

The logo for the Texas Sunset Advisory Commission is a semi-circular emblem. It features a thick black outer border and a white inner border. The center of the emblem is a solid black shape, and the words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a white, bold, serif font within this black area.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

State Board of Canvassers

A Staff Report
to the
Sunset Advisory Commission

1989

State Board of Canvassers

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Background and Focus

Creation and Powers

The responsibility for canvassing the statewide results of elections by the secretary of state in the presence of other state officials dates back to 1848. Currently, the State Board of Canvassers meets after general elections and after special elections for legislative offices to canvass, or count, the returns from the state's counties. The canvass determines the official result of the election on the basis of the votes received. Based on this canvass, the certificates of election for each candidate are prepared. Candidates elected to an office canvassed by the board must have this certificate of election in order to take office.

Policy-Making Structure

The State Board of Canvassers is composed of three members. These are: the secretary of state, serving as the presiding officer; the governor; and a public member, appointed by the governor for a two-year term. Originally, the responsibility for canvassing elections was performed by the secretary of state in the presence of the governor, lieutenant governor, and attorney general. In 1876, the lieutenant governor was removed from this activity. The board, itself, was created in 1897, composed of the same state officials involved in the canvass. In 1963, the attorney general was removed from the board and replaced by a public member.

Funding and Organization

The board does not receive a line item appropriation, and it does not employ staff. Instead, the board receives financial and staff support from the secretary of state's elections division. Funding for the board is limited to paying expenses for the private member to attend state canvasses. The secretary of state's office receives and tabulates the returns from the counties. However, the secretary of state does not maintain workload measures and cannot estimate the amount of staff time spent on state canvassing activities.

Programs and Functions

The State Board of Canvassers is responsible for canvassing, or tabulating, the county election returns for president and vice-president of the United States, statewide offices other than governor and lieutenant governor, district offices, and statewide measures, such as constitutional amendments. Specifically, the state board canvasses the elections shown in Exhibit A. The legislature, in accordance with constitutional provisions and established practice dating back to 1845, canvasses the returns for elections for governor and lieutenant governor. The canvass determines the official election results upon which the certificates of election are issued to the candidates receiving the most votes.

Before the state canvass may occur, local canvassing boards composed of the county judge and commissioners' court in each county must meet to canvass precinct returns throughout the county. This local canvass must occur within six days of the general election, and within three days of a special election to fill a vacancy in the legislature. The county results must be forwarded to the secretary of state's office within 24 hours of the completion of the canvass. These county election returns sent to the secretary of state must be in an officially prescribed form provided by the secretary of state.

Exhibit A

Elections Canvassed by the State Board of Canvassers

Federal Offices

President and vice-president of the United States
United States senator
United States representative

State Offices

Attorney general
Comptroller of public accounts
State treasurer
Commissioner of the General Land Office
Commissioner of agriculture
Railroad commissioner
Chief justice, supreme court
Justice, supreme court
Presiding judge, court of criminal appeals
Judge, court of criminal appeals

District Offices

Member, State Board of Education
State senator
State representative
Chief justice, court of appeals
Justice, court of appeals
District judge
Criminal district judge
Family district judge
District attorney
Criminal district attorney

Statewide Measures

Constitutional amendments

The secretary of state's staff receives and tabulates these county returns for the state board of canvassers. This function is basically a mechanical, mathematical procedure of adding the vote totals from each of the counties for each of the offices which the board canvasses. The board only receives county vote totals, and does not receive the ballots. The board does not have the authority to analyze returns to look into the regularity of an election. The board does not get involved in contested elections, except in a contest of the election of presidential electors, where it has exclusive jurisdiction. Similarly, the board does not have the authority to recount votes. The board may, however, recanvass returns based on recounted vote totals if the recount changes the result of the election.

The board must meet between 15 days and 30 days after a general election to perform the state canvass. The board must also meet within seven days of a special election to canvass the returns of elections to fill vacancies in the legislature. The board members sign the canvassing documents prepared by the secretary of state's office, making official the results of these elections. Based on these official results, the governor prepares and issues certificates of election for each candidate elected to office. After the canvass of a presidential election, the secretary of state prepares and issues election certificates to the presidential elector candidates. These election certificates entitle the candidates to assume the offices to which they were elected.

Focus of Review

The review of the State Board of Canvassers focused on the continuing need for the board to conduct the canvass of statewide election returns in Texas. A number of activities were undertaken by the staff to gain a better understanding of the board and the canvassing function. These activities include:

- discussions with staff of the secretary of state's elections division;
- review of state laws dating to 1848 regarding the canvassing of elections in Texas;
- review of approaches developed regarding the canvassing of elections in other states.

These activities yielded a basic understanding of the purpose and objectives of the board of canvassers and they provided insights into alternative methods for canvassing statewide election returns.

The review indicated that there is a continuing need to canvass statewide election returns. However, the review indicated that there is no longer a need to have a board of canvassers perform this function. The tabulation of returns from each of the counties for statewide and district elections and the certification of official results of these elections can easily be performed without a state board. The review concluded that the State Board of Canvassers should be abolished and that the responsibility for canvassing statewide election returns should be transferred to the governor's office. The tabulation of election returns should be performed by the secretary of state's office, as is the current practice. The governor should be responsible for certifying the official results and for issuing the certificates of election. The board's responsibility for settling contests for the election of presidential electors should also be given to the governor's office.

Findings and Recommendations

ISSUE 1: The State Board of Canvassers should be abolished and its functions transferred to the governor.

BACKGROUND

Though the responsibility for canvassing the statewide results of elections dates back to 1848, the first statutory reference to a State Board of Canvassers did not appear until 1897. The board was composed of the same state officials who were involved in the canvass, the secretary of state, the governor, and the attorney general. The board's specific responsibility was to settle contests for presidential electors. The statutory language for the state canvass provided only that the secretary of state open and count the county returns "in the presence" of the governor and the attorney general, or either of them. In 1963, the attorney general was removed from this process and replaced by a public member appointed by the governor. The language regarding the canvass by the secretary of state "in the presence" of other state officials stayed basically the same from 1848 until 1985. At that time, the recodification of the Election Code finally specified that the State Board of Canvassers was responsible for conducting the canvass.

The review indicated the following:

- ▶ The secretary of state's elections division performs almost all of the work involved in canvassing elections.
- ▶ The board of canvassers' actions are largely ceremonial, limited almost exclusively to adopting the tabulations made by the secretary of state's office.
- ▶ The board has never had to exercise its authority to settle a contest for the election of presidential electors. No justification exists for having a separate board to perform an activity that is needed so infrequently.
- ▶ A survey of the ten other most populous states shows that only two, Florida and Michigan, have boards responsible for canvassing elections.

PROBLEM

The State Board of Canvassers is not necessary to perform the function of canvassing statewide elections results.

RECOMMENDATION

The following action is recommended:

The State Board of Canvassers should be abolished and its responsibilities transferred to the governor's office. The governor would assume the responsibilities of:

- certifying the results of all elections currently canvassed by the state board; and
- settling contests involving the election of presidential electors.

This recommendation would not significantly change the way that state canvasses currently occur. The staff of the secretary of state's office would continue to tabulate the statewide results, and the governor's office would continue to issue the election certificates based on these results. The major change would be that the governor, alone, would certify the canvassed results. The largely ceremonial procedure of certifying these results by the state board would be removed.

FISCAL IMPACT

Abolishing the State Board of Canvassers would cause some savings to the state resulting from eliminating travel expenses of the public member. These savings, however, would be very small.