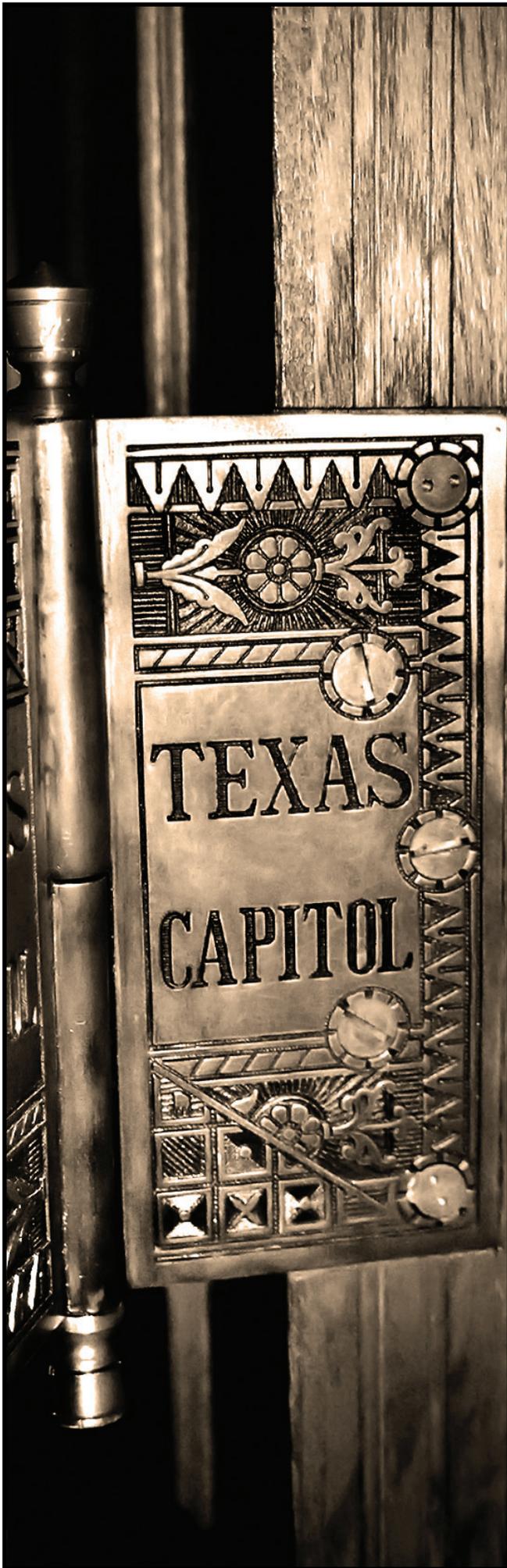


# SUNSET ADVISORY COMMISSION

*Report to the 83rd  
Legislature*

FEBRUARY 2013



# *Sunset Advisory Commission*

**Representative Dennis Bonnen**  
*Chair*

**Senator Robert Nichols**  
*Vice Chair*

Representative Rafael Anchia

Senator Brian Birdwell

Representative Byron Cook

Senator Joan Huffman

Representative Harold V. Dutton, Jr.

Senator Dan Patrick

Representative Four Price

Senator John Whitmire

Casandra Ortiz

Jan Newton

**Ken Levine**  
*Director*

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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.*



# SUNSET ADVISORY COMMISSION

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

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Jan Newton  
Boerne

## Director

Ken Levine

February 8, 2013

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 83rd Legislature  
Assembled in Regular Session

Ladies and Gentlemen:

As we begin the 83rd Legislative Session, the members of the Sunset Advisory Commission present to you the enclosed results of the many hours of staff work, hearings, debate and decisions of the Commission. As you know, statute directs the Sunset Commission to review and evaluate the performance of agencies subject to the Sunset Act each biennium; recommend the abolition or continuation of these agencies; propose needed statutory or management changes; and develop legislation to implement any proposed statutory changes.

Between September 2011 and January 2013, the Sunset Commission worked to develop recommendations regarding the 24 agencies under Sunset review. These recommendations to the 83rd Legislature intend to streamline government and best meet the needs of Texans. Examples of these changes include abolishing one agency, eliminating numerous unnecessary programs and reporting requirements, and positioning agencies to best meet the challenge of delivering outstanding services to the citizens of Texas. If implemented, these recommendations would have a positive fiscal impact to the State of \$7.8 million over the upcoming 2014–2015 biennium.

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

Respectfully Submitted,

Representative Dennis Bonnen  
Chair  
Sunset Advisory Commission

Senator Robert Nichols  
Vice Chair  
Sunset Advisory Commission

# **REPORT TO THE 83RD LEGISLATURE**

**FEBRUARY 2013**

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# INTRODUCTION

# INTRODUCTION

Sunset is the regular assessment of the continuing need for a state agency to exist. For agencies that are needed, the process provides an opportunity to make the agency more efficient, effective, and more open and responsive to the citizens. The process works by setting a date on which an agency is abolished unless the Legislature passes a bill to continue its operations. Agencies typically undergo review once every 12 years.

An agency under review must prove to the Legislature that it is still needed. This creates a unique opportunity for the Legislature to look closely at an agency and make fundamental changes to its mission or operations as needed. Legislation reauthorizing the agency and its functions must be enacted, otherwise, the agency is automatically abolished.

## Sunset for the 83rd Legislative Session

A total of 24 agencies went through Sunset review this biennium. Education was a key focus — with both the Texas Education Agency and Higher Education Coordinating Board under review. Sunset also revisited the adult criminal justice system, examining the impact of significant policy changes enacted six years ago.

Four agencies subject to Sunset in 2011 underwent review again this biennium as their Sunset bills either failed to pass or were vetoed. These agencies included the Railroad Commission, Public Utility Commission, Department of Information Resources, and Department of Housing and Community Affairs.

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*Sunset adopted 349  
recommendations to improve  
the agencies under review.*

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Other key reviews covered topics ranging from public sector ethics to technology procurement to the lottery. The Legislature also directed Sunset to conduct a special review of the Port of Houston Authority to objectively evaluate concerns about its oversight and management.

## Results

Following extensive analysis, testimony, and deliberations, the Sunset Commission recommends that the 83rd Legislature pass legislation making significant improvements to the operations and oversight of 23 agencies and abolishing one agency — the Office of Fire Fighters' Pension Commissioner. While the Commission recommends continuing 18 of these agencies, five agencies continue automatically, as they do not have a Sunset expiration clause.

Altogether, the Sunset Commission adopted 349 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 3

summarizes the Sunset Commission's decisions regarding the continuation of the agencies under review and provides an estimated two-year fiscal impact of recommended changes.

The reviews this biennium presented fewer opportunities for positive fiscal impact than in the past. Most of the agencies reviewed received significant budget reductions for fiscal years 2012 and 2013. As a result, the Sunset Commission recommended many structural and statutory changes to meet an agency's reduced fiscal profile. This means, essentially, that the fiscal savings have already occurred, and Sunset recommends ways for agencies to operate successfully in the new fiscal reality. Despite these fiscal limitations, the Sunset Commission's recommendations would still result in a positive fiscal impact to the State of \$7.8 million in fiscal years 2014–2015, as shown in the accompanying chart.

## Guide to Recommendations

Individual chapters in this report summarize Sunset recommendations for each agency under review this biennium, including three types of recommendations as described below, followed by the fiscal impact of these changes.

- **Statutory Change.** These changes in law require consideration and action by the full Legislature and are drafted into Sunset legislation on each agency.
- **Management Action.** These changes call for management action by an agency and do not require legislative action. As adopted by the Sunset Commission, these recommendations should be implemented by each agency over the next two years.
- **Appropriations Change.** These changes express the will of the Sunset Commission to request changes to agencies' appropriations by the appropriative committees. These changes are not contained in the Sunset bills for those agencies.

More detailed information on Sunset's recommended changes on each of the agencies can be found in the individual Sunset staff report on each agency, available on the Commission's [website](#), or by contacting Sunset staff directly.

## Implementation of 2011 Legislation

Following the current recommendations, the report includes an update on the status of state agencies' implementation of changes adopted through the Sunset process last session. The 82nd Legislature passed 18 of 22 bills containing 189 changes recommended by the Sunset Commission. Overall, agencies, to date, have implemented 87 percent of these statutory changes. A summary of the status of key management actions, as followed up on by the State Auditor's Office, are also covered in this section of the report. The Sunset Commission appreciates the State Auditor's assistance in this project.

Finally, the appendices of this report provide a list of agencies scheduled for Sunset review in 2015, and a summary of the Texas Sunset Act.

**83rd Session Sunset Summary Information**

<b>Agency</b>	<b>Action</b>	<b>Two-Year Net Fiscal Impact</b>
Architectural Examiners, Texas Board of	Continue	\$110,000 <sup>1</sup>
Arts, Texas Commission on the	Continue	\$26,000
Correctional Managed Health Care Committee	Continue	No Impact
Criminal Justice, Texas Board and Department of	Continue	No Impact
Education Agency, Texas	Continue	\$17,230
Engineers, Texas Board of Professional	Continue	(\$88,000)
Ethics Commission, Texas	N/A	\$7,000
Facilities Commission, Texas	Continue	No Impact
Fire Fighters' Pension Commissioner, Office of	Abolish	\$346,000
Higher Education Coordinating Board, Texas	Continue	No Impact
Housing and Community Affairs, Texas Department of	Continue	No Impact
Information Resources, Department of	Continue	No Impact
Judicial Conduct, State Commission on	N/A	(\$104,813)
Lottery Commission, Texas	Continue	\$2,940,000
Pardons and Paroles, Board of	N/A	No Impact
Pension Review Board, State	Continue	No Impact
Port of Houston Authority	N/A	No Impact <sup>2</sup>
Preservation Board, State	Continue	No Impact
Procurement and Support Services Division, Comptroller	Continue	No Impact
Public Utility Commission of Texas	Continue	No Impact
Railroad Commission of Texas	Continue	\$4,050,000
Self-Directed Semi-Independent Agency Project Act (SDSI)	Continue	\$496,000 <sup>3</sup>
State Employee Charitable Campaign Policy Committee	Continue	No Impact
Windham School District within Texas Department of Criminal Justice	N/A	No Impact
<b><i>Net Positive Fiscal Impact</i></b>		<b><i>\$7,799,417</i></b>

.....

<sup>1</sup> While resulting in a gain to General Revenue, these Sunset recommendations would also reduce revenue to the agency by about \$310,000 for the biennium. However, because the Board operates outside the legislative appropriations process as an SDSI agency, this change would not have an impact to the State.

<sup>2</sup> Total does not include the Port of Houston Authority's estimated cost of \$194,800 for internal auditing, as the Authority is not a state-funded agency.

<sup>3</sup> The Sunset recommendations would result in a gain to General Revenue but would also cause the SDSI agencies, which operate outside the appropriations process, to experience biennial revenue losses in the following amounts: \$258,000 for the Accountancy Board, \$142,000 for the Architectural Board, and \$96,000 for the Engineers Board.



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**SUNSET COMMISSION  
RECOMMENDATIONS**

# TEXAS BOARD OF ARCHITECTURAL EXAMINERS

*Carrie Holley-Hurt, Project Manager*

## Agency at a Glance

The Texas Board of Architectural Examiners regulates architects, landscape architects, and registered interior designers in the state. The Board was established to regulate architects after a 1937 explosion at a school in New London, Texas caused by design flaws, killed more than 300 students and teachers. A separate agency created to regulate landscape architects in 1969 was combined with the Board in 1979. The Legislature added the regulation of interior designers in 1991. The Board regulated 12,482 architects, 1,485 landscape architects, and 5,217 registered interior designers in fiscal year 2011. To fulfill its mission of protecting the public, the Board carries out the following key activities.

- Licenses architects and landscape architects practicing in Texas.
- Licenses interior designers who wish to call themselves Registered Interior Designers.
- Receives and investigates complaints concerning licensees, and takes disciplinary actions against individuals who violate the Board's statute or rules.
- Provides information to licensees, building officials, and the public.

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*Effective state regulation depends on equally applying licensing requirements to all practitioners.*

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As a state agency operating under the Self-Directed Semi-Independent (SDSI) Agency Project Act, the Board does not receive legislative appropriations, but instead collects its own revenue from licensing fees and sets its own budget.

## Summary

Since the inception of the Board of Architectural Examiners over 70 years ago, the agency's responsibilities have grown from regulating practitioners using the title "architect" to regulating the practice of architecture, landscape architecture, and the use of the title "registered interior designer." The Sunset Commission found that the State should continue to regulate these professions. The Commission found that effective state regulation of interior designers depends on equally applying requirements for licenses or registrations to all practitioners who enjoy the state sanction. Specifically, the Sunset action would phase out the grandfather provision that currently allows some interior designers to be registered without ever having to pass the registration examination.

The Sunset Commission also evaluated other organizational approaches for regulating these design professionals, but did not find that structural changes would result in significant efficiencies or cost savings to the State at this time, and recommended continuing the Board for 12 years. Finally, the Commission compared the Board's statute against standard licensing practices and identified changes that would enhance fairness, public protection, and improve the consistency of the Board's operations.

The Commission found that the Board should continue to operate outside the legislative appropriations process under the SDSI Act as discussed in a separate section of this report. The following material summarizes the Sunset Commission's recommendations on the Board.

## ***Issue 1***

### **The State Has a Continuing Need to Regulate Architects, Landscape Architects, and Registered Interior Designers.**

The Sunset Commission found that the State should continue to license and regulate architects, landscape architects, and registered interior designers as a way to assure the public that these professionals have maintained the appropriate level of education, completed the requisite experience, and have passed the required exam. However, nearly 60 percent of the Board's current registered interior designers were grandfathered into the profession and do not meet the current standards for registration. While such grandfather provisions are not unusual for regulatory programs, they do undermine the promise of competence when engaging a licensed professional — especially when more than half of those registered have not had to pass the registration examination. These provisions also give preferential treatment to grandfathered registrants over others who must pass the registration exam. Finally, the Board has struggled to provide data to show the results of its efforts, especially outreach and customer service, to achieve better compliance with regulatory requirements.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Continue the Texas Board of Architectural Examiners for 12 years.**

This recommendation would continue the Texas Board of Architectural Examiners as an independent agency responsible for overseeing architects, landscape architects, and registered interior designers.

#### **1.2 Eliminate the grandfather provision for registered interior designers who have not passed the registration examination.**

This recommendation would require registered interior designers who have not passed the registration examination to do so within three years of the effective date of the applicable legislation in order to continue to use the title "registered interior designer" beyond that date.

### ***Management Action***

#### **1.3 Direct the Board to measure the effects its customer service and outreach efforts have on licensing and enforcement.**

This recommendation directs the Board to tie both its customer service and outreach functions to its regulatory functions by collecting data that highlight the impact of those efforts on licensing and enforcement.

## *Issue 2*

### **Key Elements of the Texas Board of Architectural Examiners' Statute Do Not Conform to Common Licensing Standards.**

In reviewing the Board's regulatory functions, the Sunset Commission found that certain licensing and enforcement processes in the Board's statute do not match model standards developed over many years of Sunset reviews of regulatory agencies.

### **Recommendations**

#### ***Change in Statute***

#### **2.1 Clarify statute to require the Board to assess the \$200 professional fee at initial registration and renewal for all three regulated professions.**

This recommendation would change statute to apply the \$200 professional fee for architects at the time of license issuance as the law currently provides for landscape architects and registered interior designers, and not just on the renewal of the architect's license.

#### **2.2 Require the Board to conduct fingerprint-based criminal background checks of applicants and licensees with active licenses.**

This recommendation would require the Board to conduct fingerprint-based criminal background checks, instead of the self-reporting and name-based checks the agency currently uses that can be inaccurate and provide incomplete information. Fingerprint-based checks through the Department of Public Safety on all applicants and licensees would provide complete federal and state criminal histories of applicants to help the Board ensure that licensed design professionals have not engaged in criminal activity in Texas or another state that may affect their ability to perform the job, such as being a fiduciary, as commonly occurs. Currently, about 51 agencies use fingerprints to assess the criminal backgrounds of persons they license, with the licensees typically paying these costs.

#### **2.3 Clarify statute to require the Board to use only its own renewal fee when calculating penalties for late renewal.**

Under this recommendation, the Board would no longer calculate penalties for late renewal using the \$200 statutory professional fee, which is paid to the State and is not an agency fee. Instead, the Board would use only its own renewal fee when calculating such penalties.

#### **2.4 Clarify statute to authorize the Board to apply administrative penalties per violation per day.**

This recommendation would clarify statute to allow the Board to apply its administrative penalties per violation for each day the violation occurred, as is the standard approach for other regulatory agencies.

## Fiscal Implication Summary

When fully implemented, these recommendations would result in an estimated annual gain of \$55,000 to the General Revenue Fund, as summarized below.

**Issue 2** — Clarifying that the \$200 professional fee applies to architects at initial licensure would result in the Board collecting an additional \$55,000 annually to be deposited to General Revenue, as shown in the chart below.

Clarifying that the penalty for late renewal would be based only on the agency's renewal fee, and not the \$200 professional fee paid to the State, would reduce revenue to the agency by about \$155,000 annually. However, because the Board operates outside the legislative appropriations process as an SDSI agency, this change would not have an impact to the State.

### ***Texas Board of Architectural Examiners***

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>
2014	\$55,000
2015	\$55,000
2016	\$55,000
2017	\$55,000
2018	\$55,000

# TEXAS COMMISSION ON THE ARTS

*Emily Johnson, Project Manager*

## Agency at a Glance

The Texas Commission on the Arts' (TCA's) mission is to advance the state economically and culturally by investing in a creative Texas. To achieve its mission, the agency carries out the following key activities.

- Awards grants to nonprofit organizations throughout the state to develop a receptive climate for the arts.
- Promotes the arts to attract tourists and build audiences for Texas-based arts organizations and events.
- Provides information and assistance to arts and cultural industries and organizations, and the public.

## Summary

When the Texas Commission on the Arts underwent Sunset review six years ago, the agency was struggling with an unstable funding source, grant oversight issues, and high administrative and overhead costs. Since then, the agency streamlined its grant programs and reduced administrative costs, and the Legislature abolished its unstable Cultural Endowment Fund. However, with last session's budget constraints, the 82nd Legislature cut the agency's budget by more than half to \$3.7 million and reduced its staff from 17 to 12.

Currently, Texas' public support of the arts draws down more than \$1 million in federal and regional arts funds, leverages additional local and private funds, stimulates economic development, and supports access to the arts all across the state. The Sunset Commission found these economic and social benefits represent a good investment, and make continuing the agency to administer funding for the arts worthwhile. Further, the Sunset Commission determined no significant savings or benefits would result from transferring the agency's functions to another agency.

Beyond the agency's continuation and structure, the Sunset Commission found TCA's 17-member governing board is unnecessarily large given the agency's size and programs, and that its grant programs could benefit from clearer statutory authority and the incorporation of some common best practices for grant making. The following material summarizes the Sunset Commission's recommendations for the Commission on the Arts.

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*The Commission's role in administering public funds for the arts is worthwhile.*

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## ***Issue 1***

### **The Commission on the Arts Performs Valuable Functions Worth Continuing.**

TCA's mission to advance the state economically and culturally by investing in a creative Texas provides economic and social benefits. The State's public investment in the arts draws down federal and regional arts funds that would not be available without a state arts agency and leverages additional local and private funds. Texas' investment also provides invaluable operating support for nonprofit arts and cultural organizations, supports access to the arts, and stimulates economic development by supporting the arts infrastructure.

### **Recommendation**

#### ***Change in Statute***

##### **1.1 Continue the Commission on the Arts for 12 years.**

This recommendation would continue the Commission as an independent agency responsible for supporting and developing a receptive climate for the arts.

## ***Issue 2***

### **A Seventeen-Member Board Is Unnecessary to Effectively Oversee the Commission on the Arts.**

The Commission on the Arts consists of 17 Governor-appointed members that must represent all arts fields and be widely known for their professional competence and experience in connection with the arts. The Sunset Commission determined no clear ongoing need for maintaining such a large board exists and that reducing the number of commissioners would allow the agency to more easily and effectively support its oversight body, while not hindering the Commission's policy and oversight functions.

### **Recommendation**

#### ***Change in Statute***

##### **2.1 Reduce the size of the governing body of the Texas Commission on the Arts from 17 to nine members.**

This change would reduce the overall size of the board and require that the members represent a diverse cross-section of arts fields, but not all fields of the arts as currently required. Statute would continue to require at least two members be residents of a county with a population of less than 50,000. To limit disruption to the current structure, this recommendation would be implemented with provisions to allow fewer appointments as current commissioners' terms expire and a reallocation of terms to ensure an equal number of appointments every two years.

## ***Issue 3***

### **TCA's Grant Procedures Adhere to Best Practices, but Could Benefit From Additional Improvements.**

While TCA's grant programs generally work well, clear statutory authority for the agency's grant-making practices would help ensure TCA's grant programs work to help achieve its mission. In addition, incorporating additional best practices into the agency's grant reporting requirements, risk-based monitoring, and program evaluation procedures would help ensure legislative investments work as anticipated.

### **Recommendations**

#### ***Change in Statute***

##### **3.1 Clarify the Commission's statutory authority to award grants to support the arts in Texas.**

This recommendation would clearly state in law the Commission's authority to award grants in accordance with its mission to advance the state economically and culturally by investing in the arts in Texas.

#### ***Management Action***

##### **3.2 TCA should amend its grant guidelines to incorporate reporting requirements for subgrantors and to better link on-site monitoring visits to risk.**

TCA should amend its grant program guidelines to add subgranting reporting requirements and directly link the need for on-site monitoring to risk assessment results.

##### **3.3 TCA should develop and track additional performance measures to evaluate the impact of its grants.**

TCA should use data it collects from grant applications and compliance reports to develop and report on additional performance measures that better illustrate the impact of its grants based on the grant's purpose.

### **Fiscal Implication Summary**

These recommendations would result in a savings to General Revenue of about \$13,000 per year, as summarized below.

**Issue 2** — Reducing the size of the Commission from 17 to nine members would result in savings of about \$9,000 per year, once fully implemented in 2015, as a result of reduced travel, lodging, and per diem expenses.

**Issue 3** — Directing TCA to better link its on-site monitoring visits to its risk assessment would save about \$4,000 per year.



# TEXAS CRIMINAL JUSTICE AGENCIES

*Jennifer Jones, Project Manager*

## **Texas Department of Criminal Justice at a Glance**

Created in 1989 by consolidating Texas' adult probation, incarceration, and parole supervision functions, the Texas Department of Criminal Justice (TDCJ) works with the Windham School District, the Correctional Managed Health Care Committee (Committee), and the Texas Board of Pardons and Paroles, to operate and oversee the adult criminal justice system in Texas. TDCJ's major functions include:

- assisting local Community Supervision and Corrections Departments (CSCDs) that provide supervision for offenders on probation;
- providing for confinement and rehabilitation of offenders in state jails and prisons; and
- supervising offenders released on parole by the Parole Board.

## **Correctional Managed Health Care Committee at a Glance**

The Legislature created the Correctional Managed Health Care Committee in 1993 to serve as a third-party intermediary between TDCJ and state university contractors for offender healthcare services. However, the Legislature transferred contracting authority from the Committee to TDCJ in 2011. While the Committee continues to define its new role, today its major responsibility is in using its medical expertise to develop the Managed Health Care Plan and policies that outline the standards to which contract providers adhere in delivering offender healthcare services.

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*With legislative reforms resulting in a healthier system overall, this review focused on giving the agencies solid foundations to meet upcoming challenges.*

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## **Windham School District at a Glance**

The Windham School District provides educational, vocational, and life skills programs for offenders in TDCJ to assist offenders in becoming responsible, productive members of their communities. Windham's statutory goals are to:

- reduce recidivism;
- reduce the cost of confinement or imprisonment;

- increase the success of former offenders in obtaining and maintaining employment; and
- provide incentives to offenders to behave in positive ways during imprisonment.

## Board of Pardons and Paroles at a Glance

Established in 1929, the Texas Board of Pardons and Paroles is a constitutionally created agency primarily charged with determining which eligible offenders to release early from prison. The mission of the Parole Board is to:

- determine which offenders to release on parole or discretionary mandatory supervision;
- determine conditions of parole and mandatory supervision;
- determine revocation of parole and mandatory supervision; and
- recommend the resolution of clemency matters to the Governor.

## Summary

When the Texas Department of Criminal Justice, Correctional Managed Health Care Committee, and Board of Pardons and Paroles were last under Sunset review in 2007, Texas' adult criminal justice system had reached a pivotal point. The system was at capacity and the Legislature had to decide whether to invest in building new prisons or in alternatives to incarceration. The Legislature chose the latter, investing in diversion strategies including treatment programming, probation, and parole to help control incarceration capacity.

Six years later, the Legislature's reforms have clearly improved the system. Since 2007, the number of offenders entering prison as a result of having their probation or parole status revoked has decreased, while the Parole Board's overall release rates have increased. State jail and prison reincarceration rates have declined and as a result, Texas has not had to build more prisons and was able to close the Central Unit in 2011. These successes indicate that overall, the Texas adult criminal justice system is working well.

Another difference between this Sunset review and the last is that the Legislature placed the Windham School District — Texas' correctional education provider — under a special purpose Sunset review to examine its structure, management, and operations. The Sunset review of the system overall identified some problems within each of the four agencies, but none were significant enough to justify major structural changes, particularly when any single structural change could easily impact the system's current stability, potentially causing renewed capacity problems.

Within this context, and with many of the Legislature's investments beginning to bear fruit, the Sunset Commission's recommendations aim to give the agencies clear direction, as well as a solid foundation and statutory framework needed to address future priorities and challenges. The following material summarizes the Sunset Commission's recommendations on all four agencies.

## ***Issue 1***

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

Texas has a need to protect the public's safety, and TDCJ provides the support and structure to supervise offenders on probation in the community, securely confine more serious offenders in prison, and directly supervise offenders on parole. The Sunset Commission concluded that TDCJ is the most appropriate agency to oversee this system.

Of the four state agencies in the adult criminal justice system — TDCJ, Parole Board, Committee, and Windham — only TDCJ has an abolishment date under the Sunset Act, necessitating a recommendation to continue the agency. As a constitutionally established agency, the Parole Board is not subject to abolishment, but will continue to come under Sunset review at the same time as TDCJ. Neither the Committee nor Windham has an abolishment date, but as discussed in Issues 4 and 5, the Sunset Commission recommends continuing to review both of these entities along with TDCJ in future reviews.

### **Recommendation**

#### ***Change in Statute***

##### **1.1 Continue the Board and Department of Criminal Justice for eight years.**

This recommendation would continue TDCJ and the Board of Criminal Justice to oversee its operations for eight years. Because the Parole Board is subject to Sunset review at the same time as TDCJ, it would also come under review again in 2021. The Committee and Windham would also be subject to Sunset review in conjunction with TDCJ in 2021, as recommended in Issues 4 and 5.

## ***Issue 2***

### **Reentry Strategies Lack Focus and Coordination, Limiting Opportunities for Texas to Further Reduce Recidivism and System Costs.**

Reentry programming and related services help improve offenders' transition from prison to communities and reduce the likelihood of recidivism. Though TDCJ and partner agencies are working to improve the reentry process, the agencies have yet to establish clear and thorough reentry strategies.

Without concrete goals and responsibilities for participants in the reentry planning process, or compulsory coordination, reentry partners run the risk of missing opportunities to leverage limited resources and better manage offenders. Given the pivotal role of reentry in improving the criminal justice system, the Sunset Commission determined that the agencies need explicit direction and clear expectations to make offender reentry an ongoing priority.

### **Recommendations**

#### ***Change in Statute***

##### **2.1 Require TDCJ to produce a written reentry plan, detailing the reentry goals and strategies, and how it will evaluate the plan.**

This recommendation would expand the current statutory requirement to develop a comprehensive reentry plan by requiring TDCJ, in consultation with Windham and the Parole Board, to clearly

establish a written reentry plan that includes each agency's reentry goals, strategies for achieving those goals, the responsibilities of various entities involved in reentry, and timelines for implementing the plan. As part of this plan, TDCJ would identify how it will evaluate the impact of reentry services using recidivism data and other means.

## **2.2 Require TDCJ to implement a system-wide risk and needs assessment for use in managing offenders on probation, parole, and in prison.**

This recommendation would require TDCJ to adopt one consistent needs assessment tool, including criminogenic factors, for use throughout the system from probation to parole. This requirement would replace existing law that requires TDCJ to assess offenders upon intake to a TDCJ facility. Instead, TDCJ must ensure that local probation departments assess probationers, determine when during the period of incarceration to assess offenders in prison, and assess parolees. Since different TDCJ divisions are in the process of piloting assessment tools, this recommendation requires all assessments be fully implemented and in use by January 2015.

## **2.3 Require TDCJ to leverage existing resources to institute a case management system for offenders.**

This recommendation would require TDCJ to implement basic case management using existing processes and staff. The current unit classification process would serve as the basis for improved case management. Classification hearings would include an appropriate array of members to assess each offender and direct them to needed programming. The case management team would review the offender's Individual Treatment Plan (ITP) or institutional record with the offender, and discuss options for a possible plan of treatment through education, rehabilitation, or volunteer programs, as needed.

## **2.4 Require the Individual Treatment Plan to capture all of an offender's risk and needs information, as well as all participation in both state-funded and volunteer programs.**

Under this approach, TDCJ would upgrade its use of the ITP to more fully capture individual offender information for use in treatment planning, including scores resulting from all assessments including educational, vocational, substance abuse, and criminogenic factors. The record would contain need and priority information for all programming responsive to each offender's indicated needs. Finally, the record would capture an offender's participation in all programs, including both state-funded and intensive volunteer programs. TDCJ would review the ITP annually to capture changes in the needs, custody, unit placement, or health of an offender that could impact future programming.

### ***Management Action***

## **2.5 Direct the Parole Board to use the ITP in making programming placement decisions.**

This recommendation directs the Parole Board to consider offender risk, needs, and priority information contained in the ITP when making program placement decisions for paroling offenders, once TDCJ has upgraded the ITP consistent with Recommendation 2.4. This recommendation also directs the Parole Board to track placement decisions that are inconsistent with the need indicated on the ITP; and directs the Parole Board, TDCJ, and Windham to establish the frequency and method by which the Parole Board will provide this information on program placements to the agencies. Finally, under this recommendation, the Parole Board, TDCJ, and Windham should meet annually to discuss program

placement, recent outcomes, and programming needs throughout the system, including any concerns related to placements based on use of the upgraded ITP.

### ***Change in Statute***

#### **2.6 Expand the statutory membership and duties of the Reentry Task Force.**

This recommendation expands the membership of the Reentry Task Force to include representation from each of the following entities — Board of Pardons and Paroles; Windham School District; Texas Commission on Jail Standards; Department of State Health Services; Texas Court of Criminal Appeals; County Judges and Commissioners Association of Texas; Sheriff’s Association of Texas; Texas District and County Attorneys Association; and Texas Conference of Urban Counties. TDCJ’s Executive Director would select three additional members, including a representative from community supervision and corrections departments; an organization that advocates for offenders; and a local reentry planning entity. The Executive Director would be authorized to appoint additional members as necessary.

Under this recommendation, the Task Force would identify gaps in and make recommendations regarding the provision of comprehensive post-release services. This recommendation would also require the Task Force to identify its own goals, the responsibilities of each participant, the Task Force’s deliverables, the timeline for completing deliverables, and who should receive the deliverables.

## ***Issue 3***

### **Community Supervision Funding Formulas and Grant Processes Need Strengthening to Keep Pace With a Changing Adult Probation System.**

TDCJ’s Community Justice Assistance Division (CJAD) provides state money — through competitive grants and formula funding — to the 121 local CSCDs that directly supervise and rehabilitate offenders sentenced to community supervision. The Sunset Commission found CJAD lacks a statutory grant-making structure to ensure funds are awarded transparently and fairly to programs that can show a direct impact by reducing recidivism and community supervision revocations.

The Sunset Commission also found that statutory funding formulas do not align with or reward community supervision initiatives that emphasize successful outcomes, which can discourage participation. Although CJAD is working on collecting additional offender risk data to help deliberations on changing these formulas, it does not yet have the data.

## **Recommendations**

### ***Change in Statute***

#### **3.1 Require CJAD to establish standard grant processes.**

This recommendation would require CJAD to develop processes for each of its grant programs, including establishing goals to ensure the grant programs meet CJAD’s mission, and to maintain a system to routinely monitor grant performance. CJAD would establish customary grant application, evaluation, and award processes, including defining and making publicly available grant evaluation criteria and award determinations, and developing an appeals process for grant award decisions. CJAD would also assess a program’s direct impact or benefit based on program-specific outcome data, which CSCDs would be required to submit.

### **3.2 Require CJAD to study the use of performance-based funding formulas and report its recommendations to the Legislature.**

This recommendation would require CJAD to research and consider modifications to the State's current statutory funding formulas for community supervision. CJAD would seek input from stakeholders in developing recommendations and work with the Legislative Budget Board (LBB) to determine the impact of any recommended changes to current funding projection methodology and appropriations. CJAD would consider other appropriate factors that may be necessary to align statutory funding formulas with the needs of the State's community supervision system, and report any recommendations and their potential effects to the Legislature by 2017 through existing statutory reporting requirements.

## ***Issue 4***

### **Statute Does Not Align With Recent Changes in the State's Approach to Providing Offender Health Care.**

Providing incarcerated offenders with a constitutional level of health care costs the State approximately \$490 million annually. Historically, Texas has provided such care by contracting with two university providers — the University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center — with the Committee acting as a contracting intermediary between the universities and TDCJ. However, last session, the Legislature shifted healthcare contracting oversight from the Committee to TDCJ. This change, coupled with public acknowledgement that UTMB might end its long-term relationship with the State to provide offender healthcare, highlighted inconsistencies in TDCJ's current contracting authority in state law. The Sunset Commission found these inconsistencies could limit TDCJ's ability to move forward and partner with new entities to provide offender health care.

Recognizing the offender healthcare contract landscape is changing almost daily, the Sunset Commission identified the need to give TDCJ both the structure and flexibility to be responsive to healthcare provider changes and legislative direction. TDCJ needs clear statutory authority and a strong contracting framework to better ensure it can fully protect the State's interest while providing the necessary level of health care to offenders in its new healthcare contractor role. However, the Sunset Commission determined that the Committee continues to serve a needed and useful role in helping formulate offender healthcare policies and procedures.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Clarify TDCJ's authority to contract with any provider for offender health care, to include, but not be limited to, specifically named university providers.**

This recommendation would expressly authorize TDCJ to enter into a contract with any entity to provide healthcare services, including public medical schools, governmental entities, and any other provider, as appropriate. Under this recommendation, if TDCJ were to contract with non-governmental providers, it would competitively bid those contracts. This recommendation would remove statutory references to contracting with specific providers, namely UTMB and Texas Tech. Since the State receives significant cost savings from contracting with an entity that can purchase prescription drugs under Section 340B of the federal Public Health Service Act, this recommendation would continue to require TDCJ to

make efforts to enter into contracts with entities that participate in this program, but remove current specificity that limits these contracts to UTMB.

#### **4.2 Require TDCJ to adhere to standard contracting requirements for offender healthcare services contracts, and report healthcare cost and use information to state leadership.**

Under this recommendation, TDCJ must adhere to the State of Texas Contract Management Guide, published by the Comptroller of Public Accounts, when entering into any contract related to offender health care. This recommendation would codify language currently in Rider 55 of TDCJ's appropriations pattern that requires TDCJ to submit quarterly reports to LBB and the Governor's Office regarding actual and projected expenditures for unit, psychiatric, hospital and clinic care, and pharmaceuticals; healthcare utilization; and other healthcare information, as determined by LBB and the Governor's Office. TDCJ would include information relating to any cost savings associated with contracting with a healthcare provider other than UTMB or Texas Tech in these quarterly reports.

#### **4.3 Continue the Correctional Managed Health Care Committee as an independent state agency, but modify the Committee's structure and functions.**

This recommendation would continue the Committee as an independent state agency responsible for developing and approving the Managed Health Care Plan and providing medical expertise to the Texas Board of Criminal Justice. The Committee would develop and finally approve the Managed Health Care Plan that specifies the type and general level of care provided and ensures continued access to needed care in the offender healthcare system. The Committee would provide expertise in developing any associated policies and procedures that further implement the Plan's directives. The Committee would report to the Board and be authorized to appoint subcommittees.

The Committee would provide medical expertise and advice to TDCJ and the Board as needed, including assisting in identifying system needs and helping in resolving contract disputes as they arise. However, this recommendation would transfer the Committee's duties relating to healthcare contracting to TDCJ, consistent with the Legislature's previous decision to transfer this authority, and would retain current language subjecting the Committee to Sunset review at the same time as TDCJ.

This recommendation modifies the Committee's membership as follows:

- two physicians representing university health science centers, appointed by the Governor;
- two public members appointed by the Governor, one of whom must be a physician who serves as the Chair;
- a TDCJ employee appointed by the Executive Director; and
- the State Medicaid Director, or other Health and Human Services Commission designee, who serves as an ex officio nonvoting member.

## *Issue 5*

### **Without a Regular Review of the Windham School District and Its Programs, the Legislature Cannot Best Direct Resources to Programs That Work.**

Although not subject to regular Sunset review, the Legislature placed the Windham School District under a special purpose Sunset review to examine its structure, management, and operations. Windham provides educational programs within the state criminal justice system and is Texas' only school district whose programs support a state agency — TDCJ. The Sunset Commission found Windham provides academic, vocational, and life skills programming and services, but cannot consistently show whether its programs actually accomplish the district's statutory goals — to reduce recidivism and incarceration costs, and improve offender behavior and employability.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Require Windham to conduct biennial program evaluations to measure whether its programs reduce recidivism and meet the district's other statutory goals, and to recommend changes to programs when needed.**

This recommendation would require Windham to collect results-based performance data for each of its programs, and evaluate whether the programs are meeting the district's statutory goals. Windham would collect and analyze data related to institutional disciplinary violations, rearrests, reincarcerations, employment, and cost of confinement, and use the new data to produce and compare recidivism and other correctional impact trends over time.

If Windham's evaluations reveal poor program performance, this recommendation would allow Windham to make structural or programmatic adjustments to improve program performance, as needed. Windham would be authorized to establish a memorandum of understanding with TDCJ, the Texas Department of Public Safety, and the Texas Workforce Commission to obtain and share data necessary to perform these evaluations.

This recommendation would also eliminate the requirement that Windham consult with LBB on its evaluation of vocational training services, and would remove the requirement that LBB submit this information to the Legislature and the Governor. Instead, Windham would continue to compile, analyze, and report this information biennially.

#### **5.2 Require Windham to be reviewed by the Sunset Commission in conjunction with future Sunset reviews of TDCJ.**

Windham would be subject to Sunset review in conjunction with TDCJ, the Parole Board, and the Committee in 2021 to provide a full examination of all of the State's adult correctional programs together.

## *Issue 6*

### **The Parole Board's Ability to Make Effective Parole Release Decisions Is Impeded by Its Limited Use of Available Resources and Inconsistent Access to Information.**

As an independent entity, the Board of Pardons and Paroles is responsible for releasing offenders early from prison. Since 1987, the Legislature has required the Parole Board to use validated guidelines that indicate an offender's risk to recidivate as a baseline when making these decisions. However, the Sunset Commission found that the Parole Board has shown continued reluctance to use tools such as the guidelines and lacks explicit direction to use other available resources and management tools in making and reviewing parole decisions.

The Parole Board discontinued its public use of recommended approval rates, without which the Parole Board's overall voting cannot be fully assessed to ensure consistent and fair parole decisions. The Sunset Commission also found that despite efforts to increase clarity, the Parole Board continues to provide offenders with unnecessarily vague parole denial reasons, and that crime victim input is not always available for full consideration by the Parole Board when making parole decisions.

## **Recommendations**

### ***Change in Statute***

#### **6.1 Require the Parole Board to determine and maintain a range of recommended parole approval rates for each parole guideline score, and to conduct peer reviews to help improve parole decision making and management of its operations.**

This recommendation would provide the Parole Board with additional management tools to augment its existing annual review of parole approval rates by requiring the Parole Board to determine and maintain a range of recommended parole approval rates for each guideline score; conduct an annual review of voting patterns to identify significant deviation from recommended parole approval rate ranges; develop and implement a peer review process to help ensure consistent application of the guidelines; and prioritize technical assistance, training, and use of outside experts to update the guidelines or modify the recommended parole approval rate ranges if needed changes are identified. The Parole Board would be required to include a summary of all peer review recommendations and the approved actions taken to implement those recommendations in the Parole Guidelines Annual Report.

Nothing in this recommendation would limit parole panel members' discretion in individual cases, establish any right to parole, modify existing parole release decisions made by a parole panel or parole panel member, or require an individual parole panel member to approve parole based on a recommended approval rate range.

#### **6.2 Require standardized processes to ensure crime victim input is available for Parole Board consideration.**

The goal of this recommendation is to improve inclusion rates of victim impact statements in pen packets submitted to TDCJ. If a victim impact statement is unavailable, counties must include a separate form in an offender's pen packet that affirms the victim assistance coordinator did not receive a victim impact statement from the offender's victim(s). TDCJ would develop the standard form and processing procedures with input and ideas from key participants in the criminal justice system. Victim assistance coordinators and attorney offices prosecuting criminal cases would be required to use the standard form and processing procedures no later than January 1, 2014.

### **6.3 Require parole panels, when approving or denying an offender's release from incarceration, to provide a clear and understandable written explanation of the panel's decision.**

This recommendation would modify existing parole decision notification requirements by requiring a parole panel to produce a clear and understandable written explanation of the panel's parole decision, including only the reason(s) that relate specifically to the offender. The recommendation would require the explanation to provide the most information provided by law that does not compromise the statutorily confidential nature of information received by the Parole Board. In the case of a denial, the letter would not have a single paragraph indicating several reasons for denial, but would list each specific reason and component for denial that applies to the offender separately. The Parole Board would be required to place the letter in the offender's parole file and provide a copy of the letter to the offender.

### **6.4 Authorize the Parole Board to delegate all hearings, but not final determinations, to its hearing officers.**

This recommendation would clearly authorize, but not require, the Parole Board to delegate all of its due process hearings to hearing officers. A parole panel would retain responsibility for making all final determinations, upon recommendation from the hearing officer.

## ***Issue 7***

### **Texas Criminal Justice Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement established in law for an agency under review. TDCJ has 17 reporting requirements, Windham has three, the Parole Board has two, and the Committee has one. The Sunset Commission determined that one of TDCJ's reporting requirements does not serve a useful purpose and should be eliminated, and that all other reporting requirements should be continued.

The Texas Sunset Act also directs the Sunset Commission to consider agencies' compliance with applicable federal and state requirements regarding equal employment opportunities and historically underutilized businesses. The Sunset Commission found that TDCJ, Windham, and the Parole Board did not meet many statewide workforce percentages. Specifically, TDCJ has historically had difficulty recruiting Hispanic applicants, especially correctional officers.

## **Recommendations**

### ***Change in Statute***

#### **7.1 Abolish TDCJ's report on bed ratios for SAFFP facilities, and continue all other reporting requirements for TDCJ, the Committee, Windham, and the Parole Board.**

This recommendation would eliminate TDCJ's report on bed ratios for Substance Abuse Felony Punishment (SAFFP) facilities. TDCJ's remaining reporting requirements as well as Windham's, the Parole Board's, and the Committee's reporting requirements would be continued as they provide information useful both to the agencies and the public.

## ***Management Action***

### **7.2 TDCJ should research and implement innovative alternatives to recruit a more diverse workforce.**

As part of the recruiting process, TDCJ should identify positions that are underrepresented by Hispanics; identify recruitment strategies implemented by other state agencies with a large workforce; research other recruitment methods implemented by other states' correctional agencies; and implement innovative alternatives to recruit more Hispanic applicants.

## ***Issue 8***

### **The State Funding Arrangement for Local CSCD Employees' Health Benefits Is Not Transparent and Lessens Funding Available for Community Supervision Programs.**

In 2003, the Legislature added local CSCD employees to the state Employees Retirement System (ERS). The State currently funds its contribution for these employees through an appropriation to TDCJ's Community Justice Assistance Division (CJAD), as opposed to a direct appropriation to ERS, as state employees are funded. Based on the total amount of state basic supervision funding appropriated, CJAD establishes a basic supervision budget for each CSCD and then deducts the amount needed to pay ERS from this amount.

The Sunset Commission found that while the Legislature has made significant investments in diversion efforts in recent years, an increasing portion of those investments are being put towards insurance costs through these ERS payments rather than into direct programmatic use. Additionally, these insurance costs may not be evident to some appropriators. As benefit costs increase, less funding is available for programming, which could eventually lead to increased revocations or other harms to public safety.

## **Recommendation**

### ***Change in Appropriations***

#### **8.1 Request that the Legislature, through the appropriative committees and the Legislative Budget Board, study the impact of the current method of providing insurance for CSCD staff and retirees and consider certain changes.**

This recommendation expresses the will of the Sunset Commission that the Legislature, through the legislative appropriative committees, and LBB determine the feasibility of ERS fully managing CSCD health insurance and consider placing CSCD insurance amounts as an ERS funding line item.

## **Fiscal Implication Summary**

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



# TEXAS EDUCATION AGENCY

*Karen Latta, Project Manager*

## Agency at a Glance

The Texas Education Agency (TEA) oversees the state's elementary and secondary public education system, providing leadership, guidance, and resources to help schools meet the educational needs of all students. The agency's key functions include:

- distributing state and federal funding to public schools;
- administering the statewide standardized testing program and accountability systems;
- providing assistance to and imposing interventions and sanctions on schools that consistently fail to meet state or federal accountability standards;
- providing support to the State Board of Education with regards to curriculum standards, instructional materials, and the Permanent School Fund;
- collecting a wide array of educational and financial data from public schools;
- administratively supporting the State Board for Educator Certification's regulation of educators and educator preparation programs; and
- monitoring schools for compliance with certain federal and state requirements.

During the 2011–2012 school year, Texas' public education system consisted of 1,235 local education agencies, including 198 charter school districts. More than 324,000 teachers in about 8,500 schools taught nearly five million students.

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*With one-third less funding and staff, Sunset recommendations focus on reshaping TEA's role and priorities.*

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## Summary

One of the major questions revolving around education circles after the last legislative session was how TEA would do its job with about one-third less General Revenue funding and staff. As a result of these cuts, the Sunset Commission found the agency in a period of significant transition, unsettled by seemingly perpetual reorganizations, the departure of numerous long-tenured, high-level managers, and finally the appointment of a new Commissioner. Recognizing these significant changes, Sunset focused on evaluating the effectiveness of the agency in reshaping its role and priorities within the education system.

With a statewide investment of \$24.8 billion, Texas needs an organization such as TEA to ensure the system provides a quality education and that taxpayers' dollars are well spent. More than 99 percent of that money is sent directly to school districts and charter schools, which must be held accountable for those funds. However, TEA lacks sufficient tools to address schools with serious academic and financial accountability problems, in particular the chronic poor performance of a few charter schools. Other TEA functions also need improvement, including the agency's efforts to gather stakeholder input, its management of \$241 million in contract expenditures, and the regulation of certified educators and educator preparation programs.

Spread too thin, TEA struggles to perform all its functions well. Redefining the agency's powers and duties in statute and eliminating a variety of outdated and unnecessary statutory provisions would allow TEA to focus its resources on key functions. Moving both management of the adult education program and regulation of the private driver training industry to other, more appropriate agencies would allow TEA to focus more on its mission of ensuring the delivery of quality primary and secondary education. The following material summarizes the Sunset Commission's recommendations on TEA.

## ***Issue 1***

### **TEA Does Not Effectively Manage Public Involvement to Obtain the Greatest Value From Its Stakeholder Input.**

TEA has a large and diverse group of stakeholders interested in and affected by the policy decisions of the agency. While TEA makes many efforts to gather stakeholder input, including the use of many advisory committees and workgroups, the agency lacks a comprehensive approach to managing these efforts to ensure it gets the most benefit from the input provided.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Require TEA to develop and implement a policy to guide and encourage more meaningful and comprehensive stakeholder involvement efforts.**

This recommendation would require TEA to develop a new policy to guide its overall approach to public involvement, including consideration of more proactive stakeholder engagement, formal and informal methods of stakeholder input, easy access to meetings and meeting materials, and clear information about opportunities for stakeholder input and the results of those efforts.

#### **1.2 Require TEA to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.**

TEA would have to adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, tasks, manner of reporting, and abolishment dates for each of its advisory committees, regardless of whether the committee was created in statute or by the Commissioner. This recommendation would apply to any committee or council whose primary function is advising the Commissioner or TEA staff.

## *Issue 2*

### **Misplaced at TEA, Texas Lacks Clear Leadership on Adult Education, Threatening the State's Ability to Meet Future Workforce Demands.**

Educating adults is not part of the agency's mission, and for almost 10 years, TEA has outsourced administration of the program without having clearly defined oversight of its contractor. TEA meets federal requirements, but has not directed the program's major providers to focus on specific goals, such as getting adult Texans educated and employed more quickly. Despite the enormous need for adult education services, many providers have left adult education funds unspent and little coordination exists between agencies responsible for the State's adult education programs.

### **Recommendations**

#### ***Change in Statute***

#### **2.1 Transfer responsibility for adult education from TEA to the Texas Workforce Commission (TWC).**

This recommendation would ensure more effective oversight and more targeted use of Texas' adult education funds. After holding public hearings to receive a broad range of input, TWC would develop rules establishing a new allocation formula for adult education provider grants across the state beginning in school year 2014–2015.

#### **2.2 Create an adult education advisory committee at the Texas Workforce Commission.**

The committee, appointed by TWC's governing board, would advise on the development of policies and priorities that support the adult education program in developing an educated and skilled workforce. The advisory committee would consist of not more than seven members representing experts in the adult education field.

#### ***Management Action***

#### **2.3 TEA and TWC should develop a transition plan for the transfer of the adult education program.**

Transition planning should begin upon passage of the legislation, and the transition plan should include a timetable with specific steps and deadlines needed to fully implement the transfer; a method to transfer all program and personnel records to TWC; steps to ensure against any unnecessary disruption to services at the local level; and other steps necessary to complete the transition of the program.

## *Issue 3*

### **Regulating the Private Driver Training Industry Does Not Match TEA's Public Education Mission.**

TEA regulates almost 1,000 private driver education and driving safety schools and more than 3,000 instructors who teach at those schools. The public schools that still teach driver education are exempt from this state-level regulation. As a result, this activity is simply a business regulatory function. Due to its ties to the safety of citizens and the court system, this regulation is still needed. However, the regulation does not fit TEA's mission. The Sunset Commission also applied licensing best practices

to the driver training statute, resulting in several recommendations to increase the effectiveness and fairness of the regulation.

## Recommendations

### *Change in Statute*

#### **3.1 Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation (TDLR).**

Under this recommendation, TEA would continue to maintain rules regarding driver education in public schools, but TDLR would regulate the private driver training industry and develop driver education curriculum, with help from the advisory committee established below.

#### **3.2 Require the Commission of Licensing and Regulation to establish an advisory committee to provide technical expertise from the driver training industry.**

This recommendation would ensure the board that governs TDLR can obtain expertise, when needed, on rules and standards related to the driver training industry. The presiding officer of the Commission, with the Commission's approval, would appoint seven members to the advisory committee for six-year staggered terms. Representation on the committee would include one driver education school, one driving safety school, one course provider, one instructor, one Department of Public Safety employee, and two public members.

#### **3.3 Remove the statutory requirement to license driver training school directors, assistant directors, and administrative staff.**

This recommendation would eliminate from statute the unnecessary requirement that these administrative staff at driver training schools meet education and experience requirements, be licensed, and pay application fees.

#### **3.4 Remove fixed driver training fee amounts and fee caps from statute.**

This recommendation would provide more flexibility to TDLR to set licensing fees at a level necessary to recover program costs. All fees would be set by rule, allowing for public comment on any fee adjustments.

#### **3.5 Require TDLR to maintain information on driver training complaints.**

This recommendation would require TDLR to develop and maintain files on all complaints received, ensure that all parties to a complaint are made aware of the status of the complaint until resolution, and ensure all parties are made aware of the agency's policies and procedures pertaining to complaint investigation.

#### **3.6 Increase the driver training statute's maximum administrative penalty from \$1,000 to \$5,000 per day, per violation.**

This recommendation would make the driver training statute consistent with other licensing agencies' statutes by increasing the maximum administrative penalty amount from \$1,000 to \$5,000 per day, per violation. As a cap, this maximum penalty would be applied only to the most serious offenses.

### **3.7 Require TDLR to use the State Office of Administrative Hearings to conduct hearings on driver training enforcement cases.**

This recommendation would require TDLR to use the State Office of Administrative Hearings for its driver training enforcement hearings, with the Commission of Licensing and Regulation holding final authority on decisions, as is standard in the Administrative Procedure Act.

#### ***Management Action***

### **3.8 TEA and TDLR should develop a transition plan for the transfer of driver training regulation.**

Transition planning should begin upon passage of the legislation, and the transition plan should include a timetable with specific steps and deadlines needed to carry out the transfer; a method to transfer all program and personnel records to TDLR; steps to ensure against any unnecessary disruption in services to licensees and driver training students; and other steps necessary to complete the transition of programs.

### **3.9 TDLR should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner.**

This recommendation directs TDLR to develop performance measures to gauge how long it takes to resolve complaint investigations to help encourage their timely conclusion.

### **3.10 TDLR should make public final driver training school disciplinary orders and sanctions on its website.**

Under this recommendation consumers would have easier access to disciplinary information on driver training schools.

## ***Issue 4***

### **Outdated and Unnecessary Statutory Provisions Divert TEA's Focus From Its Core Functions During a Time of Limited Resources.**

TEA's loss of staff necessitates a reduction in its responsibilities, especially those that are not key to overseeing the State's public education system. Several statutory requirements are no longer necessary or useful, and several functions and required reports are redundant or do not provide value to the State.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Allow the Commissioner to decide the most appropriate academic accountability indicators to report on the quality of learning in the state.**

This recommendation would give the Commissioner flexibility in reporting on key indicators of student academic achievement, instead of having to report on *all* indicators listed in statute. This recommendation would also allow the Commissioner to add other indicators as necessary to provide a complete assessment of the quality of learning in the state.

#### **4.2 Eliminate campus distinction designations and the committees charged with their development.**

This recommendation would remove the resource-intensive and unfunded requirement for the Commissioner to award campus distinction designations for academic achievement in English language arts, mathematics, science, and social studies; fine arts; physical education; 21st century workforce development; and second language acquisition. The Commissioner would also no longer establish standards for awarding the distinctions or establish committees to develop criteria for each distinction.

#### **4.3 Make the *Comprehensive Annual Report to the Legislature on Texas Public Schools* biennial.**

TEA would produce the *Comprehensive Annual Report* every other year, rather than every year. The report would be due by December 1 of each even-numbered year, in time for the next legislative session, and the report would contain information covering the previous two years.

#### **4.4 Merge the *Campus Report Card* with the *Performance Reports* and require TEA to distribute the reports to school districts for dissemination to campuses and parents.**

This recommendation would abolish the duplicative *Campus Report Card* by requiring TEA to include key indicators from the *Report Card* in the agency's existing annual *Performance Reports*. This recommendation would also require campuses to provide this information to parents in whatever form of communication the campus typically uses for communicating with parents.

#### **4.5 Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.**

This recommendation would remove the prescriptive statutory list of items required to be considered in the evaluation of open-enrollment charter schools. In its place, statute would require the agency to designate an impartial organization to evaluate the cost, performance, or other aspects of charter school regulation, as determined by the Commissioner. TEA would conduct the evaluation and report findings to the Legislature once every four years instead of annually, and include recommendations for statutory change to improve charter school performance or regulation as the agency deems appropriate.

#### **4.6 Limit TEA's involvement in appointing hearing examiners for teacher contract cases.**

For cases in which a teacher contests a decision to prematurely terminate the teacher's contract, this recommendation would remove the requirement for TEA to appoint a hearing examiner when the parties to the case fail to agree on a choice. For the initial hearing, the parties would choose a hearing examiner from TEA's list. In the absence of a local agreement, the Commissioner would assign the next hearing examiner on the list of certified examiners in that region.

#### **4.7 Eliminate the requirement that the Commissioner approve shared services arrangements for special education services.**

This recommendation would remove the duplicative requirement that a contract for a shared services arrangement for special education services be approved by the Commissioner.

**4.8 Eliminate the requirement for TEA to oversee training for, and to conduct a survey of, site-based decision making.**

This recommendation would remove the requirement for TEA to oversee training and support to all districts and campuses for site-based decision making processes. This recommendation would also remove an unfunded and potentially costly requirement for TEA to conduct an annual statewide survey of types of decision making and planning processes, the involvement of stakeholders in those processes, and the perceptions of those persons as to the effectiveness of decisions.

**4.9 Eliminate the ability of school districts to seek and receive a foreign exchange student waiver from TEA.**

TEA would no longer grant waivers from the requirement that a district admit a foreign exchange student placed with a host family that resides in the district. This recommendation would not prevent a school district from denying admission to foreign students who are residing in their countries of origin and seeking to enroll in the district as allowed for under federal law.

**4.10 Eliminate the requirement for school districts and charter schools to file a copy of their depository contracts and related documents with the agency.**

These documents serve no purpose at TEA. This recommendation would also remove the requirement that district bidding documents be on a form provided by the State Board of Education.

**4.11 Eliminate the requirement for school district boards of trustees to report the terms of superintendent severance payments to the Commissioner.**

Such matters are the province of local officials. TEA would no longer use this information to reduce state education funds in an amount exceeding one year's salary and benefits for the superintendent.

**4.12 Replace the prescriptive audit methodology for compensatory education funds with a requirement for TEA to audit all aspects of state education funding through a risk-based approach.**

This recommendation would remove the specific requirements to audit compensatory education funds in Chapter 42 of the Texas Education Code. Instead, TEA would audit any appropriate aspects of state education funding, including compensatory education, on a risk basis. TEA would develop a standard, risk-based approach to auditing these funds in rule, and provide guidance to districts and open-enrollment charter schools in any training or reference materials it provides.

**4.13 Eliminate the requirement for TEA to recognize schools' use of High School Allotment funds.**

Since very few schools apply for recognition, this recommendation would remove the requirement that TEA develop standards for evaluating and recognizing best use of High School Allotment funds. This recommendation would not affect the ongoing disbursement of these funds to school districts, but simply eliminate TEA's recognition program.

**4.14 Eliminate the Best Practices Clearinghouse.**

This recommendation would remove the Best Practices Clearinghouse and all provisions related to TEA's maintenance of the Clearinghouse from statute, as many other more effective options exist for schools to share best practices.

#### **4.15 Eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.**

This recommendation would abolish the High School Completion and Success Initiative Council, whose job is completed and whose broader concerns are covered by the work of the State P-16 Council. The recommendation would also eliminate the Council's various reporting requirements and its six unfunded grant and pilot programs.<sup>1</sup>

#### **4.16 Eliminate five unnecessary reporting requirements, but continue 14 that still serve a purpose.**

Statute would be amended to eliminate the following reports: *International Assessment Instrument Program Report*, *Intensive Mathematics and Algebra Intervention Pilot Program Report*, *Report on Exemption of Courses for Extracurricular Activities*, *Reporting of Bus Accidents*, and *Physical Fitness Assessment Report*. This recommendation would also remove the unfunded Intensive Mathematics and Algebra Intervention Pilot Program from statute. While this recommendation eliminates the requirement for TEA to produce a report of its analysis of physical fitness assessment data and its correlation to certain student achievement indicators, TEA would still post fitness data collected from schools on its website.

## ***Issue 5***

### **Separate Reviews Hinder TEA's Comprehensive Assessment of School District and Charter Finances.**

Separate review processes and ratings to evaluate the financial health of school districts and charter schools are duplicative and confusing. Statutory guidance for identifying districts and charters at risk of insolvency is unclear and does not provide adequate tools to ensure districts and charters appropriately plan to address their financial concerns.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Incorporate the financial solvency review into the FIRST financial accountability system.**

This recommendation would remove the financial solvency review from statute as a stand-alone review and require TEA to incorporate the financial solvency review indicators into its annual Financial Integrity Rating System of Texas (FIRST). TEA would adopt the indicators for the process in rule, and would make any needed adjustments to issue one rating that would reflect a comprehensive view of a district's or charter's finances.

#### **5.2 Require TEA to project revenues and expenditures for districts and charters that will likely become insolvent within three years.**

This recommendation would require TEA to project revenues and expenditures for any district or charter the agency has reason to believe may have a deficit in its general fund within three years. If an identified district or charter does not provide adequate information, or if TEA determines the district's or charter's information is not reliable, TEA would be authorized to require the district or charter to obtain professional services, such as for an audit, to verify the school's financial condition.

**5.3 Require districts and charters that fail FIRST to prepare a corrective action plan, and authorize TEA to apply its standard set of sanctions to schools that fail to submit or implement adequate plans.**

This recommendation would require all districts and charters failing FIRST to prepare a corrective action plan to address the financial weaknesses causing them to fail FIRST. This recommendation would also provide TEA authority to apply the standard set of sanctions and interventions available to the agency for accountability purposes for failure to submit or implement an adequate financial improvement plan.

**5.4 Require TEA to re-evaluate all FIRST indicators every three years.**

This recommendation would require TEA to re-evaluate all indicators in FIRST at least every three years to ensure they reflect current thinking related to financial management.

## *Issue 6*

**TEA Lacks Authority and Flexibility in Annexing a School District, Especially an Imminently Insolvent District.**

Statute lacks a process to require a school district's annexation if a district will not have sufficient funding to make it through another school year and fails to act on its own to plan for its students' education. Similarly, no mechanism exists to facilitate annexation when a district is unable to consolidate on its own. The Commissioner also needs adequate flexibility in the agency's annexation process to allow it to adapt to unique circumstances of school districts with varying academic, financial, or accreditation problems.

## **Recommendations**

### ***Change in Statute***

**6.1 Authorize the Commissioner to work with county commissioners courts to ensure the timely annexation of an insolvent school district.**

This recommendation would authorize the Commissioner of Education to work with county commissioners courts to facilitate the annexation of a district that has failed to operate for 10 or more days, or that has formally requested the Commissioner's assistance, due to insolvency. The Commissioner of Education would notify each appropriate commissioners court of the failure to operate or formal request, and each commissioners court would be required to annex the territory of the district within its county to one or more school districts in the same county or to any contiguous district in an adjacent county. In the unlikely event that a commissioners court fails to order annexation of the district's territory within 60 days, statute would authorize the Commissioner of Education to order annexation of the insolvent school district.

**6.2 Authorize the Commissioner to adjust the effective date for a district's annexation.**

This recommendation would allow the Commissioner to provide for an effective date other than July 1 for a district's annexation. While July 1 should still be the target date for district annexations, this recommendation would allow the Commissioner to adjust the date if in the best interest of students.

### **6.3 Provide the Commissioner with flexibility to annex a school district to a non-adjointing district.**

Under this recommendation, the Commissioner would be authorized to annex a school district to a non-adjointing district if that annexation is in the best interest of students.

### **6.4 Provide the Commissioner with limited authority to use a board of managers beyond two years for the purpose of overseeing the annexation process.**

This recommendation would allow the Commissioner to extend the appointment of an existing board of managers beyond the two-year limit solely to oversee the process for closure and annexation of a school district. The board of managers would serve during the transition period to help direct operations of a district as it winds down and transfers assets to the receiving district.

### **6.5 Clarify conflicting provisions to ensure that the Commissioner may annex a school district for failure to meet financial accountability standards or loss of accreditation status.**

This recommendation would clarify conflicting statutory provisions to ensure that, in addition to annexation for an academically unacceptable district, the Commissioner may annex a school district to one or more districts for failure to meet financial accountability standards for two consecutive years or for loss of district accreditation.

## ***Issue 7***

### **TEA Lacks a Full Range of Tools to Effectively Address Poor Academic Performance and Financial Mismanagement at Low-Performing Charter Schools.**

Many charter schools meet the Legislature's expectations for higher, innovative performance and provide an excellent education to students. However, poor performance by some charter schools threatens a quality education for their students and the reputation of charter schools as a whole. TEA does not have sufficient regulatory tools to ensure charters meet minimum academic and financial performance standards or to revoke a charter without lengthy and protracted litigation, during which time students may continue to receive a substandard education. Another practice of some charter schools, nepotism, is an exception among publicly funded entities and can place public funds at risk.

## **Recommendations**

### ***Change in Statute***

#### **7.1 Require revocation of a charter for failure to meet basic academic or financial accountability standards for three years in a row.**

This recommendation would require the Commissioner to revoke a charter without an agency hearing, if, for three consecutive years, the charter fails to satisfy academic accountability standards; or for three consecutive years, the charter fails to satisfy financial accountability standards. A charter could contest the current year's rating under existing processes for academic or financial rating appeals. However, a charter could not appeal the Commissioner's revocation order through either an agency review or contested case hearing at the State Office of Administrative Hearings (SOAH).

## **7.2 Authorize the Commissioner to suspend operations and pursue revocation of an imminently insolvent charter to ensure it does not open without sufficient funding to complete the term.**

This recommendation would authorize the Commissioner to suspend the operations of all campuses under a charter on an effective date that would prevent the charter from opening for a new school year or term, and pursue revocation if the Commissioner determines the charter is imminently insolvent and does not have sufficient funding to complete the next school year.

A charter would be entitled to challenge the suspension of its operations through a hearing at TEA. If the Commissioner determines, after a hearing, that the charter is imminently insolvent, the Commissioner would order revocation of the charter. The Commissioner's order could be appealed to SOAH as a contested case hearing under current processes, except that the charter's operations would remain suspended pending the outcome of the appeal.

## **7.3 Set eight-year terms for charters and restructure the renewal process to ensure failure to meet basic standards for accountability can lead to nonrenewal.**

This recommendation would specify in statute that the initial and renewal term for a charter is eight years, at the end of which authority to operate a charter school would expire unless renewed by TEA. For charters with a proven record of high academic and financial performance, with no interventions or sanctions, TEA would provide the charter greater autonomy through a streamlined review and renewal process. For all other charters, TEA would examine the extent to which the charter has met academic, financial, and governance standards, as well as the extent to which the charter school has operated in compliance with its charter. TEA would be required to adopt in rule clear academic, financial, governance, or any other standards for renewal.

If TEA does not renew a charter, TEA would be authorized to impose conditions or requirements for improvement during a one-year probationary period. If a charter fails to meet TEA conditions or standards within the one-year period, TEA must deny renewal of the charter. The charter holder would then be entitled to a contested case hearing under current processes. TEA would have one year to implement this new renewal process.

## **7.4 Provide for objective criteria and flexibility in applying sanctions to charter schools.**

This recommendation would require TEA to establish separate performance standards for each of its different types of sanctions, such as for denying renewal of, modifying, probating, or revoking a charter. This recommendation would establish more objective criteria in law for taking adverse action against a charter based on previous violations, efforts to correct the violation, and action needed to deter future violations. This recommendation would also grant TEA additional flexibility to apply a range of sanctions for health and safety violations, instead of limiting TEA to either ceasing its suspension or revoking a charter after a hearing.

## **7.5 Authorize TEA to reconstitute the governing board of a charter holder.**

This recommendation would authorize the Commissioner to reconstitute the governing board of a charter holder if the Commissioner finds that the board is not providing adequate oversight of a charter school and other intermediate sanctions have not been effective in remedying the problems. The Commissioner would make all appointments to the new charter holder board, in accordance with terms and other provisions of the charter holder's bylaws.

## **7.6 Apply standard prohibitions on nepotism to all charter schools.**

This recommendation would remove the statutory exception to the prohibition on nepotism for charter schools. As a publicly funded entity, all restrictions, requirements, and prohibitions on the appointment, employment, or confirmation of employees within the third degree of consanguinity and second degree of affinity, would apply to all members of the charter holder board or employees of a charter school. This recommendation would also make the provision related to conflicts of interest for members of the charter holder board consistent with provisions related to nepotism.

## **7.7 Prohibit family members from serving on a charter holder board together.**

Under this recommendation, persons related to each other within the third degree of consanguinity and second degree of affinity would be prohibited from serving on a charter holder board at the same time.

### ***Management Action***

## **7.8 TEA should revise its practices for applying interventions and sanctions to clarify expectations and ensure appropriate and timely action against poor performing charters.**

This recommendation directs TEA to revise its enforcement policies and practices to ensure consistency with requirements and performance standards in rule for nonrenewal, revocation, or other interventions and sanctions. TEA should ensure its rules for taking enforcement action set clear performance expectations and the agency should use its full range of remedies in a timely manner to ensure charter schools meet accountability and performance expectations.

## ***Issue 8***

### **Educator Certification Can Be Overseen by the Commissioner of Education Without the Need for a Separate Board.**

In 2005, the Legislature abolished the separate state agency that regulated educators and transferred its functions to TEA under the Commissioner of Education, while maintaining the agency's separate Governor-appointed board. Having two Governor-appointed entities involved in overseeing work that is largely performed by TEA staff can lead to confusion and a lack of clear accountability for ensuring that the certification and oversight of educators is effective. In addition, statute requires educator certification and educator preparation program rules to go for review by a second board, the State Board of Education. The Sunset Commission concluded this multilayered bureaucracy is inefficient and unnecessary.

## **Recommendations**

### ***Change in Statute***

#### **8.1 Abolish the State Board for Educator Certification and transfer its powers and duties to the Commissioner of Education.**

Under this recommendation, the Board would cease to exist and the Commissioner of Education would perform its limited functions. The Commissioner would approve all rule changes for the regulation and standards of certified educators and educator preparation programs. The Commissioner would have

the ultimate responsibility of disciplining certified educators and sanctioning educator preparation programs found out of compliance with state law and rules.

### **8.2 Remove the State Board of Education's authority to reject proposed educator certification and educator preparation rules.**

This recommendation would remove the duplicative review of educator rules by two different entities.

### **8.3 Require the Commissioner to establish an advisory committee to assist with the regulation of educators and educator preparation programs.**

This recommendation would create an advisory committee to provide input and ensure the involvement of public school educators in setting the standards for and governing all aspects of educator oversight. The advisory committee would not be involved in educator discipline. The Commissioner would be directed to appoint a balanced representation of teachers, administrators, and counselors from the public education field; and traditional and alternative certification educator preparation programs.

## ***Issue 9***

### **Elements of Educator Certification Do Not Conform to Commonly Applied Licensing Practices.**

Certain educator certification licensing provisions do not follow model licensing and enforcement practices, hindering the agency's ability to provide consistent regulation and to take enforcement action as needed to protect the public.

## **Recommendations**

### ***Change in Statute***

#### **9.1 Clarify the statutory requirements for school administrators to report misconduct by certified educators to TEA.**

This recommendation would make changes to statute, as follows.

- Require charter school directors to meet the same certified educator misconduct reporting and investigation requirements as superintendents.
- Require superintendents and charter school directors to report any termination or resignation based on a determination that the certified educator solicited or engaged in sexual conduct or was involved in a romantic relationship with a student or minor.
- Authorize the Commissioner of Education to establish rules to govern superintendents' and charter school directors' reporting of changes in certified educators' criminal records to TEA, rather than statutorily mandating the reporting of *all* changes to TEA.
- Clarify that superintendents and charter school directors must report arrests, terminations, or resignations of certified educators, rather than incidents of misconduct, within seven days of first learning of the action.
- Require superintendents and charter school directors to complete an investigation of a certified educator if they have a reasonable suspicion, rather than the higher standard of reasonable cause

to believe, that a certified educator abused or solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

### **9.2 Grant the Commissioner administrative subpoena power to fully investigate certified educator misconduct cases.**

This recommendation would provide administrative subpoena power for the production of records, papers, and other objects related to a certified educator misconduct investigation. All information and materials subpoenaed or compiled in connection with an investigation would remain confidential and not be subject to disclosure.

### **9.3 Require the Commissioner to establish a disciplinary matrix to guide the application of sanctions to certified educators for violations of law or rule.**

A disciplinary matrix for certified educator violations would ensure fair and consistent application of sanctions. In developing the matrix, TEA would strive to cover the range of violations by certified educators and relate the range of appropriate sanctions to different violations based on their severity. This recommendation would only set up guidelines and would not take away the Commissioner's ability to use discretion in making disciplinary decisions based on the specific circumstances of an individual case.

## ***Management Action***

### **9.4 Direct the Commissioner to adjust fees in rule for educator certification and educator preparation programs to ensure they adequately cover costs and are equitable across fee payers.**

TEA should evaluate its fee structure and make changes to cover the cost of administering the educator regulatory programs, while also ensuring the equity of fees across the different types of fee payers. TEA should also reconsider a previous decision by the State Board for Educator Certification not to require lifetime certificate holders to renew their licenses and pay the standard renewal fee every five years.

### **9.5 TEA should provide a more comprehensive preliminary criminal history evaluation for individuals who may later apply for educator certification.**

This recommendation directs TEA to provide, upon request, a more in-depth investigation of an individual's background, before certification, to ensure the individual's eligibility to become an educator. To remove a disincentive to use this service, TEA should consider adjusting its preliminary criminal history evaluation fee to simply cover the agency's cost of completing an evaluation and the fee for a basic background check.

### **9.6 Direct TEA staff to comprehensively track and analyze enforcement case data.**

All TEA staff involved in educator discipline cases should regularly communicate to ensure the agency consistently processes its investigations and sanctions of educators. TEA should also combine, track, and analyze all educator enforcement case data to identify trends and issues and adjust its regulatory approach as appropriate.

### **9.7 TEA should encourage the use of mediation in educator misconduct cases as an alternative to formal administrative hearings.**

TEA should support mediation as a means to resolve certain contested cases that the agency determines are appropriate for mediation by the State Office of Administrative Hearings. Although not all cases are suitable for mediation, TEA should develop and implement a policy to encourage mediation in cases that may be open to compromise.

## ***Issue 10***

### **Elements of the Regulation of Educator Preparation Programs Do Not Conform to Commonly Applied Licensing Practices.**

Several areas of statute, rules, and procedures regarding the accreditation and regulation of educator preparation programs (EPPs) do not follow model licensing standards, hindering the agency's ability to effectively sanction programs and ensure candidates are fully prepared to enter the classroom.

## **Recommendations**

### ***Change in Statute***

#### **10.1 Establish a five-year renewal process for EPPs in statute.**

Statute would set a five-year renewal requirement for EPPs and require the Commissioner of Education to adopt, in rule, an evaluation process tied to EPPs' compliance with basic standards and requirements to adequately prepare candidates for educator certification. As part of this recommendation, the Commissioner would have to repeal the rules specifying the ten-year reapplication process and five-year compliance audit.

#### **10.2 Require the Commissioner to adopt rules to make information about how to file a complaint about an EPP accessible to EPP students and the public.**

This recommendation would require the Commissioner to adopt rules requiring EPPs to inform their students about the EPP complaint process and post TEA's contact information along with the complaint process in their facilities. Statute would also require TEA to provide the public with instructions for contacting the agency about a complaint against an EPP on the agency's website.

#### **10.3 Require the Commissioner to establish a comprehensive risk-assessment model to guide the monitoring of EPPs.**

This recommendation would require the Commissioner to establish a risk-based approach to conducting on-site monitoring and inspections that would adjust the amount of time staff spends on site during compliance audits, including visits associated with the EPP renewal process. The Commissioner would use the assessment model to determine risk, such as a program's compliance history, operational standards, accountability measures, and accreditations by other organizations.

#### **10.4 Strengthen and clarify the Commissioner's authority to sanction EPPs for violations of law or rules.**

Under this recommendation, the Commissioner would have the same range of sanctions as currently in law for EPPs not meeting accreditation standards. The Commissioner would also make sanctioning information accessible to all EPPs and counsel at-risk programs.

## ***Management Action***

### **10.5 Direct TEA to develop procedures outlining all phases of the EPP complaint process and track and analyze complaint data.**

TEA staff would develop procedures for complaint receipt, investigation, adjudication, resulting sanctions, disclosure to the public, and handling of non-jurisdictional complaints. The agency would also track and analyze all EPP complaint information to identify trends and issues, report on these trends to the public, and adjust EPP regulation and monitoring efforts accordingly.

## ***Issue 11***

### **Better Adherence to Contracting Policies Would Help TEA Handle Contracts Consistently and Maximize the Value of Its Expenditures.**

TEA relies heavily on contracts with outside vendors to fulfill its responsibilities and spent an estimated \$241 million on contracts in fiscal year 2011. While TEA has many contracting standards in place, the agency does not always follow its own processes or certain best practices.

## **Recommendations**

### ***Management Action***

#### **11.1 TEA should improve collection and reporting of all contract sanctions.**

This recommendation directs TEA to develop a centralized method for tracking overall contract sanction activity and reporting the information to senior management. The agency's Purchasing and Contracts Division should have documentation of any contractor nonperformance and the resulting action from TEA.

#### **11.2 TEA should ensure staff follow guidelines regarding contracting with education service centers.**

TEA should provide staff with training that emphasizes the importance of conducting and documenting a cost-benefit analysis when contracting with education service centers, which are by law noncompetitive procurements.

#### **11.3 TEA should complete training of the agency's contract managers by April 1, 2013.**

This recommendation would require TEA management to expedite and ensure all contract staff receive necessary training by April 1, 2013.

#### **11.4 Direct TEA to include a section on ethics in contracting in its contracting manual.**

TEA should add to its contracting manual the state ethics policy and standards of conduct in the *State of Texas Contract Management Guide*, and any other ethics guidelines appropriate to contracting.

### **11.5 Direct TEA to ensure staff assess all contracts to identify lessons learned and report assessments of major contracts to senior management.**

TEA should require staff to complete forms that assess contractor performance and lessons learned for every contract upon close-out. Any contractor deficiencies should be documented and communicated to all appropriate parties. TEA should include in its contracting manual and training the requirement to report to senior management on contractor performance and lessons learned for all major contracts.

## ***Issue 12***

### **TEA's Statute Does Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Sunset Commission adopts Across-the-Board Recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. Three of these provisions are missing from TEA's statute and should be applied.

### **Recommendation**

#### ***Change in Statute***

#### **12.1 Apply three standard Sunset Across-the-Board Recommendations to the Texas Education Agency.**

- **Conflicts of interest.** This recommendation would prohibit high-level TEA employees from being an officer, employee, or paid consultant of a professional trade association in the field of elementary or secondary education, and prohibit high-level employees' spouses from being an officer, manager, or paid consultant of such a professional trade association. It would also update statute to prohibit TEA's general counsel from lobbying on behalf of interests related to the field of elementary or secondary education.
- **Information on complaints.** This recommendation would require TEA to maintain a system for acting on complaints and to make information regarding its complaint procedures available to the public. The agency must also maintain documentation on complaints and periodically notify complaint parties of the status of complaints.
- **Negotiated rulemaking and alternative dispute resolution.** This recommendation would ensure that TEA develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution.

## ***Issue 13***

### **Texas Has a Continuing Need for the Texas Education Agency.**

Ensuring the provision of public education is a key state responsibility. TEA's constitutional and statutory role is to ensure that the billions of dollars spent to educate the children of Texas provide a quality education that meets the needs of all students. TEA's functions of distributing and ensuring the proper use of education funds, measuring student and school performance, and informing the public about the quality of schools are vital to the State. However, TEA's enabling law lacks a clear, concise description of these duties.

## Recommendations

### *Change in Statute*

#### **13.1 Continue the Texas Education Agency for 12 years.**

This recommendation would continue TEA as an independent agency responsible for overseeing the state's public education system.

#### **13.2 Redefine the Commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system.**

This recommendation would replace the lengthy section of the Texas Education Code that defines the Commissioner of Education's powers and duties with a concise list of the major duties of that position. In place of the current statutory language, the Commissioner would:

- serve as the educational leader of the State, with rulemaking authority as specified in statute;
- serve as the executive head of the agency and oversee its day-to-day operations, with authority to:
  - employ staff necessary to perform the duties of the agency;
  - delegate functions to agency staff;
  - appoint advisory committees as necessary to advise the Commissioner in carrying out the duties and mission of the agency;
  - appoint an internal auditor for the agency; and
- carry out the duties imposed on the Commissioner by the Legislature.<sup>2</sup>

This recommendation would also replace the section of the Texas Education Code that defines TEA's powers and duties with a concise list of the agency's major duties. In place of the current statutory language, the agency would:

- distribute state and federal funding to public schools and ensure the proper use of those funds;
- monitor public schools for compliance with federal and state guidelines;
- administer the statewide standardized testing program and accountability systems;
- provide assistance to and impose interventions and sanctions on schools that consistently fail to meet state or federal accountability standards;
- provide support to the State Board of Education in developing statewide curriculum standards, adopting instructional materials, managing the instructional materials allotment and distribution process, and carrying out duties related to the Permanent School Fund;
- collect, analyze, and make accessible a wide array of educational and financial data from public schools;
- ensure the quality of public school educators by certifying educators, regulating educator preparation programs, and taking enforcement action in cases of educator misconduct; and
- carry out any other duties imposed on the agency by the Legislature, consistent with the agency's appropriations and mission.<sup>3</sup>

## Management Action

### 13.3 TEA should develop and implement a succession plan to prepare for impending retirements and other potential workforce changes.

The agency should establish a comprehensive strategy for preparing staff to assume the responsibilities of positions critical to TEA's operations. TEA should identify all critical positions at risk of becoming vacant in the near future, formally document the skills needed to fill these vacancies, and prepare staff to assume top-level management roles by ensuring they receive the necessary training and development opportunities.

## Fiscal Implication Summary

Overall these recommendations would result in a small positive net fiscal impact to the State of \$8,615 per year. Many issues are likely to result in savings in time and effort on the part of TEA staff, if not monetary savings, as the agency's duties are adjusted to better match its previously reduced funding. In addition, the transfer of driver training regulation to the Texas Department of Licensing and Regulation (TDLR) would ultimately result in a reduction in fees to licensees and students. Recommendations with a fiscal impact are summarized below.

**Issue 2** — Transferring TEA's adult education program to the Texas Workforce Commission (TWC) would not have a fiscal impact to the State, but would result in a cost-neutral transfer of about \$70 million in federal and state funds from TEA to TWC, along with authority to fill 19 full-time equivalent positions.

**Issue 3** — Transferring regulation of driver training would initially involve a cost-neutral transfer of about \$2.9 million from TEA to TDLR, along with authority to fill 10.5 full-time equivalent positions. However, once transferred, TDLR's expected adjustment of fees to match its costs of regulation could result in a reduction of about \$1 million in fee revenue, depending on TDLR's actual operating costs. These fee changes would reduce costs to driver training businesses and the students paying the fees, not the State. In addition, because TEA incorrectly used excess driver training revenue to cover costs unrelated to driver training, it would have to find other revenue to pay these costs in the future. Finally, eliminating the regulation of certain driver training administrative staff would result in a small revenue loss of \$2,385 per year in fees.

**Issue 4** — These 16 recommendations should result in significant administrative efficiencies, but due to TEA's recent reduction in funding and staff, no further savings are anticipated. Rather, these changes aim to match the agency's workload to its reduced resources.

**Issue 8** — Although cost savings are not the reason the Sunset Commission recommends abolishing the State Board for Educator Certification, the recommendation would result in eliminating the Board member travel costs, saving the State about \$11,000 a year.

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<sup>1</sup> A full list of the six unfunded programs associated with the High School Completion and Success Initiative that the Sunset Commission has recommended eliminating is available on page 44 of the *Sunset Staff Report with Commission Decisions for the Texas Education Agency*, January 2013.

<sup>2</sup> A detailed accounting of the changes recommended for this section of statute is located in Appendix G of the *Sunset Staff Report with Commission Decisions for the Texas Education Agency*, January 2013.

<sup>3</sup> A detailed accounting of the changes recommended for this section of statute is located in Appendix H of the *Sunset Staff Report with Commission Decisions for the Texas Education Agency*, January 2013.



# TEXAS BOARD OF PROFESSIONAL ENGINEERS

*Steven Ogle, Project Manager*

## Agency at a Glance

The Texas Board of Professional Engineers seeks to protect public health, safety, and welfare by ensuring that only qualified individuals provide engineering services to the public. In fiscal year 2011, the Board licensed 2,651 new Professional Engineers, bringing the total number of licensees to 55,407. In addition, the Board issued 1,918 new Engineer-in-Training certificates, bringing the total to 13,154. To achieve its mission, the Board carries out the following key activities.

- Licensing Professional Engineers and certifying Engineers-in-Training.
- Registering engineering firms, including sole proprietorships, partnerships, corporations, and joint stock associations.
- Investigating complaints alleging illegal or incompetent practice of engineering by both licensed and unlicensed persons and taking disciplinary action when necessary.

As a state agency operating under the Self-Directed Semi-Independent (SDSI) Agency Project Act, the Board does not receive legislative appropriations, but instead collects its own revenue from licensing fees and sets its own budget.

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*Changing the organizational approach for regulating professional engineers is not warranted at this time.*

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## Summary

Through the evaluation of the Board, the Sunset Commission found that the State has a continuing interest in regulating the practice of engineering. The Sunset Commission also evaluated other organizational approaches for regulating Professional Engineers, but did not find that structural changes would result in significant efficiencies or cost savings to the State at this time. Finally, the Commission compared the Board's statute against standard licensing practices and identified changes that would enhance fairness, public protection, and improve the consistency of the Board's operations.

The Commission also found that the Board should continue to operate outside the legislative appropriations process under the SDSI Act as discussed in a separate section of this report. The following material summarizes the Sunset Commission's recommendations on the Board.

## *Issue 1*

### **Texas Has A Continuing Need for the Regulation of Professional Engineers.**

The Texas Board of Professional Engineers regulates the practice of engineering by licensing individuals and firms that provide engineering services to the public. The Sunset Commission found that Texas has a continuing need to license and regulate Professional Engineers to protect consumers and ensure the competent and ethical practice of engineering.

### **Recommendation**

#### ***Change in Statute***

##### **1.1 Continue the Texas Board of Professional Engineers for 12 years.**

This recommendation would continue the Board as an independent agency responsible for regulating the practice of engineering.

## *Issue 2*

### **Key Elements of the Engineering Practice Act's Licensing and Regulatory Requirements Do Not Conform to Common Licensing Standards.**

In reviewing the Board's regulatory functions, the Sunset Commission found that certain licensing and enforcement processes in the Board's statute do not match model standards developed over many years of Sunset reviews of regulatory agencies.

### **Recommendations**

#### ***Change in Statute***

##### **2.1 Require the Board to adopt clear procedures governing all parts of the testing process, including test administration.**

This recommendation would eliminate specific references to a testing format that is scheduled to be phased out by 2014 by the national testing entity responsible for developing the engineering exams. The Board would also update its guidelines and website detailing procedures for the testing process.

##### **2.2 Require the Board to conduct fingerprint-based criminal background checks of Professional Engineer applicants and licensees with active licenses.**

This recommendation would require the Board to conduct fingerprint-based criminal background checks instead of the name-based checks the agency currently uses that can be inaccurate and provide incomplete information. Fingerprint-based checks through the Department of Public Safety on all future applicants and current licensees would provide complete federal and state criminal histories of applicants. This change would ensure that if the Board is to check a person's criminal background, as the Engineering Practice Act requires, it does so in a way that works appropriately to provide the information. Currently, 51 agencies use fingerprints to assess criminal backgrounds of persons they license, with the licensees typically paying the cost.

### **2.3 Prohibit the Board from collecting the \$200 professional fee before applicants satisfy licensing requirements as Professional Engineers.**

Under this recommendation the Board would no longer collect the \$200 professional fee upon application for licensure. Instead, the Board would collect the fee upon issuance of a license, eliminating the fee assessment on applicants who either fail to receive Board approval to take the professional engineer exam, or fail to pass the exam.

### **2.4 Increase the Board's administrative penalty authority to \$5,000 per violation per day for violations of the Engineering Practice Act or Board rules.**

This recommendation would increase the Board's administrative penalty authority for individuals who violate the Engineering Practice Act or rule to \$5,000 per violation per day, from the current \$3,000 per violation per day. This \$5,000 penalty maximum is more in line with other comparable occupational licensing agencies.

### **2.5 Authorize the Board to issue summary suspension orders.**

This change would authorize the Board to summarily suspend the license of any person or firm that is committing fraud, violating the Engineering Practice Act, or is about to engage in fraudulent activity or violations. Summary suspension authority would be limited to situations presenting an immediate threat to the public welfare, and would be subject to appeal and other due process provisions for timely hearing after the initial suspension.

### **2.6 Grant cease-and-desist authority to the Board for the unlicensed practice of engineering.**

This recommendation would allow the Board to issue cease-and-desist orders when it discovers an individual or entity operating without a license. As part of this recommendation, the Board would also be authorized to assess administrative penalties on unlicensed individuals or entities who fail to comply with the Board's order.

## **Fiscal Implication Summary**

The recommendations in this report would result in an estimated loss of \$44,000 to the General Revenue Fund, as summarized below.

*Issue 2* — Prohibiting the Board from collecting the \$200 professional fee from applicants before they have satisfied the licensing requirements would result in a loss of approximately \$44,000 annually to the General Revenue Fund.

#### ***Texas Board of Professional Engineers***

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>
2014	(\$44,000)
2015	(\$44,000)
2016	(\$44,000)
2017	(\$44,000)
2018	(\$44,000)



# TEXAS ETHICS COMMISSION

*Karl Spock, Project Manager*

## Agency at a Glance

The Texas Ethics Commission administers and enforces the state's campaign finance and ethics laws that govern the conduct of state officers and employees, state and local candidates and officeholders, political committees, political parties, and lobbyists. Created by a constitutional amendment adopted by the voters in 1991, the Texas Ethics Commission does not terminate but is subject to review under the Sunset Act. The agency's major functions include:

- maintaining financial disclosure reports and making them available to the public;
- investigating ethics and campaign finance complaints and assessing penalties when warranted;
- issuing advisory opinions interpreting laws under the agency's jurisdiction;
- providing information and assistance to stakeholders to help them understand their obligations under campaign finance and ethics laws; and
- registering persons engaged in lobbying at the state level and requiring periodic lobby activity reports.

## Summary

The people of Texas had every reason to believe they were getting an ethics agency when they voted for the constitutional amendment creating the Texas Ethics Commission in 1991. They did not vote for a Disclosure Filing Commission, and likely would not have done so. Disclosure, however, is the central tenet of Texas' system for dealing with campaign finance, personal financial statements, and lobby activity reports. Given the few limits state law places on campaign contributions and expenditures, Texas' approach to ethics relies on disclosure to shine a light on political financial activity for the public to see and judge.

Enforcement of disclosure laws works in such a way that even innocent mistakes may result in candidates or officeholders being portrayed as ethics violators, with a stigmatizing impact that is out of proportion to the seriousness of the mistake. The Sunset Commission found access to electronic disclosure information, a more contentious political climate, and greater amounts of money in races for public office heighten the potential and temptation to use disclosure less for illumination than for political opportunism. Further,

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*Enforcement of disclosure laws may result in candidates or officeholders being stigmatized as ethics violators for innocent mistakes.*

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enforcement procedures different from those of many regulatory agencies may also affect the role and effectiveness of the Texas Ethics Commission.

The Sunset Commission also found the agency lacks an efficient and modern reporting system for filers and administers disclosure provisions under laws containing outdated, inefficient, or unclear requirements. The following material summarizes the Sunset Commission's recommendations on the Ethics Commission.

## ***Issue 1***

### **The State's Ethics Enforcement Process Unnecessarily Focuses on Minor Reporting Infractions.**

In Texas' disclosure-based ethics system, almost any error is a potential violation, and filers found to be in violation of disclosure laws in even minor ways may be stigmatized as ethics violators. This stigma can mislead the public as to a person's character, be devastating to political careers, and provide incentives to misuse the agency's complaint process for political purposes. Several factors contribute to this situation, including the public's difficulty in determining the seriousness of violations, the legalistic appearance of complaint documents, the absence of a system to review reports for accuracy on submission, and the lack of audits to encourage compliance.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Develop a system for resolving complaints that aligns enforcement actions with the seriousness of violations.**

This recommendation would overhaul the agency's current statutory enforcement process to create a system to match the action taken to sanction an ethical breach with the seriousness of the violation. The form used to initiate an action would be styled as an "inquiry form" rather than a "sworn complaint." Individuals would still sign an affidavit with the inquiry swearing to its content and submit the form to the agency, as is currently required. Upon receipt of an inquiry, Commission staff would review the matter and propose to the respondent a resolution of apparently valid allegations according to one of three outcomes escalating according to seriousness.

A *Letter of Acknowledgment* would cover those violations deemed technical, clerical, or de minimis, as defined by the Commission in rule. These violations would carry no dollar penalty and would remain confidential. A *Notice of Administrative or Filing Error* would address more serious filing or other administrative errors, as defined by the Commission in rule, and would carry a fine. If the respondent agrees to the *Notice of Administrative or Filing Error*, it would be made public and be available on the agency's website. A *Notice of Violation* would address the most serious violations. The Commission would define in rule which violations would be subject to this sanction, and these violations would carry a fine and be made publicly available on the agency's website.

The Commission would develop penalty guidelines in rule and within the bounds of the Commission's current statutory penalty authority.

## ***Management Action***

### **1.2 Direct the agency to strengthen systems to verify the completeness and accuracy of disclosure information.**

Statute requires the Texas Ethics Commission to review filers' disclosure reports and personal financial statements for facial compliance with the law based on a random selection process, but the agency has not done so recently because of resource constraints. Contingent on funding, the agency should perform this check using either the random process currently laid out in statute or through an improved electronic filing system. An improved electronic system, discussed in Issue 3, would assist a much broader range of filers because the system could electronically flag incomplete information and potential mistakes for filers and agency staff.

The agency should also exercise its existing authority to develop a system of audits for reviewing filers' disclosure information in more depth, comparing the information with bank statements, contacting third parties, or performing other investigatory functions. Violations found during a complete audit would subject filers to enforcement action as described in the previous recommendation.

## ***Issue 2***

### **The Hearings Process for Ethics Complaints Weakens the Commission's Effectiveness in Enforcing Disclosure Laws.**

Unlike many state agencies with enforcement authority, the agency's full Commission is involved in both developing proposed enforcement actions and sitting as judge to take final action on sworn complaints. This process could bias Commissioners as to the outcome of a complaint because they actually were involved in its investigation. Also, unlike many state agencies, a respondent to a complaint may choose to bypass the agency's hearings process on the complaint and go to court under a trial de novo standard. This approach essentially throws out the agency's work and record, weakening its enforcement powers.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Eliminate Commissioner involvement in the preliminary review of a sworn complaint and restructure the preliminary hearing to include only two Commissioners.**

Removing Commissioners from the preliminary review of a complaint would require staff to make any initial proposals to respondents and to continue gathering information, as necessary. Rejection of a proposal made by staff would move the case to the preliminary hearing phase, where all possible actions remain on the table for consideration.

Commissioner involvement in the preliminary hearing phase of a complaint would be limited to two instead of the full Commission, as is currently the case. The Commission would decide by rule how the two commissioners representing each political party would be selected. A tie vote on an action in a preliminary hearing, or rejection of a proposal by the respondent, would promote the case to the formal hearing stage.

The Commission would adopt rules as necessary defining the preliminary review and preliminary hearing procedures, in compliance with broad statutory directives. Unless specifically delegated in rule or statute, the Commission would still need to approve all agreed orders arising through any preliminary processes. Other powers of the Commission, such as subpoena power, would remain unchanged.

## **2.2 Provide for judicial review of Commission decisions based on substantial evidence of the record and decisions made by the Commission.**

Making contested case hearings subject to appeal under the substantial evidence rule rather than the requirement of a new trial would ensure the appropriate weight is given to the Commission's process. Additionally, a respondent would be required to exhaust the Commission's administrative remedies and not allowed to bypass agency hearings before taking a case to court.

## **2.3 Clearly establish that the Texas Ethics Commission has the choice of holding formal hearings itself or delegating this responsibility to the State Office of Administrative Hearings.**

The agency's statute mentions, but does not specifically authorize the agency's use of the State Office of Administrative Hearings, and this recommendation would eliminate the current ambiguity in its wording.

### ***Issue 3***

#### **The Agency's Electronic Reporting System and Information Management Have Not Kept Pace With Its Workload and Changing User Needs.**

The Texas Ethics Commission's computer systems supporting filing of reports and public accessibility have not kept pace with needs or the march of technology. The agency does not have a user-friendly, adequate reporting system to check disclosure documents for facial compliance after submission, or a system to conduct complete audits at a later point, reducing assistance and incentives to achieve accurate reporting and compliance. Also, the agency has not analyzed information that could help it maintain its high level of customer service while potentially reducing telephone inquiries and filer reporting errors and possibly reducing its workload.

### **Recommendations**

#### ***Management Action***

#### **3.1 The Texas Ethics Commission should evaluate and report to the 83rd Legislature on an electronic reporting system that allows filers to upload disclosure information soon after any activity occurs.**

The agency should fully evaluate the feasibility of a new electronic, web-based reporting system that allows filers to enter disclosure information "as you go" as activity occurs. As suggested by agency staff, the new system would replace the current system based on fixed reporting dates with a new "rolling date" system of contribution and expenditure activity; allow filers to enter information shortly after it occurs; warn filers of clearly mistaken entries and flag possible errors for agency attention; and be available to the public soon after uploading. The agency should report its analysis of such a system to the Legislature by February 1, 2013, in time for consideration by the 83rd Legislature. The report should address costs and benefits of the system; statutory changes needed for possible implementation; possible application to other filings, such as lobby activity reports and personal financial statements; and a plan for its rollout, including the possibility of a pilot project, if the Commission deems such a system to be feasible.

### **3.2 The agency should better track and analyze information such as call volume detail and sworn complaint allegations.**

To improve customer service, the agency should better track and analyze incoming calls and technical requests as well as allegations made in sworn complaints and their final disposition.

## ***Issue 4***

### **Antiquated Filing Requirements Waste Agency Resources and Do Not Promote Efficient Disclosure.**

State law requires candidates, state officers and employees, certain local officers, caucuses, political committees, and lobbyists to submit periodic reports to the agency disclosing campaign, lobby activity, and personal financial information. Several outdated, inconsistent, or unnecessary statutory provisions impede transparent and efficient disclosure.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Require personal financial statements to be submitted electronically.**

This recommendation would require personal financial statements to be submitted to the agency electronically in a format prescribed by the Commission. The agency already has software that could be modified to allow filers to electronically submit the statements.

#### **4.2 Remove the statutory prohibition on posting reports of major party candidates whose opponents have not yet filed.**

This recommendation would eliminate the waiting period for posting reports filed by major party candidates, allowing the agency to make these reports available online within two business days as statute requires for other campaign finance reports.

#### **4.3 Modify statutory filing provisions to streamline the agency's campaign finance filing processes.**

Statute should be changed to accomplish the following.

- Authorize a candidate or officeholder to designate a specific-purpose committee as the principal committee responsible for filing campaign finance and other reports, relieving the candidate or officeholder from having to file separate reports.
- Require legislative caucuses to file a notice of appointment of caucus chair with the Commission and require that the chair be responsible for filing campaign finance reports.
- Provide for exempting legislative caucuses from filing electronic campaign finance reports if they meet the same statutory threshold as currently exists for candidates, officeholders, and political committees.
- Clarify that the statutory exemption for filing electronic campaign finance reports and lobby activity reports is a one-time threshold, such that once filers meet the threshold, they must always file electronically.

- Remove prescriptive and expensive mailing requirements from statute and require the Commission to adopt rules prescribing how to handle notification and correspondence for all filer types and reports.
- Align the reporting period with the entire month, instead of the 25th of the month, for political committees reporting campaign finance information monthly.
- Clarify that a candidate, officeholder, or political committee receiving a contribution has until the report is filed or due to accept or reject the contribution, instead of making the decision by the end of the reporting period, which typically is not when the scrutiny occurs.

## ***Issue 5***

### **The Texas Ethics Commission’s Statute Complies With Standard Elements Analyzed During Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement established in law for an agency under review. The Texas Ethics Commission has a single reporting requirement to submit a biennial report to the Legislature regarding its activities.

## **Recommendation**

### ***Change in Statute***

#### **5.1 Continue requiring the Commission to submit its biennial report to the Legislature.**

This recommendation would continue the existing requirement in law for the Commission’s biennial report to the Legislature, though no statutory change would be needed to continue this reporting requirement.

## ***Issue 6***

### **Certain Requirements for Lobbyist Registration, Disclosure, and Reporting Are Unclear or Insufficiently Defined, Hampering Compliance and Transparency.**

Persons who attempt to influence members of the legislative or executive branches of Texas government must register with the Ethics Commission as lobbyists and file lobby activity reports with the agency. However, the Lobby Law does not clearly outline the thresholds triggering registration as a lobbyist, hampering a consistent and clear understanding of who is required to register. Other provisions of the law do not clearly or adequately address situations in which a lobbyist makes a joint expenditure with a non-lobbyist; a lobbyist makes a lump-sum expenditure for certain events; or legislative advertising is distributed by legislators.

## Recommendations

### *Change in Statute*

#### **6.1 Place in statute and clarify certain provisions related to registration as a lobbyist.**

This recommendation would clearly lay out in law who must register as a lobbyist according to the following provisions:

- codify in statute provisions found in Texas Ethics Commission rules requiring registration as a lobbyist if 5 percent or more of a person's compensated time during a calendar quarter is spent lobbying;
- clarify in statute that the 5 percent time calculation is based on a standard workday of eight hours, which amounts to 3.25 days in a calendar quarter; and
- codify the concept of "goodwill communications" by adding to the definition of direct communication those communications made with the intent to create goodwill with the recipient for possible future communications to influence legislation or administrative action.

#### **6.2 Clarify in the Lobby Law that a lobby registrant does not lose any protection under the Lobby Law if reporting a portion of a joint expenditure made by a non-registrant.**

This recommendation would ensure the non-registrant's portion of the joint expenditure made with a registered lobbyist would not affect the lobbyist's existing protection under the bribery statute.

#### **6.3 Add categories to the Lobby Law provision related to reporting lump sum expenditures for certain events.**

This recommendation would simplify lobby reporting by adding categories for registered lobbyists to report expenditures for events to include committee parties, all House members and staff, all Senate members and staff, or all staff invited.

#### **6.4 Provide an exception from the legislative advertising disclaimer for material distributed by a legislator on the floor of the House or Senate.**

This recommendation would add an exception from this disclosure requirement for material distributed by legislators while on the floor of either chamber. Instead, distribution and disclosure requirements would fall under the rules and procedures of the House and Senate.

## Fiscal Implication Summary

Overall, these recommendations would have a savings to General Revenue of \$3,500 per year, as summarized below.

*Issue 1* — Strengthening the electronic filing and audit systems would be contingent on the receipt of revenue generated from any source of funds directed by the Legislature for this purpose.

*Issue 4* — Removing prescriptive mailing requirements from statute and allowing staff to determine the appropriate method for sending late notices and sworn complaint correspondence would result in annual savings to General Revenue of about \$3,500.

#### ***Texas Ethics Commission***

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>
2014	\$3,500
2015	\$3,500
2016	\$3,500
2017	\$3,500
2018	\$3,500



# TEXAS FACILITIES COMMISSION

*Christian Ninaud, Project Manager*

## Agency at a Glance

The Texas Facilities Commission (TFC) manages the building construction, maintenance, and leasing needs of state agencies. TFC carries out the following key activities.

- Provides office space for state agencies through acquisition or design and construction of facilities, or through leasing services.
- Maintains state-owned facilities in a secure and cost-efficient manner.
- Provides various support services to state agencies, such as operating state and federal surplus property programs and coordinating the recycling program.

## Summary

The origins of the Texas Facilities Commission as a central services agency date back to 1919, but the Legislature has since reduced its responsibilities to focus TFC on planning for and managing the space needs of state government. This role has now placed TFC front and center in a major initiative to consolidate state agency leases and develop state-owned properties in the Capitol Complex and elsewhere to house state employees.

TFC's growing role in making significant decisions on the use and development of key state assets coincides with the Legislature's adoption of a new approach for procuring public facilities under the Public and Private Facilities and Infrastructure Act (P3 Act) in 2011. The Sunset Commission determined that while TFC is at the forefront of implementing P3 projects, it has stepped into these efforts without adequate guidance, planning, and resources needed to ensure protection of the State's best interests.

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*Developing the Capitol Complex without a leadership-approved plan seems hasty.*

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The Capitol Complex is the centerpiece of government for Texas. Given that the most recent plan for the future of the Capitol Complex was developed and adopted by the State Preservation Board in 1989, proceeding to develop the Complex without a current plan developed with and agreed to by state leadership seems hasty, particularly given the complicated long-term nature of public-private partnership agreements.

While the Sunset Commission determined the State has a continuing need for TFC, it identified the need to ensure TFC has the statutory direction and

tools in place to operate with greater transparency, collaboration, and accountability. The following material summarizes the Sunset Commission's recommendations for the Texas Facilities Commission.

## ***Issue 1***

### **The State Lacks a Coordinated, Transparent Approach to Planning Future Development of the Capitol Complex.**

While TFC works to cost-effectively meet the long-term space needs of Texas government, its efforts to develop the Capitol Complex are hampered by the lack of a clear plan built upon coordination with key partners in the Complex. Though several agencies have responsibilities related to the Capitol Complex, none is clearly charged with leading or planning for its development.

Recently, TFC has taken the lead in planning not just office space needs, but also the development of state-owned properties throughout Austin, including the Capitol Complex. However, TFC's efforts are not based on a collaborative, approved vision for the properties, particularly the Complex's future.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Require TFC to develop and formally adopt a Capitol Complex Master Plan to guide decision making on the Complex's future development.**

The Plan would outline the overall strategy and goals for developing the Capitol Complex and provide recommendations for meeting the goals. The Plan would include an overview of previous planning efforts; a strategic vision and long term goals for the Capitol Complex; analysis of Capitol Complex properties and space needs; site specific proposals for development of properties; analysis and recommendations related to real estate market conditions, design guidelines, infrastructure and parking needs, and financing options; and timeframes for implementing the Plan. The Plan would be submitted to the Governor, Comptroller of Public Accounts, Lieutenant Governor, Speaker of the House, and Legislative Budget Board by July 1, 2014 and updated biennially.

#### **1.2 Require TFC to develop and adopt, in rule, a comprehensive planning process that guides and ensures more meaningful public and stakeholder input for its planning and development responsibilities.**

This recommendation would require TFC to implement a process for planning the development of its state-owned facilities, including those in the Capitol Complex and when assisting other state agencies with space development plans. The process would include a clear approach and specific timeframes for obtaining input throughout the entire planning process from the public, stakeholders, and affected agencies in the Capitol Complex, as well as a public involvement policy that ensures the public and stakeholders have the opportunity to review and comment on any development plans well in advance of Commission decisions. The process would also specify timeframes for Commission updates regarding planning and development efforts and have confidentiality policies consistent with state open records laws.

**1.3 Require TFC to submit the Capitol Complex Master Plan to the State Preservation Board for review, comment, and possible action.**

Under this recommendation, the State Preservation Board (SPB) would have the opportunity to review and comment on the first Plan at least 90 days before the Commission is scheduled to discuss it in a public meeting. SPB would be authorized to disapprove the Plan if it determines the goals or recommendations are not in the best interest of the State or the Capitol Complex. Absent this vote, the Plan would be considered approved by SPB. For subsequent Plan updates, TFC would provide SPB a draft for review and comment at least 60 days before the Commission discusses it in a public meeting.

**1.4 Require the State Preservation Board's long-range plan to conform to the Capitol Complex Master Plan.**

Under this recommendation, if SPB chooses to update its long-range master plan for the capitol buildings and their grounds in the future, the plan would be required to conform to the Capitol Complex Master Plan.

**1.5 Require TFC to submit the Capitol Complex Master Plan to the General Land Office for review and comment.**

Under this recommendation, the General Land Office (GLO) would have the opportunity to review and comment on the first Plan at least 90 days before the Commission is scheduled to discuss it in a public meeting. For subsequent Plan updates, TFC would provide GLO a draft at least 60 days before the Commission discusses it in a public meeting. GLO would not have approval or disapproval authority.

**1.6 Exempt the Capitol Complex from the state-owned properties the General Land Office is required to evaluate and make recommendations on regarding highest and best use, and possible sale.**

This recommendation exempts properties within the Capitol Complex from GLO's current review requirements. GLO would no longer identify properties within the Capitol Complex that are underutilized or make recommendations on the best use of or sale of these properties, since the Capitol Complex Master Plan would cover these properties.

***Management Action*****1.7 Direct TFC staff to present information to the Commission at least 30 days before the Commission votes on an item related to development of TFC property statewide.**

This recommendation would give the Commission time to fully consider and deliberate before voting on an item related to the agency's efforts to develop state properties. During the 30 days prior to a vote, staff could better prepare the Commission for its deliberations and address any Commissioner questions or concerns. Having these items on the agenda would give the public the opportunity to provide comments as well.

## *Issue 2*

### **TFC's Current Approach to Public-Private Partnerships Needs Additional Safeguards to Avoid Exposing the State to Significant Risks.**

As authorized by the recently enacted Public and Private Facilities and Infrastructure Act (P3 Act), TFC is embarking on significant efforts to redevelop state-owned properties within the Capitol Complex and other areas of the state using P3 projects. TFC has received unsolicited P3 proposals affecting nine potential sites with a total construction value of about \$824 million. The P3 procurement method presents the opportunity for great benefits to the State, but also brings the potential for new and more complex risks that TFC is not fully prepared to mitigate. The Sunset Commission found TFC lacks sufficient transparency, controls, resources and staff expertise needed to ensure effective protection of the State's interest when planning, negotiating, and overseeing P3 projects.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Require TFC to include a complete and clearly documented process for evaluating P3 proposals in its P3 Guidelines, and make the evaluation results publicly available.**

Under this recommendation, the Commission would amend its P3 Guidelines to include criteria and documentation to guide the initial review of all substantially complete P3 proposals the agency receives. The initial review criteria should include, at a minimum: the extent to which the project meets a public need and the agency's objectives; the overall feasibility of the project; the adequacy of the proposer's qualifications, experience, and financial capacity; any potentially unacceptable risks to the State; and whether an alternative delivery is appropriate.

A summary of the initial review would be provided to the Commission, including any analysis and recommendations. The P3 Guidelines would also require the Oversight Committee to report the results of its evaluation of any P3 proposals to the Commission and specify the timeframes, procedures, and documentation required. TFC would also make P3 evaluation documents available on the agency's website, with any confidential information redacted.

#### **2.2 Require TFC to use a value for money analysis, but authorize TFC to use an alternative analysis methodology if a value for money analysis is not appropriate for a specific proposal.**

This recommendation would require TFC to use a value for money assessment when evaluating P3 proposals to determine if the P3 approach is in the best long-term financial interest of the State, and if the project will provide a tangible public benefit. Under this recommendation, TFC would conduct a thorough risk analysis of a proposed P3 project that identifies specific risks to be shared between the State and the private partner, and subjects these risks to negotiation in the contract.

TFC would be authorized to use an alternative analysis methodology if more appropriate for a specific proposal, but must document in writing to the Commission the reasons for using an alternative methodology. Finally, TFC would coordinate with its Office of Internal Audit for review and comment on the appropriateness of assumptions used in any analysis.

**2.3 Require TFC to hold a public hearing on a P3 proposal before submitting it to the Partnership Advisory Commission, and to incorporate public comments into the proposal submission.**

TFC would post a copy of the detailed proposal on the agency's website in advance of the hearing; however, with any confidential information redacted. The recommendation would require TFC to incorporate public comments into the proposal submission and allow TFC to provide any additional information or modify the proposal based on consideration of the public input. The Commission must hold a public hearing before finalizing the contract.

**2.4 Require the Commission's P3 Guidelines to include policies on acquiring needed professional expertise to evaluate, negotiate, and oversee P3 proposals and contracts.**

This recommendation would require TFC to amend its P3 Guidelines to specify types of professional expertise needed at each stage of the P3 process, including financial and legal expertise, to protect the State's interest when considering and implementing a P3 project. The P3 Guidelines would specify a range of expertise needed to carry out the evaluation of P3 proposals, assess and allocate risk, negotiate a contract, and oversee the performance of the contract over its lifetime. The Commission would use this information to determine the cost of a reasonable proposal fee, which could also include direct costs, such as staff time required to process a proposal.

**2.5 Require TFC to submit each P3 contract to the Comptroller's Contract Advisory Team for review and comment before adoption by the Commission.**

This recommendation would require TFC to submit a copy of each final draft P3 contract, including a copy of the detailed proposal and agreement, to the Contract Advisory Team (CAT) for review and comment, but not approval. The contract would be provided to CAT at least 60 days before the Commission is scheduled to vote on the approval of the contract. The recommendation specifies that the CAT review would focus on contract management and administration best practices.

**2.6 Specifically authorize TFC to charge a reasonable proposal fee to recover the costs of processing, reviewing, and evaluating P3 proposals.**

Under this recommendation, TFC would develop and adopt a fee schedule sufficient to recover the costs associated with processing, reviewing, and evaluating P3 proposals.

**2.7 Prohibit outside employment of TFC P3 program staff in fields or activities related to their responsibilities at the agency.**

TFC would ensure it has sufficient information to determine whether any potential conflict of interest exists between an employee's duties and their outside employment, and that each employee is aware of and agrees in writing to the agency's ethics and conflict of interest policies. This recommendation would not prohibit other agency staff such as engineers or maintenance workers, from engaging in outside employment, to the extent allowed under current TFC policies.

## ***Management Action***

### **2.8 Direct the Commission to delay formal action on P3 proposals until after September 1, 2013.**

This recommendation gives the Legislature an opportunity to assess and make any needed changes to the P3 Act before moving forward on proposals that could affect the Capitol Complex and other areas. TFC would not have to discontinue the P3 program or end its efforts at developing state assets generally under this recommendation.

### **2.9 Direct TFC to provide financial information and analysis related to any P3 revenues to the Legislative Budget Board.**

TFC should provide information to the Legislative Budget Board on a regular basis regarding any potential and actual revenues generated from P3 developments, as well as financial analysis, forecasts, or other information resulting from the evaluation and implementation of P3 projects.

## ***Issue 3***

### **TFC's Contracting Functions Lack Standard Elements Necessary to Improve Contract Transparency and Management.**

TFC has a large contracting function that carries significant risk due to the multi-million dollar service contracts involved, such as for facilities construction, and in the near future, public-private partnerships that bring new complexities and risks to the procurement process. However, TFC lacks a range of contracting best practices related to contracting methods, procurement, and contract administration needed to reduce risks and better protect the State's financial interests.

## **Recommendations**

### ***Management Action***

#### **3.1 Direct the Commission to formally adopt policies on contracting methods and indefinite delivery/indefinite quantity contracts in a public meeting.**

Under this recommendation, the Commission's contracting policy should specify the circumstances when one delivery method is more appropriate than another, and TFC staff should report information justifying the recommended method to the Commission. The policy should require the Commission to approve indefinite delivery/indefinite quantity contract assignments over \$25,000 and ensure the use of these contracts only for emergencies by having staff report specific reasons for why such an assignment is urgent.

#### **3.2 Direct TFC to revise its policy on the use of interagency contracts and develop a policy for bundled contracts.**

TFC should revise its policy on interagency contracts to restrict their use for procurements under \$100,000 except in emergencies. The Commission should approve any contracts over that amount and staff should report justification as to why the contract is an emergency. TFC should also develop general guidelines for the use of bundled contracts and criteria on the appropriate scope and price for such contracts.

### 3.3 TFC should improve its procedures for soliciting and awarding contracts, including performing risk and needs assessments and documenting needed information.

This recommendation directs the agency to implement the following improvements to better guide agency staff and provide needed information to the Commission regarding the solicitation and awarding of contracts.

- **Risk and needs assessment.** TFC should perform a risk and needs assessment for each contract and clearly document this analysis in the contract files.
- **Contract Advisory Team recommendations.** TFC procurement staff should clearly document CAT recommendations, indicate which ones were implemented, and give a written explanation for any not adopted in the master contract files.
- **Insurance requirements review.** TFC should develop a centralized insurance review function performed by staff qualified to review insurance policies and coverages.
- **Negotiation plans and outcomes.** TFC should develop a written negotiation plan before each contract negotiation and document negotiation outcomes. Staff should use this information to evaluate the negotiation outcomes compared to the original plans, and report this analysis to the Commission on a regular basis.

### 3.4 Direct TFC to apply certain contracting standards to better align its contract administration procedures with commonly accepted best practices.

TFC should implement the following standards to improve its contract administration and close out procedures.

- **Administration plans.** The agency should develop clear administration plans for each of its contracts, which would include standard elements, such as identification of risk areas and monitoring plans, needed to administer the contract.
- **Training.** TFC should develop a written policy requiring all contract administrators, procurement staff, and legal staff dealing with contracts to receive contract training specifically geared toward each program area with responsibilities over contracts.
- **Documentation and reporting on monitoring efforts.** Each TFC program area should timely update and document contract monitoring efforts, including contract monitoring plans and any information related to contract sanctions.
- **Use of building commissioning.** The agency should develop criteria for determining whether to use building commissioning for each TFC or client agency project. These criteria should include risk-based analysis to factor in the size and complexity of a project, and TFC should obtain outside expertise when developing the criteria and using commissioning.
- **Close out.** TFC should establish procedures where staff in each program would assess overall contractor and agency performance at contract closeout, including lessons learned, and report this information to the Commission. Specifically, staff should perform a comprehensive evaluation of change orders and amendments and explain significant changes.
- **Master files.** TFC should develop centralized master files for contracts, including documentation of the contracting process from initial planning to final close out and assessment.

- **Vendor oversight.** TFC should revise its childcare center contract to include a clear contract monitoring plan and a range of sanctions, including a corrective action plan. The monitoring plan should specify the frequency of any inspections and reporting requirements and include the review of state inspection reports and accreditation requirements.

### **3.5 TFC should develop a policy to apply contracting standards to P3 contracts when applicable.**

The agency should have a formal policy that ensures it applies contracting best practices and standards to P3 contracts as appropriate. This recommendation applies particularly to the need for thorough procedures and documentation relating to planning, risk assessment, performance measures, and ongoing contract oversight.

## ***Issue 4***

### **TFC Struggles to Effectively Plan for and Manage Its Deferred Maintenance Needs.**

TFC's deferred maintenance program manages large construction projects to address maintenance and capital needs and delayed repairs of equipment and building systems. Already a high-risk area because of the millions of dollars of repairs involved, deferred maintenance has risen to the forefront lately as TFC's inventory of state properties continues to deteriorate.

TFC does not have the information necessary to effectively manage or assess performance of its deferred maintenance program, and lacks comprehensive information on future needs, such as for capital renewal. This lack of information prevents TFC from effectively planning for and informing the Legislature about the deferred maintenance needs of state facilities.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Require TFC to develop and regularly update a comprehensive plan for all of its maintenance and capital improvement needs.**

TFC would develop a comprehensive planning process for its deferred maintenance, capital improvement, and emergency needs to ensure the agency can identify and predict both current and future needs. The plan would include a full list of deferred maintenance and capital improvement needs, how the agency plans to address these needs, and an estimate of costs. For emergency needs, the agency would plan for potential emergency projects on a biennial basis and identify a potential pool of bonds or other funds that could be used to address them.

Under this recommendation, each element in the plan would include a prioritized list of projects with an estimate of individual and aggregate project costs. The plan would also show prioritized projects by facility. The agency would include the plan in its Facilities Master Plan and update it on a regular basis. The recommendation specifies that the agency would report this information to the Commission and Legislature to tie these needs to the expected level of needed funding.

## ***Management Action***

### **4.2 Direct TFC to better track and report management and performance data about its deferred maintenance program and the condition of its building systems.**

This recommendation directs TFC to collect accurate, up-to-date information on budgetary and project changes to deferred maintenance projects, including justification for why these changes were made. The information should include a comparison of the contract amount before and after any significant changes; the source of funds used to finance the changes; and for project changes requiring Commission approval, justification for their need. Upon project completion, TFC should analyze its performance and report information showing the projects that finished within the original budget and timeline, and explain any variances.

## ***Issue 5***

### **The Texas Facilities Commission's Statute Contains Inefficient Reporting Requirements and Does Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement established in law for an agency under review. The Texas Facilities Commission has 21 reporting requirements. The Sunset Commission determined that all of these reporting requirements should be continued; however, the due dates and recipients of six of these reports should be aligned to allow for more efficient reporting.

In addition, the Sunset Commission adopted Across-the-Board Recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. One of these provisions is missing from TFC's statute and should be applied.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Continue all of TFC's reporting requirements, but align the due dates and recipients of selected reports to allow for report consolidation.**

This recommendation would continue all of TFC's reporting requirements, but would align the due dates of the Report on Improvements and Repairs to State Buildings, State Buildings — Status and Construction Costs, and Report on Space Needs with the Facilities Master Plan Report due date of July 1 of even numbered years. In addition, this recommendation would make the recipients of these reports consistent to include the Governor, Comptroller of Public Accounts, Lieutenant Governor, Speaker of the House, and LBB. This recommendation would also align the due dates of the Report on Parking Programs and the Report on Lease of Space in State-Owned Parking Lots and Garages to December 1 of each even-numbered year and align the recipients to include both the Legislature and LBB.

## **5.2 Apply the standard Sunset Across-the-Board Recommendation for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.**

This recommendation would require TFC to develop and implement a policy to encourage alternative procedures for rulemaking and dispute resolution. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

## ***Issue 6***

### **The State Has a Continuing Need for the Texas Facilities Commission.**

The State continues to need the Texas Facilities Commission to manage the buildings, grounds, and properties, and their associated infrastructure, which support state government operations. TFC manages 130 state-owned facilities and 25.5 million square feet of leased office space for 103 state agencies in 288 Texas cities. Since 2007 the Legislature has focused TFC more squarely on its state facilities planning and management duties, and the Sunset Commission did not find any significant advantages that would result from transferring TFC's statewide support functions to another state agency. However, Texas has chosen a decentralized approach towards managing the administrative support needs of state agencies and also maintains key support services at the Department of Information Resources (DIR) and the Comptroller's Texas Procurement and Support Services Division.

### **Recommendation**

#### ***Change in Statute***

#### **6.1 Continue the Texas Facilities Commission for eight years to align its review with other state agencies that provide administrative support services in Texas.**

This recommendation would continue the Texas Facilities Commission as an independent agency and align its Sunset date with the recommended next Sunset dates of DIR and the Division to allow for a comprehensive review of the State's overall approach to providing administrative support services.

### **Fiscal Implication Summary**

Overall, these recommendations would not result in a direct fiscal impact to the State. Other potential impacts are summarized below.

**Issue 1** — The recommendation to produce a Capitol Complex Master Plan would not have a significant fiscal impact to the State. TFC already produces a Facilities Master Plan Report, which contains some components that would be included in the Capitol Complex Master Plan and is hiring a design firm to produce a more detailed plan related, in part, to the Capitol Complex which could be used in the recommended Master Plan.

**Issue 2** — Recommendations relating to the implementation of public-private partnerships, and the resulting financial benefits, have the potential for a significant positive fiscal impact for the State. This potential would likely be tapped in the next five fiscal years, but the amounts could not be estimated due to significant variance in the types of projects and their financial structure. Specifically authorizing TFC to charge fees to developers to cover the costs of reviewing P3 proposals would offset these costs for the State.

# OFFICE OF FIRE FIGHTERS' PENSION COMMISSIONER

*Sean Shurtleff, Project Manager*

## Office at a Glance

Created in 1937, the Office of Fire Fighters' Pension Commissioner performs two basic activities: providing assistance to 122 individual pension systems organized under the Texas Local Fire Fighters' Retirement Act (TLFFRA), and administering a separate statewide system for volunteers, known as the Texas Emergency Services Retirement System (TESRS). Under TLFFRA, the Office monitors and assists locally operating pension systems for both paid and volunteer fire departments in the following ways:

- requires annual reporting from local fire department pension systems and reviews pension benefits;
- decides pension member appeals of benefit decisions by local pension boards;
- provides technical assistance and legal interpretations of statute and other aspects of systems; and
- conducts training for local board trustees through its annual TLFFRA educational conference and peer review workshop.

Since 1977, the Office has administered TESRS, under the policy direction of a separate Governor-appointed Board of Trustees. This system, with its \$62.5 million fund, provides retirement as well as death and disability benefits to volunteer firefighters and emergency services personnel in more than 200 volunteer departments statewide.

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*Many Office activities are an anachronism from when the Commissioner oversaw the spending of State funds.*

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## Summary

The question of the need for the Office of Fire Fighters' Pension Commissioner is not about the essential role that firefighters play in protecting the public or even the pensions these firefighters have earned for retirement. The question is instead about whether the Office's duties under TLFFRA are an anachronism from the time when the Commissioner's oversight ensured these local firefighter pension systems properly spent state funds and complied with state law. The question is also about whether the Office's other assistance activities, such as specialized technical assistance and educational seminars, reflect a unique benefit for just this subset of local pension systems that is increasingly difficult to justify.

Clearly these TLFFRA systems still find value in having a Commissioner that represents their interests, but the Sunset Commission concluded this special treatment is not an appropriate State role and is no longer needed to ensure that these local systems are managed and operating appropriately. Like all other local pension systems in the state, these TLFFRA systems are subject to Pension Review Board (PRB) oversight and would continue to receive assistance and training from PRB when necessary.

The Commissioner's administrative role under TESRS is distinct from the role under TLFFRA. This system has its own Governor-appointed Board of Trustees responsible for managing the TESRS Fund and benefits, and should operate like other statewide pension systems, with its own administrator and staff. Also, the pension structure for TESRS creates the potential for greater liabilities to the State, justifying the need for more detailed financial information and audits of the system's actuarial data. Finally, TESRS lacks needed contract management and oversight controls. The following material summarizes the Sunset Commission's recommendations on the Office.

## ***Issue 1***

### **While the State Needs a Pension System for Volunteer Emergency Services Personnel, the Office of Fire Fighters' Pension Commissioner Is Not Necessary.**

Services provided by volunteer and paid fire departments are essential. However, state assistance for pension systems under TLFFRA is no longer needed. The Office's limited monitoring and assistance functions, such as reviewing benefits and providing technical assistance, are but vestiges of the Commissioner's original responsibilities to provide State funding to local TLFFRA systems and ensure proper use of these funds and compliance with statute. What remains at the Office is a mix of activities that do not require a separate agency to perform.

Further, the TLFFRA statute provides a framework for these systems that offers safeguards for their long-term operation. Also, paid systems have grown self-sustainable while volunteer systems have other options such as transferring to TESRS. Last, PRB will continue to provide these systems with the same monitoring and assistance it offers to all other Texas pension systems.

The State continues to need TESRS, but a separate Governor-appointed Commissioner is not needed to administer that system. Last, TESRS presents a level of risk that justifies the need for continuing Sunset review.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Abolish the Commissioner's position and make TESRS subject to Sunset review every 12 years.**

This recommendation would abolish the Office, repealing references to the Pension Commissioner in both the TLFFRA and TESRS statutes and replacing the Commissioner's position in administering TESRS with an executive director. The TESRS Board would be authorized to hire this executive director and administrative staff. The recommendation would not repeal TLFFRA or TESRS statute, but only references to the Commissioner, and would also not affect the constitutional provision providing for the Commissioner's four year term, since it applies only *if* the Legislature authorizes a Commissioner. In addition, this recommendation would require the TESRS Board to undergo Sunset review in 12 years to ensure ongoing oversight.

## **1.2 Eliminate the Office's authority to collect reports from TLFFRA pension systems.**

The eliminated reports would include those on pension finances, investment policy, changes to the system plan design document, audited financial statements, and actuarial valuations. PRB would continue to receive reports, monitor their financial and actuarial condition, and provide guidance when requested, as currently authorized in statute.

## **1.3 Eliminate the Commissioner's authority to hear TLFFRA and TESRS appeals on benefit decisions.**

TLFFRA systems would refer appeals directly to the State Office of Administrative Hearings (SOAH), with an administrative law judge making the final decision. Appeals for TESRS members would be heard at SOAH, with final decisions made by the statewide TESRS Board, as is the practice with Texas' other statewide pension systems. Also, like other statewide pension systems, a provision would be added to statute authorizing TESRS members to appeal TESRS Board decisions to district court.

SOAH funding for TLFFRA and TESRS appeals is currently tied to the Office, and would cease if the Office is abolished. Thus, the Sunset Commission requests that SOAH continue to receive General Revenue appropriations to cover the cost of TLFFRA and TESRS hearings, as it does currently, so that neither the pension systems nor firefighters would incur additional costs.

## **1.4 Eliminate the Office's authority to conduct seminars or workshops.**

Under this change, TLFFRA systems would be able to take over full administration of these seminars. Trustees and staff of TLFFRA pensions could also continue to receive training through the certification classes and conferences provided by other organizations such as the Texas Association of Public Employee Retirement Systems and PRB.

### ***Management Action***

## **1.5 Direct the Office to cease issuing legal interpretations.**

TLFFRA boards of trustees are able to seek legal advice from their retained attorneys.

## ***Issue 2***

### **The Texas Emergency Services Retirement System Lacks Transparency and Oversight Needed to Minimize the State's Financial Risk.**

The Texas Emergency Services Retirement System provides pension benefits for volunteer firefighters and emergency services personnel paid for by the local governments sponsoring these entities. However, the system relies on the State to fund most administrative costs and to cover investment losses, posing the risk of significant ongoing State financial obligations.

Since 2002, the State has paid \$12.8 million in TESRS Fund contributions and administrative costs mostly to cover investment losses. The unique structure of TESRS warrants greater oversight, verification, and reporting on the Fund to ensure the Legislature has accurate and timely information needed to make funding decisions.

## Recommendations

### *Change in Statute*

#### **2.1 Require the TESRS Board to provide the Legislature with a range of options for meeting the State's contribution requirement should the Fund experience significant losses or increased liabilities.**

Under this recommendation, the TESRS Board would provide the Legislature information on different pension contribution and benefit structures if the Fund experiences a significant decrease in assets, or increase in unfunded liabilities that make the Fund unsound even with maximum State contributions. The Board would also report actuarial options to the Legislature anytime it decides to change benefits or contributions on its own initiative, and for significant changes to the actuarial valuation. Information provided to the Legislature should include analysis of how different changes to contributions and benefits could affect the Fund's financial liabilities, the State's potential contribution, and need for continuing appropriations to pay administrative costs. This recommendation would not change current statutory requirements for State contributions to the plan.

#### **2.2 Require the TESRS actuarial valuation to include detailed information on the impact of assuming both a full State contribution and no State contribution.**

Under this recommendation, the actuarial valuation would clearly show the fiscal implications of assuming no State contributions and full State contributions to the Fund, including funding for administrative costs. This information should show the fiscal implications of both scenarios, including the number of years needed to amortize the unfunded liabilities. This recommendation would not change the Board's authority to assume maximum State contributions when determining the benefit formula.

#### **2.3 Require the Board to regularly conduct actuarial audits and experience studies to ensure accurate pension assumptions and valuations.**

This recommendation would specify that the Board must conduct an audit of its actuarial valuation, similar to that conducted in 2007, and an experience study, at least every five years.

## *Issue 3*

### **The Office Lacks a Consistent Approach to Contract Management and Oversight.**

In reviewing the Office, the Sunset Commission applied key contracting best practices. The Office, like many small agencies, does not have needed management and oversight controls in place to guide contracting, which it uses infrequently yet supports critical functions for administering its pension system. Applying a few basic contracting practices would ensure that the TESRS Board receives needed support regardless of the Office's future.

## Recommendations

### *Change in Statute*

#### **3.1 Require the TESRS Board to adopt a clear policy on contract management and oversight.**

This policy would include procedures for planning for contracting needs and developing solicitation documents; reviewing, evaluating, and awarding contract proposals; managing and approving contract changes; identifying performance issues and resolving contract disputes; monitoring contract expenditures; closing out contracts; and maintaining centralized information on all contracts.

In implementing this recommendation, the agency would designate one person as the central point of contact between the agency and contractors. In developing this policy and associated procedures, the agency would consult with the Comptroller's Office for guidance on best practices.

### *Management Action*

#### **3.2 Direct TESRS to participate in contract management and oversight training.**

The TESRS Board should designate one staff person to attend contract management and oversight classes such as those offered by the Comptroller's Office. TESRS should also take advantage of contracting seminars offered by the Comptroller's Office.

#### **3.3 Direct the Board to adopt a rule containing the Comptroller's HUB rules.**

This rule should include the requirement that contracts over \$100,000 have a HUB subcontracting plan, where appropriate.

## *Issue 4*

### **The Texas Emergency Services Retirement System Statute Does Not Reflect Standard Elements of Sunset Reviews.**

The Sunset Commission has developed Across-the-Board Recommendations (ATBs) containing "good government" standards that it applies to all state agencies under review. The Office's significant role in administering TESRS, and the State's financial stake in that system, make a review of TESRS' conformance with ATBs appropriate. In addition, the Texas Sunset Act requires the Commission to consider if statutory reporting requirements, imposed by law on agencies under review, should be continued or abolished.

## Recommendations

### *Change in Statute*

#### **4.1 Update and apply standard Across-the-Board Recommendations to TESRS statute.**

- **Conflict of Interest.** This recommendation would prohibit a person from serving as a TESRS Board member or high-level TESRS employee if the person or person's spouse is an officer, employee, or paid consultant of a professional trade association for firefighters or public retirement systems. Any current Board members falling under this description would be allowed to serve out their term.

- **Board member training.** This recommendation would require Board members to receive training and clearly establish the type of information to be included. The training would need to provide Board members with information regarding the legislation that created the Board; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.
- **Separation of duties.** Under this recommendation, the Board must adopt policies clearly defining its role of setting policy separate from staff responsibilities.
- **Public testimony.** This provision would add specific statutory language to ensure the opportunity for public input to the Board on issues under its jurisdiction.
- **Complaint information.** This recommendation would require the Board to maintain a system for acting on complaints and make information available regarding its complaint procedures. The Board must also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints.

#### 4.2 Continue the TESRS reports.

This recommendation would continue the two reports currently required of TESRS because they provide information useful to both TESRS and the public.

### Fiscal Implication Summary

These issues would have a positive fiscal impact to the State, as summarized below.

**Issue 1** — Eliminating the Office would have a positive fiscal impact to the State, resulting in the reduction of 3.5 employees associated with TLFFRA functions and annual savings of about \$173,000 to the General Revenue Fund, as shown in the chart below. TESRS administrative costs would continue to require approximately \$500,000 per year in general revenue appropriations.

**Issue 2** — Requiring the TESRS Board to regularly conduct actuarial audits and experience studies would cost a fund the size of TESRS approximately \$25,000 for the audit and \$50,000 for the experience study once every five years, paid from the pension fund.

#### *Office of Fire Fighters' Pension Commissioner*

Fiscal Year	Savings to the General Revenue Fund	Changes in FTEs From FY 2013
2014	\$173,000	-3.5
2015	\$173,000	-3.5
2016	\$173,000	-3.5
2017	\$173,000	-3.5
2018	\$173,000	-3.5

# TEXAS HIGHER EDUCATION COORDINATING BOARD

*Sarah Kirkle, Project Manager*

## Agency at a Glance

The Legislature created the Texas Higher Education Coordinating Board in 1965 to provide statewide leadership for Texas' public institutions of higher education, to promote quality education, and to avoid unnecessary duplication among program offerings. The Board's key functions include:

- developing, implementing, and evaluating a long-range strategic plan for Texas higher education;
- collecting, analyzing, and disseminating data on higher education;
- reviewing and approving degree programs and the construction of major facilities at public institutions of higher education;
- administering state financial aid programs and disbursing financial aid funds to institutions of higher education; and
- administering state and federal grant programs to support higher education goals.

The Texas public higher education system includes 38 universities, 50 community college districts, nine health science centers, three state colleges, and four state technical colleges. In fiscal year 2011, more than 1.3 million students were enrolled in these public institutions.

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*Openly considering the diverse perspectives of the state's higher education institutions is fundamental to effective coordination.*

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## Summary

With vast differences in the size, type, mission, geography, needs, and resources of Texas' higher education institutions, openly considering these diverse perspectives is fundamental to effective coordination. The Texas Higher Education Coordinating Board makes a large overall effort to obtain stakeholder input, but then makes major decisions in isolation or without clearly communicating the reasons for significant, and sometimes last minute, changes. This culture makes it difficult for the agency to foster a collaborative environment essential for moving the state forward on shared higher education goals.

Internally, myriad duties, programs, initiatives, and expectations have led the agency astray from its core functions as a coordinating entity. The lack of a

clear, agency-level strategic plan to prioritize among its multitude of duties, as well as outdated and confusing statutory guidance, results in ongoing confusion about the agency's role and what it plans to focus on every two years.

Because the Coordinating Board lacks performance measures or clear means for the Legislature to judge the performance of the agency, the success or failure of the agency's many programs is not always obvious. For example, the B-On-Time loan program leaves millions of valuable financial aid dollars unspent and puts millions of state dollars at risk through its high default rate.

The agency also lacks a consistent monitoring function to ensure more than \$900 million in disbursed funds are used in accordance with the State's intent or that critical data, such as enrollment data used to allocate more than \$3.8 billion in formula funding, is accurate. The following material summarizes the Sunset Commission's recommendations on the Texas Higher Education Coordinating Board.

## ***Issue 1***

### **The Governing Board's Limited Stakeholder Input and Experience Hinder Its Ability to Coordinate Texas' Higher Education Community.**

Despite the agency's extensive efforts to obtain stakeholder feedback, the governing board itself receives little direct stakeholder and public input. Together with the agency's isolated approach to decision making, stakeholders lack clear means to provide direct feedback or offer varying perspectives related to major decisions before the Board. The Board's structure also fails to ensure higher education experience to aid in navigating the complexities of, and to independently direct, state higher education policy.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Require one-third of the members of the Board to have experience in the field of higher education.**

This recommendation would require three of the nine public members of the governing board to have experience in the field of higher education governance or administration, such that the Board includes experience from both universities and community or technical colleges. This recommendation would not affect current appointments to the Board.

#### **1.2 Require the Coordinating Board to provide opportunities for public comment as an agenda item for each board meeting.**

To comply with the spirit of Sunset's Across-the-Board Recommendation to allow reasonable opportunities for public comment, this recommendation would also encourage the Coordinating Board to allow public comment before making decisions on any matter on which the agency anticipates significant stakeholder interest.

#### **1.3 Require the Coordinating Board to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria, and report recommendations directly to the Board.**

The Coordinating Board would adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, tasks, manner of reporting, and abolishment dates for each of its advisory

committees. The agency would also annually evaluate each committee's work, usefulness, and costs related to the committee's existence and report the results of its evaluation to the Legislative Budget Board. The Coordinating Board would also be required to adopt rules to ensure its advisory committees report any recommendations directly to the governing board.

#### **1.4 Require the Coordinating Board to strengthen its internal controls for allocating financial aid funding and ensure stakeholder input by adopting allocation methodologies in rule.**

This recommendation would require the Coordinating Board to develop procedures to check for accuracy in applying the allocation formulas, to guide staff in allocating financial aid funding to institutions to prevent potential errors. Statute would also direct the agency to consider adopting more sophisticated technological means of managing its fund allocations as it updates its information systems, including technologies that allow for built-in controls, such as pre-populated fields. The Coordinating Board would also be required to formally adopt rules identifying allocation methodologies for all financial aid programs for which the agency makes allocations.

### ***Management Action***

#### **1.5 Direct the Coordinating Board to restructure and reduce its number of advisory committees.**

The Coordinating Board should restructure and reduce its number of advisory committees to move from a multitude of narrow, topic-specific committees to a smaller number of standing committees with broad-based jurisdiction.

## ***Issue 2***

### **Outdated and Unnecessary Statutory Provisions Divert the Agency's Focus From Its Core Functions as a Higher Education Coordinating Entity.**

Since the Legislature created the Coordinating Board nearly 50 years ago, it has been adding onto the agency's statutory duties with a variety of planning functions, regulatory approvals, reporting requirements, and programs. Over time, all of these additions have begun to weigh the agency down to the point that its core functions as a higher education coordinating entity have been obscured. In addition, statutory language for two of the agency's key functions, long-range planning and academic program approval, is outdated, unclear, and confusing.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Redefine the Coordinating Board's powers and duties in statute to reflect the major functions of a modern higher education coordinating entity.**

This recommendation would replace the section of the Texas Education Code that defines the agency's powers and duties with a concise list of major duties. In place of the current statutory language, the agency would represent the highest authority in the state in matters on public higher education and promote quality education throughout the state by:

- providing a statewide perspective to ensure the efficient and effective use of higher education resources and to eliminate unnecessary duplication;
- developing and evaluating progress toward a long-range plan for higher education and providing analysis and recommendations to link state spending on higher education with the goals of the long-range plan;
- collecting and making accessible data on higher education in the state and aggregating and analyzing data to support policy recommendations;
- making recommendations to improve the efficiency and effectiveness of transitions, such as between high school and college, between institutions for transfer purposes, or between college and the workforce; and
- administering programs and trusteed funds for financial aid and other grants as necessary to achieve the state's long-range goals and as directed by the Legislature.<sup>1</sup>

## **2.2 Redefine long-range planning for higher education in statute.**

This recommendation would eliminate all existing statutory requirements for higher education planning. Instead, the agency would be required to develop one long-range plan for higher education, which would mirror the agency's current efforts related to the *Closing the Gaps* plan. Statute would define essential elements of the plan to include long-term, measurable goals and strategies for meeting those goals, an assessment of higher education needs, regular updates to the plan, methods to obtain stakeholder input on the plan, and biennial progress reports.

## **2.3 Update the Coordinating Board's statute to clearly define its academic program approval authority in one section of law.**

This recommendation would consolidate the agency's certificate and degree program approval and authority in a new section of statute. The Coordinating Board would have the authority to approve all new degree and certificate programs at public institutions of higher education based on need, not duplicating other programs, adequate financing and faculty, and meeting academic or workforce standards. Institutions would secure preliminary approval for new degree and certificate programs from the Coordinating Board, rather than just notifying the Coordinating Board, before applying for full program approval.

Under this recommendation, the Coordinating Board would be required to review existing certificate and degree programs at least every 10 years to ensure programs still meet the criteria for new programs. The Coordinating Board would also review the graduation rates of degree and certificate programs at least every four years, and would be authorized to consolidate or eliminate unneeded programs based on the same criteria outlined above, including the program's annual graduation rate.

The Coordinating Board would periodically evaluate the role and mission of all public four-year institutions in conjunction with development of the long-range plan for higher education in Recommendation 2.2, but would no longer approve mission statements. The Coordinating Board would have the authority to require institutions to report administrative changes to organizational units, but would no longer approve new schools or departments. The Coordinating Board would also have the authority to approve off-campus courses offered for credit within the state and distance education courses, but would no longer approve out-of-state, off-campus courses.

#### **2.4 Eliminate 20 unfunded and unnecessary programs from statute.**

This recommendation would remove 19 unfunded programs, including the Advanced Technology Program, Grants for Teaching and Education Research, and Texas Partnership and Scholarship Program; as well as the unnecessary Research Assessment Program from statute.<sup>2</sup>

#### **2.5 Eliminate four unnecessary reporting requirements, but continue 18 that still serve a purpose.**

This recommendation would continue all necessary reporting requirements and remove the following unnecessary reports from statute: *Report on Student Loan Funds*; *Report on Restricted Research Expenditures*; *Texas Opportunity Plan Report*; and *Progress Report on P-16 College Readiness and Success Strategic Action Plan*.

#### **2.6 Require the Coordinating Board to periodically re-evaluate the ongoing need for all existing data requests it imposes on higher education institutions through rule or policy.**

This recommendation would require the Coordinating Board to re-evaluate its rules and policies every five years to ensure the continuing need for the data requests it imposes on institutions. In conducting these evaluations, the agency would consult with institutions to identify unnecessary requests or ways to streamline those requests. The Coordinating Board would then remove, from rule and policy, data requests identified as unnecessary.

#### **2.7 Provide for the Coordinating Board to administer pilot projects to identify best practices only in circumstances where other entities cannot or will not administer the programs.**

This recommendation would provide that the Coordinating Board no longer be involved in administering or overseeing programs to identify best practices, except in cases where funding or other restrictions prevent entities other than the agency from administering the programs. The Coordinating Board would refrain from initiating new pilot projects unless it can justify that other entities, such as non-profits or institutions, are not engaging in similar projects or that the initiative cannot be performed by another entity.

### ***Issue 3***

#### **The Coordinating Board's Overarching Focus on *Closing the Gaps* Impedes the Agency's Strategic Management of Its Own Operations.**

*Closing the Gaps by 2015* is the State's long-range plan for higher education, and the ultimate success or failure of the plan depends mostly on the actions of the state's colleges and universities. *Closing the Gaps* is not, and was never meant to be, a strategic plan for the Coordinating Board itself.

However, since its creation in 2000, *Closing the Gaps* has become the driving force behind the agency's every decision. While well-intentioned, this overarching focus on *Closing the Gaps* has impeded the agency from clearly defining its own mission and role. The Coordinating Board also lacks a single manager to run, and ensure accountability for, the day-to-day operations of the agency, and struggles to communicate its activities via its website.

## Recommendations

### *Management Action*

#### **3.1 Direct the Coordinating Board to revamp its statutorily required strategic plan to be specific to the agency's goals and functions.**

This recommendation aims to help the Coordinating Board develop a more meaningful and comprehensive strategic planning process by setting goals and strategies that are specific to the functions of the agency. In developing its new strategic planning process, the agency would need to find a balance between maintaining long-term focus on the goals of *Closing the Gaps* and ensuring agency staff have clear guidance of what their priorities are on a daily basis.

#### **3.2 Direct the Commissioner of Higher Education to ensure that a single high-level executive manages and coordinates the agency's day-to-day operations.**

The person chosen for this position should report directly to the Commissioner and should have experience managing large organizations, but does not necessarily need to possess academic experience. At a minimum, the functions of this position should include ensuring compliance with laws, ensuring consistency in communications, assessing the efficiency of the agency's organization, preparing the agency's strategic plan and budget, and ensuring agency staff is aware of the agency's priorities and working efficiently towards established goals. When designating this position, the agency should ensure that the duties are well-defined and distinct from the duties of the Commissioner.

#### **3.3 Direct the Coordinating Board to work toward revamping its budget pattern and performance measures to better reflect the agency's functions.**

The Coordinating Board should work with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy to change its budget goals and strategies and develop agency-specific performance measures to support its strategic planning process. The budget goals and strategies should more closely follow the agency's functions and organization and the new measures should be designed to provide an accurate assessment of the agency's activities.

#### **3.4 Direct the Coordinating Board to redesign its websites to better meet the needs of its stakeholders and ensure centralized control over the sites' content and organization.**

The Coordinating Board should redesign its primary website and complete the redesign of the Texas Higher Education Data website, tailoring information to different audiences and presenting the most pertinent information in the most accessible way. The agency should provide space on either the primary site or the data site to present the most frequently requested statewide data, such as enrollment and graduation rates.

#### **3.5 Direct the Coordinating Board to develop a time management system for its staff.**

The Coordinating Board should develop a system that will provide agency management with information on the time its staff spends on different programs and activities. Management should then use this time accounting information to evaluate use of staff resources, including whether staff time is spent in accordance with agency priorities, and whether programs or activities should be eliminated, streamlined, or restructured more efficiently across divisions.

## ***Issue 4***

### **Texas' B-On-Time Loan Program Is Not Working as Intended, Leaving Millions of Financial Aid Dollars Unspent or At Risk From Default.**

The Texas B-On-Time Loan Program provides zero-percent interest loans for eligible students, and offers loan forgiveness to students who graduate with at least a B-average and within a specific number of credit hours or years. In fiscal year 2011, institutions failed to disburse more than \$32 million in B-On-Time funds, only 38 percent of participants fulfilled the program's forgiveness requirements, and the program's default rate was nearly triple the rate of the agency's other state loan program. The program appears particularly ill-suited to two-year institutions that use very little of their B-On-Time allocations.

### **Recommendations**

#### ***Change in Statute***

##### **4.1 Remove all two-year institutions from participation in the B-On-Time loan program and transfer the funding for public two-year institutions to a program better suited to those institutions' needs.**

This recommendation would eliminate all two-year institutions — including community colleges, public technical colleges, public state colleges, and private two-year institutions — as eligible institutions for the B-On-Time program since few students from these institutions qualify for the program. This change would work in conjunction with Recommendation 4.2 to maintain this financial aid for students at public two-year institutions by transferring B-On-Time funding for these institutions to the Texas Educational Opportunity Grant (TEOG) program.

#### ***Change in Appropriations***

##### **4.2 Request that the Legislature, through the appropriations process, transfer B-On-Time funding for public two-year institutions to the Texas Educational Opportunity Grant program.**

This recommendation expresses the will of the Sunset Commission that the Legislature transfer B-On-Time general revenue funding previously allocated for public two-year institutions to the TEOG program, which is uniquely structured to meet the needs of public two-year institution students. Current B-On-Time participants at all two-year institutions would continue to have their loans renewed using general revenue, and funding for renewal B-On-Time participants at public two-year institutions would be phased out of the B-On-Time program into TEOG.

#### ***Management Action***

##### **4.3 Require the Coordinating Board to include information about the B-On-Time program's progress in its annual financial aid report.**

The Coordinating Board should report on the progress of the B-On-Time program in its existing *Report on Student Financial Aid in Texas Higher Education* to the Legislature. The Coordinating Board should track key performance measures for B-On-Time, including the amount of funds disbursed, number of students achieving loan forgiveness, and default rate. If program outcomes do not improve after four years, the Legislature should consider abolishing the B-On-Time program and transferring its funding to other state financial aid programs.

#### **4.4 Direct the Coordinating Board to seek a revision to federal regulations for alternative loans to exclude restrictions on state-sponsored loan programs.**

The Coordinating Board, through the Commissioner of Higher Education, should seek changes to federal regulations to exclude state-sponsored student loan programs from federal alternative student loan regulations, which limits financial aid officers at institutions from fully promoting state loan programs such as B-On-Time.

## ***Issue 5***

### **The Coordinating Board's Limited Monitoring of Funding and Data Fails to Ensure Their Appropriate Use and Accuracy.**

The Coordinating Board flows almost \$910 million in financial aid for students and other grants to institutions of higher education annually, and collects critical data from institutions that the Legislature uses to fund and plan higher education. Despite the significant volume of state funds at risk, the Coordinating Board does not sufficiently or consistently monitor institutions' use of funding to make certain that aid goes to eligible students.

While the Coordinating Board's internal audit program performs limited monitoring through audits of funds and data at select institutions, this role is not standard for internal audit, diverts its focus from agency operations, and can compromise its ability to independently evaluate the agency's monitoring efforts. Monitoring of key data, primarily enrollment figures used for formula funding to institutions, is also split between the Coordinating Board and the State Auditor's Office.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Require the Coordinating Board to establish a risk-based, agency-wide compliance monitoring function to help ensure the proper use of its funding and the accuracy of its data.**

This recommendation would statutorily require the Coordinating Board to create a compliance monitoring function for grant and loan funds flowing out of the agency and self-reported data coming into the agency. This recommendation would eliminate the need for enrollment data audit requirements in rider, and consolidate monitoring and audits of enrollment data from all types of institutions at the Coordinating Board.

The new compliance monitoring function would be required to conduct regular monitoring of financial aid, the largest category of state funds flowing through the Coordinating Board to institutions of higher education, to ensure that state funds go to eligible students. The Coordinating Board would also routinely verify key data reported by institutions of higher education using a risk-based approach to focus on data presenting the highest risks to the State, such as enrollment data used for formula funding.

## ***Change in Appropriations***

### **5.2 Request that the Legislature, through the appropriations process, use existing state funds and increase the Coordinating Board's full-time equivalent cap for the new compliance monitoring function.**

To fund the monitoring function established by Recommendation 5.1, the Sunset Commission recommends that the Legislature use a small portion of the General Revenue already designated for financial aid and formula funding for institutions. The Legislature often uses a limited amount of grant funds or other allocated funds to pay for the administration of state funds, and as the funds most at risk, the administrative costs of monitoring should come from these two sources before allocation to institutions.

While using these funding sources for administration represents a real reduction of money to institutions and financial aid, the estimated cost of monitoring represents a tiny fraction of the total funds in need of oversight. The Sunset Commission also recommends that the Legislature increase the Coordinating Board's staff by four full-time equivalents to perform the new monitoring function.

## ***Management Action***

### **5.3 The Coordinating Board's Office of Internal Auditor should prioritize its core functions over other duties that divert its focus or impair its ability to independently evaluate the agency's operations.**

The Coordinating Board's internal audit office should focus its resources on audits of its own agency's operations, such as its administration of financial aid and grants, to ensure adequate internal controls to minimize risks to the State. The agency's Internal Auditor should only perform audits of institutions when warranted by significant risk.

## ***Issue 6***

### **Texas Has a Continuing Need for the Texas Higher Education Coordinating Board.**

The Sunset Commission concluded that because of the decentralized nature of the state's higher education system, the State continues to need a statewide perspective on higher education in Texas. The State benefits from having an entity to plan for statewide higher education needs, aggregate statewide data, coordinate distribution of higher education resources and link those decisions to state spending, as well as to serve as a central administrator for certain grant and student financial aid programs. No significant benefits would justify consolidation with or transfer of the Coordinating Board's functions to another agency.

## **Recommendation**

### ***Change in Statute***

#### **6.1 Continue the Texas Higher Education Coordinating Board for 12 years.**

This recommendation would continue the Coordinating Board as an independent agency responsible for coordinating the state's system of public higher education for 12 years.

## Fiscal Implication Summary

Overall, these recommendations would not have a significant fiscal impact to the State. However, several issues recommend changes in funding, as summarized below.

**Issue 3** — Requiring the Coordinating Board to designate a single high-level executive to oversee the agency’s day-to-day management could be accommodated through restructuring the existing staff organization instead of hiring a new employee. The other recommendations regarding the agency’s website, strategic planning, budgeting, performance measures, and time management should not require new resources.

**Issue 4** — Removing all two-year institutions from participation in the B-On-Time loan program and transferring the General Revenue to the Texas Educational Opportunity Grant (TEOG) Program would not result in a net fiscal impact to the State. Approximately \$7.2 million would need to transfer from B-On-Time to TEOG. A small portion of these funds would remain in B-On-Time to fund participating students until they graduate or become ineligible for the program.

**Issue 5** — Establishing a compliance monitoring function at the Coordinating Board for funds flowing to institutions of higher education and self-reported data would not have a net fiscal impact to the State. While the new monitoring function would require an increase of four full-time staff, the estimated \$310,910 in costs would come from the funds most at risk of misuse or inaccuracy — General Revenue appropriated for financial aid and institutional formula funding — prior to allocation to institutions.

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<sup>1</sup> A detailed accounting of the changes recommended for this section of statute is located in Appendix E of the *Sunset Staff Report with Commission Decisions for the Texas Higher Education Coordinating Board*, June 2012.

<sup>2</sup> A full list of the 19 unfunded programs that the Sunset Commission has recommended eliminating is available on page 26 of the *Sunset Staff Report with Commission Decisions for the Texas Higher Education Coordinating Board*, June 2012.

# TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

*Eric Beverly, Project Manager*

## Agency at a Glance

The Texas Department of Housing and Community Affairs (TDHCA) works to ensure the availability of affordable housing, provides funding for community assistance, and regulates the manufactured housing industry. The Department's functions include the following activities.

- Assisting low-income individuals and families to obtain affordable rental housing by awarding federal and state funds, as well as federal tax credits, to nonprofit and for-profit organizations and local governments.
- Assisting low- and moderate-income families with home rehabilitation, reconstruction, or first time home purchase.
- Assisting low-income individuals and families through a network of public and private service providers to obtain community-based support services, including services to address homelessness, foreclosure, high utility costs, home weatherization, and other concerns.
- Acting as an information clearinghouse on affordable housing resources in Texas.
- Regulating the manufactured housing industry and maintaining official records of manufactured home ownership, location, and status, including liens.

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*Most of Sunset's  
recommendations from  
2011 remain appropriate.*

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## Summary

This special purpose review of TDHCA follows up on the full Sunset review of the Department conducted last biennium. At that time, the Sunset Commission adopted and forwarded recommendations on the Department to the 82nd Legislature. The Legislature passed House Bill 2608, containing most of the Sunset Commission's recommendations; however, in June 2011, the Governor vetoed the bill over concerns about language pertaining to the Department's disaster recovery functions. In the special legislative session that summer, the Legislature made changes to the disaster recovery program, continued the Department for two years, and focused the current Sunset staff review on the appropriateness of the recommendations voted on and adopted by the Sunset Commission prior to last session.

Based on the re-examination, the Sunset Commission concluded that most of Sunset's previous recommendations remain appropriate, and that the

Department continues to need statutory authority and direction to implement them. The following material summarizes Sunset Commission recommendations on the Department, including the Manufactured Housing Division.

## *Issue 1*

### **Certain Statutory Requirements Impede Texas' Administration of the Housing Tax Credit Program.**

The TDHCA-administered federal tax credit program provides incentives for private investment in affordable multifamily rental housing, creating more affordable housing in Texas than any other program. The Sunset Commission found several statutory requirements that impede the effective administration of this key housing program. First, state law requires TDHCA to measure community support for tax credit developments based on neighborhood organization letters and letters from state senators and representatives. Neighborhood organization letters do not always reflect local interests and are regularly contested. Nowhere else in state law are state elected officials required to provide support letters of this nature. In addition, fixed statutory deadlines could restrict the State's ability to distribute federal tax credit assistance in emergency circumstances.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Replace neighborhood organization letters with voted resolutions from local city council or county commissioners courts as a principle tax credit scoring item, but continue to consider neighborhood organization letters as a lesser scoring item.**

This recommendation would adjust the tax credit scoring process to give greater weight to local voted resolutions and reduce the weight for neighborhood organization letters. Voted resolutions would replace neighborhood organizations letters as the second highest scoring criterion required by statute for tax credit applications. The Department would award points to applications for supportive voted resolutions from a city council, or if none exists, the county commissioners court in the area of the proposed development. The Department would continue to score letters from neighborhood organizations, but as the last statutorily required item in the tax credit scoring process.

#### **1.2 Eliminate the requirement for letters of support from state senators and representatives.**

State senators and representatives could still provide input in the tax credit awards process, but their participation would not be a required scoring item.

#### **1.3 Allow TDHCA to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.**

In the event the State receives emergency credits or related funding, this recommendation would allow the Department to release credits or funds for development outside of the regular application cycle by creating a new application cycle as needed. The recommendation would make the temporary statutory authorization, which expired in 2011, permanent, and would also clarify the emergency authority applies to any federal programs related to tax credits.

## Issue 2

### **Inconsistencies in the Department's Enforcement Process Could Waste Resources and Contribute to Compliance Problems.**

The Department monitors TDHCA-sponsored affordable multifamily developments to ensure properties are well constructed, remain suitable for tenants, appropriately restrict rents, and generally perform well for the life of the contract. Properties that do not comply with requirements can face fines and appeal those fines. The Sunset Commission found that the Department's current appeals process is not consistent with most state agencies and wastes agency resources. In addition, statute unnecessarily limits the agency's ability to prevent bad actors from applying to TDHCA programs to just one program.

### **Recommendations**

#### **Change in Statute**

#### **2.1 Clarify the agency's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.**

This recommendation would require TDHCA to refer penalty appeals to the State Office of Administrative Hearings (SOAH), following the same process as TDHCA's Manufactured Housing Division. In conducting hearings, SOAH would consider the Department's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Department's Board would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge.

#### **2.2 Require judicial review of appeals of the Department's decisions to be based on the substantial evidence rule, instead of a *de novo* review.**

Any party subject to a penalty would continue to be authorized to appeal board decisions to district court, but this recommendation would specify that appeals be made under the substantial evidence rule, consistent with the vast majority of other administrative appeals.

#### **2.3 Authorize the Department to use debarment as a sanction and protection in all its programs.**

This recommendation would clearly permit the Department to debar individuals for significant performance failures across all programs, not just the housing tax credit program. Participants facing debarment would be authorized to appeal decisions to the Board.

## Issue 3

### **Key Elements of the Manufactured Housing Division's Functions Do Not Conform to Common Licensing Standards.**

The Sunset Commission has reviewed approximately 100 occupational licensing agencies. In doing so, the Commission has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing licensing functions at the Manufactured Housing Division, the Sunset Commission found that certain licensing and enforcement processes in the agency's statute do

not match these model standards. The Sunset Commission identified changes needed to bring the Division in line with model standards to better protect owners of manufactured homes and the public.

## Recommendations

### *Change in Statute*

#### **3.1 Require the Manufactured Housing Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.**

This recommendation would require the Division to conduct fingerprint criminal background checks, through the Department of Public Safety (DPS), on all licensees to review complete federal and state criminal histories of applicants. The DPS system provides automatic updates, eliminating the need for additional background checks at the time of renewal. Applicants would pay the one-time \$42 cost.

#### **3.2 Grant cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.**

This recommendation would allow the Division to take action to stop an individual or entity operating without a license. The Division would also be authorized to assess administrative penalties on unlicensed individuals or entities of up to \$1,000 for each day of the violation, consistent with the Division's current penalty authority for licensed individuals and entities. These changes would not impact the Division's authority to also seek an injunction through the Attorney General.

#### **3.3 Authorize the Division to order direct refunds as part of the manufactured housing complaint settlement process.**

This recommendation would authorize the Division to order refunds directly from the licensee, instead of having to use the licensee's surety bond, for any violation that caused consumer harm. This recommendation would not expand the basic authority the Division already has, but would simply increase options for payment, allowing licensees to pay refunds directly.

#### **3.4 Authorize Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.**

This recommendation would save time while promoting greater accountability of staff actions by ensuring Division staff report these actions to its Board. Dismissal information reported to the Division's Board should contain sufficient explanation indicating why staff dismissed complaints.

#### **3.5 Eliminate manufactured housing branch and rebuilder licenses from statute.**

This recommendation would eliminate the unnecessary branch and rebuilder licenses as the Division has never issued a branch license and does not anticipate issuing either license in the future.

#### **3.6 Authorize the Division to collect a fee for reprinted manufactured housing licenses.**

This recommendation would permit the Division to collect a nominal fee, as determined by the Division's Board, for reprinted licenses requested by a licensee to ensure the licensee bears the associated cost.

## ***Issue 4***

### **The State Has a Continuing Need for the Texas Department of Housing and Community Affairs.**

Texas faces a shortage of affordable housing that will continue for the foreseeable future. The federal government and the Texas Legislature have established numerous programs to help communities increase housing and community-based services options for low- and moderate-income people. The Sunset Commission concluded that the Department acts as a necessary partner in these programs, disbursing hundreds of millions of dollars annually.

### **Recommendations**

#### ***Change in Statute***

##### **4.1 Continue the Texas Department of Housing and Community Affairs for 12 years.**

This recommendation would continue the Texas Department of Housing and Community Affairs as an independent agency responsible for the allocation of state and federal funds related to development of affordable housing and the provision of community services. The recommendation would also continue the Manufactured Housing Division, within the Department, and maintain its separate Board.

##### **4.2 Apply the standard Sunset Across-the-Board Recommendation for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.**

This recommendation would ensure that the Division develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution. The Division would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

## ***Issue 5***

### **Department Statutes Contain Unnecessary Reporting Requirements.**

The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished. The Sunset Commission found three unnecessary reporting requirements for TDHCA.

### **Recommendation**

#### ***Change in Statute***

##### **5.1 Abolish the Department's reports relating to energy and peak demand savings, the statutory Contract for Deed Conversion Guarantee Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.**

This recommendation would eliminate these three reports from law.

## **Fiscal Implication Summary**

These recommendations would have no fiscal impact to the State.

# DEPARTMENT OF INFORMATION RESOURCES

*Katharine Teleki, Project Manager*

## COMPTROLLER PROCUREMENT AND SUPPORT SERVICES DIVISION

*Amy Tripp, Project Manager*

### DIR at a Glance

The Department of Information Resources (DIR) is the State's information technology and telecommunications agency. The Legislature created DIR in 1989 to set the overall strategic direction for state agencies' use and management of IT. Since then, DIR's responsibilities have expanded significantly. DIR now provides a range of IT and telecommunications products and services to state agencies and eligible voluntary customers, including local governments and universities, primarily by procuring and administering contracts on behalf of the State.

DIR's purpose is to coordinate and support the IT and telecommunications needs of the State by carrying out the following key activities.

- Provides statewide IT strategic planning, reporting, and standards setting.
- Provides guidance and oversight of state information security.
- Oversees three major statewide programs, including procuring and managing contracts for the State's telecommunications system, the Texas Agency Network (TEX-AN); the official website of Texas, Texas.gov; and consolidated data center services for state agencies.
- Procures and manages statewide cooperative contracts for IT services and products.
- Operates the Capitol Complex Telephone System.

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*The reviews of DIR and the Division point to the need for a broader look at the State's decentralized approach to contracting and procurement.*

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### Comptroller Division at a Glance

In 2007, the Legislature transferred statewide procurement functions and other support services from the then-named Texas Building and Procurement Commission to the Comptroller of Public Accounts, creating the Texas Procurement and Support Services Division. The Division carries out the following key activities.

- Establishes and manages statewide contracts for commodities and services, and reviews and delegates specific purchases to individual state agencies.
- Certifies Historically Underutilized Businesses (HUBs), develops statewide HUB goals, and reports on the State's use of HUBs.
- Trains and certifies purchasers and contract managers.
- Provides mail services to state agencies within Travis County.

## Summary

Legislative interest and direction regarding DIR and the Division required the Sunset Commission to answer two specific structural questions regarding these two agencies: Should the Division's functions return to the Texas Facilities Commission, and should DIR's cooperative contracts program for information technology items transfer to the Comptroller's Office to consolidate the State's two centralized purchasing programs?

Considering that the State has gone through a 20-year period of back-and-forth organizational shifts from centralizing state administrative support services within a single agency to the more decentralized structure that exists today, the Sunset Commission ultimately concluded that further shuffling the placement of these functions would likely create more risk than benefit at this time. However, more formal coordination between DIR and the Division regarding the State's two procurement programs is needed to ensure ongoing collaboration and collection of comparable data for future decision making.

The reviews of these agencies' purchasing programs also highlighted the persistent, and much broader, legislative interest in ensuring the State's overall approach to contracting and procurement results in the most efficient and accountable use of taxpayer dollars. The Legislature has made repeated attempts to study and address concerns arising from various high-profile contracting problems, but these efforts have largely been piecemeal, with no complete, in-depth evaluation of the State's overall approach to contracting and procurement. Without such an evaluation, the Legislature has not had the opportunity to look at these matters from a statewide perspective and consider making more meaningful, overarching changes to help address ongoing questions and concerns.

The Sunset Commission also evaluated the continued appropriateness of its 2010 recommendations on DIR which were adopted by the 82nd Legislature, but ultimately vetoed by the Governor. These recommendations addressed concerns with DIR's oversight, management of administrative fees and costs, and contracting practices beyond its cooperative purchasing program for technology commodities. The Sunset Commission concluded that DIR has made sincere efforts to address previous concerns, but continued follow-up and statutory changes are needed to ensure ongoing implementation and accountability. The following material summarizes the Sunset Commission's recommendations on DIR and the Division.

## *Issue 1*

### **While the Division and DIR Should Continue, the State's Fragmented Approach to Procurement Needs Further Evaluation.**

The Sunset Commission found the State has a continuing need for the procurement, support, and information technology functions performed by DIR and the Division, and that no organizational

change is needed at this time. While the programs share similar procurement functions and could benefit from increased coordination, the Sunset Commission concluded that a full merger could pose more risks than benefits, particularly given both agencies have made significant efforts to address previous concerns. More broadly, the breadth of state procurement and longstanding legislative concerns about the State's approach to contracting warrant a more comprehensive evaluation than the reviews of these two agencies could provide.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Retain the Texas Procurement and Support Services Division's functions at the Comptroller's Office and continue the program for eight years.**

This recommendation would maintain the Division's functions at the Comptroller's Office instead of transferring them back to the Texas Facilities Commission on September 1, 2013. The Division would undergo a Sunset review in eight years, aligning it with the overall Sunset review of state procurement and contracting proposed in Recommendation 1.4.

#### **1.2 Continue the Department of Information Resources and its customer advisory committee for eight years.**

This recommendation continues DIR as an independent agency and aligns its next review with the overall Sunset review of state procurement and contracting proposed in Recommendation 1.4. The recommendation directs Sunset staff to report on DIR's implementation of the Sunset Commission's 2010 management recommendations currently in progress in its compliance report to the 84th Legislature. The recommendation also requires DIR's Board to maintain its recently created customer advisory committee to ensure ongoing implementation of the previous Sunset recommendation.

#### **1.3 Require formalized coordination and improved data collection between DIR and the Division to allow for a more complete evaluation of their procurement programs in the 2020–2021 biennium.**

This recommendation requires DIR and the Division to formally coordinate, share best practices, and develop common methodologies for collecting data and measuring the success of their two statewide procurement programs. Under this recommendation, the two agencies would dedicate high-level staff to form a coordinating committee; develop and share best practices; and identify and develop strategies to avoid duplication and capitalize on opportunities for collaboration and consolidation. DIR and the Division would develop a memorandum of understanding to carry out this recommendation.

#### **1.4 Require the Sunset Commission to evaluate the State's overall approach to procurement and contracting in 2021 to coincide with the next DIR and Division Sunset reviews.**

This recommendation directs the Sunset Commission to evaluate the State's overall approach to procurement in eight years, concurrent with the next Sunset reviews of DIR and the Division as suggested in Recommendations 1.1 and 1.2. The evaluation would have an intentionally broad scope, including but not limited to examining the State's overall statutory procurement and contracting framework, the Council on Competitive Government, the Contract Advisory Team, the Quality Assurance Team, and general contract management and oversight.

### **1.5 Require DIR to better maximize the State's buying power through the agency's cooperative contracts program.**

This recommendation requires DIR to analyze the historical spending for information technology commodities and services, and to develop contracts that leverage this spend. DIR would negotiate specific pricing, when reasonable, for commonly purchased IT commodities and services. If DIR negotiates a contract that uses a discount from list pricing scheme, DIR must document why this pricing scheme is necessary.

## ***Issue 2***

### **DIR Continues to Need Statutory Direction to Ensure Its Recently Improved Cost-Recovery Strategies and Administrative Efficiencies Are Lasting.**

The 2010 Sunset review found that DIR's customers were paying more than necessary to recover the operating costs for its telecommunications and cooperative contracts programs, and that DIR had not established the procedures necessary to ensure it charged appropriate fees and delivered expected cost savings. While these programs are intended to break even, DIR had accumulated \$29 million in fund balances by the end of fiscal year 2009.

Due to both legislative action and DIR's own initiative, the Sunset Commission observed significant positive change over the last two years resulting in the elimination of surplus fund balances, reduced fees charged to DIR's customers, and greater administrative efficiency. These changes are encouraging, but continued legislative direction is necessary to ensure lasting progress.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Require DIR to establish clear procedures for setting, adjusting, and approving administrative fees for each of its cost recovery programs as part of its annual budget process.**

This recommendation requires DIR to maintain its recently adopted process for calculating the administrative fees for each of its cost recovery programs. Fees must directly relate to the amount the Department needs to collect to recover the cost of its operations, as determined by the agency's annual budget process. DIR would maintain clear procedures directing how staff in each of DIR's programs and the finance division would work together to determine fees, including review and approval of fees by the agency's Chief Financial Officer, Executive Director, and Board.

#### **2.2 Require DIR to report its administrative fees and the methodology used to set them to the Legislative Budget Board annually, and post all fee information on its website.**

After reviewing and adjusting its fees as part of the annual budget process, the Department would report its fees for the new fiscal year to LBB, along with the underlying analysis and methodology which determined the fee amounts. DIR would also post information about the fees for its cost recovery programs, including a description of how they are derived, on its website. DIR would provide updates anytime a contract amendment or other action results in major pricing changes. The Department must also report the cost allocation charged to its telecommunications customers, similar to existing reporting requirements for its cooperative contracts and data center customers.

### **2.3 Establish each of DIR's accounts in statute and limit expenditures to program purposes.**

This recommendation adds DIR's Clearing Fund Account and the Statewide Technology Account to statute, along with a description of their intended use to benefit each program, similar to what already exists for the Telecommunications Revolving Fund. DIR would not use funds in these accounts for purposes other than those specifically authorized by the Legislature.

### **2.4 Direct DIR to develop a clear policy governing the appropriate use of staff augmentation contractors and outside consultants.**

This recommendation requires DIR to maintain its recently developed criteria for the appropriate use of staff augmentation contractors and outside consultants by the agency. DIR staff must prepare, and the Board approve, an annual analysis of staffing needs and proposed use of contractors and consultants in conjunction with the budget process. The analysis would include the need for and cost-effectiveness of using staff augmentation contractors or outside consultants, and consider the possibilities for DIR to use its own workforce to accomplish tasks proposed for contractors or consultants, and any training or additional resources that may be needed.

## ***Issue 3***

### **While DIR Has Made Progress, Management and Enforcement of Major Contracts Continue to Pose Risks to the State.**

Although chosen by the Legislature to help other state agencies mitigate risks inherent in IT projects and contracts, DIR has struggled to fulfill this role. The 2010 Sunset review highlighted significant concerns with two of DIR's major contracts for data center and telecommunications services, and recommended increased oversight and a more strategic, best-practices approach to contract management from DIR's Board and staff. While the agency has made significant progress in addressing these previous concerns and recommendations, statutory and legislative direction is still necessary to ensure continued attention given the wide scope and high risk of DIR's contracted programs.

## **Recommendations**

### ***Change in Statute***

#### **3.1 Require DIR to consistently measure and report cost savings and project status for IT consolidation projects.**

DIR would work with entities involved in consolidation projects to develop an agreed upon methodology to first collect and validate data for a baseline assessment of costs, for use in both initial projections and subsequent cost comparisons. DIR must use this methodology to evaluate and annually report information on actual costs and cost savings to the DIR Board, LBB, and DIR customers. DIR would also report on the progress of the projects compared to the initially projected timelines for implementation.

DIR would report this information on both a statewide and individual agency level and coordinate with its Internal Audit Division for guidance on how to ensure the methodology provides an objective assessment of costs and project status. DIR would post these status reports on its website. In addition to the current data center services project, this recommendation would apply to any future consolidation initiatives DIR undertakes.

### **3.2 Require DIR to create a contract management guide to provide a clear, overall approach to managing its major outsourced contracts.**

Under this recommendation, DIR must create, maintain, and regularly update a contract management guide specifically targeted toward providing an overall, consistent approach on how to procure and manage DIR's major outsourced contracts. DIR would update this manual regularly, using lessons learned and changing conditions to guide these updates. The manual would include DIR's general approach to contract management, lines of accountability, ethics standards and policies, risk management, stakeholder input, and contract monitoring.

### **3.3 Require DIR to create management plans specific to each of its major outsourced contracts.**

This recommendation requires DIR to develop and maintain specific procedures for administering and overseeing each of its major contracts and for managing and mitigating risks inherent in each contract. The plans would be required for Texas.gov, TEX-AN, and data center services, and any other major outsourced contract DIR enters into in the future. Contract administration and program staff would develop these plans jointly, with input from executive management and the Board, and approval by the Executive Director.

For each of its major contracts, DIR would tailor the plan to define its approach to transitioning from one contract to another; establishing lines of accountability and coordination of contract activities; implementing the program; monitoring contractor performance; identifying and mitigating risks; and involving and communicating with customers. DIR would revise its management plans as necessary to keep current during the active contract phase, and as it re-procures its contracts to ensure the plans remain updated and incorporate any changes resulting from new contracts.

### **3.4 Strengthen and improve the Board's oversight of DIR's contracting functions.**

This recommendation requires DIR's Board to take the following actions to continue improving its oversight of DIR's contracting functions.

- Require the Board to approve all major outsourced contracts and any significant amendments with statewide impact.
- Require the Board to adopt a policy describing the Board's role in setting a strategic direction for DIR's programs and require the Board to evaluate and approve new initiatives or categories of services offered by DIR.
- Require the Board to establish subcommittees to monitor DIR's major outsourced contracts, including data center services, TEX-AN, and Texas.gov.
- Require the Board to regularly evaluate the extent to which DIR meets its information technology mission by providing cost effective services and addressing customer needs.
- Require the Board to regularly evaluate the operations of the agency, including information regarding the agency's revenues and expenses and customer satisfaction.

### **3.5 Require DIR to develop and implement an agencywide training policy for all staff involved in contract management and Board members.**

This recommendation would require DIR to develop and maintain a contract management training policy for all staff involved in contract management, including contract managers, program staff, and

executive management, as well as members of DIR's Board. The policy would include specific training on DIR's overall approach to procuring and managing contracts, as well as contract-specific procedures, as developed under Recommendations 3.2 and 3.3. Contract management training for Board members, while less specific, would be a part of the Board member training already required in statute.

### **3.6 Require DIR to establish formal contract governance structures for each of its major contracts.**

This recommendation requires DIR to create a formalized contract governance structure for each of its major contracts, including data center services, TEX-AN, and Texas.gov, to ensure customer involvement in decision making. DIR would have a standard, coordinated approach to obtaining the feedback necessary to effectively manage its contracts and best meet customer needs.

### **3.7 Establish stricter conflict of interest provisions in DIR's statute.**

This recommendation adds specific provisions to DIR's statute similar to those in the Comptroller of Public Account's statute. DIR employees involved in contracting and procurement would be prohibited from soliciting or accepting anything of value from a vendor or potential vendor. DIR would maintain these provisions in its recently adopted internal policies, such as its employee and contract management manuals, and in staff training.

### **3.8 Require DIR to respond to Contract Advisory Team feedback on solicitations.**

Under this recommendation, for any solicitation DIR submits to the Contract Advisory Team for review, DIR must either adopt CAT's recommendations or provide an explanation in writing as to why the recommendations cannot be implemented.

## ***Issue 4***

### **DIR's Statute Does Not Ensure Ongoing Strong Internal Audit Oversight of Its High-Risk Programs.**

DIR's contracts involve considerable amounts of public funds — \$2 billion in fiscal year 2011. Because the risks inherent to DIR's programs affect not only DIR, but many other governmental entities that rely on and pay for DIR's services, a high level of scrutiny is necessary to ensure DIR manages these complex programs effectively. The 2010 Sunset review found DIR did not dedicate sufficient resources to its internal audit function, exposing the Department and the State to an unacceptable level of risk. DIR has since taken encouraging steps to improve its internal audit program, but statutory direction is still necessary to ensure DIR and its Board continue to make internal auditing a priority.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Require DIR to establish an Internal Audit Division.**

#### **4.2 Require the DIR Board to maintain an audit subcommittee.**

These recommendations would solidify the Department's and Board's decisions to establish an Internal Audit Division and a Finance and Audit Subcommittee by placing them in statute. This approach would ensure DIR maintains a full-time, in-house internal audit function, and that the Board continues

to closely monitor internal audit activities. The Audit Subcommittee would determine if allocated resources are adequate to cover the areas of risk identified in the internal audit plan. Under this recommendation, the Internal Audit Division would continue to prepare an annual audit plan using risk assessment techniques to determine DIR's areas of greatest risk, for approval by the Board.

## ***Issue 5***

### **The Department's Statute Contains Inefficient Reporting Requirements and Does Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Sunset Act charges the Sunset Commission to recommend the continuation or abolishment of each reporting requirement imposed on an agency under review. The Sunset Commission found that all of DIR's reporting requirements continue to serve a useful purpose and should be continued, but the due date for one of these reports should be changed. Also, among the standard elements considered in a Sunset review, the Sunset Commission adopts Across-the-Board Recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. DIR's statute lacks one of these recommendations.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Continue all of DIR's reporting requirements, but change the due date for the Texas.gov reporting requirements.**

This recommendation would continue all of DIR's reporting requirements, but would change the due date for Texas.gov reporting requirements from September 1 of even-numbered years to November 15 of even-numbered years to align the submission date with DIR's Biennial Performance Report on the Use of Information Resources Technologies by Texas State Agencies. To comply with a recent change in law, reports to the Legislature should be provided in electronic format only.

#### **5.2 Apply the standard Sunset Across-the-Board Recommendation for the Department to develop a policy regarding negotiated rulemaking and alternative dispute resolution.**

This recommendation requires DIR to implement a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The Department would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

## *Issue 6*

### **Three of the Division's Statutorily Required Reports Are Inefficient and One Is No Longer Needed.**

The Sunset Commission found that one of the Division's reporting requirements no longer serves a useful purpose and should be eliminated, and that the other four required reports should be continued. In addition, the Sunset Commission identified opportunities to adjust due dates and recipients for the remaining Division reports to increase efficiency.

### **Recommendations**

#### ***Change in Statute***

#### **6.1 Abolish the Division's report on Texas Correctional Industries products sold and continue the Division's other reports.**

This recommendation eliminates the Division's required report on TCI products sold, since the information is readily available in alternative ways. The Division's remaining four statutory reports would be continued because they provide useful information to state leadership. To comply with a recent change in law, reports to the Legislature should be provided in electronic format only.

#### **6.2 Modify the due date of the HUB Education and Outreach Report and modify the due dates and update the recipients of the Annual and Semi-Annual HUB Reports.**

This recommendation changes the due date for the Historically Underutilized Business (HUB) Education and Outreach Report from before September 1 of each year to October 15 of each year. This recommendation also changes the due dates for the Semi-Annual and Annual HUB Reports from April 15 and October 15 to May 15 and November 15, respectively. Finally, this recommendation amends the recipients of both the Semi-Annual and Annual HUB reports to remove references to the joint committee charged with monitoring the implementation of HUB goals, which no longer exists. Instead, the Division would send both reports to the Lieutenant Governor and the Speaker of the House of Representatives, consistent with the current statutory recipients of the Annual HUB Report.

### **Fiscal Implication Summary**

These recommendations would not have a significant fiscal impact to the State. Improved coordination between DIR and the Division recommended in Issue 1 would result in administrative savings and efficiencies, but the exact amount depends on implementation and could not be estimated.



# STATE COMMISSION ON JUDICIAL CONDUCT

*Erick Fajardo, Project Manager*

## Agency at a Glance

The State Commission on Judicial Conduct's mission is to protect the public from judicial misconduct or incapacity by ensuring Texas' more than 3,900 judges comply with standards of conduct established in the Texas Constitution and by the Supreme Court. Originally created in 1965, the Commission operates as a judicial branch agency, and the constitution spells out all of the Commission's key duties and responsibilities, as follows.

- Investigating complaints against Texas judges.
- Issuing private and public sanctions to judges found to have committed judicial misconduct.
- Making recommendations for the removal or retirement of a judge based on misconduct or incapacity.

## Summary

As a judicial branch agency, the structure, enabling laws, rules, confidentiality, and oversight of the Commission on Judicial Conduct differ considerably from that of other state agencies. These differences posed challenges to the Sunset Commission's ability to evaluate this agency, and pose ongoing obstacles to the Legislature's ability to implement changes or reforms to the agency and Texas' approach to overseeing the conduct of judges.

Most critically, the Commission's structure and operations are prescribed in great detail in the Texas Constitution. Thus, any changes or reforms to these duties or responsibilities regarding Texas' approach to overseeing the conduct of judges would require voter approval of a Constitutional amendment, not simply a change in statute.

Another challenge involves the shared oversight of the Commission by the Texas Supreme Court and the Legislature. The Supreme Court promulgates the procedural rules that guide the Commission's operations in addition to direction provided by the Legislature in statute. Because statute and procedural rules have the same authority, a change in statute that differs from the procedural rules could bring into question which takes precedence.

The Commission also operates largely behind closed doors to protect the confidentiality of judges. While Sunset recognizes the need to protect judges from public disclosure of unfair or unwarranted complaints stemming from

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*The Commission's  
Constitutional structure poses  
obstacles to implementing  
changes to the oversight  
of judges in Texas.*

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individuals unhappy with the outcome of a case or from political opponents, this must be balanced against the public's right to know that the process is working fairly and effectively when judges misuse or abuse their substantial authority.

With only very limited access to its meetings and key documents, the Sunset Commission could not reach an overall conclusion regarding the Commission's efficiency, effectiveness, or impartiality. The Sunset Commission concluded that this unusual structure makes the need for an objective outside evaluation even more critical. With greater access, Sunset could conduct such a review, to provide a check on the Commission on Judicial Conduct's work, ensuring to the public the process's integrity while maintaining the necessary confidentiality of judges subject to disciplinary action. The following summarizes the Sunset Commission's recommendations regarding the State Commission on Judicial Conduct.

## *Issue 1*

### **The Texas Constitution Limits the Commission's Options to Hear Major Cases in Open Proceedings.**

Once the Commission institutes a formal proceeding, it can only dismiss the complaint, issue a censure, or make a recommendation on removal or retirement. The Commission's limited range of penalties available following a formal proceeding could deter it from pursuing cases of public import in open formal proceedings. Confidence in the integrity of the judiciary rests on high profile cases being heard openly.

## **Recommendations**

### ***Constitutional Amendment***

#### **1.1 Constitutionally authorize the Commission to use its full range of sanctions following formal proceedings.**

This recommendation would allow the Commission to issue one of its lesser sanctions, such as a public admonition, warning, reprimand, or order of education following a formal proceeding, in addition to issuing a public censure or recommending removal or retirement to the Review Tribunal. This change would equip the Commission with all the necessary tools it needs and remove any disincentive to taking a case to an open, formal proceeding when warranted.

To enact a change to the constitution, this recommendation would require the Legislature to pass a joint resolution containing this sanction authority and Texas voters to approve an amendment to the State Constitution.

### ***Change in Statute***

#### **1.2 Statutorily authorize a Court of Review to hear appeals of sanctions following formal proceedings, in the same manner as it hears appeals of censures.**

This recommendation would allow the Court of Review to hear appeals of public sanctions issued following a formal hearing in the same manner as public censures. The Court of Review would conduct a review of the record of the formal proceeding and would allow new evidence only with good cause shown, as is currently done for censures. The decision of the Court of Review would be final and not appealable.

## *Issue 2*

### **Inconsistencies Between Its Statute and Rules Create the Potential for Litigation and Inefficiencies in the Commission's Operation.**

The Commission's procedural rules being on an equal legal footing with state law creates the potential for conflicts and legal challenges. Further, since the Supreme Court has not updated the Commission's procedural rules in many years, the Commission now has several discrepancies between its statute and its rules.

#### **Recommendation**

##### ***Change in Statute***

#### **2.1 Require the Commission on Judicial Conduct to report to the Supreme Court as needed on suggested changes to update its procedural rules.**

This recommendation would require the Commission to study its procedural rules for needed updates to reflect changes in case law, statute, and the constitution, and to report these findings to the Supreme Court on an as-needed basis. The Commission would also have to assess needed updates to improve Commission operations or increase Commission efficiency. This change would help enable the Supreme Court to more regularly update the rules to stay current and prevent conflicts that muddle the Commission's process and provide fodder for legal challenges.

## *Issue 3*

### **Lack of Access to Key Meetings and Records Limits Sunset's Ability to Fully Assess the Commission's Oversight of Judges.**

The inability of Sunset staff to attend the Commission's meetings and to review key documents seriously limited staff's ability to evaluate the efficiency and effectiveness of the Commission's primary duty — taking enforcement action in cases of potential judicial misconduct.

#### **Recommendations**

##### ***Change in Statute***

#### **3.1 Require the Commission to provide Sunset staff with access to observe its closed meetings and review its confidential records to ensure a complete and thorough evaluation of the Commission's activities.**

The recommendation would clarify in statute that the Commission's confidentiality and privilege provisions do not bar the Commission from being subject to a full Sunset review. The recommendation would also clarify that Sunset staff must maintain the same level of confidentiality as the staff of the Commission and, as a result, is entitled to access whatever components of the Commission's process Sunset deems necessary.

#### **3.2 Review the Commission in six years, rather than the standard 12-year period.**

This recommendation would make a one-time change to provide for the next review to occur in six years, in 2019. Reviewing the Commission in six years, rather than the standard 12-year period, would

allow the Commission time to implement changes recommended as a result of this review and enable Sunset to more fully evaluate the Commission's disciplinary process. After 2019, the Commission would revert back to a periodic Sunset review every 12th year.

### **3.3 Maintain in law the requirement for the Commission to distribute an annual report on its activities to protect the public from judicial misconduct.**

This recommendation would simply maintain the requirement in the Commission's statute to annually report on its activities and sanctions.

## ***Issue 4***

### **The Commission's Lack of Open Meetings Provides No Means for the Public to Provide Input on Its Oversight of Judge's Conduct.**

Due to the Commission's strict requirements for confidentiality and its exemption from the Open Meetings Act, Public Information Act, and Administrative Procedures Act, most of the Commission's work takes place out of the public's view. In addition, because the Supreme Court promulgates the Commission's procedural rules, the public is never afforded the opportunity to provide feedback on the Commission's work and governance.

## **Recommendation**

### ***Change in Statute***

#### **4.1 Require the Commission to hold an annual public hearing to allow the public to offer input on the Commission's mission and operations.**

This recommendation would require the Commission to hold an open public meeting at least once every year, with notice to the public at least seven days in advance of the meeting. The purpose of the meeting would be to provide members of the public an opportunity to offer suggestions to the members and staff of the Commission to improve any aspects of their oversight of judicial conduct, handling of judicial complaints, or the efficiency of its overall operations.

## ***Issue 5***

### **The Commission Fails to Provide Clear Information on Reasons for Dismissing Complaints, Undermining the Public's Understanding of the Process.**

The Commission receives more than 1,000 complaints per year, dismissing the vast majority either immediately or after a preliminary investigation for failing to allege misconduct. The Commission typically informs the individual who filed the complaint, in very general terms, that the complaint did not allege a violation under the Commission's jurisdiction, or that the complaint pertains to decisions or rulings made by the judge while exercising judicial discretion. A survey conducted during the Sunset review of individuals who filed complaints revealed considerable confusion and frustration over the lack of clarity on these dismissals.

## Recommendation

### *Change in Statute*

#### **5.1 Require the Commission, after dismissing a complaint, to provide the individual who filed the complaint with the reason(s) in plain language why the allegation made in the complaint failed to meet the definition of judicial misconduct.**

This recommendation would require the Commission to include, in its notice that informs individuals that the Commission has dismissed their complaint, a specific explanation of how the conduct alleged in the complaint failed to constitute judicial misconduct. The Commission would have to provide this explanation in as plain and easily understandable language as possible.

## *Issue 6*

### **Lack of Clarity About the Commission's Status Has Resulted in Confusion About Whether It Functions as a State Agency or a Court.**

At times, confusion has arisen as to the status of the Commission — is it an administrative agency or does it function as a court? As a judicial branch agency, the Commission's statute and enabling article in the Constitution contain certain provisions typically reserved for a court, such as an exemption from the Open Meetings Act, Public Information Act, and Administrative Procedures Act. However, the Commission does not have the judicial criminal or civil authority of a court.

The Commission's 13-member body does include six judges appointed by the Supreme Court; however, the majority of its members are not judges — with five public members appointed by the Governor and two attorneys appointed by the State Bar. While many of its enforcement duties involve hearings and other legal matters, these duties are comparable to many other executive branch professional licensing boards and commissions that operate as administrative agencies, not courts.

## Recommendation

### *Change in Statute*

#### **6.1 Clarify in statute that the Commission is a state agency for the administration of judicial discipline, and does not have the power and authority of a court.**

This recommendation would make it clear in statute that the Commission does not have the power and authority of a court, but is instead a state agency within the judicial branch that administers judicial discipline.

## Fiscal Implication Summary

These recommendations would have a one-time publication cost to the State of \$104,813 for placing a constitutional amendment on the ballot.



# TEXAS LOTTERY COMMISSION

*Amy Trost, Project Manager*

## Agency at a Glance

The Texas Lottery Commission administers the state lottery and regulates charitable bingo activities. The Commission's mission is to generate revenue for the State, primarily for education, through the responsible management and sale of lottery products. The Commission also provides charitable organizations the opportunity to raise funds for charitable purposes by conducting bingo. To achieve its mission, the Commission carries out the following key activities:

- licenses lottery retailers; develops, approves, and markets lottery games; conducts lottery drawings; and processes winning ticket claims;
- manages several major contracts for day-to-day lottery operations, mass media advertising, and instant ticket production, among others;
- licenses and monitors bingo industry participants, including charitable organizations and for-profit businesses; and
- collects bingo taxes and prize fees and helps allocate a share of the prize fees to cities and counties.

## Summary

The Texas Lottery Commission walks a tightrope in balancing the many contradictions in the State's attitudes about gaming. The agency is charged with operating the lottery to generate revenue for the State through gaming, but must remain mindful of gaming's many vocal opponents in Texas. The Commission must also balance its effort to efficiently operate the State's lottery while handling the thorny regulation of charitable bingo, a complex, cash-based enterprise with very real opportunities for fraud.

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*The Commission must balance its effort to efficiently operate the State's lottery while handling the thorny regulation of charitable bingo.*

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The Sunset Commission found that while the agency successfully manages the various demands placed on it, an opportunity exists to promote agency effectiveness and accountability by increasing the size of the three-member Lottery Commission so that it is better able to oversee the business of the agency, especially in approving the agency's major contracts. The agency also has opportunities to better track information to help improve its performance and efficiency and potentially increase revenue to the State.

The Sunset Commission also sought to strengthen the agency's ability to effectively regulate charitable bingo by ensuring that licensing fees cover the

cost of regulation and replace the lottery funding the agency must currently use to subsidize bingo regulation. The following material summarizes Sunset Commission recommendations on the Texas Lottery Commission.

## ***Issue 1***

### **An Expanded Lottery Commission With Clear Contract Oversight Would Improve Accountability and Effectiveness.**

The Lottery Commission's three-member, part-time oversight body is unlike many state agency boards in that it does not approve major contracts. Contract approval rests solely with the executive director, including recent approval of the agency's new lottery operator contract worth an estimated \$747 million. Having just three members is also unusual among state agency policy bodies and limits the Commission's ability to develop expertise to help improve oversight.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Increase the Texas Lottery Commission from three to five public members.**

Under this recommendation, Commission members would continue to serve part time, and the requirement that one member have experience with bingo would also continue. With more members, the Commission could consider creating committees to oversee major functions of the agency, such as contracting, that would benefit from increased attention.

#### **1.2 Require the Lottery Commission to approve major contracts.**

This recommendation would give procurement authority to the Commission, which could delegate most procurement duties to the executive director while retaining approval of major contracts as it determines, based on the value of the contract and other factors. Commission members would have final approval authority for major contract awards but would not be required to sign contracts. The executive director would continue to work out final details and sign contracts as is current agency practice.

## ***Issue 2***

### **Improved Information Collection and Reporting Would Enhance Oversight of the Commission's Critical Contracting Activities.**

Contracting for goods and services is a core function of the Lottery Commission, which spent nearly \$158 million, or 78 percent of its administrative budget, on contracts in fiscal year 2011. The Sunset Commission found that the agency successfully follows established contracting standards, but identified opportunities to improve contract oversight by enhancing information gathering and reporting on contract sanctions, negotiations, and close-out analysis.

## Recommendation

### *Management Action*

#### **2.1 Direct the Commission to improve collection and dissemination of information about contract sanctions, outcomes of negotiations, and contract close-out results.**

Under this recommendation, the agency should collect and provide specific additional information to management and Commission members to enhance the tools available for contract oversight. Specifically, the agency should develop a centralized method for tracking and reporting overall contract sanction activity, outcomes of negotiations, and results of contract close-out reports. The information should be tracked by contract and also collected in summary format to help agency management and Commission members evaluate the agency's performance of contract management functions.

## *Issue 3*

### **Regular Analysis and Reporting on the Effectiveness of Ongoing Lottery Strategies Would Improve Accountability and, Potentially, Revenues to the State.**

The Texas lottery has been successful at producing nearly \$1 billion in revenue for the State each year, primarily for the Foundation School Fund. However, like many other mature state lotteries, the Texas lottery is facing ongoing challenges to maintain and increase this revenue into the future. Many complex factors affect lottery performance, such as the mix and design of games offered, number and quality of lottery retailers, and agency administrative efficiency. While Texas' lottery is generally high performing when compared to other states, the agency could benefit from setting formal goals, tracking factors affecting its performance and efficiency, evaluating the success of ongoing programs, and consistently reporting this information to the public and Commission members.

## Recommendation

### *Change in Statute*

#### **3.1 Require the Lottery Commission to develop a comprehensive business plan including specific evaluations of, and goals tied to, efficiency and performance.**

This recommendation would build upon the agency's current business plan aimed at evaluating, and ultimately improving, the agency's performance and cost-effectiveness. The plan would be required to set specific goals, evaluate the agency's overall performance, effectiveness of specific programs and initiatives, and ongoing efficiency of operations. While most critical for the agency's lottery operations, the plan would also include similar analysis and information, as applicable, regarding the agency's regulation of charitable bingo.

## *Issue 4*

### **Inadequate Funding and Inefficiencies in Its Auditing and Inspection Process Severely Limit the Agency's Ability to Regulate Bingo.**

The ability of the agency's Charitable Bingo Operations Division to prevent theft and fraud in the \$700 million-per-year bingo industry is severely hindered by insufficient funding and an inefficient audit

and inspection process. Much of the bingo license fee revenue the State collects is not appropriated back to the agency for bingo regulation, and the structure of the bingo appropriations bill pattern has intensified the impact of recent budget cuts.

Also, the agency does not have authority to charge fees for some of the bingo regulation it provides, while many of the bingo licensing fees it does charge do not cover the costs of regulation. Due to these funding shortfalls, the agency must subsidize bingo regulation with lottery funds which would otherwise go to the Foundation School Fund. In addition, the Division does not have a targeted approach to its audit and inspection process, reducing its ability to use scarce resources efficiently.

## **Recommendations**

### ***Change in Appropriations***

#### **4.1 The House Appropriations and Senate Finance Committees should consider removing bingo prize fees from the agency's bill pattern.**

This recommendation expresses the will of the Sunset Commission that the House Appropriations and Senate Finance Committees consider separating bingo prize fees from the Lottery Commission's bill pattern so that pass-through funds over which it has no control will not be included in the calculation of budget cuts for bingo regulation in the future. Prize fees would continue to be appropriated to local governments through rider. Future budget cuts to the agency would be based on actual agency costs.

### ***Change in Statute***

#### **4.2 Remove the fixed license amendment fee from statute, and require the Commission to adjust fees by rule.**

This recommendation would give the agency flexibility to adjust the license amendment fee to cover costs. The Commission would also determine whether to vary the fee depending on the complexity of the amendment, and set any new fee levels in rule. The public would have the opportunity to comment on proposed fees through the rulemaking process. Fee revenue would still have to be appropriated to the agency, dampening the incentive to raise fees too high.

#### **4.3 Authorize the agency to charge a fee to cover the costs of adding bingo hall workers to the Registry of Approved Bingo Workers.**

The Commission would evaluate the fee level necessary to cover the costs of processing worker registry applications and renewals, and put the fee in rule. Included in the fee would be the cost of a criminal background check, the identification card, processing the application fee, and any other administrative costs deemed appropriate by the Commission. Bingo workers would only pay the fee for new original applications or upon renewal every three years. As with any rulemaking, the Commission would account for stakeholder input when setting the fee level. Also, like any fee, revenues collected must be appropriated to the agency, removing the incentive to set the fee too high.

#### **4.4 Require the agency to use risk analysis to select licensees for bingo inspections, and put its inspection policies in rule.**

The Commission would evaluate risk according to different factors, such as high sales, compliance history, time since last inspection, and other factors the Commission considers important, and then rank licensees by highest risk. On a regular basis, factors could be adjusted as necessary to make the risk plan more effective. This recommendation would also direct the Commission to put its bingo inspection policy in rule to make the process more transparent to licensees and the public.

#### **4.5 Require the Commission to develop a goal to audit all the highest-risk bingo licensees within a certain timeframe, and put its audit policies in rule.**

This recommendation would require the Bingo Division to use its audit risk analysis to determine the highest-risk licensees, set a reasonable goal for auditing them within a specific timeframe, and report this goal to the Commission. A reasonable audit goal would account for limited Division resources, be actually attainable within five years or less, and be updated annually based on the latest risk analysis. The Commission also would describe its audit policy in rule to inform licensees and the public of the agency's efforts to ensure compliance.

### ***Management Action***

#### **4.6 The Commission should reassess the full cost of bingo regulation and seek to adjust license fees and its legislative appropriations request accordingly.**

Under this recommendation, the Commission should reassess its expenses for bingo regulation to account for direct and indirect expenses and the cost of any support services provided by another division of the agency to the Bingo Division. The agency would use this information to set bingo license fees and to report bingo regulatory costs in the agency's Legislative Appropriations Request. On a regular basis, the Commission should analyze each bingo license fee, including those authorized in this report, to determine the full cost of regulation, and adjust each fee level in rule as necessary. In determining any new fee levels, the Commission should take into account input from stakeholders to ensure transparency and fairness to licensees and the public. This recommendation assumes that any extra revenue from license fees would be appropriated back to the agency to cover costs.

## ***Issue 5***

### **Elements of the Bingo Enabling Act Do Not Conform to Commonly Applied Licensing Practices.**

The Bingo Enabling Act has licensing provisions that do not follow model licensing practices and does not contain other standard enforcement provisions, hindering the agency's ability to provide consistent regulation, protect the public, and safeguard state revenue.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Require the Commission to address felony and misdemeanor convictions according to established standards in the Occupations Code.**

This recommendation would require the Commission to adopt guidelines on applying Chapter 53 of the Occupations Code when using criminal history information in bingo licensing and worker registry decisions. This change would ensure that the agency follows the State's guidelines to evaluate the offense as it relates to the responsibilities of the license, whether the person has been convicted of a felony or received deferred adjudication.

#### **5.2 Require the agency to create a standard bingo license renewal process, and remove the nonstandard provisions for two-year bingo license fees.**

This recommendation would require bingo manufacturers and distributors to meet renewal criteria reflecting the requirements for initial licensure, similar to the way statute currently lists renewal

criteria for bingo conductors and lessors. The recommendation would require the Commission to document through rule its renewal process for all bingo licenses from submission to completion. This recommendation would also remove from statute the ability of bingo conductors and lessors who opt for a two-year license to pay the renewal fee annually, and would remove the extra fee that manufacturers and distributors pay for a two-year license.

### **5.3 Remove the statutory fee levels for bingo manufacturer and distributor licenses.**

This recommendation would remove fixed fees for bingo manufacturer and distributor licenses, and instead require the Commission to set fees at levels necessary to cover the costs of bingo regulation. The Commission would be required to put fee levels in rule, allowing stakeholders the opportunity to provide feedback through the rulemaking process.

### **5.4 Require the Commission to develop complaint procedures, track, analyze, and report complaints, and provide more information to bingo licensees.**

The Commission would be required to adopt rules describing policies for all phases of the complaint process, including complaint receipt, investigation, and resolution so the public and bingo licensees can better understand the Commission's complaint process for bingo matters. The recommendation would also require the agency to analyze complaint information to identify trends and issues, report on these trends to the public, and adjust bingo regulation accordingly.

### **5.5 Conform the Bingo Act to the Commission's current practice of conducting hearings through the State Office of Administrative Hearings.**

Statute would clearly provide for the Commission to use the State Office of Administrative Hearings (SOAH) for all bingo-related hearings, and would repeal current provisions that allow the Bingo Division to use an agency-appointed hearings examiner. This recommendation would ensure that the Commission continues to use SOAH's independent hearings.

### **5.6 Authorize the Commission to place suspended bingo licensees and registered workers on probation.**

This recommendation would allow the Commission to use probation of a suspended license or registration as a sanction. The Commission would be required to put probation procedures in rule, including how it would impose appropriate conditions, notify those on probation of necessary actions to meet those conditions, and track their progress.

### **5.7 Require the Commission to amend its current penalty schedule to include a full range of sanctions.**

The agency would develop a schedule of sanctions to include revocation, suspension, and denial of license renewal, in addition to the sanctions currently addressed in the agency's bingo penalty schedule. The Commission would need to develop clear policies to guide its staff in any deviations from this schedule for mitigating factors. The public and bingo licensees would have the opportunity to participate in development of the schedule through the rulemaking process.

### **5.8 Expand the Commission's authority to temporarily suspend bingo licenses to prevent financial losses to the State.**

This recommendation would allow the agency to temporarily suspend a bingo license to prevent financial loss to the State, such as when a licensee fails to remit quarterly taxes or prize fee payments to

the agency. The Commission would be required to identify in rule the circumstances in which it would use this new authority, including in its schedule of sanctions, as recommended above.

## ***Issue 6***

### **Elements of the State Lottery Act Do Not Conform to Commonly Applied Licensing Practices.**

In assessing the Commission's regulation of nearly 17,000 lottery retailers, several areas where the Commission's statute and procedures do not match model licensing standards were found. In particular, additional improvements to the Commission's complaint process are needed to complete the agency's efforts to implement previous Sunset recommendations.

### **Recommendations**

#### ***Change in Statute***

#### **6.1 Require the Commission to develop complaint procedures, track and analyze complaints, and provide better information about what to expect once a complaint is filed.**

Under this recommendation, the Commission would adopt rules that clearly lay out policies for all phases of the complaint process, including complaint receipt, investigation, and resolution so the public and retailers can better understand the Commission's complaint process as it relates to the lottery. The recommendation would also provide ongoing statutory direction requiring the agency to analyze complaint information to identify trends and issues and adjust its regulatory approach as appropriate.

#### **6.2 Conform the Lottery Act to the Commission's current practice of conducting hearings through the State Office of Administrative Hearings.**

Statute would clearly provide for the Commission to use SOAH for all hearings relating to licensed lottery retailers. Requiring the use of SOAH ensures the Commission will continue to use SOAH's independent hearings as it currently does.

## ***Issue 7***

### **The Lottery Commission's Statute Does Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Sunset Commission adopts Across-the-Board Recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. Because a Sunset bill for the Lottery Commission has never passed, several of these provisions are missing entirely from the agency's statute and must be applied, and others must be updated.

In addition, the Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement imposed on an agency under review. The Sunset Commission found that one of the Lottery Commission's nine required reports does not serve a useful purpose and should be eliminated.

## Recommendations

### *Change in Statute*

#### **7.1 Update and apply standard Across-the-Board Recommendations to the Lottery Commission.**

- **Public membership.** This provision would prohibit Commission members from being registered or licensed by the agency.
- **Conflict of interest.** This would prohibit a high-level agency employee from being an officer, employee, or paid consultant of a bingo or lottery professional trade association, and prohibit a high-level employee's spouse from being an officer, manager, or paid consultant of a bingo or lottery professional trade association. The agency's general counsel would also be prohibited from lobbying on behalf of lottery or bingo interests.
- **Grounds for removal.** This provision would specify notification requirements for when the agency's director has knowledge that a potential ground for removing a Commission member exists.
- **Board member training.** This recommendation would clearly establish the type of information to be included in Commission member training, including information regarding the Commission's enabling legislation and other applicable state laws.
- **Separation of duties.** Under this recommendation, the Commission would be required to adopt policies clearly defining its role of setting policy separate from staff responsibilities.
- **Public testimony.** This provision would ensure the opportunity for public input to the Commission on issues under its jurisdiction.
- **Complaint information.** The agency would have to maintain a system for acting on complaints and make information available regarding its complaint procedures. The agency also would be required to maintain documentation on all complaints and periodically notify complaint parties of the status of complaints.
- **Alternative dispute resolution.** This provision would ensure the Commission develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution that conforms to model guidelines by the State Office of Administrative Hearings. The agency also would be required to coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

#### **7.2 Abolish the Commission's report on lottery tickets sold and prizes awarded and continue the Commission's other reports.**

The report of tickets sold and prizes awarded for each lottery game has not been requested in at least five years, is impractical and has largely been supplanted by more timely and useful information available on the agency's website. The remaining eight reports currently required of the Commission would be continued because they provide information useful to both the agency and the public.

## Issue 8

### Texas Has a Continuing Need for the Texas Lottery Commission.

For almost 20 years, the Texas Lottery Commission has both operated the Texas lottery and regulated charitable bingo, and the need for those functions continues. Texans spend up to \$4 billion on lottery tickets and \$700 million on bingo games each year, showing their continued interest in the games.

Revenue from the lottery and bingo continue to be important to the State, local governments, and charitable organizations. The lottery provides about \$1 billion each year to the Foundation School Fund, while each year bingo provides about \$28 million to the State and local governments and another \$34 million to charities. The Lottery Commission has the expertise and organizational structure to administer the lottery and oversee bingo regulation.

### Recommendation

#### Change in Statute

##### 8.1 Continue the Texas Lottery Commission for 12 years.

This recommendation would continue the Commission as the agency responsible for operating the state lottery and regulating charitable bingo. This recommendation would also delete the Sunset date relating to the Lottery Division — vestiges from lottery operations being housed at the Comptroller's Office — while updating the Sunset date relating to the Lottery Commission as a whole.

### Fiscal Implication Summary

These recommendations would result in an estimated annual gain of \$1.47 million to the Foundation School Fund, as summarized below.

*Issue 4* — Providing for the agency to set or adjust various bingo licensing fees would increase revenue to the General Revenue Fund, allowing the agency to recover the full cost of bingo regulation. The additional revenue would ensure that bingo regulation would no longer need to be subsidized by approximately \$1.47 million in lottery funds, resulting in a gain of an equal amount to the Foundation School Fund.

#### Texas Lottery Commission

Fiscal Year	Gain to Foundation School Fund
2014	\$1,470,000
2015	\$1,470,000
2016	\$1,470,000
2017	\$1,470,000
2018	\$1,470,000



# STATE PENSION REVIEW BOARD

*Michelle Kranes, Project Manager*

## Agency at a Glance

The State Pension Review Board (PRB) oversees state and local public retirement systems through the ongoing assessment of their actuarial and financial soundness. The agency also provides policymakers and the public with information on pension-related topics. PRB's main functions include:

- reviewing state and local retirement systems' financial and actuarial condition, and highlighting potential problems;
- collecting and aggregating information on Texas public retirement systems and relevant pension-related topics for the Legislature and the public;
- assessing the actuarial impact of proposed legislation that affects public pension benefits or contribution levels; and
- offering education for public retirement system trustees and administrators.

## Summary

Recognizing the long-term financial liabilities associated with traditional defined benefit public pensions, the Legislature created the State Pension Review Board in 1979 to monitor Texas' local public pensions to help avoid funding problems before they become insurmountable. Through PRB, the State takes a light approach to overseeing an array of local public pensions, reflecting the strong Texas tradition of local control. While statute exempts the statewide retirement systems from most PRB oversight, they voluntarily submit to its watchful gaze. The agency cannot force action by local retirement systems. Instead PRB works to shine light on potential problems affecting the ability of traditional defined benefit pensions to meet obligations to members. As long as Texas has traditional defined benefit public pensions, the State needs ways to monitor these plans and work with them to help ensure they remain financially and actuarially sound without unnecessarily burdening taxpayers. PRB has the resources necessary to analyze public pensions across the state, and it provides a public forum to help hold local pensions accountable.

The Sunset review of PRB identified ways in which the agency has not been focused on its core mission of overseeing the actuarial soundness of traditional defined benefit plans. The agency has long struggled to gain reporting compliance from other types of retirement plans, even though those

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*As long as Texas has traditional defined benefit pensions, the State needs to monitor their financial soundness.*

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plans do not pose enough risk to warrant state oversight beyond basic data collection. Conversely, the Sunset Commission found that PRB lacks critical information from traditional defined benefit plans to allow it to fully evaluate those plans that do present serious funding risks to their members, sponsors, and taxpayers. The Sunset Commission also found opportunities for PRB's delivery of educational resources to reach plans with fewer resources and a greater need for assistance.

## ***Issue 1***

### **Texas Has a Continuing Need for the State Pension Review Board.**

In a state with many scattered local public pensions, PRB serves as a central source of objective pension information, bringing light to financial issues before they become unmanageable. The Board provides a public forum for holding pension systems and their sponsoring governmental entities accountable for their decisions, and the staff provides pension expertise that is especially important as the policy debate about the future of public pensions grows louder. No other state entity provides this needed mix of structure, focus, and expertise to adequately perform this job.

### **Recommendation**

#### ***Change in Statute***

##### **1.1 Continue the State Pension Review Board for 12 years.**

This recommendation would continue the State Pension Review Board as an independent agency responsible for overseeing Texas' public retirement systems and providing pension-related information.

## ***Issue 2***

### **Many Pension Plans Lack Significant Risk, Necessitating Less PRB Oversight.**

Since 1979, when the Legislature created PRB, the pension landscape in Texas has shifted from mostly defined benefit pension plans to a nearly even mix of defined benefit and defined contribution plans. Neither defined contribution nor pay-as-you-go defined benefit plans pose the same long-term funding risks as traditional defined benefit plans, which guarantee a monthly benefit for life and can generate large unfunded liabilities for taxpayers. However, state law requires defined contribution and pay-as-you-go plans to file the same reports as traditional defined benefit plans, even though PRB cannot use much of the information, as its oversight tools are not designed for these plans.

### **Recommendation**

#### ***Change in Statute***

##### **2.1 Exempt defined contribution and pay-as-you-go defined benefit public retirement plans from PRB reporting requirements except for registration and basic plan information.**

This recommendation would exempt defined contribution and pay-as-you-go defined benefit plans from submitting membership reports, investment policies, annual audited financial reports, actuarial valuations, and sponsoring entity audits. These plans would still be required to register with PRB, provide summary plan information, and provide updates to both.

## *Issue 3*

### **Pension System Reporting Requirements Do Not Provide Important Data Needed to Detect Problems.**

PRB monitors public retirement systems' financial condition to expose problems in time to address them before a system's ability to pay benefits is affected. The agency does this by monitoring and analyzing a variety of statutorily required reports submitted by the systems, and may request a system and its sponsor appear before the Board to explain identified problems and how they plan to address them. However, statute does not require public retirement systems to provide the agency with timely updates of changes to their plans or other information necessary to ensure the success of PRB's monitoring role. On the other hand, PRB collects quarterly information from retirement systems that it cannot use to detect financial problems.

### **Recommendations**

#### ***Change in Statute***

#### **3.1 Require public retirement systems to provide PRB a summary of significant plan changes within 30 days of their adoption.**

This recommendation would require public retirement systems to provide PRB a summary of plan changes that affect contributions, benefits, or eligibility, within 30 days of their adoption, instead of the 270 days in current law.

#### **3.2 Require public retirement systems that conduct experience studies to submit copies of the studies to PRB.**

This recommendation would require a retirement system that conducts an experience study to provide PRB a copy within 30 days of the adoption of the study. The four largest statewide systems that are already exempt from most PRB reporting requirements would also be exempt from this requirement.

#### **3.3 Clarify in statute that sponsoring entity audits do not satisfy retirement systems' annual financial reporting requirements.**

While statute already requires an audit, this recommendation would clarify that public retirement systems would have to conduct their own audits, and cannot submit their sponsoring entity's audit to satisfy their statutory annual financial reporting requirement. In conjunction with the recommendation in Issue 2, this change would only apply to traditional defined benefit plans.

#### ***Management Action***

#### **3.4 PRB should no longer require retirement systems to submit quarterly financial data.**

The Board should adjust rules as necessary to stop requiring plans to submit unnecessary quarterly reports.

## ***Issue 4***

### **The Agency's Training Efforts Are Not Reaching Public Retirement Systems With the Greatest Needs.**

Statute authorizes PRB to provide training for public retirement system trustees and administrators, but implies an approach that consists of conferences and seminars. PRB's primary reliance on an annual seminar to deliver training limits the agency's ability to reach all public retirement systems, especially smaller systems with few resources and those located far from Austin.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Clarify the agency's authority to provide training in a way that is accessible to all public retirement system trustees and administrators.**

This recommendation would clarify PRB's authority to provide training to public retirement systems through a delivery method that is cost-effective and accessible to all systems, not just through its current annual seminar. Under this recommendation, the agency would consider using web-based tools, such as webinars, and archive training sessions to make them available on its website.

### ***Management Action***

#### **4.2 Direct PRB to develop training content that more directly assists public retirement systems with managing their plans.**

PRB should develop training content that is Texas-specific and relevant to the day-to-day management of plans. Best practices should be made available on the agency's website. This training content should include topics such as asset allocation, plan design and management, contracting, and updates to federal and state law.

## ***Issue 5***

### **The State Pension Review Board's Statute Does Not Reflect Certain Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review are Across-the-Board Recommendations by the Sunset Commission as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. PRB's statute contains most Across-the-Board provisions but does not include standard provisions relating to conflicts of interest or alternative rulemaking and dispute resolution. The Texas Sunset Act also directs the Sunset Commission to recommend the continuation or abolishment of reporting requirements imposed on an agency under review.

## Recommendations

### *Change in Statute*

#### **5.1 Apply standard Across-the-Board Recommendations to the State Pension Review Board.**

- **Conflict of interest.** This provision would prohibit a board member or high-level agency employee from being an officer, employee, or paid consultant of a pension-related professional trade association. The provision would also prohibit a person from serving on the Board or as a high-level employee if the person's spouse is an officer, manager, or paid consultant of a pension-related professional trade association.
- **Alternative dispute resolution.** This provision would ensure that the agency develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution that conforms, to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency would provide internal training as needed and collect data concerning the effectiveness of these procedures.

#### **5.2 Continue requiring the State Pension Review Board to submit its biennial report to the Legislature.**

This recommendation continues the existing requirement in law for the agency's biennial report to the Governor and the Legislature, though no statutory change is needed to continue this reporting requirement.

## Fiscal Implication Summary

These recommendations would not have a significant fiscal impact to the State. Other impacts are summarized below.

**Issue 2** — Exempting defined contribution and pay-as-you-go defined benefit plans from most PRB reporting requirements would create a small administrative savings for the agency.

**Issue 3** — Clarifying that retirement systems should submit their own financial audit to PRB instead of submitting their sponsor's audit could result in increased costs for the systems. However, the cost of a financial audit for these plans, which have millions of dollars in assets, would be relatively small.

**Issue 4** — Authorizing PRB to provide education and training in a way that is accessible to all public retirement systems using internet technology would not create a need for additional funding. The agency could continue to collect fees for its seminars and redirect some of this funding to cover the cost of web-based training tools.



# PORT OF HOUSTON AUTHORITY

*Katharine Teleki, Project Manager*

## Port Authority at a Glance

The Port of Houston Authority has the dual mission of supporting the entire 52-mile Houston Ship Channel, with its more than 150 public and privately owned terminals and industrial facilities, and owning and operating a handful of these facilities. The scope of the Authority's responsibilities and the Channel is immense, with impacts reaching far beyond the Houston region. In 2011, activity along the Channel contributed to more than one million jobs and \$178 billion in total economic activity in Texas.

As a public governmental agency, the Authority performs the following key activities:

- acts as the federally designated local sponsor of the Channel, partnering with the U.S. Army Corps of Engineers to oversee development and maintenance of the federal waterway;
- owns and operates two container terminals and five public-use general cargo facilities;
- markets and develops trade opportunities for Authority facilities and the Channel generally;
- maintains police and fire departments to monitor and respond to security and safety threats, and partners with industry and governmental entities on security issues; and
- acts as the regulatory body for the Houston port pilots.

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*The Sunset Commission expressed frustration about the need for real change, through state involvement if necessary.*

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## Summary

The Port of Houston Authority is not a broken organization, despite the image that has recently appeared through the harsh glare of the media spotlight. The Authority has certainly had its missteps and the negative attention and resulting Sunset review have been a needed wake-up call for the organization and the Port Commission that oversees it.

However, deeper concerns about the leadership of the Port Commission and the level of engagement by its local appointing entities led the Sunset Commission to send its own wake-up call, expressing its frustration about the need for real culture change, through greater state involvement if necessary. The Authority, local officials, and state leaders now have significant work to do to address these concerns and lead the way to meaningful change.

The Authority faces a period of growth bringing both opportunity and challenges as it coincides with increasingly scarce federal funds for maintenance of the Houston Ship Channel, and a need for alternative funding for infrastructure improvements. These challenges and the scale of the Channel's impact on the state's economy require the Authority to have the vision and the public's trust to do its job, which means constantly weighing its responsibilities as a governmental entity with the reality of its competitive operating environment.

The Sunset Commission's recommendations focus on restoring trust in the organization and helping it move ahead. In addition to major changes to its governance structure, the Sunset Commission proposed a number of reforms to improve the Authority's internal controls and modernize other aspects of its operations. While the Authority has already identified some of these areas for improvement and has begun work to address them, ultimately only a committed leadership can reset the culture of the organization to ensure these critical changes are meaningful and lasting.

## ***Issue 1***

### **Clear Actions Must be Taken to Restore Trust in the Port Commission's Ability to Carry Out Its Important Mission.**

The Authority's basic governance structure has remained largely unchanged for nearly 100 years and does not reflect the Authority's significantly expanded modern scope and impact beyond its origins as a city-county entity. Recent media scandals have contributed to a tangible public skepticism about the Authority that ultimately must be addressed through the organization's governance and continued legislative oversight. A general lack of clarity in the Authority's enabling laws and governance practices creates additional confusion that also undermines confidence.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Modernize the Commission's appointment structure by providing for a new Governor-appointed Commission and adding term limits for Commissioners.**

This recommendation would maintain a seven-member Port Commission but would remove current members, change to a wholly Governor-appointed Commission, and impose term limits. The Governor would appoint five members from a list of no more than 20 names submitted by the Houston-Galveston Area Council (HGAC), and the remaining two members would represent the public not residing in the HGAC region. Commissioner terms would be lengthened from two to four years, with Commissioners limited to serving no more than three, four-year terms, or a total of 12 years.

Current members would not be eligible for new appointments, providing for a total membership change effective September 1, 2013. New appointments would be staggered with terms expiring in February of odd-numbered years. The Governor would designate the Chair of the Commission and appointees would be subject to Senate confirmation.

#### **1.2 Require the Commission to develop and implement policies clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Authority's Executive Director and staff.**

For too long, Commission members have inserted themselves into administrative matters normally carried out by an agency's staff, under its executive director. This recommendation, based on a standard

Sunset provision applied to state agencies, would require the Commission to clearly describe its role in policymaking and oversight of the organization and make the Executive Director and staff responsible for the day-to-day operations of the agency. This policy would adjust and clearly spell out, in one place, all relevant duties currently existing in various Authority laws, contracts, bylaws, and policies. The new policy would, among other factors, clearly establish the Executive Director as solely responsible for employment and personnel decisions.

### **1.3 Require standard best practices to promote ethics and good governance for the Commission and Authority staff.**

This recommendation is based on a combination of best practices, general state laws, and standard Sunset provisions, and includes the following elements.

- **Standards of conduct and code of ethics.** The Commission would be required to adopt and abide by a formal policy governing standards of conduct and ethics for Commission members and employees.
- **Whistleblower policy.** The Commission would be required to adopt and maintain a whistleblower function according to standard best practices.
- **Governance policies.** The Commission would be required to adopt detailed policies comprehensively documenting its governing practices and make these policies available on its website.
- **Financial disclosure.** This recommendation would reinstate the application of personal financial disclosure requirements found in Chapter 572, Texas Government Code for Commission members.
- **Conflict of interest.** This recommendation would prohibit a person from serving as a member of the Commission if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Commission other than compensation or reimbursement authorized by law for Commission membership, attendance, or expenses. In addition, this recommendation would prohibit a person employed by or participating in the management of a business entity or other organization regulated by or receiving money from the Commission from being a member on the Commission.
- **Grounds for removal.** This recommendation would specify the grounds for removal for Commission members and the notification procedure for when a potential ground for removal exists.
- **Commissioner training.** This recommendation would require Commission member training to provide members with information regarding the legislation that created the Authority; its programs, functions, rules, and budget; the results of its most recent formal audits; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.

### **1.4 Require another Sunset review of the Port of Houston Authority in four years.**

The Authority would be subject to Sunset review but not abolishment, with the Sunset Commission providing recommendations to the 85th Legislature in 2017. The Authority would be required to pay the cost incurred by the Sunset Commission in performing the review.

## *Issue 2*

### **The Authority Lacks a Proactive Public Engagement Strategy Necessary to Improve Stakeholder Trust.**

To carry out its mission, the Authority needs public support, since it operates in the midst of a number of local communities and relies on government permits and taxpayer-supported bonds to expand and maintain its facilities. However, recent events highlight the Authority's lack of a comprehensive approach to engage its stakeholders, contributing to a pervasive cynicism about the Authority by the public that was apparent throughout the Sunset review.

### **Recommendations**

#### ***Change in Statute***

#### **2.1 Require the Authority to develop and implement a policy to guide and encourage more meaningful stakeholder involvement efforts.**

This recommendation would require the Authority to develop an official policy providing a clear structure for its overall approach to public involvement including a description of how the Authority would seek to engage stakeholders more proactively; specific actions it would take to go beyond minimum Open Meetings Act requirements; and strategies for how it would use its website to provide clear, updated information on issues of public concern.

#### **2.2 Require the Authority to develop a standard process to receive, respond to, document, and analyze complaints.**

The Authority would be required to develop policies and procedures to formally document and effectively manage complaints organization-wide. The Authority would maintain a system for receiving and acting on complaints, maintain documentation on all complaints, and periodically notify complaint parties of the status of complaints. The Authority would also be required to develop a standard form for the public to use when making a complaint, and make this form available on its website, along with clear information on what to expect once a complaint is filed, including timelines for response and resolution.

As part of this recommendation, the Authority would compile detailed statistics and analyze complaint information trends to get a clearer picture of the problems identified through the complaints received. This data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. Authority staff would report this information on a regular basis to senior management and the Commission.

## *Issue 3*

### **A Formal and Comprehensive Strategic Planning Process Is Critical to the Authority's Future Success.**

The Authority faces unique challenges as a public entity operating in a competitive environment, requiring it to constantly weigh its various and sometimes conflicting responsibilities as it plans for the future. Ongoing infrastructure financing challenges will require creative solutions and increased trust in the Authority's business practices, demanding a robust and well-documented planning

process. However, the Authority currently lacks such a developed process, despite its recent efforts at improvement.

## Recommendation

### *Change in Statute*

#### **3.1 Require the Authority to create a comprehensive strategic planning process, including long-range strategies and shorter-range implementation plans tied to financial and capital planning.**

This recommendation would require the Authority to develop a long-range strategic plan and shorter-range implementation plans, according to the following provisions.

- **Long-range strategic planning.** The Authority would develop a 10- to 20-year long-range plan containing its mission and values statement, and including standard elements of strategic plans. The Authority would identify and work with key internal and external stakeholders to get formal input on the plan, and the Commission would discuss and adopt the plan in an open meeting. The Authority would provide annual progress updates according to performance measures developed through the plan, and complete a comprehensive re-evaluation and update of the plan at least every five years.
- **Mid-range implementation, including five-year financial and capital plans.** The Authority would develop a mid-range plan to carry out the vision and strategies contained in the long range plan, including a five-year financial forecast and five-year capital plan. The capital plan would include a preliminary analysis and prioritization of each project's need. The financial plan would address future financial needs and financing options, and provide information about the relative cost of various options. Authority staff would prepare and present these documents to the Commission in an open meeting, but these plans would not require Commission approval.
- **Short-range budget and capital plan.** The Authority would develop a one-year capital plan with an associated financing plan, integrated with its existing budget, which would be adopted by the Commission in an open meeting. The Authority would include projects in the one-year capital plan only after a rigorous and documented process of analysis and approval.
- **Public information.** The Authority would make its long-range plan, five-year capital plan and financial forecast, and one-year budget and capital plan available on its website.

## *Issue 4*

### **Unclear and Outdated Statutes Prevent the Authority From Having an Effective Internal Audit Function.**

As a reflection of the Authority's historical connection to Harris County, statute designates the Harris County Auditor as the Authority's auditor, and prescribes specific duties aimed at reviewing individual financial transactions and performing a basic check on compliance with laws and policies. However, the Authority has never had a risk-based internal audit function including both financial and operational auditing, a standard oversight tool for both public and private sector organizations. Over the last two years, as the Authority has sought to establish an internal audit function, the County Auditor and the

Authority have come to an impasse in interpreting the proper role of each party due to ambiguous statutes that do not clearly define how the Authority's internal audit function should work.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Require the Authority to establish an internal audit function following accepted internal auditing standards.**

This recommendation would require the Authority to establish an internal audit function, similar to requirements of the Texas Internal Auditing Act and following standards developed by the Institute of Internal Auditors. Under this recommendation, the Authority's internal audit function would report to the Port Commission's Audit Task Force. The Commission would hire the chief audit executive, and approve a risk-based annual audit plan. This recommendation would require the Authority to provide its internal audit reports to the Harris County Auditor and other appointing entities upon request, and make its internal audit plan available on its website.

#### **4.2 Authorize audit oversight of the Authority by the County based on risk and clarify related statutory provisions.**

This recommendation would authorize the Harris County Auditor to perform financial audits of the Authority in an occasional oversight role, much like the role of the State Auditor's Office in auditing state agencies. The County Auditor would no longer have a day-to-day auditing function at the Authority. Statute would require any such audits of the Authority to be part of the County Auditor's overall risk assessment and annual audit plan for Harris County. Statute would continue to require the Authority to reimburse the County Auditor for any audits performed, at standard rates agreed to by the Authority and the County Auditor and updated periodically, in advance of any audits being scheduled or performed. This recommendation would remove the statutory designation of the Harris County Auditor as the Authority's auditor.

#### **4.3 Repeal outdated provisions prescribing the Harris County Auditor's Authority-related audit duties.**

This recommendation would repeal all session law and Texas Water Code audit-related provisions applying to the Port of Houston Authority. These provisions include requirements to pre-approve all Authority claims and contracts, certify funds availability, and prescribe inventory procedures. This recommendation would also repeal provisions for the County Auditor to monitor and audit the Promotion and Development Fund by ensuring the Authority stays within the 5 percent expenditure cap, auditing disbursements, and receiving monthly reports on expenditures. Audit of the Promotion and Development Fund would become part of the new internal audit function's ongoing responsibility.

## ***Issue 5***

### **Use of the Authority's Promotion and Development Fund Requires Additional Controls and Transparency to Avoid Future Controversy and Distraction.**

Due to competitive business functions unique to a governmental entity and with clear statutory authorization, the Authority is certainly justified in spending its Promotion and Development (P&D) Fund for many purposes, such as lobbying for federal dredging dollars and travel to promote trade

development. However, some of the Authority's expenditures allowed under the P&D statute are unusual for governmental agencies and have repeatedly involved the Authority in various media exposés over the years, blemishing its reputation.

Despite these repeated controversies, the Authority has not yet set clearly defined purposes and strict parameters for uses of the Fund, and has not made sufficient efforts to ensure its use of the Fund is transparent both within the organization and to stakeholders and the public. The Authority also lacks basic controls to ensure ongoing accountability and efficiency of Commissioner and staff travel and expenses, typically paid from the Fund.

## Recommendations

### *Change in Statute*

#### **5.1 Require the Port Commission to adopt comprehensive and publicly available policies and provide detailed reporting on the Authority's use of the P&D Fund.**

The policies should, at a minimum:

- define acceptable uses of P&D funds with a more narrow, direct tie to the Authority's mission than current general statute and Authority policy provides;
- define a clear and consistent budget and process for requesting sponsorship funds by Commissioners, outside groups, and staff;
- define proper approval procedures for all types of P&D expenditures, including the proper level of approval or notification among staff, task forces, and the full Commission;
- require each approval to demonstrate the expected impact of the expense and how the expense meets the approved strategic direction for P&D funds previously adopted by the Commission;
- address how the Authority will handle any exceptions to established policies, and provide that any exceptions should be reported in the same manner as any other P&D expenditure;
- provide for evaluation of the policy's effectiveness and regular updates approved by the Commission in a public meeting; and
- provide for regular tracking and detailed reporting of all P&D expenditures to the full Commission and on the Authority's website, including detailed information about Commissioner travel, special uses of the Authority's resources including any public tour vessels, and all sponsorship and other similar spending. The reports would also contain year-to-date summary information on the Authority's P&D expenditures for different expenditure categories.

#### **5.2 Require the Authority to adopt travel and expense policies to include generally accepted expenditure control elements with clear lines of accountability for both staff and Commissioners.**

This recommendation would ensure the Authority revises existing policies to put in place additional controls on staff and Commission travel and other expenses to minimize the cost of these activities. In implementing this requirement, the Authority would establish specific travel spending guidelines such as per diem limits; authorize a documented process for handling exceptions from these limits when and if business needs require; limit or eliminate the use of cash advances in most cases; clarify expense report protocols in its travel and expense policies by requiring separation of Commissioner and staff

expense reports; and specifically prohibit use of P&D or any Authority funds for staff and Commission meals not part of approved Authority travel or part of a business-related function with outside parties.

## ***Issue 6***

### **Procurement at the Authority Lacks Consistent Practices to Ensure Fair, Cost-Effective Purchasing.**

Procurement is a crucial function at the Authority, totaling \$122 million in 2011. Procurement practices at the organization have not matured to match this high level of expenditures. The Authority's organizational approach does not have a clear, central point to coordinate procurement oversight. Some long-standing policies and practices, such as those dealing with small business contracting and legal and lobby services, have not been systematically examined to determine their continuing relevance or structure.

## **Recommendations**

### ***Management Action***

#### **6.1 The Authority should take steps to better manage and align its organizational approach to procurements.**

The Authority should establish a centralized procurement office to provide a clear point of coordination for its procurements and should move the small business procurement function into this new office. Consideration should be given to reducing involvement of the Legal Division in the procurement process and moving aspects of the Division's current responsibilities related to contract development to the new procurement office. Finally, the Authority needs to quickly complete its updated contracting rules and procedures, and improve centralized computerized procurement information to better track and manage procurements.

#### **6.2 The Authority should review small business goals and selected functions.**

The Authority should conduct a more structured evaluation of its 35 percent small business goal to determine its current reasonableness. The Authority should also move promotional functions from the Small Business Division to Public Affairs to keep the small business function focused on promoting small business contracting while shifting responsibility for promotional funding to the Authority's organizational unit most responsible for this function.

#### **6.3 The Authority should eliminate or better manage ongoing professional services contracts.**

The Authority should eliminate the outside Special Counsel and Litigation Counsel functions, which could be performed by the Authority's General Counsel at a savings of about \$282,600 annually. The Commission and staff should also take a more active approach to its lobby program, including annually evaluating the organization's lobby needs and the program's cost-effective approach.

#### **6.4 The Authority should improve disclosure and communications policies for solicitations.**

Staff involved in a procurement should complete nepotism and non-disclosure forms in writing to improve contracting transparency and fairness and avoid improper relationships with contractors. The

Commission should adopt policies prohibiting both staff and Commissioner communications with vendors during active solicitations to promote objective contracting decisions and send a clear message about the Commission's dedication to fair procurements.

#### **6.5 The Authority should take steps to improve the evaluation and award of contracts.**

The Authority should standardize the evaluation committee process to ensure a complete, fair, and consistent approach, regardless of which division is engaged in the contracting. The Commission should change procedures so that the Commission may only accept or reject a staff-recommended vendor in a procurement award. A clear up or down vote, as the Commission has used in the past, would eliminate the appearance of subjective decision making that could affect confidence in the Authority's contracting process. The Authority should also implement an appeals process for resolving vendor protests, and obtain systematic feedback and documentation about vendor performance at contract closeout to help in future procurements.

#### **6.6 The Authority should establish a training program on conflicts of interest and other aspects of contracting.**

The Authority should provide a systematic and ongoing training program for both Commission members and staff, given the importance of the procurement function to the Authority.

## ***Issue 7***

### **The Authority Could Reduce Injuries and Save Money by Implementing a More Proactive Safety Program.**

The Authority has a basic responsibility to ensure the safety of its operations, which include high-risk activities involving specialized skills, heavy equipment, and hazardous material. However, the accident rate for its employees is unacceptably high in some areas, and recent incidents have caused the Authority to re-evaluate the strength of its safety program and its appropriate role in managing activities on its property. Despite ongoing efforts, the Authority's safety program is neither comprehensive nor complete. The Authority rarely exercises its broad enforcement powers beyond informal measures, and does not have standard, organization-wide safety policies or systems for monitoring, documenting, and reporting safety issues.

## **Recommendation**

### ***Management Action***

#### **7.1 The Authority should take aggressive steps to implement a coordinated and comprehensive safety program.**

The Authority should take focused actions to finish developing a comprehensive, organization-wide safety program for the Authority's employees, tenants, and other users. The program should focus first on Authority employees, but should also actively address tenants and other outside users. The Authority should involve a wide range of both internal and external stakeholders in developing the safety program, and establish a clear organizational home to coordinate an active, Authority-wide safety program. The Authority should systematically address standard best practices when implementing the safety program, including instituting a return to work program. Finally, management should adopt timelines for developing and implementing the safety program to ensure quick and accountable implementation.

## *Issue 8*

### **The Commission's Role as the Pilot Board to Regulate Houston Pilots Lacks Focused Oversight and Standard Best Practices for Licensing Functions.**

Pilots serve a crucial role in ensuring safety and the continued flow of commerce along the Houston Ship Channel, which requires about 20,000 piloted ship movements per year. In the Commission's additional role as the Board of Pilot Commissioners for the Ports of Harris County, it approves pilot applicants and submissions for required state commissions, establishes pilotage rates, and investigates incidents involving pilots.

Pilot regulation is not like licensing for most occupations because it is closely intertwined with the Houston Pilots Association, which plays a large role in vetting pilot applicants, scheduling work assignments, providing training, and ultimately asserting more regulatory powers than the Pilot Board. The arrangement is not a significant cause for concern, but does result in concentrating information at the Association that the Board needs to effectively monitor the pilots and carry out its clear statutory responsibility to provide oversight.

### **Recommendation**

#### ***Management Action***

#### **8.1 Direct the Port Commission, acting as the Pilot Board, to take a more active role in oversight of the Houston Pilots.**

The Pilot Board should take action under its existing statutory authority to more actively address safety and public information needs related to pilots. The Pilot Board should amend its adopted Rules and Regulations governing pilots to clearly specify the information it needs to adequately oversee the Houston pilots, such as reporting of pilots' training and continuing education, and the results of any incident investigations involving pilots.

In particular, Authority staff should work with the Pilots Association to develop a formal fatigue mitigation program to educate pilots on best practices relating to rest guidelines and develop hours of service rules to prevent fatigue from extended work hours. Authority staff should also determine the appropriate information to submit to the Pilot Board regarding the program, including the reporting of pilot work records and logs and any fatigue mitigation program activities.

This recommendation also directs the Authority to conduct, at a minimum, statewide criminal history background checks during the pilot application and renewal process. The Pilot Board should adopt guidelines for using these criminal history checks according to the provisions in the Texas Occupations Code to help ensure that the consideration of past behavior relates to the duties and responsibilities of being a pilot.

Finally, this recommendation directs the Pilot Board to implement a complaint process regarding pilots as already required by statute and include information about the process and contact information on the Authority's website. The Pilot Board should also include information about its duties and oversight responsibilities on the Authority's website and in other appropriate Authority publications.

## Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State since the Authority does not receive state appropriations. Specific impacts to the Authority are described below. In addition, Sunset recommendations for improvements to Promotion and Development Fund expenditures, procurement, and employee safety are expected to increase efficiency at the Authority resulting in significant savings, but the exact impact will depend on implementation.

*Issue 1* — Paying the costs incurred by the Sunset Commission in conducting another review of the Authority in four years would result in a cost to the Authority of approximately \$280,000 during the 2016–17 biennium based on a preliminary analysis of the costs to conduct the current review.

*Issue 4* — Eliminating the Harris County Auditor’s day-to-day audit functions at the Authority, and instead having the Authority establish its own in-house internal audit function would likely result in a net annual cost of approximately \$380,000 to the Authority.

*Issue 6* — Eliminating the Commission’s Special Counsel and Litigation Counsel contracts would result in savings to the Authority of about \$282,600 per year if the Authority instead performed these functions in-house using current resources.



# STATE PRESERVATION BOARD

*Faye Rencher, Project Manager*

## Agency at a Glance

Created in 1983, the State Preservation Board (SPB) is responsible for preserving and maintaining the Capitol, General Land Office Building (now the Capitol Visitors Center), Capitol Visitors Parking Garage, and Governor's Mansion; and operating the Bob Bullock Texas State History Museum. The agency's responsibilities vary for each building under its care, but generally staff works to meet the daily needs of building occupants and visitors while still performing the following functions to support the agency's core preservation mission.

- Approve changes to the buildings involving construction, restoration, and repairs.
- Provide maintenance, housekeeping, and grounds keeping services.
- Provide curatorial and interpretive services for the Capitol Historical Artifact Collection.
- Conduct guided tours of the buildings, including educational tours for school children.
- Manage business enterprises to help fund agency operations, including gift shops, cafés and catering, theaters, and parking facilities.

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*Diverse responsibilities, and a unique governance structure, challenge the Board's current approach to overseeing the agency.*

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## Summary

The State Preservation Board is unique in that it has successfully unified the typically separate and often competing interests of building and property management with historical preservation and curatorial expertise. The agency's governance and funding structures are also unique. The Board includes the Governor, Lieutenant Governor, and Speaker of the House of Representatives, and the majority of the agency's funding is made up of earned revenues held outside the Treasury. The Sunset Commission determined that while these unique aspects of the agency afford it the flexibility and agility with which to serve its immediate constituency, they also present certain challenges.

Because most of the agency's board members have other significant state responsibilities, the Board does not meet regularly to provide the level of direction and oversight typical of most other state agencies. SPB has also had to increasingly rely on its earned revenues, rather than general revenue, to fund its operations, indicating the need for a more formal, comprehensive

budgeting process. In addition, the roles and responsibilities for the management of the Bob Bullock Museum are not clearly defined and the aging Museum struggles to be self-sufficient, creating financial and operational risks to the State. The Sunset Commission's recommendations on the State Preservation Board, summarized in the following material, aim to position the agency and the Museum to operate successfully within their unique structures and funding limitations.

## *Issue 1*

### **Texas Has a Continuing Need for the State Preservation Board, but More Regular, Formal Involvement of the Board Is Also Needed.**

Texas continues to need the State Preservation Board to preserve, maintain, and manage the State's \$281 million investment in its key historic buildings and to serve the buildings' occupants and visitors. The agency is governed by a unique Board made up of some of the State's highest ranking and busiest leaders and as such, it rarely meets. Instead, the agency uses informal and less transparent means to obtain needed oversight and direction from the Board.

Recognizing the unique attributes and constraints of having the State's leadership on the Board, the Sunset Commission determined requiring more regular board meetings, but allowing certain members to designate a representative, would provide more direct oversight of agency operations, and still allow for needed flexibility in scheduling these meetings.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Continue the State Preservation Board for 12 years.**

This recommendation would continue the State Preservation Board as an independent agency.

#### **1.2 Allow certain Board members to designate representatives to participate in State Preservation Board meetings.**

This recommendation would allow Board members with the greatest need for scheduling flexibility — the Governor, Lieutenant Governor, and Speaker of the House of Representatives — to designate a representative to act on their behalf during board meetings, including the ability to vote. This recommendation would not require any of the Board members to name a designee, only that they would have that option. Board members would always have the ability to attend and vote in person.

#### **1.3 Require the Board to meet at least twice per year.**

This recommendation would require the Board to meet twice per year, and at other times at the call of the Governor and as provided by Board rule.

### ***Management Action***

#### **1.4 The Board should resume oversight of SPB at a level typical of other agencies.**

Under this recommendation, the Board should resume more regular involvement in and oversight of the agency, including:

- having the internal auditor report directly to the Board, instead of the executive director;

- annually reviewing and approving SPB's annual operating budget and work plan;
- reviewing and approving SPB's Legislative Appropriations Request and Strategic Plan; and
- developing and implementing policies that clearly separate the policymaking responsibilities of the Board and the management responsibilities of the executive director and staff.

## *Issue 2*

### **The State Preservation Board Lacks Certain Key Budgeting and Planning Tools Needed to Best Manage the Agency.**

Since the majority of SPB's funding is held outside the Treasury, its budget is not subject to the same controls most state agencies receive through the appropriations process. Therefore, a clear and consistent budgeting process is critical to effectively plan for and manage agency finances, particularly as the Legislature is asking SPB to rely more on its earned revenues and less on state funding. However, SPB's budget does not include all of its revenues and expenditures, resulting in an incomplete picture of the agency and its operations. The agency also does not tie capital needs, funding, and decision making together to meet the most critical needs of the buildings it manages within limited resources.

### **Recommendations**

#### ***Management Action***

#### **2.1 Direct SPB to create a comprehensive five-year capital improvement plan across all properties it manages and an annual project schedule.**

SPB should develop a formal, documented approach to capital improvement planning and budgeting that articulates needs across all the properties it manages, including estimated costs, justification, prioritization, and funding sources. The agency should use this information to create a five-year capital improvement plan, updated at least annually, and use the plan as the basis for an annual project schedule that includes all properties the agency manages. The Board should approve both the five-year plan and the annual schedule.

#### **2.2 Direct SPB to create and maintain an agency operating budget that includes all areas of expenditure and funding.**

SPB should develop and maintain a comprehensive operating budget that incorporates all of its revenues and expenditures, including those from its funds held outside the Treasury. The operating budget should be presented as a single, summarized document and should be used in addition to the agency's more detailed, internal budget documents and spreadsheets.

#### **2.3 SPB should conduct a regular, comprehensive assessment of the agency's enterprise functions to evaluate potential for optimizing revenue.**

SPB should establish a process to evaluate its enterprise operations based on the overall goals of these operations, such as increasing sales, and the strategies needed to achieve them, such as future marketing campaigns. SPB should also identify specific performance measures to track progress, such as estimates of expected revenues and return on investment.

## *Issue 3*

### **The Bob Bullock Texas State History Museum Needs Planning Tools and a Clear Management Structure to Best Ensure Its Success.**

The roles and responsibilities for the management of the Museum are not clearly defined in statute or rule, which could hinder accreditation by the American Association of Museums. This accreditation requires a museum's governing entity to formally authorize full responsibility for museum operations to the museum director, and to ensure clarity of roles and responsibilities between the governing entity and staff.

The Museum is not required to produce certain planning and budgeting documents needed to provide direction, monitor, and evaluate the effectiveness and success of an organization. Without its own planning and reporting requirements, the Museum, SPB, and the Legislature do not have the information needed to best monitor and evaluate the Museum's operations, performance, and long-term success. In addition, the Board does not have a clear policy specifying the purpose and approved uses of the Museum Fund to help the Museum achieve greater financial stability.

## **Recommendations**

### ***Change in Statute***

#### **3.1 Establish the museum director position in statute.**

To clarify responsibility for the management and operation of the Museum, this recommendation would statutorily require the executive director to employ a museum director.

### ***Management Action***

#### **3.2 Direct the Board to adopt a policy that clearly defines the roles and responsibilities of the museum director and the executive director in the management of the Museum.**

In adopting this policy, the Board should consider specifically delegating certain duties and responsibilities to the museum director, including Museum programming, budgeting, business operations, and staffing.

#### **3.3 Direct the agency to develop a separate strategic plan and annual report for the Museum by January 2013, and continue to provide the Museum Fund Annual Report.**

Under this recommendation, the agency should develop and regularly update a strategic plan to guide the mission, goals, and activities of the Museum. The agency should also produce an annual report on the Museum, which could include program accomplishments and future plans, a comprehensive budget, and performance measures.

The agency should develop and update both the strategic plan and annual report, to be submitted to the Board for review and approval each fiscal year, and should continue to produce the Museum Fund Annual Report.

#### **3.4 Direct the Board to develop a policy on the use of the Museum Fund that governs the Fund's balances by January 2013.**

Under this recommendation, the Board should adopt a policy specifying the purpose and approved uses of the Museum Fund. The Board should consider requiring the Museum Fund to reach an operating

reserve of two months or approximately \$1 million, and that the Fund is used to cover unanticipated operating or capital costs, such as emergency repairs. The Board should also consider requiring expenditures from the Museum Fund be reimbursed as soon as funds become available to help the Museum achieve greater financial stability.

**3.5 By January 2013, allow the museum director to create an advisory council to provide additional advice and expertise on Museum programming and operations.**

The council could include persons with museum expertise, historians, academics, and others such as business and community members. The council should meet on an as-needed basis, and its composition should be determined by the museum director.

## *Issue 4*

### **The State Preservation Board Benefits From the Support of Its Affiliated Nonprofit Organizations, but Additional Controls Are Needed.**

The agency has developed partnerships with affiliated nonprofit organizations, such as the Texas State History Museum Foundation, to further SPB's mission and goals. Relationships between state agencies and closely affiliated nonprofit organizations can be beneficial to the state when both partners adhere to established best practices, but such partnerships also entail inherent risks.

Because of the close relationships of affiliated nonprofits with state agencies under Sunset review over the years, the Sunset Commission has identified standards of conduct and best practices for such organizations. The Board's rules governing the agency's relationships with its affiliated nonprofits include some, but not all, of the best practices identified by Sunset staff.

## **Recommendation**

### ***Management Action***

**4.1 The Board should modify its proposed rules governing SPB's relationships with its affiliated nonprofit organizations to specifically address the following standards and ensure adherence to accepted best practices.**

The rules should include the following components.

- Prohibit SPB employees from directly spending or controlling affiliated nonprofits' funds, and clarify funds raised by the agency's affiliated nonprofit organizations be used only for SPB-directed priorities and legitimate operating expenses of the nonprofit organization.
- Prohibit SPB employees from accepting a salary supplement, bonus, or other direct benefit from affiliated nonprofit organizations. Affiliated nonprofits may provide financial or other benefits to SPB for discretionary award to employees, but SPB would make the final decision on awarding its employees, not the affiliated nonprofit.
- Require the nonprofits to adopt criteria and guidelines for seeking corporate sponsorships to ensure any sponsorship serves the public interest and are aligned with SPB's mission.
- Require, at a minimum, that affiliated nonprofit organizations provide SPB with an annual report and an annual audit.

- Require SPB and its affiliated nonprofits to review their relationships at regular intervals, including consideration of the purpose and continued need for the affiliated nonprofit organization, and any changes needed.

## ***Issue 5***

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

The State Preservation Board balances the competing needs of preserving the most historically significant assets in Texas with their active use. As such, the agency employs a specialized workforce that understands the history, intricacies, and special needs of its buildings. However, in the near future, SPB will likely experience a significant loss of institutional knowledge and expertise as key management staff become eligible to retire. As SPB has relied on the institutional knowledge retained by its long-tenured staff, the agency has not fully documented important staff policies and procedures.

## **Recommendations**

### ***Management Action***

#### **5.1 The State Preservation Board should develop and implement a succession plan to prepare for impending retirements and workforce changes.**

The agency should develop a succession plan to prepare for both anticipated and unanticipated departures of key staff, including identifying positions critical to SPB's operations and establishing a comprehensive strategy for preparing new staff to assume these responsibilities. Also, SPB should identify critical vacant positions and positions at risk of becoming vacant in the near future, and provide training and development opportunities to employees eligible to move into these positions.

#### **5.2 Direct SPB to formally document and regularly update its key duties and procedures in writing, and make them available electronically.**

SPB should capture institutional knowledge regarding the agency's key duties and procedures, and use this information to develop and update employee manuals and other materials to reflect current job duties and procedures for all its programs. The agency should make this information available to all staff electronically, such as through the agency's intranet site.

#### **5.3 Direct SPB to develop and implement an agencywide staff training and development policy.**

The agency should develop a policy that promotes agencywide access to training, including setting division training budgets, as funding allows, and identifying training needs through the employee evaluation process.

## **Fiscal Implication Summary**

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

# PUBLIC UTILITY COMMISSION OF TEXAS

*Karl Spock, Project Manager*

## Agency at a Glance

The Public Utility Commission (PUC) oversees electric and telecommunications companies in Texas. The Legislature created PUC in 1975 to regulate rates and services of monopoly utilities as a substitute for competition. Since then, legislative changes restructuring and deregulating major portions of electric and telecommunications markets have modified PUC's focus. PUC carries out the following key duties.

- Oversees the rates and services of transmission and distribution utilities, certification of retail electric providers, and registration of power generation companies in areas of the state open to electric competition.
- Oversees the operations of the Electric Reliability Council of Texas (ERCOT).
- Regulates the rates, services, and service quality of electric utilities that continue to operate as monopolies in areas of the state not open to electric competition.
- Administers renewable energy and energy efficiency programs.
- Regulates or oversees in varying degrees telecommunications providers.
- Administers several assistance programs for low-income electric or telephone customers.

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*The Sunset Commission  
concluded that most of its  
previous recommendations  
remain appropriate.*

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## Summary

This special purpose review of PUC follows up on the full Sunset review of the agency conducted in the 2010–2011 biennium. At that time, the Sunset Commission adopted and forwarded recommendations related to PUC to the 82nd Legislature that would have provided the agency with additional tools to oversee an increasingly competitive electric market to better protect consumers; required additional PUC oversight of ERCOT to promote grid reliability; and transferred water and sewer rate-related regulation from the Texas Commission on Environmental Quality (TCEQ) to PUC to take advantage of PUC's ratemaking expertise and better focus TCEQ on its complex environmental mission.

Senate Bill 661 included these Sunset Commission recommendations, but the bill did not pass. The Legislature continued PUC for two years in a separate

bill and focused this current Sunset review on the appropriateness of PUC-related recommendations adopted by the Sunset Commission last biennium.

Based on this reevaluation, the Sunset Commission concluded that most of its previous recommendations remain appropriate, and that statutory direction to ensure their implementation is still needed. The following material summarizes PUC-related recommendations from last biennium that continue to be appropriate for consideration, and adds an evaluation of agency reporting requirements that the Legislature now requires of all Sunset reviews.

## ***Issue 1***

### **PUC Lacks Regulatory Tools Needed to Provide Effective Oversight and Prevent Harm to the Public.**

Since 1995, the Legislature has enacted laws restructuring electric and telecommunications industries from traditional rate regulated monopoly markets to markets open to competition. In these restructured markets, PUC relies on licensing-related functions to achieve oversight instead of rate regulation. These functions include granting businesses operating authority, resolving consumer complaints, and taking enforcement actions against violators.

PUC still lacks a degree of regulatory authority necessary for effective oversight in these restructured markets. Unlike various major regulatory agencies such as the Texas Department of Insurance, PUC lacks authority to immediately halt actions that are of imminent danger to the public. Also, the effectiveness of PUC's limited oversight of Competitive Local Exchange Carriers is reduced because the agency's list of these providers is inaccurate, primarily because no renewal process exists to ensure timely tracking and updates of their active status.

## **Recommendations**

### ***Change in Statute***

#### **1.1 In limited circumstances, authorize PUC to issue emergency cease-and-desist orders to electric industry participants.**

PUC could use this authority when an electric industry participant's actions would harm the reliability of the electric grid; are hazardous or create an immediate danger to public safety; or could reasonably be expected to cause immediate harm to consumers in situations in which monetary compensation would be inadequate. The recommendation would provide for expedited notice and hearings when issuing cease-and-desist orders. This recommendation also would authorize PUC to assess administrative penalties against companies that violate an emergency cease-and-desist order, and allow companies to appeal the orders and penalties through the normal enforcement process.

#### **1.2 Require PUC to provide for the renewal of certificates for Competitive Local Exchange Carriers.**

Statute would require Competitive Local Exchange Carriers to renew their certifications by January 1, 2015, so that PUC could develop an accurate list of carriers that continue to be active and subject to its limited oversight. To satisfy the renewal requirement, the carrier would submit the carrier's name, address, and annual report that are currently required. Statute would authorize PUC to adopt rules establishing the process, including determining the time periods for the renewal of registrations and

providing a grace period for active carriers who fail to timely file the required information. Carriers that fail to meet the filing requirement and grace period would need to satisfy all requirements of the original authorization issued by PUC to be reinstated.

## ***Issue 2***

### **Statutory Changes Are Needed to Ensure the Public Utility Commission's Improved Processes of Overseeing the Electric Reliability Council of Texas Continue in the Future.**

ERCOT total spending authorization for 2012 was \$177.1 million from statutorily permitted charges on electricity. With PUC's oversight, the organization uses its funds to ensure the reliable distribution of electricity and coordinate the operation of Texas' competitive electric market. In 2011, the Sunset Commission found that PUC's oversight of ERCOT needed to be strengthened, given the magnitude of funds expended and past issues, including management of debt. Although the Sunset bill failed to pass, PUC and ERCOT have worked together to implement many of the recommended changes, including PUC approval of ERCOT's annual budget and debt financing. However, these recommendations need statutory action to provide needed safeguards and to prevent backsliding.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Require PUC to exercise additional oversight authority of the Electric Reliability Council of Texas by:**

- review and approval of annual budgets for ERCOT on a timeframe determined by PUC;
- prior review and approval of all debt financing, except as negotiated by PUC and ERCOT; and
- annual review of PUC-approved performance measures tracking ERCOT's operations.

Statute would provide PUC with the explicit authority to approve, disapprove, or modify each budget item. The reviews could occur each year or biennially, but the budgets themselves would be annual, as are the budgets of state agencies. PUC would solicit and actively encourage public participation in budget deliberations according to a process it develops. These reviews would be exempt by statute from requirements to conduct proceedings as a contested case under the Administrative Procedure Act, although PUC could still do so as it determines necessary.

By rule, PUC could establish reasonable dates for submission of all necessary budget-related documents, and the necessary level of detail contained within the documents. Statute also would require PUC to review and approve each request for use of debt funding or refinancing of existing debt, except as mutually agreed by PUC and ERCOT.

#### **2.2 Require the System Administration Fee to vary when needed to match revenues to the budget approved by PUC.**

PUC would approve the appropriate level of funding for ERCOT's annual budget, instead of the current procedure of approving the fee needed to raise a particular amount of funding. ERCOT would have the authority to vary the System Administration Fee to help meet budgeted requirements. ERCOT would be expected to closely match funding sources to the budget so that budgetary years

would not end with extra or inadequate funds, and would report to PUC as that agency requires on the matchup between funding and budget. PUC would provide guidelines on the range of variation that would be allowed, and would approve the request for a fee change, taking into account the timing of the change and its effect on market participants and consumers. The fee setting process would not require a contested case under the Administrative Procedure Act.

## ***Issue 3***

### **The State Could Benefit From Transferring Regulatory Functions Related to Water and Wastewater Utilities to the Public Utility Commission.**

In 2011, the Sunset Commission recommended transferring the regulation of water and wastewater utilities from TCEQ to PUC, but Sunset legislation implementing this transfer did not pass. The Sunset Commission's core recommendations on this issue are still appropriate, allowing TCEQ to focus on its basic mission of environmental regulation, taking advantage of PUC's expertise in utility ratemaking and providing consumer assistance.

## **Recommendations**

### ***Change in Statute***

#### **3.1 Transfer responsibility for regulating water and wastewater rates and services from the Texas Commission on Environmental Quality to PUC.**

This recommendation would transfer TCEQ's existing authority for water and wastewater utilities regarding retail and wholesale rates; water and wastewater utility submetering; certificates of convenience and necessity; certain financial, managerial, and technical practices; reporting requirements; and consumer assistance and complaints to PUC. TCEQ would continue to have responsibility for ensuring that utilities meet drinking water standards, sewage treatment requirements, and review of investor owned utility drought contingency plans. The State Office of Administrative Hearings (SOAH) would continue to hear cases related to water and sewer regulation as it does now.

This recommendation requires the agencies to complete the transfer by September 1, 2014. Both agencies would establish a transition team with high-level employees to plan for the sharing of information and the transfer of ongoing cases, property, personnel, powers, and duties. The recommendation would also require the agencies to develop a memorandum of understanding by August 1, 2014 to implement these plans.

#### **3.2 Provide for the Office of Public Utility Counsel to represent residential and small commercial interests relating to water and wastewater utilities, contingent on the transfer to PUC.**

This recommendation would provide for the Office of Public Utility Counsel (OPUC) to represent the interests of residential and small commercial consumers in water and wastewater utility matters under the same authority OPUC has for electric and telecommunications matters. The Office of Public Interest Counsel at TCEQ would not be involved in water and wastewater utility matters at PUC. This recommendation is contingent on the transfer of water and wastewater regulation from TCEQ to PUC.

### ***Change in Appropriations***

**3.3 By rider to the General Appropriations Act, transfer funds from the Texas Commission on Environmental Quality to PUC, the Office of Public Utility Counsel, and the State Office of Administrative Hearings for the regulation of water and sewer utilities.**

The Legislature would appropriate funds to TCEQ from Water Resource Management Account #153 for the regulation of water and sewer utilities. TCEQ would then remit funding for utility regulation to PUC, OPUC, and SOAH based on the level of the legislative appropriation required by rider in the General Appropriations Act. TCEQ's existing rider transferring funds to SOAH for its contract for all hearings would be reduced by the same amount as the transfer for water utility matters to properly account for SOAH costs. The transfer of funds could occur by interagency contract, and TCEQ would not be responsible for the use of the funds.

### ***Change in Statute***

**3.4 Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority, contingent on any transfers, to determine opportunities for standardization.**

PUC would report to the Legislature any recommendations about any identified opportunities to standardize these ratemaking requirements in time for consideration in the 2015 legislative session.

**3.5 Require PUC and the Office of Public Utility Counsel to analyze their staffing requirements, contingent on any transfers, and report potential changes in staffing needs to the Legislative Budget Board and the Governor's budget office.**

This recommendation would require a one-time report to the Legislative Budget Board and the Governor's budget office at the same time PUC and OPUC submit their Legislative Appropriations Requests for the 2016–2017 biennium. The report would detail any staffing changes, including reductions or increases that the agencies recommend. This recommendation gives PUC and OPUC the opportunity during the transition planning process to gain more knowledge about the programs to be transferred and the staffing required to meet program needs.

## ***Issue 4***

### **PUC Statutes Contain Unnecessary Reporting Requirements.**

The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Sunset Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.

The Sunset Commission found that statute requires PUC to compile separate reports relating to customer awareness for telecommunications markets. One report focuses exclusively on telecommunications markets, while the other applies more broadly to both electric and telecommunications utilities, rendering the first report unnecessary.

In addition, statute requires PUC to report on the sufficiency of funds in the System Benefit Fund to the Electric Utility Restructuring Legislative Oversight Committee. This committee was abolished in 2011, and other provisions requiring PUC to report quarterly on the System Benefit Fund to the Governor and the Legislative Budget Board more appropriately serve the intended purpose of this report, rendering it unnecessary.

## **Recommendation**

### ***Change in Statute***

#### **4.1 Abolish PUC's report relating to customer awareness for telecommunications markets and the System Benefit Fund report to the Electric Utility Restructuring Legislative Oversight Committee.**

This recommendation would not affect PUC's separate reporting requirement for customer awareness that relates to both telecommunications and electric markets, or for quarterly reports to the Governor and LBB regarding the System Benefit Fund.

## ***Issue 5***

### **The State Has a Continuing Need for the Public Utility Commission.**

Regulatory oversight is still needed for Texas' essential electric and telecommunications industries. The State needs to regulate remaining electric and telecommunications monopoly utilities to ensure just and reasonable rates and high quality service. In addition, the State still needs to oversee the competitive aspects of the electric and telecommunications markets because of their complexity and the potential for abuse. PUC continues to be the proper agency to carry out this regulation. As in the past, continuation of PUC should be aligned with the review of the OPUC because of the two agencies' interconnected missions.

In the last decade, PUC Commissioners have come to play an increasingly significant role in overseeing the operations of ERCOT. Statutory conflict-of-interest provisions applied to Commissioners have not been updated to reflect this close oversight.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Continue the Public Utility Commission for 10 years.**

This recommendation would continue PUC until 2023, a date that keeps the reviews of PUC and OPUC aligned.

#### **5.2 Prohibit PUC Commissioners from being employed by the Electric Reliability Council of Texas for two years after leaving PUC.**

Current post-employment restrictions prohibit a PUC Commissioner from employment with a public utility in the Commissioner's responsibility for two years after leaving the agency. This recommendation extends the provision to also prohibit employment with ERCOT for two years.

## Fiscal Implication Summary

These recommendations would not have a net fiscal impact to the State, but one issue would have cost-neutral implications, as summarized below.

*Issue 3* — Transferring the regulation of water and sewer utilities from TCEQ to PUC is intended to be revenue and cost neutral initially. Future savings from regulatory standardization could occur, but could not be estimated. Provisions would require TCEQ to transfer 21 full time equivalent employees and annual appropriations of about \$1,695,000 from the Water Resource Management Account as follows:

- PUC, 20 employees and \$1,430,000;
- OPUC, one employee and \$81,000; and
- SOAH, \$184,000.



# RAILROAD COMMISSION OF TEXAS

*Joseph Reed, Project Manager*

## Agency at a Glance

The Railroad Commission of Texas serves as the State's primary regulator of the oil and gas industry. The Commission's mission is to ensure efficient production, safe transportation, and fair access to the state's energy resources, with minimal effects to the environment. To fulfill its mission, the Commission:

- oversees all aspects of oil and natural gas production, including permitting, monitoring, and inspecting oil and natural gas operations;
- permits, monitors, and inspects surface coal and uranium exploration, mining, and reclamation;
- inspects intrastate pipelines to ensure the safety of the public and the environment;
- oversees gas utility rates and ensures compliance with rates and tax regulations; and
- promotes the use of propane and licenses all propane distributors.

## Summary

Despite its misleading name, the Railroad Commission regulates the state's oil and gas industry and has nothing to do with railroads. The clarity of its name matters as the Commission's job takes center stage in overseeing an unprecedented expansion of oil and natural gas drilling in the state. While clearly beneficial to Texas' economy, questions have been raised about the impact of this rapid growth on public safety, groundwater, and local roads and infrastructure. With these challenges in mind, the Sunset Commission concluded having a transparent and objective regulator is more important now than ever.

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*With the recent boom in production, having a transparent and objective regulator is more important now than ever.*

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Having three statewide-elected Commissioners also raises questions regarding the Commissioner's regulatory role versus their need to solicit campaign funds. With campaigns requiring millions of dollars and an increasing majority of these funds coming from the regulated community, the public needs assurance that the Commission's regulatory decisions are made in the public's interest. The Sunset Commission adopted several recommendations to address these concerns.

Ensuring the effective functioning of the Commission's recently expanded authority to self-fund its operations is also important to having a regulatory

agency that can keep pace with a growing industry. Based on Sunset's recommendation, the Legislature enabled the Commission to self-fund its Oil and Gas program in 2011. However, exponential growth in oil and gas production may soon put the Commission at risk of exceeding the \$20 million cap on this funding.

For pipeline safety, the Commission relies on a back-end fee paid by gas utility customers, with no front-end fee on pipeline operators to obtain a permit. This approach limits the Commission's ability to cover its costs to ensure appropriate public safety and oversight of a growing network of oil and gas pipelines.

Inadequate enforcement efforts, a concern raised in 2011 by the Sunset Commission, led to Railroad Commission initiatives to beef up its enforcement processes, with higher penalties for repeat and serious violations. While no clear-cut impact of these changes could be measured as yet, clear statutory direction would help to ensure these efforts continue. The following material summarizes each of the Sunset Commission's recommendations regarding the Railroad Commission, including several recommendations brought forward from the previous Sunset review in 2011.

## *Issue 1*

### **Changing the Railroad Commission's Name and Addressing the Appearance of Conflicts of Interest Remain Critical to Ensuring Transparent and Effective Regulation.**

The Railroad Commission's name does not reflect its duties, is unclear to the increasing number of people coming into contact with oil and gas production, and confuses voters about the duties of the three Commissioners the public elects on a statewide basis. The Sunset Commission also expressed concern about the potential for conflicts of interest when these elected individuals rely significantly on the industry they regulate for campaign contributions. Accepting contributions from parties with contested cases before the Commission poses a particularly egregious conflict. Another concern stems from Commissioners running for other offices while still serving on the Railroad Commission, diverting time and attention from their full-time jobs at the agency.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Change the name of the Railroad Commission of Texas to the Texas Energy Resources Commission and continue the agency for 10 years.**

This recommendation would continue the agency in the same capacity, renamed to ensure increased transparency for its primary role in overseeing energy resource exploration and production in Texas — eliminating confusion regarding any ongoing role with railroads, as it has none. Continuing the Commission for 10 years, rather than the standard 12-year period, would keep the agency's Sunset review aligned with other related agency reviews. As part of this recommendation, the Commission must develop a policy that encourages alternative dispute resolution and negotiated rulemaking, a standard Sunset Across-the-Board Recommendation.

**1.2 Limit the solicitation and receipt of campaign contributions by a Commissioner or any candidates seeking the office to a year and a half timeframe around the election, rather than throughout the full six-year term.**

Commissioners and any candidates seeking office as a Commissioner would be limited to soliciting and receiving campaign contributions in an 18 month period, starting 17 months before the election and ending one month after the election. This structure would provide adequate time for fund raising before the primary and general elections, while not allowing fundraising throughout the person's full six-year term. This timeframe also complies with existing prohibitions against accepting contributions during the time around a regular legislative session.

**1.3 Prohibit a Commissioner from knowingly accepting contributions from a party with a contested case before the Commission.**

This prohibition would apply to political committees affiliated with parties with a contested case before the Commission. This timeframe would extend from the date the hearing is set until the 30th day after the hearing ends. Commission staff would keep a running list of active contested cases, along with the parties to the case, to facilitate compliance with this requirement. Any contribution accepted by mistake must be returned.

**1.4 Require the automatic resignation of a Commissioner that announces or becomes a candidate for another elected office.**

This recommendation would include announcing or becoming a candidate for an elected office in any general, special, or primary election, other than a run for reelection to the Commission. Commissioners opting to run for other office have to resign from their full-time jobs at the agency. Commission members would be allowed to run for other offices in the last 18 months of their terms.

**1.5 Require the Commission to develop a policy in rule to prohibit and ensure against any inadvertent ex-parte communications between hearing examiners and the Commissioners, and hearing examiners and technical staff who are parties to a contested case.**

With in-house hearing examiners, the potential for inadvertent ex-parte communications is clear. Having a policy in rule to specifically prohibit such communications would help ensure against such biases impacting the fair and impartial role of the hearing examiner in overseeing and making recommendations in a contested case before the Commission.

***Management Action***

**1.6 Direct the Commission to review its recusal policy, and revise as necessary to ensure Commissioners' awareness of, and compliance with, its requirements.**

This recommendation would ensure the Commission revisits its standards, requirements, and procedures for recusal of a Commissioner. Clarifying when Commissioners must recuse themselves would help avoid any appearance of bias based on a personal or financial interest in an item up for decision.

## *Issue 2*

### **Self-Funding of the Oil and Gas Program Is Working Well, But Would Benefit From Removal of the \$20 Million Cap on the Oil and Gas Regulation and Cleanup Fund.**

Based on a Sunset recommendation, the 82nd Legislature authorized the Commission to levy surcharges to make its Oil and Gas program self-supporting, and decreased the amount of General Revenue the Commission receives to correspond with these increases in surcharges. While these changes to the Commission's funding sources are working well, the Oil and Gas Regulation and Cleanup Fund has outgrown the purpose of its \$20 million statutory cap. The Fund's cap also restricts the Commission from increasing statutorily authorized surcharges to adequately fund its oil and gas regulatory and cleanup operations. In addition, the Sunset Commission found that the Oil Field Cleanup Fund Advisory Committee has served its purpose and is no longer needed.

### **Recommendations**

#### ***Change in Statute***

##### **2.1 Eliminate the cap on the Oil and Gas Regulation and Cleanup Fund.**

Without a funding cap, the Commission would still only be allowed to spend funds at the level appropriated by the Legislature. To ensure transparency, the Commission would continue to produce its report on the Oil and Gas Regulation and Cleanup Fund to the Legislature and the Legislative Budget Board and to place this report on its website.

##### **2.2 Abolish the Oil Field Cleanup Fund Advisory Committee.**

This recommendation would repeal statute that establishes the Advisory Committee and the requirement for the Committee to provide information on the administration of the Oil Field Cleanup Fund. Instead, the Commission would provide this information through its report on the Oil and Gas Regulation and Cleanup Fund.

## *Issue 3*

### **The Commission's Current Pipeline Safety Fee Does Not Cover the Program's Costs, Limiting the Agency's Ability to Ensure Public Safety Within a Growing Oil and Gas Industry.**

Unlike the Railroad Commission's Oil and Gas program, the Commission's Pipeline Safety program is not entirely self-funded. Instead, the program is funded with a combination of pipeline safety fees, paid by natural gas utility customers, and General Revenue. Pipeline operators applying for a permit must provide information on the pipeline's location, mileage, and type of fluid transported, which the Commission uses to help ensure public safety. However, the Commission does not have authority to assess a fee for operating a pipeline, limiting the Commission's ability to ensure public safety and oversight of a growing industry.

## Recommendations

### *Change in Statute*

#### **3.1 Authorize the Commission to create a pipeline permit fee to help support its Pipeline Safety program.**

This new permit fee would provide a mechanism for the Commission, based on legislative appropriations, to generate additional revenue to better ensure public safety by hiring sufficient field inspectors, and to make information technology improvements to meet the needs of a growing oil and gas industry. The Commission would establish a methodology for developing the fee that reflects the time needed to perform the regulatory work associated with permitting pipelines; the impact of the permit fee on operators of all sizes; and other factors it considers important. The Commission would assess the fee based on the mileage of pipeline, the number of new and renewed permits, the number of amended permits, the number of pipeline systems, or any other factor that enables the Commission to equitably and efficiently recover its costs.

### *Change in Appropriations*

#### **3.2 Add language in the General Appropriations Act to further ensure that the Commission collects fee amounts to offset the costs of administering its Pipeline Safety program, including administration costs and benefits.**

This recommendation would add new rider language in the Commission's appropriation pattern to require that the pipeline safety and pipeline permit fees, and any other miscellaneous revenue associated with the Pipeline Safety program cover, at a minimum, all program costs including direct and indirect administrative costs as well as benefits.

## *Issue 4*

### **While Changes Have Begun, the Commission Continues to Need Statutory Direction to Improve Its Enforcement Processes.**

One of the key findings of the Sunset Commission in 2011 was that the Railroad Commission's enforcement efforts were sorely lacking. Although recommendations to strengthen its enforcement failed to pass during the 2011 session, the Railroad Commission took action on its own to adopt penalty guidelines in rule, field test a more aggressive enforcement policy, and track and publish enforcement data on its website. However, the Sunset Commission concluded that statutory direction is still needed to ensure an ongoing focus on and full implementation of the Commission's new enforcement efforts, particularly in regards to going beyond simple compliance for serious violations and better deterrence of repeat violators.

## Recommendations

### *Change in Statute*

#### **4.1 Require the Commission to develop an enforcement policy to guide staff in evaluating and ranking oil- and natural gas-related violations.**

While the Commission is developing a new policy, this recommendation would ensure the agency includes specific processes for classifying violations based on the risk to public safety or the risk of pollution. The Commission would adopt standards to guide field staff on which type of violations to

appropriately dismiss and which to forward for enforcement. The Commission's standards must take into account an operator's previous violations and compliance history when determining whether to forward a violation.

#### **4.2 Require the Commission to formally adopt penalty guidelines.**

Even though the Commission has adopted penalty guidelines, placing this requirement in statute would help ensure the Commission maintains such guidelines in the future. The Commission would obtain public input when considering penalty amounts based on their risk and severity, making full use of higher penalties for more serious and repeat violations. In addition, the Commission must consider the number of times a violator has had a lease severed when determining a penalty amount.

## ***Issue 5***

### **The Commission's Promotion of Propane Is No Longer Necessary.**

The Commission licenses businesses and individuals that supply, transport, or distribute propane to ensure its safe delivery to both commercial and residential users. In addition, the Commission promotes the use of propane as an alternative fuel, primarily through a rebate program that provides financial incentives to purchasers of propane appliances. The Commission funds the rebates by charging a delivery fee on the sale of propane gas.

The Sunset Commission found that the Railroad Commission's promotion of propane poses a conflict with its role as a regulator of propane. In addition, other state and national organizations promote propane, making the Railroad Commission's efforts duplicative and unnecessary, especially as, in the end, these extra marketing costs simply increase the cost of propane to the consumer.

## **Recommendation**

### ***Change in Statute***

#### **5.1 Eliminate the Commission's statutory authority to promote the use of propane and to charge a delivery fee for this purpose.**

This recommendation would also dissolve the Alternative Fuels Research and Education Division dedicated account, which houses these propane funds. The Commission would continue to administer, until completed, its current propane-related grants and could continue to apply for such grants; provided that each grant covers the agency's associated administrative costs.

These changes would not impact the Commission's ongoing propane licensing activities and the Propane Alternative Fuels Advisory Committee would continue to develop ideas for training and testing of propane licensees. However, the Advisory Committee's statutory authority to advise the Commission on the promotion of propane would be eliminated.

## ***Issue 6***

### **Texas' Interstate Pipelines Lack Damage Prevention Oversight Needed to Ensure Public Protection.**

Texas has more than 214,000 miles of pipeline, including both *intrastate* pipelines that run within the state and *interstate* pipelines that connect to other states. To help ensure public safety, Texas established

a damage prevention program to educate excavators and operators and take enforcement action when violations occur. However, the Commission only has statutory authority over intrastate pipelines. Thus, the Commission's damage prevention program does not extend to interstate lines, leaving a large and potentially dangerous regulatory gap.

## **Recommendation**

### ***Change in Statute***

#### **6.1 Authorize the Commission to enforce damage prevention requirements for interstate pipelines.**

This recommendation authorizes the Commission to extend its damage prevention rules to interstate as well as intrastate pipelines, and to enforce violations affecting both types of pipelines. This approach extends administrative penalty authority to excavators and operators that violate damage prevention rules on interstate lines. The Commission would deposit these penalties in the General Revenue Fund, as it does with penalties from its intrastate pipeline damage prevention program.

## ***Issue 7***

### **The Commission's Mineral Pooling and Field Spacing Hearings Lack Certain Procedural Safeguards for Mineral Owners.**

The Mineral Interest Pooling Act allows the Commission to pool mineral interests for a particular oil or natural gas well under certain circumstances. The Commission's process for informing mineral owners affected by an application for pooling uses outdated and highly technical language, resulting in potential confusion and a general lack of understanding of how to engage in contesting a permit. In addition, mineral owners seeking to protest a pooling permit do not have the option of requesting a local hearing on the matter.

Another concern is that applicants for field spacing exceptions may withdraw their permit at any time, without penalty, adding further burden to the mineral owner who may be forced to travel multiple times to Austin for hearings that never actually occur. Travelling to Austin is time consuming and costly, posing a potential disincentive for mineral owners or land owners wanting to participate in Commission hearings

## **Recommendations**

### ***Change in Statute***

#### **7.1 Authorize a party affected by forced pooling to request a hearing on the matter in the county where the proposed well will be drilled.**

This recommendation authorizes a mineral owner or other party affected by forced pooling to request a local hearing, instead of having to attend a hearing at the Commission's central office in Austin. Further, the Commission could hold such hearings by telephone if both parties agree.

## ***Management Action***

### **7.2 Direct the Commission to develop a fee schedule for increased charges associated with re-filing previously withdrawn applications for forced pooling or field spacing exceptions.**

The Commission should develop an increased fee for those applicants who re-file applications for forced pooling or field spacing exceptions, when they have previously submitted and withdrawn an application set for hearing without giving proper notice. As part of this recommendation, the Commission would develop the timeframe as well as the fee associated with re-filing an application under these circumstances.

### **7.3 Direct the Commission to study the use and development of telecommunication technology designed to increase the transparency of, and the public's participation in, agency hearing processes to ensure the rights of mineral owners and land owners in the state of Texas.**

This recommendation directs the Commission to research and develop a plan to increase the use of technology for affected parties in the agency's hearing process.

## ***Issue 8***

### **The Railroad Commission's Key Reporting Requirement Continues to Serve a Useful Purpose.**

The Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement established in law for an agency under review. The Sunset Commission determined that the Railroad Commission addresses three of its four reporting requirements in one report, the *Report on the Oil and Gas Regulation and Cleanup Fund*, and this report should be continued. The fourth one, the *Report on the Oil Field Cleanup Fund Advisory Committee*, is no longer needed and should be eliminated, as is provided for in Recommendation 2.1.

## **Recommendation**

### ***Change in Statute***

#### **8.1 Continue requiring the Commission to submit its report on the Oil and Gas Regulation and Cleanup Fund to the Legislature.**

This recommendation would continue this one comprehensive report to address three reporting requirements.

## **Fiscal Implication Summary**

These recommendations would have a net positive fiscal impact to the State of about \$2.55 million in fiscal year 2014 and about \$1.5 million each year after, as summarized below.

**Issue 1** — Changing the agency's name would have no significant fiscal impact as the Commission would phase in these changes over time using existing resources.

**Issue 3** — Authorizing a new pipeline permit fee would have a savings of about \$1.5 million to the General Revenue Fund. Revenue from the newly created pipeline permit fee would be used to offset the general revenue the Legislature currently appropriates to the Commission for its Pipeline Safety program.

**Issue 4** — Requiring the Commission to develop an enforcement policy and penalty guidelines would likely generate additional revenue from penalties, which are deposited in the General Revenue Fund. However, the fiscal impact of these changes could not be estimated because penalty amounts generated would depend on the number and seriousness of future violations.

**Issue 5** — Eliminating the propane promotion program and associated fee would result in no net fiscal impact, but would result in the elimination of four FTEs. In addition, eliminating the program's associated dedicated account would result in a one-time gain to General Revenue of about \$1.05 million because all remaining funds in the account would roll into General Revenue Fund 1.

***Railroad Commission of Texas***

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund 1</b>	<b>Change in Number of FTEs From FY 2013</b>
2014	\$2.55 million	-4
2015	\$1.5 million	-4
2016	\$1.5 million	-4
2017	\$1.5 million	-4
2018	\$1.5 million	-4



# SELF-DIRECTED SEMI-INDEPENDENT AGENCY PROJECT ACT

*Steven Ogle, Project Manager*

## Act at a Glance

In fiscal year 2002, the Texas State Board of Public Accountancy, Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners began operating under the Self-Directed Semi-Independent (SDSI) Agency Project Act, allowing them to collect revenues and establish budgets outside of the appropriations process. The Legislature has since extended SDSI status to six additional agencies, but has done so through separate statutory provisions and not under the provisions of this Act. As such, these other agencies were not included as part of this Sunset review of the Act.

The SDSI Act authorizes the Accountancy, Engineers, and Architectural boards to:

- establish and collect licensing fees for deposit outside the State Treasury in the Texas Safekeeping Trust Company;
- adopt an annual budget based on their own projections of revenues approved by the agencies' governing boards;
- keep administrative penalties, capped at 20 percent of an agency's previous year's expenditures, not to exceed \$1 million; and
- enter into contracts and lease property.

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*The rush of agencies to gain SDSI status causes concern for the State's overall approach to SDSI.*

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## Summary

The SDSI Act presented a unique set of challenges for the Sunset Commission to consider. First, the Act appears conceptually incongruous with basic legislative process. Removing state agencies from the appropriations process eliminates a standard tool for the Legislature to see how well these publicly funded entities exercise the power of the State. In addition, as a statute, the Act does not lend itself to the standard criteria for Sunset reviews tailored for evaluating state agencies. More challenging still was that the SDSI Act is but a piece of a larger arrangement with six other state agencies operating under SDSI provisions but not affected by this review. In addition, the waiting list for more agencies desiring SDSI status is expected to grow longer, causing concern for the State's overall approach to SDSI.

Despite these challenges, the Sunset Commission found that the three project agencies have operated appropriately under the SDSI Act and that the Act

should continue beyond its pilot project status with additional safeguards in place to ensure adequate controls and oversight. Separate review of the SDSI Act, however, would no longer be needed as SDSI provisions would be reviewed in conjunction with each agency's Sunset review.

Separate recommendations on the Board of Architectural Examiners and Board of Professional Engineers are laid out in other sections of this report. The Board of Public Accountancy did not undergo Sunset review and is currently scheduled for review during the 2015 legislative session. The following material summarizes the Sunset Commission's recommendations on the SDSI Act.

## ***Issue 1***

### **Despite Lack of a Comprehensive State Approach to SDSI, the SDSI Act Is Working as Intended and Should Be Continued.**

By removing project agencies from the legislative appropriations process, the SDSI Act provides project agencies with flexibility to set their own budgets and to operate on the revenue generated from fees. The Sunset Commission found the agencies to be acting in the public interest and the Act to be working as intended. However, the Commission also found that the Act did not require the project agencies to provide the Legislature with enough detailed or historical context, especially with regard to trend data, to give the more complete picture needed for proper oversight.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Continue the SDSI Act, but remove its separate Sunset date and pilot project status and provide for its future Sunset review with agencies subject to the Act.**

This recommendation would remove the Sunset provision from the Act and would instead require that a Sunset review of an agency operating under the SDSI Act include a review of the agency's performance under the Act to ensure continued legislative oversight. In addition, the recommendation would remove references to project status from the Act since the agencies have completed the test period and the Sunset review of the performance of the pilot project during that time.

#### **1.2 Expand the data in the current reports required by agencies subject to the SDSI Act to help improve oversight.**

This recommendation would continue the reporting requirements in the Act and would require agencies operating under the SDSI Act to provide five years of trend performance data in the reports they are already required to submit to the Governor, Senate Finance and House Appropriations, and Legislative Budget Board each biennium. The report would include trend data on specific measures regarding agency budgets, staffing, administration, licensing complaints and enforcement.

## Issue 2

### The SDSI Act Does Not Provide Needed Safeguards to Ensure Oversight and Prevent Potential Abuse.

Although project agencies are not subject to the appropriations process, they remain state agencies, using state employees, and exercising the power of the State through their licensing and enforcement efforts. However, the SDSI Act does not clearly establish what provisions of general law applicable to all state agencies also apply to project agencies or clearly establish the Comptroller's role in managing the agencies' accounts. The SDSI Act also allows project agencies to keep revenue from administrative penalties, going against good government standards for state agencies and creating the potential for project agencies to use penalties to self-support operations or increase fund balances.

### Recommendations

#### Change in Statute

#### 2.1 Clarify that provisions of general law applicable to state agencies apply to the project agencies if not in conflict with their SDSI status.

This recommendation clarifies the project agencies' status as state agencies by identifying general law provisions applicable to state agencies that also apply to the project agencies. This change would not impose additional duties on the agencies.

#### 2.2 Clarify that project agencies must use the Comptroller's Uniform Statewide Accounting System to make all payments.

By requiring project agencies to use the Uniform Statewide Accounting System to process payments, this recommendation would clarify that they cannot open accounts outside the control of the Comptroller's Office, ensuring ongoing oversight through the Comptroller's post-payment audits.

#### 2.3 Require the project agencies to remit all administrative penalties to General Revenue.

This recommendation would delete language in the SDSI Act that allows project agencies to retain administrative penalties. Instead, agencies would deposit penalties in the General Revenue Fund as is common practice for state agencies to prevent the appearance that penalties are agency revenue generators.

### Fiscal Implication Summary

These recommendations would result in an estimated gain of \$248,000 to the General Revenue Fund, as summarized below.

*Issue 2* — Requiring all three agencies to remit collected administrative penalties to General Revenue would result in an annual gain to the General Revenue Fund in the amount of \$248,000. Conversely, the project agencies would experience annual revenue losses in the following amounts: \$129,000 for the Accountancy Board, \$71,000 for the Architectural Board, and \$48,000 for the Engineers Board.

#### Self-Directed Semi-Independent Agency Project Act

Fiscal Year	Gain to the General Revenue Fund
2014	\$248,000
2015	\$248,000
2016	\$248,000
2017	\$248,000
2018	\$248,000



# STATE EMPLOYEE CHARITABLE CAMPAIGN

*Joseph Reed, Project Manager*

## Campaign at a Glance

The Legislature created the State Employee Charitable Campaign (SECC) in 1993 to provide Texas state employees and retirees, including higher education employees, the option to donate to charities through the convenience of payroll deduction. SECC's major functions include:

- administering the voluntary workplace giving campaign, including the employee donation and payroll deduction process;
- ensuring charities participating in SECC meet the eligibility criteria specified in statute; and
- distributing donations made by state employees to designated charities.

## Summary

Before the advent of SECC, charitable giving in state government workplaces often took place through multiple time-consuming fund-raising drives for different causes throughout the year, which, in some instances, was said to lead to coercion of state employees. SECC changed this dynamic, providing state employees the convenience of monthly payroll deductions for a wide variety of state-approved charities, while limiting workplace solicitation.

In 2011, the Legislature placed SECC under Sunset review, which provided the first in-depth look at its structure and operations since its creation. The Sunset Commission found that in the 18 years since SECC's first campaign, the world of charitable giving has changed significantly, but SECC has not. SECC has continued to operate as it always has, with a paper-based donation system and an unwieldy administrative structure, with little attention given to the cost or effectiveness of its operations to ensure its continued success. The following material summarizes the Sunset Commission's recommendations on SECC.

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*The nature of charitable giving has changed since 1993; SECC has not.*

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## *Issue 1*

### **SECC's Existing Structure Is Outdated and No Longer Effective In Meeting the Changing Needs of the Campaign.**

While SECC is beneficial to state employees who voluntarily choose to donate to charities through payroll deduction, it lacks the leadership structure and direction necessary to make needed decisions and improvements to modernize the Campaign. Statute does not explicitly charge the State Employee Charitable Campaign Policy Committee to develop a strategic vision and a comprehensive budget for the Campaign. Also, SECC's structure — with one statewide campaign and 18 local campaigns — unnecessarily increases administrative costs and prevents the efficient use of employee donations.

### **Recommendations**

#### ***Change in Statute***

#### **1.1 Continue SECC and charge the State Policy Committee with providing leadership for the Campaign, including developing a strategic plan and overall budget.**

This recommendation would continue SECC as a voluntary benefit for state employees, and charge the State Policy Committee with more fully overseeing and providing leadership for the Campaign. The State Policy Committee would be required to develop a strategic plan for SECC and make improvements to the Campaign as needed, and to develop, approve, and oversee SECC's overall budget.

The State Policy Committee would also review and approve or deny charity applications, and collect and report annual summary information about the Campaign's performance. Statute would require the existence of both statewide and local campaigns, but would give the State Policy Committee flexibility to determine how to best ensure a local presence. Finally, this recommendation would remove SECC and the State Policy Committee from future Sunset review.

#### **1.2 Require the Comptroller to provide the State Policy Committee with administrative assistance in overseeing the Campaign.**

Under this recommendation, the Comptroller would be required to provide the State Policy Committee with administrative support in carrying out its oversight duties that the Committee is unable to provide without a staff of its own. The Comptroller would provide the State Policy Committee with assistance in developing and overseeing contracts, developing the budget, auditing charities' distribution of donations, and other administrative functions. The Comptroller would retain current statutory authority to charge participating charities an administrative fee to cover costs incurred to administer the Campaign.

#### **1.3 Restructure the composition and terms of the State Policy Committee.**

This recommendation would change the composition of the State Policy Committee to include nine members, with three members appointed by the Governor with the advice and consent of the Senate, three by the Lieutenant Governor, and three by the Comptroller. One of the Governor's three appointments would be required to be a state retiree. To provide continuity and expertise on the Committee, members would serve two-year staggered terms.

#### **1.4 Apply standard Across-the-Board Recommendations to the State Policy Committee.**

This recommendation would apply standard Sunset Across-the-Board Recommendations related to policymaking boards and modify them to fit the State Policy Committee's structure. Statute would specify the grounds for removal of a State Policy Committee member and members would be required to undergo training before participating on the State Policy Committee.

#### **1.5 Restructure the State Employee Charitable Campaign Advisory Committee.**

Under this recommendation, the composition of the State Employee Charitable Campaign Advisory Committee's membership would change to include representatives of four statewide or local federations, and four other charities participating in the Campaign. This recommendation would also clarify the State Advisory Committee's role and responsibilities, including advising the State Policy Committee and Comptroller in adopting rules and establishing procedures for the operation and management of the Campaign and providing input from charities to the State Policy Committee.

#### **1.6 Remove the statutory language that allows charities that have administrative costs that exceed 25 percent of revenues and that participated in the Campaign before 2003 to participate under old eligibility requirements.**

This recommendation would remove the grandfathered eligibility provision for charities that have administrative costs that exceed 25 percent of revenues. These charities would no longer be eligible to participate in SECC, even if they had participated in the Campaign before 2003. This recommendation would not affect the provision in state law that allows international charities that participated in SECC before 2003 to participate in the Campaign as long as they meet other eligibility requirements.

### ***Management Action***

#### **1.7 Direct the State Policy Committee to evaluate and streamline SECC's current processes, organization, and structure.**

This recommendation directs the State Policy Committee to revamp and modernize the Campaign. The recommendation charges the State Policy Committee with taking a critical look at SECC's current structure and operations, and making changes as needed with an eye towards centralizing administration as efficiently as possible without sacrificing effectiveness.

## **Fiscal Implication Summary**

These recommendations would not have a fiscal impact to the State since SECC receives no state appropriation. Costs to administer SECC would continue to come from a portion of employee donations made through the Campaign, capped at 10 percent of total donations raised.



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**IMPLEMENTATION OF  
2011 SUNSET LEGISLATION**

# IMPLEMENTATION OF 2011 SUNSET LEGISLATION

The Sunset Act requires the Sunset Commission to review the implementation of Commission recommendations and resulting legislation from the previous legislative session. This review is designed to ensure that agencies implement changes adopted by the Legislature through the Sunset process.

In 2011, the 82nd Legislature passed 18 of the 22 bills containing the Sunset Commission's recommendations. These bills contained a total of 189 provisions requiring action by the agencies involved.

Sunset staff worked with each agency affected by these provisions to assess their efforts to implement the required changes. Sunset staff found that agencies have made 87 percent of these changes, with most of the remainder in progress. Key changes implemented as a part of the Sunset process include the following.

- Merging the functions of the Texas Youth Commission and Texas Juvenile Probation Commission into a single agency focused on diverting youth from state institutions and serving them more effectively in their local communities.
- Abolishing the Coastal Coordination Council, On-Site Wastewater Treatment Research Council, Equine Research Account Advisory Committee, and Electronic Government Program Management Office of the Department of Information Resources.
- Improving the transparency, accountability, and reliability of the Texas Department of Transportation through a more integrated and understandable transportation planning process, increased public involvement, and strengthened internal controls.
- Equipping the Texas Commission on Environmental Quality (TCEQ) with the tools needed to take appropriate enforcement action, better targeting regulation according to entities' compliance history, and increasing the transparency of TCEQ's enforcement approach and specific policies.
- Improving the functions of the Division of Workers' Compensation (DWC) at the Texas Department of Insurance to streamline the workers' compensation process by simplifying the resolution of disputes to provide a quicker, more accessible alternative to the courts, improving oversight of medical care provided, and strengthening DWC's ability to take enforcement actions to protect system participants.

The chart, *Summary of 2011 Sunset Legislation Implementation*, shows that 13 percent of the provisions have not yet been fully put into action. The chart on page 167, *2011 Sunset Legislation Implementation 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, or not implemented, is provided by agency in the following exception charts.

### **Summary of 2011 Sunset Legislation Implementation**

Status of Provisions	Number	Percentage
Implemented	164	87%
In Progress	23	12%
Not Implemented	2	1%
Total	189	100%

The Sunset Commission did not conduct a compliance review for four of the agencies under Sunset review, as their Sunset legislation failed to pass into law during 82nd Legislature. The Legislature did not pass the Sunset bills for the Railroad Commission of Texas or the Public Utility Commission of Texas but continued the agencies for another two years through a bill that makes adjustments to the Sunset Commission's review schedule for several upcoming biennia. The Governor vetoed the two Sunset bills that would have continued the Texas Department of Information Resources and the Department of Housing and Community Affairs. However, the 82nd Legislature passed separate legislation during its 1st Called Session reauthorizing both agencies for two years and placing them again under Sunset review.

In addition to statutory changes, the Sunset Commission adopted 45 management recommendations for improvements to agency operations under review before the 2011 Session. In November 2012, the State Auditor's Office evaluated the implementation of the 25 most important management recommendations, identifying five as incomplete or ongoing.<sup>1</sup> Sunset staff, in January 2013, followed up on these five management recommendations and determined that two had still not been implemented. The chart on page 177 provide further information on these two recommendations.

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<sup>1</sup> The Auditor's findings are contained in SAO Report No. 13-006, *A Report on State Agency and Transportation Authority Implementation of Sunset Advisory Commission Management Actions*, which can be obtained at [www.sao.state.tx.us](http://www.sao.state.tx.us).

**Implementation of 2011 Sunset Legislation by Agency\***

<b>Agency</b>	<b>Bill Number</b>	<b>Changes Required</b>	<b>Changes Implemented</b>	<b>In Progress</b>	<b>Not Implemented</b>
Capital Metropolitan Transportation Authority	S.B. 650	9	8	1	—
Coastal Coordination Council	S.B. 656	5	1	4	—
Emergency Communications, Commission on State	H.B. 1861	3	3	—	—
Environmental Quality, Texas Commission on	H.B. 2694	25	23	2	—
On-site Wastewater Treatment Research Council					
Forest Service, Texas	S.B. 646	4	4	—	—
Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of	S.B. 663	12	12	—	—
Housing Corporation, Texas State Affordable	H.B. 1818	4	4	—	—
Injured Employee Counsel, Office of	H.B. 1774	3	3	—	—
Insurance, Texas Department of	H.B. 1951	14	9	5	—
Insurance Counsel, Office of Public	S.B. 647	1	1	—	—
Juvenile Justice Department, Texas	S.B. 653	21	16	3	2
Public Finance Authority, Texas	H.B. 2251	3	3	—	—
Racing Commission, Texas	H.B. 2271	11	8	3	—
Equine Research Account Advisory Committee					
Soil and Water Conservation Board, Texas State	H.B. 1808	8	6	2	—
Speech-Language Pathology and Audiology, State Board of Examiners for	S.B. 662	3	3	—	—
Transportation, Texas Department of	S.B. 1420	28	25	3	—
Water Development Board, Texas	S.B. 660	11	11	—	—
Workers' Compensation at Texas Department of Insurance, Division of	H.B. 2605	24	24	—	—
<b>Totals</b>		<b>189</b>	<b>164</b>	<b>23</b>	<b>2</b>

\* As of January 2013.

**Capital Metropolitan Transportation Authority – S.B. 650**

Senate Bill 650, as adopted by the 82nd Legislature, made numerous changes to the operations and finances of the Capital Metropolitan Transportation Authority (Capital Metro). The legislation included nine changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
<p>1. Requires the Board to maintain a reserve equal to at least two months of operating expenses and requires the Board to adopt criteria for spending any amount in the core balance of the reserve fund.</p> <p>Requires Capital Metro to report to the Legislature on its progress meeting the reserve no later than December 31, 2014, and requires the Board to establish the reserve account no later than September 1, 2016.</p>	<p><b>In Progress</b></p>	<p>In September 2010 the Board adopted a policy on establishment and expenditure of reserves, and is making progress towards establishing the reserve account. Capital Metro estimates a two-month operating reserve to be about \$30 million and estimates a fiscal year 2013 ending balance of about \$26.7 million. Capital Metro is not required to establish the reserve account until September 1, 2016.</p>

### **Coastal Coordination Council – S.B. 656**

Senate Bill 656, as adopted by the 82nd Legislature, abolished the Coastal Coordination Council and transferred its functions to the General Land Office (GLO). The legislation included a total of five changes requiring action. The following chart summarizes four provisions that are still in progress and provides the status of each

<b>Bill Provision</b>	<b>Implementation</b>	
	<b>Status</b>	<b>Comments</b>
1. Abolishes the Coastal Coordination Council and transfers its functions and existing authority to GLO and the Land Commissioner. Provides transition language requiring GLO to consult with the National Oceanic and Atmospheric Administration (NOAA) to ensure continued compliance with federal requirements for maintaining approval of the State's Coastal Management Program.	<b>In Progress</b>	The transfer of Coastal Management Program functions to GLO must be formally approved by NOAA to maintain compliance with federal requirements. GLO estimates NOAA will approve this change by April 2013.
2. Requires the Land Commissioner, by rule, to establish the Coastal Coordination Advisory Committee to advise the Commissioner on the Coastal Management Program. Requires membership to include representatives from each of the previous Council-member agencies, and requires the Commissioner to appoint four members representing specific interests to the Advisory Committee.	<b>In Progress</b>	GLO has formed the Advisory Committee. The Land Commissioner has appointed all but one of his four appointees, and each previous Council-member agency has appointed their representative. However, GLO has not yet established this Committee in rule. Agency staff estimates these rules will be adopted by April 2013, though no official action has been taken.
3. Prohibits the Land Commissioner from reviewing a consistency determination of GLO, the Land Commissioner, or the School Land Board. Requires the Land Commissioner to refer requests for review of these consistency determinations to the Attorney General, and establishes a review process at OAG. Authorizes the Attorney General to adopt rules to implement this process.	<b>In Progress</b>	GLO legal staff is working with the Office of the Attorney General to implement this consistency determination process, but rules have not yet been adopted.
4. Deletes statutory language to remove an outdated provision and language detailing the federal consistency review process to better conform to federal requirements.	<b>In Progress</b>	NOAA approval is necessary to implement this provision, and GLO estimates NOAA will approve this change by April 2013.

**Texas Commission on Environmental Quality – H.B. 2694**

House Bill 2694, as adopted by the 82nd Legislature, continued the Texas Commission on Environmental Quality (TCEQ) for 12 years. The legislation included a total of 25 changes requiring action. The following chart summarizes two provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Transfers the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission of Texas, relating to three types of wells: oil and gas wells, injection wells for oil and gas waste, and injection wells for geologic storage of anthropogenic carbon dioxide.	In Progress	The agencies substantially completed the transfer of the program from TCEQ to the Railroad Commission in September, 2011. The Railroad Commission is continuing to adopt rules relating to the program, most recently publishing proposed rules in the Texas Register on September 7, 2012. Once the Railroad Commission adopts all necessary rules to complete implementation, TCEQ will repeal its rules related to the program.
2. For certain water management plans, requires the executive director to complete a technical review within one year of administrative completion; allows the applicant 30 days to provide additional information to TCEQ and provides for a tolling period; provides for public comment; and requires the Commission to act on a hearing request and act on the application within 60 days.	In Progress	The Lower Colorado River Authority submitted its water management plan to TCEQ on March 12, 2012. TCEQ expects to complete its technical review of the plan well before April 19, 2013, as required by provisions in the bill.

### **Texas Department of Insurance – H.B. 1951**

House Bill 1951, as adopted by the 82nd Legislature, continued the Texas Department of Insurance (TDI) for 12 years. The legislation included a total of 14 changes requiring action. The following chart summarizes five provisions that are still in progress, and provides the status of each.

<b>Bill Provision</b>	<b>Implementation</b>	
	<b>Status</b>	<b>Comments</b>
<p>1. Requires TDI to better define the process for requesting supplemental information from insurers in rule.</p> <p>Requires TDI to track, compile, and routinely analyze the number and type of supplemental information requests it makes. Requires TDI to routinely track, compile, and routinely analyze factors that contribute to rate disapprovals.</p>	<b>In Progress</b>	<p>The Department indicates that draft rules relating to supplemental information are expected to be adopted in May 2013.</p> <p>The Department has initiated a process for tracking supplemental information requests beginning in January 2013.</p>
<p>2. Requires TDI to generally define, in rule, factors that could result in a company being placed under prior approval.</p>	<b>In Progress</b>	<p>The Department has drafted rules relating to prior approval factors and expects their adoption in June 2013.</p>
<p>3. Requires the Commissioner to establish a penalty matrix for violations by State Fire Marshal's Office (SFMO) licensees and to delegate administration of these penalties to the SFMO, by rule.</p>	<b>In Progress</b>	<p>The Department indicates that draft rules have been published and should be adopted in April 2013.</p>
<p>4. Requires TDI 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, and requires TDI to publish the information on its website. Provides that the information will be collected on an annual basis, with the information broken down by quarter.</p>	<b>In Progress</b>	<p>The Department has begun to collect claims information data, and plans to publish the information on its website in March 2013.</p>
<p>5. Requires the Commissioner to study the reduced rate filing requirements for insurers writing residential property insurance in underserved areas, including the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements. Requires the study results to be included in the TDI's biennial report. Expands the factors that the Commissioner must consider when designating areas of the state as underserved to include reasonable access to the full range of coverages and policy forms.</p> <p>Requires the Commissioner to study areas of the state designated as underserved and to determine which areas to designate as underserved every six years.</p>	<b>In Progress</b>	<p>The Department has completed its study of the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements, and published the study in its December 2012 biennial report.</p> <p>The Department has not yet studied the areas of the state designated as underserved nor determined which areas to designate as underserved, as the bill requires it to do once every six years.</p>

### **Texas Juvenile Justice Department – S.B. 653**

Senate Bill 653, as adopted by the 82nd Legislature, abolished the Texas Juvenile Probation Commission and the Texas Youth Commission and transferred their functions to a newly created state agency, the Texas Juvenile Justice Department (TJJD), with a Sunset date of 2017. The legislation included a total of 21 changes requiring action. The following chart summarizes two provisions that have not been implemented and three provisions that are still in progress and provides the status of each.

<b>Bill Provision</b>	<b>Implementation</b>	
	<b>Status</b>	<b>Comments</b>
1. Expands existing language on interagency cooperation to include improvement of services for all youth served by the Department, instead of only youth on probation. Authorizes the Department to cooperate and contract with private foundations in addition to governmental entities.	<b>In Progress</b>	TJJD's Executive Director has met with the executives of the state agencies required by the bill, but these agencies have not met as a group and have not made joint recommendations to the Governor or Legislature to increase collaboration.
2. Requires the Department to operate a single toll-free number to receive any information concerning the abuse, neglect, or exploitation of children in the custody of the Department or housed in a local probation facility. Requires that the Department operate and answer the hotline 24 hours per day, every day of the year. Modifies the provision to require the Department to share complaints received on its 24-hr hotline with the Office of Inspector General and the Office of Independent Ombudsman.	<b>Not Implemented</b>	TJJD operates the hotline as required but has not reduced the two existing toll-free numbers to one because of the prohibitive cost of reprinting all printed material in county facilities.
3. Requires the Department to establish and implement a program evaluation system. Requires the Department to establish and implement a system to evaluate the effectiveness of state and county programs and services for youth.	<b>In Progress</b>	TJJD has completed its evaluation of state programs but has only begun its evaluation of county programs. TJJD anticipates completing its county program evaluation by the end of 2013.
4. Provides that statements made by a child or data obtained during administration of the risk and needs assessment is not admissible against the child at any other hearing. Extends the same protection for the risk and needs assessment as currently exists for the mental health screening.	<b>Not Implemented</b>	TJJD reports that, in practice, staff administering mental health assessments verbally inform youth of this provision. However, TJJD has yet to adopt rules to ensure this practice but intends to do so in fiscal year 2013.
5. Requires the Department to encourage compliance with state or federal educational service standards by facilitating interagency coordination and collaboration among juvenile probation departments, school districts, and the Texas Education Agency; and developing a plan to ensure continuity of educational services to juvenile offenders, including special education for youth with disabilities.	<b>In Progress</b>	TJJD is developing training for local probation departments on state and federal educational service standards. Over the next two years, TJJD anticipates collaborating with probation departments, school districts, and the Texas Education Agency on a plan to ensure continuity of educational services to juvenile offenders.

### **Texas Racing Commission – H.B. 2271**

House Bill 2271, as adopted by the 82nd Legislature, continued the Texas Racing Commission for 6 years. The legislation included a total of 11 changes requiring action. The following chart summarizes three provisions that are still in progress and provides the status of each.

<b>Bill Provision</b>	<b>Implementation</b>	
	<b>Status</b>	<b>Comments</b>
1. Requires the Commission to designate racetrack licenses as either active or inactive and develop, in rule, renewal criteria for licenses designated as inactive. Requires the Commission to perform reviews of active racetrack licenses every five years. Designates a one year renewal timeframe for inactive racetracks. Authorizes the Commission to develop and assess fees as part of the renewal process. In addition, authorizes the Commission to refuse to renew an inactive racetrack license. Instructional Provision that requires the Commission to designate each racetrack license as either inactive or active by no later than September 1, 2012.	<b>In Progress</b>	The Commission adopted all necessary rules except on the scheduling and process for conducting reviews of active race tracks. The Commission designated all licenses as active or inactive at its meeting on August 14, 2012. The Commission will consider a proposed rule on the scheduling and process for conducting reviews of active race tracks at its February 19, 2013 meeting.
2. Adds standard Sunset language requiring the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.	<b>In Progress</b>	The Commission will consider a proposed rule implementing this recommendation at its February 19, 2013 meeting.
3. Specifies that an active racetrack license effective until the license is designated as inactive or is surrendered, suspended, or revoked. Also specifies that the commission should use revocation only when it reasonably determines that other disciplinary actions are inadequate.	<b>In Progress</b>	The Commission will consider adopting a proposed rule eliminating perpetual racetrack licenses at its February 19, 2013 meeting.

**Texas State Soil and Water Conservation Board – H.B. 1808**

House Bill 1808, as adopted by the 82nd Legislature, continued the Texas State Soil and Water Conservation Board for 12 years. The legislation included a total of eight changes requiring action. The following chart summarizes two provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Clarifies that the State Board’s brush control efforts should focus on water supply enhancement and changes the name of the Program from Brush Control to Water Supply Enhancement. Requires the State Board to establish program goals.	In Progress	The State Board has changed the name and focus of its program from the Brush Control Program to Water Supply Enhancement Program. The State Board has also created draft goals and an outline for its next Water Supply Enhancement Plan. The State Board expects to adopt and publish the Plan by July 2013.
2. Requires the State Board to develop a system to rank and prioritize water supply enhancement projects, rather than areas of the state, based on water conservation need and water yield. Requires the State Board to rank, based on need for water conservation and potential water yield, watershed projects across the state. Specifies criteria for project prioritization, including projected water yield through a model in a feasibility study.	In Progress	The State Board has developed the components necessary for ranking and prioritizing water supply enhancement projects. Specifically, the State Board, in consultation with stakeholders and hydrologists, has completed a system for ranking water conservation need, created a spatial analysis system to determine the highest water-yielding acres of a watershed, and adopted rules to reflect new statutory changes. The State Board expects to fully implement these components in a comprehensive system to rank and prioritize water supply enhancement projects in July 2013.

### **Texas Department of Transportation – S.B. 1420**

Senate Bill 1420, as adopted by the 82nd Legislature, continued the Texas Department of Transportation (TxDOT) for four years. The legislation included 28 changes requiring action. The following chart summarizes three provisions that are still in progress and provides the status of each.

<b>Bill Provisions</b>	<b>Implementation</b>	
	<b>Status</b>	<b>Comments</b>
<p>1. Requires TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agency-wide. Requires the Department's public involvement policy to make efforts toward clearly tying public involvement to decisions made by the Department and providing clear information to the public about specific outcomes of public input.</p>	<b>In Progress</b>	<p>The Transportation Commission has adopted a Public Involvement Policy that requires the agency to "purposefully involve the public in planning and project implementation by providing for early, continuous, transparent and effective access to information and decision-making processes." The agency is preparing guidance for staff to ensure that efforts are made to tie public input to Department decisions, and to notify the public on the specific outcomes of public input. The agency anticipates this guidance will be completed and distributed by mid-2013.</p>
<p>2. Authorizes TxDOT to enter into comprehensive development agreements (CDAs) for all or part of the following projects, with this authority expiring on August 31, 2015 for all of the projects except the State Highway 99 (Grand Parkway) project:</p> <ul style="list-style-type: none"> <li>• the State Highway 99 (Grand Parkway) project;</li> <li>• the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;</li> <li>• the North Tarrant Express project in Tarrant and Dallas Counties, including on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E); on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);</li> <li>• the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;</li> <li>• the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;</li> </ul>	<b>In Progress</b>	<p>Six of the authorized projects are currently in various stages of procurement or implementation. The seventh, U.S. Highway 290 in Houston, is being constructed via the traditional design-bid-build method, rather than as a CDA.</p> <p>The following projects have not received full environmental clearance.</p> <ul style="list-style-type: none"> <li>• The State Highway 99 (Grand Parkway) project, Segments B, C, H, and I-1. Anticipate clearance late 2013/2014.</li> <li>• The North Tarrant Express project in Tarrant and Dallas Counties, including on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4). Currently under review.</li> <li>• The State Highway 288 project in Brazoria County and Harris County. Currently under review; anticipate clearance in 2013.</li> <li>• The U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99. Record decision approved August 2012; anticipate remaining re-evaluations by 2013.</li> </ul>

**Texas Department of Transportation – S.B. 1420 (continued)**

<ul style="list-style-type: none"> <li>• the State Highway 288 project in Brazoria County and Harris County; and</li> <li>• the U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99.</li> </ul> <p>Before entering into a CDA for these projects, requires the Department to obtain the appropriate environmental clearance by August 31, 2013 for any project other than the State Highway 99 (Grand Parkway) project, and present a full financial plan for the project, including costing methodology and cost proposals, to the Commission. Requires the Department to present a report to the Commission on the status of each CDA project, including status of environmental clearance, explanation of any project delays, and anticipated procurement completion date, by December 1, 2012.</p>		
<p>3. Authorizes TxDOT or certain Regional Mobility Authorities (RMAs) to enter into a CDA relating to improvements to or construction of the following projects, with this authority expiring on August 31, 2015:</p> <ul style="list-style-type: none"> <li>• the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;</li> <li>• the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; or</li> <li>• a project consisting of the construction of the Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847; and the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100.</li> </ul> <p>Before entering into a CDA for these projects, requires the Department or RMA as applicable to obtain the appropriate environmental clearance by August 31, 2013 and present a full financial plan for the project, including costing methodology and cost proposals, to the Commission. Requires the Department or RMA to present a report to the Commission on the status of each CDA project, including status of environmental clearance, explanation of any project delays, and anticipated procurement completion date, by December 1, 2012.</p>	<p><b>In Progress</b></p>	<p>These projects are currently in various stages of procurement or implementation.</p> <p>The following projects have not received full environmental clearance.</p> <ul style="list-style-type: none"> <li>• The U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue. Anticipate completion of environmental study in 2014.</li> <li>• A project consisting of the construction of the Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847. Environmental study in progress.</li> <li>• The South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100. Final Environmental Impact Statement in progress.</li> </ul>

**2011 Sunset Management Recommendations Not Implemented\***

<b>Texas Forest Service</b>		
<b>Management Recommendation</b>	<b>Implementation</b>	
	<b>Status</b>	<b>Comments</b>
1. Direct the Texas Forest Service to reduce the current number of its field offices, co-locating staff with other public agencies when possible.	<b>Not Implemented</b>	<p>The Texas Forest Service conducted a comprehensive assessment of the agency's office locations but determined that no other office closures are necessary. The number of agency field offices has expanded since publication of the Sunset report from 52 to 67.</p> <p>The agency notes that most field offices have a wildfire response component making them important for timely and effective response to minimize damage and loss of life and property. The agency also notes that more than half of its field offices are co-located with other public agencies.</p>
<b>Texas Water Development Board</b>		
<b>Management Recommendation</b>	<b>Implementation</b>	
	<b>Status</b>	<b>Comments</b>
1. The Board should request a full exemption for the Texas Natural Resources Information System (TNRIS) from the data center services contract at the Department of Information Resources (DIR) to accommodate its statutory emergency management responsibilities.	<b>Not Implemented</b>	<p>While the Board requested, and was denied, an exemption for the entire agency from the data center services contract in spring 2011, it has not requested an exemption specific to TNRIS. The Board and DIR have worked on an alternative approach to address several of the Sunset Commission's concerns related to TNRIS through the Pilot Texas Cloud Offering. However, uncertainty regarding the use of contract funds for a continued cloud vendor threatens to require the Board to again work with DIR to find a solution for TNRIS.</p>

\* As of January 2013.



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# APPENDICES

# APPENDIX A

## *Sunset Review Schedule – 2015*

Accountancy, Texas State Board of Public  
Administrative Hearings, State Office of  
Aging and Disability Services, Department of  
Assistive and Rehabilitative Services, Department of  
Banking Commissioner, Office of  
Children With Special Needs, Interagency Task Force for  
Consumer Credit Commissioner, Office of  
Developmental Disabilities, Texas Council for  
Family and Protective Services, Department of  
Finance Commission of Texas  
Guardianship Certification Board  
Health and Human Services Commission  
Health Services, Department of State  
Health Services Authority, Texas  
People with Disabilities, Governor's Committee on  
Purchasing from People with Disabilities, Texas Council on  
Regional Education Service Centers  
Savings and Mortgage Lending, Office of Commissioner and Department of  
Securities Board, State  
Soil and Water Conservation Board, State  
Tax Division, State Office of Administrative Hearings  
Transportation, Texas Department of  
Windstorm Insurance Association, Texas  
Workforce Commission, Texas  
Workforce Investment Council, Texas



# 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 improve an agency or correct problems identified during the review. These changes 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?
13. Do the agency's statutory reporting requirements effectively fulfill a useful purpose?

## ***Appendix B***

### **Continuing an Agency**

If the Commission recommends that an agency be continued, it has legislation drafted for that purpose, and to make improvements identified during the Sunset review. Sunset legislation typically continues an agency for 12 years, although the Commission may recommend a shorter term.

### **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 implementation of a Sunset bill before the next legislative session. In addition, the State Auditor evaluates the agency's compliance with certain non-statutory management changes recommended by the Commission.