



Sunset Advisory Commission

Summary of Sunset Legislation

79th Legislature

July 2005

SUNSET ADVISORY COMMISSION

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SUMMARY



Summary

Based on recommendations from the Sunset Advisory Commission, the 79th Legislature passed legislation affecting 25 state agencies and boards. The Legislature adopted the majority of changes recommended by the Commission and added a number of improvements to the bills. These bills will result in more than \$46 million in savings and revenue gains over the next two years by streamlining agency processes and eliminating waste, duplication, and inefficiency in state government. This report summarizes the results of the Sunset Commission's work, including changes made by the 79th Legislature to modify and improve the Sunset bills.

Of the agencies and boards under Sunset review, the Legislature abolished the Texas Workers' Compensation Commission, the Texas State Board of Barber Examiners, and the Texas Cosmetology Commission, transferring these agencies' functions to other state agencies. The Legislature continued 20 other entities under Sunset review, many with significant changes. The Legislature also directed the Sunset Commission to continue evaluation of two agencies, the Texas Alcoholic Beverage Commission and the Texas Education Agency (TEA), by extending their Sunset review dates for only two years. The Legislature is also considering the Sunset Commission's recommendations regarding TEA in the current special legislative session on education reform and school finance.

Several key provisions of the Sunset bills are highlighted below, and the fiscal impact of each bill is summarized in the following table.

- Abolish the Texas Workers' Compensation Commission and transfer its functions to the newly created Division of Workers' Compensation within the Department of Insurance. Establish an independent Office of Injured Employee Counsel. Simplify the provision of workers' compensation health care by allowing networks similar to those found in group health insurance. Enhance the delivery and quality of benefits for injured workers to focus on improving outcomes for return to work.
- Continue the Public Utility Commission (PUC) for six years, clarifying PUC's oversight authority over the Electric Reliability Council of Texas (ERCOT) and adding two independent members to the ERCOT board. Require ERCOT to perform market monitoring through a contract with a private company selected by PUC. Increase PUC's maximum administrative penalty from \$5,000 to \$25,000 for serious violations.


Sunset legislation will result in \$46 million in savings and revenue gains over the next two years.


The 79th Legislature continued 22 agencies and abolished three agencies as a result of the Sunset process.

- Clarify language regarding the use and confidentiality of peer review documents in hearings by the Texas State Board of Medical Examiners and the State Office of Administrative Hearings. Require the Medical, Physician Assistant, and Acupuncture boards to provide stakeholders with meaningful input into the rulemaking process. Provide further improvements to the boards' investigation processes to better protect the public.
- Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and transfer their functions to the Texas Department of Licensing and Regulation. Reduce the level of regulation of barbers and cosmetologists, including requiring inspections to be risk based, focusing on sanitation violations.

The Sunset Commission will monitor these agencies to assess how well they implement the legislative directives in the Sunset bills. A Sunset Commission report to be released in January 2007 will detail the results of the agencies' implementation efforts. The State Auditor may also evaluate the agencies' responses to any non-statutory, management recommendations made to the agencies by the Commission.

The 79th Legislature also passed H.B. 1116 and other legislation that affect the Sunset review schedule for the next interim, the 2007 review cycle. The Sunset Commission must review and make recommendations on 23 agencies and programs during the next 15 months. These agencies include the Texas Education Agency and the Texas Alcoholic Beverage Commission, which were continued in their current form by H.B. 1116. Major upcoming reviews include the Department of Criminal Justice, the Board of Pardons and Paroles, and the State Board of Trustees of the Teacher Retirement System of Texas. Several agencies were moved to later review cycles, notably the Texas Department of Agriculture and the Texas Department of Insurance. The appendix to this report provides a complete list of the 2007 review schedule.

79th Session Sunset Summary Information

Agency	Action	Two-Year Net Fiscal Impact	Bill Author		Bill Number	
			Senate	House		
Alcoholic Beverage Commission, Texas	Continued ¹	No Impact	Whitmire	Hamric	H.B. 2544	
Barber Examiners, Texas State Board of Cosmetology Commission, Texas	Abolished/ Transferred	\$2,336,806	Whitmire	Hamric	S.B. 411	
Chiropractic Examiners, Texas Board of	Continued	(\$54,400)	Nelson	Solomons	H.B. 972	
Education Agency, Texas	Continued ¹	No Impact	Jackson	Grusendorf	S.B. 422	
Educator Certification, State Board for	Merged ²	No Impact	Shapleigh	Grusendorf	S.B. 418	
Guaranteed Student Loan Corporation, Texas	Continued	No Impact	Carona	B. Cook	H.B. 2274	
Lottery Commission, Texas	Continued ³	No Impact	Jackson	Hamric	H.B. 1434	
Medical Examiners, Texas State Board of Physician Assistant Examiners, Texas State Board of Acupuncture Examiners, Texas State Board of	Continued	(\$55,046)	Nelson	Solomons	S.B. 419	
Optometry Board, Texas	Continued	\$5,550	Shapleigh	Solomons	H.B. 1025	
Pharmacy, Texas State Board of	Continued	\$4,880,640	Whitmire	Truitt	S.B. 410	
Podiatric Medical Examiners, Texas State Board of	Continued	\$6,630	Nelson	Hamric	S.B. 402	
Psychologists, Texas State Board of Examiners of	Continued	No Impact	Jackson	Truitt	H.B. 1015	
Public Utility Commission of Texas	Continued	No Impact	Nelson	P. King	S.B. 408	
Public Utility Counsel, Office of	Continued	No Impact	Nelson	P. King	S.B. 409	
Department of State Health Services	Dietitians, Texas State Board of Examiners of	Continued	No Impact	Shapleigh	Truitt	H.B. 1155
	Marriage and Family Therapists, Texas State Board of Examiners of	Continued	(\$26,196)	Whitmire	Truitt	H.B. 1413
	Midwifery Board, Texas	Continued	\$1,800	Shapleigh	Truitt	H.B. 1535
	Perfusionists, Texas State Board of Examiners of ⁴	Continued	No Impact	Nelson	Truitt	S.B. 403
	Professional Counselors, Texas State Board of Examiners of	Continued	(\$25,308)	Carona	Truitt	H.B. 1283
	Social Worker Examiners, Texas State Board of	Continued	No Impact	Shapleigh	Truitt	S.B. 415
Veterinary Medical Examiners, Texas State Board of	Continued	(\$14,986)	Jackson	B. Cook	S.B. 407	
Workers' Compensation Commission, Texas	Abolished/ Transferred	\$39,768,216	Nelson	Solomons	H.B. 7	
Fiscal Impact Total		\$46,823,706				

¹ The Texas Alcoholic Beverage Commission and the Texas Education Agency were continued for two years in H.B. 1116. The agencies will be reviewed again in the 2006 - 2007 biennium.

² The State Board for Educator Certification policy board was continued, but its staff functions were merged with TEA in H.B. 1116. The Board and staff functions will be reviewed again in the 2006 - 2007 biennium.

³ The Texas Lottery Commission was continued for six years in H.B. 1116.

⁴ The Texas State Board of Perfusionists was replaced with an advisory committee in S.B. 403.

AGENCIES



Texas Alcoholic Beverage Commission

Staff Contact: Karen Latta

H.B. 2544 Hamric, et al. (Whitmire)

Summary

The Texas Alcoholic Beverage Commission (TABC) regulates all phases of the alcoholic beverage industry. The Legislature created the agency, originally called the Liquor Control Board, in 1935, in response to the repeal of Prohibition. The agency has four primary functions: licensing alcoholic beverage manufacturers, wholesalers, and retailers; enforcing administrative and criminal laws in the Alcoholic Beverage Code; collecting taxes on alcoholic beverages; and providing educational programs to address issues such as underage drinking. The agency has a staff of 568 employees, and an annual budget of \$29.5 million, which comes from licensing fees and surcharges.

The Sunset Commission's recommendations on TABC included updating its mission to better reflect today's regulatory environment and the agency's role in public safety issues; strengthening the agency's management of its enforcement activities to best protect the public's safety; and reducing regulation of certain business practices that no longer serve a purpose. The Sunset Commission also recommended continuing the agency for six years and establishing a joint interim committee to study revision of the regulatory structure of alcoholic beverages. These recommendations and others were incorporated into House Bill 2544.

The bill passed by the House reflected the Sunset Commission's recommendations, with a few minor amendments. The Senate referred the bill to committee, but it was never scheduled for a hearing. As a result, H.B. 2544 was not passed by the Legislature.

While H.B. 2544 did not pass, two of the Sunset Commission's recommendations on TABC were incorporated into Senate Bill 1255, which was passed. These recommendations eliminate restrictions on the size of beer containers that can legally be sold in Texas and allow TABC to use proceeds from the sale of seized property to pay for the costs of forfeiture lawsuits.

TABC was continued in separate legislation. House Bill 1116 continues the agency until 2007 and requires the Sunset Commission to focus its next review of TABC on the appropriateness of its previous recommendations to the 79th Legislature. Continuing the agency for two years will allow the Sunset Commission to re-examine alcoholic beverage regulation issues and make recommendations to the 80th Legislature.



Texas State Board of Barber Examiners Texas Cosmetology Commission

Staff Contact: Chloe Lieberknecht

S.B. 411 Whitmire (Hamric)

Summary

The Texas State Board of Barber Examiners and the Texas Cosmetology Commission regulate barbers and cosmetologists to protect the health and safety of the public. The agencies perform two major functions: license barbers and cosmetologists, instructors, shops, salons, and schools; and enforce the Barber and Cosmetology Acts and agency rules by investigating complaints and conducting inspections. The Board of Barber Examiners currently regulates about 13,150 individuals and 8,000 entities, with a staff of 13, on an annual budget of about \$600,000. The Cosmetology Commission currently regulates about 151,500 individuals and 26,570 entities, with a staff of 43, and a budget of about \$2.3 million.

The Legislature abolished both agencies, transferring their functions to the Texas Department of Licensing and Regulation (TDLR), and added other statutory modifications to the Barber and Cosmetology Acts to standardize licensing and enforcement functions. The list below summarizes the major provisions of S.B. 411, and a more detailed discussion follows.

Sunset Provisions

1. Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and Transfer the Agencies' Functions to the Texas Department of Licensing and Regulation.
2. Reduce the Level of Regulation of Barbers and Cosmetologists, Including Requiring Inspection Efforts to be Risk-Based, Focusing on Sanitation Violations.
3. Conform Key Elements of the Regulation of Barbers and Cosmetologists to Commonly Applied Licensing Practices.
4. Require Nail Salons to Use Autoclaves to Sanitize Instruments.

Provisions Added by the Legislature

5. Authorize TDLR to Register Examination Proctors to Administer Barber and Cosmetology Exams Around the State.
6. Make Technical and Conforming Changes to Both Acts to Provide for Effective Administration of the Programs by TDLR.
7. Create an Inactive License Status for Cosmetology Licensees.
8. Authorize the Commission on Licensing and Regulation to Amend the Definition of Cosmetology by Rule.

Sunset Provisions

1. Abolish the Texas State Board of Barber Examiners and the Texas Cosmetology Commission and Transfer the Agencies' Functions to the Texas Department of Licensing and Regulation.

The original recommendation from the Sunset Advisory Commission was to abolish the Board of Barber Examiners and the Cosmetology Commission and merge their functions into a new agency. Instead, the Legislature modified the Sunset provision and abolished both agencies, transferring their functions to the Texas Department of Licensing and Regulation (TDLR). Senate Bill 411 creates two new advisory committees at TDLR, to advise the Commission on Licensing and Regulation on technical matters relating to barbering and cosmetology, and provides for composition requirements and duties of the advisory boards.

The legislation requires the transfer of all powers, duties, and resources of the two agencies to be completed by January 1, 2006, and requires the two agencies to work with TDLR and the Comptroller's Office to transfer some functions and operations to TDLR before September 1, 2005.

2. Reduce the Level of Regulation of Barbers and Cosmetologists, Including Requiring Inspection Efforts to be Risk-Based, Focusing on Sanitation Violations.

Instead of the agencies' current programs of routine inspections, S.B. 411 will focus limited resources on inspection of facilities that require the most attention – those that violate sanitation rules – by requiring risk-based inspections at least every two years. The Legislature modified this provision by requiring TDLR to establish a schedule of risk-based inspections based on certain criteria, including the inspection history of the facility and prior sanitation violations.

Senate Bill 411 will eliminate an unnecessary burden for licensees by removing the current requirement that barbers, barber technicians, manicurists, and barber instructors submit a health certificate upon initial licensure and renewal. Additionally, the legislation will prohibit TDLR from keeping student transcripts and records beyond other state requirements for document retention.

3. Conform Key Elements of the Regulation of Barbers and Cosmetologists to Commonly Applied Licensing Practices.

Senate Bill 411 includes eight provisions that bring the Barber and Cosmetology Acts in line with standard licensing agency practices, consisting of the following.

- Authorizes provisional barber licenses to ensure that persons applying for a Texas barbering license who hold a current license from another state will be able to practice while waiting for evaluation of their application.
- Removes specific license renewal dates in the Barber Act, resulting in greater administrative efficiency and more convenient service to licensees.
- Authorizes denial of barber and cosmetology license renewals based on outstanding administrative fines.

- Requires development of a method for violation and complaint trend analysis for barber and cosmetology enforcement actions.
- Requires compilation of detailed statistics on barber and cosmetology violations and complaints, and an annual report.
- Requires adoption of guidelines for informal settlement conferences for barber and cosmetology enforcement actions.
- Directs TDLR to develop a method for responding to and documenting barber and cosmetology non-jurisdictional complaints.
- Eliminates fee caps in the Barber Act.

4. Require Nail Salons to Use Autoclaves to Sanitize Instruments.

The Legislature modified the Sunset provision to require cosmetology nail salons to use autoclaves to sanitize instruments, and expanded the provision to require all nail salons to use autoclaves to sterilize non-disposable instruments. Additionally, the legislation requires that salons may only use a disposable instrument if it is bought at the location that the service is performed or provided by the person on whom the service is performed.

Provisions Added by the Legislature

5. Authorize TDLR to Register Examination Proctors to Administer Barber and Cosmetology Exams Around the State.

The Legislature added a provision authorizing the registration of exam proctors to assist TDLR in giving barber and cosmetology practical exams across the state.

6. Make Technical and Conforming Changes to Both Acts to Provide for Effective Administration of the Programs by TDLR.

The Legislature added several provisions that make clarifying changes to both the Barber and Cosmetology Acts to simplify the administration of the programs at TDLR and to provide for a smooth transition of functions, including the following.

- Increases the age requirement for barber manicurists from 16 to 17.
- Increases the student-to-teacher ratio in barber schools to 25 students per teacher, from 20 students per teacher.
- Subjects barbershops, as well as owners and schools, to civil penalties.
- Removes requirements regarding the Barber Board adopting rules on specific areas of sanitation and instead relies on TDLR's general rulemaking authority over sanitation issues provided elsewhere in the legislation.
- Removes a provision that details when and how often TDLR is required to give the cosmetology exam and requires TDLR to announce the site of the exam not later than six months before the scheduled exam date.

- Changes the requirements for owning a barbershop by removing the provisions requiring owners to be barbers practicing for at least 12 months and a requirement that a barber must supervise a barbershop at all times.

7. Create an Inactive License Status for Cosmetology Licensees.

The Legislature adopted a provision that allows cosmetology licensees to apply for inactive status and maintain their cosmetology licenses without complying with cosmetology continuing education requirements. Licensees with inactive status may not practice cosmetology.

8. Authorize the Commission on Licensing and Regulation to Amend the Definition of Cosmetology by Rule.

The Legislature adopted a provision that allows the Commission, by rule, to amend the statutory definition of cosmetology to eliminate a cosmetic service included in that definition, thus removing the service from regulation.

Provisions Removed by the Legislature _____

1. Discontinue Use of Practical Examinations Required for Licensure of Barbers and Cosmetologists.

The Legislature did not adopt the provision removing the requirement and authority for barber and cosmetology practical exams.

2. Conform Key Elements of the Regulation of Barbers and Cosmetologists.

The Legislature did not adopt several Sunset provisions aimed at conforming the Barber and Cosmetology Acts with standard licensing processes, since TDLR's enabling Act already provides for the same requirements. These provisions include standard penalties for late license renewal, scheduling of hearings at the State Office of Administrative Hearings, probating a suspended license, and procedures for complaint processing.

Fiscal Implication Summary _____

The provisions in S.B. 411 will result in a positive fiscal impact to the State. Abolishing the independent agencies and transferring their functions to TDLR will result in a total savings of \$680,207 each fiscal year, attributable to the reduction of 11.5 unneeded staff positions and a reduction of travel reimbursements for members of the State Board of Barber Examiners and the Texas Cosmetology Commission. Additionally, TDLR will transfer the agencies' computer licensing systems to TDLR's in-house licensing system, resulting in a savings of \$325,000 per year, beginning in fiscal year 2007, based on a reduction in technology contracting costs.

Requiring risk-based inspections at least every two years will reduce the number of inspections, resulting in a savings of \$325,696 annually based on a reduction of eight staff positions.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in Staff Positions From FY 2005</i>
2006	\$1,005,903	-19.5
2007	\$1,330,903	-19.5
2008	\$1,330,903	-19.5
2009	\$1,330,903	-19.5
2010	\$1,330,903	-19.5



Texas Board of Chiropractic Examiners

Staff Contact: Emilie Leroux

H.B. 972 Solomons, et al. (Nelson)

Summary

The Texas Board of Chiropractic Examiners (the Board) was created in 1949 to protect the public's health, safety, and economic welfare by ensuring that chiropractors are qualified and competent. The Board has three primary functions: license chiropractors, and register chiropractic radiological technicians and chiropractic facilities; set standards for the profession; and enforce the Chiropractic Act by investigating and resolving complaints. The Board currently licenses about 4,700 chiropractors, with a staff of six employees and an annual budget of \$340,000.

House Bill 972 continues the Board for 12 years and contains the Sunset Commission's recommendations to improve the Board's process for defining scope of practice and strengthen its enforcement program. The list below summarizes the major provisions of H.B. 972, and a more detailed discussion follows.

Sunset Provisions

1. Require the Board to Clarify Scope of Practice Questions Through Rules Developed With Early Stakeholder Input and Following Common Definitions From the Medical Practice Act.
2. Strengthen the Board's Enforcement Program to Enable It to More Effectively Resolve Complaints.
3. Conform Elements of the Board's Licensing Functions to Commonly Applied Licensing Practices.
4. Increase the Number of Undergraduate Hours Required for Licensure as a Chiropractor.
5. Limit the Number of Attempts to Pass the Chiropractic Jurisprudence Exam.
6. Continue the Texas Board of Chiropractic Examiners for 12 Years.

Sunset Provisions

1. Require the Board to Clarify Scope of Practice Questions Through Rules Developed With Early Stakeholder Input and Following Common Definitions From the Medical Practice Act.

House Bill 972 requires the Board to follow the State's rulemaking process in clarifying which activities are within and which are outside the scope of chiropractic practice. Specifically, the Board must clearly define the procedures that chiropractors may perform, using the input of stakeholders early in the rulemaking process. The Legislature modified the Sunset provision by requiring the Board to adopt rules specifying what equipment chiropractors are prohibited from using rather than what equipment is allowed. The bill also requires the Board to determine whether additional training or certification is required to practice certain procedures and use certain equipment. The Legislature also repealed the multi-disciplinary advisory commission that had been established to advise the Board on new and experimental practices within the meaning of chiropractic.

House Bill 972 also conforms the Chiropractic Act's definitions with applicable definitions in the Medical Practice Act to define treatments prohibited under a chiropractor's scope of practice. These definitions include surgical procedure, controlled substance, and dangerous drug.

2. Strengthen the Board's Enforcement Program to Enable It to More Effectively Resolve Complaints.

House Bill 972 includes several provisions that strengthen the Board's enforcement program. Specifically, the bill revamps the Board-appointed local peer review committees and expands their responsibilities to include assisting the Board in investigating complaint cases that require chiropractic expertise by reviewing records and evidence, and reporting findings to the Board. In addition, the Board must adopt rules to prevent workers' compensation and insurance fraud, and it must vigorously enforce those provisions. The Board must also cooperate with the Texas Department of Insurance (TDI) to improve the sharing of relevant enforcement information.

The bill also includes provisions to bring the Board in line with standard agency practices related to enforcement. Under the bill, the Board may inspect chiropractic facilities on an unannounced basis when investigating complaints, and it must investigate complaints in priority order according to risk. The bill gives the Board the authority to issue cease-and-desist orders to stop unlicensed activity, and to assess administrative penalties against persons who violate cease-and-desist orders. The bill authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.

House Bill 972 also conforms the Chiropractic Act with several provisions that apply to physicians in the Medical Practice Act. Specifically, the bill makes practicing chiropractic while under the influence of drugs or alcohol a state jail felony. The bill also requires medical malpractice settlement information collected by TDI and expert witness reports filed by insurers to be submitted to the Board. The bill makes chiropractors subject to disciplinary action for performing fraudulent practices, unprofessional or dishonorable conduct, or other acts to deceive and defraud the public. The Board must also suspend or revoke licenses for convictions such as felonies, assaults, sex crimes, and drug offenses.

3. Conform Elements of the Board's Licensing Functions to Commonly Applied Licensing Practices.

House Bill 972 includes two provisions that bring the Board in line with standard licensing agency practices.

- Requires the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.
- Requires the Board to base delinquent license renewal fees on the normally required renewal fee.

4. Increase the Number of Undergraduate Hours Required for Licensure as a Chiropractor.

House Bill 972 increases the number of undergraduate hours required for licensure from 60 to 90 credit hours, as specified by the Council on Chiropractic Education, the accreditation body for chiropractic schools. The bill also gives the Board flexibility to require a different number of semester hours based on a requirement of a recognized accreditation organization.

5. Limit the Number of Attempts to Pass the Chiropractic Jurisprudence Exam.

House Bill 972 limits applicants to three attempts to pass the Board's jurisprudence exam measuring understanding of state chiropractic laws and rules.

6. Continue the Texas Board of Chiropractic Examiners for 12 Years.

This provision continues the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

This legislation will result in a negative fiscal impact to the State of \$27,200 annually. Reimbursing the Board's peer review committees for work performed reviewing standard of care complaints will cost \$5,600 annually, at a reimbursement rate of \$100 per complaint. This cost will be offset by a fee increase among the Board's regulated population. Changing the amount of the late renewal fee for delinquent licenses will result in a total loss of \$27,200 annually.

<i>Fiscal Year</i>	<i>Loss to the General Revenue Fund</i>
2006	\$27,200
2007	\$27,200
2008	\$27,200
2009	\$27,200
2010	\$27,200



Summary

Together, the State Board of Education, Commissioner of Education, Texas Education Agency (TEA), and 20 regional education service centers (ESCs) support and oversee the public education system in Texas. In the 2004 – 2005 school year, this system served more than four million students at about 1,037 school districts and 204 charter schools.

With an annual budget of \$15 billion and about 630 staff, TEA develops educational standards; administers student testing; monitors school districts and charter schools; distributes and ensures proper use of public education funding; and coordinates the adoption and purchase of textbooks. The 20 ESCs provide training, technical assistance, administrative support, and other services to meet the needs of local school districts, charter schools, teachers, and administrators in the public education system.

Senate Bill 422 as introduced contained all of the Sunset Commission's recommendations on TEA and ESCs. The recommendations included continuing both TEA and ESCs, and giving TEA clear statutory authority and direction to ensure school districts and charter schools are fiscally responsible. TEA would also have been directed to improve monitoring and grant management, and to better disseminate best practices. The Sunset Commission also recommended improving and transferring TEA's private Driver Training program to the Texas Department of Licensing and Regulation.

The bill adopted by the Senate reflected all of the Sunset Commission's recommendations, as well as several new provisions, including the development of a comprehensive school accreditation system, and requiring annual safety training in schools. When the bill reached the House, the House committee removed several of the Sunset provisions and added a provision to establish an urban school choice pilot program. During debate by the full House, a point of order against further consideration of S.B. 422 was raised and sustained. As a result, S.B. 422 was not passed by the Legislature.

However, separate legislation continued both TEA and ESCs. House Bill 1116 continues the education service centers indefinitely by removing them from separate Sunset review, and continues TEA until 2007. The bill also requires the Sunset Commission to focus its next review of TEA on the appropriateness of its previous recommendations to the 79th Legislature.

The Legislature is currently meeting in special session to consider education reform and public school finance. At this time, most of the Commission's recommendations regarding TEA and ESCs are contained in Senate Bill 2 and House Bill 2, the education reform bills. As these bills proceed through the legislative process, Sunset staff will continue to track the progress of the Sunset Commission's education recommendations.



State Board for Educator Certification

Staff Contact: Charles Sallee

S.B. 418 by Shapleigh (Grusendorf)

Summary

The State Board for Educator Certification (SBEC) oversees the preparation and regulation of public school educators. The Legislature created SBEC in 1995. Before 1995, the Texas Education Agency (TEA) was responsible for teacher certification.

SBEC oversees more than 250,000 certified educators, with a staff of 63 employees and an annual fee-supported budget of \$17.5 million. SBEC's major functions include ensuring the quality of educators upon entry into the teaching profession through testing, certification, and the accreditation of educator preparation programs; enforcing professional standards of conduct; and creating and promoting strategies for the recruitment and retention of educators in the public school system. The State Board of Education (SBOE) has a continued role with the profession through its veto authority over SBEC rule proposals.

Senate Bill 418 as introduced contained all of the Sunset Commission's recommendations on SBEC. The recommendations included continuing SBEC for 12 years; expanding SBOE's authority over SBEC rule proposals and improving stakeholder involvement in rule development; improving SBEC's process of conducting criminal history checks of prospective educators; and ensuring timely resolution of disciplinary investigations. The Sunset Commission also recommended providing SBEC authority to approve teaching permits, issue certification waivers, and certify educational diagnosticians.

The Senate Committee on Government Organization reported Senate Bill 418 favorably without amendment to the full Senate. The Senate did not bring up the bill for consideration and as a result S.B. 418 did not pass. The House did not consider the companion Sunset bill, H.B. 1633.

However, separate legislation continues SBEC's policy board but transfers its staff functions to TEA. House Bill 1116 continues SBEC indefinitely by removing the agency from separate Sunset review. The Sunset Commission will review the policy board and teacher certification as part of its upcoming review of TEA in 2007. The bill also repeals the statutory executive director position and requires TEA to carry out the Board's administrative functions and services. As a result, SBEC's policy board will continue to propose rules to SBOE and issue final disciplinary orders, and TEA staff will carry out the day-to-day operations and educator certification duties.

The Legislature is currently meeting in special session to consider education reform and public school finance. Senate Bill 2 and House Bill 2, the education reform bills, contain provisions to abolish SBEC and transfer its powers and duties to the Commissioner of Education. Sunset staff will track the progress of this legislation.



Texas Guaranteed Student Loan Corporation

Staff Contact: Lori Hartman

H.B. 2274 B. Cook, et al. (Carona)

Summary

The Legislature created the Texas Guaranteed Student Loan Corporation (TG) in 1979 to administer the Federal Family Education Loan Program in Texas. This program, better known as FFELP, is a federal program that encourages private lenders to make loans to students and their parents to help pay for the cost of postsecondary education. TG does not make loans; instead it guarantees the repayment of loans to lenders. In fiscal year 2004, TG guaranteed 516,000 loans totaling more than \$2.8 billion. As a public, nonprofit corporation, TG receives no state appropriations. Instead, TG is funded by the federal government for the loans it guarantees and services. TG operates on an annual budget of \$74 million and with a staff of 578 employees.

House Bill 2274 continues TG for 12 years and contains the Sunset Commission's recommendations to improve TG's accountability to its Board and its interaction with state agencies. The Legislature adopted all of the Sunset Commission's recommendations. The list below summarizes the major provisions of H.B. 2274, and a more detailed discussion follows.

Sunset Provisions

1. Continue the Texas Guaranteed Student Loan Corporation for 12 Years, and Increase the Size of TG's Board to 11 Members.
2. Require TG's Internal Auditor to Report to the Board of Directors.
3. Require Relevant State Agencies to Coordinate With TG on Outreach Activities Tied to Financial Aid for Higher Education, and Direct TG to Report to the Legislature on the Demand for Financial Aid in Texas.
4. Require State Licensing Agencies to Provide TG With Lists of Licensees So That TG Can Better Identify Individuals With Defaulted Student Loans.

Sunset Provisions

1. Continue the Texas Guaranteed Student Loan Corporation for 12 Years, and Increase the Size of TG's Board to 11 Members.

House Bill 2274 continues TG as the entity responsible for administering the Federal Family Education Loan Program in Texas. The bill also increases TG's Board to 11 members. Under this change, the Governor will appoint 10 of the 11 members, including five members with knowledge or experience in finance, four members from the faculty or administration of a postsecondary educational institution, and one member who is a full-time student enrolled at a postsecondary educational institution. The Comptroller of Public Accounts will continue to serve as a permanent, ex officio, voting member of the Board.

2. Require TG's Internal Auditor to Report to the Board of Directors.

House Bill 2274 requires TG's Internal Auditor to report to the Board, instead of to TG's President. The Board may opt to have the Internal Auditor report to a designated subcommittee of the Board. Under this provision, TG's Board will have the authority to hire and fire the Internal Auditor and will approve the Internal Auditor's budget, staffing level, and audit plans. TG's President will continue to provide administrative day-to-day support. The Internal Auditor will also continue to work closely with TG's President and senior management team to address audit-related activities.

3. Require Relevant State Agencies to Coordinate With TG on Outreach Activities Tied to Financial Aid for Higher Education, and Direct TG to Report to the Legislature on the Demand for Financial Aid in Texas.

House Bill 2274 requires all state agencies that conduct higher education and financial aid outreach to enter into a memorandum of understanding with TG. This provision ensures that TG and the state agencies will coordinate their activities to make the most of limited resources and avoid duplication of efforts. Requiring TG to report to the Legislature in December of each even-numbered year will ensure that the Legislature has the most up-to-date information about the demand for student financial aid in Texas before the start of each legislative session.

4. Require State Licensing Agencies to Provide TG With Lists of Licensees So That TG Can Better Identify Individuals With Defaulted Student Loans.

This provision requires state agencies that issue professional or occupational licenses to prepare a list of their licensees and provide that list to TG annually. TG will use the lists to identify individuals with defaulted student loans guaranteed by TG, and will then notify the appropriate licensing agency of any matches. The licensing agency will deny the license renewal application of any licensee with a defaulted student loan until the licensee remedies the default or enters into a repayment agreement with TG.

Fiscal Implication Summary

This legislation will not have a fiscal impact to the State.



Staff Contact: Karen Latta

H.B. 1434 Hamric, et al. (Jackson)

Summary

In 1991, Texas voters approved a constitutional amendment authorizing a state lottery. In 1993, the Legislature created the Texas Lottery Commission to assume the administration of the lottery and transferred the administration of the Bingo Enabling Act to the new agency. Today, the Commission administers and markets the state lottery and regulates the charitable bingo industry through licensing and enforcement. The Commission has 325 staff and operates with an annual budget of \$209.7 million, all of which comes from lottery proceeds and bingo licensing fees. In FY 2004, the lottery generated about \$3.5 billion in revenue, of which \$1 billion was transferred to the Foundation School Fund.

The Sunset Commission's recommendations on the Texas Lottery Commission included continuing the agency for 12 years, increasing the size of the Commission from three to five members, and requiring more Commission involvement in major procurement decisions. The Sunset Commission also recommended several changes to the agency's bingo licensing and enforcement processes. These recommendations were incorporated into House Bill 1434.

The bill, as passed by the House, reflected most of the Sunset Commission's recommendations, but also included several new provisions, including removing the agency's exemption for standard contracting and procurement procedures, prohibiting the use of certain electronic bingo machines, and requiring all lottery games to return at least 12 percent of all money wagered to the State. The Senate committee later removed the House amendments. However, when the full Senate brought the bill up for consideration, a point of order was raised and sustained, preventing further consideration of the bill. Therefore, H.B. 1434 did not pass.

The Lottery Commission was continued in separate legislation. House Bill 1116 continues the agency until 2011.



Texas State Board of Medical Examiners

Texas State Board of Physician Assistant Examiners

Texas State Board of Acupuncture Examiners

Staff Contact: Meredith Whitten

S.B. 419 Nelson (Solomons)

Summary

Texas began regulating physicians in 1837, and created the current Texas State Board of Medical Examiners (Medical Board) in 1907 to ensure that only qualified physicians practice medicine and provide health care to Texans. In 1993, the State established both the Texas State Board of Physician Assistant Examiners and the Texas State Board of Acupuncture Examiners as advisory boards to the Medical Board to assist in regulating physician assistants, who provide medical services under the supervision of licensed physicians, and acupuncturists. The boards' main functions include issuing licenses to qualified individuals; investigating and resolving complaints, including taking disciplinary action when necessary; and monitoring compliance with disciplinary orders. With a staff of 133 employees and a budget of about \$8.3 million, the boards regulate about 56,000 physicians, 6,500 physicians-in-training, 3,500 physician assistants, 700 acupuncturists, and 260 surgical assistants.

Senate Bill 419 continues the Medical, Physician Assistant, and Acupuncture boards for 12 years and contains the Sunset Commission's recommendations to increase the boards' ability to protect the public and provide fairer, more efficient processes for license holders. The bill improves stakeholder input into the boards' rulemaking process, builds on recent legislative directives to further strengthen the boards' enforcement efforts, clarifies the Medical Board's use of peer review documents, authorizes the Medical Board to issue several new types of licenses, establishes grounds for disciplinary action for physicians who perform certain abortions, and enhances the Acupuncture Board's role as a regulatory board. Senate Bill 419 also changes the name of the Texas State Board of Medical Examiners and the Texas State Board of Physician Assistant Examiners to the Texas Medical Board and the Texas Physician Assistant Board, respectively. The list below summarizes the major provisions of S.B. 419, and a more detailed discussion follows.

Sunset Provisions

1. Require the Boards to Provide Stakeholders With Meaningful Opportunities for Input Into the Rulemaking Process.
2. Update the Boards' Licensing Process to Ensure Fair, Consistent Decisions.
3. Provide Further Improvements to the Medical, Physician Assistant, and Acupuncture Boards' Investigation Processes to Better Protect the Public.
4. Define Clear Roles, Responsibilities, and Authority for the Boards' Informal Hearings Process.
5. Clarify Language Regarding the Use and Confidentiality of Peer Review Documents in Hearings by the Medical Board and the State Office of Administrative Hearings.
6. Update the Boards' Private Rehabilitation Order to Ensure Adequate Public Protection.

7. Require Physicians Who Use Moderate Sedation in Outpatient Settings to Comply With the Medical Board's Safety Requirements.
8. Update the Authority for Regulating Acupuncture to Ensure Efficiency and Protect the Public.
9. Grant the Medical Board Flexibility in How it Regulates the Delegation of Prescription Authority by Physicians.
10. Conform Key Elements of the Boards' Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
11. Prohibit Medical Board Members From Using Information Obtained Through Their Duties for Personal Gain.
12. Require the Medical Board to Publish Updated or Corrected Disciplinary Actions.
13. Clarify the Boards' Authority to Modify a Proposal for Decision Received From the State Office of Administrative Hearings.
14. Continue the Medical Board for 12 Years and Eliminate the Separate Sunset Dates for the Physician Assistant and Acupuncture Boards.

Provisions Added by the Legislature

15. Authorize the Medical Board to Issue a Faculty Temporary License.
16. Direct the Medical Board to Consider if a Violation Directly Relates to Patient Care When Determining a Sanction.
17. Require the Medical Board to Document Reasons for Rejecting Recommendations From Informal Hearings Panels.
18. Require a Joint Interim Study on the Medical Peer Review Process.
19. Restrict a Physician From Performing a Third-Trimester Abortion, Except Under Certain Circumstances.
20. Require a Physician to Get Parental Consent Before Performing an Abortion on a Minor.

Sunset Provisions

1. Require the Boards to Provide Stakeholders With Meaningful Opportunities for Input Into the Rulemaking Process.

Senate Bill 419 requires the Medical, Physician Assistant, and Acupuncture boards to develop guidelines for the early involvement of stakeholders in the rulemaking process. In addition, the Medical Board's guidelines must include procedures for receiving input from the Physician Assistant and Acupuncture boards, as rules proposed by the Medical Board may affect individuals under these boards' jurisdiction. The Medical Board's guidelines also must accommodate stakeholders' comments on rules proposed to the Medical Board by the Physician Assistant and Acupuncture boards, as these advisory boards do not have independent rulemaking authority and therefore must have their rules approved by the Medical Board.

The Legislature modified the Sunset provision to delete language allowing the boards to decide which rules need early stakeholder involvement. Instead, the Legislature added language specifying that a rule adopted by the boards may not be challenged on the grounds that the boards did not comply with the provisions for receiving input during rulemaking. In this situation, the boards must state in writing the reasons why they were not able to solicit a significant amount of input.

2. Update the Boards' Licensing Process to Ensure Fair, Consistent Decisions.

Under S.B. 419, the Medical, Physician Assistant, and Acupuncture boards must develop, in conjunction with each board's associated stakeholders, guidelines for evaluating applicants' and license holders' mental and physical health, as well as alcohol or other substance abuse, and professional behavior problems. The bill limits the ability of the boards to refer a person to a specified type of specialist for evaluation unless medically indicated or too few physicians are available to perform the appropriate examination in an area. The guidelines do not affect the boards' power to make independent licensing decisions.

The bill removes from the Medical Practice Act the current exceptions to the number of allowed licensing examination attempts, instead requiring all applicants to complete each of the three licensing exam sections within three attempts. The Medical Board must adopt rules that prescribe how the limit on the number of examination attempts applies to applicants who attempt both the allopathic and osteopathic medical licensing examinations.

In addition, the bill authorizes the Medical Board to issue a medical license limited to the practice of administrative medicine to applicants who meet specific licensing requirements established by the Board. Individuals who hold an administrative license must prove clinical competence and meet all other eligibility requirements if they later seek to practice with an unrestricted license. The Legislature modified the Sunset provision regarding institutional medical licenses for foreign medical graduates to authorize the Board instead to issue a license limited in scope to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty. License holders are restricted to practicing only their medical specialty within the specific institution or program that recommended the license holders, and must meet all Board licensing requirements to be eligible for an unrestricted license.

3. Provide Further Improvements to the Medical, Physician Assistant, and Acupuncture Boards' Investigation Processes to Better Protect the Public.

Building upon recent legislative directives, S.B. 419 strengthens the boards' investigation process. The bill directs the Medical Board to adopt rules regarding its panel of expert physician reviewers, including length of service, grounds for removal, and conflicts of interest related to standard-of-care cases. The Legislature modified the provision to require that the rules also address situations in which an expert reviewer and the physician under review live or work in the same geographical area or are competitors. The Medical Board also must randomly select expert reviewers within the same or similar specialty as the affected physician for standard-of-care cases.

Under a process established in the bill, an expert physician reviewer reviews each medical competency case to determine if the affected physician violated the standard of care and issues a preliminary report of that determination. A second reviewer conducts an abbreviated review of the first physician's report and other information and, if the two reviewers do not agree, a third expert physician reviewer will examine the case. The Legislature added a provision to clarify that expert physician reviewers may consult and communicate with each other about a complaint. To help ensure that the Medical, Physician Assistant, and Acupuncture boards can secure experts to assist in the evaluation of medical competency cases, the bill provides that persons serving as expert reviewers or consultants to the boards are immune from suit and judgment and may not be subjected to a suit for damages if the expert acted without fraud or malice.

The bill, as modified by the Legislature, requires the boards to complete a preliminary investigation and determine whether to officially proceed on a complaint no later than 30 days after receiving the complaint. In addition, the Medical Board may not dismiss complaints solely because the Board has not set the complaint for an informal hearing within 180 days. If a hearing has not been scheduled within 180 days, the Medical Board must notify all parties to a complaint and include information about such complaints in its annual report to the Legislature. Additionally, the bill requires the Medical Board to further define in rule the reasons a Board investigation may extend beyond 180 days.

4. Define Clear Roles, Responsibilities, and Authority for the Boards' Informal Hearings Process.

Senate Bill 419 addresses the roles and responsibilities of informal hearings participants, including board members, District Review Committee (DRC) members, and all appropriate staff. A minimum of two panelists – including at least one physician for cases heard by the Medical Board – must serve on all informal hearings panels that deliberate on disciplinary matters. The two-panelist requirement does not apply to hearings for showing compliance with a Board order or in hearings where the respondent waives the requirement. At least one of the informal hearings panel members must be a public member. For the Medical Board, the public member can be a Board member or a member of one of the District Review Committees. To give the Medical Board a larger pool of public members to draw from for informal hearings, the bill increases the number of public members on each District Review Committee by two, from one to three.

The Medical Board must provide a license holder scheduled for an informal hearing with information regarding the grounds of the hearing at least 30 days before the hearing. If the Board fails to do so, the license holder may reschedule the hearing. The Legislature modified this provision to specify that, if the complaint alleges a violation of the standard of care, the Medical Board must include the

expert physician reviewers' reports in the information sent to the license holder. The Legislature also added language to require the license holder to submit any rebuttals at least five business days before the informal hearing in order for the information to be considered at the hearing.

The Legislature extended existing statutory deadlines regarding investigations that apply to the Medical Board to the Physician Assistant and Acupuncture boards, and to investigations conducted by the Medical Board regarding surgical assistants. For example, the boards must schedule an informal hearing within 180 days of determining whether to proceed on a complaint. In addition, the Legislature modified the Sunset provision to specify that only informal hearings panel members and the board attorney acting as counsel to the panel may be present during deliberations, and that the role of the boards' attorney during the deliberations is limited to providing advice on legal issues and precedents.

Senate Bill 419 clarifies that DRC members assist the Medical Board in informal hearings and establishes eligibility requirements for DRC members. DRC members are subject to the same conflict-of-interest and grounds-for-removal requirements as Medical Board members, and must complete training relevant to serving on a District Review Committee. In addition, DRC physician members who participate in informal hearings involving standard-of-care cases must meet the same qualifications as the Medical Board's expert physician reviewers.

Finally, the bill authorizes a committee of agency staff to resolve cases that do not directly relate to patient care or that involve only administrative violations, subject to delegation by the boards. The boards must approve all staff decisions during a public meeting and a license holder retains the right to request that the case be heard at an informal hearing.

5. Clarify Language Regarding the Use and Confidentiality of Peer Review Documents in Hearings by the Medical Board and the State Office of Administrative Hearings.

Senate Bill 419 clarifies that the Medical Board's current authority to disclose peer review documents in disciplinary hearings extends to formal contested case hearings before the State Office of Administrative Hearings (SOAH). The bill specifies that peer review information may not be used as evidence at SOAH, except as the basis for the opinion of an expert witness called by the Medical Board. For cases that the Medical Board files at SOAH based on the grounds that a peer review action occurred, the Board must provide evidence from its investigation to verify the peer review evidence. The bill clarifies that peer review documents remain confidential at the Board and SOAH.

The Legislature added language to specify that if medical peer review documents are admitted into evidence for any purpose at SOAH, the documents must be admitted under seal. In addition, if a decision of the Board or SOAH is appealed to district court or other court, the confidentiality protections relating to medical peer review committee documents continue. The Legislature also modified a Sunset provision to clarify that medical records used by a medical peer review committee – including a patient's medical records – or any records made or maintained in the regular course of business are not confidential if the records are not considered confidential by other laws and are otherwise available to the Medical Board.

6. Update the Boards' Private Rehabilitation Order to Ensure Adequate Public Protection.

To strengthen the boards' ability to protect the public, S.B. 419 clarifies that the boards may issue a private, nondisciplinary rehabilitation order to an applicant or license holder with a current condition or history of substance or alcohol abuse only if the license holder has not violated the standard of care as a result of the impairment. If the boards receive a valid complaint related to the license holder's impairment before the license holder signs a private order, the license holder is no longer eligible for the private order.

In addition, if the boards impose a private rehabilitation order that requires a license holder to participate in programs provided by a private medical association, the boards must inform the association of the license holder's duties under the order, as well as provide specific guidance to the association to assist in the license holder's rehabilitation. The Legislature modified the Sunset provision to authorize the boards to provide private associations with any information – including a copy of the private order – necessary to assist the association. Any information received by the association remains confidential.

7. Require Physicians Who Use Moderate Sedation in Outpatient Settings to Comply With the Board's Safety Requirements.

Senate Bill 419 removes a provision in the Medical Practice Act that exempts from the Medical Board's regulations physicians who use certain drugs for moderate sedation in an outpatient setting. The bill requires these physicians to register with the Board and comply with Board rules regarding minimum standards for providing anesthesia services or be subject to disciplinary action for violation of office-based anesthesia rules.

8. Update the Authority for Regulating Acupuncture to Ensure Efficiency and Protect the Public.

Senate Bill 419 strengthens the Acupuncture Board's regulatory authority. The Acupuncture Board now has independent authority to approve applications for licensure and take a full range of enforcement actions, including assessing administrative penalties, without the Medical Board's approval. However, the Medical Board retains oversight of the Acupuncture Board's rulemaking process.

In addition, the bill gives the Acupuncture Board tools to quickly stop activity that could harm the public. This includes allowing the Acupuncture Board to temporarily suspend a license without holding an initial hearing or Medical Board approval, as well as authorizing the Acupuncture Board, without Medical Board approval, to issue cease-and-desist orders.

The Acupuncture Board's process for approving continuing education will be streamlined as the result of S.B. 419. The bill requires the Acupuncture Board to establish guidelines for preferred providers and course content, then directs the Board to allow agency staff to approve continuing education course applications. Staff will refer any questionable applications to the Board for review and final approval. The bill also clarifies that the Texas Higher Education Coordinating Board approves Texas acupuncture schools and acupuncture degree programs. The Legislature modified this provision to require the Coordinating Board to seek input from the Acupuncture Board regarding

the standards to be used for assessing whether a school or degree program adequately prepares an individual for the practice of acupuncture. Finally, the bill requires the presiding officer of the Acupuncture Board to be a licensed acupuncturist.

9. Grant the Medical Board Flexibility in How it Regulates the Delegation of Prescription Authority by Physicians.

The Medical Board's ability to waive site and supervision requirements for physicians who delegate prescriptive authority to physician assistants and advanced nurse practitioners will continue under S.B. 419, which removes the expiration date for Board waiver of delegation requirements. However, the Prescriptive Delegation Waiver Committee, which currently reviews requests for waivers and makes recommendations to the Medical Board, will expire as scheduled on September 1, 2005; the Medical Board will assume this responsibility through its committee structure.

The bill also eliminates the requirement that physicians, physician assistants, and advanced nurse practitioners register their intent to practice or to supervise delegated prescriptive authority with the Board, and instead requires physicians who delegate prescriptive authority to document in their own records when prescriptive authority is delegated.

10. Conform Key Elements of the Boards' Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Senate Bill 419 includes 13 provisions that bring the Medical, Physician Assistant, and Acupuncture boards in line with standard licensing agency practices, including the following.

- Requires physician assistant and acupuncture applicants to pass a jurisprudence exam as a condition for licensure.
- Clarifies that the boards must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code, except when the boards' enabling statutes are stricter.
- Authorizes staff to issue licenses to qualified physician, physician assistant, acupuncture, and surgical assistant applicants.
- Clarifies the Physician Assistant Board's responsibility to establish a system of continuing medical education.
- Changes the basis for the Physician Assistant Board's late-renewal penalties.
- Authorizes the Medical and Physician Assistant boards to adopt a system under which physician and physician assistant licenses expire on various dates during the year.
- Authorizes the Physician Assistant and Acupuncture boards to refuse to renew a license and to accept the voluntary surrender of a license.
- Authorizes the boards to provide for refunds by licensees to the consumer as part of the agreed settlement process.
- Authorizes the Medical and Physician Assistant boards to issue cease-and-desist orders.
- Allows medical faculty members to be eligible to serve on the Medical Board.

- Clarifies that the Senate must confirm appointments to the Physician Assistant and Acupuncture boards.
- Authorizes the Physician Assistant Board to establish a fee for individuals who hold an inactive license.
- Requires the Acupuncture Board to recommend licensing and other fees to the Medical Board.

11. Prohibit Medical Board Members From Using Information Obtained Through Their Duties for Personal Gain.

Senate Bill 419 prohibits physicians on the Medical Board or physicians acting as agents of the Board from using information acquired solely by virtue of their Board duties for the advancement of their personal medical practice, or for assisting in the advancement or gain of any other physician or affiliate.

12. Require the Medical Board to Publish Updated or Corrected Disciplinary Actions.

The Medical Board must publish acknowledgments of any errors or reversals related to its disciplinary actions, under S.B. 419. This information must be disseminated in the same format, size, style, and manner as the originally published action. The Legislature modified the provision to specify that the Board may not publish any corrections or reversals if the physician who was subject to disciplinary action requests that the information not be disseminated.

13. Clarify the Boards' Authority to Modify a Proposal for Decision Received From the State Office of Administrative Hearings.

Senate Bill 419 clarifies that the boards may only change a finding of fact or conclusion of law, or modify or vacate an order made by an administrative law judge at the State Office of Administrative Hearings under certain provisions outlined in the Administrative Procedure Act. The boards must state in writing the specific reason and legal basis for any changes they make.

14. Continue the Medical Board for 12 Years and Eliminate the Separate Sunset Dates for the Physician Assistant and Acupuncture Boards.

The Texas State Board of Medical Examiners will continue as a separate, stand-alone agency for the standard 12-year period, although to better reflect and communicate the Board's responsibilities, S.B. 419 changes the agency's name to the Texas Medical Board. In addition, the Legislature changed the name of the Texas State Board of Physician Assistant Examiners to the Texas Physician Assistant Board. The Physician Assistant and Acupuncture boards will continue as advisory boards under the Medical Board, but the bill removes their separate Sunset dates. As a result, future Sunset reviews of these two boards will be conducted in conjunction with reviews of the Medical Board.

Provisions Added by the Legislature

15. Authorize the Medical Board to Issue a Faculty Temporary License.

The Legislature established in statute the Medical Board's authority to issue a faculty temporary license to a physician appointed by a Texas medical school. A license holder must meet specific eligibility requirements, including licensure in another state without any restrictions or disciplinary orders, and is prohibited from practicing medicine outside the setting of the medical school. A license holder wishing to practice medicine in Texas outside the medical school must meet the requirements for the Board's unrestricted license, including any examination requirements.

16. Direct the Medical Board to Consider if a Violation Directly Relates to Patient Care When Determining a Sanction.

The Legislature added a provision to S.B. 419 to require the Medical Board, when determining the appropriate disciplinary action, to consider whether the violation relates directly to patient care or involves only an administrative violation.

17. Require the Medical Board to Document Reasons for Rejecting Recommendations From Informal Hearings Panels.

If the Medical Board rejects a recommendation for settlement or dismissal of a complaint from an informal hearings panel, the Board must notify a license holder and document in the Board's minutes the reason for rejecting the recommendation and note the further action to be considered. The Legislature also directed the Medical Board to consider previous attempts to resolve the matter when determining what further action to take.

18. Require a Joint Interim Study on the Medical Peer Review Process.

The Lieutenant Governor and the Speaker of the House will appoint a joint interim committee to study the medical peer review process in hospitals and other health-care entities in Texas. The study must include an examination of the use of medical peer review in identifying, reporting to the Medical Board, and disciplining a physician based on the conduct of or quality of care provided by physicians who are members of medical staffs of hospitals and other health-care entities. Also, as part of the study, the committee will investigate the adequacy of the Medical Board's oversight and investigation of physician claims that the medical peer review process is misused, and whether the Board's oversight and disciplinary powers should be strengthened. The committee must report its findings to the Governor, Lieutenant Governor, and Speaker of the House by January 1, 2007.

19. Restrict a Physician From Performing a Third-Trimester Abortion, Except Under Certain Circumstances.

The Legislature added this provision that prohibits a physician from performing an abortion on a woman who is pregnant with a viable child during the third trimester of the pregnancy, unless the abortion is necessary to prevent the death of the woman; the viable unborn child has a severe, irreversible brain impairment; or the woman is diagnosed with a significant likelihood of suffering

imminent severe, irreversible brain damage or paralysis. A physician who violates this provision is subject to disciplinary action by the Medical Board.

20. Require a Physician to Get Parental Consent Before Performing an Abortion on a Minor.

This provision, added by the Legislature, establishes that it is prohibited under the Medical Practice Act, subject to disciplinary action, for a physician to perform an abortion on an unemancipated minor without written consent of the child's parent, managing conservator, or legal guardian or without a court order authorizing the minor to consent to the abortion. The bill provides an exception from this provision if the physician concludes that the immediate abortion of the minor's pregnancy is needed to avert her death or to avoid a serious risk of substantial impairment of a major bodily function; and that insufficient time exists to obtain the consent of the child's parent, managing conservator, or legal guardian.

The Legislature also added a provision to S.B. 419 requiring the Medical Board to adopt the forms necessary for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor, and specifies timeframes for the physician to retain the form and any other required documentation.

Provision Removed by the Legislature --- ---

1. Direct the Medical Board to Investigate Complaints Regarding Misuse of the Peer Review Process.

The Legislature did not adopt the Sunset provision requiring the Medical Board to review complaints regarding misuse of the peer review process, including fraudulent and malicious conduct.

Fiscal Implication Summary --- ---

Senate Bill 419 contains provisions that will result in a revenue gain of almost \$66,000 in fiscal year 2006 and a loss of \$121,000 in fiscal year 2007 and each year thereafter. These provisions are discussed below, followed by a five-year summary chart.

The bill contains two provisions that will result in additional costs to the Medical Board. Requiring the Medical Board to use at least two expert panelists for each standard-of-care investigation will cost \$218,000 per year for the additional panelist's review as well as mailing and copying costs. Requiring applicants for physician assistant and acupuncture licenses to pass a jurisprudence exam will result in a one-time cost in fiscal year 2006 of \$960 for the Physician Assistant Board and \$960 for the Acupuncture Board, as the boards will have to develop exam questions.

The bill will also result in annual savings of \$5,928 by authorizing staff to resolve cases that do not directly relate to patient care or that involve only administrative violations, which will result in the need for fewer informal hearings, and thus lower travel costs for board and District Review Committee members. In the General Appropriations Act, the Legislature included a contingency appropriation to cover the net cost to the Medical Board resulting from these provisions. This appropriation, for \$213,992 in fiscal year 2006 and \$212,072 in fiscal year 2007, is contingent on the Medical Board assessing fees sufficient to cover these costs.

Other provisions in the bill will affect the amount of revenue that accrues to the State. Authorizing staff to issue licenses, and thus eliminating the need for temporary licenses, will result in a one-time gain in revenue of \$401,046 in fiscal year 2006 by accelerating the collection of permanent licensing fees in lieu of temporary licenses. The agency will experience a loss of \$121,000 that same year and each subsequent year, resulting from the elimination of the temporary fee.

Creating a statutory basis for the Physician Assistant Board's late-renewal penalty will result in a gain of \$3,775 annually. Establishing a renewal fee for the physician inactive license will result in a gain in revenue of \$13,800 per year.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Gain to the General Revenue Fund</i>	<i>Cost to the General Revenue Fund</i>	<i>Loss to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>
2006	\$5,928	\$401,046	\$219,920	\$121,000	\$65,954
2007	\$5,928	\$212,072	\$218,000	\$121,000	(\$121,000)
2008	\$5,928	\$212,072	\$218,000	\$121,000	(\$121,000)
2009	\$5,928	\$212,072	\$218,000	\$121,000	(\$121,000)
2010	\$5,928	\$212,072	\$218,000	\$121,000	(\$121,000)



Staff Contact: Christian Ninaud

H.B. 1025 Solomons (Shapleigh)

Summary

The Texas Optometry Board (the Board) was created in 1921 to ensure that safe and quality eye health services are provided to the citizens of Texas. The Board has three primary functions: licensing qualified individuals to practice optometry in Texas; enforcing the Optometry Act and key provisions of the State's Contact Lens Prescription Act; and investigating and resolving complaints. The Board currently licenses about 3,400 individuals, of which 1,358 are dually licensed as therapeutic optometrists and glaucoma specialists. The Board has a staff of seven and operates on an annual budget of \$372,000.

House Bill 1025 continues the Board for 12 years, and contains the Sunset Commission's recommendations to improve consumers' ability to shop competitively for contact lenses, and strengthen the Board's enforcement procedures. The legislation ensures that consumers have an effective state agency with clear authority to address contact lens complaints, and to better protect patient safety when purchasing contact lenses over the Internet. Additionally, the legislation strengthens the Board's regulatory authority over optometrists, creates a fairer process to resolve complaints, and provides the Board additional enforcement tools to protect the public's health and safety.

Sunset Provisions

1. Increase Consumers' Access to Their Contact Lens Prescriptions and Ensure Protection of Consumers' Eye Health When Purchasing Lenses From Dispensers.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
3. Continue the Texas Optometry Board for 12 Years.

Sunset Provisions

1. Increase Consumers' Access to Their Contact Lens Prescriptions and Ensure Protection of Consumers' Eye Health When Purchasing Lenses From Dispensers.

House Bill 1025 conforms the State's Contact Lens Prescription Act with federal regulations governing the release and verification of contact lens prescriptions. Specifically, the bill:

- requires optometrists and other contact lens prescribers to give patients their prescriptions without the patient having to ask for it;
- eliminates requirements for a contact lens seller to fill a prescription only from an original written prescription;
- authorizes verification of a contact lens prescription between a seller and an optometrist or other prescriber; and
- allows sellers to substitute one brand of lens for a different brand only if it is the same contact lens prescribed.

By providing consumers greater access to their contact lens prescriptions and establishing a process for verifying valid prescriptions, House Bill 1025 provides a greater range of purchasing choices. It also provides clear authority for the Board to address consumer complaints regarding access to prescriptions and to enforce provisions regarding the release or verification of a prescription by optometrists. The bill also requires the Texas Department of State Health Services to enforce provisions regarding verification requests from contact lens sellers permitted by the Department.

2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

To bring the Board in line with standard licensing agency practices, House Bill 1025 includes the following provisions.

- Requires the Board to change the way it calculates penalties for late license renewals.
- Requires the Board to investigate complaints according to risk.
- Authorizes staff to settle complaints which do not require optometric expertise, subject to the Board's final approval.
- Requires that at least two optometrist members of the Board review complaints requiring professional expertise.
- Requires the Board to include one of its public members in informal settlement processes.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Requires the Board to adopt an administrative penalty matrix in procedures or rules.
- Prevents the Board from requiring additional practice authority as part of a disciplinary action.
- Authorizes the Board to temporarily suspend a license.

- Authorizes the Board to issue cease-and-desist orders to stop unlicensed activity.
- Authorizes the Board to conduct unannounced inspections of optometrists' offices.
- Requires the Board to formally open complaints resulting from inspections.
- Eliminates Board authority to administer oral exams.

3. Continue the Texas Optometry Board for 12 Years.

House Bill 1025 continues the Board as a separate, stand-alone agency responsible for regulating the optometric profession for the standard 12-year period.

Fiscal Implication Summary

Requiring the Board to change the way it calculates late renewals will result in a gain to the General Revenue Fund of approximately \$2,775 annually, as shown in the chart below.

<i>Fiscal Year</i>	<i>Gain to the General Revenue Fund</i>
2006	\$2,775
2007	\$2,775
2008	\$2,775
2009	\$2,775
2010	\$2,775

Summary

The Texas State Board of Pharmacy (the Board) was created in 1907 to regulate the practice of pharmacy, the operation of pharmacies, and the distribution of prescription drugs. The Board has the following primary functions: licensing qualified individuals to practice pharmacy or operate a pharmacy, and registering pharmacist-interns, preceptors, and pharmacy technicians; regulating the delivery or distribution of prescription drugs or devices; setting standards regarding the practice of pharmacy; and enforcing the Texas Pharmacy Act by investigating and resolving complaints against pharmacists, pharmacies, and pharmacy technicians. The Board operates with an annual budget of \$3.2 million, and has 48 staff positions.

Senate Bill 410 continues the Board for 12 years, and contains the Sunset Commission recommendations to strengthen the Board's regulation of pharmacists and pharmacies in Texas and licensed out-of-state pharmacies, such as Internet pharmacies. The bill also strengthens the Board's regulation of pharmacy technicians and establishes the regulation of pharmacy technician trainees to provide better control over persons having access to prescription drugs and controlled substances. Finally, the Legislature added a provision for the Board to authorize at least one, but not more than 10, Canadian pharmacies to ship prescription drugs to Texas residents. The list below summarizes the major provisions of S.B. 410, and a more detailed discussion follows.

Sunset Provisions

1. Strengthen the Board's Ability to Regulate Out-of-State Pharmacies.
2. Update the Board's Enforcement Authority to Address Needs Created by Changes in the Pharmacy Industry.
3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
4. Expand the Board's Enforcement Authority Over Pharmacy Technicians.
5. Authorize the Board to Register and Discipline Pharmacy Technician Trainees.
6. Make Confidential Personal Information About Persons Licensed and Registered by the Board.
7. Continue the Texas State Board of Pharmacy for 12 Years.

Provisions Added by the Legislature

8. Require the Pharmacy Board to Authorize Canadian Pharmacies to Dispense Prescription Drugs to Texas Residents on a Limited Basis.

9. Simplify the Process Between a Physician and a Pharmacist for Prescribing Certain Controlled Substances.
10. Allow the Board to Recognize Other Health-Care Professionals Besides Pharmacists as Preceptors to Supervise Pharmacist-Interns.
11. Clarify the Board's Jurisdiction Over Pharmacists With Expired Licenses for Enforcement Purposes.

Sunset Provisions

1. Strengthen the Board's Ability to Regulate Out-of-State Pharmacies.

Senate Bill 410 contains several provisions to hold out-of-state pharmacies to the same standards as in-state pharmacies. To be licensed by the Board, these pharmacies must meet comparable standards such as providing proof of credit worthiness and having a suitable inspection report. Out-of-state pharmacies also will be subject to the same grounds for disciplinary action as in-state pharmacies.

The bill also clarifies the Board's ability to take disciplinary action against out-of-state pharmacies. The bill removes the time frames that the Board must adhere to before initiating disciplinary action against an out-of-state pharmacy that allegedly violated the Texas Pharmacy Act. As a result, the Board may initiate disciplinary action against one of these pharmacies without having to wait to allow the pharmacy board in the state where the pharmacy is located to take action first.

Senate Bill 410 requires out-of-state pharmacies to post on their Internet home page general information on filing a complaint with the Board. More detailed information on how to file a complaint with the Board must be no more than two links away from the pharmacy's initial home page. In addition, the Board must provide on its Web site information about Internet pharmacies licensed by the Board, including the pharmacy's name, license number, and state of physical location.

The bill also requires a pharmacist or pharmacy to determine that a prescription is valid before dispensing it, and prohibits the dispensing of a prescription drug if the pharmacist or pharmacy knows or should know that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid practitioner-patient relationship, except in emergencies.

2. Update the Board's Enforcement Authority to Address Needs Created by Changes in the Pharmacy Industry.

Senate Bill 410 expands the grounds for the Board to take enforcement action against Texas pharmacists and pharmacies. Specifically, pharmacists will be subject to disciplinary action for inadequate supervision of a pharmacy technician. Pharmacists and pharmacies will be subject to the Board's full range of disciplinary action for failure to comply with Board rules or orders, including confidential orders or contracts for pharmacists entered into through the Pharmacy Recovery Network peer assistance program. The bill also adds deferred adjudication to convictions for felonies or misdemeanors involving moral turpitude or that relate to statutes affecting the practice of pharmacy to the grounds for the Board to discipline pharmacists and pharmacy owners.

The bill allows the Board to discipline pharmacists and pharmacies – including out-of-state pharmacies – based on disciplinary action taken by another state pharmacy board, if the conduct is also a violation

of Texas law. This authority also applies to an out-of-state pharmacy that is disciplined by another state's board. The bill also holds pharmacists and pharmacy owners responsible for drug audit shortages, allowing the Board to pursue a more significant offense than the finding of inadequate record keeping, which is the only offense currently available to the Board.

3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

To bring the Board in line with standard licensing agency practices, Senate Bill 410 includes the following provisions.

- Requires the Board to adopt procedures to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.
- Authorizes the Board to establish policies regarding nonrefundable testing fees.
- Simplifies the process for a pharmacist who holds an active license in another state to be licensed in Texas.
- Bases delinquent license renewal fees on the Board's normally required renewal fee.
- Authorizes staff to dismiss baseless cases.
- Increases the amount of the Board's administrative penalty authority and requires the Board to adopt an administrative penalty matrix in rule.
- Removes the requirement that a majority of Board members must approve temporary suspension of a license and provide for the temporary suspension of pharmacies' licenses.
- Authorizes the Board to use cease-and-desist orders with regard to practicing pharmacy without a license.
- Allows pharmacy faculty members to be eligible to serve on the Board.
- Authorizes Board members to receive reimbursement for travel expenses.
- Requires the Board to establish guidelines for Board subcommittees.
- Eliminates the Pharmacy Board Operating Account allowing the Board's funds to be deposited into and received from the General Revenue Fund.

4. Expand the Board's Enforcement Authority Over Pharmacy Technicians.

The bill expands the range of sanctions available to the Board in disciplining pharmacy technicians. In addition to the Board's current authority to refuse to issue or renew, suspend, or revoke a pharmacy technician's license, the Board will have authority to reprimand a pharmacy technician, restrict, retire, or temporarily suspend a pharmacy technician's registration, place the pharmacy technician on probation with certain guidelines, or impose an administrative penalty against a pharmacy technician. These changes bring the range of disciplinary sanctions for pharmacy technicians in line with those for pharmacists.

The Legislature added language to make pharmacy technicians subject to discipline if they receive deferred adjudication for any felony or misdemeanors involving moral turpitude or that relate to statutes affecting the practice of pharmacy. This language reflects the same provisions in the bill related to pharmacists and pharmacy owners placed on deferred adjudication.

5. Authorize the Board to Register and Discipline Pharmacy Technician Trainees.

Senate Bill 410 authorizes the Board to register individuals while they are working in a pharmacy as pharmacy technician trainees subject to qualifications specified by Board rule. The Legislature added language to authorize the Board to hold trainees to the same disciplinary grounds and disciplinary actions that are applied to pharmacy technicians, pharmacists, and pharmacies. As a result, trainees will be subject to discipline if they receive deferred adjudication for felonies or certain misdemeanors, just like pharmacy technicians. Trainees also will now be subject to temporary suspension and the full range of other disciplinary sanctions, including being reprimanded, placed on probation, or assessed an administrative penalty, in addition to being suspended or revoked.

6. Make Confidential Personal Information About Persons Licensed and Registered by the Board.

The bill makes information regarding the home address and telephone number of licensees and registrants confidential and not subject to disclosure under the Texas Public Information Act, clarifying and expanding the original Sunset Commission provision that pharmacists have the option of making this information confidential. Each person licensed or registered by the Board must provide a business address or address that is subject to disclosure and that may be posted on the Board's Internet site or in the Board's licensure verification database.

7. Continue the Texas State Board of Pharmacy for 12 Years.

The Board will continue as a separate, stand-alone agency for the standard 12-year period.

Provisions Added by the Legislature

8. Require the Pharmacy Board to Authorize Canadian Pharmacies to Dispense Prescription Drugs to Texas Residents on a Limited Basis.

The Legislature added a provision to require the Board to designate at least one, but not more than 10, Canadian pharmacies to dispense prescriptions under a prescription drug order to residents of Texas. To be designated by the Pharmacy Board to dispense prescription drugs to Texas, Canadian pharmacies must comply with safety standards and other requirements of the Texas Pharmacy Act and Board rules, and must meet additional qualifications, such as holding a Canadian license in good standing and being able to adequately respond to Board requests for information. The bill also limits the types of drugs that Canadian pharmacies may dispense to Texas residents.

Before a Canadian pharmacy may be designated to dispense prescription drugs to Texas residents, it must pass an initial inspection by the Pharmacy Board. Thereafter, these pharmacies are subject to

random inspections, conducted at least annually, that the Board may provide through an agreement with another state. The Board must set fees to cover its costs of inspecting these pharmacies, and must establish a Web site to provide information to enable Texas residents to conveniently order prescription drugs from designated Canadian pharmacies.

9. Simplify the Process Between a Physician and a Pharmacist for Prescribing Certain Controlled Substances.

The Legislature added a provision to eliminate the requirement that a physician who prescribes a schedule II controlled substance and faxes it to a pharmacy must deliver in person or by mail the official written copy to the pharmacist. Instead, the physician, after faxing the prescription, must write “void” on the original prescription and file it in the patient’s records.

10. Allow the Board to Recognize Other Health-Care Professionals Besides Pharmacists as Preceptors to Supervise Pharmacist-Interns.

The Legislature added this provision to allow other health-care professionals to serve as preceptors in situations, such as clinical rotations, in which pharmacy interns may need to be under the supervision of practitioners other than pharmacists, such as physicians.

11. Clarify the Board’s Jurisdiction Over Pharmacists With Expired Licenses for Enforcement Purposes.

The Legislature added a provision to ensure that the Board retains jurisdiction over pharmacists whose licenses have expired if they are subject to pending investigation or disciplinary action.

Provision Removed by the Legislature _____

1. Authorize the Board to Access Sales and Pricing Data During Investigations That Resulted From a Complaint or Previously Failed Inspection.

The Legislature did not adopt the Sunset provision removing the limitation on the Board’s access to sales and pricing data during a Board investigation of a pharmacy or pharmacist for illegally dispensing drugs; or for violating a provision of the Texas Pharmacy Act or Board rules, such as fraud cases.

Fiscal Implication Summary _____

Senate Bill 410 contains provisions that will have an overall gain to the General Revenue Fund of \$4,847,320 in fiscal year 2006 and \$33,320 in fiscal year 2007 and each year thereafter. These provisions are discussed below, followed by a five-year summary chart.

Eliminating the Pharmacy Board Operating Account will result in \$4,814,000, as estimated by the Comptroller of Public Accounts, being transferred to the General Revenue Fund on September 1, 2006. The provision changing the basis of the late renewal penalties for pharmacists and pharmacies will result in a loss of revenue to the State of \$8,680 per year.

Provisions in the bill expanding the Board's disciplinary authority over pharmacy technicians and establishing the regulation of pharmacy technician trainees will result in additional costs to the Board of \$240,093 in fiscal year 2006 and \$191,446 in fiscal year 2007 and each year thereafter. The Legislature included a contingency appropriation in the General Appropriations Act for these costs to pay for increased overall technology costs and for three additional employees required for the anticipated increased workload associated with the growth in enforcement cases against pharmacy technicians and trainees. This appropriation is contingent on the Board assessing fees sufficient to cover these costs.

The strengthened enforcement authority over pharmacy technicians and trainees will also result in a revenue gain of \$42,000 annually from added enforcement orders and probationary fees assessed against registrants who violate the law or Board rule.

Providing for the Board to designate up to 10 Canadian pharmacies to distribute drugs to Texas residents will have costs of \$25,040 annually for staff travel to inspect these pharmacies and to address complaints against these pharmacies. However, because the Board did not receive additional funding for this provision, it must cover these costs with its current resources, at no additional cost to the State.

<i>Fiscal Year</i>	<i>Gain to the General Revenue Fund</i>	<i>Cost to the General Revenue Fund</i>	<i>Loss to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>	<i>Change in Staff Positions From FY 2005</i>
2006	\$5,096,093	\$240,093	\$8,680	\$4,847,320	+3
2007	\$233,446	\$191,446	\$8,680	\$33,320	+3
2008	\$233,446	\$191,446	\$8,680	\$33,320	+3
2009	\$233,446	\$191,446	\$8,680	\$33,320	+3
2010	\$233,446	\$191,446	\$8,680	\$33,320	+3



Texas State Board of Podiatric Medical Examiners

Staff Contact: Amy Trost

S.B. 402 Nelson (Hamric)

Summary

The State has regulated podiatry since 1923 through different agency structures. Since 1995, the Texas State Board of Podiatric Medical Examiners (the Board) has been responsible for ensuring that safe and quality podiatric services are provided to the citizens of Texas. The Board does this through three primary functions: license qualified individuals to practice podiatry in Texas; set standards relating to the practice of podiatry; and enforce the Podiatric Medical Act, including investigating and resolving complaints. The Board currently licenses about 850 podiatrists, with a staff of four employees and an annual budget of \$204,792.

Senate Bill 402 continues the Board for 12 years, and contains the Sunset Commission's recommendations to conform key elements of the Podiatric Medical Act to commonly applied licensing practices. The list below summarizes the major provisions of S.B. 402, and a more detailed discussion follows.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Agency Practices.
2. Continue the Texas State Board of Podiatric Medical Examiners for 12 Years.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Senate Bill 402 includes 11 provisions that bring the Board in line with standard licensing agency practices, consisting of the following.

- Clarifies that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Simplifies the process for a podiatrist who holds an active license in another state to be licensed in Texas.
- Bases delinquent license renewal fees on the Board's normally required renewal fee.
- Authorizes the Board to conduct inspections of podiatrists' premises in the course of an investigation, or to determine compliance with a Board order.
- Requires the Board to include one of its public members in the informal settlement process.
- Increases the amount of the Board's administrative penalty authority, and requires the Board to adopt an administrative penalty matrix in rule.
- Authorizes the Board to temporarily suspend a license under certain circumstances.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Authorizes the Board to issue cease-and-desist orders to stop unlicensed activity.
- Authorizes Board members to receive reimbursement for travel expenses.
- Prohibits Board members from serving as voting members on task forces or advisory committees.

2. Continue the Texas State Board of Podiatric Medical Examiners for 12 years.

This provision continues the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

Senate Bill 402 contains one provision that will have a positive fiscal impact to the State. Basing the late license renewal fees on the cost of renewal, rather than the cost of the licensing exam, will result in an estimated annual revenue gain of \$3,315 because the renewal fee is higher than the examination fee. The revenue gain is shown in the following five-year summary chart.

<i>Fiscal Year</i>	<i>Gain to the General Revenue Fund</i>
2006	\$3,315
2007	\$3,315
2008	\$3,315
2009	\$3,315
2010	\$3,315



Texas State Board of Examiners of Psychologists

Staff Contact: Melissa Aerne

H.B. 1015 Truitt, et al. (Jackson)

Summary

The Texas State Board of Examiners of Psychologists (the Board) was created in 1969 to ensure that Texans receive psychological services from competent, qualified practitioners. The Board has two primary functions: license qualified individuals to provide psychological services in Texas and enforce the Psychologists' Licensing Act, including investigating and resolving complaints. The Board currently licenses more than 6,000 psychological practitioners, with a staff of 12 employees and an annual budget of \$720,564.

House Bill 1015 continues the Board for 12 years and contains the Sunset Commission's recommendations to strengthen the Board's enforcement procedures, abolish the Psychological Associate Advisory Committee and improve stakeholder input in the Board's rule development process, and streamline the licensing process for psychologist applicants already licensed to practice independently in other states. Other provisions in the bill improve the consistency of the administration and the objectivity of the Board's oral exam for psychologist licensure, and enhance the Board's continuing education program. The list below summarizes the major provisions of H.B. 1015, and a more detailed discussion follows.

Sunset Provisions

1. Require the Board to Improve the Objectivity and Administration of Its Oral Examination for Psychologist Licensure.
2. Abolish the Psychological Associate Advisory Committee and Require the Board to Seek Input From All Licensee Groups and Stakeholders Early in Its Rule Development Process.
3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
4. Authorize the Board to Participate in the Quarterly Criminal Record Checks Conducted by the Department of Public Safety.
5. Continue the Texas State Board of Examiners of Psychologists for 12 Years.

Provision Added by the Legislature

6. Authorize the Board to Approve Continuing Education Courses Developed by Third-Party Providers.

Sunset Provisions

1. Require the Board to Improve the Objectivity and Administration of Its Oral Examination for Psychologist Licensure.

Instead of abolishing the oral examination for psychologists, the Legislature modified the Sunset recommendation to prohibit the Board from assessing applicants' personal characteristics through its oral exam, and improve the Board's administration of the examination. The Board must define by rule the standards used to determine passage of the exam, and establish a working group to periodically evaluate the oral exam and make recommendations for its improvement.

2. Abolish the Psychological Associate Advisory Committee and Require the Board to Seek Input From All Licensee Groups and Stakeholders Early in Its Rule Development Process.

House Bill 1015 abolishes the Psychological Associate Advisory Committee and removes the requirement for the Governor to appoint its members. The Governor will continue to appoint two psychological associate members to the Board.

The bill also requires the Board to provide all psychology professionals and stakeholders with the opportunity for a stronger role in the development of rules, before formal proposal in the *Texas Register*, by allowing those most affected by a proposed rule to provide advice and opinions earlier in the process. Once the Board receives early input, it will still publish proposed rules according to the Administrative Procedure Act, and allow the public an opportunity to oppose the rules or suggest alternatives during the comment period.

3. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

House Bill 1015 includes nine provisions that bring the Board in line with standard licensing agency practices, consisting of the following.

- Allows qualified psychology professionals from other states to apply for licensure in Texas through a streamlined process without meeting minimum practice requirements, as long as they meet all other licensing requirements.
- Provides an exemption from the provisional license supervision requirement for applicants who are already licensed to practice independently in other states.
- Authorizes the Board to accept all national credentials as proof of meeting basic licensing requirements.
- Authorizes the Board to grant temporary privileges to psychology professionals from other states who wish to practice in Texas for a short, specified period of time.
- Requires the Board to develop a system for complaint trend analysis.
- Requires the Board to investigate complaints according to risk.

- Requires the Board to include one of its public members in the informal settlement process.
- Requires the Board to adopt a more specific schedule of sanctions in rule.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement process.

4. Authorize the Board to Participate in the Quarterly Criminal Record Checks Conducted by the Department of Public Safety.

House Bill 1015 includes the Psychology Board with the Medical, Dental, Podiatric Medical, and Pharmacy boards as agencies receiving quarterly criminal record checks of licensees by the Department of Public Safety, to help identify licensees who may be a threat to public safety.

5. Continue the Texas State Board of Examiners of Psychologists for 12 Years.

This provision continues the Board as a separate, stand-alone agency for the standard 12-year period.

Provision Added by the Legislature _____

6. Authorize the Board to Approve Continuing Education Courses Developed by Third-Party Providers.

The Legislature adopted a provision that authorizes the Board to approve continuing education courses developed or approved by accepted third-party providers, including national and state associations that represent license holders and other mental health associations, and institutions of higher education.

Provision Removed by the Legislature _____

1. Change the Basis for the Board’s Late Renewal Penalties.

The Legislature did not adopt the Sunset provision requiring the Board to use the standard renewal fee as the basis for its late renewal penalties, rather than the cost of the exams required for licensure.

Fiscal Implication Summary _____

This legislation will not have a fiscal impact to the State.

Summary

The Public Utility Commission of Texas (PUC) oversees electric and telecommunications companies to ensure Texas consumers have access to high-quality, competitive utility services. Established by the Legislature in 1975, PUC oversees fair competition in the wholesale and retail electricity and telecommunications markets; regulates rates and services of non-competitive electric utilities and local exchange companies; helps consumers resolve complaints; enforces compliance with statutes and rules; and administers electricity and telephone discount programs for low-income and rural customers. The Commission employs 211 staff and operates on a budget of \$109.9 million, of which \$97 million passes through the agency to utilities to provide discounts for low-income electricity consumers in areas with competition.

The Legislature continued PUC for six years and adopted all of the Sunset Commission's recommendations to strengthen oversight of the Electric Reliability Council of Texas (ERCOT), and to improve PUC's regulation of the electric and telecommunications industries. The list below summarizes the major provisions of Senate Bill 408, and a more detailed discussion follows.

Sunset Provisions

1. Clarify PUC's Oversight Authority Over the Electric Reliability Council of Texas and Add Two Independent Members to the ERCOT Board.
2. Require ERCOT to Perform Market Monitoring Through a Contract With a Private Company Selected By PUC.
3. Eliminate the Requirement for Telecommunications Utilities to File the *Report of Certain Expenses* and Require PUC to Evaluate the Necessity of Other Required Reports.
4. Increase PUC's Maximum Administrative Penalty from \$5,000 to \$25,000 for Serious Violations.
5. Expand the Use of the System Benefit Fund to Assist Needy Patients on Life Support or With Serious Health Problems Who Are Threatened With Disconnection for Nonpayment.
6. Continue the Public Utility Commission of Texas for Six Years.

Sunset Provisions

1. Clarify PUC's Oversight Authority Over the Electric Reliability Council of Texas and Add Two Independent Members to the ERCOT Board.

Senate Bill 408 clarifies PUC's complete oversight authority over all facets of the Electric Reliability Council of Texas' (ERCOT) finances, budget, and operations. The bill also requires ERCOT to add two independent Board members by September 2006, provides that the Board Chair must be an independent member, requires ERCOT Board members to disclose any conflicts of interest and recuse themselves from votes directly related to those interests, and requires Board meetings to be open to the public. The Legislature added a provision granting PUC the ability to assess administrative penalties against ERCOT.

2. Require ERCOT to Perform Market Monitoring Through a Contract With a Private Company Selected By PUC.

Senate Bill 408 requires ERCOT to contract with, fund, and support the operations of a private company to perform market monitoring; and requires PUC to select the monitoring company, define the company's responsibilities, and set standards for funding, staff qualifications, and ethical conduct. The bill requires the market monitoring company to report potential violations of PUC or ERCOT rules or other potential market manipulations to PUC; and submit an annual report identifying market design flaws and recommending methods to fix the flaws.

3. Eliminate the Requirement for Telecommunications Utilities to File the Report of Certain Expenses and Require PUC to Evaluate the Necessity of Other Required Reports.

Senate Bill 408 reduces the burden of PUC's reporting requirements on telecommunications utilities. Specifically, the bill eliminates the statutory provision that authorizes PUC to require telecommunications utilities to annually report expenditures related to business gifts, entertainment, advertising, and public relations. The bill also requires PUC to conduct a one-time review of its reporting requirements for telecommunications utilities to determine the ongoing need for the required reports.

4. Increase PUC's Maximum Administrative Penalty from \$5,000 to \$25,000 for Serious Violations.

To effectively address and deter violations by electric and telecommunications utilities operating in a deregulated environment, Senate Bill 408 increases PUC's maximum administrative penalty from \$5,000 to \$25,000 per day, per violation. The bill requires PUC to develop in rule a series of classes of violations with ranges of administrative penalty amounts for each class of violation, and provides that only the most serious violations would result in penalties exceeding \$5,000 per day, per violation.

5. Expand the Use of the System Benefit Fund to Assist Needy Patients on Life Support or With Serious Health Problems Who Are Threatened With Disconnection for Nonpayment.

The bill expands the use of the System Benefit Fund to assist needy patients on life support or with serious health problems who are threatened with disconnection for nonpayment. The bill also requires PUC to develop rules governing the program.

6. Continue the Public Utility Commission of Texas for Six Years.

Senate Bill 408 continues PUC as an independent agency, responsible for protecting electricity and telephone customers and enforcing the rules of competition for these industries, for six years.

Fiscal Implication Summary _____

Senate Bill 408 will not have a significant fiscal impact to the General Revenue Fund. However, two provisions will result in a cost of \$1.55 million to ERCOT, a private, non-profit corporation operating outside the appropriations process. Senate Bill 408 adds two additional independent members to the ERCOT Board resulting in a cost of \$150,000 per year. The bill also transfers responsibility for monitoring the wholesale electric market to ERCOT from PUC, resulting in a cost to ERCOT of \$1.4 million per year.



Office of Public Utility Counsel

Staff Contact: Janelle Collier

S.B. 409 Nelson (P. King)

Summary

The Office of Public Utility Counsel (OPUC) represents the interests of residential and small commercial consumers to help ensure just and reasonable rates for electricity and telephone services. OPUC participates in contested cases and other proceedings before the Public Utility Commission (PUC); advocates on behalf of consumers in federal regulatory proceedings; and represents consumers at the Electric Reliability Council of Texas. OPUC employs 19 staff, and operates on a \$1.6 million annual budget.

Senate Bill 409 continues the Office of Public Utility Counsel for six years, directs the State Auditor's Office to audit OPUC's performance measures, requires OPUC to annually report its performance to the Legislature, and requires OPUC to obtain consumer input through an annual stakeholder meeting. The Legislature adopted all of the Sunset Commission's recommendations without modification. The major provision of S.B. 409 is listed below, and a more detailed discussion follows.

Sunset Provision

1. Continue OPUC for Six Years, and Require Increased Consumer Input and Legislative Oversight.

Sunset Provision

1. Continue OPUC for Six Years, and Require Increased Consumer Input and Legislative Oversight.

The shorter Sunset date required by S.B. 409 will allow the Legislature to reevaluate the ongoing need for an independent consumer advocate when competition is more fully implemented. OPUC will have six years in which to operate, improve its accountability to both the Legislature and the consumers it represents, and the Legislature will evaluate the need for the agency in the 2011 legislative session, coinciding with the Sunset review of PUC.

The bill requires OPUC to report the number of hours billed, a breakdown of time spent, the types of activities conducted, the number and type of staff positions, and its success rate on appeals. The report will be sent to the appropriate standing committees that have jurisdiction over OPUC, House Appropriations Committee, Senate Finance Committee, and the Sunset Advisory Commission.

Senate Bill 409 directs the State Auditor's Office to evaluate OPUC's current performance measures to determine the accuracy of the calculations, and if the current measures accurately depict the impact of OPUC. The audit will include all measures, especially the reported bill savings to residential and small commercial consumers attributable to OPUC's participation in proceedings.

Finally, S.B. 409 requires OPUC to hold an annual stakeholder meeting to obtain input directly from the consumers it represents. OPUC will receive public comment on its functions and effectiveness, and input to assist the Office in developing a plan outlining its priorities. To provide sufficient notice, the meeting will be posted in the *Texas Register*.

Fiscal Implication Summary

The provisions in S.B. 409 will not have a fiscal impact to the State.



Texas Department of State Health Services

Texas State Board of Examiners of Dietitians

Staff Contact: Amy Trost

H.B. 1155 Truitt, et al. (Shapleigh)

Summary

The Legislature created the Texas State Board of Examiners of Dietitians (the Board) in 1983 to ensure that safe and quality dietetic services are provided to the citizens of Texas. The Board does this through two primary functions: licensing qualified individuals to use the title “licensed dietitian” in Texas, and enforcing the Licensed Dietitian Act, including investigating and resolving complaints. The Board, through its administrative attachment to the Department of State Health Services, currently licenses about 3,400 dietitians, with a staff of one employee and an annual budget of about \$109,000. The Legislature adopted all of the Sunset Commission’s recommendations on the Board. The list below summarizes the major provisions of H.B. 1155, and a more detailed discussion follows.

Sunset Provisions

1. Conform Key Elements of the Board’s Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
2. Continue Regulation of Dietitians With an Independent Board at the Department of State Health Services for 12 Years.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

House Bill 1155 includes 11 provisions that bring the Board in line with standard licensing agency practices, consisting of the following.

- Clarifies that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Requires applicants to pass a jurisprudence exam as a condition of licensure.
- Requires the Board to base delinquent license renewal fees on the normally required renewal fee.
- Requires the Board to include a public member on complaint committees.
- Authorizes the Board to refuse to renew a license as an administrative sanction.
- Requires the Board to have penalty matrices with dollar amounts associated with violations.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Authorizes the Board to seek an injunction against persons holding themselves out as dietitians without a license.
- Authorizes the Board to issue cease-and-desist orders against unlicensed activity.
- Removes authority for Board members to receive payments for attendance at meetings and clarifies that they may be reimbursed for travel expenses.
- Clarifies the Board's authority to appoint Board committees, but only composed of Board members.

2. Continue Regulation of Dietitians With an Independent Board at the Department of State Health Services for 12 Years.

This provision continues the Board at the Department of State Health Services for the standard 12-year period.

Fiscal Implication Summary

This legislation will not have a significant fiscal impact to the State.



Texas Department of State Health Services

Texas State Board of Examiners of Marriage and Family Therapists

Staff Contact: Steve Hopson

H.B. 1413 Truitt, et al. (Whitmire)

Summary

The Legislature created the Texas State Board of Examiners of Marriage and Family Therapists in 1991 to ensure that Texans receive services from competent, qualified professionals trained in psychotherapy and family systems. The Board licenses qualified individuals; sets rules and standards for practicing the profession; and enforces the Marriage and Family Therapist Act by investigating and resolving complaints. The Board, through its administrative attachment to the Department of State Health Services, licenses about 3,000 marriage and family therapists, with a staff of three employees and an annual budget of about \$171,000.

The Legislature adopted all of the Sunset Commission's recommendations to improve the licensing and regulation of marriage and family therapists and to make the Board's processes fairer and more efficient. The list below summarizes the major provisions of House Bill 1413, and a more detailed discussion follows.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
2. Continue Regulation of Marriage and Family Therapists With an Independent Board at the Department of State Health Services for 12 Years.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

House Bill 1413 includes 12 provisions that align the regulation of marriage and family therapy with standard licensing agency practices, consisting of the following.

- Clarifies that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Removes subjective examination provisions from the Marriage and Family Therapist Act.
- Requires applicants to pass a jurisprudence exam as a condition of licensure.
- Removes exemptions from the Marriage and Family Therapist Act for non-Texas residents to practice without temporary licensure.
- Requires the Board to base delinquent license renewal fees on the normally required renewal fee.
- Requires the Board to include a public member on complaint committees.
- Authorizes the Board to refuse to renew a license as an administrative sanction.
- Increases the maximum administrative penalty of the Board to \$5,000 per violation, per day.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Authorizes the Board to issue cease-and-desist orders against unlicensed activity.
- Removes authority for Board members to receive payments for attendance at meetings.
- Clarifies the Board's authority to appoint Board committees, but only composed of Board members.

2. Continue Regulation of Marriage and Family Therapists With an Independent Board at the Department of State Health Services for 12 Years.

This provision continues the Board at the Department of State Health Services for the standard 12-year period.

Fiscal Implication Summary

Changing the basis of the late renewal penalties will result in a loss to the General Revenue Fund of \$13,098 per year.

<i>Fiscal Year</i>	<i>Loss to the General Revenue Fund</i>
2006	\$13,098
2007	\$13,098
2008	\$13,098
2009	\$13,098
2010	\$13,098



Texas Department of State Health Services

Texas Midwifery Board

Staff Contact: Amy Trost

H.B. 1535 Truitt, et al. (Shapleigh)

Summary

The Legislature created the Texas Midwifery Board (the Board) in 1991, after increasing the scope of regulation of the original Lay Midwifery Board created in 1983, to ensure that safe and quality midwifery services are provided to the citizens of Texas. The Board does this through three primary functions: licensing qualified individuals to practice midwifery in Texas; setting standards relating to the practice of midwifery; and enforcing the Texas Midwifery Act, including investigating and resolving complaints. The Board, through its administrative attachment to the Department of State Health Services, currently licenses about 180 midwives, with a staff of one employee and an annual budget of about \$40,000. The Legislature adopted all of the Sunset Commission's recommendations on the Board. The list below summarizes the major provisions of H.B. 1535, and a more detailed discussion follows.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
2. Change the Statutory Designation of Documented Midwife to Licensed Midwife.
3. Add Greater Representation of Midwives to the Midwifery Board.
4. Continue Regulation of Midwives at the Department of State Health Services for 12 Years.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

House Bill 1535 includes 12 provisions that bring the Board in line with standard licensing agency practices, including the following.

- Clarifies that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Requires applicants to pass a jurisprudence exam as a condition of licensure.
- Requires the Board to provide timely notice of exam results.
- Requires the Board to base delinquent license renewal fees on the normally required renewal fee, and requires midwives whose licenses are delinquent more than one year to reapply for licensure.
- Limits the Board from having rules restricting advertising or competitive bidding by a license holder.
- Requires the Board to include a public member on complaint committees.
- Authorizes the Board to refuse to renew a license as an administrative sanction.
- Increases the Board's maximum administrative penalty to \$5,000 per violation, per day.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Authorizes the Board to issue cease-and-desist orders against unlicensed activity.
- Removes authority for Board members to receive payments for attendance at meetings other than reimbursement for travel expenses.
- Clarifies the Board's authority to appoint Board committees, but only composed of Board members.

2. Change the Statutory Designation of Documented Midwife to Licensed Midwife.

Under this provision, all references in the Midwifery Act to a documented midwife change to a licensed midwife. References to documentation also change to licensure.

3. Add Greater Representation of Midwives to the Midwifery Board.

House Bill 1535 increases the number of midwife positions on the Board from three to five by eliminating the certified nurse-midwife and one public member from the Board, and replacing them with two midwife members. The new Board composition includes five midwives; one physician who is a certified obstetrician/gynecologist; one physician who is a certified family practitioner or

pediatrician; and two public members, one of whom is a parent of a child born with the assistance of a midwife. The bill also removes the prohibition against more than one Midwifery Board member being a licensed health care professional by deleting an unclear provision from the Midwifery Act, as all documented midwives are licensed health care professionals.

4. Continue Regulation of Midwives at the Department of State Health Services for 12 Years.

This provision continues the Board at the Department of State Health Services for the standard 12-year period.

Fiscal Implication Summary

One provision in House Bill 1535 will have a slight, positive fiscal impact to the State. Eliminating the payments to Midwifery Board members for attending their semi-annual meetings will save \$900 annually, as shown in the five-year chart below.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>
2006	\$900
2007	\$900
2008	\$900
2009	\$900
2010	\$900



Texas Department of State Health Services

Texas State Board of Examiners of Perfusionists

Staff Contact: David Olvera

S.B. 403 Nelson (Truitt)

Summary

The Legislature created the Texas State Board of Examiners of Perfusionists (the Board) in 1993 to ensure that the health-care professionals who operate cardiopulmonary bypass equipment during open-heart surgeries provide safe and quality services to the public. The Board oversees the profession by licensing qualified individuals to practice perfusion and enforcing the Perfusion Act by investigating and resolving complaints. The Perfusionist Board, through its administrative attachment to the Department of State Health Services (the Department), currently licenses about 300 perfusionists, with a staff of one employee and an annual budget of \$35,000.

The Legislature adopted all of the Sunset Commission's recommendations to replace the Governor-appointed Perfusionist Board with an advisory committee, and to improve the Department's licensing and enforcement processes. The list below summarizes the major provisions of Senate Bill 403, and a more detailed discussion follows.

Sunset Provisions

1. Replace the Independent, Governor-Appointed Perfusionist Board With an Advisory Committee.
2. Conform Key Elements of Perfusionist Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
3. Continue Regulation of Perfusionists with an Advisory Committee at the Department of State Health Services for 12 Years.

Sunset Provisions

1. Replace the Independent, Governor-Appointed Perfusionist Board With an Advisory Committee.

Senate Bill 403 replaces the Governor-appointed Perfusionist Board with an advisory committee appointed by the Commissioner of State Health Services and repeals the Board's policymaking authority. The bill requires the advisory committee to advise the Executive Commissioner of the Health and Human Services Commission on perfusion rules, and the Department of State Health Services on the administration of the Perfusion Act.

2. Conform Key Elements of Perfusionist Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Senate Bill 403 includes several provisions that align the regulation of perfusion with standard licensing agency practices, including the following.

- Clarifies that the Executive Commissioner of the Health and Human Services Commission must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Requires applicants to pass a jurisprudence exam as a condition of licensure.
- Removes exemptions from the Perfusionist Act for non-Texas residents to practice without temporary licensure.
- Requires the Department to base delinquent license renewal fees on the normally required renewal fee, and requires perfusionists whose licenses are delinquent more than one year to reapply for licensure.
- Authorizes the Department to refuse to renew a license as an administrative sanction.
- Requires the Executive Commissioner of the Health and Human Services Commission to adopt a penalty matrix with dollar amounts associated with violations.
- Authorizes the Department to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Authorizes the issuance of cease-and-desist orders against unlicensed activity.
- Removes authority for committee members to receive payments for attendance at meetings.

3. Continue Regulation of Perfusionists with an Advisory Committee at the Department of State Health Services for 12 Years.

This provision continues the regulation of perfusionists for 12 years, but with an advisory committee at the Department of State Health Services instead of an independent State Board of Examiners of Perfusionists.

Fiscal Implication Summary

Senate Bill 403 will not have a significant fiscal impact to the State.



Texas Department of State Health Services

Texas State Board of Examiners of Professional Counselors

Staff Contact: Kelly Kennedy

H.B. 1283 Truitt, et al. (Carona)

Summary

The Texas State Board of Examiners of Professional Counselors (the Board) was created in 1981 to ensure that Texans receive counseling services from competent, qualified professionals. The Board has three primary functions: license qualified individuals to engage in the practice of professional counseling in Texas; set standards relating to the practice of counseling; and enforce the Licensed Professional Counselor Act, including investigating and resolving complaints. The Board, through its administrative attachment to the Department of State Health Services, licenses about 16,200 professional counselors, with a staff of eight employees and an annual budget of about \$498,000.

The Legislature adopted all of the Sunset Commission's recommendations on the Board to improve the consistency of the licensing process and to make the process fairer and more efficient while still protecting the public. The list below summarizes the major provisions of House Bill 1283, and a more detailed discussion follows.

Sunset Provisions

1. Eliminate the Texas-Specific Exam for Professional Counselors and Update Other Licensing Requirements to Improve Interstate Movement of Professional Counselors.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
3. Continue Regulation of Professional Counselors With An Independent Board at the Department of State Health Services for 12 Years.

Provision Added by the Legislature

4. Prohibit Counselor Interns Pursuing a Course of Study in an Art Therapy Program From Using the Designation "Art Therapy Intern."

Sunset Provisions

1. Eliminate the Texas-Specific Exam for Professional Counselors and Update Other Licensing Requirements to Improve Interstate Movement of Professional Counselors.

House Bill 1283 increases national portability for Texas licensees who wish to be licensed in another state, and for out-of-state licensees who seek licensure in Texas. The bill removes the Board's authority to write its own exam, and requires the Board to contract with a nationally recognized organization to develop and administer the exam.

The bill also authorizes the Board to determine the number of graduate hours, and the Legislature added a provision authorizing the Board to determine supervision requirements necessary for licensure. The bill gives the Board flexibility to increase education and experience requirements above current levels to track national trends, but maintains the existing requirements as minimum standards.

2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

House Bill 1283 includes 12 provisions that bring the Board in line with standard licensing agency practices, including the following.

- Clarifies that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Removes exemptions from temporary licensure requirements.
- Removes subjective exam provisions from the Professional Counselor Act.
- Requires applicants to pass a jurisprudence exam as a condition of licensure.
- Removes exemptions from the Professional Counselor Act for non-Texas residents to practice without temporary licensure.
- Requires the Board to base delinquent license renewal fees on the normally required renewal fee.
- Requires the Board to include a public member on complaint committees.
- Requires the Board to have penalty matrices with dollar amounts associated with violations.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Authorizes the Board to issue cease-and-desist orders against unlicensed activity.
- Removes authority for Board members to receive payments for attendance at meetings.
- Clarifies the Board's authority to appoint Board committees, but only composed of Board members, and removes the authority for the Board to delegate its authority to a single member.

3. Continue Regulation of Professional Counselors With An Independent Board at the Department of State Health Services for 12 Years.

This provision continues the Board at the Department of State Health Services for the standard 12-year period.

Provision Added by the Legislature _____

4. Prohibit Counselor Interns Pursuing a Course of Study in an Art Therapy Program From Using the Designation “Art Therapy Intern.”

The Legislature adopted a provision that ensures art therapy students are not allowed to use the title “intern,” a title that other counseling students may not use. This provision does not prevent a counselor intern from completing the necessary training to specialize in art therapy.

Fiscal Implication Summary _____

Changing the basis of the late renewal penalties will result in a loss to the General Revenue Fund of \$12,654 per year.

<i>Fiscal Year</i>	<i>Loss to the General Revenue Fund</i>
2006	\$12,654
2007	\$12,654
2008	\$12,654
2009	\$12,654
2010	\$12,654



Texas Department of State Health Services

Texas State Board of Social Worker Examiners

Staff Contact: David Olvera

S.B. 415 Shapleigh (Truitt)

Summary

In 1993, the Legislature established the full licensure of social workers, created the Texas State Board of Social Worker Examiners (the Board), and transferred regulatory functions to the Department of Health, now the Department of State Health Services. Today the Board oversees social work by licensing qualified individuals, setting rules, and enforcing the Social Work Act by investigating and resolving complaints. The Board currently licenses about 22,000 social workers, with a staff of eight employees and an annual budget of \$500,000.

The Legislature adopted all of the Sunset Commission's recommendations to continue the Board for 12 years, improve the Board's licensing procedures, and strengthen enforcement of the Social Work Act. The list below summarizes the major provisions of Senate Bill 415, and a more detailed discussion follows.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
2. Continue Regulation of Social Workers With an Independent Board at the Department of State Health Services for 12 Years.

Provision Added by the Legislature

3. Authorize the Board to License Out-of-State Applicants With Qualifications Substantially Equivalent to Texas Licensees.

Sunset Provisions

1. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Senate Bill 415 includes several provisions that align the regulation of social work with standard licensing agency practices, including the following.

- Clarifies that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Requires applicants to pass a jurisprudence exam as a condition of licensure.
- Removes exemptions from the Social Work Act for non-Texas residents to practice without temporary licensure.
- Requires the Board to base delinquent license renewal fees on the normally required renewal fee unless the Board determines that the fees would not cover costs.
- Requires the Board to include a public member on complaint committees.
- Authorizes the Board to refuse to renew a license as an administrative sanction.
- Increases the maximum administrative penalty of the Board from \$500 to \$5,000 per violation, per day.
- Requires the Board to adopt a penalty matrix with dollar amounts associated with violations.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement conference process.
- Authorizes the Board to issue cease-and-desist orders against unlicensed activity.
- Clarifies the Board's authority to appoint Board committees, but only composed of Board members.

2. Continue Regulation of Social Workers With an Independent Board at the Department of State Health Services for 12 Years.

Senate Bill 415 continues the Board at the Department of State Health Services for the standard 12-year period.

Provision Added by the Legislature

3. Authorize the Board to License Out-of-State Applicants With Qualifications Substantially Equivalent to Texas Licensees.

The bill allows the Board to waive the examination of licensed out-of-state applicants who have largely the same experience as a Texas licensee who was grandfathered into licensure without examination. Also, the bill authorizes the Board to license out-of-state applicants who have obtained

credentials from national organizations that the Board determines sufficient. Finally, the bill authorizes the Board to consider supervision received by an applicant if the supervision were deemed sufficient in the applicant's state of origin.

Fiscal Implication Summary

Senate Bill 415 will not have a significant fiscal impact to the State.



Texas State Board of Veterinary Medical Examiners

Staff Contact: Meredith Whitten

S.B. 407 Jackson (B. Cook)

Summary

The Texas State Board of Veterinary Medical Examiners (the Board) was created in 1911 to ensure that safe and quality veterinary services are provided to the citizens of Texas and their animals. The Board has three primary functions: license qualified individuals to practice veterinary medicine in Texas; set standards relating to the practice of veterinary medicine; and enforce the Veterinary Licensing Act, including investigating and resolving complaints. The Board currently licenses more than 6,800 veterinarians, with a staff of 11 employees and an annual budget of \$613,145.

Senate Bill 407 continues the Veterinary Board for 12 years and contains the Sunset Commission's recommendations to strengthen the Board's continuing education program, and to make the Board's licensing and enforcement processes more efficient and fairer to both licensees and the public. The list below summarizes the major provisions of S.B. 407, and a more detailed discussion follows.

Sunset Provisions

1. Strengthen the Board's Continuing Education Program to Better Ensure Licensees Keep Current With Industry Standards and Practices.
2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
3. Continue the Texas State Board of Veterinary Medical Examiners for 12 Years.

Provision Added by the Legislature

4. Clarify That the Board's General Counsel May Be Present During Informal Proceedings.

Sunset Provisions

1. Strengthen the Board's Continuing Education Program to Better Ensure Licensees Keep Current With Industry Standards and Practices.

Senate Bill 407 requires the Veterinary Board to conduct random audits of license renewals to ensure that veterinarians comply with continuing education (CE) requirements. Focusing its CE-monitoring efforts through its licensing functions instead of inspections, as is current Board practice, will provide a more equitable system of checking for CE compliance, and free investigators to focus on more imminent threats, such as controlled substance and sanitation violations.

The bill also authorizes the Board to require a veterinarian to make up any missed hours of continuing education in following years, ensuring that they receive the required continuing education. In addition, the bill allows the Board to order a veterinarian to take additional continuing education hours as part of a disciplinary action, giving the Board an avenue to see that veterinarians address identified concerns.

2. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.

Senate Bill 407 includes 11 provisions that bring the Board in line with standard licensing agency practices, including the following.

- Eliminates obsolete language in the Veterinary Licensing Act that gives the Board authority to conduct oral exams.
- Requires the Board to establish a policy for refunding examination fees.
- Provides an exemption from the provisional license supervision requirement for applicants who are already licensed to practice independently in other states.
- Changes the basis for the Board's late renewal penalties.
- Requires at least two veterinarian Board members to review complaints and attend informal proceedings that require professional expertise, and authorizes staff to settle administrative complaints.
- Requires the Board to include one of its public members in the informal settlement process.
- Authorizes the Board to set penalties at a level that matches the egregiousness of each drug-related felony conviction.
- Clarifies the Board's administrative penalty authority, and increases the amount of an administrative penalty that the Board can impose.
- Authorizes the Board to provide for refunds by licensees to the consumer as part of the settlement process.
- Authorizes the Board to issue cease-and-desist orders.
- Requires the Board to adopt formal policies that focus the Board on resolving complaints and prioritize complaints according to risk.

3. Continue the Texas State Board of Veterinary Medical Examiners for 12 Years.

This provision continues the Board as a separate, stand-alone agency for the standard 12-year period.

Provision Added by the Legislature _____

4. Clarify That the Board’s General Counsel May Be Present During Informal Proceedings.

The Veterinary Licensing Act currently requires a representative from the Attorney General’s Office at the Board’s informal proceedings to advise the Board and agency employees even though the Veterinary Board has its own general counsel. The Legislature added a provision to S.B. 407 that authorizes the Board’s general counsel or the Attorney General’s representative to be present during informal proceedings.

Fiscal Implication Summary _____

Senate Bill 407 contains provisions that will have a negative fiscal impact to the Board. However, the Board will adjust licensing fees to cover costs of implementing the bill and, as a result, the bill will have only a slight impact to the State. These provisions are summarized in the table below.

Requiring two additional Board members – an additional veterinarian and a public member – to attend informal hearings for complaints that require medical expertise will result in an estimated annual cost to the Board of \$9,200 for travel-related expenses. Because the Board did not receive additional funding for this provision, the Board must cover these costs with its current resources, at no additional cost to the State. In addition, changing the basis of the late renewal penalties will result in a loss in revenue of \$7,493 per year.

<i>Fiscal Year</i>	<i>Loss to the General Revenue Fund</i>
2006	\$7,493
2007	\$7,493
2008	\$7,493
2009	\$7,493
2010	\$7,493



Texas Workers' Compensation Commission

Staff Contact: Charles Sallee

H.B. 7 Solomons, et al. (Staples)

Summary

The Texas Workers' Compensation Commission (TWCC) was created in 1990 as part of a broad effort to reform the workers' compensation system in Texas. Workers' compensation provides for no-fault income-replacement benefits and medical care for workers who are injured on the job. TWCC administers key parts of the system including overseeing delivery of medical and income benefits to injured workers, resolving disputes, and providing workplace safety services to employers. The agency operates with an annual budget of about \$50 million and employs about 1,050 staff in its 24 field offices around the state and central office in Austin.

House Bill 7 contains the Sunset Commission's recommendations to abolish the Workers' Compensation Commission and transfer its functions to the Department of Insurance (Department) and newly created Office of Injured Employee Counsel, streamline the administration of the workers' compensation system, allow the establishment of certified workers' compensation health-care networks to provide medical benefits to injured workers, and focus the system on returning injured employees to work and enhancing benefits.

The Legislature added several other provisions to House Bill 7 that strengthen the Department's oversight of workers' compensation insurance prices, help contain medical costs and improve care in non-network areas by requiring the use of evidence-based treatment and return to work guidelines, and limit the use of post-injury cause of action waivers by employers not participating in the workers' compensation system. The list below summarizes the major provisions of House Bill 7, and a more detailed discussion follows.

Sunset Provisions

1. Abolish the Workers' Compensation Commission and Transfer Its Functions to the Newly Created Division of Workers' Compensation Within the Department of Insurance.
2. Establish an Independent Office of Injured Employee Counsel.
3. Simplify the Provision of Workers' Compensation Health Care by Allowing Networks Similar to Those Found in Group Health Insurance.
4. Enhance the Delivery and Quality of Benefits for Injured Workers to Focus on Improving Outcomes for Return to Work.
5. Streamline the Medical and Income Benefit Dispute Resolution Processes.
6. Clarify the Purpose, Mission, and Goals of the Workers' Compensation System; and Require the Department to Analyze Its Effectiveness in Meeting These Statutory Goals.
7. Require the Division to Implement a Workers' Compensation Regulatory Approach That Emphasizes Overall Compliance, Rewards Performance, and Efficiently Handles Complaints.

8. Establish Specific Duties and Studies of the Workers' Compensation Research and Evaluation Group, Including Preparing Workers' Compensation Network Consumer Report Cards.
9. Require the Commissioner of Workers' Compensation to Adopt Fee Guidelines With One or More Conversion Factors.
10. Authorize Group Health Insurance Carriers to Operate Workers' Compensation Networks.
11. Authorize the Use of Medical Exams by Treating Doctors to Define an Injured Employee's Compensable Injury.
12. Require the Department to Ensure All Workers' Compensation Forms and Explanatory Materials Are Prepared in Plain Language in Both English and Spanish.

Provisions Added by the Legislature

13. Enhance the Authority of the Commissioner of Insurance to Oversee and, if Necessary, Reduce Workers' Compensation Rates and Premiums.
14. Prohibit the Use of Post-Injury Waivers Unless Certain Conditions Are Met to Protect Injured Employees' Rights.
15. Require the Use of Evidence-Based Treatment Guidelines and a Disability Management Process.
16. Streamline Medical Billing Administration and Enhance Division Oversight of Medical Review Entities.
17. Expand the Functions and Clarify Qualifications and Requirements of Designated Doctors.
18. Prohibit the Misuse of the Division's Name, Abbreviations, Symbols, and Logos.
19. Clarify That Work-Related Injuries Determined Non-Compensable Remain Subject to the Exclusive Remedy Provision of Workers' Compensation.
20. Expand the Statutory Definition of Intoxication in the Workers' Compensation System.
21. Adjust the Assessment Calculation of the Maintenance Tax Rate by the Commissioner of Insurance.
22. Expand the Accessibility of Occupational Health and Safety Information to Employees.
23. Clarify That the Subsequent Injury Fund Is a Dedicated Account in the General Revenue Fund.
24. Authorize Texas A&M University System and University of Texas System Employees to Use Sick and Annual Leave Before Receiving Workers' Compensation Income Benefits.

Sunset Provisions

1. Abolish the Workers' Compensation Commission and Transfer Its Functions to the Newly Created Division of Workers' Compensation Within the Department of Insurance.

House Bill 7 abolishes TWCC and establishes a division within the Department of Insurance to administer and operate the workers' compensation system, including regulatory, dispute resolution, and workplace education and safety programs functions performed by TWCC. The bill creates a Governor-appointed Commissioner of Workers' Compensation to administer the Division of Workers' Compensation (Division) and adopt rules. The bill also requires the Commissioner of Insurance and Commissioner of Workers' Compensation to develop a policy that clearly separates the responsibilities of the Department and Division. While the Division will carry out the primary duties and functions under the Workers' Compensation Act, the Department will provide administrative services, such as budget planning, purchasing, and computer support. The bill establishes a 2009 Sunset date for the Division and moves the Sunset date of the Department from 2007 to 2009, to allow for a full review of all TDI functions. These provisions are a modification of the original Sunset recommendations to abolish TWCC and transfer all functions to the Department.

House Bill 7 abolishes the Medical Advisory Committee and several obsolete workplace safety programs that include the Hazardous Employer Program, Field Safety Representative Program, Drug Free Workplace Program, Approved Professional Source Program, and TWCC's role in the Rejected Risk Program. The bill also eliminates the Approved Doctor List (ADL) starting September 1, 2007, and prohibits doctors removed from the ADL from treating injured workers after its abolishment.

2. Establish an Independent Office of Injured Employee Counsel.

The Legislature modified the Sunset provisions by creating a new Office of Injured Employee Counsel (Office), and transferring TWCC's Ombudsman program to the Office. A Public Counsel, appointed by the Governor and approved by the Senate, will oversee the Office and adopt rules to carry out its duties. The Office is independent of the Department and the Workers' Compensation Division and has a 2009 Sunset date. However, the Office will receive its administrative services, such as human resources and information technology support, from the Department of Insurance.

The bill authorizes the Office to advocate, represent, appear or intervene on behalf of injured employees as a class before TDI, the Division, or in judicial proceedings. The bill prohibits the Office from providing individual injured employees with legal representation, but authorizes the Office to use attorneys to supervise and advise Ombudsman staff. Ombudsmen will provide direct assistance to injured employees throughout the dispute process; help resolve complaints pending at the Division or other state licensing agencies; and make referrals, as appropriate, to services that could help an injured employee return to work. The Legislature removed a Sunset provision directing the Office to coordinate with the Texas Workforce Commission to develop a workplace literacy curriculum.

3. Simplify the Provision of Workers' Compensation Health Care by Allowing Networks Similar to Those Found in Group Health Insurance.

The Legislature adopted, expanded upon, and in some cases modified, a series of Sunset recommendations to establish workers' compensation health-care networks for the provision of medical benefits to injured workers. The network system will be based on contractual relationships between system participants, overseen by the Department. House Bill 7 authorizes insurers, certified self-insured employers, and public entities to establish or contract with networks. The bill allows employers to elect to participate in a network offered by their insurer. Injured employees must use a network if their employer has contracted for one, and choose a network treating doctor to coordinate their medical care. The network will designate which type of medical specialties may serve as a treating doctor. However, the bill allows an injured worker to receive treatment from his or her own Health Maintenance Organization primary care provider and, in specific cases, apply to the network to use a non-primary care specialist as the treating doctor.

House Bill 7 establishes standards for the certification, administration, and enforcement of the delivery of health-care services to injured employees by the Department. Key elements of the network provisions include requiring that all services be ordered by a treating doctor; specific service accessibility and quality assurance; exemptions for pharmacy and related services provided by networks; requiring that networks adopt and use evidence-based treatment and return to work guidelines, and treatment protocols; and utilization and retrospective review of medical necessity of care.

House Bill 7 includes provisions covering both network and non-network medical care, to establish specific prompt payment standards and authorize the Commissioner to adopt alternative standards for underserved areas. The bill also provides the State and university systems, like private employers, the option to use workers' compensation networks for their employees' medical care. The bill allows political subdivisions to use networks to provide health care using existing non-network regulations, or by directly contracting with providers or a local government health benefits pool if workers' compensation networks are not available or practicable.

4. Enhance the Delivery and Quality of Benefits for Injured Workers to Focus on Improving Outcomes for Return to Work.

The Legislature modified several Sunset provisions intended to significantly enhance efforts to improve return to work outcomes for injured employees. House Bill 7 requires the Division to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce, and includes the following provisions.

- Establishes a return to work pilot program through 2009 to reimburse qualifying small employers' expenses for workplace modifications necessary to accommodate an injured employee's return to work.
- Requires the Division to provide all employers with information and best practices on methods to enhance return to work communication and services; and provide plain language information to injured workers on the benefits of early return to work, and making informed medical decisions.
- Requires the Division to establish specific protocols for assisting injured employees receiving income benefits to obtain workforce and occupational training where appropriate.

- Requires the Division and the Department of Assistive and Rehabilitative Services to report to the Legislature on actions taken to improve access to and the effectiveness of vocational rehabilitation programs for injured workers.
- Requires the Division to set compliance standards for supplemental income benefit recipients' work search requirements to replace the current standard of "good faith effort."
- Requires carriers, in certain cases, to provide skilled case management services using appropriately licensed case managers and prohibits claims adjusters from providing case management services.
- Encourages the use of single points of contact for injured workers at the Division and the carrier.

House Bill 7 also includes Sunset provisions, as modified by the Legislature, to increase benefits to injured workers. The bill increases the maximum amount of benefits to 88 percent of the average weekly wage of covered employment as calculated by the Texas Workforce Commission. The bill reduces the time injured workers must lose from work to begin receiving temporary income benefits from 28 to 14 days.

5. Streamline the Medical and Income Benefit Dispute Resolution Processes.

House Bill 7 streamlines both the medical and the income benefit dispute resolution processes to help resolve disputes more quickly. For medical disputes, the bill continues to provide for Independent Review Organizations (IROs) to decide unresolved disputes, but requires insurance carriers to pay for IRO reviews. To streamline the process, the bill removes the State Office of Administrative Hearings from the appeal process, but requires every IRO decision to include specific information for use in an appeal to district court.

The Legislature also modified several Sunset provisions to streamline the income benefit dispute resolution process to help resolve disputes earlier in the process. The bill requires a party requesting a Benefit Review Conference (BRC) to document efforts made to resolve the dispute before requesting a BRC, and allows only two BRCs for each dispute. The Division must provide a list of information the parties should have available at BRCs and Contested Case Hearings, and allows BRCs to be conducted by telephone. The bill also aims to improve BRCs by requiring benefit review officers to have dispute resolution training, and removes the requirement that benefit review officers make recommendations regarding unresolved issues. The bill also restructures the Appeals Panel as a single, three-member panel responsible for issuing decisions only on reversed or remanded cases, and maintaining a precedent manual.

Finally, the Legislature repealed the expiration date for a statutory provision to continue requiring insurance carriers to pay an injured worker's attorney's fees in certain cases if the injured worker prevails in an income benefit dispute both before the Appeals Panel and in district court.

6. Clarify the Purpose, Mission, and Goals of the Workers' Compensation System; and Require the Division to Analyze Its Effectiveness in Meeting These Statutory Goals.

House Bill 7 establishes the primary goals of the workers' compensation system and details nine system-wide strategies to guide TDC's implementation of its powers and duties under the Workers' Compensation Act. The bill requires the Division to assess its effectiveness in meeting the statutory goals, and to identify and report all internal policy and statutory changes needed to address deficiencies.

The Legislature modified the Sunset recommendation to clarify that the goals and strategies do not create a cause of action or establish an entitlement to benefits not otherwise provided for in statute.

7. Require the Division to Implement a Workers' Compensation Regulatory Approach That Emphasizes Overall Compliance, Rewards Performance, and Efficiently Handles Complaints.

House Bill 7 requires the Division to regularly assess the performance of carriers, networks, and medical providers against key regulatory goals to identify entities needing enhanced regulatory oversight. The Division must create regulatory incentives to promote greater overall compliance and reward performance. The Legislature modified the Sunset recommendation by adding a provision to increase the maximum amount of an administrative penalty to \$25,000 and eliminate the multiple "classes" of violations and associated administrative penalties.

The bill also requires the Division to establish rules that govern the filing of a complaint against a regulated entity and to prioritize complaint investigation using risk-based criteria. The Legislature added a provision to allow the Division to release investigation files to an insurance carrier if the files directly relate to a felony regarding workers' compensation, or a claim in which the carrier may be entitled to restitution.

8. Establish Specific Duties and Studies of the Workers' Compensation Research and Evaluation Group, Including Preparing Workers' Compensation Network Consumer Report Cards.

House Bill 7 renames the Department's workers' compensation research function the Workers' Compensation Research and Evaluation Group (Group). The Group will serve as a resource to the Commissioner of Insurance and continue to receive its funding through the assessment of a maintenance tax collected annually from workers' compensation insurance carriers. The bill also requires the Group to prepare and publish annually a proposed workers' compensation research agenda and requires the Commissioner to accept public comment and, if requested, hold a public hearing on the research agenda.

House Bill 7 requires the Group to annually publish consumer report cards on network outcomes including employee access to care, return to work outcomes, and customer satisfaction. The bill also requires the Group to evaluate the impact of networks on the cost and quality of medical care in the workers' compensation system and report its findings every other year beginning December 1, 2008. Finally, the bill exempts the Group's work papers from public disclosure and adds protections to keep information gathered during research confidential.

9. Require the Commissioner of Workers' Compensation to Adopt Fee Guidelines With One or More Conversion Factors.

House Bill 7 includes Sunset provisions, as modified by the Legislature, to require the Commissioner to adopt fee guidelines using one or more conversion factors and exempt carriers, networks, and providers from using the fee guidelines if they have a fee schedule established through a contract.

10. Authorize Group Health Insurance Carriers to Operate Workers' Compensation Networks.

House Bill 7 includes a Sunset provision, as modified by the Legislature, to authorize group health insurers to seek certification from TDI to provide workers' compensation network coverage. The bill does not allow group health insurers to offer workers' compensation insurance coverage to Texas employers.

11. Authorize the Use of Medical Exams by Treating Doctors to Define an Injured Employee's Compensable Injury.

House Bill 7 includes a Sunset provision, as modified by the Legislature, to require injured employees to submit to a single medical exam by their treating doctor to define the compensable injury, upon request by a carrier. The bill requires preauthorization for treatment of an injury or diagnosis that a carrier does not accept as compensable at the time of the exam.

12. Require the Department to Ensure All Workers' Compensation Forms and Explanatory Materials Are Prepared in Plain Language in Both English and Spanish.

The Legislature adopted the Sunset recommendations to ensure that all system participants have the information they need regarding the workers' compensation system.

Provisions Added by the Legislature =====

13. Enhance the Authority of the Commissioner of Insurance to Oversee and, if Necessary, Reduce Workers' Compensation Rates and Premiums.

The Legislature added a provision that requires the Commissioner to determine the impact of H.B. 7 on workers' compensation rates and premiums, and authorizes the Commissioner to order rate reductions or require the modification of use of individual risk variations. This provision establishes oversight by the Commissioner of workers' compensation premiums and rates, provides for a public hearing on rates, and requires carriers to file rating information with the Commissioner before the hearing.

14. Prohibit the Use of Post-Injury Waivers Unless Certain Conditions Are Met To Protect Injured Employees' Rights.

The Legislature added a provision to H.B. 7 that limits the ability of employees to agree to waive, after an injury, their right to pursue a cause of action against an employer not participating in the workers' compensation system. The bill adds specific conditions for post-injury waivers.

15. Require the Use of Evidence-Based Treatment Guidelines and a Disability Management Process.

The Legislature added provisions to require the Commissioner of Workers' Compensation to adopt evidence-based and outcome-focused treatment and return to work guidelines and require their use for non-network care. House Bill 7 also authorizes the Commissioner to adopt rules providing for a disability management and treatment planning process aimed to improve return to work outcomes for injured workers.

16. Streamline Medical Billing Administration and Enhance Division Oversight of Medical Review Entities.

House Bill 7 makes several changes to the administration and Division oversight of the workers' compensation health-care system, and medical services provided to injured workers, including the following provisions.

- Requires insurance carriers to accept medical bills from providers electronically, and authorizes the Division to adopt rules regarding the electronic payment of medical bills by carriers to health-care providers.
- Requires the Division to adopt a closed formulary and fee schedule for pharmacy and pharmaceutical services, and requires carriers, networks, and providers to use either the fee schedule or rates negotiated by contract.
- Prohibits retrospective reviews of medical necessity for preauthorized treatments and services, and adds physical and occupational therapy to the statutory list of services requiring preauthorization.
- Requires workers' compensation peer review doctors to hold a Texas-issued license, and requires the Commissioner of Workers' Compensation to adopt rules setting peer review standards and providing sanctions of doctors.
- Requires the Division to monitor Independent Review Organizations' performance in the workers' compensation system, and report the results to the Department quarterly.
- Requires the Division to review reimbursement rates and accessibility issues for surgically implanted devices.
- Requires the Division to study and report to the Legislature whether to require accreditation of interdisciplinary pain rehabilitation programs or treatment facilities that provide services to injured employees.

17. Expand the Functions and Clarify Qualifications and Requirements of Designated Doctors.

The Legislature added several provisions to H.B. 7 allowing for greater involvement of designated doctors in resolving disputes. The provisions allow designated doctors to determine the extent of the compensable injury, whether the disability is a direct result of the work-related injury, the ability of the employee to return to work, and similar issues. The bill provides that the designated doctor's report has presumptive weight in a dispute unless the preponderance of evidence is to the contrary.

Additionally, the bill requires insurance carriers to pay benefits based on the opinion of the designated doctor during the pendency of a dispute, and provides that designated doctors may communicate with any health-care provider that previously treated the injured worker.

The bill also clarifies the qualification requirements for designated doctors and instructs the Commissioner of Workers' Compensation to adopt rules accordingly, including ensuring designated doctors have no conflicts of interest when performing any examination.

18. Prohibit the Misuse of the Division's Name, Abbreviations, Symbols, and Logos.

The Legislature added provisions to authorize the Commissioner of Workers' Compensation to adopt rules relating to the use of the Division's name, and to impose civil and administrative penalties for any violations. House Bill 7 authorizes the Attorney General or a district attorney to file an action to enjoin or restrain a violation at the request of the Commissioner.

19. Clarify That Work-Related Injuries Determined Non-Compensable Remain Subject to the Exclusive Remedy Provision of Workers' Compensation.

Current law provides that workers' compensation benefits are the exclusive remedy for an employee covered by workers' compensation insurance for work-related injuries, except in the case of gross negligence by an employer. The Legislature added a provision to clarify that the exclusive remedy provision of workers' compensation remains in effect, regardless of whether a workplace injury was found non-compensable due to the employee engaging in activities not within the scope of their job, engaging in horseplay, or being intoxicated.

20. Expand the Statutory Definition of Intoxication in the Workers' Compensation System.

The Legislature added a provision to create a rebuttable presumption that a person is intoxicated if a person voluntarily introduces a controlled substance into their body, based on a blood test or urinalysis.

21. Adjust the Assessment Calculation of the Maintenance Tax Rate by the Commissioner of Insurance.

The Legislature added a provision that requires the Commissioner of Insurance to set, and certify to the Comptroller, the rate of maintenance tax assessment, taking into account any expenditure projected as necessary for the Division of Workers' Compensation and the Office of Injured Employee Counsel. Both the Commissioner of Workers' Compensation and the Commissioner of Insurance have authority to collect the taxes. The bill also requires the Commissioner of Insurance to annually adjust the tax rate to ensure that the tax imposed that year, along with any unexpended funds produced by the tax, yields the amount the Commissioner of Insurance determines to be necessary.

22. Expand the Accessibility of Occupational Health and Safety Information to Employees.

The Legislature added provisions to H.B. 7 to require the Division's 24-hour hotline for reports of occupational health and safety violations to be available in both English and Spanish, and require the Division to provide employers and employees with educational materials on unsafe working conditions, safety violations, reporting requirements, and laws regarding employer retaliation.

23. Clarify That the Subsequent Injury Fund Is a Dedicated Account in the General Revenue Fund.

The Legislature added a provision to establish the Subsequent Injury Fund as a dedicated account in the General Revenue Fund.

24. Authorize Texas A&M University System and University of Texas System Employees to Use Sick and Annual Leave Before Receiving Workers' Compensation Income Benefits.

The bill provides that if employees elect this option, they must exhaust all accrued sick leave or the elected number of weeks of annual leave before receiving income benefits.

Provisions Removed by the Legislature _____

1. Allow Functional Capacity Assessments of Non-Injured Employees to Set Base Capacity.

The Legislature did not adopt this provision relating to carriers' use of functional capacity exams.

2. Require Carriers to Survey Injured Workers to Obtain Customer Satisfaction Data.

The Legislature did not adopt this provision requiring carriers to conduct customer satisfaction surveys. However, as part of the network report card provisions, the Research Group will have authority to obtain customer satisfaction information for the report cards.

3. Require Carriers to File With the Department the Percentage Discounts Used for Return to Work and Safety Programs.

The Legislature did not adopt this specific Sunset provision. However, House Bill 7 provides the Department with expanded oversight of rates.

4. Strengthen Provisions for Fraud Reporting and Prosecution.

The Legislature did not adopt the Sunset Commission recommendations to require system participants to report fraud, provide penalties for failure to report, and expand jurisdictions where fraud cases can be filed.

Fiscal Implication Summary

House Bill 7 will result in significant savings to the State and Texas employers. Overall, the bill will result in annual net savings of about \$17 million and reduce the need for about 31 staff positions in fiscal year 2006, increasing to 53 staff positions in fiscal year 2008 and thereafter. These provisions are discussed below, followed by a five-year summary chart. In addition, the net savings from provisions that restructure and streamline the administration of the system may allow the Department of Insurance to lower the maintenance tax charged to workers' compensation insurers. However, this report could not predict such a change and assumes savings through the five-year period.

Abolishing TWCC and transferring its functions to the Department will generate administrative efficiencies and result in savings of \$3,786,690 in fiscal year 2006 and \$5,058,538 thereafter; and reduce 71.5 staff positions in fiscal year 2006, and 102.5 thereafter. These staff currently perform central administrative and other support services that will be provided by the Department.

Streamlining the medical dispute resolution process by removing state-funded appeals at the State Office of Administrative Hearings will result in savings of \$955,775 in fiscal year 2006 and \$1,108,371 thereafter, and require eight fewer staff positions to administer medical disputes.

Streamlining the income benefit dispute process and reducing the number of Appeals Panel judges from nine to three will save \$448,000 in fiscal year 2006 and \$481,000 in the following fiscal years. Requiring the agency's Benefit Review Officers to complete 40 hours of mediation training will have an initial cost of approximately \$33,000.

Establishing an independent Office of Injured Employee Counsel will cost \$383,911 and require six staff positions to provide advocacy and assistance for certain injured workers. These positions will be in addition to the existing Ombudsman staff transferred to the Office.

Eliminating unnecessary workplace safety programs and medical functions will result in savings of about \$1 million and a decrease in 17 staff positions in fiscal years 2006 - 2007, and about \$1.6 million and 23 staff positions thereafter.

Authorizing the establishment of workers' compensation health-care networks will result in annual savings of about \$19 million to state agencies' and university systems' medical and income benefit payments. The estimated costs of operating the networks, about \$4.7 million, would be paid out of these savings. The State will be able to contract with networks to provide coverage across most of Texas, possibly with many of the same group health networks already providing services to state and higher education employees. In addition, savings to local government, insurers, and employers, essentially savings to "the system," will also be substantial.

Overseeing the network and producing annual reports cards on the cost and quality of network services will cost the Department and its Research Group about \$734,343 in 2006, and increase to about \$1 million by 2010.

Increasing income benefits for injured workers will cost the state workers' compensation program about \$15,000 in fiscal year 2006 and increase to about \$156,000 by 2010.

Several provisions, not shown in the following chart, would potentially have a fiscal impact, depending on implementation decisions. For example, any potential savings or costs to the state workers' compensation system resulting from implementing evidence-based treatment and return to work guidelines, or a closed formulary and fee structure for pharmacy benefits, will be dependent on the type of treatment and fee guidelines established. Thus, these impacts could not be calculated for inclusion below.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund and Related Funds</i>	<i>Cost to the General Revenue Fund and Related Funds</i>	<i>Net Effect on the General Revenue Fund and Related Funds</i>	<i>Change in Staff Positions From FY 2005</i>
2006	\$25,133,750	\$5,949,091	\$19,184,659	-82.5
2007	\$26,670,974	\$6,087,417	\$20,583,557	-113.5
2008	\$27,324,645	\$6,290,692	\$21,033,953	-119.5
2009	\$27,324,645	\$6,304,145	\$21,020,500	-119.5
2010	\$27,324,645	\$6,406,747	\$20,917,898	-119.5

ACROSS-THE-BOARD RECOMMENDATIONS



Across-the-Board Recommendations

This report section briefly describes each of the Sunset across-the-board recommendations (ATBs), with a chart detailing the application of the ATBs to each of the agencies under review for the 79th Legislature.

The Sunset Commission adopts across-the-board recommendations as standards for state agencies, reflecting criteria in the Sunset Act designed to ensure open, responsive, and effective government. The Sunset Commission applies across-the-board recommendations to every state agency reviewed, unless a clear reason to exempt the agency is identified. Some Sunset ATBs address policy issues related to an agency's policymaking body, such as requiring public membership on boards or allowing the Governor to designate the chair of a board. Other Sunset ATBs require agencies to set consistent policies in areas such as how to handle complaints and how to ensure public input.

Across-the-Board Recommendations

1. Public Membership – Require public membership on state agency policymaking bodies.

Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This provision gives the general public a direct voice in the activities of an agency through representation on the Board. Having members of the general public on the Board, as close to one-third as possible, ensures representation.

2. Conflicts of Interest – Require provisions relating to conflicts of interest.

An agency may have ties with professional trade organizations and other groups that may not be in the public interest. Conflicts of interest can also result when board or commission members, or an agency's general counsel, are involved in lobbying. These provisions prevent such potential conflicts.

3. Unbiased Appointments – Require unbiased appointments to the agency's policymaking body.

Policymaking bodies whose appointees have been chosen on an impartial and unbiased basis help ensure that state agencies operate fairly and impartially.

4. Governor Designates Presiding Officer – Provide that the Governor designate the presiding officer of a state agency's policymaking body.

Presiding officers of state commissions and boards in Texas have traditionally been elected by their fellow members. In recent years, the Legislature has routinely authorized the Governor to appoint the presiding officer of state policymaking bodies to increase state agencies' accountability. Using this approach ensures that the Legislature's standard policy is applied to every agency undergoing Sunset review.

5. Grounds for Removal – Specify grounds for removal of a member of the policymaking body.

This provision specifies that it is grounds for removal of a member if appointment requirements for members of a policymaking body are not met. This provision also clarifies that if a ground for removal of a member exists, actions taken by the policymaking body are still valid.

6. Board Member Training – Require training for members of policymaking bodies.

Members of policymaking bodies should be provided with adequate information and training to allow them to properly discharge their duties. This provision establishes the type of training and the information to be included.

7. Separation of Functions – Require separation of policymaking and agency staff functions.

This provision requires the policymaking body to adopt policies defining its role of setting agency policy. The executive director/administrator should be responsible for managing the agency's day-to-day activities.

8. Public Input – Provide for public testimony at meetings of the policymaking body.

This provision ensures the opportunity for public input to the policymaking body on issues under its jurisdiction.

9. Complaint Information – Require information to be maintained on complaints.

State agencies should maintain adequate information about complaints received. This provision requires that documentation be maintained on all complaints received by the agency; and that all parties to a complaint are informed about agency complaint investigation procedures, and the status of the complaint until resolution.

10. Technology Use – Require agencies to use technology to increase public access.

Many state agencies are slow to implement technological solutions to their business processes because of a built-in bias in favor of traditional ways of doing business. Despite this reluctance, new technology can improve the ability of state agencies to deliver services to clients, provide information to the public, and reduce the costs of providing services. This provision requires agency boards to ensure the effective use of technology.

11. Alternative Dispute Resolution – Develop and use appropriate alternative rulemaking and dispute resolution procedures.

The Legislature has established clear authority for the use of alternative procedures for rulemaking and dispute resolution by state agencies. This provision ensures that each agency develops a written, comprehensive plan that encourages these procedures; and applies those procedures to its rulemaking, internal employee grievances, inter-agency conflicts, contract disputes, actual or potential contested matters, and other appropriate potential conflict areas.

Application of ATBs to Agencies Under Review

For the agencies under Sunset review for the 79th Legislative Session, the Sunset Commission evaluated and applied each of the ATBs where appropriate. If the standard approach did not work, the Sunset Commission modified the language to fit the precise circumstances of an individual agency's operations. In addition, some of the agencies under review this session had been previously reviewed, and the ATB language was already in law or simply had to be updated.

The chart on the following page details the application of ATBs to agencies under review in the 79th Legislative Session. However, the Sunset bills for the Texas Alcoholic Beverage Commission, Texas Education Agency, State Board for Educator Certification, and Texas Lottery Commission did not pass. As a result, no ATB changes were applied to those agencies.

**Sunset Across-the-Board
Recommendations
2005**

	Public Membership	Conflicts of Interest	Unbiased Appointments	Governor Designates Presiding Officer	Grounds for Removal	Board Member Training	Separation of Functions	Public Input	Complaint Information	Technology Use	Alternative Dispute Resolution
Acupuncture Examiners, Texas State Board of	S	U	S	M	S	U	S	S	S	A	A
Barber Examiners, Texas State Board of	S	U	S	S	U	A	U	S	U	A	A
Chiropractic Examiners, Texas Board of	S	U	S	S	U	A	U	S	S	A	A
Cosmetology Commission, Texas	S	U	U	S	U	A	U	S	U	A	A
Dietitians, Texas State Board of Examiners of	S	U	S	A	U	U	U	S	S	A	A
Guaranteed Student Loan Corporation, Texas	N	U	U	N	U	M	U	S	U	A	N
Marriage and Family Therapists, Texas State Board of Examiners of	S	U ¹	S	S	U	S	U	S	S	A	A
Medical Examiners, Texas State Board of	U	M	S	U	U	U	U	S	U	A	A
Midwifery Board, Texas	S	U	S	M	M	A	U	S	U	A	A
Optometry Board, Texas	S	U	S	A	U	U	U	S	U	A	A
Perfusionists, Texas State Board of Examiners of	A	U	U	A	U	A	U	S	S	A	A
Pharmacy, Texas State Board of	S	U	S	A	S	U	S	S	U	S	S
Physician Assistant Examiners, Texas State Board of	U	U	A	A	U	A	M	A	U	A	A
Podiatric Medical Examiners, Texas State Board of	S	U	U	A	U	M	U	S	U	A	A
Professional Counselors, Texas State Board of Examiners of	S	U ¹	A	S	U	U	A	S	S	A	A
Psychologists, Texas State Board of Examiners of	S	U ¹	S	A	U	U	U	S	U	A	A
Public Utility Commission of Texas	S	U	S	S	U	M	U	S	M	A	A
Public Utility Counsel, Office of	S	U	S	N/A	M	N/A	N/A	N/A	M	A	M
Social Worker Examiners, Texas State Board of	S	M ¹	A	S	U	S	A	S	S	A	A
Veterinary Medical Examiners, Texas State Board of	S	U ²	S	A	U	U	U	S	U	A	A

A=apply N/A= not applicable
M=modify S=already in statute
N=do not apply U=update

¹ Provision modified to allow the Governor to appoint a public member whose spouse is licensed in the field of health care as long as it is not in the field of mental health care.

² Provision modified to allow the Governor to appoint a public member whose spouse is licensed in the field of health care as long as it is not in the field of veterinary health care.

APPENDIX



Appendix: Sunset Review Schedule – 2007

General Government

Arts, Texas Commission on the
Historical Commission, Texas
Historical Representation Advisory Committee
Library and Archives Commission, Texas State
Risk Management Board
State-Federal Relations, Office of
Veterans Commission, Texas

Education

Education Agency, Texas
Higher Education Savings Plan
Prepaid Higher Education Tuition Board
Teacher Retirement System, Board of Trustees of the
Veterinary Medical Diagnostic Laboratory, Texas

Natural Resources

Animal Health Commission, Texas
Veterans' Land Board

Regulatory

Alcoholic Beverage Commission, Texas
Health Benefit Plan Coverage for Brain Injury, Study of
Nurse Examiners, Board of
Real Estate Commission, Texas
Structural Pest Control Board, Texas

Business and Economic Development

Rural Community Affairs, Office of

Public Safety and Criminal Justice

Correctional Managed Health Care Committee
Court Costs and Fees, Study of
Criminal Justice, Texas Department of
Pardons and Paroles, Board of

