

SUNSET ADVISORY COMMISSION

Report to the 80th Legislature

May 2007



Sunset Advisory Commission

Senator Kim Brimer, Chair

Representative Vicki Truitt, Vice Chair

Senator Robert F. Deuell, M.D.

Representative Byron Cook

Senator Craig Estes

Representative Dan Flynn

Senator Eliot Shapleigh

Representative Lois Kolkhorst

Senator John Whitmire

Representative Ruth Jones McClendon

Howard Wolf, Public Member

Ike Sugg, Public Member

Joey Longley

Director

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



SUNSET ADVISORY COMMISSION

P.O. Box 13066 ❖ Austin, Texas 78711-3066

Senate Members

Chair
Sen. Kim Brimer
Ft. Worth

Sen. Robert F. Deuell, M.D.
Greenville

Sen. Craig Estes
Wichita Falls

Sen. Eliot Shapleigh
El Paso

Sen. John Whitmire
Houston

Howard Wolf
Austin

May 23, 2007

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 80th Legislature
Assembled in Regular Session

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San Antonio

Ike Sugg
San Angelo

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 2005 and January 2007, the Sunset Commission has worked to develop recommendations for the 20 agencies scheduled for Sunset review. During this 17-month period, the Commission held numerous public meetings to hear presentations of its staff's reviews, hear testimony on the results of those reviews and other issues, and make 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.

Director
Joey Longley

The Sunset Advisory Commission is pleased to forward to you its findings and recommendations with this report.

Respectfully submitted,



Senator Kim Brimer
Chair
Sunset Advisory Commission



Representative Vicki Truitt
Vice Chair
Sunset Advisory Commission



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INTRODUCTION



Introduction

The Sunset law in Texas, enacted nearly 30 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 80th Legislative Session

For the 80th Legislative Session, 20 agencies are under Sunset review. Among the agencies to be considered by the Legislature this session are the Texas Department of Criminal Justice, Teacher Retirement System, Office of Rural Community Affairs, and Texas Veterans Commission. Several regulatory agencies, such as the Board of Nurse Examiners, Structural Pest Control Board, and Real Estate Commission, and cultural resources agencies, such as the Commission on the Arts, Historical Commission, and Library and Archives Commission, are also under review.

Results of Sunset Commission Reviews

As a result of its deliberations, the Sunset Commission recommends that the 80th Legislature pass legislation continuing 14 of 20 agencies under review, with significant improvements to each agency continued. Three of the agencies reviewed were not subject to termination, but the Commission makes several recommendations to improve their operations. The Commission recommends abolishing two agencies – the Office of State-Federal Relations and the Structural Pest Control Board – and merging their functions with the Office of the Governor and the Department of Agriculture, respectively. The Commission also voted to abolish the Historical Representation Advisory Committee since it has never been active. For one agency, the Correctional Managed Health Care Committee, the Commission voted to remove it from Sunset review. While the Texas Education Agency was originally scheduled for Sunset review this cycle, the 79th Legislature extended its Sunset date to 2012 during the 3rd called session.

Altogether, the Sunset Commission adopted 232 recommendations to improve agency 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 and provides the estimated two-year fiscal impact of recommended changes. Overall, in fiscal years 2008 to 2009, the Sunset Commission's recommendations would result in a positive fiscal impact to the State of about \$56,000. The Sunset Commission also recommends changes to appropriations for three agencies. Since these recommendations are suggestions to the Legislature through the appropriations process, they will not be contained in the Sunset bills for those agencies.

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 website, 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 2005. The Sunset Act requires the Commission to review the way each agency implements the provisions of its Sunset bill. In 2005, the 79th Legislature passed 18 bills containing the majority of changes recommended by the Sunset Commission. Overall, state agencies have implemented 85 percent of these changes.

Also included in this report are two information items. These items are the results of special requests for studies by the Legislature. Finally, this report includes a list of agencies scheduled for Sunset review in 2009, and a summary of the Texas Sunset Act.

SUMMARY OF SUNSET RECOMMENDATIONS
TO THE 80TH LEGISLATURE



Summary of Sunset Recommendations

Alcoholic Beverage Commission, Texas

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 costs and delays 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. Ensure licensees have access to online license application, renewal, and fee payment.
7. Require establishments that serve alcohol to post signs warning the public of the risks of drinking alcohol during pregnancy.
8. Expand TABC's authority to take enforcement action against establishments that sell or serve alcohol during prohibited hours.
9. Continue TABC for 12 years.

Animal Health Commission, Texas

1. Clarify the Commission's role in preparing for and responding to natural or man-made emergencies, including a study of the State's capacity to perform disease testing during emergencies.
2. Clarify the Commission's authority to address diseases in other species that threaten livestock and fowl.
3. Clarify the Commission's authority to register feral swine holding facilities and regulate movement of feral swine for disease-control purposes.
4. Establish an agencywide compliance policy and improve public information regarding its compliance process.
5. Develop and implement a succession plan.
6. Continue the Commission for 12 years.

Arts, Texas Commission on the

1. Continue the Texas Commission on the Arts for two years, and require a follow-up Sunset review focused on how the agency spends its funds, particularly its expenditures on administration and overhead.
2. Require the Commission to adopt rules to govern the acceptance of private funds to ensure that the use of the funds supports the agency's key functions.
3. Require the Commission to adopt rules to ensure accountability of TCA's special initiative grants.
4. Request that the Legislature, through the appropriations process, authorize TCA to expend the annual interest income earned on the Cultural Endowment Fund for grants only.

Criminal Justice Agencies

Texas Department of Criminal Justice

Board of Pardons and Paroles

Correctional Managed Health Care Committee

1. Request that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.
2. Establish a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies.
3. Require the Board of Pardons and Paroles to annually review and update its parole guidelines, and report and explain to the Legislature its efforts to meet them.
4. Require CSCDs to identify and recommend probationers appropriate for early termination, and encourage TDCJ and the Legislature to adjust funding methods to minimize the loss of funds to CSCDs resulting from these early terminations.
5. Require TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders early from parole and mandatory supervision.
6. Authorize judges to permit the early medical release of state jail confinees who pose no risk to public safety due to their medical conditions.
7. Expand conflict of interest provisions and previous employment restrictions for Parole Board members to apply to parole commissioners.
8. Require the Board of Pardons and Paroles to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process.
9. Require TDCJ to identify and provide information and interventions to women offenders at risk of having an alcohol-exposed pregnancy.
10. Require TDCJ to study the option of using electronic GPS tracking and monitoring devices for people on parole, and report the findings to the Legislature.

11. Continue TDCJ for 12 years.
12. Require the Correctional Managed Health Care Committee to make information about offender health care readily available to the public and offenders.
13. Allow the Correctional Managed Health Care Committee to continue, but update its statutory direction and remove its separate Sunset date.

Higher Education Tuition Board, Prepaid

1. Facilitate the Board's ability to reopen the Prepaid Plan through changes in law that enable better pricing of contracts given a tuition deregulated environment.
2. Direct the Board to consider changes to encourage greater interest in managing the Savings Plan and to regularly evaluate the cost-effectiveness of its advertising.
3. Require in law an ethics policy for Board members and staff to help ensure against any potential conflicts of interest.
4. Require the Board to study how it could leverage prepaid tuition contracts to secure benefits for Prepaid Plan beneficiaries from Texas universities.
5. Continue the Prepaid Higher Education Tuition Board, housed at the Comptroller's Office, for the standard 12-year period.

Historical Commission, Texas

1. Require the Texas Historical Commission to adopt rules governing the relationship between the agency and its associated nonprofit corporation.
2. Require THC to create a statewide strategy for awarding historical markers.
3. Continue THC for 12 years, and direct the agency to evaluate and prioritize its many programs.

Library and Archives Commission, Texas State

1. Continue the Texas State Library and Archives Commission for 12 years.
2. Restructure regional library systems' funding to provide flexibility to meet changing conditions and encourage innovation.
3. Eliminate state certification of county librarians.
4. Authorize TSLAC in law to provide direction and leadership to collaborative efforts to develop online access to historical resources.
5. Require TSLAC and the Texas Education Agency to develop a joint study of school library needs, and to assess which needs each agency should address.

Nurse Examiners, Board of

1. Streamline the Nurse Board's process for approving nursing education programs to remove unnecessary complexity, eliminate duplication, and accommodate changes in the delivery of nursing education.
2. Encourage an innovative approach by the Board for dealing with the nursing shortage.
3. Require the Board to clarify how it will use criminal history and arrest information in licensing and disciplining nurses.
4. Change the way the Board uses advisory committees to ensure objective, independent advice on Board functions and policies.
5. Adopt the Advanced Practice Registered Nurse Multistate Compact to make it easier for these nurses to come to Texas.
6. Improve the Board's ability to deal with impaired nurses who commit practice violations.
7. Strengthen the Board's oversight of targeted continuing education to make the requirements workable for the Board and beneficial for the nurse.
8. Conform key elements of the Board's licensing and enforcement functions to commonly applied licensing practices.
9. Continue the Board of Nurse Examiners for 10 years.

Real Estate Commission, Texas

1. Increase TREC's focus on consumer protection, and provide the agency additional enforcement tools.
2. Improve TREC's ability to quickly resolve complaints, and transfer its hearings to SOAH.
3. Improve regulation of private real estate schools to ensure students get a quality education.
4. Conform key elements of the Commission's licensing and regulatory functions to commonly applied licensing practices.
5. Continue the Texas Real Estate Commission for 12 years, and better integrate regulation of home inspectors and appraisers into the agency's structure.

Risk Management, State Office of

1. Require SORM to facilitate the return to work of injured employees by expanding its case management program and reporting the lost time and return to work outcomes of state agencies.
2. Require SORM to study how the State could structure its workers' compensation program to be prepared for claims resulting from a disaster and to report options to the Legislature.
3. Require SORM to pay most indemnity benefits by direct deposit.

4. Require state agencies to develop business continuity plans with SORM's consultation and evaluation.
5. Require SORM, the Texas Building and Procurement Commission, and the State Fire Marshal's Office to exchange safety information.
6. Continue the State Office of Risk Management for 12 years.

Rural Community Affairs, Office of

1. Continue ORCA for four years, with new leadership and refocused to better serve rural Texas.

State-Federal Relations, Office of

1. Abolish the Office of State-Federal Relations and restructure it within the Office of the Governor with clear legislative consultation; and if the Office chooses to contract with consultants, require it to adhere to clear guidelines.
2. Require state agencies and political subdivisions of the State of Texas to report contracts with federal-level government relations consultants to the Office.
3. Require the Office to track performance indicators, as determined by the Office of the Governor in consultation with legislative leadership, and include the information in its annual policy priority document.

Structural Pest Control Board, Texas

1. Abolish the Structural Pest Control Board and transfer its functions to the Texas Department of Agriculture.
2. Allow the agency to determine its inspection frequency based on an assessment of risk.
3. Require the agency to develop a formal process for exam development and revision.
4. Improve the Integrated Pest Management Program to provide more clear and consistent guidance to schools.
5. Conform key elements of the agency's licensing and regulatory functions to commonly applied licensing practices.
6. Allow beekeepers to remove bees from structures without a pest control license, as long as they do not use pesticides.

Teacher Retirement System of Texas

1. Require TRS to provide equal access to retirement counseling services across the state.
2. Restructure TRS' disability retirement benefit program to ensure protection of Pension Trust Fund assets.

3. Grant TRS a greater range of oversight tools to adequately protect investments made by public education employees in 403(b) products.
4. Repeal the statutory requirement for TRS to conduct the Public School Employees' Health Coverage Comparability Study.

Veterans Commission, Texas

1. Continue the Texas Veterans Commission for four years and allow the Commission additional time to assume its new programs.
2. Improve the Commission's rulemaking process, enabling the Commission to respond to changes in its mission and the veterans it serves.
3. Provide the Commission with management tools needed to ensure the highest quality claims counseling and representation services for Texas' veterans.
4. Strengthen the Commission's relationship with county service officers to more effectively reach veterans at the local level.
5. Require the Commission to develop and implement a succession plan in anticipation of changes in the agency's workforce.
6. Require the Texas Veterans Commission and the Veterans' Land Board to coordinate a statewide approach to making Texas veterans aware of available benefits and services.

Veterans' Land Board

1. Require the Veterans' Land Board and the Texas Veterans Commission to coordinate a statewide approach to making Texas veterans aware of available benefits and services.
2. Require the Veterans' Land Board to obtain and approve relevant audit plans and publicly discuss internal audit reports.

Veterinary Medical Diagnostic Laboratory, Texas

1. Continue TVMDL for 12 years.
2. Clarify TVMDL's powers and duties in statute, and require the agency to provide notice and opportunity for public comment when developing its fee schedule.

80th Session Sunset Summary Information

Agency	Action	Two-Year Net Fiscal Impact	Bill Author	
			Senate	House
Alcoholic Beverage Commission, Texas	Continue	No Impact	Brimer	Truitt
Animal Health Commission, Texas	Continue	No Impact	Estes	Kolkhorst
Arts, Texas Commission on the	Continue	No Impact	Deuell	Flynn
Criminal Justice, Texas Department of	Continue	No Impact	Whitmire	Madden
Correctional Managed Health Care Committee	Sunset Date Removed	No Impact	Whitmire	Madden
Higher Education Tuition Board, Prepaid	Continue	No Impact	Brimer	Cook, B.
Historical Representation Advisory Committee	Abolish	No Impact	No Legislation	
Historical Commission, Texas	Continue	No Impact	Deuell	Flynn
Library and Archives Commission, Texas State	Continue	No Impact	Brimer	McClendon
Nurse Examiners, Board of	Continue	(\$195,200)	Deuell	Truitt
Pardons and Paroles, Board of	No Sunset Date	No Impact	Whitmire	Madden
Real Estate Commission, Texas	Continue	\$156,800	Shapleigh	Truitt
Risk Management, State Office of	Continue	(\$155,360)	Brimer	McClendon
Rural Community Affairs, Office of	Continue	No Impact	Estes	Kolkhorst
State-Federal Relations, Office of	Abolish / Merge	No Impact	Brimer	Kolkhorst
Structural Pest Control Board, Texas	Abolish / Merge	No Impact	Brimer	Cook, B.
Teacher Retirement System of Texas	No Sunset Date	\$250,000	Whitmire	Truitt
Veterans Commission, Texas	Continue	No Impact	Shapleigh	Flynn
Veterans' Land Board	No Sunset Date	No Impact	Shapleigh	Flynn
Veterinary Medical Diagnostic Laboratory, Texas	Continue	No Impact	Estes	Kolkhorst
Fiscal Impact Total		\$56,240		

SUNSET COMMISSION RECOMMENDATIONS



Texas Alcoholic Beverage Commission

Special Purpose Review

The Texas Alcoholic Beverage Commission (TABC) underwent Sunset review in 2004, and the Sunset Commission forwarded recommendations to improve the agency to the Legislature in 2005. However, the Sunset legislation did not pass. Instead, the Legislature, through separate legislation, continued TABC for two years and required a follow-up Sunset review to focus on the appropriateness of the Sunset Commission’s 2004 recommendations. The results of that special purpose review are contained in this material.

Agency at a Glance

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) 463-1300.*

Key Facts

- ◆ **Funding.** The agency spent more than \$38.2 million for its operations in fiscal year 2006 – all of which came from licensing fees and surcharges.
- ◆ **Staffing.** In fiscal year 2006, the agency had 686 employees, including 300 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 118,657 licenses in fiscal year 2006, including 79,108 retailer, 1,009 wholesaler, and 2,754 manufacturer licenses. Some businesses require more than one license to operate, and so the agency actually licensed 42,414 locations that year.
- ◆ **Enforcement.** In fiscal year 2006, the agency issued citations for 13,019 administrative violations and 20,487 criminal violations. As a result, the agency collected \$2.9 million in fines, temporarily suspended licenses or required civil penalties in 2,783 cases, and cancelled 77 licenses, among other enforcement actions. The agency also received 4,837 complaints and resolved 4,735.

- ◆ **Tax Collection.** In fiscal year 2006, TABC collected more than \$180 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 153,400 people in fiscal year 2006, including school children, college students, local law enforcement personnel, civic and community group members, and licensed businesses. In that same year, the agency received \$380,000 in federal grants for educational programs, most of which it passed through to local law enforcement, advocacy, and university groups.

Commission Members (3)

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

Agency Head

Alan Steen, Administrator
 (512) 206-3221

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 costs and delays 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. Ensure licensees have access to online license application, renewal, and fee payment.
7. Require establishments that serve alcohol to post signs warning the public of the risks of drinking alcohol during pregnancy.
8. Expand TABC's authority to take enforcement action against establishments that sell or serve alcohol during prohibited hours.
9. Continue TABC for 12 years.

Issue 1

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

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. Although the agency has improved its strategic planning process in response to the 2004 Sunset recommendations, it would still benefit from having its mission better defined in statute.

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.

These changes would provide a framework for TABC to have a clear mission that better reflects the modern alcoholic beverage regulatory environment and the public safety needs of the State.

Management Action

1.2 TABC should continue refining its new performance measures and developing the capabilities necessary to effectively analyze this data.

TABC should continue working with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy to ensure its performance measures accurately reflect its new statutory mission, as laid out in Recommendation 1.1. The agency also needs to continue developing its data collection and analysis capabilities to be able to report the kind of data necessary to support its new strategic planning process and performance measures. Further, since the agency is making many changes to its operations as a result of the 2004 Sunset recommendations, it will need to ensure that its strategic planning process reflects these changes and that it effectively measures the performance of its new and restructured functions.

Issue 2

Statutory Changes Are Needed to Ensure TABC's Enforcement Efforts Are Fair, Consistent, and Focused on Public Safety.

TABC performs a variety of enforcement activities to protect the public's safety and ensure compliance with alcoholic beverage regulations. In 2004, the Sunset Commission determined that the agency lacked the necessary procedures and oversight to ensure fair, consistent, and effective enforcement of the law. Consequently, the Sunset Commission adopted a series of statutory and management recommendations designed to strengthen the agency's enforcement process, ensure the fair and consistent application of penalties, and redirect its enforcement efforts toward more serious violations.

TABC has taken numerous steps to implement the Sunset Commission's recommendations regarding enforcement, especially all of the management changes. However, since the Sunset legislation did not pass, statutory changes are still necessary to ensure that the agency has the authority to fully enact the improved enforcement procedures, and continues these practices in the future.

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 should compile detailed statistics and analyze trends to get a clearer picture of problems facing the state. The agency should summarize these statistics and trends for executive management on a monthly basis and on a quarterly basis for the Commission, as well as make this information available on its website.

This recommendation would ensure that the agency places its limited enforcement resources where they are needed most.

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 website.
- ◆ 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 website.

This recommendation would allow the agency to identify problems and trends, and focus resources where they are needed most.

Issue 3

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

The 2004 Sunset review examined a broad range of regulations that TABC enforces regarding the production, approval, and distribution of alcoholic beverages. The Sunset Commission found that eliminating regulation that is duplicative, unnecessarily burdensome for the agency, or not clearly tied to public safety or consumer interests, would improve TABC's oversight of the industry. Though the agency has implemented some of the 2004 Sunset recommendations, it still needs statutory authority to effect all of the changes envisioned by the Commission.

Recommendations

Change in Statute

3.1 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 authorize the agency to implement a label registration program to accept federal Certificates of Label Approval for liquor and wine. This recommendation would eliminate statutory requirements for state approval of liquor labels, and clearly authorize TABC to implement a process to accept federal approvals for liquor and wine instead. Once TABC registers a federal certificate, the manufacturer would be in full compliance with agency standards. Allowing the agency to accept federal certificates of approval for liquor and wine would reduce delays to business in getting products to market.

3.2 Give beer manufacturers the option of submitting laboratory analyses of their products to TABC or having their products tested by TABC.

This recommendation would eliminate the requirement that the agency perform chemical analyses of all new beer products. Instead, beer manufacturers would have the option of submitting to TABC analyses from independent, reputable laboratories indicating the alcohol content of their products. TABC would have the authority to establish standards for which labs it considers acceptable. If a manufacturer chooses not to submit an independent lab analysis, TABC would test their product. TABC would still approve all beer labels since Texas has additional labeling requirements that go beyond federal regulations.

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

This recommendation would remove the \$25 dollar 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, and the agency would set this fee to cover the cost of these activities. Eliminating statutory caps on fees for product approval would give the agency the flexibility to set fees at the level necessary to recover liquor and wine registration and beer testing program costs as conditions change.

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

This recommendation would modify requirements for liquor and wine distributors to report in writing delinquent retailers by allowing for alternative means, such as e-mail or fax, for providing this information to the agency.

Issue 4

TABC Should Continue Efforts to Resolve and Communicate Marketing Practices Issues.

The 2004 Sunset review found that TABC struggles to formulate, and communicate to the industry, important regulatory policies. Consequently, the Sunset Commission recommended that TABC improve its processes for consistently and reliably interpreting its regulations. In addition, the Sunset Commission recommended that TABC provide better quality information on regulatory policies to

assist with compliance, and provide more regulatory certainty for the industry. Though the agency has begun to implement these changes, placing these requirements in law would help ensure the processes are continued into the future.

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.

This recommendation would require the agency to develop a formal process to improve both its overall decision-making processes for marketing practices regulatory issues, and how the agency communicates these decisions to its staff and to the regulated community. In implementing this recommendation, TABC staff should meet with a cross section of industry members to discuss regulatory issues and gather input for the drafting of marketing practices policies. 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 website, electronic mail, and agency publications. This recommendation would improve TABC's ability to effectively regulate marketing practices by providing better information to the regulated community.

Issue 5

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

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. The 2004 Sunset review found that because the agency's internal affairs function had no statutory or other formal basis for existence, and no written policies and procedures, it had come and gone over the years according to the management style of the agency's administrators. As a result, the Sunset Commission made a series of recommendations to formalize this function. While the agency has implemented the 2004 recommendations, statutory changes are still necessary to ensure an effective internal affairs function into the future.

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. These

changes would result in a more consistent handling of complaints against agency employees within and across administrations, and would help ensure due process for employees who have complaints filed against them.

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 to the Administrator, at least monthly, information about the nature and status of each complaint. It would also require the staff to report to the Alcoholic Beverage 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. This recommendation would ensure internal affairs staff report necessary information to the Commission, the Administrator, division directors, and other appropriate personnel that can be used to help facilitate good management and policy decisions.

Issue 6

TABC Should Continue Working to Make as Much of Its Licensing Process Available Online as Possible.

Applying for and receiving a TABC license is paper-intensive and can be a lengthy process. In 2004, the Sunset Commission recommended that TABC provide for online license application, renewal, and payment of fees. While TABC is computerizing its licensing functions, statutory change is still needed to ensure that online licensing is fully implemented and becomes standard procedure.

Recommendation

Change in Statute

6.1 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 applicants 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 7

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

TABC regulates all aspects of the alcoholic beverage industry to ensure the protection of the health, safety, and welfare of Texans. In 2004, the Sunset Commission recommended that TABC develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy. A change in law is still necessary to ensure that all establishments post this information.

Recommendation

Change in Statute

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

The 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 8

TABC Lacks Authority to Effectively Enforce Prohibitions Against Selling or Serving Alcohol After Hours.

TABC enforces violations involving the sale, service, or consumption of alcohol during prohibited hours. The agency may take criminal and administrative enforcement action against licensees who sell, serve, or allow consumption on their premises after hours. The agency may also issue citations to or arrest individuals who possess or consume alcohol in public places after hours. However, the scope of TABC's enforcement authority in this area of law is limited.

When TABC finds licensees committing criminal violations of after hours laws, it often has difficulty convincing local prosecutors to take action since the Alcoholic Beverage Code does not define specific sanctions for such violations. Further, the agency often has difficulty gathering evidence and establishing facts for enforcement cases because a licensed establishment that is closed for business is not considered a public place or because the owner or staff of an establishment may refuse entry to the agency's enforcement agents.

TABC's ability to take effective administrative action against an establishment's license is also limited. Licensees have the option of paying a fine or closing their business for a certain number of days. Licensees usually choose the sanction that is the least detrimental to their business, regardless of the harm their violation has caused to the public.

Recommendations

Change in Statute

8.1 Set specific criminal sanctions against licensees who violate after hours laws or hinder TABC's investigation of such violations.

This recommendation would make after hours violations Class A misdemeanors. Local prosecutors may be more likely to take action if a criminal sanction is defined in law. The following violations would be Class A misdemeanors:

- ◆ selling or serving alcohol during prohibited hours;
- ◆ consuming or permitting consumption of alcohol on licensed premises during prohibited hours; and
- ◆ refusing to allow entry to inspectors and law enforcement personnel.

8.2 Define premises licensed under the Alcoholic Beverage Code as public places at all hours.

This recommendation would allow TABC to take enforcement action against individuals who consume alcohol at establishments during prohibited hours by defining these locations as public places. Making these locations public places under the law would allow TABC to arrest or issue citations to individuals who illegally consume alcohol at licensed establishments after they close their doors for business.

8.3 Authorize TABC to suspend a license for violations involving after hours sales and consumption.

This recommendation would allow TABC to suspend a license, rather than offer the option of an administrative penalty, for licensees who commit after hours violations. Under this recommendation, TABC, rather than the licensee, would have the option to decide whether an administrative penalty or suspension is appropriate in each case.

8.4 Require TABC to report to the Legislature on its enforcement efforts concerning violations involving after hours alcohol sales, service, and consumption.

This recommendation would require TABC to report to the Legislature the number of establishments found to be:

- ◆ selling or serving alcohol during prohibited hours;
- ◆ consuming or permitting consumption of alcohol on licensed premises during prohibited hours;
- ◆ refusing to allow entry to inspectors and law enforcement personnel; and
- ◆ operating without a license.

TABC would report these data on a statewide basis, as well as for each region and major metropolitan area. TABC would submit this report to the Legislature in the fall before each Legislative session.

Issue 9

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

Key Finding

- ◆ The agency has made a clear effort to implement as many of the 2004 Sunset Commission recommendations as possible and should be continued for the standard 12-year period.

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. Although the Sunset Commission had many concerns about the agency's operations following its review in 2004, the agency has made a clear effort to address those concerns and should be continued for 12 years.

Recommendation

Change in Statute

9.1 Continue the Texas Alcoholic Beverage Commission for 12 years.

This recommendation would continue TABC as an independent agency, responsible for regulating the alcoholic beverage industry.

Fiscal Implication Summary

None of the recommendations regarding the Texas Alcoholic Beverage Commission would have a significant fiscal impact to the State.



Texas Animal Health Commission

Agency at a Glance

The Texas Animal Health Commission (the Commission) works to prevent, control, and eradicate disease in Texas livestock, exotic livestock, domestic fowl, and exotic fowl. The Legislature established the Texas Animal Health Commission – originally named the Texas Livestock Sanitary Commission – in 1893 to fight the tick fever epidemic, which resulted in a federal quarantine of Texas cattle and threatened to cripple the State’s economy. Since then, the Commission’s responsibilities have remained consistent, although the Legislature has expanded the animals under the Commission’s jurisdiction beyond cattle, and added to the list of diseases that the Commission works to control.

Today, the Commission’s mission includes:

- ◆ protecting livestock and fowl from domestic, foreign, and emerging animal diseases;
- ◆ increasing the marketability of Texas livestock commodities worldwide;
- ◆ promoting and ensuring animal health and productivity;
- ◆ protecting human health from animal diseases and conditions that are transmissible to people; and
- ◆ preparing for and responding to emergencies involving animals.



*For additional information,
please contact Sarah Kirkle
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, the Commission operated on a budget of \$14.7 million, including \$5.9 million in federal funds.
- ◆ **Staffing.** The Commission employs a staff of 192, more than half of whom work in the Commission’s eight field areas. Employees also work in four laboratories, which the Commission jointly operates with the U.S. Department of Agriculture.
- ◆ **Surveillance.** In fiscal year 2006, the Commission examined 8.4 million animals at livestock markets. The Commission also monitored 3,271 livestock shipments.
- ◆ **Testing.** Employees in the Commission’s laboratory system processed about 2.9 million samples in fiscal year 2006. Tests

conducted include those to detect bovine and swine brucellosis, swine pseudorabies, and bovine tuberculosis. Lab staff also identify disease-carrying parasites, such as fever ticks.

- ◆ **Emergency Management and Homeland Security.** In fiscal year 2006, Commission staff spent 6,234 hours planning for and responding to disease outbreaks and natural and man-made disasters. The Governor appointed the Commission as a member of the Texas Emergency Management Council in 2001, and the Homeland Security Council in 2005.

Commission Members (13)

Richard Traylor, Presiding Officer
(Carrizo Springs)
Rita Baca (El Paso)
Reta Dyess (Jacksonville)
William Edmiston, Jr., DVM (Eldorado)
Thomas George Kezar (Dripping Springs)
Coleman Hudgins Locke (Wharton)
Rogelio Martinez (McAllen)
Ernesto A. Morales (Devine)
Charles E. Real (Marion)
Ralph Simmons (Center)
Michael Louis Vickers, DVM (Falfurrias)
Jerry P. Windham (College Station)
Jill Bryar Wood (Wimberley)

Agency Head

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Recommendations

1. Clarify the Commission's role in preparing for and responding to natural or man-made emergencies, including a study of the State's capacity to perform disease testing during emergencies.
2. Clarify the Commission's authority to address diseases in other species that threaten livestock and fowl.
3. Clarify the Commission's authority to register feral swine holding facilities and regulate movement of feral swine for disease-control purposes.
4. Establish an agencywide compliance policy and improve public information regarding its compliance process.
5. Develop and implement a succession plan.
6. Continue the Commission for 12 years.

Issue 1

The Commission's Statute Has Not Kept Pace With Its Increasing Emergency Management Responsibilities.

Key Findings

- ◆ An increased awareness of the threat of an agroterrorism attack, as well as the impact of natural disasters on animals, has expanded the Commission's role in emergency management.
- ◆ Natural and man-made emergencies can have a devastating impact on livestock and fowl, humans, and the State's economy.
- ◆ The Commission lacks clear legislative direction to engage in emergency planning activities, an increasing and essential Commission function.
- ◆ Outdated authority for issuing quarantines and disposing of diseased livestock carcasses may limit the Commission's ability to control the spread of disease during an emergency.

Natural and man-made emergencies can have an impact on animal health, as well as public health and the economy. As the State's lead agency for animal issues, the Texas Animal Health Commission conducts emergency management planning related to livestock and fowl for the state and local jurisdictions, coordinates with federal emergency management planners, and offers planning and biosecurity advice and instruction to industry representatives and producers. However, the Commission lacks clear statutory authority to prepare and plan for such emergencies, even as the Commission's role in emergency management has significantly expanded in recent years. Also, limitations on issuing statewide or widespread quarantines and disposing of diseased livestock carcasses could hamper the Commission's disease control efforts.

Recommendations

Change in Statute

1.1 Authorize the Commission to plan for, prepare for, and respond to both natural and man-made emergencies that may have an impact on livestock and fowl.

This recommendation would establish emergency management as a vital responsibility of the Commission's mission in statute, thus allowing the Commission, as part of its routine activities, to perform emergency management duties currently not explicitly authorized in statute. The Commission would have authority to prepare and plan for, respond to, and recover from disaster events, including disease outbreaks; hurricanes; floods; tornadoes; wildfires; and acts of terrorism affecting livestock, exotic livestock, domestic fowl, and exotic fowl. In doing so, the Commission should ensure that it has established priorities to guide staff statewide in balancing emergency management duties with traditional disease surveillance, control, and eradication responsibilities. This recommendation would also clarify the Commission's authority to assist with local emergency management planning.

1.2 Authorize the Commission to impose a statewide or widespread quarantine on livestock and fowl when needed to prevent or contain a disease outbreak.

To address the spread of fast-moving and highly infectious diseases, this recommendation would authorize the Commission to issue a statewide or widespread quarantine on livestock and fowl as a means of quickly stopping the movement of animals potentially infected with disease. Given the immediate threat posed by a disease outbreak, and the need to act quickly, the Commission could

delegate, by rule, the authority to issue a quarantine to the Executive Director, who would promptly notify Commission members when a quarantine has been issued.

1.3 Clarify the Commission’s authority to determine the appropriate method of carcass disposal for diseased livestock.

Under this recommendation, the Commission would have authority to determine and implement the most effective method, including methods other than burning or burial, for disposing of diseased livestock carcasses. This would allow the Commission to consider factors such as the most appropriate disposal method for the particular disease, environmental implications, geographic location, number of carcasses, and weather conditions when deciding what method of carcass disposal to employ. To more quickly respond to carcass disposal issues, the Commission could delegate this authority to the Executive Director, by rule.

1.4 Require the Commission, the Texas Veterinary Medical Diagnostic Laboratory, and the Texas Department of Agriculture to jointly conduct a study regarding the State’s current and future capacity to perform disease testing for livestock and fowl during an animal disease outbreak or emergency.

In conducting the study, the Commission should include participation from other animal-health related partners, including the U.S. Department of Agriculture. The scope of the study should include, but would not be limited to, the following:

- ◆ determining the current testing capability and capacity level of animal health laboratories in the state;
- ◆ determining the current average time to conduct tests for animal diseases, and the current average time to report initial testing results and required confirmation testing results conducted by the U.S. Department of Agriculture;
- ◆ projecting the needed capability and capacity level of the State’s animal health laboratories during a statewide or nationwide animal disease outbreak over the next 20 years;
- ◆ assessing the potential benefits of expanding or combining existing animal health laboratories in Texas, including those operated in conjunction with the U.S. Department of Agriculture and other partners;
- ◆ establishing or relocating animal health laboratories in more accessible locations;
- ◆ pursuing location of federal animal health laboratories in Texas;
- ◆ exploring methods to reduce the average time to report both initial testing results and federal confirmation testing results for animal diseases; and
- ◆ projecting whether a change in the biosafety level – as designated by the U.S. Department of Agriculture and Centers for Disease Control and Prevention – is needed for animal health laboratories in Texas, based on projected future testing capabilities and capacity levels.

Issue 2

The Commission Has Limited Authority to Control Diseases Spread to Livestock and Fowl by Other Species, Potentially Resulting in Preventable Disease Outbreaks.

Key Findings

- ◆ Nonlivestock animals can transmit disease to livestock and fowl.
- ◆ The Commission does not have clear authority to address diseases in other species that could result in a disease outbreak among livestock and fowl.
- ◆ Introducing or reintroducing animal disease can have devastating effects on livestock and fowl, humans, and the economy.

The Texas Animal Health Commission has responsibility to protect livestock and fowl from disease. However, species that do not fall under the Commission's jurisdiction can spread diseases that threaten livestock and fowl. Some of these diseases also affect humans. Although the law clearly outlines the Commission's responsibility to protect livestock and fowl from disease, statute is not clear on whether this includes the authority to act to prevent, control, or eradicate diseases in other species that threaten livestock and fowl. Without clear direction, the Commission is limited in its ability to protect the species it regulates.

Recommendation

Change in Statute

2.1 Clarify that the Commission has authority to act to prevent, control, or eradicate diseases that affect livestock and fowl, regardless of what species carries the disease.

This recommendation would give the Commission clear authority to protect livestock and fowl from disease, even if the disease threat comes from a species not under the Commission's authority. The Commission's existing authority to regulate movement, establish quarantines, inspect shipments, and require testing would apply. However, the Commission's authority regarding species other than livestock or fowl would be limited only to instances when a disease that threatens livestock or fowl has been confirmed or is suspected to exist in another species and the Commission determines that a threat to livestock or fowl exists. This authority would not authorize the Commission to infringe upon or supersede any other agency's authority, such as the Texas Parks and Wildlife Department's authority to regulate wildlife. In those situations, the Commission would assume responsibility for disease-control efforts, but would work collaboratively with the other agency.

Issue 3

Lack of Clear Authority Regarding Feral Swine Limits the Commission's Ability to Prevent the Spread of Disease to Domestic Swine and Other Livestock.

Key Findings

- ◆ Feral swine transmit disease to domestic swine, threatening the health and economic viability of Texas' domestic swine population.
- ◆ Unclear authority to regulate the movement of feral swine and feral swine holding facilities limits the Commission's ability to prevent the spread of disease from feral swine to livestock.

Feral swine carry diseases, such as swine brucellosis and pseudorabies, that they can transmit to domestic swine and other livestock. The dramatically increasing number and range of feral swine, coupled with increased movement of these wild hogs for hunting and other purposes, has increased the risk of spreading diseases to domestic swine and threatens Texas' federally designated disease status. To protect domestic swine from this disease threat, the Texas Animal Health Commission has imposed restrictions on movement of feral swine and established a registration program to create standards for maintaining feral swine holding facilities. However, the Commission's authority to regulate movement of feral swine or register feral swine holding facilities, as well as its ability to adopt and enforce rules regarding feral swine, is unclear.

Recommendations

Change in Statute

3.1 Clarify that the Commission can regulate the movement of feral swine as a disease-control measure.

Under this recommendation, the Commission's existing authority to regulate the movement of animals would be clarified to include movement of feral swine for disease-control purposes. The Commission should adopt rules relating to the movement of feral swine, including disease-testing requirements prior to movement from one location to another. Regulating the movement of feral swine would aid the Commission's efforts to control the spread of disease to livestock by specifying conditions under which feral swine could be transported. This recommendation would not interfere with Texas Parks and Wildlife Department's authority to regulate the hunting or trapping of feral swine, as it would apply solely to movement of feral swine. The Commission should be given clear authority to take enforcement action for violations of statutory provisions or Commission rules or orders related to the movement of feral swine.

3.2 Authorize the Commission to register feral swine holding facilities.

This recommendation would grant the Commission specific statutory authority to require the registration of feral swine holding facilities for disease-control purposes, ensuring the Commission's ability to better protect domestic swine and other livestock from diseases spread by feral swine. Individuals would be required to register with the Commission if they confine feral swine in pens for slaughter, retail, exhibition, hunter-kill purposes, or other purposes determined necessary by the Commission to prevent the spread of disease. The Commission should adopt rules regarding registration requirements, issuance, revocation, and renewal; disease testing; inspections; record-keeping; construction standards; and location; as well as treatment in, and movement to and from, a feral swine holding facility.

As part of this recommendation, the Commission should also be given clear authority to take enforcement action against individuals who violate statutory provisions or Commission rules or orders related to feral swine holding facility registration. Because the Commission would only regulate feral swine from a disease-control perspective, the authority to register feral swine holding facilities would not authorize the Commission to interfere with any other agency's authority, such as Texas Parks and Wildlife Department's authority to regulate the hunting and trapping of feral swine.

Issue 4

Lack of Clear Compliance Procedures Can Lead to an Inconsistent Approach to Enforcement Across the Commission's Eight Field Areas.

Key Findings

- ◆ Lack of written agencywide compliance policies and procedures can lead to an inconsistent response to violations statewide.
- ◆ The Commission has not made its complaint procedures easily accessible to the public.
- ◆ The Commission does not use its compliance system to track repeat offenders, analyze common violations and complaint dispositions, or keep field staff informed.

The Commission has responsibility for identifying and stopping illegal activity that threatens animal health, a critical part of protecting livestock and fowl from disease. Because most of the Commission's employees work in the field, they identify the majority of the violations. However, the Commission has not developed clear policies and procedures to adequately guide field staff or Austin-based staff who process compliance actions. In addition, the Commission's complaint process is not readily accessible to the public. Also, because the Commission does not track violations or complaint dispositions that occur, it misses an opportunity to provide additional education and outreach opportunities to stop illegal behavior.

Recommendations

Change in Statute

4.1 Require the Commission to establish an agencywide compliance policy and internal operating procedures to guide compliance activities.

This recommendation would ensure that the Commission adopts an agencywide policy regarding its philosophy on compliance and conveys this policy to staff statewide. The policy should also address how to prioritize compliance activities with other agency operations, as well as how to prioritize the types of violations. In addition, the Commission should develop clearly defined procedures regarding the Commission's approach to addressing compliance with state laws and Commission rules. The Commission should post these internal operating procedures on the agency's intranet so that all Commission employees, including area office directors and field inspectors, have access to them.

4.2 Require the Commission to provide information regarding the process for accepting complaints on its website.

To provide the public with simple, easy-to-access information about the Commission's complaint procedures, the Commission would be required to post information regarding complaints on the home page of its website. These procedures should address how to file a complaint, what types of information

to include in the complaint, and the general process to expect. The Commission should also explain what types of complaints fall under its jurisdiction, thus reducing the potential for any confusion on nonjurisdictional complaints – such as those dealing with companion animals or animal welfare issues – that the agency does not have authority to resolve.

Management Action

4.3 The Commission should track categories of violations to identify common problems that could be addressed through targeted regulation or education efforts.

Tracking the types of complaints received and compliance actions taken would provide the Commission with useful information to identify regulatory problem areas. Types of complaints could be categorized by section of statute or particular rule violated, or under broader categories, such as failure to properly vaccinate or test an animal. Armed with this information, the Commission could target its public information and education efforts on those areas identified as a concern. Tracking dispositions of complaints, including those handled by the courts, would keep the Commission abreast of the actions taken to achieve compliance, thus allowing the Commission to more accurately report its activities to the Legislature, stakeholders, and the public.

4.4 The Commission should make its compliance database available to its employees statewide to facilitate better sharing of information and consistency in staff's approach to compliance.

Allowing field employees to have electronic access to the Commission's database would reduce field staff's reliance on paper copies, thus making it easier for staff to check for previous violations by the same offender, search for similar situations and violations by other individuals within the area and in other areas, and determine the final disposition of complaints submitted by field staff. By taking advantage of this additional information, field staff could take more consistent and effective steps to ensure compliance with animal health laws and rules.

Issue 5

Anticipated Changes in the Commission's Workforce Could Leave the Agency Vulnerable to a Significant Loss of Knowledge Critical to Its Operations.

Key Findings

- ◆ The Commission employs a highly technical and aging workforce.
- ◆ The Commission will likely experience a significant rise in staff turnover in the near future.
- ◆ The Commission is experiencing a shift in necessary job skills, as well as a decreasing pool of qualified applicants for some key positions.
- ◆ The Commission lacks a plan to deal with impending retirements and workforce changes.

Within the next five years, the Texas Animal Health Commission will likely experience a significant increase in its turnover rate, as many older and long-tenured employees become eligible for retirement. Coupled with normal attrition, this loss could leave the Commission vulnerable to a great void of institutional knowledge. At the same time, the pool of qualified applicants for some key positions is decreasing, as the skills needed by the Commission are changing. Although the Commission recognizes the potential for problems, it is not well-positioned to deal with its impending workforce changes.

Recommendations

Management Action

5.1 The Commission should develop and implement a succession plan to prepare for impending retirements and workforce changes.

The Commission should develop a plan to prepare for both anticipated and unanticipated departures of key staff, including identifying positions critical to the agency's operations. With the Commission's turnover rate expected to significantly rise, the Commission should implement this plan within two to four years, before anticipated retirement-eligibility dates of key staff. A succession plan would reposition the Commission to address future needs with current resources and ensure continuity of leadership.

5.2 The Commission should formally document its duties in writing by updating its manuals and making them available to all employees electronically.

This recommendation would ensure that the Commission captures institutional knowledge and uses this information to update its employee manuals to reflect current job duties and procedures. This would allow the Commission to record valuable knowledge and expertise before key staff leaves, providing an effective method to document current practices as well as to train new staff. The Commission should make these manuals available to all staff electronically, such as through the Commission's intranet, as a more effective means of information disbursement. This would allow the agency to more easily update information without printing new manuals every time information changes.

5.3 The Commission should train and develop staff to move into at-risk positions.

The Commission should identify positions at risk of becoming vacant in the near future and provide training and development opportunities to employees eligible to move into these positions. Training and development opportunities would give staff the skills and competencies needed to move into essential positions and enable the Commission to pass its institutional knowledge and expertise to new staff members. This recommendation would also allow the Commission to further develop its career ladder.

Issue 6

Texas Has A Continuing Need for the Texas Animal Health Commission.

Key Findings

- ◆ Texas has a clear and continuing interest in preventing, controlling, and eradicating disease in the state's livestock and fowl.
- ◆ The Commission effectively accomplishes its mission to protect livestock and fowl from domestic, foreign, and emerging diseases.
- ◆ Review of the Commission and other related agencies did not reveal any significant beneficial alternatives for consolidation or transfer of functions.

Since creating the Commission, the Legislature has strengthened its efforts to protect animals from disease by expanding the species under the Commission's jurisdiction, and by adding to the list of reportable animal diseases. Maintaining healthy, disease-free livestock and fowl benefits not only animal health, but human health as well, as many diseases are transmissible from animals to humans. Protecting animals from disease also greatly benefits Texas' economy, as the livestock and poultry industries contribute significantly to the State's economic health.

Recommendation

Change in Statute

6.1 Continue the Texas Animal Health Commission for 12 years.

This recommendation would continue the Commission as an independent agency responsible for preventing, controlling, and eradicating animal diseases in livestock, exotic livestock, domestic fowl, and exotic fowl for the standard 12-year period, until 2019. The Commission would maintain its activities focused on protecting livestock and fowl from disease. Doing so would not only benefit animal health, but would also help protect humans from zoonotic diseases and help protect Texas' economy from the potentially devastating effects that could result from an animal disease outbreak.

Fiscal Implication Summary _____

None of these recommendations would have a significant fiscal impact to the State.



Texas Commission on the Arts

Agency at a Glance

The Texas Commission on the Arts (TCA) helps develop a receptive climate for the arts through the support and development of arts and cultural industries in Texas. The Legislature originally created the agency in 1965 to receive federal arts funding, and encourage an interest in fine arts in Texas. Today, to accomplish its mission, TCA:

- ◆ provides grants to nonprofit arts, educational, and governmental organizations to help make arts accessible to all Texans;
- ◆ promotes arts and cultural events to increase participation in the arts and encourage tourism; and
- ◆ markets and raises funds to support the agency's programs.



*For additional information,
please contact Ginny McKay
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** The agency operates with an annual appropriation of about \$5 million and expends the majority of this funding on arts and cultural grants. A little more than half of the agency's funding comes from General Revenue. The other half comes from a blend of federal funds from the National Endowment of the Arts, revenue from the sale of the *State of the Arts* license plates, interagency contracts, and fundraising.
- ◆ **Staffing.** The Commission has 19 staff, including one employee at the agency's satellite office in McAllen.
- ◆ **Grants.** TCA distributes about \$3.3 million in grants each fiscal year to arts and cultural organizations and other nonprofit entities. The agency funds 96 percent of all grant applications submitted, with grantees receiving about 26 percent of the grant amount requested. In fiscal year 2006, the agency awarded 980 grants and the average grant amount was \$3,063. TCA has had a fully automated online grants application system since 1998.
- ◆ **Texas Cultural Endowment Fund.** In 1993, the Legislature established the Texas Cultural Endowment Fund outside the State Treasury to create a stable source of funding for the arts in Texas. At the end of fiscal year 2006, the Fund had a balance of about \$13.7 million.
- ◆ **State of the Arts License Plates.** TCA markets its license plate, the best selling specialty plate in Texas, to raise funds to help support its grant programs. In fiscal year 2006, the sale or renewal of 18,879 license plates raised \$415,332.
- ◆ **Texas Music Project Music CDs.** TCA collaborates with other organizations to market music CDs containing songs from well-known and emerging Texas musicians. Sales from four CDs have raised \$115,000 for grants to schools to support music education in K-12 classrooms.

Commission Members (17)

Victoria Hodge Lightman, Chair (Houston)
David Garza, Vice Chair (Rancho Viejo)
Dorothy E. Farrington Caram, Ed.D., Treasurer
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Billye Proctor Shaw, Parliamentarian (Abilene)
Alphonse A. Dotson, Secretary (Voca)
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Patty A. Bryant (Amarillo)
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Recommendations

1. Continue the Texas Commission on the Arts for two years, and require a follow-up Sunset review focused on how the agency spends its funds, particularly its expenditures on administration and overhead.
2. Require the Commission to adopt rules to govern the acceptance of private funds to ensure that the use of the funds supports the agency's key functions.
3. Require the Commission to adopt rules to ensure accountability of TCA's special initiative grants.
4. Request that the Legislature, through the appropriations process, authorize TCA to expend the annual interest income earned on the Cultural Endowment Fund for grants only.

Issue 1

While Texas Has a Continuing Need for the Texas Commission on the Arts, the Agency's Administrative Costs Require Additional Follow-Up.

Key Findings

- ◆ Even though people may question the need for public support of the arts, Texas benefits from limited state support of the arts.
- ◆ TCA accomplishes its mission and makes the arts accessible to Texas communities, but expends a significant percentage of its funds on administration.
- ◆ While other agencies could perform TCA's functions, these alternatives offer no clear benefits over an agency dedicated to the arts.

The Texas Commission on the Arts' responsibilities – supporting and developing the arts – continue to provide some benefit to the State. The arts help stimulate economic development and tourism in Texas, and TCA grants assist arts organizations in leveraging other support. However, with limited funding available, TCA's expenditures need to be focused on its grants and promotion efforts, not on administration and overhead. In fiscal year 2005, TCA expended approximately 26 percent of its budget on central administration, 6 percent for marketing and promotion, and 68 percent for grants.

Recommendation

Change in Statute

- 1.1 Continue the Texas Commission on the Arts for two years, and require a follow-up Sunset review focused on how the agency spends its funds, particularly its expenditures on administration and overhead.**

This recommendation would require Sunset staff, prior to the 81st Legislative Session in 2009, to perform a follow-up review on TCA's overall expenditures, focusing particularly on costs associated with administration and overhead. The Sunset Commission would also coordinate with the Senate Finance Committee, House Appropriations Committee, and the Legislative Budget Board to determine whether the agency's expenditures are in accordance with its appropriations.

Issue 2

TCA Continues to Operate Programs That Do Not Fit With Legislative Efforts to Narrow the Agency's Focus.

Key Findings

- ◆ In 2005, the Legislature narrowed the Texas Commission on the Arts' focus.
- ◆ Despite legislative efforts to the contrary, TCA continues to directly administer arts education programs.
- ◆ To accept private funding, TCA created programs outside its main functions that require considerable staff effort to administer.

The Legislature, through the appropriations process, has recently narrowed the Texas Commission on the Arts' functions to focus on providing grants, promoting arts events, and raising private funds to support its grants and promotion work. While arts education is valuable, TCA continues to go beyond its primary function of grantmaking, and uses limited resources to directly administer costly arts education programs as well as other privately supported initiatives. Additionally, the Commission has created some of these programs as a condition of accepting donations in order to satisfy private interests.

Recommendations

Change in Statute

2.1 Require the Commission to adopt rules to govern the acceptance of private funds to ensure that the use of the funds supports the agency's key functions.

This recommendation would require TCA to focus on its primary mission of arts promotion and grants rather than creating and directly administering additional programs to satisfy the requirements of private donations. The Commission would develop and adopt rules to guide the acceptance and use of private donations given to TCA to ensure that the funds support the agency's primary functions. At a minimum, the rules should require staff to fully evaluate any gift, grant, or donation to determine if its purpose supports the agency's priorities as set by the Legislature. TCA would also evaluate what obligations the agency would have to meet to accept the donation, including matching funds, staff time and effort, and any other additional costs. This information should be presented to the Commission for consideration before the acceptance of any donation. The rules should also ensure against TCA creating and directly administering additional programs just to receive private funding.

Management Action

2.2 The Commission should evaluate the agency's programs and initiatives to ensure compliance with the legislative direction to focus on arts promotion and grants.

Under this recommendation, TCA's Commission should evaluate the agency's programs to see if they comply with the legislative directive to support, not directly administer, programs, other than grants or arts promotion efforts. Any directly administered program that does not meet these requirements should be eliminated, and any staff or other resources from the eliminated programs should be re-directed towards the agency's primary functions – providing grants, promoting the arts, and raising private funding to support these functions.

2.3 TCA should close its Fort Worth satellite office.

With the legislative directive to support arts education solely through its grants program, TCA should close its Fort Worth satellite office. The arts education programs and initiatives administered through this office do not support the agency's grant or arts promotion functions, and take limited resources away from the agency's primary functions.

Issue 3

TCA Awards Special Initiative Grants With Limited Review, Oversight, and Commission Approval.

Key Findings

- ◆ Special initiative grants have no set funding limit and often represent some of the largest individual grants TCA awards.
- ◆ Unlike its other grants, TCA has no clear review process or criteria for evaluating special initiative grants.
- ◆ The Executive Director awards and monitors special initiative grants with limited Commission oversight or approval.

TCA spends about 17 percent of its biennial grant budget on special initiative grants. During the 2004-2005 biennium, TCA awarded 182 special initiative grants totaling \$1.18 million. These grants help fund unique opportunities that advance the arts in Texas, particularly projects related to cultural tourism and arts education, but TCA awards the grants outside its normal requirements and procedures. The Commission's limited oversight or approval of these grants jeopardizes the accountability of these funds.

Recommendations

Change in Statute

3.1 Require the Commission to adopt rules to ensure accountability of TCA's special initiative grants.

This recommendation would ensure greater accountability of TCA's special initiative grants by requiring the Commission to develop rules governing the review, approval, and oversight of these grants. The rules should clearly address Commission approval of special initiative grants, but the Commission could opt to provide for an expedited approach in cases requiring more immediate action.

The rules should also address the amounts awarded for special initiative grants, and criteria used to review and evaluate the grant applications. This information would improve the Commission's ability to make informed decisions about which projects to fund and at what level.

Management Action

3.2 TCA should provide regular updates to the Commission on all of the agency's grants.

This recommendation would improve the Commission's ability to oversee the grants by ensuring the Commission members receive key information on all of the grants. The agency should provide regular updates to the Commission in an open meeting regarding all of the agency's grants. Requiring these updates would ensure that the Commission members receive the information necessary to effectively oversee all of the agency's grants.

Issue 4

Restricting Access to the Cultural Endowment Fund's Interest Income Limits the Fund's Usefulness.

Key Findings

- ◆ The Legislature has appropriated little or none of the interest income earned on the Cultural Endowment Fund to TCA since 2003.
- ◆ Without the ability of TCA to access the interest, the Fund sits unused, and private sector contributions to the Fund have significantly declined.

The Legislature established the Cultural Endowment Fund in 1993 with the intent that it become a stable funding source for the arts. At the end of fiscal year 2006, the Fund totaled approximately \$13.7 million. Statute permits the Legislature to appropriate the Fund's interest income to TCA, but not its principal. From fiscal years 1998 to 2003, the Legislature appropriated to TCA interest income earned from the Fund totaling nearly \$2.7 million. However, the 78th Legislature did not appropriate the interest to TCA, and the 79th Legislature appropriated only enough interest to provide the match needed to avoid placing existing private sector contributions at risk. Without access to the Fund's interest, TCA has no means for using the Fund to support the arts. The agency also has difficulty obtaining contributions to the Fund since the money cannot be used to support the arts.

Recommendation

Change in Appropriations

4.1 Request that the Legislature, through the appropriations process, authorize TCA to expend the annual interest income earned on the Cultural Endowment Fund for grants only.

Under this recommendation, the Sunset Commission requests that the 80th Legislature appropriate the Fund's annual interest income to TCA for fiscal years 2008-09, and specify by rider that the interest income can only be used for grants which meet the purposes for which the Fund was created. The estimated interest for this two-year period would total approximately \$2.4 million.

Fiscal Implication Summary

Two recommendations regarding the Texas Commission on the Arts could have a fiscal impact, as summarized below.

Issue 2 – The management recommendation directing TCA to close its Fort Worth satellite office would eliminate one staff person and save the agency approximately \$75,000 per year in general revenue funding. These savings should be redirected to the agency's grant and promotion activities.

Issue 4 – Appropriating the interest income earned on the Cultural Endowment Fund to TCA for grants would result in a gain in revenue to the agency of approximately \$2.4 million for fiscal years 2008-09. The specific amount of interest to be appropriated to TCA from the Fund would be determined through the appropriations process, and would not relate to the Texas Commission on the Arts Sunset bill.



Criminal Justice Agencies

Texas Department of Criminal Justice

Board of Pardons and Paroles

Correctional Managed Health Care Committee

Agencies at a Glance

In 1846, the Texas Legislature provided funding for the first Texas prison. Since that time the state criminal justice system has expanded to include probation, parole, and offender rehabilitation programming. The Texas Department of Criminal Justice (TDCJ) works with the Board of Pardons and Paroles (Parole Board), and the Correctional Managed Health Care Committee (the Committee) to perform these functions. Both the Parole Board and the Committee operate as semi-independent agencies and are responsible for making offender parole determinations and coordinating offender healthcare services, respectively.

The Texas Department of Criminal Justice’s major functions include:

- ◆ providing for confinement and reintegration of adult offenders;
- ◆ maintaining appropriate community-based supervision for offenders released on parole and mandatory supervision; and
- ◆ supporting community-based supervision and programs for offenders on probation.



*For additional information,
please contact Jennifer
Jones at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, TDCJ operated with a budget of \$2.6 billion. Approximately 80 percent of TDCJ’s budget supports the incarceration of offenders. In fiscal year 2006, the Parole Board operated with a budget of \$9 million and the Committee’s budget was \$376 million.
- ◆ **Average Daily Costs.** The average daily cost associated with housing an offender was \$37.90 in fiscal year 2006. Supervising offenders on parole cost \$3.51 per day and \$2.55 for offenders on probation during this same year. Health care for offenders cost an average of \$7.64 per offender per day in fiscal year 2006.
- ◆ **Offender Population.** In fiscal year 2006, TDCJ incarcerated approximately 153,000 offenders in 106 prisons located throughout the state. TDCJ also provided funding and support for about 431,000 offenders on probation in 121 Community Supervision and Corrections Departments (CSCDs), and TDCJ’s Parole Division supervised approximately 77,000 offenders released on parole and mandatory supervision.
- ◆ **Staffing.** TDCJ employs approximately 38,000 staff, of which 23,500 are correctional officers. The Parole Board employs about 175 staff, and the Committee has four employees.

Board Members

Texas Board of Criminal Justice (9)

Christina Melton Crain, Chair (Dallas)
Pierce Miller, Vice Chair (San Angelo)
Patricia A. Day, Secretary (Dallas)
Adrian A. Arriaga (McAllen)
Oliver J. Bell (Austin)
Gregory S. Coleman (Austin)
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Tom Mechler (Claude)
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Board of Pardons and Paroles (7)

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(Huntsville)
Jose Aliseda, Jr. (San Antonio)
Charles Aycock (Amarillo)
Conrith W. Davis (Huntsville)
Jackie DeNoyelles (Palestine)
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Correctional Managed Health Care Committee (9)

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Ed Owens (Huntsville)
Ben G. Raimer, M.D. (Galveston)
Lawrence E. Revill (Galveston)
Desmar Walkes, M.D. (Bastrop)

Agency Heads

Texas Department of Criminal Justice

Brad Livingston, Executive Director
(936) 437-2101

Board of Pardons and Paroles

Rissie Owens, Presiding Officer
(936) 291-2161

Correctional Managed Health Care Committee

The Honorable Allen Hightower,
Executive Director
(936) 437-1972

Recommendations

1. Request that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.
2. Establish a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies.
3. Require the Board of Pardons and Paroles to annually review and update its parole guidelines, and report and explain to the Legislature its efforts to meet them.
4. Require CSCDs to identify and recommend probationers appropriate for early termination, and encourage TDCJ and the Legislature to adjust funding methods to minimize the loss of funds to CSCDs resulting from these early terminations.
5. Require TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders early from parole and mandatory supervision.
6. Authorize judges to permit the early medical release of state jail confinees who pose no risk to public safety due to their medical conditions.
7. Expand conflict of interest provisions and previous employment restrictions for Parole Board members to apply to parole commissioners.
8. Require the Board of Pardons and Paroles to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process.
9. Require TDCJ to identify and provide information and interventions to women offenders at risk of having an alcohol-exposed pregnancy.

10. Require TDCJ to study the option of using electronic GPS tracking and monitoring devices for people on parole, and report the findings to the Legislature.
11. Continue TDCJ for 12 years.
12. Require the Correctional Managed Health Care Committee to make information about offender health care readily available to the public and offenders.
13. Allow the Correctional Managed Health Care Committee to continue, but update its statutory direction and remove its separate Sunset date.

Issue 1

By Not Adequately Addressing Offender Rehabilitation Needs, the State's Criminal Justice Efforts May Not Deter Recidivism, Increasing the Prison Population.

Key Findings

- ◆ Several factors, including recidivism, have caused Texas' prisoner population to exceed prison capacity.
- ◆ Treatment and prison diversion programs have been shown to reduce recidivism and result in savings for the State.
- ◆ Without adequate resources, TDCJ cannot successfully implement treatment and diversion programs to meet existing needs.
- ◆ Building prisons without investing in treatment programs is not the most cost-effective or sustainable solution to prison population growth.

The Texas criminal justice system is at a crossroads. The State's prison population has been steadily increasing and is expected to exceed capacity by more than 17,000 beds in 2012. Facing the prospect of prison overcrowding, the State must either increase prison capacity or reduce the number of offenders in the system.

Offender recidivism plays a central role in fueling prison population growth. TDCJ has developed offender rehabilitation programming to help prevent probationers from entering the prison system, and to keep former offenders out of the system once they are released. TDCJ has concentrated on developing treatment programs that are demonstrated to reduce offender recidivism. However, TDCJ does not currently have enough funding to meet programming needs.

Recommendations

Change in Appropriations

1.1 Request that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.

This recommendation expresses the will of the Sunset Commission that the Legislature appropriate additional funding for treatment and rehabilitation programs for offenders on probation, in prison, and on parole. By targeting risk factors for recidivism, these programs could reduce the number of incoming offenders and potentially lessen the need to build new prisons, promote public safety, and encourage offenders to become productive members of society.

Based largely on needs identified by TDCJ in its 2008-2009 Legislative Appropriations Request, the recommendation is intended to promote discussion about the State's approach to incarceration as it again reaches the crossroads of the supply and demand of prison beds. The recommendation does not address the overall need for capacity, which TDCJ has identified and should pursue on its own. The following provides some detail on the various program categories and suggested funding.

In-Prison Treatment: \$62.9 million (construction); \$8.4 million (treatment)

This funding would provide \$2.4 million annually to support using 200 existing beds for the In-Prison Therapeutic Community (IPTC) program; a six-month program that provides intensive substance abuse and reentry services for parole eligible offenders. Offenders who complete IPTC and are released from prison participate in 15 months of community-based after-care treatment. Based on rates of program completion in 2006, approximately 1.7 offenders completed programming per IPTC bed. With 200 extra beds, an additional 340 offenders might complete the IPTC program annually. By accommodating an additional 340 offenders in this program each year, TDCJ could potentially experience a reduction in the number of offenders reincarcerated from 77 to 17, based on past recidivism studies. The cost avoided by not having to incarcerate the larger number of offenders could be approximately \$931,600 annually.

This recommendation would also provide \$62.9 million to construct a 1,000 bed medium security facility, with 500 beds designated for offenders with driving while intoxicated (DWI) convictions. The treatment cost for these beds would be \$6 million annually. A facility of this size would cost approximately \$11 million per year in staffing and operating expenses; however, TDCJ anticipates using appropriations designated for temporary capacity beds to fund this expenditure. While this provision would add capacity to TDCJ, it would also expand treatment for offenders with DWI convictions, which would be expected to reduce recidivism rates along the same lines as for IPTC. Expanded treatment for DWI offenders would also increase the likelihood of parole for low-risk offenders, resulting in shorter sentences for these offenders. Assuming TDCJ created a six-month program, and completion rates were similar to the IPTC as noted above, 850 offenders could complete programming annually. The number of reincarcerations could potentially decline from 191 to 43, resulting in 148 fewer offenders in prison. The cost avoided by not incarcerating 148 offenders could be approximately \$2.3 million annually.

Parole and Probation Treatment: \$31.5 million

This funding would provide an additional \$24.8 million annually to support probation services. Specifically, \$5.6 million would provide 250 additional residential treatment beds for inpatient substance abuse and mental health services. Another \$10 million in funding would go to basic supervision, for reducing probation officer caseloads. This funding would also provide \$9.2 million for outpatient substance abuse treatment through contracted community-based providers. This recommendation would increase the total funding for Community Supervision and Corrections Departments (CSCDs) above the amount appropriated in 2006 to encourage departments to continue to implement progressive sanctions models, which have been shown to reduce the number of probation revocations. Funding provided to CSCDs in fiscal year 2006 resulted in 1,155 fewer probation revocations than during the same time period in the previous fiscal year. With 1,155 fewer offenders in prison, the State benefits from approximately \$17.9 million in annual cost avoidance.

This recommendation also includes an additional \$6.7 million to increase Substance Abuse Felony Punishment (SAFP) program capacity by 250 beds. Based on the number of SAFP beds and the total number of SAFP completers in 2006, TDCJ could expect approximately 1.6 offenders to complete the program per year, per bed. An additional 250 beds would enable approximately 400 more offenders to complete SAFP annually. Assuming the most recent recidivism rates for SAFP, the addition of 250 SAFP beds could result in 100 fewer reincarcerations, with a possible avoided cost of incarceration of \$1.6 million.

Pre-Trial Diversion: \$5 million

This recommendation would provide \$5 million for additional pre-trial diversion treatment, allowing TDCJ to contract with various community-based providers to deliver treatment services to mentally ill offenders awaiting trial. Following arrest, offenders receive mental health screenings through the county jail intake process. If services are in place, mentally ill offenders could be released after intake instead of being incarcerated pending trial. TDCJ estimates that this funding would serve 1,500 offenders. Since this funding provides pre-trial treatment, and sentencing occurs at the presiding judge's discretion, TDCJ has had difficulty determining how many of these offenders might be diverted from prison or state jail. However, similar probation programs have reduced reincarceration rates, indicating the success of this type of initiative in treating, stabilizing, and lowering recidivism for mentally ill offenders.

Literacy Education: \$6 million

This funding would provide \$6 million for additional literacy education programming in TDCJ prisons. This money would allow the Windham School District to provide literacy education to an additional 7,670 high-risk offenders annually, who are likely to experience the largest reduction in recidivism. Windham can provide literacy education to these offenders without adding to classroom capacity. According to the most recent data available, reincarceration rates for these offenders could potentially drop from 30 percent to 19 percent, resulting in 844 fewer offenders in prison and \$13.1 million in annual cost avoidance.

Management Action

1.2 TDCJ should conduct routine program evaluations of all rehabilitation programs designed to reduce reincarcerations and revocations, and report the findings to the Legislature.

This recommendation directs TDCJ to perform routine program evaluations of all its rehabilitation programs to ensure that these programs reduce offender reincarcerations and revocations. TDCJ should coordinate its evaluative efforts with the legislative oversight committee recommended in Issue 2 to evaluate the effectiveness of correctional programs, if such a body is established. However, TDCJ would still be responsible for conducting its own evaluation, regardless of the outcome of that recommendation. While not intended to be a statistically validated study, TDCJ should be able to calculate the number of persons returned to prison or revoked based on assumptions that it must identify, such as the population being evaluated, the length of time under evaluation, and any other factors TDCJ deems necessary. All evaluation findings should be presented to the Legislature in support of additional legislative appropriations requests. These findings would provide better information on which to make budget decisions.

Issue 2

Lawmakers Do Not Have the Information Necessary to Effectively Manage the State's Criminal Justice System and Plan for Its Future.

Key Findings

- ◆ The Texas criminal justice system is expansive, expensive, and facing significant challenges.
- ◆ Currently, no entity exists to provide comprehensive and ongoing analysis of the criminal justice system to determine its effectiveness and help plan for its future.

- ◆ The individual criminal justice agencies cannot effectively evaluate the entire criminal justice system on their own.
- ◆ The State uses legislative oversight committees to monitor, analyze, and report on other statewide systems to help guide policymaking.

Although faced with growing prison capacity concerns and given the size and complexity of the State's criminal justice system, lawmakers do not have access to independent, objective information and analysis to help determine and prioritize the long-range needs of the system. Without this information, the State cannot know if the system is operating efficiently or effectively, and lawmakers cannot make informed decisions on criminal justice policies and plan for the future of the State's criminal justice system.

Recommendation

Change in Statute

2.1 Establish a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies.

This recommendation would create a Criminal Justice Legislative Oversight Committee. The Committee would consist of six members as follows:

- ◆ the Chair of the Senate Committee on Criminal Justice;
- ◆ the Chair of the House Committee on Corrections;
- ◆ two members of the Senate appointed by the Lieutenant Governor; and
- ◆ two members of the House of Representatives appointed by the Speaker of the House of Representatives.

The Lieutenant Governor and the Speaker of the House of Representatives should give first consideration to members of the Senate Finance Committee and the House Appropriations Committee when making the appointments. The Lieutenant Governor and the Speaker would appoint the presiding officer of the Committee on an alternating basis. The presiding officer would serve a two-year term, expiring February 1 of each odd-numbered year.

The Committee would be charged to:

- ◆ conduct an in-depth analysis of the criminal justice system;
- ◆ assess the cost-effectiveness of the use of state and local funds in the criminal justice system;
- ◆ identify critical problems in the criminal justice system and recommend strategies to solve those problems;
- ◆ determine long-range needs of the criminal justice system and recommend policy priorities for the system; and
- ◆ advise and assist the Legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the criminal justice system.

The Committee would not be responsible for the tracking and reporting functions that the Legislative Budget Board previously assumed from the Criminal Justice Policy Council, including prison population and cost projections. Instead, the Committee would be focused on providing more broad-based

oversight of the criminal justice system to identify whether or not the system is working. The Committee would provide statistical research, analysis, and reporting necessary to know whether or not the system is effectively providing public safety, promoting positive change in offender behavior, and helping to successfully reintegrate offenders into society.

The Committee would be able to hire its own staff, but would also be authorized to contract with universities or other entities to carry out its duties. Allowing the Committee to contract out for these services would ensure that it would not have to develop the expertise necessary to perform these functions. However, the Committee, with its legislative membership, would be the entity best suited to advise the Legislature in developing plans, programs, and legislation to improve the overall effectiveness of the State's criminal justice system.

Issue 3

The Board of Pardons and Paroles Has Not Adequately Updated and Used Required Parole Guidelines to Help Ensure the Most Consistent, Appropriate Release Decisions.

Key Findings

- ◆ The Legislature required the Board of Pardons and Paroles to develop parole guidelines to provide objective criteria to help determine whether to grant or deny parole.
- ◆ Parole panels continue to deviate from the parole guidelines, despite repeated documentation of noncompliance.
- ◆ By not using the guidelines, parole panels do not take advantage of the best tool for deciding the most appropriate parole candidates for release.

In 1987, the Legislature required the Board of Pardons and Paroles to develop and implement parole guidelines to provide objective criteria to assist in decision making, and help make parole decisions more consistent. Despite numerous reports citing the Parole Board's lack of adherence to the guidelines, parole approval rates continue to show significant departure from the expected parole rates established by the Parole Board, especially for offenders judged to be at lower risk of re-offending and who committed less severe offenses.

Recommendations

Change in Statute

3.1 Require the Board of Pardons and Paroles to annually report and explain to the Legislature its efforts to meet the parole guidelines.

This recommendation would require the Parole Board to report to the Lieutenant Governor, Speaker of the House, Criminal Justice Legislative Oversight Committee recommended in Issue 2, and the substantive committees of each house responsible for overseeing criminal justice, regarding its efforts to meet its own guidelines for making parole decisions.

The Parole Board would monitor the actual approval rates for individual parole panel members, regional offices, and the state as a whole, and compare these rates with the expected rates under the guidelines. The report would specifically highlight areas where the Parole Board's actual parole approval rates do

not meet the expectations established under the guidelines, explaining these variations and detailing actions the Parole Board has taken or will take to meet the guidelines.

The recommendation would not require the Parole Board to adhere to the parole approval ranges in the guidelines, nor would it provide for penalizing parole panel members for failure to meet the guidelines. As a result, this recommendation would not impede panel discretion or affect members' ability to decide each case individually. The recommendation would, however, require the Parole Board to focus more attention on the way parole panels make parole decisions, and whether the process provides enough objectivity and consistency, as well as flexibility and accountability, to adequately protect the public.

3.2 Require the Board of Pardons and Paroles to annually review and update the parole guidelines.

The Parole Board would meet each year to perform an internal assessment in which it would review and discuss how its guidelines serve the needs of parole decision making. The assessment should focus not just on how well the guidelines reflect parole panel decisions, but also how well they predict successful parole outcomes. The Parole Board would have the authority to enlist experts, as needed, to assist with the review. Through these assessments, the Parole Board could seek to update its guidelines by including new risk factors, as well as changing the values of offense severity or risk factor scores. If actual parole approval rates significantly differ from the recommended rates in the guidelines, the Parole Board could also modify the benchmark rates.

3.3 Require parole panel members who depart from the guidelines to provide specific reasons explaining the deviation.

This recommendation would require parole panel members to produce a written statement describing in detail the specific circumstances regarding departure from the guidelines. The approval and denial reasons currently used for parole determinations would not be sufficient, requiring greater specificity. Providing more information regarding departure from the guidelines would increase transparency and public confidence in the parole process.

Issue 4

Supervising Low-Risk Probationers Who Could Be Released From Probation Early Diverts Limited Resources From Probationers Needing More Intensive Supervision.

Key Findings

- ◆ Texas has the largest adult probation population in the United States, with longer sentences than most states.
- ◆ Although judges have authority to terminate or reduce probation sentences, the current supervision funding system discourages early termination.
- ◆ Not granting early termination causes the State to use limited resources to supervise low-risk offenders, and restricts good behavior incentives for probationers.

Both the State and TDCJ's Community Justice Assistance Division's funding practices discourage early termination of offenders on probation, depriving the State of the benefit of allowing an early end of supervision of low-risk offenders and the refocusing of limited resources on higher-risk offenders. The system also fails to provide incentives for good behavior for probationers. Judges have the statutory authority to grant early termination; however, very few probationers discharge early.

Recommendations

Change in Statute

4.1 Require CSCDs to identify and recommend probationers appropriate for early termination.

This recommendation would require Community Supervision and Corrections Departments (CSCDs) to conduct early termination reviews of all felony and misdemeanor probationers who have served either two years or one-third of their sentences. This early termination review could coincide with CSCDs' routine offender assessments. If the review determines that probationers have complied with all probation conditions, and have not committed additional violations of the law or of probation conditions, they would be recommended to the district judge for early termination. The judge would retain full discretion to determine whether or not to grant early termination.

4.2 Authorize TDCJ to adjust funding methods to minimize the loss of funds to CSCDs resulting from early termination of probationers.

This recommendation would amend the statutory funding formula for basic supervision to give TDCJ more flexibility in the way it funds CSCDs. TDCJ would be authorized to restructure the funding formulas for CSCDs to ensure they maintain adequate funding while permitting early termination of low-risk offenders. TDCJ's new funding methods should provide funding and support for high-risk offenders, including newer probationers, while not penalizing CSCDs for releasing low-risk offenders. TDCJ could accomplish this by providing more funding for offenders in their first years of probation, when intensive services are most beneficial, and tapering funding after probationers have served several successful years of their sentences and require less intensive supervision.

Change in Appropriations

4.3 Request that the Legislature change its method of funding CSCDs to maintain a constant funding level even if the number of probationers declines because of early termination.

This recommendation reflects the will of the Sunset Commission that the Legislature adjust its method of appropriating funds for TDCJ's probation and community-based programs. Currently, the amount of state probation funding for TDCJ is determined by the number of offenders under direct supervision. If early terminations increase as a result of these recommendations, state probation funding would decrease, discouraging early termination. To minimize the disincentives against early termination, TDCJ should maintain level funding for CSCDs, and direct them to target funding toward the highest-risk probationers. Increased early termination will result in the loss of offender fees; however, by adjusting both the State's method of appropriating money for probation programs, and TDCJ's formula for funding CSCDs, the Legislature could minimize the impact of this loss and encourage CSCDs to focus services towards higher-risk offenders.

Issue 5

Keeping Low-Risk Offenders on Parole and Mandatory Supervision Who Could Be Released Early Can Divert Limited TDCJ Resources From Best Use.

Key Findings

- ◆ TDCJ does not use its statutory authority to grant early release from supervision to offenders on parole and mandatory supervision.

- ◆ Continuing to supervise low-risk offenders on parole and mandatory supervision can divert resources from high-risk offenders, and fail to reward good behavior.

Once released on parole or mandatory supervision, offenders must serve the remainder of their sentence under supervision, which requires significant resources. TDCJ has the authority to grant early release from supervision for certain offenders who have completed half of their remaining sentence upon release, have not been revoked, and whose release would be in the best interest of society. Despite statutory authority, TDCJ has never granted early release to an offender. Supervising minimum-risk offenders, who have shown a pattern of compliance with the rules and conditions of supervision, and have been deemed to have adjusted to life in the free world, may divert attention and resources from offenders who need it most.

Recommendation

Change in Statute

5.1 Require TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders from parole and mandatory supervision early.

Under this recommendation, offenders on parole and mandatory supervision would become eligible for early release after completing one-half of their remaining sentence upon release, including two consecutive years immediately preceding the review showing successful supervision without any violation of the rules or conditions of release.

Offenders eligible for early release would be identified and reviewed annually. Parole officers would evaluate the offender's risk of recidivism and efforts to comply with the conditions of supervision. Early release would be a privilege, not a right.

Offenders released from supervision early would remain under TDCJ jurisdiction until the completion of their sentence. TDCJ would retain the authority to require an offender to resubmit to supervision at any time and for any reason. Granting early release to low-risk offenders would reduce parole officer caseloads, giving officers more time to supervise high-risk offenders, who require more frequent contact and oversight. This recommendation would also provide an incentive for released offenders to successfully complete supervision.

Issue 6

Current Law Limits the Use and Effectiveness of Medically Recommended Early Release of Offenders, Increasing State Medical Costs.

Key Findings

- ◆ To significantly reduce state medical costs, prison offenders with serious medical conditions may be released early through MRIS.
- ◆ Lacking clear statutory authority, local judges rarely and inconsistently approve state jail confinees for MRIS.
- ◆ By not specifically authorizing MRIS for state jail confinees, the State misses an opportunity to reduce medical costs.

TDCJ has authority to release state prison offenders who no longer pose a threat to public safety due to their medical conditions. However, district judges, who retain authority over state jail confinees throughout their incarceration, lack clear authority to consider the release of confinees for medical reasons. Without clear authority, TDCJ cannot develop a consistent process to ensure that eligible state jail confinees are reviewed and considered for early medical release, thereby maximizing the benefits of medical release and lowering state medical costs.

Recommendations

Change in Statute

6.1 Authorize judges to permit the early release of state jail confinees who pose no risk to public safety due to their medical conditions.

This recommendation would specifically allow district judges to grant early medical release to state jail confinees. These recommendations would not affect judges' discretion to grant or deny release of state jail confinees under current law or for medical reasons. By clarifying the judge's authority to grant early release of confinees for medical reasons, this recommendation would help provide for more consistent application of this program statewide.

6.2 Require TCOOMMI to identify and recommend state jail confinees eligible for early medical release.

This recommendation would require the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) to develop a process to facilitate judges' consideration of Medically Recommended Intensive Supervision for state jail confinees, following the same process currently used for offenders in prison. Specifically, TCOOMMI would:

- ◆ work with the Correctional Managed Health Care Committee and the university healthcare providers to identify medically eligible confinees;
- ◆ develop a case summary and medical report for each eligible confinee, and present that information to the judge with jurisdiction;
- ◆ create a continuity of care plan, including medical placement and services, for confinees approved for release;
- ◆ coordinate community supervision with local CSCDs; and
- ◆ make quarterly status reports to judges on released confinees.

Issue 7 _____

Current Law Does Not Hold All Parole Decision Makers to the Same Standards of Objectivity and Independence.

Key Findings

- ◆ The Board of Pardons and Paroles shares much of its decision-making authority regarding prison releases and parole revocations with 12 parole commissioners.
- ◆ Provisions to protect the objectivity and independence of parole decision making do not apply to parole commissioners.

To ensure objectivity and prevent bias, the Legislature enacted provisions affecting the eligibility of appointments to the Board of Pardons and Paroles. For example, conflict of interest provisions ensure Parole Board members do not have inappropriate financial or professional relationships with persons or entities that could unduly influence parole determinations. In addition, previous employment restrictions establish independence from TDCJ, which is directly affected by parole decisions. Parole commissioners, who have comparable decision-making authority to Parole Board members in parole determinations, are not subject to the same conflict of interest provisions and previous employment restrictions. Without application of similar provisions, commissioners may be susceptible to conflict, limiting the appearance of objectivity and decreasing the public's confidence in parole panel discretion.

Recommendations

Change in Statute

7.1 Expand conflict of interest provisions concerning financial and personal interests to include parole commissioners.

This recommendation would make both Parole Board members and commissioners subject to the same conflict of interest provisions. Parole commissioners would be prohibited from ownership, or having a spouse who is an owner, of an entity funded or regulated by TDCJ or the Parole Board. In addition, parole commissioners and their spouses could not be officers or paid representatives of a criminal justice trade association, and parole commissioners could not be registered lobbyists. This recommendation would be prospective, so any current parole commissioners would not be affected. Applying conflict of interest provisions to all parole decision makers would help prevent the appearance of impropriety, and increase public confidence in the objectivity of the parole process.

7.2 Expand restrictions on previous employment with TDCJ to include parole commissioners.

The employment restrictions currently applicable to Parole Board members would be expanded to include all future parole commissioners as well. Any parole commissioner applicants would be ineligible to serve as commissioners until the second anniversary of the date the person terminated employment with TDCJ. Employment restrictions would strengthen the Parole Board's independence from TDCJ, and help prevent the appearance of bias in release and revocation decisions.

Issue 8

Deceased Victims Have Limited Representation In the Parole Review Process.

Current law only allows a close relative of a deceased victim to represent the victim in the parole review process. The definition of close relative is limited to the victim's spouse, parent, or adult sibling or child. If these close relatives are deceased or incapacitated, this definition does not allow any other relatives such as aunts, uncles, or cousins, to represent the deceased victim in the parole review process, leaving the victim without representation.

Recommendation

Change in Statute

8.1 Require the Board of Pardons and Paroles to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process.

This recommendation would expand the definition of close relative to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process only if the victim's spouse, parent, and adult sibling or child are deceased or incapacitated due to physical illness or infirmity. By including the nearest relative by consanguinity, this provision would allow aunts, uncles, and cousins, related by blood, to participate in the parole review process.

Issue 9

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

Fetal Alcohol Syndrome, caused by maternal consumption of alcohol during pregnancy, is one of the leading known preventable causes of mental retardation and birth defects.¹ Women in the criminal justice system tend to be of childbearing age and often have substance abuse problems. As a result, the State has an opportunity to educate women in prison about the health effects of drinking alcohol during pregnancy and thus help prevent fetal alcohol disorders.

Recommendations

Change in Statute

9.1 Require TDCJ to identify and provide interventions to women offenders at risk of having an alcohol-exposed pregnancy.

Under this recommendation, TDCJ would assess women serving sentences of two years or less and who are of childbearing age, meaning ages 18 to 44, for alcohol consumption and family planning practice to determine the risk of an alcohol-exposed pregnancy. Trained corrections personnel would administer and score an alcohol screening tool, and provide a brief intervention to women identified at risk for an alcohol-exposed pregnancy.

9.2 Require TDCJ to provide information about the health risks of drinking alcohol during pregnancy to women offenders.

This recommendation would require TDCJ to provide a brochure about the risks of drinking alcohol during pregnancy to all women during intake into the correctional system to help prevent alcohol-exposed pregnancies.

Issue 10

TDCJ and the Legislature Do Not Have the Information Necessary to Evaluate and Determine the Best Use of New Electronic Monitoring Devices.

TDCJ currently uses a two-piece, electronic device to monitor certain offenders on parole. New technology has resulted in one-piece, electronic monitoring devices that could be more cost effective and provide better monitoring capabilities than two-piece devices. However, TDCJ and the Legislature do not have basic information on the different types of electronic monitoring devices available, and therefore cannot compare the devices' ability to maintain public safety, as well as their cost-effectiveness and different monitoring capabilities.

Recommendation

Change in Statute

10.1 Require TDCJ to study the option of using electronic GPS tracking and monitoring devices for people on parole and report the findings to the Legislature.

This recommendation would require TDCJ to study different types of electronic monitoring devices and report the findings to the Legislature by January 1, 2009. The report would include recommended options for using the devices to monitor certain offenders on parole, any associated costs, and funding proposals for implementing these options.

Issue 11

Texas Has a Continuing Need for the Texas Department of Criminal Justice.

Key Findings

- ◆ TDCJ provides public safety by assisting local governments with community supervision, and by confining offenders and providing for their reintegration into society.
- ◆ Texas has a clear and continuing need to support local community supervision and to operate a system for incarcerating and preparing offenders for release and reintegration into society.
- ◆ No other state, local, or private entity exists that can perform TDCJ's activities.
- ◆ As a constitutional agency, the Board of Pardons and Paroles is not subject to abolishment under the Sunset Act, but is subject to Sunset review concurrently with TDCJ.

The Texas Department of Criminal Justice's responsibility to protect the public by assisting in community corrections, incarcerating felons, and supervising parolees continues to be needed and is important to Texas. Beyond the need of protecting the public's safety, TDCJ's efforts in each of these areas are particularly important as the state faces a growing prison population, but with limited capacity.

By supporting community supervision of less serious offenders, TDCJ helps divert these offenders from traditional incarceration. For the more serious offenders, providing a secure environment as well as rehabilitative programs both in prison and under parole supervision helps ensure successful reintegration back into society rather than returning to prison.

Recommendation

Change in Statute

11.1 Continue TDCJ for 12 years.

This recommendation would continue TDCJ for 12 years as an independent agency, responsible for providing public safety by confining, rehabilitating, and reintegrating offenders into society. Because the Board of Pardons and Paroles is not subject to abolishment, but is instead subject to review at the same time as TDCJ, it would also come under review in 2019.

Issue 12

Offenders and the Public Have Limited Access to Information About Correctional Health Care, Leading to a Lack of Transparency in the System.

Key Findings

- ◆ Little information about correctional health care is readily available to the public or offenders.
- ◆ The lack of information about correctional health care fosters a perception of secrecy that clouds public confidence in the system.
- ◆ The Legislature and other jurisdictions have recognized the benefits of openness and improved information sharing regarding correctional health care.

Administering a constitutional correctional healthcare system requires that leaders make prudent decisions about health care in the challenging context of the prison environment. Clinical guidelines and community standards of care are constantly balanced against security and budgetary constraints. Correctional healthcare administrators in Texas face these difficult decisions daily, but they make very little information available about the deliberative process or the resulting policies. This lack of readily available information can lead to frustration, and precipitate a sentiment of distrust.

Recommendations

Change in Statute

12.1 Require the Committee to make information about offender health care readily available to the public.

The Committee's statute should be amended to ensure that the following information is accessible to the public:

- ◆ contracts between TDCJ, the Committee, and the universities, including the Offender Health Services Plan attachment;
- ◆ Correctional Managed Care Formulary;
- ◆ Correctional Managed Care Policies and Procedures Manual;
- ◆ quality assurance statistics and data, to the extent permitted by law;

- ◆ general information about the costs of correctional health care, including, but not limited to quarterly and monthly financial reports, and aggregate cost information on items such as pharmaceutical costs, salaries and benefits, equipment, offsite medical services, and supplies;
- ◆ aggregate, statistical information about offender deaths and disease prevalence;
- ◆ description of the process for filing offender grievances;
- ◆ general statistics on the number and type of offender grievances filed during the previous quarter;
- ◆ contact information for the public to file complaints or submit inquiries to TDCJ and the university providers;
- ◆ information about the regulation and discipline of healthcare professionals and a link to the Health Professions Council website;
- ◆ unit data, including the most recent accreditation review date (if the unit has been accredited by a national accrediting body), hours of operation, a description of services available, general information on unit staffing, and statistics on offenders' ability to access care in a timely manner;
- ◆ dates and agendas for quarterly Committee meetings; and
- ◆ meeting minutes from past Committee meetings.

By improving the transparency of the correctional healthcare system, this recommendation would promote a greater understanding of how health care is delivered and would ultimately ensure greater public confidence in the system. This information should be made available on the Committee's website and should also be available in written form, upon request. The Committee should work with TDCJ and the two public universities that provide offender healthcare services, the University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (Texas Tech), to ensure that its website is linked to their websites, and that it is accessible through the State of Texas website, and is locatable through common search engines.

All of this information is already subject to disclosure under the public under the Public Information Act. This recommendation would not require disclosure of any information currently considered confidential under federal and state law, such as medical and other information relating to individuals. In determining the specific information to be made more readily available, the Committee should work with TDCJ to ensure that public disclosure would not pose a security threat to individuals or to the criminal justice system.

12.2 Require TDCJ to make information about healthcare services readily available to offenders.

Statute should be amended to ensure that the following information is available to offenders through the unit law libraries:

- ◆ Offender Health Services Plan;
- ◆ Correctional Managed Care Formulary;
- ◆ Correctional Managed Care Policies and Procedures Manual; and
- ◆ description of the process for filing offender grievances.

By providing more information to offenders, the recommendation would promote a better understanding of the system among offenders and would ultimately improve accountability of the healthcare providers.

Management Action

12.3 TDCJ's Health Services Division and the university providers should provide more useful information in response to offender grievances.

When an offender appeals a grievance, TDCJ and the universities should more fully explain the major findings from the investigation, and provide an explanation of the specific reason or policy basis for dismissing the grievance, or a description of any corrective action that results. This provision should result in more complete responses to these offender grievances, beyond the simple form-letter responses currently used.

Issue 13

Due to Its Unusual Structure and Function, the Correctional Managed Health Care Committee Should Be Allowed to Continue, Removed From Sunset Review.

Key Findings

- ◆ Texas has a continuing need for professional healthcare providers to make healthcare decisions for incarcerated offenders in a secure prison environment.
- ◆ The arrangement between TDCJ and the universities for providing offender health care does not lend itself to objective analysis of whether or not the Committee should be continued.
- ◆ The Committee's statutory responsibilities need updating to better reflect its actual purpose.
- ◆ Because the Board of Criminal Justice relies on the Committee to oversee prison health care, it is too far removed from its responsibility to ensure offenders receive a constitutional level of health care.

Texas benefits from the contractual relationship between TDCJ and two public universities, UTMB and Texas Tech, for the provision of offender healthcare services. However, this relationship is not a typical contractual relationship and the Committee, as the facilitator between the parties, is not a typical stand-alone state agency. While objective analysis of this structure would probably lead to the conclusion that the Committee is not needed as a semi-independent agency, the unique circumstances of the Committee make this conclusion impossible to draw. Certainly, no problems would be fixed by abolishing the Committee. Ultimately, the Committee defies the standard, objective assessment of need. Also, TDCJ is limited in its ability to monitor health care, thus preventing it from carrying out its responsibility of ensuring the well-being of offenders.

Recommendations

Change in Statute

13.1 Remove the separate Sunset date for the Committee and allow it to continue.

This recommendation would allow the Committee to continue, but it would not be scheduled for Sunset review in the future. The Legislature's decision to have such an entity to oversee the contracting

relationship would not be the subject of future Sunset review. However, the Committee's role and responsibilities in the correctional healthcare system would be subject to review as part of future Sunset reviews of TDCJ.

13.2 Update the statutory direction for the Committee.

In place of its current statutory responsibilities, the Committee would be responsible for:

- ◆ developing statewide policies for the delivery of offender health care;
- ◆ maintaining the contracts for healthcare services in consultation with TDCJ and the healthcare providers;
- ◆ allocating funding made available through legislative appropriations for correctional health care;
- ◆ identifying and addressing long-term needs of the correctional healthcare system;
- ◆ monitoring the universities' expenditures to ensure they are in compliance with statutory and contractual requirements;
- ◆ addressing problems found through monitoring performed by TDCJ and the universities, including requiring corrective action;
- ◆ serving as a dispute resolution forum in the event of a disagreement relating to offender health care between TDCJ and the healthcare providers or between UTMB and Texas Tech;
- ◆ communicating with TDCJ and the Legislature about the financial needs of the correctional healthcare system; and
- ◆ providing reports to the Board of Criminal Justice at the Board's quarterly meetings on the Committee's policy decisions, financial status, and corrective actions.

This recommendation would replace current statutory responsibilities with those that reflect the Committee's current functions.

13.3 Require the Chair of the Committee to be a public physician member.

This recommendation would require the Governor to choose one of the two public members who is licensed to practice medicine as the Chair of the Committee. Having a public member as the Chair would ensure that none of the parties to the correctional healthcare contracts are in charge of the Committee, thus emphasizing the balanced partnership that has evolved over the years.

13.4 Remove limitations on the Texas Department of Criminal Justice's ability to monitor the quality of health care provided to offenders.

This recommendation would fully enable TDCJ to review the health care provided to offenders. Since TDCJ is ultimately responsible for the well-being of the offenders under its authority, it should be allowed to conduct any monitoring activities it feels are necessary. Just as TDCJ and the universities have developed a cooperative relationship through the Committee, TDCJ and the universities should cooperate to the greatest extent feasible on quality of care monitoring. However, the scope of TDCJ's efforts should not be limited in statute.

When TDCJ finds problems through its monitoring activities, it would be able to require the universities to take corrective action. The agency would report to the Board of Criminal Justice and the Committee all corrective actions required and whether the universities took appropriate action in response. Clarifying the scope of TDCJ's monitoring would allow the agency to hold the universities accountable for the care they provide and ensure the universities are properly addressing allegations of inadequate care.

This recommendation does not require TDCJ to take on any specific new responsibilities or to become solely responsible for ensuring quality care is provided. Instead, TDCJ would be able to decide what new monitoring activities, if any, to perform. Further, this change would not affect the universities' ability and responsibility to conduct their own quality of care monitoring.

Fiscal Implication Summary

Several of these recommendations will have a fiscal impact to the State, but the actual amount of the impact will depend on how the recommendations are implemented. The fiscal impact of the recommendations is discussed below.

Issue 1 – Appropriating additional funds to TDCJ for offender treatment and rehabilitation programs would result in a cost to the State. However, funding these programs would reduce recidivism, reducing the need for creating additional capacity, potentially generating millions of dollars in cost avoidance for the State. The recommendations suggest that more than \$100 million be appropriated. The Legislature, through the appropriations process, would determine the amount of funding and therefore the actual impact to the State. The fiscal impact would not be reflected in the fiscal note for the TDCJ Sunset bill.

Issue 2 – Establishing a Criminal Justice Legislative Oversight Committee would result in a cost to the State. However, the actual fiscal impact will depend on how the Committee structures its staff support.

Issue 3 – If the Parole Board updates the guidelines and parole panels come closer to meeting the established approval ranges for each guideline score, additional offenders could be released from prison earlier, resulting in significant cost avoidance for the State. For example, in fiscal year 2005, compliance with minimum parole approval rates could have resulted in the release of an additional 2,400 offenders, with more than \$32 million in costs avoided on an annual basis.

Issue 4 – Any state money that would have been used to supervise early terminating offenders should be redirected and used to supervise new probationers and higher-risk offenders.

Issue 5 – Any savings realized from reduced parole supervision caseloads would be used to supervise high-risk offenders on parole or mandatory supervision.

Issue 6 – Authorizing the release of medically eligible state jail confinees would result in a savings to the General Revenue Fund, but the savings cannot be determined because TDCJ cannot estimate how many confinees would be eligible and approved for release.

Issue 9 – Requiring TDCJ to screen all women who enter the prison system each year and provide brief interventions to those at risk of an alcohol-exposed pregnancy would have a minimal cost for staff time and training, but these costs would not be significant.

¹ Centers for Disease Control and Prevention, Fetal Alcohol Spectrum Disorders: Fetal Alcohol Information, www.cdc.gov/ncbddd/fas/fasask.htm. Accessed: January 26, 2007.



Prepaid Higher Education Tuition Board

Board at a Glance

The mission of the Prepaid Higher Education Tuition Board (the Board) is to help Texas students attend college. The Board accomplishes its mission by overseeing the State's two 529 college savings programs, named after the section of the Internal Revenue Code that authorizes them. The Texas Guaranteed Tuition Plan (Prepaid Plan) allows buyers to lock in future college tuition and required fees at today's prices, and Tomorrow's College Investment Plan (Savings Plan) is a savings program that works much like a 401(k) but with after-tax dollars.

In 2003, the Board temporarily suspended enrollment in the Prepaid Plan because of the uncertain effects of the deregulation of tuition. The Board feared that, because it could not accurately predict future costs of tuition, it could potentially sell new tuition contracts at inadequate prices and jeopardize the Plan's assets. To date, the Prepaid Plan remains closed to new applicants, but Texas families can continue to invest in the State's Savings Plan to help cover future college expenses.



*For additional information,
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Key Facts

- ◆ **Staffing.** The Board has no staff of its own, but reimburses the Office of the Comptroller of Public Accounts for 20.5 staff positions to support the day-to-day operations of the Board. Because the Board contracts out administration of the Savings Plan, the 20.5 staff primarily support the Prepaid Plan.
- ◆ **Funding.** The Board receives no appropriation to operate the two plans, but instead relies on prepaid tuition contract payments, investment income, and fees to cover administrative costs and tuition benefits. In fiscal year 2006, the Board spent about \$8.3 million in Prepaid Plan administrative costs, which included staff salaries and payments to fund managers. The Board also received almost \$730,000 from the Savings Plan contractor for reimbursement of administrative and marketing expenses for that program.
- ◆ **Texas Guaranteed Tuition Plan (Prepaid Plan).** From 1996 to 2003, the Board sold more than 158,000 prepaid tuition contracts to Texas families, allowing them to pay for future college tuition and fees at current prices. With \$1.7 billion in assets at the end of fiscal year 2006, the Prepaid Plan Fund is one of the State's largest investment funds and is backed by the full faith and credit of the State. The Plan has paid almost \$226 million in tuition and fees in the last five academic years.
- ◆ **Tomorrow's College Investment Plan (Savings Plan).** By the end of fiscal year 2006, more than 19,000 account holders had invested more than \$175 million in Savings Plan accounts. The Plan has disbursed approximately \$22.4 million for college costs from its inception in 2002 through fiscal year 2006.

Board Members (7)

The Honorable Susan Combs, Comptroller of
Public Accounts, Presiding Officer (Austin)
The Honorable John C. Anderson (Plainview)
Theresa W. Chang (Houston)
Richard Collins (Dallas)
Jack R. Hamilton, CFA (Houston)
Harrison Keller, Ph.D. (Austin)
Zan S. Statham (Weatherford)

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Recommendations

1. Facilitate the Board's ability to reopen the Prepaid Plan through changes in law that enable better pricing of contracts given a tuition deregulated environment.
2. Direct the Board to consider changes to encourage greater interest in managing the Savings Plan and to regularly evaluate the cost-effectiveness of its advertising.
3. Require in law an ethics policy for Board members and staff to help ensure against any potential conflicts of interest.
4. Require the Board to study how it could leverage prepaid tuition contracts to secure benefits for Prepaid Plan beneficiaries from Texas universities.
5. Continue the Prepaid Higher Education Tuition Board, housed at the Comptroller's Office, for the standard 12-year period.

Issue 1

Statutory Changes Could Help Facilitate the Board's Ability to Reopen the Prepaid Plan Within a Tuition Deregulated Environment.

Key Findings

- ◆ The Board has suspended any new enrollment in the Texas Guaranteed Tuition Plan since 2003, but continues to manage its more than 158,000 existing prepaid tuition contracts.
- ◆ Deregulation has caused tuition at four-year, public, Texas universities to diverge considerably, making it difficult for the Board to accurately price new contracts.
- ◆ Continuing to apply the weighted average requirement to new contracts could unfairly shift a growing portion of beneficiaries' future tuition costs to universities with tuition that exceeds the weighted average.
- ◆ The Board lacks authority to issue refunds for certain plans to help protect purchasers who pay more for the contract than the actual cost of tuition.
- ◆ Unlike Texas, most prepaid tuition plans in other states require a delay from the contract purchase date to when the student claims benefits, allowing time for investments to grow.

Through the Texas Guaranteed Tuition Plan (Prepaid Plan), the Board has helped thousands of Texas families afford college tuition for their young family members. However, the Board has not sold new prepaid tuition contracts since the Legislature deregulated tuition in 2003. Key obstacles to reopening the Prepaid Plan include the increasingly divergent tuition rates set by Texas universities, and limits in existing law that were created in the environment prior to tuition deregulation.

Recommendations

Change in Statute

1.1 Remove the weighted average requirement for any new prepaid tuition contracts the Board sells.

This recommendation would remove the requirement that any university with tuition and required fees above the weighted average of all four-year, public, Texas universities waive the difference in cost between their tuition and required fees and the weighted average amount. Because this provision is important to the soundness of tuition contracts the Board sold previously, the recommendation would only apply to new contracts issued if the Board reopens the Prepaid Plan in the future. The weighted average requirement would still apply to all Senior College contracts the Board sold from 1996 to 2003.

With the changes recommended in this report, the Board would have more opportunities to create a self-sustaining program that is capable of paying universities the actual cost of tuition.

1.2 Authorize the Board to issue refunds for new prepaid tuition contracts if a purchaser pays more for a contract than the actual cost of the beneficiary's tuition.

This recommendation would authorize, but not require, the Board to issue refunds for Junior, Senior, and Junior-Senior College Plans, if necessary. Pricing contracts higher could help protect the Board's assets and enable the sale of new contracts, but a refund provision may be necessary to protect future

purchasers' investments. The intent of the recommendation is to give the Board a tool that may help it reopen the Prepaid Plan.

1.3 Authorize the Board to require a delay from the contract purchase date to when the student claims benefits, allowing time for investments to grow.

This recommendation would authorize, but not require, the Board to require a maturity period before a beneficiary could use prepaid tuition benefits. Such a delay from the time a contract is purchased would ensure sufficient time for the Board's investments to grow before the beneficiary claims tuition benefits. The intent of the recommendation is to give the Board additional flexibility to protect the Plan's assets, which may help reopen the Prepaid Plan.

1.4 Require the Board to annually reassess whether it can reopen the Prepaid Plan as long as the Plan remains closed.

This recommendation would require the Board to create a procedure in rule that clearly outlines criteria to use when annually analyzing whether the Prepaid Plan may reopen. As part of this procedure, the Board should consider the Plan's current structure and whether additional statutory changes are needed for it to reopen.

Issue 2

The Savings Plan Could Benefit From the Board's Reconsideration of Restrictions in Its Request for Proposals and the Cost-Effectiveness of Its Advertising.

Key Findings

- ◆ Two key components of the Board's Request for Proposals (RFP) to run the Savings Plan may unnecessarily restrict fund manager applicants, reducing the competitiveness of the Plan.
- ◆ The Board devotes significant funds to television advertising for the Savings Plan but fails to clearly track its impact on new enrollment.

The Board is responsible for contracting with vendors to ensure that the State's 529 Savings Plan is well managed and accessible to individuals wishing to save for their children's or grandchildren's educations. Texas' 529 Savings Plan is relatively new and growing; however, many other states' plans, which began at approximately the same time, are significantly larger.

Two key components of the Board's contracting process may have limited the competitiveness of the Savings Plan. The Board restricted respondents to only those firms that did not manage other states' plans, and required a significant annual, upfront marketing contribution from the plan manager, potentially impacting the Board's ability to attract larger, more established plan managers.

The Board could also benefit from clearer oversight of the Savings Plan's advertising campaign to ensure the cost-effectiveness of its efforts to increase enrollment.

Recommendations

Management Action

2.1 The Board should consider restructuring its next Request for Proposals for the Savings Plan manager to encourage a wider variety of respondents.

This recommendation would direct the Board to consider restructuring the plan manager RFP to improve the volume and quality of respondents. The Board should evaluate eliminating the current requirement that the plan manager exclusively manage the Texas plan. By removing this requirement, the Board would allow many additional firms with good standing in the 529 market to respond. In addition, the Board should reconsider the marketing cost charged to the plan manager to ensure that the required contribution does not unreasonably restrict the RFP respondent pool.

2.2 The Board should regularly evaluate the impact of its advertising campaign to ensure that it is cost-effectively generating new enrollment.

This recommendation would ensure that the Board routinely reassesses the advertising plan for the State's Savings Plan, and for the Prepaid Plan should enrollment reopen. The Board should require that the contracted advertising vendor provide regular reports that assess the volume of new business generated by the advertising campaign. In addition, the advertising vendor and the Board should regularly evaluate the plan to ensure that it provides the best mix of advertising to effectively reach the broadest segment of individuals interested in investing and saving for college-bound Texans.

Issue 3

The Board's Statute Lacks Ethics Provisions That Are Important Safeguards for Boards With Significant Investment Oversight.

Key Findings

- ◆ Prepaid Higher Education Tuition Board members and staff are involved in investment decisions regarding the Board's two 529 college savings programs.
- ◆ Though the Board follows an ethics policy, and has not encountered any problems, the Board's statute does not specify ethical standards for Board members and staff.
- ◆ Other state agencies and boards with investment responsibilities have ethics requirements in their statutes.

The Board and its staff oversee investments of almost \$2 billion in Texas' two college savings plans. The Board has established and uses an ethics policy to guide its members and staff when dealing with a variety of potential ethical challenges. However, unlike other government bodies with investment authority, the Board has no requirement in law to have an ethics policy.

Recommendation

Change in Statute

3.1 Require in law an ethics policy for Board members and staff that includes disclosure of conflicts of interest and recusal when conflicts exist.

This recommendation would add a provision to the Board's statute that would require the Board to maintain an ethics policy that addresses the following issues for Board members and staff:

- ◆ general ethical standards;
- ◆ conflicts of interest, including disclosure and recusal requirements;
- ◆ acceptance of gifts and entertainment; and
- ◆ compliance with, and enforcement of, the ethics policy.

The Board’s current policy contains these provisions, so the Board would not need to develop a new policy. Placing provisions of the Board’s existing ethics policy in statute would help ensure that the actions of future Board members avoid any conflicts of interest or other ethical violations. Placing ethics policy requirements in statute also makes them more visible to the public and investors.

Issue 4

The Board Could Be Missing An Opportunity to Leverage Prepaid Tuition Contracts to Secure Benefits From Texas Universities for Plan Beneficiaries.

More than 120,000 college-bound Texas students have prepaid tuition contracts. In fiscal year 2006, 18,062 students used prepaid plan benefits, the majority of whom attended Texas public universities. These students provide a stable source of funding for universities, and they are more likely to graduate on time because their tuition has been paid for. Given this high volume of securely funded students, the Board could be missing an opportunity to obtain tuition discounts or other benefits from universities interested in encouraging students with prepaid contracts to attend their institutions.

Recommendation

Change in Statute

4.1 Require the Board to study how it could leverage its prepaid tuition contracts to secure benefits from Texas universities for plan beneficiaries.

This recommendation would require the Board to conduct a one-time study to determine whether it could negotiate with Texas universities to secure tuition discounts or other benefits for students with prepaid tuition contracts.

Issue 5

Texas Has a Continuing Need for the Prepaid Higher Education Tuition Board.

Key Findings

- ◆ The Prepaid Higher Education Tuition Board oversees the State’s two tax-advantaged college savings plans.
- ◆ Texas has a continuing interest in, and the Board has been successful with, helping thousands of Texas families save for college.
- ◆ While other state agencies deal with higher education, none offer advantages over the Office of the Comptroller of Public Accounts for housing the Board’s college savings plans.

The Legislature recognized the need to help Texans save for college expenses in 1995 when it established the Prepaid Higher Education Tuition Board. The Board administers both of the State's 529 college savings plans, the Texas Guaranteed Tuition Plan and Tomorrow's College Investment Plan. While organizational alternatives to housing the Board at the Office of the Comptroller of Public Accounts exist, no other agency could provide benefits over the current structure. The Board successfully accomplishes its mission and should be continued for 12 years.

Recommendation

Change in Statute

5.1 Continue the Prepaid Higher Education Tuition Board for 12 years.

This recommendation would continue the Board, housed at the Comptroller of Public Accounts, for the standard 12-year period.

Fiscal Implication Summary _____

None of these recommendations would have a significant fiscal impact to the State.



Texas Historical Commission

Agency at a Glance

The Texas Historical Commission is the state agency for historic preservation. The Legislature originally created the Texas State Historical Survey Committee in 1953 to identify important historic sites across the state, later expanding its role to include protecting and preserving the state’s heritage. In 1969, the Legislature created the Texas Antiquities Committee to protect all cultural resources, historic and prehistoric, on public land in Texas. Today, these two missions are combined in the renamed Texas Historical Commission (THC), whose mission is to protect and preserve Texas’ unique historic resources. THC also acts as the State Historic Preservation Office for Texas, implementing federally mandated historic preservation programs. To accomplish its mission, THC:

- ◆ identifies and designates historic resources in Texas;
- ◆ reviews proposed projects to help protect historic resources on public and private land;
- ◆ provides financial and educational assistance to communities and organizations for developing and preserving historic resources; and
- ◆ acts as a steward to preserve and interpret historic resources entrusted to the State’s care.



*For additional information, please contact
Chloe Lieberknecht at
(512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, the agency operated with a budget of \$10.7 million, funded through bonds, general revenue, interagency transfers, and federal funds. The largest expenditure was about \$4.65 million in salaries.
- ◆ **Staffing.** The Commission employs 109.5 staff, mostly in its Austin headquarters. Four employees also run the Sam Rayburn House Museum in Bonham, and 13 employees operate the National Museum of the Pacific War in Fredericksburg.
- ◆ **Grants.** In fiscal year 2006, THC awarded just over \$3 million in grants to communities, owners of historic properties, and historic preservation education and training initiatives to support the preservation and promotion of Texas’ historic resources.
- ◆ **Historical Markers and Designations.** THC identifies and designates many types of historic properties. Among these, THC has helped individuals and organizations mark more than 13,000 significant sites with Official Texas Historical Markers, and assisted citizens in preparing more than 3,000 nominations to the National Register of Historic Places.
- ◆ **Review of Proposed Projects.** THC works to protect important historic resources on public land by reviewing proposed construction projects to ensure that they do not negatively affect those resources. In fiscal year 2006, THC reviewed more than 10,000 federal projects, as required by Section 106 of the National Historic Preservation Act of 1966. The agency also completed about 3,500 Antiquities Code reviews on state-held land, as required by state law.

- ◆ **Texas Main Street Cities.** THC has many programs to help local communities and organizations further preservation goals on the local level. The Texas Main Street Program, the most recognizable of these programs, has helped 155 cities revitalize their historic downtowns.

Commission Members (17)

John Liston Nau, III, Chair (Houston)
Jane Cook Barnhill, Vice Chair (Brenham)
Lareatha H. Clay, Secretary (Dallas)
Thomas E. Alexander (Kerrville)
Bob Bowman (Lufkin)
Earl Broussard, Jr. (Austin)
Diane D. Bumpas (Dallas)
Shirley W. Caldwell (Albany)
Donna D. Carter (Austin)
Frank W. Gorman (El Paso)
David A. Gravelle (Dallas)
Albert F. (Boo) Hausser (San Antonio)
Sarita A. Hixon (Houston)
Eileen Johnson (Lubbock)
Thomas R. Phillips (Bastrop)
Marcus Warren Watson (Plano)
Frank D. Yturria (Brownsville)

Agency Head

Lawrence Oaks, Executive Director
(512) 463-6100

Recommendations

1. Require the Texas Historical Commission to adopt rules governing the relationship between the agency and its associated nonprofit corporation.
2. Require THC to create a statewide strategy for awarding historical markers.
3. Continue THC for 12 years, and direct the agency to evaluate and prioritize its many programs.

Issue 1

THC Benefits From the Support of Its Associated Nonprofit Corporation, but Clarifying Each Entity's Role Would Help Guard Against Any Potential Conflicts of Interest.

Key Findings

- ◆ Partnerships between state agencies and associated nonprofit organizations can benefit the State.
- ◆ The agency's relationship with Friends of the Texas Historical Commission has effectively advanced historic preservation in Texas.
- ◆ Some THC staff are inappropriately involved in Friends fundraising initiatives.
- ◆ THC provides a significant level of financial and staff support to run the Friends corporation.
- ◆ THC lacks clear guidelines for prioritizing projects most in need of Friends funding.

The Texas Historical Commission has partnered with an associated nonprofit corporation, Friends of the Texas Historical Commission, Inc. (Friends), to provide funding and support for preservation projects beyond the means of the agency's state and federal funding. While often beneficial, such relationships can also create risks and agencies should minimize these risks.

Recommendations

Change in Statute

1.1 Require THC to adopt rules governing the relationship between the agency and any affiliated nonprofit organization.

This recommendation would ensure that THC defines the relationship between the agency and any affiliated nonprofit organization, eliminating any appearance of improper conduct or conflict of interest. To best define this partnership, these rules should take into account applicable accepted best practices and standards, as well as ensure full THC compliance with Government Code sections requiring such rules to address agency staff roles in relation to the nonprofit organization and funds. These changes would help ensure that the agency and the nonprofit understand the appropriate conduct for state employees regarding affiliated nonprofit organizations, which does not include soliciting funds in agency publications and fundraising by employees with regulatory responsibilities.

1.2 Prohibit the THC Executive Director from serving as a voting member of the board of any affiliated nonprofit organization.

This recommendation would align THC's practices with accepted standards for the relationship between state agencies and closely associated nonprofit entities by statutorily prohibiting the Executive Director's participation as a voting member of an affiliated nonprofit board. Because the Executive Director will always inherently have regulatory duties as the head of the agency, the Executive Director should not vote on fundraising priorities at the supporting nonprofit corporation. This change would not prohibit the THC Executive Director from serving as an ex officio, nonvoting member of such a board.

1.3 Require THC to establish guidelines that will identify and define the type of administrative and financial support the agency should give to the nonprofit organization Friends of the Texas Historical Commission.

To clarify the agency's role in supporting its associated nonprofit corporation, this recommendation would require the agency to set guidelines governing the specific type of administrative and financial support the agency gives to its nonprofit organization. These guidelines should cover cash, fundraising, and in-kind support of the nonprofit.

Management Action

1.4 Direct THC to establish a clear and open process to prioritize projects for financial assistance from Friends.

THC, as an agency rather than on the division level, should create a process by which projects and initiatives are consistently reviewed for prioritization for Friends funding. The agency should examine whether Friends funding would be most useful for supporting large projects aligning directly with the agency's goals and mission, or if the extra resources of Friends might be better directed toward some of the agency's newer and less critical initiatives. This would introduce a strategic element into THC's use of Friends funding, allowing the agency to maximize the benefit of its supporting organization.

Issue 2

THC Lacks a Statewide Strategy for Recognizing Resources in the Historical Marker Program, Limiting the Program's Effectiveness as an Educational and Tourism Tool.

Key Findings

- ◆ THC recognizes important historic resources with markers to educate people about Texas history and encourage tourism.
- ◆ While the program successfully identifies many historic resources, its lack of focus on the broader stories of statewide significance limits its effectiveness as an educational and tourism tool.
- ◆ Some County Historical Commissions lack the capacity to effectively research and evaluate historic resources appropriate for an official marker.
- ◆ THC charges a fee to pay for marker hardware, but does not assess an application fee to recover the agency's application review costs.

The Texas Historical Commission recognizes historically significant resources with Official Texas Historical Markers for educational and tourism purposes. While the agency has successfully identified many historic resources, it could benefit from taking a more strategic approach. The growing number of markers in the state – 13,000 – could eventually lessen each marker's individual significance. By relying almost exclusively on the public to identify important resources, the agency could be missing important aspects of Texas history. Additionally, some County Historical Commissions (CHCs) lack the capacity to effectively evaluate historic resources appropriate for an official marker. Finally, while THC charges for the marker hardware once approved, the agency does not charge a marker application fee.

Recommendations

Change in Statute

2.1 Require THC to approach the marker program more strategically by awarding a more limited number of markers based on statewide themes and significance.

This recommendation would ensure a more strategic approach to how THC awards historical markers, requiring THC to develop statewide themes for the marker program, linked to the agency's broader preservation plan for Texas. THC could continue to award markers for resources that are significant locally, but that fit into the overall themes identified by the agency. After the agency awards markers to resources that are linked to the statewide theme, to the extent that the agency has not met its annual limit, it could then award markers to resources that tell unrelated local stories.

Approaching the marker program more strategically would help link this tool to THC's broader goals, particularly in the areas of education and tourism. By limiting the total number of markers, and awarding them based on statewide themes and significance, THC would ensure that markers remained more of an honor than a commodity.

Management Action

2.2 Direct the agency to help build the capacity of County Historical Commissions to more effectively research and evaluate resources appropriate for official historical markers.

To build local capacity, THC should provide training and educational materials to help County Historical Commissions and communities in effectively researching, documenting, and evaluating the historical significance of resources appropriate for official markers. The agency should make this information available on its website and through workshops targeted at more directly assisting CHCs with the greatest need.

Local communities, with access to local resources and greater knowledge of local history, are well-placed to be an effective partner to THC in the marker program. Improved county-level evaluations should enable THC to spend less time assisting applicants in researching local history, and more time developing statewide stories to tell through the marker program.

2.3 Direct THC to establish an application fee for historical markers.

This recommendation would direct THC to use its existing statutory authority to establish a reasonable fee to be submitted with historical marker applications. In developing the fee amount, the agency should consider the approximate amount of time staff needs to evaluate each marker application. The money brought in through application fees should be directed back into the agency's historical marker program.

Issue 3

Texas Has a Continuing Need for the Texas Historical Commission.

Key Findings

- ◆ Texas has a clear and continuing interest in protecting and preserving important historic resources.

- ◆ THC has been successful in leading efforts to identify, protect, and preserve historic resources in Texas, but could benefit from clearer prioritization of its many programs.
- ◆ While other state agencies perform functions that deal with cultural resources, consolidation offers no significant benefits over the current structure.

The Texas Historical Commission's responsibilities to protect and preserve historic resources in the state continue to be important to Texas. Beyond the necessity of preserving Texas' history for current and future generations, THC's preservation efforts also help local communities, fostering economic development in the state. Additionally, THC fulfills federal preservation requirements delegated to the State under the National Historic Preservation Act of 1966. Finally, although THC is generally successful and should be continued for 12 years, the agency should evaluate and prioritize its many activities to more effectively lead efforts to preserve history in Texas.

Recommendations

Change in Statute

3.1 Continue the Texas Historical Commission for 12 years.

This recommendation would continue THC as an independent agency for 12 years.

Management Action

3.2 Direct THC staff to evaluate and prioritize its many programs and initiatives, linking them back to the agency's most important goals.

This recommendation would instruct THC staff to evaluate and prioritize its programs and initiatives to better guide the agency's preservation efforts. In doing so, the agency should consider how each program and initiative relates to the agency's most important goals, and which programs should take priority within the context of those goals. The agency should examine the importance of each program and assign agency resources accordingly.

Fiscal Implication Summary _____

None of the recommendations concerning the Texas Historical Commission would have a net fiscal impact to the State.



Texas State Library and Archives Commission

Agency at a Glance

The Texas State Library and Archives Commission (TSLAC) works to improve the availability and quality of library services across the state, and preserve and provide access to significant Texas documents. The origin of today's State Library dates to 1839, when Mirabeau B. Lamar established the National Library of the Republic of Texas. Later, as a State, the Legislature expanded the Library's role to include serving as a depository of historical materials. Today, to accomplish its mission, the Commission:

- ◆ provides financial and consulting assistance to libraries and library systems to promote library development and resource sharing;
- ◆ provides direct library services to persons with disabilities; and
- ◆ ensures access to important Texas documents by coordinating state and local records management, and acquiring and preserving archival documents.



*For additional information,
please contact Amy Trost
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** The agency operated with an annual appropriation of \$28 million in fiscal year 2006, funded largely through a mix of general revenue and federal funds. The largest single expenditure, \$7.5 million, funded ten regional library systems across the state that provided continuing education and technical assistance to more than 500 member public libraries and 300 branch libraries.
- ◆ **Staffing.** The Commission employs 188 staff, most of whom work in Austin at the agency's headquarters and at the State Records Center. Six staff work in Liberty at the Sam Houston Regional Library and Research Center.
- ◆ **TexShare.** The Commission coordinates a statewide consortium of about 700 public, academic, and clinical medicine libraries that participate in the group purchasing of databases and resource sharing services. In fiscal year 2006, TSLAC and TexShare member libraries saved more than \$70 million by purchasing access to 50 popular academic databases as a group.
- ◆ **Talking Book Program.** In fiscal year 2006, the Commission provided books on tape and large print and Braille books to about 21,000 Texans who cannot read standard print materials because of visual, physical, or learning disabilities.
- ◆ **Texas State Archives.** The Commission appraises, prepares for research, and preserves historically valuable Texas documents and makes them available to the public. TSLAC's more than 60,000 cubic feet of archives include the Texas Declaration of Independence and the Texas Constitution, along with Texas government records, collections of private papers, maps, photographs, books, and newspapers.

Commission Members (7)

Sandra J. Pickett, Chair (Liberty)
Sharon T. Carr (El Paso)
Diana Rae Hester Cox (Canyon)
Martha Doty Freeman (Austin)
Cruz G. Hernandez (Burleson)
Sandra G. Holland (Pleasanton)
Sally Ann Reynolds (Rockport)

Agency Head

Peggy Rudd, Director & Librarian
(512) 463-5460

Recommendations

1. Continue the Texas State Library and Archives Commission for 12 years.
2. Restructure regional library systems' funding to provide flexibility to meet changing conditions and encourage innovation.
3. Eliminate state certification of county librarians.
4. Authorize TSLAC in law to provide direction and leadership to collaborative efforts to develop online access to historical resources.
5. Require TSLAC and the Texas Education Agency to develop a joint study of school library needs, and to assess which needs each agency should address.

Issue 1

Texas Has a Continuing Need for the Texas State Library and Archives Commission.

Key Findings

- ◆ Texas has a clear and continuing interest in improving library services, as well as preserving and providing access to important historic documents. The Commission has been successful in leading these efforts.
- ◆ While other state agencies perform functions that deal with libraries, archives, and other cultural resources, consolidation offers no significant benefits over the current structure.

The Texas State Library and Archives Commission's responsibilities – to improve library services, and preserve and provide access to important documents – continue to be important to Texas. The Commission's efforts help meet the information needs of Texans through the support of libraries statewide and better access to historic documents and government records. Additionally, the State must have a library agency to receive federal library funds. The Legislature has considered consolidating TSLAC with other state agencies that play a role in supporting and preserving the State's cultural resources, but aside from administrative efficiency, no significant savings would result.

Recommendation

Change in Statute

1.1 Continue the Texas State Library and Archives Commission for 12 years.

The recommendation would continue TSLAC as an independent agency for 12 years.

Issue 2

The Structure for Funding Regional Library Systems Fails to Provide Flexibility to Meet Changing Conditions or Encourage Innovation.

Key Findings

- ◆ TSLAC administers a network of regional library systems to improve public libraries.
- ◆ Having the system funding formula in state law does not allow TSLAC to make adjustments for changing conditions.
- ◆ The current funding method does not encourage innovation or help advance targeted state or federal goals.

TSLAC provides statewide assistance to public libraries by administering and funding 10 regional library systems. The systems, in turn, provide continuing education, technical assistance, and other programs to help public libraries offer better services to their patrons. However, TSLAC cannot make funding modifications to respond to changing conditions because the formula is set in statute. In addition, the current method of funding does not provide TSLAC with the flexibility to encourage or reward innovation.

Recommendations

Change in Statute

- 2.1 Remove the system funding formula from statute and require the Commission to adopt a new formula in rule that provides flexibility but continues to ensure funding for basic system support services.**

The recommendation would take the funding formula for system operation grants out of TSLAC's statute and require the Commission to adopt a new one through its rulemaking process. Removing the formula from statute would provide the Commission with needed flexibility to address changes while ensuring that each system continues to receive funds to provide the basic system services of technical assistance and continuing education.

- 2.2 Require TSLAC to distribute a portion of system funds in competitive grants aimed at increasing innovation and targeting state and federal goals.**

This recommendation would require the Commission to develop a program of competitive grants for regional systems and all Texas libraries. These grants would enable the agency to encourage innovation and target state and federal goals, such as collaboration among different types of libraries and programs for special populations. The Commission should require grant recipients to report best practices and performance outcomes from which other systems and libraries could benefit. In setting up the competitive grant program, the Commission should ensure an appropriate balance between a base amount of funds needed for systems operation, and funds to help encourage and reward innovation.

Management Action

- 2.3 TSLAC should use its Library Systems Act Advisory Board in the development of a new system formula.**

In developing a proposed formula for the Commission, the Advisory Board should consider a variety of factors including, but not limited to, the number of member libraries in a system and regional economic conditions, in addition to the systems' populations. The Advisory Board should hold public meetings to receive stakeholder input on the new formula. Also, TSLAC should prominently post on its website agendas and other information to be discussed at Advisory Board meetings at least two weeks before the meetings to allow stakeholders adequate time to study the documents. The Advisory Board should submit its proposed formula to the Commission for consideration and adoption.

Issue 3

State Certification of County Librarians Is Not Needed to Ensure Public Access to Quality Library Services.

Key Findings

- ◆ State law requires TSLAC to certify county librarians.
- ◆ State certification of individuals working within a library is not needed to protect the public.
- ◆ No rationale could be found for singling out county-funded libraries for additional state scrutiny.

State law requires TSLAC to certify county librarians, whom the agency interprets as directors of libraries that receive any amount of county funding. However, the agency has never received a formal

complaint about a certified librarian, and already directs concerns about the quality of public library service to the appropriate local entity.

State regulation of a profession should be limited to those posing a threat to the health, safety, or welfare of the public, not for advancement or promotion of a profession, no matter how valuable a service they provide. Since the State already ensures the quality of public library service by regulating library facilities, certifying the individuals working within them is not necessary.

Recommendation

Change in Statute

3.1 Eliminate TSLAC's certification of county librarians.

This recommendation would remove the requirement to certify county librarians from TSLAC's statute, discontinuing the state regulation of individual librarians. This recommendation would not adversely affect the quality of public library service, since the local entities employing these librarians could set standards to ensure their individual competence, leaving the State to focus on the broader oversight and support of library facilities statewide.

Issue 4

Lack of Statutory Direction Could Threaten the Success of Efforts to Provide Online Access to Texas' Historic Documents.

Key Findings

- ◆ TSLAC plays a key role in voluntary efforts to digitally preserve and provide online access to important historic documents housed at institutions across the state.
- ◆ Without collaboration, institutions may digitize their collections separately, spending more money and time on less useful products.
- ◆ TSLAC is providing initial leadership for the Texas Heritage Digitization Initiative, but lacks a clear statutory directive to give ongoing and stable support for this type of collaboration.

Since 2004, TSLAC has been a key member of the Texas Heritage Digitization Initiative, a project involving more than 80 diverse institutions working to make historic Texas resources available online. Digitization and the creation of an online search tool not only deliver a resource frequently requested by the public, but also assist efforts to preserve the original documents. State-level coordination is essential to ensuring consistent standards, and would provide significant cost savings. TSLAC is the most appropriate agency to coordinate and promote a statewide digitization program, as it is already coordinating the Initiative, and is the only statewide entity with existing relationships with archives, libraries, and local governments.

Recommendation

Change in Statute

- 4.1 Authorize TSLAC to promote, and provide leadership to, collaboration between a wide range of Texas institutions to develop online access to digitized cultural resources.**

This change in law would demonstrate the State's interest in digitally preserving and enhancing online access to important historic resources. Providing statutory support for TSLAC to coordinate partnerships between diverse groups would help ensure a consistent and cost-effective approach as individual institutions move forward to digitize their collections. As part of this recommendation, the Commission's ability to include museums in the collaboration, which hold many important resources, should be clarified. Finally, providing statutory support would help Texas secure federal grants and private funding to sustain the collaborative digitization project and online access.

Issue 5

Public School Libraries Lack Comprehensive Support From Any State Agency.

Neither the Texas Education Agency (TEA) nor TSLAC include support of Texas' approximately 7,000 public school libraries in their core missions, and as a result, school libraries have received minimal state-level support in recent years. Previously, TEA provided a staff person dedicated to school libraries and subsidized access to electronic books and online articles, but eliminated the programs in 2003 due to budget shortfalls. TSLAC began negotiating database subscriptions on behalf of school libraries in 2005, but does not subsidize any of the cost, and does not include school libraries in its larger TexShare consortium of academic and public libraries. Both TEA and TSLAC work together to develop voluntary public school library standards.

Recommendation

Change in Statute

- 5.1 Require TSLAC and the Texas Education Agency to develop a joint study of school library needs and to assess which needs each agency should address.**

This recommendation would require TEA and TSLAC to conduct a joint study to determine school library needs. Each agency should also determine which school library needs it is best suited to address, and this information should be included in the joint study. The study should be completed by September 1, 2008, and presented to the Governor, Lieutenant Governor, Speaker of the House, and the appropriate oversight committees in the House and Senate.

Fiscal Implication Summary

These recommendations would not have a significant fiscal impact to the State.



Board of Nurse Examiners

Agency at a Glance

The mission of the Board of Nurse Examiners for the State of Texas (the Board) is to protect the public and promote the welfare of Texans by regulating the practices of professional nursing and vocational nursing. The State began regulating nursing in 1909, when the Legislature passed the Nursing Practice Act creating the Board and setting standards for licensure. In 1951, the Legislature distinguished between professional – or registered – nurses and vocational nurses by establishing the Texas Board of Vocational Nurse Examiners and creating a separate licensing act for vocational nurses. The Legislature combined the two boards and their licensing acts in 2003. The Board’s main functions include:

- ◆ licensing qualified individuals to practice professional nursing and vocational nursing;
- ◆ authorizing qualified professional nurses to practice as advanced practice nurses and to carry out or sign a prescription drug order;
- ◆ establishing standards for and approving nursing education programs; and
- ◆ investigating and resolving complaints, and taking disciplinary action to enforce the Nursing Practice Act and Board rules.



*For additional information,
please contact Joe Walraven
at (512) 463-1300.*

Key Facts

- ◆ **Merger.** In 2003, the Legislature merged the Board of Vocational Nurse Examiners into the Board of Nurse Examiners, creating a single agency responsible for regulating all nurses in Texas. The Board consists of 13 members representing professional nursing, vocational nursing, nursing education, and the public.
- ◆ **Funding.** In fiscal year 2006, the Board operated with a budget of \$6.5 million. All costs are covered by licensing fees collected from the profession.
- ◆ **Staffing.** The Board had a staff of 79 in 2006, all based in Austin.
- ◆ **Education.** The Board currently has approved 217 nursing education programs in Texas, including 96 for professional nurses, 115 for vocational nurses, and six for advanced practice nurses.
- ◆ **Licensing.** In fiscal year 2006, the Board regulated 274,302 licensees, including 193,764 professional nurses and 80,538 vocational nurses. That same year, the Board issued 18,236 new licenses.
- ◆ **Enforcement.** In fiscal year 2006, the Board received 6,673 jurisdictional complaints and resolved 6,029. Of the resolved complaints, 2,423 resulted in disciplinary action. The Board also took disciplinary action against 504 applicants for licensure because of criminal history.

Board Members (13)

Linda R. Rounds, RN, FNP, President
(Galveston)
George H. Buchenau, Jr., RN, Vice President
(Amarillo)
Deborah H. Bell (Abilene)
Virginia M. Campbell, RN (Mesquite)
Blanca Rosa Garcia, RN (Corpus Christi)
Richard Gibbs, LVN (Mesquite)
Rachel Gomez, LVN (Harlingen)
Brenda Jackson, RN (San Antonio)
Beverley Jean Nutall, LVN (Bryan)
Anita S. Palmer (Olney)
Frank Sandoval, Jr. (San Antonio)
Vacancy (2)

Agency Head

Kathy Thomas, Executive Director
(512) 305-6811

Recommendations

1. Streamline the Nurse Board's process for approving nursing education programs to remove unnecessary complexity, eliminate duplication, and accommodate changes in the delivery of nursing education.
2. Encourage an innovative approach by the Board for dealing with the nursing shortage.
3. Require the Board to clarify how it will use criminal history and arrest information in licensing and disciplining nurses.
4. Change the way the Board uses advisory committees to ensure objective, independent advice on Board functions and policies.
5. Adopt the Advanced Practice Registered Nurse Multistate Compact to make it easier for these nurses to come to Texas.
6. Improve the Board's ability to deal with impaired nurses who commit practice violations.
7. Strengthen the Board's oversight of targeted continuing education to make the requirements workable for the Board and beneficial for the nurse.
8. Conform key elements of the Board's licensing and enforcement functions to commonly applied licensing practices.
9. Continue the Board of Nurse Examiners for 10 years.

Issue 1

The Board's Process of Approving Nursing Education Programs, Developed Without Clear Statutory Guidance, Could Contribute to the Nurse Shortage in Texas.

Key Findings

- ◆ Because the statute regarding nursing education programs is vague, the Board's policies and procedures have evolved without the sanction of the Legislature and may limit opportunities for new nursing programs in Texas.
- ◆ The Board's process for approving nursing education programs duplicates some of the processes of other state agencies, as well as national accrediting agencies.
- ◆ The Board has made recommendations and issued requirements to nursing programs that surpass the Board's responsibility to ensure minimum competency levels of nurses.
- ◆ No other health licensing agency in Texas has authority to approve education programs, as other health professions have a more streamlined, nationally standardized process.

Authority to approve education programs is uncommon among Texas health licensing agencies. Because of the roots of nursing education, the Board has historically approved nursing education programs in Texas. However, in the absence of clear statutory direction, the Board has established an education approval process that duplicates the efforts of other state agencies and national accrediting agencies and exceeds what is necessary to ensure minimal competence to enter the profession, which could have an impact on the shortage of nurses in Texas.

Nationally, the nature of regulation of nursing education programs is changing, presenting challenges to state regulation of these programs. Without a framework for streamlining the Board's process for approving nursing education programs, the State is less prepared to respond to these changes and to ensure consistent standards for education programs in other states, a more coordinated approach to approving these programs, and the elimination of requirements that unnecessarily restrict opportunities for new nursing programs in Texas.

Recommendations

Change in Statute

1.1 Clarify that nursing programs, once accredited by a nursing accreditation agency recognized by the U.S. Department of Education, are exempt from Board approval.

Any nursing program that maintains accreditation through a nursing accrediting agency recognized by the U.S. Department of Education, and determined by the Board to have acceptable standards, would be deemed approved and would be exempt from needing to adhere to Board rules regarding ongoing program approval, to the extent that the program's pass rate on the licensing examination does not indicate a problem. If a program's pass rate on the exam drops below the Board's established standard, the program would be subject to review by the Board. The Board could take action to assist the program to return to compliance with Board standards. Any program having its approval rescinded would have the right to reapply.

Because nursing accrediting agencies currently do not approve new or proposed nursing education programs until the program receives approval from a state board of nursing, this recommendation would not directly affect these programs' need to receive initial approval from the Board. In the future, however, if nursing accrediting agencies provide initial approval of new nursing programs, similar to national accreditation of other professions, and the Board determines that such an accrediting agency is capable of initial approval, the Board should defer approval of nursing education programs to that agency. At such time, should a new nursing education program receive initial approval from a nursing accrediting agency, the program would not need to also receive initial approval from the Board to establish a program in Texas. To accomplish this, the Board would determine which accrediting agencies' standards are acceptable and then would allow graduates from any nursing education program approved by those accrediting agencies to be eligible for licensure in Texas.

1.2 Limit the Board's role to approving nursing education programs leading to initial licensure.

This recommendation would limit the Board to approving only nursing education programs that lead to initial licensure as a professional or vocational nurse. Thus, programs for a registered nurse to get a bachelor of science in nursing, for a nurse to get a master's or doctoral degree, and for nurses to receive advanced practice nursing education, would not be required to obtain Board approval because these programs do not lead to initial licensure as a professional or vocational nurse.

1.3 Clarify the Board's authority to approve nursing education programs approved by other state boards of nursing.

To address the increase of nontraditional nursing education programs, such as online and out-of-state programs, this recommendation would clarify that the Board can recognize and accept nursing education programs that are approved by another state board of nursing. The Board would develop policies to ensure that another state's education standards are substantially equivalent to the Board's.

This recommendation would allow Texas nursing students enrolled in an online or out-of-state program approved by the state board of nursing where the program is physically located to complete clinicals in Texas without needing to hold a Texas license. Thus, the Board would discontinue its practice of considering these students as practicing nursing without a license.

1.4 Require the Board to streamline its initial approval process for nursing education programs.

To avoid duplication, the Board would streamline its initial approval process by identifying tasks that are duplicated or overlap between the Board and Texas Higher Education Coordinating Board or the Texas Workforce Commission, and coordinating evaluation of new nursing programs with these other agencies. Responsibility for tasks identified as duplicative should be performed by the Coordinating Board or the Workforce Commission, not the Board, recognizing those agencies' primary roles in approving education programs.

In doing so, the Board would work with the Coordinating Board and the Workforce Commission to establish guidelines for current program administrators and potential new nursing programs regarding how to receive initial approval of nursing education programs. The guidelines would incorporate the part of the process conducted by the Coordinating Board or the Workforce Commission, to be available in writing and on the Board's website to nursing education programs, and would specify that approval by the Coordinating Board or the Workforce Commission would precede approval by the Board.

1.5 Require hospital-based diploma programs in Texas to be associated with a degree-granting institution by 2015.

With the management action in Recommendation 1.8 below, regarding the process for approving hospital-based diploma programs, the requirement for these programs to be affiliated with a degree-granting institution within eight years will help encourage the development of new programs while improving academic standards of these programs. Ultimately, training with improved academic standards will help ensure the safety of patients.

Management Action

1.6 The Board should review and revise its education rules, policies, and procedures to ensure they do not exceed the Board's responsibility to certify minimum competence to enter the profession of nursing.

The Board should review and revise its education rules, policies, and procedures to ensure that they appropriately reflect the Board's role as a regulatory body. In this review, the Board should maintain its focus on public protection through ensuring minimum competence to enter the practice of nursing according to the statutory direction of the Legislature, and should revise or delete rules, policies, or other requirements that do not relate to its public safety mission. The Board's concern should not be with the professional advancement of practitioners or the image of the nursing profession. Instead, the Board, as a regulatory agency, should concentrate on ensuring that nurses meet the requirements to receive a license in Texas and that they comply with state laws and Board rules once licensed. This philosophy should be communicated consistently among Board members, such as in Board training, and to staff and advisory committee members, to ensure that future Board policies and actions continue to serve the Board's regulatory mission.

1.7 The Board should delegate approval of nursing education programs to staff.

Delegating decisions regarding initial and ongoing approval of education programs to agency staff, as the Board has done for licensing and disciplinary decisions, would streamline the education program approval process and allow the Board to focus on setting policy and addressing practice concerns. The Board would retain final decision-making authority, as it does with licensing and disciplinary decisions. Staff could refer a proposal to the full Board that requires the Board's input. In addition, the Board would be able to pull education decision items from a consent agenda to allow for discussion and separate decision by the Board. Members of the public who wish to address the Board about a proposed program would still have the opportunity to do so during the public hearing portion of the Board's quarterly meetings.

1.8 The Board should develop a process to allow for Board approval of hospital-based diploma programs.

To comply with statute, the Board should change its rules to allow an avenue for new diploma programs to gain Board approval and become operational in Texas. For example, the Board should discontinue requiring regional accreditation for nursing education programs, as diploma programs are not eligible for regional accreditation. The Board could use other forms of accreditation to allow flexibility in accreditation eligibility or could adopt a broader policy of accepting any form of accreditation recognized by the U.S. Department of Education.

1.9 The Board should approve nursing education programs for a period longer than one year.

The Board should extend its continuing approval of those nursing education programs subject to Board approval for longer than one year. For example, the Board could review continuing approval in conjunction with its site visits every six years. The Board retains authority to move up consideration

of a program's continuing approval status if problems are indicated through a program's annual report, which would still be required for informational purposes.

The Board should also revise its policy for maintaining licensing examination pass rates to allow nursing programs an opportunity for self-correction before submitting to Board review. Under this recommendation, the Board should revise its standard to allow for exemptions for mitigating circumstances before a nursing education program would be subject to automatic Board review for low pass rates on licensing exams, which usually result in such measures as a self-study or change in approval status.

1.10 The Board should discontinue its policy of requesting letters of support from surrounding nursing programs.

The Board should discontinue its policy of requesting letters of support for new nursing programs from nursing programs within a 25-mile radius. The Board could instead provide opportunity for programs to support or object to proposed nursing programs in a public hearing or by responding to a notice of intent to open a new nursing program. This change eliminates a conflict of interest for existing schools of nursing, as well as eliminate potential bias by the Board against schools that lack support from other nursing programs.

1.11 The Board should discontinue the use of waivers for nurse faculty requirements.

The Board should adopt its current requirements for waivers of faculty requirements into Board rule. Thus, existing waiver qualifications for nurse faculty, allowing nurses with a bachelor's degree in nursing to serve as nurse faculty if they meet current eligibility conditions such as working towards a master's degree or having a certain amount of clinical experience, should become Board rule, and the Board no longer needs to issue waivers. The Board should also adopt other stipulations used with waivers, such as a limit on the total number of bachelor's-prepared nurses eligible to serve as faculty in each nursing program.

Issue 2

A More Innovative Approach by the Board Is Needed to Deal Effectively With the Shortage of Nurses in Texas.

Texas is experiencing a shortage of nurses due to many factors, including a shortage of nursing faculty in the State's nursing education programs. Board policies, such as faculty to student ratios, may also play a role in the nurse shortage by affecting the number of slots available for nursing applicants to obtain the education needed to be licensed as a nurse. The effect is that, in some programs, the number of qualified applicants for nursing education far outpaces the number of available slots in the education program.

Recommendations

Change in Statute

2.1 Require the Board to create innovative models for nursing education that promote increased enrollment in Texas nursing programs.

This recommendation requires the Board, in collaboration with nursing education stakeholders and the Texas Higher Education Coordinating Board, to create innovative models for nursing education that promote increased enrollment in Texas nursing programs as part of a plan to alleviate the nursing

shortage in Texas. The Board must implement a statewide plan for creating these models and must report back to the Sunset Commission by September 1, 2008, regarding the plan and the Board's efforts to increase enrollment in nursing education programs.

Management Action

2.2 The Board should report to the Sunset Commission during the 2007 legislative session regarding its efforts in creating innovative models for nursing education.

Under this recommendation, the Board should work in collaboration with nursing education stakeholders and the Texas Higher Education Coordinating Board to create innovative models in nursing education. The Board should report to the Sunset Commission by March 2007 regarding its efforts to create these innovative models so that the Legislature can make needed changes to the agency's appropriation or statute during the 2007 session.

Issue 3

Board Guidelines Do Not Ensure Consistent and Fair Consideration of Criminal History Information in Licensing and Disciplinary Decisions.

Key Findings

- ◆ The Board has not adequately identified the types of crimes that relate to the practice of nursing.
- ◆ No guidelines exist to ensure the Board appropriately uses arrest information when determining licensure eligibility or disciplinary action.
- ◆ The Board's process for reviewing criminal convictions may delay the time it takes to conduct investigations, potentially overburdening its enforcement efforts.

Because nurses work with patients who are physically, emotionally, and financially vulnerable, the Legislature directed the Board to ensure that applicants and license holders do not have criminal convictions or have not engaged in criminal activity that could affect their ability to safely practice nursing. To accomplish this goal, the Board conducts fingerprint-based background checks on both applicants for licensure and existing licensees.

The Legislature has directed occupational licensing agencies – including the Board – to tie criminal activity to the regulated profession. However, the Board has adopted a policy that all criminal convictions relate to the practice of nursing. Further, when determining whether individuals' past criminal activity affects their ability to hold a license, the Board considers arrests, although the Board has not established guidelines to direct its use of this information.

Recommendations

Change in Statute

3.1 Require the Board to more clearly identify which crimes relate to the practice of nursing.

This recommendation clarifies the Board's responsibility to adopt guidelines that follow the requirements of Chapter 53 of the Occupations Code by specifically requiring the Board to develop rules defining which crimes relate to an individual's ability to practice nursing. Reading the Nursing Practice Act

with Chapter 53 would allow the Board to take action against an applicant or licensee who committed a crime – including a crime that resulted in a disposition other than a conviction, such as deferred adjudication – identified by the Board as relating to the practice of nursing. While the Board should have authority to consider each case on its own merits, identifying those crimes that most directly and consistently relate to the practice of nursing would allow the Board to prioritize its licensing and enforcement efforts related to criminal activity. Prioritizing these efforts would allow the Board to better allocate its resources to better protect the public, while ensuring that applicants and license holders are treated fairly and consistently. Simply defining all crimes as related to the practice of nursing does not meet the intent of the Legislature and is not the norm among health licensing agencies.

3.2 Require the Board to establish guidelines to direct its use of arrest information when determining an applicant’s eligibility for licensure or disciplining a nurse.

The Board should adopt guidelines, in rule, to ensure that, when considering an applicant’s or nurse’s criminal history, it uses arrest information consistently and fairly and only to the extent that the underlying conduct relates to the practice of nursing. While the underlying conduct of an arrest may be relevant to an individual’s ability to practice nursing, the Board should be judicious when using arrest information, especially arrests dismissed without charges that have not been tried in a court of law or had the alleged criminal action proven.

Issue 4

The Board Has Not Defined the Purpose and Structure of Its Advisory Committees to Obtain the Most Benefit From Them.

Key Findings

- ◆ Having Board members serve on agency advisory committees can undermine the advisory purpose of these committees.
- ◆ The Board lacks adequate guidelines regarding the purpose and structure of its advisory committees.

The Board uses advisory committees for input on a variety of topics, including nursing practice, education, and disciplinary issues. Policy boards like the Board of Nurse Examiners use advisory committees to receive expert advice from a broad perspective in an objective, independent forum.

Because the Board has not formally outlined the purpose and structure of its advisory committees, the committees lack guidance to perform their delegated tasks. Further, having Board members serve on advisory committees, as the Board does, may undermine the purpose for which these committees were established.

Recommendation

Change in Statute

4.1 Require the Board’s advisory committees to meet standard structure and operating criteria.

This recommendation specifies that the Board’s advisory committees must provide independent, external expertise on Board functions and policies; not be involved in setting policy; and not include Board

members on the committees. The Board would adopt rules regarding the purpose, structure, and use of its advisory committees, including:

- ◆ the purpose, role, responsibility, and goal of the committees;
- ◆ size and quorum requirements of the committees;
- ◆ composition and representation provisions of the committees;
- ◆ qualifications of the members, such as experience or geographic location;
- ◆ appointment procedures for the committees;
- ◆ terms of service;
- ◆ training requirements, if needed;
- ◆ the method the Board will use to receive public input on issues acted upon by the advisory committees; and
- ◆ the requirement that the Board comply with the requirements of the Open Meetings Act, including notification requirements.

This recommendation prohibits Board members from serving on the Board's advisory committees, which would allow the committees to actually serve in an advisory capacity. The Board would change its current advisory committee structure to ensure that it is consistent with these requirements. While Board members would not be eligible to sit on the committees, they could serve as liaisons between the committees and the full Board, but would not be required to attend committee meetings. A liaison who opts to attend a meeting would do so as an observer, and not as a participant. The liaison's role would be limited to clarification of the Board's charge and intent to the committee.

This recommendation would ensure that the Board's advisory committees are structured and used to advise Board members and agency staff, and not involved in setting policy. It would also help improve the effectiveness and objectivity of these committees.

Issue 5

The Current Process for Authorizing Qualified Advanced Practice Nurses to Practice in Texas Does Not Promote Mobility Within the Profession.

Key Findings

- ◆ Advanced practice nurses provide a range of health services that fill a valuable healthcare need, especially in underserved areas.
- ◆ The process for authorizing qualified APNs from other states to practice in Texas does not facilitate their ease of movement.
- ◆ The same process that already allows qualified professional and vocational nurses to move easily between states could work for APNs.

By practicing in an expanded role, advanced practice nurses (APNs) provide valuable access to care in Texas, especially in certain underserved areas of the state. In recent years, Texas has seen an increase in the

number of APNs from other states that come to Texas to practice. However, the process for authorizing APNs licensed in other states to practice in Texas does not facilitate their ease of movement.

Recommendation

Change in Statute

5.1 Adopt the Advanced Practice Registered Nurse Multistate Compact.

Adopting the Advanced Practice Registered Nurse (APRN) Multistate Compact would allow qualified APNs from other member states to practice in Texas without having to go through the Board's authorization process. However, if an APN practicing under an APRN Compact license establishes residency in Texas, the APN would be required to obtain APN authorization in Texas. The APRN Compact would include the following provisions.

- ◆ An APN practicing in Texas would be required to comply with the Nursing Practice Act and Board rules.
- ◆ Texas would have authority to limit or revoke the multistate advanced practice privilege of an APN in Texas.
- ◆ Texas would participate in a coordinated licensure information system of all APNs to include licensure and disciplinary data on each APN in APRN Compact states.
- ◆ Texas would report all adverse actions to the coordinated licensure information system and the home state of an APN practicing in Texas under an APRN Compact privilege.
- ◆ The Board's Executive Director would serve as the administrator of the APRN Compact, just as with the Nurse Licensure Compact, and the Board would be authorized to develop rules to implement the APRN Compact.

Adopting the Advanced Practice Registered Nurse Multistate Compact in state law would not expand the scope of practice for any advanced practice nurses in Texas, as the Legislature would still define APNs' scope of practice, including prescriptive authority, through the Nursing Practice Act and other state laws. Authority to establish criteria for recognizing APNs would remain with the Board and would not be dictated by the APRN Compact. Should any existing provisions in the Nursing Practice Act or other state laws conflict with the APRN Compact, the existing language would prevail. The Board would adopt rules necessary for implementation of the APRN Compact by December 31, 2011. If the Board has not done so by then, authority to implement the APRN Compact would expire.

Issue 6

The Nursing Practice Act Does Not Address Discipline for Impaired Nurses Who Commit Practice Violations.

Key Findings

- ◆ The Nursing Practice Act may allow nurses who have violated standards of practice to avoid disciplinary action.
- ◆ The Board does not have adequate guidelines and procedures to ensure it consistently handles and accounts for impaired nurses.

To encourage nurses to report their impairment and undergo treatment, the Board allows nurses to participate in its peer assistance program. However, provisions in the Nursing Practice Act regarding reporting requirements may be unclear and may result in allowing a nurse who has committed a practice violation to escape disciplinary action by the Board.

In dealing with impairment issues, the Board seeks to balance its interests in protecting the public by adequately disciplining nurses who commit practice violations with the desire not to create a disincentive for impaired nurses to seek needed treatment. Ultimately, however, the Board's public protection mission must prevail.

Recommendations

Change in Statute

6.1 Clarify that third parties required to report impaired nurses must notify the Board if they suspect the nurse also committed a practice violation.

The recommendation would help ensure that the Board is appropriately aware of practice violations by requiring third parties who already have an obligation to report impaired nurses to a peer assistance program to report to the Board when a practice violation occurs as a result of a nurse's chemical dependency or diminished mental capacity. In these cases, the Board would have responsibility for determining if a nurse violated the Act, and is therefore subject to appropriate discipline by the Board. The recommendation does not require a sanction to be imposed. The Board would have discretion to impose a sanction and could still decide to allow the nurse to participate in the peer assistance program by referral if no other Board action is taken. The Board should remain cautious in how it approaches balancing the need to protect the public from impaired nurses with the need to ensure that third parties are not deterred from seeing that an impaired nurse seeks treatment. Clarifying that third parties aware of practice violations by impaired nurses must be reported to the Board would help ensure impaired nurses receive sufficient treatment while seeing that the public is adequately protected.

6.2 Require the Board to adopt rules clearly outlining its peer assistance program.

Under this recommendation, the Board would develop guidelines, in rule, to improve information sharing and communication between the Board and its peer assistance provider, outlining the following:

- ◆ the roles and responsibilities of the Board and the peer assistance program provider;
- ◆ the process for referring complaints alleging practice violations to the Board, should the peer assistance program learn of such a violation;
- ◆ successful program completion and compliance notification requirements for individual nurses ordered or referred by the Board to the program; and
- ◆ procedures for evaluating the peer assistance program's success over time.

Management Action

6.3 The Board should establish a process to ensure that it consistently evaluates complaints involving impaired nurses suspected of also violating standards of practice.

Under this recommendation, the Board would establish a process to consistently evaluate impairment cases to determine whether a nurse ordered or referred to Texas Peer Assistance Program for Nurses (TPAPN) committed other violations of the Act or Board rules, including standards-of-practice or

unprofessional conduct violations. If an investigation reveals that such a violation did occur, the Board would determine whether it should assess disciplinary sanctions in addition to ordering the nurse to TPAPN.

Issue 7

Targeted Continuing Education Requirements Dilute the Board's Ability to Ensure Nurses Maintain Competence to Practice.

Key Findings

- ◆ While continuing education keeps nurses current on industry practices in their specialized fields and settings, the Legislature has gone further to require continuing education in targeted areas.
- ◆ Requiring CE in specific topics for all nurses does not benefit all nurses.
- ◆ The Board has difficulty verifying nurses' compliance with CE requirements targeted at a subset of nurses.

Nurses must complete continuing education (CE) requirements as a condition of license renewal to ensure continued competence to practice. All nurses must take 20 hours of continuing education during every two-year licensing period. Nurses can choose continuing education courses that relate to their work setting and practice area, which benefits employers and patients. After requiring that nurses take continuing education in certain areas, the Legislature instructed the Sunset Commission to evaluate the necessity and effectiveness of mandating continuing education courses for nurses on specific topics.

Because the scope of practice, work setting, and professional requirements for nurses vary greatly, requiring all nurses to take continuing education in certain topics reduces the effectiveness of continuing education. In addition, requiring certain nurses to complete targeted continuing education courses creates an administrative burden for the Board.

Recommendation

Change in Statute

7.1 Authorize the Board to establish guidelines for targeted continuing education requirements.

Under this recommendation, the Board would define the parameters of targeted continuing education requirements imposed by the Legislature or the Board. The Board would establish, in rule, the following:

- ◆ the nurses required to complete the targeted CE requirement;
- ◆ the types of courses that satisfy the targeted CE requirement;
- ◆ the time frame in which a nurse must complete the CE;
- ◆ how often a nurse must meet the targeted CE requirement, such as a one-time requirement or during every licensing renewal period; and
- ◆ other requirements identified by the Board.

The recommendation would not preclude targeted CE from being required for nurses and would not change the current requirement for 20 hours of CE in each two-year period. Authorizing the Board to define conditions of targeted CE, however, would give the Board flexibility to make such CE requirements more workable, while ensuring that nurses meet the requirements set for them by the Legislature and the Board.

Issue 8

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 consumers.
- ◆ Provisions for the Board's policy body conflict with standard practice, potentially hindering the Board's ability to operate efficiently.

Various licensing, enforcement, and administrative processes in the Nursing Practice Act do not match model standards developed from experience gained through more than 90 occupational licensing reviews over the last 29 years. Comparing the Board's statute, rules, and practices to the model licensing standards identified variations that need to be brought in line with the model standards.

Recommendations

Licensing – Change in Statute

8.1 Require applicants to pass a jurisprudence exam as a condition of licensure.

This recommendation builds on existing licensure requirements by requiring applicants, including applicants for licensure by endorsement, to pass a jurisprudence exam to be eligible for licensure. The Board would need to develop an examination based on the Nursing Practice Act and Board rules, and other applicable state laws and regulations affecting the practice of nursing. The Board would determine the method of administering the exam, such as an online, take-home, or open-book test. In doing so, the Board should consult other health licensing agencies that require their applicants to pass a jurisprudence exam. These other agencies could also provide guidance in determining the best method to deliver the exam, such as through a statewide testing service.

The Board would also establish rules regarding examination development, fees, administration, reexamination, grading, and notice of results. The Board would develop an exam and begin exam administration by September 1, 2008. The requirement to pass the jurisprudence exam would only apply to individuals who apply for licensure on or after September 1, 2008; individuals licensed before then would be exempt from passing the jurisprudence exam.

8.2 Require the Board to adopt clear procedures governing all parts of the testing process, including test admission and administration.

Under this recommendation, the Board would adopt guidelines detailing procedures for the testing process, including national exam requirements. To ensure that applicants and potential applicants can readily find information on exam requirements, the Board would reference the National Council of State Boards of Nursing's (NCSBN's) testing procedures, including test admission and administration on the Board's website.

8.3 Direct the Board to establish a policy for nonrefundable examination fees.

This recommendation would authorize the Board to recommend to NCSBN or its testing vendor whether all or part of an applicant's examination fees should be refunded, based on the applicant providing reasonable advance notice or a satisfactory excuse, such as an emergency. The Board would establish a written policy defining the reasonable notification period and the emergencies that would warrant a refund. In establishing its policy, the Board should ensure that the policy does not conflict with any of NCSBN's exam fee or refund policies.

8.4 Change the basis for the Board's late renewal penalties.

This recommendation would require the Board to use the standard renewal fee set by the Board as the basis for late renewal penalties, rather than the cost of the exam required for licensure. To renew a nurse's 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 nurse's 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. A nurse whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. This recommendation would remove the Board's authority to set the time frame beyond which a delinquent license may be renewed. However, the Board would retain the authority to determine time frames for renewal of an inactive license.

This provision does not apply to nurses who were licensed in Texas and moved to another state to practice. Instead, a person who is licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license in Texas without reexamination. In addition, the standard renewal provision would not apply to nurses who no longer hold licenses because they have been revoked or surrendered as the result of disciplinary action.

Licensing – Management Action

8.5 The Board should remove the requirement that applications for licensure filed with the Board be notarized.

The Board should eliminate its requirement that applicants who file a paper application must have it notarized. Existing provisions of the Penal Code that make falsifying a government record a crime would continue to apply to all license applications.

Enforcement – Change in Statute

8.6 Require the Board to adopt an enforcement matrix in rule.

This recommendation would require the Board to establish, in rule, a matrix to use when determining disciplinary actions for nurses who have violated state laws or Board rules. While adopting an enforcement matrix will help the Board make consistent, fair disciplinary decisions, the matrix would not be used as a one-size-fits-all approach, as the Board would maintain flexibility in determining the most appropriate sanction for each violation.

In developing the matrix, the Board should take into account factors including the licensee's compliance history, seriousness of the violation, the threat to the public's health and safety, and mitigating factors. Adopting the enforcement matrix in rule would provide the public with the opportunity to comment on the development of the matrix, and would provide nurses with ready access to the Board's enforcement guidelines, allowing them to better understand the potential consequences of violations.

8.7 Require the Board to develop a method for analyzing trends in complaints and violations.

This recommendation would require the Board to develop a method for analyzing the sources and types of complaints and violations. The Board would establish categories for complaints and violations, such as section of statute, Board rule, or broader categories, including standard of care and professional boundaries. The agency would analyze complaints and violations to identify trends and regulatory problem areas. The Board could use this analysis to focus its information and education efforts on specific areas.

8.8 Authorize staff to dismiss baseless cases.

The Board would establish, in rule, staff's authority to dismiss complaints if an investigation shows no violation occurred or if the complaint does not fall under the Board's jurisdiction, or in other situations delegated by the Board to staff. Staff would report administratively dismissed complaints to Board members at each of the Board's regular public meetings.

8.9 Increase the amount of the Board's administrative penalty authority.

The amount of an administrative penalty the Board would be able to impose on an individual who violates the Nursing Practice Act, Board rule, or other state laws, would be increased to \$5,000 per violation, per day, from \$2,500 per violation, per day. The provision that each day a violation continues or occurs is a separate violation for purposes of imposing the penalty would continue to apply.

8.10 Authorize the Board to require refunds as part of the agreed settlement process.

This recommendation allows the Board to include refunds as a part of an agreed order. Authority would be limited to providing a refund not to exceed the amount the patient paid for services or the actual amount a nurse stole or defrauded from a patient. Any refund order would not include an estimation of other damages or harm, and must be agreed to by the nurse. The refund may be in lieu of or in addition to other sanctions against a nurse.

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

Cease-and-desist authority would allow the Board to move more quickly to stop unlicensed activity, including in cases involving nurse imposters, that threaten the health and safety of the public. This recommendation would also authorize the Board to assess administrative penalties against individuals who violate cease-and-desist orders. The Board would still be able to refer unlicensed activity cases to local law enforcement agencies or the Attorney General for prosecution. However, the Board should count unauthorized practice cases as jurisdictional and direct investigators to pursue and follow up with unlicensed individuals to ensure compliance.

Enforcement – Management Action

8.12 The Board should track the number and types of nonjurisdictional complaints it receives.

The Board should document the nonjurisdictional complaints it receives by keeping track of the number of complaints received, the subject matter of complaints, and the agency to which the Board referred the complaint. Doing so would allow the Board to get a more accurate picture of the types of complaints received, address areas of confusion to the public, and better coordinate with other agencies.

8.13 The Board should post information about disciplinary actions on its website.

Under this recommendation, consumers would have improved access to the Board’s disciplinary information. The Board should provide more detailed information about nurses disciplined by the Board, including a citation of the law or Board rule violated, the Board’s action, and the date of the Board’s order.

Administration and Policy Body – Change in Statute

8.14 Authorize Board members to receive reimbursement for travel expenses.

This recommendation would remove the conflict between the Nursing Practice Act 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. With this change, the Board would no longer need to classify Board members as state employees for reimbursement purposes.

Issue 9

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

Key Findings

- ◆ Texas has a continuing need to regulate professional, vocational, and advanced practice nurses.
- ◆ Review of the Board and other related agencies did not reveal serious opportunities for consolidation or transfer of functions.

Nurses play a critical role in providing health care to all Texans. From practicing in a school to working bedside in a hospital to providing home-health services, nurses perform an array of tasks, including taking a patient’s vital signs, prescribing and administering medication, performing diagnostic tests, giving injections, administering anesthesia, and assisting with surgery.

Because the tasks nurses perform can pose significant risks, and because nurses practice in settings where patients are vulnerable, the State has an interest in regulating professional, vocational, and advanced practice nurses. In addition, the Board, through its regulatory activities, helps provide Texans with the confidence that nurses practicing in the state are competent, meet established standards, and are held accountable for their actions, and should be continued for another 10 years.

Recommendation

Change in Statute

9.1 Continue the Board of Nurse Examiners for 10 years.

This recommendation would continue the Board as an independent agency responsible for regulating professional, vocational, and advanced practice nurses in Texas for 10 years, until 2017. Continuing the Board for 10 years, instead of the standard 12-year period, would bring the Board’s next review in line with the Sunset review dates of other similar, stand-alone healthcare regulatory boards, such as the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy.

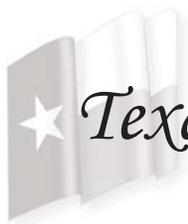
Fiscal Implication Summary

When fully implemented, these recommendations would result in a loss to the General Revenue Fund of about \$97,600 annually.

Issue 4 – Prohibiting Board members from serving on advisory committees and specifying that Board members are not required to attend advisory committee meetings, even as liaisons, would eliminate the need for travel reimbursement, resulting in an annual savings of \$2,400.

Issue 8 – Changing the statutory basis for the late renewal penalty would result in lost revenue of approximately \$100,000.

<i>Fiscal Year</i>	<i>Loss to the General Revenue Fund</i>	<i>Savings to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>
2008	\$100,000	\$2,400	(\$97,600)
2009	\$100,000	\$2,400	(\$97,600)
2010	\$100,000	\$2,400	(\$97,600)
2011	\$100,000	\$2,400	(\$97,600)
2012	\$100,000	\$2,400	(\$97,600)



Texas Real Estate Commission

Agency at a Glance

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

The Commission's main functions include:

- ◆ licensing real estate brokers, salespersons, home inspectors, and residential service companies;
- ◆ certifying right-of-way agents and registering timeshare projects;
- ◆ approving private real estate schools, courses, and instructors; and
- ◆ investigating and resolving complaints, and taking disciplinary action when necessary to enforce the Commission's statutes and rules.



*For additional information,
please contact Christian
Ninaud at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, the agency operated on a budget of about \$4.5 million and collected about \$19.8 million in revenues primarily from professional licensing fees.
- ◆ **Staffing.** The agency employs 76 people who work primarily in Austin. TREC also provides administrative support to the seven staff of the Texas Appraiser Licensing and Certification Board.
- ◆ **Licensing.** The agency licenses 153,259 individuals and businesses, including 35,280 real estate brokers and 106,597 salespersons. The remainder includes broker corporations, private real estate schools, instructors, home inspectors, right-of-way agents, home warranty companies, and time share projects.
- ◆ **Enforcement.** In fiscal year 2006, the Commission opened 5,391 enforcement cases, and closed 4,894, with 1,258 initiated by complaints from consumers or licensees.

Commission Members (9)

- John S. Walton, Jr., Chair (Lubbock)
- Elizabeth Leal, Vice Chair (El Paso)
- Troy C. Alley Jr. (Arlington)
- Mary Frances Burleson (Sachse)
- John D. Eckstrum (Conroe)
- William H. Flores (Sugarland)
- Louise E. Hull (Victoria)
- Paul Jordan (Georgetown)
- Tom C. Mesa, Jr. (Pasadena)

Agency Head

Wayne Thorburn, Administrator
(512) 465-3900

Recommendations

1. Increase TREC's focus on consumer protection, and provide the agency additional enforcement tools.
2. Improve TREC's ability to quickly resolve complaints, and transfer its hearings to SOAH.
3. Improve regulation of private real estate schools to ensure students get a quality education.
4. Conform key elements of the Commission's licensing and regulatory functions to commonly applied licensing practices.
5. Continue the Texas Real Estate Commission for 12 years, and better integrate regulation of home inspectors and appraisers into the agency's structure.

Issue 1

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

Key Findings

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

TREC's enforcement authority, policies, and processes create barriers to more quickly and effectively investigating and resolving complaints against licensees, hindering the agency's ability to adequately balance consumer protection against the needs of licensees. The Sunset Commission also found that TREC lacks standard enforcement tools and complaint tracking processes common to occupational licensing agencies.

Recommendations

Change in Statute

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

Under this recommendation TREC would focus on more quickly investigating consumer complaints and taking swifter action against licensees who violate the licensing act by creating a risk-based approach to prioritizing and investigating complaints. In creating this risk-based approach, the Commission would consider the degree of potential harm to the consumer; the potential for immediate harm to other consumers; the overall severity of the allegations in the complaint; the number of potential violations in the complaint; the number of licensees potentially involved in the complaint; and the previous complaint history of the licensee.

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

Rather than waiting to request the Commission's approval to open enforcement cases, agency staff would be authorized to immediately, and more quickly, open enforcement cases regarding any violation of the licensing act or TREC rules, based upon reasonable cause. Other state occupational and professional licensing agencies commonly have this authority to effectively enforce their statute and rules.

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

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

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

This recommendation would ensure that the Commission can consistently and fairly apply a full range of sanctions against licensees for violations of the licensing act and rules. By requiring the Commission to adopt the matrix in rule, the public would have an opportunity to comment. Typical sanctions could include revocation, suspension or probation of a license, or fines.

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

This recommendation would provide TREC an additional enforcement tool to more effectively hold a person accountable for violations, and allow the agency to conclude an investigation and obtain a final order without having to re-open the case at a later date should the person re-apply for a license.

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

The Commission would be allowed to include refunds as part of an agreed order negotiated with a licensee. Refunds would be limited to fees paid for real estate-related services and products regulated by TREC, and would not include estimations of damages or harm. Refunds may be in lieu of or in addition to other sanctions against a licensee.

Management Action

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

This recommendation would direct the Commission to compile more useful information on complaint and violation statistics in a format that allows staff to identify regulatory problem areas. The type of information the Commission should analyze includes enforcement case resolution time frames by type of complaints; the number, type, and age of all open complaints at the end of each fiscal year; and the number and type of nonjurisdictional complaints.

Issue 2

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

Key Findings

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

TREC carries out long-standing internal practices to enforce provisions of its enabling Act. In evaluating these practices, the Sunset Commission concluded that the agency's practices fail to meet common standards relating to consistency, fairness, and effectiveness. In addition, the Sunset Commission found that the State Office of Administrative Hearings (SOAH) could more independently and efficiently conduct TREC's contested case hearings.

Recommendations

Change in Statute

2.1 Align TREC's hearing and administrative penalty processes.

This recommendation would allow TREC to more easily investigate and administer cases through a single, consistent process by aligning several statutory provisions of TREC's contested case hearing and administrative penalty processes. TREC would analyze all elements of its enforcement processes under the new statutory framework and align all elements to ensure rapid, fair, and complete administration and disposition of cases.

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

This recommendation would modernize TREC's enforcement process and apply common procedures for informal complaint resolution. As a result, the majority of TREC's complaint cases would be closed much more quickly, and only the most serious enforcement cases would need a contested case hearing. TREC would create an enforcement plan detailing an informal complaint resolution process, which requires the following statutory changes.

- ◆ Require the Commission to issue notices of violation with proposed sanctions if warranted. Sanctions may include one or more of administrative penalties, actions against a license, and terms of probation.
- ◆ Provide the Commission authority to require licensees to respond to notices of violations within a specific timeframe.
- ◆ Require the Commission to issue default enforcement orders when licensees do not timely respond to notices of violation, or do not request a hearing.
- ◆ Require the Commission to hold informal settlement conferences to resolve complaints and negotiate agreed orders.

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

In conducting hearings, SOAH would consider the Commission's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Commission would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. The Commission may reverse or modify the decision only if the judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions; the judge relied on a prior administrative decision that is incorrect or should be changed; or the Commission finds a technical error in a finding of fact that should be changed.

Issue 3

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

Key Finding

- ◆ The Commission does not hold private real estate schools accountable for providing quality education outcomes, nor provide information to prospective students to assist them with choosing the best real estate school.

The Sunset Commission found that TREC's current regulations do not go far enough to ensure that private real estate and home inspector schools provide information useful to evaluating a school's ability to teach courses, or help ensure students receive a quality education that leads to licensure in the field. Currently, real estate students have limited access to information that would help them choose a quality course provider. In addition, TREC does not have an adequate mechanism to review real estate schools that consistently show problems, and assist these schools with improving their performance.

Recommendations

Change in Statute

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

The Commission lacks a basic performance measure for private real estate and home inspector schools to help ensure that students are able to attend quality schools. The Commission would establish a minimum pass rate requirement, above the current 55 percent average exam pass rate, for a school to be re-accredited by the Commission.

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

Currently students lack information needed to help them choose a quality real estate school to attend, and this recommendation would assist prospective students with making more informed choices before enrolling in a particular real estate school.

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

This recommendation would allow the Commission to convene a review committee to conduct assessments of low-performing schools, such as those having difficulty in meeting minimum exam pass rates, and provide these schools with advice on improving their business practices or teaching methods.

Management Action

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

Under this recommendation, TREC would perform unannounced audits only on schools where significant problems exist, such as repeated failure to meet defined performance measures, including exam pass rates. TREC would redirect these resources to complaints that directly affect consumers.

Issue 4

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

Key Findings

- ◆ Licensing provisions in the Commission's statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- ◆ Nonstandard enforcement provisions in TREC's statutes could reduce the agency's effectiveness in protecting consumers.

Various licensing and enforcement processes in the agency's statutes and rules do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 90 Sunset reviews of occupational licensing agencies in 29 years. For example, the lack of a full range of penalties may affect the agency's ability to protect the public from licensees who violate the law and TREC's rules. Comparing TREC's regulatory practices and statute to these licensing standards identified variations and needed changes to bring the Commission in line with model standards.

Recommendations

Licensing – Change in Statute

4.1 Authorize TREC to approve continuing education courses for inspectors.

This recommendation would ensure that home inspectors have a variety of relevant continuing education courses to choose from, and have access to education on new technologies and changes in the home inspection field.

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

The renewal fee for licensees who are delinquent in renewing their licenses would be based on the standard renewal rate set by the Commission, rather than the fee for an original application. A person whose license has been expired for 90 days or less, would pay a renewal fee equal to 1-1/2 times the regular renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year, would pay a fee equal to two times the renewal fee. In calculating the late penalty, TREC would not include the \$200 professional fee assessed on brokers and salespersons.

Licensing – Management Action

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

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

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

TREC would no longer purge the electronic records of licensees who have been inactive for eight years if they have a violation history, and would be able to ensure that no one with a history of severe violations receives a license.

Enforcement – Change in Statute

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

Providing the Commission with cease-and-desist authority would help the agency to more quickly protect consumers from unlicensed real estate practice. This recommendation would also authorize the Commission to assess administrative penalties against persons who violate these orders.

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

The Commission would be able to levy an administrative penalty of up to \$5,000 per day, per violation of the Residential Service Company Act or TREC rules, strengthening the Commission's ability to protect consumers and gain compliance for violations.

4.7 Authorize the Commission to temporarily suspend a license.

The Commission would be able to temporarily suspend a license upon determination that continued practice by the licensee threatens the public. Action by a panel of three Commission members would be required to temporarily suspend a broker, salesperson, or home inspector license, and could occur by teleconference. The Commission would ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension.

Administration – Change in Statute

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

The Commission would have greater flexibility to set fees as appropriate, without statutory change, to recover program costs as conditions change. The Legislature would continue to maintain control by setting spending levels in the General Appropriations Act. Under this recommendation, fees passed through to the Texas Real Estate Research Center would not be affected.

Administration – Management Action

4.9 The Commission, Appraiser's Board, Department of Savings and Mortgage Lending, and Department of Insurance should coordinate their enforcement efforts.

These agencies would develop an interagency agreement specifying referral of nonjurisdictional complaints to the appropriate agency, and coordination of enforcement efforts to address mortgage fraud and other illegal activities conducted by their respective licensees.

Issue 5

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

Key Findings

- ◆ Texas has a continuing interest in licensing and regulating the real estate industry.
- ◆ The Texas Real Estate Inspector Committee's statute does not conform to standards for advisory committees.
- ◆ Separation of the Appraiser Board's operations from TREC prevents the Appraiser Board from operating efficiently.

The Texas Real Estate Commission's responsibilities – licensing and regulating real estate professionals – are important to ensuring the protection of consumers from unscrupulous or ill-trained licensees, and other participants, that could easily take financial advantage of consumers. While the Sunset Commission identified needed improvements to the agency's operations, particularly in enforcement, TREC remains uniquely qualified to focus on the regulation of the real estate industry, and its specialized expertise in the areas of real estate transactions, home inspections, home warranties, and timeshare properties. While other agencies perform similar functions, the Sunset Commission did not find that TREC has specific problems justifying transfer of its functions to another state agency. The Sunset Commission also found that TREC could better integrate the Texas Real Estate Inspector Committee and the functions of the Appraiser Board into the agency's overall structure.

Recommendations

Change in Statute

5.1 Continue the Texas Real Estate Commission for 12 years.

This recommendation would continue the Commission as a separate, stand-alone agency to regulate the real estate, home inspection, home warranty, and timeshare industries.

5.2 Remove the Commission's authority to delegate decision-making powers to the Texas Real Estate Inspector Committee, and authorize the Commission to create advisory committees as needed.

The Texas Real Estate Inspector Committee's role and authority would be aligned with standards for advisory committees, to better conform with its actual advisory role. The Commission would also be able to create advisory committees, as needed, to provide special expertise and would adopt standard rules for advisory committees in compliance with Chapter 2110 of the Texas Government Code. This change would not affect the agency's Texas Real Estate Broker-Lawyer Committee.

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

TREC's advisory committees would be able to more effectively carry out their business by allowing them to hold general meetings by teleconference, which would be subject to open meetings notice requirements.

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

Under this recommendation, TREC's Administrator would serve as the Appraiser Board's Commissioner, and Appraiser Board staff would be fully integrated into TREC's staff structure, making the Board's operations more efficient. The Appraiser Board would continue as an independent regulatory body to meet federal requirements for an independent state authority.

Fiscal Implication Summary

Two issues regarding the Commission would have a fiscal impact to the State, as summarized below.

Issue 2 – Implementing an informal complaint resolution process and transferring TREC’s hearings to the State Office of Administrative Hearings would result in efficiencies for the agency, allowing them to redirect resources equal to about two staff positions towards meeting their goals of issuing licenses and protecting consumers.

Issue 4 – Changing the basis on which the agency calculates late renewal penalties would result in a gain of about \$78,400 annually.

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



State Office of Risk Management

Agency at a Glance

The State Office of Risk Management (SORM) functions as an insurance agency for Texas government. SORM's mission is to assist state agencies in protecting their employees and the State's physical and financial assets by reducing and controlling risk. To accomplish its mission, the agency:

- ◆ administers an employee workers' compensation insurance program;
- ◆ provides risk management services to state agencies; and
- ◆ coordinates state agency purchases of property, casualty, and liability insurance.



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

Key Facts

- ◆ **Funding.** SORM's revenue in fiscal year 2006 totaled \$64.7 million including \$57 million in assessments on state agencies for workers' compensation expenses, \$3.6 million from the General Revenue Fund, and \$4.4 million from interagency contracts.
- ◆ **Staffing.** The agency has a staff of 124 employees, all based in Austin.
- ◆ **Workers' Compensation.** SORM administers Texas' self-insured workers' compensation program for state agencies, covering 172,000 employees with about \$54 million in claims costs per year.
- ◆ **Risk Management.** SORM performs consulting work for state agencies to identify and control workplace risks.
- ◆ **State Agency Insurance.** SORM sponsors five lines of insurance for state agencies – directors' and officers', property, special events liability, automobile, and volunteer insurance – to leverage the State's buying power and reduce costs.
- ◆ **Administrative Attachment.** The Office of Attorney General performs administrative functions for SORM including human resources and payroll processing.
- ◆ **Exemptions.** The Texas Department of Transportation, University of Texas System, and Texas A&M University System are exempt from requirements to use SORM's services and each operate their own workers' compensation system. The Employees Retirement System and Teacher Retirement System are also exempt, but use SORM as an insurance provider.

Board Members (5)

Ernest C. Garcia, J.D., Chair (Austin)
 Ron J. Walenta, Vice Chair (Dallas)
 Dr. Ronald D. Beals (Tyler)
 Kenneth N. Mitchell (El Paso)
 Martha A. Rider (Houston)

Agency Head

Jonathan Bow, Executive Director
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Recommendations

1. Require SORM to facilitate the return to work of injured employees by expanding its case management program and reporting the lost time and return to work outcomes of state agencies.
2. Require SORM to study how the State could structure its workers' compensation program to be prepared for claims resulting from a disaster and to report options to the Legislature.
3. Require SORM to pay most indemnity benefits by direct deposit.
4. Require state agencies to develop business continuity plans with SORM's consultation and evaluation.
5. Require SORM, the Texas Building and Procurement Commission, and the State Fire Marshal's Office to exchange safety information.
6. Continue the State Office of Risk Management for 12 years.

Issue 1

The State's Approach to Return to Work Can Result in Higher Than Necessary Workers' Compensation Costs.

Key Findings

- ◆ The Legislature has placed considerable emphasis on the importance of return to work efforts in the workers' compensation system.
- ◆ Both SORM and state agencies play a key role in returning injured employees to work.
- ◆ Poor return to work outcomes increase workers' compensation costs and cause hardships for injured workers.
- ◆ SORM needs to place more emphasis and resources on return to work services.
- ◆ Other workers' compensation carriers and programs are able to focus more on return to work strategies.

Although SORM must rely on its client agencies to facilitate the return to work of their employees, most state agencies have little experience or incentive to perform well. Facilitating the quick return to work of employees injured on the job reduces the cost of indemnity and medical benefits. Rapid return to work is also better for employees and reduces the cost to employers for hiring and training replacement workers.

Recommendations

Change in Statute

1.1 Require SORM to develop an expanded case management program that focuses on facilitating the reintegration of injured employees.

This recommendation builds upon the requirements in House Bill 7, 79th Legislature, that insurance carriers evaluate claims as soon as possible to determine if case management is necessary. SORM should begin case management earlier than it does currently. In addition to facilitating communication between parties and access to appropriate medical treatment, the program should focus on working directly with the injured worker to overcome any barriers to return to work. Case managers should identify injured employees who will need assistance re-entering the workforce early in a claim and help employees access assistance available to them from the Department of Assistive and Rehabilitative Services, the Texas Workforce Commission, their employing agency, and other resources.

1.2 Require SORM to evaluate lost time and return to work outcomes by agency, and report the results to the Legislature.

This recommendation would allow SORM to measure the success of its return to work efforts and to identify agencies whose claims coordinators or other staff may need additional training or risk management services related to return to work. SORM could also use this information to modify its assessment calculation to make agencies more effective in reducing costs.

Issue 2

The State Needs to Be Better Prepared to Pay Workers' Compensation Claims Resulting From a Disaster.

Key Findings

- ◆ SORM is inadequately prepared to pay workers' compensation claims resulting from a catastrophic event.
- ◆ Self-insured companies and insurance carriers use many strategies to mitigate the risk of catastrophic claims.
- ◆ Other public, self-insured workers' compensation programs are better prepared to handle catastrophic events.

The Legislature provides funding for state employee workers' compensation to the State Office of Risk Management on a pay-as-you-go basis. Unlike the structure of private insurance carriers, SORM's funding does not include reserves for future obligations or as a cushion against a catastrophic event. Although SORM's funding method keeps current expenditures low, SORM is not structured to adequately protect the State against large claims that may arise from a natural or man-made disaster. In the event of a catastrophe, SORM would have to seek emergency appropriations to pay the cost of workers' compensation claims. However, these requests would arise at the same time that the Legislature would need to fund other emergency items.

Recommendation

Change in Statute

2.1 Require SORM to study how the State could structure its workers' compensation program to be prepared for claims resulting from a disaster and to report options to the Legislature.

This recommendation would require SORM to study various options, such as establishing a state employee workers' compensation catastrophe fund outside of the State Treasury, the purchase of catastrophe reinsurance, or other options which may be available to the State. SORM should work with the Texas Department of Insurance's Research and Evaluation Group to determine viable options on how the State can better prepare for workers' compensation claims resulting from a disaster. In addition, SORM may wish to contract with a consultant to analyze the costs of potential disasters, and estimate the appropriate size for a catastrophe fund or level of reinsurance needed. SORM should complete the study by September 1, 2008, and transmit it to the Lieutenant Governor, Speaker of the House, and appropriate and standing committees of each house with responsibility for oversight of SORM.

Issue 3

Mailing Indemnity Benefit Checks Delays Payments to Injured Workers.

Key Findings

- ◆ Paying workers' compensation indemnity benefits by check wastes taxpayer dollars.
- ◆ The Comptroller's Office makes most payments to state employees by direct deposit.
- ◆ The workers' compensation program operated by the Texas Department of Transportation pays most indemnity benefits through direct deposit.
- ◆ Direct deposit delivers workers' compensation benefits faster and reduces hardships for injured workers.

In fiscal year 2005, SORM made 53,000 indemnity benefit payments to injured state employees. Although state employees are accustomed to receiving paychecks by direct deposit, SORM pays 94 percent of indemnity benefits by mailing paper checks. Direct deposit would be faster, safer, less expensive, and convenient for injured workers.

Recommendation

Change in Statute

3.1 Require SORM to pay most indemnity benefits by direct deposit.

This recommendation would save time, effort, and money for both the State and injured workers by requiring the direct deposit of indemnity benefits instead of paper checks. State employees would receive indemnity benefits through the same method they have selected for payroll, so that those currently paid salary by check would be able to receive benefits by check.

Issue 4

Many Agencies Are at Risk of Not Being Able to Deliver Needed Services Following a Disaster Due to a Lack of Business Continuity Planning.

Key Findings

- ◆ Most state agencies are not prepared to quickly resume business functions after a disaster, leaving state government at risk of serious disruptions.
- ◆ Other states require all state agencies to have comprehensive business continuity plans.

Business continuity plans help state agencies prepare to resume functions after a disruption in normal business operations. In recent years, Texas has experienced a series of natural disasters that highlight the need for this planning. Continuing the functions of each governmental agency following a disruption is an important part in assisting the recovery efforts of the state as a whole. While Texas' key emergency response agencies are well prepared, the majority of state agencies have not planned for the resumption of their business operations and no single state agency is responsible for ensuring that all agencies plan for inevitable interruptions.

Recommendations

Change in Statute

4.1 Require all state agencies to develop business continuity plans.

Business continuity plans would include detailed steps for resumption of essential services such as scheduling an emergency workforce, coordination with public authorities, management of media, customer services delivery, and assessing immediate financial or operational needs. Agencies involved in the initial delivery of emergency services as members of the Emergency Management Council or part of the Department of Information Resources state data center project already have plans in place which would be deemed to meet this requirement. The recommendation would only require these agencies to forward their plans to SORM.

4.2 Require SORM to consult with state agencies on business continuity plans by developing guidelines, model plans, and training.

This recommendation would require SORM to assist state agencies with the development of business continuity plans by making available guidelines and models for key elements of the plan. These key elements would include emergency workforce scheduling, coordination with public authorities, and assessing immediate financial or operational needs in addition to other elements. SORM should also work with agencies to ensure plans are workable, that all agency staff are familiarized with plan elements, and that agencies practice implementation of the plan.

4.3 Require SORM to evaluate state agencies' business continuity plans and report the results to the Legislature.

This recommendation would require SORM to biennially report to the Legislature on the efforts of state agencies to develop and maintain business continuity plans. This report would include SORM's evaluation of each agency's plan for completeness and viability.

Issue 5

The Three State Agencies With Safety Responsibilities Do Not Communicate Well, Creating the Potential for Harm to State Employees, Visitors, and Property.

Key Findings

- ◆ SORM, SFMO, and TBPC each have a role in overseeing and protecting state buildings, but fail to communicate safety information to each other on a regular basis that could prevent harm to state employees and property.
- ◆ The Legislature has solved such communication failures in the past by requiring agencies with similar goals to work together.

The Legislature has assigned three state agencies – the State Office of Risk Management, State Fire Marshal's Office (SFMO), and Texas Building and Procurement Commission (TBPC) – interrelated responsibilities for protecting state employees and assets. Despite the importance of their missions, the three agencies have not established clear lines of communication, leaving the State at increased risk of harm to people and property.

Recommendations

Change in Statute

5.1 **Require SORM and TBPC to enter into a memorandum of understanding on exchange of safety-related information.**

The recommendation would require each agency to agree on means of establishing improved communication links. The memorandum of understanding should detail the type, amount, and frequency of safety-related information that should be shared. This recommendation would also require designated points of contact within each agency to coordinate information.

5.2 **Add SORM to the current statutorily required memorandum of understanding between SFMO and TBPC regarding fire safety.**

This recommendation would add SORM as an official participant in the current interagency agreement. SORM would be copied on communication between SFMO and TBPC concerning fire-related hazards, and would provide relevant information to the other agencies.

Issue 6

Texas Has a Continuing Need for the State Office of Risk Management.

Key Findings

- ◆ SORM effectively accomplishes its mission, and a review of other related agencies did not reveal any significant beneficial alternatives for consolidation or transfer of functions.
- ◆ While organizational structures vary, most states have established a state agency to provide workers' compensation services for state government.

The Legislature recognized the need for a single state agency to provide workers' compensation and risk management functions for other state agencies when it created the State Office of Risk Management in 1997. Since its creation, the Legislature has added the responsibility of overseeing the purchasing of other types of insurance to the agency. Providing these insurance services is important in protecting the State's human and physical assets.

Recommendation

Change in Statute

6.1 **Continue the State Office of Risk Management for 12 years.**

This recommendation would continue SORM as an independent agency, responsible for providing workers' compensation, risk management, and insurance purchasing services to state agencies for the standard 12-year period, until 2019.

Fiscal Implication Summary

When fully implemented, the recommendations would result in a net, first-year cost to the General Revenue Fund of about \$78,000. In addition, one issue will have a one-time cost of \$20,000 that will

be apportioned among state agencies as part of their annual workers' compensation assessment. The specific fiscal impact of these recommendations is summarized below.

Issue 1 – Requiring SORM to expand case management to facilitate the quick return to work of injured employees would have an annual cost of \$91,700 for the first biennium to hire two additional case managers. By fiscal year 2010, SORM would reduce this annual cost to \$45,850 by eliminating one of the two new positions and relying more on its newly instituted workers' compensation network. Savings in indemnity and medical benefits would offset these costs, but these savings would accrue to state agencies and not directly to the General Revenue Fund.

Issue 2 – Requiring SORM to study how the State could best prepare to pay workers' compensation claims resulting from a disaster is estimated to cost \$20,000 for consulting services. Consultants would analyze the costs of potential disasters and the size of a catastrophe fund or level of reinsurance. The contract would be paid for from state agency assessments for workers' compensation insurance.

Issue 3 – Changing the method that SORM uses to pay indemnity benefits to injured state employees from mailing paper checks to direct deposit would have a positive fiscal impact of \$74,700 annually. These savings are based on the assumption that SORM will directly deposit 83 percent of the 50,000 checks it currently mails and the Comptroller's Office estimate of a savings of \$1.80 for each payment converted from paper check to direct deposit.

Issue 4 – Requiring SORM to consult with state agencies on business continuity plans would result in an annual cost of \$60,680 to hire an additional employee to perform the consultations and provide training.

Fiscal Year	Cost to the State	Savings to the State	Change in FTEs From FY 2007	Net Effect on the General Revenue Fund
2008	\$172,380	\$74,700	+3	(\$77,680)
2009	\$152,380	\$74,700	+3	(\$77,680)
2010	\$106,530	\$74,700	+2	(\$31,830)
2011	\$106,530	\$74,700	+2	(\$31,830)
2012	\$106,530	\$74,700	+2	(\$31,830)



Office of Rural Community Affairs

Agency at a Glance

The mission of the Office of Rural Community Affairs (ORCA) is to assist rural communities to enhance their quality of life and support their ongoing contribution to the State's prosperity and cultural identity. Created in 2001, the Legislature charged ORCA with developing a rural policy for the State and coordinating state services to better serve rural communities. In addition, the Legislature transferred the rural Community Development Block Grant (CDBG) and rural health programs to ORCA. To accomplish its mission, ORCA:

- ◆ provides grants, loans, and assistance to rural communities to support economic and community development, and improved access to quality health care; and
- ◆ acts as a key state resource on rural issues by seeking input on, monitoring, researching, coordinating, and reporting on concerns and trends affecting rural communities in Texas.



*For additional information,
please contact Christian
Ninaud at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, the agency received a total of \$128 million. Of this total, about \$4.9 million went to support the operations of the agency, with the majority of funds passed through to rural communities in grants. Approximately \$121 million, or 94.5 percent, of ORCA's revenues come from federal funds, with the remaining 5.5 percent from General Revenue.
- ◆ **Staffing.** ORCA employs a staff of 70 that is headquartered in Austin, with one to two employees in each of its eight field offices in rural communities.
- ◆ **Community Development.** ORCA oversees about 974 active community development projects awarded over previous years, with open contracts worth about \$338 million. The agency awarded approximately \$106 million in CDBG funds in fiscal year 2006. These projects help improve the quality of life for about 1.6 million rural Texans by assisting communities to install water/wastewater systems, pave roads, rehabilitate housing, build community facilities, meet disaster relief needs, attract businesses, and retain jobs.
- ◆ **Rural Health.** As the State's Office of Rural Health, the agency funded 435 rural health grants and loans with a value of \$4.7 million in fiscal year 2006. These projects help mitigate shortages in rural healthcare access by assisting communities with recruiting and retaining healthcare practitioners, and improving hospital facilities.

Executive Committee Members (9)

Michael Waters, Chair (Abilene)
David Richey Alders, Vice Chair
(Nacogdoches)
Charles N. Butts (Lamesa)
Nicki Harle, Secretary (Baird)
Carol Harrell (Jefferson)
Wallace G. Klusmann (Fredericksburg)
Lydia Rangel Saenz (Carrizo Springs)
Ike Sugg (San Angelo)
Patrick Wallace (Athens)

Agency Head

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Recommendation

1. Continue ORCA for four years, with new leadership and refocused to better serve rural Texas.

Issue 1

ORCA Lacks the Leadership and Focus Needed to Effectively Serve Rural Texas.

Key Findings

- ◆ Texas has a clear and continuing need to focus on addressing the unique challenges and concerns facing its rural communities.
- ◆ ORCA's Executive Committee lacks the leadership needed to prioritize critical rural concerns and provide the Legislature with recommendations to effectively address these issues.
- ◆ Current law does not maximize use of the State Review Committee as a resource to approve grants.
- ◆ Several opportunities exist for streamlining the rural community development grant process to more easily and quickly get funds to local communities.
- ◆ Closer collaboration with the Texas Department of Agriculture (TDA) would enable ORCA to more effectively serve as a resource to rural communities.

The State has a continuing need to focus on the concerns of Texas' rural communities, and to set clear policy priorities to help address these issues. However, ORCA has not met the Legislature's expectations to create a rural policy and provide recommendations to improve rural programs across state agencies. ORCA continues to rely on an overly-complex process for awarding rural community development grants, contributing to delays in getting funds to local communities. Separate administration of ORCA's rural programs and TDA's Texas Capital Fund economic development program contributes to difficulties in coordinating these programs to maximize benefits to rural communities.

Recommendations

Change in Statute

1.1 Continue the Office of Rural Community Affairs for four years, refocused to more effectively guide rural development in Texas.

To enable the agency to more effectively meet its objectives, ORCA's mission would be more narrowly focused on serving as a clearinghouse for information on rural programs and services, and providing assistance to rural communities in four key areas: economic development, community development, rural health, and natural resources. This recommendation would provide for Sunset review in four years to give the Legislature the opportunity to determine if the changes have been effectively implemented to better serve rural Texas.

1.2 Replace ORCA's Executive Committee with a new Board with the leadership needed to prioritize critical rural concerns and to work with the Legislature to address these issues.

Under this recommendation, the new Board's membership would include:

- ◆ four members appointed by the Governor who must represent different geographic regions of the state, including two rural community members, and two elected local rural officials or city or county employees involved with rural development;

- ◆ three members appointed by the Lieutenant Governor, including one Senator and two public members with interests in rural issues;
- ◆ three members appointed by the Speaker of the House, including one House member and two public members with interests in rural issues; and
- ◆ the Commissioner of Agriculture, or designee, as a voting, ex officio member.

The Governor would designate the Board's Chair from among any of the 11 members, and all ten appointed members must reside in rural cities or counties. These changes would provide ORCA's Board with the leadership and expertise needed to identify the key concerns of Texas' rural communities, develop policy recommendations, and work with the Legislature to address these issues. Requiring appointed members to live in rural communities would ensure that the Board has direct understanding of rural issues. Having rural legislative members on the Board would help ensure a better connection between ORCA and the Texas Legislature.

1.3 Require the State Review Committee to review grant applications and approve grant and loan awards.

This recommendation would make better use of the 12-member, Governor-appointed Committee by expanding its duties from simply advising ORCA on rural community development programs to actually approving all rural community development and health grants and loans. Members with any conflicts of interest regarding a particular grant application would be required to recuse themselves from voting. Using the Committee, instead of ORCA's Board, to approve grants would allow the Board to focus on rural policy issues. Complaints regarding the scoring or funding decisions would be heard by ORCA's Board.

1.4 Require ORCA, in consultation with the Texas Department of Agriculture, to evaluate and streamline Texas' administration of the rural Community Development Block Grant program.

This recommendation would require ORCA to work with TDA to evaluate Texas' administration of the rural Community Development Block Grant program, to include funds directly administered by ORCA and funds provided to TDA to administer the Texas Capital Fund. The program evaluation should include at the minimum, combining funding categories, simplifying the application and scoring process, and regularly reviewing and closing out aged contracts. This recommendation would ensure that ORCA and TDA maximize existing local resources, make it easier for communities to apply for funds, and eliminate any unnecessary duplication or inconsistency across the two agencies.

1.5 Require ORCA to collocate its field staff in the Texas Department of Agriculture's offices.

This recommendation would eliminate ORCA's single-person field offices. Instead, ORCA would be required to take advantage of TDA's existing regional offices for housing these staff. Many of TDA's offices already provide rural development information and services to similar constituents. ORCA would also be required to cross-train with TDA to ensure the agencies are knowledgeable about their respective programs and can serve as better resources to rural communities.

Fiscal Implication Summary _____

These recommendations would not have a fiscal impact to the State.



Office of State-Federal Relations

Agency at a Glance

The Office of State-Federal Relations (the State-Fed Office) acts as the State's advocate in Washington, DC to help promote and protect the interests of Texas at the federal level. Initially, the Legislature created the Division of State-Federal Relations in 1965 as a program within the Governor's Office, and later established the Office as an independent state agency in 1971. The Office's mission is to promote communication and build relationships between the state and federal governments to advance the interests of Texas.

To accomplish its mission, the Office:

- ◆ prioritizes a federal agenda for Texas;
- ◆ advocates for federal funding and policy decisions favorable to Texas; and
- ◆ communicates information about Texas issues at the state and federal levels.



*For additional
information, please contact
Chloe Lieberknecht at
(512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, the State-Fed Office operated with a budget of about \$922,000, most of which came from General Revenue. The Office's largest expenditures included salaries, consultant fees, and building rent.
- ◆ **Staff.** The Office has six staff, with five located in Washington and one in Austin. In addition, five staff from four other Texas state agencies currently collocate in the agency's Washington, DC office.
- ◆ **Consultants.** Until recently, the State-Fed Office contracted with two government relations consulting firms in Washington, DC to assist the Office in securing support from Congress on the State's federal agenda. In fiscal year 2006, the Office spent about \$300,000 for these services.
- ◆ **Priorities.** On an annual basis, the Office identifies and prioritizes the State's federal policy agenda. The Office's most recent priorities are within the areas of health and human services, transportation, defense and homeland security, federal appropriations, and federal tax issues.

Board Members (3)

The Honorable Rick Perry, Governor (Austin)
The Honorable David Dewhurst, Lieutenant Governor (Austin)
The Honorable Tom Craddick, Speaker of the House of Representatives (Austin)

Agency Head

Ed Pérez, Executive Director
(202) 638-3927

Brandon Steinmann, Austin Director
(512) 463-6676

Recommendations

1. Abolish the Office of State-Federal Relations and restructure it within the Office of the Governor with clear legislative consultation; and if the Office chooses to contract with consultants, require it to adhere to clear guidelines.
2. Require state agencies and political subdivisions of the State of Texas to report contracts with federal-level government relations consultants to the Office.
3. Require the Office to track performance indicators, as determined by the Office of the Governor in consultation with legislative leadership, and include the information in its annual policy priority document.

Issue 1

Texas Benefits From Having an Advocate in Washington, DC, but the State No Longer Needs a Separate State Agency to Help Promote Its Federal Interests.

Key Findings

- ◆ The Office of State-Federal Relations acts as Texas' advocate in Washington, DC.
- ◆ Texas has a continuing need for a presence in Washington to protect and promote the State's interests.
- ◆ The Office's unusual structure diverts limited staff resources to administrative duties and dilutes the strength of its voice in Washington.
- ◆ The Office lacks specific guidelines for contracting with government relations consultants on the federal level.

Amid the whirlwind of activities on Capitol Hill, the Office of State-Federal Relations acts as the voice of Texas, protecting and promoting Texas' interests in Washington, DC. Of equal importance, the Office serves as Texas' eyes and ears at the federal level, advising Texas officials on federal issues. While Texas has an ongoing need for a presence in Washington, the agency's organizational structure is not effective. Texas is the only state that organizes its advocacy office as an independent state agency. This structure results in unnecessary administrative burdens and can inhibit the Office's ability to quickly react to the ever-changing Washington environment. Additionally, the Office's use of government relations consultants to aid in influencing federal policy lacks clear statutory guidelines to protect the State's interests and avoid potential abuse.

Recommendations

Change in Statute

- 1.1 Abolish the Office of State-Federal Relations as an independent state agency and restructure it within the Office of the Governor, requiring the Office to interact and consult with the Lieutenant Governor and Speaker of the House, and subjecting it to Sunset review in six years.**

This recommendation would abolish the Office as an independent agency and establish the Office of State-Federal Relations as a trustee program within the Office of the Governor. As part of this recommendation, the three-member Advisory Policy Board would be abolished. An Executive Director, appointed by the Governor, would administer and oversee the Office's operations. The Executive Director would be accountable to the Governor, who would be responsible for providing guidance in directing the Office's activities. The Office would be required to continue to interact and consult with legislative leadership on federal issues, and would be subject to Sunset review in six years, giving the Office a new Sunset date of September 1, 2013. This recommendation would also remove administrative provisions in statute that are unnecessary for administering a program within the Governor's Office.

As the State's entity charged with communicating and building relationships between the state and federal governments, the Office would advocate for Texas' interests in Washington and respond to information requests from Texas and federal officials. The Office's main responsibilities would include:

- ◆ preparing an annual priority document to be approved by the Governor in consultation with legislative leadership;

- ◆ providing updates on federal activities to the Governor and legislative leadership and updating the Texas congressional delegation on state activities;
- ◆ responding to information requests from the Legislature, congressional offices, and federal agencies;
- ◆ coordinating with the Legislative Budget Board on how federal funding affects the state budget; and
- ◆ requiring the Office to include the Lieutenant Governor and Speaker in any routine communication relating to its progress on the federal level, including weekly conference calls.

Restructuring the State-Fed Office within the Office of the Governor would allow Texas to have a stronger voice in Washington while encouraging more direct accountability at the state level. The Office would continue to work with the Texas Legislature and state agencies, as well as federal officials, but would have a more streamlined chain of command.

1.2 Require the Office to adhere to clear contracting guidelines, established in statute, if the Office chooses to contract with federal-level government relations consultants.

Although the Office has contracted with federal-level government relations consultants in the past, it currently has no such contracts. This recommendation would require the Office to adhere to specific contract procurement and management guidelines, to be laid out in statute, if it enters into contracts with federal-level government relations consultants to lobby at the federal level. The guidelines would include:

- ◆ requiring the Office to have written guidelines for contract management;
- ◆ requiring the Office to use a competitive procurement process, and have procedures to assess a prospective contractor's strengths;
- ◆ requiring the Office to assign a value to a prospective firm's ability to provide services at a reasonable price and level of experience in the consulting field during the contract procurement process;
- ◆ requiring that potential consultants show a demonstrated ability to work with key members of Congress and effectively advocate on behalf of the State;
- ◆ requiring the contract to contain clear goals for service and to include targeted performance measures that both the Office and contractor agree upon;
- ◆ requiring the Office to ensure that no conflicts of interest exist between the contractor and other parties that may jeopardize the State's interest;
- ◆ requiring the contract to contain a termination clause; and
- ◆ requiring the contract to include an audit clause, allowing the Office and other oversight entities to audit the contract.

Establishing contracting provisions in statute would give the Office clear standards to follow to protect the State's interests and ensure against potential abuses and conflicts. Under the new organizational structure, as the person responsible for overseeing the Office's activities, the Governor would have to approve all such contracts.

Issue 2

No Entity Collects Information on How Much Texas State Agencies or Political Subdivisions Spend to Contract With Consultants to Influence Legislation at the Federal Level.

Many state agencies and political subdivisions contract with consultants to lobby on the federal level, and while this information is public, no entity collects such information in its entirety. This lack of information limits the ability of both the public and elected officials to get a full picture of what Texas' interests are on a federal level, and how much public money is being spent on such consultants.

Recommendations

Change in Statute

2.1 Require state agencies and political subdivisions of the State of Texas to report information on contracts with federal-level government relations consultants to the Office of State-Federal Relations.

This recommendation would require all state agencies and political subdivisions of the State of Texas, including institutions of higher education and river authorities, to report to the Office annually, on contracts with federal-level government relations consultants. Information in such reports would include the name of the consultant or firm contracted with, the issue the firm was hired to work on, and the contract amount.

2.2 Require state agencies that contract with federal-level government relations consultants, which then subcontract the agency's work with another firm or individual, to report all such subcontracts to the Office.

This recommendation would require state agencies to also report any subcontracts of a contract with a federal-level government relations consultant to the Office.

Issue 3

Broadening the Office's Reported Performance Indicators Would Increase Its Accountability to the State.

The Office of State-Federal Relations' main responsibility is to act as the State's advocate in Washington, DC to help promote and protect Texas' interests. Many different factors, including some outside the Office's control, affect the Office's successful fulfillment of the outcomes that the Office is responsible for, including legislative and funding decisions that are favorable to Texas. By increasing the scope of the Office's performance indicators, and exploring how Texas compares to other states, the State can get a better understanding of the Office's success.

Recommendation

Change in Statute

- 3.1 Require the Office to track performance indicators, as determined by the Office of the Governor in consultation with legislative leadership, and include the information in its annual policy priority document.**

This recommendation would require the Office to track performance indicators and include the information in its existing annual policy priority document. The performance indicators would be determined by the Office of the Governor in consultation with legislative leadership. The indicators would go beyond the Legislative Budget Board performance measures included in the General Appropriations Act. Instead, the performance indicators would be used as an internal tool to increase understanding of how the Office is performing and would be aimed at giving a full view of Texas' standing, in both funding and policy areas, on the federal level.

Fiscal Implication Summary _____

None of these recommendations would have a net fiscal impact to the State.



Texas Structural Pest Control Board

Agency at a Glance

The Texas Structural Pest Control Board (the Board) seeks to protect the public and the environment against the misuse of pesticides by ensuring that those who perform pest control activities in buildings, homes, and other structures are qualified, competent, and adhere to established professional standards. The Legislature created the Board in 1971 to regulate the structural pest control industry. To accomplish its mission, the Board:

- ◆ licenses commercial and noncommercial pest control professionals;
- ◆ ensures compliance with the Texas Structural Pest Control Act, Board rules, and federal law by investigating and resolving complaints, routinely inspecting pest control businesses, and taking disciplinary action when necessary; and
- ◆ provides information to licensees and the public.



*For additional information,
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Key Facts

- ◆ **Funding.** In fiscal year 2006, the Board spent nearly \$1.4 million, funded primarily from licensing and examination fees, but also from federal grants from the Environmental Protection Agency.
- ◆ **Staffing.** The Board currently has 29 employees. Thirteen and a half perform licensing and administrative functions in Austin and the other 15.5 work throughout the state as field investigators.
- ◆ **Licensing.** The Board regulates more than 3,400 commercial pest control businesses and nearly 13,000 individual pesticide applicators. Individual applicators fall into three skill levels: apprentice, technician, and certified applicator. In addition, the agency licenses school employees and the employees of certain facilities who perform pest control as part of their jobs.
- ◆ **Enforcement.** In fiscal year 2006, the Board resolved 868 complaints that were either initiated by the agency or submitted by the public. In response, the Board assessed administrative penalties in 90 cases, put a licensee on probation in seven cases, and revoked a license in six cases.
- ◆ **Pest Control in Schools.** Statute requires all public school districts to implement an Integrated Pest Management Program to ensure they use the least toxic pest control alternatives available. The Board meets this requirement by inspecting school districts and ensuring that school pesticide applicators are licensed.
- ◆ **Federal Coordination.** Federal law requires all states to regulate the use of pesticides by licensing certified applicators and taking enforcement action when necessary. The Board performs these duties, in addition to its state-mandated regulatory duties, and receives some federal grant funding in return.

Board Members (9)

Tomas Cantu, Chair (McAllen)
Madeline Kirven-Gamble, Vice Chair (Dallas)
Charles Brown (Bryan)
Roger Gold, Ph.D., Ex Officio, Department
of Entomology at Texas A&M University
(College Station)
Brenda Hill (Nacogdoches)
John Lee Morrison (San Antonio)
Randy Rivera, Ex Officio, Texas Department of
Agriculture (Austin)
Richard Rogers (Richardson)
Thandi Ziqubu-Page, MPH, Ph.D., Ex Officio,
Texas Department of State Health Services
(Austin)

Agency Head

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Recommendations

1. Abolish the Structural Pest Control Board and transfer its functions to the Texas Department of Agriculture.
2. Allow the agency to determine its inspection frequency based on an assessment of risk.
3. Require the agency to develop a formal process for exam development and revision.
4. Improve the Integrated Pest Management Program to provide more clear and consistent guidance to schools.
5. Conform key elements of the agency's licensing and regulatory functions to commonly applied licensing practices.
6. Allow beekeepers to remove bees from structures without a pest control license, as long as they do not use pesticides.

Issue 1

Texas No Longer Needs an Independent Agency to Regulate Structural Pest Control.

Texas has a continuing need to regulate the structural pest control industry to protect the public and the environment from the misuse of pesticides. However, Texas does not have a continuing need for a separate, independent agency to perform this function. The agency's responsibilities could be successfully transferred to the Department of Agriculture (the Department).

Recommendation

Change in Statute

1.1 Abolish the Structural Pest Control Board and transfer its functions to the Texas Department of Agriculture.

This recommendation would abolish the Board as an independent agency and transfer the regulation of the structural pest control industry to the Department of Agriculture. The Commissioner of Agriculture would be responsible for administering the Structural Pest Control Act, including licensing and taking enforcement action against pest control operators and providing information to licensees, school districts, and the public. This recommendation would also create an advisory committee to advise the Department on structural pest control issues. The Agriculture Commissioner would appoint the members of the advisory committee, including experts in the pest control industry and representatives of the public.

The following material details specific problems relating to the Structural Pest Control Board that, because of the recommendation to abolish and transfer, would need to be addressed as recommendations to the Texas Department of Agriculture.

Issue 2

Statutory Inspection Requirements Limit the Board's Ability to Focus Its Limited Resources on Areas of Highest Risk.

Key Findings

- ◆ A biennial inspection requirement means the agency spends its limited resources on businesses with few or no compliance problems.
- ◆ The biennial inspection requirement prevents the agency from focusing on other priorities.
- ◆ The Board's current approach to inspecting school integrated pest management programs does not ensure that they are inspected regularly.
- ◆ The difficulty of identifying noncommercial facilities subject to regulation affects the Board's ability to adequately inspect and regulate these facilities.

The Board conducts inspections of commercial pest control businesses, public schools, and certain other facilities to ensure compliance with state and federal laws and Board rules. Statute requires the Board to inspect all businesses every two years, but this requirement prevents the agency from focusing

its limited resources on other risk areas. Further, the agency does not collect sufficient information to determine the effectiveness of its inspections or which businesses and facilities pose the greatest risk to the public.

Recommendations

Change in Statute

2.1 Allow the Department of Agriculture to determine its inspection frequency based on an assessment of risk.

Requiring the Department to conduct its inspection activities according to risk would allow the agency to place its limited resources where it believes they are needed most, rather than being required to inspect all businesses every two years as the statute currently provides. The agency would be required to inspect all businesses in their first year of operation and at least once every four years thereafter. However, the agency could shorten the inspection interval for any or all businesses as it determines necessary, especially for businesses with compliance problems. Further, the agency should ensure it inspects all school districts at least every five years, and more frequently as it deems necessary.

Under the risk-based approach, the Department should focus on detecting serious violations to protect the public and the environment from the misapplication of pesticides. This approach would still ensure regular inspections of pest control businesses, but would allow the agency to focus greater attention on businesses with poor compliance histories and less attention on businesses that consistently follow the law. A risk-based approach would also allow the agency to focus more resources on inspections of school districts under the Integrated Pest Management Program and facilities that fall under the noncommercial license program.

Management Action

2.2 The Department of Agriculture should increase coordination with other agencies and use other resources to disseminate information and seek out unlicensed noncommercial activity.

This recommendation directs the Department to expand outreach efforts by taking advantage of existing resources to improve compliance with noncommercial license requirements. For example, the agency could provide information materials to the Department of State Health Services, Department of Aging and Disability Services, local health departments, and associations, which they could then distribute to those they regulate or represent. The Department could also develop a survey for these other agencies and associations to distribute to determine how many facilities hire commercial pest control companies or employ their own staff to perform pest control. This survey information could help the agency identify certain types of facilities or areas of the state that need assistance in complying with licensing requirements.

2.3 The Department of Agriculture should track and analyze enforcement data by license type to support its development of a risk-based approach to inspections.

The agency should compile detailed statistics on complaints filed and violations found. This information would support the agency's efforts to develop a risk-based approach to inspections by providing a better picture of where complaints originate, and which segments of the structural pest control industry are committing the most violations. These statistics should include:

- ◆ the origin of the complaint, the allegation, and the basis for the complaint, including complaints in which the agency finds no violation;

- ◆ the type of establishment against whom the complaint was lodged, such as a commercial business, noncommercial facility, or school district;
- ◆ the type of licensee against whom the complaint was lodged, such as a business licensee, certified applicator, technician, or apprentice; and
- ◆ the outcome of the complaint, including the number dismissed, the reason for dismissal, and the type of disciplinary action taken.

Issue 3

The Board's Unstructured Method of Developing and Revising Licensing Exams Could Result in Inconsistent Assessment of Applicants' Knowledge.

Key Findings

- ◆ The agency does not routinely update or randomize test questions, limiting its ability to gauge competence and ensure fairness for all applicants.
- ◆ The agency does not have an adequate process to ensure that exam questions are developed in a consistent, fair, and expert manner.
- ◆ The current process for writing and administering exams misallocates scarce agency resources and creates delays for exam-takers.

The Board has responsibility for protecting public safety and the environment by ensuring that pesticide applicators are qualified and competent. As such, the Board administers written examinations to applicants for licensure to test their knowledge of laws, rules, and proper procedures for pesticide use. However, the Board has no formal method for developing its exams to ensure they are fair and adequately test applicants' knowledge of pest control laws and practices.

Recommendations

Change in Statute

3.1 Require the Department of Agriculture to develop a formal process for exam development and revision.

Creating a structured process for exam revision would enable the Department to better ensure that exams are fair, consistent, adequately test applicants' knowledge of pest control practices, and reflect changes in the industry. The recommendation would require the agency to create a written policy to govern the exam process. The policy should prescribe procedures to improve the design and construction of exams, the content of exams, the procedures in place to administer exams, and the process for evaluating exams that are in use.

Specifically, the exam policy should include the following elements:

- ◆ provisions for seeking assistance in the development of exams and exam content from experts in the fields of pest control, pest control education, and exam creation and validation;
- ◆ timelines for exam revision and maintenance, including how often exams will be updated;
- ◆ mechanisms for routine exam analysis and validation;

- ◆ specific requirements for reporting to the agency;
- ◆ development of question banks for each exam; and
- ◆ guidelines to assist the agency in developing exams from the exam banks.

Management Action

3.2 The Department of Agriculture should contract with an external entity for exam administration, if found to be cost effective.

To date, the Structural Pest Control Board has taken some steps to investigate the use of an external entity to administer exams. However, the Department of Agriculture should commit to a more formal process. Specifically, the agency should develop a request for proposal to determine whether an external entity could administer exams more effectively and efficiently than doing so internally. In determining whether to contract for exam administration, the agency should consider advantages and disadvantages to licensees, such as availability of computer exams, exam locations, and more frequent testing opportunities. The agency should also consider benefits to the agency, such as reductions in the examination duties of administrative and investigative staff, and the efficiencies this might create.

Issue 4

The Board’s Guidance to Schools on Integrated Pest Management Regulations Does Not Go Far Enough to Ensure Consistent Compliance.

Key Findings

- ◆ The Board’s system for classifying pesticides is not specific enough to prevent inappropriate pesticide applications in school environments.
- ◆ The Board does not routinely communicate with schools, resulting in schools being unaware of important changes in regulations and practices.

The Board administers the Texas school Integrated Pest Management (IPM) Program to protect the health and safety of public school children. The Board develops regulations for the safe use of pesticides in schools, and inspects schools to ensure compliance with IPM regulations. However, the Board does not effectively communicate the requirements of the program to school districts, which causes confusion and could lead to improper pesticide use in schools.

Recommendations

Change in Statute

4.1 Require the Department of Agriculture to more clearly define pesticide categories and specify the requirements that pertain to each category.

This recommendation would clarify the agency’s responsibility to identify which pesticides are suitable for use in schools and how those pesticides are to be used. The recommendation would remove the statutory requirement for schools to restrict entry for 12 hours following all pesticide applications, and instead require the agency to establish guidelines appropriate for each type of pesticide in rule. It would also remove the current requirement for the agency to list the specific pesticides that may be used and instead require the agency to adopt categories of pesticides with clear, easier to follow guidelines as to

their use. By redefining the current category system in rule, the agency will be able to provide clear guidance to school districts and assist them in using the least toxic products as safely as possible.

The Department should develop clear regulations that correspond to each category of pesticide that include:

- ◆ the physical distance required between application sites and students at the time of application;
- ◆ reporting, record keeping, and pesticide approval requirements;
- ◆ re-entry requirements; and
- ◆ posting regulations for indoor and outdoor pesticide use.

Improving the program by providing more clear and consistent guidance to schools would help ensure that the program is easily implemented by school districts, runs efficiently, and protects the safety of school children.

4.2 Require all school districts to provide contact information for their IPM Coordinators.

This recommendation would require school districts to inform the Department of the name, address, phone number, and email address of their IPM Coordinators, who are responsible for overseeing pest control on school property. Further, school districts would have to inform the agency within 90 days when a new coordinator is appointed. Using this contact information, the agency would be better able to disseminate information about IPM requirements to coordinators.

4.3 Require continuing education for IPM Coordinators.

This recommendation would require IPM Coordinators to complete six hours of continuing education every three years to keep them up-to-date on program requirements and changes in pest control practices.

Management Action

4.4 The Department of Agriculture should develop better information resources and outreach for IPM Coordinators.

By providing more information to school districts, the Department can help coordinators to stay abreast of changes in pest control practices and assist schools in reducing students' exposure to pesticides. The agency should provide information concerning changes in regulations and practices to IPM Coordinators. Ways to accomplish this include posting IPM information, including changes in rules, on the agency's website in a format that school districts can easily access and developing a coordinator e-mail distribution list to disseminate information.

Change in Appropriations

4.5 The Legislature should appropriate \$100,000 for educational programs targeting schools through the Texas Cooperative Extension.

This recommendation expresses the will of the Sunset Commission that the Legislature, through the appropriations process, allocate \$100,000 for IPM educational programs. This funding would go to the Southwest Technical Resource Center for School IPM at the Texas Cooperative Extension, which currently provides training and technical assistance to school districts on proper pest control practices.

Issue 5

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

Key Findings

- ◆ Infrequent checks of licensees' criminal history could potentially affect the agency's ability to protect consumers.
- ◆ Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers and providing fair treatment to licensees.
- ◆ Fee caps in the Board's statute conflict with standard practice, potentially reducing the Board's efficiency.

Over the past 29 years, the Sunset Commission has reviewed more than 90 occupational licensing agencies, and in doing so, has identified common standards among them. 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 licensing agencies.

Recommendations

Licensing – Management Action

5.1 The Department of Agriculture should conduct criminal background checks for all license applications and renewals.

Conducting background checks through the Texas Department of Public Safety on all licensees would help ensure pest control professionals who enter people's homes do not have serious criminal records. The agency could develop a schedule to phase in the checks. By conducting these checks for all applicants and renewing licensees, the agency would be informed of persons it is currently missing who provide false information regarding their previous arrest record and persons who get convicted after they receive their license.

Enforcement – Change in Statute

5.2 Require the Department of Agriculture to clearly outline its enforcement process and make this information and information in complaint files accessible to licensees.

This recommendation would promote a better understanding of the agency's enforcement process and help licensees accused of violations prepare a response. The agency must outline its enforcement process and the steps a complaint would take from initial filing until final disposition, including appeal options, various hearings, and a licensee's ability to obtain copies of complaint files. Information should be made available in the agency's brochures and website and any other available information resources.

5.3 Authorize agency staff to administratively dismiss complaints and report these actions to the Commissioner of Agriculture.

This recommendation would promote greater accountability of staff actions by clearly authorizing it to dismiss complaints and report these actions to the Commissioner. Dismissal information reported to the Commissioner should contain sufficient explanation indicating why complaints were dismissed.

5.4 Authorize the Commissioner of Agriculture to temporarily suspend a license.

This recommendation would enable the Commissioner to take faster action to suspend a license upon determination that continued practice by the licensee presents an imminent danger to the public or the environment. The Commissioner would also need to ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension. This recommendation would strengthen the agency's enforcement process and increase protection of the public and the environment against harm or imminent danger by enabling a faster response against serious violators.

5.5 Authorize the Department of Agriculture to issue cease-and-desist orders to stop the unlicensed practice of structural pest control.

The Department would be able to issue cease-and-desist letters to stop individuals or businesses from practicing pest control without a license. The recommendation would also authorize the Commissioner of Agriculture to assess administrative penalties against persons who violate cease-and-desist orders. Cease-and-desist authority would help the agency better protect the public and the environment from unlicensed applicators and standardize its procedures with commonly applied licensing practices.

5.6 Grant the Department of Agriculture authority to immediately stop the use of banned pesticides and the sale of products treated with banned pesticides.

This recommendation would authorize the Department to issue stop use and stop sale orders for structural pest control, reflecting the same authority the Department already has for agricultural pest control. The recommendation would also authorize the Commissioner of Agriculture to assess administrative penalties against persons who violate stop use and stop sale orders, and allow licensees to appeal the orders and penalties through the normal enforcement process. Allowing the agency to issue these orders would strengthen its ability to protect the public from harmful illegal pesticides.

5.7 Require the Department of Agriculture to make information on enforcement actions available to the public on the agency's website and in other appropriate publications.

Improving access to disciplinary information about individual pest control operators would help consumers make more informed decisions about the companies they hire. Increasing accessibility could include creating a quarterly listing of all enforcement orders and sanctions arranged alphabetically by licensee name. In addition to helping the public, this listing may reduce the amount of time staff must dedicate to handling consumer inquiries.

Administration – Change in Statute

5.8 Eliminate licensing and administrative fee caps and authorize the Commissioner of Agriculture to set fees in rule.

This recommendation would give the Commissioner greater flexibility to set fees as appropriate without prior legislative action. The recommendation would also give the Commissioner flexibility to set fees at the level necessary to recover program costs as conditions change. The Legislature would maintain control by setting spending levels in the General Appropriations Act.

5.9 Require the Department to base delinquent license renewal fees on the standard renewal fee.

The renewal fee for the agency's licensees who are delinquent in renewing their licenses would be based on the standard renewal rate set by the Commissioner of Agriculture rather than the same fixed amount to all licensees as currently specified in statute. To renew a license that has been expired for 30 days or less, the licensee would have to pay 1 1/2 times the standard renewal fee. If the license has

been expired for more than 30 days, but less than 60 days, the licensee would have to pay twice the standard renewal fee. This recommendation would maintain the existing statutory requirement that persons whose licenses have expired for more than 60 days must be re-examined by the Department to obtain a license.

Issue 6

Requiring Beekeepers to Be Licensed to Remove Bees From Structures Without Using Pesticides Is Not Needed to Protect the Public.

The Structural Pest Control Act requires beekeepers who remove bees from structures to be licensed. Some beekeepers are able to perform this service without using pesticides and usually remove the bees at no charge to the structure's owner. Further, these beekeepers generally do not perform other pest control services that would require licensure. Beekeepers are not required to be licensed to remove or destroy bees that are not attached to a dwelling or other structure occupied by the public. Requiring beekeepers to be licensed to remove bees from structures creates an undue burden on people who volunteer to remove bees and is not necessary to protect public safety.

Recommendation

Change in Statute

6.1 Allow beekeepers to remove bees from structures without a license from the Department of Agriculture, as long as they do not use pesticides.

This recommendation would clarify that the Structural Pest Control Act does not require beekeepers to obtain a pest control operator license to remove bees from structures. Existing language would provide that they may not use pesticides or electrical devices other than conventional bee smokers when removing bees from structures.

Fiscal Implication Summary

Three recommendations regarding the Structural Pest Control Board could have a fiscal impact to the State. The fiscal impact of the recommendations is summarized below.

Issue 1 – Abolishing the Structural Pest Control Board and transferring its functions to the Department of Agriculture may result in savings from reduced administrative costs and staff positions by taking advantage of the existing administrative structure of the Department.

Issue 4 – Appropriating funds for educational programs targeting schools would result in a cost to the State. While the Sunset Commission has recommended that the Legislature appropriate \$100,000 for this effort, the specific amount would need to be determined through the appropriations process. The fiscal impact would not be reflected in the fiscal note for the Pest Control Board Sunset bill.

Issue 5 – Directing the Department to conduct criminal history checks for all license applications and renewals could require additional funding from the Legislature. Through the appropriations process, the Legislature could decide funding levels to cover the cost of performing the history check. The Legislature could also decide whether to devote additional staff to review the background information and take appropriate action when an applicant or licensee is found to have a criminal record. The fiscal impact would not be reflected in the fiscal note for the Pest Control Board Sunset bill.



Teacher Retirement System of Texas

Agency at a Glance

The Teacher Retirement System of Texas (TRS) delivers retirement benefits to employees of public schools and state-supported colleges and universities, and manages assets held in trust to provide future benefits for members and their beneficiaries. Following voter passage of a constitutional amendment, the Legislature created the agency in 1937. To accomplish its mission, the Board of Trustees:

- ◆ administers and operates a system to provide retirement, disability, death, and survivor benefits for 1.2 million Texas public and higher education employees, retirees, and beneficiaries;
- ◆ invests and manages the \$100.2 billion Pension Trust Fund;
- ◆ offers health and long-term care insurance to eligible public education employees, retirees, and their dependents; and
- ◆ provides counseling services and information about retirement and health-care benefits and other agency activities.



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

Key Facts

- ◆ **State Funding.** TRS' fiscal year 2006 appropriation totals about \$1.65 billion, including \$1.6 billion from the General Revenue Fund, and \$44.7 million from the TRS Trust Account for administrative expenses.
- ◆ **Staffing.** TRS had 466 employees in fiscal year 2006, all based in Austin. The majority of TRS staff, 427 employees, assisted the agency in investing the Pension Trust Fund (Fund) and delivering retirement benefits, while 39 employees assisted with the administration of health care benefits and other TRS functions.
- ◆ **TRS Membership.** Employees and retirees of 1,363 independent school districts, charter schools, education service centers, and colleges and universities comprise the membership of TRS. At the end of fiscal year 2006, TRS membership totaled 1.2 million persons, which included 911,000 current members and 257,000 annuitants.
- ◆ **Pension Trust Fund.** TRS' Pension Trust Fund is the eighth largest pension fund in the nation¹, valued at \$100.2 billion. The Fund holds contributions from TRS members, the State, educational employers, and accumulated investment returns. In fiscal year 2006, members contributed \$1.7 billion into the Pension Trust Fund, the State contributed \$1.3 billion, and educational employers contributed \$267 million.
- ◆ **Retirement Program.** TRS administers a defined benefit plan to provide a lifetime stream of income to eligible members during retirement years. In fiscal year 2006, TRS paid 257,000 retirees and their beneficiaries \$5.6 billion, with an average monthly retirement benefit of \$1,796.
- ◆ **Investments.** TRS manages and invests monies in the Pension Trust Fund and other funds it administers. In fiscal year 2006, TRS earned a 9.6 percent return on its

investment portfolio, a gain of \$9 billion. TRS' investment-related administrative costs to achieve that gain totaled \$19.1 million. During the past 10 years, TRS' investment performance has averaged 9.17 percent.

- ◆ **TRS-Care.** TRS offers a health insurance plan to retired public school employees and their dependents. In fiscal year 2006, of the 257,000 eligible TRS retirees, 190,000 participated in TRS-Care. TRS contracts with Aetna to administer the health plan and Caremark for pharmacy benefits.
- ◆ **TRS-ActiveCare.** TRS offers a health insurance plan to active public education employees whose employers have chosen to participate. Of the 1,244 school districts eligible to participate, about 1,042, or 84 percent, have enrolled. Currently, about 299,000 TRS members and dependents receive health insurance from TRS-ActiveCare. TRS contracts with BlueCross BlueShield of Texas to administer the health plan and Medco Health Solutions to administer pharmacy benefits.
- ◆ **Member Services.** TRS provides information to members, retirees, and the general public through publications, the agency's toll-free telephone number and website, one-on-one counseling, and group presentations. In fiscal year 2006, TRS counseled 9,100 members on a one-on-one basis about their retirement benefits, made 155 group presentations, and received 663,000 telephone calls and 1.75 million website visits.

Board Members (9)

Jarvis V. Hollingsworth, Chair (Sugar Land)
Linus D. Wright, Vice Chair (Dallas)
Terence "Terry" Ellis (New Ulm)
John Graham, Jr. (Fredericksburg)
John "Mark" Henry, Ed.D. (Galena Park)
James H. "Jim" Lee (Houston)
Philip Mullins (Austin)
Greg Poole, Ed.D. (Conroe)
Dory A. Wiley (Dallas)

Agency Head

Ronnie Jung, Executive Director
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Recommendations

1. Require TRS to provide equal access to retirement counseling services across the state.
2. Restructure TRS' disability retirement benefit program to ensure protection of Pension Trust Fund assets.
3. Grant TRS a greater range of oversight tools to adequately protect investments made by public education employees in 403(b) products.
4. Repeal the statutory requirement for TRS to conduct the Public School Employees' Health Coverage Comparability Study.

Issue 1

TRS Does Not Provide Equal Access to Counseling Services to Members Across the State.

Key Findings

- ◆ Counseling members about their retirement options is a critical function for TRS.
- ◆ Members who need in-person, individual counseling on their retirement options must travel to Austin, a hardship for some members.
- ◆ Other major retirement systems conduct counseling sessions in ways that are more convenient to members.

Before retiring, TRS members make a multitude of decisions that affect their lifetime annuities. While TRS has taken great strides to provide in-person, individual counseling services, these services are only offered at TRS' headquarters in Austin – requiring members living outside the capital to travel to access the services. In addition, TRS has not taken other steps to reduce the hardship on members working outside Austin, such as offering in-person counseling sessions after business hours, and allowing members to schedule telephone counseling sessions.

Recommendations

Change in Statute

1.1 Require TRS to conduct in-person, individual member counseling in locations other than Austin.

This recommendation would allow members who live outside of Austin to access the in-person, individual counseling services now offered by TRS only at its headquarters. To enable the most effective delivery of these services, TRS should adopt policies regarding availability, timing, and scheduling. The agency should identify the geographic areas most in need of the counseling services and focus efforts on those areas. TRS should also make these individual counseling services available in conjunction with scheduled group sessions.

Management Action

1.2 TRS should improve the convenience of counseling services for its members.

This recommendation would ease the hardship on members who live outside of central Texas and wish to access TRS' in-person counseling services. TRS should offer in-person counseling sessions after normal working hours on one or two days a week. TRS should also allow members to schedule telephone counseling sessions to speak with counselors familiar with their retirement details. TRS should improve the capability of its website to allow members to access and complete forms online, increasing the usefulness of TRS' website.

Issue 2

TRS' Disability Retirement Benefit Program Is Not Properly Structured to Ensure Protection of Pension Trust Fund Assets.

Key Findings

- ◆ TRS cannot adequately protect the Pension Trust Fund from potential abuses in the disability retirement program.
- ◆ Disability retirees earning high incomes inappropriately increase TRS-Care costs.
- ◆ TRS' lack of limitations on earnings by disability retirees is inconsistent with other retirement systems.
- ◆ Other state retirement systems provide greater oversight of disability retirement programs through reporting and reviewing functions.

Since 1937, TRS has offered disability benefits to members unable to work until normal service retirement due to injury or illness. While disability benefits provide needed replacement income for persons unable to work, TRS has no way of knowing if disability retirees are able to work, and no mechanism to adjust disability benefits for individuals who earn a significant amount of money. In this regard, TRS is the only major retirement program that does not limit earnings by disability retirees.

Recommendations

Change in Statute

2.1 Require TRS to adjust benefits for disability retirees who earn significant incomes.

This recommendation would make clear that disability retirement is meant as hardship relief and not as a supplemental income program. Under this recommendation, TRS should adopt rules to reduce or limit benefits, and provide for benefits to be reinstated when appropriate. The TRS rules should limit disability retirees' earnings to the amount less than or equal to their previous position's salary. This approach would prevent misuse of Pension Trust Fund assets as a bonus for disability retirees that also work for significant pay. To avoid loss of health insurance, the statute would allow disability retirees, with at least 10 years of service credit, who lose benefits under this recommendation, to continue enrollment in TRS-Care by paying the appropriate premium.

2.2 Grant TRS authority to require income reports from disability retirees who earn incomes in excess of limits set by TRS.

This recommendation would require disability retirees, who earn significant incomes as defined by TRS, to report earned income. By only requiring disability retirees with incomes over a certain level to report to TRS, this process would not burden the majority of disability retirees. The agency would adjust or cancel benefits after investigating cases in which earnings exceed limitations.

Management Action

2.3 Direct TRS to access Texas Workforce Commission records on disability retirees for the purpose of reviewing earnings.

This recommendation would direct TRS to enter into an inter-agency contract with the Texas Workforce Commission to verify income reports of disability retirees. TRS would use this information, along with the self-reporting required above, to ensure that disability retirees receive the income benefits they deserve, and no more.

Issue 3

TRS Lacks Sufficient Authority in Its 403(b) Certification Program to Adequately Protect Public Education Employees.

Key Findings

- ◆ TRS lacks authority necessary to protect investors from excessive fees and adequately address violations by 403(b) companies.
- ◆ Other agencies have developed 403(b) oversight systems that provide more information and protection to investors.
- ◆ TRS could better assist public education employees by providing basic, unbiased information on 403(b) investment options.
- ◆ Other state agencies have more authority to better protect consumers.

The Internal Revenue Code allows public education employees to supplement their retirement by making tax-deferred contributions to a 403(b) plan, similar to private-sector 401(k) plans. In response to abuses in the 403(b) market beginning in the 1990s, the Legislature created a 403(b) certification program at TRS, and gave TRS authority to set limits on fees that can be charged in such plans. However, TRS lacks sufficient authority to effectively administer the 403(b) certification program and protect public education employees from excessive fees in investments.

Recommendations

Change in Statute

3.1 Require certified 403(b) companies to register individual products offered for sale to Texas educators.

This recommendation would retain the basic structure of the 403(b) certification program and add a requirement for companies to register all individual 403(b) products with TRS before being marketed to public education employees in Texas. Adding product registration to TRS' 403(b) certification would allow the agency to know exactly which products companies represent as meeting the fee limitations and the actual fees charged. School districts currently ensure that a 403(b) company is on TRS' list of certified companies before processing a salary reduction agreement. Under this recommendation, school districts should ensure that a selected investment product is registered with TRS, before processing a salary reduction, by checking TRS' website.

3.2 Require TRS to list all registered 403(b) products and their fees on the TRS website.

This recommendation would require TRS to list all registered 403(b) products on its website as well as information on the fees in each category and other relevant information collected during registration. This change would greatly increase public education employees' access to comprehensive, unbiased information on 403(b) products.

3.3 Grant TRS a greater range of oversight tools including suspension and administrative penalty authority.

The recommendation would grant TRS a range of oversight tools to better protect public education employees in the 403(b) market. Specifically, TRS would have authority to conduct complaint-based or self-generated investigations of certified companies and registered products to determine compliance. Additionally, TRS would have authority to suspend certification and levy administrative penalties up to \$1,000 per violation. TRS should adopt a penalty matrix in rule that specifies the fine amounts for various offenses by severity. This recommendation will give TRS the ability to detect registered 403(b) products that violate TRS' fee limitations, and the flexibility to work with a 403(b) company that has reported a violation to come back into compliance.

Issue 4

State Law Requires TRS to Produce a Costly Study That Is No Longer Useful.

Key Findings

- ◆ State law requires TRS to conduct a study comparing health insurance coverage offered by public schools.
- ◆ The Health Coverage Comparability Study is no longer necessary.
- ◆ The Legislature has shown interest in removing agency reporting requirements that are no longer useful or necessary.

Since 1997, statute has required TRS to study the health insurance coverage offered by local school districts, charter schools, and education service centers and compare that coverage to the basic coverage provided to state employees. The Legislature established this study before the introduction of TRS-ActiveCare, which makes health coverage comparable to the basic state employees' plan accessible to all public education entities. However, the study no longer produces sufficient valuable information to justify biennial appropriations of \$250,000 in General Revenue Funds.

Recommendation

Change in Statute

4.1 Repeal the statutory requirement for TRS to conduct the Public School Employees' Health Coverage Comparability Study.

This recommendation would eliminate an out-of-date statutory provision that requires TRS to analyze health coverage data submitted by public education entities, certify coverage that is comparable, and produce the Comparability Study every other year. Eliminating this requirement will save staff time at TRS in producing the reports and in school districts responding to TRS' information requests.

Fiscal Implication Summary

When fully implemented, the recommendations would result in annual savings of \$125,000 to the General Revenue Fund. The specific fiscal impact of these recommendations is summarized below.

Issue 2 – Removing disability retirees, who are gainfully employed, from TRS-Care would have a positive fiscal impact to the State. Because the number of disability retirees who earn excessive incomes is unknown, the exact fiscal impact is difficult to estimate. Assuming that 5 percent of TRS disability retirees would be affected, the recommendation would save \$256,000 in General Revenue. Reducing the pensions of gainfully employed disability retirees would also have a positive fiscal impact to the Pension Trust Fund. TRS would reduce annuity payments from the Fund by \$6.45 million for disability retirees who are earning high incomes in other positions. These savings are not reflected in the five-year fiscal impact table or the total above due to their estimated nature.

Issue 4 – Eliminating the unnecessary health coverage comparability study would result in a positive fiscal impact of \$125,000 per year to the State.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>
2008	\$125,000
2009	\$125,000
2010	\$125,000
2011	\$125,000
2012	\$125,000

¹ Pensions & Investments Online, *The top 200 pension funds/sponsors*, ranked by total assets, in U.S. millions (January 24, 2005).



Texas Veterans Commission

Agency at a Glance

The Texas Veterans Commission (TVC) supports Texas veterans and their families by providing assistance to veterans filing federal benefit claims and veterans seeking employment, and by approving educational institutions to receive federal Montgomery GI Bill funds. While TVC currently operates three programs, each of which contribute to the overall goal of providing accessible benefits to eligible Texas veterans, until the last two years, the Commission focused its efforts on providing assistance to veterans in filing federal benefit claims with the U.S. Department of Veterans Affairs (VA). Created in 1927 as a division of the Adjutant General's Department, and becoming an independent agency in 1947, TVC received responsibility for the Veterans Employment Services program from the Texas Workforce Commission in 2005, and was designated by the Governor as the State Approving Agency for Veterans' Education, also in place of the Workforce Commission, in 2006.

Today, the Commission's main functions include:

- ◆ assisting veterans and their families in obtaining various state and federal benefits;
- ◆ administering benefit assistance training to veteran county service officers;
- ◆ providing employment and re-employment services to eligible veterans and their families;
- ◆ approving veterans' education and training institutions to receive federal funds; and
- ◆ promoting benefits provided by the state and federal governments to eligible veterans.



*For additional information,
please contact Kelly Kennedy
at (512) 463-1300.*

Key Facts

- ◆ **Recent Program Transfers.** The transfer of the Veterans Employment Services program and the designation of the Commission as the State Approving Agency for Veterans' Education more than tripled the agency's number of staff and increased TVC's budget by more than \$11 million since the end of fiscal year 2005. To provide an accurate picture of the agency requires assessment of 2006 and even 2007 data.
- ◆ **Funding.** As a result of increased funding due to the Veterans Employment and Veterans' Education program transfers, in fiscal year 2007, the Commission expects to operate on a budget of about \$15.3 million, more than four times the agency's fiscal year 2006 operating budget.
- ◆ **Staffing.** TVC currently employs a staff of 311, with 291 located in 145 field offices and local workforce centers throughout the state. Before receiving the Veterans Employment and Veterans' Education programs, the Commission employed a staff of 97.
- ◆ **Claims Counseling.** The Veterans Commission provides information regarding the numerous state and federal benefits available to veterans as well as direct assistance

to veterans seeking to file federal benefit claims with the VA. In fiscal year 2006, the Commission assisted Texas veterans in filing 72,632 VA benefit claims and appealing 10,974 VA decisions.

- ◆ **Employment Services.** TVC helps eligible veterans access employment and training opportunities through the federally mandated Veterans Employment Services program. An annual federal grant of about \$10.4 million funds staff in local workforce centers throughout the state to assist veterans with finding jobs.
- ◆ **Veterans' Education.** The Commission approves education and training programs in Texas to authorize veterans' use of federal Montgomery GI Bill funds. Currently, a total of 837 programs are approved for veterans' education purposes.
- ◆ **County Service Officers.** The Veterans Commission provides technical training and general support to the State's network of approximately 250 county service officers who provide claims assistance to veterans at the local level.

Commission Members (5)

John A. Brieden, III, Chair (Brenham)
Karen S. Rankin, Vice Chair (San Antonio)
Hector Farias, Secretary (Weslaco)
James R. Adams (Dallas)
Leonardo Barraza (El Paso)

Agency Head

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Recommendations

1. Continue the Texas Veterans Commission for four years and allow the Commission additional time to assume its new programs.
2. Improve the Commission's rulemaking process, enabling the Commission to respond to changes in its mission and the veterans it serves.
3. Provide the Commission with management tools needed to ensure the highest quality claims counseling and representation services for Texas' veterans.
4. Strengthen the Commission's relationship with county service officers to more effectively reach veterans at the local level.
5. Require the Commission to develop and implement a succession plan in anticipation of changes in the agency's workforce.
6. Require the Texas Veterans Commission and the Veterans' Land Board to coordinate a statewide approach to making Texas veterans aware of available benefits and services.

Issue 1

Texas Has a Continuing Need for the Texas Veterans Commission.

Key Findings

- ◆ The Texas Veterans Commission supports veterans and their families with accessing various state and federal benefits.
- ◆ The State has a clear and continuing interest in supporting Texans who have served their country.
- ◆ While the Commission generally accomplishes its traditional claims assistance mission, the agency faces challenges in operating its new programs.
- ◆ While the Veterans' Land Board also plays a key role in providing state benefits to veterans, consolidation is not a viable option.

At a time when the Texas veteran population is booming and veterans' issues are becoming more and more complex, the Texas Veterans Commission plays a key role in the State's commitment to honor those who have risked their lives to serve their country. Historically, the Commission's only function has been to provide veterans and their families with general benefit information and one-on-one assistance in pursuing federal benefit claims. However, TVC's new objectives include administering two benefit programs beyond this primary task, stretching the agency well beyond its original mission.

While Texas clearly has an interest in providing benefit assistance to veterans, the recent transfers of the veterans employment and education programs present significant challenges to the Commission and its ability to fulfill these new responsibilities. Because of this change, the agency needs additional time to assume its new functions and develop a track record for judging its ability to effectively administer these new programs.

Recommendations

Change in Statute

1.1 Continue the Texas Veterans Commission for four years.

This recommendation would continue TVC as an independent state agency for four years, allowing the Commission additional time to assume its new functions – operating the Veterans Employment Services program and acting as the State Approving Agency for Veterans' Education – and providing the Legislature an opportunity to re-evaluate the Commission's progress and performance at that time. While the State should continue to assist Texas veterans and their families in obtaining the various benefits entitled to them by law, a more complete evaluation of whether the Veterans Commission has the organizational structure or institutional resources necessary to successfully provide employment and education services could not be made.

In the next Sunset review, TVC's overall performance would be assessed, as in any Sunset review, as well as the agency's ability to integrate the new programs into its overall mission. Giving the agency a Sunset date of September 1, 2011, would give TVC an opportunity to fully implement its assigned duties and develop a track record for adequately evaluating its performance.

In addition, the next Sunset review of the Texas Workforce Commission should be postponed from its current 2009 Sunset date, until 2011, to coincide with the TVC review to provide for a more comprehensive review of the comparable programs and the workforce system as a whole. This change would need to happen in a separate piece of legislation from that continuing TVC.

Management Action

1.2 The Commission should explore ways to better integrate its new programs into the agency's overall mission.

This recommendation directs the Commission to assess its two new programs and better incorporate these functions into the agency's overall mission of providing veterans with all benefits entitled to them by law. In doing so, TVC should consider ways to connect the employment and education programs with the claims assistance program, providing veterans with a direct referral system to each division in the agency. For example, TVC should pursue providing its veterans employment staff with access to the U.S. Department of Veterans Affairs' database, allowing the agency's other front-line assistance staff the opportunity to provide veterans with claim information updates. TVC should also explore opportunities for the veterans employment and education program staff, all of whom are required to perform community outreach functions as part of their job description, to provide information regarding the comprehensive benefit package that is available to Texas veterans.

Issue 2

Limited Rulemaking and Stakeholder Input Restricts the Commission's Ability to Respond to Changes in Its Mission and the Veterans It Serves.

Key Findings

- ◆ The Commission seeks to serve the needs of Texas veterans at a time when the profile of both the veteran and the agency is changing.
- ◆ TVC lacks a formal means of gathering needed input from stakeholders and coordinating with other organizations serving veterans.
- ◆ The Commission has not used rulemaking to establish an adequate framework for its programs.

Since its inception, the Texas Veterans Commission's mission has been to support veterans and their families, advocating on their behalf to obtain veteran benefits to which they are entitled. While TVC still helps veterans with their benefit claims, it does so in a changed environment. The Commission is not the same agency it once was, having recently gained responsibility for veterans employment and education programs from the Texas Workforce Commission. In addition, the veterans that the agency works with have also changed due to the composition of the fighting force deployed to Iraq and Afghanistan.

TVC needs to adapt its operations to accommodate these changes, but will need to increase its rulemaking to accomplish this task. The Commission also lacks an effective structure to consider outside expertise and advice, instead relying on informal relationships that may not reflect the variety of opinions or number of issues facing veterans today.

Recommendations

Change in Statute

2.1 Require the Commission to develop guidelines for early stakeholder involvement in its rulemaking and policy development processes.

This recommendation would require the Commission to develop a process for providing stakeholders with the opportunity for a stronger role in the development of agency rules and policies. This process could include appointing advisory committees under the agency's delegated authority provided in the Administrative Procedure Act (APA). Allowing key stakeholder input would provide the Commission with needed expertise as it develops program policies and strategies to address critical veterans' issues. If the Commission chooses to appoint advisory committees, the Commission should adopt rules regarding these committees, in compliance with Government Code provisions for advisory committees, including:

- ◆ purpose, role, and goals of the committee;
- ◆ size and quorum requirements;
- ◆ qualifications of the members and selection criteria;
- ◆ appointment procedures;
- ◆ terms of service;
- ◆ training requirements;
- ◆ a needs assessment process to regularly evaluate the continuing need for the committee; and
- ◆ the requirement that the committee comply with the Open Meetings Act.

Management Action

2.2 The Commission should adopt rules to guide its programs.

This recommendation directs the Commission to adopt rules under the APA to direct its programs, bringing TVC in line with other state agencies' standard procedures for adopting rules for their programs. Adoption and application of rules is especially important for the agency's new programs where TVC does not have the expertise in workforce and training-related matters already in place at the Texas Workforce Commission. The Veterans Commission should take full advantage of APA authority to gather advice from veterans, their families, and the general public on proposed rules.

Issue 3

TVC Lacks Management Tools Needed to Ensure the Highest Quality Claims Counseling and Representation Services for Texas' Veterans.

Key Findings

- ◆ As part of a network of representatives, TVC assists veterans with filing VA benefit claims.
- ◆ TVC's approach to providing claims assistance potentially results in wasted resources needed to help veterans most in need.

- ◆ The state of TVC's information technology prevents the agency from effectively sharing information and measuring its performance on claims assistance activities.

For nearly 80 years, TVC has provided benefit information and one-on-one assistance to veterans navigating the U.S. Department of Veterans Affairs' benefit claims process. However, the agency heavily relies on historical knowledge to administer its claims program and lacks basic policies to guide the assistance process. Without this guidance, TVC cannot ensure an effective, consistent approach is used by counselors statewide or that, as a result, its process to assist veterans does not have the unintended consequences of wasting resources dedicated to help veterans most in need. Finally, the agency is severely hampered by its lack of information technology, restricting both TVC's ability to shepherd specific cases through the system and its ability to see how well the system is working.

Recommendations

Change in Statute

3.1 Require TVC to adopt procedures for providing claims assistance services to Texas veterans.

This recommendation would require TVC to develop criteria, subject to the Commission's approval, to improve and streamline the claims assistance process. In developing standard procedures for helping veterans file claims, TVC should address, at a minimum, the following areas:

- ◆ criteria for assessing initial claims to ensure the claim is substantially complete and meets the basic eligibility requirements specified in federal law;
- ◆ a formal documented process for expediting claims based on hardship, including whether the veteran is in immediate need, is terminally ill, has a verifiable financial hardship, or has a disability that presents an undue burden;
- ◆ procedures for counseling veterans on the potential merits of claims, or the potential drawbacks of pursuing claims that could place a veteran's current level of benefits at risk;
- ◆ steps needed to ensure adequate documentation and development of a claim, or appeal, including early client involvement, collection of needed evidence and records, and analysis of further actions needed to support the claim;
- ◆ criteria for evaluating whether the VA's benefit decision contains sufficient cause for filing an appeal; and
- ◆ requirements for claims counselors to report to the VA claims that TVC has direct knowledge contain false or deceptive information.

Under this recommendation, TVC would consult with the VA when developing these rules to ensure that TVC staff are not improperly involved in adjudicating claims. TVC would also work with the VA to ensure that policies and procedures provide for resolving disputes at the lowest level of the VA's benefit decision process. Additionally, in assessing cases, TVC would better prioritize its efforts to help veterans with claims when appropriate, and provide them with information on alternative sources for obtaining claims assistance services when it is not.

TVC would also work with the VA to establish broad areas of cooperation between the agencies to help streamline, and more closely align, TVC's service delivery with the VA's own processes. These areas of cooperation with the VA would include, cooperating on expediting hardship cases and appeals;

identifying processes to update changes to veterans' cases and power of attorney designation; and identifying opportunities for the VA to provide TVC with needed data to assist with tracking the progress and outcomes of claims.

Management Action

3.2 TVC should assess its information technology needs for the claims assistance program and report to the Legislature on the costs and benefits of implementing software to support the program.

Under this recommendation TVC would work with the Texas Department of Information Resources (DIR) to assess the requirements, costs, and benefits of a case management system. TVC should work with DIR to identify existing case management software which could meet TVC's needs with a minimum level of modifications. At a minimum, the software should allow claims counselors to enter critical information regarding each case and for this information to be shared between all of TVC's field and regional offices, and the agency's headquarters, including the call center which currently does not have access to information regarding the progress of benefit claims. The program should also allow the agency to access management reports that indicate case progression and identify outcomes from TVC's efforts.

Based on the results of these efforts, TVC should work through the legislative appropriations process to seek appropriate funding for the case management software system. In calculating a cost of the system, the agency should include efficiencies in processes, resulting in potential reductions in administrative staff who provide transcription services to claims counselors in the agency's two regional offices.

This recommendation would also enable TVC to evaluate the effectiveness of its claims assistance activities, and to generate more useful and accurate management data needed to evaluate the agency's performance. To that end, TVC should work with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy to redefine agency performance measures that show outcomes rather than basic outputs.

Issue 4

The State Does Not Effectively Use County Service Officers to Reach Veterans at the Local Level.

Key Findings

- ◆ The State has established a system of local county service officers to better assist veterans and their family members in applying for benefits.
- ◆ TVC can improve services to veterans through the more strategic use of CSOs.
- ◆ Statute limits TVC's ability to quickly and efficiently train county service officers.
- ◆ TVC's training and technical assistance could be improved to help ensure that veterans receive the best quality claims assistance services at the local level.

County service officers (CSOs) play a valuable role in helping Texas veterans, especially those located in rural communities without immediate access to other support resources, to obtain all the benefits to which they are entitled. The Texas Veterans Commission is responsible for training and certifying county service officers to help ensure that veterans receive quality benefit assistance at the local level.

Although TVC does not have direct authority over CSOs, or the counties for which they work, taking advantage of its relationship with CSOs could help develop them as a resource to serve more effectively in the State's veterans assistance network. The Commission could also improve its training program to better serve the training needs of CSOs so that they may best assist veterans. Updating statute to allow TVC flexibility in how it administers training, and directing TVC to implement a standard training curriculum, would ensure that county service officers have the initial and ongoing support they need.

Recommendations

Change in Statute

4.1 Require the Commission to adopt a strategic plan to further integrate county service officers into the State's veterans assistance network.

This recommendation would require the Commission to develop and adopt a plan to more closely coordinate with CSOs, and the county officials who oversee them, to create a statewide approach to claims assistance services that can be updated as the veteran population changes and new needs arise. At a minimum, this strategic plan should address the following areas:

- ◆ stating the Commission's, CSOs', and counties' shared objectives in serving veterans;
- ◆ working with counties to recruit CSOs, and encouraging them to become VA-accredited;
- ◆ consulting with counties to determine the most effective locations for CSOs;
- ◆ defining TVC's responsibilities in overseeing claims and appeals prepared by CSOs;
- ◆ collecting information on CSO performance, and providing needed technical assistance;
- ◆ documenting CSO performance, including on-site visit reports, and providing that information to county judges or other local officials that supervise CSOs;
- ◆ incorporating CSOs into VA appeals hearings either to represent veterans or to appeal as witnesses;
- ◆ exploring opportunities for funding CSO travel to participate in VA appeals hearings; and
- ◆ regularly updating CSOs on changes in VA policies and procedures, and other information.

4.2 Require the Commission to develop and adopt a standard training curriculum.

Under this recommendation, TVC would be required to develop standard course materials and exams for CSO certification and accreditation, subject to the Commission's approval. The agency would maintain and regularly update its course materials, keeping them in a central location and providing easy accessibility to all field staff and CSOs via the Internet. When implementing this recommendation, TVC would consult with the VA to ensure training material is accurate, up-to-date, and meets the VA's requirements. TVC would also seek input from accredited county service officers, who work as an extension of TVC, to ensure that training topics cover veterans' issues emerging at the local level.

In addition, the Commission would be required to develop a training handbook containing practical instruction and case examples, to be posted on the Internet, and addressing, at a minimum, the following areas:

- ◆ general assistance techniques, including how to provide referrals for other services or to other agencies, and general benefit information;
- ◆ basic counseling approaches for helping veterans and their family members file benefit claims;
- ◆ basic information on VA processes and procedures, including how to accurately complete claim and appeals forms and how to support the claim;
- ◆ methods of collecting needed documentation and further developing claims and appeals;
- ◆ methods of documenting progress and updating veteran case information;
- ◆ ways to assist veterans in pursuing appeals, including offering case knowledge in appeal hearings; and
- ◆ methods of representing veterans during appeal hearings.

4.3 Provide for the Commission to train county service officers by other means beyond training conferences.

This recommendation would remove the statutory requirement for TVC to hold training conferences and require TVC to develop alternative ways of ensuring that CSOs meet initial and annual training requirements. Under this recommendation, TVC would not be precluded from conducting training conferences, though the following management action directs the Commission to reduce the number of these training conferences. This recommendation would give TVC greater flexibility to provide training through other means it determines appropriate, including Internet-based seminars, via videoconference, or in cooperation with training conducted by the VA. It would also allow TVC the flexibility to train and certify county service officers without requiring CSOs or its own claims counselors to attend a week-long training session.

Management Action

4.4 TVC should reduce the number of training conferences it conducts.

This recommendation directs the Commission to reduce the number of training conferences it holds every year, refocusing its training efforts to include alternative methods, as described in the recommendation above. The Commission could still hold a limited number of conferences to allow county service officers, VA staff, its own claims counselors, and other members of the veterans community a means to network.

By reducing the number of conferences it holds each year, TVC would have additional resources to allocate towards providing individualized, in-field technical assistance to CSOs and could redirect management resources currently used to plan and conduct conferences to further efforts to integrate CSOs into the State's efforts to serve veterans. Finally, reducing the number of training conferences would free significant state and county staff time currently spent attending conferences, which could be used to provide additional claims assistance services to veterans.

Issue 5

Anticipated Changes in the Commission's Workforce Could Leave the Commission Vulnerable to a Significant Loss of Institutional Knowledge Critical to Its Operations.

Key Findings

- ◆ The Commission employs a specialized and aging workforce.
- ◆ The Commission is likely to experience a significant rise in staff turnover in the near future.
- ◆ The Commission lacks thorough documentation of staff policies and procedures.
- ◆ The Commission will experience a dramatic increase in demand for veterans services.
- ◆ The Commission lacks a formal plan to deal with impending retirements and workforce changes.

In the near future, the Texas Veterans Commission will likely experience a significant loss of institutional knowledge and expertise as many older and long-tenured employees retire. At the same time, the demand for veterans services will dramatically increase as new veterans return from Iraq and Afghanistan. Currently, the Commission is not well-positioned to deal with its impending workforce changes. As the Commission has historically relied on the institutional knowledge retained by its long-tenured staff, the agency lacks documentation of its policies and procedures for future reference and training purposes.

Recommendations

Management Action

5.1 The Commission should develop and implement a succession plan to prepare for impending retirements and workforce changes.

The Commission should develop a plan to prepare for both anticipated and unanticipated departures of key staff, including identifying positions critical to the agency's operations and establishing a comprehensive strategy for preparing new staff to assume these responsibilities. The Commission should identify positions at risk of becoming vacant in the near future and provide training and development opportunities to employees eligible to move into these positions to enable the seamless transfer of institutional knowledge and expertise to new staff members.

The Commission would also be able to further develop its career ladder. With the Commission's turnover rate expected to significantly rise, the Commission should implement this plan within two to four years, before anticipated retirement-eligibility dates of key staff.

5.2 The Commission should formally document its duties in writing by updating its manuals and making them available to all employees electronically.

This recommendation ensures that the Commission captures institutional knowledge and uses this information to update its employee manuals to reflect current job duties and procedures for all Commission programs. The Commission should record valuable knowledge and expertise before key staff leaves, providing an effective method to document current practices as well as to train new staff. The Commission should make these manuals available to all staff electronically, such as through a password protected area on the Commission's website, or through other electronic means, such

as compact discs, as a more accessible and cost-effective means of information disbursement. This would allow the agency to more easily update information without printing new manuals every time information changes.

5.3 The Commission should evaluate its promotion and evaluation policies and revise them to include measures of job performance.

The Commission should revise its promotion and evaluation policies for all positions, including claims counselors, to include measures of job performance. Including measures of job performance for these positions would change promotions to be based more on merit, and less on performing a standard checklist of activities, providing an incentive for employees to perform their job well and rewarding employees most deserving of advancement.

5.4 The Commission should take advantage of the pool of returning veterans who are seeking employment services to fill Commission vacancies.

This recommendation instructs the Commission to take advantage of its direct contact with unemployed veterans when seeking to fill its vacated positions, assisting veterans in finding gainful employment and filling the Commission's own human resource needs.

Issue 6

Texas Lacks a Comprehensive Approach to Making Veterans Aware of Available Benefits and Services.

Key Findings

- ◆ Texas offers many benefits and services to its large veteran population.
- ◆ TVC and VLB duplicate many outreach efforts to veterans, wasting state resources.
- ◆ Despite the agencies' efforts, many veterans remain unaware or confused about all available benefits.
- ◆ The agencies' separate approaches to outreach leave Texas veterans without full and clear information on the total benefits package available to them.

The State honors its veteran population by providing many benefits and services to veterans, and their dependents and survivors. The Texas Veterans Commission and the Veterans' Land Board (VLB) both provide some of these benefits and services. TVC, statutorily required to collect, coordinate, and disseminate veteran information for the State, does so in conjunction with other agencies, particularly VLB. While TVC and VLB do coordinate in some ways to reach Texas veterans, the agencies' information exists in silos, making communication from the State to veterans inconsistent and incomplete. Additionally, the agencies' duplicate many activities and do not present benefit and service information to veterans in a clear and comprehensive way.

Recommendations

Change in Statute

6.1 Merge TVC's and VLB's communications efforts by requiring the agencies to operate one call center, to maintain and share databases of veteran contact information, and to pool some direct mail efforts.

This recommendation would combine the agencies' separate communications centers, requiring the following:

- ◆ merging TVC's call center with VLB's, collectively answering calls from the toll-free hotline;
- ◆ providing for the agencies to jointly maintain, access, and continue to build the veteran contact databases; and
- ◆ combining both agencies' direct mail efforts targeting newly discharged veterans, promoting benefits seminars, and persons seeking general information on veterans' services.

This recommendation would relocate to VLB the TVC employees necessary to jointly operate the communications center, which includes answering calls, maintaining databases, and any combined direct mail efforts. These employees would still be employed by TVC, but would be supervised by VLB, as determined through the agencies' Memorandum of Understanding (MOU). As a part of this recommendation, the agencies would cross-train call center employees to be knowledgeable about the services both agencies provide. As TVC and VLB begin to work more collaboratively on veterans databases and mail-outs, the State will definitively know which veterans they reach and will be able to provide needed information to more of its large veteran population with the information that they need.

6.2 Require TVC and VLB to cooperatively create one website and one comprehensive brochure that provides information about all available veterans' benefits and services.

This recommendation would require TVC and VLB to provide comprehensive information on veteran benefits and services in easy-to-use formats, developing one website and brochure for that purpose. This recommendation would require a coordinated effort, creating one place for veterans to find information about available benefits and how to pursue them. This recommendation requires the agencies to designate an easily identifiable web address for veterans. The new brochure should also advertise the web address as the central information hub.

6.3 Require the agencies to jointly plan and present a total benefits package to veterans at all benefits seminars and meetings.

Under this recommendation, TVC and VLB and their respective field representatives should collaborate on all benefits seminars to ensure they communicate information to Texas veterans as a total benefits package. As a part of this recommendation, the agencies would coordinate their involvement in state-sponsored seminars as well as meetings hosted by other veteran advocacy organizations. All state-sponsored seminars should be jointly planned and presented by the agencies, with an emphasis on presenting total benefit information to veterans. The agencies would have the ability to create the format of such seminars to provide for the effective use of time and level of detail necessary to educate veterans on benefits.

6.4 Require the agencies to modify their existing Memorandum of Understanding to specify the guidelines necessary to coordinate veterans' benefit awareness activities.

This recommendation would require the agencies to use their existing MOU to set up guidelines and reimbursements for coordinated outreach activities required in the preceding recommendations. The MOU should address the implementation of a joint call center, shared databases, combined direct mail efforts, comprehensive website and brochures, and coordinated seminars. The MOU should include the agencies' specific responsibilities for the management and funding of any colocated employees, necessary cross-training of staff, other operating expenses, such as office space, printing, postage, website development and maintenance, and any other coordinated outreach activity. In amending the MOU, the agencies should take into consideration the appropriate use of authorized bond proceeds and federal funds to ensure that the agencies comply with all funding constraints. This recommendation requires the agencies to complete the revised MOU by March 1, 2008.

This approach would ensure that the agencies have an operational framework to clearly and fairly lay out each agency's duties in implementing the above recommendations. The recommendation would provide for the appropriate use of each agency's resources, while better serving Texas veterans.

The agencies should also use the MOU as a working document to continue to explore opportunities for agency coordination, updating it as this collective marketing approach expands. As the veteran population grows in Texas from more veterans coming home, and as available resources change, TVC and VLB should use the MOU as a mechanism to collaboratively help more veterans find and access benefits and services.

Fiscal Implication Summary

One recommendation regarding the Texas Veterans Commission could have a fiscal impact to the State, as discussed below.

Issue 3 – Appropriating funds for a computer-based case management system would result in start-up costs of about \$100,000 and annual costs of approximately \$75,000. However, no additional staff would be needed to set up or maintain the system. While the Sunset Commission has recommended that the Legislature appropriate \$100,000 for fiscal year 2008 and an additional \$75,000 each fiscal year thereafter to cover the cost of maintaining the system, the specific amount would need to be determined through the appropriations process. Also, this recommendation would not be tied to the Veterans Commission Sunset bill.



Agency at a Glance

Texas voters established the Veterans' Land Board (VLB) through a constitutional amendment in 1946 to honor Texas veterans and their families by providing loans to purchase raw land. Today the Board operates within the structure of the General Land Office (GLO) and provides veterans with state benefits including:

- ◆ below-market interest rate loans for purchasing raw land, homes, and funding home improvement projects;
- ◆ long-term care nursing homes for veterans and their families; and
- ◆ veterans cemeteries.

Key Facts

- ◆ **Funding.** In fiscal year 2006, VLB administered its three programs with a budget of about \$24 million. VLB receives no General Revenue funds as most of the agency's revenue is derived from investment income from constitutionally authorized bond sales and loan payment proceeds. VLB also receives federal grants from the U.S. Department of Veterans Affairs (VA) for the construction of veterans nursing homes and cemeteries.
- ◆ **Staffing.** VLB has 83 staff. While most staff are housed in Austin, 19.5 positions are located in field offices and nursing homes across the state. The Legislature authorizes VLB staff through GLO's appropriations and all employees are GLO employees.
- ◆ **Investments.** GLO manages VLB's fixed-income portfolio, which was valued at \$346 million on December 31, 2006, and achieved an annual rate of return of 4.45 percent during calendar year 2006. VLB's investment strategy is to maximize returns, minimize risks, and ensure liquidity necessary to meet the demand in its loan programs. The agency invests a large portion of its portfolio in bonds issued by federal agencies.
- ◆ **Loans.** The agency made more than 4,500 loans to veterans in fiscal year 2006, with a total value of \$602 million. About 93.5 percent of the total amount of loans were for the purchase of homes. Land loans comprised about 6 percent of the agency's portfolio, and the remainder were for home improvements.
- ◆ **Nursing Homes.** VLB owns and operates six long-term, skilled nursing care facilities in Big Spring, Bonham, El Paso, Floresville, McAllen, and Temple. Another home is under construction in Amarillo. These nursing homes provide long-term care for veterans, their spouses, and Gold Star parents, who have lost all of their children in military service.
- ◆ **Veterans Cemeteries.** The Board owns and operates two veterans state cemeteries, in Killeen and Mission, that augment the state's four national veterans cemeteries by providing burial space to veterans, their spouses, and dependents.



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Board Members (3)

The Honorable Jerry Patterson, General Land
Commissioner, Chair (Austin)
Alan L. Johnson (Harlingen)
Cephus S. “Dusty” Rhodes (El Paso)

Agency Head

Paul Moore, Executive Secretary
(512) 463-5401

Recommendations

1. Require the Veterans’ Land Board and the Texas Veterans Commission to coordinate a statewide approach to making Texas veterans aware of available benefits and services.
2. Require the Veterans’ Land Board to obtain and approve relevant audit plans and publicly discuss internal audit reports.

Issue 1

Texas Lacks a Comprehensive Approach to Making Veterans Aware of Available Benefits and Services.

Key Findings

- ◆ Texas offers many benefits and services to its large veteran population.
- ◆ TVC and VLB duplicate many outreach efforts to veterans, wasting state resources.
- ◆ Despite the agencies' efforts, many veterans remain unaware or confused about all available benefits.
- ◆ The agencies' separate approaches to outreach leave Texas veterans without full and clear information on the total benefits package available to them.

The State honors its veteran population by providing many benefits and services to veterans, and their dependents and survivors. The Texas Veterans Commission (TVC) and the Veterans' Land Board both provide some of these benefits and services. TVC, statutorily required to collect, coordinate, and disseminate veteran information for the State, does so in conjunction with other agencies, particularly VLB. While TVC and VLB do coordinate in some ways to reach Texas veterans, the agencies' information exists in silos, making communication from the State to veterans inconsistent and incomplete. Additionally, the agencies duplicate many activities and do not present benefit and service information to veterans in a clear and comprehensive way.

Recommendations

Change in Statute

1.1 Merge TVC's and VLB's communications efforts by requiring the agencies to operate one call center, to maintain and share databases of veteran contact information, and to pool some direct mail efforts.

This recommendation would combine the agencies' separate communications centers, requiring the following:

- ◆ merging TVC's call center with VLB's, collectively answering calls from the toll-free hotline;
- ◆ providing for the agencies to jointly maintain, access, and continue to build the veteran contact databases; and
- ◆ combining both agencies' direct mail efforts targeting newly discharged veterans, promoting benefits seminars, and persons seeking general information on veterans' services.

This recommendation would relocate to VLB the TVC employees necessary to jointly operate the communications center, which includes answering calls, maintaining databases, and any combined direct mail efforts. These employees would still be employed by TVC, but would be supervised by VLB, as determined through the agencies' Memorandum of Understanding (MOU). As a part of this recommendation, the agencies would cross-train call center employees to be knowledgeable about the services both agencies provide. As TVC and VLB begin to work more collaboratively on veterans databases and mail-outs, the State will definitively know which veterans they reach and will be able to provide needed information to more of its large veteran population with the information that they need.

1.2 Require TVC and VLB to cooperatively create one website and one comprehensive brochure that provides information about all available veterans' benefits and services.

This recommendation would require TVC and VLB to provide comprehensive information on veteran benefits and services in easy-to-use formats, developing one website and brochure for that purpose. This recommendation would require a coordinated effort, creating one place for veterans to find information about available benefits and how to pursue them. This recommendation requires the agencies to designate an easily identifiable web address for veterans. The new brochure should also advertise the web address as the central information hub.

1.3 Require the agencies to jointly plan and present a total benefits package to veterans at all benefits seminars and meetings.

Under this recommendation, TVC and VLB and their respective field representatives should collaborate on all benefits seminars to ensure they communicate information to Texas veterans as a total benefits package. As a part of this recommendation, the agencies would coordinate their involvement in state-sponsored seminars as well as meetings hosted by other veteran advocacy organizations. All state-sponsored seminars should be jointly planned and presented by the agencies, with an emphasis on presenting total benefit information to veterans. The agencies would have the ability to create the format of such seminars to provide for the effective use of time and level of detail necessary to educate veterans on benefits.

1.4 Require the agencies to modify their existing Memorandum of Understanding to specify the guidelines necessary to coordinate veterans' benefit awareness activities.

This recommendation would require the agencies to use their existing MOU to set up guidelines and reimbursements for the coordinated outreach activities required in preceding recommendations. The MOU should address the implementation of a joint call center, shared databases, combined direct mail efforts, comprehensive website and brochures, and coordinated seminars. The MOU should include the agencies' specific responsibilities for the management and funding of any collocated employees, necessary cross-training of staff, other operating expenses, such as office space, printing, postage, website development and maintenance, and any other coordinated outreach activity. In amending the MOU, the agencies should take into consideration the appropriate use of authorized bond proceeds and federal funds to ensure that the agencies comply with all funding constraints. This recommendation requires the agencies to complete the revised MOU by March 1, 2008.

This approach would ensure that the agencies have an operational framework to clearly and fairly lay out each agency's duties in implementing the above recommendations. The recommendation would provide for the appropriate use of each agency's resources, while better serving Texas veterans.

The agencies should also use the MOU as a working document to continue to explore opportunities for agency coordination, updating it as this collective marketing approach expands. As the veteran population grows in Texas from more veterans coming home, and as available resources change, TVC and VLB should use the MOU as a mechanism to collaboratively help more veterans find and access benefits and services.

Issue 2

The Veterans' Land Board's Oversight of the Internal Audit Process Lacks Necessary Elements.

Key Findings

- ◆ The General Land Office provides the Veterans' Land Board with internal auditing functions and audit oversight.
- ◆ The Board's lack of formal involvement in the internal auditing process dilutes its ability to fully oversee the agency.

VLB's attachment to the General Land Office warrants a distinctive approach to the reporting structure of the Internal Auditor.

- ◆ Emerging auditing principles recognize the importance of board involvement in the internal audit process.

The General Land Office provides the Veterans' Land Board with internal auditing functions and oversight. The Commissioner of the General Land Office oversees this internal auditing function on behalf of the Board in his dual role as Chairman of the Board and Commissioner of GLO. While no problems exist with this structure, the current link between the Board and the Internal Auditor should be strengthened by requiring the Board to approve audit plans and review reports that relate to VLB programs.

Recommendation

Change in Statute

2.1 Require the Veterans' Land Board to obtain and approve relevant audit plans and publicly discuss internal audit reports.

Under this recommendation, the Veterans' Land Board would review and approve, during public Board meetings, the VLB-related components of the General Land Office's internal audit plans. The Board would also review and discuss internal audit reports. The GLO Internal Auditor would submit the parts of the audit plan relating to VLB to the Board, as well as report to the Board on the results of audits and follow-up audits that pertain to VLB functions. This recommendation would not affect the current reporting structure for the Internal Audit Division's larger responsibility to the GLO, and the Internal Auditor would continue to report to the Commissioner in his capacity as GLO's administrator.

Although the Internal Auditor would continue to work with VLB administration to address audit-related activities, expanding the Board's role in the audit process would allow the Board to exercise an appropriate level of policy oversight. The recommendation is not intended to require VLB to have a separate internal audit function from GLO, only to increase the Board's involvement in the process.

Fiscal Implication Summary

None of these recommendations would have a net fiscal impact to the State.



Texas Veterinary Medical Diagnostic Laboratory

Agency at a Glance

The Texas Veterinary Medical Diagnostic Laboratory (TVMDL) performs diagnostic testing to identify animal diseases so that the appropriate state or federal regulatory agency may act to avert potential epidemics. The Legislature created TVMDL in 1967 to provide laboratory services that aid in the identification of diseases; perform tests required for shipments of animals; and identify potential epidemics through disease surveillance. Through its diagnostic testing, TVMDL helps provide tests for national and international shipment of animals and their products, and helps protect public health by identifying those diseases transmissible from animals to humans. In addition, the agency's mission is to facilitate the economic growth of the state by providing the necessary drug and residue tests for the pari-mutuel racing industry.

To accomplish its mission, the Texas Veterinary Medical Diagnostic Laboratory:

- ◆ provides diagnostic testing services and disease surveillance;
- ◆ conducts sampling and testing under the Texas Pullorum-Typhoid Program; and
- ◆ performs drug testing of horses and greyhounds participating in pari-mutuel races.

Key Facts

- ◆ **Funding.** In fiscal year 2006, TVMDL operated on a \$13 million budget. It received approximately \$5.4 million from the General Revenue Fund, \$8.2 million in fee revenue from sales of diagnostic services, and about \$300,000 in federal funds. TVMDL's budget for fiscal year 2007 is \$15 million.
- ◆ **Staffing.** The Texas Veterinary Medical Diagnostic Laboratory has 153 employees. A total of 108 employees work in the central laboratory, located in College Station. The remaining 45 employees work in satellite laboratories located in Amarillo, Center, and Gonzales.
- ◆ **Diagnostic Testing and Surveillance.** TVMDL diagnoses animal diseases from specimens submitted by animal owners or veterinarians, and performs surveillance of disease trends in the state. In 2006, the



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agency performed more than 1.1 million tests. TVMDL also performs disease surveillance by tracking diagnostic results to provide critical data to notify veterinarians and animal owners of emerging animal disease trends.

- ◆ **Texas Pullorum-Typhoid Program.** TVMDL administers the Texas Pullorum-Typhoid Program by monitoring flocks to eliminate pullorum-typhoid in Texas poultry. In the past five years, TVMDL tested approximately 8,000 flocks and 350,000 individual birds.
- ◆ **Pari-mutuel Drug Testing.** In accordance with the Texas Racing Act, TVMDL provides pari-mutuel drug testing for the Texas Racing Commission, performing tests for prohibited substances on approximately 20,000 greyhound samples and 8,000 horse samples each year.

Board Members (9)

The Texas A&M University System Board of Regents oversees the Texas Veterinary Medical Diagnostic Laboratory.

John D. White, Chair (Houston)
Bill Jones, Vice Chair (Austin)
Phil Adams (Bryan)
Ida Clement Steen (San Antonio)
Lupe Fraga (Houston)
Wendy Gramm, Ph.D. (Helotes)
Lowry Mays (San Antonio)
Erle Nye (Dallas)
Gene Stallings (Powderly)

Agency Head

Lelve G. Gayle, DVM, Associate Vice Chancellor
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Recommendations

1. Continue TVMDL for 12 years.
2. Clarify TVMDL's powers and duties in statute, and require the agency to provide notice and opportunity for public comment when developing its fee schedule.

Issue 1

Texas Has a Continuing Need for the Texas Veterinary Medical Diagnostic Laboratory.

Key Findings

- ◆ The Texas Veterinary Medical Diagnostic Laboratory performs diagnostic testing for the livestock and poultry industries, animal owners, and veterinarians.
- ◆ TVMDEs testing provides a vital link in the state and federal effort to identify animal diseases.
- ◆ The current organizational structure of TVMDL provides essential coordination of academic research and disease diagnostics.

The Texas Veterinary Medical Diagnostic Laboratory is the only laboratory in Texas that provides complete diagnostic services to animal owners, as well as the commercial livestock industry. In light of TVMDEs role in state and federal program testing and surveillance, as well as its increased role in the event of an animal disease outbreak, the State has an interest in maintaining a facility capable of rapidly diagnosing and reporting potentially harmful diseases. The State also has an interest in having a laboratory like TVMDL perform voluntary diagnostic testing on sick animals. Maintaining TVMDL at Texas A&M University will provide numerous academic and professional resources and ensure coordination between relevant animal health-related programs and departments in the event of an animal health emergency.

Recommendation

Change in Statute

1.1 Continue the Texas Veterinary Medical Diagnostic Laboratory for 12 years.

The recommendation would continue the Texas Veterinary Medical Diagnostic Laboratory as an independent agency responsible for providing diagnostic services and disease surveillance.

Issue 2

TVMDL's Current Statute Is an Inaccurate Reflection of Its Functions, Resulting in Decreased Accountability to the Legislature and the Public.

Key Findings

- ◆ TVMDEs duties have greatly expanded since its inception.
- ◆ The agency's incomplete statutory framework limits full accountability for its performance.
- ◆ TVMDEs process for adjusting fees is too unstructured to provide for needed public involvement.
- ◆ Most state agencies have comprehensive enabling statutes that define their mission and functions.

- ◆ Reflecting TVMDL's current functions in law would ensure that needed diagnostic testing and surveillance continue.

Although TVMDL's role has significantly evolved, the agency lacks statutory direction for its basic mission and most of its functions. The lack of statutory framework makes it difficult for the Legislature and other oversight authorities to evaluate the agency's functions. Also, TVMDL's funding pattern in the General Appropriations Act does not allow the Legislature to accurately assess the agency's functions and duties. Finally, because TVMDL does not have a formal process for review and approval of changes to its fee schedule, the public is unable to provide input when changes are made to fees.

Recommendations

Change in Statute

2.1 Clarify TVMDL's current powers and duties in statute.

This recommendation would establish TVMDL's current mission and functions in law to provide a clearer picture to policymakers, budget writers, and the public as to what the agency does, and help tie specific funding decisions to those functions. Specifically, TVMDL's responsibilities would include:

- ◆ providing laboratory testing to aid in the identification of diseases;
- ◆ providing tests required for intrastate, interstate, or international animal shipments;
- ◆ identifying disease epidemics;
- ◆ generally assisting livestock owners and veterinarians with problems associated with disease identification, diagnosis, and treatment;
- ◆ providing diagnostic services for companion animals and out-of-state clients only when staff, facilities, and supplies are not required for in-state livestock testing;
- ◆ reporting diseases to the Texas Animal Health Commission, Texas Department of State Health Services, and other state or federal agencies as specified in statute or rule;
- ◆ performing other diagnostic services or activities as TVMDL determines necessary to address new and emerging threats; and
- ◆ providing information to veterinarians, animal owners, and the public developed through TVMDL's diagnostic testing efforts, and other news and information the agency deems appropriate.

2.2 Require the agency to provide notice and opportunity for public comment when developing its fee schedule.

Improving the public's ability to participate in TVMDL's fee development process would provide greater accountability for the agency's decisions that affect the public. Specifically, TVMDL would provide 30 days' notice of the proposed fee on its website, as well as in its monthly newsletter. In addition, TVMDL would give all interested persons a reasonable opportunity to submit written comments. Changes to the fee schedule would occur only after appropriate notice was given, and the agency fully considered all public comment received.

Management Action

2.3 TVMDL should work with the Legislative Budget Board to develop a more clearly defined bill pattern in the General Appropriations Act.

Under this recommendation, TVMDL would request that the Legislative Budget Board work with the agency to clarify TVMDL's bill pattern in the General Appropriations Act. Further detail and explanation in TVMDL's bill pattern and additional performance measures beyond output goals would assist the Legislature in accurately assessing and funding TVMDL's duties. TVMDL's federal funding would be appropriately noted, apprising the Legislature of additional funding received to support federal testing and surveillance programs, as well as animal disease emergencies.

Fiscal Implication Summary _____

The recommendations would not have a fiscal impact to the State.

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 80th 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 would 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 grounds for removal of a member exist, 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 80th 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 Sunset Commission did not apply ATBs to three entities under review because the ATBs were either not appropriate, or the Commission recommended the agency for abolishment. These entities are: Office of State-Federal Relations, the Structural Pest Control Board, and the Office of Rural Community Affairs.

**Sunset Across-the-Board
Recommendations
2007**

	<i>Public Membership</i>	<i>Conflicts of Interest</i>	<i>Unbiased Appointments</i>	<i>Governor Designates Presiding Officer</i>	<i>Grounds for Removal</i>	<i>Board Member Training</i>	<i>Separation of Functions</i>	<i>Public Input</i>	<i>Complaint Information</i>	<i>Technology Use</i>	<i>Alternative Dispute Resolution</i>
Alcoholic Beverage Commission, Texas	N	U	U	U	U	A	A	S	M	A	A
Animal Health Commission, Texas	U	U	S	S	U	U	S	S	U	A	A
Arts, Texas Commission on the	M	U	S	S	U	U	S	S	U	A	A
Criminal Justice, Texas Department of	S	S	S	S	S	S	S	S	S	A	A
Correctional Managed Health Care Committee	S	S	S	S	S	S	S	S	M	A	M
Higher Education Tuition Board, Prepaid	N	M	S	N	M	U	S	S	U	A	N
Historical Commission, Texas	U	U	S	S	S	U	S	S	U	A	A
Library and Archives Commission, Texas State	S	U	S	S	U	U	S	S	A	A	A
Nurse Examiners, Board of	U	U	S	S	U	U	S	S	U	A	A
Pardons and Paroles, Board of	S	S	S	S	U	S	S	M	M	A	M
Real Estate Commission, Texas	S	U	S	S	U	A	U	S	U/M	A	A
Risk Management, State Office of	M	A	A	A	U	U	A	A	A	A	A
Teacher Retirement System of Texas	S	U	S	S	U	M	S	S	M	A	M
Veterans Commission, Texas	M	M	U	A	U	A	A	A	A	A	A
Veterans' Land Board	N	M	U	N	U	A	N	S	A	A	M
Veterinary Medical Diagnostic Laboratory, Texas	N/A	M	N/A	N/A	N/A	N/A	N/A	N/A	A	A	A

A – apply N/A – not applicable
M – modify S – already in statute
N – do not apply U – update

IMPLEMENTATION OF 2005
SUNSET LEGISLATION



Implementation of 2005 Sunset Legislation

Summary

The Sunset Act requires the Sunset Commission to review the ways in which agencies implement Sunset bill provisions in the session following their Sunset reviews. This review helps ensure that agencies fully implement changes adopted by the Legislature through the Sunset process.

In 2005, the 79th Legislature passed 18 bills containing changes recommended by the Sunset Commission. These bills contained a total of 275 provisions requiring action by the agencies involved. Sunset staff worked with each agency affected by these provisions to follow up on their efforts to implement the required changes.

Sunset staff found many major changes have been made by these agencies based on directives contained in the Sunset legislation from 2005. Key changes implemented as a part of the Sunset process include the following:

- ◆ creating a new structure for workers' compensation in Texas through the abolishment of the Texas Workers' Compensation Commission, transfer of its functions to the newly created Division of Workers' Compensation in the Department of Insurance, and establishment of an independent Office of Injured Employee Counsel;
- ◆ strengthening of the Public Utility Commission's (PUC) authority to oversee the Electric Reliability Council of Texas (ERCOT), the addition of two public members to the ERCOT Board, and the requirement that ERCOT monitor the electricity market by contracting with a private company selected by PUC;
- ◆ providing stakeholders with meaningful input into the rulemaking process of the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and the Texas State Board of Acupuncture Examiners and improving the boards' investigation processes to better protect the public; and
- ◆ abolishing the Texas State Board of Barber Examiners and the Texas Cosmetology Commission, transferring their functions to the Texas Department of Licensing and Regulation, and reducing the level of regulation of barbers and cosmetologists.

While the majority of statutory provisions have been implemented, the chart, *Implementation Results*, shows that a number of provisions have not yet been fully put into action. Sunset staff identified 28 provisions that agencies are still in progress of implementing. In addition, five provisions are not yet effective, and eight provisions have not been implemented.

The chart on page 175, *Implementation Results by Agency*, shows the progress of each agency in implementing its statutory changes. Detailed information on the status of each statutory provision that is in progress, not yet effective, or

Implementation Results

Status of Provisions	Number	Percentage
Implemented	234	85%
In Progress	30	11%
Not Yet Effective	5	2%
Not Implemented	6	2%
Total	275	100%

not implemented, is provided in the following material. In addition to statutory changes, the Sunset Commission adopted 36 management recommendations for improvements to agency operations. The State Auditor evaluated the implementation of these management recommendations. The Auditor's findings are contained in SAO Report number 06-057, *A Review of State Agencies' Implementation of Sunset Advisory Commission Management Actions*, which can be obtained at www.sao.state.tx.us.

Implementation Results by Agency

Agency	Bill Number	Changes Required	Changes Implemented	In Progress	Not Yet Effective	Not Implemented
Barber Examiners, Texas State Board of Cosmetology Commission, Texas	SB 411	26	26			
Chiropractic Examiners, Texas Board of	HB 972	12	6	6		
Counselors, Texas State Board of Examiners of Professional	HB 1283	12	11		1	
Dietitians, Texas State Board of Examiners of	HB 1155	7	6		1	
Guaranteed Student Loan Corporation, Texas	HB 2274	4	3	1		
Marriage and Family Therapists, Texas State Board of Examiners of	HB 1413	8	7		1	
Medical Examiners, Texas State Board of Physician Assistant Examiners, Texas State Board of Acupuncture Examiners, Texas State Board of	SB 419	38	35	3		
Midwifery Board, Texas	HB 1535	13	13			
Optometry Board, Texas	HB 1025	15	15			
Perfusionists, Texas State Board of Examiners of	SB 403	14	13		1	
Pharmacy, Texas State Board of	SB 410	19	18			1
Podiatric Medical Examiners, Texas State Board of	SB 402	12	11			1
Psychologists, Texas State Board of Examiners of	HB 1015	13	13			
Public Utility Commission of Texas	SB 408	16	14	2		
Public Utility Counsel, Office of	SB 409	5	5			
Social Worker Examiners, Texas State Board of	SB 415	9	8		1	
Veterinary Medical Examiners, Texas State Board of	SB 407	11	9	2		
Workers' Compensation Commission, Texas	HB 7	41	21	16		4
Totals	18	275	234	30	5	6

Texas Board of Chiropractic Examiners

HB 972

House Bill 972, as adopted by the 79th Legislature, continued the Texas Board of Chiropractic Examiners for 12 years. The legislation included a total of 12 changes requiring action. The following chart summarizes six provisions that are still in progress.

Item	Bill Provisions	Implementation Status
1	Adds standard Sunset language requiring Board members to complete training before assuming their duties. Provides that the changes in law only apply to a member appointed on or after September 1, 2005.	<i>In Progress</i> – The agency is creating a formal policy on training future board members. The Board will consider the new policy during either the February or May 2007 meeting, pending staff’s finalization of the proposed policy.
2	Requires the Board to take a strong stance against fraud and to adopt rules to prevent fraud in the practice of chiropractic no later than Jan 1, 2006. Requires the Board and the Texas Department of Insurance to cooperate on relevant cases of insurance fraud for complaints filed on or after the bill’s effective date, Sept 1, 2005. Requires the Board to report information on joint fraud cases with TDI to the Legislature annually.	<i>In Progress</i> – Fraud prevention rules adopted by the Board became effective December 2006. However, the rules do not include a formal process for sharing insurance fraud information among the agency, the Texas Department of Insurance (TDI), and TDI’s Division of Workers’ Compensation. Currently, the Board shares information with TDI’s fraud prevention division through an informal process. A memorandum of understanding between the Chiropractic Board and TDI to formalize the exchange of information on fraud complaints is being drafted and may be considered by the Board during its February 2007 meeting.
3	Adds standard Sunset language requiring the Board to implement a policy for the effective use of technology in its delivery of services and provision of information to the public.	<i>In Progress</i> – The Board has embarked on an approach to use technology to deliver online services to the public and will consider adopting a specific policy statement at the February 2007 board meeting. The Board also has hired a system analyst to review agency processes in preparation for creating a new database. The database should be functional by September 1, 2007.
4	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 Board does not have a formal policy on negotiated rulemaking, but has begun using early stakeholder involvement to ensure that rulemaking is open and fair.

Texas Board of Chiropractic Examiners

HB 972 (Continued)

Item	Bill Provisions	Implementation Status
5	<p>Provides that peer review committee members serve staggered terms of three years and receive training. Requires the Board to adopt rules no later than Jan 1, 2006 that define eligibility requirements to serve on peer review committees, including a clean and acceptable disciplinary and utilization record. Requires the Board to appoint members of the local and executive peer review committees on or before January 1, 2006. Authorizes the local peer review committee members to assist the Board in investigating complaints that require a standard of care review, creating immunity from civil liability, for complaints filed with the Board on or after the bill's effective date, Sept 1, 2005. Requires the peer review committees to report information on disputes mediated to the Board. Requires the Board to post information about the peer review committees on its website. Bases delinquent license renewal fees on the Board's normally required renewal fee (instead of the exam fee). Specifies that the changes only apply to a license applied for on or after September 1, 2007.</p>	<p><i>In Progress</i> – The Board has adopted rules outlining the process for establishing peer review committees. Currently, the Board is determining the number of peer review committees needed and procedures on how to solicit and select members. This process should be finalized by the May 2007 Board meeting.</p>
6	<p>Requires TDI to share with the Board information it collects on medical malpractice settlements and requires insurers that have filed expert witness reports in a malpractice action against a chiropractor to submit these reports to the Board.</p>	<p><i>In Progress</i> – The Board has not established a formal procedure for receiving malpractice settlement information from TDI. The working relationship between TDI and the Chiropractic Board is being reestablished after a complete turnover in executive and enforcement staff at the Chiropractic Board.</p>

Texas State Board of Examiners of Professional Counselors

HB 1283

House Bill 1283, as adopted by the 79th Legislature, continued the Texas State Board of Examiners of Professional Counselors for 12 years. The legislation included a total of 12 changes requiring action. The following chart summarizes one provision that is not yet effective.

Item	Bill Provision	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Specifies that changes in license renewal fees apply only to renewals on or after September 1, 2007.	Not Yet Effective – The Board will propose and adopt rules relating to late renewal fees by the provision’s effective date of September 1, 2007.

Texas State Board of Examiners of Dietitians

HB 1155

House Bill 1155, as adopted by the 79th Legislature, continued the Texas State Board of Examiners of Dietitians for 12 years. The legislation included a total of seven changes requiring action. The following chart summarizes one provision that is not yet effective.

Item	Bill Provision	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Specifies that changes in license renewal fees apply only to renewals on or after September 1, 2007.	Not Yet Effective – The Board expects to adopt the necessary rules by the provision’s effective date of September 1, 2007.

Texas Guaranteed Student Loan Corporation

HB 2274

House Bill 2274, as adopted by the 79th Legislature, continued the Texas Guaranteed Student Loan Corporation (TG) for 12 years. The legislation included a total of four changes requiring action. The following chart summarizes one provision that is in progress.

Item	Bill Provision	Implementation Status
1	Requires state agencies that issue professional and occupational licenses to provide TG with lists of their licensees for TG to use in identifying individuals with defaulted student loans, instead of requiring TG to provide lists of defaulted borrowers to the licensing agencies. Repeals language no longer applicable under this new process.	In Progress – TG has identified and notified all known state agencies that issue professional and occupational licenses in an effort to identify individuals with defaulted student loans. Communications with TEA's Educator Certification Board and the Texas Department of Agriculture are ongoing. Responses to information requests from the Appraiser Licensing and Certification Board of the Texas Real Estate Commission, the Savings & Loan Department, and the Board of Professional Geoscientists are outstanding. With cooperation by these agencies, all data is scheduled to be exchanged with TG by June 2007.

Texas State Board of Examiners of Marriage and Family Therapists

HB 1413

House Bill 1413, as adopted by the 79th Legislature, continued the Texas State Board of Examiners of Marriage and Family Therapists for 12 years. The legislation included a total of eight changes requiring action. The following chart summarizes one provision that is not yet effective.

Item	Bill Provision	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Specifies that changes in license renewal fees apply only to renewals on or after September 1, 2007.	Not Yet Effective – The Board will propose and adopt rules relating to the recalculation of late renewal fees to become effective by September 1, 2007.

**Texas State Board of Medical Examiners
Texas State Board of Physician Assistant Examiners
Texas State Board of Acupuncture Examiners
SB 419**

Senate Bill 419, as adopted by the 79th Legislature, continued the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners for 12 years. The bill also renamed the Texas State Board of Medical Examiners to the Texas Medical Board and the Texas State Board of Physician Assistant Examiners to the Physician Assistant Board. The legislation included a total of 38 changes requiring action. The following chart summarizes three provisions that are still in progress.

Item	Bill Provisions	Implementation Status
1	Authorizes the Medical Board to issue a limited license for the practice of administrative medicine. Requires an applicant to meet the same licensing standards as other applicants. Requires the Board to adopt rules regarding the eligibility for the license, scope of the license, fees, and other renewal requirements. Requires an administrative license holder to prove clinical competence if the license holder seeks to practice medicine.	In Progress – Following an extensive process working with various stakeholders to draft rules, the Board heard public comments on proposed rules relating to administrative medicine licensure at its December 2006 Board meeting. Following the meeting, the rules were pulled for further research regarding the definitions of “determination of medical necessity” and “practice of medicine,” and regarding potential conflict with federal statute. The Board expects to take public comments on the revised rules in April 2007.
2	Requires the boards to develop guidelines, in conjunction with stakeholders, for evaluating applicants’ mental or physical health, alcohol and substance abuse, or professional behavior problems. Requires the boards to refer applicants or licensees to the most appropriate medical specialist for evaluation.	In Progress – The agency established a stakeholder working group to discuss required guidelines for all three professions. The agency expects to complete the guidelines in spring 2007.
3	Requires the Acupuncture Board to establish guidelines for preferred providers and content for continuing education courses. Requires the Board to delegate to staff authority to approve continuing education courses that clearly meet the guidelines, and refer courses that do not clearly meet guidelines to the Board for approval.	In Progress – The Board is in the early stages of developing guidelines for preferred providers and content for continuing education courses, and established an ad hoc committee during its October 2006 Board meeting to determine evaluation criteria. Because the Board has not determined the criteria, agency staff are not approving courses as required by the bill.

Texas State Board of Examiners of Perfusionists

SB 403

Senate Bill 403, as adopted by the 79th Legislature, abolished the Texas State Board of Examiners of Perfusionists, replacing it with an advisory committee to the Department of State Health Services (DSHS). The legislation included a total of 14 changes requiring action by DSHS. The following chart summarizes one provision that is not yet effective.

Item	Bill Provision	Implementation Status
1	Requires delinquent license renewal fees to be based on the normally required renewal fee. Also requires perfusionists who are delinquent for more than one year to reapply for licensure.	Not Yet Effective – Provisions related to late renewal fees will be effective on September 1, 2007.

Texas State Board of Pharmacy

SB 410

Senate Bill 410, as adopted by the 79th Legislature, continued the Texas State Board of Pharmacy for 12 years. The legislation included a total of 19 changes requiring action. The following chart summarizes one provision that has not yet been implemented.

Item	Bill Provision	Implementation Status
1	<p>Establishes legislative findings regarding the high cost of prescription drugs and their effect on residents of this state. Requires the Pharmacy Board to authorize at least one, but not more than 10, Canadian pharmacies to dispense prescriptions under a prescription drug order to residents of Texas. Allows the Board to set fees, and requires the Board to establish a website to provide information about Canadian pharmacies. Provides for the Pharmacy Board at least annually to conduct random inspections of Canadian pharmacies to ensure compliance with safety standards and other requirements of the Pharmacy Act and Board rules. Allows for the Board to enter into an agreement with another state to provide these inspections, other than the initial inspection of the pharmacy.</p> <p>Prohibits a pharmacy located in Canada from shipping or delivering prescription drugs under a prescription drug order to a resident of this state unless the pharmacy is designated by the Board. Requires Canadian pharmacies to meet Texas licensing standards to pass inspection by the Board. Establishes additional requirements on Canadian pharmacies to qualify for designation by the Board. Requires a Board representative to visit the pharmacy's facilities and review its compliance with Board requirements and safety standards before a Canadian pharmacy may be designated to dispense drugs to residents in this state.</p> <p>Allows a Texas pharmacy to order for a consumer a prescription drug from a Canadian pharmacy designated to dispense prescription drugs.</p> <p>Requires a Canadian designated to dispense prescription drugs to do so only under a lawful order of a practitioner licensed in the United States and provides other requirements for prescribing drugs. Requires these Canadian pharmacies to provide periodic reports on each complaint received from a Texas consumer and</p>	<p>Not Implemented – The Board voted to not implement the legislation based on an Attorney General's opinion (GA-0384). The opinion held that designating certain Canadian pharmacies, promoting them on a website, and expressly permitting Texas consumers to import prescription drugs that cannot be imported under federal law would be a violation of the federal Food, Drug, and Cosmetic Act.</p>

Texas State Board of Pharmacy

SB 410 (Continued)

Item	Bill Provision	Implementation Status
1 (cont.)	<p>to maintain a current price list for prescription drugs and guarantee those prices for at least 30 days.</p> <p>Requires the Board, not later than the 30th day after the effective date of this Act, to adopt initial rules necessary to implement changes regarding Canadian pharmacies in the manner provided by law for adoption of emergency rules. Requires the Board to adopt rules necessary to implement changes regarding Canadian pharmacies not later than January 1, 2006. Provides for the requirements on Canadian pharmacies designated to dispense drugs in this state to take effect March 1, 2006.</p>	

Texas State Board of Podiatric Medical Examiners

SB 402

Senate Bill 402, as adopted by the 79th Legislature, continued the Texas State Board of Podiatric Medical Examiners for 12 years. The legislation included a total of 12 changes requiring action. The following chart summarizes one provision that the Board has not implemented.

Item	Bill Provision	Implementation Status
1	Simplifies the licensing process for active podiatrists from out of state by eliminating the requirement that they pass a clinical skills exam if it was not required of Texas licensees at the time the out-of-state licensee became licensed.	Not Implemented – Because of unclear statutory language, the Board has not implemented the recommendation. The Board plans to seek a sponsor for legislation to correct the ambiguity during the 80th Legislature.

Public Utility Commission of Texas

SB 408

Senate Bill 408, as adopted by the 79th Legislature, continued the Public Utility Commission of Texas (PUC) for 12 years. The legislation included a total of 16 changes requiring action. The following chart summarizes two provisions that are in progress.

Item	Bill Provisions	Implementation Status
1	Clarifies PUC's complete oversight authority over all facets of the Electric Reliability Council of Texas (ERCOT) finances, budget, and operations.	In Progress – PUC has initiated a rulemaking project related to decertification of an independent organization.
2	Expands 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. Updates obsolete reference to Department of Human Services.	In Progress – Although PUC did not receive funding for the program, the Commission has initiated a rulemaking project to prepare for the program's possible implementation.

Texas State Board of Social Worker Examiners

SB 415

Senate Bill 415, as adopted by the 79th Legislature, continued the Texas State Board of Social Worker Examiners for 12 years. The legislation included a total of nine changes requiring action. The following chart summarizes one provision that is not yet effective.

Item	Bill Provision	Implementation Status
1	Requires the Board to base delinquent license renewal fees on the normally required renewal fee instead of the examination fee. Because of potential revenue loss, the provision requires the Board to enact this change at such time that the new renewal fee would result in an increased late fee.	Not Yet Effective – The agency is monitoring the license renewal fee and will implement the statutory provision when the new renewal fee will not result in a revenue loss as provided by the statute.

Texas State Board of Veterinary Medical Examiners

SB 407

Senate Bill 407, as adopted by the 79th Legislature, continued the Texas State Board of Veterinary Medical Examiners for 12 years. The legislation included a total of 11 changes requiring action. The following chart summarizes two provisions that are still in progress.

Item	Bill Provisions	Implementation Status
1	Requires the Board to monitor licensees' compliance with continuing education (CE) requirements through randomly conducted audits of license renewals. Requires a license holder who is audited to provide proof of CE course completion. Prohibits license holders from submitting pre-signed CE forms.	<i>In Progress</i> – The Board adopted revisions to rules on continuing education and the required documentation to reflect the bill's provisions. The Board currently monitors licensee compliance through desk audits conducted by the agency's investigative staff. Due to staffing constraints, the agency is unable to conduct monitoring through the license renewal process. The agency is working to incorporate this change into the new online renewal program being developed.
2	Authorizes the Board to impose administrative penalties for drug-related felony convictions and to set the amount of the penalty to match the seriousness of the offense. Repeals the requirement that the Board must revoke a license if the license holder has been convicted of a drug-related felony.	<i>In Progress</i> – The agency will propose amendments to its rules on drug-related felonies at its February 2007 Board meeting.

Texas Workers' Compensation Commission

HB 7

House Bill 7, as adopted by the 79th Legislature, abolished the Texas Workers' Compensation Commission, and transferred the duties of the Commission to the Division of Workers' Compensation of the Texas Department of Insurance and the newly created Office of Injured Employee Counsel. The bill established a 2009 Sunset date for the Division and moved the Sunset date of the Department from 2007 to 2009. The legislation included a total of 41 changes requiring action. The following chart summarizes 16 provisions that are still in progress, and four that have not been implemented.

Item	Bill Provisions	Implementation Status
1	Encourages the use of single points of contact for injured workers at the Division and with the carrier.	In Progress – Carriers are required to establish single points of contact; however, the Texas Department of Insurance's Division of Workers' Compensation (Division) has not checked carrier compliance with this provision. The Division implemented a single point of contact model in its 24 field offices. Work remains to establish a single point of contact system between the Division and the Office of Injured Employee Counsel (OIEC).
2	<p>a) Adds explicit language to the workers' compensation statute detailing nine system wide goals and clarifies that the Division may adopt any rules necessary and appropriate to implement its powers and duties under the Workers' Compensation Act.</p> <p>b) Requires the Division to assess its effectiveness in meeting the statutory goals and identify and report all internal policy and statutory changes needed to address deficiencies. Specifies that the goals and strategies do not create a cause of action or establish an entitlement to benefits not otherwise provided for in statute.</p>	<p>In Progress – The Division has a strategic management plan that details the major goals of the system. The plan informs all policy, program, and rule development, and will be updated as needed. The Division has begun to collect data on the system's effectiveness, but it is too early for meaningful analysis. Future reports to the Legislature will outline deficiencies in the system as well as statutory and policy changes needed to address these deficiencies.</p> <p>In December 2006, TDI issued two reports to the 80th Legislature. <i>Biennial Report of the Texas Department of Insurance to the 80th Legislature</i> provides an overview of the workers' compensation system. The report entitled <i>The Effects of the 2005 Legislative Reforms on the Affordability and Availability of Workers' Compensation Insurance</i>, presents preliminary data on the impact of House Bill 7 reforms.</p>
3	Requires the Division to ensure all workers' compensation forms and explanatory materials are prepared in plain language and in Spanish where appropriate.	In Progress – All high priority documents have been translated into Spanish and prepared in plain English. The Division will continue to translate and update remaining forms and letters.
4	a) Requires the Division to implement a workers' compensation regulatory approach that emphasizes overall compliance, rewards performance, and efficiently handles complaints.	In Progress – The Division developed a risk-based complaint process that allows staff to process telephonic and web-based complaints; however, the Division has not yet adopted rules to govern the process.

Texas Workers' Compensation Commission

HB 7 (Continued)

Item	Bill Provisions	Implementation Status
4 (cont.)	<p>(b) Requires the Division to regularly assess the performance of carriers and medical providers against key regulatory goals to identify entities needing enhanced regulatory oversight and create regulatory incentives to promote greater overall compliance and reward performance.</p> <p>(c) Requires the Division to establish rules that govern the filing of a complaint against a regulated entity, and make that information available on its website.</p> <p>(d) Requires the Division to prioritize its investigations of complaints using risk-based criteria.</p> <p>(e) Authorizes the Department to conduct audits of carriers' accident prevention services.</p>	<p>The Division developed a compliance audit plan to steer the performance review process. Similar to the complaint process, the Division uses a risk-based approach to schedule audits. The Division anticipates initiating or completing 80 audits in fiscal year 2007.</p> <p>The Division developed performance measures for system participants but has not yet collected data for meaningful evaluation or risk assessment.</p> <p>The Division intends to develop incentives to reward performance following evaluation of system participants.</p>
5	<p>Clarifies that the Division may impose sanctions against any person regulated by the Division and that sanctions are binding pending appeal.</p>	<p>In Progress – The Division has partially implemented a new enforcement process. In December 2006, the Division issued a Commissioner's Bulletin to all regulated system participants that described changes in the enforcement process. The Division does not intend to adopt rules to govern the enforcement process.</p>
6	<p>(a) Establishes a system of workers' compensation health-care networks. Authorizes insurers, certified self-insured employers, and public entities to establish or contract with networks, and authorizes employers to elect to participate in a network offered by their insurer. Injured workers must use a network if their employer has contracted for one, and choose a network treating doctor to coordinate their medical care.</p> <p>(b) Allows injured workers to receive treatment from their PCP if the employee is in an HMO and allows employees with certain chronic and life-threatening conditions to use a nonprimary care specialist as their treating doctor.</p> <p>(c) Authorizes networks to designate the specialties of providers who may serve as network treating doctors.</p>	<p>In Progress – As of December 1, 2006, the Division has certified 17 workers' compensation health-care networks.</p> <p>All certified networks are required to meet the regulations and service delivery standards outlined in statute, including the standards outlined in sections 6(a) through 6(d) of this chart.</p> <p>The Division is still engaged in rulemaking, or anticipating rule proposal, relating to certain standards such as return to work guidelines, complaint resolution, treatment protocols, and the Division's enforcement process. The Division has developed performance measures and audit guidelines based on required standards.</p> <p>The Commissioner has not adopted rules identifying underserved areas or modifying requirements in those areas. The Division will review this issue concurrent with the revisions to medical fee guidelines scheduled for 2007.</p>

Texas Workers' Compensation Commission

HB 7 (Continued)

Item	Bill Provisions	Implementation Status
6 (cont.)	<p>(d) Requires TDI to certify networks meet certain regulations and service delivery standards outlined in the Insurance Code, including requirements for notices, access to care, contracts, electric billing, use of evidence-based treatment and return to work guidelines, and treatment protocols, monitoring and quality improvement plans, internal complaint resolution, interaction with providers, and utilization and retrospective review of medical necessity of care. Provides oversight, enforcement and sanction authority to TDI over networks and management contractors.</p> <p>(e) For both network and non-network areas, establishes specific prompt payment standards and authorizes the Commissioner to adopt alternative standards for underserved areas.</p>	
7	<p>(a) Establishes specific duties relating to research and professional studies of the Workers' Compensation Research and Evaluation Group.</p> <p>(b) Requires REG to evaluate the impact of health-care networks on the cost and quality of medical care in the workers' compensation system, including the frequency, duration and outcomes of dispute and complaint resolution, and report on its findings every other year beginning December 1, 2008.</p> <p>(c) Requires REG to prepare and publish annually a proposed workers' compensation research agenda. Requires the Commissioner to accept public comment and, if requested, hold a public hearing on the research agenda. Exempts the group's working papers from disclosure requirements.</p>	<p>In Progress – The Workers' Compensation Research and Evaluation Group (REG) issued research agendas for fiscal years 2006 and 2007.</p> <p>REG has begun to collect a variety of different types of data, including the data outlined in statute, to assist in evaluating the impact of health-care networks. Specifically, REG will use data to analyze the extent, reach, and impact of existing networks. To date, sufficient data is not available to determine the percentage of covered workers, or any outcome information.</p> <p>REG plans to publish reports on its findings beginning in December 2008.</p>
8	<p>(a) Requires the Commissioner of Workers' Compensation, in coordination with the Commissioner of Insurance, to adopt rules requiring insurance carriers to accept medical bills from providers electronically no later than January 1, 2006. Requires the Commissioner to adopt rules outlining criteria for granting exceptions to carriers and providers unable to comply with the electronic billing requirements.</p> <p>(b) Authorizes the Commissioner to adopt rules regarding electronic payments by carriers to providers on or after January 1, 2008.</p>	<p>In Progress – The Division has adopted rules on electronic billing, although the rules are not effective until January 1, 2008. The delay in implementation is due to technical problems with electronic billing systems.</p> <p>The Division anticipates adopting electronic payment rules on or after January 1, 2008.</p>

Texas Workers' Compensation Commission

HB 7 (Continued)

Item	Bill Provisions	Implementation Status
9	<p>(a) Requires the Commissioner of Workers' Compensation to adopt a closed formulary using generic pharmaceutical medications and appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor; and</p> <p>(b) adopt a fee schedule for pharmacy benefits and services and for carriers and networks to reimburse using the Division developed schedule or at rates negotiated in advance.</p>	<p>In Progress – The Division is in the process of contracting with a consultant to create the pharmaceutical formulary, and anticipates completion of the formulary in Spring 2007. The Division plans to adopt rules related to the formulary and fee reimbursement following the release of the formulary.</p>
10	<p>Requires the Division to study and report to the Legislature whether to require accreditation of interdisciplinary pain rehabilitation programs or treatment facilities that provide services to injured employees.</p>	<p>In Progress – The Division is developing a report to the Legislature on accreditation of pain rehabilitation programs.</p>
11	<p>Requires the Commissioner to adopt rules setting compliance standards for Supplemental Income Benefits (SIB) recipients work search requirements and to define the level of activity required to meet these standards, including defining the number of job applications necessary to meet the requirements and taking into consideration the availability of employment options. Requires SIB recipients to demonstrate active participation with TWC, DARS or private vocational rehabilitation programs, or actively search for work documented by the number of job applications. Eliminates current standard of good faith effort.</p>	<p>Not Implemented – The Division anticipates adoption of SIB work search rules in mid 2007. Due to a large volume of statutory changes requiring rule development, including varying effective dates, the Division set a timeline for rulemaking that prioritized certain key elements of House Bill 7. The Division intends to propose and adopt all remaining rules in 2007 and 2008.</p>
12	<p>(a) Requires the Division to establish protocols for injured workers to obtain workforce and occupational training where appropriate.</p> <p>(b) Requires the Division, where appropriate, to work with TWC, DARS, and private vocational rehabilitation programs to identify and attempt to remove barriers to successful employment income benefit 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 Division with income benefit recipients. Expands requirement that the Department refer</p>	<p>In Progress – The Division has memoranda of agreement with the Department of Assistive and Rehabilitative Services (DARS) and the Texas Workforce Commission (TWC). The Division is working with DARS to develop improved referral processes. DARS, Division, and Office of Injured Employee Counsel staffs have received training on making appropriate referrals. Injured employees may be referred to DARS and TWC, as appropriate.</p> <p>The Division expects to contact injured employees in the future to determine referral outcomes.</p>

Texas Workers' Compensation Commission

HB 7 (Continued)

Item	Bill Provisions	Implementation Status
12 (cont.)	<p>any income benefit recipient in need of vocational rehabilitation to DARS, rather than just those persons receiving SIBs.</p> <p>(c) Requires the Division and DARS to report to the Legislature on actions taken to improve access to and the effectiveness of vocational rehabilitation programs for injured workers.</p>	DARS and the Division submitted an abbreviated report to the Legislature in September 2006. However, no data is available to determine the effectiveness of the Division's and DARS' vocational rehabilitation efforts.
13	Requires the Division to monitor Independent Review Organizations (IROs) and evaluate the compliance of the IROs with the statute and with rules relating to medical policies, fee guidelines, and impairment ratings, as well as the quality and timeliness of IRO decisions.	Not Implemented – The Division is developing procedures for referring possible violations to the Health and Workers' Compensation Network Certification and Quality Assurance Division. The Division's Quality Monitoring and Enforcement Team is developing IRO review criteria. The Office of the Medical Advisor plans to evaluate the 13 licensed IROs in the future.
14	Abolishes the Medical Advisory Committee. Expands the Medical Advisor duties to make recommendations on policies, monitor the quality and timeliness of decisions by designated doctors and IROs, and impose sanctions regarding those decisions. Expands Medical Quality Review Panel authority to review IROs.	In Progress – The Commissioner of Workers' Compensation has expanded the Medical Advisor's job description to include elements required in H.B. 7. However, the Medical Advisor has not yet developed enforcement or sanction standards for IROs or doctors. In addition, the Medical Advisor is not consistently monitoring quality and timeliness of decisions by doctors and IROs because data is not yet available.
15	<p>(a) Requires the Commissioner of Workers' Compensation to adopt fee guidelines using one or more conversion factors and exempt carriers, networks, and providers from using the fee guidelines if they have a fee schedule established through a contract.</p> <p>(b) Requires the Commissioner of Insurance to adopt evidence-based and outcome focused treatment and return to work guidelines and authorizes the Commissioner to adopt individual treatment protocols. Authorizes the Commissioner to adopt rules providing for a disability management and treatment planning process aimed to improve return to work outcomes for injured workers.</p>	<p>In Progress – The Division formed a stakeholder working group to aid in developing hospital inpatient and outpatient fee guidelines. The Division is collecting additional cost and reimbursement data to assist this process. The Division is working to expedite stakeholder involvement and anticipates rule proposal in Summer 2007.</p> <p>After adopting inpatient fee guidelines, the Division plans to begin work on outpatient, professional fee, and pharmacy guidelines.</p> <p>The Division has adopted disability management rules on return to work, treatment guidelines, and disability guidelines. These rules will be effective May 1, 2007.</p>
16	Requires the Division to review reimbursement rates and accessibility issues for surgically implanted devices.	Not Implemented – The Division anticipates researching these issues in 2007.

Texas Workers' Compensation Commission

HB 7 (Continued)

Item	Bill Provisions	Implementation Status
17	Requires carriers to evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as is practicable to determine if skilled case management is necessary for the injured employee's case. As necessary, requires carriers to use case managers who are appropriately licensed to practice in Texas to carry out the evaluations and prohibits claims adjusters from providing case management services.	Not Implemented – The Division anticipates adopting rules related to case management in summer 2007.
18	Increases the maximum administrative penalty to \$25,000 and eliminates the multiple “classes” of violations and associated administrative penalties. Eliminates the “willfully and intentionally” standard for certain violations by attorneys, carriers, health-care providers.	In Progress – The Division is instituting a new enforcement process with maximum penalties of \$25,000. The enforcement process is still in development and the Division has not adopted rules to govern the process.
19	Requires TDI, as part of its research duties, to prepare report cards on quality, costs, provider availability, customer satisfaction and other factors of workers' compensation networks.	In Progress – The REG drafted measures for use in the workers' compensation network report cards. The Division expects to issue the first report card by September 2007, in accordance with the 18-month schedule established in statute.
20	(a) Requires the Commissioner to determine the impact of H.B. 7 on workers' compensation rates and premiums, and authorizes the Commissioner to order rate reductions or require the modification of use of individual risk variations. This provision establishes oversight by the Commissioner of Workers' Compensation for premiums and rates, and provides for a public hearing on rates. (b) Requires carriers to file rating information with the Commissioner before the hearing.	In Progress – The REG issued data calls to collect preliminary data on the functioning of the workers' compensation system. Additional data calls will be issued semiannually and will provide the basis for actuarial projections of cost savings and the impact on premiums. The Commissioner has not called a hearing on rates but intends to call a hearing, as required by statute, before December 1, 2008. The Division requires insurers to provide data on premium credits granted for employer network participation. The Division has previously requested rates filings and will continue to request filings in the future.

INFORMATION ITEMS



Study of Health Benefit Plan Coverage for Brain Injuries

Summary

In 2001, the Legislature enacted House Bill 1676, which mandated certain health insurance benefits for rehabilitative testing and treatment related to acquired brain injury. Acquired brain injuries (ABIs) are acute injuries to the tissues of the brain that happen after birth that may be caused by trauma to the head, lack of oxygen to the brain, stroke, aneurysm, infectious disease, and toxic exposure. ABIs may result in temporary or permanent cognitive, physical and behavioral impairments. People with moderate or severe brain injuries may require weeks, months, or years of rehabilitative therapies to regain previous levels of functioning or learn ways to compensate for impairments. Before passage of H.B. 1676, insurers and HMOs offered varying levels of coverage for rehabilitative therapies related to acquired brain injury.

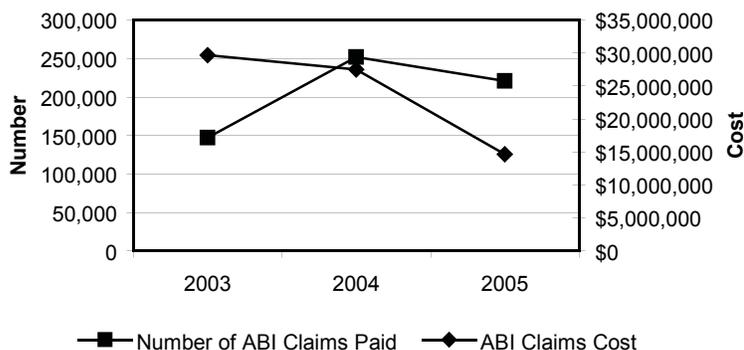


When it passed a bill in 2001 mandating health insurance benefits for brain injuries, the Legislature also directed the Sunset Commission to study the impact.

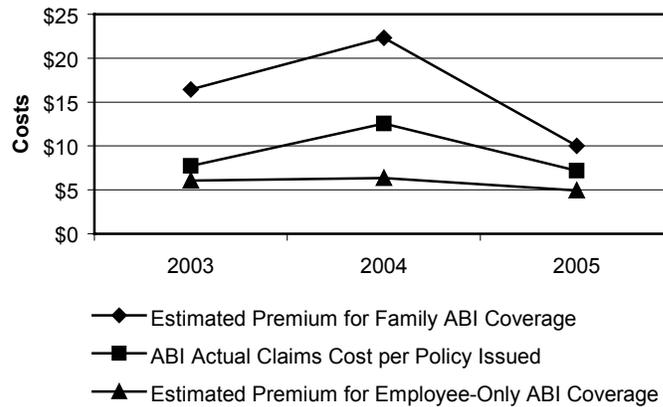
H.B. 1676 also required the Texas Sunset Advisory Commission to study the ABI mandated benefit and report to the Legislature the extent to which covered health insurance enrollees use the mandated benefit and its impact on the cost of health insurance. The bill provided for the Texas Department of Insurance (TDI) to cooperate with the Sunset Commission in conducting this study. TDI's data shows that the mandated benefit for ABI testing and treatment has resulted in additional claims costs and premium costs for group and individual insurance plans in Texas; however, claims costs associated with the ABI mandated benefit are very small – less than one-fifth of one percent of total claims paid by insurers in 2005.

From 2003 to 2005 the number of ABI mandated benefit claims increased significantly while ABI claims costs decreased by half. These trends largely reflect carriers' improved ability to identify and more accurately report on claim costs from ABI mandated benefits. Actual claims cost per policy and estimated premium cost per policy have also declined. An overview of utilization and costs data for this mandated benefit provided under group health insurance plans is shown in the charts, *Number of ABI Claims Paid and Claims Costs* and *ABI Claims and Premium Costs Per Policy*. The following material provides a more complete discussion of brain injuries and the impact of the mandated benefit on health insurance costs.

Number of ABI Claims Paid and Claims Costs



ABI Claims and Premium Costs Per Policy



Brain Injury

Brain injuries are acute injuries to the tissues of the brain that temporarily or permanently impair brain function. Acquired brain injury is a brain injury that occurs after birth which is not hereditary or degenerative. ABI may result in mild to severe impairments of cognition, communication, memory, concentration, reasoning, abstract thinking, physical functions, psychosocial behavior, and information processing. A list of symptoms caused by ABI is shown in the table, *Symptoms of Acquired Brain Injury*. Major causes of ABI are trauma to the head or neck (traumatic brain injury), lack of oxygen or

Symptoms of Acquired Brain Injury

Physical	Cognitive	Emotional/Behavioral
<ul style="list-style-type: none"> ◆ Hemiplegia or hemiparesis (paralysis or weakness of one side of the body) ◆ Spasticity ◆ Tremors ◆ Hearing Loss ◆ Seizures ◆ Double vision ◆ Visual field cuts ◆ Changes in sensory perception ◆ Fatigue ◆ Ataxia (problems with balance or coordination) ◆ Dysphagia (problems swallowing) ◆ Dysarthria (problems with articulation) ◆ Autonomic dysfunction (dysregulation of the stress reaction) ◆ Apraxia (inability to carry out purposeful movement) 	<ul style="list-style-type: none"> ◆ Level of consciousness ◆ Attention/concentration ◆ Memory ◆ Expressive language (spoken or written) ◆ Receptive language (understanding what is said or written) ◆ Constructional ability (copying 2 or 3 dimensional designs) ◆ Orientation (knowing who, what, when, where & why) ◆ Abstract thought ◆ Planning ◆ Organizing ◆ Insight ◆ Generalization ◆ Flexibility ◆ Problems solving ◆ Mental processing speed ◆ Academic skills ◆ Right-left orientation 	<ul style="list-style-type: none"> ◆ Agitation (excessive restlessness) ◆ Lack of cooperation ◆ Low frustration tolerance ◆ Aggression, anger, or hostility ◆ Emotional lability (inappropriate fluctuations in mood) ◆ Distortions of reality ◆ Obsessions/compulsions ◆ Loose associations ◆ Tangentiality (answers to questions are obliquely related or unrelated) ◆ Egocentrism ◆ Decreased social skills ◆ Lack initiation/motivation ◆ Perseveration (repeating an idea or action over and over) ◆ Disinhibition ◆ Impulsivity

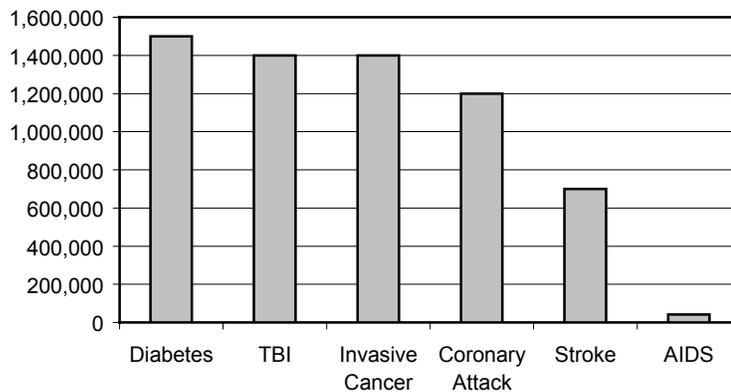
blood flow to the brain, stroke, aneurysm, brain tumors, infectious disease, metabolic disorders, toxic exposure, and intracranial surgery.¹

The Centers for Disease Control and Prevention (CDC) does not track data on the overall incidence of ABI, but does collect information on traumatic brain injury (TBI), which is the type of acquired brain injury most likely to cause death or permanent disability,² and which can thus serve as a suitable surrogate to provide background information regarding the incidence, causes and treatment of brain injury. The CDC defines TBI as, “a blow or jolt to the head or a penetrating head injury that disrupts the normal function of the brain.”³ Concussions are a mild form of TBI. Mild TBIs generally result in brief, if any, loss of consciousness and can result in symptoms including headache, fatigue, balance problems, irritability, decreased concentration, memory problems, and nausea. Moderate TBIs result in a loss of consciousness that lasts up to a few hours and temporary or permanent cognitive, physical, and/or behavioral impairments. Severe TBIs are characterized by a coma that can last days, weeks, or months and generally permanent cognitive, physical, and/or behavioral impairments.⁴

Incidence of TBI

TBI is a leading cause of death and permanent disability.⁵ A comparison of the incidence of TBI to other medical conditions is shown in the graph, *Comparison of Annual Incidence in the United States*.

Comparison of Annual Incidence in the United States



Annually, at least 1.4 million TBIs occur in the United States and are treated in hospitals or result in death. These injuries result in 1.1 million emergency room visits, 235,000 hospitalizations, and 50,000 deaths.⁶ In addition, physicians’ offices and other outpatient settings treat an estimated 528,000 TBIs each year. Many more mild or moderate TBIs may occur for which no medical care is sought.⁷ The CDC estimates that 5.3 million Americans, or 2 percent of the population, are living with a disability due to a TBI, and each year, 80,000 to 90,000 people become disabled from a TBI.⁸ As noted above, these statistics do not take into account the incidence of other types of acquired brain injury.



Data is available on traumatic brain injury, making it suitable to provide background information regarding the incidence, causes, and treatment of brain injury.

The risk of sustaining a TBI varies by age and gender. Children aged 4 and under have the highest rate of TBI-related emergency room visits, followed by teens ages 15 to 19. Adults aged 75 and older have the highest rates of TBI-related hospitalization. At almost all ages, rates of TBI are higher for males than females. Males sustain 1.5 times as many TBIs as females.⁹

In Texas, an estimated 144,000 people sustain a TBI each year. TBIs kill 4,200 Texans and permanently disable 5,700 Texans each year. An estimated 410,000 Texans are living with a disability due to a TBI.¹⁰ Additional statistics on the incidence of TBI in Texas are shown in the textbox, *TBIs in Texas*.

TBIs in Texas

Each Day in Texas

- ◆ 395 people will sustain a TBI;
- ◆ 48 people will be hospitalized with a TBI;
- ◆ 18 people will be permanently disabled by a TBI and;
- ◆ 12 people will die due to a TBI.

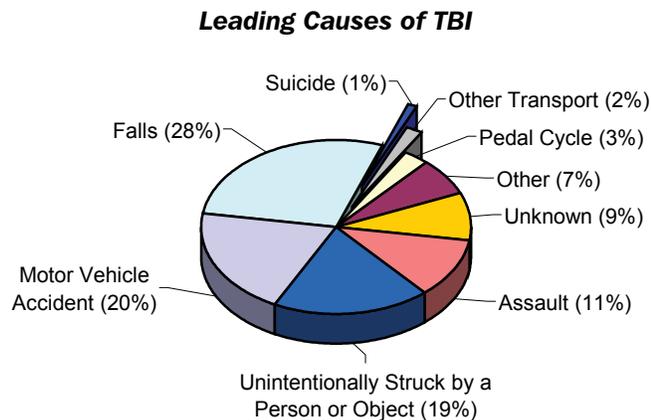
Source: Texas Traumatic Brain Injury Advisory Council, *Traumatic Brain Injury in Texas*.



Falls are the leading cause of traumatic brain injuries, and are most likely to occur among the very young and the elderly.

Causes of TBI

Falls are the leading cause of TBIs that result in emergency room visits, hospitalization, or death. Rates of fall-related TBIs are greatest among children ages 0 to 4 years and adults over age 75. Motor vehicle accidents are the second overall cause of TBI, but motor vehicle accidents result in the highest number of TBI-related hospitalizations. The rate of motor vehicle accident-related TBIs is greatest among adolescents ages 15 to 19 years. The third leading cause of TBI is events in which a person is unintentionally struck by or against another person or an object. Many of these injuries are sports and recreation-related, but also include injuries from falling debris, among other things. Assault is the fourth leading cause of TBI.¹¹ Firearm use, which is one type of assault, is the leading cause of TBI related-death.¹² The leading causes of TBIs that result in emergency room visits, hospitalization, or death are shown in the chart, *Leading Causes of TBI*.



Source: Centers for Disease Control and Prevention, *Traumatic Brain Injury in the United States: Emergency Department Visits, Hospitalizations, and Deaths*.

Treatment

Level of recovery from brain injuries depends on the severity of the brain injury and treatment received. Generally, people with mild brain injuries can expect to recover completely within a short amount of time. People who sustain moderate or severe brain injuries that cause mental or physical impairments may need emergency treatment and long-term rehabilitative care. In such cases, recovery can take weeks, months, or years. The objective of rehabilitation is to help people with brain injuries regain the most independent level of functioning possible. This includes both achieving functional recovery and learning to cope with remaining disabilities.¹³

People with moderate or severe brain injuries may be admitted to a hospital's intensive care unit following emergency medical treatment. In the intensive care unit, patients with brain injuries receive life-sustaining care until they become medically stable. Rehabilitation begins when patients are medically stable and able to participate in therapy. The process of rehabilitation varies with each person and is designed to address an individual's unique impairments resulting from a brain injury. People who need intensive therapy to re-learn daily skills like speaking and walking may receive evaluations and care from a range of specialists and therapists in inpatient rehabilitation facilities. People who need less intensive therapy may receive outpatient therapy to evaluate and address functional impairments.¹⁴

Mandated Benefits

State mandated health benefits are benefits required by law to be included in certain types of fully-insured health insurance policies offered in the state.¹⁵ All 50 states have adopted multiple mandated benefits.¹⁶ State legislatures use mandated benefits to address a perceived absence of necessary health insurance benefits.¹⁷ State mandated benefit laws apply to certain commercial health insurance companies and health maintenance organizations.¹⁸ Consumer choice health benefit plans, created by Senate Bill 541 in 2003, do not have to provide all state mandated health benefits, but may exclude or reduce coverage for specific benefits designated by the Legislature.¹⁹ In addition, state mandated benefits do not generally apply to public health benefit programs, self-insured companies, or other plans not regulated by the Texas Department of Insurance, with some exceptions for governmental programs over which the Legislature has authority. Texas' 31 mandated benefits are listed in Attachment A.

Mandated Benefit for Acquired Brain Injury

In 2001, the Legislature enacted House Bill 1676, which mandated benefits for rehabilitative testing and treatment related to acquired brain injury. Fully-insured group and individual insurance policies in Texas cannot exclude specific services, listed in the table, *Treatment Included in the Acquired Brain Injury Mandated Benefit*, that are necessary as a result of and related to an ABI.²⁰ The ABI mandated benefit does not include services for emergency care following a brain injury or other services related to an ABI that is not listed in the table, though many of those services are covered under most health insurance plans.



All states have adopted multiple mandated benefits, typically to address an absence of necessary health insurance benefits.

Treatment Included in the Acquired Brain Injury Mandated Benefit

Benefit	Definition
Cognitive Rehabilitation Therapy	Services designed to address therapeutic cognitive activities, based on an assessment and understanding of the individual's brain-behavioral deficits.
Cognitive Rehabilitation Therapy	Services designed to address modalities of comprehension and expression, including understanding, reading, writing, and verbal expression of information.
Neurocognitive Therapy and Rehabilitation	Services designed to address neurological deficits in informational processing and to facilitate the development of higher level cognitive abilities; and services designed to assist cognitively impaired individuals to compensate for deficits in cognitive functioning by rebuilding cognitive skills and/or developing compensatory strategies and techniques.
Neurobehavioral Testing and Treatment	An evaluation of the history of neurological and psychiatric difficulty, current symptoms, current mental status, and premorbid history, including the identification of problematic behavior and the relationship between behavior and the variables that control behavior; and interventions that focus on behavior and the variables that control behavior.
Neurophysiological Testing and Treatment	An evaluation of the functions of the nervous system; and interventions that focus on the functions of the nervous system.
Neurophysiological Testing and Treatment	The administering of a comprehensive battery of tests to evaluate neurocognitive, behavioral, and emotional strengths and weaknesses and their relationship to normal and abnormal central nervous system functioning; and interventions designed to improve or minimize deficits in behavioral and cognitive processes.
Psychophysiological Testing and Treatment	An evaluation of the interrelationships between the nervous system and other bodily organs and behavior; and interventions designed to alleviate or decrease abnormal physiological responses of the nervous system due to behavioral or emotional factors.
Neurofeedback Therapy	Services that utilize operant conditioning learning procedure based on electroencephalography (EEG) parameters, and which are designed to result in improved mental performance and behavior, and stabilized mood.
Remediation	The process of restoring or improving a specific function.
Post-acute Transition Services	Services that facilitate the continuum of care beyond the initial neurological insult through rehabilitation and community reintegration.
Community Reintegration Services	Services that facilitate the continuum of care as an affected individual transitions into the community.

Source: Texas Insurance Code, sec. 1352.003 (a), and Texas Administrative Code, title 28, sec. 21.3102.

The mandated benefits related to ABI may be subject to deductibles, copayments, coinsurance, and annual maximum payment limits that apply to similar coverages in a health insurance policy.²¹ In addition, insurers may limit mandated brain injury benefits as they do coverage for other illnesses and injuries. For example, insurers may require preauthorization for ABI benefits and may deny benefits that are not medically necessary, experimental or investigational, or not preauthorized.²²

Before passage of the mandated benefit for acquired brain injury coverage, coverage for testing and treatment following an ABI varied by insurance

carrier. Many carriers covered treatment for ABI, but which therapies were covered and in what amount varied widely.²³ Some carriers specifically excluded rehabilitation related to brain injury as treatment for a mental illness rather than a physical illness.²⁴ If not covered by private insurance, the burden for treatment of ABI often fell on publicly funded programs, including the Department of Assistive and Rehabilitative Services and Medicaid.²⁵

Impact of the Brain Injury Mandated Benefit

H.B. 1676 included a requirement that the Sunset Advisory Commission report the impact of the mandated benefit for acquired brain injury coverage to the Legislature. Specifically, the Sunset Advisory Commission must study:

- (1) to what extent covered health insurance enrollees use acquired brain injury coverage mandated by H.B. 1676; and
- (2) the impact of the mandated benefit on the cost of health insurance.²⁶

To accomplish this task, Sunset staff requested assistance from the Texas Department of Insurance (TDI). TDI's full report is attached as Attachment B. Staff wishes to acknowledge the valuable assistance provided by TDI for this study. The highlights from TDI's report are summarized below.

Use and Cost of the Mandated Benefit for Acquired Brain Injury

TDI collects utilization and claims cost data from health insurers and HMOs on many mandated benefits, including coverage for ABI, and annually reports findings to the Legislature.²⁷ TDI provides specific direction to carriers to encourage uniform reporting, but due to limitations in how carriers receive and process claims data, the actual utilization and claims cost of services covered by ABI mandated benefits may either be under-reported or over-reported.²⁸ TDI also asks insurers to estimate the average premium cost associated with each mandated benefit for employee-only coverage and family coverage (employee, spouse, and children). Finally, TDI asks carriers to estimate the administrative costs associated with providing coverage under each mandated benefit.²⁹ TDI's cost analysis does not take into account any cost savings or benefits that may result from the ABI mandated benefit, such as improvements in the health and functioning of Texans with an ABI and reductions of reliance on publicly funded programs through the Department of Assistive and Rehabilitative Services and Medicaid.

Group Benefit Plans

Insurers and HMOs providing data on group benefit plans, which include employer-sponsored insurance, reported a total of 221,145 claims for mandated ABI benefits in 2005, at a cost of \$14.7 million, or \$7.18 per policy issued.³⁰ Claims costs for ABI mandated benefits accounted for 0.19 percent of all claims paid. Average insurer estimates of the annual premium cost for ABI mandated benefits were \$4.94 for employee-only coverage and \$10.02 for family coverage. In addition, insurers estimate that they spent \$3 million in administrative expenses in 2005 to provide coverage under the ABI mandated benefit.



The cost analysis does not account for any cost savings to publicly funded programs resulting from the mandated benefit for brain injuries.



TDI believes that claims cost decreases reflect more accurate reporting on claims costs from brain injury mandated benefits.

Three years of claims data for the ABI mandated benefit are shown in the table, *Acquired Brain Injury Mandated Benefit Utilization and Cost*. From 2003 to 2005 the number of ABI mandated benefit claims to group benefit plans increased significantly while costs associated with claims decreased significantly. TDI reports that these changes largely reflect an improved ability on the part of carriers to isolate and more accurately report on claims costs from ABI mandated benefits.

Individual Benefit Plans

Insurers and HMOs providing data on individual benefit plans reported a total of 1,249 claims for mandated ABI benefits in 2005, at a cost of \$320,291, or \$1.37 per policy issued. As shown in the table, *Acquired Brain Injury Mandated Benefit Utilization and Cost*, claims costs associated with ABI claims under individual benefit plans show even more drastic declines from 2003 to 2005 than under group benefit plans.

Acquired Brain Injury Mandated Benefit Utilization and Cost

	2003	2004	2005
Group Benefit Plans			
Number of ABI Claims Paid	147,316	251,984	221,145
ABI Claims Cost	\$29,670,771	\$27,530,060	\$14,675,648
ABI Claims Cost per Policy Issued	\$7.73	\$12.57	\$7.18
ABI Claims Cost as a Percentage of All Claims Cost	0.40%	0.37%	0.19%
Estimated Premium for Employee-Only ABI Coverage	\$6.07	\$6.34	\$4.94
Estimated Premium for Family ABI Coverage	\$16.43	\$22.30	\$10.02
Annual Administrative Cost for ABI	\$4,723,998	\$5,435,539	\$3,020,362
Annual Administrative Cost as a Percent of All Claims Costs	0.06%	0.07%	0.04%
Individual Benefit Plans			
Number of ABI Claims Paid	1,384	8,658 ³¹	1,249
ABI Claims Cost	\$1,031,402	\$1,033,044	\$320,291
ABI Claims Cost per Policy Issued	\$10.56	\$5.19	\$1.37
ABI Claims Cost as a Percentage of All Claims Cost	0.14%	0.16%	0.04%
Estimated Premium for Single ABI Coverage	\$3.20	\$2.69	\$2.79
Estimated Premium for Family ABI Coverage	\$8.01	\$4.88	\$6.14
Annual Administrative Cost for ABI	\$66,020	\$225,388	\$35,791
Annual Administrative Cost as a Percent of All Claims Cost	0.01%	0.03%	0.00%

Source: Texas Department of Insurance, *Acquired Brain Injury Mandated Benefit Cost and Utilization Report to the Texas Sunset Commission*.

Claims costs for ABI mandated benefits under individual plans accounted for 0.04 percent of all claims paid. Average premium cost estimates for ABI mandated benefits in individual benefit plans were \$2.79 for a single insured and \$6.14 for family coverage. In addition, insurers estimate that they spent \$36,000 in administrative expenses in 2005 to provide coverage under the ABI mandated benefit.

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- ¹ Brain Injury Association of America, Types of Brain Injury, www.biausa.org/Pages/types_of_brain_injury.html. Accessed: September 15, 2006.
- ² Brain Injury Association of Texas, Resources, www.biatx.org/resources/index.html. Accessed: September 15, 2006.
- ³ Centers for Disease Control and Prevention, TBI-Traumatic Brain Injury, www.cdc.gov/ncipc/tbi/TBI.htm. Accessed: September 15, 2006.
- ⁴ Brain Injury Association of America, Types of Brain Injury, www.biausa.org/Pages/types_of_brain_injury.html. Accessed: September 15, 2006.
- ⁵ David J. Thurman, Clinton Alverson, Kathleen A. Dunn, Janet Guerrero, and Joseph E. Snieczek, "Traumatic Brain Injury in the United States: A Public Health Perspective," *Journal of Head Trauma Rehabilitation*, 1999; 14(6):602-615.
- ⁶ Centers for Disease Control and Prevention, *Traumatic Brain Injury in the United States: Emergency Department Visits, Hospitalizations, and Deaths*, by J.A. Langlois, W. Rutland-Brown, and K.E. Thomas (Atlanta, Georgia, January 2006), p.7. Online. Available: http://www.cdc.gov/ncipc/pub-res/TBI_in_US_04/TBI%20in%20the%20US_Jan_2006.pdf. Accessed: September 15, 2006.
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²⁶ Acts 2001, ch. 859, sec. 2.

²⁷ TDI collects and reports mandated benefit information as required by the Texas Insurance Code, sec. 38.252. Insurers with \$10 million or more in annual group premiums and/or \$2 million or more in individual premiums, and HMOs with \$10 million or more in premiums for basic service plans are required to report mandated benefit data to TDI. This data reflects submissions by more than 90 percent of the group and individual health insurance market based on premium volume. TDI does not audit data submitted by insurance companies. Companies are responsible for assuring that the information they report is accurate and complete.

²⁸ Reporting data for the ABI mandated benefit poses unique challenges to carriers. Carriers have difficulty identifying the claims costs associated with the specific mandated ABI coverages as opposed to other treatment and evaluation services which may be provided to people with an ABI. Carriers' ability to correctly identify only the costs related to services named in the mandated benefit is limited by the software used to process claims and the level of detail and accuracy submitted on claim forms by doctors and hospitals.

²⁹ TDI does not provide a standard methodology used by insurers to calculate premium and administrative cost estimates. Carriers use their own internal guidelines to determine these estimates.

³⁰ Data from 2005 reflects the reporting period from October 2004 through September 2005. Data from 2004 reflects the reporting period from October 2003 through September 2004. Data from 2003 reflects the calendar year January 2003 through December 2003.

³¹ Increased claims rates reported in 2004 were due primarily to data reported by two companies, both of which revised their methodology for 2005, and submitted data consistent with that of other carriers.



Attachment A

Texas Mandated Benefits Accident and Health Insurance

Benefit	Explanation	Applicability
Alzheimer's Disease, Biological Brain Disease and serious mental illness	No long-term care policy may exclude or limit coverage for covered services on the basis of a diagnosis of Alzheimer's disease or biologically-based brain disease/serious mental illness.	Applicable to any individual or group long-term care, home health or nursing home policy.
Brain injury	A policy may not exclude coverage for cognitive rehabilitation therapy, cognitive communication therapy, neurocognitive therapy and rehabilitation, neurobehavioral, neurophysiological, neuropsychological, and psychophysiological testing or treatment, neurofeedback therapy, remediation, post-acute transition services, or community reintegration services necessary as a result of and related to an acquired brain injury. Coverage may be subject to deductibles, copayments, coinsurance, or annual or maximum payment limits that are consistent with other similar coverage under the policy.	Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses, including an accident policy.
Chemical dependency	Benefits for the necessary care and treatment of chemical dependency must be provided on the same basis as other physical illnesses generally. Benefits for treatment of chemical dependency may be limited to three separate series of treatments for each covered individual. The series of treatments must be in accordance with the standards adopted under 28 TAC §§3.8001 – 3.8030.	Applicable to any group policy providing basic hospital, surgical or major medical expense benefits.
Complications of pregnancy	Benefits for complications of pregnancy must be provided on the same basis as for other illnesses.	Applicable to any individual or group policy including major medical, hospital/medical/surgical, hospital indemnity, and disability coverages.
Colorectal cancer testing	A policy that provide benefits for screening medical procedures must provide coverage for each person enrolled in the plan who is 50 years of age or older and at normal risk for developing colon cancer for expenses incurred in conducting a medically recognized screening examination for the detection of colorectal cancer. An insured must have the choice of at least one of the following: (1) a fecal occult blood test performed annually and a flexible sigmoidoscopy performed every five years or (2) a colonoscopy performed every 10 years.	Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.

**Texas Mandated Benefits
Accident and Health Insurance**

Benefit	Explanation	Applicability
Diabetes	Medical or surgical expense policies which provide benefits for treatment of diabetes and associated conditions must provide coverage to each qualified insured for diabetes equipment, diabetes supplies and diabetes self-management training programs. The coverage must be provided in accordance with the standards adopted under 28 TAC §§ 21.2601 - 21.2607.	Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.
Emergency care Emergency care provisions for preferred provider plans	Reimbursement for the following emergency care services must be at the preferred provider level of benefits, if an insured cannot reasonably reach a preferred provider: (a) any medical screening examination or other evaluation required by state or federal law to be provided in the emergency facility of a hospital which is necessary to determine whether a medical emergency condition exists; (b) necessary emergency care services including treatment and stabilization of an emergency medical condition; and (c) services originating in a hospital emergency facility following treatment or stabilization of an emergency medical condition.	Applicable to any insurance policy that contains preferred provider benefits.
Emergency care Reimbursement for emergency care under utilization review	Carriers that apply utilization review must provide reimbursement for “emergency care” as that term is defined in Insurance Code, Article 21.58A.	Applicable to carriers that apply utilization review.
Emergency care Definition of emergency care	Policies that provide an emergency care benefit must define emergency care to mean bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient’s health in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part.	Applicable to any insurance policy that does not contain preferred provider benefits and does not apply utilization review.
Government hospital coverage	Policies providing hospital confinement indemnity coverage may not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.	Applicable to any individual policy providing hospital indemnity coverage.
Hearing screening for children	Policies that provide benefits for a family member of the insured shall provide coverage for each covered child for: (1) a screening test (as provided by Chapter 47, Health and Safety Code) for hearing loss from birth through the date the child is 30 days old; and (2) necessary follow-up care related to the screening test from birth through the date the child is 24 months old. Benefits may be subject to copayment and coinsurance requirements, but may not be subject to a deductible requirement or dollar limits and this must be stated in the policy. (See also “Speech and Hearing” under the section for Mandated Offers.)	Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.

**Texas Mandated Benefits
Accident and Health Insurance**

Benefit	Explanation	Applicability
Human papillomavirus and cervical cancer testing	A health benefit plan that provides coverage for diagnostic medical procedures must provide, for each woman enrolled in the plan who is 18 years of age or older, coverage for an annual medically recognized diagnostic examination for the early detection of cervical cancer. Minimum benefits include a conventional Pap smear screening or a screening using liquid-based cytology methods alone or in combination with a test for the detection of the human papillomavirus approved by the United States Food and Drug Administration.	Applicable to any individual, group, blanket, franchise insurance policy, insurance agreement, group hospital service contract, an individual or group evidence of coverage, or a similar coverage document that provides coverage for medical or surgical expenses.
Immunizations	Policies that provide benefits for a family member of the insured shall provide coverage for each covered child from birth through the date the child is six years old for: (1) immunization against diphtheria; haemophilus influenzae type b; hepatitis B; measles; mumps; pertussis; polio; rubella; tetanus; and varicella; and (2) any other immunization that is required by law for the child. Immunizations may not be subject to a deductible, copayment or coinsurance requirement.	Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.
Mammography	Annual screening by low-dose mammography for females 35 years old or older must be provided on the same basis as other radiological examinations.	Applicable to any individual or group policy.
Mastectomy Minimum length of stay following mastectomy or lymph node dissection	Policies that provide benefits for the treatment of breast cancer must include coverage for inpatient care for a covered individual for a minimum of: (a) 48 hours following a mastectomy; and (b) 24 hours following a lymph node dissection for the treatment of breast cancer. A policy is not required to provide the minimum hours of coverage of inpatient care required if the covered individual and the covered individual's attending physician determine that a shorter period of inpatient care is appropriate.	Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.
Mastectomy Reconstructive surgery incident to a mastectomy	Policies that provide coverage for mastectomy must provide coverage for: (1) reconstruction of the breast on which the mastectomy has been performed; (2) surgery and reconstruction of the other breast to achieve a symmetrical appearance; and (3) prostheses and treatment of physical complications, including lymphedemas, at all stages of mastectomy. The coverage may be subject to annual deductibles, copayments, and coinsurance that are consistent with other benefits under the policy, but may not be subject to dollar limitations other than the policy lifetime maximum.	Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses, including cancer policies.

**Texas Mandated Benefits
Accident and Health Insurance**

Benefit	Explanation	Applicability
Maternity Minimum stay following birth of a child	Policies providing maternity benefits, including benefits for childbirth, must include coverage for inpatient care for a mother and her newborn child in a health care facility for a minimum of: (a) 48 hours following uncomplicated vaginal delivery; and (b) 96 hours following uncomplicated caesarean section. Policies that provides in-home postdelivery care are not required to provide the minimum number of hours unless the inpatient care is determined to be medically necessary by the attending physician or is requested by the mother.	Applicable to any individual, group, blanket or franchise insurance policy that provide benefits for medical or surgical expenses.
Mental/nervous disorders with demonstrable organic disease	No individual policy may exclude mental, emotional or functional nervous disorders with demonstrable organic disease.	Applicable to any individual policy (primarily major medical, hospital indemnity and hospital/medical/surgical coverages).
Osteoporosis, detection and prevention	Policies that provide benefits for medical or surgical expenses incurred as a result of an accident or sickness must provide coverage to qualified individuals for medically accepted bone mass measurement to determine a person's risk of osteoporosis and fractures associated with osteoporosis.	Applicable to any group policy that provides benefits for medical or surgical expenses.
Prescription drugs Formulary	A group policy that provides benefits for prescription drugs shall make a prescription drug that was approved or covered for a medical condition or mental illness available to each covered individual at the contracted benefit level until the policy's renewal date, regardless of whether the prescribed drug has been removed from the policy's drug formulary.	Applicable to any group policy which provides coverage for prescription drugs and uses one or more drug formularies. Not applicable to a policy issued to a small employer.
Prescription drugs Off-label drugs	A policy that provides coverage for drugs must provide coverage for any drug prescribed to treat a covered individual for a covered chronic, disabling, or life-threatening illness if the drug: (1) has been approved by the Food and Drug Administration for at least one indication; and (2) is recognized for treatment of the indication for which the drug is prescribed in: (a) a prescription drug compendium approved by the commissioner; or (b) substantially accepted peer-reviewed medical literature. Coverage shall include any medically necessary services associated with the administration of the drug.	Applicable to any individual, group, blanket or franchise insurance policy that provides coverage for prescription drugs. Not applicable to a policy issued to a small employer.
Prescription drugs Oral contraceptives	Benefits for oral contraceptives must be provided when all other prescription drugs are provided.	Applicable to any individual or group policy providing coverage for prescription drugs.

**Texas Mandated Benefits
Accident and Health Insurance**

Benefit	Explanation	Applicability
<p>Prescription drugs Prescription contraceptive drugs and devices and related services</p>	<p>A policy that provides benefits for prescription drugs or devices may not exclude or limit benefits to insureds for (1) a prescription contraceptive drug or device approved by the United States Food and Drug Administration; or (2) an outpatient contraceptive service. Coverage for abortifacients or any other drug or device that terminates a pregnancy is not required to be covered. A policy limitation that applies to all prescription drugs or devices or, all services for which benefits are provided may be imposed. Any deductible, copayment, coinsurance or other cost sharing provision applicable to prescription contraceptive drugs or devices or outpatient contraceptive services may not exceed that required for other prescription drugs or devices or outpatient services covered under the policy. Any waiting period imposed on benefits for prescription contraceptive drugs or devices or outpatient contraceptive services may not be longer than any waiting period applicable for other prescription drugs or devices or other outpatient services under the policy.</p>	<p>Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses.</p>
<p>Prescription drugs Phenylketonuria (pku)</p>	<p>Policies that provide benefits for prescription drugs must include formulas for treatment of PKU or other heritable diseases.</p>	<p>Applicable to any group policy which provides coverage for prescription drugs.</p>
<p>Prostate testing Coverage of certain tests</p>	<p>Policies that provides benefits for diagnostic medical procedures must provide coverage for each male enrolled in the plan for expenses incurred in conducting an annual medically recognized diagnostic examination for the detection of prostate cancer. Minimum benefits must include: (1) a physical examination for the detection of prostate cancer; and (2) a prostate specific antigen test used for the detection of prostate cancer for each male enrolled in the plan who is: (a) at least 50 years of age and asymptomatic; or (b) at least 40 years of age with a family history of prostate cancer or another prostate cancer risk factor.</p>	<p>Applicable to any individual, group, blanket, or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.</p>
<p>Prostate testing Prostate-specific antigen test</p>	<p>A policy offered under the Texas Public School Retired Employees Group Insurance Act must provide coverage for a medically accepted prostate specific antigen test for each male who is enrolled in the plan and at least 50 years of age or at least 40 years of age with a family history of prostate cancer or another cancer risk factor.</p>	<p>Applicable to any policy offered under the Texas Public School Retired Employees Group Insurance Act.</p>
<p>Reconstructive surgery for craniofacial abnormalities in a child</p>	<p>Policies that provide benefits to a child who is younger than 18 years of age must cover “reconstructive surgery for craniofacial abnormalities” and define it as surgery to improve the function of, or to attempt to create a normal appearance of, an abnormal structure caused by congenital defects, developmental deformities, trauma, tumors, infections, or disease.</p>	<p>Applicable to any individual, group, blanket, or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.</p>

**Texas Mandated Benefits
Accident and Health Insurance**

Benefit	Explanation	Applicability
Serious mental illness	<p>A group policy (a) must provide coverage for 45 days of inpatient treatment, and 60 visits for outpatient treatment, including group and individual outpatient treatment coverage, for serious mental illness in each calendar year; (b) may NOT include a lifetime limit on the number of days of inpatient treatment or the number of outpatient visits covered under the plan; and (c) must include the same amount limits, deductibles, and coinsurance factors for serious mental illness as for physical illness – Insurance Code, Section 1355.004.</p> <p>The Texas State Employees Uniform Group Insurance Plan may not provide benefits for serious mental illness that are less extensive than the minimum coverage required by Insurance Code, Section 1355.004.</p> <p>Benefits for serious mental illness must be provided as extensive as any other physical illness.</p> <ul style="list-style-type: none"> ◆ Texas State College and University Employees Uniform Insurance Benefits Act – Insurance Code, Section 1601.109. ◆ Local Governments – Insurance Code, Section 1355.151. 	<p>Applicable to any group policy that provides benefits for medical or surgical expenses. (Note: Mandated Offer for a policy issued to a small employer.)</p> <p>Applicable to any policy offered under the Texas State Employees Uniform Group Insurance Benefits Act – Section 1551.205.</p> <p>Applicable to the specific governmental employee policy referenced.</p>
Telemedicine/ telehealth	<p>A policy may not exclude a telemedicine medical service or a telehealth service from coverage solely because the service is not provided through a face-to-face consultation. Telemedicine medical services and telehealth services may be made subject to a deductible, copayment, or coinsurance requirement; however, the deductible, copayment, or coinsurance may not exceed that required for a comparable medical service provided through a face-to-face consultation.</p>	<p>Applicable to any individual, group, blanket or franchise insurance policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.</p>
Temporomandibular joint (tmj)	<p>A group policy that provides benefits for the medically necessary diagnostic or surgical treatment of skeletal joints must provide comparable coverage for the diagnosis or surgical treatment of conditions affecting the temporomandibular joint that is necessary as a result of: (1) an accident; (2) a trauma; (a) a congenital defect; (4) a developmental defect; or (5) a pathology.</p>	<p>Applicable to any group policy that provides benefits for medical or surgical expenses. Not applicable to a policy issued to a small employer.</p>
Transplant donor coverage	<p>A policy providing a specific benefit for the recipient in a transplant operation shall also provide reimbursement of any medical expense of a live donor to the extent that the benefits remain and are available under the recipient's policy, after benefits for the recipient's own expenses have been paid.</p>	<p>Applicable to any individual policy providing for transplant coverage.</p>
<p>Source: Texas Department of Insurance, Texas Mandated Benefits/Offers/Coverages, www.tdi.state.tx.us/company/documents/lhmanben_v2.doc. Accessed: September 20, 2006</p>		



Attachment B

Acquired Brain Injury Mandated Benefit Cost and Utilization Report to the Texas Sunset Commission – September 2006 Texas Department of Insurance

To calculate the cost of mandated health insurance benefits and their impact on health benefit coverage and pursuant to Sections 38.251-38.254, Texas Insurance Code, the Texas Department of Insurance (TDI) collects cost and utilization data for a select group of mandated health insurance benefits required under group and individual fully insured benefit plans. This report summarizes information collected on the cost and utilization experience for benefits provided for the treatment of acquired brain injury (ABI) as required under Chapter 1352, Texas Insurance Code. Data are provided for three reporting periods covering 2003, 2004, and 2005. This information is provided to the Texas Sunset Commission as requested under HB 1676, 77th Legislature.

Survey Methodology

Under rules adopted by TDI, insurers with \$10 million or more in annual group premiums and/or at least \$2 million in individual premiums, and HMOs with at least \$10 million in premiums for basic service plans, are required to annually submit data on the costs and utilization of certain mandated benefits. Reporting companies represent more than 90 percent of the group and individual health insurance market based on premium volume.

For each mandated benefit, including acquired brain injury, insurers/HMOs provide the following information for both group and individual benefit plans:

- ◆ number of claims paid;
- ◆ total dollar value of claims paid;
- ◆ the average annual premium cost; and
- ◆ the estimated annual administrative cost attributed to each benefit.

In addition, companies report enrollment data, total premium and total claims data for both group and individual plans that allows additional analysis by TDI on a company-level basis as well as on an aggregated, industry-wide basis.

To the greatest extent possible, TDI provides specific directions to ensure uniform reporting across companies. Due to standardized industry practices for claims payment forms and the use of standard codes for medical diagnoses and services, the data collected for the total number of claims paid and the total dollar value of claims paid are generally consistent across carriers for most of the required mandated benefits. However, benefits related to the services for ABI pose unique challenges for carriers/HMOs that may affect the quality of the reported data for this particular benefit. The statutory mandated benefit provision applies only to specific types of services related to cognitive therapy provided for the treatment of acquired brain injury. The law requires plans to include coverage for cognitive rehabilitation therapy; cognitive communication therapy; neurocognitive therapy and rehabilitation; neurobehavioural, neurophysiological, neuropsychological and psychophysiological testing or treatment; neurofeedback therapy; remediation; post-acute transition services; or community reintegration services necessary

as a result of and related to an acquired brain injury. The coverage may be subject to deductibles, copayments, and annual or maximum payment limits that are consistent with other similar coverage under the benefit plan.

In the reporting directions, insurers/HMOs are instructed to isolate services related only to the mandated benefit requirements as described above. Other related services for medical treatment or other therapies for ABI should *not* be included in the reported claims data since those services are not a requirement under the mandated benefit provision. However, companies' claims data analyses are completely dependent on the accuracy and level of detail provided on the claim form submitted by the provider. If the description of services provided on the claim form is not detailed enough to isolate only those costs associated with cognitive therapy-type claims, carriers may either under-report or over-report claims paid for ABI therapy required by law. TDI provides a list of recommended diagnosis codes and treatment codes that may be used to initially identify ABI claims, along with additional reporting guidelines that direct companies to use a variety of other data elements in order to accurately limit claim reporting to include only those charges covered under the ABI mandated benefit requirement.

Despite these instructions, most companies have difficulty identifying only those claims costs associated with the benefit requirement. Insurers/HMOs have correctly pointed out that their ability to identify such costs is limited both by the software used to process claims and the extent to which providers submit detailed information for all types of services provided. Companies that rely on outside vendors to process claims face additional challenges as they must rely on the accuracy of vendors' data systems to compile information. For these reasons, compared to other mandated benefits for which data are collected, data for ABI claims are more difficult to identify and report in a consistent manner.

In follow-up discussions with companies to verify data that appears questionable, some have indicated they may have under-reported claims while others believe they may have over-reported claim costs due to an inability to isolate therapy-related services. A few companies reported no claims, either because they cannot accurately identify the costs associated specifically with the required therapy, or they cannot determine whether there were any claims at all for these specific services. Companies are directed to use their best judgment in these cases, but the reporting specifications and values are ultimately a decision of the company.

Insurers and HMOs also provide estimates for average premium costs associated with each mandated benefit. Companies are required to provide an annual premium estimate for "single coverage" and for "family coverage" to demonstrate the cost impact of mandated benefits on the least expensive and most expensive forms of coverage. "Single coverage" as used in this report refers to coverage provided to a single individual and does not include any dependent coverage for children or a spouse. "Family coverage" refers to coverage provided to the employee/enrollee plus spouse and children. Single coverage is the least costly category since it insures only one person, and family coverage is the most expensive since it insures the entire family.

Premium cost estimates can vary significantly from company to company. While claims coding and payment processes are generally standardized, the process insurers/HMOs use to determine premium costs for specific benefits varies. Although all companies use similar actuarial principles, there are technical variances among carriers that result in methodological differences in the way they develop premium cost estimates. The exact process and underlying data assumptions used are highly protected trade secrets that are not generally subject to TDI oversight or review. A standardized, prescribed methodology for rate development does not exist. As such, the reported premium cost estimates

are developed according to each company's internal guidelines rather than an industry-wide or TDI standard. However, TDI does advise companies that the premium estimate should reflect a reasonable relationship to the claims paid.

Finally, companies also must provide an estimate of administrative costs associated with providing coverage required under each mandated benefit. Because no standard definition exists for "administrative costs", each carrier determines what expenses to include in this estimate. Companies may include only costs directly associated with that claim, such as claims processing expenses and fees for providing physician referrals or authorizations. Other companies include a much broader range of expenses, such as overhead, commissions, salaries, taxes, and any other costs not directly used for health care services. Some companies simply apply a standard percentage to each mandated benefit claim. Each of these methodologies is allowed under the current reporting guidelines. However, carriers are instructed not to include first-year expenses (such as policy form updates, riders, or printing costs incurred when a mandated benefit is initially enacted), in any subsequent years.

Data reported by carriers are not "audited" by TDI, but are reviewed to identify extreme data anomalies or outliers. Carriers submitting questionable data or missing data elements are contacted by TDI to verify the accuracy of the information and to correct any reporting errors. Companies are responsible for assuring that the information they report is accurate and complete to the greatest extent possible and are required to provide supporting documentation if requested by TDI. Through this process, TDI has identified numerous reporting errors each year, and has required carriers to re-submit corrected data.

All data in this report are aggregated and represent industry-wide averages. State law specifically prohibits TDI from publishing data that identifies any specific company. The following table provides a summary of all reported claims costs associated with benefits for acquired brain injury for 2003 through 2005.

Group Benefit Plans – Claims and Utilization

As shown above, claims costs associated with ABI claims under group benefit plans totaled \$29.6 million in 2003, but decreased significantly to \$14.6 million in 2005. At the same time, the total number of claims increased substantially from 147,316 claims in 2003 to 221,145 claims in 2005. A review of the detailed claims data shows the majority of the 2005 decrease in claim costs is attributed to one carrier, which previously reported the highest volume and value of claims paid for ABI service. The carrier experienced an overall decline in its group business, with a decrease in total premiums of more than \$200 million and a decrease in ABI claims of more than \$13 million from 2004 to 2005. However, most of the other carriers/HMOs also reported a decline in both the number of claims and the cost of claims for 2005 compared to 2004. Based on discussions TDI had with several carriers, the decline appears to be due in large part to improved claims reporting and an ability to isolate claims costs associated with ABI therapy rather than a decline in total services. After three years of participating in this data call, TDI saw a marked improvement in the overall accuracy of reporting, with fewer errors, outliers, and questionable data elements than in the previous years. This is true not only for ABI claims data, but for all mandated benefit reporting.

Acquired Brain Injury Premium Data

Acquired Brain Injury Average	January 2003 to December 2003 Reporting Period	October 2003 to September 2004 Reporting Period	October 2004 to September 2005 Reporting Period
Group Benefit Plans			
Number of Acquired Brain Injury Claims Paid	147,316	251,984	221,145
Percentage of the Total Number of Mandated Benefit Claims Paid	3.53%	5.95%	5.60%
Value of Acquired Brain Injury Claims Paid	\$29,670,771	\$27,530,060	\$14,675,648
Percentage of the Total Value of Mandated Benefit Claims Paid	8.78%	7.98%	3.90%
Percentage of the Total Value of All Claims Paid	0.40%	0.37%	0.19%
Average Annual Claim Cost Per Certificate for Acquired Brain Injury	\$7.73	\$12.57	\$7.18
Annual Administrative Cost for Acquired Brain Injury	\$4,723,998	\$5,435,539	\$3,020,362
Annual Administrative Cost as a Percent of All Claims Paid	0.06%	0.07%	0.04%
Individual Benefit Plans			
Number of Acquired Brain Injury Claims Paid	1,384	8,658	1,249
Percentage of the Total Number of Mandated Benefit Claims Paid	0.35%	1.98%	0.31%
Value of Acquired Brain Injury Claims Paid	\$1,031,402	\$1,033,044	\$320,291
Percentage of the Total Value of Mandated Benefit Claims Paid	3.91%	3.77%	0.92%
Percentage of the Total Value of All Claims Paid	0.14%	0.16%	0.04%
Average Annual Claim Cost Per Certificate for Acquired Brain Injury	\$10.56	\$5.19	\$1.37
Annual Administrative Cost for Acquired Brain Injury	\$66,020	\$225,388	\$35,791
Annual Administrative Cost as a Percent of All Claims Paid	0.01%	0.03%	0.00%

Consistent with the decline in claims paid as described above, as a percentage of all mandated benefit claim costs, ABI claims declined from 8.78 percent in 2003 to 3.90 percent in 2005. As a percentage of all claims paid, ABI represented 0.19 percent of total claim costs in 2005. The average annual claim cost per certificate-of-coverage also dropped slightly from \$7.73 in 2003 to \$7.18 in 2005. Total annual administrative costs associated with ABI were estimated at \$3,020,362 in 2005, down from both 2003 and 2004.

Individual Benefit Plans – Claims and Utilization

Claims data for individual benefit plans also show a significant decline in ABI claims from 2003 to 2005 for the same reasons described above. As carriers have improved their ability to identify ABI claims for cognitive therapy, nearly all insurers/HMOs reported a decline in both the total cost and utilization of services over time. In 2005, ABI claims represented 0.92 percent of mandated benefit claims paid, for a total of \$320,291. As a percentage of total claims paid, ABI benefits represented less than four-hundredths of one percent in 2005. The average claim cost per certificate of coverage was nominal at \$1.37. Increased claims and utilization rates reported in 2004 were due primarily to data reported by two companies, both of which revised their methodology for 2005 and submitted data consistent with that of other carriers.

Premium Cost Data

As described above, carriers/HMOs are required to provide estimated annual premium costs for each mandated benefit provision. As the table below illustrates, estimated premiums for group and individual coverage have decreased since 2003. This is at least partly due to improvements in companies' data methodologies and their ability to isolate costs specifically related to the cognitive therapy services required under the ABI benefit mandate. The premium cost should reflect the expense associated only with the specific services mandated, and should not reflect other non-mandated types of services provided for acquired brain injury treatment.

Costs are provided in the table below for single coverage (one person) and family coverage (employee/enrollee, spouse and children). In 2005, coverage for employee-only ABI mandated benefits under a group benefit plan cost an average of \$4.94 a year. Family coverage was approximately \$10.02 per year. For individual benefit plans, single coverage was \$2.79 on average, and family coverage cost \$6.14 a year.

Acquired Brain Injury Premium Data

Acquired Brain Injury Average	January 2003 to December 2003 Reporting Period	October 2003 to September 2004 Reporting Period	October 2004 to September 2005 Reporting Period
Group Benefit Plans			
Single Coverage	\$6.07	\$6.34	\$4.94
Family Coverage	\$16.43	\$22.30	\$10.02
Individual Benefit Plans			
Single Coverage	\$3.20	\$2.69	\$2.79
Family Coverage	\$8.01	\$4.88	\$6.14

Additional information on mandated benefit expenses and costs are provided in the full mandated benefit reports mentioned earlier. For a better understanding of how the costs summarized in this report compare in relation to other mandated benefit provisions, please see the 2003, 2004, and 2005 TDI reports at: <http://www.tdi.state.tx.us/reports/report3.html>.



Court Costs and Fees Study

Sunset Study of Court Costs and Fees

House Bill 1116, passed in 2005 by the 79th Legislature, required the Sunset Commission, as part of its review of criminal justice agencies, to study the purpose, collection, and use of certain criminal court costs and fees, and parole, probation, and community supervision fees.¹ In addition, the legislation required the Office of the State Auditor (SAO), Legislative Budget Board (LBB), Comptroller of Public Accounts (the Comptroller), and any other state agency to assist Sunset as necessary in conducting the study. The legislation directs the Sunset Commission to include any recommendations it considers appropriate in its report to the 80th Legislature.

As noted below, both the Senate Jurisprudence Committee and LBB are currently performing similar court costs and fees studies. Therefore, Sunset staff limited the scope of this review to prevent any duplication of effort. The following includes an overview of court costs and fees; data and tables of state and local court costs, created and provided by LBB and the Office of Court Administration (OCA), detailing the various assessments for certain categories of offenses; and three case studies performed by Sunset staff that provide real-world examples of the types of court costs and fees certain offenders may face.

Overview of Court Costs and Fees

In Texas, municipal courts, justice courts, county courts, and district courts are authorized to hear certain types of criminal cases. Each of these courts must impose basic mandatory state and local court costs and fees on defendants, in addition to county-imposed court costs, fees, and fines. Generally, state court costs and fees are submitted to the Comptroller for deposit into state funds, and local court costs and fees are retained by the county or municipality. Court costs and fees generally pay for certain programs, such as those aimed at crime prevention, victim compensation, and training of court and law enforcement personnel.

The Comptroller and OCA provide direction and assistance regarding the collection of court costs and fees. The Comptroller is responsible for administering state court costs and fees. County and district courts must assess, collect, and report fees in accordance with Comptroller requirements. OCA provides technical assistance to local courts to improve the collection of these fees for the state. OCA also publishes court costs and fees handbooks for municipal courts, justice courts, and county and district clerks, and administers the Collection Improvement Program.

The Collection Improvement Program is a process designed to improve the collection of court costs and fees by creating a process for managing cases when defendants are not prepared to pay all court costs, fees, and fines, at the point of assessment and when time to pay is requested. OCA originally developed the program as a voluntary model in 1996. However, in response



*The 79th
Legislature
required Sunset to
perform a study of
court costs and fees.*

to concerns and reports regarding uncollected and misused court costs and fees, the 79th Legislature expanded the program and required counties with a population greater than 50,000 and cities with a population greater than 100,000 to implement a court collection improvement program.^{2,3}

Both the Senate Jurisprudence Committee and LBB have reviewed the Collection Improvement Program. In December 2006, the Committee published an interim report recommending changes to the Collection Improvement Program designed to improve program effectiveness. LBB provided additional information about the Collection Improvement Program and its implementation in the mandatory jurisdictions in its *Financing the Judiciary in Texas, Legislative Primer*, published January 2007.

Court Costs and Fees in Criminal Cases Sent to the State

Municipal Courts are authorized to hear only three types of criminal cases: municipal ordinance offense cases; Transportation Code, Title 7, Subtitle C offense cases; and Class C Misdemeanor offense cases. Justice Courts are authorized to hear only two types of criminal cases: Transportation Code, Title 7, Subtitle C offense cases and Class C Misdemeanor offense cases. County and District Courts are authorized to hear all types of criminal offense cases except municipal ordinance offenses. The courts impose basic mandatory state and local court costs and fees, as well as additional court costs and fees, as applicable. State court costs and fees are those submitted to the state Comptroller of Public Accounts for deposit into state funds, although a portion of some of those costs and fees are retained by the applicable local government. Local court costs and fees are those retained by the municipality or county, as applicable.

The dollar amounts in Tables 1A and 1B reflect only those criminal court costs and fees of which all or a portion are submitted to the Comptroller of Public Accounts. Those state court costs and fees are imposed in municipal, justice, county, and district courts. Municipal criminal court costs and fees are shown in Tables 2A, 2B, and 2C. All criminal court costs and fees that can be imposed are shown in Tables 3A, 3B, 3C, and 3D. Shaded rows indicate the types of offenses described in the following case studies.

Table 1A

Basic State Criminal Court Costs and Fees Imposed by Municipal, Justice, County, and District Courts

Offense / Description	State Consolidated Court Cost	State Jury Reimbursement Fee	State Judicial Support Fee	State Traffic Fine	State EMS Trauma Fund	State DNA Testing	Total State Court Costs and Fees
Municipal Ordinance (imposed and collected in Municipal Court only): Offenses other than parking or pedestrian	\$40.00	\$4.00	\$4.00	N/A	N/A	N/A	\$48.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road), Parking and Pedestrian	N/A	N/A	N/A	\$30.00	N/A	N/A	\$30.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road), Other Offenses	\$40.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$78.00
Class C Misdemeanor: All Other Offenses (except violations of handicapped parking Trans. Code §681.011: not applicable)	\$40.00	\$4.00	\$4.00	N/A	N/A	N/A	\$48.00
Class A or B Misdemeanors: Transportation Code, Title 7, Subtitle C (Rules of the Road)	\$83.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$121.00
Class A or B Misdemeanors: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	\$83.00	\$4.00	\$4.00	N/A	\$100.00	N/A	\$191.00
Class A or B Misdemeanors: Penal Code, DNA Testing Offenses	\$83.00	\$4.00	\$4.00	N/A	N/A	\$50.00	\$141.00
Class A or B Misdemeanors: All Other Offenses	\$83.00	\$4.00	\$4.00	N/A	N/A	N/A	\$91.00
Felonies: Transportation Code, Title 7, Subtitle C (Rules of the Road)	\$133.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$171.00
Felonies: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	\$133.00	\$4.00	\$4.00	N/A	\$100.00	N/A	\$241.00
Felonies: Penal Code, DNA Testing Offenses	\$133.00	\$4.00	\$4.00	N/A	N/A	\$250.00	\$391.00
Felonies: All Other Offenses	\$133.00	\$4.00	\$4.00	N/A	N/A	N/A	\$141.00

Sources: Legislative Budget Board; Office of Court Administration, County & District Clerks – Court Costs and Fees Handbook (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Sent to the State

**Table 1B
Other State Criminal Court Costs and Fees Imposed by Municipal, Justice, County, and District Courts**

Fee Type	Portion of Fee Submitted to State	Total Amount of Fee Imposed
<p>Arrest Fee: For issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 percent (\$1.00) is sent to the state.</p>	\$1.00	\$5.00
<p>Warrant Fee: For executing or processing an issued arrest warrant or <i>capias</i>. When service is performed by a peace officer employed by the state, 20 percent (\$10.00) is sent to the state.</p>	\$10.00	\$50.00
<p>Failure to Appear Fee: If a city or county has contracted with the Department of Public Safety to provide information necessary for the department to deny renewal of driver's licenses, a fee is charged for (a) each complaint or citation reported to DPS under Transportation Code, Chapter 706, unless the person is acquitted of the charges for which the person failed to appear, or (b) failing to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders. The fee is due when (1) the court enters judgment on the underlying offense reported to the department; (2) the underlying offense is dismissed; or (3) bond or other security is posted to reinstate the charge for which the warrant was issued.</p>	\$20.00	\$30.00
<p>Time Payment Fee: From a person who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution. One-half (\$12.50) is sent to the state. One-tenth (\$2.50) is retained locally for judicial efficiency. Four-tenths (\$10.00) is retained locally with no restrictions.</p>	\$12.50	\$25.00
<p>Judicial Fund Court Cost: Court cost on conviction of any criminal offense in statutory county courts and constitutional county courts only, including cases in which probation or deferred adjudication is granted. However, convictions arising under any law that regulates pedestrians or the parking of motor vehicles are not included.</p>	\$15.00	\$15.00
<p>Restitution Installment Fee: Imposed when the court requires defendant to make restitution in specified installments under Code of Criminal Procedure, Article 42.037. One-half (\$6.00) is sent to the state. One-half (\$6.00) is retained locally for costs incurred in collecting the installments.</p>	\$6.00	\$12.00

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

**Table 2A
Basic Municipal Criminal Court Costs and Fees Imposed by Municipal or Justice Courts**

Offense / Description	Traffic	Child Safety	Total Local Government Costs/Fees
Municipal Ordinance: Parking authorized by Transportation Code §542.202 – §542.203 (Powers of Local Authorities and Limitation on Local Authorities)	N/A	Note 1	Note 1
Municipal Ordinance: Pedestrian and Other Municipal Offenses	N/A	N/A	N/A
State Law: Education Code §25.093, Parent Contributing to Nonattendance and §25.094, Failure to Attend School	\$0.00	\$20.00	\$20.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian in a School Zone	\$3.00	\$25.00	\$28.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian outside a School Zone	\$3.00	\$0.00	\$3.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – §545.066, Passing a School Bus	\$3.00	\$25.00	\$28.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (in a School Crossing Zone)	\$3.00	\$25.00	\$28.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (outside a School Crossing Zone)	\$3.00	\$0.00	\$3.00
All Other Misdemeanors	N/A	N/A	N/A

Note 1: Up to \$5.00 court cost for cities with population < 850,000 that have adopted appropriate ordinance, regulation, or order (optional). From \$2.00 to \$5.00 court cost for cities with population > 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 2B

Other Municipal Criminal Court Costs and Fees (if applicable); Fees for Services of Peace Officers under Code of Criminal Procedure, Article 102.011

Court Costs / Fees	Local Government Amount Retained
Arrest Fee: \$5.00 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 percent (\$1.00) is sent to the state. (Imposed by municipal, justice, county, or district court.)	\$5.00 if local peace officer; \$4.00 if state peace officer
Warrant Fee: \$50.00 for executing or processing an issued arrest warrant or capias. When service is performed by a peace officer employed by the state, 20 percent (\$10.00) is sent to the state. (Imposed by municipal, justice, county, or district court.)	\$50.00 if local peace officer; \$40.00 if state peace officer
Summoning a Witness: Fee of \$5.00 for serving a subpoena. (Imposed by a municipal or justice court.)	\$5.00
Summoning a Jury: Fee of \$5.00. (Imposed by a municipal or justice court.)	\$5.00
Service of a Summons (for a defendant or child's parents): Fee of \$35.00 (Imposed by a municipal or justice court.)	\$35.00
Other Costs: Actual for overtime paid for time spent testifying in the trial of a case or traveling to and from testifying in the trial of a case. (Imposed by a municipal or justice court.)	Varies

Sources: Legislative Budget Board; Office of Court Administration, County & District Clerks – Court Costs and Fees Handbook (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 2C

Other Municipal Criminal Court Costs and Fees Not Associated with Peace Officer Services

Court Costs / Fees	Local Government Amount Retained
Driving Record Fee: Optional \$10.00 fee for obtaining a copy of the defendant's driving record from the Texas Department of Public Safety. All (100 percent) is sent to the state. (Imposed by a municipal or justice court.)	\$0.00
Special Expense Warrant Fee: Not to exceed \$25.00 per warrant for failure to appear or violation of promise to appear if the governing body has passed the required ordinance. (Imposed by a municipal or justice court.)	\$25.00
Municipal Court Building Security Fee: \$3.00 if governing body has passed required ordinance. (Imposed by a municipal or justice court.)	\$3.00
Municipal Court Technology Fee: Not to exceed \$4.00 if governing body has passed required ordinance. (Imposed by a municipal or justice court.)	\$4.00
Juvenile Case Manager Court Cost: Not to exceed \$5.00 if governing body has passed required ordinance. (Imposed by a municipal or justice court.)	\$5.00
Failure to Appear Fee: If a city or county has contracted with the Texas Department of Public Safety to provide information necessary for the department to deny renewal of driver's licenses, \$30.00 for failure to appear or failure to pay or satisfy a judgment; however, only \$4.00 is retained locally. (Imposed by municipal, justice, county, or district court.)	\$4.00
Jury Fee: \$3.00 per conviction when conviction is by a jury or when a defendant requests a jury trial and withdraws the request within less than 24 hours of the time of trial. (Imposed by a municipal or justice court.)	\$3.00
Time Payment Fee: \$25.00 from a person who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution; however, only \$2.50 is retained locally for judicial efficiency and \$10.00 is retained locally with no restrictions. (Imposed by municipal, justice, county, or district court.)	\$12.50
Administrative Fees (for dismissing certain driving charges and for requesting a driving safety course): Not to exceed \$10.00. (Imposed by a municipal or justice court.)	\$10.00
Teen Court Fees: Optional fee not to exceed \$10.00. (Imposed by a municipal or justice court.)	\$10.00
Expungement Fee: \$30.00 for each application filed. (Imposed by a municipal or justice court.)	\$30.00

Sources: Legislative Budget Board; Office of Court Administration, County & District Clerks – Court Costs and Fees Handbook (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 3A

Basic Criminal Court Costs and Fees; Imposed by Municipal, Justice, County, or District Courts

Offense / Description	State Consolidated Court Cost	State Jury Reimbursement Fee	State Judicial Support Fee	State Traffic Fine	State EMS Trauma Fund	State DNA Testing	Total State Court Costs and Fees	Municipal Traffic	Municipal Child Safety	Total Municipal Court Costs and Fees	Total Court Costs and Fees
Municipal Ordinance: Parking authorized by Transportation Code §542.202 – §542.203 (Powers of Local Authorities and Limitation on Local Authorities)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Note 1	Note 1	Note 1
Municipal Ordinance: Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Municipal Ordinance: Other Municipal Offenses	\$40.00	\$4.00	\$4.00	N/A	N/A	N/A	\$48.00	N/A	N/A	N/A	\$48.00
Class C Misdemeanor: Education Code §25.093, Parent Contributing to Nonattendance and §25.094, Failure to Attend School	\$40.00	\$4.00	\$4.00	N/A	N/A	N/A	\$48.00	N/A	\$20.00	\$20.00	\$68.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian in a School Zone	N/A	N/A	N/A	\$30.00	N/A	N/A	\$30.00	\$3.00	\$25.00	\$28.00	\$58.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian outside a School Zone	N/A	N/A	N/A	\$30.00	N/A	N/A	\$30.00	\$3.00	N/A	\$3.00	\$63.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – §545.066, Passing a School Bus [Amounts shown reflect Class C Misdemeanor, although this offense can be a Class A if serious bodily injury occurs or a State Jail Felony if this is a subsequent offense.]	\$40.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$78.00	\$3.00	\$25.00	\$28.00	\$106.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (in a School Crossing Zone)	\$40.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$78.00	\$3.00	\$25.00	\$28.00	\$106.00

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 3A (continued)
Basic Criminal Court Costs and Fees; Imposed by Municipal, Justice, County, or District Courts

Offense / Description	State Consolidated Court Cost	State Jury Reimbursement Fee	State Judicial Support Fee	State Traffic Fine	State EMS Trauma Fund	State DNA Testing	Total State Court Costs and Fees	Municipal Traffic	Municipal Child Safety	Total Municipal Court Costs and Fees	Total Court Costs and Fees
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (outside a School Crossing Zone)	\$40.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$78.00	\$3.00	N/A	\$3.00	\$81.00
Class C Misdemeanors: All Other Offenses (except handicapped parking violations, for which no costs or fees are applicable)	\$40.00	\$4.00	\$4.00	N/A	N/A	N/A	\$48.00	N/A	N/A	N/A	\$48.00
Class A or B Misdemeanors: Transportation Code, Title 7, Subtitle C (Rules of the Road)	\$83.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$121.00	N/A	N/A	N/A	\$121.00
Class A or B Misdemeanors: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	\$83.00	\$4.00	\$4.00	N/A	\$100.00	N/A	\$191.00	N/A	N/A	N/A	\$191.00
Class A or B Misdemeanors: Penal Code, DNA Testing Offenses	\$83.00	\$4.00	\$4.00	N/A	N/A	\$50.00	\$141.00	N/A	N/A	N/A	\$141.00
Class A or B Misdemeanors: All Other Offenses	\$83.00	\$4.00	\$4.00	N/A	N/A	N/A	\$91.00	N/A	N/A	N/A	\$91.00
Felonies: Transportation Code, Title 7, Subtitle C (Rules of the Road)	\$133.00	\$4.00	\$4.00	\$30.00	N/A	N/A	\$171.00	N/A	N/A	N/A	\$171.00
Felonies: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	\$133.00	\$4.00	\$4.00	N/A	\$100.00	N/A	\$241.00	N/A	N/A	N/A	\$241.00
Felonies: Penal Code, DNA Testing Offenses	\$133.00	\$4.00	\$4.00	N/A	N/A	\$250.00	\$391.00	N/A	N/A	N/A	\$391.00
Felonies: All Other Offenses	\$133.00	\$4.00	\$4.00	N/A	N/A	N/A	\$141.00	N/A	N/A	N/A	\$141.00

Note 1: Up to \$5.00 court cost for cities with population < 850,000 that have adopted appropriate ordinance, regulation, or order (optional). From \$2.00 to \$5.00 court cost for cities with population > 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

Sources: Legislative Budget Board; Office of Court Administration, County & District Clerks – Court Costs and Fees Handbook (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 3B

Other Court Costs and Fees Imposed by Municipal, County, and District Courts

Court Cost / Fee	State Court Costs and Fees	Local Court Costs and Fees	Combined Total of Court Costs and Fees
Arrest Fee: For issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 percent (\$1.00) is sent to the state.	\$1.00	\$4.00	\$5.00
Warrant Fee: For executing or processing an issued arrest warrant or capias. When service is performed by a peace officer employed by the state, 20 percent (\$10.00) is sent to the state.	\$10.00	\$40.00	\$50.00
Failure to Appear Fee: If a city or county has contracted with the Department of Public Safety (DPS) to provide information necessary for the department to deny renewal of driver's licenses, a fee is charged for (a) each complaint or citation reported to DPS under Transportation Code, Chapter 706, unless the person is acquitted of the charges for which the person failed to appear or (b) failing to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders. The fee is due when (1) the court enters judgment on the underlying offense reported to the department; (2) the underlying offense is dismissed; or (3) bond or other security is posted to reinstate the charge for which the warrant was issued.	\$20.00	\$4.00	*\$30.00
Time Payment Fee: Imposed on a person who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution. One-half (\$12.50) is sent to the state. One-tenth (\$2.50) is retained locally for judicial efficiency. Four-tenths (\$10.00) is retained locally with no restrictions.	\$12.50	\$12.50	\$25.00
Judicial Fund Court Cost: Court cost on conviction of any criminal offense in statutory county courts and constitutional county courts only, including cases in which probation or deferred adjudication is granted. However, convictions arising under any law that regulates pedestrians or the parking of motor vehicles are not included.	\$15.00	N/A	\$15.00
Restitution Installment Fee: Imposed when the court requires a defendant to make restitution in specified installments under Code of Criminal Procedure, Article 42.037.	\$6.00	\$6.00	\$12.00

* \$6.00 is paid to OmniBase Services of Texas, the vendor with which DPS contracts for services related to the Failure to Appear program.

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Combined State and Local Criminal Court Costs and Fees

Table 3C

Other Court Costs and Fees Imposed by Municipal Courts

Court Cost / Fee	State Court Costs and Fees	Local Court Costs and Fees	Combined Total of Court Costs and Fees
Summoning a Witness: Fee of \$5.00 for serving a subpoena.	N/A	\$5.00	\$5.00
Summoning a Jury: Fee of \$5.00.	N/A	\$5.00	\$5.00
Service of a Summons (for a defendant or child's parents): Fee of \$35.00.	N/A	\$35.00	\$35.00
Other Costs Related to Services of Peace Officers under Code of Criminal Procedure, Art. 102.011: Actual for overtime paid for time spent testifying in the trial of a case or traveling to and from testifying in the trial of a case.	N/A	Varies	Varies
Municipal Court Building Security Fee: Imposed if governing body has passed required ordinance.	N/A	\$3.00	\$3.00
Municipal Court Technology Fee: Imposed if governing body has passed required ordinance. Not to exceed \$4.00.	N/A	\$4.00	\$4.00
Juvenile Case Manager Court Cost: Imposed if governing body has passed required ordinance. Not to exceed \$5.00.	N/A	\$5.00	\$5.00
Jury Fee: Imposed per conviction when conviction is by a jury or when a defendant requests a jury trial and withdraws the request within less than 24 hours of the time of the trial.	N/A	\$3.00	\$3.00
Administrative Fees: Imposed for dismissing certain driving charges and for requesting a driving safety course.	N/A	\$10.00	\$10.00
Teen Court Fees: Optional fee not to exceed \$10.00.	N/A	\$10.00	\$10.00
Expungement Fee: Charged for each application filed.	N/A	\$30.00	\$30.00
Driving Record Fee: Optional fee imposed for obtaining a copy of the defendant's driving record from the Texas Department of Public Safety.	\$10.00	\$0	\$10.00
Special Expense Warrant Fee: Not to exceed \$25.00 per warrant, imposed for failure to appear or violation of promise to appear if the governing body has passed the required ordinance.	N/A	\$25.00	\$25.00

Sources: Legislative Budget Board; Office of Court Administration, County & District Clerks – Court Costs and Fees Handbook (Austin, Texas, October 2005).

Combined State and Local Criminal Court Costs and Fees

Table 3D

Other Court Costs and Fees Imposed by County and District Courts. (Costs and fees are collected by applicable court clerk and paid to retain locally by municipality or county, as appropriate.)

Court Cost / Fee	State Court Costs and Fees	Local Court Costs and Fees	Combined Total of Court Costs and Fees
Clerk's Fee	N/A	\$40.00	\$40.00
Records Management and Preservation Fee	N/A	\$25.00	\$25.00
Courthouse Security Fee: Misdemeanors in Municipal Court, County Court at Law, or District Court	N/A	\$3.00	\$3.00
Courthouse Security Fee: Misdemeanors in Justice Court	N/A	\$4.00	\$4.00
Courthouse Security Fee: Felonies	N/A	\$5.00	\$5.00
Fee for Services of Prosecutors: Misdemeanors and Gambling Offenses	N/A	\$25.00	\$25.00
Juvenile Delinquency Prevention Fee	N/A	\$5.00	\$5.00
Breath Alcohol Testing Court Cost	N/A	\$22.50	\$22.50
Visual Recording Fee	N/A	\$15.00	\$15.00
Cost of Evaluation Court Cost	N/A	Varies	Varies
Transaction Administrative Fee	N/A	\$2.00	\$2.00
Additional Court Cost Traffic Offenses	N/A	\$3.00	\$3.00
Jury Fee	N/A	\$20.00	\$20.00
Appealed Cases Deferred Special Expense	N/A	Not to Exceed Assessed Fine	Not to Exceed Assessed Fine
Juvenile Case Manager Court Cost: Imposed only if governing body has passed required ordinance.	N/A	\$5.00	\$5.00
Child Abuse Prevention Court Cost	N/A	\$100.00	\$100.00
Juvenile Probation Diversion Fund Court Cost: Imposed if a disposition hearing is held; collected only if the child, parent, or other person responsible for the child's support is financially able to pay it.	N/A	\$20.00	\$20.00

Sources: Legislative Budget Board; Office of Court Administration, County & District Clerks – Court Costs and Fees Handbook (Austin, Texas, October 2005).

Case Studies

To illustrate the various fees assigned to certain criminal offenses, Sunset staff performed three case studies evaluating the various costs that could be attached to three different offenses: a Class C Misdemeanor municipal ordinance violation, such as a traffic ticket; a Class A Misdemeanor driving while intoxicated (DWI) offense; and a felony DNA testing offense, such as sexual assault. The following tables represent the maximum amount of court costs and fees that could be applied to each offense. In addition, the three offenses studied are shaded in the previous tables, *Court Costs and Fees in Criminal Cases Sent to the State* and *Court Costs and Fees in Criminal Cases Retained by Municipality*. As discussed earlier, state fees are mandatory and must be assessed, but the assessment of local fees depends on the particular jurisdiction.

Case Study 1: Class C Misdemeanor Municipal Ordinance Violation

Municipal ordinances, such as violation of a parking ordinance, are generally classified as Class C Misdemeanors. A person convicted of a municipal ordinance violation could face the following fees, in addition to the fine for the offense itself. Including the Consolidated Court Cost and other state fees, local jurisdictions can add fees to defray the cost of the services of the peace officer, as well as fees to provide local technology. The chart, *Class C Misdemeanor Municipal Ordinance Violation Fees*, details the type and amount of fees that could be assessed for this type of violation. The court costs and fees for a Class C Misdemeanor municipal ordinance violation would be at least \$48, and could possibly be up to \$63.

Class C Misdemeanor Municipal Ordinance Violation Fees

Date Added	Fee	State/Local	Amount
2005	Judicial Support Fee	State	\$4.00
2005	Jury Reimbursement Fee	State	\$4.00
2004	Jury Fee	Local	\$3.00
2004	Fee for Services of Peace Officers	State/Local ⁴	\$5.00
2003	Juvenile Crime and Delinquency Program at Prairie View A&M University*	State	\$0.49
2003	Comprehensive Rehabilitation*	State	\$2.13
2001	Fair Defense*	State	\$2.41
2001	Correctional Management Institute at Sam Houston State University*	State	\$0.48
1999	Municipal Court Technology Fee	Local	\$4.00
1997	TDCJ Fugitive Apprehension*	State	\$4.84
1995	Law Enforcement Officers Standards and Education*	State	\$2.00
1993	Municipal Court Building Security Fee	Local	\$3.00
1991	DPS Breath Alcohol Testing*	State	\$0.22
1989	Crime Stoppers Assistance*	State	\$0.10
1987	Judicial and Court Personnel Training*	State	\$1.93
1987	Operator's and Chauffeur's License Fund*	State	\$4.46
1987	Law Enforcement Management Institute at Sam Houston State University*	State	\$0.87
1979	Crime Victims' Compensation Fund*	State	\$15.05
1971	State Criminal Justice Planning*	State	\$5.02
Total Fees Assessed			\$63.00

*Part of the Consolidated Court Cost, discussed further in Attachment A.⁵

Case Study 2: Class A Misdemeanor Driving While Intoxicated Offense

A person convicted of a Class A Misdemeanor offense of driving while intoxicated could face the following fees. The total state court costs and fees would be \$191. In addition, the offender faces additional fees upon conviction, such as the Judicial Fund Court Cost and the breath alcohol testing fee. If the offender requests a jury trial, more fees could be added, totaling \$346.50, detailed in the chart, *Class A Misdemeanor Driving While Intoxicated Fees*. Finally, if this is the second DWI offense, the offender must pay an annual \$1,500 surcharge for a driver's license under the Driver's Responsibility Program for three years, totaling \$4,500. Therefore, for a second Class A Misdemeanor DWI offense, an offender could face more than \$4,800 in court costs and fees.

Class A Misdemeanor Driving While Intoxicated Fees

Date Added	Fee	State/Local	Amount
2005	Jury Reimbursement Fee	State	\$4.00
2005	Clerk's Fee	Local	\$40.00
2005	Judicial Support Fee	State	\$4.00
2005	Records Management and Preservation Services	Local	\$25.00
2004	Jury Fee	Local	\$20.00
2004	Fee for Services of Peace Officers	State/Local	\$5.00
2003	Juvenile Crime and Delinquency Program at Prairie View A&M University*	State	\$1.00
2003	Judicial and Court Personnel Training*	State	\$4.01
2003	Comprehensive Rehabilitation*	State	\$4.42
2003	EMS Trauma Fund	State	\$100.00
2001	Fair Defense*	State	\$4.99
2001	Correctional Management Institute at Sam Houston State University*	State	\$1.00
1997	TDCJ Fugitive Apprehension*	State	\$10.04
1997	Breath Alcohol Testing Court Cost	Local	\$22.50
1995	Law Enforcement Officers Standards and Education*	State	\$4.15
1995	Electronic Visual Recording Fee	Local	\$15.00
1993	Courthouse Security Fee	Local	\$3.00
1991	Breath Alcohol Testing*	State	\$0.46
1989	Abused Children's Counseling*	State	\$0.01
1989	Crime Stoppers Assistance*	State	\$0.21
1987	Law Enforcement Management Institute at Sam Houston State University*	State	\$1.80
1987	Operator's and Chauffeur's License Fund*	State	\$9.25
1985	Fee for Services of Prosecutors	Local	\$25.00
1979	Crime Victims' Compensation Fund*	State	\$31.24
1971	Criminal Justice Planning*	State	\$10.42
Total Fees Assessed			\$346.50

*Part of the Consolidated Court Cost, discussed further in Attachment A.

Case Study 3: DNA Felony Offense

A person convicted of a felony offense requiring DNA testing, such as sexual assault, would face the following state court costs and fees, totaling \$391, and could face additional fees, increasing the total to \$486. Felony offenses pay higher Consolidated Court Costs. For example, misdemeanor offenses pay \$15-30 to the Crime Victims' Compensation Fund, while felony offenses pay \$50. Finally, certain offenses necessitating comprehensive DNA testing face a \$250 state DNA testing fee. The chart, *Felony DNA Testing Offense Fees*, details the various fees that could be applied to this offense.

Felony DNA Testing Offense Fees

Date Added	Fee	State/Local	Amount
2005	Clerk's Fee	Local	\$40.00
2005	Records Management and Preservation Services	Local	\$25.00
2005	Courthouse Security Fee	Local	\$5.00
2005	Jury Reimbursement Fee	State	\$4.00
2005	Judicial Support Fee	State	\$4.00
2004	Fee for Services of Peace Officers	State/Local	\$5.00
2004	Jury Fee	Local	\$20.00
2003	Juvenile Crime and Delinquency Program at Prairie View A&M University*	State	\$1.62
2003	Judicial and Court Personnel Training*	State	\$6.43
2003	Comprehensive Rehabilitation*	State	\$7.08
2001	DNA Testing Fee	State	\$250.00
2001	Fair Defense*	State	\$8.00
2001	Correctional Management Institute at Sam Houston State University*	State	\$1.61
1997	TDCJ Fugitive Apprehension*	State	\$16.08
1995	Law Enforcement Officers Standards and Education*	State	\$6.65
1991	Breath Alcohol Testing*	State	\$0.73
1989	Abused Children's Counseling*	State	\$0.01
1989	Crime Stoppers Assistance*	State	\$0.34
1987	Law Enforcement Management Institute at Sam Houston State University*	State	\$2.88
1987	Operator's and Chauffeur's License Fund*	State	\$14.82
1979	Crime Victims' Compensation Fund*	State	\$50.05
1971	Criminal Justice Planning*	State	\$16.70
Total Fees Assessed			\$486.00

*Part of the Consolidated Court Cost, discussed further in Attachment A.

¹ Texas House Bill 1116, 79th Legislature (2005), Article 6.

² In 2002, SAO issued an audit report on funds collected as court costs, concluding that certain grantees, contractors, and award recipients that received court costs and fees from the Governor's Office, the Office of the Attorney General, and the Children's Trust Fund of Texas Council may not have always spent funds for the intended purposes. In addition, the report found that six court costs and fees do not have a specific purpose directing expenditure of funds. In 2005, OCA estimated that \$397 million annually in court costs, fees, and fines is uncollected by local court jurisdictions for criminal offense convictions, \$99 million of which would go to the state. State Auditor's Office, *Funds Collected as Court Costs* (Austin, Texas, 2002), p. 1.

³ Texas Senate Bill 1863, 79th Legislature (2005).

⁴ When service is performed by a peace officer employed by the State, 20 percent (\$1.00) is sent to the State, and the remainder retained locally.

⁵ Fourteen different state criminal court costs and fees comprise the Consolidated Court Cost. The Consolidated Court Cost is a group of fees that requires the Comptroller to deposit certain percentages of the monies received for each fee in specific accounts. Attachment A details the fees that comprise the Consolidated Court Cost, their purpose, and who administers the funds or accounts relating to each fee.



Attachment A

Consolidated Court Cost¹

Fee	Purpose	Administrator
Abused Children's Counseling	To provide counseling services to abused children.	General Revenue Fund
Breath Alcohol Testing	To implement, administer, and maintain the statewide certified breath alcohol testing program.	Department of Public Safety
Comprehensive Rehabilitation	To provide rehabilitation services to eligible individuals.	Department of Assistive and Rehabilitative Services
Correctional Management Institute	To establish and operate the Correctional Management Institute of Texas and Criminal Justice Center Account.	Sam Houston State University
Crime Stoppers Assistance	To fund crime stoppers organizations and operate a toll-free number for citizens in areas of the state not covered by crime stoppers organizations to report information about criminal acts.	Governor's Office, Criminal Justice Division
Crime Victims Compensation Fund	To reimburse out-of-pocket expenses to victims of violent crime and their families, operate the Crime Victim Institute, and fund victim-related services and assistance.	Office of the Attorney General
Criminal Justice Planning	To fund state and local criminal justice projects, and for costs of administering funds for the projects.	Governor's Office, Criminal Justice Division
Fair Defense	To help provide legal representation and other defense services to indigent defendants.	Task Force on Indigent Defense
Fugitive Apprehension	To apprehend and incarcerate certain individuals.	Department of Public Safety
Judicial and Court Personnel Training	To provide continuing legal education of judges and court personnel.	Court of Criminal Appeals
Juvenile Crime and Delinquency	To the establishment and operation of the Center for Study and Prevention of Juvenile Crime and Delinquency.	Prairie View A&M University
Law Enforcement Officers Administrative and Continuing Education	To train police management personnel.	Bill Blackwood Law Enforcement Institute of Texas
Law Enforcement Officers Administrative and Continuing Education	To fund Commission administrative expenses and train law enforcement personnel.	Commission on Law Enforcement Standards and Education
Operator's and Chauffeur's License	To defray expenses of administering the Safety Responsibility Law.	Department of Public Safety

¹ Office of Court Administration, *County and District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005), pp. 1-2.

APPENDICES



Appendix A

Sunset Review Schedule – 2009

General Government

Electronic Government Program Management Office¹
Information Resources, Department of
Military Preparedness Commission, Texas
Public Finance Authority, Texas

Health and Human Services

Aging and Disability Services, Department of
Assistive and Rehabilitative Services, Department of
Cancer Council, Texas
Developmental Disabilities, Texas Council for
Family and Protective Services, Department of
Health and Human Services Commission
Health Services, Department of State
People with Disabilities, Governor's Committee on

Public Safety and Criminal Justice

Adjutant General's Department
Fire Protection, Texas Commission on
Jail Standards, Commission on
Juvenile Probation Commission, Texas
Law Enforcement Officer Standards and Education, Commission on
Military Facilities Commission, Texas²
Polygraph Examiners Board³
Private Security Board, Texas³
Public Safety, Texas Department of
Youth Commission, Texas

Business and Economic Development

Housing Corporation, Texas State Affordable
Transportation, Texas Department of
Workforce Commission, Texas

Regulatory

Credit Union Commission

Equine Research Account Advisory Committee

Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of ⁴

Injured Employee Counsel, Office of

Insurance, Texas Department of

Insurance Counsel, Office of Public

Occupational Therapy Examiners, Texas Board of

Orthotics and Prosthetics, Texas Board of ⁴

Physical Therapy and Occupational Therapy Examiners, Executive Council of

Physical Therapy Examiners, Texas Board of

Racing Commission, Texas

Residential Construction Commission, Texas

Self-Directed Semi-Independent Agency Project Act

Speech-Language Pathology and Audiology, State Board of Examiners for ⁴

Workers' Compensation, Division of ⁵

¹ The Office is located in the Department of Information Resources.

² By means of a line item veto in S.B. 1, 79th Legislature, Regular Session, the Governor eliminated funding for this agency.

³ Both boards are part of the Texas Department of Public Safety.

⁴ These boards are located at the Department of State Health Services.

⁵ The Division is part of the Texas Department of Insurance.



Appendix B

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 textbox, *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.

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?

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.