

STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS TAX

DIVISION

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Agency at a Glance

The State Office of Administrative Hearings (SOAH), established in 1991, serves as the State's independent centralized administrative hearing tribunal to conduct unbiased contested case hearings and alternative dispute resolution proceedings for state agencies. SOAH's mission is to conduct these proceedings in a fair, prompt, and efficient manner, and to provide fair, logical, and timely decisions. The agency carries out its mission through the following key activities.

- Conducting administrative hearings for contested cases involving disputes between state agencies and private parties, and issuing final decisions or proposals for decision used by agencies to make a final determination.
- Performing alternative dispute resolution, such as mediation, to assist parties involved in contested cases to come to an agreement to avoid more costly and lengthy administrative hearings.
- Overseeing contested case hearings for the Texas Department of Public Safety (DPS) and issuing final decisions concerning individuals who have their driver's license suspended for allegedly driving while intoxicated.
- Handling contested cases for the Comptroller of Public Accounts dealing with the collection, receipt, administration, and enforcement of state taxes and fees.

SOAH efficiently provides a needed and independent venue for contested matters.

Summary

The Legislature's decision in 1991 to create SOAH set Texas administrative law on a course for increased independence, impartiality, fairness, and efficiency. The Sunset Commission found SOAH provides a needed and independent venue for contested matters, produces quality decisions that are rarely overturned, and does its work in a timely manner. In evaluating the efficiency of having a separate, independent state agency to conduct contested case hearings, the Sunset Commission found SOAH performs more work today with fewer resources than it did during its last Sunset review in 2002. However, the Sunset Commission identified the need to further strengthen SOAH's independence, improve its management of staff and diverse caseload, and stabilize its funding to make revenue, and budgeting, more predictable.

Statute also required Sunset to conduct a special purpose review of SOAH's tax division, whose functions were transferred from the comptroller's office in 2007. Responsibility for conducting these tax hearings will revert back to the comptroller's office on September 1, 2015 unless specifically continued at SOAH. The Sunset Commission determined tax hearings should continue at SOAH, but several safeguards initially put in place when the transfer occurred are now problematic and should be removed to ensure SOAH's independence.

Finally, the Sunset Commission found little basis for commonly heard complaints such as SOAH taking too long to hold hearings and make decisions, or that its administrative law judges lack expertise needed to handle certain cases, but did find room for improvement in providing informational materials to parties without legal representation. The following material summarizes the Sunset Commission's recommendations on SOAH.

Issues and Recommendations

Issue 1

SOAH's Budget Planning and Billing Processes Do Not Effectively Target and Fund the Agency's Needs, Jeopardizing the Agency's Operations.

In fiscal year 2013, SOAH spent \$9.1 million — one-third from general revenue, one-third from highway funds, and one-third from interagency contracts. Unfortunately, SOAH has difficulty predicting work that will come from each agency, leading to inaccurate budget estimates and lapsed funds. Although statute requires agencies that contract with SOAH to pay up-front, lump-sum payments annually, SOAH has not enforced this payment method. The Sunset Commission also found SOAH's hourly rate is too low to cover its costs, while the amount of funding to conduct hearings for the Texas Commission on Environmental Quality (TCEQ) is too high. SOAH also lacks formal budget controls necessary to ensure it maintains and reports accurate financial and performance data.

Recommendations

Change in Statute

1.1 Authorize SOAH to adjust its hourly rate to recover the full cost of services.

This recommendation would give SOAH clear authority to set its hourly rate to recover costs and end the practice of using general revenue to subsidize the costs of its contract-funded hearings. SOAH would not have an incentive to overcharge agencies because the Legislature would retain oversight of SOAH's funding through the appropriations process.

1.2 Require agencies contracting for services with SOAH to send their caseload projections to SOAH and the Legislative Budget Board each biennium.

This information would help SOAH develop its legislative appropriations requests and ensure it has information to calculate accurate caseload projections.

1.3 Authorize agencies to make up-front, lump-sum payments to SOAH annually or quarterly and only require adjustments if actual costs are not within 10 percent of projections.

This recommendation would allow agencies contracting for services to make fixed annual or quarterly payments to SOAH at the beginning of the payment period before SOAH renders services. If actual costs are no more than 10 percent above or below projected costs, SOAH would not charge extra to cover shortfalls and would keep excess funds. Ultimately, this recommendation would reduce the administrative burden from billing after rendering services and allow SOAH to pool its contract funds to ensure adequate cash flow throughout the year.

Management Action – Nonstatutory

1.4 Direct SOAH to evaluate, on a regular basis, the effectiveness of its caseload projections to predict actual caseload and report this information to the Legislative Budget Board.

1.5 Direct SOAH to require all agencies contracting for services to pay lump-sum amounts upfront.

Contracting agencies could make up-front payments on either a quarterly or annual basis.

1.6 Direct SOAH to evaluate and improve its budget control processes and policies.

To ensure SOAH continues reforms based on recent audit findings to improve and make its budgeting process more accurate, the agency should identify where additional budgetary controls, such as formal reviews of budget spreadsheets, are needed and formalize its budget control processes by developing and adopting written policies and procedures.

Change in Appropriation

1.7 The Senate Finance and House Appropriations committees should consider removing the requirement that TCEQ pay SOAH \$1 million, regardless of actual costs.

This recommendation expresses the will of the Sunset Commission that the Senate Finance and House Appropriations committees consider removing the requirement in SOAH's appropriations bill pattern that requires TCEQ to pay \$1 million for contested case hearings, regardless of actual caseload. Instead, TCEQ's lump-sum payments would be based on average costs over the last three years, like most other agencies paying SOAH by contract. This change would better reflect TCEQ's actual costs, greatly reducing the likelihood of excess funds remaining unspent at the end of the fiscal year.

Issue 2

SOAH Lacks Organizational Flexibility and Certain Management Tools to Best Manage the Agency.

Statutory requirements that SOAH maintain specific divisions for tax, utility, and natural resource conservation cases limits its flexibility to restructure staff to streamline operations and meet changing demands. SOAH's performance evaluation process also needs improvement, including enhanced performance feedback for mid-level managers and field offices. In addition, SOAH needs additional tools and policies to bolster managers' training and oversight of judges, and ensure judges meet deadlines and performance targets.

Recommendations

Change in Statute

2.1 Remove the statutory requirements for SOAH to maintain separate tax, natural resource conservation, and utility divisions.

This recommendation would give SOAH flexibility to organize as necessary to deal with workload requirements. Since experience requirements for judges are important to ensure needed expertise rather than organizational structure, this recommendation would not affect existing experience requirements of judges who hear contested matters for the Public Utility Commission, TCEQ, and the comptroller's office.

2.2 Require referring agencies to provide SOAH with a copy of their final orders.

Under this recommendation, when SOAH issues a proposal for decision to a referring agency that makes the final decision, that agency would send an electronic copy of the final order to SOAH. This recommendation ensures SOAH has the information necessary to track and report appropriate performance measures and to evaluate modified and overturned proposals for decision to help identify trends and areas for improvement.

Management Action – Nonstatutory

2.3 Direct SOAH to improve its performance evaluation process.

Under this recommendation, SOAH should enhance its performance evaluation process by increasing opportunities for employee input, clarifying guidelines for promotions, and making its managers' meetings to discuss employee performance more transparent.

2.4 Direct SOAH to improve and formalize certain management tools.

This recommendation directs SOAH to strengthen its management training, establish clear procedures for monitoring hearing deadlines, and ensure judges' performance is reviewed and evaluated to identify ways to improve the hearing process and quality of decisions.

2.5 Direct SOAH to track and analyze informal complaints and improve its customer service survey.

Issue 3

Contested Tax Case Hearings Should Continue at SOAH, but With Greater Independence.

Since 2007, SOAH's tax division has conducted hearings for taxpayers who contest actions taken by the comptroller when collecting and enforcing certain taxes, such as sales and use or franchise taxes. The Sunset Commission found SOAH has become efficient at handling these tax hearings and employs highly qualified tax judges who produce good decisions that are rarely overturned. As a result, the Commission determined SOAH should continue to conduct these tax hearings to ensure fairness and impartiality, but that SOAH's independence should be improved.

Recommendations

Change in Statute

3.1 Continue tax hearings at SOAH and remove the separate Sunset date for the tax division.

Under this recommendation, tax hearings would remain at SOAH and be reviewed with all of the agency's other functions as part of its future Sunset reviews.

3.2 Remove outdated provisions that give the comptroller undue and unnecessary authority over tax cases and judges.

To address the perception that the comptroller can exercise undue influence over SOAH's tax decisions, this recommendation would remove the requirement that the comptroller provide SOAH with the comptroller's priorities and policy needs. The comptroller's authority to evaluate tax judges' performance and approve their assignment to non-tax cases would also be removed.

3.3 Change the statutory experience requirements for administrative tax law judges.

This recommendation would remove the problematic statutory requirement that SOAH tax judges have devoted at least 75 percent of their legal practice to Texas tax law in at least five of the last 10 years. However, this recommendation would retain other statutory experience requirements for tax judges, such as having substantial tax experience and at least seven years practicing law.

Issue 4

The State's Approach to Processing Administrative License Revocation Hearings Leads to Delays and Lacks Efficiency.

Administrative license revocation (ALR) hearings for drivers who have allegedly driven while intoxicated accounted for 84 percent of SOAH's caseload in fiscal year 2013. Unlike any other hearings held at SOAH, the agency referring the cases, DPS, schedules initial hearing dates and continuances. This shared responsibility for docketing cases has led to communication breakdowns between the agencies, scheduling confusion, unnecessary surges in SOAH's workload, and delays. SOAH's productivity in conducting ALR hearings is further constrained by DPS' docketing system as well as its own teleconferencing technology, which is often insufficient and unreliable.

Recommendations

Change in Statute

4.1 Transfer docketing responsibilities for ALR hearings from DPS to SOAH through a memorandum of understanding.

This recommendation would require SOAH and DPS to develop and adopt a memorandum of understanding (MOU) no later than September 1, 2016 establishing that SOAH has primary scheduling responsibility for ALR hearings. The MOU would set out the roles and responsibilities of each agency in the ALR hearing process, ensure timely access to scheduling and continuance information, and transfer funding for three full-time equivalent employees that DPS currently uses for ALR docketing when SOAH assumes responsibility for initial scheduling of ALR hearings.

Management Action – Nonstatutory

4.2 Direct SOAH to centralize or otherwise significantly improve its telephonic ALR hearings and take advantage of current technology for conference calls.

Issue 5

Statute Does Not Provide Clear Authority to Allow Referring Agencies to Informally Dispose of SOAH’s Default Cases.

If a party fails to appear for a SOAH hearing and does not bear the burden of proof, the Administrative Procedure Act allows an administrative law judge to proceed in the party’s absence. In these default cases, the judge may issue a formal proposal for decision or issue a dismissal order and return the case to the referring agency for informal disposition, which is more efficient for both SOAH and the referring agency. While SOAH’s procedural rules provide for a clear and efficient process to dismiss default cases, statute is unclear as to whether referring agencies may rely on this authority.

Recommendation

Change in Statute

5.1 Specifically authorize SOAH to remand default cases back to the referring agencies for informal disposition.

This recommendation would authorize a referring agency to apply its own rules or SOAH’s procedural rules to informally dispose of default cases, but would not apply to a contested case in which the SOAH judge is authorized to render a final decision.

Issue 6

Parties Without Attorneys Need Access to Quality, Detailed Information About the SOAH Hearing Process.

SOAH hearings can be difficult to navigate since they are governed not only by SOAH’s procedural rules and the referring agency’s statute and substantive rules, but also the Administrative Procedure Act, the Texas Rules of Evidence, and parts of the Texas Rules of Civil Procedure related to discovery. While SOAH is not a traditional court, its decisions and proposals for decision carry considerable weight and can result in significant outcomes like the revocation of a person’s occupational license. Since the State is not required to provide an attorney, many parties to SOAH cases represent themselves *pro se*. The Sunset Commission found a high level of dissatisfaction among these *pro se* parties who reported feeling unprepared and overwhelmed by SOAH’s hearings process.

Recommendations

Management Action – Nonstatutory

- 6.1 Direct SOAH to develop and maintain a comprehensive, plain-language guide for *pro se* parties.**
- 6.2 SOAH should require notices of hearing to include information about and a link to the *pro se* guide.**

Fiscal Implication Summary

These recommendations could result in a savings of about \$500,000 annually to the General Revenue Fund, likely offset by costs to other state agencies, and a savings to TCEQ of about \$500,000 annually.

Issue 1 — The recommendation to authorize SOAH to adjust its hourly rate to recover the full cost of services should result in a reduction of SOAH's general revenue funding by about \$500,000 annually, but most of this amount would be offset by an increase in costs for contract agencies from raising SOAH's hourly rate. Removing the requirement in the General Appropriations Act that TCEQ pay SOAH \$1 million, regardless of actual costs, could result in a savings to TCEQ of about \$500,000 annually if the Legislature chooses to bring these payments to SOAH more in line with actual costs.

Issue 4 — The recommendation shifting docketing responsibilities for ALR hearings from DPS to SOAH through an MOU would require DPS to transfer funding for three full-time equivalent employees that DPS currently uses for ALR docketing, but not until SOAH assumes responsibility for initial scheduling of ALR hearings.

State Office of Administrative Hearings

Fiscal Year	Savings to the General Revenue Fund	Cost to Contract Agencies	Savings to TCEQ Funds*
2016	\$500,000	\$500,000	\$500,000
2017	\$500,000	\$500,000	\$500,000
2018	\$500,000	\$500,000	\$500,000
2019	\$500,000	\$500,000	\$500,000
2020	\$500,000	\$500,000	\$500,000

* TCEQ pays for SOAH hearings from four general revenue dedicated accounts. In fiscal year 2013, about \$100,000 came from the Clean Air Account 0151, \$85,000 from Petroleum Storage Tank Account 0655, \$120,000 from Waste Management Account 0549, and \$174,000 from Water Resource Management Account 0153.

