Sunset Advisory Commission

Staff Report

Texas Workforce Commission

Texas Workforce Investment Council

November 2014

Sunset Advisory Commission

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Cover Photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the north facade of the Capitol. The gardens in the foreground sit atop a 667,000 square foot underground structure, the Capitol Extension, which houses many legislators' offices and committee rooms. Photo Credit: Janet Wood

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Summary

Summary

The workforce system in Texas has matured substantially since 1995 when the Legislature merged staff and programs from 10 different state agencies to create the Texas Workforce Commission (TWC). Tested through the years by natural disasters and a major recession, TWC has emerged as a national leader by supporting a locally driven workforce environment — key to Texas' economic development and stability. With Texas experiencing strong growth in new jobs and the labor force overall, the need to continue the work of TWC is clear.

TWC now faces the challenge of developing a workforce trained to meet the new and changing demands of job growth across a multitude of businesses and industries. Oil and gas exploration and production requires skilled workers in areas of the state unprepared for such unprecedented change. Veterans need assistance transitioning their military knowledge and experience to jobs in the civilian workforce. However, despite overall improvement, some regions of the state continue to experience high unemployment as a result of the economic downturn. At the same time, declining federal funds mean TWC and its partners must do more with less.

Responsive to concerns, TWC proactively manages its work and efficiently operates its core programs.

With these challenges, Sunset staff initially focused its time and energy on evaluating TWC's key functions of workforce development and unemployment assistance. Visiting local boards and call centers and talking with stakeholders throughout the state, staff found the agency engaged and responsive to concerns raised about its core programs and activities. Applying its lean business principles, the agency has developed many rapid process improvements to successfully address problems identified in its programs and operations. Overall, TWC proactively manages its work and Sunset staff found no critical problems within its core functions.

In contrast, Sunset staff did identify concerns in several programs TWC operates that are outside its wheelhouse. Transferred to TWC in 2003, the Civil Rights Division investigates complaints of employment and housing discrimination. While operated as a division within TWC, the legislation maintained a separate seven-member board, splitting oversight with TWC and leaving little for the board to actually do.

Another area of concern is TWC's regulation of career schools and colleges. In preparing students for employment, these privately owned schools require effective oversight to ensure quality education and consumer protection of the students. However, TWC has no mechanism to ensure the accuracy of a key component of this protection — the requirement that schools maintain an employment rate of 60 percent for graduates in jobs related to the occupation in which they trained — relying instead on the schools' self-reported data.

Child care represents almost half of TWC's budget. However, the program is largely outside of the agency's primary focus. TWC sends funding to local

boards accountable for numbers served, but unlike other core programs, the agency does not actively manage the program for success. With renewed legislative direction to improve the quality of subsidized child care, TWC needs better tools to ensure the funds are well spent.

The agency lacks needed authority in state law to get the U.S. Department of the Treasury to assist TWC in recovering outstanding unemployment compensation debt. Participation in the federal debt collection program could assist Texas in recovering an estimated $586.5 million in debt just in the first four years of operation. Other issues in this report address concerns about ensuring consistency in the agency's handling of wage complaints and better access to written materials discussed in open meetings of the commission.

As part of this report, Sunset staff also reviewed the Texas Workforce Investment Council (council). The council is a 19-member board that assists the governor and Legislature with planning and evaluating Texas' workforce system. Federal law requires such a council and Texas could lose $160 million in federal funds if the state does not maintain it. However, Sunset found that the functions of the closely related Texas Skill Standards Board could be performed by the council, eliminating the need for this separate workforce-related board.

A summary follows of the Sunset staff's recommendations on the Texas Workforce Commission and the Texas Workforce Investment Council.

Issues and Recommendations

Texas Workforce Commission

Issue 1

The Civil Rights Division Needs Clearer Accountability and Streamlined Functions to Effectively Focus on Its Core Duties.

The Civil Rights Division investigates complaints of employment and housing discrimination in Texas, duties previously performed by a separate agency, the Commission on Human Rights (commission). Due to poor management, the Legislature abolished that agency in 2003, moving these duties to TWC as an independent division, with its separate board, the Human Rights Commission, left intact. This structure fails to provide a clear role for TWC, impeding accountability and clear oversight of the division's performance.

Sunset staff evaluated the need for a separate human rights policymaking body and found it to have limited authority to oversee the division's functions. As staff investigates and resolves the majority of antidiscrimination cases, the commission's workload is minimal. Also, the division's review of local fire department exams has proven ineffective and its oversight of state agency personnel policies is hampered by poor data and infrequent reviews.

Key Recommendations

- Transfer the powers and duties of the Human Rights Commission to the Texas Workforce Commission.
- Eliminate the statutory requirement for the Civil Rights Division to review fire department exams for discriminatory factors.

- Require TWC to improve the tracking of state agency discrimination complaints and use that information to develop a risk assessment for reviewing state agency personnel policies.

Issue 2

Students Need Better Career School Performance Information When Selecting Training Programs.

TWC regulates more than 500 career schools to ensure school quality and provide consumer protections to students. In regulating these institutions, TWC monitors student outcomes and provides consumer information students rely on to help them make informed decisions and be confident in the quality of education and training they receive. However, the accuracy of student outcomes is difficult to ensure because TWC relies on schools to self-report outcome information and lacks a mechanism to adequately validate the most important measure of a school's performance — program employment rates. Also, TWC fails to provide students with enforcement actions taken against career schools, and has been unable to raise fees for many years because they are capped in statute.

Key Recommendations

- Require TWC to collect employees' occupational information as part of employers' wage records and use the records to verify employment information career schools submit.
- Require TWC to make information on enforcement actions available to the public on its website.
- Eliminate statutory career school fees and fee caps, and authorize TWC to set fees in rule.

Issue 3

TWC Must Better Ensure Its Child Care Program Helps Clients Achieve Employment Goals and Obtain Quality Care for Children.

Quality, affordable child care is an important support benefitting both low-income parents and employers, and can have long-term implications for the development of the children served. TWC, in conjunction with the 28 local workforce boards, administers the state's $489 million subsidized child care program. Despite its importance and large price tag, TWC has not done enough to manage the program for success. Instead, the agency measures effectiveness primarily in terms of the number of people served and average cost, with no in-depth analysis of employment outcomes or comparison of the effectiveness of local boards' policies and management of the program.

Through passage of House Bill 376 during the 83rd Legislative Session, the Legislature signaled a renewed policy focus on improving quality in the subsidized child care system. The bill mandated a complete overhaul of the quality standards for the Texas Rising Star program, the state's child care quality rating system. However, TWC lacks the needed processes and tools to better manage these major changes and ensure ongoing maintenance of the program.

Key Recommendations

- Require TWC to include more in-depth data on the effectiveness and outcomes of child care subsidies in its statutorily required report on the program.

- Direct TWC to more regularly evaluate child care program measures, gather input from local boards, and consolidate its policies for the program.
- Require TWC to establish a process in rule providing for regular review of the Texas Rising Star child care quality standards.
- Direct TWC to establish baseline board-level data on the Texas Rising Star program and evaluate impacts and trends as program changes progress.

Issue 4

TWC's Appeals Process Lacks Certain Tools That Would Increase Consistency and Transparency.

TWC has the important responsibility of deciding whether an individual is entitled to unemployment insurance (UI) benefits or unpaid wages. Once a decision is made, either party — usually an employee or employer — may appeal the decision. To help guide agency staff in making decisions and the parties in developing their cases, TWC created a publicly available precedent manual of UI cases. However, the wage claim program lacks a similarly developed manual to guide agency staff and parties to the claims, creating a greater risk for inconsistent decisions. As the agency establishes precedents for any administrative claim proceeding, it must take care to avoid creating broad agency policy when rulemaking with full public input is warranted. By adding a wage claim manual and developing criteria to determine when policies established from precedent should be in rule, TWC would increase consistency and transparency.

Key Recommendations

- Direct TWC to create a searchable and publicly accessible precedent manual for wage disputes.
- Direct TWC to establish procedures and criteria for determining when policies clarified through precedents would be more appropriate for rulemaking.

Issue 5

TWC Needs Authority to Use Federal Offsets to Recover Millions of Dollars in Unemployment Compensation Debt.

Texas is missing out on an opportunity to collect hundreds of millions of dollars it is owed. Through its administration of the UI program, TWC ends up with a significant amount of outstanding debt, both from delinquent unpaid taxes and from payments made to claimants that must be repaid because the person did not meet the requirements of the program. In addition to TWC's collection methods, the U.S. Department of the Treasury operates a debt collection program that can apply all or part of a federal payment, most commonly a tax refund, toward any submitted delinquent debts an individual owes.

While initially voluntary, state participation in this program for the collection of delinquent unemployment compensation debt becomes mandatory in 2015. However, TWC needs specific statutory authority to participate in this program. Texas has the opportunity to collect significantly more of the debt owed through the UI program, conservatively estimated at $586.5 million in the first four years after implementation.

Key Recommendation

- Authorize TWC to participate in the federal treasury offset program to recover outstanding unemployment compensation debts.

Issue 6

Texas Has a Continuing Need for the Texas Workforce Commission.

Texas clearly benefits from and has an ongoing need for TWC's workforce development and UI programs. In addition, the federal government largely funds and requires states to provide these services. Sunset staff also found no benefits to moving any of these functions to other state agencies.

While TWC has made strides to improve public access to the commission's open meetings, it does not provide easy access to written materials discussed in these meetings. This limits the ability of the public and other stakeholders to follow along and understand the commission's policymaking actions and deliberations. Many other state agencies provide such material online and in advance of open meetings.

Key Recommendations

- Continue the Texas Workforce Commission for 12 years.
- Direct TWC to provide greater public access to written materials up for discussion in its open public meetings to facilitate the public's ability to follow and understand its deliberations.

Texas Workforce Investment Council

Issue 1

Texas Has a Continuing Need for the Texas Workforce Investment Council and Would Benefit From Its Assumption of the Duties of the Texas Skill Standards Board.

The Texas Workforce Investment Council fulfills the federal requirement that states must maintain a state-level workforce development board to plan, evaluate, and coordinate workforce services. Texas benefits from having such an entity strategically plan for the integration of workforce services in Texas, and evaluate the effectiveness of the state's workforce system. Coordination of the Sunset review of this council and the larger review of TWC facilitates Sunset staff's ability to efficiently evaluate these two related entities.

In addition, Sunset staff found that a separate workforce-related entity, the Texas Skill Standards Board, has accomplished most of its key tasks and concluded that the remaining duties could easily be absorbed by the council. Maintaining two separate governor-appointed boards when one could perform these duties is inefficient. The council's staff already provides administrative support to the Skill Standards Board, and the council's broader directive to promote the development of a well-educated, highly skilled workforce easily encompasses the board's duties.

Key Recommendations

- Continue the Texas Workforce Investment Council for 12 years and align its Sunset review with that of the Texas Workforce Commission.

- Abolish the Texas Skill Standards Board and transfer its functions to the Texas Workforce Investment Council.

Fiscal Implication Summary

Texas Workforce Commission

Of the six TWC issues in this report, two would have a fiscal impact, as described below.

Issue 2 — Requiring TWC to collect occupational information as part of employers' wage records would result in one-time costs to TWC of approximately $812,000, but these costs should be offset by a one-time increase in career school fees.

Issue 5 — Authorizing TWC to participate in the treasury offset program would result in a revenue gain of approximately $586.5 million for the first four years following implementation, as outlined in the chart below. Of that $586.5 million, $474 million would be a gain to Texas' UI Trust Fund, and $111 million would be returned to the U.S. Department of Labor (DOL) as reimbursement for overpayment of federal benefits. The remaining $1.5 million would be a gain to the General Revenue Fund. TWC estimates one-time costs of $436,328 to cover programming of its automated systems to accommodate this new program, but plans to cover these costs using its UI administrative grant.

Texas Workforce Commission

Fiscal Year	Revenue Gain to UI Trust Fund	Revenue Gain to the General Revenue Fund	Amount Returned to DOL	Change in Number of FTEs
2016	$0	$0	$0	0
2017	$155,404,776	$588,888	$46,029,179	0
2018	$124,561,272	$419,813	$30,726,038	0
2019	$103,954,711	$299,280	$20,503,639	0
2020	$90,175,210	$213,354	$13,686,221	0

Texas Workforce Investment Council

None of the recommendations regarding the council would have a fiscal impact to the state.

TWC at a Glance

TWC at a Glance

The Texas Workforce Commission (TWC) oversees and provides workforce development services to employers and job seekers. TWC's mission is to promote and support a workforce system that creates value and offers employers, individuals, and communities the opportunity to achieve and sustain economic prosperity. To achieve its mission the agency carries out the following key activities:

- contracting with 28 local workforce development boards to provide a variety of services, such as job training, employment services, and child care;
- administering the state's unemployment insurance (UI) system and collecting taxes for the UI Trust Fund;
- administering a variety of regulatory programs ranging from the enforcement of wage and child labor laws to the oversight of career schools;
- enforcing state law to prevent and reduce employment and housing discrimination; and
- collecting, analyzing, and disseminating workforce and labor market data.

Key Facts

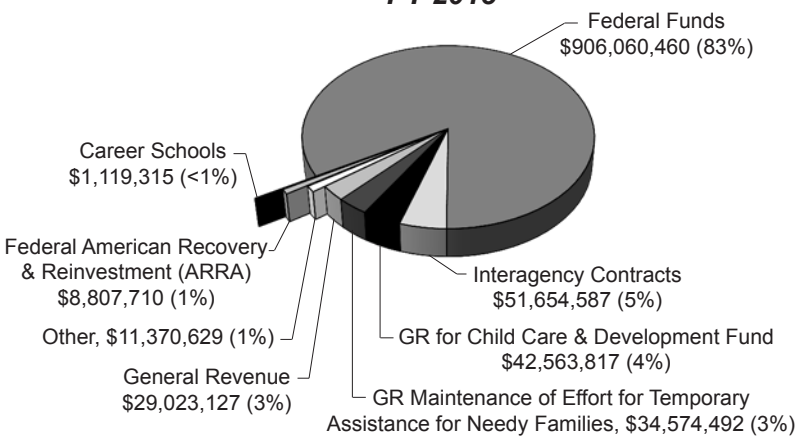
- **Agency Governance.** The governor appoints three full-time commissioners, designating one member as the chair, to serve as the policymaking body that oversees all TWC functions including adjudicating UI benefit, wage claim, and employer tax liability cases. The commissioners serve six-year staggered terms, with one member representing the public, one member representing employers, and one member representing labor. The chart, *Texas Workforce Commission Members*, provides information on the current commissioners.

Texas Workforce Commission Members

Member	Represents	Term Expires
Andres Alcantar Chair	Public	2019
Ronald G. Congleton	Labor	2017
Hope Andrade	Employers	2015

- **Funding.** In fiscal year 2013, TWC operated on a budget of about $1.09 billion. The chart, *TWC Revenues*, details TWC's funding sources that year. Of the $1.09 billion received, almost 85 percent was derived from federal funds, including a one-time allocation of $8.8 million in federal American Reinvestment and Recovery Act funds. Another 11 percent of the agency's revenues come from general revenue, $24 million of which is devoted to

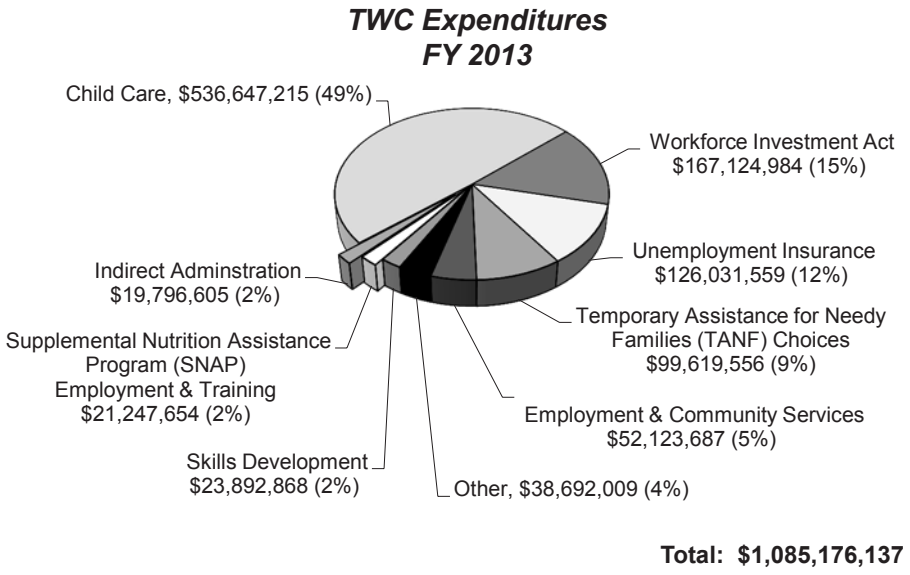
TWC Revenues FY 2013



Total: $1,085,176,137

skills development grants. The agency also receives general revenue for career school regulation that is offset by funds generated from the program's licensing fees. The UI Trust Fund is self-funded through employer taxes and is therefore not represented in the chart.

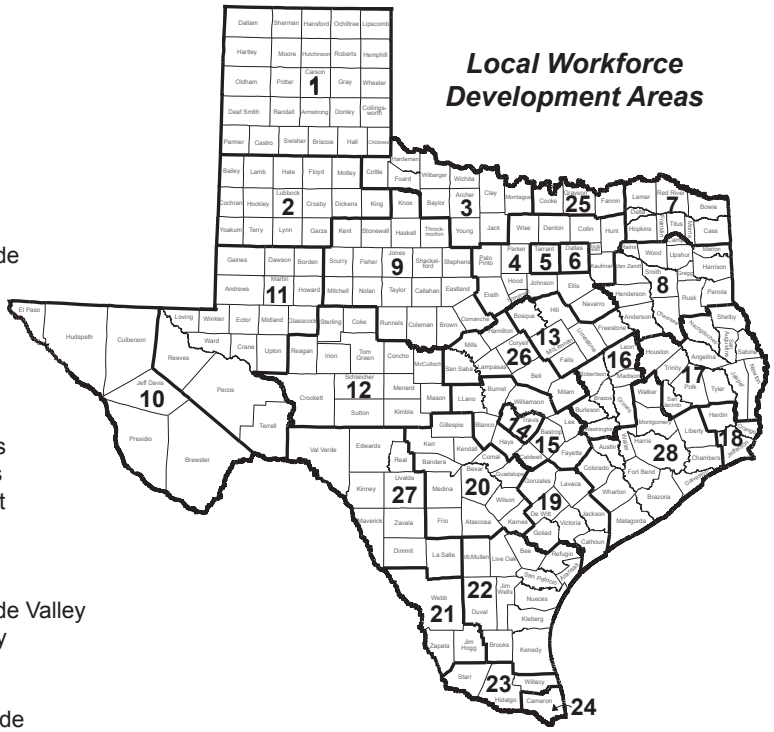
The chart, *TWC Expenditures*, provides a breakdown of TWC's almost $1.09 billion in expenditures for fiscal year 2013. The agency spent $537 million, or almost half of its budget, on subsidized child care to low-income families, including $48.1 million in child care for Department of Family and Protective Services clients through an interagency contract. TWC spent its remaining budget on UI administration and the oversight and delivery of workforce programs for workers, job seekers, and businesses. While TWC spent $126 million in federal funds to administer the UI program, expenditures for actual UI benefits paid to qualified claimants of about $3.8 billion are separate and not reflected in this chart. Appendix A describes TWC's use of historically underutilized businesses in purchasing goods and services for fiscal years 2011 to 2013.



- **Staffing.** In 2013, TWC employed about 3,340 staff, including more than 1,300 staff working at its Austin headquarters, 847 staff integrated within local workforce development boards, and 348 employees working in tax or appeals field offices throughout the state. TWC also operates four call centers across the state, which house 839 full-time employees, answering nearly 3.7 million phone calls, and initially processing 49 percent of the agency's UI claims. Appendix B compares the agency's workforce composition to the percentage of minorities and females in the statewide civilian labor forces for the past three fiscal years.

- **Local Workforce Development Boards.** Workforce training and employment services are delivered through an organizational structure known as the "Texas Model" — a network of 28 local workforce development boards and their subcontracted service providers. The map on the following page, *Local Workforce Development Areas*, shows the name and area covered by each local board. TWC oversees and regulates the provision of services, while local boards and subcontractors deliver services to customers at 192 local "one-stop" workforce centers.

1. Panhandle
2. South Plains
3. North Texas
4. North Central
5. Tarrant County
6. Dallas
7. North East
8. East Texas
9. West Central
10. Upper Rio Grande
11. Permian Basin
12. Concho Valley
13. Heart of Texas
14. Capital Area
15. Rural Capital
16. Brazos Valley
17. Deep East Texas
18. Southeast Texas
19. Golden Crescent
20. Alamo
21. South Texas
22. Coastal Bend
23. Lower Rio Grande Valley
24. Cameron County
25. Texoma
26. Central Texas
27. Middle Rio Grande
28. Gulf Coast



TWC holds local boards accountable for performance through contract monitoring and oversight. TWC staff review the financial and program operations of local boards monthly, and in fiscal year 2013, performed 72 on-site reviews of local boards and other subrecipients to ensure adequate controls on contracted funds. In total, TWC manages approximately 520 contracts with the local boards. Appendix C describes the workforce programs TWC and the local boards work together to provide.

- **Employment Services.** TWC, together with the local boards and their contractors, provides a wide array of workforce services and information to help job seekers find employment and to help employers recruit qualified candidates. In fiscal year 2013, the Texas workforce system provided nearly 1.5 million job seekers with services, including job search, job referral, and job placement assistance. That same year, nearly 92,000 employers received business services, including development of workforce training programs, assistance with applicant screening and referrals, job fair hosting, employment law seminars, and analysis of labor market information. To help further employment service goals TWC operates WorkInTexas.com, an Internet job-posting and application website, which currently has more than 228,000 job openings, 383,000 active resumes, and has filled more than two million jobs since its launch in 2004.

- **Education and Training.** TWC provides a variety of education and training programs designed to equip the workforce with the skills necessary to meet the needs and demands of Texas employers. Local workforce boards solicit and approve qualified training providers supporting their area's target occupations, and workforce centers match and refer clients to the appropriate providers. In fiscal year 2013, TWC spent about $33 million to provide occupational training to almost 12,000 dislocated workers, disadvantaged youth, and unemployed or low-wage earning adults.

Through the skills development program, TWC funds partnerships between employers and either community or technical colleges to provide customized training for specific skills for newly hired and incumbent workers. In fiscal year 2013, TWC awarded 40 grants to 28 community and technical colleges in partnership with 70 employers to provide job training for more than 14,000 trainees. TWC also funds apprenticeship training, which is a combination of on-the-job training and classroom instruction for highly skilled trades and occupations. In addition, TWC recently assumed the administration of adult education and literacy programs from the Texas Education Agency and began serving adults with English literacy and civics education needs in fiscal year 2014.

- **Child Care.** TWC provides subsidized child care to enable parents to work or participate in job training programs. In fiscal year 2013, TWC expended more than $489 million to fund child care services to an average of 102,799 children per day. About 10 percent of participants qualify for services because they are receiving or transitioning off of public assistance. The other 90 percent qualify based on income level and work status, and receive services depending on the availability of funds and providers. Each local board sets the reimbursement rate for the providers in their area, up to a maximum level established by TWC. Of the 10,066 child care providers that participate in the program, about 19 percent earn at least a 5 percent higher reimbursement rate by meeting certain quality standards, such as those established by TWC through Texas Rising Star or other quality rating programs.

- **Unemployment Insurance.** TWC administers the state's UI program, which temporarily replaces a portion of wages for workers who have lost their jobs through no fault of their own. The agency's functions include tax collection and claims services for employers and unemployed workers. TWC collects about $2.4 billion in taxes each year, at a rate of about $181 per employee, from approximately 485,000 employers. In fiscal year 2013, TWC paid out about $3.8 billion in state and federal UI benefits to 698,399 claimants. To continue receiving benefits, claimants are required to register on the WorkInTexas.com website, be actively looking for work, and make a certain number of job contacts each week. The agency also works to prevent and recover benefit overpayments when they occur.

- **Regulatory Integrity.** Through a number of regulatory functions, TWC works to prevent, detect, and eliminate fraud, waste, and abuse across all of its programs, and to collect any owed funds. These functions include collecting UI benefit overpayments and delinquent payroll taxes, adjudicating workers' claims for unpaid wages, and investigating child labor and worker misclassification complaints. In fiscal year 2013, TWC conducted more than 14,000 wage payment investigations and recovered nearly $5.9 million in wages owed to Texas workers.

- **Career School Regulation.** TWC licenses and regulates career schools and colleges to ensure the quality of programs and provide consumer protections. During fiscal year 2013, 148,544 students were enrolled in 536 licensed schools. To administer this program that year, TWC collected about $1.7 million in fees and fines from licensed schools. To remain in good standing with TWC, schools must maintain a minimum success rate of 60 percent of graduates obtaining employment in their field of training.

- **Civil Rights.** TWC conducts employment and housing discrimination investigations through an independent Civil Rights Division (division) housed within TWC. The division is partially overseen by a governor-appointed Human Rights Commission, comprised of five members representing the public, one member representing industry, and one member representing labor. The division enforces state and federal employment and housing laws by investigating and resolving equal employment and fair housing complaints, and assists state agencies with equal employment opportunity training and compliance.

- **Labor Market Data and Performance Measurement.** Externally, TWC provides a wide variety of information to employers, job seekers, local workforce boards, other agencies, and the general public. Through a contract with the federal government, TWC collects and reports Texas labor market data such as unemployment statistics, economic profiles, employment projections, and occupational information to the Bureau of Labor Statistics. The bureau publishes this data on a nationwide basis for use by states to guide their various job search and employment assistance activities, and for use by the general public for various economic and research related purposes.

  Internally, the agency creates and monitors performance measures across all its programs. TWC cooperates with federal agencies and other entities that interact with the agency to negotiate and develop performance measurements that accurately reflect program performance and the effective use of funds. Currently, the agency reports performance on 97 different measures as required by external agencies, and a variety of measures used for internal purposes. The chart, *TWC by the Numbers*, provides some key measures the agency tracks to monitor its performance.

TWC by the Numbers, FY 2013

Measure	Number
Number of Job Seekers Served	1,473,598
Entered Employment	819,816
Number of At-Risk Job Seekers Served	462,914
At-Risk Entered Employment	260,660
Number of Employers Served	84,842
Number of Employer Job Openings Filled	139,647

TWC Issues

Issue 1

The Civil Rights Division Needs Clearer Accountability and Streamlined Functions to Effectively Focus on Its Core Duties.

Background

In 1983, the Legislature created the Texas Commission on Human Rights to protect the public from employment discrimination.[1] In 1989, the Legislature added fair housing enforcement to the agency's duties by passing the Texas Fair Housing Act.[2] The Legislature later added two functions to the Texas Commission on Human Rights — reviews of firefighter exams to assess potential discriminatory factors and reviews of state agency personnel policies and practices to ensure compliance with state law.[3]

In 2003, based on a history of gross fiscal mismanagement at the Texas Commission on Human Rights, the Legislature abolished the independent agency and transferred its functions to the Texas Workforce Commission (TWC) under a separate Civil Rights Division (division).[4] Despite this transfer, the division kept its own board, the Human Rights Commission (commission), which retained limited authority over the independent division. The commission is a seven-member, governor-appointed board with one member representing labor, one representing employers, and five representing the public.[5] In fiscal year 2013, the division had 31 employees and spent about $2.5 million on its operations. The following material provides further description of the division's functions.

- **Employment and housing discrimination investigations.** The division's core functions are to investigate complaints of employment and housing discrimination and enforce state and federal anti-discrimination laws in collaboration with the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development. The division investigates and resolves complaints, and provides technical assistance and training to employers and housing providers. The division resolved 650 employment complaints in an average of 104 days and 343 housing complaints in an average of 255 days in fiscal year 2013.[6]

- **Firefighter exam reviews.** In 2001, the Legislature required the division to begin reviewing paid fire departments' administration of tests to determine if they have a discriminatory effect on the employment of any particular group of applicants. In practice, the division's fire department exam reviews consist of performing a statistical analysis on each fire department's exam results based on the number of applicants who passed or failed the exam over the last two years, broken down by race, national origin, and gender. These reviews are done once every six years. In fiscal year 2013, the division reviewed the exams of 72 fire departments out of a total of about 400 departments. The division does not run an analysis on the exam results of departments that use one of the division's approved nationally recognized exams, and in the last six-year cycle, this exemption applied to about 55 percent of the departments.

- **State agency personnel policy reviews and training.** The division reviews state agency personnel policies and practices to determine compliance with laws and regulations related to employment. If the division identifies concerns, staff recommends best practice solutions to help the agency become compliant. For example, if division staff finds an agency does not use specific work objectives, measurable criteria, or consistently conduct employee evaluations, the division will recommend that the agency develop standard evaluation criteria along with a regular evaluation schedule for all employees.

Within 60 days of the division completing a personnel policy review, each state agency must send a report to the Legislature stating whether the agency implemented the division's recommendations or explaining why the agency will not implement the recommendations.[7] The division reviews all state agencies and universities on a six-year schedule, and reviewed 29 agencies in fiscal year 2013.

Upon request, the division provides trainings to state agencies and private businesses on equal employment, sexual harassment, and fair housing requirements. The division charges for these in-person trainings based on the length of the training and conducted eight such trainings in fiscal year 2013, increasing to 20 trainings in fiscal year 2014. The division also began offering free computer-based training to state agencies toward the end of fiscal year 2013 and in fiscal year 2014, 4,302 people took this training.

Findings

Maintaining the separate governor-appointed Human Rights Commission to oversee the Civil Rights Division impedes clear accountability, and its limited workload could be easily handled by the Texas Workforce Commission.

- **Split responsibilities and awkward reporting structure.** Responsibility for overseeing the division is split between the seven-member Human Rights Commission and the three-member Texas Workforce Commission, as shown in the table, *Split Oversight of the Civil Rights Division*. This division of responsibilities is awkward and can lead to confusion about which governing body is ultimately responsible, as the division's staff must carry out activities according to rules and the budget approved by the Texas Workforce Commission, but are managed by a director appointed by and accountable to the Human Rights Commission.

Split Oversight of the Civil Rights Division

Responsibility	Texas Workforce Commission	Human Rights Commission
Rulemaking authority	X	
Controls the budget	X	
Approves internal policies		X
Appoints division director		X
Votes to determine cause on employment complaints and whether to file a civil action		X
Votes to provide relief on fair housing complaints		X
Authorizes division to act as a complainant in housing complaints		X

Maintaining an independent commission to oversee the division staff's activities creates an inefficient and cumbersome reporting structure that ultimately blurs lines of accountability. In practice, the division director must answer up through two chains of command, which can be time

consuming. If problems arise, the current structure provides little clarity as to who is ultimately responsible for ensuring the division effectively carries out its duties — TWC leadership or the Human Rights Commission. For example, several former employees of the division have filed suit against TWC alleging a prior division director discriminated against them. While division staff operate under TWC's overall human resources policies, TWC has no direct oversight of the division director who is selected by and answers to the Human Rights Commission.

One of the reasons the Legislature transferred these functions to TWC was that the division had historically had difficulty processing employment and housing discrimination investigations in a timely fashion. However, the new structure failed to provide a clear role for TWC by maintaining a separate board for an independent division within TWC. For many years problems continued under the new structure, in part because it continued to operate largely on its own. TWC saw its role as providing support but not directly responsible for the division's effective operation.

TWC recently worked with the division to address some of its long-standing inefficiencies. Specifically, a team of division and other TWC staff analyzed the division's complaint procedures, and recommended key changes to streamline the processes and track and use performance data to analyze trends and manage workflow. The division now uses this data to hold its employees more accountable for meeting deadlines and to monitor every complaint to ensure it is on track for completion within the designated timeframe.

No complaints have required a commission level decision in more than 10 years.

- **Minimal workload and decision making.** With staff investigating and resolving the majority of antidiscrimination complaints, the Human Rights Commission has little work to do. Typically, the commission meets four times a year, with each meeting lasting about two hours. In the more than 10 years since the transfer to TWC, no fair housing or employment complaints have made it to the commission level for decision, instead either being resolved by staff or the parties coming to an agreement on their own. The commission did vote 56 times in the same time period to act as a complainant in a housing discrimination investigation. However, these housing investigations rely heavily on staff investigative work, with the commission simply approving when to act as a complainant. With no significant decision making duties, the commission's meetings often simply involve updates from the division director and staff on their activities.

Thus, the Human Rights Commission has essentially become an advisory committee for division staff, while the three-member Texas Workforce Commission carries out the typical governing board responsibilities of rulemaking and budget planning and approval. Sunset staff evaluated the ongoing need for a separate commission to oversee this one division and concluded that TWC's governing body could easily handle these responsibilities. TWC's governing body — with a labor, employer, and public member — includes a balanced representation to fairly decide any employment or housing matters.

The division's review of local firefighter exams has not proven effective in identifying potential employment discrimination, and diverts needed resources from the division's other functions.

From fiscal year 2008 to 2013, the division conducted reviews of all paid departments that do not use nationally recognized exams, but found no instances of discriminatory exams. Further, even if the division finds an issue of potential discrimination, it has no authority to require a fire department to change its exam to eliminate potential discriminatory factors. The division can make recommendations to a fire department, but the only way to penalize or ensure a fire department corrects the problem is if an individual files a complaint that is then determined to have merit by the commission or EEOC.

In more than six years of reviews, the division has found no discriminatory exams.

Like all other individual employees, fire department applicants or employees who believe discrimination has taken place can use existing administrative and legal processes by filing a complaint with a local equal opportunity employment agency, the division, or the federal EEOC.[8] The complaint resolution process provides a broader assessment of discrimination than the division's exam review by evaluating not only a fire department's exam, but other relevant factors as well, such as the criteria used by a fire department to select an applicant. In fact, the complaint process has shown itself to be a more effective means of addressing employment discrimination than the division's exam review in at least one recent instance.

The textbox, *Austin Fire Department Discrimination Case Timeline*, shows how the Austin Fire Department was reviewed by the division, but soon after EEOC and the Department of Justice (DOJ) found the fire department engaged in a pattern of discrimination.[9] In this case the division's process did not find the pattern of discrimination, and even if it had, an individual would still need to file a complaint to correct the problem. Aside from its lack of effectiveness, a state-level review of firefighter exams singles out one profession that uses a standardized exam as part of the hiring process over other similar professions, such as police.

Austin Fire Department Discrimination Case Timeline

- 2010 – The Civil Rights Division is scheduled to review the Austin Fire Department's applicant exam results but the fire department had not recently administered any tests, leaving no results to review.
- 2012 – An Austin firefighter candidate files a complaint with EEOC based on Austin Fire Department's discriminatory hiring practices.
- 2013 – EEOC and DOJ find the City of Austin used screening and selection devices that adversely affected African-American and Hispanic applicants. The fire department changes the discriminatory aspects of their hiring procedures, but EEOC and DOJ still find discriminatory factors.
- 2014 – DOJ requires the Austin Fire Department to develop a new selection procedure that complies with the Civil Rights Act and establishes benefits for the affected applicants.

The effectiveness of the division's reviews of state agencies is impeded by poor data management, infrequent reviews, and inconsistent reimbursement rates.

- **Poor data management, tracking, and reporting.** The division does not effectively track or report important data related to its state agency review process, making evaluation of the division's effectiveness difficult for Sunset staff, as described below.

  Personnel policy review data. Until fiscal year 2014 the division did not electronically track data related to its state agency review process, such as personnel policy review findings. Sunset staff requested basic data on review findings, but to gather this information, division staff had to manually search paper files of each review. The absence of sufficient data limits the division's ability to identify recurring issues and analyze trends, such as the most common employment-related problems at state agencies. With better information the division could focus its training to improve how the state agencies deal with employee discrimination. The division has made improvements to its investigation processes, including data collection and use, with TWC's assistance, and could benefit from doing the same for state agency personnel policy reviews.

  Without basic data staff cannot analyze trends in employment discrimination at state agencies.

  State employee complaint data. Before fiscal year 2014 the division did not consistently collect data on employment complaints made against state agencies and use that information to ensure all state agencies with three or more complaints with merit in a year received required training on employment discrimination.[10] In fact, in fiscal year 2013, one state agency received nine complaints with merit, but because of staff turnover in the division that information was overlooked and resulted in that agency not receiving training required by statute. As a result, the division does not have accurate and complete data to identify recurring issues and trends. By contrast, the division has years of statewide data on the number and types of employment complaints available to the public because it publishes this data in its annual report.[11] With consistent data collection on state employee complaints over time, the division could use this data along with personnel policy review data to provide an overall assessment of how state agencies are doing in avoiding discriminatory practices against state employees.

  Poor complaint tracking has prevented the division from ensuring agencies with repeat violations receive training.

- **Inability to conduct more frequent reviews.** The division's statute limits it to reviewing state agencies no more than once every six years. This inhibits the division's ability to follow up on an agency's efforts to correct identified problems and target agencies at higher risk for noncompliance with more frequent review.[12] Although most state agencies correct problems found through the review process, the division has no mechanism to ensure the proper implementation of changes until the next review six years later. In addition, the division receives information on the number and type of complaints with merit filed by state employees, but has no means for placing a higher priority on the agencies involved. For example, in fiscal year 2014, 16 complaints against agencies were found to have merit,

indicating noncompliance with employment law may remain an issue at these agencies. With limited resources, having the ability to target agencies with known problems can ensure the division does not have to wait six years to examine their processes.

To more proactively ensure agencies address problems and provide them with additional assistance in between the regular reviews every six years, the division recently began offering to re-review agencies' personnel policies and practices. However, this process is voluntary and may not allow the division to adequately address problems found at agencies needing more frequent review to ensure they correct problems identified.

- **Inconsistent rate-setting practices.** Statute requires the division to charge state agencies for the time spent and expenses incurred during a review.[13] Until recently, the division had not reviewed the rates it charges to state agencies for conducting personnel policy reviews to ensure reimbursement rates are in line with actual costs. This lack of review by the division and its predecessor agency has historically resulted in charges not accurately reflecting the costs involved. For example, a 2003 finding by the State Auditor's Office found that the former Texas Commission on Human Rights underbilled for these reviews and could not fully cover its costs.[14] In contrast, for fiscal year 2013 TWC's finance department worked with the division to assess these costs and reimbursement rates, finding the division had over billed state agencies for these reviews. Neither over- nor undercharging agencies is appropriate when more regular evaluation of costs could ensure more accurate billing. The division recently reassessed the rates for fiscal year 2014.

Charges for state agency reviews have not reflected costs.

Recommendations

Change in Statute

1.1 Transfer the powers and duties of the Human Rights Commission to the Texas Workforce Commission.

This recommendation would abolish the existing Human Rights Commission and transfer its functions to the governing body of the Texas Workforce Commission including the following:

- acting as the state authority on equal employment and fair housing complaints; and
- acting as a complainant in a fair housing complaint without a private party.

By eliminating the separate Human Rights Commission, the responsibility for hiring the division director and setting policy for the division would transfer to TWC's executive management to perform as it would with any other division of the agency. These changes would clarify and simplify the lines of accountability, and ensure one governing body, the Texas Workforce Commission, is responsible for the overall performance of the division. The agency should revise rules as appropriate to reflect statutory changes adopted based on this recommendation.

1.2 Eliminate the statutory requirement for the Civil Rights Division to review fire department exams for discriminatory factors.

This recommendation would eliminate an ineffective task that placed an unnecessary burden on the division's staff and allow them to better focus limited staff time to improving other functions, such as state agency personnel policy reviews. This change if adopted should go into effect on September 1, 2015.

1.3 Require TWC, as part of the division's annual report, to provide data on the number and type of state agency employment discrimination complaints with merit.

This recommendation would require TWC to add information to the division's existing annual report on all complaints with merit filed by employees against state agencies, both by number and by type, along with key findings or trends identified during reviews of agencies' personnel policies and procedures. To ensure TWC complies with the confidentiality requirement in its contract with EEOC, any complainants or state agency complaint information would be de-identified. TWC should continue publishing this report online so that this aggregate information is easily available to the public in addition to the current report recipients including the governor, the Legislature, and the Legislative Budget Board. This recommendation would ensure an assessment occurs of how well state agencies are managing their personnel policies, including information on complaints with merit, in one location that is accessible to the public. These changes should be incorporated into the division's annual report no later than the fiscal year 2015 report.

1.4 Require TWC to develop risk assessment criteria in rule for determining when an agency could be subject to review more frequently than the regular six-year schedule.

Under this recommendation, TWC would develop criteria division staff would use in conducting a risk assessment to determine when an agency could require a follow-up or targeted review based on risk. This risk assessment would ensure the division has a systematic method of verifying whether agencies address identified issues and complaints sooner than the regular six-year review. TWC would still ensure a review of all agencies at least once every six years, consistent with the current schedule, but would not be limited to only reviewing an agency once every six years. At a minimum, the risk assessment would use data on complaints against an agency along with the information on review findings and other related data collected in accordance with Recommendation 1.6, to determine which agencies need follow-up review in a given year. These rules should be enacted no later than September 1, 2016.

1.5 Require TWC to charge state agencies a rate that covers the costs of reviewing their personnel policies and procedures, and annually reassess reimbursement rates to ensure true cost recovery.

This recommendation would require TWC to annually review the costs associated with conducting state agency policy reviews to ensure reimbursement rates are set at a cost recovery level. TWC would be required to adjust its rates as a result of this annual review if staff finds rates are too high or too low. This recommendation would ensure TWC continues to reassess reimbursement rates for agency personnel policy reviews on a regular basis to both ensure the agency fully recovers its costs and avoids overcharging agencies.

Management Action

1.6 Direct TWC to assist the division in making improvements to electronically track data from state agency personnel policy reviews and use this data to better manage the review process.

This recommendation aims to improve the division's tracking and management of personnel policy review data on state agencies. Division staff should work with TWC's data experts to decide what information is needed and develop a central database to collect this information. At a minimum, the agency should collect information on issues found at each agency, recommendations made to resolve them, agency action to resolve the issues, and the number of repeat violations found each year overall and within each agency. TWC should incorporate relevant information, as described in Recommendation 1.3, and use the data as a factor in developing the risk assessment required in Recommendation 1.4. These improvements to the division's data tracking and management should be made no later than September 1, 2016.

The division should design an approach to gathering and using data for managing its performance, in addition to monitoring the performance of state agencies. These changes would improve the personnel policy review process itself, as well as provide data to the Legislature and the public on the overall performance of state agencies in complying with employment law. The new information would allow the division to identify trends that could be incorporated into trainings or used to improve the assistance it provides to state agencies.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. Abolishing the Human Rights Commission would result in a small, but not significant savings for travel reimbursements of commission members. Eliminating fire fighter exam reviews would free staff time to conduct other activities, such as state agency reviews. Any further adjustment to the reimbursement rates for state agency reviews should simply ensure the rates cover the actual costs, but not generate any additional revenues.

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[1] Chapter 21, Texas Labor Code.

[2] Texas Fair Housing Act, Chapter 301, Texas Property Code.

[3] Sections 419.101–419.105, Texas Government Code; Sections 21.451–21.456, Texas Labor Code.

[4] State Auditor's Office, *A Financial Review of The Commission on Human Rights*, accessed September 30, 2014, https://www.sao.state.tx.us/reports/main/02-023.pdf.

[5] Section 301.153(a), Texas Labor Code.

[6] Texas Workforce Commission Civil Rights Division, *FY 2013 Commission on Human Rights Annual Report*, accessed September 30, 2014, http://www.twc.state.tx.us/crd/annual-human-rights-report-2013.pdf.

[7] Section 21.454, Texas Labor Code.

[8] Three local equal opportunity employment agencies exist in Texas — the City of Austin Equal Employment/Fair Housing Office, Corpus Christi Human Relations Commission, and City of Fort Worth Human Relations Commission. EEOC refers to them as Fair Employment Practice Agencies or FEPAs.

[9] Sections 419.101–419.105, Texas Government Code; Letter from the U.S. Department of Justice Civil Rights Division to Karen Kennard, City of Austin Attorney, September 26, 2013, http://www.austintexas.gov/edims/document.cfm?id=210039; U.S. Department of Justice, "Justice Department Settles Employment Discrimination Allegations Against City of Austin," news release, June 9, 2014, http://www.justice.gov/opa/pr/2014/June/14-crt-615.html.

[10] Section 21.556, Texas Labor Code.

[11] Sections 21.003(d), 21.504, and 301.156, Texas Labor Code.

[12] Section 21.453(a), Texas Labor Code.

[13] Section 21.455, Texas Labor Code.

[14] State Auditor's Office, *A Review of the Commission on Human Rights' Expenses for Reviewing Entities' Manuals*, accessed September 30, 2014, https://www.sao.state.tx.us/reports/main/04-005.pdf.

Issue 2

Students Need Better Career School Performance Information When Selecting Training Programs.

Background

The Texas Workforce Commission (TWC) regulates privately owned career schools and colleges that advertise, solicit, or enroll students within Texas to ensure the quality of schools and provide consumer protections to students.[1] During fiscal year 2013, 148,544 students were enrolled in 536 licensed career schools and colleges. These schools offer a variety of professional certification and degree programs, with 89 licensed schools offering a post-secondary degree in fiscal year 2013. Programs also vary in length and cost. For example, a seminar course in Adobe InDesign software may run less than a day and cost around $300 while earning an Associate of Applied Science degree in software development will take about a year-and-a-half and can cost more than $45,000. The textbox, *Common Career School Programs*, provides examples of other career school programs and degrees.

Common Career School Programs

- Business management-accounting
- Culinary arts
- Dental assistant
- Heating, air conditioning, and refrigeration mechanic
- Information technology
- Nurse aide

In addition to licensing schools, TWC reviews and approves programs and key staff, registers representatives that recruit students, conducts annual on-site visits, investigates student complaints against schools, and monitors student outcomes.[2] Career schools report enrollment, program completion, job placement, and employment information about students enrolled in the previous fiscal year annually to TWC. Schools track students' job placement and employment rates by contacting students post-graduation to determine whether they found a job and at what wage, and then report that information to TWC.

Because the purpose of a career school is to prepare students for employment, to satisfy program and license requirements, schools must maintain a minimum employment rate of 60 percent for program graduates in jobs related to the occupation for which they attended school.[3] As described in the accompanying textbox, TWC rule prescribes graduated corrective actions the agency takes each consecutive year a program fails to meet the employment requirement.[4] Of the 2,294 programs offered by career schools in fiscal year 2013, 64 programs failed to meet the requirement the first year of reporting and 37 of those remained out of compliance the second year.

Minimum Employment Rate Corrective Actions

- **Year 1:** School must submit a performance improvement plan for how it is going to reach the requirement.
- **Year 2:** School must modify its performance improvement plan. If the school improved its performance by less than 50 percent of the shortfall, TWC also suspends new enrollment of any students funded with TWC-allocated funds.
- **Year 3:** TWC revokes program approval.

TWC also operates the Tuition Trust Account, which provides refunds to students in the event a school closes and cannot or does not issue a refund.[5] The account also provides funding to other schools to perform teach-outs, meaning another school assumes responsibility for a closed school's students. In fiscal year 2013, the account paid out nearly $114,000 for refund and teach-out assistance.

TWC is not the only entity involved in overseeing career schools. The agency shares regulatory responsibilities with the U.S. Department of Education (DOE); accreditation entities; and other state agencies, such as the Texas Higher Education Coordinating Board, which provides degree granting authority to schools, and the Texas Board of Nursing, which approves the curriculum for nursing programs. Accreditation is not required for TWC to license a career school; however, to offer federal financial aid to its students, a school must be accredited by a DOE-recognized accrediting body.[6] Although TWC is the primary regulator at the state level, it has no role in student financial aid or default rates, which are historically higher than those of students attending public universities or community colleges.[7] DOE protects the administrative and fiscal integrity of federal financial aid programs and is typically the entity involved when schools have financial problems.

TWC's career school regulation is funded from initial license, license renewal, and other related fees and fines schools pay. In fiscal year 2013, TWC collected $1.7 million in revenue and spent $1.5 million on career school regulation and Tuition Trust Account payments.[8]

Findings

TWC lacks an adequate mechanism to validate a key outcome necessary to gauge career schools' performance.

Students rely on TWC for accurate information about career schools to help them make informed decisions and be confident in the quality of education and training they receive. However, TWC lacks a mechanism to ensure the validity of the most important measure of a school's performance — program employment rates. TWC relies on schools to self-report employment rates of their graduates and historically has not systematically audited or otherwise ensured the accuracy of the information.

TWC relies on schools to self-report employment rates of their graduates.

Because schools' program approvals and licenses depend on maintaining minimum employment rates, they have an incentive to exaggerate the numbers, especially if they are having difficulty meeting the standard or are at risk of having a program revoked. But since TWC does not regularly verify the information, it has no way of knowing whether schools are reporting accurately. In fact, a 2010 Government Accountability Office (GAO) investigation led to the discovery that several career schools nationwide, including Texas-based ATI Enterprises, over-reported their job placement rates.[9] Following the GAO investigation, TWC initiated its own investigation and audit of ATI, as well as several American Commercial College campuses, and ultimately required both schools to conduct third-party reviews of student employment information. The reviews revealed several instances where the schools' self-reported employment and placement rates, especially in ATI's case, were greater than the rate the reviewer was able to verify and actually below the 60 percent

employment requirement. While these periodic reviews are valuable, they do not supplant TWC's ongoing responsibility to ensure the accuracy of the data it receives across career schools.

In September of this year, for the first time, TWC proactively began matching last year's career school graduates to employers' wage records to confirm whether the former students were in fact employed and with the business the school reported. Quarterly, nearly 500,000 Texas employers report their employees' wages to TWC as part of the state's unemployment insurance system. These records include the employer's contact information and industry code, employees' names and social security numbers, and total wages paid to each employee. This sort of wage matching, where TWC compares schools' self-reported data to employers' wage records, is the ideal and most efficient way for TWC to verify employment information schools submit. However, wage records do not include employees' job titles or other occupational information, limiting the records' usefulness for verifying in what capacity someone is employed. For example, suppose a career school reports one of its nurse aide program graduates got a job at Brackenridge Hospital; TWC would be able to pull Seton's wage records and see whether the former student is in fact employed at the hospital, but would not know if that student works as a nurse aide, janitor, or receptionist.

Wage records lack information needed to verify career school graduates' occupations.

Nationally, a move to collect additional data as part of employers' wage records is underway. The Workforce Information Council, a federal-state collaboration that plans, guides, and oversees the nationwide workforce information system, established a workgroup to look into the potential benefits of, and barriers to, enhancing labor market information by adding data elements, such as occupational information, to wage records.[10] Even though additional data would be valuable for better tracking workforce training outcomes and improving the quality of labor market information, only Alaska collects occupational information from employers.[11] Since the late 1980s, Alaska's Department of Labor and Workforce Development has collected employees' job title and standard occupation classification code from the state's employers, which it uses not only to evaluate education and training outcomes, but to track occupational trends, and make occupational projections.

Despite the benefits of enhanced wage records, states have been hesitant to move forward with changes because of the potential burden on employers, especially small businesses, to identify occupations into which employees fit. States acknowledge other challenges as well, such as the time it could take for workforce agencies and employers to make changes to their computer systems for reporting and manipulating the additional information and limitations of standard occupation codes.

Additional consumer information would further inform prospective students' decisions about career schools.

Although TWC has taken steps to increase the amount and quality of consumer information it provides to students, the agency could improve its tracking and reporting of additional key information that could help prospective students

make informed choices about career schools. Following legislative changes in 2011, TWC enhanced its consumer information by developing a directory of licensed career schools that provides current tuition information as well as program completion and employment rates for the last three fiscal years for every licensed career school. TWC also identifies on its website schools issued cease-and-desist orders.

However, despite rules indicating TWC will provide information online that addresses schools' regulatory compliance, the agency does not identify enforcement actions taken against schools, schools with multiple or repeat violations, or those assessed administrative penalties.[12] For example, in fiscal year 2013, TWC assessed approximately $26,017 in administrative penalties against 69 different schools, all for failing to submit timely renewal applications or other required documentation. The accompanying table describes other adverse actions taken against schools in fiscal year 2013 that TWC does not provide as part of its career school directory. The only way for a potential student to get information about actions against a school is to submit an open records request to TWC.

Enforcement Actions, FY 2013

Action	Number of Occurrences
Intent to revoke license	12
Intent to revoke program	6
Program revoked	5
School closed in violation	11

Other licensing agencies typically make enforcement information, such as final disciplinary orders, available to the public. For example, the Texas Department of Licensing and Regulation, which regulates the operation of barber and cosmetology schools, provides information online about enforcement actions against a school, including a description of the violation and amount of any penalty assessed.

Additionally, TWC could provide a link on its career schools website to the agency's Reality Check tool, which allows individuals to estimate housing, utilities, and other living expenses and see which careers could pay for those needs, and also shows the purchasing power of occupations. Such information would be valuable to individuals considering attending a career school, but unsure about what career path to choose or those who want to ensure their chosen career will adequately meet their needs.

Career school license and other related fees are set in statute, limiting TWC's flexibility to change fees as needed for effective regulation.

Most career school fees have been at their cap for over 20 years.

Statute prescribes initial license, renewal, and other related fees TWC may charge career schools and caps those fees at 150 percent of the prescribed amount.[13] The table on the following page, *Career School Licensing and Application Fees*, lists key licensing and other fees the agency charges and their statutory caps. Most of the fees have been at their cap for over 20 years.[14]

The Legislature has established a practice in many regulatory programs of eliminating statutory fee amounts and allowing agencies to set fees in rule. The Legislature essentially sets the caps for fees by appropriating specific

Career School Licensing and Application Fees

Fee	Current Fee	Statutory Cap
Initial license	$3,000	$3,000
Initial license (small school)	$1,001*	$1,500
License renewal	0.12% of gross tuition and fees	Greater of 0.45% of gross tuition and fees or $750
License renewal (small school)	$1,001*	Greater of 0.45% of gross tuition and fees or $750
Representative registration	$90	$90
Representative renewal	$45	$45
Additional course of instruction	$225	$225
Change of owner name	$150	$150

* Small schools receive a three-year license, so the renewal fee is $501 for the first year and $250 for each of the next two years.

amounts of expected fee collections back to an agency. This practice allows for greater administrative flexibility and is consistent with the general practice for most agencies to set fee amounts necessary to recover the cost of regulation. Greater flexibility to set fees in rule allows agencies to adjust fees as conditions change, without the need for repeated changes in law.

Recommendations

Change in Statute

2.1 Require TWC to collect employees' occupational information as part of employers' wage records and use the records to verify employment information career schools submit.

This recommendation would require TWC to collect employees' occupational information from employers as part of their wage record submissions. TWC would work with employers to establish, in rule, what specific information to collect from businesses, such as job title and/or standard occupation classification code, that would meet the recommendation's intent while minimizing the burden on employers. TWC estimates updating its systems to collect and process the additional data would take about eight months, but recognizing the potential burden this recommendation may place on employers, especially small businesses, TWC would be required to begin collecting the occupational information by no later than September 1, 2018.

This recommendation would also require TWC to establish a policy for verifying career schools' employment information. As part of that policy TWC should consider whether the timeframe for schools to submit job placement and employment information needs to change to better align with wage record submissions. Any schools found failing TWC's employment requirements as a result of the validation would still have the opportunity to improve their performance through the agency's established graduated corrective action rules. TWC would begin verifying the schools' information after it starts receiving occupation-enhanced wage records, but in the meantime should continue its efforts to match the previous year's career school graduates to employers' existing wage records to confirm whether the former students were employed and with the business the school reported.

Having information about employees' occupations would not only allow TWC to verify outcomes of career school graduates, but also better track outcomes of other workforce training and education programs, such as those funded through the Workforce Innovation and Opportunity Act. Wage records with occupational information incorporated could also improve TWC's labor market and career information and therefore be more useful to businesses that use the information to make decisions about pay scales, budgets, and wage trends.

2.2 Require TWC to make information on enforcement actions available to the public on its website.

This recommendation would require TWC to incorporate information on formal enforcement actions into its existing career school directory. At a minimum, TWC should provide information on each school's administrative penalties, program revocations, and enrollment suspensions for the last three fiscal years. Improving access to information about enforcement actions taken against individual career schools would help prospective students make more informed decisions about the schools they consider. In addition to helping prospective students and the public, this information may reduce the amount of time staff must dedicate to handling consumer inquiries.

2.3 Eliminate statutory career school fees and fee caps, and authorize TWC to set fees in rule.

This recommendation would give TWC the flexibility to adjust fees as appropriate, without needing legislation for each change. All fees would be set in rule, thus allowing the career school industry and the public to have input into the amounts. Fees would continue to be deposited to the General Revenue Fund, and the Legislature would set the fee recovery expectations through the appropriations process.

Management Action

2.4 Direct TWC to provide a link to its Reality Check tool on its career schools webpage.

On the career schools portion of its website, TWC should provide a link to its Reality Check tool, which allows individuals to estimate how much money they need for housing, utilities, transportation, clothes, health care, entertainment, and other expenses, and see which careers would most likely pay for those needs. Combined with TWC's other consumer information, the tool would be useful in helping individuals interested in attending a career school assess and compare the costs and benefits of different schools.

Fiscal Implication

The recommendation for TWC to collect occupational information as part of employers' wage records would result in one-time costs, estimated by TWC to be $812,000 for the agency to modify its existing information technology systems to collect the additional data and then process, store, manipulate, and match the data against career school performance information. However, these costs should be offset by a one-time increase in fees career schools pay, which TWC estimates total just 0.1 percent of the nearly $1 billion in tuition collected across licensed career schools. TWC could consider spreading the temporary fee increase across multiple years to minimize the impact on career schools.

Employer costs associated with providing occupational information for all their employees cannot be estimated because they will vary by employer depending on the employer's size and whether the information is readily available and easily accessible. However, tools exist to help employers easily

identify occupations into which employees fit. For example, TWC has an online system based on the Occupational Information Network (also known as O*NET) that provides occupational classification based on a job title or description an employer specifies.

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[1] Statute provides for a number of exemptions and exclusions to regulation, including certain schools or training programs that offer only avocational or recreational instruction in subjects such as yoga, dance, or physical fitness; certain out of state, degree-granting schools that only offer distance education in Texas; and schools or programs that are regulated under another law or approved for continuing education credit by an organization that accredits courses for the maintenance of a state license.

[2] Subchapter B, Chapter 132, Texas Education Code.

[3] 40 T.A.C. Section 807.131(b)(2).

[4] 40 T.A.C. Section 807.284(d).

[5] Section 132.2415, Texas Education Code.

[6] "Accreditation in the United States: Accrediting Agencies Recognized for Title IV Purposes," U.S. Department of Education, accessed October 1, 2014, http://www2.ed.gov/admins/finaid/accred/accreditation_pg9.html#TitleIVRecognition.

[7] "Three-year Official Cohort Default Rates for Schools," Federal Student Aid, U.S. Department of Education, accessed August 20, 2014, http://www2.ed.gov/offices/OSFAP/defaultmanagement/schooltyperates.pdf.

[8] The $1.5 million includes appropriated amounts, allocations for employee benefits, and payments from the Tuition Trust Account.

[9] Government Accountability Office, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices*, accessed September 17, 2014, http://www.gao.gov/assets/130/125197.pdf.

[10] Administrative Wage Record Enhancement Study Group, *Phase One Interim Report on the Current Practices of Unemployment Insurance Wage Record Collection and Use* (Workforce Information Council, 2014).

[11] Ibid., p. 10.

[12] 40 T.A.C. Section 807.284(e)(2)(B).

[13] Section 132.201, Texas Education Code.

[14] The Central Education Agency — now the Texas Education Agency — operated the career schools program before TWC and last increased the fees in 1992.

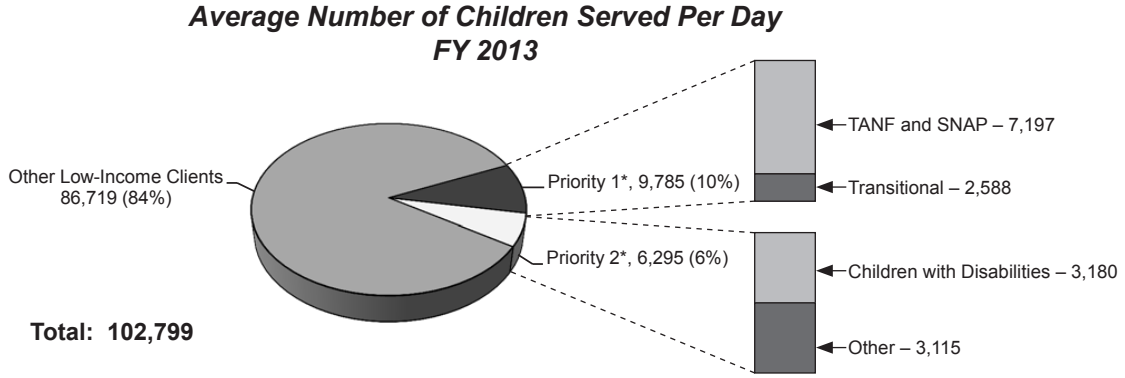
Issue 3

TWC Must Better Ensure Its Child Care Program Helps Clients Achieve Employment Goals and Obtain Quality Care for Children.

Background

Because of child care's role as a critical workforce support for low-income parents, the Texas Workforce Commission (TWC) administers the state's $489 million subsidized child care program. The program primarily serves working parents at risk of becoming dependent on public assistance, as they are, by far, the largest group actually receiving child care services. This group qualifies for services based on income and work status, though receipt of services is subject to funding and provider availability. By TWC rule, however, first priority for child care services goes to a smaller group of clients, which includes parents currently receiving public assistance, primarily Temporary Assistance to Needy Families (TANF), as well as to those transitioning off public assistance. This priority group is the only eligible population assured services.[1]

The chart, *Average Number of Children Served Per Day*, shows the number of children served by client category, TWC's primary performance measure for this program. Through this program, TWC serves about 12 percent of the total number of children in private child care across Texas. TWC estimates that it serves roughly 16 to 17 percent of all children whose parents are eligible since the funding is insufficient to serve all those that qualify.



* Priority groups established in TWC rules, 40 T.A.C. Section 809.43.

The federal government provides block grants to states enabling them to provide subsidized child care to low-income parents as a workforce support, but also to help children succeed in school through high-quality affordable child care.[2] TWC then allocates the federal grant to each of the 28 local workforce development boards using a need-based formula established in agency rule.[3] In fiscal year 2013, out of the $489 million in total funds TWC spent on the child care program, $417.2 million were federal funds, $70.3 million were state general revenue, and $1 million were local matching funds.[4]

TWC and the local boards jointly administer the child care program. Not only does TWC allocate the funds, it also establishes performance measures for each board and sets basic parameters for the child care program. The local boards, however, plan and manage the delivery of child care services. Local boards

also decide significant program policies, such as provider reimbursement rates. Each board contracts to provide those services in its area, which include eligibility determination and referrals to child care providers that accept subsidies.

In 1991, the Legislature created Texas Rising Star, a voluntary quality rating system for child care providers that participate in the subsidized child care program. TWC sets the quality standards, which exceed the state's minimum regulatory standards established by the Department of Family and Protective Services. The rating system includes three levels of quality providers can attain. Texas Rising Star providers receive reimbursements that are at least 5 percent greater than the maximum rates paid to non-Texas Rising Star providers. In fiscal year 2013, about 19 percent of child care providers participating in the subsidized child care program had a Texas Rising Star or other quality rating and received the higher reimbursement.

Requirements of House Bill 376 – Texas Rising Star

- Requires graduated reimbursement rates based on quality level.
- Reserves 2 percent of the federal block grant for quality improvement activities.
- Mandates local boards have staff to assist child care providers wishing to attain or improve their quality rating.
- Creates the Texas Rising Star Workgroup to comprehensively revise the quality standards.

After a long absence of dedicated state funding for quality improvement and dependence on local boards to use local funds for this purpose, the Legislature passed House Bill 376 during the 83rd Legislative Session. This bill signals a renewed policy focus by the Legislature on improving quality in the subsidized child care system, though the changes also mean the state will serve fewer people since overall funding remains the same.[5] This bill establishes a number of requirements directed at increasing the overall availability of quality child care for TWC clients, summarized in the textbox, *Requirements of House Bill 376 – Texas Rising Star*.

Findings

Quality, affordable child care is a vitally important support benefitting both parents and employers, and has long-term implications for child developmental outcomes.

Access to stable child care significantly impacts a parent's ability to maintain employment.

Affordable, stable, quality child care arrangements can make or break a parent's ability to successfully participate in the workforce and avoid reliance on public assistance. In fact, one study showed that among TANF recipients across six states, child care access was a more difficult barrier to employment than transportation or housing problems.[6] The cost of child care is substantial and creates a major challenge even for parents with more resources, but low-income parents find affording child care particularly challenging, since costs are often on par with housing in a family's budget. The issue of cost is further exacerbated in the case of single parents or those with more than one child. In 2012, the average annual cost for full-time care for one child at a child care center in Texas was $8,495 for an infant and $6,547 for a 4-year-old.[7] By comparison, a minimum wage worker in Texas makes about $15,000 per year. Though commonly viewed primarily as a workforce support for low-income parents, quality, affordable child care has implications for both employers' bottom lines and long-range outcomes of the children receiving care, as follows.

- **Role as employment support.** Losses in productivity and turnover of employees unable to arrange child care that meshes with their work schedule is a significant issue impacting employers as well. Employees missing work due to a breakdown in their child care arrangement results in about $3 billion of costs annually to U.S. businesses.[8] In one study, over a three-month period 29 percent of employed parents experienced some type of breakdown in their child care arrangement, resulting in lost productivity, absenteeism, and reduced concentration.[9]

- **Influence of child care quality on child development outcomes.** The quality and stability of child care is also critical to early learning and school readiness for young children. Studies have found links between the quality of early care and education and later developmental outcomes, such as language and social skills and overall progress in school; studies have also found that quality early education is particularly important for children from low-income families as their risk of poor developmental outcomes is higher.[10] Given the significant expense of child care, the subsidized child care program provides access to higher quality care than low-income parents would otherwise be able to afford. A 2012 study showed that parents receiving a subsidy typically access better quality care than comparable parents who did not receive a subsidy.[11]

Child care problems result in about $3 billion in annual losses to U.S. businesses.

TWC has not focused on managing the child care program for success or ensured the most effective use of the program's $489 million in funding.

TWC's child care program is unique in that it is cast in a supporting role in the workforce development system, yet it is the single largest expenditure in TWC's budget. This is an expensive support service that requires significant resources to serve even a single client — on average $368 per month, per child in care, or $4,412 annually. Further, benefits are not time limited as long as a parent still meets the eligibility criteria. While TWC excels in measuring outcomes for a number of its other programs and has dedicated staff and the expertise necessary to use data for strategic management purposes, the agency has yet to design a way to consistently and comprehensively assess the ultimate effectiveness and outcomes of the child care program. Because of the program's significant expense for a limited population, an estimated 16 to 17 percent of eligible parents statewide, understanding the program's effectiveness and managing it for success are critical.

The child care program serves only about 16 to 17 percent of eligible parents statewide.

The Sunset review found that this lack of information has resulted in concerns among some local workforce board staff, board members, and stakeholders about how well the child care program is working and what the state is ultimately getting for such a significant expenditure. Some mentioned parents have difficulty maintaining their child care services due to substantial paperwork requirements, resulting in a parent moving on and off subsidized care numerous times.

Because TWC does not adequately analyze the child care program's effectiveness, the agency does not know whether the program is meeting client goals. The agency further misses an opportunity to better support the local boards that manage the program day-to-day. Providing more thorough analysis would enable TWC to support the 28 local boards with much-needed management information, and help TWC better manage the child care program as a whole. The boards make many critical program policy decisions, such as rate setting and parent copayment policies. More outcomes-focused analysis would facilitate comparisons across boards, providing insight into how board policies affect the ultimate outcomes of the program. Such comparisons could also allow for better identification and sharing of best practices and improve the quality of the technical assistance TWC provides to the boards.

Local boards make critical program policy decisions, such as rate setting.

- **Inadequate performance measures.** Despite the large price tag, TWC has continued to measure the effectiveness of this program primarily in terms of how many people the agency serves and average cost measures. However, the 2003 Sunset review recommended TWC better measure employment outcomes for parents using this service since that is the ultimate goal of providing child care services to low-income parents.[12] Measures TWC regularly uses internally to evaluate the child care program's performance on a monthly basis are listed in the textbox, *Child Care Data Routinely Evaluated by TWC*. These measures are certainly important for TWC's day-to-day oversight and management of the local boards, but do not go far enough in regularly assessing the outcomes of the child care subsidy program.

Child Care Data Routinely Evaluated by TWC

- Average number of children served per day
- Average daily cost
- Number of children on wait lists
- Number of providers by license type and percentage of children receiving care in each type of facility

Ultimately, through the 2003 Sunset bill, the Legislature required TWC to report on the effectiveness of the child care services program, prescribing specific measures the agency needed to report. These measures include parents' entered employment rate, employment retention rate, reasons parents give for leaving the child care program, and whether parents return to public assistance after receiving these services.[13] TWC's implementation of this requirement has consisted of a biennial report posted on its website and provided to the Legislature with state-level data. While the data TWC reports meets the statutory requirement, it is not broken down by board area and does not include trend information over time.[14] As a result, this report is limited in its usefulness because TWC produces it primarily for external consumption and not internal management use. The agency has not made efforts to evaluate this type of data in more detail, such as by looking at data on the board level, considering trends over time, or developing additional ways to measure effectiveness.

TWC has not made sufficient efforts to evaluate program outcomes.

- **Opportunities to better measure effectiveness.** TWC could use the extensive data it collects through its case management system as well as the wage record data it collects on all employees in Texas to better analyze

and measure the child care program's effectiveness. The textbox, *Opportunities for Measuring Effectiveness of the Child Care Program*, lists several areas TWC does not routinely evaluate for internal purposes, but that bear a direct relationship to whether the child care program is meeting its overall goal. TWC has contemplated the need to dig deeper into the data, but this effort is in the formative stages.

Opportunities for Measuring Effectiveness of the Child Care Program

- Parents' job stability
- Trends in parents' wages
- Duration of child's stay at a single child care provider
- Number of moves of a child between providers
- Reasons parents leave the child care program

TWC needs additional processes and tools to effectively implement and administer the newly revamped Texas Rising Star program.

As required by H.B. 376, TWC is expected to adopt significantly revised Texas Rising Star child care quality standards in January 2015, the first comprehensive revision since the beginning of the program in 1991. In addition to significant substantive revisions to the standards, providers will be paid graduated reimbursements for each quality level, and TWC will dedicate funding specifically for quality improvement and staff at the local board level. With these significant changes, the effect the new structure will have on the availability of quality providers and the number of children in quality care is unknown. Given this level of uncertainty, TWC needs the following processes and tools in place to effectively manage this major change to the program as well as ensure ongoing maintenance of the program. The information below describes gaps in TWC's management of the program the agency needs to address to help ensure the changes to Texas Rising Star are successful.

- **Performance measures.** Going forward TWC needs to expand its approach to using data to manage Texas Rising Star. TWC looks at statewide numbers of Texas Rising Star providers and the number of children enrolled at these providers, but TWC should be looking at this type of data across the different boards given the program's history of inconsistent implementation. First, the agency needs to establish baseline data to understand the starting point of Texas Rising Star across the state before full implementation of the changes. The textbox, *Opportunities for Using Texas Rising Star Performance Data*, describes ways in which TWC can use performance data for monitoring implementation of the changes to the program, but also for effectively managing the program going forward.

Opportunities for Using Texas Rising Star Performance Data

- Evaluate baseline data prior to implementation of updated standards.
- Monitor ability of providers to meet standards and achieve higher quality ratings over time.
- Monitor trends in number of children receiving care by quality-rated providers.
- Evaluate effectiveness of local boards' quality improvement efforts and use of quality funds to identify best practices and share with all boards.

- **Ongoing stakeholder input.** TWC does not have adequate internal expertise on child care quality and early education, which is why the Texas Rising Star Workgroup included a variety of stakeholders, such as

early education experts, advocates, and child care providers. Given the significant changes the agency is about to implement and the need for ongoing management of the program, TWC should have a consistent mechanism to gather stakeholder input on Texas Rising Star and the child care program generally.

Before 2014, TWC had not conducted a comprehensive review of its quality standards in over 20 years.

- **Regular review of standards.** TWC lacks a process to ensure regular, comprehensive review of the Texas Rising Star standards. Prior to the direction provided by the Legislature in H.B. 376 in 2013, TWC adopted some changes to the quality standards, but had not conducted a comprehensive review of the standards in over 20 years. Because research and industry standards evolve over time, TWC needs to ensure the standards receive regular review. By contrast, the Department of Family and Protective Services, which regulates child care providers, comprehensively reviews its licensing standards every six years using a stakeholder process.

The technical support provided to local boards does not ensure effective management of the subsidized child care program.

TWC's primary role in the child care program is to oversee and support the local boards, which manage the day-to-day operations of the program and directly assist clients. During the Sunset review, survey results, interviews, and other feedback received from local board staff and contractors indicated the child care program is the single area in which some boards have difficulties managing the program and believe the support provided by TWC has room for improvement. The following material describes ways in which TWC could strengthen its support of local boards.

Without sufficient feedback from local boards, TWC cannot ensure its technical assistance is adequate.

- **Insufficient feedback mechanism from local boards.** Given its critical role in supporting local boards in administering the child care program, TWC needs a regular, comprehensive way of gathering feedback to improve the quality of support provided to boards. Regularly collecting feedback on the quality of its local workforce board support would help TWC target efforts for improvement.

- **No comprehensive policy and procedures manual.** TWC makes rules and policy for the child care program and provides critical guidance to local boards regarding implementation and other issues, but lacks a single, comprehensive guide for board staff and their contractors to use. This creates more work for board staff and contractors in locating information, as well as increasing the likelihood that appropriate current policy will not be followed. By contrast, TWC has created comprehensive policy and procedure manuals for other workforce development programs.

Recommendations

Change in Statute

3.1 Require TWC to include more in-depth data on the effectiveness and outcomes of child care subsidies in its statutorily required report on the program.

This recommendation would require TWC to expand the scope of its statutorily required report on the effectiveness of the child care program by including performance by board area as well as the statewide information on outcomes of the child care program. TWC would also be required to include multi-year trend information with, at a minimum, the last five years of data. This would provide more comprehensive analysis of board and state-level performance. TWC should also consider adding measures to this report based on new measures described in Recommendation 3.4. The goal of this recommendation would be to improve the existing report TWC creates for the Legislature and the public by providing more in-depth, useful information on the effectiveness of the program. TWC would include this additional data beginning with its 2017 report to the Legislature.

3.2 Require TWC to establish a process in rule providing for regular review of the Texas Rising Star child care quality standards.

This recommendation would require the agency to adopt rules by September 1, 2016, defining a regular timeframe and process it would use in reviewing and updating the Texas Rising Star quality standards. This process should include a stakeholder input component. Adopting such a process would ensure TWC keeps the standards up to date in the future. This process would also allow opportunities for TWC to take advantage of outside expertise, using methods of gathering stakeholder input implemented under Recommendation 3.3.

3.3 Require TWC to develop a policy on gathering and using stakeholder input regarding the child care program.

This recommendation would require TWC to develop processes for gathering and using stakeholder input regarding the child care program. While the agency most clearly needs stakeholder involvement in the ongoing implementation of the significantly revised Texas Rising Star program, TWC should also take advantage of these processes for obtaining and using stakeholder input on the child care program generally. In its policy, TWC should define the appropriate methods for obtaining needed input, such as through more formal means, like an advisory committee, or less formal means, such as time-limited workgroups, periodic surveys, and proactive communication with stakeholders through the agency's website. Implementing this process would help ensure a consistent approach to gathering input, and provide additional opportunities for the child care program's many stakeholders, including advocates, child care experts, and providers, to give TWC staff information useful for program and policy improvement. TWC would be required to adopt this policy by September 1, 2016.

Management Action

3.4 Direct TWC to evaluate measures of the child care program's effectiveness in its internal monthly performance analysis.

This recommendation would direct TWC to expand its performance management approach for the child care program to include outcomes and effectiveness data, and to regularly evaluate and use this information for determining any policy or administrative changes. TWC should use this information to identify local boards that need technical assistance in improving their performance. The agency

should also use this information to identify boards that perform well, as they may have implemented best practices that can be shared with other boards. TWC should use this data for its own management purposes, but also regularly report performance information to the local boards for their use in making management and policy decisions. Specific measures TWC should create and use to evaluate program outcomes should include, at a minimum, the following:

- parents' employment stability;
- parents' wages;
- stability of children's care arrangement;
- reasons parents leave the child care program; and
- any other measures and aspects of effectiveness deemed necessary and useful by TWC.

TWC should evaluate this data by board area, and should consider other ways of analyzing outcome data, such as evaluating this data by type of provider. TWC could use this information as it does other performance dashboard information it regularly evaluates to proactively identify performance issues and target technical assistance efforts. TWC should also explore incorporation of outcome measures into the agency's contracts with local boards as a means of ensuring board performance and to evaluate changes over time. This approach would also help TWC use data to identify best practices that could be shared statewide, thus improving the overall quality of TWC's technical assistance to local boards. As a result, TWC and all the local boards would better understand their performance and the outcomes the program achieves in a concrete fashion.

3.5 Direct TWC to establish baseline board-level data on the Texas Rising Star program and evaluate impacts and trends as program changes progress.

Under this recommendation, TWC should conduct a baseline performance analysis of the Texas Rising Star program before full implementation of the new standards and reimbursement rates. TWC should regularly monitor the measures described below over time, both as implementation of the changes progresses, and also in the future after full implementation. TWC should establish baseline board-level and statewide data including, but not limited to, the following measures:

- number of children receiving care from a Texas Rising Star-certified child care provider, broken down by the star level;
- number of Texas Rising Star-certified providers, broken down by star level; and
- any other measures deemed useful by the agency.

Initially, TWC should use this data to monitor ongoing implementation of the changes to the program resulting from H.B. 376. TWC should then consider using these measures or similar measures as part of the agency's contracts with local boards. At a minimum, TWC should be evaluating this data on the local board level as part of its existing regular monthly performance review of each board's performance in the child care program. TWC could also use this information to identify boards that are more effective at using dedicated quality improvement funds, and share those best practices statewide.

3.6 Direct TWC to regularly gather feedback from boards on the quality of TWC's assistance in managing the child care program.

This recommendation would direct TWC to develop a process for regularly soliciting input on the quality of the support it provides and the policies it sets from local workforce development boards. TWC should gather this input from various levels, including executive-level staff, board staff managing the child care program, as well as boards' child care contractors, and any others TWC deems appropriate. Implementing this recommendation would help ensure TWC has a comprehensive view of any issues and challenges facing boards. It would also indicate how well TWC is doing in providing policy direction and technical assistance, and allow boards to provide suggestions for policy and other changes that would improve the child care program as a whole.

3.7 Direct TWC to establish and regularly update a consolidated policies and procedures manual for the child care program.

Under this recommendation, TWC staff should consolidate existing letters, memos, technical assistance bulletins, and any other guidance it has produced for local boards to follow into a single policies and procedures manual and update it regularly. TWC should post the manual on its intranet site to ensure easy accessibility for local board staff and contractors.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. Recommendations 3.1, 3.4, and 3.5 require the agency to gather additional data and conduct additional performance analysis, but TWC has dedicated internal resources for data analysis and can implement these recommendations within existing resources.

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[1] 40 T.A.C. Section 809.43.

[2] Office of Child Care, Administration for Children and Families, "What We Do," accessed September 10, 2014, http://www.acf.hhs.gov/programs/occ/about/what-we-do.

[3] 40 T.A.C. Section 800.58.

[4] This amount does not include the $48.1 million in child care services administered by TWC through an interagency contract with the Department of Family and Protective Services (DFPS) for children involved in Child Protective Services cases, including children in foster care. DFPS pays the cost through its own appropriations and authorizes provision of these services, not TWC.

[5] H.B. 376, 83rd Legislature, Regular Session, 2013.

[6] U.S. Department of Health and Human Services, *Developing Measures of Child Care as a Support to Employment and Self-Sufficiency* (Washington, D.C., 2006), pp. 8–9, http://www.researchconnections.org/files/meetings/roundtable/RoundtableConceptPaper.pdf.

[7] Child Care Aware, *Parents and the High Cost of Child Care 2013 Report*, p. 41, http://usa.childcareaware.org/sites/default/files/Cost%20of%20Care%202013%20110613.pdf.

[8] Ibid., p. 9.

[9] Ibid., p. 9.

[10] The Urban Institute, *Early Care and Education for Children in Low-Income Families: Patterns of Use, Quality, and Potential Policy Implications* (May 2007), p.vi, http://www.urban.org/UploadedPDF/411482_early_care.pdf.

[11] Anna D. Johnson, Rebecca M. Ryan, and Jeanne Brooks-Gunn, *Child Care Subsidies: Do They Impact the Quality of Care Children Experience* (Washington, D.C., 2011), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3160790/.

[12] Sunset Advisory Commission, *Texas Workforce Commission and Texas Council on Economic Competitiveness Sunset Staff Report* (Austin, 2002), pp. 67–73, https://www.sunset.texas.gov/public/uploads/files/reports/Texas%20Workforce%20Commission%20Staff%20Report%202002%2078%20Leg.pdf.

[13] S.B. 280, 78th Legislature, Regular Session, 2003.

[14] Texas Workforce Commission, *Evaluation of Effectiveness of the Subsidized Child Care Program, Report to the 83rd Legislature*, accessed September 25, 2014, http://www.twc.state.tx.us/svcs/childcare/effectiveness-child-care-program-83-legislature.pdf.

Issue 4

TWC's Appeals Process Lacks Certain Tools That Would Increase Consistency and Transparency.

Background

The Texas Workforce Commission (TWC) has the important responsibility of deciding whether an individual is entitled to unemployment insurance (UI) benefits or unpaid wages. Statute and rules govern the agency's processes for hearing these types of claims and appeals cases.

- **UI benefits.** The largest volume of claims is in the UI program, which provides temporary funding to Texans who lose their job through no fault of their own.[1] TWC determines an individual's eligibility for UI benefits based on a number of factors, including how much money a person earned before filing for UI benefits, the reason a person is out of work, the effort a person is making to find a job, and whether a person is able and available to accept a new job. To award benefits, TWC staff must evaluate whether a person qualifies in each of these areas.

- **Wage claims.** TWC also handles claims regarding individual wage disputes. Texas' payday law provides an opportunity for individuals who allege they have been paid incorrectly, or not at all, to recover those wages from their employers.[2] For example, an hourly employee may file a claim for unpaid wages because the employer withheld the employee's wages to cover the cost of damaged equipment. Other examples of individuals who might file a wage claim include sales representatives who allege they were not paid commissions and professionals who entered into agreements for bonuses but did not receive them.

- **Appeals.** To handle appeals of staff decisions on these claims, TWC has two levels of administrative review before a case can be appealed to the courts. Either party — typically an employee or employer — may appeal the staff's decision to a TWC hearing officer. The hearing officer conducts an evidentiary hearing by telephone. The hearing officer can affirm, reverse, or modify the staff's decision. Either party can appeal that decision to the commission. The commission can issue a decision affirming, reversing, or modifying the hearing officer's decision. Beyond the agency, once the commission issues a final decision, a party can appeal to an appropriate civil court.[3] The chart, *Administrative Claims and Appeals*, shows the number of claims that were decided at each stage of the process in fiscal year 2013.

Administrative Claims and Appeals, FY 2013

Stage of Process	Number of UI Claims and Appeals	Number of Wage Claims and Appeals
Initial claim filed with TWC	776,106	14,192
Decision appealed to TWC hearing officer	118,923	2,785
Decision appealed to the commission	18,859	809
Decision appealed to court	124	18

- **UI appeals policy and precedent manual.** Because the UI program handles a large volume of cases with too many scenarios to fully address in statute or rule, TWC developed the Appeals Policy and Precedent Manual (precedent manual) to ensure more consistent decisions in UI benefit cases.[4] A precedent is a commission holding in a case that represents the commission's interpretation of the law given the particular facts of the case and serves to guide agency staff and the public on how the commission is likely to decide a case with similar facts when the statute and rules are silent or unclear. Some examples of precedents in UI benefit cases are included in the accompanying textbox.

Staff recommends a decision as precedent when the case is before the three commissioners on appeal. If at least two commissioners agree to make the decision precedent, the facts and holding are summarized and included in the precedent manual. The manual is divided into subject chapters, such as suitable work or misconduct, which include precedents on different legal issues under each subject. TWC updates the precedent manual when new precedents are added or removed. The manual currently contains almost 1,300 precedents, most of which come from UI benefit rulings, but it does include a handful of wage claim and tax liability case precedents. In addition, the manual contains published state and federal court decisions that govern the UI benefit appeals process.

Excerpts from TWC Appeals Policy and Precedent Manual

Appeal No. 601-CA-76. The UI benefits claimant was discharged from work immediately upon telling the employer that he intended to take off work to keep a doctor's appointment. He was not given an opportunity to protect his job by deferring the doctor's appointment and had offered to make up the time lost by reason of the doctor's appointment. HELD: Discharged, but not for misconduct connected with the work.

Appeal No. 3534-CA-76. The UI benefits claimant was discharged from work because he had threatened to file a lawsuit to obtain a bonus to which he believed he was entitled. HELD: Since the claimant had reasonably believed that his complaint about the bonus was justified and had voiced his complaint through proper channels before threatening to sue, his actions did not constitute misconduct connected with the work.

Findings

TWC decides thousands of wage claims and appeals each year, but lacks a precedent manual to help ensure consistent decisions and to guide parties in preparing their cases.

Precedent manuals are useful tools to ensure consistent decisions, but TWC has not made the tool a priority in programs other than UI. With so many ways to interpret wage laws and so many decision makers involved, the risk of inconsistent decisions is high without guidance in these areas. Since rules cannot possibly address every scenario raised by a case, a body of precedent decisions provides the necessary support for staff to prepare better, more consistent decisions, and for individuals going through the administrative process to prepare their cases. To date, the commission has issued over 4,000 wage decisions but only established two precedents.

Without more guidance, the risk of inconsistent decisions in wage claims is high.

In fact, grey areas in the wage rules have led to inconsistent decisions across different TWC staff, wasting time and resources. In one dispute over wages, TWC staff initially reviewed the claim, found the worker was an employee, and ordered the employer to pay owed wages. The employer appealed this decision to a TWC hearing officer who rendered a different decision, dismissing the case based on a finding that the worker was an independent contractor. On further appeal, the commission reversed that decision, ultimately going back

to the staff's initial finding that the worker was an employee owed wages. In cases with significant room for interpretation, a tool to help guide TWC investigators and hearing officers arrive at decisions that are consistent with each other and established Texas law would be useful.

Other states statutorily charged with wage regulation use precedent-type manuals. For example, Michigan's Wage and Hour Digest is an online manual that is indexed by subject and includes digest entries for administrative decisions and court reviews related to complaints filed under the state's Payment of Wages and Fringe Benefits Act.[5]

While useful tools, TWC must guard against inappropriately setting broad policies through precedents when rulemaking with full public input is warranted.

Whether an agency uses rulemaking or precedent to establish its policies depends largely on the policy's impact. Agencies use rulemaking when establishing requirements that are generally applicable to the population served by the program. The process ensures fairness and transparency by requiring that rules be put out for notice and comment so that anyone affected by a rule can provide input before the agency adopts standards.[6] On the other hand, precedent is used when an agency's experience with a problem is so limited that rules are not warranted or the problem is so specialized and varying in nature that a rule could not capture it.[7]

As previously mentioned, TWC has a precedent manual for the UI program. Sunset staff's review of this manual revealed several examples of precedents adopted by previous commissions that establish policies potentially more appropriate for traditional rulemaking, as described below.

Some precedents establish policies more appropriate for traditional rulemaking.

- **Requirement for UI claimants to seek full-time work.** Three different precedents say a UI benefits claimant must be available for and seeking full-time work to receive benefits, yet statute and rules governing the program never define work as full or part time.[8]

- **Defining unreasonable limits on salaries sought.** TWC rule specifies that claimants are not making a reasonable search for work if they place unreasonable limitations as to salary, but does not define "unreasonable limitations."[9] Previous commissioners saw a need to better define "unreasonable limitations," but rather than do it by rulemaking, they narrowly defined it through precedent.[10]

In both examples, the precedents involved policies impacting a large number of UI claimants. The agency later included the standards initially set by precedents in its Unemployment Benefits Handbook, making them program requirements.[11] While helpful in providing guidance, this approach does not allow for public input, as required in the adoption of rules. In addition, while TWC does review new precedents as part of the rule review process and has added some rules based on precedent, the process did not identify either of the examples highlighted above.

Recommendations

Management Action

4.1 Direct TWC to create a searchable and publicly accessible precedent manual for wage disputes.

Under this recommendation, TWC should create a separate precedent manual to help ensure better and more consistent decisions at each level of the wage dispute resolution process and help the public understand the commission's interpretation of its laws and rules. As the commission establishes new precedents, summaries of the decisions would be published in the manual, divided by subject areas, and available on the agency's website. In addition, published decisions from state and federal courts that govern wage cases should be considered for inclusion in the manual.

The manual of precedents would not bind the commission but rather provide guidance to agency staff and participants in the process on how the commission has looked at similar facts in previous cases. As the volume of claims and appeals grows in other areas, the agency could consider creating additional precedent manuals, such as for tax liability cases.

4.2 Direct TWC to establish procedures and criteria for determining when policies clarified through precedents would be more appropriate for rulemaking.

Under this recommendation, TWC should establish a procedure to annually review precedents, specifically in UI benefit and wage claims, to determine whether any precedents should be recommended for rulemaking. As part of the process, the agency should develop criteria, such as whether a holding has broad applicability or whether an issue is routinely heard by the commission, to decide if it belongs in rule. The criteria should also be applied to existing precedent, and any precedent that belongs in rule should be recommended for and go through the traditional rulemaking process by January 2017.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. Creating a precedent manual for wage cases and establishing a procedure for reviewing precedents appropriate for rulemaking would involve staff time and resources, but could be performed with existing resources. The suggested timeframes allow staff to gradually absorb the workload over time.

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[1] Subchapter A, Chapter 207, Texas Labor Code; 40 T.A.C. Chapter 815.

[2] Subchapter D, Chapter 61, Texas Labor Code; 40 T.A.C. Chapter 821.

[3] Chapters 61 and 212, Texas Labor Code; 40 T.A.C. Subchapter B, Section 815; 40 T.A.C. Subchapter C, Section 821.

[4] Texas Workforce Commission, *Appeals Policy and Precedent Manual*, accessed September 29, 2014, http://www.twc.state.tx.us/ui/appl/unemployment-benefits-appeals-policy-precedent-manual.html#precedentDecisions.

[5] Michigan Licensing and Regulatory Affairs, *Wage Hour Digest*, accessed October 6, 2014, http://www.michigan.gov/documents/lara/2014_Wage_Hour_Digest_Reference_Volume_466229_7.pdf.

[6] Ronald L. Beal, Texas Administrative Practice and Procedure Section 10.1, p. 10-5 (2014).

[7] Ibid., p. 10-4.

[8] Texas Workforce Commission, *Appeals Policy and Precedent Manual, Able and Available*, Time 450.40 Appeal No. 4009-CSUA-76; Able and Available, Domestic Circumstances 155.35 Appeal No. 378-CSUA-76; Able and Available, Receipt of Other Payments 375.25 Appeal No. 1769-CF-77; Chapters 201 and 207, Texas Labor Code; 40 T.A.C. Section 815.

[9] 40 T.A.C. Section 815.28(a)(1); 40 T.A.C. Section 815.28(a)(1)(C).

[10] Texas Workforce Commission, *Appeals Policy and Precedent Manual*, Able and Available, Wages 500.00, Appeal No. 2282-CA-77.

[11] Texas Workforce Commission, *Unemployment Benefits Handbook*, p. 8, accessed September 29, 2014, http://www.twc.state.tx.us/ui/bnfts/bi-99.pdf.

Issue 5

TWC Needs Authority to Use Federal Offsets to Recover Millions of Dollars In Unemployment Compensation Debt.

Background

The Texas Unemployment Compensation Act authorizes the Texas Workforce Commission (TWC) to recover unemployment compensation debts owed to the state using a variety of collection methods.[1] Unemployment compensation debt results from employers not paying their unemployment insurance (UI) taxes or benefit claimants not returning benefit overpayments. Benefit overpayments occur primarily when a claimant fails to meet work search requirements or accurately report earnings, or when an employer fails to promptly respond to an initial claims notice. The textbox, *TWC Collection Methods*, lists the agency's current statutorily authorized methods for collecting outstanding debt, depending on the type of debt involved.

TWC Collection Methods

Delinquent UI Taxes

- Notice of assessment
- Default notice
- Warrant hold
- State tax lien
- Bank freeze or levy

UI Benefit Overpayment

- Notice of assessment
- Payment plan
- Warrant hold
- Deduction from future benefits

Looking only at fiscal year 2013, TWC had more than $2.9 billion in total payroll tax obligations. Of that amount, the agency collected $2.89 billion from about 485,000 employers, with $13.7 million in taxes still owed. During that same time frame, TWC paid a total of $3.8 billion in state and federal UI benefits with overpayments in the amount of $130 million. TWC recovered more than $38 million using the collection methods referenced above, leaving $92 million in outstanding overpayment debts still owed to TWC. Thus, while TWC collected the majority of the total unemployment compensation debt for fiscal year 2013, more than $100 million of debt remained outstanding for that year.

- **Treasury offset program.** The U.S. Department of the Treasury operates the treasury offset program, which functions as the federal government's central debt collection agency. Through the offset program, federal agencies and states can submit information to the Treasury Department about a debtor and the amounts owed, and collect repayment of those funds from any federal payments or refunds owed to that individual. An offset occurs when the Treasury Department applies all or part of a federal payment, most commonly a tax refund, toward any submitted delinquent debts an individual owes.

  Historically, states have used this program to collect delinquent child support, nutrition assistance benefit overpayments, and state income tax debts. However, in 2008, Congress authorized the use of treasury offsets to collect unemployment compensation debts incurred as a result of fraud, later expanding it to cover a broader range of unemployment compensation debts.[2] Initially participation by states was voluntary, but in 2013 Congress made states' participation mandatory.[3] In May 2014, the U.S. Department of Labor (DOL) announced to states that participation would also be a condition of receipt of grants to administer the UI program, and that any state legislative changes needed to implement the program must be completed by the end of 2014 unless such action was unable to

Types of UI Debt Covered by Federal Offsets

- Uncollected past-due contributions to the state's unemployment fund.
- Overpayments due to fraud or failure to report earnings.
- Debts that remain uncollected for a year from when the state originally determined them to be due.
- Debt owed by individuals, including persons in sole proprietorships, partnerships, or some limited liability companies; not corporations.

take place until 2015.[4] The textbox, *Types of UI Debt Covered by Federal Offsets*, shows the type of unemployment compensation debt that federal law requires to be collected through the offset program.

Participation in the offset program involves several steps. States must first send a notice to the debtor stating that unpaid debts will be submitted for collection off any federal payments owed to the debtor if the debt is not paid within 60 days. After sending the letter, states may submit any unpaid debt that has been outstanding for one year or longer to the Treasury Department, which matches a debtor's social security number against any federal payments to be issued through the Treasury Department. The Treasury Department then recovers funds for the debts and allocates the recovered funds to the debt holder, TWC, minus administrative fees charged by the Treasury Department — currently authorized at $17 per transaction.

Findings

TWC lacks explicit statutory authority to use federal offsets to recover outstanding unemployment compensation debts, losing the opportunity to recover millions of dollars for Texas' Unemployment Insurance Trust Fund.

The Texas Unemployment Compensation Act authorizes TWC to use specific methods of recovering funds, but does not include authority for the agency's participation in the federal government's centralized offset program to collect delinquent unemployment compensation debts owed to Texas. Without this authority, Texas misses out on the potential to collect a substantial portion of debt owed to the UI Trust Fund.

The chart, *Estimated UI Collections – Federal Offset Program*, illustrates the estimated collection amounts at each stage of the treasury offset program collection sequence. TWC estimated the initial debt available for offset to be $607.6 million, based on $599.7 million in overpayments and $7.8 million in tax obligations. The Treasury Department indicated to TWC that states generally collect 25 percent of outstanding debt as a result of just sending the notice that unpaid debts will be submitted for federal offset if not paid within 60 days. Of the remaining debt subsequently submitted to the federal treasury offset program, Sunset staff conservatively estimates the recovery of an additional 11 percent, based on a study of other states average recovery rates.[5] As such, these actions would result in TWC

Estimated UI Collections – Federal Offset Program FY 2017

Total UI Debt Available for Offset Program (Benefit Overpayment and Tax Debts)	$607,587,499
60 Day Letter Collections (25% Rate)	$151,896,875
Amount Submitted for Offset (Total debt less 60-day letter collections)	$455,690,625
Offset Recovery (11% Rate)	$50,125,969
Total Expected Collections (60-day letter plus 11% offset collections)	$202,022,844

collections of $151.9 million off the 60-day notice alone, plus $50.1 million based on the subsequent offset recovery rate, resulting in estimated collections for the first year of the program of $202 million.

To determine how much additional debt Texas might recover through this program, Sunset staff worked with TWC staff to develop the estimate for the first year of collections. Program implementation would be in fiscal year 2016 at the earliest, with actual collections beginning in fiscal year 2017. As program implementation cannot begin immediately upon authorization, the debt that accumulates between now and the implementation of the program must also be taken into account. As such, the estimate is derived from four components:

In the first year alone, TWC could collect an additional $202 million in UI debt.

- actual benefit overpayment debt history from fiscal years 2009–2013;
- actual tax debt that is eligible for federal offset as of fiscal year 2013;
- estimated overpayment and tax debt for fiscal years 2014–2016; and
- estimated treasury offset program collection rates, as shown in the chart, *Estimated UI Collections – Federal Offset Program*.

Federal law requires collected debts be credited to the account from which they were paid, meaning all state benefit overpayments recovered would go to the UI Trust Fund, as would any collections associated with the original amount of payroll taxes owed by an employer. Any federal benefit overpayments would be remitted to DOL. Interest and penalties associated with the debts collected are deposited in the General Revenue Fund. Currently, the UI Trust Fund has a floor of about $1 billion. If the balance falls below the floor, TWC may need to raise taxes or finance revenues sufficient to meet that floor. Therefore, collecting outstanding debts and depositing them in the UI Trust Fund helps to keep the fund solvent, reducing the likelihood of future payroll tax increases.

TWC must comply with federal offset program requirements or risk losing its $121 million UI grant.

Failure to implement the treasury offset program in Texas would place TWC at risk of losing its federal grant to administer the UI program.

DOL has made state participation in the program a condition of receipt of the state's UI program administration grants. As a result, TWC would be at risk of losing future administration grant funds, which totaled $121 million for fiscal year 2014, if the Legislature does not act to authorize the agency's participation. As noted above, any needed state legislative changes must be completed by the end of 2014, unless such action was unable to take place until 2015. As the Texas Legislature does not convene until 2015, the latter option would apply.

Texas is already using the treasury offset program to collect other debts owed to the State.

Texas has successfully used the treasury offset program since 1985 to help recover delinquent child support obligations. For example, in fiscal year 2013, Texas

recovered $254.4 million in outstanding child support obligations through this program. The Texas attorney general participates in the treasury offset program through statutory authority to contract with federal, state, or other public or private agencies or individuals to carry out the agency's responsibilities under federal or state law.[6] Texas also uses the offset program to collect nutrition assistance benefit overpayments, collecting $14.3 million in fiscal year 2013.[7]

Texas successfully used the offset program to collect $254 million in child support debt in fiscal year 2013.

Other states participating in the treasury offset program have shown an excellent record of collecting outstanding unemployment compensation debts.

As of September 30, 2013, 37 states and the District of Columbia are participating in the program to collect unemployment compensation debts — up from just three in 2011. According to the Treasury Department, in fiscal year 2013, the program helped states recover a total of $326.2 million in debts related to fraud or an employer's failure to pay its UI obligations.[8] In March of 2014, the California State Auditor found that the state's failure to implement necessary participation requirements until an expected date of September 2014 meant California was unable to recoup an estimated $516 million through the program.[9]

Recommendation

Change in Statute

5.1 Authorize TWC to participate in the federal treasury offset program to recover outstanding unemployment compensation debts.

This recommendation would necessitate amending the Texas Labor Code to provide the specific authority necessary to comply with the Bipartisan Budget Act of 2013 requirement to participate in the federal treasury offset program. Statute should also authorize TWC to include any fees charged by the Treasury Department for the administration of the program in the amount of a debt. These changes will enable TWC to recover a significantly larger portion of outstanding UI debt, ensure Texas' compliance with federal law, and help avoid any potential loss of Texas' UI administrative grant. Returning these funds to the trust fund will also help TWC keep the fund solvent and reduce or delay the need for future tax increases.

Fiscal Implication

This recommendation would result in an estimated revenue gain of more than $586.5 million in the first four years following program implementation, from fiscal year 2016 through fiscal year 2020, based on assumptions outlined earlier in this issue. Of that $586.5 million, $474 million would be a gain to Texas' UI Trust Fund, and $111 million would be returned to DOL as reimbursement for overpayment of federal benefits. The remaining $1.5 million would be a gain to the General Revenue Fund.[10]

In estimating the fiscal impact of these changes, Sunset staff assumed zero collections for fiscal year 2016 as the agency works on program implementation. Beginning in fiscal year 2017, based on a starting debt of $607.6 million, the program is estimated to recover $202 million, shown in the chart on the following page as a gain of $155.4 million to the UI Trust Fund, $588,888 to general revenue, and $46 million

returned to the federal government. As only a portion of debt is recovered each year, a balance of debt after each year's collections will remain. Thus, each subsequent year's starting debt adds any projected debt growth to the previous year's remaining outstanding debt.

While TWC would incur some additional costs to implement this program, the agency indicates it would cover these costs using existing funds. For example, TWC estimates changes to its automated systems would require 7,024 hours of programming, with estimated costs of $214,677 for changes to its UI tax system and $221,651 for changes to its UI benefits system. However, the agency indicates it would cover these costs using funds from the federal UI administrative grant. TWC may also need additional staff to handle claimant phone calls and to process transactions for this program, but can reassign staff from other less successful collection efforts. Thus, TWC does not anticipate needing any additional staff to implement these changes.

Texas Workforce Commission

Fiscal Year	Revenue Gain to UI Trust Fund	Revenue Gain to the General Revenue Fund	Amount Returned to DOL	Change in Number of FTEs
2016	$0	$0	$0	0
2017	$155,404,776	$588,888	$46,029,179	0
2018	$124,561,272	$419,813	$30,726,038	0
2019	$103,954,711	$299,280	$20,503,639	0
2020	$90,175,210	$213,354	$13,686,221	0

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1 Texas Unemployment Compensation Act, Chapter 201–215, Texas Labor Code.

2 Supplemental Security Income Extension for Elderly and Disabled Refugees Act (26 U.S.C. 6402(f)); The Claims Resolution Act of 2010 (26 U.S.C. 6402(f)).

3 Bipartisan Budget Act of 2013 (26 U.S.C. 6402(f)).

4 Unemployment Insurance Program Letter No. 12-14 from the U.S. Department of Labor to state workforce agencies, May 20, 2014, http://wdr.doleta.gov/directives/corr_doc.cfm?docn=9344.

5 U.S. Department of the Treasury Financial Management Service, "Offsets Matter: TOP's News for State Agencies," Issue Six, January 2013, p. 5, http://fiscal.treasury.gov/fsservices/gov/debtColl/pdf/top/OffsetsMatter0113.pdf.

6 Section 231.002(c), Texas Family Code.

7 U.S. Department of the Treasury, Bureau of the Fiscal Service, *Fiscal Year 2013 Annual Report to the States: Treasury Offset Program Delinquent Debt Collections*, July 2014, http://fiscal.treasury.gov/fsservices/gov/debtColl/pdf/top/TOP_annual_report_to_states_fy13.pdf.

8 U.S. Department of the Treasury, Bureau of the Fiscal Service, *Fiscal Year 2013 Annual Report to the States: Treasury Offset Program Delinquent Debt Collections*, July 2014, http://fiscal.treasury.gov/fsservices/gov/debtColl/pdf/top/TOP_annual_report_to_states_fy13.pdf.

9 California State Auditor, *Employment Development Department: It Failed to Participate in a Federal Program That Would Have Allowed the State to Collect Hundreds of Millions of Dollars*, Investigative Report 2012-0651, March 2014, http://www.auditor.ca.gov/reports/summary/I2012-0651.

10 Specifically, funds are deposited in TWC's Special Administration Fund, which pays a portion of UI benefits that the State owes to certain state employees, and pays salaries for certain regulatory staff at TWC.

Issue 6

Texas Has a Continuing Need for the Texas Workforce Commission.

Background

Created in 1995 by House Bill 1863, the Texas Workforce Commission (TWC) oversees an integrated workforce development system that consolidates employment, job training, and other workforce-related services, and administers the unemployment insurance (UI) program in this state. TWC's mission is to promote and support a workforce system that creates value and offers employers, individuals, and communities the opportunity to achieve and sustain economic prosperity. The agency's key functions include the following:

- contracting with 28 local workforce development boards to provide a variety of services, such as job training, employment services, and child care;
- administering the state's UI system and collecting taxes for the UI Trust Fund;
- administering a variety of regulatory programs ranging from the enforcement of wage and child labor laws to the oversight of career schools;
- enforcing state law to prevent and reduce employment and housing discrimination; and
- collecting, analyzing, and disseminating workforce and labor market data.

In fiscal year 2013, TWC provided employment services to 1.5 million job seekers, and business services to almost 92,000 employers.[1] The agency operated on a budget of $1.09 billion, with almost 85 percent derived from federal funding sources.[2]

A full-time, three-member commission oversees the agency. The commission is mainly responsible for ensuring the agency effectively operates the workforce development system and administers the UI program in Texas. The commission meets weekly in an open meeting to handle a variety of tasks, including decisions on UI benefits, wage claim, or tax liability cases, and to consider or take action on items related to the agency's budget, performance, and policies.

Findings

Texas has a clear and continuing need for the workforce development and unemployment services provided through TWC.

Federal law requires, and largely funds, each state to administer workforce development and UI programs. Workforce development services provide training and support necessary to enhance the skills of Texas' workforce and to improve the economic self-sufficiency of individuals, both of which are critical to ensuring the health of the Texas economy. UI benefits provide temporary income support to individual claimants while they look for new jobs. TWC receives about $906 million in federal funds annually to provide both workforce services and supports, and to administer the UI program. TWC

also provided $3.8 billion in regular, emergency, and extended UI benefits to claimants in fiscal year 2013.[3] Elimination of TWC's functions would result not only in the loss of these critical services and supports, but in a significant loss of federal funds for the state.

Elimination of TWC's functions would result in the loss of significant federal funds for the state.

In helping individuals to get and maintain work, child care assistance is another key support provided through TWC. Delivered through the local workforce boards, child care services support families and promote long-term self-sufficiency by enabling parents to work or complete job training. On average, 102,799 children from low-income families received federally subsidized child care daily through TWC in fiscal year 2013. Heavily federally funded, elimination of this function would result in the loss of more than $400 million in federal dollars to Texas, as well as needed support to working families.

To guard against fraud, waste, and abuse in its programs, TWC performs a number of regulatory functions. For instance, TWC enforces wage and child labor laws to ensure the timely payment of workers' wages and the protection of children in the workplace. In addition, TWC licenses more than 500 career schools to protect students' investments in education and better inform their decisions when choosing career paths. These Texas schools provide vocational training to more than 148,544 students annually.

Transferred to TWC in 2003, another important function the agency performs is protecting the public from employment and housing discrimination. Staff investigate complaints and enforce discrimination laws. In fiscal year 2013, staff resolved 650 employment and 343 housing discrimination complaints.[4] Without this option at the state level, these cases would have to be resolved at the federal level, taking more time for individuals to obtain relief for valid complaints.

TWC's labor market analysis ensures easy access to up-to-date data on Texas' economy.

Finally, TWC provides access to and analysis of key labor market information, assisting employers with critical business decisions regarding their workforce needs, and helping local communities better align supply and demand for jobs. TWC, largely through a number of easily accessible web resources, provides up-to-date information and statistics about the Texas economy, including industry information and employment figures, to assist local workforce boards, businesses, and economic development professionals.

No clear benefits would result from merging TWC's functions with other state agencies.

Sunset staff looked at alternatives for the structure and governance of workforce development services and support, but determined no substantial benefits would result from such a change. TWC is already an entity made up of a number of programs the Legislature consolidated from several different state agencies, and this structure works well and warrants no further organizational change. While TWC, through the local workforce system, does serve populations, such as veterans and people with disabilities, that also rely on other state agencies for their core services, staff found no significant benefits to structurally changing

how these services are delivered at this time. However, TWC should continue to work with the entities that serve these populations — the Texas Veterans Commission and Department of Assistive and Rehabilitative Services — to track and report workforce outcomes related to these populations in accordance with state and federal law.

Overall, Sunset staff found TWC to be a well-functioning agency that is continuously working to improve its operations. Since integrating service delivery at the local level, the workforce system has matured and TWC is now better engaged and responsive to local needs, particularly in difficult economic times. For instance, during the 2009 recession, the agency quickly ramped up its operations to infuse a significant increase of more than $500 million in federal funds into the Texas economy. As the state continues to recover from the recession, TWC reports a steady increase in the number of UI claimants getting back to work.

TWC is now better engaged and responsive to local needs, especially in difficult economic times.

Though organizational structures vary, every state has an agency to provide employment and training services and administer UI benefits.

All states are federally required to administer employment and training services, and to operate a UI program for workers to receive benefits. Texas is unique in that it provides access to a wide range of interconnected workforce-related services under the umbrella of a single agency, creating a seamless system for workforce clients. This structure allows TWC to serve a client's multiple employment or reemployment needs, from UI benefits and job search and matching services to job training, and even child care assistance.

Commission meetings, while open and broadcast live, do not include access to the written documents and materials under discussion, limiting the public's understanding of and participation in the agency's administration.

Lack of materials for commission meetings inhibits stakeholder involvement.

Although the commission fully complies with all Open Meetings Act requirements to post its weekly meetings in advance, along with a broad and general agenda, the commission does not provide access to the written materials under discussion at these meetings. Without access to these materials, members of the public, or any interested stakeholders, would have difficulty readily following along with the commission's policymaking actions and deliberations.

In preparation for open meetings, TWC staff disseminates written documents for discussion at each meeting, including some briefing materials, to the commissioners and other agency staff only. However, no hard copies or online links to these draft documents are available to aid public comprehension of agenda items. Live broadcasts of commission meetings are not as useful without public access to the documents that accompany the agenda items.

Many other state agencies provide board materials either online or in hardcopy prior to and during open meetings.[5] Often these items are briefing documents

related to the agency's budget and performance, or draft policy recommendations that may require board action. These documents allow the public to follow along with the discussion and enable individuals to understand the policymaking body's actions. The agency's ability to publicly provide this type of information, even if in draft form, prior to commission meetings should not be preempted by a requirement that these items first be formally adopted by the commission.

All of TWC's reporting requirements continue to be useful.

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.[6] The Sunset Commission has interpreted these provisions as applying to reports required by law that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports. Reports required by rider in the General Appropriations Act are also omitted under the presumption that the appropriations committees have vetted these requirements each biennium. Appendix D lists TWC's statutory reporting requirements, all of which Sunset staff found are useful and should be continued.

Recommendations

Change in Statute

6.1 Continue the Texas Workforce Commission for 12 years.

This recommendation would continue the Texas Workforce Commission as the agency responsible for administering the state's UI and workforce programs, and related activities.

Management Action

6.2 Direct TWC to provide greater public access to written materials up for discussion in its open public meetings to facilitate the public's ability to follow and understand its deliberations.

This recommendation would direct TWC to routinely provide public access to certain open meeting materials that correspond with the meeting agenda and are used to brief commissioners or aid commission meeting discussion. The agency should make a reasonable effort to make briefing materials, such as documents related to the agency's budget and performance, accessible electronically before the meeting or in hardcopy at the meeting. If provided electronically, a link to the materials should be posted online, preferably on the same webpage that provides information about commission meeting dates, times, and agendas.

Under this recommendation, TWC should also consider including other types of useful briefing materials, similar to what other boards provide, such as policy recommendations that may require board action, even if in draft form. Any confidential or otherwise protected information, such as UI benefits, wage claim, and tax liability dockets, would not be included under this recommendation. This recommendation would also not apply to information on individual equal employment and housing

discrimination complaints taken up by the commission as a result of the adoption of recommendations discussed earlier in this report.

This recommendation would allow members of the public, local boards, and other interested stakeholders to more easily follow along with meeting discussions. Better access to this information would also encourage more public participation in and promote better understanding of commission actions.

Fiscal Implication

If the Legislature continues the current functions of TWC, using the existing organizational structure, the agency's annual appropriation of $1.09 billion would continue to be required for its ongoing operation.

1 Texas Workforce Commission, *2013 Texas Workforce Commission Annual Report* (Austin: Texas Workforce Commission, 2013), p. 35.

2 Ibid.

3 Ibid.

4 Ibid., p. 20.

5 Examples of other agencies that provide board materials before and during open meetings either online or in hard copy include the Texas Board of Nursing, Texas Commission on Environmental Quality, Texas Department of Housing and Community Affairs, Texas Ethics Commission, and Texas Water Development Board.

6 Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

Council at a Glance

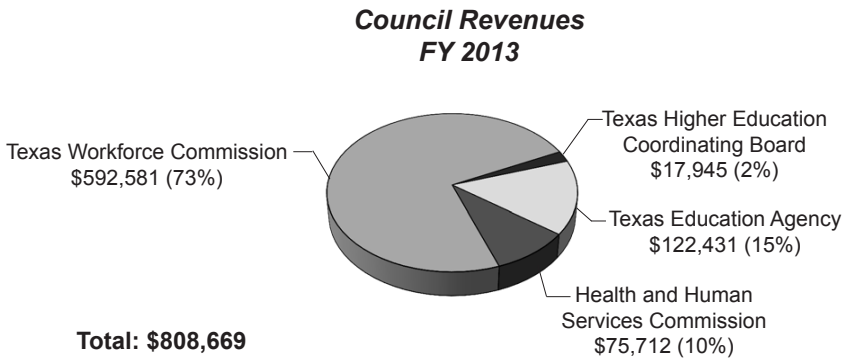
Council at a Glance

The Texas Workforce Investment Council (council) is a 19-member board that assists the governor and the Legislature with strategic planning for and evaluation of the Texas workforce system. The council's mission is to promote the development of a highly skilled and well-educated workforce for Texas. In addition to its responsibilities in state law, the council also serves as the State Workforce Investment Board under the federal Workforce Investment Act (WIA) of 1998. The council's key duties include:

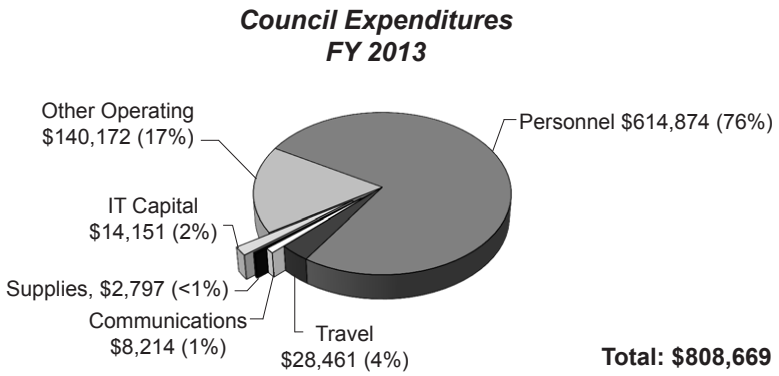
- strategic planning for the integration of system-wide workforce development services in Texas;
- evaluating the workforce development system by collecting and reporting performance measure data from agencies and employers to identify how well the state's workforce system is meeting the needs of employers and job seekers;
- producing research reports for the Office of the Governor, the Legislature, and others, on topics such as adult education and workforce trends; and
- reviewing state and local workforce plans to recommend final approval by the governor.

Key Facts

- **Composition.** The council is made up of 19 members. Fourteen of the members are appointed by the governor with five representing business, five labor, three education, and one community-based organizations. The remaining five are ex officio voting members representing workforce system partner agencies: Office of the Governor's Economic Development and Tourism Division; Texas Education Agency; Texas Health and Human Services Commission; Texas Higher Education Coordinating Board; and Texas Workforce Commission. The governor appoints the chair of the council from one of its business or labor representatives. Members serve six-year terms, except for ex officio members who serve as long as they are in the designated office.
- **Advisory Committees.** The council has two advisory committees — the Apprenticeship Training Advisory Committee and the System Integration Technical Advisory Committee. The Apprenticeship Training Advisory Committee advises the council on issues related to the distribution of available funds to apprenticeship training programs. The System Integration Technical Advisory Committee helps ensure the implementation of the strategic plan for the workforce system through collaborative problem solving when issues arise. This committee gives a quarterly progress report to the council on the plan's implementation. Also, to continuously improve the workforce system, the committee is a forum to share strategies and best practices and to focus on collective goals.
- **Funding.** Because the council is not a separate state agency, it receives administrative support from the Governor's Office and funding from some of its member agencies. The agencies contribute funding in proportion to their financial participation in the workforce system. For fiscal year 2013, the council received $808,669 in funding from four of the council's member agencies, as shown in the chart on the following page, *Council Revenues*. The Texas Workforce Commission contributes the most funding to the council because it has more workforce system programs than the other agencies. The Office of the Governor's Economic Development and Tourism Division does not contribute funds since it does not have workforce programs, but it does provide staff support and data to the council.



The Texas Workforce Commission funds the council's expenditures upfront then proportionately bills the contributing member agencies throughout the year based on an approved funding formula.[1] The council's expenditures in fiscal year 2013 are shown in the chart, *Council Expenditures*. Personnel costs made up the majority, 76 percent, of the council's expenses.



- **Staffing.** The council has 12 full-time equivalent positions and is administratively attached to the Governor's Office. One employee staffs the Texas Skill Standards Board, a related but independent advisory board also located in the Governor's Office.

- **Strategic Planning and Capacity-building.** The council does not operate programs, so the focus of its work is strategic rather than operational. The main responsibility of the council is to develop an integrated strategic plan for the workforce system. Through the strategic planning process, the council, in its neutral position, convenes agencies and other system stakeholders to focus collective efforts on critical system-building initiatives and opportunities for improvement. The current strategic plan, *Advancing Texas*, covers fiscal years 2010–2015 and includes goals, objectives, and performance measures for the workforce system that involve programs of all state agencies that administer workforce programs.[2]

- **Evaluation and Performance Measures.** Four key measures identify outcomes that are essentially consistent across all workforce development programs within the system: educational achievement, entered employment, employment retention, and customers served. The council monitors overall system performance by aggregating this data from 24 workforce programs across the system's eight state agency partners. The accompanying chart lists these key measures and the rate of success of participants in workforce system programs relevant to each measure for fiscal year 2013. The council also monitors the agency partners' progress toward implementation of the strategic plan and

Texas Workforce System Performance, FY 2013

Outcome Measure	Percent (or number) of successful participants
Educational Achievement	80.36%
Entered Employment	71.07%
Employment Retention	83.29%
Customers Served	5,052,195

charts milestones toward meeting long-term goals in the plan. The council reports this performance information to the governor and the Legislature in an annual evaluation report.[3]

- **Research.** The council also conducts research and produces reports on emerging issues and workforce trends. Examples of council research are listed in the accompanying textbox, *Council Research Reports*.

Council Research Reports

- *Adult Education Providers: Instructional Approaches and Service Delivery Methods* (2010)
- *Veterans in Texas: A Demographic Study* (2012)
- *People with Disabilities: A Texas Profile* (2013)

- **Review of State and Local Workforce Plans.** Federal law requires states to develop a state plan and local boards to develop local plans consistent with the state plan to receive federal funds.[4] The council reviews these plans and recommends approval by the governor.[5]

1 Section 2308.065, Texas Government Code.

2 Texas Workforce Investment Council, *Advancing Texas: Strategic Plan for the Texas Workforce System, FY2010–FY2015* (Austin: Texas Workforce Investment Council, 2010).

3 Texas Workforce Investment Council, *Evaluation 2013: Accomplishments and Outcomes of the Texas Workforce System* (Austin: Texas Workforce Investment Council), p. 11.

4 Workforce Investment Act (29 U.S.C. Sections 2822(a) and 2833(a)).

5 Section 2308.101(a)(5), Texas Government Code.

Council Issue

Issue 1

Texas Has a Continuing Need for the Texas Workforce Investment Council and Would Benefit From Its Assumption of the Duties of the Texas Skill Standards Board.

Background

Created by the Legislature in 1993, the Texas Workforce Investment Council (council) promotes the development of a well-educated, highly skilled workforce in Texas and advocates for an integrated workforce system that provides quality, relevant services that address the needs of Texas' businesses and its workers. The council consists of 19 members who represent the major sectors of the workforce system, as shown in the textbox, *Council Composition*. The governor appoints 14 of the members and state law designates the head of five member agencies as ex officio voting members of the council. The council meets four times a year.

Council Composition

Business (5)

Labor (5)

Education (3)

Community Based Organizations (1)

Ex Officio State Agencies (5)

- Office of the Governor's Economic Development and Tourism Division
- Texas Education Agency
- Health and Human Services Commission
- Texas Higher Education Coordinating Board
- Texas Workforce Commission

The table on the following page, *Texas Workforce System Programs and Services*, shows the key workforce-related duties of the state agency members, as well as other agency partners with workforce development duties, including the Texas Department of Criminal Justice, Texas Juvenile Justice Commission, and Texas Veterans Commission.

State and federal law assign the council four main functions:

- strategic planning for the integration of workforce services in Texas;
- evaluating and measuring the performance of the workforce system in meeting the needs of employers and job seekers;
- producing a range of workforce-related research reports; and
- reviewing state and local workforce plans to recommend final approval by the governor.[1]

The council is administratively attached to and housed in the Office of the Governor. The council receives funding from its member agencies, primarily from the Texas Workforce Commission (TWC), based on a funding formula approved by the governor and administered through a memorandum of understanding that delineates each member's contribution. For fiscal year 2013, the council budgeted for about $1 million in support, but expended only $808,669 as not all budgeted activities took place in that fiscal year. The council has 12 full-time equivalent positions.

As directed by state law, the council also provides staff support for the Texas Skill Standards Board (TSSB) — a separate but related advisory board also housed within the Governor's Office.[2] TSSB was

*Texas Workforce System Programs and Services**

Texas Agency	Program	Who Is Served?
Texas Department of Criminal Justice	Postsecondary Community and Technical College Education – Corrections	Individuals 25 and younger in state prisons and jails with a high school diploma or equivalent; and within five years of parole eligibility.
	Secondary Academic Education – Windham	Incarcerated adults who do not have a high school diploma or the equivalent.
	Secondary Technical Education – Windham	
Texas Education Agency	Perkins Secondary Career and Technical Education	Secondary students.
	Secondary Education	
Health and Human Services Commission	Blind Services	Adults who are blind or visually impaired.
	Rehabilitation Services	Adults with a mental or physical disability.
Texas Higher Education Coordinating Board	Community and Technical College Academic Education	Students with a high school diploma or the equivalent.
	Community and Technical College Technical Education	
Texas Juvenile Justice Department	Secondary Academic Education – Youth Corrections	Secondary students in youth correctional facilities.
	Secondary Technical Education – Youth Corrections	
Texas Veterans Commission	Veterans Employment and Training	Any person who served on active duty for 180 days and was honorably discharged or released because of a service-connected disability.
Texas Workforce Commission	Adult Education, Workforce Investment Act Title II	Persons at least 16 years old and not registered in a secondary school and who lack basic education skills.
	Adults, Workforce Investment Act Title I	Adults and youth, 16 years or older, with a high school diploma or equivalent.
	Apprenticeship	Students with a high school diploma or the equivalent.
	Dislocated Workers, Workforce Investment Act Title I	Dislocated workers who are unemployed due to layoffs or adverse market conditions and unlikely to return to their jobs.
	Employment Services – Wagner Peyser	All applicants looking for work and all employers seeking employees.
	Self-Sufficiency Fund	Recipients of TANF or SNAP benefits, or a parent, with wages at or below $37,000.
	Senior Community Service Employment Program	Low income adults aged 55 or older.
	Skills Development Fund	Adult incumbent workers in need of updated skills or adults to be hired upon completion of training.
	Supplemental Nutrition Assistance Program Employment and Training (SNAP)	Recipients are mandatory work registrants, unemployed, or employed less than full time and able to work.
	Temporary Assistance for Needy Families Choices (TANF)	Eligible single-parent families and eligible two-parent families with children.
	Trade Adjustment Assistance	Workers adversely affected by trade agreements as certified by the U.S. Department of Labor.
	Youth, Workforce Investment Act Title I	Persons between age 14 and 21 who face barriers to school completion or employment.

* The Office of the Governor's Economic Development and Tourism Division does not directly administer workforce development programs, but works to attract industry and create jobs.

created by the Legislature in 1995 to develop a statewide system of skill standards and credentials for occupations with strong employment and earnings opportunities but requiring less than a baccalaureate degree. The accompanying textbox shows the composition of the 11-member, governor-appointed board. The council has historically provided two staff to support the work of TSSB, but recently reduced it to one.

Texas Skill Standards Board Composition

Business (7)
Labor (2)
Secondary education (1)
Post-secondary education (1)

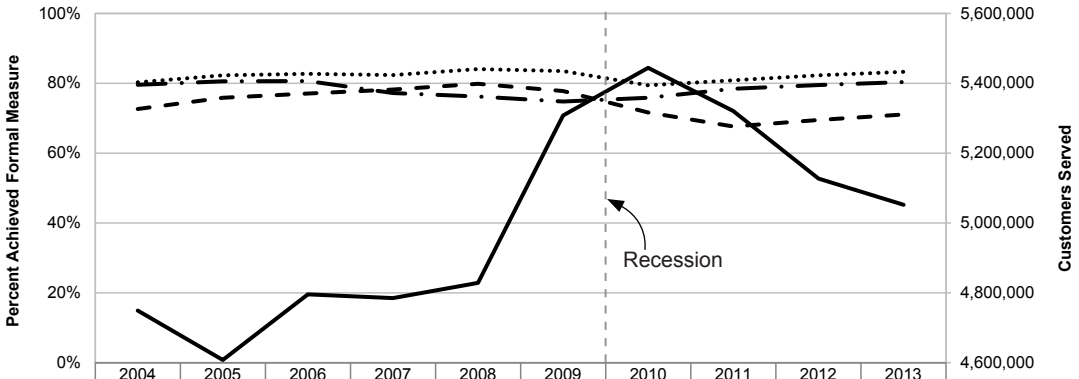
Findings

Texas must maintain the council to meet federal requirements and the council's work contributes to the effectiveness of the state's workforce system.

The Workforce Investment Act of 1998 (WIA), recently reauthorized as the Workforce Innovation and Opportunity Act of 2014 (WIOA) effective July 1, 2015, mandates that every state have a state-level workforce investment board to plan, evaluate, and coordinate services.[3] The council serves this function in Texas. Federal law directs these boards, in consultation with the governor, to promote comprehensive workforce services across employment, training, and education programs. Sunset staff determined that not maintaining the council, or a similar function, could result in the loss of about $160 million in federal WIA funding to Texas.

Beyond the federal requirements, Texas benefits from the council's evaluation of the effectiveness of the state's workforce system.[4] The council annually tracks and reports system progress toward achievement of state and local workforce goals and objectives, as well as key performance outcomes. The graph, *Texas Workforce System Performance*, shows the outcomes of the system's four key performance measures, which include educational attainment, entered employment, employment retention, and customers served. These measures capture the aggregate performance of 24 workforce programs across the system's eight state agency partners.[5]

Texas Workforce System Performance FYs 2004–2013



	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Educational Achievement	79.53%	80.57%	80.63%	77.22%	76.18%	74.78%	75.85%	78.38%	79.46%	80.36%
Entered Employment	72.60%	75.87%	77.05%	78.21%	79.83%	77.75%	71.62%	67.62%	69.49%	71.07%
Employment Retention	80.24%	82.28%	82.71%	82.36%	84.02%	83.49%	79.43%	80.87%	82.24%	83.29%
Customers Served	4,749,052	4,608,101	4,796,076	4,785,366	4,828,428	5,308,022	5,444,288	5,320,655	5,126,874	5,052,195

Measure Definitions

These measures reflect the aggregate performance of the eight state agency partners.

Educational Attainment – Number and percent of all program participants who obtain a degree or other credential of completion, or complete the level enrolled in either a training or educational program.

Entered Employment – Number and percent of all program participants who secure employment by a specified point after exiting a program.

Employment Retention – Number and percent of all program participants who retain employment at a specified point after exiting a program.

Customers Served – Number of employers and individuals who received system services including program participation.

As shown, the performance of the workforce system across these measures remained fairly stable despite the effects of the recession in 2009. The one exception was the tremendous increase in the number of customers served, funded largely through additional federal recovery relief funding that has since ended as the economy has improved. The textbox, *Measure Definitions*, provides explanations of each measure.

Current and future changes in the workforce environment require continued efforts to align, coordinate, collaborate, and enhance outcomes for system participants. As such, the council's focus on system strategic planning is needed to ensure appropriate targeting of initiatives and issues that cross agencies and programs. The council identifies key areas to target activities to improve and enhance system performance, reduce redundancy, and assist workforce partners in working more cohesively. The council's System Integration Technical Advisory Committee works to ensure system partners implement action plans to achieve the system's long-term objectives in the strategic plan. Action plans identify the major tasks, milestones, time frames, and performance measures necessary for achieving the objectives. The council's latest five-year strategic plan identified 14 long-term objectives, and the textbox, *Increasing Awareness of Career Technical Education*, highlights a few of the council's efforts to reach this objective.[6]

Increasing Awareness of Career Technical Education

- In September 2010 the council researched, identified, and validated best practices for providing information to improve understanding of educational pathways to careers, and published *Research Findings: Raising Awareness of Career and Technical Education in Texas Schools*.
- The council convened a workgroup in June 2011 to develop a model of career information and activities, and released the *Career Awareness Model: A Guide to a Sequential, Cohort-Based Approach*. This guide was distributed electronically in 2013 to all Texas high schools to support *Achieve Texas* through the list serves maintained by the Texas Education Agency and the Career and Technology Association of Texas.

Housing this cross-agency council in the Office of the Governor is optimal and no benefits would result from moving it to any other agency.

Sunset staff evaluated the need for maintaining the council's functions within the Governor's Office and found no significant benefits to changing the organizational structure of the council. While the bulk of the workforce

development programs, funding, and operational support for the council come from the TWC, attaching the council to TWC would diminish the council's ability to effectively facilitate planning and evaluation across eight agencies with multiple programs. Currently, the council has a neutral position that enables it to convene these agencies and other system stakeholders to focus collective efforts on system issues and opportunities for improvement. As such, staff determined the council is appropriately placed within the Governor's Office, independent of the agencies within the system that it is evaluating.

Housed in the Governor's office, the council focuses on systemwide issues and improvements.

Sunset staff also did not pursue any changes to the composition of the council. The council operates under a grandfather clause in WIA that allows Texas to maintain the council's composition as developed under previous state legislation. This grandfather status could be jeopardized if major changes are made to the council's composition. If this exemption was lost, Texas would have to comply with WIA requirements that at a minimum would require adding the governor, members of the Legislature, and locally elected officials to the council.

While Texas benefits from maintaining the council separately from TWC, alignment of the Sunset reviews of the council and TWC greatly facilitates Sunset staff's evaluation of the workforce system overall. TWC operates the largest number of workforce programs that make up the system, and having both entities under review at the same time facilitates Sunset staff's ability to see the relationship between the two entities, and how they collaborate with other system partners on workforce issues.

The Texas Skill Standards Board, having accomplished most of its key tasks, could be abolished and its remaining duties assumed by the Texas Workforce Investment Council, eliminating the need for this separate workforce-related advisory body.

With a statewide system of skill standards now in place, TSSB only met once in the last year.

After almost 20 years, TSSB has succeeded in engaging industry in developing a voluntary statewide system of skill standards for a broad range of occupations. These skill standards are the tool for communicating employers' workforce requirements to education and training providers. TSSB's website provides access to information on skill standards for employers, colleges, and students. To date, TSSB has recognized 27 community and technical colleges that have translated theses skill standards into curricula for 52 approved programs, resulting in 2,235 graduates with credential seals affixed to their diplomas. These seals attest to the fact that technical education programs taught students the occupational competencies identified by industry. Employers recruiting from recognized programs can be assured that the training received had industry-recognized skill standards incorporated into the curriculum.

Over the years, the development of new skill standards and the number of new programs and colleges seeking recognition from the state has decreased, with most of the workload shifting to the renewal of existing programs, as shown in the chart on the following page, *Texas Skill Standards Board Activity*. Based on this reduction in workload, the board only met once in the last year. While

Texas Skill Standards Board Activity

	FY 09	FY 10	FY 11	FY 12	FY 13
Board-Recognized Programs					
New Programs	12	12	10	6	5
Continuing and Renewed Programs	17	28	39	43	47
Total Programs	**29**	**40**	**49**	**49**	**52**
Colleges with Board-Recognized Programs					
New Colleges	3	4	6	2	1
Continuing Colleges	15	17	21	24	26
Total Colleges	**18**	**21**	**27**	**26**	**27**

TSSB must formally approve all new and renewing skill standards and program recognitions, it voted to delegate program recognition authority to the board chair to both accelerate a college's use of the recognized program and reduce the need to convene for a one-hour meeting.

While likely a natural evolution of the program, this decreased activity could also be due to a move at both the state and federal levels to recognize industry certifications. Industry certifications are similar to TSSB's skill standards in that they define the competencies required in an occupation. Specifically, federal performance measures in the Carl D. Perkins Career and Technical Education Act are fueling the use of industry certifications as an indicator of career and technical education effectiveness.[7]

As part of this review, Sunset staff examined the role of council staff in supporting TSSB and TSSB's relationship to the council's broader directive to promote the development of a well-educated, highly skilled workforce that meets the needs of Texas employers and its workers. Sunset staff found that TSSB's duties remain needed, particularly for the colleges, students, and employers currently participating in and relying on its skill standards and program recognitions.

The council's broad directive includes the promotion of a highly skilled workforce.

However, as TSSB meets only once or twice a year, Sunset staff found that these limited duties could be assumed by the council, eliminating the need for a separate workforce-related board within the Governor's Office. The broad directive of the council to promote a well-educated, highly skilled workforce that meets the needs of businesses and workers clearly encompasses the skill standards work of TSSB. The council's membership of business, labor, and education enables it to maintain the same kind of representation as that of TSSB. Additionally, the council has existing statutory authority to appoint technical advisory committees to receive additional input, as needed, on skill standards that meet industry needs.[8]

As the staff of the council administer the skill standards program and provide the day-to-day technical assistance to community and technical colleges, they are more than capable of handling these ongoing responsibilities. These duties will largely encompass administering three-year program renewals and continuing administration of the credential seals. However, instead of having to report to two separate advisory bodies, the staff would answer to the council for all of its responsibilities.

Both of the council's reporting requirements continue to be useful.

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.[9] The Sunset Commission has interpreted these provisions as applying to reports required by law that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports. Reports required by rider in the General Appropriations Act are also omitted under the presumption that the appropriations committees have vetted these requirements each biennium. Appendix E lists the council's statutory reporting requirements, both of which Sunset staff found are useful and should be continued.

Recommendations

Change in Statute

1.1 Continue the Texas Workforce Investment Council for 12 years and align its Sunset review with that of the Texas Workforce Commission.

This recommendation would continue the council to meet federal requirements under both WIA and WIOA. The council would continue to be administratively attached to the Governor's Office.

As part of this recommendation, the council's statute should be changed to ensure future Sunset reviews of the council coincide with those of TWC as TWC oversees the most significant number of workforce programs merged into a single agency in Texas. While such coordination occurred, this change would ensure it continues in the future.

1.2 Abolish the Texas Skill Standards Board and transfer its powers and duties to the Texas Workforce Investment Council.

Under this recommendation, TSSB would cease to exist and the council would take over responsibility for developing and maintaining the statewide system of industry-defined and industry-recognized skill standards and credentials for all major skilled occupations. The statutory duties that would transfer to the council include the following:

- validating and recognizing nationally established skill standards to guide curriculum development, training, assessment, and certification of workforce skills;
- convening industry groups to develop skill standards and certification procedures for industries and occupations in which standards have not been established or adopted and recognize the skill standards and certification procedures;
- reviewing the standards developed by other states and foreign countries and entering into agreements for mutual recognition of standards and credentials to enhance portability of skills; and
- promoting the use of standards and credentials among employers.

The integrity of the Texas skill standards brand that schools have invested in and employers find of value would be maintained, simply under the council's authority. The council also has existing statutory authority to appoint technical advisory committees and can do so as needed to receive input on new standards or ones in need of updating.[10] Council staff would continue administering the skill standards program, but answer to the council for these responsibilities. This recommendation would fully integrate TSSB's functions into the council, effectively streamlining the administration of related workforce development functions under a single entity. These changes would take place on September 1, 2015.

Fiscal Implication

These recommendations would have no significant fiscal impact to the State. The changes would ensure Texas maintains compliance with federal requirements under WIA and WIOA, thereby avoiding the loss of a significant amount of federal funding. If continued by the Legislature, the member agencies would continue to fund the council. Eliminating the standalone TSSB would result in a small, but not significant, savings from reduced travel reimbursements.

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1 Chapter 2308, Texas Government Code and Workforce Investment Act of 1998 (29 U.S.C. Section 2821).

2 Section 2308.403, Texas Government Code.

3 Workforce Investment Act of 1998 (29 U.S.C. Section 2821).

4 Section, 2308.101(a)(6), Texas Government Code.

5 Texas Workforce Investment Council, *Evaluation 2013: Accomplishments and Outcomes of the Texas Workforce System* (Austin: Texas Workforce Investment Council), p. 11.

6 Ibid., p. 39.

7 Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. Section 2323).

8 Section 2308.058(b), Texas Government Code.

9 Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

10 Section 2308.058, Texas Government Code.

Appendices

Appendix A

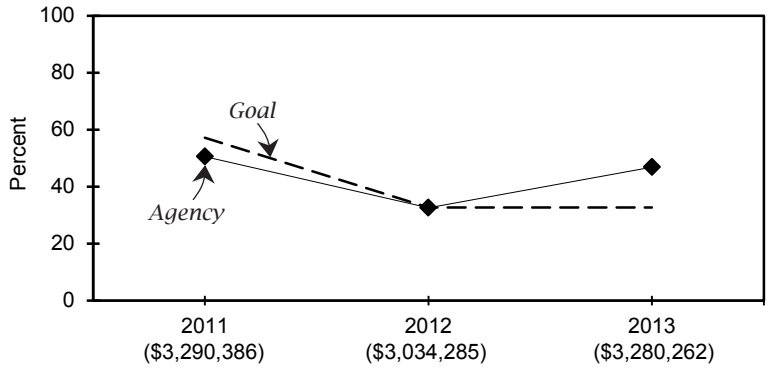
Texas Workforce Commission Historically Underutilized Businesses Statistics 2011 to 2013

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1]

The following material shows trend information for the Texas Workforce Commission's (TWC) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.[2] In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2011 to 2013. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency exceeded the statewide HUB purchasing goals for the commodities category all three years. While TWC exceeded the HUB goal for special trade in 2013, it did not meet the goal in 2011 or 2012. TWC exceeded the HUB goal for professional services in 2011 and 2013, but it did not meet the goal in 2012. The agency also fell short of meeting the goals for other services in the last three years. The agency complies with other HUB-related requirements such as adopting HUB rules, creating HUB subcontracting plans for large contracts, appointing a HUB coordinator, establishing a HUB policy, creating a HUB forum program, and developing a mentor-protégé program.

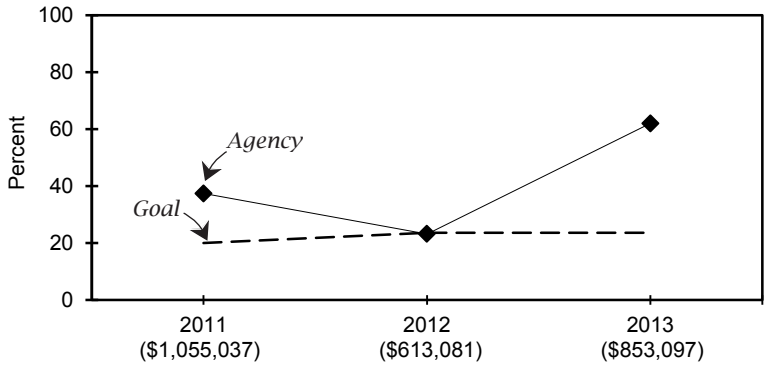
Special Trade



The agency's purchases for this category fell slightly below the statewide purchasing goal in 2011 and 2012, but exceeded the goal for this category in 2013.

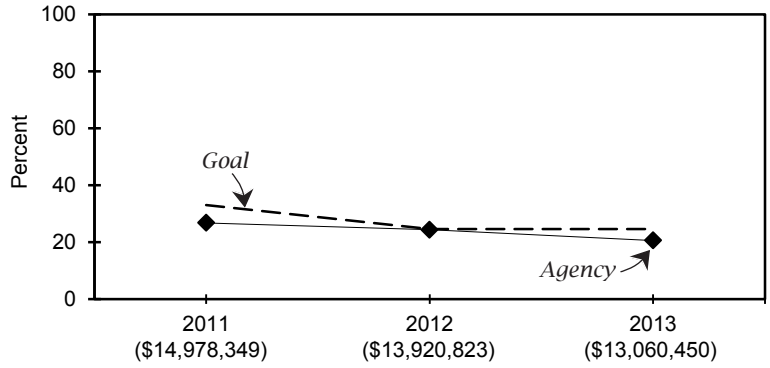
Appendix A

Professional Services



The agency's purchases for this category fell slightly below the statewide purchasing goal in 2012, but exceeded the goal for this category in 2011 and 2013.

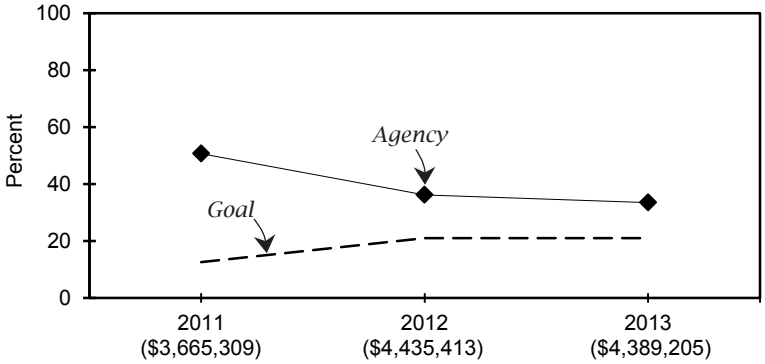
Other Services



The agency did not meet the statewide purchasing goal in this category in any fiscal year. The expenditures in this category are made up of information technology services and products as well as telecommunications (voice, data, and cellular). TWC uses the contracts available through Texas Department of Information Resources for these services and most of the major vendors that can provide the statewide coverage needed by TWC are not HUB vendors.

Appendix A

Commodities



Purchases in this category exceeded the statewide purchasing goal for 2011, 2012, and 2013.

1 Section 325.011(9)(B), Texas Government Code.

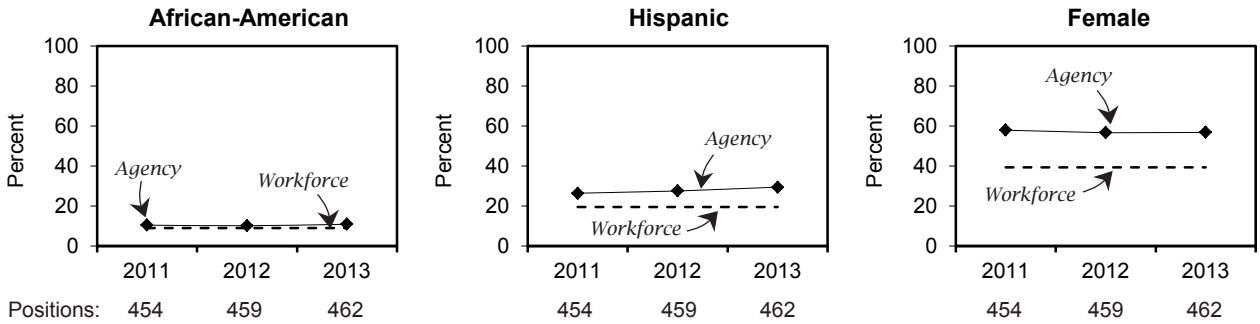
2 Chapter 2161, Texas Government Code.

Appendix B

Texas Workforce Commission Equal Employment Opportunity Statistics 2011 to 2013

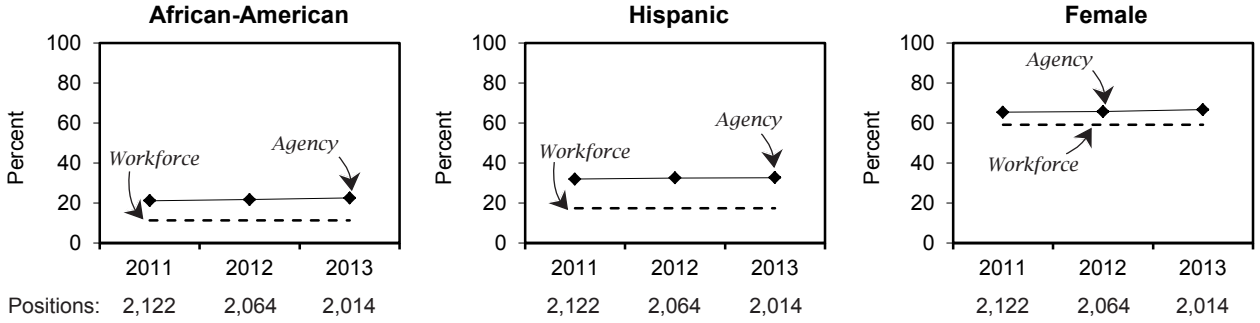
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Workforce Commission (TWC).[1] The agency maintains and reports this information under guidelines established by TWC.[2] In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.[3] These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2011 to 2013. The makeup of the agency's workforce is at or above the comparative civilian workforce percentages in almost all categories.

Administration



The agency met or exceeded the civilian workforce percentages in all categories for the last three years.

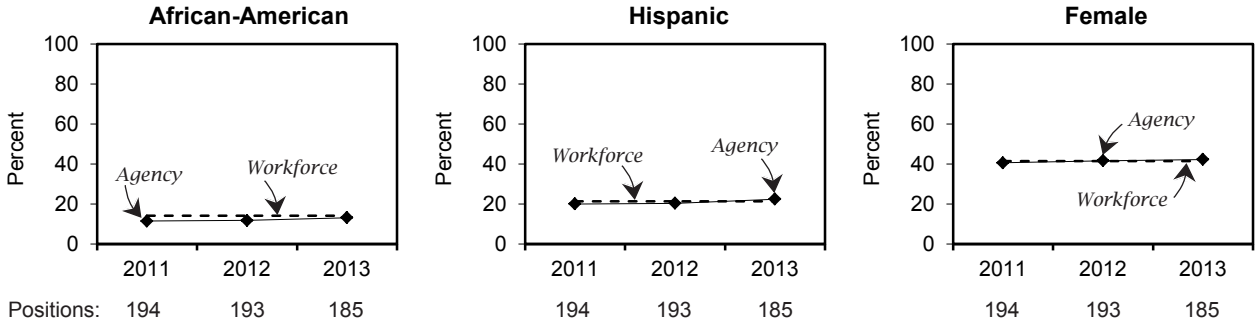
Professional



The agency exceeded the civilian workforce percentages in all categories for the last three years.

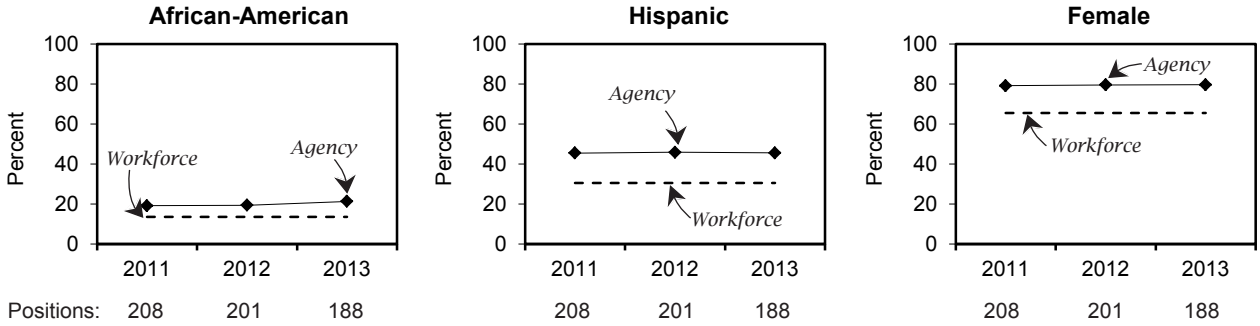
Appendix B

Technical



The agency met or was close to meeting the civilian workforce percentages for the Hispanic and female categories for the last three years. The agency fell below the civilian workforce percentages for the African-American category for the last three years, but the percent has increased each year.

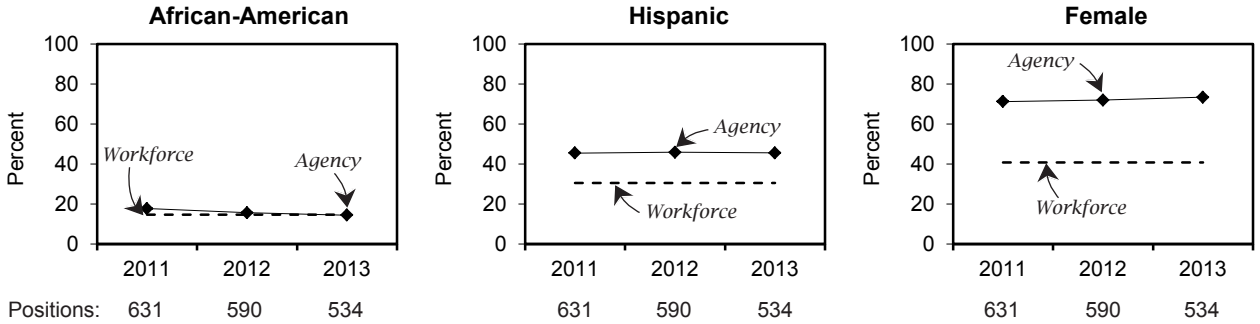
Administrative Support



The agency met or exceeded the civilian workforce percentages in all categories for the last three years.

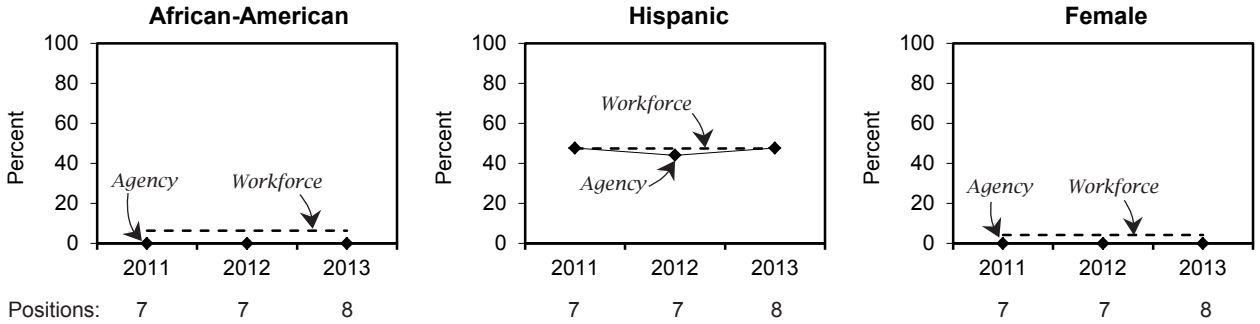
Appendix B

Service/Maintenance[4]



The agency met or exceeded the civilian workforce percentages in all categories for the last three years.

Skilled Craft



For the last three years, the agency fell below the civilian workforce percentages for both the African-American and female categories, but TWC met or nearly met them in the Hispanic category. Although TWC was below in the African-American and female categories, the agency only employs eight full-time staff that fall within the Skilled Craft category. Due to the small number of employees in this category, the agency has difficulty meeting the statewide percentage.

……..

1 Section 325.011(9)(A), Texas Government Code.

2 Section 21.501, Texas Labor Code.

3 Because the Texas Workforce Commission has not released statewide civilian workforce percentages for fiscal years 2012 and 2013, this analysis uses fiscal year 2011 percentages for those two years.

4 The service/maintenance category includes three distinct occupational categories: service/maintenance, para-professionals, and protective services. Protective service workers and para-professionals used to be reported as separate groups.

Appendix C

Texas Workforce Commission Summary of Major Programs – FY 2013

Program (Alphabetical)	Expenditures	Program Description	Number of Clients Served
Adult Education and Literacy*	$66,167,186	Develops programs that encourage literacy and ensure all adults have the basic education skills they need to contribute to their families, communities, and the world.	85,389 Students
Apprenticeship Training	$2,918,312	Provides training through a combination of classroom instruction and supervised on-the-job experience to help individuals become certified skilled craft workers.	3,947 Individuals
Career Schools and Colleges	$860,527	Certifies and regulates private career schools and colleges and evaluates appropriateness of education and training programs. Ensures quality in program offerings and provides consumer protection for students and private school owners.	536 Schools 148,544 Students
Child Care Services	$537,732,536	Subsidizes the cost of child care for certain Texas Workforce Commission (TWC) clients. TWC also administers child care services on behalf of the Department of Family and Protective Services.	107,033 Parents 195,702 Children
Eligible Training Provider System	$185,644	Provides access to a wide selection of approved training programs by offering providers an Internet-based eligible training provider application, and maintaining the online statewide list of certified training providers.	5,220 Training Programs
Foreign Labor Certification	$338,919	Reviews labor certification applications submitted by employers to facilitate foreign workers receiving approval to work in the United States when qualified United States workers are not available.	1,046 Employers 19,698 Jobs Certified
Migrant and Seasonal Farmworker	$329,085	Monitors and evaluates the delivery of services to migrant and seasonal farmworkers throughout Texas and serves as point of contact for local workforce boards, farmworker organizations, and state and federal agencies on migrant and seasonal farmworker issues.	9,736 Workers
Self-Sufficiency Fund	$1,109,952	Provides customized job training in partnership with public community and technical colleges for new or existing jobs in local businesses for Temporary Assistance of Needy Families (TANF) recipients and other low-income individuals.	121 Trainees 20 Employers
Senior Community Service Employment	$4,771,103	Assists eligible individuals aged 55 and older to gain competitive job skills through part-time on-the-job training while providing valuable community service.	785 Individuals

Appendix C

Program (Alphabetical)	Expenditures	Program Description	Number of Clients Served
Skills Development Fund	$23,525,012	Provides customized job training in partnership with public community and technical colleges for new or existing jobs in local businesses.	19,992 Trainees 655 Employers
Skills for Small Business	$305,353	Allows small businesses to apply for training for their employees offered by their local community or technical college, or the Texas Engineering Extension Service.	727 Trainees 132 Employers
Supplemental Nutritional Assistance Program Employment and Training	$21,376,781	Provides employment, training and support services to Supplemental Nutritional Assistance Program recipients not eligible for TANF cash assistance to enable them to become self-sufficient.	49,039 Individuals
Temporary Assistance for Needy Families Choices	$100,270,858	Provides employment, training, and job retention services for applicants, recipients, and former recipients of TANF cash assistance.	50,022 Individuals
Texas Veterans Leadership Program	$585,827	Assists Texas veterans of Iraq and Afghanistan wars upon their return to civilian life by providing a network of services to connect returning veterans with the resources and tools they need to lead productive lives.	3,992 Veterans
Trade Adjustment Assistance	$11,350,865	Provides employment, training, and relocation assistance for eligible trade-affected workers.	2,981 Individuals
Unemployment Insurance	$3,751,399,044	Collects all appropriate employer contributions for unemployment insurance and pays unemployment insurance benefits to all qualified claimants actively seeking employment.	698,399 Claimants
Wagner-Peyser Employment Services	$51,079,002	Provides services to facilitate the match between employers and job seekers by helping employers fill jobs and assisting job seekers to find employment.	1,418,891 Individuals
Work Opportunity Tax Credit	$839,094	Certifies tax credit applications to reduce the tax liability for businesses that hire eligible workers.	6,077 Employers
Workforce Investment Act	$167,896,941	Provides employment, training, and retention services for eligible Workforce Investment Act adult participants, and services for eligible youth to acquire skills for employment.	10,087 Youth 38,527 Adults and other Dislocated Workers

* The adult education and literacy program was transferred to TWC from the Texas Education Agency (TEA) September 1, 2014, so fiscal year 2013 data reflects TEA's expenditures on and clients served through the program that year.

Appendix D

Texas Workforce Commission Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Adult Education and Literacy Program Report	Section 315.002(c), Texas Labor Code	Requires the Texas Workforce Commission (TWC) to monitor, evaluate, and report education and employment outcomes of students who participate in TWC's adult education and literacy programs.	Legislature	Continue
2. Annual Report	Section 301.065, Texas Labor Code	Requires TWC to report on the administration and operation activities under the Texas Unemployment Compensation Act during the preceding fiscal year, including each recommendation of TWC for amendments to this act. Also requires the report to include: a balance sheet of the money in the Unemployment Insurance Trust Fund; TWC's long-term and short-term objectives; and any other information requested by the Legislature or the Legislative Budget Board.	Governor and Legislature	Continue
3. Civil Rights Division Annual Report	Sections 21.003(d), 21.504, and 301.156, Texas Labor Code	Requires the Civil Rights Division to have an annual report and to compile the total number of African Americans, Hispanic Americans, females, and other persons hired for each job category within each state agency. Also requires the division to collect and report statewide information relating to employment and housing discrimination complaints.	Governor, Legislature, and Legislative Budget Board	Continue – Post online per Recommendation 1.3
4. Data Transmission to the Comptroller	Section 301.086, Texas Labor Code	Requires TWC to provide the name, address, social security number, and date of birth of each person for whom TWC has this information to assist the comptroller in identifying people entitled to unclaimed property.	Comptroller of Public Accounts	Continue

Appendix D

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
5. Effectiveness of Subsidized Child Care Program	Section 302.0043, Texas Labor Code	Requires TWC to evaluate and report on the effectiveness of TWC's child care program in helping parents who receive subsidized child care to find or maintain employment. Also requires TWC to compile data regarding the effectiveness of the program in improving the training of child care professionals and how well the program improves collaboration with certain agencies.	Legislature	Continue
6. Employment History of Former Recipients of Public Assistance	Section 302.012(d), Texas Labor Code	Requires TWC to report on the long-term employment history of persons who are former recipients of public assistance programs.	Legislature	Continue
7. Equal Employment Opportunity and Minority Hiring Practices	Sections 21.0035, and 21.552–553, Texas Labor Code	Requires the Civil Rights Division to compile and analyze the statewide civilian workforce based on sex, racial, and ethnic group, each of which must be listed by job description.	Governor, Legislature, and Legislative Budget Board	Continue
8. Equal Employment Opportunity Policy	Section 301.045(a)–(b), Texas Labor Code	Requires TWC to annually prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.	Governor	Continue
9. Occupational Shortage Study Report	Section 302.019, Texas Labor Code	Requires TWC to gather and study information related to existing and projected shortages in high-demand, high-wage occupations in this state and submit a report with the findings.	Governor, Lieutenant Governor, Speaker of the House of Representatives, and the presiding officer of each standing committee with primary jurisdiction over workforce development matters	Continue

Appendix D

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
10. Report on Federal Trade Adjustments	Section 302.007, Texas Labor Code	Requires TWC to report on the effectiveness of federal programs designed to provide trade adjustment assistance to persons in this state. Also requires TWC to include the following information in the report: the number of people who enter employment; the occupations people are placed in; wages earned by persons before and after program participation; whether a person retains employment for at least six months; persons participating in integrated vocational and language training programs; and whether participant acquired basic skills to enhance employability in participant's local labor market.	Legislature	Continue
11. Skills Development Fund Report	Section 303.006, Texas Labor Code	Requires TWC to report information about the Skills Development Fund including: number of applicants; wage levels of trainees by region of the state, and new and current employees; trainees covered by health care, workers compensation, and other analogous benefit programs; the amount of money awarded in each region of the state based on population; the total amount awarded to employers of various sizes; and the total number of jobs created or persons retained under the program based on certain criteria.	Governor and Legislature	Continue
12. Texas Career Opportunity Grant Program	Section 305.029, Texas Labor Code	Requires TWC to report on the Texas Career Opportunity Grant Program including the number of students who received this grant, the number of students who attended each eligible institution and information on the race and ethnicity of those students.	Legislature	Continue

Appendix E

Texas Workforce Investment Council Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Evaluation Report on Accomplishments and Outcomes of the Texas Workforce System	Sections 2308.101(14) and 2308.104(a), Texas Government Code	Requires the Texas Workforce Investment Council (council) to report annually on the implementation of the strategic plan.	Governor and Legislature	Continue
2. Strategic Plan for the Texas Workforce System	Section 2308.104(a), Texas Government Code	Requires the council to develop a single strategic plan that establishes the framework for the budgeting and operation of the workforce development system, including school to careers and welfare to work components, administered by agencies represented on the council.	Governor and Legislature	Continue

Appendix F

Staff Review Activities

During the review of the Texas Workforce Commission (TWC) and Texas Workforce Investment Council (council), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with TWC and council personnel; attended commission meetings and met with each of the three commissioners; attended council and advisory committee meetings and met with members; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to TWC and the council.

- Visited six local workforce development boards in Austin, Amarillo, Dallas, Fort Worth, Laredo, and San Antonio and interviewed board members, staff, and contracted service providers.
- Interviewed workforce development stakeholders in the Amarillo area, including staff from Amarillo Community College, Amarillo Area Foundation, and Panhandle Area Chamber of Commerce.
- Interviewed workforce development stakeholders in the Dallas/Fort Worth area, including staff from area chambers of commerce, several economic development corporations, the Dallas County Community College District, and several businesses.
- Interviewed workforce development stakeholders in the Laredo area, including staff from Laredo Community College, Laredo Chamber of Commerce, Health and Human Services Commission Office of Border Affairs, and several businesses.
- Visited TWC regional tax offices in Amarillo and Laredo and interviewed staff.
- Toured the San Antonio unemployment insurance call center.
- Toured three career schools and attended an annual monitoring visit.
- Interviewed local child care providers.
- Attended a Human Rights Commission meeting and interviewed commissioners.
- Attended a Texas Skill Standards Board meeting and interviewed board members.
- Surveyed over 14,000 individuals, interest groups, state and federal agencies, and other stakeholders regarding the programs and services provided by TWC, the council, and local workforce development boards.
- Interviewed staff from the Office of the Attorney General, Office of Court Administration, Office of the Governor, Texas Commission on Fire Protection, Texas Comptroller of Public Accounts, Texas Department of Insurance, Texas Department of Licensing and Regulation, Texas Education Agency,

Appendix F

Texas Guaranteed Student Loan Corporation, Texas Higher Education Coordinating Board, and Texas Veterans Commission.

- Interviewed staff from the federal Department of Housing and Urban Development, and Equal Employment Opportunity Commission.

Sunset Staff Review of the
Texas Workforce Commission
Texas Workforce Investment Council

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