff must dedicate to handling consumer inquiries.

2.13 The Board should post information about the peer assistance program on its Web site.

The Board would post information on its Web site about the peer assistance program for veterinarians who are chemically dependent or mentally impaired. Because the Board contracts with the Texas Veterinary Medical Association (TVMA) to administer the program, the Board should also provide TVMA's contact information in its description of the program.

Issue 3

Texas Has a Continuing Need for the Texas State Board of Veterinary Medical Examiners.

Key Findings

- Texas has a continuing interest in licensing and regulating veterinarians.
- The Texas State Board of Veterinary Medical Examiners protects the public by ensuring that qualified individuals practice veterinary medicine.

The practice of veterinary medicine affects all Texans. Veterinarians provide medical services for companion animals and livestock. They play a key role in public health issues by protecting the public from zoonotic diseases, those transferable from animals to humans. Veterinarians also have a direct impact on food-animal production – a major segment of the state's economy – by assisting producers in disease prevention, nutrition programs, and general herd and flock management.

Recommendation

Change in Statute

3.1 Continue the Texas State Board of Veterinary Medical Examiners for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

Several recommendations regarding the Texas State Board of Veterinary Medical Examiners would result in a small net savings to the State. The fiscal impact of the recommendations is summarized below:

- **Issue 2** – Changing the basis for the late renewal penalty would result in a positive fiscal impact of \$27,000 annually. The Board would need \$9,200 a year to cover travel costs associated with requiring a public member and an additional veterinarian Board member to attend informal conferences.

<i>Fiscal Year</i>	<i>Cost to the General Revenue Fund</i>	<i>Gain to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>
2006	\$9,200	\$27,000	\$17,800
2007	\$9,200	\$27,000	\$17,800
2008	\$9,200	\$27,000	\$17,800
2009	\$9,200	\$27,000	\$17,800
2010	\$9,200	\$27,000	\$17,800



House Bill 2455, passed in 2003 by the 78th Legislature, required the Sunset Commission to conduct a special purpose review of the Windham School District (WSD). To assist in this review, the Legislature required the Texas Education Agency (TEA) to conduct a limited scope review of the structure, management, and operations of WSD and report the results to the Commission. The legislation directed the Sunset Commission, after considering TEA's report, to include any appropriate recommendations relating to WSD in its report to the 79th Legislature.

TEA completed its special purpose review of WSD in August 2004. The goals associated with TEA's special purpose review were to review the structure, management, and operations of WSD; determine the impact of WSD programs on the prison population; and determine relevant policy issues and their proposed solutions. TEA's resulting report described, but did not evaluate the structure, management, and operations of WSD; and did not determine the impact of WSD's programs. The report did set out issues and proposed solutions to identified problems, such as the lack of a system to measure the effects of education on recidivism, and the need for an external evaluation/accountability system for Windham's operations. However, the proposed solutions did not include enough specificity and would have significant costs associated with them if adopted.


*For additional
information,
please contact
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Overview of the Windham School District

The Legislature established the Windham School District in 1968 to provide academic, as well as career and technology education to eligible offenders incarcerated within the Texas prison system. The Texas Board of Criminal Justice serves as the Board of Trustees for WSD. The Board oversees the district and hires the superintendent who manages the district's daily operations. WSD operates with an annual budget of about \$72.4 million, the majority of which comes from the Foundation School Program.

Windham School District Key Facts for FY 2004

Budget	\$72,409,388
Employees	1,388
Campuses	88
Students	83,785

WSD's 1,388 employees, including teachers, administrators, counselors, and librarians provide services to approximately 84,000 students in 88 campuses housed in Texas Department of Criminal Justice (TDCJ) facilities. WSD students are older than students in traditional school districts, have been convicted of a felony, and many lack basic academic skills. Offenders younger than 35 years old and within five years of projected release have the highest priority for placement in WSD programs. WSD operates programs in four major areas – academic, career and technology, life skills, and Project Re-Integration of

Offenders (RIO). WSD designed these programs to meet its statutory goals of reducing recidivism; reducing the cost of confinement; promoting positive behavior during confinement; and increasing offenders' success in obtaining and maintaining employment.

Recommendation

After considering TEA's report, the Sunset Commission chose not to take any action on the proposed solutions. Therefore, this report does not include any recommendations related to the Windham School District.



Texas Workers' Compensation Commission

Agency at a Glance

The Texas Workers' Compensation Commission (TWCC) was created in 1990 as part of a broad effort to reform the workers' compensation system in Texas. The Workers' Compensation Act provides for no-fault income-replacement benefits and medical care for workers who are injured on the job and are unable to earn their pre-injury wage. TWCC administers key parts of the system including ensuring the timely, appropriate, and cost-effective delivery of benefits to injured workers; overseeing and regulating system participants to ensure compliance with statutes and rules; and providing training and informational services to help system participants understand and operate within the system.

To accomplish this, TWCC:

- oversees a benefit delivery system and provides income and medical-related dispute resolution services;
- certifies doctors to provide medical services and reviews medical utilization patterns of health-care providers;
- develops and adopts fee and treatment guidelines for medical services;
- provides health and safety resources, education services, and training for system participants;
- certifies employers who choose to self-insure as their own workers' compensation insurance carriers; and
- performs compliance audits and fraud investigations, and enforces compliance with statutes and rules.

Key Facts

- **Funding.** In fiscal year 2004, TWCC operated on a \$55 million budget, including \$2.4 million in federal funds. The agency is required to cover its state appropriations via maintenance taxes on workers' compensation insurance premiums.
- **Staffing.** TWCC is authorized to employ a total of 1,042 people in its 24 field offices and central office in Austin.
- **System Participation.** In 2004, 253 insurance carriers wrote workers' compensation insurance policies. Approximately 62 percent of Texas employers, employing approximately 76 percent of the workforce, carried workers' compensation insurance coverage in 2004. The remaining employers self-insure, offer alternative benefits, or offer no workers' compensation coverage.



For additional information, please contact Ken Levine or Charles Sallee at 512-463-1300.

- **Workers' Compensation Claims.** In fiscal year 2004, workers reported 157,983 claims, with at least one day of lost time. The average cost of a workers' compensation claim was \$2,685.
- **Self-Insurers.** In fiscal year 2004, TWCC issued 49 certificates representing 197 employers as self-insurers covering about 184,000 employees, allowing the employer to act as its own workers' compensation insurance carrier.
- **Dispute Resolution.** In fiscal year 2004, TWCC received 53,915 benefit disputes. The agency informally resolved 86 percent of cases. TWCC also received 18,267 valid medical disputes, the majority of which were medical fee disputes.
- **Compliance.** In fiscal year 2004, TWCC issued 2,165 penalties with fines totaling \$1,966,156.

Commission Members (6)

Mike Hachtman, Chair (Houston)

William A. Ledbetter, Jr. (North Richland Hills)

Edward J. Sanchez (Houston)

Carolyn J. Walls (San Antonio)

Lonnie Watson (Cleburne)

Eddie Wilkerson (La Porte)

Agency Head

Robert L. Shipe, Executive Director

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Recommendations

1. Abolish the Texas Workers' Compensation Commission, Transferring Functions to the Department of Insurance, Texas Workforce Commission, and Newly Created Office of Employee Assistance, Streamline Dispute Resolution and Improve the Oversight of the Workers' Compensation System.
2. Authorize Delivery of Workers' Compensation Health Care Through Networks Operated Similarly to Current Group Health Insurance to Improve Injured Workers' Health-Care Outcomes and Better Contain Costs.
3. Enhance the Delivery and Quality of Benefits for Injured Workers to Focus on Improving Outcomes for Return to Work.

Structural and Streamlining Changes Are Needed to Improve Oversight of Workers' Compensation.

Key Findings

- TWCC has not effectively managed its administrative role and has failed to address critical issues impacting the workers' compensation system.
- The delivery of workers' compensation services through TWCC is not effectively structured.
- Workers' compensation dispute resolution processes are cumbersome, costly, and do not ensure timely resolution.
- Injured workers do not receive quality assistance at TWCC to navigate the workers' compensation bureaucracy.
- The workers' compensation regulatory system is inefficient and does not emphasize or reward overall performance.

The basic regulatory structure for workers' compensation in Texas has not proven effective for injured workers, or efficient for employers and insurance carriers providing services for employers. TWCC has proven process-oriented, thus missing key opportunities to set strategic direction for Texas' workers' compensation system. As a result, the workers' compensation system has produced rapidly rising medical costs per claim that are significantly greater than the national average, slow and expensive service, and a lack of success in returning injured workers to gainful employment.

Recommendations

Workers' Compensation Functions at the Department of Insurance

Change in Statute

1.1 Abolish the Workers' Compensation Commission and transfer its regulatory programs to the Department of Insurance.

This recommendation would abolish the Commission and transfer workers' compensation regulatory functions and associated rulemaking authority to the Texas Department of Insurance (Department). Transferred oversight responsibilities and associated functions would include workers' compensation insurance coverage; self-insurance regulation; income and medical benefits, including medical services regulation, cost containment and quality control functions including the Medical Quality Review Panel; claims procedures; compliance and enforcement of the Workers' Compensation Act and Rules; fraud investigation; and regulation of carrier-provided accident prevention services. The Commissioner of Insurance would receive the current authority to appoint a Medical Advisor. The Department would also provide customer assistance for workers' compensation policyholders, and conduct workers' compensation records and information management functions.

1.2 Streamline the medical dispute resolution process and transfer its oversight and management functions from the Workers' Compensation Commission to the Department of Insurance.

This recommendation would transfer oversight responsibility for workers' compensation medical disputes to the Department, and simplify the dispute resolution process. Specifically, this recommendation would require medical disputes to go through an initial informal dispute resolution process with the insurance carrier and provide for an Independent Review Organization (IRO) to decide any unresolved disputes. IRO decisions would be final for carriers, thus removing the State Office of Administrative Hearings from the appeal process. However, an injured worker would be allowed to appeal an IRO decision to district court. Finally, this recommendation would require every IRO decision to include specific information elements for use in an appeal and for quality evaluation of IRO decisions by the Department.

1.3 Streamline the income benefit dispute resolution process and transfer its oversight and management functions from the Workers' Compensation Commission to the Department of Insurance.

The Department would become responsible for overseeing and managing a streamlined dispute process for income benefits. The Commissioner would have authority to determine staffing levels and location of regional offices necessary to continue having hearing sites available across the state. This recommendation would require injured workers, employers, and carriers involved in an income benefit dispute to try to resolve the dispute themselves before filing a dispute at the Department. The Commissioner of Insurance would be authorized to adopt rules to ensure documentation of the initial attempt to resolve the dispute.

For unresolved disputes, the Department would hold a pre-hearing conference, replacing the current Benefit Review Conference, to identify contested issues for the formal contested case hearing. The recommendation requires the Department to provide participants with a list of information that participants may need at a hearing to ensure they have the most useful information to help resolve the dispute. This recommendation would also allow parties to appeal the hearing decision directly to district court, eliminating the need for the Appeals Panel. The Department would also be required to create a precedent manual for income benefit disputes.

1.4 Rename the Department's workers' compensation research function the Workers' Compensation Research and Evaluation Group.

This recommendation would maintain workers' compensation research activities at the Department and continue funding for the function through the assessment of a maintenance tax collected annually from all workers' compensation insurance carriers.

1.5 Clarify the purpose, mission, and goals of the workers' compensation system, and require the Department to analyze its effectiveness in meeting these statutory goals.

This recommendation would specify that the purpose of the Workers' Compensation Act is to ensure that every injured worker:

- is treated with dignity and respect when injured on the job;
- has access to a fair and accessible dispute resolution process;

- has access to prompt, quality medical care within the framework established by the State; and
- receives services to facilitate return to work as soon as it is deemed safe and appropriate by his or her medical provider.

This recommendation would also add explicit language to the workers' compensation statute detailing nine systemwide goals and clarify that the Department may adopt any rules necessary and appropriate to implement its powers and duties under the Workers' Compensation Act. The Department would assess its effectiveness in meeting the statutory goals and identify and report all internal policy and statutory changes needed to address deficiencies.

1.6 Require the Department to implement a workers' compensation regulatory approach that emphasizes overall compliance, rewards performance, and efficiently handles complaints.

This recommendation would require the Department to regularly assess the performance of carriers and medical providers against key regulatory goals to identify entities needing enhanced regulatory oversight. The Department would create regulatory incentives to promote greater overall compliance and reward performance. This recommendation would also authorize the Department to conduct audits of carriers' accident prevention services based on the risk assessment, rather than every two years.

The Department would also be required to establish rules that govern the filing of a complaint against a regulated entity and make that information available on its Web site. In addition, the Department would be required to prioritize its investigations of complaints using risk-based criteria.

Workers' Compensation Functions at the Texas Workforce Commission

Change in Statute

1.7 Transfer workers' compensation workplace education and safety functions from the Workers' Compensation Commission to the Texas Workforce Commission.

This recommendation would transfer to the Texas Workforce Commission (TWC) the federal Occupational Safety and Health Consultation Program, workplace accident data collection, and the education functions that disseminate best practices information to employers on return to work programs and workplace safety. The non-federally funded programs and functions transferred to TWC would continue to receive their funding through the assessment of a maintenance tax collected annually from all workers' compensation insurance carriers.

New Office of Employee Assistance

Change in Statute

1.8 Establish an independent Office of Employee Assistance (OEA).

This recommendation would create a new Office of Employee Assistance to provide constituent services for injured workers, including the Commission's Ombudsman program. OEA would be led by a single director, appointed by the Governor and approved by the Senate. While the operations of the Office would be independent, OEA would receive its administrative services, such as human and information resources, from the Department of Insurance.

This recommendation would authorize OEA to provide legal representation for injured workers and adopt rules to set standards to accept or reject cases for representation of injured workers in workers' compensation disputes. As appropriate, the staff from the Ombudsman program would coordinate OEA services with TWC and the Department of Assistive and Rehabilitative Services (DARS). OEA would also provide public advocacy on the Department's workers' compensation rulemaking.

This recommendation would also statutorily direct OEA to coordinate with the Texas Workforce Commission and local workforce boards to develop a workplace literacy and basic skills curriculum that bridges the skills gap between workers and current and emerging jobs.

Management Action

1.9 OEA should consider contracting for some portion of its worker assistance activities.

Contracting with outside groups would allow OEA to provide expanded injured worker legal assistance through means other than hiring more agency legal staff. At a minimum, the OEA should identify methods to partner with legal aid clinics at law schools when developing rules to provide legal assistance to injured workers.

1.10 Sunset staff should work with the Legislative Budget Board to obtain full funding for OEA in the fiscal note process.

Sunset staff would provide an estimate on the staffing and other resource levels needed to operate OEA to Legislative Budget Board staff, and provide assistance developing language for a rider in the Appropriations Act contingent on the adoption of legislation creating OEA.

Elimination of Programs

Change in Statute

1.11 Abolish the Medical Advisory Committee and authorize the Medical Advisor to appoint ad hoc medical workgroups.

The Department would have the authority to appoint advisory committees as needed. Ad hoc medical workgroups would allow the Medical Advisor and Department staff to have access to additional medical expertise as needed to assist the Department in developing and reviewing medical policies and treatment guidelines.

1.12 Eliminate programs inconsistent with the new approach to workers' compensation.

This recommendation would eliminate the Approved Doctor List, the Field Safety Representative Program, the Hazardous Employer Program, the Rejected Risk Program, the Approved Professional Source Program, and the Drug Free Workplace Program.

The Workers' Compensation Health-Care System Has Not Succeeded in Improving Medical Outcomes for Injured Workers or Containing Costs.

Key Findings

- The workers' compensation health-care system produces higher costs and poorer patient outcomes than other states and other health care delivery systems.
- Poor coordination of injured workers' medical treatment makes returning injured employees to work difficult and results in high numbers of disputes and problems with appropriate access to medical care.
- Employers and workers lack performance information on the quality, access to care, and cost of health care provided by carriers and health-care providers.

The current approach to delivery of medical services to injured workers varies greatly from typical health insurance familiar to patients, employers, and medical providers. Medical cost containment is often retrospective and generally ineffective, as shown by Texas' workers' compensation costs far exceeding national averages. The lack of a network model has led to high insurance rates for employers, dissatisfied workers, and health-care providers abandoning the system.

Recommendations

Workers' Compensation Health-Care System

Change in Statute

2.1 Simplify the provision of workers' compensation health care by allowing networks similar to those found in group health insurance.

The Sunset Commission adopted a series of recommendations to establish workers' compensation health-care networks and closely align their regulations and operation to group health insurance. The new model would allow insurers, under Department supervision, to establish networks similar to those found in group health insurance. Employees would have to use the network if their employer has contracted for one and would choose a network primary care provider to coordinate all medical care.

The network system would be based on contractual relationships, rather than State intervention, between system participants. The Department would oversee these arrangements by setting standards, collecting and maintaining data, and monitoring compliance. Key elements of the networks would include a requirement that all services be ordered by a primary care provider; placing limits on the retrospective review of medical necessity of care; and applying group health prompt payment procedures to workers' compensation networks. In addition, the networks would be required to establish a broad choice of medical providers within the network structure where feasible. The Commissioner would identify and adopt alternative standards for underserved areas.

2.2 Require the State and political subdivisions to use networks where available and practicable.

This recommendation would require all public sector entities to use networks established under Recommendation 2.1 for their employees' workers' compensation medical care if networks are available in their area.

2.3 Require the Commissioner of Insurance to adopt new fee guidelines and set conversion factors for most medical practices for out-of-network services.

For areas not covered by networks, the Department would have authority to set standards and guidelines for medical fees and care. This recommendation would require the Commissioner to replace the current set of fee guidelines adopted by TWCC.

2.4 Require the Workers' Compensation Research and Evaluation Group to prepare report cards on quality, costs, provider availability, and other factors of workers' compensation networks.

The reports cards would provide employers and employees with the information needed to make informed purchasing or other decisions for workers' compensation coverage through a network. The Department would also have data and information necessary to monitor the performance of the networks it would regulate to ensure they meet minimum standards.

In addition, this recommendation would require the Research and Evaluation Group to study the impact of requiring electronic billing and payments in the workers' compensation system; and fee guidelines for non-network services, including the impact of maintaining the current approach or using an alternative payment structure.

Management Action

2.5 The Department should adopt return to work guidelines.

This recommendation directs the Department to formally adopt return to work guidelines that meet the requirements of the Labor Code and clarify the appropriate use of the guidelines for medical decisionmaking by system participants. The Department, at a minimum, would use the guidelines to monitor treating doctors' performance and provide information back to them on how their treatment practices compare to the average treatment practices in the system.

Incentives and Other Provisions to Contain Costs

Change in Statute

2.6 Open workers' compensation coverage to group health insurance carriers.

This recommendation would provide employers with expanded purchasing options by allowing group health insurance carriers to enter the workers' compensation market and offer insurance coverage to Texas employers. This approach would increase competition in workers' compensation insurance and should result in reduced rates for employers.

2.7 Allow functional capacity assessments of non-injured employees to set base capacity if an injury should later occur and to ensure employees have the physical capacity to safely perform duties of a job.

This recommendation would provide employers and carriers with an additional tool to reduce workplace accidents. As part of this recommendation, the Department and carriers should consider discounts for employers using these functional capacity assessments. In addition, a carrier could use the assessment of a non-injured employee's physical capacity to provide the basis for determining a more specific amount of liability for a workplace injury should an injury occur at a later date of employment.

2.8 Authorize carriers to use a physical exam to detail the full extent of an injured worker's compensable injury and limit future claims to the injury identified by the exam, unless a further exam determines a related compensable injury.

Under this recommendation carriers would be able to use the results of the physical exam to establish the full extent of an injured worker's compensable injuries for lost time cases only. A carrier would not be liable for injury claims not identified in the exam, unless a subsequent physical exam determines that the newly discovered injury was in fact related to the original compensable injury.

2.9 Strengthen provisions for fraud reporting and prosecution.

This recommendation would require system participants to report fraud, with penalties for failure to report and would expand jurisdictions where fraud cases can be filed. This recommendation would also allow the Department to use appropriated funds collected from the annual assessment of a maintenance tax on all workers' compensation insurance carriers to fund fraud prosecution efforts.

2.10 Require carriers to file with the Department the percentage discounts used for return to work and safety programs.

Regular filing of discounts by carriers would provide the Department with information on the type and amount of discounts being offered to Texas employers. The Department should examine whether to mandate any of these discounts.

Issue 3

The Texas Workers' Compensation System Does Not Provide Adequate Benefits or Deliver the Quality Services Needed to Improve Return to Work Outcomes for Injured Workers.

Key Findings

- Some benefit delivery requirements cause a hardship for injured workers.
- Lack of effective return to work initiatives results in higher costs to employers and poor outcomes for injured workers.
- Employers and workers do not have the information needed to make informed decisions about effective return to work.
- TWCC does not effectively staff and manage cases for injured workers.

Texas law limits the amount of benefits an injured worker can receive, and creates difficulty for workers to replace lost wages for the first week they cannot work. The system also does a poor job in quickly returning injured workers back to employment, fueling, in part, annual double-digit growth in the cost of workers' compensation claims since 2000. Research shows that 25 percent of injured workers do not return to work and the average amount of time away from work has increased steadily to about 21 weeks.

Recommendations

Income Benefits

Change in Statute

3.1 Increase the existing cap on income benefits from 100 percent to 130 percent of the State Average Weekly Wage.

The maximum weekly amount an injured worker can receive in temporary income benefits equals the state average weekly wage (SAWW), which the Legislature has set in statute at \$539. This recommendation would tie the SAWW calculation to the standard formula used by the Texas Workforce Commission, and eliminate the need for the Legislature to update the SAWW in statute every two years. This recommendation does not affect workers with wages less than the SAWW, or minimum weekly benefit amounts.

3.2 Reduce the time period from 28 to 14 days that injured workers must lose from work to receive payment for the first week of temporary income benefits.

Income benefits do not start accruing until after seven days of lost time from work. However, injured workers must remain off work for 28 days until they are eligible to receive a benefit check for lost time during the first week of their injury. This recommendation would reduce the waiting time to 14 days.

Service Delivery

Change in Statute

3.3 Require skilled case management as early as is practicable for lost time disability cases.

Requiring carriers to provide skilled case managers early in lost time disability cases would help ensure better coordination of health care and other services needed to facilitate an injured worker's return to work in a safe, timely, and appropriate manner. The Department would oversee and enforce this requirement.

3.4 Encourage use of single points of contact for injured workers at the Department, OEA, and the carrier.

Reducing the number of people injured workers have to obtain information and services from at the Department, OEA and carriers would better help injured workers obtain consistent information and navigate the complex workers' compensation system.

3.5 Require carriers to survey injured workers to obtain data on satisfaction of services provided through networks and report results to the research group at the Department for the "report card."

Incorporating injured worker satisfaction data as an element of the health-care network report cards would ensure employers and employees have information needed to make informed decisions on the overall quality of health-care services provided by each network to injured workers.

Return to Work

Change in Statute

3.6 Require the Department of Insurance and the Texas Workforce Commission to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.

This recommendation would add an explicit return to work goal in both the Department's and TWC's enabling statutes and require both agencies to take actions, such as rule changes, to support return to work efforts in the workers' compensation system. The Department, in partnership with system stakeholders, must evaluate and improve the benefit delivery system to promote the safe and timely return of injured employees to work. The Department should coordinate this review with TWC to evaluate statutory and other barriers and make recommendations to the Legislature no later than December 2006.

As part of TWC's new workers' compensation duties and functions, TWC would provide integrated workplace safety and return to work outreach services to small and medium-sized employers. Both agencies would provide employers with information and best practices on methods to enhance return to work communication and services; and provide plain language information to injured workers on the benefits of early return to work, and making informed medical decisions.

3.7 Require the Department to establish protocols for injured workers receiving supplemental income benefits (SIBs) to obtain workforce and occupational training where appropriate.

Improving access to existing state resources at TWC and the Department of Assistive and Rehabilitative Services (DARS) would better assist SIB recipients to return to the workforce. The Department, where appropriate, would work with TWC, DARS, and private vocational rehabilitation programs to identify and attempt to remove barriers to successful employment of SIB recipients; ensure information and outcome data is tracked between appropriate agencies and carriers; establish a referral mechanism to TWC and local workforce centers; and create a method to promote employment success that includes post-referral contact by the Department with SIB recipients.

3.8 Set compliance standards for SIB recipients work search requirements to replace the current standard of "good faith effort."

This recommendation would set straightforward standards to define work search efforts of SIB recipients. SIB recipients would have to actively participate with TWC, DARS or private vocational rehabilitation programs, or actively search for work documented by the number of job applications. The Department would be required to establish rules to define the level of activity required to meet these standards, including defining the number of job applications necessary to meet the requirements.

3.9 Require the Department to ensure all workers' compensation forms and explanatory materials are prepared in plain language and in Spanish where appropriate.

The workers' compensation system can be complicated and confusing, and clear information is vital for injured workers to protect their rights and receive proper benefits under the law. This recommendation would ensure that all system participants have the information they need regarding the workers' compensation system.

Management Action

3.10 The Department and the Workers' Compensation Research and Evaluation Group should partner with TWC to obtain return to work outcome information.

The Department should formalize an agreement with the Workforce Commission to match employment data from TWC against workers' compensation claims data to determine return to work outcomes.

Fiscal Implication Summary

This report contains several recommendations that will result in a significant positive fiscal impact to the State. Overall, these recommendations would result in net savings of about \$22.6 million beginning in fiscal year 2006. These recommendations are discussed below, followed by a five-year summary chart. In addition, the net savings from recommendations to restructure and streamline the administration of the system may allow the Department of Insurance to lower the maintenance tax charged to workers' compensation insurers. However, this report could not predict such a change and assumes savings through the five-year period.

- **Recommendation 1.1** – Transferring regulatory functions to the Department would generate administrative efficiencies and result in annual savings of about \$900,000 in General Revenue and a reduction of 17.5 full-time equivalents (FTE) needed to perform indirect administrative services, such as human resources and computer support.
- **Recommendation 1.2** – Streamlining and transferring oversight of the medical dispute resolution process to the Department would result in annual General Revenue savings of \$1,170,758 by removing state-funded appeals at the State Office of Administrative Hearings. As a result, this recommendation would require eight fewer FTEs to administer medical disputes.
- **Recommendation 1.3** – Streamlining the income benefit dispute resolution process by decreasing the number of administrative steps and transferring the function to the Department would result in annual General Revenue savings of about \$3.6 million and a reduction of 85 FTEs needed to support the new dispute process.
- **Recommendation 1.7** – Transferring workplace education and safety functions to the Workforce Commission would generate administrative efficiencies for each program and result in annual General Revenue savings of about \$229,000 and a reduction of 4.5 FTEs needed to perform indirect administrative services, such as human resources and accounting.
- **Recommendation 1.8** – Establishing an independent Office of Employee Assistance (OEA) to provide legal representation for certain injured workers, and transferring the Ombudsman program to OEA would result in net costs of about \$1.6 million and an additional 28 FTEs.

Requiring the Department to provide administrative support services to OEA would save about \$166,000 in indirect administration with an associated reduction of three FTEs.

- **Recommendation 1.11** – Abolishing the Medical Advisory Committee would result in General Revenue savings of \$43,893 and a reduction of one FTE.
- **Recommendation 1.12** – Eliminating the Approved Doctor List, the Field Safety Representative Program, the Hazardous Employer Program, the Rejected Risk Program, the Approved Professional Source Program, and the Drug Free Workplace Program would result in General Revenue savings of \$1,011,389 and a reduction of about 16 FTEs needed to administer these functions.
- **Recommendations 2.1-2.2** – Authorizing the establishment of health-care networks for workers' compensation, similar to group health insurance, and requiring the State and local political subdivisions and their employees to use the networks would result in substantial savings. Savings to state workers' compensation medical and indemnity payments would be 30 percent annually, or about \$17.4 million. Savings to programs outside state and local government, essentially savings to "the system," would also be substantial.

In addition, the use of networks would decrease the number of medical disputes and associated costs to the State for medical dispute resolution, with conservatively estimated General Revenue savings of 30 percent or about \$470,000 in fiscal year 2007; 40 percent or about \$630,000 in 2008; and 50 percent or \$786,000 thereafter. Staffing levels would have a corresponding decrease of 13 FTEs in fiscal year 2007 to 21.5 FTEs beginning in 2009.

- **Recommendation 2.4** – The workers' compensation research group would need an increased General Revenue appropriation of \$57,000 to hire one additional research employee to help compile report cards on workers' compensation networks and conduct other studies. However, as provided for in statute, any research group costs to General Revenue would be offset through an adjustment to the workers' compensation premium maintenance tax and thus would not have a net fiscal impact to General Revenue.
- **Recommendation 3.1** – Basing the statutory definition of the state average weekly wage (SAWW) on the Texas Workforce Commission's calculation, rather than a specific amount, would raise the weekly wage amount from \$539 to about \$728 used to calculate maximum and minimum benefits for all workers' compensation income benefits. Changing the SAWW definition, and increasing the cap on maximum weekly benefits from 100 to 130 percent of the SAWW would increase costs to the state's workers' compensation programs through increased benefit payments. Estimates show benefit payment costs to the state's workers' compensation programs increasing from about \$200,000 in 2006 to \$922,000 in 2010.
- **Recommendation 3.2** – Reducing the retroactive waiting period from 28 to 14 days for injured workers to receive their first week's benefit payment would have a minimal fiscal impact to the State. According to a preliminary estimate by the State Office of Risk Management, the State would incur an increase in benefit payments of about \$12,900 per year.

Several recommendations potentially have a fiscal impact if enacted by the Legislature, but depend on implementation decisions to determine the fiscal impact. These recommendations follow.

The Department's adoption of new fee guidelines for out-of-network health care would be carried out within existing resources used for making medical policies. Any potential savings or costs to the state workers' compensation system as a result of a new fee structure would be dependent on changes to the fee guidelines and amount of care provided to injured workers in areas not served by networks.

Allowing functional capacity exams and allowing carriers, for lost time cases, to obtain physical exams to detail the full extent of injuries and limit future claims to those injuries could have a fiscal impact to the state workers' compensation program and other agencies. However, the fiscal impact would be dependent on how, or whether, the agencies decide to use the exams.

The fiscal impact from increasing fraud reporting requirements and fraud prosecution efforts would be dependent on the level of use by the Department and cannot be estimated for this report.

<i>Fiscal Year</i>	<i>Cost to the General Revenue Fund</i>	<i>Savings to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>	<i>Change in FTEs from FY 2005</i>
2006	\$1,869,900	\$24,521,040	\$22,651,140	-106
2007	\$2,369,900	\$24,991,040	\$22,621,140	-119
2008	\$2,503,900	\$25,151,040	\$22,647,140	-123
2009	\$2,551,900	\$25,307,040	\$22,755,140	-127.5
2010	\$2,591,900	\$25,307,040	\$22,715,140	-127.5

ACROSS-THE-BOARD RECOMMENDATIONS



Across-the-Board Recommendations

This report section briefly describes each of the Sunset across-the-board recommendations (ATBs), with a chart detailing the application of the ATBs to each of the agencies currently under review for the 79th Legislature.

The Sunset Commission adopts across-the-board recommendations as standards for state agencies, reflecting criteria in the Sunset Act designed to ensure open, responsive, and effective government. The Sunset Commission applies across-the-board recommendations to every state agency reviewed, unless a clear reason to exempt the agency is identified. Some Sunset ATBs address policy issues related to an agency's policymaking body, such as requiring public membership on boards or allowing the Governor to designate the chair of a board. Other Sunset ATBs require agencies to set consistent policies in areas such as how to handle complaints and how to ensure public input.

Across-the-Board Recommendations

1. Public Membership – Require public membership on state agency policymaking bodies.

Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This provision gives the general public a direct voice in the activities of an agency through representation on the Board. Having members of the general public on the Board, as close to one-third as possible, would ensure representation.

2. Conflicts of Interest – Require provisions relating to conflicts of interest.

An agency may have ties with professional trade organizations and other groups that may not be in the public interest. Conflicts of interest can also result when board or commission members, or an agency's general counsel, are involved in lobbying. These provisions prevent these potential conflicts.

3. Unbiased Appointments – Require unbiased appointments to the agency's policymaking body.

Policymaking bodies, whose appointees have been chosen on an impartial and unbiased basis, can help ensure that state agencies operate fairly and impartially.

4. Governor Designates Presiding Officer – Provide that the Governor designate the presiding officer of a state agency's policymaking body.

Presiding officers of state commissions and boards in Texas have traditionally been elected by their fellow members. In recent years, the Legislature has routinely authorized the Governor to appoint the presiding officer of state policymaking bodies to increase state agencies' accountability. Using this approach will ensure that the Legislature's standard policy is applied to every agency undergoing Sunset review.

5. Grounds for Removal – Specify grounds for removal of a member of the policymaking body.

This provision specifies that it is grounds for removal of a member if appointment requirements for members of a policymaking body are not met. This provision also clarifies that if a ground for removal of a member exists, actions taken by the policymaking body are still valid.

6. Board Member Training – Require training for members of policymaking bodies.

Members of policymaking bodies should be provided with adequate information and training to allow them to properly discharge their duties. This provision establishes the type of training and the information to be included.

7. Separation of Functions – Require separation of policymaking and agency staff functions.

This provision requires the policymaking body to adopt policies defining its role of setting agency policy. The executive director/administrator should be responsible for managing the agency's day-to-day activities.

8. Public Input – Provide for public testimony at meetings of the policymaking body.

This provision ensures the opportunity for public input to the policymaking body on issues under its jurisdiction.

9. Complaint Information – Require information to be maintained on complaints.

State agencies should maintain adequate information about complaints received. This provision would require that documentation be maintained on all complaints received by the agency; and that all parties to a complaint are informed about agency complaint investigation procedures, and the status of the complaint until resolution.

10. Technology Use – Require agencies to use technology to increase public access.

Many state agencies are slow to implement technological solutions to their business processes because of a built-in bias in favor of traditional ways of doing business. Despite this reluctance, new technology can improve the ability of state agencies to deliver services to clients, provide information to the public, and reduce the costs of providing services. This provision requires agency boards to ensure the effective use of technology.

11. Alternative Dispute Resolution – Develop and use appropriate alternative rulemaking and dispute resolution procedures.

The Legislature has established clear authority for the use of alternative procedures for rulemaking and dispute resolution by state agencies. This provision ensures that each agency develops a written, comprehensive plan that encourages these procedures; and applies those procedures to its rulemaking, internal employee grievances, inter-agency conflicts, contract disputes, actual or potential contested matters, and other appropriate potential conflict areas.

Application of ATBs to Agencies Currently Under Review

For the agencies currently under Sunset review for the 79th Legislative Session, the Sunset Commission evaluated and applied each of the ATBs where appropriate. If the standard approach did not work, the Sunset Commission modified the language to fit the precise circumstances of an individual agency's operations. In addition, some of the agencies under review this session had been previously reviewed and the ATB language was already in law or simply had to be updated.

The chart on the following page details the application of ATBs to agencies currently under review. The Commission did not apply ATBs to six entities under review because they were either recommended for abolishment by the Sunset Commission, or they do not exist as typical state agencies, amenable to these standard provisions. These entities are: Electric Utility Restructuring Legislative Oversight Committee; Regional Education Service Centers; Telecommunications Infrastructure Fund Board; Texas Film Industry Development Loan Guarantee Program; Texas Workers' Compensation Commission; and Windham School District.

**Sunset Across-the-Board
Recommendations
2005**

	Public Membership	Conflicts of Interest	Unbiased Appointments	Governor Designates Presiding Officer	Grounds for Removal	Board Member Training	Separation of Functions	Public Input	Complaint Information	Technology Use	Alternative Dispute Resolution
Acupuncture Examiners, Texas State Board of	S	U	S	S	S	U	S	S	S	A	A
Alcoholic Beverage Commission, Texas	N	U	U	U	U	A	A	S	M	A	A
Barber Examiners, Texas State Board of	S	U	S	S	U	A	U	S	U	A	A
Chiropractic Examiners, Texas Board of	S	U	S	S	U	A	U	S	S	A	A
Cosmetology Commission, Texas	S	U	U	S	U	A	U	S	U	A	A
Dietitians, Texas State Board of Examiners of	S	U	S	A	U	U	U	S	S	A	A
Education Agency, Texas	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	A	M	M
Educator Certification, State Board for	S	A	S	A	M	A	S	A	A	A	A
Guaranteed Student Loan Corporation, Texas	N	U	U	N	U	M	U	S	U	A	N
Lottery Commission, Texas	S	U	U	S	U	A	A	A	A	A	A
Marriage and Family Therapists, Texas State Board of Examiners of	S	U	S	S	U	S	U	S	S	A	A
Medical Examiners, Texas State Board of	U	M	S	U	U	U	U	S	U	A	A
Midwifery Board, Texas	S	U	S	M	M	A	U	S	U	A	A
Optometry Board, Texas	S	U	S	A	U	U	U	S	U	A	A
Perfusionists, Texas State Board of Examiners of	A	U	U	A	U	A	U	S	S	A	A
Pharmacy, Texas State Board of	S	U	S	A	S	U	S	S	U	S	S
Physician Assistant Examiners, Texas State Board of	U	U	A	A	U	A	M	A	U	A	A
Podiatric Medical Examiners, Texas State Board of	S	U	U	A	U	M	U	S	U	A	A
Professional Counselors, Texas State Board of Examiners of	S	U	A	S	U	U	A	S	S	A	A
Psychologists, Texas State Board of Examiners of	S	U	S	A	U	U	U	S	U	A	A
Public Utility Commission of Texas	S	U	S	S	U	M	U	S	M	A	A
Public Utility Counsel, Office of	S	U	S	N/A	M	N/A	N/A	N/A	M	A	M
Social Worker Examiners, Texas State Board of	S	S	A	S	U	S	A	S	S	A	A
Veterinary Medical Examiners, Texas State Board of	S	U	S	A	U	U	U	S	U	A	A

A= apply N/A= not applicable
M= modify S= already in statute
N= do not apply U= update

**IMPLEMENTATION OF 2003
SUNSET LEGISLATION**



Implementation of 2003 Sunset Legislation

Summary

The Sunset Act requires the Sunset Commission to review the implementation of Sunset bill provisions from the preceding legislative session. This review helps ensure that agencies follow through in implementing changes adopted by the Legislature through the Sunset process.

In 2003, the 78th Legislature passed 23 bills containing the majority of changes recommended by the Sunset Commission. Overall, these bills contained a total of 453 provisions requiring action by the agencies involved. Sunset staff worked with each of the agencies impacted by these provisions to follow up on their efforts to implement the required changes.

As shown in the chart, *Implementation Results Overall*, the vast majority of these provisions have been implemented, 25 provisions are still in progress, and only one has not been implemented. To see the percentage of provisions implemented by agency, see the chart on the following page, *Implementation Results by Agency*.

<i>Implementation Results Overall</i>		
Status of Provisions	Number	Percentage
Implemented	427	94.3%
In Progress	25	5.5%
Not Implemented	1	0.2%
Total	453	100%

Within the more than 420 provisions implemented, Sunset staff found that many major changes have been made by these agencies based on directives contained in the Sunset legislation from 2003. Key changes implemented as a part of the Sunset process included the following:

- creation of a new structure and focus for economic development in Texas by abolishment of the Texas Department of Economic Development and Texas Aerospace Commission and transfer of their primary functions to the Governor's Office;
- significant savings at the Texas Workforce Commission from the use of bonds to replenish the employment fund, rather than borrowing from the federal government;
- reduction of the amount of time the Texas Ethics Commission takes to resolve complaints from the public by eliminating unnecessary steps in the process, imposing time limits on responses, and establishing a priority system for handling complaints;
- movement to a common course numbering system for lower division courses at community colleges and most universities by September 1, 2005, based on a provision in the Higher Education Coordinating Board's Sunset bill; and
- changing the composition of 49 boards and commissions to bring them into compliance with a 1999 constitutional amendment to have an odd number of board members.

Implementation Results by Agency

Agency	Bill Number	Changes Required	Completed	In Progress	Not Implemented
Accountancy, Texas State Board of Public	HB 1218	17	14	3	
Administrative Hearings, State Office of	SB 1147	9	8	1	
Aerospace Commission, Texas	SB 275	1	1		
Architectural Examiners, Texas Board of	SB 283	23	23		
Bar of Texas, State	HB 599	14	14		
Court Reporters Certification Board	SB 273	19	18	1	
Dental Examiners, State Board of	SB 263	15	14	1	
Economic Development, Texas Department of	SB 275	8	7	1	
Engineers, Texas Board of Professional	SB 277	33	33		
Ethics Commission, Texas	HB 1606	51	50	1	
Funeral Service Commission, Texas	HB 1538	11	11		
Higher Education Coordinating Board, Texas	SB 286	26	21	5	
Housing Corporation, Texas State Affordable	SB 284	16	16		
Housing and Community Affairs, Texas Department of	SB 264	23	23		
Human Services, Texas Department of *	SB 285	8	4	4	
Land Surveying, Texas Board of Professional	SB 260	22	21	1	
Law Examiners, Board of	SB 266	11	11		
Licensing and Regulation, Texas Department of	SB 279	39	38	1	
Plumbing Examiners, Texas State Board of	SB 282	27	26	1	
Purchasing from People with Disabilities, Texas Council on	SB 261	11	8	3	
Tax Professional Examiners, Board of	SB 276	16	16		
Workforce Commission, Texas	SB 280	42	39	2	1**
Workforce and Economic Competitiveness, Texas Council on	SB 281	11	11		
Totals		453	427	25	1

* Separate legislation (HB 2292) transferred the Department of Human Services' responsibilities to the Health and Human Services Commission and Department of Aging and Disability Services.

** While in the TWC Sunset bill, this provision placed a requirement on the Texas Education Agency, which TEA has not implemented.

The one statutory provision that has not been implemented is summarized below.

1. The Texas Education Agency (TEA), as required by the Sunset bill on the Texas Workforce Commission (TWC), has not implemented a provision requiring TEA to use existing funds to contract with TWC to develop a demand-driven workplace literacy and basic skills curriculum. TEA claims that its federal literacy funding cannot be used for skills training.

For agencies that have provisions that have not been implemented or are still in progress, we have provided additional information on the status of each of these provisions, organized by agency. It should be noted that several of the provisions shown as in progress will be implemented shortly or are not required to be fully implemented until a later date.

In addition to statutory changes, the Sunset Commission adopted 58 management recommendations for improvements to agency operations. The State Auditor evaluates the implementation of management recommendations adopted by the Sunset Commission. The Auditor's findings are contained in SAO No. 05-005, *A Review of Sunset Advisory Commission Management Actions at 15 State Agencies*, which can be obtained at www.sao.state.tx.us.

**AGENCIES WITH PROVISIONS
IN PROGRESS OR NOT IMPLEMENTED**

**Texas State Board of Public Accountancy
HB 1218**

House Bill 1218, as adopted by the 78th Legislature, continued the Texas State Board of Public Accountancy for 12 years. The legislation included a total of 17 changes requiring action. The following chart summarizes three provisions that are still in progress, and provides the status of each.

Item	Bill Provision	Implementation Status
1	Requires non-Board members appointed to serve on the Board's working committees to meet the same qualifications as Board members. Provides that the financial disclosure required for non-Board members be made to the Executive Director of the agency, instead of to the Ethics Commission.	<i>In Progress</i> - The agency is in the process of collecting financial disclosure statements from non-Board members serving on working committees.
2	Provides that the Board shall adopt rules to prevent any committee member from voting on issues in which the member has a personal or financial interest.	<i>In Progress</i> - The Board proposed a rule at its January 2005 meeting to prevent committee members from voting on issues in which they have a personal or financial interest. The Board expects to adopt the rule at its March 2005 meeting.
3	Authorizes the Board to establish policymaking and working committees to assist the Board in performing its responsibilities. Clarifies that policymaking committees shall consist solely of Board members, and assist the Board in establishing policies, drafting rules, and other oversight duties. Clarifies that working committees may consist of both Board members and non-Board members, and assist the Board in carrying out Board functions, such as reviewing enforcement cases and other licensing matters. Requires the Board to maintain the distinction between policymaking and working committees.	<i>In Progress</i> - The Board has established policymaking and working committees as required. However, Board rules continue to delegate rulemaking functions to working committees that consist of both board and non-board members. These rules are contrary to the requirement that policymaking committees, consisting only of Board members, may draft rules. The Board proposed a rule at its January 2005 meeting to clarify that all rules must go through a policymaking committee. The Board anticipates adopting the rule at its March 2005 meeting.

**State Office of Administrative Hearings
SB 1147**

Senate Bill 1147, as adopted by the 78th Legislature, continued the State Office of Administrative Hearings (SOAH) for 12 years. The legislation included a total of nine changes requiring action. The following chart summarizes one provision that is still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Changes the process by which some agencies will pay SOAH for hearings and alternative dispute resolution for the 2006-2007 biennium. Requires certain agencies that contract with SOAH or that SOAH bills instead to pay these costs in a lump sum at the beginning of each fiscal year based on their average annual usage over the three most recent years, as determined by SOAH. SOAH would then include these estimates in its legislative appropriations request.	<i>In Progress</i> - Full implementation of this change in SOAH's funding is pending a September 1, 2005 effective date, and is subject to any funding changes that may be made for SOAH in the upcoming legislative session. SOAH has notified the affected agencies regarding this change in its funding, and it has also estimated its workload for these agencies for the 2006-2007 biennium. SOAH and the affected agencies have not determined a dollar amount that would be paid to SOAH because FY 2005 workload statistics may affect this calculation. In addition, SOAH is seeking General Revenue funding for agencies currently subject to the billing process. It also anticipates that interagency contracts will continue to be needed because some agencies will not have sufficient historical data for estimating costs and others will voluntarily refer work to SOAH.

**Court Reporters Certification Board
SB 273**

Senate Bill 273, as adopted by the 78th Legislature, continued the Court Reporters Certification Board for 12 years. The legislation included a total of 19 changes requiring action. The following chart summarizes one provision that is still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Adds standard Sunset language requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.	<i>In Progress</i> - The Court Reporters Certification Board has developed policies that will be reviewed by the Texas Supreme Court in 2005.

**Texas State Board of Dental Examiners
SB 263**

Senate Bill 263, as adopted by the 78th Legislature, continued the Texas State Board of Dental Examiners for 12 years. The legislation included a total of 15 changes requiring action. The following chart summarizes one provision that is still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Requires the Dental Board to adopt rules regarding procedures for expunging dismissed complaints from Board records under certain circumstances. Requires staff to report each expungement to the Board.	<i>In Progress</i> - The Board proposed rules in its January 2005 meeting to establish a procedure for expungement of dismissed complaints, and expects to adopt these rules in its April meeting.

**Texas Department of Economic Development
SB 275**

Senate Bill 275, as adopted by the 78th Legislature, abolished the Texas Department of Economic Development and transferred its primary functions to the Texas Economic Development and Tourism Office (EDT) within the Office of the Governor. The legislation included a total of eight changes requiring action. The following chart summarizes one provision that is still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Requires EDT to establish a statewide strategy to address economic growth, based in part on the identification and development of industry clusters. Requires EDT to evaluate the effectiveness of services provided to industry clusters and the potential return to the State from devoting additional resources to a targeted sector's approach to economic development.	<p><i>In Progress</i> - EDT established a statewide strategy that focuses on targeting the following six competitive industry clusters:</p> <ul style="list-style-type: none"> • advanced technologies and manufacturing; • aerospace and defense; • biotechnology and life sciences; • information and computer technology; • petroleum refining and chemical products; and • energy. <p>EDT assigned industry cluster teams in October 2004 to assess and monitor each cluster's economic competitiveness and business climate. Results of this evaluation are not yet available, but are in progress.</p>

**Texas Ethics Commission
HB 1606**

House Bill 1606, as adopted by the 78th Legislature, addressed the functions of the Texas Ethics Commission. The legislation included a total of 51 changes requiring action. The following chart summarizes one provision that is still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Requires the Commission to adopt rules outlining procedures for terminating campaign treasurer appointments of inactive candidates and political committees. Does not apply to candidates who won their elections. Allows the Commission to define, through rule, "inactive candidate or political committee."	<i>In Progress</i> - Although the Commission has not yet adopted a rule to implement this provision, it is in the process of collecting information to use as a basis for a proposed rule. The agency expects to propose a rule on this topic in July 2005.

**Texas Higher Education Coordinating Board
SB 286**

Senate Bill 286, as adopted by the 78th Legislature, continues the Texas Higher Education Coordinating Board for 12 years. The legislation included a total of 26 changes requiring action. The following chart summarizes five provisions that are still in progress, and provides the status of each.

Item	Bill Provision	Implementation Status
1	Requires the Board to articulate implementation strategies for the higher education plan, Closing the Gaps, and report biennially to the Legislature on statutory changes that would allow the agency to better support the plan.	<i>In Progress</i> - The Board is in the process of identifying implementation strategies that would help universities reach the goals of the plan, and will hear recommendations at its next Board meeting in April 2005.
2	Requires the Board to annually assess its activities and how well they support the higher education plan.	<i>In Progress</i> - The Board has reviewed its rules and internal policies and continues to change its organizational structure to better align the agency with Closing the Gaps.
3	Requires the Board to annually publish certain performance data for general academic teaching institutions on the Internet. Also, requires institutions to provide performance data beginning with the 2003-2004 academic year. Requires the Board to publish the data by March 1, 2005.	<i>In Progress</i> - Almost all of the data has been collected. The Board expects to integrate the data into its higher education accountability system, already available online, and meet the March 1, 2005 deadline for completion of this project.
4	Requires the Board to establish a doctoral incentive loan repayment program to assist individuals from groups that are underrepresented among the faculty and administration of institutions of higher education.	<i>In Progress</i> - The Board has adopted rules for the program and is currently in the process of evaluating applications before notifying those who will be accepted in the program. The first awards of \$20,000 each will be processed at the end of the current academic year.
5	Requires the Board to establish a pilot program project to examine the feasibility and effectiveness of authorizing public junior colleges to offer baccalaureate degree programs in the fields of applied science and applied technology.	<i>In Progress</i> - The Board has selected four institutions for the pilot program. These institutions are awaiting authorization from the Southern Association of Colleges and Schools, and subsequent approval by the Board, to begin offering baccalaureate degree programs.

**Texas Department of Human Services
SB 285**

Senate Bill 285, as adopted by the 78th Legislature, contained the recommendations of the Sunset Commission from a special purpose review of the Department of Human Services (DHS). However, HB 2292, the health and human services agency reorganization bill which passed during the same legislative session, abolished the Department and transferred its responsibilities to the Health and Human Services Commission (HHSC) and the newly-created Department of Aging and Disability Services (DADS). Despite this reorganization, eight changes from SB 285 requiring action remained in effect. The following chart summarizes four provisions that are still in progress, and provides the status of each.

Item	Bill Provision	Implementation Status
1	Requires the Department, by rule, to develop and implement a plan to assist clients in receiving community care services as quickly as possible when those services are available. Requires the Department to identify community care slots that may soon come available, contact individuals on interest lists, and start the eligibility determination process at least 30 days in advance.	<i>In Progress</i> - DADS has implemented portions of this provision by practice and HHSC is developing rules that will address this provision. HHSC staff expects rules to be adopted and in effect by August 1, 2005.
2	Adds standard Sunset language allowing the Board to adopt a staggered license renewal system for Medication Aides.	<i>In Progress</i> - HHSC is developing rules that will include these provisions, and expects these rules to be adopted and in effect by August 1, 2005.
3	Adds standard Sunset language establishing a method for license renewal for Medication Aides and a time-frame and penalty structure for delinquent renewals.	<i>In Progress</i> - HHSC is developing rules that will include these provisions, and expects these rules to be adopted and in effect by August 1, 2005.
4	Adds standard Sunset language requiring the Department to notify Medication Aide applicants of exam results within a reasonable time, and to provide an analysis of exam performance to an applicant who failed a licensing exam.	<i>In Progress</i> - HHSC is developing rules that will include these provisions, and expects these rules to be adopted and in effect by August 1, 2005.

**Texas Board of Professional Land Surveying
SB 260**

Senate Bill 260, as adopted by the 78th Legislature, continued the Texas Board of Professional Land Surveying for 12 years. The legislation included a total of 22 changes requiring action. The following chart summarizes one provision still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Requires the Board to adopt written guidelines for probation in rule. Requires the Board to adopt the rules by September 1, 2005.	<i>In Progress</i> - The Board is working on written guidelines for administering probation.

**Texas Department of Licensing and Regulation
SB 279**

Senate Bill 279, as adopted by the 78th Legislature, continued the Texas Department of Licensing and Regulation (TDLR) for 12 years. The legislation included a total of 39 changes requiring action by TDLR, the Department of Information Resources (DIR), the Texas Commission on Environmental Quality (TCEQ), the Texas Department of Agriculture (TDA), or the Secretary of State. The following chart summarizes one provision that is still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Adds a requirement for persons regulated by one or more licensing authorities to file a single change of address online with DIR, using the TexasOnline Authority. Requires DIR to provide the new address to each appropriate licensing agency.	<i>In Progress</i> - DIR is developing an application to be hosted on TexasOnline to provide for a person regulated by one or more licensing authorities to file a single change of address online. Completion of the application is targeted for spring 2005.

**Texas State Board of Plumbing Examiners
SB 282**

Senate Bill 282, as adopted by the 78th Legislature, continues the Texas State Board of Plumbing Examiners for 12 years. The legislation included a total of 27 changes requiring action by the Board. The following chart summarizes one provision that is still in progress, and provides its status.

Item	Bill Provision	Implementation Status
1	Requires the Board to develop a review course in English and Spanish to prepare applicants for each of the Board's license examinations.	<i>In Progress</i> - The Board is developing the review course in English and Spanish, and anticipates making the courses available to applicants free of charge on its Web site early in 2005.

**Texas Council on Purchasing from People with Disabilities
SB 261**

Senate Bill 261, as adopted by the 78th Legislature, continued the Texas Council on Purchasing from People with Disabilities for 12 years. The legislation included a total of 11 changes requiring action. The following chart summarizes three provisions that are still in progress, and provides the status of each.

Item	Bill Provision	Implementation Status
1	Requires the Council to adopt a formal Community Rehabilitation Program certification procedure. Requires the Council to adopt rules by January 1, 2004.	<i>In Progress</i> - The Council considered amending its rules to establish a Community Rehabilitation Program certification procedure at the December 2004 Council meeting, and anticipates proposing the rule for publication in March 2005.
2	Requires the State Auditor's Office (SAO) to consider agency compliance with state use laws as part of its HUB compliance audits, and to report any noncompliance to the Council. Requires the Council to assist noncompliant agencies in complying.	<i>In Progress</i> - SAO is in the process of auditing agencies' compliance with state use laws through the HUB audits. The Council intends to notify and offer assistance to noncompliant agencies once it receives compliance information from SAO.
3	Requires the Council to develop a formal process for the annual review of a Central Nonprofit Agency's management fee. Requires the Council to adopt rules outlining the process by January 1, 2004.	<i>In Progress</i> - The Council published a rule relating to the annual review of a Central Nonprofit Agency's management fee in the January 14, 2005 <i>Texas Register</i> . The Council anticipates adoption at its February 2005 meeting.

**Texas Workforce Commission
SB 280**

Senate Bill 280, as adopted by the 78th Legislature, continued the Texas Workforce Commission (TWC) for six years. The bill contained 42 provisions requiring action by TWC, the Texas Education Agency, and the Texas Workforce Investment Council, and 39 of these provisions have been implemented. One provision has not been implemented and two are still in progress; and the following chart summarizes these provisions, and provides the status of each.

Item	Bill Provision	Implementation Status
1	<p>Requires the Texas Education Agency (TEA) to use existing funds to contract with TWC to develop the demand-driven workplace literacy and basic skills curriculum. Instructs TEA to implement these changes as soon as possible after the effective date of the bill (September 1, 2003). In developing the curriculum, requires TWC to evaluate existing efforts and potential cost savings resulting from such a curriculum; contract for development assistance; target up to five industry sectors that would benefit; pilot test the curriculum in those industry sectors; and develop appropriate credentials associated with the curriculum. Instructs TWC to implement these changes no later than September 1, 2005.</p>	<p><i>Not Implemented</i> - TEA has not funded a contract with TWC for the development and evaluation of a demand-driven workplace literacy and basic skills curriculum. In response, in January 2005, the Sunset Commission recommended that the 79th Legislature extend the effective date of this provision in law to September 1, 2007 as part of the TEA Sunset bill; and directed TEA and TWC to submit quarterly reports to the Sunset Commission detailing the agencies' progress implementing this provision.</p> <p>According to TEA, Adult Basic Education Federal Funds and State Match cannot be used toward training for certificates or credentials, or for co-enrollment in a post-secondary program.</p> <p>TWC has conducted an evaluation of existing curricula, identified three targeted industry sectors, and potential cost savings that could result from implementing a demand-driven workforce literacy curriculum.</p> <p>While no curriculum has been developed, TWC has funded the development of three guides to instruct people entering workforce literacy classes on how to find a job and how to succeed on the job. TWC expects to complete the guides in the spring of 2005 and plans to publish them online in English and Spanish.</p>

Texas Workforce Commission
SB 280

Item	Bill Provision	Implementation Status
2	<p>Requires TWC to streamline the delivery of services by integrating the administration of federal workforce programs no later than September 1, 2004. Requires TWC, in consultation with local boards, to ensure that the agency's rules, performance measures, policies, procedures, and organizational structures support the integration of the above federal programs and associated caseworker functions</p> <p>Instructs TWC to conduct a review of these programs, including implementing three to five pilot projects in different local board areas, to identify barriers to integration, and then modify and develop the programs to support integration of associated caseworker functions no later than September 1, 2004. Authorizes TWC to seek a federal waiver, if necessary.</p> <p>Instructs TWC to report its findings, with recommendations, to the Legislature no later than January 15, 2005.</p> <p>Requires local centers to provide integrated services across programs, integrated eligibility determination, and integrated case management services through a single point of contact to customers receiving services from more than one of any of the above federal workforce programs by September 1, 2007.</p>	<p><i>In Progress</i> - At the state level, TWC has taken some steps to integrate its administration of these programs, but more comprehensive changes, including integrating policies and performance measures across programs, have not occurred within the September 1, 2004 time frame called for in SB 280.</p> <p>TWC staff indicate these efforts have been hampered by the fact that key workforce programs are pending reauthorization by Congress. The Commission plans to conduct a full business process redesign of its computer system and a concurrent review of program policies beginning in 2005.</p> <p>At the local level, TWC has initiated pilot projects at three local workforce boards to identify specific barriers to integration and evaluate service delivery models that support the integration of case worker functions.</p> <p>In January 2005, TWC published a report, <i>Integration of Workforce Services</i>, presenting TWC's review of its policies and structure, the preliminary results of the three pilot projects, and the next steps in addressing barriers to integration.</p> <p>Full implementation at the local level is not required until September 1, 2007.</p>

Texas Workforce Commission
SB 280

Item	Bill Provision	Implementation Status
3	Requires TWC to conduct an annual evaluation of child care allocation formulas to ensure that local child care needs and costs are reflected in the formulas. Specifies that the evaluation assess each board's current use of funds, performance, general cost of care in the area, area poverty rate relative to state poverty rate, number of children on waiting lists, and overall capacity.	<i>In Progress</i> - TWC staff has assessed various methods for allocating child care funds, and developed recommendations for changes to the formulas that will be included in a report scheduled for release in February 2005. While TWC staff looked at each of the factors specified in SB 280, the staff are not recommending inclusion of any of these factors in the formulas, stating that these factors are too fluid.

APPENDICES



Appendix: Sunset Review Schedule – 2007

General Government

Arts, Texas Commission on the
Historical Commission, Texas
Historical Representation Advisory Committee
Incentive and Productivity Commission, Texas
Library and Archives Commission, Texas State
Military Preparedness Commission, Texas
Preservation Board, State
Risk Management Board
State-Federal Relations, Office of
Veterans Commission, Texas

Education

Higher Education Savings Plan
Higher Education Tuition Board, Prepaid
Teacher Retirement System, Board of Trustees of the
Veterinary Medical Diagnostic Laboratory, Texas

Natural Resources

Agriculture, Texas Department of
Animal Health Commission, Texas
Boll Weevil Eradication Foundation, Board of Directors of the Official Cotton Growers'
Prescribed Burning Board
Texas-Israel Exchange Fund Board
Veterans' Land Board

Regulatory

Brain Injury, Study of Health Benefit Plan Coverage
Insurance, Texas Department of
Insurance Counsel, Office of Public
Nurse Examiners, Board of
Property and Casualty Insurance Legislative Oversight Committee
Real Estate Commission, Texas
Structural Pest Control Board, Texas

Business and Economic Development

Rural Community Affairs, Office of



Appendix: Summary of the Texas Sunset Act

Sunset Act

The Texas Sunset Act (Chapter 325, Government Code) went into effect in August 1977. It provides for automatic termination of most agencies under Sunset review, although a few agencies under review are exempt from automatic termination.

Sunset Advisory Commission

The 12-member Sunset Advisory Commission has five members of the Senate, five members of the House, and two public members, appointed by the Lieutenant Governor, and the Speaker of the House, respectively. The chairmanship rotates between the Senate and the House every two years.

Reviewing an Agency

When reviewing an agency, the Commission's staff must consider statutory criteria as shown in the chart, *Sunset Review Questions*. The Commission's report on an agency must include a recommendation to abolish or continue the agency, and may contain recommendations to correct problems identified during the review. These problems may include other agencies not under review that overlap or duplicate, or otherwise relate to the agency under review.

Continuing an Agency

If the Commission recommends that an agency be continued, it has legislation drafted for that purpose, and to correct the problems found during the Sunset review. Sunset legislation usually continues an agency for 12 years.

Terminating an Agency

If the Commission recommends abolishment of an agency, the agency generally has a one-year period to wind down its operations. The agency retains full authority and responsibility until the end of that year, at which time its property and records are transferred to the appropriate state agency.

Compliance Reviews

The Commission is required to examine an agency's actions after a Sunset bill is passed to determine if the agency has implemented the new statutory requirements. In addition, the State Auditor may evaluate the agency's compliance with non-statutory management changes recommended by the Commission.

Sunset Review Questions

1. How efficiently does the agency operate?
2. How successful has the agency been in achieving its statutory objectives?
3. In what ways could the agency's operations be less burdensome or restrictive and still adequately protect the public?
4. To what degree are the agency's advisory committees needed and used?
5. How much do the agency's programs and jurisdiction duplicate those of other agencies? Could the agency's programs be consolidated in another agency?
6. To what extent has the agency recommended statutory changes that benefit the public rather than regulated businesses?
7. Does the agency promptly and effectively handle complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions? How compatible are the agency's rules with its objectives?
9. How has the agency complied with requirements for equal employment opportunity, the rights and privacy of individuals, and purchasing products from Historically Underutilized Businesses?
10. Are changes needed in the agency's enabling statute to comply with these Sunset criteria?
11. How effectively does the agency enforce rules on employee conflicts of interest?
12. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
13. Would abolishing the agency cause federal government intervention or a loss of federal funds?

