

SUNSET ADVISORY COMMISSION

Report to the 81st Legislature

February 2009



Sunset Advisory Commission



Representative Carl Isett, Chair

Senator Glenn Hegar, Jr., Vice Chair

Representative Dan Flynn

Senator Robert F. Deuell, M.D.

Representative Linda Harper-Brown

Senator Craig Estes

Representative Lois Kolkhorst

Senator Juan "Chuy" Hinojosa

Representative Ruth Jones McClendon

Vacant

Ike Sugg, Public Member

Charles McMahan, 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 130 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

House Members

Chair
Rep. Carl Isett
Lubbock

Rep. Dan Flynn
Van

Rep. Linda Harper-Brown
Irving

Rep. Lois Kolkhorst
Brenham

Rep. Ruth Jones McClendon
San Antonio

Ike Sugg
San Angelo

Senate Members

Vice Chair
Sen. Glenn Hegar, Jr.
Katy

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

Sen. Craig Estes
Wichita Falls

Sen. Juan "Chuy" Hinojosa
McAllen

Vacant

Charles McMahan
Schulenburg

Director

Joey Longley

February 17, 2009

The Honorable Rick Perry
Governor of Texas

The Honorable David Dewhurst
Lieutenant Governor of Texas

The Honorable Joe Straus
Speaker, Texas House of Representatives

Honorable Members of the 81st Legislature
Assembled in Regular Session

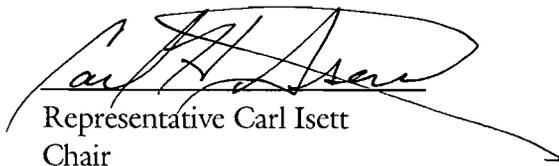
Ladies and Gentlemen:

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

Between September 2007 and January 2009, the Sunset Commission has worked to develop recommendations resulting from the 27 reviews 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 streamline state government, improve agencies' operations, result in cost savings, and position these agencies to better serve the people of Texas.

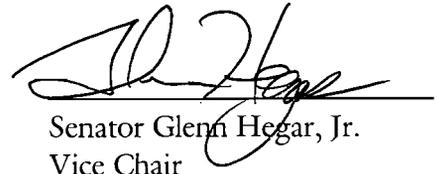
The Sunset Advisory Commission is pleased to forward to you its findings and recommendations with this report.

Respectfully submitted,



Representative Carl Isett
Chair

Sunset Advisory Commission



Senator Glenn Hegar, Jr.
Vice Chair

Sunset Advisory Commission

Table of Contents

	PAGE
INTRODUCTION	
.....	1
SUMMARY OF SUNSET RECOMMENDATIONS TO THE 81ST LEGISLATURE	
.....	3
SUNSET COMMISSION RECOMMENDATIONS	
Agriculture, Texas Department of.....	13
Prescribed Burning Board	
Texas-Israel Exchange Fund Board	
Boll Weevil Eradication Foundation, Texas	33
Credit Union Department	37
Fire Protection, Texas Commission on.....	43
Housing Corporation, Texas State Affordable	51
Insurance, Texas Department of.....	57
Insurance Counsel, Office of Public	81
Jail Standards, Texas Commission on.....	85
Juvenile Justice Agencies	93
Youth Commission, Texas	
Juvenile Probation Commission, Texas	
Office of Independent Ombudsman	
Law Enforcement Officer Standards and Education, Texas Commission on	107
Military Preparedness Commission, Texas.....	117
Parks and Wildlife Department, Texas.....	123
Polygraph Examiners Board.....	135

	PAGE
SUNSET COMMISSION RECOMMENDATIONS (continued)	
Public Safety, Department of	139
Private Security Board	
Racing Commission, Texas.....	155
Equine Research Account Advisory Committee	
Residential Construction Commission, Texas	165
State-Federal Relations, Office of	179
Tax Professional Examiners, Board of.....	185
Transportation, Texas Department of.....	191
 ACROSS-THE-BOARD RECOMMENDATIONS (ATBs)	
.....	225
 IMPLEMENTATION OF 2007 SUNSET LEGISLATION	
.....	229
 INFORMATION ITEMS	
Facilities Commission, Texas.....	239
Medical Board, Texas	255
 APPENDICES	
Appendix A — Sunset Review Schedule – 2011	271
Appendix B — Summary of the Texas Sunset Act	273

Introduction

The Sunset law in Texas, enacted more than 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 81st Legislative Session

For the 81st Legislative Session, 27 agencies are under Sunset review. Of the agencies under review, two are special studies requested by the Legislature and not under full Sunset review. Among the agencies to be considered by the Legislature this session are the Texas Department of Agriculture, Texas Department of Insurance, Texas Parks and Wildlife Department, and Texas Department of Transportation. Several criminal justice and public safety agencies, such as the Texas Juvenile Probation Commission, Texas Youth Commission, and Department of Public Safety, are also under review.

Results of Sunset Commission Reviews

As a result of its deliberations, the Sunset Commission recommends that the 81st Legislature pass legislation continuing 14 of 25 agencies under full review, with significant improvements to each agency continued. The Commission recommends abolishing two agencies – the Texas Juvenile Probation Commission and Texas Youth Commission – and merging their functions into a newly created agency – the Texas Juvenile Justice Department. The Commission recommends abolishing three other agencies – the Polygraph Examiners Board, Board of Tax Professional Examiners, and Office of State-Federal Relations – and merging the functions of the first two with the Texas Department of Licensing and Regulation, and restructuring the latter within the Office of the Governor. The Commission also voted to abolish the Equine Research Account Advisory Committee and the Texas-Israel Exchange Fund Board because the State does not need separate entities to administer these programs. The Commission recommends removing four agencies' Sunset dates from statute, subjecting them to Sunset review at the same time as the agencies to which they are attached. These agencies include the Texas Military Preparedness Commission, Prescribed Burning Board, Private Security Board, and Office of Independent Ombudsman. The Commission also recommends creating a new agency, the Texas Department of Motor Vehicles, by transferring the motor vehicle functions from within the Texas Department of Transportation to the new agency.

Altogether, the Sunset Commission adopted 318 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 11 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 2010 and 2011, the Sunset Commission's recommendations would result in a positive fiscal impact to the State of about \$2.6 million. The Sunset Commission also recommends changes to appropriations for five 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. Finally, the Commission voted to request that the appropriate legislative committees study the development of legislation on specific issues related to three agencies under review.

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 suitable 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 2007. The Sunset Act requires the Commission to review the way each agency implements the provisions of its Sunset bill. In 2007, the 80th Legislature passed 15 bills containing the majority of changes recommended by the Sunset Commission. Overall, state agencies have implemented 95 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 of the Texas Facilities Commission and Texas Medical Board. Finally, this report includes a list of agencies scheduled for Sunset review in 2011, and a summary of the Texas Sunset Act.

INTRODUCTION



**SUMMARY OF SUNSET RECOMMENDATIONS
TO THE 81ST LEGISLATURE**



Summary of Sunset Recommendations

Agriculture, Texas Department of

Prescribed Burning Board

Texas-Israel Exchange Fund Board

1. Restructure the Texas Agricultural Finance Authority's programs so that they better meet the needs of Texas agriculture.
2. Continue the Prescribed Burning Board as a semi-independent board and strengthen its enforcement authority over noncompliant licensees and unlicensed activity.
3. Abolish the Texas-Israel Exchange Fund, and give TDA the discretion to seek funding for cooperative agricultural research as the agency sees fit.
4. Require the Commissioner of Agriculture, rather than the Governor, to appoint the members of certain boards and combine the two wine advisory committees into one.
5. Direct TDA to develop rules to administer and enforce the Texas Public School Nutrition Policy.
6. Eliminate regulation of certain activities and conform the regulation of others to reflect current industry practices.
7. Conform key elements of TDA's licensing and enforcement functions to commonly applied licensing practices.
8. Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.
9. Direct TDA to explore ways to get excess venison from landowners to food banks, schools, and prisons.
10. Continue TDA for 12 years.

Boll Weevil Eradication Foundation, Texas

1. Continue the Texas Boll Weevil Eradication Foundation for 12 years.
2. Provide the Foundation flexibility in the collection and use of grower assessments to meet the changing nature of boll weevil eradication efforts.

Credit Union Department

1. Continue the Credit Union Department for 12 years.
2. Require state-chartered credit unions to provide more information about their financial condition and management to their members.
3. Authorize the Credit Union Commissioner to issue cease-and-desist orders against unchartered credit unions and to assess late penalties for delinquent operating fees.

4. Require the Credit Union Commission to adopt rules governing its use of advisory committees and direct it to abolish the Legislative Advisory Committee.

Fire Protection, Texas Commission on

1. Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.
2. Repeal the Commission's Fire Department Emergency Program and transfer the one million dollars in annual funding for grants to the Texas Forest Service, with volunteer and paid fire departments to be eligible to apply for grants.
3. Conform key elements of the Commission's certification and regulatory functions to commonly applied licensing practices.
4. Continue the Texas Commission on Fire Protection for 12 years, with an increased focus on preventing fire fighter injuries.

Housing Corporation, Texas State Affordable

1. Continue the Texas State Affordable Housing Corporation for six years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.
2. Increase the size of the Corporation's Board by adding one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations.
3. Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.

Insurance, Texas Department of

1. Require TDI to clearly define the processes it uses to regulate property and casualty insurance in Texas.
2. Clarify the division of responsibilities between the Texas Windstorm Insurance Association and TDI to ensure that TDI can oversee the Association as a market of last resort.
3. Require Preferred Provider Organizations to obtain a certificate of authority from TDI to operate in Texas.
4. Give TDI additional regulatory tools to effectively oversee title insurance and accurately promulgate title insurance rates for the State.
5. Eliminate unnecessary advisory committees in statute, and require TDI to ensure that agency-created advisory committees meet standard criteria.
6. Require the State Fire Marshal's Office (SFMO) to periodically inspect state-leased buildings and better target its fire safety inspections.

7. Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.
8. Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.
9. Change the threshold needed to be met for reduced rate filing requirements for insurers that write residential property insurance in areas designated as underserved.
10. Request that the Legislature study the use of insurance maintenance taxes to support other state agencies, and make appropriate changes in methods of finance as necessary.
11. Request that the Legislature, through the appropriate legislative committees, consider creating a Health Insurance Innovations Program.
12. Continue the Texas Department of Insurance for 12 years and update its statutory duties.

Insurance Counsel, Office of Public

1. Continue the Office of Public Insurance Counsel for 12 years.

Jail Standards, Texas Commission on

1. Continue the Texas Commission on Jail Standards as an independent agency for 12 years.
2. Require the Commission to more effectively target high-risk jails through its inspections process, and request that the Legislature fund an additional jail inspector position.
3. Require the Commission to disseminate best practice information to jails and update its use of technology and internal procedures.
4. Conform the Commission's complaints and public information procedures with commonly applied standards.

Juvenile Justice Agencies

Youth Commission, Texas

Juvenile Probation Commission, Texas

Office of Independent Ombudsman

1. Consolidate the functions of TYC and TJPC into a new Texas Juvenile Justice Department effective September 1, 2010 and subject to Sunset in 2015; provide funding incentives for counties to keep more youth in their home communities; and require a comprehensive five-year plan to better integrate juvenile justice functions and ensure implementation of state-level reforms.
2. Require OIO and the new Department to develop formal procedures to help ensure timely and informative communication between the two agencies on OIO reports and areas of overlapping responsibility.

3. Require the Department to regulate, and local juvenile boards to inspect and certify, all nonsecure correctional facilities that accept only youth on probation.
4. Conform key elements of TJPC's officer certification program to commonly applied licensing practices.

Law Enforcement Officer Standards and Education, Texas Commission on

1. Require the Commission to conduct a technology performance review to specifically evaluate the cost, feasibility, and risks associated with options to modernize its IT systems.
2. Streamline the Commission's F-5, or agency separation, appeal process by encouraging mediation and conducting hearings locally, where appropriate.
3. Conform key elements of the Commission's licensing and enforcement functions to commonly applied licensing practices.
4. Remove ex officio members from the Commission's composition.
5. Continue the Texas Commission on Law Enforcement Officer Standards and Education for 12 years.

Military Preparedness Commission, Texas

1. Continue the Texas Military Preparedness Commission as an independent board administratively tied to the Governor's Texas Economic Development and Tourism Office, and clarify its role in the Texas Military Value Revolving Loan Fund Program.
2. Expand the DEAAG program beyond job creation to include job retention, developing contract performance measures for job retention grants, as well as rules governing the Commission's role in the grant award decision-making process.
3. Require the Commission to advocate for the preservation and expansion of missions and capabilities of military reserve bases and to consider reserve communities in promoting DEAAG funding.

Parks and Wildlife Department, Texas

1. Require the Texas Parks and Wildlife Department to create a list of aquatic plants that may be imported and possessed within Texas without a permit, and direct the Department to provide greater information to the public on the harm caused by releasing exotic species.
2. Require entities that receive TPWD's comments on proposed projects or permits to respond to TPWD on the disposition of those comments, and direct TPWD to track and use information on its comments to improve review processes.
3. Establish an Internal Affairs Office in statute, require the Office to report to the Parks and Wildlife Commission, and grant the Commission authority to initiate cases.
4. Authorize the Texas Parks and Wildlife Commission to join the Interstate Wildlife Violator Compact on behalf of the State of Texas.

5. Direct TPWD and the proposed Texas Department of Motor Vehicles to make an extensive effort to assist counties to offer boat registration and title services throughout Texas.
6. Instruct TPWD and the Texas Youth Commission to jointly seek representation by the Attorney General to pursue a modification of the Parrie Haynes Trust to designate TPWD as the state agency responsible for the Parrie Haynes Ranch and Trust.
7. Direct TPWD to cooperate with the Texas Department of Agriculture in pilot projects to get excess venison from landowners to food banks, schools, and prisons, and to study existing statutory and regulatory impediments preventing greater use of venison.
8. Continue TPWD for 12 years, and direct TPWD to evaluate and align its programs with the goals outlined in the Land and Water Resources Conservation and Recreation Plan.

Polygraph Examiners Board

1. Transfer the regulation of polygraph examiners to the Department of Licensing and Regulation, and standardize licensing and enforcement provisions in the Act.

Public Safety, Department of Private Security Board

1. Require the Department to contract for a management and organizational study, and operate the Driver License Program using a civilian business management model.
2. Require the Department to manage the vehicle inspection program as a civilian business and licensing operation with established goals and expected performance outcomes.
3. Clarify roles among GDEM, DPS, and the Governor's Office of Homeland Security, and request that the Legislature, through the appropriations process, exclude GDEM from the Department's cap on capital budget expenses paid for with federal funds.
4. Require affidavits of breath test operators and supervisors to be admissible without the witness's appearance unless the judge finds that justice requires their presence, and require the defense to request breath test operators and supervisors by subpoena.
5. Require the Department to modify its promotional policy to provide officers with location options when applying for promotions.
6. Conform key elements of the Private Security Bureau's licensing and regulatory functions to commonly applied licensing practices.
7. Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.
8. Require Sunset to conduct a limited scope review of DPS in 2011 to study the agency's implementation of the information technology audit conducted in 2008 and to review implementation of a civilian business management model for the Driver License Program.

9. Direct DPS to use state-of-the-art call center technology and best practices for monitoring driver license customer service phone calls; help customers replace lost driver licenses more quickly; and look at expanding the hours of operation of driver license offices.
10. Direct DPS to rescind its policy that prohibits troopers from living more than 20 miles from their duty stations, and to reconsider any other outdated policies that hinder employee retention.
11. Strengthen the internal affairs function at DPS regarding investigation of potential wrongdoings by DPS employees and crimes committed on DPS property.
12. Request that the Legislature, through the appropriate legislative committees, consider whether technology specialists who engage in computer forensics and analysis should be separately registered or otherwise set apart from traditional private security personnel or investigators.
13. Authorize DPS to put the classroom part of the concealed handgun licensing renewal class and the written test online.
14. Continue the Department of Public Safety for 12 years.

Racing Commission, Texas

Equine Research Account Advisory Committee

1. Improve the Racing Commission's ability to regulate the racing industry.
2. Require the Commission to increase and ensure consistent oversight of licensees who can affect pari-mutuel racing.
3. Eliminate current statutory limitations on withdrawals from automated teller machines at racetracks.
4. Continue the Texas Racing Commission for six years.
5. Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

Residential Construction Commission, Texas

1. Continue the Texas Residential Construction Commission for four years.
2. Amend the Texas Residential Construction Commission Act to include an agency purpose clause.
3. Restructure the Commission to provide additional focus on consumer issues and increase technical expertise.
4. Streamline the State Inspection Process to provide more efficient and effective outcomes and offer a mechanism for homeowners to opt out of the Process in cases where certain delays occur.
5. Improve the Commission's enforcement authority over registered builders and unregulated activity.

6. Require the agency to offer incentive to builders who fix confirmed defects.
7. Establish an Office of the Ombudsman to ensure consumer interests are represented within the agency and before the Commission.
8. Require the Commission to produce a brochure detailing agency programs to be distributed at new home closings.
9. Increase the amount of continuing education required of registered builders and remodelers.
10. Abolish the Star Builder Program.
11. Expand the eligibility to provide fee inspections as part of the County Inspection Program.
12. Direct the agency to study the possibility of adopting building codes for unincorporated areas.
13. Establish a recovery fund.

State-Federal Relations, Office of

1. Abolish the Office of State-Federal Relations and restructure it within the Office of the Governor and make additional changes to the Office's statute to improve its effectiveness in promoting the State's federal interests.

Tax Professional Examiners, Board of

1. Abolish the Board of Tax Professional Examiners and transfer its functions to the Texas Department of Licensing and Regulation.
2. Conform key elements of the Property Taxation Professional Certification Act's licensing and enforcement functions to commonly applied licensing practices.

Transportation, Texas Department of

1. Continue TxDOT for four years, but replace the Transportation Commission with a single, appointed Commissioner of Transportation and establish a Transportation Legislative Oversight Committee.
2. Improve TxDOT's internal controls to better ensure accountability of the Department and its employees.
3. Require TxDOT to develop a comprehensive, transparent, and easily understandable planning and reporting system for transportation projects in the state.
4. Require TxDOT to improve its public involvement efforts and strengthen the Department's lobbying prohibitions.
5. Update TxDOT's contracting authority and practices regarding the use of design-build, advertising, and professional services contracts; and require the Comptroller of Public Accounts and the Attorney General to approve certain comprehensive development agreements.

6. Transfer the State's motor vehicle functions from TxDOT to a newly created Texas Department of Motor Vehicles.
7. Require the new Texas Department of Motor Vehicles to review and report on improving the regulation of oversize and overweight vehicles.
8. Conform regulation of motor vehicle dealers, salvage vehicle dealers, and household goods carriers to commonly applied licensing practices and model standards.
9. Require outdoor advertising regulation to follow common regulatory practices and request that the Legislature reconsider the current process for valuation of outdoor advertising.
10. Create a rail division within TxDOT to ensure the Department provides adequate attention to rail transportation issues.
11. Require TxDOT to actively manage all of its dynamic message signs.
12. Establish in statute the Green Ribbon Project for enhancing the appearance of highways through landscaping.
13. Direct TxDOT to provide the Legislature information about its fleet of alternative fuel vehicles, including its declining use of propane vehicles.

81st Session Sunset Summary Information

Agency	Action	Two-Year Net Fiscal Impact
Agriculture, Texas Department of	Continue	No Impact
Boll Weevil Eradication Foundation, Texas	Continue	No Impact
Credit Union Department	Continue	No Impact
Equine Research Account Advisory Committee	Abolish	No Impact
Fire Protection, Texas Commission on	Continue	No Impact
Housing Corporation, Texas State Affordable	Continue	No Impact
Insurance, Texas Department of	Continue	No Impact
Insurance Counsel, Office of Public	Continue	No Impact
Jail Standards, Texas Commission on	Continue	No Impact
Juvenile Justice	Youth Commission, Texas Juvenile Probation Commission, Texas	Abolish / Merge \$594,616
	Office of Independent Ombudsman	Sunset Date Removed No Impact
Law Enforcement Officer Standards and Education, Texas Commission on	Continue	(\$40,000)
Military Preparedness Commission, Texas	Sunset Date Removed	No Impact
Parks and Wildlife Department, Texas	Continue	(\$103,107)
Polygraph Examiners Board	Abolish / Merge	\$83,480
Prescribed Burning Board	Sunset Date Removed	No Impact
Private Security Board	Sunset Date Removed	No Impact
Public Safety, Department of	Continue	No Impact
Racing Commission, Texas	Continue	No Impact
Residential Construction Commission, Texas	Continue	No Impact
State-Federal Relations, Office of	Abolish / Merge	No Impact
Tax Professional Examiners, Board of	Abolish / Merge	No Impact
Texas-Israel Exchange Fund Board	Abolish	No Impact
Transportation, Texas Department of	Continue	\$2,073,874
Net Positive Fiscal Impact		\$2,608,863

SUNSET COMMISSION RECOMMENDATIONS



Texas Department of Agriculture Prescribed Burning Board Texas-Israel Exchange Fund Board

Agency at a Glance

The Legislature established the Texas Department of Agriculture (TDA) in 1907. Since that time, the agency has evolved from its original responsibility for gathering information and statistics on crops and livestock to incorporate a largely regulatory function, and most recently to include marketing, economic development, and nutrition functions. Today, the agency encompasses all phases of modern agriculture, agricultural businesses, and consumer protection. To fulfill its mission of making Texas the leader in agriculture, TDA:

- ◆ promotes Texas agricultural products locally, nationally, and internationally;
- ◆ assists in the development of agribusiness industry in Texas by promoting rural communities and distributing grant money;
- ◆ regulates the sale, use, storage, and disposal of pesticides and herbicides;
- ◆ controls destructive plant pests and diseases;
- ◆ protects consumers through its regulation of agricultural commodities and measuring devices; and
- ◆ administers federal nutrition programs for school children and for adults and children in day care facilities.


*For additional information,
please contact Karen Latta
at (512) 463-1300.*

As part of its functions, TDA administers both the Texas-Israel Exchange Fund and the prescribed burn manager certification program. TDA receives guidance on these programs from two statutorily-created, semi-independent bodies – the Texas-Israel Exchange Fund Board and the Prescribed Burning Board – which are both subject to review under the Sunset Act in the same time frame as TDA.

Key Facts

- ◆ **Funding.** The Texas Department of Agriculture received an appropriation of \$347 million for fiscal year 2008, more than four times its \$80.5 million budget for fiscal year 2007. The increase is due to the transfer of several nutrition programs from the Health and Human Services Commission, the transfer of structural pest control regulation, and funding for a grant program to help organizations that deliver meals to homebound persons.

- ◆ **Staffing.** The number of employees authorized for TDA for fiscal year 2008 is 650.5, an increase of 146 employees from 2007 due to the additional responsibilities given to the agency. About half of the staff is based in Austin and the other half works in field offices throughout the state.
- ◆ **Food and Nutrition.** Through its administration of federally funded nutrition programs, including the National School Lunch Program and surplus agricultural commodity distribution programs, TDA oversaw the serving of more than one billion meals and the distribution of 166 million pounds of agricultural commodities in 2008.
- ◆ **Marketing.** The GO TEXAN marketing campaign, launched in 1999, promotes all Texas agricultural products under one recognizable trademark. TDA finished fiscal year 2008 with 2,320 GO TEXAN members, representing a wide variety of Texas-made agricultural and non-agricultural products.
- ◆ **Regulatory Programs.** The agency licenses, certifies, or regulates more than 130,000 persons, businesses, or entities – 53 percent of which are associated with the agency’s pesticide program. In addition to pesticides, TDA also regulates commercial weights and measures, plant quality, seed quality, perishable commodities, aquaculture facilities, cooperative marketing associations, grain warehouses, egg quality, and organics. The agency performs more than 335,000 inspections annually of fields, vehicles, warehouses, products in commerce, retail establishments, and other locations throughout the state. TDA currently certifies 18 prescribed burn managers.
- ◆ **Grants.** TDA administers a number of state and federally funded grant programs. One such program will provide grants totaling \$19 million during the 2008-2009 biennium to support local organizations that deliver meals to the homebound elderly and disabled. Another program, the Texas-Israel Exchange Fund, will grant \$500,000 during the biennium for agricultural research conducted by Texas and Israeli researchers. Through its Texas Capital Fund program, TDA will provide \$10 million to small communities for infrastructure improvement and downtown revitalization.

Agency Head

Todd Staples, Commissioner of Agriculture
(512) 463-1408

Recommendations

1. Restructure the Texas Agricultural Finance Authority’s programs so that they better meet the needs of Texas agriculture.
2. Continue the Prescribed Burning Board as a semi-independent board and strengthen its enforcement authority over noncompliant licensees and unlicensed activity.
3. Abolish the Texas-Israel Exchange Fund, and give TDA the discretion to seek funding for cooperative agricultural research as the agency sees fit.
4. Require the Commissioner of Agriculture, rather than the Governor, to appoint the members of certain boards and combine the two wine advisory committees into one.
5. Direct TDA to develop rules to administer and enforce the Texas Public School Nutrition Policy.

6. Eliminate regulation of certain activities and conform the regulation of others to reflect current industry practices.
7. Conform key elements of TDA's licensing and enforcement functions to commonly applied licensing practices.
8. Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.
9. Direct TDA to explore ways to get excess venison from landowners to food banks, schools, and prisons.
10. Continue TDA for 12 years.

Issue 1

The Texas Agricultural Finance Authority Has Significant Structural Problems and Does Not Currently Meet the Needs of Texas Agriculture.

Key Findings

- ◆ TAFAs is carrying a significant amount of debt from defaulted loans and its large pool of financial resources is mostly unused.
- ◆ The structure of TAFAs financial assistance programs limits its ability to sustain the programs over time.
- ◆ Previous efforts to solve TAFAs problems have had little impact in improving the Authority's programs or financial standing.

The Legislature created the Texas Agricultural Finance Authority (TAFAs) in 1987 to provide financial assistance to borrowers in the agriculture industry. Because of a high volume of defaulted loans, most TAFAs programs have been under moratorium since 2002, and the Authority is still carrying approximately \$14.7 million in debt as a result of delinquent loans. Further, the structure and statutory requirements of the programs limits their effectiveness in meeting the needs of Texas agriculture. TDA indicates that it intends to work with the Legislature, through the appropriations process, to address the outstanding debt, but statutory changes are necessary to fix TAFAs other problems.

Recommendations

Change in Statute

1.1 Provide that the Commissioner of Agriculture, rather than the Governor, appoint the TAFAs Board of Directors.

This recommendation would remove the Governor's authority to appoint the members of the TAFAs Board of Directors and give this authority to the Commissioner. The Commissioner of Agriculture is in a better position to be attuned to the needs of the state's agriculture industry. Enabling the Commissioner to appoint the members of the TAFAs Board would also better ensure that the Board's vacancies are filled in a timely fashion.

1.2 Add two members to TAFAs Board of Directors to represent young farmers.

This recommendation would expand the size of the Board from nine to 11 members. The two additional members would represent young farmers and their interests and would be appointed by the Commissioner of Agriculture. Given that several TAFAs programs are targeted to young farmers, this recommendation would give them the representation on the Board that is currently lacking.

1.3 Remove the statutory requirement that TAFAs receive a portion of the State's private activity bond authority.

Since TAFAs has never used its private activity bond authority, removing this statutory allocation would allow other state debt issuers to have access to TAFAs portion of the bonds. TAFAs would still be able to issue private activity bonds, but would have to compete with other state entities for access to the bonds that are not otherwise obligated.

1.4 Require TAFAs to issue debt through the Texas Public Finance Authority.

Under its agreement with the Public Finance Authority, TAFAs would continue to be responsible for administering its loan program to ensure full repayment of debt and to pay costs incurred by the Public Finance Authority for its issuance of the debt and associated fees and expenses. This change would provide extra oversight for TAFAs' debt issuance because the Public Finance Authority is required to receive legislative approval for each specific project for which the debt is to be issued and the estimated cost of the project or the maximum amount of bonded indebtedness that may be incurred by the issuance. Further, the Public Finance Authority's staff has expertise in the process for issuing state debt.

1.5 Eliminate the statutory requirement for the Board to give preference to value-added businesses.

Without the provision requiring the Board to give preference to value-added agricultural businesses, the Board would be able to consider all types of operations equally when making its lending decisions.

1.6 Create the Agricultural Loan Guarantee Program.

This program would offer guaranteed loans to eligible agricultural producers or other agricultural businesses and would have the following features.

- ◆ The Board would guarantee a certain amount of a loan depending on its size. The larger the loan, the lower the guaranteed amount.
- ◆ Borrowers would be able to receive a rebate on their interest rate, up to a certain amount.
- ◆ Interest rates for loans with terms extending beyond 12 months would be fixed.
- ◆ The Board would be able to create a certified lender's program to speed up the loan approval process.
- ◆ To fund the program, the Board would be able to access either three-fourths or \$12 million, whichever is less, of the Young Farmer Loan Guarantee Account, which would be renamed the Texas Agricultural Fund Account.
- ◆ To cover its administrative costs, the Board would be required to charge an administrative fee of at least 1 percent of the guaranteed amount of each loan.

This new program would be more attractive to agricultural operations and private lenders than existing TAFAs programs, while minimizing the financial risk to the State and avoiding the problems of past TAFAs programs.

1.7 Eliminate the Young Farmer Guarantee Program and replace it with two programs exclusively for young farmers.

In place of the Young Farmer Guarantee Program, this recommendation would create an interest rate reduction program and a grant program for young farmers. To increase eligibility for both programs, the definition of a young farmer would be expanded from 40 years of age to 45 years of age. The Young Farmer Interest Rate Reduction Program would allow borrowers to get lower interest rates on loans from private lenders than what is available on the commercial market. To fund the program, the Board would be able to access one-fourth of the funds in the Texas Agricultural Fund Account.

The Young Farmer Grant Program would provide grants of between \$5,000 and \$20,000 and would require the grantee to provide at least the same amount in matching funds. The funding for this grant program would come from the Texas Agricultural Fund Account. These changes would make TAFAs programs more attractive to young farmers by providing the financing needed to enter and become established in the agriculture industry in today's economic environment.

1.8 Rename the Linked Deposit Program and expand the program's eligibility.

This recommendation would rename the existing Linked Deposit Program as the Interest Rate Reduction Program, to better describe the purpose of the program. The program's eligibility would be expanded by raising the maximum loan amount eligible for participation from \$250,000 to \$500,000. These changes would make this program more attractive to agricultural producers and other agricultural businesses in need of financing options.

Issue 2

The State Needs to Continue and Strengthen the Regulation of Prescribed Burn Managers.

Key Findings

- ◆ Texas has a continuing need to regulate persons responsible for conducting prescribed burns to protect landowners, the public, and the environment.
- ◆ The statute does not provide for the adequate regulation of individuals who conduct prescribed burns in Texas.

Prescribed burning serves a need in Texas for controlling vegetative fuels that can contribute to wildfires and for managing land to maintain or restore ecosystems. Regulation of certified prescribed burn managers is intended to ensure that those responsible for conducting these burns have the training, experience, and financial responsibility to protect the interests of landowners. The agency, however, has no enforcement authority for taking action against certified prescribed burn managers who are negligent in conducting a burn or who fail to maintain insurance coverage required for certification. The agency also lacks the ability to go after unlicensed activity, among other limitations.

Recommendations

Change in Statute

2.1 Continue the Prescribed Burning Board as a semi-independent board, but remove its separate Sunset date.

This recommendation would continue the Prescribed Burning Board as a semi-independent board within the Texas Department of Agriculture, and would remove the Board's Sunset date. Future Sunset reviews of TDA would include a review of the Board as a part of its overall operations.

2.2 Authorize the agency to impose sanctions on non-compliant licensees and unlicensed activities.

This recommendation would give the agency the following enforcement authority over improper conduct associated with the prescribed burning profession.

- ◆ Authorize the agency to revoke or suspend a license, or probate a suspended license, refuse to renew, assess an administrative penalty, and impose a reprimand, as necessary.
- ◆ Authorize the agency to summarily suspend a license, issue cease-and-desist orders to stop the unlicensed practice of prescribed burning, and seek an injunction against persons holding themselves out as prescribed burn managers without a license.
- ◆ Require the agency to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.

This recommendation would give the agency enforcement authority to investigate and dispose of complaints to prevent unlicensed activities and non-compliance of licensees. The recommendation does not require the agency to conduct routine inspections of every prescribed burn.

2.3 Require the agency to develop a complaint process for taking corrective action for prescribed burning violations.

This recommendation would ensure the agency has a process to ensure appropriate and consistent action on complaints.

- ◆ Require the agency to adopt procedures for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.
- ◆ Require the agency to develop a standard form for the public to make a complaint against a certified prescribed burn manager.
- ◆ Require the agency to maintain information on complaints so that all parties to a complaint are aware of its status, or agency procedures pertaining to a complaint.
- ◆ Direct the agency to develop a method for responding to and documenting nonjurisdictional complaints.

2.4 Require the agency to renew prescribed burn manager certifications every two years.

This recommendation would enable the agency to maintain better oversight of its licensees by subjecting them to more frequent checks for continuing education. It would also allow the agency to recover more of the administrative costs associated with administering the program.

2.5 Change the title of “certified prescribed burn manager” to “certified and insured prescribed burn manager.”

Changing the title of “certified prescribed burn manager” to “certified and insured prescribed burn manager” in statute would clarify that all individuals who conduct prescribed burns for hire meet statutory education, experience, and insurance requirements. This recommendation would also help promote public knowledge that individuals who are in the business of conducting controlled burns on

another individual's land have not only the knowledge and experience, but also the required financial responsibility to protect the land and the interests of the landowner.

2.6 Allow a certified prescribed burn manager to conduct a burn in a county in which a current Governor's or Presidential Declaration of Emergency or Disaster is in effect, as long as that Declaration does not expressly prohibit all outdoor burning.

Under this recommendation, certified prescribed burn managers would be allowed to conduct burns as long as the Governor's or Presidential Declaration of Disaster does not specifically prohibit outdoor burning. This recommendation would clarify to the commissioners court of a county, which has the power to prohibit or restrict outdoor burning, that such a declaration does not affect certified prescribed burn managers conducting burns. This recommendation would allow greater use of prescribed burning as a tool for land management during conditions favorable for burning.

Issue 3

Texas Does Not Need a Separate Stand-Alone Board to Conduct Binational Collaborative Agricultural Research with Israel.

Key Findings

- ◆ Texas benefits from the binational agricultural research agreement with Israel, but these benefits are not clearly visible to the Legislature, the agriculture industry, or the public.
- ◆ Texas does not need a separate board to oversee this competitive grant program.

The Texas-Israel Exchange (TIE) Fund Board provides funding for agricultural research projects intended to be of mutual benefit to Texas and Israel. While the program is able to leverage state dollars to fund useful research for Texas agriculture, the funding for and results of these projects are not transparent to the Legislature, the agriculture industry, or the public. The same functions could be provided by an advisory committee, rather than a semi-independent board.

Recommendations

Change in Statute

3.1 Abolish the Texas-Israel Exchange Fund, and give the Texas Department of Agriculture the discretion to seek funding for cooperative agricultural research as the agency sees fit.

This recommendation removes the TIE Fund, the TIE Fund Board, and the Board's Sunset date from statute. In its place, the recommendation would add language authorizing TDA to partner with Israel to fund joint agricultural research. As a result, TDA would be able to request funding from the Legislature or seek other funding sources for binational agricultural research. Without the prescribed make-up of the TIE Fund Board in statute, TDA would be free to establish an advisory committee as it determines necessary to help it evaluate proposals, choose grant recipients, and monitor research projects.

Management Action

- 3.2 If TDA chooses to continue supporting joint agricultural research with Israel, the agency should request funding for such research through its Legislative Appropriations Request and ensure the results of that research are clearly communicated to the public.**

If TDA elects to make a budget request for cooperative agricultural research, the agency would need to make the process more transparent by including the request as a specific line item in its Legislative Appropriations Request. In addition to funding for the research projects themselves, the agency should also request funding to conduct evaluations of past projects to determine if the results of that research have been of use to the State's agriculture industry. TDA should also produce brief written descriptions of the purpose and potential benefits of the research projects it funds and provide this and other information about the program on its website. By providing this information in a publicly accessible format, policymakers and budget writers will have a better idea of how state money is being spent and those in the agriculture industry can learn about research that may benefit them. The Legislature can also decide if it wants to continue funding such efforts, based on identified results and outcomes.

Issue 4

Some of TDA's Boards and Advisory Committees Are Not Structured in a Way to Ensure Their Best Operation.

Key Findings

- ◆ The Governor does not need to appoint the members of the State Seed and Plant or Produce Recovery Fund boards.
- ◆ The State does not need two separate advisory committees to promote the wine industry.

TDA receives input from a number of semi-independent boards and advisory committees. No constitutional or operational reason exists for the members of the State Seed and Plant Board or the Produce Recovery Fund Board to be appointed by the Governor. TDA receives input on the wine industry from two separate committees, causing over-representation of the wine industry in the agency's marketing efforts and duplication in agency staff efforts to support both committees.

Recommendations

Change in Statute

- 4.1 Require the Commissioner of Agriculture and the Presidents of Texas A&M University and Texas Tech University, rather than the Governor, to appoint the members of the State Seed and Plant Board.**

The Governor would no longer appoint the members of the State Seed and Plant Board, and by extension the Seed Arbitration Board. The Senate would not provide its advice and consent of these members. Instead, the Commissioner of Agriculture would appoint the seed or plant producer and seller and the farmer. The Commissioner may be able to fill vacancies on the boards more rapidly than the Governor. Likewise, the Presidents of Texas A&M University and Texas Tech University would

appoint the representatives of their institutions. The head of TDA's seed division would also continue to serve on the Board, but would not need to be appointed.

4.2 Require the Commissioner of Agriculture, rather than the Governor, to appoint the members of the Produce Recovery Fund Board.

The Governor would no longer appoint the members of the Produce Recovery Fund Board, and they would not be subject to the advice and consent of the Senate. Instead, the Commissioner of Agriculture would appoint its members, according to the same membership qualifications already set in statute. However, each member would not have to reside in a different senatorial district. The number of members and who they represent would not change. The Commissioner may be able to fill vacancies on the boards more rapidly than the Governor.

4.3 Combine TDA's two wine advisory committees into the Wine Industry Development and Marketing Advisory Committee.

The new Wine Industry Development and Marketing Advisory Committee would encompass all wine industry stakeholders, including grape growers, wineries, wholesalers, retailers, package stores, researchers, and consumers, as well as representatives from TDA and the Texas Alcoholic Beverage Commission. The Commissioner would decide the size and specific representation of the committee and would make the appointments. The new committee would take on all responsibilities of the two current committees, including providing advice regarding development of the wine industry, research, educational programming, marketing, and the distribution of funds to support these efforts. The new committee would combine all of the expertise and functions of the existing committees with the benefit of a wider group of stakeholders in discussions of both wine marketing and research. TDA would also realize greater efficiency by only having to support one committee.

Issue 5

TDA Has No Formal Rules Governing How It Administers and Enforces the Texas Public School Nutrition Policy.

Key Finding

- ◆ No formal rules govern the administration and enforcement of the state nutrition policy to inform interested stakeholders of important processes.

Under its authority to administer federal nutrition programs, TDA sets and enforces the Texas Public School Nutrition Policy to improve the nutritional value of school lunches. However, TDA has no rules governing how it implements the policy or disseminates information to school districts and other stakeholders on policy requirements or updates. As a result, some stakeholders may not be aware of certain processes TDA uses for administering and enforcing the nutrition policy.

Recommendation

Management Action

5.1 The Texas Department of Agriculture should develop rules to administer and enforce the Texas Public School Nutrition Policy.

TDA should formalize its existing procedures governing the Texas Public School Nutrition Policy through the rulemaking process. Rules should include the following components:

- ◆ the nutritional guidelines;
- ◆ the implementation schedule;
- ◆ the compliance process;
- ◆ the enforcement process, including how to appeal a sanction; and
- ◆ any other processes TDA uses to administer the policy.

Formalizing the agency's administration of the State's nutrition policy would standardize the way TDA implements the policy, ensure fairness in getting stakeholder input, allow for public notification and comment, and make the enforcement and appeals processes consistent and transparent to school districts and all other interested parties. Rules would also provide for some continuity in the policy whenever a new Commissioner takes office.

Issue 6

Certain TDA Regulations Are Not Needed to Protect the Public or No Longer Reflect Current Practices.

Key Findings

- ◆ No clear public need exists for continued regulation of certain activities.
- ◆ Requirements for other regulatory programs no longer reflect industry practices.

TDA's regulation of certain activities does not provide any needed public protection. Regulation of these programs has not uncovered any significant problems and has resulted in very few complaints from the public, none of which have led to any type of enforcement action. Such inactivity is an indicator that these programs do not serve any public safety or consumer protection purpose. Similarly, other regulatory programs no longer reflect current practices of their respective industries. TDA is statutorily limited from adapting these programs to meet new industry practices and reduce its regulatory burden.

Recommendations

Change in Statute

6.1 Eliminate certification of rose graders.

Individuals who grade roses would no longer be required to register with TDA. Rose grading standards would remain in law and TDA would continue to enforce rose grading standards during nursery/floral inspections.

6.2 Eliminate registration of cash dealers in the handling and marketing of perishable commodities program.

This recommendation would eliminate the requirement that cash dealers who handle or market perishable commodities register with TDA. General licensees, who pay credit for perishable commodities, would still be required to register with TDA and pay into the Produce Recovery Fund.

6.3 Remove the requirement for TDA to establish piece rates for agricultural commodities.

This recommendation would remove the requirement in the Texas Labor Code that the Commissioner of Agriculture establish and update piece rates for each agricultural commodity commercially produced in the state. This would also remove all statutory language requiring the Commissioner of Agriculture to submit that information to the Texas Workforce Commission as well as provisions relating to an appeals process to contest proposed piece rates.

6.4 Eliminate registration of cooperative marketing associations.

Cooperative marketing associations would no longer need to register with TDA or provide financial information associated with that registration.

6.5 Change the regulatory structure of the public weigher program such that businesses, rather than individuals, would be registered.

This recommendation would adapt the public weigher program to place bonding and other requirements on businesses, rather than individuals. This change would also eliminate the distinction between state and county weighers and remove the process for electing a county public weigher. TDA would establish rules governing bond requirements and fees.

6.6 Remove certain statutory claim limitations and raise others for the Produce Recovery Fund.

This recommendation would increase the claim cap on the Produce Recovery Fund from \$35,000 to \$50,000 and remove statutory language that limits claim awards to all of the first \$2,000 and 70 percent of the rest of the claim. Claimants would be eligible to receive the full value of their validated claim, up to the amount of the claim cap. This recommendation would also remove the \$85,000 cap on the amount of claims against any single license holder in a single year.

Issue 7

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

Key Findings

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

Various licensing and enforcement processes in the Agriculture Code do not match model standards developed from experience gained through more than 93 occupational licensing reviews over the last 31 years. Comparing TDA'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

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

TDA would adopt guidelines detailing procedures for the testing process, including admission requirements and internal administration procedures. To ensure that applicants and potential applicants can readily find information on exam requirements, TDA would post exam procedures on its website.

7.2 Require TDA to evaluate test questions.

This recommendation would require TDA to evaluate the effectiveness of its licensure exams. Evaluation of pass/fail rates and test questions may serve as an indicator of the usefulness of the testing process. Doing so would also allow TDA to identify test questions that may be subjective or unclear as well as determine if the question is of proper difficulty to assess the applicant's knowledge.

7.3 Authorize TDA to charge fees for duplicate licenses.

This recommendation would allow TDA to establish, by rule, fees to cover the administrative costs of issuing duplicate licenses.

7.4 Authorize TDA to adopt a system under which licenses expire on various dates during the year.

TDA would establish, by rule, a license renewal system under which licenses expire on various dates during the year. This change would remove individual renewal dates from the Agriculture Code specifying licenses expire on their first anniversary for all egg licenses and the following pesticide licenses: certified private pesticide applicator, commercial pesticide applicator, noncommercial pesticide applicator, noncommercial political pesticide applicator, and private pesticide applicator real estate development licenses. This recommendation would also provide new authority to TDA to stagger license renewals. Because agency staff processes renewals for many types of registrations and licenses, this recommendation would improve staff efficiency renewing licenses.

Enforcement – Change in Statute

7.5 Authorize TDA to conduct inspections for its pesticide program.

This recommendation would authorize TDA to inspect the premises of a pesticide licensee on an unannounced basis during reasonable business hours, as part of TDA's compliance audits and complaint investigations. TDA would be able to inspect facilities and review records as necessary.

7.6 Allow TDA to establish a risk-based approach for all inspection activities.

A risk-based approach would allow the agency flexibility to balance its inspection schedule based on highest priority of risk against staff resources available to conduct inspections. Mandated inspection frequencies for weights and measures, nursery and floral, grain warehouse, and structural pest control programs would remain in statute, but the agency would have authority to inspect licensees on a risk basis within those time frames. This recommendation would allow TDA to focus greater attention on businesses with poor compliance histories and less attention on businesses that consistently follow the law. In implementing this recommendation, if TDA finds that statutory inspection frequencies impede the effective regulation of its programs, it should convey its concerns to the Legislature, with its proposal for the needed frequency of inspections to maintain adequate control over licensees.

7.7 Require TDA to clearly outline its enforcement process and make information about the process accessible to licensees.

This recommendation would promote a better understanding of TDA's enforcement process and help licensees accused of violations prepare a response. TDA 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 resources. TDA must also make information about allegations and TDA's investigation available to licensees in time for them to adequately participate in their defense.

7.8 Require TDA to offer respondents the opportunity to settle contested cases through informal settlement.

TDA would provide sufficient opportunity for a respondent to indicate whether the terms of a proposed order are acceptable, and would clearly state this opportunity in its notices of violation. Respondents who do not agree to proposed orders, would be able to request an informal settlement conference so they can present their case to the agency in person. TDA would also be able to conduct informal settlement conferences over the phone.

7.9 Increase TDA's administrative penalty authority.

The maximum administrative penalty TDA would be able to impose on an individual who violates sections of the Agriculture Code, rule, or other state laws, would be increased to \$5,000 per violation per day, and per-incident limitations would be removed. This amount reflects the significant harm that can result from illegal activity in the application of pesticides and other regulatory programs, and would provide a larger deterrent than the existing penalty amount.

7.10 Authorize TDA to issue cease-and-desist orders.

Cease-and-desist authority would allow TDA to move more quickly to stop unlicensed activity that threatens the health and safety of the public. This recommendation would also authorize TDA to assess administrative penalties against individuals who violate cease-and-desist orders. TDA would still be able to refer unlicensed activity cases to the Attorney General for injunctive relief or to seek prosecution, if necessary.

7.11 Require TDA to develop a method for analyzing trends in complaints and violations.

This recommendation would require TDA to develop a method for analyzing the sources and types of complaints and violations. The agency would analyze complaints and violations to identify trends and regulatory problem areas. In implementing this recommendation, TDA should establish categories for complaints and violations, such as section of statute or rule, as well as a process to track complaints and violations discovered through inspections and determine their disposition. TDA could use this analysis to focus its information and education efforts on specific areas. Developing a method to analyze complaints would provide TDA with improved information regarding the nature of complaints.

Enforcement – Management Action

7.12 TDA should track the number and types of nonjurisdictional complaints it receives.

TDA 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 TDA referred the complaint. Doing so would allow TDA 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.

7.13 TDA should make a complaint form available on its website in an easily accessible format.

Making a complaint form available on TDA's website would assist licensees and the public to more easily prepare and file complaints.

7.14 TDA should post information about disciplinary actions on its website.

Under this recommendation, consumers would have improved access to TDA's disciplinary information. TDA should provide more detailed information about licensees disciplined by TDA, including a citation of the law or rule violated, TDA's action, and the date of the TDA's order. In addition to increasing the public's access to enforcement data, this listing may reduce the amount of time staff must dedicate to handling consumer inquiries.

Issue 8

Statute Limits TDA's Ability to Fully Integrate the Structural Pest Control Program Into Its Regulatory Structure.

Key Findings

- ◆ Both the Structural Pest Control Act and the Agriculture Code define licensing and enforcement processes, limiting TDA's ability to create a standard regulatory structure for all its programs.
- ◆ Standardizing all regulatory processes in one agency leads to greater efficiency and fairness.

In 2007, the Legislature abolished the Structural Pest Control Board and transferred its functions to TDA. As a result, structural pest control applicators were added to the myriad individuals, businesses, and activities already regulated by TDA. Since structural pest control regulation is governed by its own statute with its own set of licensing and enforcement processes, TDA cannot fully integrate this program into its existing regulatory structure.

Recommendation

Change in Statute

8.1 Conform the Structural Pest Control Act with the Agriculture Code to better integrate the program into TDA's regulatory structure.

This recommendation would remove certain regulatory processes from the Structural Pest Control Act and replace them with references to those processes in the Agriculture Code. The Agriculture Code would also be updated to ensure its regulatory processes apply to the structural pest control program. These changes would help TDA better integrate structural pest control into its operations, leading to greater efficiency and consistency in the agency's administration of its myriad regulatory programs.

One of the changes under this recommendation would be to remove the language in the Structural Pest Control Act governing late renewal penalties, so that structural pest control licenses would be subject to the same late renewal provisions as set out in the Agriculture Code. This change would require relaxing the late renewal requirements from the shorter time frames currently contained in the structural pest control statute to the longer late renewal requirements in the Agriculture Code, which reflect the Sunset Commission's standard for encouraging timely license renewal. The advantage of this standard approach is that TDA would only need a single process for handling late license renewals rather than duplicative processes based on different time frames.

This recommendation would also conform other regulatory processes for structural pest control to the Agriculture Code, in conjunction with the recommendations in Issue 7. The following regulatory processes would be affected by this recommendation:

- ◆ risk-based inspections;
- ◆ cease-and-desist orders;
- ◆ administrative penalties;
- ◆ license sanctions, including revocation, suspension, probation, and refusal to renew;

- ◆ stop-use orders;
- ◆ fees for duplicate or replacement licenses; and
- ◆ informal settlement of contested cases.

Issue 9

Landowners Who Manage Their Lands to Improve Wildlife Habitat Do Not Have the Needed Outlets for the Venison They Harvest.

Through the Managed Lands Deer Permit Program, the Texas Parks and Wildlife Department (TPWD) works with private landowners to manage their land to the benefit of wildlife habitat. The program allows landowners who have developed a formal management plan, with help from TPWD, to have more flexible deer hunting seasons and increased harvest opportunities. However, many landowners in the program would like to harvest more deer, but cannot use all of the venison and would like to donate it to organizations and institutions that can. TDA has well-established relationships with public schools and food banks through its administration of the National School Lunch Program and programs that distribute surplus agricultural products.

Recommendations

Management Action

9.1 TDA, with cooperation from TPWD, should establish a pilot project to provide venison to the state's food bank system.

TDA should seek funding from the Legislature to provide grant funding to get more venison into food banks. With this grant funding, food banks could work with qualified meat processors and landowners in TPWD's Managed Lands Deer Permit Program to pay the cost of processing and distributing meat from deer taken from lands as part of the permit program. This pilot project could provide the opportunity for food banks to access a new source of protein and for landowners to have an additional outlet for the deer harvested from their lands.

9.2 TDA and TPWD should explore a pilot project to provide venison to schools through TDA's child nutrition programs.

TDA, in cooperation with TPWD, should explore the feasibility of working with meat processors, landowners, and public schools to provide venison through the National School Lunch Program. To determine whether such a pilot project would be feasible, TDA would have to consult with the U.S. Department of Agriculture, which administers the school lunch program, to determine whether providing venison to Texas schools is permissible and under what circumstances. This pilot project could provide the opportunity for schools to access a new source of protein and for landowners to have an additional outlet for the deer harvested from their lands.

9.3 TDA and TPWD should explore a pilot project with the Texas Department of Criminal Justice to provide venison to the food services operations in prisons.

TDA, with cooperation from TPWD, should explore whether they could work with meat processors, landowners, and the Texas Department of Criminal Justice to provide venison to prisons. This pilot project could provide the opportunity for prisons to access a new source of protein and for landowners to have an additional outlet for the deer harvested from their lands.

Issue 10

Texas Has a Continuing Need for the Texas Department of Agriculture.

Key Findings

- ◆ Texas has a continuing need to support and promote Texas agriculture, as well as rural economic development, nutrition, and consumer protection.
- ◆ TDA is the most appropriate agency to support and promote Texas agriculture, as well as performing its other functions.

The Texas Department of Agriculture's mission – to support and promote Texas agriculture – is important to Texas because agriculture is a significant contributor to the state's economy. TDA's other functions – helping rural communities develop their economies, distributing federal funding so that schools and other institutions can provide nutritious meals, and protecting consumers through regulation of various activities – are also vital to the State. The agency is uniquely positioned to promote agriculture, rural economic development, nutrition, and consumer protection.

Recommendation

Change in Statute

10.1 Continue the Texas Department of Agriculture for 12 years.

This recommendation would continue TDA as an independent agency, responsible for supporting and promoting agriculture, rural economic development, child nutrition, and consumer protection.

Fiscal Implication Summary

Three of these recommendations may have a fiscal impact, but the actual amount of the impact will depend on how the recommendations are implemented.

- ◆ **Issue 1** – Overall, the recommendations for the Texas Agricultural Finance Authority (TAFAs) would not have a fiscal impact to the State. TDA has authority to pay the costs of administering TAFAs's programs with the interest from the Young Farmer Loan Guarantee Account, which consists of revenue from a \$5 license plate tag fee on agricultural vehicles. As a result, the costs of adding two members to TAFAs's Board of Directors and any additional staff TDA requires to administer the new financing programs would be paid for with that interest income. Further, restructuring TAFAs's financing programs, including creating a grant program, will not have a fiscal impact to the State because those programs will draw on funds already available in the Young Farmer Account, which would be rolled into the Texas Agricultural Fund Account.
- ◆ **Issue 2** – Expanding TDA's authority to administer the regulation of prescribed burn managers and enforce against negligent or unlicensed burn managers could increase the agency's workload. The agency would have to process renewals more frequently and conduct complaint investigations and enforcement proceedings. However, since the program currently only certifies 18 prescribed burn managers, the agency's workload is not likely to increase significantly.
- ◆ **Issue 9** – Directing TDA to seek funding from the Legislature for a pilot project to provide venison to the state's food bank system may have a negative fiscal impact to the State. Based on discussions with the Texas Parks and Wildlife Department and food banks, TDA's initial estimate for the cost of a pilot project is \$200,000. However, the actual cost will depend on how much money, if any, the Legislature decides to appropriate to TDA for this purpose.

Texas Boll Weevil Eradication Foundation

Agency at a Glance

The Legislature created the Texas Boll Weevil Eradication Foundation in 1993 as a non-profit, quasi-governmental agency to eradicate the boll weevil and pink bollworm from Texas cotton fields. The Foundation is primarily a grower-initiated and grower-funded effort to eradicate boll weevils by hiring employees to map cotton fields throughout the state and to set and monitor traps for boll weevils. The Foundation also arranges for aerial pesticide applications in areas of boll weevil infestation.

Cotton growers vote to participate in the eradication program, and assess themselves to pay for eradication efforts. Similarly, cotton growers may vote to withdraw from the program at any time. Because the Foundation is a quasi-governmental entity, its employees are not state employees and its budget is not subject to the legislative appropriations process.



*For additional information,
please contact Karen Latta
at (512) 463-1300.*

All active cotton-growing areas of Texas participate in the Foundation's boll weevil eradication efforts. The Foundation also works to eradicate the pink bollworm, a cotton pest that primarily causes damage in West Texas. The pink bollworm is a moth whose larvae feeds on cotton bolls, damaging the cotton. Since the program's inception, boll weevil and pink bollworm populations have been reduced by more than 99 percent.

Key Facts

- ◆ **Funding.** In calendar year 2008, the Foundation operated on a budget of about \$58 million, including \$28 million in assessments from nearly 26,000 growers, \$14 million in federal funding, and \$13 million in state funding. The Foundation also has an accumulated statewide debt of \$99 million in low-interest loans from the Farm Service Agency.
- ◆ **Staff.** The Foundation operated with 346 full-time employees and 622 additional seasonal employees in calendar year 2008.
- ◆ **Field Offices.** The Foundation conducts eradication efforts across the entire state, and is divided into 16 eradication zones covering nearly six million cotton acres. The Foundation has 56 offices across the state.

Board of Directors (21)

Woodrow Anderson, Chair (Colorado City)

Don Parrish, Vice Chair (Plains)

Weldon Melton, Secretary (Plainview)

John Inman, Treasurer (Childress)

Joe Alspaugh (Slaton)

Steven Beakley (Ennis)

Keith Bram (El Campo)

Ron Craft (Plains)

Kenneth Gully (Eolz)

Eddy Herm (Ackerly)

Tryne Mengers (Tynan)

Carey Niehues (Garden City)

Hylton Nolan (Seminole)

John Norman (Weslaco)

John Saylor (Muleshoe)

Craig Shook (Corpus Christi)

Sam Simmons (Harlingen)

Larry Turnbough (Balmorhea)

Neil Walter (Oglesby)

Keith Watson (Dumas)

Mike Wright (Wolfforth)

Agency Head

Lindy Patton, President and CEO

(325) 672-2800

Recommendations

1. Continue the Texas Boll Weevil Eradication Foundation for 12 years.
2. Provide the Foundation flexibility in the collection and use of grower assessments to meet the changing nature of boll weevil eradication efforts.

Issue 1

Texas Has a Continuing Need for the Texas Boll Weevil Eradication Foundation.

Key Findings

- ◆ Texas has a continuing interest in eliminating the boll weevil to protect the cotton industry and promote the wider benefits of boll weevil control.
- ◆ The Foundation's cooperative approach to boll weevil eradication offers some advantages over traditional regulatory approaches.

Boll weevil eradication is beneficial to cotton growers in Texas, as Texas is the top cotton-producing state in the United States. Increased cotton production, largely resulting from boll weevil eradication efforts, greatly benefits Texas' economy, as the cotton industry contributes significantly to the state's economic health. Since its inception, the Foundation has reduced boll weevil and pink bollworm populations by more than 99 percent. The Foundation effectively accomplishes its mission of working to eradicate the boll weevil and pink bollworm from Texas cotton fields. The Foundation's current structure promotes meaningful participation by cotton growers that encourages a cooperative, self-policing attitude and makes the program more proactive than traditional regulatory approaches.

Recommendation

Change in Statute

1.1 Continue the Texas Boll Weevil Eradication Foundation for 12 years.

This recommendation would continue the Texas Boll Weevil Eradication Foundation as a quasi-governmental agency with oversight from the Texas Department of Agriculture for the standard 12-year period, until 2021.

Issue 2

Statute Limits the Foundation's Ability to Adapt the Use and Collection of Grower Assessments to Meet the Changing Nature of Boll Weevil Eradication Efforts.

Key Findings

- ◆ The statutory provision prohibiting assessments from being used outside the zone in which they were collected could have unintended consequences on certain growers, affecting the overall effectiveness of the State's eradication efforts.
- ◆ The Foundation's method for collecting assessments based on acres of cotton in production is difficult to collect and unfair to some growers.

The Texas Boll Weevil Eradication Foundation primarily funds boll weevil and pink bollworm eradication efforts by collecting assessments from cotton growers based on the number of acres in

production. Inflexible methods and mechanisms for collecting and using grower assessments may affect the Foundation's ability to successfully complete its mission of eradicating the boll weevil from Texas cotton fields.

Recommendations

Change in Statute

2.1 Remove statutory limitations preventing the Foundation from transferring assessments among zones and allow the Foundation flexibility to do so, upon approval of the Foundation Board and the Agriculture Commissioner.

This recommendation would remove statutory language specifying that grower assessments collected in one zone may only be used in that zone, and authorize the Foundation to transfer grower assessments among zones. Both the Foundation Board and the Commissioner of Agriculture would be required to approve the transfer of grower assessments collected for eradication efforts in one zone for use in another zone. This recommendation would allow boll weevil-free areas to help infested areas with maintenance efforts to reduce the overall risk of reinfestation.

2.2 Allow the Foundation statutory flexibility to adapt its assessment collection method and mechanism for its eradication program, not just its maintenance program, upon approval of the Foundation Board and the Agriculture Commissioner.

Under this recommendation, the Foundation would have authority to change the method and mechanism of its collection of grower assessments. The Foundation currently has this statutory flexibility for the boll weevil and pink bollworm maintenance program, but this recommendation would expand that authority to the eradication program. This would allow the Foundation to collect assessments at central points in the cotton marketing process, such as cotton gins or warehouses, as well as to collect assessments based on cotton production or acres in production or a combination of these methods. To change the method or mechanism for collecting grower assessments, both the Foundation Board and the Commissioner of Agriculture must approve such action. This change could allow the Board flexibility to decide how to collect assessments and potentially benefit financially from reduced administrative and legal costs associated with greater ease of collection and higher collection rates.

Fiscal Implication Summary

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

Credit Union Department

Agency at a Glance

The Credit Union Department oversees the safety and soundness of state-chartered credit unions in Texas. The Department's mission is to safeguard the public interest, protect the interests of credit union members, and promote public confidence in credit unions. To achieve its mission, the Department carries out the following key activities.

- ◆ Approves new charters, charter conversions, mergers, and other structural or operational changes for state-chartered credit unions.
- ◆ Examines every state-chartered credit union on a regular basis.
- ◆ Oversees out-of-state credit unions operating in Texas.
- ◆ Assists the public by helping to resolve complaints against credit unions and providing informational materials.


*For additional information,
please contact Karen Latta
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** The Department spent about \$1.79 million in fiscal year 2008. It generated revenues totaling \$2.17 million. The Department is revenue-neutral to the State since it relies on fees collected from credit unions to support its operations. The Credit Union Commissioner adjusts fees semi-annually to ensure that revenues approximately equal the agency's appropriation.
- ◆ **Staffing.** In fiscal year 2008, the Department employed 23 staff and had three unfilled positions. Thirteen travel throughout the state examining credit unions, and the other 10 perform administrative and supervisory functions at the agency's office in Austin.
- ◆ **Credit Unions.** The Department supervised 213 state-chartered credit unions, with assets totaling \$20.35 billion, in fiscal year 2008. Texas also has 363 federally chartered credit unions, with \$36 billion in assets, but the Department does not regulate these institutions.
- ◆ **Applications.** A credit union must apply to the Department to make certain operational or structural changes, such as merging with another credit union or expanding its field of membership. In fiscal year 2008, the Department received 102 applications, and approved 81. Twenty-eight of those applications were for field of membership expansions.
- ◆ **Supervision.** The Department conducted 176 regular examinations and 40 remedial exams in fiscal year 2008. The Department performs remedial exams for credit unions that have significant financial or regulatory deficiencies identified during their regular examinations.

Commission Members (9)

Gary L. Janacek, Chair (Temple)

Thomas F. Butler, Vice Chair (Deer Park)

William W. Ballard II (Waxahachie)

Manuel Cavazos (Austin)

Mary Ann Grant (Houston)

Dale E. Kimble (Denton)

Allyson Morrow (San Benito)

Barbara K. Sheffield (Sugar Land)

Henry E. Snow (Texarkana)

Agency Head

Harold E. Feeney, Commissioner

(512) 837-9236

Recommendations

1. Continue the Credit Union Department for 12 years.
2. Require state-chartered credit unions to provide more information about their financial condition and management to their members.
3. Authorize the Credit Union Commissioner to issue cease-and-desist orders against unchartered credit unions and to assess late penalties for delinquent operating fees.
4. Require the Credit Union Commission to adopt rules governing its use of advisory committees and direct it to abolish the Legislative Advisory Committee.

Issue 1

Texas Has a Continuing Need for the Credit Union Department.

Key Findings

- ◆ Texas has a continuing interest in regulating state-chartered credit unions.
- ◆ While other organizational options exist, the Department effectively regulates the industry as a stand-alone agency.

Texas has a continuing need to regulate credit unions to ensure the safety and soundness of these financial institutions. While the Credit Union Department's functions could be transferred to the Finance Commission, which oversees the regulation of other financial institutions, the benefits of placing the Department under the Finance Commission umbrella are not sufficient to justify such a significant change.

Recommendation

Change in Statute

1.1 Continue the Credit Union Department as an independent agency for 12 years.

This recommendation would continue the Department as an independent agency, responsible for supervising state-chartered credit unions in Texas.

Issue 2

Members Often Have Limited Access to Basic Information Needed to Effectively Monitor Their Credit Union's Financial Condition and Management.

Key Findings

- ◆ Credit union members have a vested interest in their institution, but often do not have convenient access to basic information about the financial condition and management of their credit union.
- ◆ As credit unions expand services to stay competitive, boards and managers may increase their institution's risk exposure without members' knowledge.
- ◆ Credit union members may not know who regulates their credit union or how to file a complaint.

State-chartered credit unions are owned and governed by their members. Members own shares, elect board members, and vote on issues such as mergers and charter conversions. Board and management decisions affect fees members pay, interest rates they are charged for loans, services credit unions offer, and whether members receive dividend payments. Despite this vested interest, members often have limited access to basic information about their credit union's financial condition and management. The Credit Union Department requires that credit unions provide certain types of information to members, but these requirements are limited.

Recommendations

Change in Statute

2.1 Require the Credit Union Commission to adopt rules requiring state-chartered credit unions to submit a report, updated annually, providing basic financial and management information to their members through their website.

Under this recommendation, the Commission would adopt rules to define what information credit unions must include in the report. At a minimum, the report should include a summary of changes over the past year in a credit union's management, financial condition, size of the membership, services offered, bylaws, and articles of incorporation. More detailed financial information, such as a balance sheet and income and expense statement, should also be standard elements of this report. The name and term of office of each member of the credit union's board of directors should be included in the report, as well as any other information the Commission deems necessary to ensure members have adequate knowledge of their credit union's financial condition and management. Commission rules should require credit unions to update their reports annually, so as to make new information available to members at their annual membership meeting.

Credit unions should make their report available to members year-round by posting it on their website. The Commission would need to adopt rules to accommodate smaller credit unions that do not have a website.

This change would improve credit unions' transparency by making operational information more easily accessible to members on an ongoing basis. A report to the membership that includes standard elements would ensure all state-chartered credit unions provide the same basic level of information to every member.

2.2 Require state-chartered credit unions to inform their members on a regular basis that they have access to certain documents related to their credit union's finances and management.

Under this recommendation, credit unions should provide a permanent notice on their website and a biannual notice in their newsletter. To accommodate credit unions without websites or newsletters, the Credit Union Commission should adopt rules to define alternative means of providing this information to members. Credit unions should inform their members that the following items, at a minimum, are available upon request:

- ◆ summary of the most recent annual audit;
- ◆ most recent statement of financial condition, such as the pages of the quarterly call reports that are not confidential;
- ◆ IRS Form 990 for the last year; and
- ◆ other items at the discretion of the Commission.

This recommendation would ensure that all state-chartered credit union members are aware they may inspect certain documents, which are already available to them, to learn about their institution.

2.3 Require credit unions to provide information through their websites and newsletters about how consumers may file a complaint with the Department, in addition to posting this information in their offices.

In addition to posting information about how to file a complaint in their offices, credit unions would also be required to add this information to their websites and newsletters. The Credit Union Commission should adopt rules to direct credit unions without websites or newsletters on how to make this information more widely available to consumers. The posting should include the Department's name, address, phone number, and website address. This change will help ensure that consumers who use online services or may not visit their credit union on a regular basis are aware of how to file a complaint if they encounter a problem and cannot resolve it through their credit union.

Issue 3

The Department Lacks Certain Enforcement Tools Needed to Protect Consumers and Hold Credit Unions Accountable.

Key Findings

- ◆ The Commissioner cannot take immediate action to stop unauthorized credit union activity.
- ◆ The Commissioner does not have statutory authority to assess penalties for delinquent credit union operating fees.

The Credit Union Commissioner lacks certain enforcement powers that are standard to other regulatory agencies in Texas and to credit union regulators in other states. In the event that unscrupulous or unknowing businesses hold themselves out as credit unions, the Commissioner does not have the ability to immediately stop such activity. The Commissioner also does not have statutory authority to assess penalties to deter late fee payments.

Recommendations

Change in Statute

3.1 Extend the Commissioner's cease-and-desist authority to include unchartered entities holding themselves out as credit unions.

This recommendation would enable the Commissioner to take immediate action if unchartered credit union activity were to occur in Texas. The ability to immediately stop an unchartered entity from doing business would protect the public from potential fraud and financial loss.

3.2 Give the Commissioner statutory authority to assess penalties for delinquent operating fees.

The Commission has already passed rules to define time frames and amounts, and this recommendation would provide legal justification for charging these penalties, thus further deterring credit unions from paying their operating fees late.

Issue 4

The Legislative Advisory Committee Does Not Conform With Statutory Standards for Agency Committees and Is No Longer Needed.

Key Finding

- ◆ The Legislative Advisory Committee does not meet statutory requirements for agency committees and does not add significant value to the Commission's policymaking process.

The Credit Union Commission created the Legislative Advisory Committee (LAC) to provide input on and make recommendations to change agency rules, statutes, and policies. However, this Committee does not meet statutory requirements for the structure and operations of agency committees. The composition of the LAC does not allow credit union members or small credit unions to have equal involvement in the Commission's policymaking process. Further, the LAC provides little added value to the Commission and its work could be done by the Commission, thus saving money on travel costs and staff time.

Recommendations

Change in Statute

- 4.1 Require the Commission to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.**

The Commission should adopt rules to ensure any advisory committees it chooses to create are in compliance with Chapter 2110 of the Texas Government Code. As a result, the Commission would have to comply with provisions governing balanced industry and consumer representation, setting a committee's purpose and tasks in rule, conducting annual evaluations of the committee's usefulness, and others.

Management Action

- 4.2 The Commission should abolish the Legislative Advisory Committee and seek more effective ways of gaining stakeholder input.**

The Commission should abolish the LAC because it is not necessary as an ongoing presence. The Commission can perform the duties of the LAC at its regular public meetings. If the Commission decides that it needs input on specific topics, it can create advisory committees that comply with the requirements outlined in Recommendation 4.1. In lieu of the LAC, the Commission should seek input through other, low-cost means, such as through e-mail, the agency's website, or its newsletter. This process could prove more effective in providing input to the Commission than the Legislative Advisory Committee.

Fiscal Implication Summary

These recommendations would have no fiscal impact to the State.

Texas Commission on Fire Protection

Agency at a Glance

Created by the Legislature in 1969, Texas Commission on Fire Protection (TCFP) seeks to ensure protection of the public, and fire fighters, by establishing standards for certifying and equipping paid fire service personnel. To achieve its mission, the Commission carries out the following key activities:

- ◆ certifies fire service personnel in disciplines including fire fighting, hazardous materials, and arson investigation;
- ◆ develops and administers certification examinations, including written exams and skills tests;
- ◆ regulates training facilities, develops course materials, and approves training classes;
- ◆ inspects fire departments to ensure compliance with national standards; and
- ◆ provides fire departments with grants to purchase equipment and protective gear.



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

Key Facts

- ◆ **Funding.** In fiscal year 2008, the Commission operated with a budget of about \$2.9 million, of which \$1 million was awarded as grants. The Commission is almost 100 percent funded by assessments on insurance policies, appropriated from General Revenue.
- ◆ **Staffing.** The Commission has 33 employees, of whom five work in five regional offices and the rest work in Austin.
- ◆ **Certifications.** The Commission certifies about 36,600 personnel in the paid fire service, employed by about 1,140 fire departments, fire marshal offices, code inspection offices, and training academies.
- ◆ **Examinations.** In fiscal year 2008, the agency administered about 13,700 written examinations and oversaw about 2,600 skills tests statewide.

Commission Members (13)

Chris Connealy, Presiding Officer (Cedar Park)

Les Bunte (Bryan)

Jane Burch (Grand Prairie)

Elroy Carson (Ransom Canyon)

Rhea Cooper (Lubbock)

Yusuf Elias Farran (El Paso)

John Kelly Gillette III (Frisco)

Jody Gonzalez (Krugerville)

Micheal Melton (Gilmer)

Arthur (Art) Pertile, III (Katy)

Kelley Stalder, (Parker)

Vacant

Vacant

Agency Head

Gary L. Warren Sr., Executive Director

(512) 936-3812

Recommendations

1. Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.
2. Repeal the Commission's Fire Department Emergency Program and transfer the one million dollars in annual funding for grants to the Texas Forest Service, with volunteer and paid fire departments to be eligible to apply for grants.
3. Conform key elements of the Commission's certification and regulatory functions to commonly applied licensing practices.
4. Continue the Texas Commission on Fire Protection for 12 years, with an increased focus on preventing fire fighter injuries.

Issue 1

Limits on Rulemaking Hinder the Commission's Ability to Lead the Agency and Provide Guidance to the Fire Service.

Key Finding

- ◆ Statute limits the Commission's ability to adopt rules in a timely manner and shifts significant policymaking authority away from the Commission, to the Fire Fighter Advisory Committee.

As the Governor's appointed body responsible for overseeing the fire service in Texas, the Commission should have full authority to adopt rules and establish policy direction. By statute, however, the Commission must rely too heavily on the Fire Fighter Advisory Committee for rule proposals and modifications. The effect is to shift too much authority away from the Governor's appointed body, ultimately hindering decisive action needed to guide the fire service.

Recommendation

Change in Statute

- 1.1 Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.**

This recommendation would eliminate uncommon restrictions on the Commission's authority so it can more effectively set policies and implement regulatory requirements. The Commission would no longer be required to seek input from the Fire Fighter Advisory Committee before adopting or amending rules, but would instead have the authority to seek such input as it sees fit. Other limitations on the Commission that would be eliminated include being authorized to make only non-substantive rule changes without advisory committee input, and not being able to pass a rule change at its next meeting, after posting for public comment. The Commission would thus have the authority customarily provided to state agency policy bodies to more effectively set policy.

Issue 2

The Commission's Grant Program Does Not Fit Well With the Agency's Responsibility to Oversee Fire Departments.

Key Finding

- ◆ The Commission's grant program detracts the agency from its primary mission of certifying and overseeing the paid fire service, and the Texas Forest Service is better positioned to administer these funds.

The Commission administers the Fire Department Emergency Program to provide financial assistance to fire departments in need of equipment and training. This program, with \$1 million in funding annually, largely serves volunteer fire departments, which the Commission does not regulate, but also provides some funding to paid departments. The Texas Forest Service already administers a similar,

much larger grant program, for volunteer departments and departments with 20 or fewer paid personnel. Maintaining a separate program at the Commission is duplicative and has the potential of distracting from the Commission's primary oversight role by involving it in advocacy activities that promote the fire service.

Recommendation

Change in Statute

2.1 Repeal the Commission's Fire Department Emergency Program and transfer the one million dollars in annual funding for grants to the Texas Forest Service, with volunteer and paid fire departments to be eligible to apply for grants.

This recommendation would transfer funding for the Commission's grant and loan program to the Texas Forest Service, to be administered under the same process as its Rural Volunteer Fire Department Assistance Program. However, fire departments with more than 20 paid personnel eligible through the Commission's program would still be able to apply for grants from the Texas Forest Service. This transfer would promote greater efficiency in the distribution of funds to fire departments, while protecting the interests of departments that currently benefit from the Commission's grant program.

Issue 3

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

Key Findings

- ◆ Provisions of the Commission's statute and rules do not follow model certification practices and could potentially affect the fair treatment of certified personnel and members of the public.
- ◆ Nonstandard enforcement provisions of the Commission's statute could reduce the agency's effectiveness in protecting the public and fire service personnel.

Various certification and enforcement processes in the Texas Commission on Fire Protection's governing statute do not match model standards developed from experience gained through more than 93 occupational licensing reviews over the last 30 years. Comparing the Commission'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

3.1 Require the Commission to conduct fingerprint-based state and national criminal history checks of all applicants for certification.

Conducting statewide and national criminal background checks on all persons applying for TCFP certification would help ensure that persons who enter the field in Texas do not have disqualifying criminal history. The Commission would be authorized to set a reasonable fee, in rule, to recover any

costs associated with conducting these checks. Fire departments that perform their own state and national fingerprint-based criminal history checks would be able to submit their own criminal history reports with their applications for certification, so the Commission would not duplicate these efforts.

3.2 Require fire departments to submit continuing education records at the time of certification renewal.

This recommendation would require fire departments to provide a record of continuing education for their personnel to the Commission when renewing their personnel's certifications. As a result, agency staff would no longer have to review these records while conducting inspections, but could instead administratively review them at the agency's central office and conduct audits on an as-needed basis. This recommendation would allow the Commission to more efficiently monitor the continuing education requirements at the time of renewal, and allow staff to focus efforts on safety concerns when inspecting fire departments.

Licensing – Management Action

3.3 The Commission should fully delegate fire fighter skills testing to certified instructors, and not tie these tests to the written exam.

Under this recommendation, the Commission would allow certified instructors to independently administer all fire fighter skills tests during training, as they currently do for about 94 percent of skills tests. Instructors would no longer have to administer a small portion of skills tests at the same time and location as the written exam, and TCFP inspectors would instead oversee these skills tests on an as-needed basis during training. As a result, TCFP would be able to more effectively implement online exams, and agency staff could focus more of their efforts on carrying out fire department inspections.

Enforcement – Change in Statute

3.4 Allow the Commission to establish a risk-based approach to conducting inspections.

This recommendation would ensure that the Commission takes a more strategic approach to conducting its regular inspections of fire departments and training providers. In developing this approach, the Commission could consider several factors including how recently a fire department has come under regulation, compliance history, number of complaints, number of paid personnel, frequency of fire responses, and ability to inspect and maintain equipment. By using a risk-based approach towards conducting inspections and follow-ups, the agency could use its limited resources more effectively by focusing its attention on regulated entities with higher risks of violations.

3.5 Require the Commission to establish a reasonable time frame for opening a complaint case after finding inspection violations.

This recommendation would require the Commission, in rule, to set a time frame for opening a complaint case after finding violations resulting from inspections of fire departments and training providers. Currently, the Commission does not open a complaint case for these violations unless it holds an informal settlement conference, confusing the Commission's overall enforcement efforts and contributing to delays in resolving these violations. Establishing a reasonable time frame for opening a complaint case, while still providing regulated entities ample opportunity to resolve violations, would improve compliance outcomes and complaint tracking.

3.6 Require the Commission to adopt an enforcement matrix in rule.

Establishing, in rule, a matrix to use when determining penalty amounts or disciplinary actions for fire departments, training providers, and certified personnel, would ensure that the Commission's sanctions appropriately relate to violations of agency statute and rules. In developing the matrix, the Commission should take into account several factors including compliance history, seriousness of the violation, the safety threat to the public or fire personnel, and any mitigating factors. Adopting the matrix in rule would provide the public with the opportunity to comment on its development, and would provide regulated entities, and fire service personnel, with ready access to the Commission's enforcement guidelines, to better understand the potential consequences of violations.

3.7 Allow the Commission to issue default orders when regulated entities do not respond to attempts to resolve violations in a timely manner.

The Commission would be authorized, but not required, to issue default orders in cases when fire departments or training providers do not respond to Commission notices to correct violations found during inspections, or do not request an informal settlement conference to resolve these issues. By issuing default orders when needed, the Commission would be able to ensure fair treatment of regulated entities and provide an incentive to come into compliance more quickly.

3.8 Require the Commission to develop a method for analyzing trends in complaints and violations.

This recommendation would require the Commission to develop a method for analyzing the sources and types of complaints and violations. The agency should establish categories for complaints and violations such as sections of Commission statute or rule, or categories related to violations found during inspections, such as protective clothing, breathing apparatus, and testing of equipment. The Commission would analyze complaints and violations to identify trends and regulatory problem areas, and focus its technical assistance and inspection efforts.

3.9 Authorize the Commission to issue summary suspension orders.

This recommendation would authorize the Commission to temporarily suspend the certification of a person, or regulated entity, upon determination by a panel of the Commission that continued activity would present an immediate threat to the public or fire service trainees. The panel would be authorized to hold a meeting by teleconference call under the provisions of the Open Meetings Act if threat to public safety is imminent and convening of the panel at one location is impossible for the timely action required.

Enforcement – Management Action

3.10 The Commission should provide the public a simple complaint form.

Making a complaint form readily available on the Commission's website or through e-mail, would assist the public, and certified personnel, with more easily preparing and filing complaints.

Issue 4

Texas Has a Continuing Need for the Texas Commission on Fire Protection, and the Agency Should Increase Its Focus On Reducing Fire Fighter Injuries.

Key Findings

- ◆ Texas has a continuing need to establish and enforce minimum standards for paid fire service personnel.
- ◆ The State does not maximize the benefits of the Commission's expertise in working with the State Fire Marshal's Office to minimize fire fighter injuries.

Setting and enforcing standards for the training, certification, and equipping of the paid fire service is vital to protecting the safety of Texans. The agency is uniquely positioned to establish standards for certifying fire service personnel and should be continued for 12 years. The Commission has the opportunity to further help protect the safety of fire fighters by working with the State Fire Marshal's Office to help minimize fire fighter injuries.

Recommendations

Change in Statute

4.1 Continue the Texas Commission on Fire Protection for 12 years.

This recommendation would continue the Texas Commission on Fire Protection for the standard 12-year period.

4.2 Require the Commission to review fire fighter injuries data and provide the State Fire Marshal's Office recommendations for reducing these injuries.

The Commission would annually review fire fighter injury reports and workers' compensation claims data, and provide the State Fire Marshal's Office (SFMO) analysis of this information and recommendations to be published in SFMO's annual report on fire fighter fatalities. The Commission would also investigate serious injuries to determine if a violation of agency rule or statute contributed to an injury. By analyzing trends in fire fighter injuries and investigating the cause of serious injuries, the Commission would help reduce injuries and their associated costs.

Fiscal Implication Summary

These recommendations would have no net fiscal implications to the State, as summarized below.

- ◆ **Issue 2** – Transferring the Commission’s Fire Department Assistance Program funding to the Texas Forest Service would save the Commission one FTE and about \$45,000 a year it currently spends on program administration, which the Commission could redirect towards its regulatory functions. The Texas Forest Service can administer the transferred funding with existing resources.
- ◆ **Issue 3** – Performing fingerprint-based criminal history checks on applicants for certification could have a fiscal impact to the State. However, the Commission would recover any costs by setting a reasonable fee, typically \$45, to carry out these checks for individual applicants or any fire departments that do not perform these checks.

Texas State Affordable Housing Corporation

Corporation at a Glance

The Legislature created the Texas State Affordable Housing Corporation (Corporation) in 1995 as a self-sustaining nonprofit corporation to help low-income Texans obtain affordable housing. To achieve its mission, the Corporation carries out the following key activities:

- ◆ issues bonds to finance the purchase of single family homes by qualifying teachers, firefighters, police officers, and low-income families;
- ◆ issues bonds to finance the development and rehabilitation of multifamily rental properties;
- ◆ provides loans to assist affordable housing developers with initial construction and start-up costs; and
- ◆ seeks out grants and donations to help support affordable housing, and administers the Texas Foundations Fund.



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

Key Facts

- ◆ **Funding.** The Corporation self-funds its operations and receives no state-appropriated funding. In fiscal year 2008, the Corporation generated about \$3 million in revenues and expended about \$2 million on its operations.
- ◆ **Governance and Staffing.** A five-member, Governor-appointed Board oversees the Corporation, which employs 15 people in Austin.
- ◆ **Single Family Programs.** In 2008, the Corporation financed \$42.3 million in loans to help 400 families to purchase homes, with an average loan amount of \$113,000.
- ◆ **Multifamily Programs.** In 2008, the Corporation did not issue any multifamily bonds due to market conditions.
- ◆ **Asset Oversight and Compliance.** In fiscal year 2008, Corporation staff conducted about 140 site visits of multifamily properties to check for compliance with property condition and affordable unit set-aside requirements.
- ◆ **Texas Foundations Fund.** In 2008, the Corporation awarded five grants of \$50,000 each to nonprofit housing organizations to fund housing proposals. In early 2009, the Corporation plans to award five additional \$50,000 grants to fund the repair of single family homes affected by hurricanes Ike and Dolly.

Commission Members (5)

Thomas Leeper, Chair (Huntsville)

Jesse Coffey (Denton)

Robert Jones (Corpus Christi)

Raymond Carter Sanders (Austin)

Jo Van Hovel (Temple)

Agency Head

David Long, President

(512) 477-3555

Recommendations

1. Continue the Texas State Affordable Housing Corporation for six years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.
2. Increase the size of the Corporation's Board by adding one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations.
3. Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.

Issue 1

The Corporation Continues to Struggle to Fulfill Its Potential in Helping the State Meet Its Need for Affordable Housing.

Key Findings

- ◆ The Corporation's status as a statewide nonprofit has potential, but its ability to leverage a meaningful amount of private funding, grants, and donations has yet to be clearly proven.
- ◆ Texas has significant unmet affordable housing needs, and despite concerns about its record to date, the Corporation has the potential to help meet this need.

The Corporation is unique in Texas' government, created as a self-funded nonprofit entity with authority to solicit donations and grants, and leverage private funding to assist with providing affordable housing. The Sunset Commission concluded that the Corporation has potential to better maximize benefits from its status as a statewide nonprofit to solicit funds and leverage private funding to support housing initiatives. However, the Corporation's inconsistent track record does not warrant continuation for a full 12 years.

Recommendation

Change in Statute

- 1.1 Continue the Texas State Affordable Housing Corporation for six years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.**

This recommendation would give the Corporation six years to more fully develop its capacity to leverage funds for affordable housing. The Corporation would be required to annually provide the Legislature with information that shows its effectiveness at competing for grant funds, raising private donations, leveraging private funds for lending, and making grants.

Issue 2

The Corporation's Board Lacks Membership Representing the Interests of Affordable Housing Organizations and Families.

The boards of state agencies and entities tied to the State, such as the Corporation, should include members representing the broad interests of stakeholders served by the entity. Current statute provides for the representation on the Corporation's Board of various housing industry sectors, such as banking and real estate development, but not those in need of affordable housing or nonprofit organizations that provide affordable housing.

Recommendation

Change in Statute

- 2.1 Increase the size of the Corporation's Board by adding one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations.**

This recommendation would expand the Board from five members to seven members and ensure needed expertise and input from families served by the Corporation's single family programs and nonprofit organizations that work to provide affordable housing.

Issue 3

The Corporation's Statute Lacks Remedies Needed to Ensure Multifamily Property Developers Provide Safe and Decent Affordable Housing.

The Corporation finances and oversees multifamily housing developments that must comply with requirements for affordability, availability, safety, and property condition. In the past, the Corporation has experienced significant compliance problems with properties financed using 501(c)(3) bonds. The Corporation has changed its policies to ensure it has needed enforcement measures in multifamily development contracts. However, because statute does not require these enforcement measures, the State cannot be assured that the Corporation will consistently incorporate these safeguards in the future.

Recommendation

Change in Statute

- 3.1 Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.**

This recommendation would require the Corporation to include the following range of enforcement options in all multifamily development contracts financed fully, or in part, by the Corporation.

- ◆ Assessment of financial penalties for non-compliance with bond documents and Corporation policies.
- ◆ Withdrawal of reserve funds by the Corporation to make needed repairs and replacements to a property.
- ◆ Removal of the property manager and replacement with one acceptable to the Corporation.
- ◆ Appointment of the Corporation as receiver to protect and operate the property.

Placing these enforcement measures in statute will ensure that the Corporation consistently includes these provisions in its development contracts and has these remedies available if needed.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State because the Corporation is self-funded and does not receive state funding.

Texas Department of Insurance

Agency at a Glance

The Texas Department of Insurance (TDI) regulates the business of insurance in Texas to ensure that Texas consumers have access to competitive and fair insurance products. TDI's major functions include:

- ◆ regulating insurance companies' solvency, rates, forms, and market conduct;
- ◆ licensing individuals and entities involved in selling insurance policies;
- ◆ providing consumer education on insurance and helping consumers resolve complaints;
- ◆ investigating and taking enforcement action against those who violate insurance laws or rules; and
- ◆ providing fire prevention services across the state.

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

The Department also regulates workers' compensation insurance; however, the Legislature postponed the Sunset review of the Division of Workers' Compensation until 2011. As such, this material focuses on the Department's regulation of insurance and does not address TDI's administration of workers' compensation regulation.

Key Facts

- ◆ **Funding.** In 2008, TDI collected a total of about \$161 million, primarily from maintenance taxes assessed on Texas insurers and user fees. The Department expended almost \$67 million on regulation of insurance and about \$62 million on workers' compensation regulation. The Legislature also appropriated about \$31 million to fund insurance-related functions at other state agencies.
- ◆ **Staffing.** The Commissioner of Insurance, appointed by the Governor and confirmed by the Senate, administers the agency's functions, assisted by 1,537 staff. Of those staff, 860 are dedicated to insurance-related activities. Most staff are based in Austin, but the agency also maintains several field offices across the state.
- ◆ **Financial Solvency and Market Monitoring.** TDI monitors insurers' solvency to ensure that carriers are able to fulfill obligations and pay future claims. In fiscal year 2008, TDI regulated more than 2,200 insurance companies and other risk-bearing entities, conducted 135 financial examinations, audited 254 title agents, and participated in six court-ordered financial rehabilitations or liquidations. The Department also

monitors market trends and insurers' market behavior, conducting 18 market conduct examinations, 6,172 advertising reviews, and 201 loss control audits.

- ◆ **Rate and Form Regulation.** In fiscal year 2008, TDI reviewed 4,611 property and casualty rate filings and 12,256 property and casualty forms. TDI also reviewed a total of 26,234 life, accident, and health rate and form filings.
- ◆ **Licensing.** TDI licenses insurance agents, agencies, adjusters, and other personnel and entities involved in providing insurance services and products. In fiscal year 2008, TDI issued more than 63,000 licenses.
- ◆ **Consumer Protection.** TDI resolves consumer complaints against insurance companies and agents. In fiscal year 2008, TDI resolved more than 23,000 complaints, resulting in \$29.8 million in additional claims paid to consumers and \$2.1 million in refunds made to consumers. In the same year, TDI responded to about 649,000 consumer inquiries, and distributed more than four million consumer publications.
- ◆ **Enforcement.** The Department investigates violations of insurance law or rule, and, in fiscal year 2008, closed 774 enforcement actions, assessed \$9.3 million in penalties, and ordered \$44 million in restitution. That same year, TDI's investigation of insurance fraud cases resulted in 144 indictments and 116 convictions with restitution, fines, and penalties ordered in excess of \$3.8 million.

Commissioner

Mike Geeslin, Commissioner

(512) 463-6169

Recommendations

1. Require TDI to clearly define the processes it uses to regulate property and casualty insurance in Texas.
2. Clarify the division of responsibilities between the Texas Windstorm Insurance Association and TDI to ensure that TDI can oversee the Association as a market of last resort.
3. Require Preferred Provider Organizations to obtain a certificate of authority from TDI to operate in Texas.
4. Give TDI additional regulatory tools to effectively oversee title insurance and accurately promulgate title insurance rates for the State.
5. Eliminate unnecessary advisory committees in statute, and require TDI to ensure that agency-created advisory committees meet standard criteria.
6. Require the State Fire Marshal's Office (SFMO) to periodically inspect state-leased buildings and better target its fire safety inspections.
7. Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.
8. Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.

9. Change the threshold needed to be met for reduced rate filing requirements for insurers that write residential property insurance in areas designated as underserved.
10. Request that the Legislature study the use of insurance maintenance taxes to support other state agencies, and make appropriate changes in methods of finance as necessary.
11. Request that the Legislature, through the appropriate legislative committees, consider creating a Health Insurance Innovations Program.
12. Continue the Texas Department of Insurance for 12 years and update its statutory duties.

Issue 1

Rate Regulation for Homeowners Insurance Lacks Clarity, Predictability, and Transparency.

Key Findings

- ◆ In 2003, the Legislature established a system of rate regulation for homeowners insurance that incorporated both pre-market and post-market regulatory tools.
- ◆ TDI uses statutory pre-market regulatory tools without defined practices, making aspects of rate regulation unpredictable.
- ◆ The processes for placing insurers under prior approval and releasing insurers from prior approval are not defined, creating uncertainty in the system.

During the last several years Texas' residential property insurance market has undergone a number of significant changes. These changes began with the dramatic rise in mold claims, and the corresponding increase in premiums for homeowners. Following these developments, the Legislature overhauled insurance rate regulation, bringing all insurers writing homeowners insurance under one system, calling for rate reductions, and establishing a new process for rate and form regulation.

The new system subjects the entire market, including the 95 percent that was previously unregulated, to rate and form regulation; albeit, a less strict form of regulation than what had been in place. Though the Legislature moved the State toward less regulation of rates and forms, state law still authorizes TDI to exercise a number of regulatory tools as safeguards to protect consumers from high rates. However, TDI's use of these safeguards, which remain relatively undefined, creates uncertainty in the regulatory system.

Recommendations

Change in Statute

1.1 Set limits for the amount of time the Department has to review and administratively disapprove filings under the file-and-use system.

This recommendation would establish deemer dates – a date on which a filing is “deemed approved” after a specified number of days has elapsed from receipt of the filing – for the Department’s review of all property and casualty rate filings.

Similar to the deemer dates that exist under prior-approval regulation, and exist for some life and health filings, the Department would have 30 days to request information from insurers and conclude rate review. The Commissioner would be authorized to extend the review period for an additional 30 days for good cause.

If TDI requests additional information from insurers, the time it takes for insurers to respond to TDI's requests would not count against the Department's review period. Insurers would continue to be permitted to use rates as soon as they are filed, if they choose. These recommendations would only affect filings not immediately used.

TDI would be permitted to administratively disapprove rates until the point that companies implement rates, or the expiration of the review period, whichever event occurs first. If TDI wanted to disallow a rate following the review period, the Department would have to disapprove the rate following its implementation, using the contested-case process, as currently laid out in state law.

This recommendation would create a time limit for information requests and provide insurers with a reasonable idea of when they may use rates. This recommendation creates a clear beginning and end point for pre-market reviews, enabling insurers to better predict when they can use products and to plan accordingly. In addition, by creating more transparency in the rate regulation process this recommendation could encourage more competition among insurers, enabling lawmakers to more fully evaluate the file-and-use system.

1.2 Require the Department to better define the process for requesting supplemental information from insurers, and to track all information requests and administrative rate disapprovals.

This recommendation would require TDI to further define, through rulemaking, the process for requesting supplemental information from insurers during its review of property and casualty rates. The review process should require, at a minimum, that TDI:

- ◆ make requests in a timely manner, enabling insurers to respond to requests and implement rates more quickly;
- ◆ reduce the number of separate requests;
- ◆ more specifically define the kinds of information that the Department can request during a rate review; and
- ◆ track and routinely analyze the volume and content of information requests to identify trends and ensure that requests are reasonable.

The Department would use data on requests to better focus education efforts for both TDI review staff and insurers, and to streamline future requests. This would also help the Department ensure that requests are fair and practical.

This recommendation would also require the Department to track and analyze the factors that contribute to administrative disapproval of rates. TDI would track precedent related to disapprovals to help ensure that the Department consistently applies rate standards. In conjunction with analyzing disapprovals, TDI would make general information about best practices for rate development, and factors that contribute to disapprovals, available to the public. All information provided to the public would be general, so as not to infringe upon an individual company's proprietary rate development data or techniques.

These recommendations would improve transparency and the exchange of information between insurers and TDI. Insurers would have a clearer idea of Department expectations and timelines, potentially increasing the speed at which products get to market. Developing a process to analyze information requests and rate disapprovals would provide TDI with improved information on filings and the rate review process.

1.3 Require the Department to generally define, in rule, factors that could result in a company being placed under prior approval.

Under this recommendation, TDI would further define, through rulemaking, what constitutes rating practices, financial conditions, or statewide emergencies that could subject an insurer to prior-approval review. This recommendation would not require the agency to enumerate specific practices or circumstances. Recognizing that determining if certain practices or conditions exist requires flexibility and depends on the specific circumstances of a filing, this recommendation aims only to more generally define conditions that might contribute to a company being placed under prior approval. The Commissioner would maintain the authority to determine if an individual company's practices or statewide situations warranted additional scrutiny through prior approval. This recommendation would clarify TDI's use of prior approval as a review mechanism and sanction against insurers, creating more predictability and transparency in rate regulation.

1.4 Require TDI to routinely evaluate the need for insurers to remain under prior approval, and require that insurers be notified in writing of the actions that need to be taken in order to return to file-and-use rate regulation.

Under this recommendation, TDI would periodically assess whether insurers need to remain under prior approval for rate filings. Similar to other probationary measures, prior-approval review can be used as a method to more closely monitor insurer ratings practices or financial conditions. To clarify expectations, the recommendation would require TDI to provide companies with written information, when they are placed under prior approval, detailing the steps they must take to return to file-and-use review. When an insurer meets the stated conditions, this recommendation would require the Commissioner to issue an order stating that the financial condition, rating practices, or statewide emergency no longer exists, and that future company filings will be subject to file-and-use.

1.5 Require the Texas Department of Insurance to develop and implement a plan to collect from insurers and publish certain information relating to the processing of personal automobile and residential property claims.

This recommendation would require TDI to collect claims data, on a quarterly or annual basis, including:

- ◆ information on the number of claims filed and pending;
- ◆ number of claims paid, denied, or pending litigation;
- ◆ number of claims that carry over from the previous reporting period; and
- ◆ any other relevant information relating to the processing of claims.

In addition to collecting the data, TDI would be required to publish or disseminate the collected information to the general public via the agency's website. TDI would be authorized to adopt rules as necessary to implement a plan for collecting and publishing claims data. Requiring TDI to collect and publish this data would help ensure that insurers are meeting their responsibilities assumed under policies of insurance.

Issue 2

TDI's Involvement in TWIA's Operations, Along With Other Restrictions in Law, Limit the Department's Ability to Effectively Oversee TWIA as a Market of Last Resort.

Key Findings

- ◆ TWIA's Board structure limits the Board's accountability to the Commissioner, and prevents the Association from taking advantage of an opportunity to reduce its federal tax burden.
- ◆ The Commissioner's direct involvement in TWIA's operations conflicts with TDI's broader regulatory role and with the duties of TWIA's Board.
- ◆ The hearings process through which the Commissioner approves TWIA's operational decisions wastes resources, limits the Board's ability to react quickly, and does not add benefit for consumers.
- ◆ With the overall goal of increasing insurance availability, TDI is not well-positioned to oversee inspections that may restrict entry into the pool.
- ◆ Statute restricts the factors that the Association may use in developing rates, limiting its ability to accurately project future losses.
- ◆ Statute does not allow the Association and the State to request proof of insurance declinations from applicants, preventing the State from ensuring that the pool operates as a market of last resort.

Texas' system for providing windstorm insurance on the Coast is at a critical juncture. Following recent hurricanes, the number of insured properties in the risk pool has been growing steadily, increasing liabilities for Texas insurers and the State. While the Legislature is faced with a significant decision relating to how to fund the Texas Windstorm Insurance Association (TWIA), the Sunset Commission found that this larger funding decision, affecting state revenue, was outside of the scope of the Sunset review of TDI.

Instead, Sunset focused on the intersection of duties between the Department and TWIA, finding that many of TWIA's and TDI's oversight responsibilities overlap, inappropriately placing TDI in the position of making some operational decisions for TWIA's Board. This overlap in authority limits the Board's accountability to policyholders, and interferes with TDI's ability to ensure that windstorm coverage remains adequate and available.

TWIA is also limited in its ability to develop accurate rates or perform as a market of last resort, preventing TWIA from operating as intended. Without the ability to develop the most accurate rates, TDI cannot perform its regulatory duties to protect the State's General Revenue Fund in the event of significant losses.

Recommendations

Change in Statute

2.1 Increase the number of public representatives on the TWIA Board, and require the Commissioner to appoint all Board members and designate the presiding officer.

This recommendation would add two public representatives to the Board, and require the Commissioner to appoint all members and designate the presiding officer. This recommendation brings the Board composition to 11 members, including five insurer representatives, four public representatives, and two property and casualty agents.

The recommendation would require TWIA's member insurers to nominate, from among the members, individuals to fill any vacancies in the five Board seats reserved for insurers. The Commissioner would appoint members from the nomination pool. The recommendation would require the Association to submit a nominee slate containing more names than the number of vacancies. The Commissioner would also appoint a presiding officer from among the Board members. All Board members would be subject to the term limits already in state law.

These changes would increase TWIA's accountability to the Commissioner and could also assist the Board in obtaining tax-exempt status from the Internal Revenue Service.

2.2 Replace the Commissioner's authority to modify TWIA rates, forms, and operations through hearings with a more traditional administrative approval process.

This recommendation would replace hearings and the Commissioner's ability to modify proposals on rates, forms, and operations, with an administrative approval process according to the following provisions.

Rates

- ◆ Eliminate rate hearings and instead require the Commissioner to permit file-and-use review for all rate increases of 5 percent or less in a 12-month period, consistent with increases approved by the Commissioner in recent years.
- ◆ Require prior-approval review for all filings proposing increases above 5 percent. Authorize the Commissioner to disapprove, but not modify, rates during a standard review period of up to 60 days.
- ◆ Maintain the 10 percent per filing rate change cap, and 15 percent rating class cap, that exist in state law, to prevent rates from increasing too rapidly.
- ◆ Require the TWIA Board to discuss and make decisions on proposed changes to rates in public Board meetings, and to publish all proposed changes in the Texas Register for public comment before the meetings.

Forms

- ◆ Eliminate form hearings and subject all form filings to prior-approval review, consistent with other residual markets and the voluntary market. Authorize the Commissioner to disapprove, but not modify, forms during a standard review period of up to 60 days.

- ◆ Require the TWIA Board to discuss and make decisions on proposed changes to forms in public Board meetings, and to publish all proposed changes in the Texas Register for public comment before the meetings.

Operations

- ◆ Eliminate hearings on the Plan of Operation, levels of reinsurance, coverages, deductibles, and limits of liability, and require TDI to conduct a rulemaking process to approve proposed changes to TWIA operations.

Under these recommendations the Commissioner would no longer be able to modify filings on rates, forms, or changes to policy content. Instead, the Commissioner would exercise regulatory oversight by approving or disapproving rate and form filings before their use. If the Commissioner disapproved a filing, TWIA would resubmit a board-approved alternative.

To regulate changes in policy content and operations, the Commissioner would conduct a rulemaking process. The recommendation would not require TDI to conduct rulemaking through a public hearing, but the Department could choose to hold hearings at its discretion, or upon request, according to the Administrative Procedures Act. The Department would continue to have hearings on the designation of catastrophe areas and changes to windstorm building code.

These recommendations would clarify lines of authority between the Commissioner and the Board, permitting TDI to obtain better information with which to make regulatory decisions, and helping the Department maintain a healthy market for insurance while protecting the State from financial risk. The recommendation would also increase the Board's accountability to TWIA stakeholders, and expedite the filing approval process, while allowing for necessary public input on changes to TWIA.

2.3 Transfer the responsibility for windstorm inspections and the oversight of engineers from TDI to TWIA.

This recommendation would transfer windstorm inspections, as well as oversight of engineers, to TWIA. This recommendation would retain the basic inspections requirements already in state law, and require TWIA to develop a windstorm inspection program including the following:

- ◆ a procedure for contracting with, and terminating contracts with, licensed engineers;
- ◆ inspection standards and regulations;
- ◆ training and education requirements for engineers, as needed;
- ◆ inspection fee guidelines;
- ◆ a procedure for handling complaints about inspectors;
- ◆ a process for engineer oversight that includes regular re-inspections by TWIA to make certain that inspectors perform duties appropriately;
- ◆ a requirement to report possible licensing violations to the Texas Board of Professional Engineers;
- ◆ a process for issuing certifications that attest to a structure's insurability through TWIA; and
- ◆ a procedure to regularly report to TDI on the inspection program.

This recommendation would require TDI to provide limited oversight of inspections. To facilitate TDI's oversight, TWIA would report monthly to TDI on the following:

- ◆ number of inspections performed;
- ◆ number of structures inspected;
- ◆ the number and a general description of the type of inspection deficiencies discovered through oversight; and
- ◆ any actions taken to resolve problems with inspections.

These changes would shift inspection responsibility to TWIA, requiring the Association to verify the insurability of applicants. The inspection program would be included in TWIA's Plan of Operation, and subject to Commissioner approval, as described in Recommendation 2.2. In transferring inspections to TWIA, this recommendation would also eliminate statutory language authorizing the Department to fund the inspection program from investment income of the trust fund.

TDI would retain six full-time staff to provide oversight of the inspection process, protecting the State's General Revenue, and to ensure that neither TWIA nor engineers unfairly limit access to the pool. TDI would also retain authority over the development of building codes and standards to which TWIA inspections must adhere.

This recommendation would help clarify the missions of both TWIA and the Department. TDI would no longer be responsible for both increasing availability and restricting entry to the pool. Eliminating the need for the Department to perform inspections would enable TDI to better focus on setting windstorm building standards, through building code development, to ensure that the Association meets its statutory purpose.

2.4 Remove unnecessary rate restrictions in law, permitting the Association to consider additional factors in developing rates.

This recommendation would retain the general statutory guidelines for developing TWIA rates, but would remove the portions of statute that specify the exact experience that must be used to develop rates. Under this recommendation TWIA would be permitted to develop rates based on the most appropriate data for the specific circumstance. Proposed rates would still be subject to a 10 percent per filing cap overall, and 15 percent cap by ratings class. This recommendation would not affect the requirement that rates be uniform throughout the coastal region. This recommendation would enable the Association to develop more accurate rates, allowing the Commissioner to better protect the revenue of the State and to promote a healthy coastal insurance market.

2.5 Authorize TWIA to require applicants to provide proof of two declinations from insurers writing windstorm insurance in the state.

Under this recommendation all new windstorm applicants would be required to periodically furnish proof of two declinations, cancellations, or a combination of the two, from Texas-licensed insurers writing in the state. This recommendation would be prospective, affecting new and renewal policies. It would not affect policies currently in effect. This recommendation is consistent with requirements for other state residual markets. By requiring applicants to demonstrate that they could not obtain insurance in the voluntary market, the State will help ensure that TWIA is meeting its intended purpose as a market of last resort.

Issue 3

The State's Lack of Regulation of Preferred Provider Organizations Does Not Correspond With Changes in the Texas Healthcare Market.

Key Findings

- ◆ The method of health insurance delivery to Texans has changed significantly in the last decade, moving towards delivery of care through PPO plans.
- ◆ TDI regulates some aspects of health insurance in Texas, but does not regulate Preferred Provider Organizations.
- ◆ TDI's lack of authority over PPOs is outdated in the current healthcare environment and may result in consumer harm.
- ◆ Although the Legislature has charged TDI with studying some aspects of the unregulated nature of PPOs, the agency lacks the specific regulatory authority needed to be effective.

The Texas Department of Insurance only regulates health insurance that is provided through group or individual plans, which affects 5.5 million Texans. More than 80 percent of this group receive their care through Preferred Provider Organization (PPO) plans. The Department does not regulate PPOs, which are the networks that the PPO plans use to assemble and credential providers and negotiate discounts for service. With the migration of the healthcare market toward PPO plans, a significant portion of the healthcare system – PPOs – goes unregulated.

The complicated system in which PPOs are responsible for a significant amount of healthcare delivery can result in less transparency and accountability about payment and coverage under these plans. The prevalence of this type of healthcare delivery system, combined with the potential consumer harm that can result, argues for regulation of PPOs by the State.

Recommendation

Change in Statute

3.1 Require Preferred Provider Organizations to obtain a certificate of authority from the TDI to operate in Texas.

This recommendation would require PPOs that operate within Texas to apply for a certificate of authority from TDI. Basic requirements for the process and application for certificate of authority would be similar to those already in law for Health Maintenance Organizations and Third-Party Administrators. The application for a PPO certificate of authority would include requirements for:

- ◆ a copy of the applicant's basic organizational document, if it exists, such as articles of incorporation or association;
- ◆ a copy of any organization bylaws;
- ◆ a list of all members in control of the organization, such as the board of directors or other governing committee, or principal officers or partners; and
- ◆ a template of any contract made between the applicant and physicians or providers.

Self-funded plans and insurers with proprietary PPOs would be exempt from this certification requirement. Under this recommendation, state law would provide requirements for approval of the application and recourse for applications denied, similar to requirements for other regulated entities. The certificate of authority would be issued once, and not subject to renewal. The Department would also be authorized to charge PPOs a fee for the certificate of authority, to offset the costs of regulation. The certificate of authority would remain in effect until the Commissioner suspends, revokes, or terminates the certificate. The recommendation would require the Commissioner to adopt rules implementing this program, including any requirements for updates of the information required for the original certificate of authority.

By certifying PPOs operating within Texas, this recommendation would allow TDI to have some regulatory authority over PPOs, and take enforcement action against them if they violate current state law or TDI rules. This minimal certification process would also allow the State to look more closely at the problems that can occur among PPOs, providers, insurers, and consumers. To help understand issues related to PPOs, the Department would be required to track and analyze complaints against PPOs.

Issue 4

TDI Cannot Effectively Regulate Title Insurance Without Independent Financial Examinations and More Comprehensive Reporting.

Key Findings

- ◆ TDI has seen an increase in financial issues among title agents in recent years, causing concerns about potential insolvencies.
- ◆ The Department lacks statutory authority to independently examine title agents.
- ◆ State law does not require title agents to regularly submit complete, audited financial data, preventing TDI from effectively regulating their solvency.
- ◆ Without comprehensive title agent examinations and reporting, TDI cannot ensure the accuracy of expense data used to promulgate title insurance rates.

The Texas Department of Insurance regulates title insurance in Texas by licensing title insurers, title agents, and escrow officers; protecting consumers from title insurer and title agent insolvencies; and promulgating statewide rates and policy forms. Currently, TDI lacks the authority to conduct independent financial examinations of title agents and does not collect the information necessary to monitor title agents' solvency. This lack of information seriously limits TDI's ability to protect consumers from economic harm and to promulgate accurate title insurance rates, which must be used in all title insurance transactions in Texas.

Recommendations

Change in Statute

4.1 Require TDI to regularly examine title agents, including verifying the expense data submitted for title insurance rate promulgation.

Under this recommendation, the statutory authority for title agent examinations would transfer from the Texas Title Insurance Guaranty Association to the Department, and TDI would be required to conduct regular title agent examinations. Examinations should include a review of the overall financial condition of a title agent, including operating accounts and escrow accounts. Every examination should also include a component to verify the expense, profit, and loss data reported for rate promulgation. This recommendation should apply to all title agents, including direct operations agents.

This recommendation would leave the frequency of title agent examinations to TDI, but examinations should occur at least once every three years. The Department could conduct targeted examinations more frequently if TDI determines a title agent's financial condition warrants closer scrutiny. This recommendation would maintain the statutory requirement that the Guaranty Association reimburse TDI for title agent examinations.

Transferring the examination authority from the Guaranty Association to TDI would give the Department the authority needed to ensure examinations are an effective component of its greater solvency monitoring. Requiring TDI to routinely verify the expense information collected from title agents would improve the Department's ability to promulgate rates that are reasonable to the public and non-confiscatory to title insurers and agents.

4.2 Require title agents to annually submit audited financial statements of operating accounts to TDI.

This recommendation would require title agents to submit audited financial statements of operating accounts to TDI as an annual reporting requirement, in addition to a requirement of initial licensure. The Department should prescribe the form and content of the statement, and the statement should be verified by an officer of the company. Information derived from agents' financial statements would be confidential and not subject to disclosure. The financial statement audit should be performed by an independent certified public accountant in accordance with generally accepted auditing standards of the accounting profession. This recommendation should apply to all title agents, including direct operations title agents.

To ensure that this requirement does not unduly burden small companies that do not write much title business, and do not hold a significant amount of funds at risk, the Commissioner would have the authority to exempt certain title agents with a premium volume of less than \$100,000, from the requirement. To implement this, the Commissioner would establish, through rule, a process for exemption, which could include procedures for deciding exemptions on a case-by-case basis.

This recommendation is not intended to replace the requirement that title agents submit annual audited reports of escrow trust fund accounts, and escrow reports could be submitted together with operating account statements. Requiring comprehensive financial statements from title agents would allow the Department to ensure that title agent financial problems are detected in a timely manner and that promulgated title insurance rates are based on accurate information.

4.3 Require the Commissioner to assess what information is needed to promulgate title insurance rates every five years.

This recommendation would require the Commissioner to assess, every five years, the expense data collected for purposes of promulgating rates and consider whether the data should be revised to capture additional or different information, or whether any items no longer remain necessary. Routinely evaluating the data would ensure that TDI collects adequate, but not unnecessary, information to promulgate rates in line with statutory requirements.

Issue 5

Most of TDI's Advisory Committees No Longer Need to Be in Law.

Key Findings

- ◆ TDI has terminated four advisory committees that have fulfilled their purposes, but these committees still exist in state law.
- ◆ Two advisory committees will soon complete their tasks but TDI, by law, is not authorized to terminate their activities.
- ◆ One committee does not carry out its duties as intended and drains TDI resources.
- ◆ Five of TDI's advisory committees may continue to be useful, but would function better in rule rather than in law.
- ◆ TDI has the authority and the demonstrated ability to create advisory committees and informal working groups as needed.

TDI uses advisory committees for input on a variety of topics, including licensing requirements, program development, insurance standards improvement, and for information on insurance market conditions. Many of the existing committees may not be needed or may not perform a useful service for the Department; however, in several cases, the Department cannot easily abolish unnecessary advisory bodies.

Recommendations

Change in Statute

5.1 Eliminate all but two TDI advisory committees from statute.

This recommendation would eliminate 12 of the 14 committees currently in statute. Specifically, this recommendation would eliminate the following committees:

- ◆ Agents Study Proposal/Vendor Committee;
- ◆ Fire Alarm Advisory Committee;
- ◆ Fire Extinguisher Advisory Council;
- ◆ Fire Sprinkler Advisory Council;

- ◆ Fireworks Advisory Council;
- ◆ Health Maintenance Organization Solvency Surveillance Committee;
- ◆ Public Insurance Adjusters Examination Advisory Committee;
- ◆ Technical Advisory Committee on Claims Processing;
- ◆ Technical Advisory Committee on Electronic Data Exchange;
- ◆ Texas Health Coverage Awareness and Education Program Task Force;
- ◆ Texas Residential Property Insurance Market Assistance Program Executive Committee; and
- ◆ Windstorm Building Code Advisory Committee.

The two remaining committees, the Bleeding Disorders Advisory Council and the Health Network Adequacy Advisory Committee, have statutory expiration dates, and will be eliminated based on these provisions in 2009. This change would eliminate several unnecessary advisory committees and allow the Commissioner to create or re-create advisory committees in rule, as necessary, to provide expertise and to advise the Department.

5.2 Require the Department to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.

The Commissioner should adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, structure, and use of the Department's advisory committees, including:

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

This recommendation would require TDI to routinely evaluate advisory committees to ensure that they continue to serve a purpose. TDI would be allowed to retain or develop committees to meet its changing needs. All committees would be structured and used to advise the Commissioner, the State Fire Marshal, or staff, but not responsible for rulemaking or policymaking. Committee meetings would also be open to the public. This change would help the Department ensure the most effective use of these committees.

Management Action

5.3 Direct the Department to clearly distinguish between the purpose and appropriate use of advisory committees and informal working groups.

Chapter 2110 of the Texas Government Code permits state agencies to establish advisory committees to advise agencies. TDI also routinely creates informal working groups to obtain stakeholder input on a variety of topics. TDI should clearly distinguish between the two types of groups. Working groups would not be required to adhere to the requirements of Chapter 2110. This recommendation would allow the Department to make use of either type of group, but would direct TDI to distinguish between the two and define the purpose for working groups as well as advisory bodies, to ensure that its use of the groups is efficient and effective.

Issue 6

To Reduce the Risk of Fire Hazard, the State Fire Marshal's Office Needs Direction to Target Its Inspections of Buildings.

Key Findings

- ◆ While the SFMO has a clear role in inspecting state-owned buildings, the law does not speak to the SFMO's inspection of state-leased buildings.
- ◆ The SFMO has not targeted its routine inspections of state buildings based on potential fire safety risks.
- ◆ Not charging a fee, and the lack of local resources, contribute to the SFMO's inappropriate involvement in private building inspections, most of which should be handled locally.

The State Fire Marshal's Office (SFMO) is charged with preventing the loss of life and property due to fire by inspecting the safety of buildings. Currently, the SFMO is required to inspect state-owned buildings for fire hazards to protect state employees and the public from harm. However, the SFMO is not required to perform periodic fire safety inspections for state-leased buildings that house thousands of state employees. In addition, the SFMO does not have a risk-based approach to its routine inspections of state buildings, preventing the most effective use of limited resources and must also divert more than a quarter of its time and resources to inspecting privately owned buildings.

Recommendations

Change in Statute

6.1 Require the SFMO to periodically inspect state-leased buildings.

As state law already requires of state-owned buildings, this recommendation would require the SFMO to periodically inspect state-leased buildings, and to take action necessary to protect state employees and the public from fire hazards in state-leased buildings. The recommendation would also require the SFMO to share and coordinate state-leased building inspection information with the affected

agency, the Texas Facilities Commission, and the State Office of Risk Management, as already required with state-owned buildings. This change would help protect employees and the public in state-leased buildings from preventable fire risks, just as in state-owned buildings.

6.2 Require the SFMO to create a risk-based approach to conducting its routine inspections of state buildings.

This recommendation would ensure that the Office takes a more strategic approach to conducting its routine inspections of state-owned and state-leased buildings. As part of this change, the SFMO would need to develop guidelines for assigning potential fire safety risks to state buildings. As the SFMO is a part of TDI, the Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. To ensure that even all low-risk buildings are inspected at some point, the rules should address a planned timeframe for continuing to inspect all buildings under the SFMO's purview. This change would not affect the SFMO's response to complaints and requests for inspections, as these cannot be assigned a risk and must be dealt with on an as-needed basis. The SFMO should also periodically report its findings on state-owned and state-leased building inspections to the relevant committees of the Legislature.

A risk-based approach would allow the SFMO to use its limited staff resources most effectively by focusing greater attention on buildings with higher risk of fire hazards, a history of complaints, or poor compliance with recommended changes to reduce fire hazards. In contrast, less attention would be needed for newer buildings built to higher standards or buildings with consistent compliance or an active fire safety program.

6.3 Authorize the SFMO to charge a fee for inspections of privately owned buildings.

This recommendation would statutorily authorize the SFMO to establish a reasonable fee for performing private building inspections. The Commissioner of Insurance would need to adopt these guidelines as rules, allowing for public input. In developing the fee amount, the SFMO should consider its overall costs in performing these inspections, including the approximate amount of time staff needs to perform the inspection, travel costs, and other expenses. Instituting a fee should help to ensure that privately owned businesses only call the SFMO as a last resort, and not just because the inspections are free.

Management Action

6.4 Direct the SFMO to work with local communities to help build capacity to more effectively assess and implement local fire prevention efforts.

In addition to fire prevention educational materials, the SFMO should focus on developing, and placing on its website, a step-by-step guide instructing local communities on how to increase fire prevention capacity at the local level, including the benefits of establishing a local city or county fire marshal. Helping local communities increase their fire prevention and inspection abilities should help to reduce the need for SFMO inspections at the local level, allowing the Office to focus on its broader state-level fire prevention strategies.

Issue 7

The State Fire Marshal's Office Lacks the Ability to Issue Fines to Ensure Licensee Compliance.

Key Finding

- ◆ TDI's broader approach to enforcement does not allow the SFMO to effectively ensure compliance with its licensing standards.

The State Fire Marshal's Office has a responsibility for protecting the public by ensuring that those who provide fire prevention and suppression equipment services, sell fireworks, and conduct firework displays are qualified and competent. However, the SFMO lacks the necessary authority to adequately enforce penalties against its licensees, which allows many violators to go unsanctioned. Because SFMO licensees are directly involved in protecting the public's welfare and preventing harm caused by fires, adequately enforcing fines against licensees to encourage compliance is critical to SFMO's mission to protect Texans.

Recommendation

Change in Statute

7.1 Require the Commissioner to establish a penalty matrix for violations by SFMO licensees, and to delegate administration of these penalties to the SFMO.

Under this recommendation, the Commissioner would create, by rule, a penalty matrix for SFMO licensee violations to ensure fair and consistent application of fines. Further, the Commissioner would delegate the administration of these penalties to the SFMO, which would give the SFMO the ability to issue fines to violators without referring the violations to TDI's broader enforcement function.

In developing the matrix, the Commissioner should take into account factors, including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The penalty amounts should reflect the severity of the violation and serve as a deterrent to violations. The Commissioner should also adopt rules defining which types of enforcement actions will be delegated to the SFMO, and outlining the process with which the SFMO will assign penalties. The recommendation would also provide for due process by authorizing a licensee to dispute the fine, and request a contested case hearing. If a licensee does not pay the fine, the SFMO would refer the case to TDI's enforcement division. This recommendation would give the SFMO the clear authority to streamline and expedite the processing of violations by issuing fines for certain minor violations, and would provide a tool for the SFMO to use to ensure compliance of fire prevention and suppression equipment services and firework licensees.

Issue 8

The Department's Statute Has Not Kept Pace With Available Electronic Transaction Technologies.

The Insurance Code currently outlines requirements for many different types of transactions between businesses related to insurance and consumers, including both financial and contractual transactions. However, the Code's lack of specificity and clarity about the use of electronic transactions is no longer appropriate in the current technological environment. Because electronic commerce transactions are not specifically mentioned in statute, businesses may be unsure if electronic transactions are permitted.

Recommendation

Change in Statute

8.1 Clarify provisions in the Insurance Code to clearly permit the use of electronic commerce transactions.

This recommendation would improve the convenience and efficiency of transactions for both businesses and consumers in Texas by clarifying the applicability of existing and future provisions in the Insurance Code to permit electronic commerce transactions. The recommendation would supplement existing laws by removing barriers to electronic commerce transactions. The Department would provide businesses and consumers with standards for electronically delivering documents. The recommendation would not require parties to conduct business electronically, but would facilitate transactions in which the parties agree to conduct business electronically.

Issue 9

Change the Reduced Rate Filing Requirements for Insurers Writing Residential Property Insurance in Underserved Areas.

Insurance companies that write a certain percentage of residential property coverage in underserved areas are exempt from rate filing and approval requirements. The current exemption covers insurers that issue residential property coverage that accounts for less than 2 percent of the total amount of premiums collected by insurers in Texas, more than 50 percent of which covers property designated by TDI as underserved and valued at less than \$100,000. If an insurer meets these qualifications, and if the proposed rate is less than a 10 percent increase, then the insurer does not have to file the rate with TDI. However, the current coverage threshold that an insurer must write to qualify for the exemption is less than 2 percent of the total amount of premiums collected in Texas, which is too low to cover companies that are writing this type of insurance for Texas' underserved market.

Recommendation

Change in Statute

9.1 Change the threshold needed to be met for reduced rate filing requirements for insurers that write residential property insurance in areas designated as underserved.

This recommendation would change the threshold for the reduced rate filing requirements for insurers writing more than 50 percent of their coverage for properties which are valued at less than \$100,000 and located in areas designated as underserved for residential property insurance. The recommendation would increase the insurer's allowed percentage of total statewide collected premiums for residential policies from less than 2 percent to less than 4 percent.

Issue 10

Using Insurance Maintenance Taxes to Fund Other State Agencies May Shift the Cost Burden for Non-Insurance Related Activities to Insurers.

The Department receives most of its funding from maintenance taxes assessed on all companies that sell insurance in Texas. State law charges TDI with setting maintenance tax rates to the level necessary to cover the costs associated with regulating insurance, as appropriated by the Legislature. In addition to appropriating money collected from these maintenance taxes to TDI, in the past, the Legislature has also appropriated a portion of this money to fund functions at other state agencies. To cover these expenditures, TDI takes into account these appropriations when determining the maintenance tax rate to be assessed on insurers.

In fiscal year 2008, the Legislature appropriated about \$31 million to eight other state agencies, including the Department of State Health Services, the Texas Facilities Commission, the Office of the Attorney General, the Texas Commission on Fire Protection, the Texas Cancer Council, the Texas Forest Service, the Comptroller of Public Accounts, and the Department of Public Safety. Although some of the functions at these state agencies are clearly insurance-related, some functions may not be linked with insurance regulation. However, insurance companies are being assessed to cover all of the appropriations from maintenance taxes. In this way, the State could be depending on insurance companies to fund other state functions not related to regulating insurance.

Recommendation

Change in Appropriations

10.1 Request that the Legislature study the use of insurance maintenance taxes to support other state agencies, and make appropriate changes in methods of finance as necessary.

This recommendation expresses the will of the Sunset Commission that the Legislature study appropriations from monies collected from maintenance taxes to other state agencies. Specifically, the Sunset Commission asks that the appropriative committees:

- ◆ study the appropriation of funds from the collection of maintenance taxes for functions at other state agencies other than the Texas Department of Insurance and determine if those diversions are directly linked to the costs associated with the regulation of insurance in Texas; and
- ◆ change the method of finance for the appropriations to other state agencies determined not to be directly related to the costs associated with the regulation of insurance to a source other than from the collection of maintenance taxes.

This recommendation would help ensure that analysis of the appropriateness of this practice is made, and any necessary changes in appropriations are made based on that analysis.

Issue 11

The Legislature Should Consider Creating a Health Insurance Innovations Program at TDI.

In Texas, almost 25 percent of the population, or about 5.5 million people, do not have health insurance. Texas has the highest rate of uninsured people in the country and has held this ranking for most of the past 10 years. To combat problems with affordability and availability of health insurance in Texas, the State could take advantage of TDI's institutional knowledge about health insurance and the uninsured population in Texas.

Recommendation

Recommendation to Legislative Committees

11.1 Request that the Legislature, through the appropriate legislative committees, consider creating a Health Insurance Innovations Program.

This recommendation expresses the will of the Sunset Commission that the Legislature consider creating a program at TDI with the goal of expanding access to affordable health insurance. Specifically, the Sunset Commission asks that the appropriate jurisdictional legislative committees consider legislation creating a Health Insurance Innovations Program that would:

- ◆ research, develop, and evaluate options for increasing the number of Texans with health insurance;
- ◆ collect and analyze data on the insured and uninsured populations in Texas, as necessary, to develop programs for expanding coverage;
- ◆ research and evaluate other states' activities, as appropriate, to determine their potential for application in Texas; and
- ◆ monitor and evaluate the status of the existing health insurance market to determine whether Texans have access to a variety of affordable products that provide adequate health care coverage.

Potential legislation would also authorize TDI to adopt rules, as necessary, to implement its new duties and require TDI to submit a report to the Texas Legislature no later than September 1 of every even number year. The report would include:

- ◆ a summary of the research and analysis conducted, significant findings, and recommendations for strategies designed to expand access to affordable health insurance;
- ◆ a current overview of the group and individual health insurance markets, significant activities and market changes since the prior report, and information on factors that the Department determines may affect the availability and affordability of coverage; and
- ◆ information on the availability and unavailability of data that is critical to the research process, with recommendations for additional data collection options for the Legislature to consider, if appropriate.

Issue 12

The State Has a Continuing Need for the Texas Department of Insurance.

Key Findings

- ◆ Texas has a clear and continuing interest in regulating the insurance industry.
- ◆ TDI is the most appropriate agency to regulate insurance in Texas.
- ◆ The Department's focus on protecting consumers and fostering a competitive market is not clearly reflected in statute.

The Texas Department of Insurance's overall duty – to regulate insurance in Texas – ensures that competitive and fair insurance products are available to Texans. The Department fulfills an important role in the state and should be continued for 12 years. The Department would also benefit from having its statutory duties updated to more clearly reflect its key role in ensuring consumer protection and fair competition within the insurance industry.

Recommendations

Change in Statute

12.1 Continue the Texas Department of Insurance for 12 years.

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

12.2 Update TDI's statutory duties to better reflect the agency's role in protecting consumers and encouraging a competitive insurance market in Texas.

This recommendation would better define the agency's overall duties in statute by updating existing language to charge the agency with:

- ◆ protecting and ensuring the fair treatment of consumers; and
- ◆ ensuring fair competition in the insurance industry, thus fostering a competitive market.

Fiscal Implication Summary

These recommendations would have no net fiscal impact to the State's General Revenue Fund, since TDI is funded through taxes and assessments on insurers. However, one of the recommendations would cut 28 full-time equivalent positions from TDI, and others would have fiscal impact to the agencies' appropriations patterns, as described below.

- ◆ **Issue 2** – Transferring windstorm inspection responsibilities from TDI to TWIA would result in a reduction of \$1,545,559 in appropriations and staffing reductions of 28 full-time equivalents (FTEs). This reduction would be reflected in TDI's appropriations but, due to the self-regulating nature of the Department's funding, any savings would result in a reduction in maintenance taxes on insurers, and the costs insurers pass on to policyholders, but would not create a positive fiscal impact for the State.
- ◆ **Issue 3** – Registering PPOs would result in additional administrative costs to TDI, and may increase appropriation levels. However, the Department would be authorized to charge certification fees, to the level necessary to regulate PPOs, to offset the costs.
- ◆ **Issue 6** – Authorizing the State Fire Marshal's Office (SFMO) to institute a fee for conducting inspections of privately owned buildings would result in a gain in revenue, but this gain would offset the Office's costs in providing the inspections, and the revenue should be redirected to those functions. The gain could not be estimated as it is dependent upon the fee level to be determined by the Office and the number of requests that continue to come in once the SFMO charges for this service.
- ◆ **Issue 7** – Allowing the SFMO to fine its licensees could result in an increase in revenues, but would depend upon the number and types of violations pursued by the SFMO, and cannot be estimated. Any administrative penalties collected by the SFMO would be deposited in General Revenue.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund, Account 36</i>	<i>Loss to the General Revenue Fund, Account 36</i>	<i>Net Effect to the General Revenue Fund, Account 36</i>	<i>Change in the Number of FTEs From FY 2009</i>
2010	\$1,545,559	\$1,545,559	0	-28
2011	\$1,545,559	\$1,545,559	0	-28
2012	\$1,545,559	\$1,545,559	0	-28
2013	\$1,545,559	\$1,545,559	0	-28
2014	\$1,545,559	\$1,545,559	0	-28

Office of Public Insurance Counsel

Agency at a Glance

The Office of Public Insurance Counsel (OPIC) represents the interests of consumers as a class in insurance matters. The Legislature created OPIC in 1991 as an independent agency to advocate for consumers in rate, form, and rule proceedings primarily at the Texas Department of Insurance. To accomplish its mission, the Office of Public Insurance Counsel:

- ◆ reviews rate and policy form filings, and works with TDI and insurance companies to negotiate changes advantageous to consumers;
- ◆ participates in contested rate cases and industry-wide rate hearings before the State Office of Administrative Hearings and the Commissioner of Insurance;
- ◆ appears in judicial appeals at district court and the court of appeals;
- ◆ advocates on behalf of consumers in rulemaking procedures at TDI; and
- ◆ provides information to consumers regarding insurance coverage and markets.

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

Key Facts

- ◆ **Funding.** In fiscal year 2008, OPIC operated on about a \$1 million budget, most of which came from the General Revenue Fund. Statutory assessments on insurers offset the agency's operating costs. Assessments collected in fiscal year 2008 totaled about \$2 million.
- ◆ **Staffing.** The Office of Public Insurance Counsel has 16.5 full-time equivalent positions. All OPIC employees work in Austin.
- ◆ **Rate and Form Review.** OPIC reviews and attempts to negotiate changes to rates and forms beneficial to consumers. In fiscal year 2008, OPIC reviewed 805 rate filings and took action on 32. In the same year, OPIC reviewed 411 form filings and took action on 15.
- ◆ **Industry-Wide Rate Hearings.** OPIC represented consumers in three industry-wide hearings in fiscal year 2008.
- ◆ **Judicial Appeals.** OPIC participated in one judicial appeal of a rate case in fiscal year 2008.
- ◆ **Rulemakings.** In fiscal year 2008, OPIC reviewed 110 rule proposals and participated in a total of 35 rulemakings, through both informal and formal intervention.

- ◆ **Insurance Information for Consumers.** OPIC publishes several consumer publications, including a Health Maintenance Organization report card, consumer bills of rights, underwriting guidelines, and a homeowners policy comparison tool.

Agency Head

Deeia Beck, Public Counsel

(512) 322-4144

Recommendation

1. Continue the Office of Public Insurance Counsel for 12 years.

Issue 1

Texas Has a Continuing Need for Consumer Representation in Insurance Regulation.

Key Finding

- ◆ Texas needs a consumer perspective in regulating insurance.

The Office of Public Insurance Counsel represents consumers as a class in insurance regulation, by assessing the effect of insurance rates, policy forms, and rules on consumers and, as statute allows, intervening when problems arise. The Office also performs a consumer education function. A consumer perspective in regulating insurance is important, and Texas continues to need an agency to perform these functions.

Recommendation

Change in Statute

- 1.1 Continue the Office of Public Insurance Counsel for 12 years.**

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

Fiscal Implication Summary

This recommendation would have no fiscal impact to the State.

Texas Commission on Jail Standards

Agency at a Glance

The Legislature created the Texas Commission on Jail Standards in 1975 to develop and enforce minimum standards for county jails and other facilities housing county or out-of-state inmates. Today, the agency's mission includes:

- ◆ regulating and supporting the management of county jails by developing jail standards, inspecting jails, investigating complaints, and providing training and technical assistance;
- ◆ reviewing and approving jail construction, renovation, and operational plans;
- ◆ compiling monthly county jail population reports; and
- ◆ monitoring Texas' compliance with federal law regarding the treatment of juveniles in adult jails and lockups.



*For additional information,
please contact Katharine
Teleki at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2008, the agency operated with an annual budget of \$948,288, funded mostly from General Revenue.
- ◆ **Staffing.** The agency employs 17 staff, including four full-time jail inspectors.
- ◆ **Jail Population.** The agency's authority extends to 248 jail facilities with 85,719 beds. On January 1, 2009, these jails were at 76 percent capacity.
- ◆ **Jail Standards Compliance.** In fiscal year 2008, the agency completed 350 inspections, including annual, repeat, and special inspections. As of January 1, 2009, 41 jails were non-compliant, and three jails, in Hopkins, San Patricio, and Smith counties, were under a Commission remedial order.

Commission Members (9)

Sheriff David Gutierrez, Chair (Lubbock)

Judge Donna S. Klaeger, Vice Chair (Burnet)

Irene A. Armendariz (El Paso)

Albert Black (Austin)

Stanley D. Egger (Abilene)

Jerry W. Lowry (New Caney)

Larry S. May (Sweetwater)

Michael M. Seale, M.D. (Houston)

Sheriff Tam Terry (White Deer)

Agency Head

Adan Muñoz, Jr., Executive Director
(512) 463-5505

Recommendations

1. Continue the Texas Commission on Jail Standards as an independent agency for 12 years.
2. Require the Commission to more effectively target high-risk jails through its inspections process, and request that the Legislature fund an additional jail inspector position.
3. Require the Commission to disseminate best practice information to jails and update its use of technology and internal procedures.
4. Conform the Commission's complaints and public information procedures with commonly applied standards.

Issue 1

Texas Has a Continuing Need for the Texas Commission on Jail Standards.

Key Findings

- ◆ Texas has a continuing need for jail standards enforcement and other assistance services for county jails.
- ◆ Consolidating the Commission with a larger agency offers no significant benefits over the current independent structure.

Given the high risk associated with operating jails, setting and enforcing minimum standards for their construction and operation, and providing assistance services to counties to help meet the standards, is vital to the State. The Texas Commission on Jail Standards is uniquely positioned and effective in establishing and enforcing jail standards, and providing training and technical assistance to counties. Consolidating the Commission with a larger agency offers no significant benefits from the current structure.

Recommendation

Change in Statute

1.1 Continue the Texas Commission on Jail Standards for 12 years.

This recommendation would continue the Texas Commission on Jail Standards for the standard 12-year period.

Issue 2

The Commission Does Not Effectively Use Risk Factors to Target Attention to High-Risk Jails.

Key Findings

- ◆ The Commission's risk-assessment process does not systematically assess risk factors affecting all jails.
- ◆ The Commission lacks resources to effectively target high-risk jails.

The Texas Commission on Jail Standards annually inspects the 248 jails under its jurisdiction using a standard process that evaluates compliance with life safety, structural, and management standards. The emphasis on compliance status does not provide an assessment of risk based on a range of factors that could indicate impending problems in jails. The Commission also does not have the staff resources and does not make enough use of unannounced inspections to focus attention on high-risk jails. The Commission could make better use of information it already receives to assess risk to help the agency better manage the jail inspection process and use its limited resources to meet the most pressing needs first.

Recommendations

Change in Statute

2.1 Require the Commission to develop specific risk factors and a risk-assessment plan to guide the inspections process for all jails.

This recommendation would require the Commission to develop a list of risk factors affecting jails, and use the factors to determine the overall risk level of each jail under its jurisdiction. Risk factors would include a jail's compliance history; population figures; repeated or multiple complaints; problems with a jail's internal grievance procedures; escapes; recent turnover among sheriffs and jail staff; mental and medical health reports, specifically those relating to infectious disease or pregnant inmates; complaints regarding violations of the 1-to-48 corrections officer-to-inmate ratio; and other criteria as determined by the Commission. The Commission should also actively seek out the results of inmate death investigations to provide additional information about potential risk factors. The Commission would use this information when developing the annual inspection schedule and scheduling unannounced inspections, and would revisit any changes in key risk factors during the monthly risk-assessment meetings.

This recommendation would not require the Commission to change its current practice of inspecting each jail every year. The Commission would still conduct annual comprehensive inspections of all jails but would use risk analysis to schedule high-risk jails earlier, target unannounced and additional special inspections based on risk, and schedule proactive technical assistance earlier in the year. The recommendation would also ensure the Commission anticipates a range of risk factors affecting all jails, instead of focusing narrowly on a jail's current compliance status; more effectively manages its limited resources; and deals with the most pressing issues first.

Management Action

2.2 The Commission should use risk analysis of jails to more effectively manage its inspection staff and resources.

The Commission should use the risk factors and risk-assessment plan described in Recommendation 2.1 to guide inspector assignments, travel schedules, and use of technical assistance and training resources. As part of this recommendation, the Commission should consider balancing the number of jails assigned to each inspector based on the jails' risk level, instead of exclusively dividing the number of jail facilities evenly among the four inspectors. Using risk information to manage resources would focus inspector responsibilities, technical assistance, and other attention based on need.

2.3 The Commission should increase the use of unannounced jail inspections.

The Commission should increase the use of unannounced jail inspections based on its risk-assessment model. The Commission should track its use of unannounced inspections to ensure that they are conducted according to the risk assessment. Increasing the use of surprise inspections for high-risk jails would ensure the Commission focuses its resources on problem areas, and would encourage greater compliance among all jails.

Change in Appropriations

2.4 Request that the Legislature fund an additional jail inspector position.

This recommendation expresses the will of the Sunset Advisory Commission that the Legislature appropriate funding for an additional jail inspector. Providing this additional resource would ensure the Commission has the necessary tools to focus on high-risk jail facilities.

Issue 3

The Commission Does Not Take Full Advantage of Its Position to Improve Jail Operations Through Information Sharing.

Key Findings

- ◆ The Commission does not share the useful information it receives about trends in jail operation through a regular, coordinated effort, missing an opportunity to more proactively encourage compliance.
- ◆ Without centralized best practice information, the Commission and counties do not work together productively to resolve common jail issues.

As a uniquely positioned state agency responsible for and in regular contact with county jails, the Commission misses an opportunity to gather and share information about common problems and innovative approaches to those problems and other best practices to improve jail operations. To be more effective in working with jails, the Commission needs an ongoing, cooperative approach to solve difficult problems instead of the harsh step of imposing enforcement sanctions on a governmental entity. Jail officials also need help in contending with the broad range of issues that may not directly relate to jail standards, but have a major impact on jail operations.

Recommendations

Change in Statute

3.1 Require the Commission to collect and disseminate best practices and other useful information about jail operations.

This recommendation would require the Commission to develop a policy for collecting and distributing useful information about common issues facing jails, examples of successful strategies for maintaining compliance with minimum standards, and solutions to broader operational challenges facing jails such as caring for mentally ill inmates. The best practices program would capitalize on the Commission's unique position as a state agency focused on jails, ensure the agency makes the best use of the information it receives, and help counties support each other through peer-exchange of information. This recommendation would also complement the Commission's current requirement to provide consultation and technical assistance to counties, and ensure the effectiveness of the agency's efforts in this area.

Management Action

3.2 The Commission should make better use of available technology to regularly share information and communicate with stakeholders.

The Commission should develop an e-mail list of sheriffs, county officials, and jail staff, use this list to regularly communicate useful information such as results of recent Commission meetings or a general agency newsletter, and improve the resources it provides on its website. The agency should identify counties without access to the Internet and develop alternative communication methods for this small group. The Commission should also provide a forum for county officials, jail staff, and stakeholders to directly communicate and share information with each other. The agency should gather useful information from Commission staff, jails, and stakeholders, and develop a plan to distribute this information to interested parties using the agency's available technology resources. Taking advantage of technology would enable the Commission, through improved communication, to quickly share useful information that could help jails solve common problems.

3.3 The Commission should develop and regularly update internal policies and procedures to guide its work.

The Commission should develop comprehensive internal policies that include a description of key agency functions, the role of individual staff members in carrying out their job responsibilities, and standard procedures for conducting the agency's work, such as inspections, compliance, construction plan review, and technical assistance. The policies should also include a clear explanation of how agency staff should communicate useful information about jails with each other and with stakeholders through a best practice program. Clear and regularly updated internal policies would ensure Commission staff understand their unique job responsibilities, and carry out the agency's mission consistently.

Issue 4

The Commission's Complaints and Public Information Processes Do Not Conform to Commonly Applied Standards.

Key Findings

- ◆ The Commission lacks clear procedures to guide complaint filing, investigation, tracking, and analysis.
- ◆ The Commission does not make enforcement information easily available to the public.

The Texas Commission on Jail Standards lacks complaints and public information procedures that are standard to other regulatory agencies in Texas and commonly applied during Sunset reviews. Without clear procedures, the Commission cannot ensure that it receives and uses complaint information in assessing the performance and condition of jails that it oversees. Inmates and their families do not have clear information on how to file a complaint or what to expect once a complaint is filed. The public does not have easy access to information about the results of the Commission's regulatory activities, which can serve to induce greater compliance with broader jail standards. Comparing the Commission's procedures to model standards identified variations that need to be brought in line to improve the Commission's relationship with the public and its stakeholders.

Recommendations

Change in Statute

4.1 Require the Commission to develop complaints procedures, track and analyze complaints, and provide better information about how to file a complaint.

The Commission would be required to adopt rules or procedures that clearly lay out policies for all phases of the complaint process, including complaint receipt, investigation, resolution, and disclosure to the public. The procedures would differentiate between complaints against jails versus complaints against the agency's policies or staff, and include a system for prioritizing complaints and a timeframe for responding to complaints.

The recommendation would repeal a statutory provision that exempts the Commission from keeping information about complaints on the jails it regulates. Instead, the Commission would be required to maintain documentation on complaints according to standard, across-the-board requirements generally placed on all agencies undergoing Sunset review. The Commission must develop a simple form for written complaints, and have processes in place to inform the public, inmates, and county officials about complaint procedures, including on the agency's website. The Commission would also be required to track and analyze all complaints according to clear criteria such as the reason or origin of each complaint received, the average time to respond or investigate, the outcome of the investigation or resolution, any disciplinary actions taken, the number of open cases at the end of each fiscal year, and a separate breakdown of non-jurisdictional complaint topics.

Requiring clear and easy-to-find complaints procedures would ensure the Commission's stakeholders understand the Commission's role in accepting and investigating complaints, how to file a complaint, and what to expect after a complaint is filed. Improved tracking and analysis of complaints would help the Commission better understand issues of concern to its stakeholders.

4.2 Require the Commission to make enforcement information more accessible to the public.

This recommendation would require the agency to provide easily accessible information to the public about the compliance status of the jails under its jurisdiction, including on the agency's website, and through other formats such as newsletters or press releases as determined by the Commission. To enhance these new communication efforts, the information must be meaningful to the general public and free of technical jargon or terminology. Providing information in this manner would help the public understand the reasons for the compliance status of jails under the agency's oversight.

Fiscal Implication Summary

One recommendation could have a fiscal impact to the State, but the amount of the impact will depend on whether the recommendation is implemented, as discussed below.

- ◆ **Issue 2** – Appropriating funds to the Commission on Jail Standards for an additional jail inspector position would result in a cost of \$58,500 per year to General Revenue. The Legislature, through the appropriations process, would determine whether to provide this funding. The fiscal impact would not be reflected in the fiscal note for the Commission on Jail Standards Sunset bill.

Texas Youth Commission

Texas Juvenile Probation Commission

Office of Independent Ombudsman

Texas Youth Commission at a Glance

Originally established in 1949 as the Texas Youth Development Council, the Texas Youth Commission (TYC) is the State's juvenile corrections agency. TYC promotes public safety by operating juvenile correctional facilities and helping youth in the agency's custody receive the education, treatment, and skills needed to successfully reintegrate back into the community. To accomplish its mission, TYC:

- ◆ provides secure confinement for youth committed to its custody;
- ◆ operates education and treatment programs designed to reduce criminal and delinquent behavior;
- ◆ supervises youth on parole; and
- ◆ works with families, volunteers, victims, and advocacy groups to help keep communities safe and increase opportunities for youth to succeed.


*For additional information,
please contact Karl Spock or
Leah Campbell at (512) 463-1300.*

Key Facts

- ◆ **2007 Reforms.** After a highly publicized cover-up of sexual abuse at TYC's West Texas State School and in response to the Legislative Audit Committee's finding of gross fiscal mismanagement, the Governor appointed a TYC conservator in March 2007. The Governor removed TYC from conservatorship in October 2008.

The 80th Legislature passed Senate Bill 103, which reformed many of TYC's operations. The legislation limited TYC commitments to youth younger than 19 who have committed a felony offense; mandated a 1:12 staff-to-youth ratio at TYC facilities; and established an Office of Inspector General and Office of Independent Ombudsman for TYC.

- ◆ **Funding.** In fiscal year 2008, TYC expended \$265 million. About 72 percent of TYC's budget supports assessment and health care of youth and their incarceration at 12 institutions, nine halfway houses, and 12 contract care residential programs.
- ◆ **Staffing.** In fiscal year 2008, TYC had a staff of about 4,200, including 2,281 juvenile correctional officers and 335 central office staff. So far in fiscal year 2009, TYC has reduced total staff by 460.5, including 30.5 staff in central office.

- ◆ **Youth Offenders.** TYC's offender population in fiscal year 2008 decreased from 3,400 to 2,425 over the course of the year. TYC also supervised an average of 2,379 youth per day on parole.

Agency Head

Cherie Townsend, Executive Commissioner
(512) 424-6002

Texas Juvenile Probation Commission at a Glance

In 1981, the Legislature created the Texas Juvenile Probation Commission (TJPC) to ensure access to juvenile probation services throughout the state. Texas reached that goal in 1984 when, for the first time, all counties had probation services available to them. Today, Texas has 166 juvenile probation departments serving all 254 counties. The Commission supports and oversees these departments to help reduce crime and divert youth from possible commitment to the Texas Youth Commission. The departments provide an array of services, from basic probation to secure community-based placement.

The agency's key functions are:

- ◆ disbursing state and federal funding to assist counties in supervising juvenile offenders and to help divert youth from commitment to TYC;
- ◆ monitoring and overseeing juvenile probation departments and locally run detention and correctional facilities to ensure compliance with established standards; and
- ◆ providing technical and legal assistance and training to counties to improve probation services.

Key Facts

- ◆ **Funding.** The agency operated with a budget of \$144.3 million in fiscal year 2008, flowing almost all of these funds to local departments to support probation services and run facilities. Funding from TJPC, which includes some federal grants, typically accounts for an average of 30 percent of local departments' budgets.
- ◆ **Probation Population.** In fiscal year 2008, TJPC provided funding to local probation departments to supervise 107,342 youth – about 30 percent for committing felonies, 60 percent for misdemeanors, and the rest for more minor offenses. In recent years, approximately 80 percent of youth have successfully completed court-ordered probation each year.
- ◆ **Staffing.** The agency has 67 staff positions, all based in Austin.
- ◆ **Monitoring.** In fiscal year 2008, the agency monitored 166 local probation departments and 87 facilities for compliance with health, safety, programmatic, and fiscal standards, conducting 192 on-site monitoring visits.

Commission Members (9)

The Honorable Ray West, Chair (Brownwood)

The Honorable Jean Boyd (Fort Worth)

The Honorable Bob "Ed" Culver, Jr. (Canadian)

Billy Wayne McClendon, D.Min. (Austin)
Scott O'Grady (Dallas)
Rene Ordoñez (El Paso)
The Honorable Cheryl Lee Shannon (Dallas)
Robert Alton "Bob" Shults (Houston)
Lea R. Wright (Amarillo)

Agency Head

Vicki Spriggs, Executive Director
(512) 424-6682

Office of Independent Ombudsman at a Glance

In 2007, the Legislature created the Office of Independent Ombudsman (OIO) for the Texas Youth Commission as a separate and independent state agency charged with investigating, evaluating, and securing the rights of children committed to TYC. The Office has no responsibility over complaints of a criminal nature.

The agency's key functions are:

- ◆ advocating on behalf of individual youth and their families at TYC;
- ◆ making site visits to TYC and contract facilities to observe conditions and operations, interviewing youth and staff, and providing assistance to youth;
- ◆ producing reports and making recommendations related to TYC resulting from its investigations or other activities; and
- ◆ participating in work groups, policy development projects, and public outreach activities.

Key Facts

- ◆ **Funding.** The agency operated with a budget of \$300,000 in fiscal year 2008, and receives administrative support from TYC for office space, accounting tasks, human resources functions such as job postings, and computer and technical support.
- ◆ **Staffing.** The OIO has four staff: the Chief Ombudsman, who offices in Austin, and three assistant ombudsmen based in Austin, Dallas, and College Station.
- ◆ **Site Visits.** Between July 2007 and October 2008, OIO personnel visited about 35 different institutions, halfway houses, contract care facilities, and TYC offices, and interviewed more than 1,800 youth.

Agency Head

Will Harrell, Chief Ombudsman
(512) 533-2770

Recommendations

1. Consolidate the functions of TYC and TJPC into a new Texas Juvenile Justice Department effective September 1, 2010 and subject to Sunset in 2015; provide funding incentives for counties to keep more youth in their home communities; and require a comprehensive five-year plan to better integrate juvenile justice functions and ensure implementation of state-level reforms.
2. Require OIO and the new Department to develop formal procedures to help ensure timely and informative communication between the two agencies on OIO reports and areas of overlapping responsibility.
3. Require the Department to regulate, and local juvenile boards to inspect and certify, all nonsecure correctional facilities that accept only youth on probation.
4. Conform key elements of TJPC's officer certification program to commonly applied licensing practices.

During the one-year phase-in period before the new Department's creation on September 1, 2010, TYC and TJPC would be responsible for various duties assigned in these recommendations to the new Department.

Issue 1

Texas' Juvenile Justice Agencies, Services, and Funding Need Major Restructuring to Ensure an Effective Continuum of Treatment and Sanctions for Youthful Offenders.

Key Findings

- ◆ Probation and TYC components of the juvenile justice system do not fit together to form an effective continuum of treatment and rehabilitation for youthful offenders.
- ◆ State funding of the juvenile justice system is not targeted toward programs that work.
- ◆ TYC has failed to provide adequate services to youth in its care or correct critical management problems.

Texas has a state-local juvenile justice system offering a range of services. County probation departments, overseen by the TJPC, serve about 95 percent of youth in the system with services ranging from home supervision to confinement; TYC serves only 5 percent of youth, committed on county decision, primarily in secure facilities.

The two parts of the system do not fit together seamlessly, creating inefficiencies and reducing effectiveness in services for youth. Counties do not consistently send their most troubled youth to TYC, which should be reserved for this purpose. TYC and TJPC historically have not collaborated well to share plans, data, or experience; state funding for probation does not target effective programs or consistently encourage keeping children close to services and family; and TYC continues to struggle to implement many critical changes required by the Legislature in 2007.

Recommendations

Change in Statute

1.1 Abolish TYC and TJPC and transfer their functions to a newly created state agency, the Texas Juvenile Justice Department, effective September 1, 2010, with a Sunset date of 2015.

This recommendation merges the functions of TYC and TJPC into the new Texas Juvenile Justice Department (Department) after a one-year phase-in period ending with creation of the new Department on September 1, 2010. During the phase-in period, TYC and TJPC would be responsible for duties assigned to the new Department in these recommendations. The Department would be subject to the Sunset Act, with an initial six-year Sunset date of September 1, 2015.

The mission of the new Department should reflect the goal of prioritizing local probation above state commitment. In keeping with this mission, the Legislature should direct more, not fewer, state resources to support local probation departments.

Staff from TYC and TJPC would transfer to the new agency, but duplicative administrative functions would be consolidated. The Department should consider creating divisions for its key functions of assisting and overseeing local probation departments; operating state juvenile correctional facilities; and providing parole and reentry services.

To assist the organization of the new agency, this recommendation would require the Governor to appoint a transition team, to begin work on September 1, 2009, composed of a representative of the Governor, who would chair the team; administrative heads of TJPC and TYC; representatives of the Lieutenant Governor and Speaker of the House; three stakeholders representing youth, families, and advocacy groups; and three stakeholders representing small, medium, and large probation departments. The team would be assisted, as needed, by the Legislative Budget Board, Governor's Budget Office, Department of Information Resources, Attorney General's Office, Comptroller's Office, and Texas Facilities Commission.

By combining TYC and TJPC, this recommendation would realign the system to provide a more consistent approach to the treatment and rehabilitation of delinquent youth. Reducing organizational barriers would promote more seamless operations between state and local parts of the juvenile justice system, improving services for youth, and providing greater security for Texas residents.

1.2 Establish a 13-member Board to govern the Texas Juvenile Justice Department.

The Governor would appoint the members of the Board to staggered six-year terms, beginning on September 1, 2010, subject to Senate confirmation. The Governor would also select the Board Chair. The Board would have the following composition:

- ◆ four juvenile court judges or county commissioners;
- ◆ one juvenile court prosecutor;
- ◆ three chief juvenile probation officers representing small, medium, and large counties;
- ◆ one mental health or other treatment professional;
- ◆ one education professional;
- ◆ one child or victim advocate; and
- ◆ two public members who are not employees of the criminal or juvenile justice systems.

To prevent any conflicts of interest, a chief juvenile probation officer may not vote or otherwise participate in board decisions when the officer has a clear, direct conflict of interest relating to his duties managing and operating a local department.

The TYC Executive Commissioner, TYC Advisory Committee, and the TJPC Board would continue until the new Board is created and duties are transferred on September 1, 2010. The new Board would hire the new Department's executive director, and local probation departments would be authorized to appeal decisions of the Executive Director to the Board.

The Legislature directed the Sunset Commission to study the merits of having an executive commissioner govern TYC as compared to a citizen board, and to make recommendations to the 81st Legislature on TYC's governance structure. The Commission concluded that establishing a governing board rather than an executive commissioner for the new agency would be preferable. A board structure would offer broad representation, particularly having members with experience in different areas of the juvenile justice system. A board also would provide an opportunity for more public involvement in both policymaking and rulemaking. Finally, a board with members serving longer terms than a

Governor-appointed executive commissioner would provide the stability this new agency would need as it becomes the State's juvenile justice agency.

1.3 Establish a community corrections pilot program that encourages counties to keep lower-risk offenders eligible for commitment to TYC in their home communities and out of state confinement.

This recommendation would create a new pilot program in which local probation departments would have access to funds that were previously appropriated solely for the commitment of youth to TYC. Participating departments would be eligible to receive an amount equal to the State's average costs for the commitment of youth from the department's jurisdiction. Departments would pay the costs of state commitment from this allocation or, if they so chose, use some portion of the funds to treat more youth locally.

This pilot would create incentives for local probation departments to reduce state commitments and treat more youth locally, while providing funding to invest in alternatives to incarceration and enhance local programs and services. The pilot would target lower-risk general offenders whose felony offenses include nonviolent property and drug crimes.

Pilot program funding would be flexible enough to permit departments to identify local needs and develop or contract for appropriate services. If a county chooses to contract for services using pilot funds, the county would be required to have a contracting process open to not-for-profit, for-profit, or faith-based providers that demonstrate experience in effective program delivery, demonstrate ability to quantify programs' effectiveness, and provide innovative programs.

TJPC and TYC would be required to work together with counties to develop and implement the pilot program in the one-year phase-in period leading up to the creation of the Texas Juvenile Justice Department on September 1, 2010.

TJPC would be required to establish funding formulas, in rule, and a reserve account in case unforeseen circumstances threaten a pilot department's programming. The pilot would require performance monitoring and reporting so the State could verify that its tax dollars were well spent and that counties were reducing commitments, decreasing recidivism, and improving public safety.

Change in Appropriations

1.4 Request that the Legislature, through the appropriations process, designate appropriate funding to establish the community corrections pilot program.

This recommendation expresses the will of the Sunset Commission that the Legislature designate for probation services a portion of funds used previously for state youth confinement. The amount of funding available for use in the pilot would be determined through the appropriations process.

1.5 Request that the Legislature, through the appropriations process, consolidate existing community corrections funding for probation departments.

This recommendation expresses the will of the Sunset Commission that the Legislature consolidate all placement, program, and service funding to each probation department into one community corrections block grant. If implemented, this recommendation would give local probation departments more flexibility in using community corrections funding, and streamline grant conditions and reporting requirements.

Change in Statute

1.6 Require the Department to consider past performance in awarding future community corrections grants or pilot program grants.

This recommendation would require the new Department, and TJPC during the one-year phase-in period, to consider past performance in awarding all community corrections grants. Future community corrections or pilot grant awards to local departments should be based on performance as well as existing formulas or grantmaking processes. These provisions would not apply to the grants that pay for basic probation services. This recommendation would help ensure that grant funding is used for the most effective programs.

1.7 Require the Department to establish basic probation and community corrections funding formulas in rule.

This recommendation would require the new Department, and TJPC during the phase-in period, to establish existing basic probation and community corrections formulas in rule. This approach would give the State the flexibility to address changes in the system and in local probation department needs, while ensuring that each local department continues to receive enough funds for necessary services and supervision. The public also would have the opportunity to comment on proposed formulas if they were adopted in rule.

1.8 Require the Department to give juvenile courts access to information on youths' progress at TYC.

This recommendation would require the Department, and TYC during the phase-in period, to send committing courts, at their request, periodic reports on a youth's progress while in the State's custody. In addition, ninety days before a youth's release from state commitment, TYC or the Department would be mandated to send the youth's reentry and reintegration plan, as well as a report on a youth's progress in key areas such as treatment, education, and health. If a youth were released to a county other than the committing jurisdiction, the progress report should be sent to both the committing court and the court in the county of planned release. This recommendation would satisfy counties' interest in the progress of committed youth; help counties prepare for a youth's return to the community; and keep the State accountable to committing counties for services provided by the State.

1.9 Require the Department to adopt a memorandum of understanding with TCOOMMI for continuity of care for juvenile offenders with mental impairments.

This recommendation would require TYC and TJPC, and later the new Department, to work with the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI), Department of State Health Services, Department of Family and Protective Services, Texas Education Agency, Department of Public Safety, and chief probation officers of juvenile probation departments to develop and adopt a Memorandum of Understanding (MOU) focused on continuity of care for youth with mental impairments in the juvenile justice system. TCOOMMI would coordinate and monitor the development and implementation of the MOU.

The MOU would establish methods for identifying youth with mental impairments in the juvenile justice system and collecting and reporting relevant data to TCOOMMI. The MOU also would provide for interagency rules and procedures to coordinate care and exchange information on these offenders among the participating agencies. TCOOMMI would be required to biennially report to

the new Department, the Governor, Lieutenant Governor, and Speaker on the outcomes of the MOU. This recommendation would help juvenile offenders receive the mental health services they need when they return to the community.

1.10 Require the new agency to develop a comprehensive five-year Juvenile Justice Improvement Plan, with annual implementation updates, to better integrate state and county juvenile justice functions and to address other critical state-level reforms.

The plan would be developed during the one-year phase-in period by a team composed of staff from TYC and TJPC, as well as stakeholders representing youth, families, advocacy groups, and local probation departments. The improvement plan should identify, as appropriate, goals, strategies, and timelines for addressing issues in these high priority areas:

- ◆ juvenile justice facilities;
- ◆ data sharing within the system and with other youth-serving agencies;
- ◆ programs, services, and reentry planning; and
- ◆ performance measurement for the entire system.

As part of this recommendation, TJPC should initiate a major data collection effort on juvenile probation program outcomes. The results of this data collection would inform the development of the five-year plan, other planning efforts following agency consolidation, and decisionmaking of the Legislature.

The new Department would implement the five-year Juvenile Justice Improvement Plan, addressing fiscal years 2011 through 2015. The first draft five-year plan would be due by June 1, 2010, and forwarded to the Governor, Lieutenant Governor, Speaker, and the Joint Criminal Justice Legislative Oversight Committee for review and comment. The final plan would be due three months later on September 1, 2010, and subject to consideration and adoption by the Board at its first meeting or as soon thereafter as possible. The new Department would update the plan and report on its implementation annually.

The plan and implementation reports would help ensure that the Department develops clear priorities, steps, and timelines that support consistent, accountable progress.

Issue 2

The Office of Independent Ombudsman and the New Texas Juvenile Justice Department Need Clearer Guidelines to Ensure Effective Interaction.

Key Findings

- ◆ Formal procedures requiring TYC to review and comment on OIO's reports do not exist, jeopardizing the effectiveness of OIO oversight of issues affecting youth rights.
- ◆ The Office and TYC have not clarified in writing ways to collaborate, share information, and effectively address problems together in areas of overlapping responsibility.
- ◆ State law does not ensure the concurrent Sunset review of OIO with the proposed Texas Juvenile Justice Department in the future.

The Legislature created the Office of Independent Ombudsman (OIO) in 2007 as part of the juvenile justice reforms of Senate Bill 103. The Office's authority extends not only to advocacy and assistance to individual youth in TYC, a more traditional concept of the ombudsman role in Texas, but also to monitoring and investigating issues affecting the rights of youth. The Sunset Commission found that this independent check and balance on TYC or its proposed successor, the new Texas Juvenile Justice Department, is appropriate, especially considering the allegations of abuse and neglect that have plagued TYC in the last several years.

The Office's operations, however, could be more effective. Although they communicate informally, the Office and TYC lack formal procedures that ensure consistent and timely TYC input on OIO's reports. Also, the two agencies have not collaborated to define in writing their interaction when responsibilities overlap. While these processes must be carefully developed to ensure OIO's continuing independence, their absence reduces the impact of OIO's oversight and the quality of collaboration between OIO and TYC or its proposed successor agency.

Recommendations

Change in Statute

2.1 Require the new Texas Juvenile Justice Department and Office of Independent Ombudsman to jointly develop and adopt rules outlining procedures for the Department to review and comment on OIO's draft reports and to formally respond to OIO's published reports.

Statute would require TYC, and later the new Department, to work with OIO to jointly develop rules for TYC's or the Department's review and comment on draft reports. The Office would in no way be required to make changes recommended by TYC or the Department, but could use comments as it felt appropriate. Procedures would allow for emergency situations in which typical timelines or processes would not have to be followed.

Statute also would require that TYC and the new Department work with OIO to jointly develop and adopt rules for TYC's or the Department's formal response to findings and recommendations in OIO's final reports. Reports subject to mandatory response would include OIO's quarterly reports and reports on particularly serious or flagrant issues, as well as other formal reports containing findings and recommendations on systemic issues. These formalized policies would help to ensure consistency and accuracy in OIO reports and accountability in TYC's or the Department's efforts to address issues raised.

2.2 Require the Department and OIO to adopt a memorandum of understanding outlining how the agencies should communicate in areas of overlapping responsibilities.

The memorandum should address issues such as OIO's interaction with TYC's or the new Department's internal audit division, communication between the two agencies about individual youth situations and how resulting actions would be documented and addressed, and guidelines on OIO's role in relevant working groups and policy development at TYC or the Department. This recommendation would promote effective communication between OIO and TYC or the Department; clarify OIO's role in critical areas of policy formation; and help ensure a timely, consistent, and well-documented outcome for youth cases.

2.3 Require that OIO undergo Sunset review during the same time period as the Department.

This recommendation would ensure that OIO's Sunset review occurs during the same biennium as the Sunset review of the new Department, even if the Legislature changes the Department's Sunset date at some time in the future. State law does not offer this assurance now, and should be changed so that the close relationship between these two agencies would be reviewed concurrently.

Issue 3

A Small Number of Nonsecure Residential Facilities, Used Exclusively by Counties for Placing Youth on Probation, Are Not Licensed or Monitored by Any State Agency.

Key Findings

- ◆ Neither TJPC nor the Department of Family and Protective Services has clear authority to regulate nonsecure correctional facilities used by county probation departments, placing youth at risk.
- ◆ State law does not require TJPC to certify employees who work in nonsecure correctional facilities that serve only youth on probation.

Two state agencies in Texas regulate facilities where county probation departments place youth who need out-of-home residential care while under probation supervision. The Texas Juvenile Probation Commission (TJPC) regulates secure detention and correctional facilities run by, or contracted with, these probation departments. The Department of Family and Protective Services (DFPS) licenses a variety of nonsecure residential facilities that probation departments often use to place youth who do not require a secure, correctional environment.

A small number of probation departments in Texas operate nonsecure facilities that serve only youth in the probation system. These facilities and the employees who work in them are not regulated by any state entity because neither TJPC nor DFPS has clear authority to regulate nonsecure correctional facilities. This regulatory gap lessens the protection of youth placed in these facilities.

Recommendations

Change in Statute

3.1 Require the new Texas Juvenile Justice Department to regulate all public and private nonsecure correctional facilities that accept only youth on probation.

This recommendation would require TJPC, and later the new Department, to adopt minimum standards for, inspect, and register these facilities. This would close the current regulatory gap by consolidating the regulation of secure and nonsecure correctional facilities serving youth on probation under one state agency.

3.2 Require the new Department to establish certification standards for employees who work in nonsecure correctional facilities that accept only youth on probation.

TJPC, and later the new Department, would be required to establish standards for employees who work in nonsecure probation facilities, similar to the process in place for certifying staff that work in detention facilities. Requiring these employees to be certified would help ensure facility staff meet certain qualifications before working with youth, and have ongoing training and professional development. This recommendation would also allow TJPC or the Department to take action against the employee's certification in the case of a finding of abuse, neglect, or exploitation.

3.3 Require a local juvenile board to annually inspect any nonsecure correctional facility in its jurisdiction used only for youth on probation, and certify the facility's suitability with the Texas Juvenile Justice Department.

Local juvenile boards would be required to annually inspect any nonsecure facility operated by the county or used by the county exclusively for youth on probation, and certify that the facility is suitable for youth. Juvenile boards would register the facility annually with TJPC or the Department, and ensure the facility adheres to all applicable minimum standards. The juvenile board would use the same process for approving nonsecure facilities as they currently use for secure facilities. Inspecting and certifying these facilities would increase protection to youth housed in them.

Issue 4

Elements of TJPC's Officer Certification Program Do Not Conform to Commonly Applied Licensing Practices.

Key Finding

- ◆ Nonstandard enforcement provisions in the agency's statute could reduce its effectiveness in safeguarding youth on probation and providing fair treatment to certified officers.

While TJPC is not a licensing agency, it certifies the juvenile probation and detention officers who supervise youth on probation. Various certification and enforcement processes in the agency's statute do not conform with model standards developed from experience gained through more than 90 Sunset occupational licensing reviews.

Recommendations

Licensing – Change in Statute

4.1 Clearly authorize the new Texas Juvenile Justice Department to require certified officers to obtain continuing education as a condition for renewal.

This recommendation would authorize TJPC and its successor agency, the new Department, to require juvenile probation and detention officers to receive continuing education before renewing their certifications. Placing this requirement more clearly in law would ensure the agency's current practice remains in place.

Enforcement – Change in Statute

4.2 Require the Department to report annually on the final resolution of abuse, neglect, and exploitation complaints.

Requiring TJPC or the Department to regularly report the final outcome of abuse, neglect, and exploitation complaints – final disciplinary action taken by both TJPC or the Department and the probation departments – would give TJPC's, or later the Department's, oversight board and other stakeholders a better understanding of the problem statewide.

4.3 Transfer disciplinary hearings for certified officers to the State Office of Administrative Hearings.

In conducting hearings, the State Office of Administrative Hearings (SOAH) would consider the agency's applicable substantive rules or policies. Like many other agencies that have hearings conducted by SOAH, TJPC's, or later the Department's, board would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. TJPC's or the Department's board could 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 TJPC or the Department finds a technical error in a finding of fact that should be changed. This recommendation would provide more independence for disciplinary hearings for certified detention and probation officers by moving them to SOAH.

4.4 Authorize the Department to place certified officers on probation.

Granting this probation authority would provide an additional action that could be taken to discipline certified officers who violate statute or rules. The recommendation would also require TJPC or the Department to develop a probation procedure that notifies probationers of the actions they need to take while on probation, and tracks probationers' progress. This recommendation would help ensure the availability of a full range of penalties for disciplining certified officers.

4.5 Authorize the Department to temporarily suspend an officer's certification under certain circumstances.

This recommendation would grant authority to temporarily suspend an officer's certification upon determination by a committee of board members that the continued certification of the officer threatens youth. A panel of three board members would be authorized to hold a meeting by telephone conference call under provisions of the Open Meetings Act if threat to youth is imminent, and convening the panel at one location is impossible for the timely action required. TJPC or the Department would also need to ensure due process to the certified officer through subsequent proceedings to resolve issues that are the basis of the temporary suspension. Temporary suspension is an important tool in situations where substantial harm could result if an activity is not stopped immediately.

4.6 Clarify certified officers' right to appeal Department actions to district court under the substantial evidence standard.

This recommendation would clarify in statute that certified officers may appeal TJPC or Department actions in district court and specify that those appeals would be reviewed under the substantial evidence standard. Adding this language to statute to reflect this common practice would make recourse for disciplined officers more clear, as well as save state resources.

Fiscal Implication Summary

These recommendations would result in a savings to the State, as described below.

- ◆ **Issue 1** – Combining TYC and TJPC’s functions into a single agency, the new Texas Juvenile Justice Department, should result in savings to the State. An annual savings of \$594,616 is estimated based on a reduction of the five following director-level positions duplicated in TYC and TJPC: executive director and executive commissioner positions, chief of staff, general counsel, human resources director, and finance director. Additional savings could be realized through further TYC staff reductions or facility closures, but these savings would depend on ongoing decisions of TYC and the Legislature, and therefore are not included in this estimate.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in the Number of FTEs From FY 2009</i>
2010	\$0	0
2011	\$594,616	-5
2012	\$594,616	-5
2013	\$594,616	-5
2014	\$594,616	-5

Texas Commission on Law Enforcement Officer Standards and Education

Agency at a Glance

The Legislature established the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) in 1965 to set voluntary training and education standards for law enforcement. Standards for peace officers became mandatory in 1969, followed by regulation of county jailers and telecommunicators. The Commission also licenses and approves training providers for both basic training and continuing education. The Commission does not investigate complaints against, or alleged crimes by, individual law enforcement or county corrections officers. The mission of the Commission is to ensure highly trained and ethical law enforcement and county corrections personnel. The agency accomplishes its mission by performing the following main functions:

- ◆ licensing and certifying qualified individuals as peace officers, county jailers, and telecommunicators;
- ◆ approving and evaluating training providers;
- ◆ developing and maintaining basic training and continuing education courses;
- ◆ taking disciplinary actions against licensees to enforce statute and rules; and
- ◆ maintaining and adding names to the Texas Peace Officers' Memorial.


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

Key Facts

- ◆ **Funding.** In fiscal year 2008, the Commission operated on a budget of \$2.7 million from a dedicated account funded primarily by court fees on felonies and misdemeanors.
- ◆ **Staffing.** The Commission employed a staff of 40 in fiscal year 2008, seven of whom were field agents working across the state.
- ◆ **Licensing.** The Commission regulates 73,487 peace officers, 31,396 jailers, and 11,055 telecommunicators. Because some licensees hold both peace officer and jailer licenses, TCLEOSE regulates a total of 103,795 individuals. In fiscal year 2008, the Commission issued 14,351 new licenses and 21,094 certificates.
- ◆ **Enforcement.** In fiscal year 2008, the Commission took disciplinary action on 199 licensees for criminal offenses, issued 28 reprimands against licensees that failed to report an arrest or conviction, and monitored

approximately 700 cases pending court disposition. The Commission also issued 208 reprimands and 144 suspensions for violations of continuing education requirements.

- ◆ **Training.** The Commission regulates 295 training providers, including 102 academies, 6 academic alternatives, and 187 contract training providers. The Commission has 618 approved training courses.

Commission Members (14)

Charles Hall, Presiding Officer (Midland)

Gary Swindle, Assistant Presiding Officer (Tyler)

Allan Cain (Carthage)

Roman Chavez (Houston)

Stephen Griffith (Sugarland)

Betty Harper-Murphy (Fredericksburg)

Patt Scheckell-Hollingsworth (Arlington)

Joel Richardson (Canyon)

Dr. Johnny E. Lovejoy II (San Antonio)

The Honorable Greg Abbott, Ex Officio (Austin)

Thomas A. Davis, Ex Officio (Austin)

Ken Nicolas, Ex Officio (Austin)

Robert P. Scott, Ex Officio (Austin)

R. David Couch, Ex Officio (Austin)

Agency Head

Timothy Braaten, Executive Director

(512) 936-7711

Recommendations

1. Require the Commission to conduct a technology performance review to specifically evaluate the cost, feasibility, and risks associated with options to modernize its IT systems.
2. Streamline the Commission's F-5, or agency separation, appeal process by encouraging mediation and conducting hearings locally, where appropriate.
3. Conform key elements of the Commission's licensing and enforcement functions to commonly applied licensing practices.
4. Remove ex officio members from the Commission's composition.
5. Continue the Texas Commission on Law Enforcement Officer Standards and Education for 12 years.

Issue 1

The Commission's Approach to Information Technology Lacks Coordination, Creates Risk, and Increases Agency Costs.

Key Findings

- ◆ The Commission dedicates significant amounts of staff time to providing general information to licensees instead of making information easily available online.
- ◆ The Commission lacks an IT system that provides basic regulatory information on licensing and enforcement or that accepts electronic licensing information.
- ◆ Texas Commission on Law Enforcement Data Distribution System (TCLEDDS) is an incomplete technology solution, unaffordable to some law enforcement agencies.
- ◆ TCLEOSE entered into an IT contract containing nonstandard provisions that could jeopardize the agency's IT operations.

TCLEOSE's approach to information technology fails to meet standards expected of a state regulatory agency. Agency staff cannot currently access data on a licensee without checking possibly three separate databases and hard copy files. Law enforcement agencies must purchase a subscription to software from a private contractor to obtain TCLEOSE training information on its officers. Only agencies that pay the private contractor for a subscription can submit documents and information to the agency electronically; all others must submit information by hard copy, causing TCLEOSE staff to enter the data by hand.

The Commission has also entered into a long-term, 10-year technology contract extension without going out for a competitive solicitation, and without meeting standards for state IT contracts. The contract contains limited termination provisions that are unfavorable to the agency, increasing risks should the contractor have problems or the agency's responsibilities change. As a result of these problems, the agency needs an information technology overhaul, with the first step – assessing the best path for improvement – preferably taking place before the next session of the Legislature.

Recommendations

Management Action

1.1 The Commission should conduct a technology performance review.

The Commission should solicit a technology performance review of its information technology to establish a work plan to improve and modernize all agency functions. The Commission should identify specific, cost-effective technology improvement options to increase the availability and quality of training and licensing information for all users, and encompass all licensing, training, and enforcement information in one system. All options should identify estimated costs of implementation.

The Commission should specifically evaluate the cost, feasibility, and risks associated with the recommended IT modernization options. At a minimum, options to evaluate should include:

- ◆ creating a new, comprehensive IT system;

- ◆ purchasing a statewide license for TCLEDDDS – including TCLEDDDS enhancements and renegotiation of its vendor contract;
- ◆ purchasing TCLEDDDS outright; or
- ◆ any other options the Commission considers viable and cost-effective.

Given this evaluation, the Commission should identify the most cost-effective solution.

The Commission and any consultants used should confer with the Department of Information Resources (DIR), Sunset Commission staff, and Legislative Budget Board staff regarding their work plan to perform the analysis. The Commission should submit copies of their analysis, recommendations, and cost estimates to the Sunset Advisory Commission, Legislative Budget Board, House Appropriations Committee, and the Senate Finance Committee by February 16, 2009.

Change in Statute

1.2 Require the Commission to develop and implement electronic submission methods for information the Commission requires from law enforcement agencies.

Under this recommendation, TCLEOSE would develop methods for electronic submission of all of required data and documents. The agency should consult with DIR and then work with its current vendor to develop an interface to import this electronic data into TCLEDDDS. Once it has established the appropriate methodology, the Commission should require law enforcement agencies to submit all required forms, data, and documents electronically. This recommendation would also remove the statutory provision requiring law enforcement agencies to submit written requests for F-5 separation forms for hiring purposes on agency letterhead. Instead, the agency would develop a system, by rule, to allow and verify this request electronically.

Management Action

1.3 The Commission should request a security evaluation of the integrity of its current IT security measures.

The Commission should work with DIR to conduct a security evaluation of its web applications – TCLEDDDS and the Peace Officer Standards and Education Internet Training (POSEIT) program. The agency should also request an annual vulnerability and control penetration test from DIR to identify any security weaknesses, and work with DIR to mitigate any security risks identified.

1.4 The Commission should professionally design and reorganize its website.

Under this recommendation, the Commission should redesign its website to clearly present information to stakeholders in a user-friendly, organized manner. The website should prioritize information stakeholders find most valuable, and allow stakeholders to easily navigate the site. The agency should develop and post a Frequently Asked Questions section that provides answers to common questions, and ensures staff give consistent answers to those questions.

Issue 2

The Commission's Unique Role as a Third Party to a Local Dispute Over Discharge Papers is Unnecessary.

Key Findings

- ◆ Although F-5 appeals have little to do with the licensure of law enforcement officers or county corrections personnel, the appeals use significant staff resources.
- ◆ Increases in F-5 appeals have caused the Commission's caseload to double and the number of appeals is expected to increase.
- ◆ The Commission's third-party role in SOAH hearings for F-5 appeals is uncommon.

In 2005, the Legislature created an F-5 review and appeal process to stop the movement of gypsy cops – police officers able to move from one law enforcement agency to another despite poor performance. Law enforcement agencies must now request copies of a licensee's F-5, or agency separation form, before hiring a candidate. In turn, licensees that feel that their F-5 form does not accurately represent the terms of separation may appeal the F-5 to TCLEOSE. Disputes over the F-5 have doubled each year, significantly affecting the Commission's and SOAH's workload. However, the Commission has not initiated efforts, such as mediation and local hearings, to limit the impact of workload increases.

Recommendations

Change in Statute

2.1 Clarify that TCLEOSE is not a party to F-5 disputes.

This recommendation would clarify TCLEOSE's role in F-5 disputes. As a result, the agency and its Attorney General representative would not need to attend SOAH hearings for F-5 appeals. A copy of the licensee's official record, as well as copies of the rules or statute that the agency wishes to provide the administrative law judge, could be submitted to SOAH before the hearing.

Management Action

2.2 The Commission should encourage alternatives for parties to F-5 disputes to avoid traveling to Austin for contested case hearings.

The Commission should work with SOAH to set contested case hearings at SOAH's field office locations or their remote hearing sites in locations convenient to the parties. The Commission should also encourage teleconferencing, so that parties might provide information by phone, rather than traveling to Austin.

2.3 The Commission should encourage mediation as an alternative to administrative hearings.

The Commission should provide information on mediation, as well as contact information for mediation and dispute resolution centers throughout the state, to parties to an F-5 dispute. Mediation costs, which typically range from \$1,000 to \$2,500 per day, would be split equally among the parties. This recommendation could result in a reduced number of administrative hearings, depending on the number of cases that opt to use mediation.

Issue 3

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

Key Findings

- ◆ Certain administrative provisions of the Commission's statute reduce the Commission's efficiency and flexibility to adapt to changing circumstances.
- ◆ Licensing provisions of the Commission's statute and rules do not follow model licensing practices and could potentially affect the fair treatment of licensees and members of the public.
- ◆ Nonstandard enforcement provisions of the Commission's statute could reduce the agency's effectiveness in protecting the public.

Various licensing and enforcement processes in TCLEOSE's governing statute do not match model standards developed by the Sunset Commission based on experience gained through more than 93 occupational licensing reviews over the last 30 years. A comparison of the Commission's statute, rules, and practices to the model licensing standards identified variations from these standards and the needed changes to bring the Commission in line with the model standards to improve operations.

Recommendations

Administration – Change in Statute

3.1 Remove the requirement for the Commission to establish standards for the certification of all county jail personnel.

This change would clarify that while TCLEOSE is responsible for certifying jailers, it does not need to establish standards and certify personnel such as cooks, clerks, and maintenance personnel. Counties would retain authority to set standards higher than the minimum standards TCLEOSE establishes.

Administration – Management Action

3.2 The Commission should update stakeholders on the appointment, duties, and progress of its informal advisory committees.

TCLEOSE should develop guidelines to inform stakeholders of the specific charges of its informal advisory committees. These guidelines should detail the process by which members of informal advisory committees are chosen. TCLEOSE should clearly delineate charges and deadlines for each committee and subcommittee and post progress reports for each committee and subcommittee to update interested stakeholders and solicit feedback.

Licensing – Change in Statute

3.3 Remove the provision requiring applicants with high school equivalency certificates to obtain additional higher education hours.

This recommendation would eliminate the statutory requirement that applicants for licensure with a high school equivalency certificate obtain at least 12 credit hours at an institution of higher education.

However, no data is available that shows a difference in future success based on a GED versus a typical high school diploma. As a result, this recommendation would treat a high school equivalency certificate as the equivalent of a high school diploma.

3.4 Require the Commission to clearly identify which crimes relate to the ability of a person to perform the occupation of county jailer.

This recommendation would clarify the Commission's responsibility to adopt guidelines that follow the requirements of Chapter 53 of the Occupations Code by specifically requiring TCLEOSE to develop rules defining which crimes relate to an individual's ability to perform the duties of a county jailer. This recommendation would also clarify the Commission's authority 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 community supervision – identified by TCLEOSE as relating to the occupation of county jailer.

Enforcement – Change in Statute

3.5 Require the Commission to establish clear rules for conducting audits of law enforcement agencies.

This recommendation would clarify TCLEOSE's authority to perform audits of law enforcement agency records relating to personnel the Commission regulates. The Commission would develop rules that provide a framework for its auditing activities. Under this recommendation, TCLEOSE would audit each law enforcement agency in the state at least every five years. By rule, the Commission should address:

- ◆ which documents are subject to audit;
- ◆ timelines for compliance; and
- ◆ sanctions for noncompliance.

In implementing this recommendation, the Commission would need to develop policies to most efficiently coordinate its audit function among field service agents and enforcement or disciplinary staff.

3.6 Require the Commission to establish a risk assessment methodology.

This recommendation would require TCLEOSE to develop a risk assessment methodology for its auditing activities in rule. The recommendation would also require the Commission to develop, by rule, timelines for resolutions of violations or deficiencies found in audits, as well as follow-up audits, and sanctions for noncompliance.

3.7 Authorize TCLEOSE to levy administrative penalties against law enforcement agencies that violate the Commission's statute or rules.

This recommendation would provide TCLEOSE an additional enforcement tool to more effectively hold law enforcement agencies accountable. The recommendation would also establish \$1,000 per incident, per day as the maximum penalty. The Commission would develop an administrative penalty matrix that relates appropriately to different violations of its statute and rules. In developing this matrix, TCLEOSE should take into account the agency's compliance history and the seriousness and nature of the violation.

3.8 Require the Commission to analyze sources and types of complaints to identify and address problem areas and trends.

This recommendation would require the Commission to develop a method for analyzing the sources and types of complaints and violations. The Commission would establish categories for complaints and violations, such as class or type of criminal offense, as well as a process to track cases through to their disposition. TCLEOSE would analyze jurisdictional complaints and violations to identify trends and regulatory problem areas.

3.9 Require the Commission to clearly outline its enforcement process and make information about the process available to licensees and the public.

This recommendation would require the Commission to outline its enforcement process and the steps a jurisdictional 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 on the Commission's website and any other available resources. TCLEOSE must also make information about allegations and the Commission's investigation available to licensees in time for them to adequately participate in their defense.

3.10 Require the Commission to adopt procedures for all phases of the complaint process.

Under this recommendation, TCLEOSE would be required to adopt rules or procedures that clearly lay out policies for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public.

3.11 Provide that TCLEOSE clarify its enforcement procedures for training providers.

This recommendation would require TCLEOSE to develop clear guidelines, in rule, for the duties and obligations of training providers placed in at-risk probationary status. The guidelines would include procedures for imposing appropriate conditions with specific timelines, notifying training providers of the conditions and actions they need to take, and tracking training providers' progress. Under this recommendation, TCLEOSE would also specify what constitutes "substantial improvement" for a noncompliant training provider.

Enforcement – Management Action

3.12 The Commission should track the number and types of nonjurisdictional complaints it receives.

The Commission 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 Commission referred the complaint.

3.13 TCLEOSE should provide a simple complaint form and remove the requirement that the form be notarized.

The Commission should make a complaint form readily available and easy to find, with an explicit link on its website. TCLEOSE should not require that a complaint form be notarized. The website should also clarify the types of complaints to which the Commission can and cannot respond. The Commission then makes the decision as to which complaints are jurisdictional, and which are not.

3.14 The Commission should consider using informal settlement conferences as part of its enforcement function.

The Commission should consider using informal settlement conferences as part of its enforcement process to resolve complaints and negotiate agreed orders. The Commission would need to develop and adopt guidelines for the use of informal settlement conferences. TCLEOSE's guidelines should detail an enforcement plan in a step-by-step informal complaint resolution process applied to all of the Commission's licensees. TCLEOSE should adopt the plan by agency rule, providing an opportunity for public comment.

Issue 4

The Commission's Ex Officio Members No Longer Provide a Needed Function.

Key Findings

- ◆ The purpose of ex officio members is to provide needed expertise to a Commission that appointed members cannot provide.
- ◆ The Commission's ex officio members rarely attend meetings, showing the lack of necessity for their input.
- ◆ TCLEOSE has other means of obtaining needed expertise.

The Commission is composed of 14 members, five of whom are non-voting ex officio members. TCLEOSE's ex officio members do not represent expertise necessary for Commission decisions. Participation among ex officio members is infrequent and inconsistent, and the Commission has alternative means for soliciting input.

Recommendation

Change in Statute

4.1 Remove ex officio members from the Commission's composition.

Removing ex officio members from the Commission's required membership would allow the Commission the flexibility to work with and obtain input from other state agencies, without unnecessary attendance of ex officio representatives at Commission meetings.

This would remove the following members from the Commission:

- ◆ the Commissioner of Higher Education of the Texas Higher Education Coordinating Board;
- ◆ the Commissioner of the Texas Education Agency;
- ◆ the Director of the Department of Public Safety;
- ◆ the Executive Director of the Criminal Justice Division of the Office of the Governor; and
- ◆ the Attorney General.

Issue 5

Texas Has a Continuing Need for the Texas Commission on Law Enforcement Officer Standards and Education.

Key Findings

- ◆ Texas has a continuing need to establish and enforce minimum standards for law enforcement and county corrections personnel.
- ◆ Review of the Commission and other related agencies did not reveal any significant beneficial alternatives for consolidation or transfer of functions.
- ◆ All 50 states train and regulate law enforcement personnel in some capacity.

Law enforcement and corrections personnel perform a critical role in protecting public safety and are authorized to exercise extraordinary powers over other citizens. For these reasons, setting and enforcing minimum standards for law enforcement and county corrections personnel is vital to the State. The Commission's functions and structure are uniquely positioned to establish standards and licensure for law enforcement and county corrections personnel, and to license and approve training providers.

Recommendation

Change in Statute

5.1 Continue the Texas Commission on Law Enforcement Officer Standards and Education for 12 years.

This recommendation would continue the Texas Commission on Law Enforcement Officer Standards and Education for the standard 12-year period.

Fiscal Implication Summary

One recommendation would have a fiscal impact to the State.

- ◆ **Issue 1** – The Commission should conduct a technology performance review. Conducting a technology performance review is estimated to cost TCLEOSE approximately \$30,000 to \$40,000. Recommendations resulting from the technology performance review could have a significant fiscal impact to the State, but that fiscal impact cannot be determined until completion of the technology performance review.

Texas Military Preparedness Commission

Agency at a Glance

In 2003, the 78th Legislature created the Texas Military Preparedness Commission (Commission) as a Trusteed Program within the Office of the Governor to assist local defense communities in identifying and using economic development resources that enhance the military value of their installations. The Commission's mission is to preserve and expand Texas' 18 major military installations and their missions, and assist communities that have been impacted by a U.S. Department of Defense Base Realignment and Closure (BRAC) action. The Commission accomplishes its mission by performing the following duties:

- ◆ advising the Governor and Legislature on defense-related issues affecting Texas military installations to support the long-term viability of the military in the State;
- ◆ providing financial assistance to defense communities impacted by BRAC through the Texas Military Value Revolving Loan Fund program and the Defense Economic Adjustment Assistance Grant (DEAAG) program;
- ◆ functioning as an information clearinghouse by providing military installation information and recommendations to enhance the military value of Texas defense installations to the Governor, Legislature, Congressional Delegation, and state and federal government officials, primarily through its *Annual Report: Master Plan for the Future*; and
- ◆ working with the Governor, Legislature, Congressional Delegation, and senior military and community leaders to seek additional defense missions for Texas.

*For additional information,
please contact Faye Rencher
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** The agency operates with an annual appropriation of about \$250,000, composed entirely of General Revenue funds.
- ◆ **Staff.** The agency has two full-time equivalent positions, an Executive Director and one program coordinator, that are responsible for planning and agency operations.
- ◆ **Defense Grants.** The Commission received \$5 million in General Revenue for the 2008-2009 biennium to award grants to defense communities affected by BRAC for projects that protect or expand military installations or missions in Texas.

- ◆ **Military Value Loans.** A constitutional amendment authorized up to \$250 million in bonds for loans to defense communities affected by BRAC. In 2007, the Commission authorized loans to two defense communities, the city of Corpus Christi and Port San Antonio, totaling approximately \$49 million.

Commission Members (15)

William J. Ehrie, Chair (Abilene)

Ralph C. Gauer, Vice Chair (Harker Heights)

Dora C. Alcala (Del Rio)

Howard C. Ham (San Antonio)

Ronald D. Henson (Texarkana)

Alvin W. Jones (College Station)

The Honorable Loyd Neal (Corpus Christi)

Paul F. Paine (Fort Worth)

Charles E. Powell (San Angelo)

Josue (Joe) Robles (San Antonio)

Eugene N. Tulich (Spring)

Tom A. Whaylen (Wichita Falls)

Vacant

Senator Leticia Van de Putte, Senate Ex Officio (San Antonio)

Representative Frank J. Corte, Jr., House Ex Officio (San Antonio)

Agency Head

Michelle A. Clark, Deputy Director

(512) 475-1475

Recommendations

1. Continue the Texas Military Preparedness Commission as an independent board administratively tied to the Governor's Texas Economic Development and Tourism Office, and clarify its role in the Texas Military Value Revolving Loan Fund Program.
2. Expand the DEAAAG program beyond job creation to include job retention, developing contract performance measures for job retention grants, as well as rules governing the Commission's role in the grant award decision-making process.
3. Require the Commission to advocate for the preservation and expansion of missions and capabilities of military reserve bases and to consider reserve communities in promoting DEAAAG funding.

Issue 1

Texas Has a Continuing Need for the Texas Military Preparedness Commission, Although Administrative Improvements are Necessary.

Key Findings

- ◆ Texas has a clear and continuing interest in providing economic assistance to its military communities, and in keeping decision makers informed of the existing capabilities of its military installations.
- ◆ Although communities benefit from the Texas Military Value Revolving Loan Fund Program, the Commission cannot effectively administer the program.
- ◆ The Commission's administrative separation from similar functions of the Governor's Office impairs program effectiveness.

Texas military communities face ongoing challenges from prospective base closures, transfer of missions, and reductions in personnel. These challenges impact communities' and Texas' economic vitality. The State created the Texas Military Preparedness Commission to assist communities in meeting these economic challenges, primarily through two programs, the Defense Economic Adjustment Assistance Grant and the Texas Military Value Revolving Loan Fund. Texas has a continuing need for the Commission and its efforts to assist military communities. However, the Commission's administrative structure needs improvement to effectively manage its financial programs.

Recommendations

Change in Statute

1.1 Continue the Texas Military Preparedness Commission as an independent board administratively tied to the Governor's Texas Economic Development and Tourism Office.

This recommendation would continue the Commission as an independent board, administratively tied to the Texas Economic Development and Tourism Office, and would remove the Commission's Sunset date. Future Sunset reviews of the Texas Economic Development and Tourism Office would include the Commission as a part of its overall operations. The Commission would retain its current membership structure, decision authority for DEAAG grants, and continue to advise the Governor and Legislature on defense-related issues affecting Texas military installations to support the long-term viability of the military in the state, particularly as it relates to BRAC.

Under this recommendation, the Executive Director of the Texas Economic Development and Tourism Office would oversee the administration of the Texas Military Value Revolving Loan Fund and the Defense Economic Adjustment Assistance Grant programs. For example, the Office would monitor DEAAG grants and assist communities in applying for future DEAAG grants. This administrative arrangement would allow the Commission to access the existing resources, experience, and expertise of the Governor's Texas Economic Development and Tourism Office in administering its financial programs.

1.2 Clarify the Commission’s role in the Texas Military Value Revolving Loan Fund Program.

The Commission’s structure is not focused on financial decision making, such as evaluating loan applications. As a result, the Commission’s role with the Revolving Loan Fund should be advisory and focused on evaluating the military value and community redevelopment value of proposed projects of defense communities that apply for loans. The Commission would recommend eligible projects to the Executive Director of Economic Development and Tourism for financial assessment and final decision.

The Texas Economic Development and Tourism Office would administer the financial aspects of the Texas Military Value Revolving Loan Fund, previously given to the Commission, including:

- ◆ evaluating creditworthiness;
- ◆ working with the Texas Public Finance Authority for bond issuance; and
- ◆ servicing and monitoring the loans.

This recommendation would clarify the roles of the Commission and Texas Economic Development and Tourism Office in administering the financial aspects of the Texas Military Value Revolving Loan Fund.

Issue 2

The Defense Economic Adjustment Assistance Grant Program Needs Redirection and Better Administration.

Key Findings

- ◆ Having job creation as the primary focus of the DEAAG program impairs the Commission’s ability to assist military communities.
- ◆ The DEAAG program selection process does not ensure fair and consistent treatment of grant applicants.

Defense communities affected by federal government decisions, such as the Base Realignment and Closure process, struggle to create new jobs for citizens and to retain existing jobs potentially affected by BRAC. Texas has developed a grant program to assist these communities to create jobs. However, several of the existing grantees have not met their job creation goals as set out in their contract for the grant award. In some cases, communities used grant funds in a way that helped those communities retain existing jobs. While not unreasonable, this approach did not meet the terms of the grant.

The Grant Review Panel established to advise the Texas Military Preparedness Commission on the award of grants has not recommended many projects due to speculative job creation figures in the proposals. However, the Commission allowed communities that were not recommended for funding to add to and amend their proposals after the advisory panel had evaluated and ranked the proposals. As a result, most of the projects received funding. This approach does not ensure fairness and consistency.

Recommendations

Change in Statute

2.1 Expand the DEAAG program beyond job creation to allow the Commission to consider grants for job retention.

Under this recommendation, the Commission could provide DEAAG funding to projects that retained or created jobs within defense communities affected by BRAC. The Commission would develop criteria that gives consideration to projects that retain or create jobs. By opening the program to projects that help retain jobs, more communities affected by BRAC would be eligible for DEAAG grants. If the grant applications exceed available funding the Commission would award grants to the highest scoring applicants, or the Commission could reduce the amount of the grants awarded.

Management Action

2.2 The Commission should develop contract performance measures for job retention grants.

This recommendation would direct the Commission to determine whether communities completing DEAAG-funded projects that result in job retention fulfill their contractual requirements. In developing these performance measures, the Commission could consider several factors, including the level of job retention or expansion expected from communities, the period of time the communities must retain the jobs, and the types of jobs communities must create or retain. This recommendation would also help the Commission measure the impact of the grant program.

2.3 The Commission should adopt rules governing the Commission's role in the grant award decision-making process.

This recommendation would ensure that the Commission's decision-making process is fair and consistent. In addition to creating rules that establish Commission procedures for making decisions on grant applications, Commission rules should also prohibit the Commission from allowing applicants to supplement or resubmit their applications once the application period is closed. Allowing some communities to alter their applications after the application period is closed is not fair to other communities in a competitive grant program.

While the Commission would continue to use its advisory Panel, the Panel's recommendations would continue to not be binding. However, the Commission should establish rules that provide for the Commission to explain any deviations from Panel recommendations and rules that allow communities that did not receive funding to appeal to the Commission.

Issue 3

The Commission Does Not Include Military Reserve Bases in Advocacy Efforts and in Promoting DEAAG Funding.

Because the Commission advocates for military bases and missions in general, it may lack the necessary focus to also ensure the preservation and expansion of reserve activities in the State, especially during times of U.S. Department Base Realignment and Closure. For instance, Texas experienced the closure

and consolidation of multiple reserve centers across the state as a result of previous BRAC actions, including reserve centers in Orange and Amarillo. The Commission's lack of focus on the State's reserve activities and communities excludes an important element of the State's military support for the U. S. Department of Defense and the economy of Texas.

Also, reserve defense communities affected by the BRAC process often need financial assistance to deal with either an increase or decrease in reserve activity within the community. Although reserve communities are eligible to receive DEAAG funding to assist with changes in reserve missions and forces, to date, no reserve communities have received DEAAG funding. A lack of awareness and knowledge of the grant program may be preventing reserve communities from applying for and receiving grants.

Recommendations

Change in Statute

3.1 Require the Commission to advocate for the missions and capabilities of reserve bases, to ensure the preservation and expansion of reserve activities in Texas.

In advocating to retain or expand military bases and missions, this recommendation would ensure the Commission also advocates for reserve activities in Texas. This recommendation would help to ensure the preservation and expansion of the missions and capabilities of reserve bases in Texas during, but not limited to, times of BRAC action. This recommendation would also improve the Commission's focus on the assistance it provides to smaller reserve communities.

Management Action

3.2 The Commission should consider communities with reserve bases when evaluating defense community applications for DEAAG grants, and should actively market the DEAAG program to local defense communities with reserve bases.

This recommendation would ensure that the Commission actively seeks applicants from defense communities with reserve bases. By ensuring that defense communities with reserve bases are participating in the DEAAG program, the Commission would be able to better protect and expand military bases and missions throughout the state.

Fiscal Implication Summary

One recommendation regarding the Texas Military Preparedness Commission could have a fiscal impact to the State, depending on how it is implemented, as discussed below.

- ◆ **Issue 1** – This recommendation could create some savings in operational costs, but the Governor's Office would need to reassess its resource needs, given the new administrative arrangement.

Texas Parks and Wildlife Department

Agency at a Glance

The Texas Parks and Wildlife Department (TPWD) is the State's lead agency in protecting Texas' fish and wildlife resources and providing outdoor recreation. The agency's main goals include:

- ◆ improving access to the outdoors;
- ◆ preserving, conserving, managing, operating, and promoting agency sites for recreational opportunities, biodiversity, and cultural heritage;
- ◆ assisting landowners in managing land for wildlife habitat;
- ◆ increasing participation and enhancing the quality of hunting, fishing, boating, and outdoor recreation; and
- ◆ maintaining or improving water quality and quantity to support the needs of fish, wildlife, and recreation.

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

Key Facts

- ◆ **Funding.** For 2008-2009, the Legislature appropriated \$664.8 million to TPWD – a biennial increase of \$232.3 million.
- ◆ **State Parks.** TPWD operates 93 state parks, natural areas, and historic sites with 586,000 acres, and 9.3 million visitors each year.
- ◆ **Licensing.** In fiscal year 2008, the Department sold 2.2 million non-commercial, hunting and fishing licenses generating \$80 million.
- ◆ **Wildlife.** TPWD oversees the harvest of publicly owned wildlife by setting hunting regulations based on scientific research. The agency operates 51 wildlife management areas, conducts public hunts, and provides technical assistance to more than 6,200 private landowners.
- ◆ **Fisheries Management.** In fiscal year 2008, TPWD operated eight fish hatcheries that produced 47.2 million fingerlings for stocking public waters – 191,000 miles of inland streams, 800 public lakes, and 4 million acres of bays, estuaries, and Gulf of Mexico waters.
- ◆ **Infrastructure.** Major projects currently in planning or construction include the permanent dry docking and repair of the Battleship TEXAS, construction of a new freshwater fish hatchery in Jasper, and 93 capital repairs or construction projects in state parks.
- ◆ **Law Enforcement.** In fiscal year 2008, Texas' 500 game wardens made 1.7 million contacts with hunters and anglers, and 723,000 water safety contacts; and completed 30 environmental investigations.

Commission Members (10)

Peter M. Holt, Chair (San Antonio)

T. Dan Friedkin, Vice Chair (Houston)

Mark E. Bivins (Amarillo)

Rick L. Campbell (Center)

Ralph H. Duggins (Fort Worth)

Antonio Falcon, M.D. (Rio Grande City)

Karen J. Hixon (San Antonio)

Margaret Martin (Boerne)

S. Reed Morian (Houston)

Lee Marshall Bass, Chairman Emeritus (Fort Worth)

Agency Head

Carter Smith, Executive Director

(512) 389-4802

Recommendations

1. Require the Texas Parks and Wildlife Department to create a list of aquatic plants that may be imported and possessed within Texas without a permit, and direct the Department to provide greater information to the public on the harm caused by releasing exotic species.
2. Require entities that receive TPWD's comments on proposed projects or permits to respond to TPWD on the disposition of those comments, and direct TPWD to track and use information on its comments to improve review processes.
3. Establish an Internal Affairs Office in statute, require the Office to report to the Parks and Wildlife Commission, and grant the Commission authority to initiate cases.
4. Authorize the Texas Parks and Wildlife Commission to join the Interstate Wildlife Violator Compact on behalf of the State of Texas.
5. Direct TPWD and the proposed Texas Department of Motor Vehicles to make an extensive effort to assist counties to offer boat registration and title services throughout Texas.
6. Instruct TPWD and the Texas Youth Commission to jointly seek representation by the Attorney General to pursue a modification of the Parrie Haynes Trust to designate TPWD as the state agency responsible for the Parrie Haynes Ranch and Trust.
7. Direct TPWD to cooperate with the Texas Department of Agriculture in pilot projects to get excess venison from landowners to food banks, schools, and prisons, and to study existing statutory and regulatory impediments preventing greater use of venison.
8. Continue TPWD for 12 years, and direct TPWD to evaluate and align its programs with the goals outlined in the Land and Water Resources Conservation and Recreation Plan.

Issue 1

Texas Parks and Wildlife Cannot Minimize Risk From Harmful Exotic Aquatic Plants Under Its Current Regulatory Approach.

Key Findings

- ◆ The Texas Parks and Wildlife Department regulates the importation, possession, sale, and introduction of harmful exotic aquatic plants into Texas waters.
- ◆ The importation of exotic aquatic plants poses unknown future risks to the Texas environment that cannot be prevented by TPWD's current efforts.
- ◆ Other states and other nations have implemented white list processes to allow only the importation of exotic species that are proven to not harm the environment.

The introduction of non-native species has dramatically altered Texas's environment. While many new species brought positive changes, some exotic species created extreme negative changes due to their ability to rapidly reproduce. Because Texas' semi-tropical, aquatic environment is especially prone to the negative effects of invasive plants which can crowd out native species, destroy habitats, deplete oxygen from water, and spread so rapidly as to render waterways unusable to boat traffic, the Legislature has granted the Texas Parks and Wildlife Department regulatory authority over harmful exotic fish, aquatic organisms, and plants. Under current law, all species not on the Department's list of prohibited species may be freely imported into Texas. Because new exotic plants can quickly invade rivers and lakes before the Department can research and add the species to the prohibited list and, once established in the state's rivers and lakes, aquatic invasive plants are expensive to eradicate or control, the current approach is not adequate to prevent future infestations of previously unknown plants.

Recommendations

Change in Statute

1.1 Require the Texas Parks and Wildlife Department to create a list of aquatic plants that may be imported and possessed within Texas without a permit.

This recommendation would establish a process where TPWD would evaluate the potential harm represented by the importation of previously unknown aquatic plants into Texas before those plants can be brought in and potentially cause harm by being released into the environment. Building upon TPWD's current authority over harmful aquatic species, the agency would establish a list of approved plants that are allowed to be imported and propagated in Texas. Exotic plant species not appearing on the approved list would require a permit before being imported and TPWD should use its current process in permitting individuals to possess species on the prohibited list for this purpose.

In compiling the list of approved aquatic plants, TPWD should use a risk assessment model to determine the potential harm of the species to the aquatic environment. The process should include peer review, published scientific research, findings from other regulatory agencies, and scientific analysis from third-party labs. Exotic plants that are determined to be already widespread in Texas and not causing economic, environmental, or health problems would be automatically placed on the approved list. TPWD would create a process by which persons may request that previously unknown plants be added to the approved list following the same risk assessment model as used in establishing the original

list. While final approval should rest with the Parks and Wildlife Commission, the Commission should delegate authority to the Executive Director to create a fast-track approval process to lessen the burdens upon affected industries.

Management Action

1.2 Direct the Department to provide greater information to the public on the harm caused by releasing exotic species.

To aid the voluntary compliance of the public with exotic species issues, TPWD should expand its educational efforts to inform the public about the harm that can be caused by accidental and small-scale intentional releases of aquatic species into the environment. Although these releases are prohibited by current law, they are difficult to police as the agency cannot patrol every stretch of water. An educational program that provides information on proper disposal of unwanted aquatic species, distributed through the agency's normal avenues of information dissemination as well as through pet and aquarium stores, could cost-effectively reduce an important route of introduction.

Issue 2

TPWD Cannot Fully Assess the Impact of Its Resource Protection Efforts.

Key Findings

- ◆ To protect the State's natural resources, TPWD reviews proposed projects and permits to determine the impact on fish and wildlife.
- ◆ The Department cannot fully assess the value or effectiveness of its resource protection function because entities are not required to respond to TPWD comments.

To protect the State's natural resources, the Texas Parks and Wildlife Department reviews proposed projects and regulatory permits, and provides comments and recommendations to the appropriate agency on the potential impact on fish and wildlife. However, because entities are not required to respond to TPWD comments, neither the Department nor the Legislature can fully determine the success, value, or effectiveness of this function.

Recommendations

Change in Statute

2.1 Require entities that receive comments on proposed projects or permits from TPWD to respond to TPWD on the disposition of those comments.

This recommendation would require entities that receive comments from TPWD through TPWD's statutory comment requirements on the impact of proposed projects or permits on fish and wildlife, to respond in writing to those comments. Responses would include information about the disposition of TPWD comments, any modifications to the proposed project or permit resulting from the comments, and any reasons why the entity disagreed with, or did not incorporate, the comments. The recommendation does not intend to make TPWD comments binding on the receiving entity, but instead simply requires the entities to notify TPWD of the disposition of its comments.

The recommendation would improve protection of the State's fish and wildlife and allow TPWD to better understand the success, value, and effectiveness of its resource review function. In addition, by knowing if a proposed permit or project did or did not incorporate the recommendations, TPWD would be aware of the actual impacts that result from the project, helping it to be more proactive in its fish and wildlife protection activities in the field.

Management Action

2.2 Direct TPWD to track the disposition of its comments and use that information to improve its review processes.

As TPWD begins to receive responses to all of its resource review comments, this recommendation would direct the Department to track comments submitted and responses received for each project it reviews. Further, TPWD should use this information to improve its resource review and comment process by analyzing which types of comments are successful and helpful to regulatory agencies and other entities, and which recommendations consistently prove to be too burdensome or cost-prohibitive to adopt.

Issue 3

TPWD's Internal Affairs Function Lacks Statutory Standing and an Adequate Connection to the Parks and Wildlife Commission.

Key Findings

- ◆ Although TPWD has a well-structured internal affairs process, it is not established in law or Commission rule and could be abolished or weakened by future directors.
- ◆ The Parks and Wildlife Commission does not have a direct connection to Internal Affairs, limiting its awareness of problems within the agency.
- ◆ Other state agencies have internal affairs functions that are established in statute.

Internal affairs offices serve to protect the public and the reputation of state agencies by investigating possible wrongdoings by personnel. The ability to conduct internal affairs investigations that are independent of the agency's supervisory chain of command is necessary to fully address potential malfeasance within an agency. Equally important is the ability of an agency's policymaking body to be aware of investigations and to take action to ensure that problem areas receive adequate attention. However, the Department's internal affairs function exists only in the agency's internal policies, is not insulated from agency management, and the Parks and Wildlife Commission does not have adequate interaction with the internal affairs office.

Recommendations

Change in Statute

3.1 Establish an Internal Affairs Office in statute with original jurisdiction over crimes committed on TPWD property, or related to the duties of TPWD employees.

This recommendation would ensure the continued effectiveness of TPWD's internal affairs process by establishing the Office in statute. The Office would have jurisdiction over all cases involving allegations of criminal conduct on TPWD property, by on-duty employees, or by its commissioned officers when performing off-duty work related to official duties. The Internal Affairs Office would have the authority to oversee and review these investigations, but would not be required to conduct each one.

3.2 Require the Internal Affairs Office to report information on trends and recently closed cases to the Parks and Wildlife Commission, and grant the Commission authority to initiate cases.

These recommendations would strengthen and clarify the connection between the Internal Affairs Office and the Commission by requiring the Internal Affairs Office to report information on trends and completed investigations. Receiving reports of completed investigations and trend information would improve the ability of the Commission to oversee the Department. As current practice, the Executive Director would continue to authorize investigations on a routine basis, but the Commission would also have authority to initiate investigations independent of the Executive Director. This authority would ensure the ability of the Commission to investigate the agency's executive management if necessary.

Issue 4

Improve Enforcement of Texas Game Laws by Joining the Interstate Wildlife Violator Compact.

Key Findings

- ◆ Enforcing wildlife laws against out-of-state violators is burdensome on game wardens.
- ◆ Texas hunters and anglers may face arrest for minor wildlife violations committed in other states.
- ◆ Other states have joined the Interstate Wildlife Violator Compact (IWVC) as a means of enforcing hunting and fishing laws on non-residents.

Texas is a popular destination for sportsmen from other states, but enforcing Texas hunting and fishing laws on these visitors requires extra time by game wardens. The extra effort is needed because, in many cases, game wardens arrest non-residents and transport them to appear before a magistrate for offenses that only require issuing a citation to a Texas resident. The arrest and processing of out-of-state sportsmen for minor violations is an inefficient use of game warden time.

Recommendation

Change in Statute

4.1 Authorize the Texas Parks and Wildlife Commission to join the Interstate Wildlife Violator Compact on behalf of the State of Texas.

This recommendation would authorize TPWD to join the IWVC and gain the benefits of a multi-state approach to handling violations of fish and game laws. During the application process, TPWD would need to compare Texas wildlife laws to those of IWVC member states to determine which provisions Texas would ratify as being comparable. Texas would not need to change its wildlife laws to match those of IWVC states, but through rulemaking the Commission would have the flexibility to indicate which laws of other states would be recognized as violations for Texas licensees. This process would ensure that Texas sportsmen are not penalized in Texas for violations committed in other states that do not violate Texas game laws. All terms of Texas wildlife laws would still apply to non-resident hunters in Texas. Should terms of the Compact ever change in a way that would not be beneficial to Texas, the authority granted to TPWD to join the Compact would also allow for the agency to withdraw after giving 90 days notice.

Issue 5

Boat and Boat Trailer Titling and Registration Services Are Not Convenient to Citizens.

Key Findings

- ◆ Tax Assessor-Collectors in 182 counties do not issue boat registrations as required by law, while the Texas Parks and Wildlife Department does little to encourage participation.
- ◆ In many areas of the state, boat owners must go to two separate offices for registration and titling, one for boats, and another for boat trailers.

Citizens are often disquieted by inefficient and unnecessary bureaucracy in obtaining government services. The current approach in many Texas counties is for boat owners to title and register their boat at a TPWD office and then travel to another government office to title and register their boat trailer at a county tax assessor-collector office. While state law already requires counties to register boats, only 72 counties do so. TPWD has a responsibility to work with counties to bring them online with the boat registration and titling system, but its efforts to bring counties online have not been sufficient.

Recommendation

Management Action

5.1 Direct the Texas Parks and Wildlife Department and the proposed Texas Department of Motor Vehicles to make an extensive effort to assist counties to offer boat registration and title services throughout Texas.

TPWD should significantly increase its efforts to bring counties online with the Department's Boat Registration and Information System (BRITS). This system is already available to all counties through

the Texas Department of Transportation's vehicle registration system. TPWD and the proposed Texas Department of Motor Vehicles should market the BRITS system to counties and provide training to county personnel. As more counties offer boat titling and registration services, residents will be able to register both their boats and trailers in one location, creating a seamless interaction with government.

Issue 6

The Department is Well Positioned to Use the Parrie Haynes Ranch to Help Texas' Youth.

Key Findings

- ◆ The Department leases the Parrie Haynes Ranch from the Texas Youth Commission for youth outreach and education.
- ◆ TPWD is well positioned to operate the Ranch in accordance with Parrie Haynes' wishes.
- ◆ By keeping the Parrie Haynes Ranch at TYC, Texas misses an opportunity to provide improved outdoor access to the state's youth.
- ◆ The Attorney General has the authority to protect the public interest in charitable gifts, including those given to the State.

In 1957, Parrie Haynes left her ranch in Bell County and assets to support the Ranch in trust to the State Orphan Home to benefit orphans. Currently, the Texas Youth Commission (TYC) holds the Parrie Haynes Ranch, and has leased it to the Texas Parks and Wildlife Department since 1993. TPWD and its partners have developed the property to provide outdoor access and education primarily to Texas' youth. Because TPWD only leases the Ranch, and does not hold the property, the Department is hesitant to continue putting resources into the property. By keeping the Ranch at TYC, Texas misses an opportunity to most effectively use the Ranch to accomplish Parrie Haynes' wishes in her will, as well as increase youth participation and appreciation of Texas' natural and cultural resources.

Recommendations

Change in Statute

6.1 Instruct TPWD and TYC to jointly seek representation by the Attorney General to pursue a modification of the Trust terms and purpose of the Parrie Haynes Trust that would designate TPWD as the state agency responsible for the Ranch and Trust.

This recommendation would express the Legislature's intent to delegate the responsibility of the Trust to TPWD and designate TPWD as the state agency responsible for the Ranch. If a court determines that TPWD is the appropriate entity to hold the Trust, then the agency's use of the property would increase outdoor access to Texas' youth, consistent with the will and with TPWD's broader goals.

Under this recommendation, TYC and TPWD should jointly seek representation by the Attorney General to bring a trust modification proceeding to properly transfer the control of the Parrie

Haynes Trust to TPWD, modify the terms of the trust, and expand the current purposes of the Trust to include benefiting disadvantaged youth and youth in general. Such a transfer would include all properties, investments, and rights associated with the Haynes Trust, as determined by the court. The recommendation would take the form of a time-limited, instructional provision in statute. Since the Ranch is held in trust, the Legislature cannot transfer the property outright; the State would need to get judicial approval of the transfer and a modification authorizing TPWD to use the Trust for purposes approved by the Court.

In doing so, it would be incumbent upon TPWD to show the Court that its use of the property is more closely aligned with the intended use of the property as outlined in the Haynes will than other potential uses of the property by the State. Although a court may modify the terms of the trust in the future, while still coming as close as possible to fulfilling the wishes of the Haynes will, this recommendation is based on the findings that TPWD's current activities on the Ranch are already more closely aligned with the intent of the will than other uses.

Management Action

6.2 Direct TPWD to increase its use of the Parrie Haynes Ranch to be as consistent as possible with the will's intent.

If a court were to modify the terms of the will and designate the responsibility of the Ranch to TPWD, this recommendation would direct TPWD to increase its efforts to develop and operate the Ranch for uses as closely aligned as possible with the direction of the Haynes will: to help orphans. While the Department's current use of the Ranch, is more consistent with the terms of the will than other uses of the property, TPWD has an opportunity to increase access to the Ranch to identified groups and individuals. Expanding TPWD's operations of the Ranch to provide services to Texas orphans in addition to the youth programs already in existence at the Ranch would ensure that Ranch operations are aligned as closely as possible to the Haynes will in the future.

To do this, TPWD should explore continued and new partnerships with private and non-profit organizations that help orphaned or disadvantaged children. In addition, TPWD should work with the Department of Family and Protective Services to identify other opportunities to serve orphans of the State. Through the implementation of this recommendation, TPWD should aim to increase access to the Ranch and Department programs to these types of groups, and continue to offer its use at minimal expense to those groups. However, without specific appropriations for the operation of the Ranch, the Department may still have to rent the facilities to private groups to cover the costs of operations. If this is the case, and if a court determines that this type of use is consistent with the Haynes will, TPWD should strive to limit rental use of the Ranch to the extent necessary to continue the operations of the Ranch, and provide as many opportunities as possible to targeted youth groups.

6.3 TPWD should include community representation on any advisory committee related to operation of the Parrie Haynes Ranch.

This recommendation directs TPWD to include community representation on any committee or board that relates to the Ranch. The recommendation would apply if TPWD simply continues to lease the Ranch, or if the Ranch were transferred to TPWD through a judicial judgment, as described above. The recommendation would ensure that the community, with its interest and local expertise, is included in any decisions made about the use of the Ranch.

Issue 7

Landowners in the Managed Lands Deer Permit Program Need Additional Outlets for the Venison They Harvest.

Key Findings

- ◆ TPWD works with private landowners in the Managed Lands Deer Permit program, to manage land to the benefit of wildlife habitat.
- ◆ Many landowners in the program would like to harvest more deer, but cannot use all of the venison.

Through the Managed Lands Deer Permit Program, TPWD assists private landowners in managing their land to improve wildlife habitat. The program allows landowners who have developed a formal management plan, with help from TPWD, to have more flexible deer hunting seasons and increased harvest opportunities. However, many landowners in the program would like to harvest more deer, but cannot use all of the venison and would like to donate it to organizations and institutions.

Recommendations

Management Action

- 7.1 Direct TPWD to cooperate with the Texas Department of Agriculture (TDA) to establish a pilot project to provide venison to the state's food bank system, explore a pilot project to provide venison to schools through TDA's child nutrition programs, and, with cooperation from the Texas Department of Criminal Justice, explore a pilot project to provide venison to the food services operations in prisons across the state.**

The Sunset Commission directed TDA to establish a pilot project to provide venison to food banks, and explore pilot projects to provide venison to schools and prisons. This recommendation directs TPWD to assist TDA in these efforts. These pilot projects could provide the opportunity for food banks, child nutrition programs, and prison food services operations to access a new source of protein and for landowners to have an additional outlet for the deer harvested from their lands.

- 7.2 Direct TPWD, with assistance from TDA, to study existing statutory and regulatory impediments preventing greater utilization of venison from Texas' white-tailed deer populations.**

This recommendation requires TPWD to study ways in which current laws and rules limit the ability of landowners from making greater use of venison from white-tailed deer on their land. The recommendation further directs TPWD to ensure that the assessment addresses the utilization of venison harvested under the various permits issued by TPWD, suggest changes to facilitate greater utilization of venison in Texas, and evaluate the potential costs and benefits of allowing venison to be sold in the private sector. TPWD is directed to report the preliminary results of the study to the Sunset Advisory Commission and the appropriate standing committees of the Legislature no later than April 1, 2009, and issue the final report no later than January 1, 2010. This study could identify ways to remove regulatory impediments and allow landowners greater flexibility in harvesting venison.

Issue 8

Texas Has a Continuing Need for the Texas Parks and Wildlife Department.

Key Findings

- ◆ The Texas Parks and Wildlife Department seeks to protect Texas' fish and wildlife resources and provide outdoor recreational opportunities and its efforts continue to be needed.
- ◆ No substantial benefit or savings would result from transferring the Department's functions to other agencies, or dividing TPWD into separate agencies.
- ◆ While TPWD has been successful in identifying natural resource conservation and recreation goals for the State, it could benefit from more clearly linking these overall goals with its specific programs.

The Texas Parks and Wildlife Department's mission is to manage and conserve the natural and cultural resources of Texas, and to provide hunting, fishing, and other outdoor recreation opportunities for the use and enjoyment of present and future generations. The Department's mission is important to Texans, has economic benefits to the State, and no significant benefit would derive from transferring TPWD's operations. In addition, the Legislature mandated a Land and Water Resources Conservation and Recreation Plan during the Department's previous Sunset review. However, the Department has not assessed how these broad goals should guide and align with the operations of its many diverse programs.

Recommendations

Change in Statute

8.1 Continue the Texas Parks and Wildlife Department for 12 years.

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

Management Action

8.2 Direct TPWD to evaluate and align its programs with the conservation and recreation goals outlined in the Land and Water Resources Conservation and Recreation Plan.

This recommendation would instruct TPWD to use the Plan to evaluate agency programs and initiatives against the Plan and align them with the Plan's broader goals and objectives. In doing so, the agency should consider how each program advances the goals and objectives set out in the Plan; how successful the program is in advancing those goals; and how the program could better advance the agency's overall goals as contained in the Plan. The recommendation aims to ensure that since TPWD has identified and developed overall strategies to advance conservation and recreation in Texas in the Plan, that it uses that work to ensure that particular programs are structured to accomplish the agency's global goals.

Fiscal Implication Summary

When fully implemented, some recommendations would result in a small cost to the State. The specific fiscal impacts of these recommendations are summarized below.

- ◆ **Issue 1** – TPWD will have a one-time cost of an estimated \$50,000 to hire a consultant to help the agency compile a list of aquatic plants that may be imported and possessed in Texas without a permit. The cost is an appropriate expenditure from the Game, Fish and Water Safety Account (Fund 009) as the reduction of harmful aquatic plants will serve to protect fish and wildlife, and improve boating access.
- ◆ **Issue 4** – TPWD will incur costs to participate in the Interstate Wildlife Violator Compact. The Department would incur costs to monitor and upload information into the Compact’s database. A half-time clerk would perform these functions. The base salary for this position is \$17,292 and with benefits, equipment, and other costs, the total first-year cost will be about \$30,107 and subsequent years will cost \$23,000.
- ◆ **Issue 5** – TPWD will experience a small loss of revenue from additional counties handling boat registration and titling. Counties retain 10 percent of the fees charged for each transaction as a commission for providing the service. The volume of such transactions could not be estimated for this report.

<i>Fiscal Year</i>	<i>Cost to the Game, Fish, and Water Safety Fund (Fund 009)</i>	<i>Change in FTEs From FY 2009</i>
2010	\$80,107	+5
2011	\$23,000	+5
2012	\$23,000	+5
2013	\$23,000	+5
2014	\$23,000	+5

Polygraph Examiners Board

Agency at a Glance

To protect the public from untrained polygraph examiners, the Legislature has provided, since 1965, that only persons licensed by the Polygraph Examiners Board may use instruments designed to detect deception or verify truth. Originally part of the Engineering Extension Service at Texas A&M University, since 1981 the licensing of polygraph examiners has been housed within the Department of Public Safety with a stand-alone Board. The Board's primary function is to test, license, and take enforcement action against violators of the Polygraph Examiners Act.

Key Facts

- ◆ **Funding.** In fiscal year 2008, the Polygraph Examiners Board operated on a budget of \$102,787.
- ◆ **Staffing.** The Board had two employees in fiscal year 2008.
- ◆ **Licensing.** In fiscal year 2008, the Board issued 17 new licenses and renewed 230 licenses for polygraph examiners.
- ◆ **Enforcement.** The Board reports receiving 10 jurisdictional complaints in fiscal year 2008, all of which the Board dismissed.


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

Commission Members (7)

Andy Sheppard, Presiding Officer (Fate)

Priscilla Kleinpeter (Amarillo)

Gory Loveday (Winona)

Lawrence D. Mann (Plano)

Trenton R. Marshall (Hurst)

Donald "Kevin" Schutte (Hooks)

Marla "Sissy" Williams (Fairfield)

Agency Head

Frank Di Tucci, Executive Director

(512) 424-2058

Recommendation

1. Transfer the regulation of polygraph examiners to the Department of Licensing and Regulation, and standardize licensing and enforcement provisions in the Act.

Issue 1

Transfer the Regulation of Polygraph Examiners to the Department of Licensing and Regulation.

Key Findings

- ◆ Regulation of polygraph examiners continues to be needed, but the function of polygraph regulation is not well placed at the Department of Public Safety.
- ◆ The Board's enforcement efforts do not adequately protect the public.
- ◆ Portions of the Board's licensing exam for polygraph examiners are overly subjective, and the Board inconsistently applies grading standards.
- ◆ The Board has made several decisions potentially based on interests of Board members rather than on the protection of the public, and has adopted rules that create the appearance of a conflict of interest.

The Legislature has charged the Polygraph Examiners Board with licensing and regulating polygraph examiners in Texas for the protection of the public. However, the Board's ability to protect the public is compromised by the real and potential conflicts of interest inherent in the Board's processes and administrative placement, its overly subjective licensing examination procedures, ineffective enforcement, and the small size of the agency and number of licensees.

Recommendations

Change in Statute

1.1 Abolish the Polygraph Examiners Board and transfer its functions to the Texas Department of Licensing and Regulation.

Under this recommendation, the Polygraph Examiners Board would cease to exist as an independent agency, and its testing and regulatory functions transferred to Texas Department of Licensing and Regulation (TDLR). The recommendation would align all regulatory provisions in the Polygraph Examiners Act with TDLR's enabling statute to streamline administration, and would also remove the Sunset provision from the Act, as it would be subject to TDLR's existing Sunset provision. TDLR's expertise with occupational licensing, as well as its economy of scale, would clearly improve regulation of the polygraph industry.

1.2 Establish a polygraph advisory committee to assist with the regulation of polygraph examiners.

This recommendation would help ensure that licensees and the public continue to have a voice, while improving current regulation, by creating a polygraph advisory committee at TDLR. The Committee would advise the Commission on Licensing and Regulation on rules and standards related to the profession, educational curricula for applicants, licensing examination content, and other technical issues related to the industry. For example, the advisory committee could provide critical input to TDLR regarding methods for modifying the polygraph licensing exam to ensure the exam is as objective as possible while still accurately assessing an examiner's proficiency to practice.

1.3 Eliminate notarization requirements for individuals applying for licensure.

This recommendation would remove antiquated requirements from the Polygraph Examiners Act that applicants must notarize polygraph examiner license applications. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications.

1.4 Clarify that the Act must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would require TDLR to follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by requiring TDLR to develop rules defining which specific types of crimes affect the licensee's ability to administer polygraph exams. Following Chapter 53 would help ensure fairness to all license applicants.

1.5 Require polygraph examiners to inform consumers of complaint procedures.

This recommendation would require a polygraph examiner to inform an individual undergoing a polygraph exam of the process for filing a complaint against the examiner with TDLR. Requiring this specific notice to individuals subject to polygraph services would help ensure the agency receives complaints from individuals who feel that the examiner or the exam process was inappropriate.

1.6 Require appeals of Board actions to district court to be reviewed under the substantial evidence standard.

This recommendation would require appeals of actions of TDLR in district court to be reviewed under the substantial evidence standard. Updating language in the Polygraph Examiners Act to reflect this common practice would save time and expense while providing a sufficient level of protection on appeal.

1.7 Remove fee caps in statute.

This recommendation would remove the schedule of fees for polygraph licensing activities currently found in the Polygraph Examiners Act and authorize the Commission on Licensing and Regulation to establish fees in rule. This allows for greater administrative flexibility and is consistent with a provision in the General Appropriations Act that requires agencies to set fee amounts necessary to recover the cost of regulation.

Fiscal Implication Summary

Transferring the functions of the Polygraph Examiners Board to the Texas Department of Licensing and Regulation would result in an estimated annual savings to the State of \$41,740. This recommendation would result in a reduction of one FTE, based on eliminating the administrative support position, resulting in an annual savings of about \$32,740 based on the average salary and fringe benefits for the position. The recommendation would also result in a savings of approximately \$9,000 due to a reduction of travel costs for Board members, based on average travel reimbursements.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in Number of FTEs From FY 2009</i>
2010	\$41,740	-1
2011	\$41,740	-1
2012	\$41,740	-1
2013	\$41,740	-1
2014	\$41,740	-1

Department of Public Safety Private Security Board

Agency at a Glance

The Legislature created the Department of Public Safety (DPS) in 1935 by consolidating the Texas Rangers from the Adjutant General, and the Texas Highway Patrol from the State Highway Department. The Rangers trace their history to 1823 when Stephen F. Austin hired 10 men to protect the colonists, and the Highway Patrol dates back to the late 1920s. Today, DPS' mission is to enforce laws to protect public safety, and to prevent and detect crime. The agency accomplishes its mission through four main functions: traffic law enforcement; criminal law enforcement; license regulation, including driver licenses and private security occupational licenses; and emergency management. The agency regulates the private security industry through the Private Security Board, which is subject to review under the Sunset Act.

Key Facts

- ◆ **Funding.** In fiscal year 2008, DPS spent \$933 million, primarily derived from the State Highway Fund and federal funds.
- ◆ **Staffing.** DPS had 7,865 employees in fiscal year 2008. Of this total, 3,458, or 44 percent, are commissioned law enforcement officers.
- ◆ **Texas Highway Patrol.** DPS' largest and most visible division, Texas Highway Patrol, enforces traffic laws on more than 225,000 miles of rural highways, provides security for the state Capitol, enforces commercial vehicle regulations, and oversees operation of the vehicle inspection program.
- ◆ **Criminal Law Enforcement.** The Criminal Law Enforcement Division works in cooperation with city, county, state, and federal law enforcement agencies with investigations and intelligence involving drug trafficking, auto theft, organized crime, terrorism, gambling, and other criminal activity.
- ◆ **Texas Rangers.** Texas' 134 Rangers assist local law enforcement agencies in enforcing criminal laws by investigating unsolved crimes and apprehending suspected criminals.
- ◆ **Driver Licenses.** DPS issues more than six million driver licenses and identification cards annually and maintains more than 21 million records.


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

- ◆ **Governor's Division of Emergency Management (GDEM).** DPS coordinates Texas' response to natural and manmade disasters and assists cities, counties, and state agencies in planning and implementing emergency management programs.

Commission Members (5)

Allan B. Polunsky, Chairman (San Antonio)

Carin Marcy Barth (Houston)

Ada Brown (Dallas)

C. Tom Clowe, Jr. (Waco)

John Steen, Jr. (San Antonio)

Agency Head

Stanley E. Clark, Director

(512) 424-2000

Recommendations

1. Require the Department to contract for a management and organizational study, and operate the Driver License Program using a civilian business management model.
2. Require the Department to manage the vehicle inspection program as a civilian business and licensing operation with established goals and expected performance outcomes.
3. Clarify roles among GDEM, DPS, and the Governor's Office of Homeland Security, and request that the Legislature, through the appropriations process, exclude GDEM from the Department's cap on capital budget expenses paid for with federal funds.
4. Require affidavits of breath test operators and supervisors to be admissible without the witness's appearance unless the judge finds that justice requires their presence, and require the defense to request breath test operators and supervisors by subpoena.
5. Require the Department to modify its promotional policy to provide officers with location options when applying for promotions.
6. Conform key elements of the Private Security Bureau's licensing and regulatory functions to commonly applied licensing practices.
7. Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.
8. Require Sunset to conduct a limited scope review of DPS in 2011 to study the agency's implementation of the information technology audit conducted in 2008 and to review implementation of a civilian business management model for the Driver License Program.
9. Direct DPS to use state-of-the-art call center technology and best practices for monitoring driver license customer service phone calls; help customers replace lost driver licenses more quickly; and look at expanding the hours of operation of driver license offices.

10. Direct DPS to rescind its policy that prohibits troopers from living more than 20 miles from their duty stations, and to reconsider any other outdated policies that hinder employee retention.
11. Strengthen the internal affairs function at DPS regarding investigation of potential wrongdoings by DPS employees and crimes committed on DPS property.
12. Request that the Legislature, through the appropriate legislative committees, consider whether technology specialists who engage in computer forensics and analysis should be separately registered or otherwise set apart from traditional private security personnel or investigators.
13. Authorize DPS to put the classroom part of the concealed handgun licensing renewal class and the written test online.
14. Continue the Department of Public Safety for 12 years.

Issue 1

The Department of Public Safety's Operating Structure Diminishes Its Potential Effectiveness.

Key Findings

- ◆ DPS' organizational structure hampers communication and crime analysis, and the agency lacks certain tools needed to prevent and respond to terrorism and other crimes.
- ◆ Driver license services operate through a law enforcement command structure rather than as a business service.

DPS operates under a basic management and organizational structure that has not changed significantly in many years. The law enforcement functions operate in a chain of command style that works well for carrying out individual law enforcement activities, but hinders communication and sharing of information and ideas. Also, regional boundaries differ unnecessarily for different programs, the fusion center has not gotten far off the ground, and the agency's information technology systems also operate in silos. In the Driver License Program, the law enforcement command structure DPS uses is unnecessary to carry out what is primarily a business sales and customer service operation, albeit one with needs for a strong law enforcement presence.

Recommendations

Management Action

1.1 The Department should contract for a management and organizational study to examine the Department's structure, communication, and policies.

DPS has significant challenges ahead on how best to modernize and organize for changes in criminal activity, technology, and the need for threat assessment and response. Given that law enforcement is a specialty service that affects the safety of citizens as well as DPS officers, this recommendation required DPS to contract with a consulting firm with law enforcement expertise for a management and organizational study, which it did in mid-2008. DPS received the study results in October 2008 and has begun implementing some of the recommendations.

1.2 DPS should operate the Driver License Program using a civilian business management model.

The Driver License Program is a combination of a basic business activity with law enforcement components. The State has significant public safety responsibilities related to security of the licensing function, but the transactions related to obtaining and renewing driver licenses and ID cards are primarily a consumer service function. While DPS needs law enforcement to secure operations and detect and investigate fraud, DPS does not need to manage the program with law enforcement personnel and could make much better use of those personnel.

With the advent of federal REAL ID requirements and the continuing growth of identification theft and fraud, having a strong law enforcement presence in the driver licenses offices remains important. This presence could continue as a separate Driver License Division, or DPS could transfer this responsibility and troops to the Texas Highway Patrol. Regardless of this decision, DPS should continue to use the expertise and training of experienced driver license troopers in this activity.

Issue 2

The Department Fails to Effectively Manage the Vehicle Inspection Program.

Key Findings

- ◆ Lack of statewide oversight leads to performance disparities among the regions.
- ◆ Operating a business function as an offshoot of a law enforcement function has led to a lack of effective oversight.

The safety inspection of vehicles is a major DPS activity. DPS oversees more than 10,000 vehicle inspection stations in Texas, employing about 38,000 licensed inspectors who perform approximately 16 million inspections annually. Under the current structure of the vehicle inspection Service (VI), program quality and effectiveness are not in anyone's chain of command at DPS. Obviously, senior executives have responsibility for the program, but no person is assigned primary oversight to ensure that the program works well overall, and in each of the DPS regions. This missing link impedes the program from operating as effectively as possible.

Recommendations

Change in Statute

2.1 DPS should manage the vehicle inspection program as a civilian business and licensing operation.

This recommendation would place the VI program in a business model environment where DPS analyzes expectations, results, and information flow in a more effective structure to improve the program and maintain a high level of performance. Under this approach, DPS would manage the program from headquarters. Regional supervisors would manage area VI activity with primary responsibility for performance and results. DPS executive management would set overall program goals with the VI program director setting and monitoring regional goals and expectations.

Highway Patrol would need to continue to provide law enforcement support as they do now. The regional VI supervisor must work with the regional Highway Patrol captain(s) on performance expectations and program needs for troopers assigned to support VI activities.

Management Action

2.2 Establish vehicle inspection goals and expected performance outcomes.

DPS needs to set the goals and performance outcome measures for both the overall VI program and for each of the regions. Tasking DPS management to establish a performance measurement system will ensure overall program improvement and enable VI employees to understand performance expectations. The agency should also obtain input from regional VI staff when developing the system. Finally, as part of the new system, DPS should stress the importance of detecting issuance and use of fraudulent inspection stickers.

Issue 3

Clarifying Roles and Exempting GDEM From Capital Expenditure Caps Would Assist Texas' Emergency Management Function.

Key Findings

- ◆ Lines of authority between DPS, GDEM, and the Governor's Office of Homeland Security are unclear.
- ◆ GDEM's unpredictable receipt of federal funds contributes to DPS quickly reaching its cap on capital expenses.

With Texas experiencing more federally declared disasters than any other state in recent years, emergency management clearly presents enormous challenges. The Governor's Division of Emergency Management (GDEM) at DPS helps local officials across the state prepare for and respond to disasters of all kinds, both manmade and natural. GDEM also helps implement the Governor's statewide homeland security strategy.

Many individuals have complained about the lack of defined roles between GDEM, DPS, and the Governor's Office of Homeland Security (OHS), and the confusion the lack of definition may cause. In addition, GDEM's frequent receipt of unexpected federal grants can cause DPS to quickly reach its cap on capital expenditures, since GDEM's capital expenses count toward DPS' cap on such expenses.

Recommendations

Change in Statute

3.1 Specify that the Department's Director appoints the chief of GDEM, subject to approval of the Governor, and require coordination between DPS, GDEM, and the Governor's Office of Homeland Security.

This recommendation would amend statute to specify that DPS' Director appoints GDEM's chief, with the approval of the Governor. DPS, GDEM, and OHS should meet bimonthly to coordinate efforts, prevent overlap of activities, and ensure no gaps exist in the State's approach to emergency management and homeland security. The Chair of the Homeland Security Council and a state agency representative from the Emergency Management Council, designated by the chair of that Council, should participate in these bimonthly meetings. The coordination meetings would ensure that the Governor's responsibility for directing Texas' homeland security strategy would continue to integrate with emergency management. In combination with changes resulting from the management and organizational study recommended in Issue 1, this recommendation would help the State's preparedness and emergency management functions continue as some of the best in the nation.

3.2 Change GDEM's name to the Texas Division of Emergency Management, and clarify that it is a division of the Department.

This recommendation would help eliminate confusion surrounding who directs day-to-day emergency management functions in Texas by specifying in statute that the Texas Division of Emergency Management at the Department of Public Safety performs the functions.

Change in Appropriations

3.3 Request that the Legislature exclude GDEM from the Department's cap on capital budget expenses paid for with federal funds, with certain precautions.

This recommendation expresses the will of the Sunset Commission that the Legislature exempt GDEM from the Department's cap on capital budget expenses paid for with federal funds, helping GDEM fully respond to disasters. GDEM should provide the Legislative Budget Board and the Governor with the fund amounts and the items to be purchased to help ensure GDEM spends the money in the State's best interest.

Issue 4

The Administrative Hearing Process for Suspending Driver Licenses of Individuals Arrested for DWI Wastes Government Resources.

Key Findings

- ◆ DPS' Administrative License Revocation program reflects the State's interest in keeping impaired drivers off the road.
- ◆ The administrative license suspension process, as currently administered, wastes government resources.

Protecting citizens from drunk drivers is paramount for the Texas Legislature. As a result, the Legislature established the Administrative License Revocation program in 1995 to discourage drunk driving by authorizing DPS to swiftly suspend the license of a person arrested for driving while intoxicated. The law and rules governing the hearings in which drivers may contest their license suspensions, however, have in some cases led to proceedings where breath test operators and breath test supervisors are routinely requested as in-person witnesses even when their testimony may not be needed. In fact, having all witnesses appear at an administrative hearing is inefficient, and generally unnecessary. The recommendations that follow would apply to administrative license revocation hearings only, and not court trials on the driving while intoxicated offense.

Recommendations

Change in Statute

4.1 Require affidavits of the breath test operators or breath test supervisors to be admissible in administrative hearings without the witness's appearance unless the judge finds that justice requires their presence.

This recommendation would prohibit a party to a hearing from requiring the presence of the breath test operator or supervisor if they submitted properly certified affidavits that contained the information necessary to confirm the breath test results and the reliability of the equipment, unless the administrative law judge determined their presence is necessary. This recommendation would prevent breath test operators and supervisors from being taken off duty to attend hearings where their testimony is not needed, using state and local law enforcement agencies' resources more efficiently.

4.2 Require the defense to request breath test operators and breath test supervisors by subpoena in administrative hearings.

This recommendation would apply to administrative license revocation cases where a breath test operator and breath test supervisor were needed at the hearing to provide testimony in addition to their affidavits. The statute would require the defendant to issue a subpoena to request the presence of operators and supervisors, rather than merely filing a request for the witnesses from the Department. Requiring subpoenas would help eliminate the potential for defendants to request breath test operators and supervisors without a clear need for their presence.

Issue 5

DPS' Law Enforcement Promotion Policy May Impede the Department From Making the Best Use of Its Workforce.

Key Findings

- ◆ DPS is facing a critical personnel shortage, weakening its ability to protect the public.
- ◆ The Department uses a list-based promotion system that does not allow applicants to apply for a specific duty station, does not take into account individual differences in duty stations, and can be a disincentive for officers to promote.
- ◆ Most other law enforcement entities in Texas that compete with DPS for personnel do not require commissioned officers to relocate when applying for promotions.

The trained troopers working for the Department of Public Safety are the critical first responders that Texas looks to when facing disasters, and in controlling crime and highway traffic. In recent years, DPS has fallen increasingly behind its recruitment goals, and the agency now projects an 8 percent vacancy rate in commissioned officer ranks at the start of the legislative session. Although DPS' staffing is affected by an increased national need for security personnel and the agency has placed a great focus on recruitment, DPS' own policies are limiting its ability to make the most of its available staff. Currently, the Department's promotional process does not allow officers any options regarding location at the time of applying for a promotion. This policy appears to deprive the agency of personnel who could perform well in the positions but choose to not move their families across the state, and can have an impact on morale.

Recommendation

Management Action

5.1 The Department of Public Safety should modify its promotional policy to provide officers with location options when applying for promotions.

This recommendation requires DPS to change its promotional system to allow greater preference in choosing duty stations to commissioned officers promoting to a higher rank, thereby improving morale and retention rates. The Department could implement this recommendation in various ways. One method would be for DPS to open unfilled promotional positions to direct application, allowing

troopers who have passed the test to be interviewed by panels that include prospective supervisors for a specific duty station. A second approach the Department could consider is to create a regional approach to promotions and allow supervisors greater choice in picking specific applicants for specific positions. To prevent regions from being isolated from the Department as a whole, DPS should continue its current policy of offering vacancies to lateral transfers within the entire agency first, before opening the vacancy to a promotion. Promoting troopers could also place themselves on one or more regional promotion lists. The Department should also consider other options, based on its experience, to achieve the goal of increased geographic selectivity in promotions.

Issue 6

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

Key Findings

- ◆ Some licensing provisions of the private security statute do not follow model licensing practices and could potentially allow over-burdensome regulation.
- ◆ Nonstandard enforcement provisions of the private security statute could reduce the Bureau's effectiveness in protecting the public.
- ◆ Certain administrative provisions of the private security statute conflict with standard practice, potentially reducing the Bureau's efficiency.

Various licensing, enforcement, and administrative processes in the private security statute do not match model licensing standards developed from experience gained through more than 90 occupational licensing reviews. Comparing private security statute, rules, and practices to model licensing standards identified variations that need to be brought in line with the model standards.

Recommendations

Licensing – Change in Statute

6.1 Authorize the Bureau to license by endorsement to streamline the licensing process and reduce regulation.

State law currently has nine classes of security company licenses with 19 licenses for security occupations, resulting in many licensees having multiple licenses for the same company. This recommendation would allow the Private Security Bureau to streamline its licensing process by eliminating overlapping license requirements for individual licenses by allowing the Bureau to issue industry class licenses with individual endorsements. The endorsements would correspond with job titles that the individual is approved for and would expire with the industry license. Key industry class licenses would include alarm company license with endorsements for installer, salesperson, and monitor; and security company license with endorsements for owner, manager, salesperson, and consultant.

6.2 Apply Occupations Code, Chapter 53 to the Private Security Act to provide flexibility and fairness in licensing applicants with criminal histories.

Applying Chapter 53 of the Occupations Code to the Private Security Act would give the Bureau the flexibility to consider extenuating circumstances when considering license applicants with criminal histories. These circumstances include age at the time the crime was committed, work and personal history since conviction, whether the crime was related to the industry being applied for, and recommendations of law enforcement officials and work supervisors familiar with the applicant. This recommendation would also require the Board to develop rules, under the provisions of Chapter 53, defining which crimes relate to each private security license and would affect the licensees' ability to practice.

6.3 Authorize the Bureau to require jurisprudence examinations for all security licensees.

Authorizing the Bureau to require jurisprudence exams would ensure that licensees have a clear understanding of the laws and rules that guide their profession. This recommendation builds on existing licensure requirements by allowing the Bureau to require all applicants to pass a jurisprudence exam to be eligible for licensure. The Board would also establish rules regarding examination development, fees, administration, re-examination, grading, and notice of results.

Enforcement – Change in Statute

6.4 Require appeals of Board actions to district civil court under the substantial evidence rule.

Under substantial evidence, the appeal allows review of the case record to ensure that evidence presented bears out the ruling. The Private Security Act is currently silent on this matter. Updating language in the Act to reflect this common practice would save time and expense while providing a sufficient level of protection on appeal.

6.5 Prohibit Board members from being involved in both the investigation of complaints and the determination of disciplinary action.

Private Security Board members are not involved in the investigation of complaints, but updating and clarifying statute would ensure that current and future Board members will be familiar with this provision and follow this practice.

6.6 Increase the amount of the Bureau's administrative penalty authority, and require the Private Security Board to recommend an administrative penalty matrix in rule for adoption by the Public Safety Commission.

The amount of an administrative penalty the Bureau is able to impose on an individual who violates the Private Security Act or rule would be increased to \$5,000 per violation per day, from the current \$500 per violation per day. This change would give the Bureau the flexibility to address the potentially severe nature of illegal behavior. The provision that each day a violation continues or occurs is a separate violation for purposes of imposing the penalty would continue to apply. The Act would require the Board to recommend an administrative penalty matrix in rules to ensure that the Board develops administrative penalty sanctions that appropriately relate to different violations of the Act or rules.

Administration – Change in Statute

6.7 Authorize Board members to receive reimbursement for travel expenses.

Eliminating the prohibition on travel reimbursement other than transportation would make the Board's statute consistent with 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.

6.8 Allow the Private Security Board to recommend fee levels.

This recommendation would eliminate statutory language that sets and caps fees and give the Board the flexibility to recommend fees at the level necessary to recover costs as conditions change. All fees would be set by rule, allowing for public comment on any fee adjustments. The Legislature would maintain control over fees by setting spending levels in the General Appropriations Act.

Issue 7

Texas Has a Continuing Need to Regulate the Private Security Industry Through the Private Security Bureau.

Key Findings

- ◆ Texas has a continuing need to regulate the private security industry.
- ◆ The Private Security Bureau is the most appropriate organization to license and regulate the private security industry in Texas.

The Private Security Bureau (PSB) protects the public by ensuring that only qualified individuals, businesses, and schools become licensed to provide private security services in Texas. The Private Security Bureau is a unit of DPS charged with administering the Private Security Act and rules recommended by the Private Security Board and adopted by the Public Safety Commission. The Bureau licenses and regulates private security companies and guards, private investigators, personal protection agents, locksmiths, alarm businesses, and others.

The Private Security Bureau's functions and structure continue to be needed to regulate the private security industry due to the potential risk to public safety of an unregulated security industry. The PSB's public safety expertise also makes it the appropriate organization to regulate the private security industry. The Board, however, does not need a separate Sunset date and should be included as part of future DPS Sunset reviews.

Recommendation

Change in Statute

7.1 Remove the separate Sunset date for the Private Security Board, continuing the Private Security Act and the Board.

This recommendation would continue the Private Security Board but not have a separate Sunset review in the future. The Sunset Commission would review the Bureau as part of its review of DPS.

Issue 8

Efforts to Improve DPS' Information Technology and Driver License Programs Need Additional Scrutiny.

The information technology function at DPS has suffered from years of neglect, as documented by an outside audit conducted in 2008. The audit found decentralized decision making, a complete lack of strategic planning, and high turnover among personnel, among other shortcomings. The Driver License Program likewise has significant room for improvement, as highlighted in Issue 1, and a limited scope Sunset review in two years will help ensure the agency implements needed changes in both programs.

Recommendation

Change in Statute

8.1 Require Sunset to conduct a limited scope review of DPS in 2011.

This recommendation would subject DPS to a limited review that studies implementation of the information technology audit conducted in 2008 and implementation of a civilian business management model for the Driver License Program. Results of the review would be included in the Sunset Commission's *Report to the 82nd Legislature* in 2011.

Issue 9

Driver License Customer Service Needs Improvement.

The Driver License Program at DPS does not effectively meet consumer needs, with long wait times at its call center and driver license offices. DPS estimates that only about 35 percent of calls to its call center are completed, with most customers hanging up before reaching a live person. While DPS has been planning a web-based, revamped driver license system for years and hopes to have it installed in offices across the state by June 2009, improvements beyond what the new system will provide are also needed.

Recommendation

Management Action

9.1 Direct DPS to use state-of-the-art call center technology and best practices for monitoring driver license customer service phone calls; help customers replace lost driver licenses more quickly; and look at expanding the hours of operation of driver license offices.

This recommendation would direct DPS to make improvements to customer service in its Driver License Program, including using better call center technology and best practices, helping customers quickly get replacement driver licenses, and looking at expanding hours of operation. These changes would help DPS increase the efficiency of its driver license services used by millions of Texans.

Issue 10

Some DPS Policies May Negatively Affect Employee Retention.

DPS policy currently requires employees with assigned fleet vehicles to live within 20 miles of their duty stations if they drive the vehicle to and from home. While designed to ensure that emergency personnel can quickly get to work, this policy may cause some hardship by requiring employees to relocate their families – in some cases, just to a nearby neighborhood – when they promote or transfer to a different duty station.

Recommendation

Management Action

10.1 Direct DPS to rescind its policy that prohibits troopers from living more than 20 miles from their duty stations, and to reconsider any other outdated policies that are hindrances to employee retention.

Under this recommendation, DPS would rescind its 20-mile policy for troopers with fleet vehicles, and would not replace it with any other restrictions on distance from duty stations, and examine other practices that may potentially impact employees' decisions to seek other employment.

Issue 11

DPS' Internal Affairs Function Is Not Properly Structured.

Law enforcement agency internal affairs offices serve to protect the reputation of police agencies and the public from possible wrong doings by personnel. The ability to conduct internal affairs investigations that are independent of the agency's supervisory chain of command is necessary to fully assess the degree of malfeasance within an agency. However, DPS' current processes and structure do not ensure the independence of internal investigations. The Public Safety Commission also does not have a direct role in overseeing the activities of the Internal Affairs Office, and multiple divisions conduct investigations, limiting the effectiveness of a centralized approach.

Recommendations

Change in Statute

11.1 Require the Public Safety Commission to hire the Director of Internal Affairs, and to directly oversee the activities of the Office.

This recommendation would improve the independence and authority of internal investigations by having the Public Safety Commission hire the Director of Internal Affairs and oversee the Office. Receiving all reports of investigations would give the Commission better access to information on which to base its direction of the agency, and establish direct accountability for the work of the Office. Clarifying that the Commission would oversee decisions regarding budgets and staffing of the Office would ensure the proper involvement of the Commission in the functions of the Office.

11.2 Establish that the mission of the Internal Affairs Office is to independently and objectively investigate all divisions of the Department.

This recommendation would clearly set in statute the mission of Internal Affairs. This mission statement should include responsibility for independently and objectively investigating criminal activity and serious breaches of departmental policy, and acting to prevent and detect criminal conduct within DPS.

Management Action

11.3 Direct DPS to enforce statutes granting the Internal Affairs Office original jurisdiction over all criminal investigations occurring on Departmental property or involving on-duty DPS employees.

11.4 Direct DPS to consolidate current internal affairs investigations throughout the Department in the Internal Affairs Office.

These recommendations would reinforce the Legislature’s statutory intent for Internal Affairs to have jurisdiction in all internal criminal investigations, avoid conflicts over jurisdictional grounds involving other units of the Department, and would help ensure that individual DPS Divisions cannot keep internal problems from coming to light. Separating the investigation of criminal cases from the normal chain of command will ensure that criminal cases receive their due degree of independence. The Internal Affairs Office should also take a proactive investigatory stance concerning possible criminal activity and serious breaches of departmental policy.

Issue 12

Computer Forensic Specialists May Be Unfairly Subject to Private Security Licensure Requirements.

Recent legislation requires individuals who engage in computer forensics – the analysis of computer-based data to determine the causes of events or peoples’ conduct – to be licensed by the Private Security Board as private investigators. Some have raised concerns that the qualifications necessary to be licensed as a private investigator do not match the qualifications necessary for a computer forensic specialist.

Recommendation

Recommendation to Legislative Committees

12.1 Request that the Legislature, through the appropriate legislative committees, consider whether technology specialists who engage in computer forensics and analysis should be separately registered or otherwise set apart from traditional private security personnel or investigators.

This recommendation would request that the appropriate legislative committees, which have oversight and knowledge of the subject, review the scope of practice of computer forensics specialists and determine whether they should have their own category of licensure, apart from private investigators. The committees should also consider whether statutory clarification is needed to ensure computer

maintenance and repair technicians and businesses fall outside the scope of private investigator or security licensing. A review of these subjects will help both the public and the individuals performing these activities know what constitutes legal practice.

Issue 13

Concealed Handgun Licensure Renewal Could Benefit From Online Classes and Testing.

Concealed handgun license renewal requires a four-hour continuing education course and a written proficiency exam, in addition to a physical demonstration of proficiency with a handgun, every five years. The first two requirements could be provided online, simplifying the renewal process for the more than 300,000 Texans who hold a concealed handgun license.

Recommendation

Change in Statute

13.1 Authorize DPS to put the classroom portion of the concealed handgun licensing renewal class and the written test online.

This recommendation would amend statute to authorize DPS to offer the classroom part of the concealed handgun license renewal class and the written test online. Online access to these features would make the renewal process easier and more efficient for licensees.

Issue 14

Texas Has a Continuing Need for the Department of Public Safety.

Key Findings

- ◆ Performing statewide law enforcement and other public safety activities continues to be needed.
- ◆ No substantial benefit or savings would result from transferring the Department's functions to other agencies.

The Department of Public Safety's mission to provide statewide law enforcement and other public safety services continues to be important to Texas, more than 70 years after the agency's establishment. While other agencies could potentially perform some of DPS' duties, no significant benefit would be realized by transferring the Department's programs, and DPS should be continued for 12 years.

Recommendation

Change in Statute

14.1 Continue the Department of Public Safety for 12 years.

While the previous issues show that DPS has significant opportunities for improvement, the agency is still clearly needed to provide public safety services at the statewide level. This recommendation would continue the Department for 12 years.

Fiscal Implication Summary

Two recommendations regarding DPS could have a fiscal impact to the State, as summarized below.

- ◆ **Issues 1 and 9** – Improving customer service at DPS' Driver License Program could have a fiscal impact to the State depending on implementation. While civilianizing the Driver License Program will not have a cost, updating the program's business practices, including its call center technology, could have costs depending on the approaches approved by the Public Safety Commission. Because these recommendations are not statutory, they will not appear in the DPS Sunset legislation. Therefore the agency would update their request for appropriations to reflect any new costs, with the Legislature making the determination on what business practice improvements are affordable.

Texas Racing Commission Equine Research Account Advisory Committee

Texas Racing Commission at a Glance

The Texas Racing Commission (Commission) regulates all aspects of horse and greyhound racing to protect the animals and participants involved in live racing, and to ensure the integrity of pari-mutuel wagering. The Legislature authorized pari-mutuel wagering on horse and greyhound races in 1986 by passing the Texas Racing Act, and establishing the Texas Racing Commission to oversee the racing industry and promote the economic and agricultural development of racing.

To accomplish its mission, the Commission:

- ◆ licenses racetrack facilities and all racing industry occupations;
- ◆ enforces the Texas Racing Act and establishes rules for racing conduct;
- ◆ allocates race dates and supervises licensee and animal conduct during live racing performances;
- ◆ oversees all pari-mutuel wagering activity, including wagers placed on simulcast races; and
- ◆ administers the Texas-bred Incentive Program.


*For additional information,
please contact Kelly Kennedy
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** The Commission spent more than \$4.4 million for its operations in fiscal year 2008, all of which came from wagers, and racing-related fees and fines. In fiscal year 2008, the Commission also collected about \$4.9 million in dedicated, pass-through funds to administer the Accredited Texas-bred Incentive Program.
- ◆ **State Revenue.** In fiscal year 2008, the State received about \$4.1 million in pari-mutuel tax on simulcast wagers. The State did not receive any live racing pari-mutuel tax because none of the racetracks met the State's tax threshold of \$100 million in live racing revenue.
- ◆ **Texas Racetracks.** The Commission currently regulates five active horse racetracks and two active greyhound racetracks. The Commission also oversees six non-operational racetrack licenses.

- ◆ **Regulation.** The Commission currently employs a staff of 81, with 52 employees located at racetrack facilities throughout the state. These employees supervise live racing and oversee the more than 14,600 occupational licensees registered with the Commission. During fiscal year 2008, Commission staff resolved 479 disciplinary actions involving licensees.

Commission Members (9)

Rolando Pablos, Chair (San Antonio)

G. Kent Carter, D.V.M., Vice Chair (Caldwell)

Jesse R. Adams (Helotes)

Roland F. Ederer (Fair Oaks Ranch)

Gloria Hicks (Corpus Christi)

Robert Schmidt, M.D. (Fort Worth)

Charles L. Sowell (Houston)

The Honorable Susan Combs, Ex Officio, Comptroller of Public Account (Austin)

Thomas Clowe, Ex Officio, Designee for Chair, Public Safety Commission (Waco)

Agency Head

Charla Ann King, Executive Director

(512) 833-6699

Equine Research Account Advisory Committee at a Glance

The Equine Research Account Advisory Committee (Committee) helps address the informational needs of the equine breeding and racing industries by recommending funding for equine research at Texas universities. In 1991, the Legislature amended the Texas Racing Act to dedicate a small amount of horse-racing wagers for equine research. These funds are deposited into the Equine Research Account, which is administered by the Director of Texas AgriLife Research, a system agency part of the Texas A&M University System and formerly known as the Texas Agricultural Experiment Station. The Committee, also created in 1991, provides subject matter expertise to AgriLife Research's Director when making grant decisions. To accomplish its mission, the Committee sets grant topics, reviews grant proposals, and recommends grant awards. The Committee is also statutorily charged with holding an annual conference on relevant equine research topics.

Key Facts

- ◆ **Funding.** In fiscal year 2008, Texas AgriLife Research pledged to gift the Committee about \$75,000 to award equine research grants.
- ◆ **Staffing.** Texas AgriLife Research provides administrative support to the Committee.
- ◆ **Research Grants.** Since its inception, the Committee has recommended awarding funding to 36 research projects, totaling \$1.2 million.
- ◆ **Equine Research Conferences.** The Committee has not held a conference on equine research in the past five years. However, the Committee plans to hold a jointly sponsored conference with other organizations.

Commission Members (10)

David Forrest, Ph.D., Chair (College Station)

Larry Boleman, Ph.D. (College Station)

Heidi Brady, Ph.D. (Lubbock)

G. Kent Carter, D.V.M. (College Station)

Charles Graham. D.V.M. (Elgin)

Don Henneke, Ph.D. (Stephenville)

Lex Smurhtwaite (Fort Worth)

Claudia Spears (Willis)

Barry Thompson, Ph.D. (West)

Dickson Varner, D.V.M. (College Station)

Agency Head

Dr. William Dugas, Interim Director

(979) 845-7980

Recommendations

1. Improve the Racing Commission's ability to regulate the racing industry.
2. Require the Commission to increase and ensure consistent oversight of licensees who can affect pari-mutuel racing.
3. Eliminate current statutory limitations on withdrawals from automated teller machines at racetracks.
4. Continue the Texas Racing Commission for six years.
5. Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

Issue 1

The Commission Lacks Certain Regulatory Tools Needed to Oversee Today's Racing Industry.

Key Findings

- ◆ As Texas' racing industry has evolved, the Texas Racing Act has not kept pace with industry changes.
- ◆ The Commission's statutory method of finance no longer provides a reliable source of revenue to ensure adequate regulation of the racing industry.
- ◆ The Texas Racing Act does not address new wagering alternatives that expand Texans' ability to gamble.

The Texas Racing Act does not reflect the environment in which the Texas Racing Commission operates. Also, the Commission's enforcement efforts can be improved to ensure consistent, evenhanded oversight of the declining industry it oversees. Without statutory change and further direction, the Commission's ability to effectively manage the racing industry in the manner originally prescribed by the Legislature is compromised.

Recommendations

Change in Statute

- 1.1 Require the Commission to review each racetrack license on a periodic basis and develop renewal criteria along with associated sanctions for failure to comply.**

This recommendation would require the Commission to review active racetrack license holders no less than every five years, and grant the Commission rulemaking authority to develop appropriate implementation procedures within that timeframe. The Commission would also be required to complete an initial review of all inactive racetrack license holders no later than September 1, 2010 and require the Commission to complete a review of any future inactive license holders within one year of entering inactive status and, if renewed, annually thereafter. Each new racetrack license issued after January 1, 2007 would have until September 1, 2011 or two years after license issuance, whichever is later, before the Commission considers each license holder for the renewal program.

In devising the renewal process, the Commission should consider reviewing some similar areas as reviewed during the initial licensure process, including financial soundness and the ability to conduct live race events. The Commission should involve members of the racing industry and other key stakeholders in developing the renewal process and associated fees. By instituting a renewal process, the Commission would be able to maintain ongoing oversight of current racetrack license holders beyond the general inspection and enforcement process and ensure that licensed racetracks fulfill racing obligations.

1.2 Clarify the Commission’s revocation authority and ability to refuse to renew a racetrack license and modify the Texas Racing Act to allow the Commission to require racetrack licensees to post security at any time.

This recommendation would clearly grant the Commission authority to employ an appropriate range of penalties for disciplinary actions against racetrack license holders. In developing the renewal process described in Recommendation 1.1, the Commission would incorporate refusal to renew a license into its disciplinary actions. For example, the Commission would consider financial soundness, as described above, and the ability to conduct live races in deciding whether to renew or refuse to renew a racetrack license. This recommendation also allows the Commission to require a racetrack license to post security at any point in time, ensuring that licensees fulfill their statutory obligations to build their tracks and run live race dates.

1.3 Eliminate uncashed winning tickets as a source of Commission revenue.

Uncashed tickets are a diminishing and unstable form of funding for the Commission. This recommendation would remove uncashed winning tickets as a method of finance for the Commission. Racetracks would be allowed to keep all revenue from uncashed winning tickets and continue to use that revenue to offset the cost of drug testing race animals. The Commission would need to replace the loss of revenue by adjusting other racing-related regulatory fees paid by each licensed racetrack.

1.4 Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.

Under this recommendation, the Texas Racing Act would be amended to clarify that no entity, including out-of-state businesses that offer online or phone accounts, can accept wagers on horse or greyhound races by Texas bettors. By making this clarification, the Texas Racing Act would be updated to reflect the Legislature’s position on allowable betting in today’s technologically advanced world. Also, other state or federal entities with authority to prosecute violations of the Texas Racing Act would have the basis to pursue known violators.

Management Action

1.5 Direct the agency to adopt a plan to further integrate field staff into the Commission’s overall racetrack enforcement plan.

Under this recommendation, the Commission would develop and adopt a plan to fully align agency field staff with the Commission’s new racetrack enforcement process. Management from the agency’s central office would also need to more regularly update Commission members on the progress of implementing this new enforcement approach and facility problems or other issues that are discovered during various enforcement efforts.

Issue 2

Weaknesses Exist in the Commission's Approach to Licensing Racing Industry Occupations.

Key Findings

- ◆ Licensing individuals who do not have influence over pari-mutuel racing serves no clear public interest.
- ◆ The Commission's process for obtaining criminal histories is inadequate to ensure full public protection.

The Texas Racing Commission licenses all occupations at a racetrack in an effort to protect racing participants and the wagering public. While licensing all racetrack occupations gives the Commission direct authority over all individuals at a racetrack, this does not efficiently use agency resources or provide added public protection. Licensing occupations not directly involved in live racing or pari-mutuel wagering is costly and the agency must use its limited investigatory resources overseeing occupations that pose little threat to racing participants or the wagering public. The Commission also has problem areas in its licensing practices, including lengthy waits for criminal history background checks, oversight of practical exams for licensees, and a need to ensure consistency for licensee enforcement.

Recommendations

Change in Statute

2.1 Require the Commission to license only those individuals who can affect pari-mutuel racing.

This recommendation would require the Commission to license only those directly involved with pari-mutuel racing. The recommendation would reduce the number of licensees the Commission oversees by more than 2,400. The Commission would continue to license occupations that need significant access to the backside of a racetrack or restricted areas of the frontside as part of their job duties. The Commission would retain authority over non-licensed frontside employees through their employers. Racetracks would be responsible for ensuring employees' compliance with the Racing Act and Rules of Racing. By shifting the responsibility for overseeing these licensees to racetrack associations, Commission investigators would be able to focus their attention on the other licensees who account for more than 90 percent of all violations.

2.2 Require the Commission to obtain criminal history reports every three years.

This recommendation would require the Commission to perform criminal history checks every three years instead of the current five-year time period. Doing so would provide better public protection and bring Texas in line with national racing industry standards.

Management Action

2.3 The Commission should develop a faster method of obtaining criminal history reports.

Applicants with adverse criminal histories can work in secure areas of a racetrack for two to three weeks under the Commission's current criminal history check process. This recommendation would direct the Commission to pursue fingerprinting services that can return a criminal history in less than the current two to three week time frame. Receiving criminal history reports more quickly would allow the Commission to deny the licenses of potentially dangerous applicants in a much shorter time, possibly before the applicant even begins working. DPS indicates that electronic fingerprinting results in the return of a DPS and FBI criminal history within three days. For those applicants who need to begin work immediately, the Commission could issue a temporary license that would be replaced by a permanent license if the criminal history reported eligibility. Costs to the State for using electronic fingerprinting services would remain the same. However, applicants using this system would pay an additional \$10 service fee to the private vendor.

2.4 The Commission should develop processes for overseeing practical examinations.

Under this recommendation, the Commission would develop a system for administering practical exams that provides more oversight of the examination process. The Commission should create written guidelines that detail acceptable methods of administering practical exams and provide clear definitions of the tasks each applicant is expected to perform. The Commission should also administer written exams before practical exams and adopt a standardized practical exam with answer keys for individuals administering the exam. These changes would give the Commission greater oversight of an applicant's knowledge base and would help ensure that practical examinations are fair and consistent.

2.5 The Commission should ensure that licensee oversight is consistent from racetrack to racetrack.

The Commission should create a manual that details investigation and inspection practices and procedures to better ensure consistent oversight by investigators at each racetrack, and provide set guidelines for new investigators. The Commission could gather the current practices of each investigator and use these as guidelines for developing the manual. The manual should create uniform procedures for performing investigations of both racetrack facilities and occupational licensee violations, and be regularly updated.

Issue 3

The Statutory Automated Teller Machine Withdrawal Limit at Racetracks Unduly Restricts Patrons From Accessing Their Funds.

The Texas Racing Commission ensures the integrity of wagers and the safety of the wagering public. However, the current statutory limit of \$200 in automated teller machine (ATM) withdrawals per day at racetracks does not ensure the integrity of wagers nor does it protect the wagering public. Since patrons are free to withdraw additional funds off site, this limit only serves to inconvenience patrons and does little to prevent excessive gambling.

Recommendation

Change in Statute

3.1 Eliminate the current statutory limitation which prevents track patrons withdrawing more than \$200 from a checking or savings account.

This recommendation would remove the statutory limit of \$200 in ATM withdrawals in a single day. Track patrons would still be limited by the terms of their ATM card and financial institution. Also, the Racing Commission would continue to regulate other aspects of ATM use at racetracks as prescribed by the Texas Racing Act.

Issue 4

Texas Has A Continuing Need for the Texas Racing Commission.

Key Findings

- ◆ The Commission oversees a declining racing industry.
- ◆ Despite declining wagers and a shrinking industry, Texas has a clear and continuing interest in regulating pari-mutuel racing.

The Texas Racing Commission manages the pari-mutuel racing industry, ensures the safety of racing participants, and certifies the integrity of the wagering process. The Legislature created the Commission to oversee this industry because it involves gambling, and the very nature of and risks involved with the gambling industry require strict State oversight. While Texas clearly has a continuing interest in regulating the pari-mutuel racing industry, the ongoing decline within the racing industry presents significant challenges to the Commission and its ability to regulate the industry.

Recommendation

Change in Statute

4.1 Continue the Texas Racing Commission for six years.

This recommendation would continue the Commission as an independent agency for six years, instead of the standard 12 years. This would allow the Legislature the opportunity to re-evaluate the Commission's role in regulating a declining industry at that time. While the State should continue regulating the pari-mutuel racing industry, the future of the industry is unknown at this time and the Commission may need additional tools to again readjust to a further decline or a revived industry.

Issue 5

The State No Longer Needs the Equine Research Account Advisory Committee.

Key Findings

- ◆ Benefits of all equine research funded through the Committee are not clear.
- ◆ Texas does not need a separate committee to review and recommend equine research grants.

In 1991, the Legislature amended the Texas Racing Act to set aside a portion of pari-mutuel wagers placed on Texas horse races to fund equine research relating to the horse racing and breeding industries. The Equine Research Account Advisory Committee (Committee) helps oversee this grant process by setting research priorities, reviewing research proposals, and recommending grant funding levels. While the State and the racing industry could benefit from this Committee-funded research, the impact of funded research has not been assessed. In addition, the Legislature has not provided grant funds to the Committee since 2003.

Recommendation

Change in Statute

5.1 Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

This recommendation would eliminate the Equine Research Account Advisory Committee from statute and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds. Dissolving the Committee structure would allow Texas AgriLife Research to directly administer grant funds and pool racing-industry funding with other funding sources – providing a greater research impact, while increasing oversight of research results.

In expending these funds, Texas AgriLife would use its existing research proposal review and award process, including involving subject-matter experts to evaluate proposals, when needed, and would adhere to Texas A&M University conflict of interest provisions. Texas AgriLife Research would also be able to pair Equine Research Account funds with other agency revenue or funding sources to create larger funding pools for long-term research initiatives. Under this recommendation, Texas AgriLife Research would also use existing agency resources to communicate the impact of funded research projects to the racing industry, including the Texas Racing Commission. Equine Research Account funds would be directly associated with the Texas A&M University System, however other Texas university faculty would not be prohibited from partnering with A&M System faculty to receive funds, as is commonly done now.

Fiscal Implication Summary

None of the recommendations relating to the Texas Racing Commission or the Equine Research Account Advisory Committee would have a fiscal impact to the State.

Texas Residential Construction Commission

Agency at a Glance

In 2003, the Legislature created the Texas Residential Construction Commission to regulate the residential construction industry and to provide clear, limited warranties for all new construction and remodel projects. The Commission's main functions include:

- ◆ registering builders, remodelers, new homes, and remodeling projects;
- ◆ enforcing the Texas Residential Construction Commission Act and Commission rules, and taking disciplinary action when necessary;
- ◆ administering the State-sponsored Inspection and Dispute Resolution Process which provides a neutral, third-party review of alleged post-construction defects; and
- ◆ maintaining the State's Limited Statutory Warranties and Building and Performance Standards.

*For additional information,
please contact Kelly Kennedy
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** The Commission operated on a budget of about \$10.6 million in fiscal year 2008. Revenues come from fees paid by builders, and fees homeowners pay as part of the State Inspection Process.
- ◆ **Staffing.** In fiscal year 2008, the Commission employed 70 staff.
- ◆ **Registration.** The Commission regulates approximately 30,000 builders, who have registered a total of about 678,000 homes. The Commission also oversees 279 third-party inspectors, four arbitrators, and nine third-party warranty companies.
- ◆ **Enforcement.** In fiscal year 2008, the Commission took enforcement action against 116 builders.
- ◆ **State Inspection.** In 2008, the agency opened 568 State Inspection cases, which included more than 29,000 individual alleged defects. The Commission's third-party inspectors confirmed that 51 percent of the alleged defects were, in fact, post-construction defects in need of repair.

Commission Members (9)

Paulo Flores, Chair (Dallas)

Glenda Mariott, Vice Chair (College Station)

Lewis Brown, Secretary (Trinity)

Art Cuevas (Lubbock)

Kenneth Davis, P.E. (Weatherford)

Gerardo "Jerry" Garcia (Corpus Christi)

John Krugh (Houston)

Steven Leipsner (Lakeway)

Mickey Redwine (Ben Wheeler)

Agency Head

Duane Waddill, Executive Director

(512) 463-9524

Recommendations

1. Continue the Texas Residential Construction Commission for four years.
2. Amend the Texas Residential Construction Commission Act to include an agency purpose clause.
3. Restructure the Commission to provide additional focus on consumer issues and increase technical expertise.
4. Streamline the State Inspection Process to provide more efficient and effective outcomes and offer a mechanism for homeowners to opt out of the Process in cases where certain delays occur.
5. Improve the Commission's enforcement authority over registered builders and unregulated activity.
6. Require the agency to offer incentive to builders who fix confirmed defects.
7. Establish an Office of the Ombudsman to ensure consumer interests are represented within the agency and before the Commission.
8. Require the Commission to produce a brochure detailing agency programs to be distributed at new home closings.
9. Increase the amount of continuing education required of registered builders and remodelers.
10. Abolish the Star Builder Program.
11. Expand the eligibility to provide fee inspections as part of the County Inspection Program.
12. Direct the agency to study the possibility of adopting building codes for unincorporated areas.
13. Establish a recovery fund.

Issue 1

The State Has a Continuing Need for the Texas Residential Construction Commission.

From its inception, the Texas Residential Construction Commission has received criticism of its ability to effectively oversee builders and protect Texans from poor quality home construction. Although the Legislature recently listened to these concerns and made significant changes to the Commission and its enforcement abilities, additional changes are needed to help ensure adequate oversight of the industry and public protection. Also, the agency needs more time to assume these new powers and develop a track record for judging its ability to effectively oversee the homebuilding industry and resolve home defects through the State Inspection Process.

Recommendation

Change in Statute

1.1 Continue the Texas Residential Construction Commission for four years.

This recommendation would continue the Texas Residential Construction Commission as an independent agency for four years, instead of the standard 12-year period. The next Sunset review would include an assessment of the agency's overall performance, as in any Sunset review, and the agency's ability to implement statutory changes and management actions resulting from this current review.

Issue 2

The Commission's Statute Does Not Provide A Clear Focus and Strategic Direction for the Commission.

The Texas Residential Construction Commission Act does not help guide the Commission in the dual-purpose environment in which it operates. The Legislature charged the Commission with elements of a regulatory agency through its registration of homebuilders and remodelers. However, the Act also charges the Commission with administering the State Inspection Process, designed to resolve disputes between homeowners and builders before either party may pursue legal action. Having a regulatory agency serve such different and potentially competing functions is unusual in state government, and it challenges the agency's ability to determine how best to pursue its oversight and service functions.

Recommendation

Change in Statute

2.1 Amend the Texas Residential Construction Commission Act to include an agency purpose clause.

This recommendation would establish an agency mission in the Texas Residential Construction Commission Act, guiding the Commission's work and clearly reflecting the agency's dual purpose of

providing industry oversight and operating a service-related program through the State Inspection Process. Under this recommendation, the mission clause would define the agency's overall purpose as maintaining oversight of all builders and remodelers registered with the agency, ensuring that registered builders and remodelers are responsible and accountable to the homeowners with whom they contract.

The agency's mission would also include the Commission having a role in educating builders and homeowners about aspects of the residential construction industry affecting the building or remodeling of Texas homes. Finally, the agency's mission would include having a service role in facilitating dispute resolution regarding construction defects between homeowners and builders through the State Inspection Process. These changes would provide a framework to guide the Commission's work. The changes would also provide more clarity both to homeowners and builders regarding their expectations for the agency and to entities like the Legislature that are responsible for evaluating the Commission's overall performance.

Issue 3

The Commission Does Not Have Consumer Representation or Technical Expertise Needed for Its Unique Regulatory and Dispute Resolution Responsibilities.

The Texas Residential Construction Commission Act guides the agency's two main functions – regulation of Texas' homebuilding industry and providing a mechanism for resolving defect disputes between homeowners and homebuilders through the State Inspection Process. In creating the Commission, the Legislature also defined minimum statutory warranties and charged the Commission with outlining the building and performance standards, which govern the way all aspects of a new home or remodel project should perform in a given time period and act as the benchmark for completing State Inspections. These responsibilities go beyond the traditional role of a regulatory agency, and underline the important role of consumer representation and technical expertise in the Commission's decision-making process.

Although the Commission's membership currently includes consumer representatives, members of the homebuilding industry, and technical experts, the Commission could benefit from having additional consumer representation and technical, building expertise.

Recommendation

Change in Statute

3.1 Restructure the Commission to provide additional focus on consumer issues and increase technical expertise.

This recommendation increases the size of the Commission from nine to 11 members by adding a public member and adding a requirement for both an architect and an engineer, instead of the original requirement for either an architect or engineer member. Increasing the number of public members from three to four would provide equal representation with homebuilders on the Commission, and help ensure a stronger consumer voice than now exists. Also, adding the requirement of an architect and an

engineer provides additional technical expertise in the area of building construction and performance-related issues, which is especially important given the Commission's role in approving building and performance standards.

Issue 4

Delays in Completing the State Inspection Process Threaten Its Role as a Meaningful Prerequisite to Legal Action for Aggrieved Homeowners.

The State-sponsored Inspection and Dispute Resolution Process provides a neutral, third-party review of post-construction defects. Consumers and builders have the opportunity to use the State Inspection Process, however both parties must go through this process before entering the legal system to seek monetary awards or final judgments. The State Inspection Process is a lengthy, sometimes difficult process for homeowners seeking to remedy a problem with their home.

Statutory guidelines require homeowners to provide 30-days written notice before entering the State Inspection Process, and give the agency 110 days to process a case involving workmanship and material defects and 140 days to process a case involving structural issues. However, the agency often takes longer than the statutorily allotted timeframes to process a State Inspection case. These timeframes mean that even under the best of circumstances, homeowners must wait nearly four months to complete the State Inspection Process to address problems with their homes.

Also, once the State Inspection Process officially ends, if a defect is confirmed, builders are required to update the agency on the progress of repairing the confirmed defect. Significant parts of this process, however, are not detailed in statute and could be improved to provide the agency with more frequent information regarding the status of repairs made.

Recommendations

Change in Statute

4.1 Streamline the State Inspection Process to provide for more efficient and effective outcomes.

This recommendation would simplify the Commission's State Inspection Process, by reducing requirements and shortening timeframes. As a result, State Inspection cases would be closed more quickly, resulting in increased customer satisfaction. Under this recommendation, the State Inspection Process would be amended in the following ways.

- ◆ Eliminate the requirement for homeowners to provide an initial, 30-day written notice to a builder or remodeler before filing a State Inspection request with the Commission.
- ◆ Decrease the statutory timeframe provided for the agency to assign a third-party inspector to a State Inspection case from 30 days to 10 days after the Commission receives the State Inspection request.
- ◆ Authorize the Commission to use its own staff to conduct inspections in emergency situations.
- ◆ Decrease the timeframe for third-party inspectors to complete structural case reports from 60 days to 45 days.

4.2 Amend the State Inspection Process to allow both parties to opt out if the Process goes beyond the newly shortened specific statutory timeframes.

Under this recommendation, both parties to a State Inspection case would have the right to stop the State Inspection Process and pursue legal action if the final action by the agency's Appeal Panel goes beyond the 30-day statutorily allowed timeframe, or if the Process, at any point, goes beyond 90 days for inspections involving workmanship and materials and 105 days for inspections involving structure, as the reduced timeframe in Recommendation 4.1 provides. By establishing hard dates after which both parties may exit the Process to pursue legal action, the recommendation would provide greater certainty for homeowners and builders and provide an escape from the delays that prolong the current Process.

4.3 Clarify statute to provide timeframes for re-inspection of repaired defects.

Under current Commission rule, if a homeowner accepts a builder's offer to repair, the builder is required to re-hire and pay for the third-party inspector who performed the initial State Inspection to inspect the completed repair work. This recommendation would amend statute to specify timeframes for these re-inspections as 30 days for workmanship and material cases and 45 days for structural cases. This recommendation would also clarify that homeowners who do not accept a builder's offer of repair can immediately pursue legal action.

4.4 Clarify statute to require builders to report the status of repaired defects.

Under current Commission rule, builders are required to submit information relating to any activities, including settlements, repair efforts, arbitration or litigation, which have occurred as part of the findings in the State Inspection Process. This recommendation would codify this process in statute and increase the frequency of reports to every 21 days, instead of the current 45-day timeframe, allowing the agency to be more frequently updated on the status of repairs.

4.5 Require the agency to implement a priority scheme for processing State Inspection requests.

This recommendation would require the Commission to adopt procedures for processing State Inspection requests, which would include assessing cases to better prioritize its efforts when appropriate. When developing these procedures, the agency should consider emergency circumstances, including habitability, and complexity of case material, including structural defects as compared to workmanship and material complaints. This change would give priority to those complaints that justify swift action and immediate attention.

4.6 Authorize third-party inspectors to include additional defects in the final inspection report.

This recommendation would allow third-party inspectors to add defects discovered during the inspection that are not included on the original State Inspection request. Inspectors would be authorized to use their own judgment in determining whether a defect should be included in the initial inspector's report and should not base this determination solely on a request by either the homeowner or the builder. Items added by the inspector and included in the inspector's report as defects would be the responsibility of the builder to repair. In addition, the defects must relate to violations of codes, standards, or warranties. This recommendation would provide consumers with an additional review of the quality of their home, allowing for an opportunity to repair any suitable defects discovered by the inspector's technical review.

Issue 5

The Commission Lacks Discretion to Take Enforcement Action as It Determines Necessary.

The Commission is charged with overseeing the homebuilding industry, including more than 30,000 builders and remodelers. Currently, however, statutory restrictions limit the Commission's authority to discipline registered builders and remodelers, including suspending or revoking a registration. Also, while the Commission currently has cease-and-desist authority to take action against unregistered building activity, the process is cumbersome and, thus, rarely used by the agency.

Recommendations

Change in Statute

5.1 Clarify the Commission's authority to suspend or revoke a builder's registration and take general enforcement actions.

This recommendation would allow the Commission to consider revocation and suspension of a builder's registration without the builder satisfying a prerequisite of repeated violations that result in disciplinary action. The Commission would also be authorized to take disciplinary action against a builder or designated agent for failure to participate in the State Inspection Process, failure to respond to a Commission request, or failure to comply with the requirements of the County Inspection Program without the builder having to violate these requirements multiple times.

These changes give the Commission direct authority to assess the builder's violation, compliance history, and other relevant information when taking disciplinary action, including revocation and suspension actions, as is common with most regulatory agencies. This recommendation also ensures that all builders, including those new to the field or who build few homes, are held accountable for any violations of the Act or Commission's rules, subject to the judgment of the Commission.

5.2 Clarify the Commission's cease-and-desist authority.

This recommendation would clarify that the Commission has clear, direct authority to issue cease-and-desist orders to stop unregistered activity that undermines the Commission's regulations and threatens public safety. In addition, this recommendation would grant the Commission authority to assess administrative penalties as a part of a cease-and-desist order. Providing the Commission with clear cease-and-desist authority would help the agency to more quickly protect consumers from illegal building activity and help instill greater confidence in the Commission's regulatory authority.

Issue 6

Builders Have Little Incentive To Fix Defects Confirmed Through the State Inspection Process.

The Commission's State Inspection Process is designed to resolve defect disputes between homeowners and builders through a neutral, third-party review of alleged defects. Although builders are statutorily required to comply with this Process, the Commission does not have the authority to require a builder to fix any confirmed defects. As a result, only half of all defects confirmed through the State Inspection Process are remedied by the builder. Currently, once the State Inspection Process is complete, a copy of the Commission's findings regarding the case is available under the builder's listing on the Commission's website.

Because the Commission does not remove information about completed State Inspections from its website or files – even if the builder repaired the defect to the satisfaction of the homeowner – the builder has less incentive to fix defects confirmed through the Process. Also, while a builder has a case going through the State Inspection Process the Commission does not pursue enforcement action against that builder so that it will not further disrupt communication with the builder in the Process. The effect is to encourage builders to draw out their participation in the State Inspection Process as a way to delay or even avoid enforcement action.

Recommendations

Change in Statute

6.1 Amend the Texas Residential Construction Commission Act to delete all public records of a State Inspection request if the builder fixes the defect.

This recommendation would require the agency to remove State Inspection request forms, case material, and final recommendations from its website and internal files if the builder repairs the confirmed defects – regardless of the timeframe in which the repairs occur. All State Inspection records would thus no longer be considered a public record at the time the repair is confirmed by the agency. The agency would confirm the validity of the repair with the homeowner and the inspector who performs the second inspection to ensure that all defects are, in fact, repaired. This recommendation provides an incentive for builders beyond an offer to repair the confirmed defect, to complete the repair to the homeowner's satisfaction.

Management Action

6.2 Direct the agency to use the disciplinary process to help negotiate repair offers.

Under this recommendation, the Commission would be required to begin the disciplinary process against a builder involved in a State Inspection case once the third-party inspector issues the final report. Currently, the agency does not pursue disciplinary action against a builder involved in an open State Inspection case. This change would encourage the builder to make repairs by allowing the agency to negotiate lower disciplinary action if repairs are made to a consumer's satisfaction.

Issue 7

Statute Does Not Reflect the Commission's Current Efforts to Meet Consumer Needs and Represent Consumer Interests.

Before January 2008, the Commission's involvement with all State Inspection cases ended once the inspector's report or appeal panel's decision was issued. Since then, the agency has used an Ombudsman to help homeowners and builders come to a resolution once the inspection process is complete. Through informal mediation, the Ombudsman acts as a buffer to restore broken communications between the homeowner and homebuilder and facilitate home repairs by gaining the cooperation of both parties, through informal repair agreements. The program has enjoyed success in improving communication between homeowners and builders and facilitating needed repairs, but the Ombudsman is not detailed in statute, compromising its longevity as a program within the agency and its clout with homebuilders. In addition, the current Ombudsman position is limited in its authority to represent consumers' concerns.

Recommendation

Change in Statute

7.1 Establish an Office of the Ombudsman to ensure consumer interests are represented within the agency and before the Commission.

Under this recommendation, the Office of the Ombudsman would be detailed in statute, formalizing the existing program which helps facilitate defect repairs following completion of the State Inspection Process. Within the Office, the lead Ombudsman would be required to be a licensed attorney and would be hired by and report directly to the Commission. The lead Ombudsman's main duties would include overseeing staff to carry out the post-State Inspection mediation process between builders and homeowners. The Ombudsman would also be responsible for commenting on rules and other policy changes before the Commission.

Formally establishing this Office in statute ensures that future Commissions provide a resource to consumers after the agency's official jurisdiction ends with the State Inspection Process. This recommendation also gives consumers an additional voice within the agency and before the Commission.

Issue 8

The Current Method of Providing Resource Information to Homeowners Does Not Adequately Ensure They Receive Needed Information.

The Commission currently produces a homeowner information booklet that is mailed to all homeowners when the builder or remodeler registers the home with the agency. Information contained in this brochure includes a description of the statutory warranties, the Commission's building and performance standards, the State Inspection Process, and other resources for homeowners with potential defects in their new home or remodeling project. The usefulness of this informational booklet is diminished

because it is mailed once the builder registers the home, and arrives separately from other important documents related to the home and often months after the new home is purchased. Also, because an unknown number of homes go unregistered by the builder without the homeowner's knowledge, these consumers similarly are less likely to be aware of the Commission's role.

Recommendation

Change in Statute

8.1 Require the Commission to produce a brochure detailing agency programs to be distributed at new home closings.

Under this recommendation, the agency would continue to produce, and update as needed, a homeowner information booklet, made available online or in a hard copy format. However, the agency would no longer mail this booklet to a homeowner once the home is registered. Instead, closing agents would be required to distribute this publication at a new home closing. This recommendation would continue the Commission's responsibility to provide brochures to homeowners with newly remodeled homes who do not go through the closing process. The Commission would be authorized to make any needed adjustments to the home registration process to facilitate this new process. Changing the point at which the Commission's information booklet is distributed ensures that homeowners receive the information with other important documentation and through a process that is not dependent on the builder registering the home.

Issue 9

Current Continuing Education Requirements Do Not Ensure Builders Remain Up To Date on Industry Changes.

In 2007, the Legislature required all registered builders and remodelers to receive continuing education. Builders who registered with the Commission before September 1, 2007 are required to complete five hours of continuing education within five years. Builders registering with the Commission after this date are required to complete five hours of continuing education within the first year and then satisfy the requirement for five hours every five years thereafter. The staggered nature of these requirements causes a confusing array of dates that the agency and builder track for completing continuing education, none of which coincide with builders' registration renewal date, which occurs every two years. Also, with the exception of newly registered builders, the current requirement does not ensure that builders remain aware of changes within the industry.

Recommendation

Change in Statute

9.1 Require registered builders and remodelers to complete three hours of continuing education every two years.

This recommendation would increase the amount of continuing education requirements that registered builders and remodelers must satisfy from five hours every five years to three hours every two years to coincide with their registration renewal. New requirements would be effective on September 1,

2009, but would not be considered as a part of renewal until September 1, 2011, giving registrants an opportunity to comply with the new requirements.

Increasing the amount of continuing education required by builders helps ensure that they have greater access to education on new building techniques and changes in the homebuilding industry. Changing to a two-year cycle would allow for aligning the requirement with registration renewal to help the agency in its efforts to ensure compliance and would provide a greater opportunity for training regarding regulatory changes resulting from the biennial legislative cycle.

Issue 10

Texas No Longer Has a Need for the Star Builder Program.

The Commission administers the Star Builder Program, a voluntary program for builders who have demonstrated experience, a proven track record of exemplary business practices and a dedication to customer services. To qualify, a builder must meet certain criteria and provide documentation indicating experience, education levels, training, financial stability, insurance, and building practices.

Although the Legislature intended for the Star Builder Program to assure consumers that designated builders provide a higher level of quality construction and service, few builders have applied to the Commission for a Star Builder designation. The Commission maintains that few builders are part of the Program because the designation is rarely recognized by consumers in the marketplace and the application process is not worth the small benefit received by having the designation. Currently, out of the approximately 30,000 registered builders, only 31 have the Star Builder designation.

Recommendation

Change in Statute

10.1 Abolish the Star Builder Program.

This recommendation would remove the Star Builder Designation from statute. Abolishing the program would allow the agency to focus on its main tasks of regulating the homebuilding industry and administering the State Inspection Process.

Issue 11

Qualified Professionals Are Currently Excluded From Performing County Inspections.

In 2007, the Legislature created the County Inspections Program, which aims to gain greater compliance with accepted residential building standards by requiring new homes and remodel projects completed in unincorporated areas to be inspected by eligible inspectors. Statute requires the County Inspections Program to include three phases of inspections on each qualifying project or home under construction: an inspection of the foundation before the placement of concrete, an inspection on framing and mechanical systems before sheetrock is installed, and a full inspection upon project completion.

Architects licensed by the Texas Board of Architectural Examiners, engineers licensed by the Texas Board of Professional Engineers, inspectors licensed by the Texas Real Estate Commission, and the Commission's third-party inspectors are all eligible to serve as fee inspectors. The demand for inspectors in unincorporated areas is high, however certain professionals who are trained and otherwise qualified to perform these types of inspections are currently not statutorily eligible to register with the Commission as a fee inspector under the County Inspections Program.

Recommendation

Change in Statute

11.1 Expand the statutory eligibility to provide fee inspections as part of the County Inspections Program.

This recommendation would include plumbing inspectors licensed by the Texas State Board of Plumbing Examiners and certified building officials as eligible to perform fee inspections as part of the County Inspection Program. Adding these two professions to the list of eligible fee inspectors increases the pool of qualified professionals who are able to provide this inspection service to builders across the state.

Issue 12

No Entity Studies Information Regarding the Effects of Building Codes on Rural Texas.

In 2007, the Legislature amended the Texas Residential Construction Commission Act to require individuals building in unincorporated areas of the state to adhere to specific building codes. Although these statutory requirements are relatively new, the codes detailed in statute have been replaced by newer versions and are out of date. No analysis has occurred, however, to determine the possible effects that updating these codes in statute would have on the quality of construction in rural areas or on the cost of housing.

Recommendation

Management Action

12.1 Direct the agency to study the possibility of adopting building codes for unincorporated areas.

This recommendation directs the agency to create an advisory committee to research the feasibility of adopting new or amending existing building codes that apply to unincorporated areas of the state. In developing this research, the committee should include expertise from the following organizations:

- ◆ the Building Officials Association of Texas;
- ◆ the Texas Association of Counties;
- ◆ the Texas A&M University Department of Construction Science; and
- ◆ any other organization that has expertise in the area of building codes.

Also, in developing this research the committee should conduct its work in an open meeting and take public comment from various stakeholders in accordance with the Open Meetings Act. Under this recommendation, the committee should complete this study by January 1, 2011 and submit the findings in a report to the Sunset Commission and the agency's House and Senate oversight committees. Using information compiled by the committees, the 82nd Legislature would be able to re-evaluate the issue of discrepancies between building codes in urban and rural areas of the state.

Issue 13

Texas Lacks the Means to Indemnify Homeowners From Unpaid Judgments Against Homebuilders.

Recovery funds provide a means for indemnifying persons from harm when responsible parties fail to make good on judgments against them. While Texas operates a State Inspection Process to resolve defect disputes, the State does not operate a recovery fund to indemnify homeowners who have won judgments against builders, but never receive the required payment, typically because the builder has gone out of business or has failed to maintain needed financial responsibility. Without a recovery fund, Texas homeowners lack a potential remedy for wrongs perpetuated by builders.

Recommendation

Change in Statute

13.1 Establish a consumer recovery fund.

This recommendation would establish a recovery fund to reimburse consumers for damages caused by builders. Under this recommendation, consumers would only be eligible for reimbursement if they have pursued the State Inspection Process to resolve a defect that has gone without remedy because the builder is no longer in business. Additional details regarding the recovery fund, including a process for accessing the fund and a funding mechanism would be determined during the 81st Legislative Session. By establishing a recovery fund, Texas would provide consumers with another remedy for dealing with defect disputes, which would otherwise go unresolved or be resolved at the expense of the homeowner.

Fiscal Implication Summary

None of the recommendations regarding the Texas Residential Construction Commission would have a fiscal impact to the State. However, one recommendation could have a fiscal impact to the State, depending on whether or not the Legislature expands the provision, as discussed below.

- ◆ **Issue 13** – As currently recommended, establishing a consumer recovery fund would not have an impact to the State, however the current recommendation does not specify a funding stream for the fund. Depending on how the Legislature chooses to appropriate funding to the fund, this recommendation could have a fiscal impact to the State.

Office of State-Federal Relations

Special Purpose Review

The Office of State-Federal Relations (the State-Fed Office) underwent Sunset review in 2006, and the Sunset Commission forwarded recommendations to the Legislature in 2007. However, the Sunset bill did not pass. Instead, the Legislature, through separate legislation, continued the Office for two years and required a follow-up Sunset review to focus on the appropriateness of the Sunset Commission's 2006 recommendations. The results of that special purpose review are contained in this material.

Agency at a Glance

The 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 on the state and federal levels.

Key Facts

- ◆ **Funding.** In fiscal year 2008, the State-Fed Office expended about \$750,000, three-quarters of which the Office spent on salaries and building rent.
- ◆ **Staff.** The Office has seven staff, with six located in Washington and one in Austin. In addition, staff from five other Texas state agencies currently collocate in the agency's Washington, DC office.
- ◆ **Priorities.** On an annual basis, the Office identifies and prioritizes the State's federal policy agenda. The Office's most recent working priorities were within the areas of health and human services; transportation; homeland and border security; federal appropriations and tax issues; and advanced technology/research and development innovations.


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

Advisory Policy Board Members (3)

The Honorable Rick Perry (Austin)

The Honorable David Dewhurst (Austin)

The Honorable Joe Straus (Austin)

Agency Head

Ed Pérez, Executive Director

(202) 638-3927

Brandon Steinmann, Austin Office Director

(512) 463-6676

Recommendation

1. Abolish the Office of State-Federal Relations and restructure it within the Office of the Governor and make additional changes to the Office's statute to improve its effectiveness in promoting the State's federal interests.

Issue 1

Texas Benefits From Having an Advocate in Washington, DC, But Changes Are Needed to Streamline the Office's Structure and Improve Its Effectiveness.

Key Finding

- ◆ No significant changes have occurred to affect the Sunset Commission's 2006 recommendations.

In 2006, the Sunset Commission adopted four recommendations, including abolishing the State-Fed Office as an independent state agency and transferring its functions to the Office of the Governor. No compelling reason exists to change what the Sunset Commission voted to support in 2006.

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, 2015. 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, 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.

1.3 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 on contracts with federal-level government relations consultants. The recommendation would also 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. Information in such

reports would include the name of the consultant or firm contracted with, the issues the firm was hired to work on, and the contract amount. This recommendation would require that entities report federal-level consultant contracts within 30 days of entering in to a contract and within 30 days of a contract termination.

1.4 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

These recommendations would have no fiscal impact to the State.

Board of Tax Professional Examiners

Agency at a Glance

The mission of the Board of Tax Professional Examiners is to regulate tax professionals in Texas to ensure that those who appraise real property and assess and collect property taxes are knowledgeable, competent, and ethical. The Board registers elected assessor-collectors and certain employees of appraisal districts and local taxing entities, including counties, cities, and school districts. To accomplish its mission, the Board:

- ◆ registers tax appraisers, assessor-collectors, and collectors and monitors their progress toward certification;
- ◆ oversees the educational system necessary to achieve certification;
- ◆ administers tax professional certification exams and issues certificates upon passage; and
- ◆ enforces the Property Taxation Professional Certification Act and Board rules by monitoring compliance with education requirements, investigating complaints against tax professionals, and taking disciplinary action when necessary.


*For additional information,
please contact Karen Latta
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2008, the Board collected more than \$279,000 in fees. The Board operated with a budget of \$159,146 plus \$78,385 in indirect costs. The appraisal districts and tax offices that employ the Board's registrants pay registration and exam fees, which cover all of the Board's administrative costs.
- ◆ **Staffing.** The Board employs three full-time employees and one part-time employee, all based in Austin.
- ◆ **Registration.** In fiscal year 2008, the Board regulated 3,728 tax professionals, 321 of whom were registered in more than one category. The Board's registrations included 2,492 appraisers, 1,148 assessor-collectors, and 409 collectors.
- ◆ **Courses and Exams.** In fiscal year 2008, the Board oversaw 144 courses on property tax topics and administered exams to 372 registrants.
- ◆ **Enforcement.** The Board resolved 24 complaints from the public in fiscal year 2008, resulting in letters of reprimand against three registrants.

Board Members (5)

D. Kristeen Roe, Chair (Bryan)

Jim Childers, Vice Chair (Canyon)

Linda Hatchel, Secretary (Woodway)

Pollard Coates, IV (Kerrville)

Steve Mossman (Flower Mound)

Agency Head

David E. Montoya, Executive Director

(512) 305-7302

Recommendations

1. Abolish the Board of Tax Professional Examiners and transfer its functions to the Texas Department of Licensing and Regulation.
2. Conform key elements of the Property Taxation Professional Certification Act's licensing and enforcement functions to commonly applied licensing practices.

Issue 1

The Board of Tax Professional Examiners Has Had Difficulty Effectively Carrying Out Its Regulatory Duties.

Key Findings

- ◆ The State has a continuing interest in registering and certifying tax professionals.
- ◆ The Board's approach to regulating tax professionals has not included a strong enforcement effort.
- ◆ The Board's resources are insufficient to effectively manage a state agency with regulatory duties.

The Legislature has charged the Board of Tax Professional Examiners with regulating local officials who administer the property tax system to ensure they are competent, knowledgeable, and ethical. However, the Board's ability to address the concerns of taxpayers is limited by the small size of the agency and its lack of clear and comprehensive regulations. These difficulties indicate the need to consolidate the Board's functions with a larger agency to improve regulatory effectiveness and administrative efficiency.

Recommendations

Change in Statute

1.1 Abolish the Board of Tax Professional Examiners and transfer its functions to the Texas Department of Licensing and Regulation.

The Board of Tax Professional Examiners would cease to exist as an independent agency, and its regulatory functions would transfer to the Texas Department of Licensing and Regulation (TDLR). The Board's existing authority for registering, certifying, and taking enforcement action against tax professionals would be transferred to TDLR, keeping current registration categories intact. TDLR provides a secure and knowledgeable agency structure to administer the regulation of tax professionals while increasing registrant and consumer responsiveness and achieving administrative efficiencies. Further, the Commission on Licensing and Regulation, with its all-public membership, would provide needed objectivity and would develop comprehensive rules to govern all aspects of tax professional regulation.

The Commission could also develop a formal relationship with the Property Tax Education Coalition. Since the Coalition is not established in statute and no formal agreement exists between it and the Board, TDLR would be able to work with the Coalition to design a relationship that would accomplish the goals of both parties, as well as tax professionals and the public.

1.2 Establish a tax professional advisory committee to assist with the regulation of tax professionals.

This recommendation would create a tax professional advisory committee at TDLR to advise the Commission on Licensing and Regulation, with the duties described in the textbox, *Recommended Duties of the Advisory Committee*. The presiding officer of the Commission, with the Commission's approval, would appoint five members to the advisory committee for six-year, staggered terms, and would designate one member of the committee as the presiding officer. The membership would include two registered appraisers, two registered assessor-collectors, and one public member.

A new advisory committee responsive to the Commission on Licensing and Regulation would capture technical expertise on the profession and merge that expertise with an effective operating structure at TDLR. The advisory committee would also ensure that stakeholders have opportunities for meaningful input in the creation of rules and regulations affecting the profession.

Recommended Duties of the Advisory Committee

- ◆ Recommend rules and standards on technical issues related to the profession.
- ◆ Provide advice regarding educational courses and curricula for registrants.
- ◆ Provide advice regarding examination content.
- ◆ Educate the Commission on Licensing and Regulation and TDLR staff on issues affecting the profession.
- ◆ Respond to questions from TDLR's staff and Commission relating to the profession.

1.3 Authorize TDLR to seek assistance from the Comptroller's Office on educational needs and other regulatory issues.

This recommendation would give TDLR and the Comptroller's Office statutory authority to collaborate on tax professional regulation. Since the Comptroller's Office regularly works with appraisal districts and taxing entities and has registered appraisers on staff, it can offer advice to TDLR on the coursework required for certification. TDLR would also be able to seek the Comptroller's technical assistance on enforcement cases and other regulatory functions.

Issue 2

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

Key Finding

- ◆ Nonstandard registration fee and renewal provisions of the tax professional's statute could reduce TDLR's flexibility and efficiency.

Various registration fee and renewal provisions of the Property Taxation Professional Certification Act do not match model standards developed from experience gained through more than 93 occupational licensing reviews over the last 31 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

Change in Statute

2.1 Eliminate licensing and administrative fee caps in statute and authorize TDLR to set fees in rule.

This recommendation would give TDLR greater flexibility to set fees as appropriate without prior legislative action. The recommendation would also provide flexibility in setting 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. Further, since TDLR would have to set fees in rule, the tax professionals advisory committee, created in Recommendation 1.2, and the public would have the ability to comment on proposed fee amounts before they are implemented.

2.2 Authorize TDLR to adopt rules establishing a system under which registrations expire on various dates during the year.

This recommendation would eliminate the Board's current statutory language requiring all registrants to renew their registration annually by December 31, and would provide new authority to stagger renewal dates. Staggered renewal dates would allow a more balanced workload throughout the year, and tax professionals would avoid registration renewal during the holiday season. TDLR would also have the flexibility to batch renewals by office instead of by individual registrant, so that appraisal districts and assessor-collector offices could renew all of their employees' registrations at the same time. The tax professionals advisory committee and the public would have the ability to comment on TDLR's proposed renewal dates through the rulemaking process.

2.3 Tighten the timeframes for assessing late renewal fees and require those fees to be based on the standard registration renewal fee.

The renewal fee for registrants who are delinquent in renewing their registrations would be due immediately after the renewal due date, removing a 30-day grace period currently in law. The late renewal penalty would be based on the standard renewal fee instead of a set amount that does not relate to the cost of renewal. To renew a registration that has been expired for 30 days or less, the late renewal fee would be equal to 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 late renewal fee would equal two times the standard renewal fee. This recommendation would maintain the existing statutory requirement that persons whose registrations have expired for more than 60 days must re-register with TDLR. This change would provide more incentive to renew registrations on time, and would scale the late renewal penalty to the cost of renewing a registration.

Fiscal Implication Summary

Two of these recommendations may have a fiscal impact, but the actual amount of the impact will depend on how the recommendations are implemented.

- ◆ **Issue 1** – Abolishing the Board of Tax Professional Examiners and transferring its functions to the Texas Department of Licensing and Regulation may result in savings from reduced administrative costs and staff positions by taking advantage of the existing administrative structure of the Department. Any cost savings resulting from this recommendation would either be used to improve services or returned to registrants in the form of lower fees.
- ◆ **Issue 2** – Changing the statutory basis for the late renewal penalty would increase the collection of late fees, but the potential increase in revenue is not likely to be significant.

Texas Department of Transportation

Agency at a Glance

The Texas Department of Transportation (TxDOT) began in 1917 as the State Highway Department. Since that time, the Department has evolved from its original responsibilities of granting financial aid and directing county road construction programs, to a much broader mission of delivering a 21st century transportation system to address the state's growing transportation needs, most recently through limited authority to use new financing options for road projects. To fulfill its mission of providing safe, efficient, and effective means for the movement of people and goods throughout the state, TxDOT:

- ◆ plans, constructs, maintains, and supports the State's transportation system;
- ◆ develops and operates a system of toll roads using public and private-sector partners and financing options;
- ◆ manages operations on the state highway system, including improving traffic safety, issuing oversize/overweight permits, and registering motor carriers;
- ◆ regulates the motor vehicle industry in Texas, including licensing and investigating complaints against dealers, lessors, lease facilitators, manufacturers, distributors, and converters; and
- ◆ registers motor vehicles, issuing certificates of title and license plates.


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

Key Facts

- ◆ **Funding.** In fiscal year 2008, TxDOT operated with a budget of more than \$8 billion, funded mostly from state taxes and fees, bond proceeds, and federal funding. The Department allocated about 76 percent of these funds on construction and maintenance of the state highway system.
- ◆ **Staffing.** The Department has about 14,332 staff, located in the Austin headquarters and in 25 district offices across the state. The smallest TxDOT district, Brownwood, employs 232 staff, while the largest, Houston, employs 1,510.
- ◆ **Highway Construction and Maintenance.** TxDOT maintains almost 80,000 centerline miles of federal interstates, U.S. and state highways, and farm- and ranch-to-market roads. In fiscal year 2008, the Department awarded 779 construction and major maintenance contracts totaling \$3.4 billion, and 973 routine maintenance contracts totaling \$279 million.
- ◆ **New Financing Tools.** Since 2001, TxDOT has issued \$5.1 billion in Texas Mobility Fund bonds and \$3.1 billion in State Highway Fund (Proposition 14) bonds. The Texas Transportation Commission

has also approved the creation of eight regional mobility authorities (RMAs), entered into four comprehensive development agreements (CDAs), and authorized \$1.4 billion in pass-through financing to local governments.

- ◆ **Licensing and Regulation.** In fiscal year 2008, the Department registered 21.2 million vehicles, generating \$1.5 billion in revenue; issued 580,415 oversized/overweight permits, generating \$98.2 million; and registered 46,775 motor carriers operating 331,605 vehicles, generating \$8.5 million. In fiscal year 2008, TxDOT licensed 19,325 motor vehicle dealers and permitted 13,306 billboards along federal-aid and rural roads.

Commission Members (5)

Deirdre Delisi, Chair (Austin)

Ned S. Holmes (Houston)

Ted Houghton (El Paso)

William Meadows (Fort Worth)

Fred Underwood (Lubbock)

Agency Head

Amadeo Saenz Jr., P.E., Executive Director

(512) 305-9501

Recommendations

1. Continue TxDOT for four years, but replace the Transportation Commission with a single, appointed Commissioner of Transportation and establish a Transportation Legislative Oversight Committee.
2. Improve TxDOT's internal controls to better ensure accountability of the Department and its employees.
3. Require TxDOT to develop a comprehensive, transparent, and easily understandable planning and reporting system for transportation projects in the state.
4. Require TxDOT to improve its public involvement efforts and strengthen the Department's lobbying prohibitions.
5. Update TxDOT's contracting authority and practices regarding the use of design-build, advertising, and professional services contracts; and require the Comptroller of Public Accounts and the Attorney General to approve certain comprehensive development agreements.
6. Transfer the State's motor vehicle functions from TxDOT to a newly created Texas Department of Motor Vehicles.
7. Require the new Texas Department of Motor Vehicles to review and report on improving the regulation of oversize and overweight vehicles.
8. Conform regulation of motor vehicle dealers, salvage vehicle dealers, and household goods carriers to commonly applied licensing practices and model standards.

9. Require outdoor advertising regulation to follow common regulatory practices and request that the Legislature reconsider the current process for valuation of outdoor advertising.
10. Create a rail division within TxDOT to ensure the Department provides adequate attention to rail transportation issues.
11. Require TxDOT to actively manage all of its dynamic message signs.
12. Establish in statute the Green Ribbon Project for enhancing the appearance of highways through landscaping.
13. Direct TxDOT to provide the Legislature information about its fleet of alternative fuel vehicles, including its declining use of propane vehicles.

Issue 1

Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.

Key Findings

- ◆ An obvious distrust characterizes the Legislature's and the public's recent relations with TxDOT, leading many to question the Department's ability to effectively manage its operations and business practices, as well as the State's transportation system.
- ◆ Lack of timely appointments to the Texas Transportation Commission has weakened TxDOT's accountability to the Legislature.
- ◆ Availability of independent, objective, and reliable information about the state transportation system is limited.
- ◆ Texas has a continuing need for the Texas Department of Transportation, but with its trust restored.

As TxDOT moved to implement the innovative funding and development mechanisms first enacted in 2001, the Legislature began to question its own actions and TxDOT's response to the new authority. Early concerns about the Department's approach to toll roads and its interest in public-private partnerships have become a deep-seated distrust of TxDOT's motives and direction, as reflected in the Legislature's insistent drive to recapture policy ground lost to the Department. This lack of trust and confidence contributes to doubt about the Department's management of its operations, including its organizational structure, use of resources, compliance with legislative intent, and overall performance, preventing TxDOT from being an effective state agency.

Recommendations

Change in Statute

1.1 Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.

This recommendation would abolish the five-member Texas Transportation Commission and replace it with a single Commissioner of Transportation. The Commissioner would be appointed by the Governor with the check and balance of Senate confirmation every two years. The Commissioner's two-year term would expire February 1 of each odd-numbered year. If the Governor does not reappoint the Commissioner or make a new appointment by February 28 of odd-numbered years, then the authority to appoint the Commissioner would, by statute, transfer to the Lieutenant Governor. Although the appointment by the Governor would be subject to Senate confirmation, the appointment by the Lieutenant Governor would not.

The Commissioner would be required to be experienced and skilled in transportation planning, development, financing, construction, and maintenance, or have appropriate finance or management experience. A person would not be eligible to be appointed or serve as the Commissioner if the person served in Texas Legislature during the previous 10 years.

A new Commissioner would help restore accountability, trust, and responsiveness of TxDOT. Senate confirmation every two years would forge a strong link of accountability to the Legislature and ongoing affirmation of acceptable Commissioner performance by a Senate vote of confidence.

With the appointment of a full-time Commissioner, the executive director's position and the statutory requirement for engineering and transportation planning, development, and construction and maintenance experience would no longer be necessary. Instead of an executive director, the Commissioner could choose to hire staff with whatever experience the Commissioner feels necessary to oversee the operations of the agency.

1.2 Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the state's transportation system.

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

- ◆ the Chair of the Senate Committee on Transportation and Homeland Security;
- ◆ the Chair of the House Transportation Committee;
- ◆ 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.

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 with:

- ◆ monitoring TxDOT's planning, programming, and funding of the state's transportation system;
- ◆ conducting an in-depth analysis of the state's transportation system;
- ◆ assessing the cost-effectiveness of the use of state, local, and private funds in the transportation system;
- ◆ identifying critical problems in the transportation system, including funding constraints and recommending strategies to solve those problems;
- ◆ determining long-range needs of the transportation system and recommending policy priorities for the system; and
- ◆ advising and assisting the Legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the transportation system.

The Committee would strengthen the Legislature's position in interactions with the Department, providing more direct oversight of the state's transportation system, evaluating the system to identify how well it is working, and making recommendations for improvements. The Committee's purpose would be to research, analyze, and report on the operation and needs of the system.

1.3 Authorize the Transportation Legislative Oversight Committee to contract with a management consulting firm to assess and recommend organizational and process improvements at the Department.

The Legislative Oversight Committee would be authorized to contract with an outside management consulting firm independent of TxDOT to recommend an effective and efficient organization structure and appropriate staffing levels based upon work loads; review TxDOT's financial condition and business practices; evaluate the effectiveness of the agency's transportation planning and programming processes; and coordinate with the Legislative Budget Board, State Auditor's Office, and the agency's internal efforts to minimize the duplication of efforts, and to plan, contract, and build in the most cost effective and timely manner. The implementation of these recommendations would be overseen by the Committee, with the goal of reducing staff, streamlining processes, and transitioning the agency into an entity with greater efficiency, transparency, and accountability.

The primary functions of the management consulting firm would include, but not be limited to:

- ◆ evaluating TxDOT's financial condition and business practices;
- ◆ evaluating TxDOT's administrative practices and performance, including statewide transportation planning, the agency's relationship with Metropolitan Planning Organizations (MPOs), how the agency's district and central offices perform their functions, and the need for standardization of the agency's operations across the state;
- ◆ evaluating the current guidelines of MPOs and all other transportation entities within the state involved with project delivery and/or transportation policy by identifying duplicative practices and providing recommendations for better efficiency and transparency;
- ◆ identifying ways to streamline all processes/procedures of policy implementations of the agency, most notably the environmental process;
- ◆ examining and evaluating the use and benefits of performance-based maintenance contracting at TxDOT;
- ◆ examining and presenting recommendations on how to maximize TxDOT's use of multi-modal solutions;
- ◆ analyzing TxDOT's compliance with applicable laws and legislative intent;
- ◆ examining the efficient use of TxDOT's available funding, personnel, equipment, and office space;
- ◆ recommending appropriate performance measurements for each major function including comparisons to best practices;
- ◆ evaluating establishing in statute the state pavement quality goal as having 85 percent of state roads being in good or better condition; and
- ◆ considering significantly expanding use of the private sector for planning, design, and delivery of projects and a commitment to excellence in project and program management.

The Transportation Legislative Oversight Committee would be required to assess TxDOT's progress in implementing the recommendations and to report the status of TxDOT's implementation efforts to the Senate Finance Committee and House Appropriations Committee to be considered when establishing TxDOT's budget as part of the appropriations process.

1.4 Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities.

This recommendation would require TxDOT to present its entire research program to the Transportation Legislative Oversight Committee for review and comment before its adoption and implementation. The Committee would review each of the proposed research projects, including the purpose, projected start and ending dates, and cost of each project, providing any comments or direction to TxDOT regarding these projects. TxDOT would provide quarterly updates on the progress of these projects as well as an annual summary to the Committee. The Committee would be authorized to request the results of any of the projects, including review of draft reports from either TxDOT or the contracted entities performing the research. This recommendation is intended to restore trust in the research being used to set transportation policy.

1.5 Clarify that the Transportation Legislative Oversight Committee could work with all Texas university transportation research programs to obtain transportation research independent of TxDOT.

This recommendation would authorize the Transportation Legislative Oversight Committee to solicit data from any Texas university transportation research program, not only to conduct needed transportation research, but also to help review and evaluate Texas' transportation system and compare elements of Texas' system to other states to set needed benchmarks. Any Texas university transportation research program would be authorized to initiate and propose its own research projects to the Transportation Legislative Oversight Committee, or take on any transportation research projects directly requested by the Committee. This recommendation would preserve the existing competitive approach to providing transportation research by including all universities, and would help ensure independence of the research by assigning a role to the Legislative Oversight Committee.

1.6 Continue TxDOT for four years.

This recommendation would continue TxDOT for a four-year period to ensure that needed changes have occurred to re-establish the Legislature's and the public's trust and confidence in the Department. This shorter Sunset review timeframe will give the Legislature the opportunity to evaluate these changes, including the accountability of a single Transportation Commissioner and the usefulness of a Transportation Legislative Oversight Committee. The Legislature could make any changes it deems necessary in the Department's next Sunset review in 2013.

Issue 2

TxDOT's Internal Controls Are Not Adequate to Ensure the Transparency and Accountability Necessary to Maintain Public Trust and Confidence.

To ensure propriety and preserve public confidence, officers and employees of the State should have specific standards to guide their conduct and clear mechanisms for enforcing those standards. TxDOT's admission of a \$1.1 billion accounting error raised significant concerns regarding the Department's financial operations and internal controls, and its conduct in responding to the situation. These concerns added to the growing distrust of TxDOT and raised additional questions as to the mechanisms in place to ensure accountability of both the officers and employees of the Department.

Recommendations

Change in Statute

2.1 Require TxDOT's Chief Financial Officer to report directly to the Commissioner of Transportation.

Under this recommendation, TxDOT's Chief Financial Officer would report directly to the Commissioner of Transportation instead of reporting to the Executive Director to ensure adequate oversight and accountability of the Department's financial operations.

2.2 Require TxDOT to evaluate the performance of its administrative and decision-making staff to determine whether employees should retain their positions within the Department.

This recommendation would require the Commissioner of Transportation to ensure that TxDOT employees are performing their duties with the citizens of Texas foremost in mind, which includes being professional, diligent, and responsive to directives and requests from the Commissioner and the Legislature. To carry out this recommendation, TxDOT employees would undergo performance reviews. Based on the outcomes of these reviews, the Commissioner would need to re-evaluate the employment of any employee not satisfying these objectives.

2.3 Require the Commissioner of Transportation and TxDOT's Chief Financial Officer to certify the establishment of, adherence to, and effectiveness of internal controls at the Department.

This recommendation would require the Commissioner of Transportation and TxDOT's Chief Financial Officer to certify in writing that they:

- ◆ are responsible for establishing and maintaining internal controls;
- ◆ have evaluated the effectiveness of the agency's internal controls;
- ◆ have presented their conclusions about the effectiveness of the internal controls and reporting requirements; and
- ◆ have effectively complied with all legislative mandates.

This certification would target responsibility for internal controls at the highest levels of the organization, and ensure greater accountability and buy-in throughout the agency.

2.4 Require TxDOT and its employees to develop, adopt, and adhere to a Code of Ethics, and to establish an ethics hotline for reporting violations.

Under this recommendation, TxDOT employees would be required to develop and adopt a Code of Ethics to promulgate a transparent culture and enhance public trust in the agency. All TxDOT employees would be required to annually affirm their adherence to this Code of Ethics. TxDOT would also be required to establish an ethics hotline through which employees and others could report, anonymously or by name, violations of the Code of Ethics.

2.5 Require TxDOT staff to present the agency's LAR to the Commissioner of Transportation in a timely manner.

To give the Commissioner of Transportation enough time to review, evaluate, and comment on TxDOT's Legislative Appropriations Request (LAR), this recommendation would require TxDOT staff to present the agency's LAR to the Commissioner in an open meeting at least 30 days before the Commissioner's adoption of the LAR for submission to the Legislative Budget Board.

Issue 3

The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made.

Key Findings

- ◆ TxDOT's long-range planning efforts are disjointed and do not result in a comprehensive and understandable view of the state's transportation needs compared to available resources.
- ◆ TxDOT's project selection and implementation system is not understandable or transparent.

TxDOT's difficult-to-understand system of transportation planning and project development has recently frustrated legislators and the public, who feel cut off from meaningful participation in the state's long-term transportation goals, and from reliable information about progress towards those goals. In the absence of information on the status and condition of the State's transportation system and how it is performing, the public and Legislature have difficulty determining what changes are needed to improve the system. In addition, rural areas of the state do not have a consistent role in transportation planning as metropolitan areas do.

Recommendations

Change in Statute

3.1 Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.

This recommendation would significantly alter TxDOT's current long-range planning process by integrating its various planning efforts into a single, measurable plan. This new plan should present a focused, meaningful vision to guide all of TxDOT's and MPOs' other short-range planning and programming efforts.

The new plan would re-engineer the Statewide Transportation Plan, already required by both federal and state law. This recommendation would add to existing statutory provisions by requiring the following elements.

- ◆ **Measurable goals.** TxDOT would develop specific, long-term transportation goals for the state, and measurable targets for each goal. The Department would report annually to the Legislature on its progress toward these goals, as already required in state law. This information also would be easily accessible from TxDOT's website.

- ◆ **Statewide priorities.** The Department would identify priority corridors, projects, or areas of the state of particular concern in meeting statewide goals.
- ◆ **Participation plan.** TxDOT would develop a participation plan specifying methods for obtaining formal input on statewide goals and priorities from other relevant state agencies, political subdivisions, local planning organizations, and the general public.
- ◆ **Regular updates.** The plan would span 20 years, as do the long-range plans of MPOs, and would be updated every five years when most MPOs update their long-range plans.
- ◆ **Forecast assumptions.** TxDOT and MPOs would collaborate to develop mutually acceptable assumptions for long-range federal and state funding forecasts. These assumptions would guide TxDOT's and MPOs' long-range planning in the Statewide Transportation Plan and Metropolitan Transportation Plans.
- ◆ **Integration with other long-range plans.** All other long-range transportation planning and policy efforts would support the specific goals outlined in the Statewide Transportation Plan. TxDOT should clearly reference how these plans fit together with and support the Statewide Transportation Plan.

Establishing this long-range plan would give a high-level prioritized focus from which all other transportation planning and measurement programs would flow.

3.2 Require TxDOT to establish a transparent, well-defined, and understandable system of project approval and programming within TxDOT that integrates project milestones, timelines, priorities, and cash forecasts.

This recommendation would place the framework for TxDOT's transportation programming process in statute to provide greater visibility about its overall purpose and greater control to the Legislature regarding the way TxDOT makes transportation decisions. Specific elements of the programming process would be left to the Department through rulemaking. TxDOT would be required to establish a project development plan and statewide work program that largely reflects its current internal programming document, the Unified Transportation Program. The recommendation would require TxDOT to annually set target funding levels and list all projects it plans to develop and begin constructing over an 11-year time period, but would not require the specific list of projects to be established in statute or rule to maintain the Department's flexibility to make adjustments during project implementation.

TxDOT would collaborate with its local transportation partners to update the actual programming document each year. The annual updates would include funding scenarios, a list of major projects with milestones and timelines, and project priority groups, as guided by agency rules, discussed in more detail below. The Department would be required to work with MPOs and other local planning entities to develop scenarios for the annual funding forecast based on a range of underlying assumptions. TxDOT, however, would be responsible for determining the forecast to be used for statewide planning purposes by MPOs and TxDOT. The Department would also develop publicly available summary documents highlighting project milestones, priorities, and forecasts in a way that is understandable to the public.

The recommendation would require TxDOT to define, in rule, program funding categories, such as safety, maintenance, and mobility. These rules would also describe how the Department selects projects for inclusion in the program in cooperation with MPOs and local partners. In implementing the

recommendation, TxDOT must ensure that rules do not conflict with federal transportation planning requirements. TxDOT would also be required to adopt rules, as discussed below, to provide tools that are not in its current programming process, to better manage and monitor the Department's performance.

- ◆ **Project milestones and timelines.** Through a project approval process clearly defined in rule, TxDOT and its local partners would be required to develop milestones and timelines for implementation of major transportation projects in the programming document. Milestones and timelines would need to be set for both implementation and construction phases. These partners would define a "major project" so that creating and tracking milestones and timelines would not be unreasonably difficult to implement. The list of major projects would be updated annually, and projects could not enter the four-year implementation phase of the programming document unless critical milestones and timelines were met. Milestones should include, at a minimum, target timeframes for each major stage of project development, such as preliminary engineering, advance planning and environmental review, right-of-way acquisition, and production of final plans, specifications, and estimates.
- ◆ **Project priority groups.** Through a process clearly defined in rule, TxDOT and local partners would assign all projects in the programming document to broad priority groups. The highest priority group would reflect the list of major projects identified for milestone tracking. Other projects would be grouped into categories of lesser priorities. Grouping projects in this manner would establish prioritized categories instead of prioritized projects, a difficult task to accomplish when many projects carry similar importance in different regions of the state. TxDOT's central office staff could use project priority groups as one indicator to help allocate staff time and resources to the most important statewide projects. Prioritization also would make the programming document more useful in explaining how TxDOT's work program is meeting statewide goals.
- ◆ **Funding allocations.** TxDOT would be required to establish and regularly update formulas for allocating funds in each program category at least every five years through a clearly defined rulemaking process.
- ◆ **Cash Forecast.** The Department would be required to produce and publish an official 10-year cash forecast. The forecast would be available no later than January 31 of odd-numbered years. TxDOT would be required to allocate the funds to the districts based on the adopted funding allocation formulas, and could not exceed the cash forecast.

This recommendation would require TxDOT to annually produce a programming document that shows the progress of transportation projects through development, promotes the allocation of resources systematically among competing priorities, provides reasonable projections of future funding to help planning and avoid surprises, and increases the overall transparency of project programming.

3.3 Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects.

This recommendation would require each TxDOT district to develop a consistent, publicly available work program based on projects in the programming document described in Recommendation 3.2. These work programs would cover a four-year period and include all projects that districts will implement during that time. The work programs would track major projects in the same way as the overall programming document, according to project implementation milestones developed in cooperation with local transportation partners. Information on lower priority projects would also be

available in summary form. District work programs would provide valuable information describing the status of local projects to transportation partners and the public. TxDOT should use information in the work programs to monitor performance of the district and key district personnel.

3.4 Require TxDOT to develop online reporting systems for providing project-specific information in a real-time dashboard, judging the effects of spending on specific transportation problems, and assessing progress in meeting overall transportation goals.

Dashboard reporting system. This recommendation would require TxDOT to develop an online, comprehensive, and continuously updated dashboard reporting system, with input from the Legislature, local planning organizations, and the public. The dashboard report would combine information from all of TxDOT's plans into one master list that would be presented in an easy-to-navigate and searchable format. TxDOT would be required to implement the dashboard immediately, using information such as letting schedules that are currently available. TxDOT would be required to include the following specific elements in the dashboard report.

- ◆ Details on funding sources for projects, including information linking specific sources of funding to specific projects.
- ◆ Project benchmarks and timelines, current progress towards goals for meeting specific benchmarks, and a list of project managers assigned to projects and their contact information.
- ◆ An annual review of project benchmarks and timelines to determine their completion rates and show whether the projects were on time.
- ◆ For projects scheduled to last more than one month or costing more than \$5 million, work zone information detailing the number of lanes open or closed; time of closure; and expected and measured delay when closed.
- ◆ Clearly defined criteria for projects classified as maintenance, and disclosure of the condition of a road prior to maintenance expenditures.
- ◆ Information about the sources of funding and expenditures by TxDOT district, spending category, and type of revenue, including private sources such as Comprehensive Development Agreements or toll revenue.
- ◆ Options to download statistical information in various formats, including html, pdf, Excel, or other database programs.

Effects of transportation spending. TxDOT would be required to develop a process to clearly identify both the State's transportation needs and the State's transportation wants, and a system to report on the effects of spending on specific transportation problems. The needs and wants system would report locally entered information about local transportation projects listed in priority order by district, as part of the online dashboard report described above. A user would be able to easily compare projects in this system with projects actually in TxDOT planning or construction phases using the dashboard report.

TxDOT would be required to prepare a list of the most significant transportation problems in each TxDOT district, and report on the effectiveness of transportation spending in addressing these problems, described by the indicators below, to justify why each project is a priority. TxDOT would be

required to prepare before and after studies on the effects of all TxDOT spending programs, internally or through a university's transportation research program. Performance measures would include the following indicators, which would be searchable on the dashboard report by county, road numbers, and functional road class:

- ◆ pavement condition indicators such as the International Roughness Index used by the Federal Highway Administration, and the percentage of pavement in good or better condition;
- ◆ bridge condition indicators such as structurally deficient, functionally obsolete, and bridge deterioration scores;
- ◆ congestion and traffic delay indicators, including the locations of the worst delays and variable travel times on major streets and highways, and the effects on both person and truck freight travel; and
- ◆ crash, injury, and fatality indicators including a list of the worst sections of road in the state by TxDOT district.

Annual reports. TxDOT would also provide at least three types of annual reports that would be available on TxDOT's and districts' websites in a searchable and easily accessible format.

- ◆ *Statewide report.* The Department would prepare the "State of Texas Transportation" report, providing a high-level summary of annual progress in meeting transportation goals. The report would include information about attainment of statewide goals as described in the Statewide Transportation Plan, progress in attaining major priorities, a summary of success in meeting statewide project implementation milestones, and information about the accuracy of past financial forecasts. The report would be formally presented to legislative committees with oversight of transportation issues each year, and be easily accessible on the Department's website.
- ◆ *Legislative district report.* Each year, TxDOT would develop "report card" information similar to that contained in the State of Texas Transportation report, but specific to each state legislative district. TxDOT would provide members of the Legislature with this specific report and meet with them at their request to explain it.
- ◆ *TxDOT district report.* TxDOT would provide this same type of report for each of its districts, forwarding it to local planning entities, cities, county commissioners courts, regional planning councils, and other appropriate local entities in the TxDOT district.

As part of this recommendation, the Legislature should consider eliminating many of the reports it requires TxDOT to produce by rider in the General Appropriations Act, since information they contain would be available through the newly created reporting system.

These changes would greatly expand the type of information that is available and easily accessible to the public and the Legislature regarding the status of projects and the State's transportation system. By showing more clearly where projects are and how they progress in TxDOT's processes, these new reporting systems would make TxDOT's decision making process considerably more transparent. They would also provide useful information for judging TxDOT's performance in completing individual projects and in meeting identified transportation needs and priorities.

3.5 Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state.

This recommendation would require TxDOT to facilitate the creation of transportation planning groups in rural areas, in cooperation with councils of governments, city and county governments, MPOs, and other local transportation partners. The structure and membership of rural planning groups could vary depending on the local situation.

Rural planning groups would be responsible for selecting projects for inclusion in the four-year Statewide Transportation Improvement Program, instead of leaving this task to district engineers as is currently the case. As part of this recommendation, TxDOT should consider whether changing some district boundaries to align more closely with those of councils of governments would better facilitate rural planning.

TxDOT would help fund and staff these rural planning efforts. The Department could use a portion of existing Statewide Planning and Research funds, provided by the federal government for statewide long-range planning, to support rural planning efforts. Because these funds require a local match, TxDOT should work with rural planning groups to determine match needs and any available funds, including the use of transportation development credits provided to the Department by the Federal Highway Administration.

This recommendation would provide an organized, predictable planning process for rural areas of the state similar to that of metropolitan areas. Under this recommendation, rural planning groups would have clear authority, similar to MPOs, to set local priorities and approve transportation projects within their planning boundaries. TxDOT should retain authority to plan, select, and approve statewide connectivity projects in rural areas, with input from these rural planning groups.

Issue 4

TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Unbiased, and Meaningful Public Involvement.

Key Findings

- ◆ TxDOT does not provide consistent or sufficient agency-wide guidance on its public involvement efforts.
- ◆ TxDOT does not have an effective system to track and manage complaints.
- ◆ TxDOT's marketing campaigns are not coordinated agency-wide and in some cases have been perceived more as lobbying to support or influence particular policies rather than informing and educating the public about the Department's programs and functions.
- ◆ TxDOT's website does not provide easily accessible and organized information crucial to informed public involvement.

Federal and state law recognize the need for public access to and input into state agency decision making, requiring agencies to meet minimum standards. Standard practices applied to most agencies during the Sunset process can identify other needs for meaningful public involvement, such as effective complaints procedures and use of technology.

The importance of transportation to the state's economy and Texans' daily life, and the level of public interest in TxDOT and its functions place high expectations on the Department to ensure adequate public involvement. When TxDOT does not meet these high expectations, it too easily falls victim to fears of gamesmanship and subterfuge that ultimately harm its ability to do its job.

Recommendations

Change in Statute

4.1 Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agency-wide.

This recommendation would require TxDOT to develop an official policy that provides guidance outlining additional public involvement strategies such as those suggested by the U.S. Department of Transportation, and consider requiring district and division staff to document these activities.

TxDOT should also work to clearly tie public involvement to decision making and provide clear information to the public about the specific outcomes of their input. This recommendation should apply to all public input with TxDOT, including into statewide transportation policy making, specific projects through the environmental process, and all of the Department's rulemaking procedures. This recommendation would help shift the agency away from focusing on meeting statutory mandates, and towards actively using meaningful public involvement to help it make quality transportation system decisions.

TxDOT would also be required to provide the ratio of positive/supportive public input to negative public input relating to all environmental impact statements. TxDOT must also present this information to the Commissioner of Transportation in an open meeting, and report this information on its website in a timely manner. Making this information available will provide the documentation necessary to assure the public that the information provided to the Federal Highway Administration accurately represents the views expressed by the public through TxDOT's public involvement process.

4.2 Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.

This recommendation would require TxDOT to develop policies and procedures to formally document and effectively manage the complaints it receives agency-wide according to the following provisions.

- ◆ Adopt rules that clearly define TxDOT's complaint process from receipt to disposition, and specify that these rules apply to each of its divisions and districts.
- ◆ Develop a standard form for the public to make a complaint to the Department. The complaint form should be available to the public on the Department's website and complaints should be accepted through the Internet.
- ◆ Compile detailed statistics and analyze complaint information trends to get a clearer picture of the problems the public has with TxDOT's functions and responsibilities. This complaint data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. The Department should track this information on a district basis, as well as by each division. TxDOT should report this information monthly to administration and quarterly to the Commissioner.

These provisions would strengthen TxDOT's complaint process and ensure the Department, the public, and the Legislature are aware of complaint trends that could indicate concerns with TxDOT's operations.

4.3 Strengthen lobbying prohibitions for TxDOT.

This recommendation would prohibit the Commissioner of Transportation and employees of TxDOT from using any money under the agency's control or engaging in activities to attempt to influence the passage or defeat of a legislative measure. Advocacy or activity of this nature would be grounds for dismissal of an employee. This recommendation would not prohibit the Commissioner of Transportation or employees of TxDOT from using state resources to provide public information or to provide information responsive to a request, nor would it prohibit TxDOT from lobbying for federal appropriations.

Implicit with this recommendation is the repeal of the statutory provision (Texas Transportation Code, sec. 201.0545) that requires TxDOT to consider ways to improve its operations and allows the Department to periodically report to the Legislature concerning potential statutory changes that would improve the operation of the Department. Strengthening lobbying prohibitions for TxDOT officials and employees would effectively render this provision meaningless. These changes would address concerns that some TxDOT officials or employees may have overstepped their authority to suggest operational improvements, and instead appear to engage in advocacy.

Management Action

4.4 TxDOT should provide a formal process for staff with similar responsibilities to share best practices information.

TxDOT should establish an internal program to capture, disseminate, and archive useful examples of division and district staff best practices. This effort should initially focus on collecting examples of successful approaches to public involvement, but could eventually include information about other responsibilities common to many Department staff. As part of this recommendation, TxDOT should consider establishing a page on its internal website to centrally locate and highlight this information. This recommendation would provide helpful examples to staff responsible for public involvement, limit duplication of effort between staff with similar responsibilities, and improve communication between the Department's many offices.

4.5 TxDOT should provide central coordination of the Department's major marketing campaigns.

TxDOT's central office should provide statewide coordination for all major marketing campaigns. Under this recommendation, the Department should establish guidelines defining major marketing campaigns and establish a procedure for coordinating activities such as purchasing advertising space, entering into consultant contracts, and timing press releases between divisions and districts. This recommendation would ensure that the Department maximizes its significant purchasing power.

4.6 TxDOT should make its website easier to use.

TxDOT should provide clear, easily accessible information on its website's homepage about the status of the State's transportation system, including information about how the public can get involved. In particular, the Department should improve the consistency of local information by ensuring that each district's webpage presents similar information highlighting key local projects, their status, and how the

public can provide input at the local level. In combination with the recommendations in Issue 2, these changes would improve the accountability and transparency of TxDOT's operations.

TxDOT should work to make its website more user-friendly by upgrading its search engine and providing access to a searchable database of minute orders. The Department should also consider integrating all of its transportation information onto one website, to the extent possible, or at a minimum ensuring that the Department's main web page related to a particular topic provides links to any of its other websites or web pages related to that topic. These changes would make it easier to find information critical to informed public participation.

Issue 5

Elements of TxDOT's Contracting Functions Lack Efficiency and Could Expose the State to Unacceptable Levels of Risk.

Key Findings

- ◆ State statute unnecessarily restricts contracting practices available to TxDOT.
- ◆ Inconsistent procedures and indeterminate timeframes may affect the effectiveness and predictability of TxDOT's contracting process.
- ◆ Limited professional services contract staffing, training, and oversight within TxDOT, as well as insufficient external oversight of comprehensive development agreements, could expose the Department, and ultimately the State, to significant risk.

TxDOT is the State's largest user of contract services, spending about \$6 billion on construction, maintenance, and professional services contracts in fiscal year 2007. State statute does not authorize TxDOT to use design-build project delivery in traditional highway projects, potentially limiting the Department's ability to carry out some of its road projects most efficiently. The Department has not established time frames for developing professional services contracts and has not standardized other contracting procedures that would help speed up and make the development of professional services contracts more consistent and efficient. Finally, the State may be exposed to significant contracting risk because of insufficient central and district office staffing and oversight in professional services contracts as well as insufficient expertise and external oversight of comprehensive development agreements.

Recommendations

Contracting Framework – Change in Statute

5.1 Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.

TxDOT's statute currently restricts use of the design-build model of project delivery, in which design and construction phases of a project occur under one contract, to toll roads. This recommendation would allow the Department to use design-build for traditionally financed highway projects.

TxDOT would develop rules specifying the conditions under which a design-build contract could be considered. Factors that should be addressed in rule include the size and complexity of the project, the

speed in which the project is needed, the level and training of agency staff managing the project, and any other elements determined to be important in the proper use of this project delivery model.

This recommendation would not require TxDOT to use design-build, but would simply authorize its use, providing an additional tool for the Department to use to help meet the state's transportation needs more efficiently. Allowing TxDOT to contract for design-build project delivery in traditional highway projects would give the Department an additional project delivery option.

Contracting Framework – Change in Statute and Management Action

5.2 Remove provisions in statute and rule requiring TxDOT to advertise its contract solicitations in local or statewide newspapers.

This recommendation would remove statutory advertising requirements for construction and maintenance contract notifications, and would direct TxDOT as a management action to remove its rule requiring such advertising for professional services bid opportunities. TxDOT would still have the authority to use newspaper notifications in situations where their use is necessary and cost effective, such as for smaller projects that might interest contractors who have not worked with TxDOT before. Implementing the recommendation would save newspaper advertising costs and staff time while still allowing for effective notification of contracting opportunities.

Contracting Procedures – Management Action

5.3 TxDOT should develop clear communication policies regarding contract solicitations for its professional services contracts.

This recommendation would direct TxDOT to develop, for its professional services contracts, a written policy identifying who on its staff can communicate with a potential respondent to a solicitation and a non-disclosure form for members of an evaluation team to sign before starting the evaluation of a proposal.

The written communications policy should clearly establish which agency personnel may answer potential respondents' inquiries, and should be distributed and explained to staff. The non-disclosure agreement should explain the sensitivity of bid documents and evaluation materials and address the consequences of the policy's violation. It should also be signed by all members of a consultant selection team. These documents would help ensure fair and consistent treatment of respondents.

5.4 TxDOT should provide additional information on overhead rates to districts and ensure that they use it.

In addition to audited overhead rates, TxDOT should provide districts with data on TxDOT-negotiated overhead rates specific to individual engineering firms. Districts should be able to tie this data to other information, such as type of contract, dollar value of contract, and managing district. TxDOT should also institute procedures requiring districts to use this and other information provided related to overhead rates. This data and the requirement that it be used would ensure that districts negotiate from a more informed basis, promoting reasonableness and fairness in negotiation outcomes.

5.5 TxDOT should set timeframes for each major step in the development of professional services contracts.

TxDOT should set timeframes for key stages in its contract process in policy or rule. The timeframes should include some flexibility to deal with unforeseen circumstances, and establish meaningful

procedures that take effect if timelines slip beyond reasonable limits. For example, the contract manager could be required to explain in writing events leading to the missed deadline, and provide the explanation to appropriate levels of management. In advertising for professional services, TxDOT should give an estimated date by which the contract would be executed. This recommendation would facilitate the timely and accountable development of contracts in a way that benefits both the Department and consultants.

Staffing and Oversight – Management Action

5.6 TxDOT should consider providing additional professional staff to support its Consultant Contract Office.

Because of the complexity and large dollar value of the contracts TxDOT's Consultant Contract Office oversees, the Department should carefully evaluate its staffing relative to responsibility and risk and make staffing adjustments as necessary. Providing additional professional staff would promote timely processing of contract documents, development of up-to-date resource materials, standardization of processes, and training that reaches TxDOT's contracting personnel faster.

5.7 TxDOT should strengthen oversight and accountability of professional services contracts in its district offices.

TxDOT should improve coordination and oversight of professional services contracts by establishing a single point of accountability and contact for a district or region. This responsibility should reside with a professional level employee with a good understanding of contract management and engineering-related experience. This contact point would improve consistency and quality of contracting practices throughout an area.

5.8 TxDOT should require contract management training for its professional services project managers and other employees involved in professional services contract administration.

TxDOT should plan for and implement mandatory training, building on the current contract management course developed by its Consultant Contract Office in consultation with the Contract Services Office. Mandatory training would help ensure that TxDOT's contract managers and contract administrative personnel receive the fundamentals of good contracting practices.

Staffing and Oversight – Change in Statute

5.9 Require comprehensive development agreements or related types of agreements for privately operated toll roads to be certified by the Comptroller of Public Accounts and approved by the Attorney General.

This recommendation would require the Comptroller of Public Accounts to certify, and the Attorney General to approve, comprehensive development agreements, underlying facility agreements, or other agreements between TxDOT and private participants for designing, operating, or collecting payment for a toll road in the event that such agreements are authorized in the future. Both the Comptroller of Public Accounts and the Attorney General would be required to sign such final agreements to ensure provisions meet the State's fiduciary responsibility. In addition, the Commissioner of Transportation would also be required to sign any such agreement. These requirements would apply only to agreements for privately operated toll roads. This recommendation would strengthen external oversight of comprehensive development agreements and reduce the State's risk when entering into these complicated, high-dollar contracts.

Issue 6

TxDOT's Motor Vehicle Functions Do Not Fit Within Its Core Mission to Plan, Build, and Maintain the State's Transportation System.

TxDOT's core responsibility is to plan, construct, and maintain the state's transportation system. Motor vehicle functions, including registering and titling vehicles, licensing and regulation of motor vehicle dealers and manufacturers, motor carrier registration, and funding programs for diminishing automobile burglary and theft, do not clearly fit within TxDOT's core mission. TxDOT has received considerable additional authority in recent years to help address the State's serious transportation needs – including bond authority, toll roads, and innovative funding mechanisms like comprehensive development agreements.

The challenges and complexities of these new responsibilities require increasing time and resources within TxDOT to administer, diminishing the high-level attention that is available to other, non-core functions. The service demands and workload of the vehicle functions respond to different factors from those of the road functions. To the extent the needs of the vehicle divisions are not met, they can experience significant problems that can negatively affect performance, including inadequate staffing, insufficient funding, inadequate technology, and outdated statutes.

Recommendation

Change in Statute

6.1 Transfer motor vehicle functions currently at TxDOT to a newly created Texas Department of Motor Vehicles.

This recommendation would transfer the motor vehicle functions currently within TxDOT, including Vehicle Titles and Registration, Motor Vehicle Division, Motor Carrier Division, and Automobile Burglary and Theft Prevention Authority to a newly created Texas Department of Motor Vehicles. The Governor would appoint a seven-member board to oversee the new agency, consisting of two automobile dealer representatives, one county tax assessor-collector representative, one motor carrier industry representative, one law enforcement representative who is not a state employee, and two public members. The board members would serve staggered, six-year terms. The standard Sunset Across-the-Board provisions would be applied to the new agency and board.

The Transportation Legislative Oversight Committee would oversee the coordination, cooperation, and collaboration between TxDOT and the new Texas Department of Motor Vehicles during the transition of these functions and until the conclusion of the Committee's responsibilities.

Creating a new, independent state agency responsible for the State's motor vehicle functions would ensure that these functions receive the focus and attention needed to improve the administration of these functions as well as customer service. The transfer of these functions would also allow TxDOT to focus on its core mission of funding, building, and maintaining the state highway system and alleviate undue pressure on these functions from involvement in highway-related issues that could constrain staffing, technology, and other resource needs.

Issue 7

More Information Is Needed to Improve Regulation of Oversize and Overweight Vehicles to Prevent Damage to Roads and Bridges.

The regulation of oversize and overweight vehicles helps limit damage and preserve roads. However, the numerous exemptions from these regulations and the increasing number of oversize and overweight trucks traveling the Texas highway system cause considerable damage to the roads that increase maintenance costs significantly. Not enough focus has been given to identifying and recommending improvements to the regulation of oversize and overweight vehicles that should be considered to help decrease maintenance costs and better preserve the state highway system.

Recommendation

Change in Statute

7.1 Require the new Texas Department of Motor Vehicles to review and report on improving the regulation of oversize and overweight vehicles.

Under this recommendation, the new Texas Department of Motor Vehicles would be required to review and report on improving the regulation of oversize and overweight vehicles, including the consideration of the following.

- ◆ Prohibiting overweight vehicles from using Texas highways if the loads cannot be engineered to prevent damage to the road(s) or bridges(s) based upon the weight specifications for which the roads and bridges were built.
- ◆ For all overweight permits issued under Texas Transportation Code, Chapter 623, requiring an applicant to pay at a graduated rate based on overweight amount, a highway maintenance fee in an amount commensurate to the amount of damage done to the roads and bridges by the permitted vehicle.
- ◆ Requiring all fees collected by the State from oversize and overweight permits to be deposited to the State Highway Fund.
- ◆ Eliminating all exemptions for overweight vehicles and requiring an overweight permit and fee in an amount commensurate to the amount of damage done to the roads and bridges by the permitted vehicle.

Developing information regarding the feasibility and impacts of different approaches to regulating oversize and overweight vehicles would better inform future consideration of ways to reduce damage to roads and bridges.

Issue 8

Key Elements of TxDOT's Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- ◆ By not allocating sufficient resources to enforce the regulation of salvage vehicle dealers, TxDOT has not taken advantage of administrative processes to control this activity.
- ◆ Licensing provisions in the Department's statute do not follow model licensing practices and could potentially affect consumer protection.
- ◆ Nonstandard statutory enforcement provisions could reduce the Department's effectiveness of regulations in protecting consumers and providing fair treatment to licensees and carriers.

Various administrative, licensing, and enforcement processes in the statutes and rules governing motor vehicle dealers, salvage vehicle dealers, and household goods carriers do not match model standards developed from experience gained through more than 93 licensing reviews over the last 31 years. Comparing the Department's statute, rules, and practices to the model licensing standards identified variations in certain programs and processes that need to be brought in line with the model standards.

Recommendations

Administration – Management Action

8.1 TxDOT needs to provide necessary resources to enforce its statutory provisions regarding salvage vehicle dealers.

This recommendation would direct the Department to determine resource and staffing needs and request appropriations to implement enforcement provisions of the salvage vehicle dealers statute. Any consideration by the Department regarding reorganizing this regulatory effort elsewhere in the agency should still include a determination of the increased resources needed to adequately regulate salvage vehicle dealers. Fees assessed on these dealers should be increased to cover the additional costs. This change would help ensure that administrative processes already in law are more effectively implemented to protect the public from illegal activities of salvage vehicle dealers, without having to go to court for civil or criminal action.

Licensing – Change in Statute

8.2 Establish a process for informing the public whether household goods carriers conduct criminal history checks on their employees.

This recommendation would require household goods carriers to report to TxDOT whether or not they conduct criminal history background checks on their employees under the provisions of the Texas Civil Practice and Remedies Code that seek to relieve liability for damages by certain companies that conduct such background checks. TxDOT would be able to require documentation it deems necessary at the time of original motor carrier registration and registration renewal to satisfy the Department

that appropriate criminal history background checks have occurred, are regularly updated, and that a household goods carrier actually excludes workers with serious criminal records from employment. TxDOT would also be required to make this information available to the public for its use in selecting a household goods carrier. This notification process would inform the public about these companies without expanding regulation or requiring household goods carriers to conduct criminal history background checks.

Enforcement – Change in Statute

8.3 Authorize the Department’s Motor Vehicle Division to provide specialized training as an enforcement option for violations of motor vehicle dealer regulations.

Allowing TxDOT to order violators of motor vehicle dealer laws and rules to obtain specialized training as a condition of probation would provide an additional tool for enforcing the Department’s regulations.

8.4 Authorize the Department to levy administrative penalties for salvage vehicle dealers and require an administrative penalty matrix for both salvage and motor vehicle dealers.

This recommendation would give the Department authority to fine salvage vehicle dealers up to \$5,000 for violations of the statute or rules. In determining actual penalty amounts, the Department should consider factors including a licensee’s compliance history, seriousness of the violation, and the threat to public welfare. The Department should develop an administrative penalty matrix that appropriately relates fines to the specific violation by salvage and motor vehicle dealers. All administrative penalties collected would be deposited into General Revenue. This recommendation would give the Department the flexibility of an additional enforcement tool while ensuring that penalty amounts reflect the severity of the violation.

8.5 Remove the cap on the amount of total penalty for a knowing violation of the regulation of household goods carriers.

This recommendation would remove the total penalty cap of \$30,000 for a knowing violation of household goods carriers statutes or rules. This change would allow the Department to establish penalty levels as necessary to deal with the violation and deter future violations.

8.6 Strengthen TxDOT’s household goods carriers enforcement authority by including summary suspension.

This recommendation would grant TxDOT authority to temporarily suspend a household goods carrier’s registration without holding an initial hearing to stop activity that could harm the public. Providing a subsequent opportunity for hearing and appeal of such an order would ensure due process for the carrier and prevent abuse of this authority.

8.7 Authorize TxDOT to order refunds as part of an agreed order of complaints involving motor vehicle dealers and household goods carriers.

This recommendation would give TxDOT the authority to include refunds in agreed orders to resolve enforcement matters involving motor vehicle dealers and household goods carriers. The refund would be limited to the amount paid by the consumer and would not include an estimation of damages or

harm. The refund may be in lieu of or in addition to other sanctions ordered against a licensee or carrier. This would allow TxDOT to take more effective action against violators in a way that benefits the aggrieved consumer.

8.8 Authorize TxDOT to issue cease-and-desist orders against unlicensed household goods carriers.

Giving TxDOT cease-and-desist authority would enable the Department to move more quickly to stop unlicensed activity that threatens the safety of the public. This recommendation would also authorize the Department to assess administrative penalties against individuals who violate cease-and-desist orders.

Enforcement – Management Action

8.9 The Department should compile and report statistical information on complaints and enforcement actions in its household goods carriers registration program.

This recommendation would direct TxDOT to compile complaint information, including non-jurisdictional complaints, regarding its household goods carriers. This information should include the number, source, subject matter, and disposition of complaints each year and be reported and made available to the public. Improved reporting of complaint and enforcement information would give the Department and the Legislature a more complete picture of the regulated area and serve as an important management tool to help improve the program.

Issue 9

The State’s Overall Approach to Outdoor Advertising Does Not Follow Common Regulatory Practices and May Result in Inequities in Valuation.

Key Findings

- ◆ The structure and set up of the outdoor advertising program does not provide for the best regulation of the industry.
- ◆ Licensing and enforcement provisions in the Department’s statute do not follow model licensing practices and could reduce the effectiveness and fairness of regulation.
- ◆ Procedures for valuing and condemning billboards may be inequitable to the State.

Various structural, administrative, licensing, and enforcement processes in the statutes governing billboard regulation along federal-aid and rural roads do not match model standards developed through experience gained through more than 93 licensing reviews during the last 31 years. Comparing the Department’s statute, rules, and practices for the outdoor advertising regulatory program to the model standards identified variations that need to be brought in line with the model standards.

Recommendations

Program Structure – Management Action

9.1 TxDOT should centralize the outdoor advertising regulatory program, requiring staff to report to the Right-of-Way Division instead of district engineers.

Centralizing the program would ensure statewide fairness and consistency in interpretation and enforcement of rules, and would help the Department track total program costs. As part of this recommendation, the Department should consider whether regionalizing some staff, and consolidating the effort of staff working part time on the program, could produce additional efficiencies. This recommendation would complement existing efforts by TxDOT to reorganize the regulation of outdoor advertising.

Administration – Change in Statute

9.2 Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads.

This recommendation would require a license to operate outdoor advertising on rural roads, matching the license requirements that currently exist for outdoor advertisers only on federal-aid roads. Under this change, a single license would enable outdoor advertisers to operate on both road systems. Outdoor advertisers would still have to obtain permits for individual signs with different standards for each type of road. The license for outdoor advertisers on rural roads would be subject to the same enforcement authority as currently governs the federal-aid road license. These changes would standardize the regulation of outdoor advertising, including standard enforcement options for all outdoor advertisers operating along the state highway system, to ensure more consistent regulation of signs on all roads.

9.3 Standardize the appeals process for denied sign permits by eliminating the Board of Variance.

This recommendation would eliminate TxDOT's Board of Variance for hearing appeals of rural road sign permit denials. TxDOT would use the same review process for rural road permit appeals as currently exists for federal-aid roads. Under this change, the agency head would have authority to grant variances from the rural road sign standards. This recommendation would standardize the administration of the outdoor advertising regulatory program.

9.4 Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account.

This change would require that the small amount of fees collected for signs along rural roads be deposited into the same Texas Highway Beautification Account in General Revenue as are fees collected for federal-aid roads, instead of to the State Highway Fund. This change would streamline the collection and tracking of revenues for licenses and permits on both rural and federal-aid roads.

Administration – Management Action

9.5 TxDOT should ensure that the cost of regulating outdoor advertising is covered by fee revenue generated by the program.

The Department should document the total cost of the program, including direct and indirect expenses to both the Right-of-Way Division and district offices. The Department should use this information to adjust fees, which have not been raised since 1991, to recover the total cost of the program, which one recent audit found operated at a \$490,000 deficit in fiscal year 2007.

Licensing – Change in Statute

9.6 Authorize the Department to deny license renewal if a licensee's permits are in poor standing.

This recommendation would clarify the Department's authority to deny the renewal of an existing license for outdoor advertisers, ensuring that the Department considers any compliance issues that a licensee might have before renewing a license.

Enforcement – Change in Statute

9.7 Require the Department to develop a complaints process, track and report complaints, and provide information to the public about how to file a complaint.

The entire complaints process should be guided by clear rules or procedures, and the Department should maintain adequate information about complaints, including detailed statistics about complaints received and resolved each year, and provide this information in an annual report. TxDOT should also have processes in place to inform the public of complaint procedures, including on the Department's website. Persons affected by the regulations should be able to file a written complaint against a licensee on a simple form provided by the Department. The Department should prioritize complaints so that the most serious problems are handled first. These changes would help ensure better involvement by all stakeholders in the regulation of outdoor advertising and would help TxDOT better understand issues of concern to those stakeholders.

9.8 Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification account.

This recommendation would clarify the existing administrative penalty authority as an enforcement tool for regulating outdoor advertising on rural roads. Specifically, this recommendation would eliminate language that a violation be intentional before the Department may assess an administrative penalty under its rural road regulations. It would also provide for an appeal of such a penalty by substantial evidence instead of by trial de novo. The recommendation would also extend this standard administrative penalty authority to violations of the Department's regulations on federal-aid roads. As part of this recommendation, all fines collected for both types of roads should be deposited into the existing General Revenue-Dedicated Texas Highway Beautification Account, not to the State Highway Fund. These changes would expand TxDOT's enforcement options and would make regulations more consistent on both rural and federal-aid roads.

Enforcement – Management Action

9.9 The Department should scale enforcement actions to the seriousness of offenses.

TxDOT should work to fully use all of its available enforcement tools by scaling penalties to the seriousness of the offense to ensure greater fairness and effectiveness of its enforcement actions. The Department should use administrative penalties for less-serious offenses, instead of revoking permits. As part of this recommendation, the Department should include a matrix describing administrative penalty levels associated with various offenses in its planned rule revision.

Cost of Outdoor Advertising – Change in Statute

9.10 Require cities to pay the costs of condemnation if they do not allow relocation of billboards affected by state roadway projects within their jurisdictions.

This recommendation would require municipalities to choose whether to allow relocation of an outdoor advertising structure affected by a state roadway project located within their jurisdictions. If the municipality does not allow relocation of the outdoor advertising structure, the municipality, and not the State, would be required to pay the costs of condemnation. This recommendation would make cities more accountable for decisions they make to allow relocation of outdoor advertising structures. Cities would no longer be able to rely on the State to pay condemnation costs for billboards that the cities disallow.

Cost of Outdoor Advertising – Recommendation to Legislative Committees

9.11 Request that the Legislature, through the appropriate legislative committees, consider the process for valuation of outdoor advertising for condemnation and ad valorem tax purposes, with a goal towards resolving inequities.

Unlike most other property valuations for condemnation purposes along Texas highways, the value of a billboard has included not only the value of the physical structure, but also projected business income from the billboard. However, for taxation purposes, the value of a billboard is based solely on the cost of the physical structure. As a result, billboards are taxed at significantly lower values than the condemnation costs paid by TxDOT and other local governmental entities. This recommendation expresses the will of the Sunset Commission that the Legislature, through the appropriate jurisdictional legislative committees, consider the process for valuation of outdoor advertising for condemnation and ad valorem tax purposes, to help ensure that the value of these structures for both purposes is more equitable.

9.12 Request that the Senate Committee on Transportation and Homeland Security and the House Committee on Transportation establish a task force to study costs associated with outdoor advertising regulation.

This recommendation expresses the will of the Sunset Commission that the Chairman of the Senate Committee on Transportation and Homeland Security and the Chairman of the House Committee on Transportation establish a task force to study the costs associated with new outdoor advertising permits in Texas, including condemnation costs and new digital technologies in billboard construction and use. Members of the task force should include legal staff from both TxDOT and the Office of the Attorney General, and two local government attorneys who specialize in billboard condemnation cases. This study would provide information to ensure that the regulation of outdoor advertising is based on the real cost of billboard construction and use.

Issue 10

TxDOT Does Not Provide Adequate Attention to Rail Transportation Issues.

Currently, TxDOT does not have a focused, internal effort to coordinate and oversee rail transportation issues, limiting its ability to meet its mission as a multimodal transportation agency. TxDOT also has not evaluated the best use for the only state-owned rail line, the South Orient Railroad, limiting the potential of this rail resource.

Recommendations

Change in Statute

10.1 Require TxDOT to establish a Rail Transportation Division.

The new Rail Transportation Division would be charged with ensuring that rail becomes an integral part of the transportation plan for Texas. Specifically, the Division's duties would include coordination and oversight of projects approved and funded through the Texas Rail Relocation and Improvement Fund; development of planning for improved passenger and freight rail service; and coordination of state, federal, and private funding for further rail development in Texas.

Management Action

10.2 Direct TxDOT to study the feasibility of selling the South Orient Railroad and report to the Legislature.

TxDOT should determine the market value of the South Orient Railroad, study the feasibility of selling the railroad to private interests, and report this information to the Legislature by February 28, 2009. If the State decides to sell the railroad, it must remain a viable, functioning railroad. This study would help ensure an informed decision as to the disposition of this resource.

Issue 11

Unmanaged Dynamic Message Signs May Affect TxDOT's Ability to Ease Traffic Flows.

Dynamic Message Signs are electronic traffic control devices used primarily for managing travel, controlling and diverting traffic, and identifying current and anticipated roadway conditions. These changeable message signs display emergency and safety information as well as warning and guidance information related to traffic control. In Texas, these signs are typically operated from Traffic Management Centers throughout the state which are managed and operated by TxDOT as well as some larger urban cities.

TxDOT has been expanding the deployment of Dynamic Message Signs, with about 536 signs installed statewide at a cost of about \$80.4 million. However, not all of the signs are actively managed, and therefore do not serve their intended purpose to help ease congestion and to provide useful and timely traffic information to the traveling public, including designating alternative routes.

Recommendation

Change in Statute

11.1 Require all electronic signage to be actively managed to mitigate congestion, including designating alternative routes.

This change would require TxDOT to ensure that all Dynamic Message Signs are managed by personnel from TxDOT or in cooperation with local governments. Active management of these signs would ensure that they are operational to provide real-time traffic information to the traveling public to help facilitate the flow of traffic.

Issue 12

TxDOT Has Not Spent Its Green Ribbon Project Allocation in a Timely Manner.

In 2001, the Legislature, by rider, expanded TxDOT's Green Ribbon Project, a public-private partnership initiative to enhance the appearance of public highways by incorporating in the design and improvement of public highways the planting of trees and shrubs, emphasizing natural beauty and greenspace, integrating public art, and highlighting cultural uniqueness of neighborhoods to other areas of the state. The rider requires that in non-attainment and near non-attainment areas, in connection with a contract for a highway project, the Department shall allocate one-half of one percent of the amount to be spent under the contract for construction, maintenance, or improvement of the highway for landscaping improvements.

Since 2002, more than \$72 million has been allocated to TxDOT districts through the Green Ribbon Project, as well as about \$72.8 million in congressional funding for plant material in Houston, to enhance the appearance of state highways. However, some TxDOT districts have not obligated all of their allocations.

Recommendation

Change in Statute

12.1 Require one half of one percent of highway or toll road projects be spent on landscaping projects in non-attainment and near non-attainment areas.

Under this recommendation TxDOT would be statutorily required, in non-attainment and near non-attainment areas, in connection with a contract for a highway project, to allocate to the district or districts in which the project is located an amount equal to not less than one half of one percent of the amount to be spent under the contract for construction, maintenance, or improvement of the highway, to be used for landscaping improvements. Landscaping improvements are defined as planting of indigenous or adapted trees and other plants that are suitable for the climate in which they will be located, and preparing the soil and installing irrigation systems for the growth of the trees and plants. This allocation would also be required on all current and future toll roads in non-attainment and near non-attainment areas. In these instances, TxDOT or the toll road authority would be required to allocate the funding. Placing this requirement in statute would give better direction to TxDOT and improve accountability of the Green Ribbon Project funding.

Issue 13

Lack of Comprehensive Information About TxDOT's Use of Propane May Affect Decisions Regarding Its Alternative Fuel Vehicle Fleet.

Although TxDOT uses several different types of alternative fuel vehicles, including propane, hybrid, and flex fuel vehicles which run on either gasoline or ethanol, the Department's use of propane vehicles has decreased significantly in recent years. The number of propane vehicles in the Department's fleet has decreased from about 5,000 vehicles in recent years to 1,488 vehicles currently. Without a comprehensive assessment of the reasons for this decrease in propane vehicles, policy makers have difficulty making well-informed decisions regarding the appropriate role propane should play in TxDOT's alternative fuel vehicle fleet.

Recommendation

Management Action

13.1 Direct TxDOT to report to the Legislature on opportunities and challenges for increasing the use of propane vehicles in its fleet.

TxDOT should report on factors – both technological and regulatory – affecting the greater use of propane in its vehicle fleet. The report must include the following:

- ◆ a description of the make-up of TxDOT's current fleet, including year, make, and model of gasoline and diesel vehicles;
- ◆ an outline of TxDOT's plan for future fleet purchases, including the year, make, and models the agency is planning to purchase; which fuel-type the vehicles will operate on; the reason for choosing a particular fuel-type; and an explanation of whether TxDOT will be able to convert the chosen engine-type to run on alternative fuel in the future;
- ◆ an analysis that compares the fuel-economy and range of all alternative fuels;
- ◆ economic models and methods that would enable TxDOT to transition to greater use of alternative fuels in its fleet; and
- ◆ the use and citation of existing case studies produced by the private sector on its use of alternative-fuel vehicles in fleets, for example, UPS and Schwann's.

Other considerations TxDOT would need to consider in its assessment include availability of propane during natural disasters; efficiency of using vehicles weighing more than a half-ton; cost-savings of using propane compared to other fuels; future plans by auto manufacturers to build vehicles retrofitted to use propane; and status of EPA's certification of propane conversion kits. Having this information would help TxDOT make well-informed decisions about the future of its alternative fuel vehicle fleet.

Fiscal Implication Summary

Four issues regarding TxDOT would have a fiscal impact. Several other recommendations could have a fiscal impact although that impact will depend on how the recommendations are implemented and therefore could not be estimated for this report.

- ◆ **Issue 1** – Eliminating the five-member Texas Transportation Commission would result in an annual savings of about \$79,570 for the part-time salary they receive. Eliminating the five commissioner assistant positions would result in a savings of \$488,867 for these salaries and fringe benefits. An additional savings of \$69,234 would result from elimination of the travel and operating expenses of both the Commission members and their assistants. With a full-time Commissioner, the Department would not need both an Executive Director and a Deputy Executive Director. The savings from eliminating one of these positions, and reorganizing staffing and salaries accordingly, would provide the necessary funding for the Commissioner’s salary as determined by the Legislature.

Creating the Legislative Oversight Committee would not have a fiscal impact to the State. The Committee would be staffed and funded by transferring six full-time equivalent positions and approximately \$1.2 million from TxDOT’s Government and Public Affairs Research Section to the Committee. TxDOT would not need to replace the transferred positions or funding for transportation policy research and evaluation since the Committee would be responsible for these functions.

- ◆ **Issue 3** – TxDOT would incur initial costs in redeveloping the Statewide Transportation Plan, restructuring the transportation planning document, and improving reporting on progress towards meeting the State’s transportation goals. The Department would be able to cover these costs through its existing budget.

The online dashboard reporting system would require initial development funding, and could also require significant upgrades to the Department’s underlying information technology systems. TxDOT estimates that initial development and purchases of software could have a one-time cost of \$500,000. Upgrades to the Department’s technology systems could have a one-time cost of between \$3 to \$5 million for data conversion, software, and hardware associated with a data warehouse. Because the need for and extent of these costs cannot be determined at this time, they are not included in the estimated impact chart on page 223.

Supporting rural planning efforts statewide would require some additional staff time and administrative costs, but the Department could cover these costs through its existing budget. The recommendation does not require the establishment of formal Rural Planning Organizations nor does it require hiring full-time dedicated staff for rural planning efforts. The Department could use existing planning staff that already provides some support for rural planning, and federal Statewide Planning and Research funds to cover these associated costs. TxDOT could potentially use a portion of its transportation development credits to meet the local match requirement for these funds to minimize any costs to local governments.

- ◆ **Issue 4** – The recommendation to better coordinate marketing campaigns could produce savings by taking advantage of the Department’s purchasing power, but an exact amount could not be estimated.

- ◆ **Issue 5** – The recommendation to eliminate required newspaper advertising for upcoming construction and maintenance contracts, at TxDOT’s discretion, would result in savings to the State Highway Fund. TxDOT could reduce annual expenditures from the State Highway Fund by an estimated \$950,000, assuming that TxDOT would eliminate newspaper notice for contracts valued at \$300,000 or more.

The management action directing TxDOT to require contract management training for its contract managers and administrative personnel could have a minimal cost to the agency. TxDOT estimates an annual cost of \$59,286 for course development, preparation, and teaching for which the Department could request additional funding for through the appropriations process.

The recommendation to require the Comptroller of Public Accounts to certify, and the Attorney General to approve, comprehensive development agreements for privately operated toll roads could result in a cost to the state for additional consulting or staff resources, but the total cost could not be estimated at this time. The 80th Legislature placed a similar requirement on the Attorney General to review these agreements for legal sufficiency. While the Attorney General estimated the review would require three additional employees at a cost of approximately \$350,000 each year, the costs were absorbed within the agency’s existing resources.

- ◆ **Issue 6** – Transferring TxDOT’s motor vehicle functions to a newly created agency, the Texas Department of Motor Vehicles would have an estimated cost to the State of \$470,734. Staffing and funding from the motor vehicle divisions totaling about 712 FTEs and \$109,539,636 would be transferred from TxDOT to the new agency. However, the new agency would need about four additional employees for an executive director and administrative support positions which would cost \$426,438. Travel and other support costs for the seven-member board would cost an estimated \$44,296.
- ◆ **Issue 8** – The recommendation directing TxDOT to request appropriations to hire staff to enforce its salvage vehicle dealer regulations could increase costs, but would not have a fiscal impact to the State as these costs should be offset by increased fees on licensees.

The management action directing the Department to compile and report statistical information on complaints against household goods carriers would not have a fiscal impact to the State. An estimated one-time cost of \$49,950 to create a software program to compile and report the information could be covered with current resources or offset by an increase in household goods carriers license fees.

The recommendation to authorize the Department to provide specialized training as an enforcement option for violations of motor vehicle dealer regulations would not have a fiscal impact to the State. An estimated cost of \$7,164 per year for travel, facility rental, equipment, and materials could be covered with current resources or offset by an increase in motor vehicle dealer license fees.

- ◆ **Issue 9** – The management actions directing TxDOT to centralize its outdoor advertising regulatory program, better track program costs, and raise fees to cover these costs could result in an annual revenue gain to the Department of \$1.3 million to cover the full cost of regulations.

The statutory recommendations to deposit all program fees and fines into the General Revenue-Dedicated Texas Highway Beautification Account would result in an approximate \$115,000 annual gain to this account, and a loss of the same amount to the State Highway Fund. Costs associated

with requiring a license to operate outdoor advertising signs along rural roads and better tracking and reporting complaints information should be offset by increased fees on licensees.

Requiring cities to pay billboard condemnation costs if city regulations prohibit relocation of billboards affected by highway projects would result in savings to the Department and costs to cities. However the specific fiscal impact cannot be estimated without knowing the number of signs and their locations.

- ◆ **Issue 10** – Requiring TxDOT to establish a Rail Transportation Division would have a fiscal impact of about \$80,000 for a new Division Director position. Additional administrative support could be provided with shared resources from TxDOT’s other divisions.

The table shows the overall fiscal impact resulting from these recommendations.

<i>Fiscal Year</i>	<i>Gain to the General Revenue-Dedicated Texas Highway Beautification Account</i>	<i>Loss to the State Highway Fund</i>	<i>Savings to the State Highway Fund</i>	<i>Change in FTEs From FY 2009</i>
2010	\$115,000	\$115,000	\$1,036,937	+5
2011	\$115,000	\$115,000	\$1,036,937	+5
2012	\$115,000	\$115,000	\$1,036,937	+5
2013	\$115,000	\$115,000	\$1,036,937	+5
2014	\$115,000	\$115,000	\$1,036,937	+5

ACROSS-THE-BOARD RECOMMENDATIONS



Across-the-Board Recommendations

This report section briefly describes each of the Sunset across-the-board recommendations (ATBs), with a chart detailing the application of the ATBs to each of the agencies currently under review for the 81st 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 81st 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 nine entities under review because the agency was under a limited-scope review, the agency does not exist as a typical state agency, or the Commission recommended the agency for abolishment. These entities are: the Texas Boll Weevil Eradication Foundation, Equine Research Account Advisory Committee, Texas Facilities Commission, Texas Medical Board, Polygraph Examiners Board, Prescribed Burning Board, Office of State-Federal Relations, Board of Tax Professional Examiners, and Texas-Israel Exchange Fund Board.

Sunset Across-the-Board Recommendations 2009

		Public Membership	Conflicts of Interest	Unbiased Appointments	Governor Designates Presiding Officer	Grounds for Removal	Board Member Training	Separation of Functions	Public Input	Complaint Information	Technology Use	Alternative Dispute Resolution
Agriculture, Texas Department of		N/A	U	N/A	N/A	N/A	N/A	N/A	S	A	A	
Credit Union Department		S	U	U	U	U	S	S	U	A	A	
Fire Protection, Texas Commission on		U	U	S	U	U	U	S	U	A	A	
Housing Corporation, Texas State Affordable		N	U	S	U	S	U	S	U	U	N	
Insurance, Texas Department of		N/A	U	S	N/A	S	S	S	S	A	A	A
Insurance Counsel, Office of Public		N/A	U	S	N/A	S	N/A	N/A	N/A	A	A	M
Jail Standards, Texas Commission on		U	U	S	S	U	U	U	S	M	A	A
Juvenile Justice	Juvenile Justice Department, Texas ¹	A	A	A	A	A	A	A	A	A	A	A
	Office of Independent Ombudsman	S	S	N/A	N/A	N/A	N/A	N/A	N/A	M	N	N
Law Enforcement Officer Standards and Education, Texas Commission on		S	U	S	S	U	U	S	S	U	A	A
Military Preparedness Commission, Texas		M	S	S	S	M	A	N/A	S	S	S	S
Parks and Wildlife Department, Texas		M	S	S	S	S	S	S	S	U	A	A
Private Security Board		S	S	S	S	S	S	S	S	U	A	A
Public Safety, Department of		N/A	U	S	S	S	S	A	S	U	A	A
Racing Commission, Texas		S	U	S	S	S	S	S	S	S	A	A
Residential Construction Commission, Texas		S	S	S	S	S	S	S	S	S	A	A
Transportation	Transportation, Texas Department of	N/A	U	M	N/A	M	M	M	M	M	A	A
	Motor Vehicles, Texas Department of ²	A	A	A	A	A	A	A	A	A	A	A
	Automobile Burglary and Theft Prevention Authority, Texas ³	S	S	S	S	U	S	S	S	A	A	A

A – Apply N/A – Not Applicable M – Modify S – Already in Statute N – Do Not Apply U – Update

¹ The Sunset Commission recommends the consolidation of the Texas Youth Commission and the Texas Juvenile Probation Commission into a newly created Texas Juvenile Justice Department and applied the Sunset ATBs to the new agency.

² The Sunset Commission recommends the transfer of the motor vehicle functions from the Texas Department of Transportation to a newly created Texas Department of Motor Vehicles and applied the Sunset ATBs to the new agency.

³ The Sunset Commission voted to apply the Sunset ATBs to the Authority, which is administratively attached to the Texas Department of Transportation.

**IMPLEMENTATION OF
2007 SUNSET LEGISLATION**



Implementation of 2007 Sunset Legislation

The Sunset Act requires the Sunset Commission to review the ways in which agencies implement Sunset bill provisions in the session following their Sunset review. This review helps ensure that agencies fully implement changes adopted by the Legislature through the Sunset process.

In 2007, the 80th Legislature passed 15 bills containing changes recommended by the Sunset Commission. These bills contained a total of 302 provisions requiring action by the agencies involved. Sunset staff worked with each agency impacted 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 2007. Key changes implemented as a part of the Sunset process included the following.

- ◆ Creating a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies, including assessing the use and results of additional treatment and rehabilitation funding recommended by the Sunset Commission and appropriated by the Legislature to the Texas Department of Criminal Justice.
- ◆ Updating the Texas Alcoholic Beverage Commission's mission to better reflect the agency's role in protecting public safety and regulating the modern alcoholic beverage industry.
- ◆ Streamlining the Texas Nurse Board's process for approving nurse education programs to remove unnecessary complexity, eliminate duplication, and accommodate changes in the delivery of nurse education.
- ◆ Abolishing the Texas Structural Pest Control Board, transferring its functions to the Texas Department of Agriculture, and developing a risk-based approach to inspections.

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.

The chart on the following page, *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, partially implemented, or not implemented is provided in the following material.

Implementation Results

Status of Provisions	Number	Percentage
Implemented	286	95%
In Progress	12	4%
Partially Implemented	3	1%
Not Implemented	1	<1%
Total	302	100%

In addition to statutory changes, the Sunset Commission adopted 50 management recommendations for improvements to agency operations. The State Auditor evaluated the implementation of a select number of these management recommendations and the Auditor's findings are contained in SAO Report number 08-041, *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	Partially Implemented	Not Implemented
Alcoholic Beverage Commission, Texas	S.B. 904	30	29	1		
Animal Health Commission, Texas	H.B. 2543	15	15			
Arts, Texas Commission on the	H.B. 2460	7	7			
Criminal Justice, Department of	S.B. 909	26	23	2	1	
Correctional Managed Health Care Committee	S.B. 909	6	6			
Higher Education Tuition Board, Prepaid	H.B. 2173	9	9			
Historical Commission, Texas	H.B. 12	12	11		1	
Library and Archives Commission, Texas State	S.B. 913	12	12			
Nursing, Texas Board of	H.B. 2426	42	41	1		
Pardons and Paroles, Board of	S.B. 909	12	10	1	1	
Real Estate Commission, Texas	S.B. 914	31	30	1		
Risk Management, State Office of	S.B. 908	14	12	1		1
Rural Community Affairs, Office of	H.B. 2542	13	13			
Structural Pest Control Regulation	H.B. 2458	16	13	3		
Teacher Retirement System of Texas	H.B. 2427	14	14			
Veterans Commission, Texas	H.B. 3426	27	27			
Veterans' Land Board	H.B. 3140	12	10	2		
Veterinary Medical Diagnostic Laboratory, Texas	H.B. 2024	4	4			
Totals		302	286	12	3	1

Implementation of 2007 Sunset Legislation

Texas Alcoholic Beverage Commission – S.B. 904		
<p>Senate Bill 904, as adopted by the 80th Legislature, continued the Texas Alcoholic Beverage Commission for 12 years. The legislation included a total of 30 changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.</p>		
Bill Provision	Implementation	
	Status	Comments
<p>1. Requires the Commission to reduce delays in the licensing process by providing for online license application, renewal, and payment of fees.</p>	<p>In Progress</p>	<p>The agency is working with the Department of Information Resources and the Governor’s Office to conduct a pilot project that will allow businesses to complete online license applications. The pilot project is scheduled to be implemented in June 2009. The agency has requested funding in its 2010-2011 Legislative Appropriations Request for upgrades to its computer systems to accept online applications. The agency has also taken steps to streamline its business processes, including creating an abbreviated and more user-friendly license application, in preparation for online licensing.</p>

Implementation of 2007 Sunset Legislation

Texas Department of Criminal Justice – S.B. 909		
<p>Senate Bill 909, as adopted by the 80th Legislature, continued the Texas Department of Criminal Justice (TDCJ) for four years and included a total of 26 changes requiring action by TDCJ. The following chart provides the status of one provision that is partially implemented and two provisions that are still in progress.</p>		
Bill Provisions	Implementation	
	Status	Comments
<p>1. Prohibits TDCJ from prohibiting a parole panel from requiring an inmate to participate in and complete a treatment program, regardless of available capacity in the program, prior to being paroled.</p>	In Progress	<p>TDCJ gives the Board of Pardons and Paroles (Parole Board) a weekly report regarding the ineligibility of certain offenders for a treatment program for reasons such as custody status or medical condition. To complement this report, TDCJ is developing as part of its mainframe system, a way to show an offender's eligibility status prior to the parole panel decision. This capability should be operational in three to six months and available to both TDCJ and the Parole Board.</p> <p>Also, TDCJ and the Parole Board formed a work group to develop a report containing useful information for the parole panel to have when making a parole decision, such as available capacity and approximate wait times for TDCJ treatment programs. TDCJ estimates it will begin submitting this report to the Parole Board in February 2009.</p>
<p>2. Authorizes TDCJ's director to meet regularly with an eligible state employee organization that represents department employees in disciplinary or grievance matters to review matters of interest to both TDCJ and the employee organization, including the operation of TDCJ facilities, and issues that could negatively affect employee retention and recruitment. Requires the director to submit a report to the Criminal Justice Legislative Oversight Committee on the outcome of these meetings.</p>	Partially Implemented	<p>The TDCJ Executive Director and other senior staff continued the practice of periodic meetings with various employee organizations such as the American Federation of State, County, and Municipal Employees Union and Texas Public Employees Association. Given the permissive language authorizing these meetings, no report on the outcomes of these meetings was produced.</p>
<p>3. Requires TDCJ to study using GPS tracking and electronic monitoring devices for people on parole, and report the findings to the Legislature by December 1, 2009.</p>	In Progress	<p>TDCJ continues to examine documentation and electronic media to identify different types of electronic monitoring, as well as coordinate testing of such equipment as it becomes available. All findings will be reported to the Legislature by December 1, 2009.</p>

Implementation of 2007 Sunset Legislation

<i>Texas Historical Commission – H.B. 12</i>		
<p>House Bill 12, as adopted by the 80th Legislature, continues the Texas Historical Commission for 12 years. The legislation included a total of 12 changes requiring action. The following chart summarizes the one provision, requiring three actions, that has been partially implemented.</p>		
Bill Provisions	Implementation	
	Status	Comments
<p>1. Require THC to approach the marker program more strategically by awarding a more limited number of markers based on statewide themes and significance.</p>	<p>Partially Implemented</p>	<p>This provision required three actions, including: requiring the Commission to develop statewide themes for the historical marker program related to the Commission's overall preservation goals; requiring the Commission to establish a limit for the number of markers the Commission awards annually; and requiring the Commission to adopt rules establishing guidelines for the marker application, including guidelines for the Commission's review of the application, criteria for ranking the application, and requiring the Commission to give priority to markers that relate to the statewide themes developed by the Commission. The Commission has taken steps to implement these provisions by adopting a statewide themes policy that defines contextual frameworks and categories of historical associations for the marker program, adopting a policy that requires the Commission to establish a numerical limit to the number of markers that will be approved, and voting to publish rules for the marker application guidelines. Because the agency's implementation is still conceptual or in progress, Sunset staff was unable to determine whether the Commission's actions fully complied with the intent of the legislation.</p>

Implementation of 2007 Sunset Legislation

Texas Board of Nursing – H.B. 2426		
<p>House Bill 2426, as adopted by the 80th Legislature, continued and renames the Texas Board of Nursing for 10 years. The legislation included a total of 42 changes requiring action. The following chart summarizes one provision that is in progress.</p>		
Bill Provisions	Implementation	
	Status	Comments
<p>1. Enacts and enters into the National Council of State Boards of Nursing (NCSBN) Advanced Practice Registered Nurse Compact to provide for cooperation of party states for licensure, authority to practice, and regulation of advanced practice nurses. Provides for the Board to adopt rules necessary for implementation of the Compact by December 31, 2011 or the authority to implement the Compact expires.</p>	<p>In Progress</p>	<p>The Board is currently reviewing its rules related to advanced practice recognition for the purpose of preparing to implement the Advanced Practice Registered Nurse Compact. The first section of rule amendments was considered for adoption by the Board at the October 2008 Board meeting. Input is being sought from the Board's Advanced Practice Nurse Advisory Committee. The Board will also collaborate with the other states that have statutory authority to implement the compact.</p>

Implementation of 2007 Sunset Legislation

Texas Board of Pardons and Paroles – S.B. 909

Senate Bill 909, as adopted by the 80th Legislature, included a total of 12 changes requiring action by the Board of Pardons and Paroles. The following chart summarizes one provision that is still in progress and one that is partially implemented.

Bill Provisions	Implementation	
	Status	Comments
<p>1. Requires the parole guidelines to take into consideration an inmate's progress in any programs in which the inmate participated during the inmate's term of confinement.</p>	<p>In Progress</p>	<p>According to the outside expert hired by the Parole Board to review the Board's parole guidelines, the Board cannot include the inmate's progress in any programs in the parole guidelines until the programs are evaluated for effectiveness in accordance with Government Code 493.0083. This statute requires TDCJ to "determine the effectiveness of rehabilitation and reintegration programs and services provided to inmates and other offenders under the jurisdiction of the department." According to TDCJ, the Department created a new position for the purpose of conducting evaluations of rehabilitation programs designed to reduce recidivism. A report was recently submitted to the Legislature on February 3, 2009.</p>
<p>2. Requires the parole panel members who deviate from the guidelines to provide a detailed, written statement explaining the specific reasons for the deviation. This requirement applies to parole decisions made on or after the effective date of this act.</p>	<p>Partially Implemented</p>	<p>A comparison of aggregate approval rates with recommended approval rates by guidelines level is made available to the Parole Board Members and Parole Commissioners on a monthly basis. However, Board Members and Parole Commissioners vote cases on a daily basis; therefore, at the time of the parole panel member's vote, the current monthly aggregate approval rates by guidelines level are not available to them. This means that the panel member voting a case is unaware of the aggregate approval rate to determine whether or not they are voting within the range of the recommended approval rate.</p> <p>A parole panel member provides approval and denial reasons for all votes through the Notice of Parole Panel Action (NPPA). The Board revised the NPPA on March 20, 2008 to include language that states that the NPPA is a detailed, written statement of the parole panel's decision. The Board coordinated implementation of the revised NPPA with TDCJ Parole Division. In addition, the Board prepared a standard letter to send to offenders and attorneys who request the detailed written statement.</p>

Implementation of 2007 Sunset Legislation

Texas Real Estate Commission – S.B. 914		
<p>Senate Bill 914, as adopted by the 80th Legislature, continued the Texas Real Estate Commission for 12 years. The legislation included a total of 31 changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.</p>		
Bill Provisions	Implementation	
	Status	Comments
<p>1. Requires the Commission to publish exam pass rates for real estate schools and provide this information to the public.</p>	<p>In Progress</p>	<p>The Commission is collecting exam pass rate data and will publish this information when the requirement becomes effective on September 1, 2009.</p>

State Office of Risk Management – S.B. 908		
<p>Senate Bill 908, as adopted by the 80th Legislature, continued the State Office of Risk Management for 12 years. The legislation included a total of 14 changes requiring action. The following chart summarizes one provision that is still in progress and one provision that has not been implemented and provides the status of each.</p>		
Bill Provisions	Implementation	
	Status	Comments
<p>1. Requires SORM to provide state agencies with return-to-work coordinated services to facilitate injured employees' return to work. Coordinated services include, a time frame in which the employer must initiate case management for the injured worker, and adoption of rules that guide agencies' interactions with the injured employees.</p>	<p>In Progress</p>	<p>The agency did not receive funding to hire staff to provide the coordinated return to work (RTW) services, and is unable to shift resources to this function. SORM is now evaluating approaches to emphasize RTW and to track RTW outcomes. SORM has also requested funding for personnel to provide these services in its fiscal year 2010 – 2011 Legislative Appropriations Request.</p>
<p>2. Requires SORM to adopt rules to guide the collection and evaluation of lost time and return to work information. Directs agencies to report return-to-work information to SORM in a standardized format, and SORM shall identify agencies in need of training or case management services related to return-to-work services. Also, requires SORM to provide an exception report on return-to-work by agency to the Legislature.</p>	<p>Not Implemented</p>	<p>As the agency is attempting to redesign its RTW to function without additional personnel, SORM has not adopted the required rules or initiated collection of RTW data.</p>

Implementation of 2007 Sunset Legislation

Structural Pest Control Regulation – H.B. 2458 (Texas Department of Agriculture)		
House Bill 2458, as adopted by the 80th Legislature, abolished the Structural Pest Control Board and transferred its functions to the Texas Department of Agriculture (TDA). The legislation included a total of 16 changes requiring action. The following chart summarizes three provisions that are still in progress and provides the status of each.		
Bill Provisions	Implementation	
	Status	Comments
1. Requires TDA to more clearly define pesticide categories and specify the requirements that pertain to each category in the Integrated Pest Management (IPM) Program for School Districts. Requires the Department to adopt rules relating to IPM requirements by September 1, 2008.	In Progress	TDA proposed rules to implement this provision in July 2008. Based on the comments the agency received on those proposed rules, TDA decided to seek additional stakeholder input. The agency revised the rules and brought them to the Structural Pest Control Advisory Committee in January 2009. The agency expects to file the revised rules in the <i>Texas Register</i> in early February 2009. Following the public comment period, the agency expects to adopt the rules in late March.
2. Requires all school districts to provide contact information for their IPM Coordinators to the Department within 90 days of appointing a new Coordinator. Requires each school district to provide IPM Coordinator contact information by September 1, 2008.	In Progress	TDA proposed rules to implement this provision in July 2008. Based on the comments the agency received on those proposed rules, TDA decided to seek additional stakeholder input. The agency revised the rules and brought them to the Structural Pest Control Advisory Committee in January 2009. The agency expects to file the revised rules in the <i>Texas Register</i> in early February 2009. Following the public comment period, the agency expects to adopt the rules in late March.
3. Requires all IPM Coordinators to complete six hours of continuing education every three years.	In Progress	TDA proposed rules to implement this provision in July 2008. Based on the comments the agency received on those proposed rules, TDA decided to seek additional stakeholder input. The agency revised the rules and brought them to the Structural Pest Control Advisory Committee in January 2009. The agency expects to file the revised rules in the <i>Texas Register</i> in early February 2009. Following the public comment period, the agency expects to adopt the rules in late March.

Implementation of 2007 Sunset Legislation

Veterans' Land Board – H.B. 3140		
<p>House Bill 3140, as adopted by the 80th Legislature, included a total of 12 changes requiring action by the Veterans' Land Board (VLB). The following chart summarizes the two provisions that are still in progress and provides the status of each.</p>		
Bill Provisions	Implementation	
	Status	Comments
<p>1. Adds standard Sunset language requiring the board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution, but modifies standard language to change “must” to “shall” relating to requiring the board to conform its alternative dispute resolution procedures to model guidelines used by the State Office of Administrative Hearings.</p>	In Progress	<p>The General Land Office (GLO), which administratively supports VLB, is currently drafting an alternative dispute resolution process that will be used by VLB and all divisions within GLO. The VLB and GLO will publish the proposed rules in the Texas Register on March 1, 2009.</p>
<p>2. Requires the Texas Veterans Commission (TVC) and VLB to cooperatively create a comprehensive brochure that provides information about all available veterans' benefits and services. Requires TVC and VLB to cooperate in integrating web services to make information about veterans benefits easily accessible to all veterans.</p>	In Progress	<p>The agencies have developed the comprehensive brochure, which is being distributed throughout the state. The agency expects to roll out the integrated web services in February 2009.</p>

INFORMATION ITEMS



Texas Facilities Commission

Staff Study

Introduction

In 2007, the 80th Legislature passed House Bill 3560, renaming the Building and Procurement Commission the Texas Facilities Commission (TFC), and transferring its procurement functions to the Comptroller's Office. As a result of this bill, TFC's key mission is to manage construction, maintenance, and leasing of state facilities. The bill also required the Sunset Advisory Commission to study TFC's functions and report to the 81st Legislature any recommendations it finds appropriate. After considering the study, the Sunset Commission did not recommend legislation affecting TFC. The textbox, *Texas Facilities Commission Sunset Study*, details the charge. House Bill 3560 did not subject TFC to abolishment, and the agency's current Sunset date is September 1, 2013.



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

House Bill 3560 also requires the Sunset Commission to evaluate the functions transferred to the Comptroller's Office, and report to the 82nd Legislature in 2011. Unless the Legislature takes actions otherwise, the Comptroller's procurement functions revert back to TFC on September 1, 2011.

The Sunset Commission thanks the State Auditor's Office for its extensive assistance with data analysis needed for assessing build, buy, or lease options, and for conducting analyses of TFC's lease portfolio. The Sunset Commission also thanks the General Land Office for providing information to assist with the study.

Texas Facilities Commission Sunset Study

The study conducted by the Sunset Commission must assess the best allocation of state resources for:

- ◆ the acquisition of state buildings through lease or purchase;
- ◆ the construction of buildings owned by the state;
- ◆ the control and maintenance of buildings owned or leased by the state; and
- ◆ all other related responsibilities performed by the commission.

The study must also consider the benefits to the State of outsourcing any TFC functions to private entities or of allocating those functions to other state agencies. The bill also required the State Auditor's Office and the General Land Office to assist with the study.

Agency at a Glance

The Texas Facilities Commission manages the office space, construction, and facility needs of Texas state agencies. To accomplish its mission, TFC carries out the following key activities:

- ◆ maintains and operates 134 state-owned office buildings, facilities, and properties, primarily in the Austin and Travis County area;
- ◆ manages state agency construction and deferred maintenance projects;

- ◆ provides comprehensive property management services to state agencies; and
- ◆ assists state agencies with determining their office needs, and manages a large leasing portfolio.

Key Facts

- ◆ **Funding.** In fiscal year 2008, TFC operated with a budget of about \$163.2 million, of which about \$93.8 million was General Obligation bond funding for deferred maintenance. About \$521,600 in funding passes through directly to the Texas State Cemetery.
- ◆ **Staffing.** TFC has 474 employees, of which 152 are contracted employees provided by janitorial and grounds keeping companies.
- ◆ **Facility Design and Construction.** The agency is managing 77 construction projects valued at almost \$404 million, and 56 deferred maintenance projects costing more than \$87.6 million.
- ◆ **Property Management.** In fiscal year 2008, the agency completed about 47,000 work orders for client agencies and TFC's own properties.
- ◆ **Space Management and State Leasing.** TFC manages a portfolio of about 980 leases costing \$112 million a year, providing 10.2 million square feet of space for 36 state agencies.

Section I

Best Allocation of State Resources for Building, Buying, or Leasing Office Space

Texas Facilities Commission's Role in Acquisition of Office Space

- ◆ According to TFC, state agency staffing will grow at 0.5 percent per year, resulting in an increase of about 800 state employees by 2011. However, the State lacks space in state-owned office buildings to house these employees, and short of constructing new buildings, Texas will instead have to rely on leasing, resulting in increased costs to the State.¹ TFC manages 134 state-owned facilities, including 46 office buildings in Travis and surrounding counties, where about 100 agencies with about 21,260 employees reside. All of these properties provide the State about 5.17 million square feet of usable office space. The agency also manages state office buildings in Corpus Christi, El Paso, Fort Worth, Houston, San Antonio, Tyler, and Waco. In fiscal year 2007, TFC spent about \$62.8 million to pay bond debt, utilities, and maintenance on all state office buildings. Texas last constructed a state office building in 2000, the Robert E. Johnson Building.
- ◆ TFC also manages a leasing portfolio of about 980 leases, costing about \$112 million annually, and providing 10.2 million square feet of space for 36 state agencies. Of total leased space, 2.7 million square feet is in Austin and Travis County, and costs about \$32 million annually. Statute authorizes TFC to evaluate the benefits of building, buying, or leasing (BBL) space to meet state agencies' needs to house employees. Statute authorizes TFC to conduct BBL analyses in counties where the State leases 50,000 square feet of space or more, currently 23 counties in Texas.

TFC spends about \$112 million a year on leases, mostly for office space.

Methodology for Analysis of Building, Buying, or Leasing Office Space

- ◆ As part of the TFC study directed by H.B. 3560, Sunset Commission staff, with assistance from the State Auditor's Office (SAO), assessed the best allocation of state resources for building, buying, or leasing space to house state employees. Statute requires TFC to ensure that when building or buying office space, total occupancy costs will not exceed the cost of leasing, when calculated over the term of bond debt, typically 20 years.² To meet these statutory criteria, TFC has a methodology for assessing BBL decisions that includes cost-benefit analyses for planning, land acquisition, design, construction, management, and lease-to-purchase. While TFC broadly looks at BBL decisions, Sunset found that TFC has

not applied this specific methodology in several years. The agency may need to evaluate if its BBL methodologies are up to date and consistently applied.

TFC should re-examine its build, buy, or lease decision methodology.

- ◆ To conduct a BBL analysis for this study, SAO developed a methodology to calculate the relative cost/benefits of BBL decisions. Sunset and SAO acknowledge that any BBL analysis is situational and dependent on variables such as property use and local market conditions. However, the BBL methodology in this study uses standard BBL criteria to provide a useful baseline for assessing the relative cost/benefits of building, buying, or leasing office space. To develop this methodology, SAO reviewed TFC policies, construction planning documents, analyzed lease data, and interviewed TFC staff. The resulting methodology includes the following key costs:
 - purchasing land for construction projects;
 - constructing a new building;
 - issuing bond debt for construction or purchase of buildings;
 - remodeling or renovating a purchased building;
 - leasing building space; and
 - maintenance, utilities, and janitorial services.
- ◆ To provide a reasonable comparison of building or buying costs to leasing costs, SAO projected lease costs over 10- and 20-year periods. TFC signs most leases for 10 years and often renews for the same amount of time. Also, 20 years is the typical repayment period for bond financing for build and buy decisions. In the methodology, SAO applied costs for building, buying, and leasing office space as a one-time cost to the State. However, leases can be renewed for longer than 20 years, with associated ongoing costs. The methodology uses a new office building of 40,000 square feet as a baseline standard building. SAO used an Internet-based application used by TFC, RS Means, to calculate build or buy costs. SAO also used TFC fiscal year 2008 leasing data in the analysis.

The cost of building or buying office space is less than leasing over the long term.

Best Allocation of State Resources for Building, Buying, or Leasing Office Space

- ◆ The study found that for long-term use of 20 years or more, building or buying office space would be the best allocation of state resources for housing state agency employees. Sunset staff and SAO analyzed key costs for the Travis County area to determine the average cost per square foot that TFC would need to consider in making a decision to build, buy, or lease office space. The chart, *Comparative Costs of Building, Buying, or Leasing Office Space*, shows the average cost per square foot of space for building, buying, or leasing in Travis County and four outlying counties. While the initial costs of building an office space are slightly higher than

Comparative Costs of Building, Buying, or Leasing Office Space

County	Estimated Building Value	Average Cost Per Square Foot		
		Build or Buy	10-Year Lease Cost	20-Year Lease Cost
Travis	\$5,687,876	\$143	\$138	\$276
Jefferson	\$5,830,703	\$147	\$111	\$222
Tom Green	\$5,242,855	\$132	\$111	\$222
Tyler	\$5,158,936	\$130	\$109	\$214
Walker	\$5,075,859	\$128	\$119	\$239

Note: Assumes about 40,000 square feet of new office space valuing about \$5.7 million in Travis County. Costs for build and buy are the same because both are for new construction. Build and buy costs are based on construction costs of 30 percent of total costs. Bond issuance costs estimated at \$7.66 per \$1,000 of bonds. Occupancy costs are based on TFC average costs reported on fiscal year 2008 performance measures. Estimated building life is 50-75 years.

leasing space for 10 years, the cost of building is less than leasing over a 20-year period. However, for shorter-term space needs of 10 years or less, leasing could be more cost effective. Also, buying a newly constructed building could be slightly more expensive than TFC constructing the building, depending on builder profits.

The study examined the Travis County area because of its large concentration of state buildings and employees. In addition, should the State propose to build new office buildings, they would most likely be in the Travis County area because of the high numbers of state employees residing in the area, and the numerous state agency central offices located in the area. To provide a further basis for comparing the cost of building, buying, or leasing, Sunset applied its BBL methodology to four outlying counties where the State has more than 50,000 square feet of leased space: Jefferson, Tom Green, Tyler, and Walker counties.

Occupancy costs must be factored into build, buy, or lease decisions.

- ◆ When considering a BBL decision, occupancy cost should also be incorporated into the analysis. When building or buying space, agencies pay for maintenance, utilities, and other costs associated with occupying the space. In the long term, maintenance costs can be high if continually deferred over the life of the building. When leasing space, responsibility for occupancy costs can be negotiated between the landlord and tenant agency. TFC leases specify if the tenant agency or the landlord pays occupancy costs. The accompanying chart shows projected occupancy costs for a 40,000 square foot office building. The State could negotiate with a landlord to potentially offset some, or all, of these costs.

**Projected Occupancy Cost
40,000 Square Foot Office Building**

Occupancy Cost	Rate	Annual Cost	10-Year Lease Cost	20-Year Lease Cost
Maintenance and Custodial	\$1.17	\$46,800	\$468,000	\$936,000
Utilities	\$2.92	\$106,800	\$1,068,000	\$2,136,000
Total	\$4.09	\$153,600	\$1,536,000	\$3,072,000

When considering whether to build, buy, or lease office space, several other factors should be considered besides the key costs. The chart, *Additional Factors in a Build, Buy, or Lease Analysis*, summarizes these considerations.

Additional Factors in a Build, Buy, or Lease Analysis

	Build or Buy	Lease
Funding Sources	<p>Building or purchasing is typically funded by issuing bond debt for 20 years or more. Depending on the structure of this debt, and bond issuance costs, debt payments are typically a fixed amount and may be more, or less, than lease payments.</p> <p>The State can also raise funds by selling existing state office buildings. However, the cost of temporarily re-locating state agency staff while constructing a building can reduce funds available to help offset the costs a new building.</p>	<p>Agencies receive appropriations to make lease payments. Lease payments are generally subject to annual cost-of-living adjustments.</p>
Space Needs	<p>Building or buying office space allows agencies to customize space to their needs. The costs of customizing space should be factored into the overall costs of building or buying space.</p>	<p>Leased space may need renovation to meet the needs of tenant agencies. Lease agreements can specify if the landlord or tenant agency pays these costs.</p>
Time Sensitivity	<p>Building or buying office space can take considerable time due to various factors, including time needed for buying property, design, and construction. Also, because building or buying can involve bond debt, these decisions must be approved by the Legislature, the Bond Review Board and potentially, voters.</p>	<p>Leasing can provide faster turnaround times to meet the needs of agencies facing time constraints. However, timeliness of leasing depends on several factors, including lead time needed to locate appropriate space.</p>

Assessment of Leases with Option to Purchase

- ◆ This study looked at a fourth option in the BBL scenario: leasing with an option to purchase. TFC has only two lease-to-purchase properties in its leasing portfolio, in place since 1993. These leases cover three Texas Department of Transportation (TxDOT) buildings located on Riverside Drive in Austin. The textbox, *TFC-Leased TxDOT Buildings*, provides details on these leases, which cover only the buildings and not the land. Under the lease terms, TxDOT also pays building maintenance and occupancy costs. TFC has separate leases for the land, for which TxDOT pays about \$6,000 to \$12,000 a month, depending on market conditions.

TFC has authority to decide if the State should purchase these buildings, which would then become TFC managed, state-owned properties. In the past, TFC has exercised the option to purchase other leased properties, however those lease options included both the building and land. According to TFC, the agency has not purchased the buildings due to the separate land leases, which if purchased, would be at high market rates.

Rather than purchase these buildings, TFC has continued to renew the leases. TFC can exercise the option to purchase in September or December of every odd-numbered year.

- ◆ Sunset staff and SAO examined these lease payments to determine if purchasing would be more cost effective for the State. The State may have had missed opportunities to realize savings by not purchasing these properties in the past. For example, the State may have saved money had it purchased both buildings in 2005. While the lease contracts provide methods for the State to purchase the land, the leases do not specify land costs.

As of fiscal year 2008, the State has paid about \$24.8 million in total lease payments for the two buildings in lease A, and \$16.1 million for the building in lease B, as shown in the textbox *TFC-Leased TxDOT Buildings*. The charts on the following page show that based on lease amortization schedules, by 2012 and 2013, the State can purchase these buildings for one dollar or less, not including the land. However, the State must continue to lease the land or purchase it, likely at market value.

Conclusion

- ◆ The study found that if the State considers acquiring additional office space, the best allocation of resources would be to build, or buy, rather than continuing to rely on long-term leases which cost more over time. The methodology developed by Sunset and SAO shows that in Travis County, the cost per square foot for building office space is slightly higher than leasing for 10 years, but significantly less than leasing for 20 years.

The study also found that TFC should review its policies to ensure it has a clear, updated methodology to apply to a BBL analysis, to provide the Legislature with the best possible information and options should it decide to build, buy, or lease more office space in the future. Also, the study found that TFC should closely evaluate whether its two lease-purchase agreements provide best value for the State, and when taking ownership of these buildings, if the State should purchase the land.

TFC-Leased TxDOT Buildings – Austin

Lease A:

- ◆ Two office buildings: 220,020 square feet
- ◆ Number of FTEs: 642
- ◆ Annual lease payment: \$1,620,970
- ◆ Total lease payments: \$24,846,977
- ◆ Taxable land value: \$11,648,970

Lease Terms

1st: June 1, 1993 – June 30, 1997

2nd: July 1, 1997 – June 30, 2007

3rd: July 1, 2007 – June 30, 2012

Lease B:

- ◆ One office building: 142,692 square feet
- ◆ Number of FTEs: 592
- ◆ Annual lease payment: \$1,120,593
- ◆ Total lease payments: \$16,080,513
- ◆ Taxable land value: \$7,812,090

Lease Terms

1st: December 1, 1993 – November 30, 1998

2nd: December 1, 1998 – November 30, 2008

3rd: December 1, 2008 – November 30, 2013



*The State can
build office space
in Travis County
for much less
than leasing
for 20 years.*

Savings Associated With Purchasing Lease A

Option to Purchase Date: September 15	Remaining Lease Payments	Cost to Purchase Buildings	Potential Savings
1995	\$15,118,774	\$11,743,723	\$3,375,051
1997	\$15,877,883	\$10,932,632	\$4,945,250
1999	\$15,527,789	\$10,010,901	\$5,516,889
2001	\$13,387,131	\$8,979,964	\$4,407,167
2003	\$12,088,496	\$7,811,128	\$4,277,368
2005	\$9,706,060	\$6,496,460	\$3,209,601
2007	\$7,129,089	\$5,008,070	\$2,121,019
2009	\$4,517,206	\$3,340,393	\$1,176,813
2011	\$1,531,043	\$1,435,916	\$95,127
2012	\$39,463	\$1	\$39,462


TFC will be able to buy the TxDOT buildings for less than \$1 by 2013.

Savings calculated assuming bonds issued for 20 years at 5.5 percent interest, and average debt service payments of about \$979,385 annually. Effective February 2008, the State will continue paying administrative costs associated with land use, currently \$555,708 annually, and expected to increase. Building purchasing costs do not include the land value.

Savings Associated With Purchasing Lease B

Option to Purchase Date: December 1	Remaining Lease Payments	Cost to Purchase Buildings	Potential Savings
1995	\$10,643,378	\$9,034,831	\$1,608,547
1997	\$11,721,239	\$8,702,706	\$3,018,533
1999	\$11,742,504	\$8,085,162	\$3,657,342
2001	\$10,302,466	\$7,379,396	\$2,923,069
2003	\$9,667,078	\$6,585,411	\$3,081,667
2005	\$8,112,139	\$5,687,636	\$2,424,502
2007	\$6,415,504	\$4,625,159	\$1,790,344
2009	\$4,811,589	\$3,450,127	\$1,361,462
2011	\$2,890,546	\$2,151,354	\$739,192
2013	\$808,383	\$0	\$808,383

Savings calculated assuming bonds issued for 20 years at 5.5 percent interest, and average debt service payments of about \$979,385 annually. Effective December 2008, the State will continue paying administrative costs associated with land use, currently \$411,840 annually, and expected to increase. Building purchasing costs do not include the land value.

¹ Texas Building and Procurement Commission, *Statewide Facilities Inventory Status*, (Austin, Texas, April 18, 2007) p. 11.

² Texas Government Code, sec. 2166.453.

Section II

Outsourcing Texas Facilities Commission Leasing Functions

Texas Facilities Commission's Leasing Function

- ◆ Statute authorizes the Texas Facilities Commission (TFC) to provide office and other space on behalf of state agencies. TFC must first attempt to meet an agency's needs by using state-owned space. If state-owned space is unavailable, TFC works with client agencies to lease space. TFC primarily locates and negotiates leases for office, parking, warehouse, and laboratory space. For Health and Human Services Commission (HHSC) agencies, TFC cannot lease office space unless HHSC approves of TFC's proposal for space.
- ◆ State law requires the Facilities Commission to decide lease selections based on obtaining best value for the state.¹ TFC may award a lease to a property owner offering space at lowest cost, if TFC determines that doing so obtains best value. The Facilities Commission may consider other qualities of a space, including condition, location, utility costs, transportation access, parking, security, and a property owner's financial resources and experience.
- ◆ The Facilities Commission may delegate authority specifically for leasing to state agencies, and has done so on a limited basis. TFC's Executive Director grants approval, but TFC requires executive branch agencies to notify the Governor before requesting delegated leasing authority. The Facilities Commission can also revoke this authority if needed. TFC may provide leasing services to agencies not under its purview, at an agency's request.


*TFC must first try
to use state-owned
space before
leasing space.*

TFC Leasing Procedures

- ◆ The Facilities Commission performs space management – which includes planning, organization, and oversight – for all leased and state-owned facilities. TFC requires client agencies to submit requests for space at least one year in advance of needing space. First, TFC visits the client agency to ensure it is making the best use of current space. If TFC determines that the client agency needs additional or different space, TFC's leasing agents work with the client agency to identify and locate suitable property, and later, to negotiate a lease.
- ◆ Statute allows TFC to lease space either by competitive bidding, competitive sealed proposals, or – if TFC determines that competition is unavailable – direct negotiation. TFC generally leases space by soliciting competitive sealed proposals through a request for proposal in the Texas Register, and meeting other notice requirements. TFC scores proposals and negotiates with multiple offerors. Client agency staff sit on TFC's

evaluation panel to help assess each bid to make a final decision. Once the parties sign the lease, the tenant agency maintains day-to-day contact with the landlord, unless the space has major deficiencies or TFC needs to conduct future negotiations.

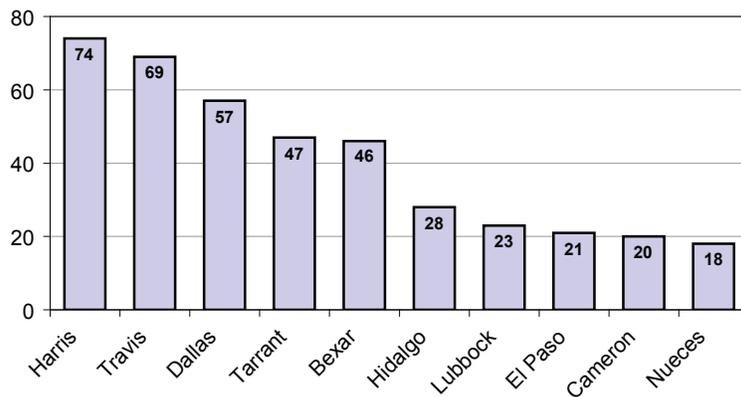
TFC's Lease Portfolio

- ◆ Statewide, TFC manages 978 leases, with 36 agencies occupying this space. The lease portfolio contains 10.2 million square feet of space costing about \$112 million annually. The State's ratio of state-owned space versus leased space is about equal. The graph, *Counties With the Highest Number of TFC Leases*, shows that of the 10 counties with the most leases, Harris County is first with 74. However, Travis County has the most leased square footage, as shown in the graph, *TFC Leased Square Footage Per County*. TFC leases about 2.7 million square feet in Travis County costing about \$32 million annually. Of this leased space, leases for about 2 million square feet, or 85 percent, will expire in 2011. Fifty-five percent of the lease portfolio consists of buildings leased for HHSC.

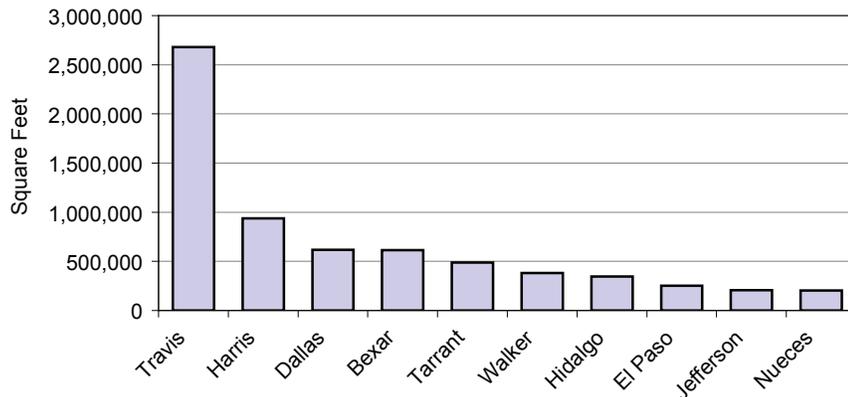
◆

Eighty-five percent of state-leased space in Travis County will expire in 2011.

Counties With the Highest Number of TFC Leases



TFC Leased Square Footage Per County



- ◆ By statute, a lease cannot exceed 10 years but can include the option to renew. TFC's leasing database indicates that, because of lease renewals, the average time a state agency occupies a particular space is about 15 years. Analysis of TFC leasing data shows that more than 300 leased spaces are locations that agencies have, or will, occupy for 17 to 29 years. According to TFC, because of continual changes in market conditions, most lease renewals involve some amount of renegotiation and adjustment to the lease terms.

About 300 leases have state agencies in the same locations from 17 to 29 years.

Potential for Outsourcing TFC Leasing Functions

- ◆ Sunset staff assessed the potential benefits of outsourcing all, or a portion, of TFC leasing functions to private real estate or asset management firms. Sunset staff found that Texas, with a large leasing portfolio valued at about \$112 million, could potentially benefit from performance-based contracts for leasing and asset management services that could reduce costs to the State and improve the quality of leased properties. With about one-third of the portfolio set to expire in 2011, the State should consider opportunities to outsource some, or all, of TFC's leasing functions and portfolio.

Real estate and asset management firms typically provide an array of services, as shown in the textbox, *Services Offered by Real Estate and Asset Management Firms*. These firms can exclusively represent the interests of tenant agencies. These firms provide services at no direct cost to the State because they receive commissions, typically three-to-four percent of lease transactions, paid by property owners.

TFC indicates it negotiates lease rates at, or just below, market rates, in part because landlords do not pay TFC these commissions. Recognizing TFC's success at keeping lease rates low, TFC's staffing limitations may affect its ability to negotiate for even lower rates, or for other benefits that private firms may obtain, such as payment for moving costs. Ultimately, in some situations, such as large lease consolidations or negotiating large, complex portions of the lease portfolio, private firms may be better positioned to provide benefits to the State.

Services Offered by Real Estate and Asset Management Firms

Real estate and asset management firms offer a range of services including the following:

- ◆ cost analysis of leasing, buying, or building office space;
- ◆ market analysis and site selection;
- ◆ analysis of occupancy costs;
- ◆ preparation of requests for proposals;
- ◆ design of lease contracts;
- ◆ negotiation of lease terms with landlords;
- ◆ management of leases and transactions;
- ◆ management of properties and facilities;
- ◆ management of office space needs;
- ◆ relocation of state agency staff; and
- ◆ asset management information systems.

- ◆ The Facilities Commission tried to outsource its leasing functions in the past; however, these efforts were never fully realized. In 2003, the agency outsourced management of its entire lease portfolio to a real estate firm, but both the agency and the firm agreed to terminate the contract by the following year. More recently, TFC was close to finalizing a contract to outsource all of HHSC's lease portfolio, but TFC and HHSC agreed to cancel this effort due to ongoing changes in HHSC's office structure

and staffing levels. Despite TFC's difficulties in outsourcing its leasing services in the past, the agency's recent reorganization and clearer focus on managing the State's building assets may present new opportunities for successful outsourcing of this function.

*Other states
outsource portions
of their leasing
operations.*

- ◆ Using the Texas Multiple Awards System (TXMAS) administered by the Comptroller's Office, TFC can procure leasing services from firms on an as-needed basis. TFC can use TXMAS at no additional cost to the State because the system provides for a pre-set commission to firms that cannot exceed four percent of the value of the transaction. At the end of the fiscal year, firms must rebate 0.75 percent of commissions to the State. TFC has two TXMAS leasing contracts but has only used one for a few leases. TXMAS offers limited ability to procure services beyond finding and negotiating single leases. Outsourcing management of a large portion, or all of TFC's lease portfolio is a significant undertaking that would involve complex negotiations and contract management beyond what TXMAS offers.
- ◆ Sunset found that other states, such as California, Florida, and New York, contract with real estate and asset management firms for different types of services, from outsourcing management of entire lease portfolios to contracting for individual services such as locating a specific building space.

Option I: Outsourcing TFC's Entire Lease Portfolio

- ◆ Rather than managing the process of locating properties and negotiating leases on behalf of client agencies, TFC could instead outsource management of its entire lease portfolio, and shift to a contract management role. Under this scenario, TFC would maintain control of setting policies for leasing, and also oversee leases for client agencies to ensure compliance with relevant statutes, rules, and policies. The Facilities Commission would closely manage and monitor firms to ensure they meet contract terms, and to ensure firms accurately report cost savings over time. TFC leasing staff would serve as contract managers similar to the role played by TFC's Facilities Design and Construction Division, which oversees contracted providers on numerous large construction projects.

*TFC could
outsource
property leasing
and shift to
a contract
management role.*

TFC could require all state agencies under its jurisdiction to use contracted firms when leasing or purchasing property. Firms would collaborate with tenant agencies to locate facilities and negotiate leases with landlords. Firms would draft, track, monitor, and report to TFC all leases and subcontracts. TFC could use a variety of different services provided by private firms, such as technical expertise, market data analysis, and contract negotiation. Contracts with firms could also stipulate that they provide research, planning, consulting, or other value-added services.

- ◆ TFC could potentially structure its contracts with real estate firms to help offset tenant agency costs associated with moving into a new location. Landlords typically factor in commissions into their lease prices, particularly if a real estate firm is procuring the property. Following the example of TXMAS, and contracting structures in other states, TFC could require the contracted firm to rebate a percentage of commissions to TFC. Subject to Legislative approval, the Facilities Commission could establish a dedicated account for these funds, available to offset the moving costs of tenant agencies.

Option II: Outsourcing a Portion of TFC's Lease Portfolio

- ◆ Instead of outsourcing TFC's entire lease portfolio, the State could elect to outsource a part of the portfolio, while retaining TFC's role in managing the portfolio overall. For example, TFC could use contracted firms for leased facilities outside of Travis and surrounding counties. Timely, cost-effective space acquisition is partially dependent on knowing local markets where agencies need space. TFC may have sufficient resources to conduct leasing in the Austin area. However, with just four leasing agents, attempting to locate and lease properties outside of Travis County, where 7.5 million square feet – or about 73 percent – of the portfolio is located, may strain TFC's resources.

Due to TFC's limited staffing, the agency relies on tenant agency staff to locate sites outside of Travis County and to serve as the day-to-day contact with landlords. If TFC outsourced portions of the lease portfolio outside of Travis County, it could access the expertise and resources of these firms in outlying areas, freeing the time and resources of tenant agencies. TFC could also better focus its own efforts on managing leases in Travis County.

- ◆ TFC could also consider outsourcing portions of the lease portfolio based on other criteria, such as TFC's regional boundaries, segments of the portfolio where TFC could realize the most savings, areas of the state where TFC needs specific market expertise, or by state agencies with specific client service needs, such as HHSC.

Option III: Maintaining Leasing as a TFC Function

- ◆ As an alternative to outsourcing, the State could consider maintaining leasing as an in-house function. TFC typically obtains lease rates at or below market rates, a key indicator of effectiveness. TFC leasing agents have expertise in working within Texas state government and are familiar with state laws, rules, and procedures. TFC staff also have working knowledge of tenant agency programs and needs, such as the location and type of facility required to best carry out the agency's mission. Also, based on the results of a survey by Sunset staff, most TFC clients appear satisfied with TFC's leasing services.

Limited outsourcing could allow TFC to focus its staff on leasing within Travis County.

TFC staff have expertise on state agencies that private firms might lack.

Conclusion

- ◆ The State could realize benefits from exercising options for outsourcing TFC’s leasing functions and portfolio. With a high percentage of leases expiring soon and market conditions changing, the time may be right for the State to significantly restructure its lease portfolio with the assistance of private firms. The State has flexibility to structure outsourcing to maximize benefits such as lower cost leases, more tenant improvements, and better quality properties. However, any outsourcing would require effective contract management and oversight of private firms to ensure compliance with deliverables and contract terms. The chart, *Outsourcing TFC Leasing Functions*, summarizes key potential benefits and drawbacks to outsourcing TFC’s leasing functions and portfolio.

Outsourcing TFC Leasing Functions

Potential Benefits of Outsourcing	
1. Savings resulting from more effective negotiation of lease rates.	TFC may lack time and resources needed to negotiate more favorable lease rates. Contracting lease negotiations to firms with leasing agents having extensive knowledge of local market could potentially lower leasing costs, as occurred recently in Florida. ²
2. Savings from negotiating items other than lease rates.	TFC’s small, Austin-based staff may lack resources needed to consistently negotiate other terms, beyond lease rates, including benefits such as tenant agency moving costs. Firms may be better equipped to more effectively negotiate additional benefits and lower costs for tenant agencies.
3. Ability to work directly with tenant agency staff in different areas of the state.	TFC may have limited resources needed to maintain closer contact with tenant agency staff when determining lease needs and following up with property conditions. TFC is only able to visit about 300 locations a year, less than one-third of the lease portfolio. Private firms may provide more staff and resources to work consistently with tenant agency staff in areas of the state where TFC has little presence.
4. Improved ability to quickly locate properties and negotiate leases based on local markets.	A private firm could have lease agents in particular markets with expertise on local market conditions and be better able to find, and negotiate, leases more quickly. In addition, private firms could provide local market information needed to assess options for reducing costs, such as consolidating leases.
5. Improved asset management capability.	TFC’s spreadsheet-based leasing database has relatively limited functionality compared to other asset management systems. For example, the database cannot identify new leases versus extensions, and does not readily provide historical data. A private firm could provide a more current asset management system with improved data capabilities.
Potential Drawbacks of Outsourcing	
1. Lack of long-term relationships with property owners.	Private brokers may not have the close working relationships that TFC has established over time, and landlords may be reluctant to negotiate with private firms.
2. Tenant agencies may not see private firms as representing their interests.	Private firms may focus on negotiating new leases, rather than remaining in the same location, even if the current location best suits the agency’s needs. In addition, private firms could potentially have conflicts of interests with landlords.

Outsourcing TFC Leasing Functions

Potential Drawbacks of Outsourcing (continued)	
3. Private firms may lack the expertise needed to serve state agencies.	State leasing agents may have a better a better understanding of client agency needs. Private firms may not be familiar with the specific laws, rules, and procedures governing state agencies and their space needs.
4. TFC would need to devote resources to contract management.	TFC staff would have to effectively oversee contracted firms to ensure firms meet contract requirements and performance measures. Private firms may have difficulty clearly documenting long-term benefits. ³
5. Commissions paid to private firms could potentially increase the cost of leases.	Because private firms rely on commissions paid by landlords, these commissions could be rolled into the cost of leases, increasing costs to the State.

.....

¹ Texas Government Code, sec. 2167.0021.

² Florida Office of Program Policy Analysis and Government Accountability (OPPAGA), *Workspace Management Initiative Can Benefit State, But DMS Not Taking Adequate Steps to Ensure Goals Are Met*, report no. 06-06 (Tallahassee, Florida, January, 2006), p. 3.

³ Ibid.

Texas Medical Board

Performance Study

Introduction

In 2007, the Legislature required the Sunset Commission to conduct a special purpose review of the Texas Medical Board's management efforts to comply with legislative direction and performance measure targets. The Medical Board is not under full Sunset review, and Sunset staff did not evaluate the functions of the Board as it would agencies under full review. Instead, staff assessed the agency's performance in meeting legislative direction regarding the timeliness of license issuance¹ and the fair and effective enforcement of the Medical Practice Act.² The resulting study is informational and contains no recommendations.

To provide the Legislature with a more complete picture of the status of the Board's licensing and enforcement efforts, Sunset staff evaluated statistical information beyond the Board's performance measures. A complete listing of this information, including some performance measures, is compiled in Attachment A. Because the Medical Board oversees the day-to-day functions of both the Physician Assistant Board and the Acupuncture Board, much of the data presented in this report reflects information about all three boards. However, because the Legislature required the Board to focus on physician licensing, the information presented in the licensing section of this study is solely regarding physicians.

In conducting this performance study, Sunset staff found that the Board has succeeded in improving its performance regarding the time it takes to issue physician licenses, and, by the end of fiscal year 2008, met both its performance target and statutory requirement for this measure. Within the agency's enforcement division, increasing numbers of complaints, quality of care cases, and active cases could contribute to higher enforcement costs, heavier staff workload, and ultimately more time to resolve complaints. Strained agency resources could limit its ability to meet future performance targets and maintain its current level of service to its regulated community and the public. The following material provides a more complete discussion of the agency's licensing and enforcement performance.



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

Agency at a Glance

To ensure that Texans receive safe and quality medical care, the Texas Medical Board, Texas Physician Assistant Board, and Texas State Board of Acupuncture Examiners regulate medical practitioners in Texas. Together, the boards issue 13 types of licenses and permits.

Key Facts

- ◆ **Funding.** In fiscal year 2008, the agency operated with a budget of about \$9.4 million, down slightly from \$9.6 million in fiscal year 2007, when the Board received a supplemental appropriation to address the backlog in physician license applications.
- ◆ **Staffing.** The agency has a staff of 137 employees, with 100 based in Austin and 37 based in the field.
- ◆ **Licensing.** The boards regulated 62,693 physicians, 6,337 physicians in training, 4,667 physician assistants, 884 acupuncturists, and 259 surgical assistants in fiscal year 2008. These numbers include 3,621 new physician licenses, 488 new physician assistant licenses, 50 new acupuncturist licenses, and 17 new surgical assistant licenses issued that year.
- ◆ **Enforcement.** The boards received 6,514 complaints in fiscal year 2008. Of these, 2,725 resulted in an opened investigation. That year, the boards resolved 2,535 complaints, with 352 resulting in sanctions against a licensee.

Agency Overview

The State first began regulating the practice of medicine in 1837, when the Legislature created the Board of Medical Censors. In 1907, the Legislature passed the Texas Medical Practice Act and established the Medical Board to regulate physicians. In 1993, the Legislature created the Acupuncture Board and began regulating the practice of acupuncture in Texas. That same year, the Legislature passed the Physician Assistant Licensing Act and established the Physician Assistant Board. The boards' main functions include:

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

Major Events in Recent Agency History

2003 The Legislature strengthens the Medical Board's enforcement authority through Senate Bill 104 by providing additional statutory direction and increased resources.

Texas voters approve a constitutional amendment to cap noneconomic damages for medical malpractice lawsuits.

2005 After a full Sunset review, the Legislature continues the Texas Medical Board for twelve years. The Sunset bill clarifies the Board's strengthened enforcement authority and provides for fairer, more efficient processes for license holders.

2007 The Legislature requires the Medical Board to decrease its average time to issue physician licenses and provides the agency with additional staff and funding to meet these goals.

Organization

The Texas Medical Board consists of 19 voting members – 12 licensed physicians and seven public members – appointed by the Governor and confirmed by the Senate. Of the 12 physicians, nine must be doctors of medicine and three must be doctors of osteopathic medicine. All 12 physician members must have been licensed in Texas for at least three years, actively engaged in the practice of medicine for at least five years, and participated in medical peer review at a healthcare facility for at least three years. The Governor designates the Board president; Board members elect a vice president and secretary-treasurer. Although required to meet at least four times a year, the Board typically meets six times a year. The Board also has rulemaking authority over the Texas State Board of Acupuncture Examiners.

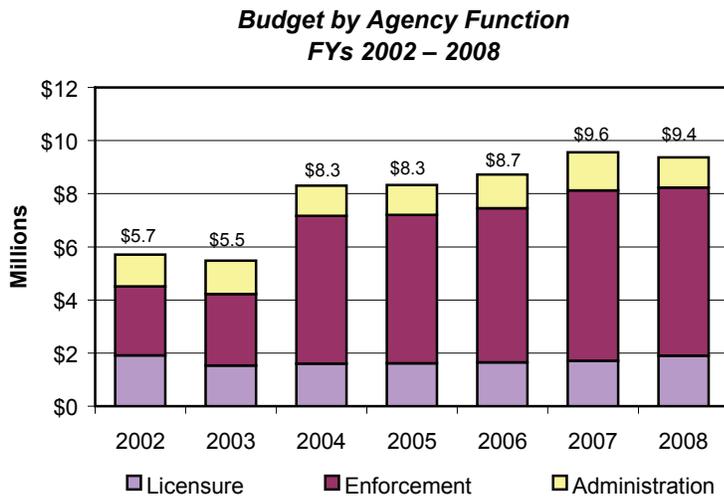
Staff

The agency employed a staff of 137 as of the publication of this study. Of these, 37 work in the field and the others work at the agency's headquarters in Austin. In fiscal year 2004, the Legislature raised the agency's full-time equivalent (FTE) cap from 113 to 133 to help strengthen the agency's enforcement efforts. The cap was raised again in fiscal year 2007, from 133 to 139, in an effort to expedite physician licensure. The agency's current FTE cap is 142.5, but the agency has a few vacancies.

Funding

In the past five years, the agency's budget has almost doubled to address an increasing workload. In 2004, the agency's budget increased from \$5.5 million to \$8.4 million to fund changes in the agency's enforcement process, enabling the agency to focus more resources on enforcement of its statute and rules. Similarly, the agency's budget increased from \$8.7 million to \$9.6 million to address a backlog in physician license applications in fiscal year 2007.

The chart, *Budget by Agency Function*, illustrates the percentage of the agency's budget dedicated to licensing and enforcement during fiscal years 2002 to 2008.



The agency's licensing budget significantly decreased after fiscal year 2002, and, while the agency received a supplemental appropriation of \$1.8 million in fiscal year 2007, and \$465,000 over the 2008-2009 biennium, its licensing budget has yet to match the 2002 level. Enforcement funds increased significantly in fiscal year 2004 and increased incrementally each year through 2007, when enforcement funds decreased slightly. Enforcement funding remained basically level in fiscal year 2008.

Licensing

Licensing Process

To become a licensed physician in Texas, applicants must meet education, experience, and examination requirements specified in the Texas Medical Practice Act and Board rules, and satisfy four criminal and disciplinary background checks. The textbox, *Physician Licensure Requirements*, highlights the requirements to be a physician in Texas. Once an applicant meets these requirements and the Board has all documentation necessary for a complete application, the applicant begins the licensure process.

Physician Licensure Requirements

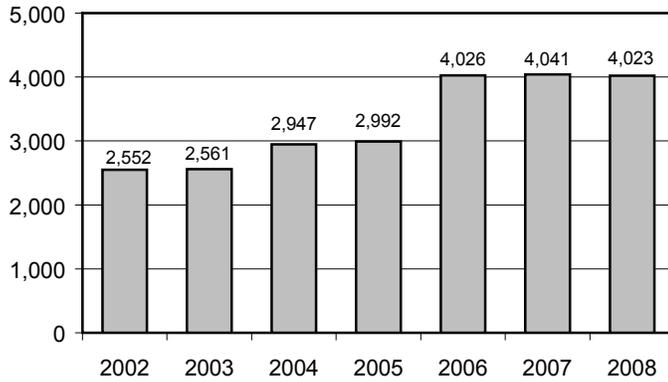
To receive a license to practice medicine in Texas, a person must meet the following requirements.

- ◆ Be at least 21 years old.
- ◆ Graduate from an accredited medical school.
- ◆ Complete at least one year of post-graduate training, depending on the school of graduation.
- ◆ Pass a national exam and the State's jurisprudence exam.
- ◆ Undergo a criminal background and sex offender database checks.
- ◆ Undergo national physician disciplinary action checks conducted by national organizations.

In the past five years, the Medical Board experienced a significant increase in physician licensure applications. From 2002 to 2008, physician license applications have increased by 58 percent. The chart, *Number of Physician*

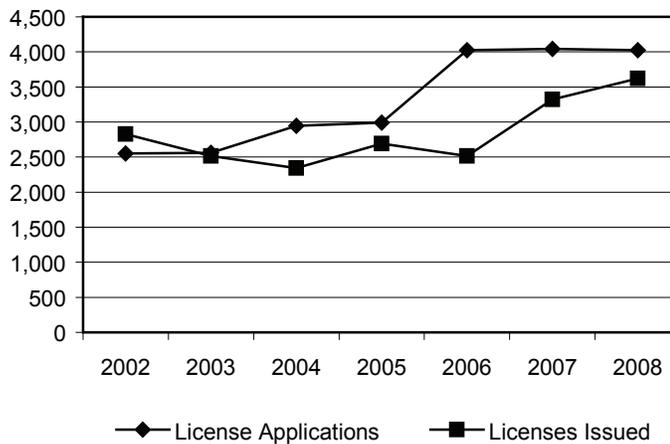
License Applications, illustrates the increase in applications during the past seven fiscal years. Since the significant increase of physician license applications in fiscal year 2006, the number of applications has remained steady.

**Number of Physician License Applications
FYs 2002 – 2008**



As shown in the chart, *Number of Physician License Applications and Licenses Issued*, the gap between the number of physician license applications the Board received and the number of physician licenses the Board issued increased between fiscal years 2005 and 2007. This gap represents the backlog of physician license applications as the number of applications the Board received increased sharply. Since the Legislature appropriated additional staff and funding in fiscal year 2007, this gap has decreased.

**Number of Physician License Applications and
Licenses Issued – FYs 2002 – 2008**



The Board used increased appropriations to reduce its backlog of applications.

Licensing Time Frames

As a result of increased physician license applications, the average number of days for the Medical Board to issue a physician license increased. Throughout fiscal year 2007, the Board was unable to meet its performance measure target for the average number of days to issue physician licenses, prompting the

Legislature to make a supplemental appropriation that same year and to appropriate still more in 2008 to aid the Medical Board's effort to decrease the number of days to issue physician licenses. The table, *Number of Days to Issue a Physician License*, shows the Board's quarterly and yearly average performance for fiscal year 2008. The Board's performance measure target for fiscal year 2008 is 90 days, but the Board is statutorily required to issue licenses within 51 days as of August 31, 2008.³

Number of Days to Issue a Physician License – FY 2008

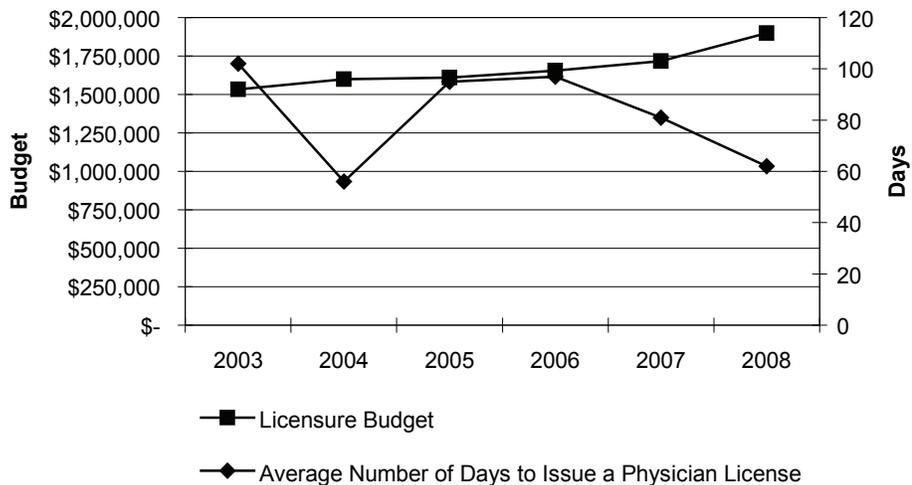
	Quarter 1	Quarter 2	Quarter 3	Quarter 4	FY 08
Number of Days	100	69	60	42	62
Number of Licenses	700	675	697	1,549	3,621

The average time to issue a license has decreased from 100 to 42 days.

Since receiving additional staff and funding, the Board decreased its average number of days to issue a physician license from 100 days in the first quarter to 42 days in the last quarter of fiscal year 2008. While the Board's yearly average number of days does not meet the performance measure target because of the high number of days in the first quarter, the Board has succeeded in decreasing the number days to issue a physician license to meet its performance measure target and the 51-day requirement in statute.

The graph, *Days to Issue Physician Licenses Compared to Licensure Budget*, illustrates how the number of days to issue a physician license has a slightly inverse relationship with the agency's licensing budget. As the agency's licensing budget increased, starting with the Governor's Emergency and Deficiency Grant awarded midway through fiscal year 2006, the number of days to issue a physician license has shortened.

**Days to Issue Physician Licenses Compared to Licensure Budget
FYs 2003 – 2008**



Other Legislative Mandates

In 2007, the Legislature mandated that the Medical Board prioritize the licensing of physicians who intend to treat Medicare and Medicaid patients⁴ or intend to practice in a health professional shortage area, medically underserved area, or rural area.⁵ The table, *Average Licensing Time for Priority License Applications*, shows that the agency issued physician licenses in each of these priority categories faster than it did for all physician applicants.

Average Licensing Time for Priority License Applications – FY 2008

Priority Category	Number of Applications	Average Days to Complete
Agree to Treat Medicare/Medicaid Patients ¹	449	27
Plan to Practice in Health Professional Shortage Area ²	96	34
Plan to Practice in Medically Underserved Area	131	32
Plan to Practice in Rural Area ³	64	50
Total All Applications	3,621	62

¹ Physicians must agree to treat Medicare/Medicaid patients for five years.

² Health Professional Shortage Areas and Medically Underserved Areas are defined by the U.S. Department of Health and Human Services.

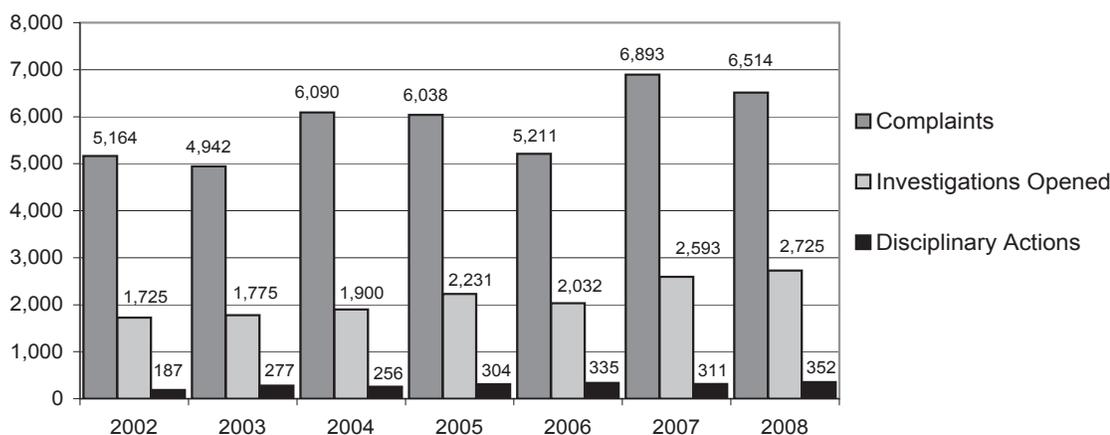
³ Rural Areas are defined by the Office of Rural and Community Affairs.

Enforcement

Enforcement Process

Enforcement activities play a critical role in the Medical, Physician Assistant, and Acupuncture boards' ability to protect Texans' health, safety, and welfare. The boards enforce state laws and Board rules by investigating complaints against licensees, taking disciplinary action if necessary, and monitoring licensees' compliance with Board orders. The chart, *Number of Complaints, Investigations, and Disciplinary Actions*, summarizes these enforcement activities.

**Number of Complaints, Investigations, and Disciplinary Actions
FYs 2002 – 2008**



In 2003, the Legislature strengthened the Medical Board's enforcement authority by providing additional statutory direction and increased funding.

**Key Provisions From Senate Bill 104
78th Legislature**

- ◆ Provided additional funds, including an \$80 surcharge on physician license renewals and employers to enhance enforcement efforts.
- ◆ Set statutory deadlines for complaint investigations and litigation.
- ◆ Created a panel of expert physicians to review quality of care complaint cases.
- ◆ Required immediate investigation of a violation of a disciplinary order or of a complaint against a license holder currently under a disciplinary order.
- ◆ Clarified the Board's authority to temporarily suspend a license.
- ◆ Deleted the requirement that insurers send all notice of claim letters to the Board.

As a result, the Board's enforcement process changed significantly between fiscal years 2003 and 2005. The textbox, *Key Provisions From Senate Bill 104*, explains the changes in more detail. In 2005, the agency's Sunset bill required the Medical Board to obtain reviews from two expert panelists, instead of only one. Because the same staff serves all three boards, the enforcement processes for physicians, physician assistants, and acupuncturists are similar. The enforcement data below encompasses complaints for all three disciplines. The flowchart, *Texas Medical Board Enforcement Process*, shows how the agency resolves complaints.

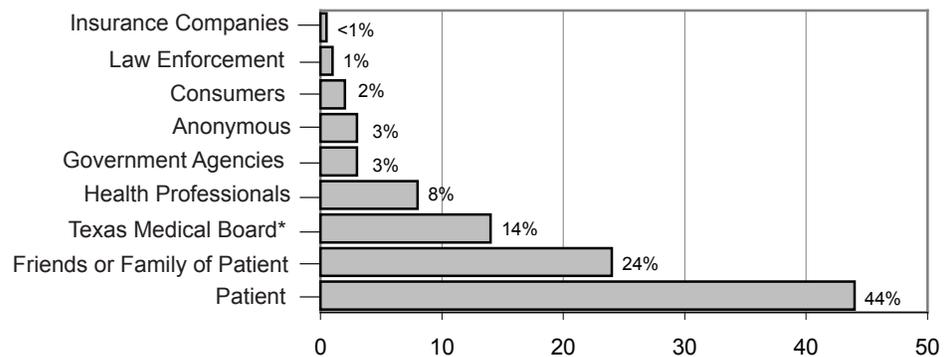
Complaints

Beyond an increase in physician license applications, the agency is also experiencing an increase in complaints, though this increase is still in line with the increase in the number of licensees. From fiscal year 2003 to its peak in fiscal year 2007, the number of complaints submitted to the boards increased by 33 percent. An increased

number of complaints affects the Medical Board's enforcement performance measures, resulting in the Board significantly exceeding measures such as the number of jurisdictional complaints received and even the number of complaints resolved.

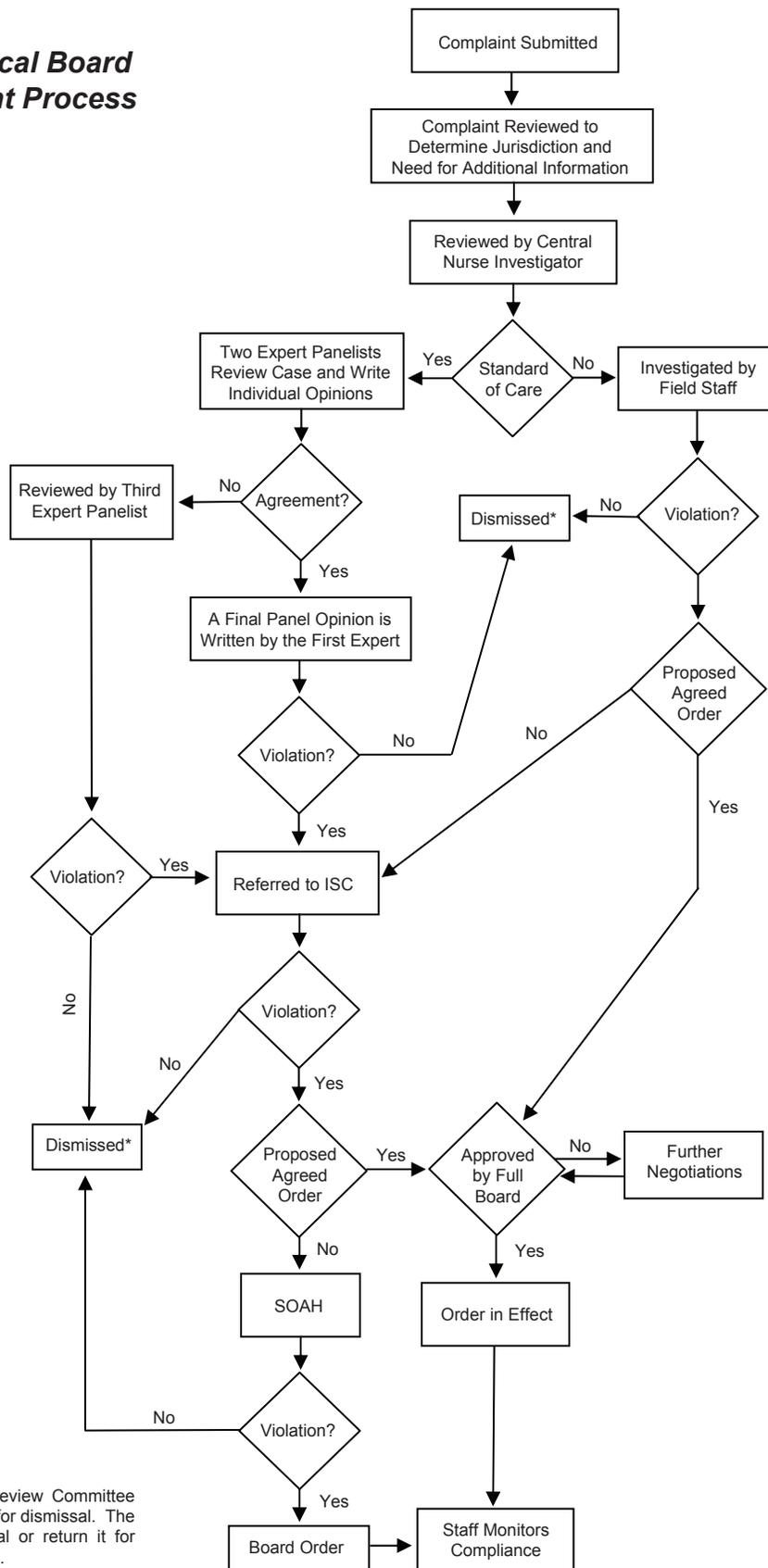
While the number of complaints has increased, the sources of the complaints have been relatively constant during fiscal years 2002 to 2008. The number of complaints filed by patients has increased, from 36 percent in 2002 to 44 percent in 2008. In fiscal year 2008, patients and friends and family of patients filed the majority, or 68 percent, of complaints. The chart, *Complaints by Source*, illustrates the breakdown of complaint sources for fiscal year 2008.

Complaints by Source – FY 2008



*TMB category includes registration responses, continuing medical education audits, medical malpractice reviews, newspaper clips, and Board discovered violations.

Texas Medical Board Enforcement Process



*The Board's Disciplinary Process Review Committee reviews all complaints recommended for dismissal. The committee can approve the dismissal or return it for additional investigation or another ISC.

Investigations

The agency opens investigations if, after a 30-day initial investigation, it determines that either a violation may have occurred or it does not yet have enough information to determine whether a violation may have occurred. As the number of complaints increases, the number of investigations opened increases. The table, *Number of Opened Investigations as a Percentage of Total Licensees*, illustrates that the number of investigations opened by the Board, as a percentage of the total number of licensees, has increased since fiscal year 2002. This indicates that the number of opened investigations is increasing at a higher rate than the number of licensed physicians, acupuncturists, physician assistants, and surgical assistants in Texas.

**Number of Opened Investigations as a Percentage of
Total Licensees – FYs 2002 – 2008**

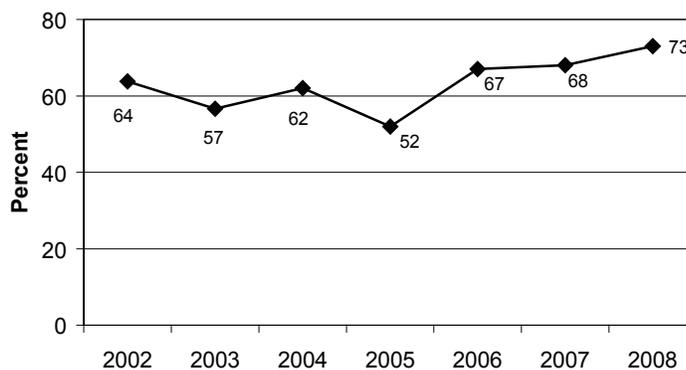
Year	2002	2003	2004	2005	2006	2007	2008
Percent	2.7	2.7	2.8	3.3	2.9	3.6	3.6

◆

The number of opened investigations is increasing at a higher rate than the number of total licensees.

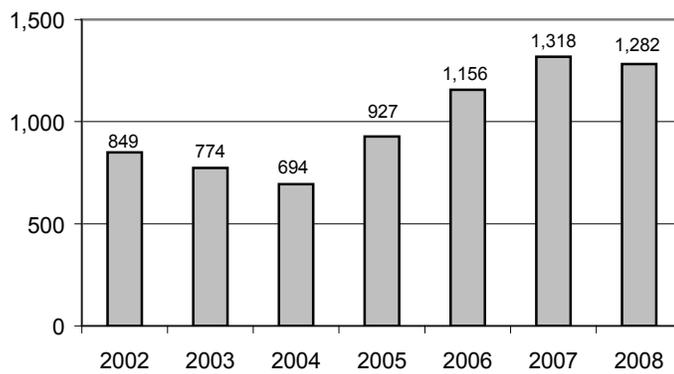
The percentage of complaints that involve quality of care issues is rising as well. These complaints are typically more serious in nature and take longer to investigate because of the complex medical issues and judgment required. The graph, *Quality of Care Cases*, shows that in fiscal year 2008, 73 percent of complaints involved quality of care issues. A larger number of complaints and a higher percentage of complex quality of care cases may contribute to a growing number of active enforcement cases. The chart, *Number of Active Enforcement Cases*, illustrates the number of active cases pursued by the boards. While the number of active cases at the end of fiscal year 2008 decreased from fiscal year 2007, the boards had nearly 1,900 active cases at the end of the third quarter of fiscal year 2008. The large number of active cases prompted the agency to hire a part-time former staff member to help the boards close cases.

**Quality of Care Cases
FYs 2002 – 2008**



Increased numbers of complaints, quality of care cases, and an increasing number of cases scheduled for informal settlement conferences and contested case hearings at the State Office of Administrative Hearings contribute to increasing the time the agency takes to resolve complaints. For example, from fiscal year 2004 to the start of fiscal year 2009, the time required to schedule an informal settlement conference has almost doubled from 84 to 152 days. These factors could also increase enforcement costs, as staff will spend time preparing for and conducting a higher number of investigations, settlement conferences, and hearings.

**Number of Active Enforcement Cases
FYs 2002 – 2008**

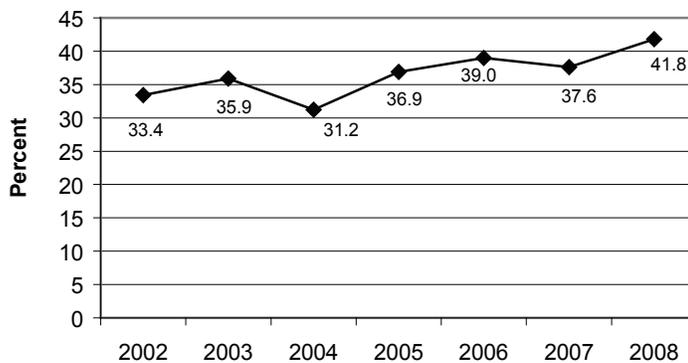


Increased complaint numbers have contributed to longer disposition times.

Complaint Disposition

The percentage of total complaints opened for investigation has increased from 33 percent in fiscal year 2002 to nearly 42 percent in fiscal year 2008, as shown in the graph, *Complaints Opened for Investigation*. These cases are those that the agency, after the 30-day initial investigation, determines need additional investigation.

**Complaints Opened for Investigation
FYs 2002 – 2008**



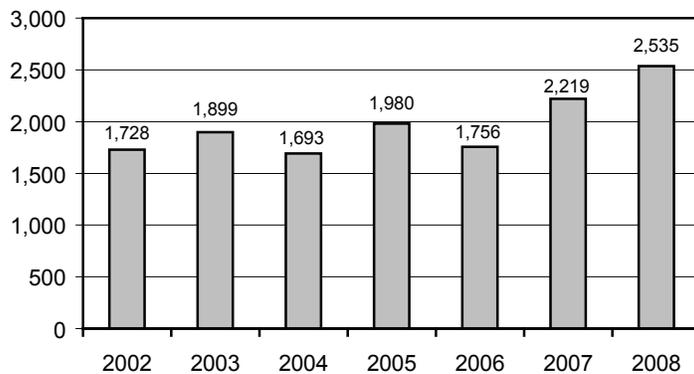
Disciplinary Actions – FY 2008

2008 Disciplinary Actions*	Administrative	Criminal Behavior	Medical Error	Mental or Physical Impairment	Quality of Care	Disciplinary Action by Peers, Another State, or Military	Substance Abuse	Unprofessional Conduct	Total
Revocation/Voluntary Surrender	0	7	0	8	7	1	3	0	26
Suspension	0	0	0	2	1	0	6	2	11
Restriction	6	3	0	4	112	7	14	21	167
Reprimand	3	1	0	0	24	0	0	4	32
Rehabilitation Order	0	0	0	17	0	0	18	0	35
Administrative Penalty	53	7	0	0	12	5	0	33	110
Cease-and-Desist	0	2	0	0	0	0	0	0	2
Total Actions	62	20	0	31	156	13	41	60	383
Total Dismissed	55	27	1	17	1,571	32	11	432	2,146
Total Complaints Resolved	117	47	1	48	1,727	45	52	492	2,529
Percentage of Complaints Resulting in Disciplinary Action	53	43	0	65	9	29	79	12	15

*Chart includes temporary actions.

The chart, *Disciplinary Actions*, highlights statistical information about the boards' disposition of complaints by type of allegation in fiscal year 2008. Attachment B shows this same information for the previous fiscal years 2005 to 2007. The chart, *Number of Complaints Resolved*, shows the increasing number of complaints the boards resolved during fiscal years 2002 to 2008. The Medical Board has exceeded its performance target for the number of complaints resolved each fiscal year since 2002.

**Number of Complaints Resolved
FYs 2002 – 2008**



While quality of care complaints make up the large majority of the total complaints received, a much smaller percentage has resulted in disciplinary action, as shown in the table, *Percent of Quality of Care Cases Resulting in Disciplinary Action*. The percentage of quality of care cases that resulted in disciplinary action increased from 2005 to 2007 before dropping in 2008.

**Percent of Quality Care Cases Resulting in Disciplinary Action
FYs 2005 – 2008**

Fiscal Year	Total Number of Quality Care Cases	Number Resulting in Disciplinary Action	Percent Resulting in Disciplinary Action
2005	1,445	113	7.8
2006	1,208	119	9.9
2007	1,485	159	10.7
2008	1,727	156	9.0

In fiscal year 2008, the Medical Board did not meet its target performance for the percentage of jurisdictional complaints resulting in disciplinary action, disciplining 14 percent of physicians, as compared to the 18 percent target. The table, *Percent of Jurisdictional Complaints Resulting in Disciplinary Action*, shows that the number of disciplinary actions against physicians, as a percentage of the total number of jurisdictional complaints, has decreased in the past two fiscal years. With the recent increase in jurisdictional complaints, an increased number of cases have been dismissed the last few fiscal years. Also, cases resulting in disciplinary action take longer to resolve, sometimes not appearing as final actions until the next fiscal year. These factors most likely explain the decrease in the percentage of jurisdictional complaints resulting in disciplinary action the last two fiscal years.

**Percent of Jurisdictional Complaints Resulting in
Disciplinary Action – FYs 2002 – 2008**

	2002	2003	2004	2005	2006	2007	2008
Performance Target	10	10	10	10	18	18	18
Actual Performance	24.3	17.8	15.8	17.0	21.0	14.0	14.0

In fiscal year 2008, the boards disciplined 352 licensees, or slightly less than one-half of one percent of the total number of physicians, acupuncturists, physician assistants, and surgical assistants. The performance measures indicate that, each biennium, 99 percent of physicians receive no disciplinary action by the Medical Board.

Enforcement Time Frames

The table, *Average Number of Days to Resolve a Complaint*, shows the average length of time the Medical Board took to resolve a complaint in fiscal years 2005 to 2008. Since generally meeting the performance target of 250 days in fiscal year 2005, the Medical Board has taken longer to resolve complaints.

**Average Number of Days to Resolve a Complaint
FYs 2002 – 2008**

	2005	2006	2007	2008
Average Number of Days to Resolve a Complaint*	251	272	261	270

*Performance target is 250 days.


*Complaint
resolution
averaged 270
days in 2008.*

In spring 2008, the Medical Board created a Fast Track enforcement process to more quickly resolve minor administrative violations. The textbox, *Violations Eligible for Fast Track Complaint Resolution*, details specific administrative violations eligible for this process. In fiscal year 2008, from the beginning of the Fast Track process, the Board averaged 67 days from receiving the complaint to approving the agreed order, compared with 270 days in fiscal year 2008 for the Board's standard enforcement process. From implementation in spring 2008 to the close of fiscal year 2008, the Board resolved 65 cases through the Fast Track process.

Violations Eligible for Fast Track Complaint Resolution

- ◆ Failure to timely provide copies of medical or billing records or overcharging for medical records
- ◆ Failure to provide medical records to patient
- ◆ Failure to timely comply with a board subpoena or request for information
- ◆ Failure to timely sign a death certificate
- ◆ Discipline by peers that does not involve patient care
- ◆ Discipline by another state or the military that does not involve patient care
- ◆ Failure to obtain or document continuing medical education
- ◆ Failure to report accurate information on an application or renewal
- ◆ Failure to report liability claims to the Board
- ◆ Failure to change address with the Board
- ◆ Failure to keep drug logs
- ◆ Misleading advertising
- ◆ Minor violation of a Board order
- ◆ Improper termination of patient care
- ◆ Violation of the Health Insurance Portability and Accountability Act (HIPAA) or patient confidentiality

.....
¹ Texas House Bill 1973, 80th Legislature (2007).

² Staff evaluation focused on the Texas Medical Board's performance in meeting legislative expectations from Texas Senate Bill 104, 78th Legislature (2003), and any concerns resulting backlash from use of its new enforcement tools and authority.

³ Texas Occupations Code, sec. 155.007(m).

⁴ Texas House Bill 1, *General Appropriations Act*, 80th Legislature (2007), Rider 7.

⁵ Texas Occupations Code, sec. 155.1025.

Attachment A

Texas Medical Board Performance Data

	2002	2003	2004	2005	2006	2007	2008
Overall Administration							
Budget	\$5,707,430	\$5,475,297	\$8,308,767	\$8,328,294	\$8,665,705	\$9,555,930	\$9,372,839
FTE Cap	112	113	133	133	133	139	142.5
Licensure							
Number of Physician License Applications	2,552	2,561	2,947	2,992	4,026	4,041	4,023
Total Number of Physicians in Texas	N/A	53,788	55,993	57,150	58,040	60,209	62,693
Number of New Physician Licenses Issued	2,828	2,513	2,343	2,692	2,516	3,324	3,621
Average Number of Days to Issue a Physician License**	133	102	56	95	97	81	62
Enforcement							
Number of Complaints Filed	5,164	4,942	6,090	6,038	5,211	6,893	6,514
Number of Nonjurisdictional Complaints	3,493	3,167	4,190	3,807	1,158	1,425	1,929
Number of Jurisdictional Not Filed Complaints*	N/A	N/A	N/A	N/A	2,020	2,905	1,860
Number of Jurisdictional Complaints – Physicians Only**	1,685	1,699	1,946	2,207	1,966	2,474	2,614
Number of Investigations Opened	1,725	1,775	1,900	2,231	2,032	2,593	2,725
Number of Active Cases	849	774	694	927	1,156	1,318	1,282
Percent Quality of Care Cases	63.8	56.6	62	52	67	68	73
Number of ISCs	172	477	420	469	427	482	521
Number of cases filed at SOAH	35	48	45	63	34	48	70
Average Number of Days for Complaint Resolution – Physicians Only**	308	271	289	296	272	261	270
Number of Complaints Resolved – Physicians Only**	1,728	1,899	1,693	1,980	1,756	2,219	2,535
Total Administrative Penalties Assessed	\$175,880	\$393,500	\$434,500	\$1,457,354	\$478,100	\$523,094	\$508,639
Total Administrative Penalties Collected	\$100,850	\$358,100	\$387,710	\$408,312	\$374,800	\$372,200	\$464,700
Total Number of Agreed Orders or Disciplinary Action Taken	187	277	256	304	335	311	352
Percent of complaints Resulting in Disciplinary Actions**	24.3	17.8	15.8	17	21	14	14
Number of Probationers	321	430	553	622	652	687	641

*The Medical Board did not track the number of jurisdictional not filed complaints before 2006.

**Texas Medical Board Performance Measure.

Attachment B

Disciplinary Actions FYs 2005 – 2007

	Administrative	Criminal Behavior	Medical Error	Mental or Physical Impairment	Quality of Care	Disciplinary Action by Peers, Another State, or Military	Substance Abuse	Unprofessional Conduct	Total
FY 2005 Disciplinary Actions*									
Revocation/Voluntary Surrender	0	3	0	0	19	5	2	9	38
Suspension	0	0	0	1	0	3	5	7	16
Restriction	6	2	0	0	86	12	4	18	128
Reprimand	0	0	0	0	0	0	0	0	0
Rehabilitation Order	1	0	0	3	0	2	19	5	30
Administrative Penalty	38	2	0	0	8	4	0	15	67
Total Actions	45	7	0	4	113	26	30	54	279
Total Dismissed	109	26	6	7	1,332	36	13	264	1,793
Total Complaints Resolved	154	33	6	11	1,445	62	43	318	2,072
FY 2006 Disciplinary Actions*									
Revocation/Voluntary Surrender	8	2	0	14	15	2	0	2	43
Suspension	0	0	0	0	2	2	6	5	15
Restriction	6	0	4	0	84	6	9	27	136
Reprimand	0	0	0	0	0	2	0	1	3
Rehabilitation Order	0	0	0	6	0	0	13	0	19
Administrative Penalty	48	2	1	0	18	7	0	14	90
Total Actions	62	4	5	20	119	19	28	49	306
Total Dismissed	78	13	8	4	1,089	14	14	152	1,372
Total Complaints Resolved	140	17	13	24	1,208	33	42	201	1,678
FY 2007 Disciplinary Actions*									
Revocation/Voluntary Surrender	2	10	0	3	6	0	1	9	31
Suspension	0	0	0	0	8	0	3	2	13
Restriction	9	1	1	0	117	8	4	30	170
Reprimand	1	0	0	0	1	1	0	0	3
Rehabilitation Order	0	0	0	16	0	0	16	0	32
Administrative Penalty	37	2	1	0	27	0	0	20	87
Total Actions	49	13	2	19	159	9	24	61	336
Total Dismissed	208	10	1	4	1,326	20	4	290	1,863
Total Complaints Resolved	257	23	3	23	1,485	29	28	351	2,199

*Chart includes temporary actions.

APPENDICES



Appendix A

Sunset Review Schedule – 2011

General Government

Procurement and Support Services Division, Comptroller of Public Accounts¹
Electronic Government Program Management Office of the Department of Information Resources
Emancipation Juneteenth Cultural and Historical Commission, Texas
Emergency Communications, Commission on State
Fire Fighters' Pension Commissioner, Office of
Information Resources, Department of
People with Disabilities, Governor's Committee on
Public Finance Authority, Texas

Health and Human Services

Aging and Disability Services, Department of
Assistive and Rehabilitative Services, Department of
Developmental Disabilities, Texas Council for
Family and Protective Services, Department of
Health and Human Services Commission
Health Services Authority, Texas
Health Services, Department of State

Education

Education Agency, Texas²

Public Safety and Criminal Justice

Pardons and Paroles, Board of
Criminal Justice, Texas Board and Department of³

Business and Economic Development

Housing and Community Affairs, Texas Department of
Lottery Commission, Texas and Lottery Division of the Texas Lottery Commission

Appendix A

Regulatory

Tax Division, State Office of Administrative Hearings

Injured Employee Counsel, Office of

Insurance, Division of Workers' Compensation of the Texas Department of

Public Utility Commission of Texas

Public Utility Counsel, Office of

.....
¹ The Sunset Commission must conduct a limited review of the transfer of powers and duties from the Texas Building and Procurement Commission to the Comptroller of Public Accounts in 2011.

² The Texas Education Agency has a Sunset date of 2012. Therefore, the Sunset review must occur in 2011.

³ Senate Bill 909, 80th Legislature, removed the Correctional Managed Health Care Committee's separate Sunset date. The Committee will be reviewed as part of each review of the Texas Department of Criminal Justice.

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 and effectively does the agency and its advisory committees operate?
2. How successful has the agency been in achieving its mission, goals, and objectives?
3. Does the agency perform any duties that are not statutorily authorized? If so, what is the authority for those activities and are they necessary?
4. What authority does the agency have related to fees, inspections, enforcement, and penalties?
5. In what ways could the agency's functions/operations be less burdensome or restrictive and still adequately protect and serve the public?
6. How much do the agency's programs and jurisdiction duplicate those of other agencies and how well does the agency coordinate with those agencies?
7. Does the agency promptly and effectively address complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions?
9. How has the agency complied with state and federal requirements regarding equal employment opportunity, the rights and privacy of individuals, and purchasing guidelines for historically underutilized businesses?
10. How effectively does the agency enforce rules on potential conflicts of interest of its employees?
11. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
12. Would abolishing the agency cause federal government intervention or loss of federal funds?

Appendix B

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.