

# SUNSET ADVISORY COMMISSION

STAFF REPORT WITH COMMISSION DECISIONS



Texas Department  
of Agriculture

Texas Boll Weevil  
Eradication Foundation

Prescribed  
Burning Board

Early Childhood Health  
and Nutrition  
Interagency Council

2020–2021

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87TH LEGISLATURE

# SUNSET ADVISORY COMMISSION



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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood*

**TEXAS DEPARTMENT OF AGRICULTURE**

**TEXAS BOLL WEEVIL ERADICATION  
FOUNDATION**

**PRESCRIBED BURNING BOARD**

**EARLY CHILDHOOD HEALTH AND NUTRITION  
INTERAGENCY COUNCIL**

**SUNSET STAFF REPORT WITH COMMISSION DECISIONS**

**2020–2021**

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## HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at [sunset.texas.gov/how-sunset-works](https://www.sunset.texas.gov/how-sunset-works). The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at [sunset.texas.gov](https://www.sunset.texas.gov).

### **Sunset Staff Report**

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

### **CURRENT VERSION: Sunset Staff Report with Commission Decisions**

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

### **Sunset Staff Report with Final Results**

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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# TABLE OF CONTENTS

| Page

Sunset Commission Decisions	
.....	A1
Summary of Sunset Staff Recommendations	
.....	1
Agency at a Glance	
.....	7
Foundation at a Glance	
.....	11
Issues/Recommendations	
1 The GO TEXAN Program Lacks the Guidance and Direction Needed for a Successful Program.....	15
2 TDA's Aquaculture Licensing Program Is Not Necessary to Protect the Public .....	21
3 The Regulation of Prescribed Burning Should Be Continued and Consolidated Within the Texas Department of Agriculture .....	25
4 Key Elements of the Department's Statute and Rules Do Not Conform to Common Regulatory Standards.....	31
5 Texas Has a Continuing Need for the Texas Department of Agriculture .....	39
6 TDA's Statutes and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.....	45
7 Texas Has a Continuing Need for the Texas Boll Weevil Eradication Foundation.....	55
Appendixes	
Appendix A — Texas Department of Agriculture Programs .....	59
Appendix B — Texas Department of Agriculture Historically Underutilized Businesses Statistics .....	63

Appendix C — Texas Department of Agriculture Equal Employment Opportunity Statistics .....	65
Appendix D — Texas Boll Weevil Eradication Foundation Equal Employment Opportunity Statistics .....	69
Appendix E — Texas Department of Agriculture Advisory Committees .....	73
Appendix F — Texas Department of Agriculture Reporting Requirements .....	75
Appendix G — Staff Review Activities.....	77

# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Department of Agriculture (TDA), Texas Boll Weevil Eradication Foundation, Prescribed Burning Board, and Early Childhood Health and Nutrition Interagency Council, as well as modifications and a new issue raised during the public hearing.

Since its creation in 1907, TDA has grown to play a significant role in agricultural and rural affairs across the state. The Sunset Commission concluded TDA is well-managed, but identified several opportunities to provide a firmer foundation for staff to successfully perform TDA's many functions. For example, the department should use violation trend data and risk-based analyses to prioritize its regulatory inspections, and make regular use of stakeholder input to evaluate the effectiveness of agency rules and procedures. Additionally, the commission determined TDA's regulation of aquaculture businesses provides no meaningful public benefit and should be eliminated.

The commission found the Texas Boll Weevil Eradication Foundation, a nonprofit quasi-governmental entity overseen by TDA, plays a critical role in preventing the re-infestation of the boll weevil in the United States and recommends continuing it for 12 years. Similarly, the commission found the Prescribed Burning Board, which regulates standards for using prescribed burning to reduce the risk of wildfires on Texas property, should be continued but recommends clarifying the board's rulemaking authority and administrative attachment to TDA. Finally, the commission recommends formally abolishing the Early Childhood Health and Nutrition Interagency Council, which issued its final report on early childhood nutrition and physical activity and voluntarily disbanded in 2018.

## ISSUE 1

**The GO TEXAN Program Lacks the Guidance and Direction Needed for a Successful Program.**

**Recommendation 1.1, Adopted as Modified** — Re-establish the GO TEXAN program and its purpose in statute, ensuring the new statutory framework includes all elements of the current program, including promotion of agricultural, non-agricultural, and value-added products in Texas.

**Recommendation 1.2, Adopted** — Direct TDA to establish a mission, goals, and objectives for the GO TEXAN program. (Management action – nonstatutory)

**Recommendation 1.3, Adopted** — Direct TDA to develop a policy to ensure expired members comply with department rules. (Management action – nonstatutory)

**Recommendation 1.4, Adopted** — Direct TDA to establish clear performance measures to evaluate its progress in meeting GO TEXAN program goals. (Management action – nonstatutory)

## ISSUE 2

### TDA's Aquaculture Licensing Program Is Not Necessary to Protect the Public.

**Recommendation 2.1, Adopted** — Eliminate TDA's Aquaculture program.

## ISSUE 3

### The Regulation of Prescribed Burning Should Be Continued and Consolidated Within the Texas Department of Agriculture.

**Recommendation 3.1, Adopted as Modified** — Clearly authorize the Prescribed Burning Board to adopt all rules related to prescribed burning, including the schedule of sanctions currently adopted by TDA, and continue the board as a semi-independent board administratively attached to the department.

**Recommendation 3.2, Adopted as Modified** — Provide clear statutory authority for the Prescribed Burning Board to issue licenses by reciprocity for substantially equivalent states.

**Recommendation 3.3, Adopted as Modified** — Direct the board to remove subjective criteria from its certification application by February 1, 2021, rather than December 1, 2020. (Management action – nonstatutory)

## ISSUE 4

### Key Elements of the Department's Statute and Rules Do Not Conform to Common Regulatory Standards.

**Recommendation 4.1, Adopted** — Require TDA to develop guidelines for evaluating applicants' criminal history in all of its occupational licensing programs.

**Recommendation 4.2, Adopted** — Remove subjective licensure provisions for seed producers.

**Recommendation 4.3, Adopted** — Require a memorandum of understanding to facilitate better coordination between TDA and the OAG.

**Recommendation 4.4, Adopted as Modified** — Direct TDA to comply with statute directing rules and procedures for military service members, veterans, and military spouses by February 1, 2021, rather than December 1, 2020. (Management action – nonstatutory)

**Recommendation 4.5, Adopted as Modified** — Statutorily require TDA to develop a strategic plan with public input for inspections that tracks and measures the effectiveness of the program.

**Recommendation 4.6, Adopted** — Direct TDA to establish a consistent policy for auditing continuing education providers and courses. (Management action – nonstatutory)

**Recommendation 4.7, Adopted** — Direct TDA and HHSC to share information about the licensing and registration status of food program participants. (Management action – nonstatutory)

**Recommendation 4.8, Adopted** — Direct TDA to collect and analyze data from its regulatory programs to increase their effectiveness. (Management action – nonstatutory)



## ISSUE 5

### Texas Has a Continuing Need for the Texas Department of Agriculture.

**Recommendation 5.1, Adopted** — Continue the Texas Department of Agriculture for 12 years.

**Recommendation 5.2, Adopted** — Abolish the Early Childhood Health and Nutrition Interagency Council.

**Recommendation 5.3, Adopted** — Eliminate the Texas Rural Foundation.

**Recommendation 5.4, Adopted** — Direct TDA to improve its stakeholder engagement, website content, and public information. (Management action – nonstatutory)

## ISSUE 6

### TDA's Statutes and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

**Recommendation 6.1, Adopted** — Remove the TDA staff appointee from the State Seed and Plant Board to align with constitutional requirements.

**Recommendation 6.2, Adopted** — Authorize the department to create advisory committees in rule.

**Recommendation 6.3, Adopted as Modified** — Remove TDA's abolished advisory committees from statute. Recreate the Citrus Budwood Advisory Council in statute to continue the composition, responsibilities, and oversight of the council currently found in Agriculture Code Chapter 19. Exempt the council from the expiration provisions of Government Code Chapter 2110.

Also, direct TDA to provide a list to the Sunset Commission of any committees under this recommendation that would be removed from statute, but that are actively being used and that TDA intends to re-create. The Sunset Commission changed the due date of this list from December 31, 2020, to February 1, 2021. (Management action – nonstatutory)

**Recommendation 6.4, Adopted** — Continue three of TDA's statutory advisory committees.

**Recommendation 6.5, Adopted** — Abolish three and modify one of TDA's reporting requirements.

**Recommendation 6.6, Adopted** — Update the department's statute to reflect the requirements of the person-first respectful language initiative.

**Recommendation 6.7, Adopted as Modified** — Direct the department to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law by February 1, 2021, rather than December 1, 2020. (Management action – nonstatutory)

**Recommendation 6.8, Adopted as Modified** — Direct TDA to adopt policies implementing alternative rulemaking and dispute resolution by February 1, 2021, rather than December 1, 2020. (Management action – nonstatutory)

**Recommendation 6.9, Adopted as Modified** — Direct the State Seed and Plant Board to adopt policies regarding the separation of duties of board members from those of the department by February 1, 2021, rather than December 1, 2020. (Management action – nonstatutory)

## ISSUE 7

### Texas Has a Continuing Need for the Texas Boll Weevil Eradication Foundation.

**Recommendation 7.1, Adopted** — Continue the Texas Boll Weevil Eradication Foundation for 12 years.

**Recommendation 7.2, Adopted** — Apply the standard across-the-board requirement regarding the separation of duties of board members from those of foundation staff.

**Recommendation 7.3, Adopted** — Apply the standard across-the-board requirement regarding developing and maintaining a system for receiving and acting on complaints and making information on complaint procedures available to the foundation.

**Recommendation 7.4, Adopted as Modified** — Direct the foundation to implement a reserve fund balance policy by February 1, 2021, rather than December 1, 2020. (Management action – nonstatutory)

## ADOPTED NEW RECOMMENDATION

### Complaints Information Update

Update the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public. Specify agencies may not inform parties of the status of complaints if doing so would jeopardize an ongoing investigation.

## Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a significant fiscal impact to the state. The department should be able to implement most recommendations with existing resources. In addition, the department is required to generate revenue to cover the cost of its regulatory programs, so any loss of revenue or increase in expenditures that result from recommendations associated with these programs should be cost-neutral. However, discontinuing TDA's Aquaculture program would result in a loss of about \$4,500 annually to general revenue. A decrease of approximately \$12,300 annually in licensing fee revenue currently collected by TDA would be offset by a savings of about \$7,800 for administering the program.

### Texas Department of Agriculture

Fiscal Year	Savings to the General Revenue Fund	Loss to the General Revenue Fund	Net Loss to the General Revenue Fund
2022	\$7,800	\$12,300	\$4,500
2023	\$7,800	\$12,300	\$4,500
2024	\$7,800	\$12,300	\$4,500
2025	\$7,800	\$12,300	\$4,500
2026	\$7,800	\$12,300	\$4,500

# SUMMARY OF SUNSET STAFF REPORT

Since its creation in 1907, the Texas Department of Agriculture (TDA) has grown to play a significant role in not only agricultural but also rural affairs across the state. From supporting rural infrastructure and hospitals, to managing the state's extensive food assistance programs for school children and at-risk populations, TDA's functions now extend well beyond regulating and promoting the state's \$25 billion agriculture industry. As one of the few state agencies headed by a statewide elected official, the department's growth and changes in focus have resulted in part from the various priorities set by its agriculture commissioners. Although each commissioner's personality ultimately affects how the department carries out its duties, Sunset's role is not to evaluate the individual commissioner, but rather to ensure TDA as a whole is efficiently and effectively serving the state in carrying out its statutory duties. With this in mind, Sunset staff concluded TDA is well-managed, and found the department's day-to-day responsibilities are largely removed from the politics and public attention focused on the commissioner, and recommends the department continue for 12 years. However, Sunset staff identified several opportunities to provide a firmer foundation for staff to successfully perform TDA's multitude of functions regardless of any shifting focus at the top.

TDA should develop a firmer foundation for day-to-day operations, independent of shifting leadership focus.

Overall, TDA would benefit from using more objective data and performance analysis to inform the department's various programs. For example, the department's highly visible GO TEXAN marketing program has no formal mission or objectives to direct its operations or resources, leading some GO TEXAN members to question the program's fairness and value. Similarly, the department's regulatory programs and administrative functions should make better use of available data and public input to guide decision making. Specifically, the department should use violation trend data and risk-based analyses to prioritize its regulatory inspections, and make regular use of stakeholder input to evaluate the effectiveness of agency rules and procedures. Establishing more formal goals and metrics to guide its operations will also help the department depend less upon staff intuition and individual experience and more upon consistent, measurable results. Further, in performing its own analysis of the department's regulatory data, Sunset staff determined TDA's regulation of aquaculture businesses provides no meaningful public benefit and should be eliminated.

Sunset staff also evaluated the Texas Boll Weevil Eradication Foundation, Prescribed Burning Board, and Early Childhood Health and Nutrition Interagency Council, which are separately subject to review under the Sunset Act.

**Texas Boll Weevil Eradication Foundation.** The foundation is a nonprofit quasi-governmental entity overseen by TDA that undergoes its own review under the Sunset Act. Since its last Sunset review in 2009, the foundation has

made significant strides toward its goal of eliminating the boll weevil to protect Texas cotton farmers. Currently, Texas is the only state with an active presence of boll weevils. The review determined the foundation continues to play a critical role in preventing re-infestation of the boll weevil in the United States and should be continued.

**Prescribed Burning Board.** As a semi-independent, 13-member board administratively attached to the department, the Prescribed Burning Board regulates standards for using prescribed burning to reduce the risk of wildfires on Texas property. Sunset staff found a lack of clear rulemaking authority regarding prescribed burning between the board and the department, and recommends formally vesting TDA with all rulemaking authority. The board would continue as an advisory committee within TDA to provide expertise and help oversee prescribed burning practices.

**Early Childhood Health and Nutrition Interagency Council.** The council was established in 2009 to review best practices and develop recommendations related to early childhood nutrition and physical activity. However, the council issued its final report and disbanded in 2018. The functions of the council duplicate the work of the Early Childhood Obesity Prevention Committee administered by the Department of State Health Services, so the council should be formally abolished.

The following material highlights Sunset staff's key recommendations for the Texas Department of Agriculture, the Texas Boll Weevil Eradication Foundation, and the Prescribed Burning Board.

## Sunset Staff Issues and Recommendations

### ISSUE 1

#### The GO TEXAN Program Lacks the Guidance and Direction Needed for a Successful Program.

The department's GO TEXAN program promotes Texas agriculture, horticulture, and other industries through advertising, trade shows, and social media promotion, using a distinctive logo to increase consumer awareness of Texas products. However, statute does not provide a clear purpose for the GO TEXAN program beyond TDA's general directive to promote Texas agriculture. The Sunset review identified several concerns related to the program's effectiveness, efficiency, fairness, and accountability that must be addressed for the department to successfully operate the program.

#### Key Recommendations

- Re-establish the GO TEXAN program and its purpose in statute.
- Direct TDA to establish a mission, goals, and objectives for the GO TEXAN program.
- Direct TDA to develop a policy to ensure expired members comply with department rules.
- Direct TDA to establish clear performance measures to evaluate its progress in meeting GO TEXAN program goals.



## ISSUE 2

### TDA's Aquaculture Licensing Program Is Not Necessary to Protect the Public.

TDA's Aquaculture program licenses individuals who produce and sell fish and shellfish raised in private facilities. However, the program performs no meaningful enforcement activity and adds no value to the industry or the public. Because other state agencies regulate the aquaculture industry and adequately protect consumers and the public, the department's Aquaculture program is unnecessary and should be eliminated.

#### Key Recommendation

- Eliminate TDA's Aquaculture program.

## ISSUE 3

### The Regulation of Prescribed Burning Should Be Continued and Consolidated Within the Texas Department of Agriculture.

In 1999, the Legislature established the semi-independent Prescribed Burning Board within TDA to develop standards for the safe and responsible use of fire to clear vegetation and reduce the impact of wildfires on Texas lands. The review found the board's expertise and oversight of prescribed burning continues to be necessary, but neither TDA nor the board have clear rulemaking authority to regulate prescribed burning. Sunset staff concluded consolidating rulemaking authority within TDA would provide more effective regulation, and continuing the Prescribed Burning Board as an advisory committee to provide expertise and oversight of prescribed burning practices would ensure the benefits and protections of prescribed burning continue to be available to Texas landowners.

#### Key Recommendation

- Clearly authorize TDA to adopt rules for all prescribed burning standards and continue the Prescribed Burning Board as an advisory committee to the department.

## ISSUE 4

### Key Elements of the Department's Statute and Rules Do Not Conform to Common Regulatory Standards.

Several of TDA's regulatory requirements and processes differ from model standards that are common at other regulatory agencies. For example, the department has not established risk-based criteria to target its routine inspections, despite statutory direction to do so as a result of the 2009 Sunset review. TDA also needs to improve coordination with other state agencies that have overlapping regulatory responsibilities to ensure consistent oversight occurs. Finally, the department fails to use or analyze available data that would improve the efficiency and effectiveness of its regulatory programs. Aligning the department's statute and rules with best practices would help ensure fair treatment of licensees and effective regulation across TDA's regulatory programs.

**Key Recommendations**

- Direct TDA to establish a risk-based approach to inspections.
- Require a memorandum of understanding to facilitate better coordination between TDA and the Office of the Attorney General.
- Direct TDA and Health and Human Services Commission to share information about the licensing and registration status of food program participants.
- Direct TDA to collect and analyze data from its regulatory programs to increase their effectiveness.

**ISSUE 5****Texas Has a Continuing Need for the Texas Department of Agriculture.**

As the third-largest agricultural producer in the United States, Texas has a vested interest in regulating and promoting the state's agriculture industry, and the department is the most appropriate agency to carry out this function. However, two entities administered by the department are no longer operational or necessary, and should be discontinued. Additionally, the department would benefit from improving its communication with its various stakeholder groups.

**Key Recommendations**

- Continue the Texas Department of Agriculture for 12 years, until 2033.
- Abolish the Early Childhood Health and Nutrition Interagency Council.
- Eliminate the Texas Rural Foundation.
- Direct TDA to improve its stakeholder engagement, website content, and public information.

**ISSUE 6****TDA's Statutes and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.**

Sunset reviews include a number of standard elements, including evaluating an agency's rulemaking, statutory advisory committees, and reporting requirements. Sunset staff found the department does not meaningfully review and revise its rules every four years and does not have required negotiated rulemaking policies. Sunset staff also found 24 of the department's 27 advisory committees are either abolished by operation of law or no longer needed, and identified several statutorily required reports that should be eliminated or modified.

**Key Recommendations**

- Direct the department to adopt a policy to ensure each rule undergoes meaningful rule review pursuant to state law.
- Remove abolished advisory committees from statute and authorize the department to create advisory committees in rule.

## ISSUE 7

### Texas Has a Continuing Need for the Texas Boll Weevil Eradication Foundation.

As the largest cotton producer in the United States, Texas has a continuing interest in the suppression and eradication of the boll weevil. The foundation has been a successful model for eliminating the boll weevil and should be continued. However, the foundation would benefit from developing a reserve fund balance policy to ensure its reserve, which includes cotton grower assessments, does not go unchecked. In addition, the foundation's statute should be updated to include two across-the-board provisions regularly applied in Sunset reviews that reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government.

#### Key Recommendations

- Continue the Texas Boll Weevil Eradication Foundation for 12 years.
- Apply the standard across-the-board requirements regarding the separation of duties of board members from those of foundation staff, and developing and maintaining a system for receiving and acting on complaints.
- Direct the foundation to implement a reserve fund balance policy.

### Fiscal Implication Summary

Overall, the recommendations in this report would not have a significant fiscal impact to the state. The department should be able to implement most recommendations with existing resources. In addition, the department is required to generate revenue to cover the cost of its regulatory programs, so any loss of revenue or increase in expenditures that result from recommendations associated with these programs should be cost-neutral. However, discontinuing TDA's Aquaculture program would result in a loss of about \$4,500 annually to general revenue. A decrease of approximately \$12,300 annually in licensing fee revenue currently collected by TDA would be offset by a savings of about \$7,800 for administering the program.

#### Texas Department of Agriculture

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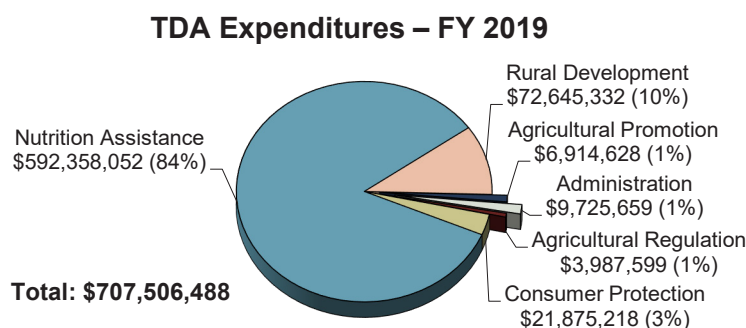
# AGENCY AT A GLANCE

Established by the Legislature in 1907, the Texas Department of Agriculture (TDA) was created to gather statistics on crops and livestock and to educate farmers on advanced farming methods and practices.<sup>1</sup> Over time, the department's responsibilities expanded significantly, including the absorption of the Department of Rural Affairs and the State Office of Rural Health in 2011.<sup>2</sup> Today, TDA performs a wide variety of regulatory, nutrition, economic development, and marketing activities, such as:

- Regulating the growth and transport of agricultural commodities.
- Administering federal and state nutrition assistance programs for children and adults.
- Regulating agriculture-related activities in the marketplace to protect consumers, such as the sale of agricultural commodities and the use of pesticides.
- Providing financial assistance to young farmers, rural healthcare facilities, and community infrastructure projects to promote economic development in rural Texas.
- Promoting Texas agricultural products locally, nationally, and internationally.

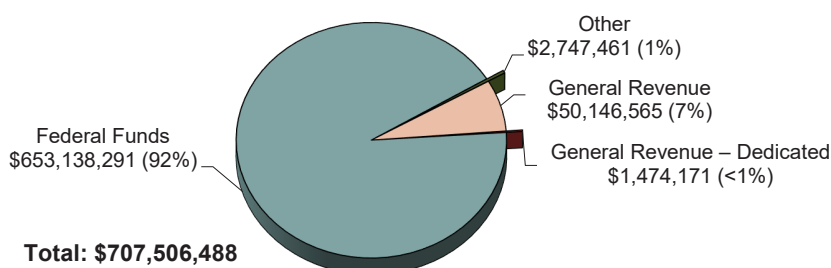
## Key Facts

- **Governance.** The Commissioner of Agriculture is a statewide elected official who serves a four-year term and is responsible for executing and enforcing the state's agricultural laws, setting TDA program policy, and managing the department's operations.<sup>3</sup> A detailed description of each of the department's program areas is provided in Appendix A. The current commissioner is the Honorable Sid Miller. Twenty-seven advisory committees provide input to the department on various programs. In general, the commissioner retains all final decision-making authority for the department, though some boards have limited independent authority to establish certain standards in rule.
- **Funding.** TDA spent \$707.5 million in fiscal year 2019, as shown in the chart, *TDA Expenditures*. More than 93 percent of these expenditures passed through the department as public assistance or intergovernmental payments, with most going to nutrition assistance and other grant programs. Beyond its annual expenditures, TDA historically returns a significant amount of unspent state and federal funds available to it each year as lapsed funds. In fiscal year 2019, TDA returned more than \$14 million in appropriations of state funds, and more than \$53 million in federal funds. The majority of these lapsed funds came from nutrition assistance or grant funds that TDA was unable to award, though TDA also lapsed nearly \$2.4 million in regulatory program appropriations.



As shown in the chart, *TDA Sources of Revenue*, most revenue for the department's operations came from federal funds, primarily for administering federal nutrition programs, as well as more than \$50 million from state general revenue. Part of TDA's general revenue appropriation is funded through license and fee revenue TDA collects to recover the costs of its regulatory programs. In fiscal year 2019, the department generated nearly \$32 million in license and fee revenue, depositing nearly \$2.5 million to general revenue from fees collected in excess of the amount appropriated for agency expenditures, primarily from the consumer protection program that regulates the use of commercial scales. TDA's use of historically underutilized businesses in purchasing goods and services for fiscal years 2017 to 2019 is described in Appendix B.

**TDA Sources of Revenue – FY 2019**



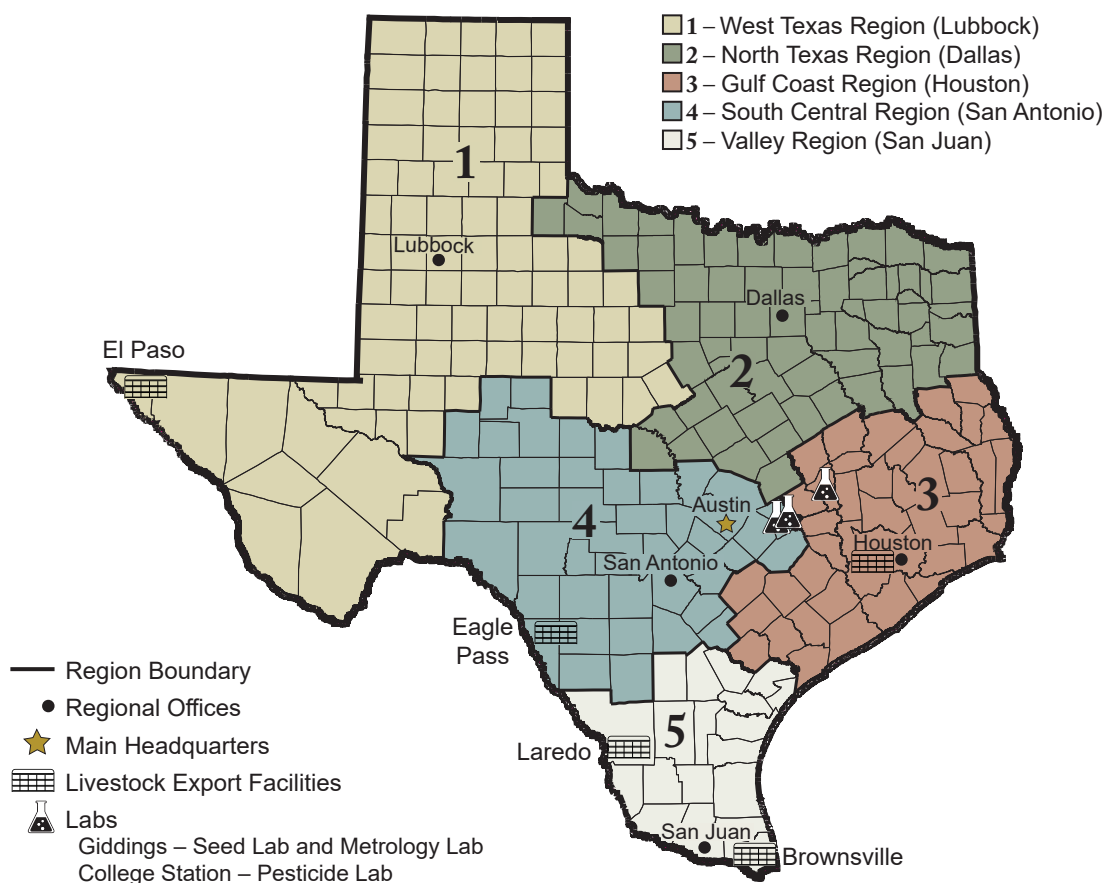
- Staffing.** In fiscal year 2019, TDA employed 614 full-time employee positions. A deputy commissioner and four assistant commissioners manage different divisions within TDA. More than half of TDA's staff are housed at TDA headquarters in Austin, with the rest divided among five regional offices, five livestock export facilities, and three laboratories that test for pesticides, seed germination, and scale calibration, as shown in the map on page 10, *Texas Department of Agriculture Regional Map*. Appendix C compares the percentage of minorities in TDA's workforce to the statewide civilian labor force for the past three fiscal years.
- Agricultural regulation.** TDA regulates the growth and transport of agricultural crops and products to prevent the spread of pests and diseases in Texas through inspections, enforcing quarantines, and similar activities. For example, the department issued 9,729 certificates in fiscal year 2019, verifying agricultural products and field equipment were free of pests and diseases to allow their transport within the state and across state lines. In severe circumstances, TDA has limited authority to destroy plants or crops to suppress pests and diseases, such as citrus greening and citrus canker.
- Nutrition assistance.** TDA administers several federal and state nutrition programs in partnership with public and private organizations throughout the state. Some nutrition programs provide free or reduced-cost meals and snacks, and others are commodity programs that distribute fresh fruits and vegetables. In fiscal year 2019, TDA served 2.8 million children daily through the National School Lunch Program, and distributed 192.8 million pounds of commodities to Texas schools and child care facilities through the U.S. Department of Agriculture (USDA) Food Distribution Program.
- Consumer protection.** TDA protects consumers and prevents fraud in the marketplace by overseeing a wide range of commercial activities affecting agriculture. For example, TDA inspects eggs, seeds, and organic products to ensure consumers are receiving goods as advertised. The department also regulates pesticide applicators to ensure restricted-use pesticides are safely handled, and inspects the calibration of commercial weighing and measuring devices, such as grocery store scales. In fiscal year 2019, TDA registered commercial devices at more than 26,000 locations, including grocery and convenience stores, and field staff conducted about 59,000 inspections of these businesses.

- **Rural development.** TDA provides financial assistance to Texas farmers and ranchers in the form of loan guarantees, interest rate reductions, and grants for young farmers. TDA also administers grant funds for community development and infrastructure improvement projects targeted to rural Texas communities, hospitals, and healthcare facilities. In fiscal year 2019, TDA awarded more than \$66 million in community development block grants, \$3 million for rural health projects, and \$300,000 in grants to young farmers.
- **Agriculture promotion.** TDA's membership-based marketing program, GO TEXAN, uses a distinctive Texas-shaped logo to promote a wide range of Texas agricultural products in local, national, and international markets. In fiscal year 2019, program membership included 1,451 Texas producers, restaurants, and other entities. TDA is also a member of national organizations that provide trade opportunities for Texas livestock and agricultural products in foreign markets.
- **Commodity producers boards.** TDA oversees 11 commodity producers boards, listed in the textbox, *Texas Commodity Producers Boards*, which encourage the production, marketing, and use of specific agricultural commodities. These boards also coordinate education and research into the control of diseases, insects, and predators for the benefit of their products. All boards are funded exclusively by producer assessments.
- **Prescribed Burning Board.** The Prescribed Burning Board regulates the practice of prescribed burning in Texas by setting education, experience, and insurance requirements and issuing certifications for burn managers and lead burn instructors. The 13-member board certified 92 burn managers and 18 lead burn instructors in fiscal year 2019. Landowners who use a licensed burn manager to conduct a prescribed burn are afforded statutory liability protections.<sup>4</sup> TDA oversees the board's operations and supplies staff and administrative services to support the board's functions, dedicating 520 hours of staff time and \$540 in travel expenses to assist the board in fiscal year 2019.
- **Texas Cooperative Inspection Program.** The department and USDA jointly created and currently oversee the Texas Cooperative Inspection Program (TCIP) as a quasi-governmental body through a cooperative agreement. TCIP inspects produce grown in Texas or transported into the state to uphold USDA marketing orders, which establish minimum quality standards that produce must meet to enter the market. The program is funded by fees paid by producers for TCIP inspections. In fiscal year 2019, TCIP staff inspected more than 3.8 billion pounds of fruits, vegetables, and nuts.
- **Early Childhood Health and Nutrition Interagency Council.** The Legislature created the council in 2009 by bringing together representatives from seven state agencies to study best practices for early childhood health and nutrition.<sup>5</sup> The council was required to submit a six-year plan for encouraging the implementation of those practices, and annually report the progress of that plan.<sup>6</sup> After publishing its annual report in the fall of 2018, the council disbanded and is no longer operational.

### Texas Commodity Producers Boards

Beef Promotion and Research Council of Texas  
 Texas Citrus Producers Board  
 Texas Corn Producers Board  
 Texas Grain Sorghum Producers Board  
 Texas Mohair Producers Board  
 Texas Peanut Producers Board  
 Texas Pecan Board  
 Texas Rice Producers Board  
 Texas Sheep & Goat Predator Management Board  
 Texas Wheat Producers Board  
 Texas Wintergarden Spinach Producers Board

## Texas Department of Agriculture Regional Map



<sup>1</sup> Chapter 59 (H.B. 274), Acts of the 30th Texas Legislature, Regular Session, 1907.

<sup>2</sup> Article 62, Chapter 4 (S.B. 1), Acts of the 82nd Texas Legislature, 1st Called Session, 2011.

<sup>3</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 11.004 and 11.001, Texas Agriculture Code.

<sup>4</sup> Section 153.081, Texas Natural Resources Code.

<sup>5</sup> Section 116.007, Texas Health and Safety Code.

<sup>6</sup> Sections 116.009 and 116.011, Texas Health and Safety Code.



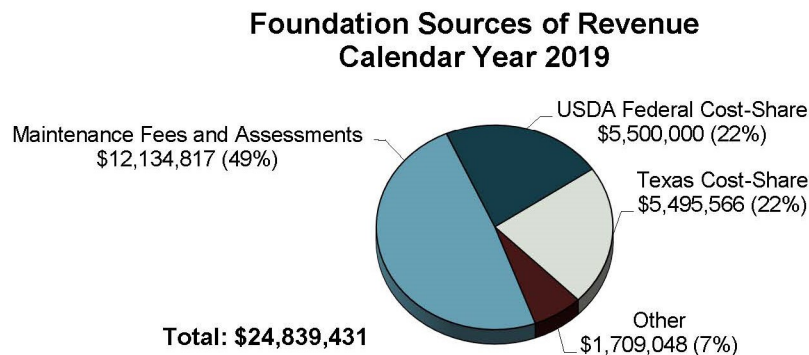
# FOUNDATION AT A GLANCE

In 1993, the Legislature created the Texas Boll Weevil Eradication Foundation in response to the devastating effects of pests on the cotton industry.<sup>1</sup> The foundation, a nonprofit, quasi-governmental agency, works to eradicate the pink bollworm and boll weevil in Texas, the latter of which has caused more than \$23 billion in nationwide economic losses since its introduction to the United States in the 1890s.<sup>2</sup> The foundation's efforts have contributed to the eradication of the boll weevil from 97 percent of cotton acres in Texas and the complete eradication of the pink bollworm.<sup>3</sup> To maintain this progress, the foundation continues to perform the following functions:

- Detects and monitors boll weevil infestations.
- Treats areas of infestation with pesticides.
- Maintains areas of eradication and treats instances of re-infestation.

## Key Facts

- **Membership Zones.** Texas consists of 16 eradication zones, reflected in the map on Page 14, *Texas Boll Weevil Eradication Foundation Zones*.<sup>4</sup> Only the Lower Rio Grande Valley (LRGV) zone continues to have an ongoing presence of boll weevils and receives active eradication efforts from the foundation. The foundation performs monitoring and maintenance activities in the remaining 15 zones, which have generally eliminated the boll weevil.
- **Governance.** The foundation's board of directors provides policy direction and oversight of the foundation's eradication efforts. The board consists of 21 members who serve four-year terms.<sup>5</sup> Each of the 16 eradication zones elects a cotton grower to serve on the board, and the commissioner of the Texas Department of Agriculture (TDA) appoints the remaining five board members.<sup>6</sup> Appointments must include two representatives from the cotton production industry, an agricultural lender, an independent entomologist, and a representative from the pest control industry.<sup>7</sup> TDA provides oversight of the board and foundation by approving the foundation's budget, conducting board member elections, and exercising rulemaking and enforcement authority.
- **Funding.** The foundation received \$24.8 million in revenue in calendar year 2019, including \$12.1 million from cotton grower assessments, \$5.5 million from the state, and \$5.5 million in federal funding. The foundation also received other income, including earned interest income and proceeds from the sale of foundation assets. The chart, *Foundation Sources of Revenue*, shows the foundation's revenues for calendar year 2019.<sup>8</sup>

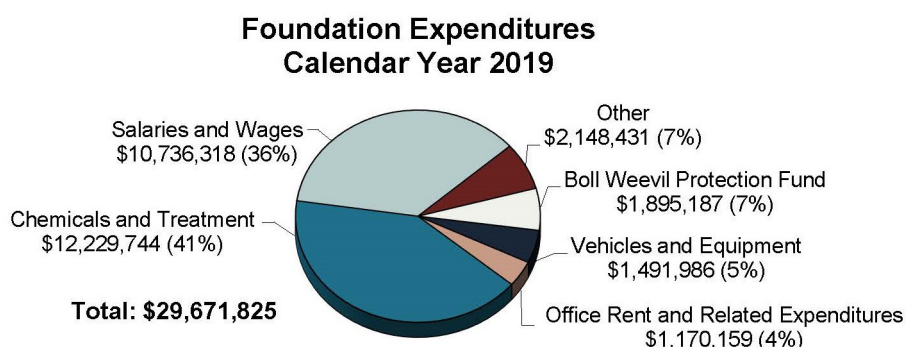


Cotton growers in the LRGV zone pay a per-acre assessment at one of two rates based on their use of dryland or irrigated farming. Growers in the West and East Texas maintenance areas, which have been declared functionally or fully eradicated of the boll weevil, pay a maintenance fee based on the number of cotton bales produced. The table, *Grower Assessments by Region*, lists the assessment rates in each area in calendar year 2019.

#### Grower Assessments by Region – Calendar Year 2019

Region	Assessment	Number of Units
Lower Rio Grande Valley		
Dryland Acres	\$14 per acre	126,941 acres
Irrigated Acres	\$28 per acre	86,923 acres
West Texas Maintenance Area	\$1 per bale	4,639,474 bales
East Texas Maintenance Area	\$2 per bale	1,506,269 bales

The foundation spent about \$29.7 million in calendar year 2019, as detailed in the chart, *Foundation Expenditures*. The foundation's expenditures were roughly \$4.8 million in excess of 2019 revenue due to increased operating costs. However, the foundation maintains a fund balance to account for unexpected shortfalls, which can also include low revenues from crop failures or increased expenditures from boll weevil outbreaks. As of January 2020, the fund had a balance of \$101.9 million.



In 2020, the foundation will receive \$5.6 million from the multi-state Boll Weevil Protection Fund administered by the National Cotton Council of America as a reimbursement for 2019 eradication efforts. The Boll Weevil Protection Fund dedicates money for active eradication efforts in years where foundation expenditures exceed revenue. The foundation has historically accumulated debt to fund its operations, but since 2016 has decreased its outstanding debt from \$6.3 million to \$1.9 million, and is expected to fully pay off its debt in 2020.

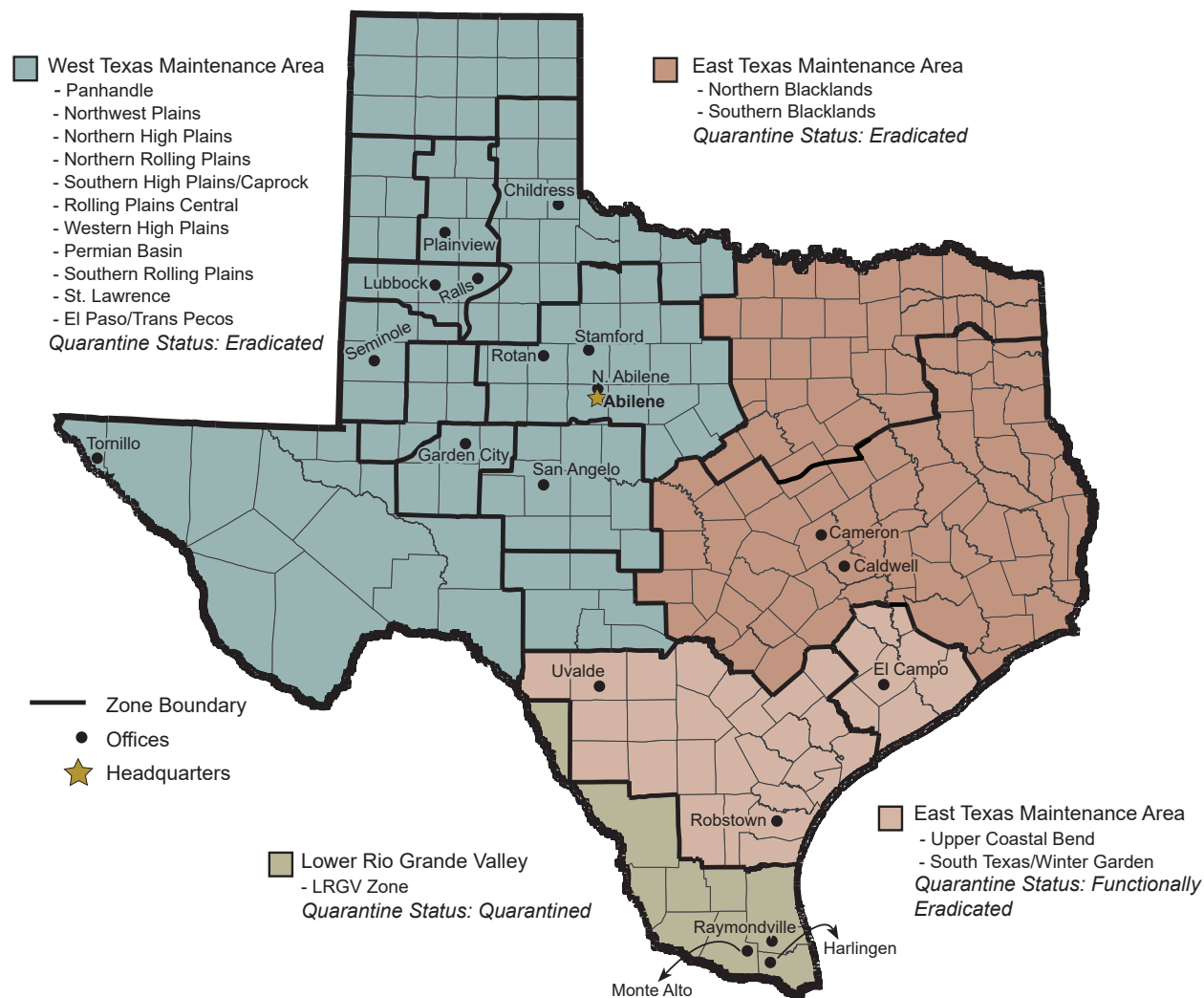
- **Staffing.** The foundation employed 106 full-time and 146 seasonal employees in 2019. The foundation maintains 21 offices across the state, with a majority of employees located in the LRGV zone. Appendix D compares the foundation's workforce to the percentage of minorities in the statewide civilian labor force for the past three calendar years.
- **Eradication efforts.** The foundation uses a combination of traps and pesticides to detect and eliminate boll weevils. In 2019, the foundation's traps captured nearly 46,000 boll weevils. The foundation uses trap data to assist TDA in designating each zone with one of four quarantine statuses defined

in the table on the following page, *TDA Quarantine Status Designations*. In calendar year 2019, the foundation treated approximately 1.5 million acres of cotton. The foundation also monitors compliance with the deadlines set by TDA to destroy cotton stalks that could provide suitable habitat for boll weevils; any noncompliance is enforced by TDA through penalty fee assessments.<sup>9</sup>

### TDA Quarantine Status Designations

Designation <sup>10</sup>	Description
Quarantined	An area with more than 0.025 boll weevils per trap per week, or an area that is not declared as suppressed, functionally eradicated, or eradicated.
Suppressed	An area in which some boll weevil reproduction may be present in the area. The boll weevil population must be equal to or less than 0.025 boll weevils per trap per week for the cotton-growing season.
Functionally Eradicated	An area meeting the trapping criteria for a suppressed area with no confirmed evidence of boll weevil reproduction occurring in the area. The boll weevil population must be equal to or less than an average of 0.001 boll weevils per trap per week for the cotton-growing season.
Eradicated	An area apparently free of boll weevil or in which no boll weevils were captured for a period of at least one cotton-growing season.

### Texas Boll Weevil Eradication Foundation Zones



<sup>1</sup> Chapter 8 (S.B. 30), Acts of the 73rd Texas Legislature, Regular Session, 1993.

<sup>2</sup> U.S. Department of Agriculture Office of Inspector General, *Texas Boll Weevil Eradication Foundation Cooperative Agreement Audit Report 33099-0001-23*, (Washington, DC: U.S. Department of Agriculture Office of Inspector General, 2018), 1.

<sup>3</sup> U.S. Department of Agriculture, "Eradication of Pink Bollworm: A Proclamation," October 19, 2018, <https://www.usda.gov/sites/default/files/documents/usda-pink-bollworm-proclamation.pdf>.

<sup>4</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 74.1021, Texas Agriculture Code; 4 T.A.C. Chapter 3.

<sup>5</sup> Section 74.107, Texas Agriculture Code.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Sections 74.113, 74.0032, and 74.114, Texas Agriculture Code.

<sup>9</sup> Section 74.0032, Texas Agriculture Code.

<sup>10</sup> 4 T.A.C. Section 20.1(a).

# ISSUE 1

## The GO TEXAN Program Lacks the Guidance and Direction Needed for a Successful Program.

### Background

The Texas Department of Agriculture (TDA) is responsible for promoting Texas agriculture, horticulture, and other industries that produce or develop commodities in the state.<sup>1</sup> In 1999, the Legislature created the department's GO TEXAN program to increase consumer awareness of and expand the markets for Texas agricultural products. The Legislature also established the GO TEXAN Partner Program at TDA that awarded matching state grant funds to agriculture industry participants for marketing activities; however, funding for the partner program was discontinued in 2011.



Today, the GO TEXAN program offers voluntary membership to businesses that grow, produce, process, or manufacture products in Texas, and then promotes these businesses through social media and electronic newsletters, and at the Texas State Fair and other trade shows.<sup>2</sup> In addition, members may display the program's distinctive logo on products, websites, or at business locations to advertise their product is Texas-produced. Six program staff and 11 field staff carry out the program's functions, in addition to implementing the department's other trade and marketing programs. TDA is appropriated about \$240,000 annually, comprised of membership dues, to fund the program.

In fiscal year 2019, the GO TEXAN program enrolled 1,451 businesses into three membership categories, reflected in the table, *Active GO TEXAN Memberships*. Businesses that grow or manufacture a commodity in Texas, or add value in-state to products that originate out-of-state, such as by cooking or blending, qualify for a "product" class membership.<sup>3</sup> Restaurants selling products made in Texas can become "restaurant" members. Finally, other businesses and entities, such as cities, can become "associate" members to support the program.<sup>4</sup> Each membership category is divided into tiers that receive graduated benefits, such as being featured in promotional materials or having early registration for trade show booth slots.

**Active GO TEXAN Memberships – FY 2019**

Membership Category	Tier Levels	Annual Membership Fee	Membership Totals	Membership Fee Revenue
Product	Tier 1	\$100	1,090	\$109,000
	Tier 2	\$500	75	\$37,500
	Tier 3	\$1,000	18	\$18,000
	Champion Sponsor	\$5,000	7	\$35,000
Restaurant	Tier 1	\$100	49	\$4,900
	Tier 2	\$500	2	\$1,000
Associate	Tier 1	\$100	181	\$18,100
	Tier 2	\$500	14	\$7,000
	Tier 3	\$1,000	6	\$6,000
	Champion Sponsor	\$5,000	1	\$5,000
<b>Totals</b>			<b>1,451</b>	<b>\$243,100</b>

## Findings

### **TDA cannot properly administer the GO TEXAN program without a clear mission, goals, or objectives.**

Within the Sunset Act, the Legislature has established criteria for the Sunset Commission and staff to consider when reviewing an agency, which generally focus on the agency's efficiency, effectiveness, fairness, and accountability.<sup>5</sup> In evaluating the GO TEXAN program, Sunset staff identified several concerns within each criteria that stem from the program's lack of a clear statutory purpose. While statute generally authorizes the department to "establish programs to promote and market agricultural products and other products grown, processed, or produced in the state," including use of a logo, it no longer provides a clear purpose or direction for the GO TEXAN program.<sup>6</sup>

Without a clear mission, goals, and objectives, the GO TEXAN program is rudderless.

Originally, the statute for the GO TEXAN Partner Program clearly specified the purpose of the program, required TDA to develop an agriculture promotional campaign and criteria for funding projects, and created an advisory board to advise the partner program.<sup>7</sup> When funding for the partner program ceased, TDA's remaining statute was not updated to clearly define the more general GO TEXAN program's purpose, and the department has not since established its own goals or guidelines for the program. Over the last few years, the department has seen declining GO TEXAN membership and shortfalls in dues needed to cover its annual appropriation. Without a clear mission, goals, and objectives, the GO TEXAN program is rudderless, changing course in response to turnover in leadership, staff, and program members.

TDA does not track or evaluate staff performance in implementing GO TEXAN activities.

- **Efficiency.** The department promotes GO TEXAN products without a clear plan for directing resources where they are most needed. For example, field staff operate largely autonomously in setting their schedules; TDA does not set target amounts of meetings, events, or other activities for staff to perform; and TDA does not track or evaluate the performance of its staff in implementing program activities, missing critical information regarding the allocation of its resources. Headquarters staff estimate the amount of time program activities should take, but field staff who appear at events do not track or report the actual time spent on program activities for comparison. Further, while field staff have set themselves an informal target to meet with each GO TEXAN member twice a year, TDA does not track and evaluate whether staff meets this goal. Finally, TDA does not have a consistent process to follow up with businesses with expired memberships or prevent them from continuing to use the GO TEXAN logo, instead relying on field staff to notice non-member products using the logo in addition to their other duties with no clear priority between competing responsibilities.
- **Effectiveness.** TDA does not set performance targets or collect data on the results of the GO TEXAN program, such as the effectiveness of different campaigns or program efforts, the impacts seen by member businesses, or



the return on investment of program expenditures. Although the department calculates the number of entities enrolled in the GO TEXAN program and the total number of businesses assisted each year, TDA does not holistically evaluate the benefits members receive from program efforts. For example, staff promotes individual members at random through social media and e-newsletters without a clear approach or objective, and promotional spots at trade show events are generally filled on a first-come, first-served basis with limited analysis of the members or products that could benefit most.

TDA does not holistically evaluate the benefits members receive from the GO TEXAN program.

TDA previously participated in academic studies related to the economic impact of its GO TEXAN, wine marketing, and shrimp marketing programs in 2004, 2011, and 2016, respectively, but has not undertaken such studies recently. The department continues to rely on these outdated results to gauge member satisfaction with the programs and consumer perception of the desirability of Texas products. Staff rarely conducts general surveys of GO TEXAN members due to low participation, and while the department has conducted limited surveys of participants in specific events, TDA does not regularly gather such data for other program activities, such as social media marketing campaigns. Without consistent evaluation across all of its marketing programs, the department cannot assess the value of the GO TEXAN program to its members or the state or make informed decisions about needed changes to the program.

- **Fairness.** The absence of formalized guidelines for the GO TEXAN program risks treating members unfairly, particularly regarding membership eligibility and available benefits. TDA offers an “associate” membership, which allows members to join the program even if they do not actually produce or promote a particular Texas product, by merely expressing a desire to “assist the department with the promotion and implementation of the GO TEXAN program.”<sup>8</sup> However, TDA rules fail to define what is required to become an “associate” member. Without clearly defined eligibility requirements, TDA has no standards in place to evaluate whether an associate’s membership promotes the program and does not solely benefit the participant. For example, TDA approved an associate membership for AM Racing, a NASCAR team, to display the GO TEXAN logo on its racing truck. Without set membership standards, at first glance, it is unclear how display of the logo on racing vehicles furthers the GO TEXAN program.

A lack of transparency and unclear benefit guidelines raise the appearance of a pay-to-play culture.

Without program guidelines, some members have also received benefits beyond what TDA regularly offers to other members, such as the example described in the textbox on the following page, *Ad Hoc Benefits*. In light of the GO TEXAN program’s graduated tiers — where some members pay more to receive increased services — the lack of transparency and clear guidelines pertaining to program benefits raises the appearance of an unfair pay-to-play culture. While the opportunities staff provides may be appropriate to advance the GO TEXAN program, members surveyed by Sunset staff complained the program focuses too heavily on certain members over others. Further, as discussed previously, the department lacks policies for use of the GO TEXAN logo by businesses with expired



memberships. This practice fails to ensure a fair playing field and allows some businesses to get something for nothing and could endanger the department's trademark and control over the logo in the future. Around 400 members do not renew their GO TEXAN membership each year, but TDA does not ensure these businesses stop using the GO TEXAN logo. Field staff may occasionally notice a non-member product displaying the logo, but do not do any systematic inspections or other follow-up with expired businesses.

### Ad Hoc Benefits

**Preferred exporter title.** Distribution company McLane Global approached TDA with a request to pay \$15,000 per year for an elevated membership title. The department created a "preferred exporter" membership without formal rulemaking or notice to other GO TEXAN members. Though now technically available to any member, TDA has never advertised this opportunity to program participants nor considered whether other specialized membership options would be valuable to the program. McLane remains the only "preferred exporter" and uses this title in ways that suggests it is a unique designation, calling its export of Texas goods the GO TEXAN Global Export program.

- **Accountability.** Ultimately, because neither statute nor department rules provide guidance as to the overall mission, goals, or objectives of the GO TEXAN program, the department has little accountability to the Legislature or member businesses for the efficiency, effectiveness, or fairness of the program.<sup>9</sup> With only a vague directive that TDA promote Texas agricultural products, the Legislature cannot hold TDA accountable to specific standards for administering the GO TEXAN program. In addition, members cannot evaluate how the department expends the fees they pay for program activities, the reasonableness of those fees, or the value the program returns in exchange. Surveys of former GO TEXAN members indicate a top reason for discontinuing membership was failure to see benefits from the program.

## Sunset Staff Recommendations

### *Change in Statute*

#### 1.1 Re-establish the GO TEXAN program and its purpose in statute.

Under this recommendation, statute would be amended to clearly establish the GO TEXAN program and its purpose, building off of the language from the now defunded GO TEXAN partner program. This language directed TDA to use the program to "encourage the development and expansion of markets for Texas agricultural products."<sup>10</sup> The department would be required to adopt rules for the program, including clear membership eligibility requirements and grounds for denial, membership categories and tiers, and membership benefits of the program.

## **Management Action**

### **1.2 Direct TDA to establish a mission, goals, and objectives for the GO TEXAN program.**

This recommendation would direct TDA to develop a clear strategic plan for the GO TEXAN program, including the mission and goals that the GO TEXAN program is meant to achieve, as well as objectives for how the department will reach those goals. A formal mission and other standards will help ensure staff and GO TEXAN members work toward the same goals and put the department's resources to more productive use. Once developed, TDA should also consider if its current rules and policies need updating to support the purpose and newly established mission and goals of the program.

### **1.3 Direct TDA to develop a policy to ensure expired members comply with department rules.**

Under this recommendation, TDA would develop a policy to ensure expired members comply with the requirements of the GO TEXAN program, such as implementing systematic spot inspections by field staff to ensure expired members no longer use the GO TEXAN logo. Monitoring for compliance will help prevent dilution of the GO TEXAN brand over time and ultimately the deterioration of the program's integrity.

### **1.4 Direct TDA to establish clear performance measures to evaluate its progress in meeting GO TEXAN program goals.**

Under this recommendation, once the department establishes the goals of the GO TEXAN program under Recommendation 1.2, it should develop performance measures to evaluate the effectiveness and impact of the GO TEXAN program. The measures could include annual targets, such as the number of contacts with each GO TEXAN member or growth in program membership, and broader measures to help achieve long-term goals, such as increased marketing of GO TEXAN products in Texas retail stores. This information would allow the department to fully and consistently analyze the effectiveness of the program and direct its future efforts for members.

## **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the state. TDA would be able to develop and implement performance goals and other improvements for the GO TEXAN program with existing resources. In addition, the department is required to generate revenue to cover the cost of the program, so any additional expenditures that result from these recommendations should be cost-neutral.<sup>11</sup>

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 12.002, Texas Agriculture Code.
- <sup>2</sup> “About GO TEXAN,” Texas Department of Agriculture, accessed May 14, 2020, <http://www.gotexan.org/AboutUs/AboutGOTEXAN.aspx>.
- <sup>3</sup> 4 T.A.C. Section 17.52.
- <sup>4</sup> 4 T.A.C. Sections 17.57 and 17.60.
- <sup>5</sup> Section 325.011, Texas Government Code.
- <sup>6</sup> Section 12.0175, Texas Agriculture Code. In contrast, TDA’s promotion of the Texas wine and wild-caught shrimp industries is clearly directed by statute and department rules. Chapters 47 and 50b, Texas Agriculture Code; 4 T.A.C. Sections 17.200–.202 and 17.400–.402.
- <sup>7</sup> Chapter 46, Texas Agriculture Code; 4 T.A.C. Sections 17.300–310.
- <sup>8</sup> 4 T.A.C. Section 17.57.
- <sup>9</sup> Section 12.0175, Texas Agriculture Code.
- <sup>10</sup> Ibid.
- <sup>11</sup> Section 24 (Appropriations Limited to Revenue Collections: Cost Recovery Program), page VI-8, Article VI (H.B. 1), Acts of the 86th Legislature, Regular Session 2019 (the General Appropriations Act).

## ISSUE 2

# TDA's Aquaculture Licensing Program Is Not Necessary to Protect the Public.

### Background

The Texas Department of Agriculture (TDA) administers a diverse set of regulatory programs comprising more than 124,000 licenses and registrations in fiscal year 2019. TDA's Aquaculture program began regulating the business of producing and selling fish and shellfish raised in private facilities in 1989. Individuals may hold a license for operating a facility that raises fish or shellfish, or for transporting and selling fish or shellfish from a vehicle.<sup>1</sup> The department coordinates regulation of aquaculture with the Texas Commission on Environmental Quality (TCEQ), which oversees facility discharge of wastewater into public waterways, and the Texas Parks and Wildlife Department (TPWD), which determines the types of fish and shellfish species that facilities can raise.<sup>2</sup> TDA collects basic information from applicants for licensure, each of whom must be approved by TCEQ and TPWD before TDA issues a license. In fiscal year 2019, TDA issued 168 facility licenses and nine vehicle licenses.

The Sunset Advisory Commission has a long history of evaluating regulatory programs, guided by standards set in the Sunset Act.<sup>3</sup> In 2013, the Legislature re-emphasized the need for a rigorous assessment of state regulation by adding criteria for Sunset reviews of licensing and regulatory programs, summarized in the textbox, *Sunset Licensing and Regulatory Questions*.<sup>4</sup> Sunset reviews evaluate the need for agencies and programs; when evaluating licensing and regulatory programs, the burden is on proving the need for the regulation. The assessment of need occurs through a detailed analysis of the potential harm, whether in terms of physical harm or in more subjective terms, such as financial or economic loss. With these criteria in mind, Sunset staff reviewed the array of regulatory programs administered by TDA and found no need for continued regulation of aquaculture.

#### Sunset Licensing and Regulatory Questions

- Does the program serve a meaningful public interest and provide the least restrictive form of regulation?
- Could the program's regulatory objectives be achieved through market forces, private certification and accreditation programs, or enforcement of other laws?
- Are the skill and training requirements consistent with a public interest, or do they impede applicants?
- What is the impact of the regulation on competition, consumer choice, and cost of services?

### Findings

#### The department's aquaculture license does not serve a public interest.

- **No meaningful enforcement activity.** TDA has taken no enforcement actions against aquaculture licensees. The department was unable to report any complaints filed against aquaculture licensees, nor could it recall ever using its authority to deny, suspend, or revoke an aquaculture license. TDA does not perform any inspections or enforce regulations for aquaculture facilities or for licensees operating out of vehicles. The lack of any enforcement activity indicates the Aquaculture program is unnecessary and deregulation would present a low risk of harm to the public and the state's natural resources.

TDA does not perform the regulatory activities that are hallmarks of meaningful oversight.

- **Licensure adds no value.** The Aquaculture program is merely an administrative task that adds no value or protection to the public or the state's natural resources. Licensure essentially serves as a registration of aquaculture businesses and a collection of basic information, such as the physical location of facilities. However, TDA does not use this information, nor do other agencies with shared regulatory oversight who rely on their own robust data collection. Further, TDA does not perform background checks on applicants, requires no minimum education or financial surety, and performs no examinations to ensure applicants' familiarity with state regulations, which are typical hallmarks of meaningful regulatory oversight. TDA also does not require an initial facility or vehicle inspection before obtaining a license and, in the rare instance when TDA denies a license, it is for non-compliance with another agency's regulatory requirements, not failure to comply with TDA's own licensure requirements.

### **Regulation of aquaculture by other state agencies adequately protects consumers.**

TCEQ and TPWD have stronger aquaculture regulations than TDA.

- **Water quality protection.** All facilities that discharge any amount of water into Texas waterways must obtain a wastewater permit from TCEQ, including aquaculture facilities.<sup>5</sup> Facilities may qualify for a general or a site-specific permit, depending on the annual production of a facility and whether it discharges into public waters.<sup>6</sup> TCEQ monitors facilities' self-reported wastewater discharge, performs on-site investigations to determine compliance with applicable rules and permit requirements, and takes enforcement action when necessary. While smaller facilities may not receive regular inspections, TCEQ monitors the water quality of Texas waterways and may enter and inspect an aquaculture facility at any time for compliance.<sup>7</sup>
- **Protection against invasive species.** Any facility that intends to raise an invasive, non-native species of fish or shellfish must obtain an exotic species permit from TPWD and comply with safety standards and reporting requirements.<sup>8</sup> TPWD performs inspections on permit holders based on the risk of exotic species escaping into public waterways and the risk of disease in exotic shellfish species. TPWD reports disease outbreaks to the Texas Animal Health Commission and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to ensure appropriate remediation measures are taken. TPWD also issues and regulates retail and wholesale fish dealer and vehicle licenses, but exempts the sale or transportation of aquatic products from an aquaculture facility to a retailer or wholesaler.<sup>9</sup>
- **Food safety and sanitation.** The Department of State Health Services (DSHS) regulates and inspects sanitation of shellfish growing areas and seafood processing facilities involved in the manufacturing of food.<sup>10</sup> DSHS also tracks salmonella and other pathogen outbreaks, and can report outbreaks to APHIS if further monitoring and emergency response is needed.

## Sunset Staff Recommendation

### *Change in Statute*

#### **2.1 Eliminate TDA's Aquaculture program.**

This recommendation would eliminate the requirement for individuals who produce, sell, or transport fish and shellfish to obtain an aquaculture license from TDA, effective September 1, 2021.<sup>11</sup> Under the recommendation, statute would be updated to remove references to the aquaculture license while continuing the remaining statutory requirements.<sup>12</sup> Aquaculture facilities would continue to be subject to TPWD, TCEQ, and DSHS regulations, including the remaining aquaculture regulations under Chapter 134 of the Texas Agriculture Code such as record retention and coastal zone shrimp production requirements. Regulatory exemptions for aquaculture facilities would also continue as currently authorized so that aquaculture facilities that only sell or transport aquatic products raised at their own facilities would continue to be exempt from obtaining certain TPWD permits. Because TDA will no longer receive aquaculture license applications, the department should coordinate with TPWD and TCEQ to update the existing Memorandum of Understanding with those agencies to ensure they continue to share information necessary to perform their regulatory functions. Ultimately, this recommendation would remove an unnecessary burden on aquaculture businesses and ensure the state imposes the least amount of regulation necessary to protect the public interest.

### **Fiscal Implication**

Overall, this recommendation would not have a significant fiscal impact to the state. Discontinuing TDA's Aquaculture program would result in a loss of about \$4,500 annually to general revenue. A decrease of approximately \$12,300 annually in licensing fee revenue currently collected by TDA would be offset by a savings of about \$7,800 for administering the program.

#### **Texas Department of Agriculture**

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Loss to the General Revenue Fund</b>	<b>Net Loss to the General Revenue Fund</b>
2022	\$7,800	\$12,300	\$4,500
2023	\$7,800	\$12,300	\$4,500
2024	\$7,800	\$12,300	\$4,500
2025	\$7,800	\$12,300	\$4,500
2026	\$7,800	\$12,300	\$4,500



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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 134.001, 134.011, and 134.012, Texas Agriculture Code.

<sup>2</sup> Section 26.0345, Texas Water Code; Section 66.007, Texas Parks and Wildlife Code.

<sup>3</sup> Section 325.0115, Texas Government Code.

<sup>4</sup> Section 325.0115(b), Texas Government Code.

<sup>5</sup> Section 26.0345, Texas Water Code; Section 134.011(d), Texas Agriculture Code.

<sup>6</sup> Sections 26.027 and 26.040, Texas Water Code.

<sup>7</sup> Sections 361.032, 361.033, and 361.037, Texas Health and Safety Code; 40 C.F.R. Section 122.41(i); Section 26.014, Texas Water Code.

<sup>8</sup> Sections 66.007(a) and (h), Texas Parks and Wildlife Code; 31 T.A.C. Sections 57.129 and 57.114.

<sup>9</sup> Sections 47.009(c), 47.010(b), 47.011(c), and 47.013(c), Texas Parks and Wildlife Code; 31 T.A.C. Sections 53.13(a)(1)–(4).

<sup>10</sup> Chapters 431 and 436, Texas Health and Safety Code (e.g., see Sections 431.042, 431.241, 436.022 and 436.112, Texas Health and Safety Code).

<sup>11</sup> Sections 134.003, 134.006, 134.011, 134.012, 134.014, 134.015, and 134.031, Texas Agriculture Code.

<sup>12</sup> Sections 47.009, 47.0091, 47.010, 47.011, 47.0111, 47.012, 47.013, 47.014, 47.034, 66.007, 66.0072, 66.020, 66.021, and 66.111, Texas Parks and Wildlife Code.

## ISSUE 3

# The Regulation of Prescribed Burning Should Be Continued and Consolidated Within the Texas Department of Agriculture.

## Background

In 1999, the Legislature established the Prescribed Burning Board to develop standards for the safe and responsible use of burning to clear undergrowth and reduce the impact of wildfires on property in Texas.<sup>1</sup> The Prescribed Burning Board was also tasked with establishing the education, experience, and training requirements for certified prescribed burn managers, listed in the textbox, *Prescribed Burn Manager Minimum Certification Requirements*.<sup>2</sup> Although Texas law generally allows individuals to burn on their own property, landowners can shift liability for potential burning damages to prescribed burn managers, who are statutorily required to carry liability insurance.<sup>3</sup> State law also allows prescribed burn managers to operate during county burn bans, since the conditions that trigger burn bans also increase the positive effect of prescribed burns.<sup>4</sup> According to the Texas A&M Forest Service, prescribed burns were used on a record 402,000 acres of land in Texas in 2018.<sup>5</sup>

### Prescribed Burn Manager Minimum Certification Requirements

- Three years of experience on a burn team
- 30 days of work on prescribed burns
- Service as the ‘burn boss’ or lead on prescribed burns for five days
- 24 hours of classroom instruction
- Pass board certification exam
- \$2 million aggregate liability coverage
- \$500 fee

The Prescribed Burning Board is a semi-independent board within the Texas Department of Agriculture (TDA).<sup>6</sup> Five of the board’s 13 members are landowners, and the others represent university systems and related agencies, such as the Texas A&M Forest Service.<sup>7</sup> In addition to certifying prescribed burn managers, the board also approves lead burn instructors to provide the training required for certification.<sup>8</sup> At the end of fiscal year 2019, the board had certified 92 prescribed burn managers and approved 18 lead burn instructors. TDA investigates complaints and enforces board rules on behalf of the board. Most of TDA’s few enforcement actions have been for administrative violations, such as renewing a certification late or lacking sufficient continuing education hours. TDA reported spending \$540 in travel costs and 520 staff hours to support the board in fiscal year 2019.

## Findings

### Texas has a continuing need to regulate prescribed burning.

Prescribed burning controls vegetation that can become fuel for wildfires and helps renew, restore, or maintain ecosystems for timber and agricultural use. The board’s standards are designed to ensure prescribed burn managers are trained to competently administer burns and prevent smoke or flames from harming nearby people and property, particularly in dry and windy weather conditions. Eleven states have certification programs for prescribed burning, as shown in the textbox on the following page, *States With Required Prescribed*

### States With Required Prescribed Burning Certifications

Alabama	North Carolina
Colorado	South Carolina
Florida	Tennessee
Georgia	Texas
Louisiana	Virginia
Mississippi	

*Burning Certifications.* Additionally, prescribed burn managers must carry significant insurance, protecting property owners from damages caused by a burn. TDA protects the public through its enforcement activities by taking action against prescribed burn managers who do not meet board standards and stopping untrained persons who misrepresent themselves as prescribed burn managers.

### Neither the board nor TDA have full authority to regulate prescribed burning.

Neither TDA nor the board have clear rulemaking authority to fully regulate prescribed burning in Texas. Statute gives TDA narrow rulemaking authority to enforce the prescribed burning law, and broad rulemaking authority to administer its various functions within the Agriculture Code. However, TDA does not have general authority to adopt rules for the prescribed burning statute, which is in the Natural Resources Code.<sup>9</sup> At the same time, this statute charges the board with establishing standards for prescribed burning and certification, but does not explicitly give the board rulemaking authority needed to adopt those standards.<sup>10</sup> Without clear, comprehensive authority assigned to either entity, the current rules related to training, fees, continuing education, and proper conduct of prescribed burning could be challenged, jeopardizing public protection.<sup>11</sup> The prescribed burning statute already gives TDA clear authority to develop rules for investigating and taking action on violations of the prescribed burning statute; vesting the remainder of rulemaking authority for prescribed burning with TDA would harmonize all rulemaking authority into one entity.<sup>12</sup>

The board's knowledge and expertise is critical to help TDA regulate prescribed burning.

Even with rulemaking consolidated within TDA, the board's knowledge and expertise in prescribed burning would still be needed to help develop policies and rules to protect the public. Having the board serve as an advisory committee to TDA would maintain the board's critical role in and benefit to these processes. State agencies often rely on advisory committees for specific subject matter expertise to inform rulemaking, improve policy and procedure, and provide general best practices. TDA currently uses advisory committees for some of its other programs, including regulation of the structural pest control profession, which would provide a model for the department's relationship with the prescribed burning board going forward. Consolidating prescribed burning rulemaking at TDA and shifting the board to an advisory capacity would maintain valuable and needed expertise while leaving the mechanics of rulemaking, certification, and enforcement to the department.

### Some board practices do not follow model licensing standards, which could potentially affect the fair treatment of licensees.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset

Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the board's practice or rules differ from these model standards and describes potential benefits of conforming to standard practices.

- **Subjective qualifications for licensure.** Licensure qualifications should not arbitrarily overburden applicants or create unreasonable barriers to entering a profession. In 2019, as part of an update to verify prescribed burn manager qualifications, the board added a requirement for applicants to discuss lessons learned or mistakes made during the five burns needed to qualify for certification.<sup>13</sup> However, this is a subjective, vague requirement that could be assessed inconsistently or unfairly. For example, the board could deny certification based on the type of mistakes described or the presumed degree of an applicant's candor provided in the description rather than on objective standards like field experience or exam passage. While well-intended, this subjective requirement increases the risk of treating applicants unequally or arbitrarily.
- **Unauthorized reciprocity rules.** A licensing agency should have authority and procedures to evaluate, recognize, and accept credentials and qualifications of out-of-state applicants for a Texas license if they are substantially equivalent to Texas' standards. The board does not currently have authority to enter into reciprocity agreements with other states, but board rule authorizes reciprocal agreements with neighboring states that could have more relaxed training and experience standards for prescribed burn managers.<sup>14</sup> Although no such agreements are currently in place, the rule could bind Texas to admitting out-of-state prescribed burn managers with less training or experience than the board mandates to operate in Texas, which undermines public safety. While reciprocity agreements can streamline the certification process, they should not inadvertently allow less qualified burn managers to practice in Texas.

Subjective  
license criteria  
risks treating  
applicants  
unequally or  
arbitrarily.

The board needs  
clear authority  
to credential  
out-of-state  
prescribed burn  
applicants.

## Sunset Staff Recommendations

### *Change in Statute*

#### **3.1 Clearly authorize TDA to adopt rules for all prescribed burning standards and continue the Prescribed Burning Board as an advisory committee to the department.**

This recommendation would give TDA clear authority to adopt rules to implement statutorily required standards for the prescribed burning program, such as curriculum, field experience, instructor requirements, and insurance requirements.<sup>15</sup> To preserve continuity of regulation under the prescribed burning statute, the recommendation would direct TDA to propose and formally adopt the board's existing rules, along with any necessary changes, by March 1, 2022.

This recommendation would also convert the current 13-member Prescribed Burning Board into an advisory committee at TDA, retaining its current size and membership. The department would be able to use the board for advice on proposed rules, and could allow the board to perform application reviews and approvals, and recommend enforcement actions. Following the model of TDA's Structural Pest Control Advisory Committee, this recommendation would allow the board to provide non-binding recommendations on proposed rules.<sup>16</sup>

As part of this recommendation, the board's separate statutory Sunset provision would be repealed, and the new advisory committee would be exempted from the duration limits in Chapter 2110, Texas Government Code, allowing it to provide expertise to and be reviewed with the department in future Sunset review cycles. This recommendation would ensure the benefits and protections of prescribed burning continue to be available to Texas landowners, while clarifying the rulemaking authority needed for effective state regulation.

### **3.2 Provide clear statutory authority for the department to issue licenses by reciprocity for substantially equivalent states.**

This recommendation would authorize the department to enter into reciprocal agreements with other states that have substantially equivalent requirements as Texas for certified prescribed burn managers. In the event an applicant is certified in a state with requirements that do not meet Texas' standards, the department would require the applicant to follow its regular application process. This recommendation would streamline the approval process for eligible out-of-state prescribed burn managers to offer their services in Texas.

## ***Management Action***

### **3.3 Direct the board to remove subjective criteria from its certification application.**

This recommendation would direct the board to remove subjective sections of its certification applications, including the section that requires applicants to discuss mistakes made during qualification burns. The board should ensure its applications ask only for objective information relevant to the qualifications necessary to receive certification and that ties directly to board standards. Removing subjective application criteria would ensure only objective criteria guide the evaluation of applicants. The board should update its application by December 1, 2020.

## **Fiscal Implication**

These recommendations would not result in a fiscal impact to the state. Any changes needed to update rules, evaluate other states for reciprocity agreements, and amend the applications for burn manager certification could be accomplished with existing resources.

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<sup>1</sup> Chapter 1432 (H. B. 2599), Acts of the 76th Texas Legislature, Regular Session, 1999.

<sup>2</sup> 4 T.A.C. Sections 226.1–226.5, Section 227.1, and Section 230.4.

<sup>3</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 153.002 and 153.081, Texas Natural Resources Code.

<sup>4</sup> Section 352.081(f), Texas Local Government Code.

<sup>5</sup> Texas A&M Forest Service, “Newsroom: Record Number of Acres Treated with Prescribed Fire in Texas,” news release, January 28, 2020, <https://tfswb.tamu.edu/content/article.aspx?id=30694>.

<sup>6</sup> Sections 153.041, 153.046, and 153.048, Texas Natural Resources Code.

<sup>7</sup> Section 153.041, Texas Natural Resources Code.

<sup>8</sup> Section 153.048, Texas Natural Resources Code; 4 T.A.C. Section 230.1.

<sup>9</sup> Section 12.016, Texas Agriculture Code; 4 T.A.C. Chapters 225–230.

<sup>10</sup> Section 153.046, Texas Natural Resources Code.

<sup>11</sup> *Ibid.*; 4 T.A.C. Chapters 225–230.

<sup>12</sup> Sections 153.101 and 153.102, Texas Natural Resources Code.

<sup>13</sup> 4 T.A.C. Chapter 226.

<sup>14</sup> 4 T.A.C. Section 226.7.

<sup>15</sup> Section 153.046, Texas Natural Resources Code.

<sup>16</sup> Section 1951.104(b), Texas Occupations Code.





## ISSUE 4

### Key Elements of the Department's Statute and Rules Do Not Conform to Common Regulatory Standards.

#### Background

The Texas Department of Agriculture (TDA) licenses and regulates more than 124,000 growers, producers, and service providers across Texas' agriculture industry, listed in the table, *TDA Licenses*. TDA also conducts regular inspections of licensees and other regulated entities, investigates complaints, and takes enforcement action when necessary. In fiscal year 2019, the department conducted more than 84,000 inspections, investigated more than 5,500 complaints, and issued nearly 900 warnings and more than 1,300 administrative penalties.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the department's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

**TDA Licenses**

Licensing Program	Number
Agricultural Pesticide	46,810
Aquaculture	177
Egg Quality	388
Grain Warehouse	119
Handling and Marketing of Perishable Commodities	293
Nursery Floral	15,506
Organic Certification	225
Seed Quality – Seed Certification	90
Seed Quality – Seed Law	344
Structural Pest Control Services	33,864
Weights & Measures	26,423
<b>Total Licenses</b>	<b>124,239</b>

#### Findings

**Nonstandard requirements and processes could impair the fair treatment and effective regulation of TDA's occupational licensing programs.**

- **Inconsistent implementation of licensing standards.** An agency's consideration of certain qualifications for licenses should be guided by generally applicable occupational regulatory standards.
  - Criminal history evaluations. In determining a license applicant's qualifications for licensure, Chapter 53 of the Texas Occupations Code requires agencies to apply objective standards that directly connect an applicant's criminal history to the duties and responsibilities of the licensed occupation. While the department has adopted rules in compliance with Chapter 53 for its structural pesticide program, it has

not done so for its other occupational licensing programs, including the agricultural pesticide program, service technician licensing, and prescribed burn manager certification.<sup>1</sup> Adopting rules that comply with state law would ensure TDA objectively and fairly evaluates all applicants' criminal history in relation to the profession, and better protects the public.

- Military service. Chapter 55 of the Texas Occupations Code requires agencies to recognize and accommodate the experience of military service members, veterans, and spouses in the licensing and renewal process, explicitly requiring rules in some provisions.<sup>2</sup> TDA has implemented some of the requirements in Chapter 55, but its approach has been piecemeal. For example, TDA's agricultural pesticide program has reciprocity for military spouses that hold a current license in another jurisdiction and credits equivalent military experience for service members and veterans, but lacks required rules regarding exemptions from fees for late renewal.<sup>3</sup> The structural pesticide program also lacks all of the required rules, but provides for expedited application and renewal for military service members, veterans, and spouses.<sup>4</sup> Additionally, TDA's website does not have a prominently posted notice that describes the provisions available to military service members, veterans, and spouses.<sup>5</sup>
- Subjective statutory qualification for licensure. Qualifications for licensure should be clear and not unreasonably restrict entry into practice. Currently, statute requires applicants for a producer license under the state's seed certification law to be of "good character and [have] a reputation for honesty."<sup>6</sup> While of course Texas wants licensees to have good character, the phrases "good character" and "reputation for honesty" are subjective, vague requirements that may be evaluated and determined inconsistently. Removing these subjective requirements would better align the department's evaluation of applicants with other, more objective and verifiable statutory requirements for licensure, such as criminal history.
- **Inefficient inspection procedures.** An agency should have clear inspection procedures to evaluate its licensees and focus its resources on the highest risk areas to the public. The 2009 Sunset review of the department resulted in statutory language authorizing risk-based inspections, but the department still generally schedules its routine inspections based on how long it has been since the last inspection and geographical convenience.<sup>7</sup> For example, when determining to inspect a facility, the department may consider when the last egg quality inspection occurred but not whether the licensee may have had a recent serious violation. In fiscal year 2019, TDA's field inspectors conducted more than 84,000 inspections, as shown in the table on the following page, *Inspections by Program*. The grain warehouse program is the only program that relies on risk factors for inspections.<sup>8</sup> Implementing a

TDA schedules inspections based on time and geographic convenience, not risk.

risk-based focus for the department's other regulatory programs would allow TDA to maximize its limited inspection resources to ensure adequate oversight of its licensees.

- **Inconsistent continuing education audits.** Continuing education (CE) requirements are a proven means of ensuring licensees maintain a working knowledge of recent developments and techniques used in their profession. While TDA audits a limited number of CE courses, the department lacks an audit policy to target its limited auditing resources toward CE providers or courses that most need attention, such as a provider that does not regularly update course content. With an audit policy in place, the department could better monitor the quality of CE courses that are meant to ensure licensees' continued competence to provide services to the public.

### Inspections by Program – FY 2019

Program	Number
Agricultural Pesticide	4,484
Egg Quality	2,093
Grain Warehouse	192
Nursery Floral	8,026
Organic Certification	128
Quarantines	797
Seed Certification	2,712
Seed Law	4,634
Structural Pest Control Services	2,396
Weights and Measures	58,868
<b>Total</b>	<b>84,330</b>

### TDA's inadequate coordination with other agencies creates inefficiencies and inconsistencies.

Agencies should coordinate their activities with other agencies that have overlapping responsibilities or interests. TDA's expansive duties require communication with multiple agencies to ensure effective oversight. However, in practice, the mechanisms for communication have proved inadequate. For example, TDA takes enforcement actions against retail stores for price and weight advertisement violations, but does not coordinate those enforcement efforts with the Office of the Attorney General (OAG), which can interfere with similar consumer fraud investigations and cases prosecuted by the OAG.

As part of its Weights and Measures program inspections, TDA verifies that the scanned price of an item matches the lowest advertised price and that the content weight of a packaged item matches the weight on the label.<sup>9</sup> In fiscal year 2019, TDA conducted more than 2,600 advertisement inspections and pursued 314 enforcement actions against retailers, assessing, on average, a \$500 administrative penalty. However, the OAG also investigates consumer fraud complaints against retailers, which often involve multiple fraudulent transactions and larger civil penalties. Although TDA has reported some advertisement violations to the OAG in the past, the department has no process to ensure consistent communication with the OAG. Establishing a formal agreement regarding the department's potential enforcement actions could prevent TDA from inadvertently interfering with the OAG's prosecution of a retailer by taking a final enforcement action against a retailer that was under investigation by the OAG.

TDA needs more formal communication with other agencies.

Similarly, TDA informally shares information with the Health and Human Services Commission (HHSC) regarding facilities regulated by both agencies, but has no formal agreement in place to ensure that information sharing is

consistent and timely. TDA administers the Child and Adult Care Food Program (CACFP) that distributes public funds for meals to child care facilities and day activity and health services facilities, which must hold a license or registration from HHSC to qualify for the CACFP funds.<sup>10</sup> Although TDA confirms license or registration status of these facilities annually, no formal process exists for TDA to receive notification from HHSC of any enforcement actions against these facilities, such as revocation of their license. Instead, TDA must rely on hunches or hearsay to become aware of any violations that could affect a facility's funding eligibility. Establishing a more formal notification process with HHSC would allow both agencies to more efficiently and consistently regulate facilities that receive state funding.

### **The department fails to utilize available data to improve the efficiency and effectiveness of its regulatory programs.**

An agency should maintain adequate information about its regulatory functions, including detailed statistics about license applications and complaints received and resolved each year. An agency should analyze this data to identify trends that can be used to inform how it operates and interacts with its licensee population. While TDA captures detailed data about its licensing, compliance, and enforcement efforts, there is no formalized process for analyzing this data to make regulatory changes and improvements.

Better data analysis could identify repeat violators and help deter future violations.

- **Incomplete application processing data.** TDA does not track information related to its approval of license applications, such as the average number of days to process an application or the percentage of applications found to be incomplete. Such information could alert department staff to unreasonable delays in the process, which may be caused by imbalanced staff resources or unclear application instructions. Addressing unnecessary delays in licensing processes can help ease an often complex and potentially cumbersome process for applicants. For example, while TDA's licensing system allows online renewals, licensees whose applications are incomplete cannot simply submit the missing information into the licensing system. Instead, they must resubmit the entire renewal application after receiving a paper notice from TDA, often weeks after the original submission.
- **Unanalyzed violations data.** TDA does not analyze enforcement data to determine the most commonly occurring violations, missing an opportunity for better program regulation. For example, simple analysis of TDA's enforcement data shows certain violations are regular occurrences every year, such as the failure to maintain complete records of pesticide use. Other violations may also be increasing, such as pest control licensees working out of category or failing to maintain insurance. As these trends are identified, TDA could make more informed decisions on whether to shift enforcement or investigative resources. Data analysis could also identify repeat violators, and could be used to update the department's penalty matrixes to be more effective in deterring violations. Further, other agencies include violations data in continuing education material to better

inform licensees about frequently violated regulations. This information could help prevent licensees from making similar mistakes and reduce the strain on limited enforcement resources. With data analysis, the department could make more informed policy and resource decisions to best allocate its enforcement and investigative resources.

## **Sunset Staff Recommendations**

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

#### **4.1 Require TDA to develop guidelines for evaluating applicants' criminal history in all of its occupational licensing programs.**

This recommendation would clarify Chapter 53, Texas Occupations Code, applies to all occupations regulated by TDA under the Agriculture Code and other statutes, and ensure all of the department's occupational licensing programs are in compliance. The guidelines should identify and explain which crimes directly relate to TDA's occupational licensing programs and will be considered when approving or denying a license. Developing and publishing criminal conduct guidelines better informs applicants about the qualifications necessary to receive a license, and improves transparency to stakeholders and the public. In implementing this recommendation, the department should thoroughly document all decisions regarding criminal history evaluations, including the specific reasons for approving or denying a license, to ensure consistent and fair evaluations of applicants.

#### **4.2 Remove subjective licensure provisions for seed producers.**

This recommendation would remove the outdated requirement that a licensure applicant be of "good character and has a reputation for honesty," which is unclear, subjective, and difficult to enforce. The department would continue to assess applicants by receiving and reviewing criminal history information to determine eligibility for licensure according to standard, objective requirements in Chapter 53, Texas Occupations Code.

#### **4.3 Require a memorandum of understanding to facilitate better coordination between TDA and the OAG.**

This recommendation would clarify authority to prosecute consumer protection cases by requiring TDA to establish a memorandum of understanding (MOU) with the OAG for coordinating their enforcement efforts. The MOU should require TDA to communicate with the OAG's consumer protection division before pursuing final disciplinary or enforcement actions related to consumer protection programs. Coordination between TDA and the OAG would minimize concerns about interference involving competing enforcement actions. This recommendation would also increase efficiency and consumer protection by tailoring TDA's inspection efforts to complement OAG efforts to target broader consumer fraud across several retail stores, ensuring licensees receive appropriate penalties for violations.

### ***Management Action***

#### **4.4 Direct TDA to comply with statute directing rules and procedures for military service members, veterans, and military spouses.**

This recommendation would direct TDA to create rules and policies to best accommodate military service members, veterans, and their spouses, in compliance with Chapter 55, Texas Occupations Code.



By developing policies to accommodate military service members' challenging schedules, crediting related military experience, waiving examination fees, and posting provisions available to service members, veterans, and military spouses on its website, the department can better enable participation from these groups. The department would be required to adopt rules and policies in compliance with Chapter 55 by December 1, 2020.

#### **4.5 Direct TDA to establish a risk-based approach to inspections.**

This recommendation would direct the department to develop rules to formally guide the prioritization of inspections based on risk to the public. In establishing these rules, TDA could consider past or repeat violations, recent complaints, negative media attention, or other indications of increased risks. In developing inspection priorities, the department could also consider if less onerous desk audits of records would suffice for low-risk inspections. Establishing a risk-based approach for inspections would ensure the most efficient allocation of resources toward the highest risks to the public. The department would be required to adopt rules implementing this recommendation by December 1, 2020.

#### **4.6 Direct TDA to establish a consistent policy for auditing continuing education providers and courses.**

Under this recommendation, the department should establish a target for performing annual CE course audits. TDA should take into account when a course provider was last audited so a variety of course topics is evaluated each year. This recommendation would ensure consistency across continuing education courses and continued competency among licensees.

#### **4.7 Direct TDA and HHSC to share information about the licensing and registration status of food program participants.**

This recommendation would direct TDA and HHSC to establish an information-sharing agreement for communicating revoked or suspended license or registration status of food program participants. Developing a system for HHSC to timely and reliably provide the needed information to TDA would help ensure public funds for nutrition assistance are directed to eligible child care facilities and day activity and health services facilities.

#### **4.8 Direct TDA to collect and analyze data from its regulatory programs to increase their effectiveness.**

This recommendation would direct the department to analyze its regulatory program data, including licensing, compliance, and enforcement data, to identify relevant trends such as increases in application processing times, filed complaints, or violation occurrences. TDA would use this data to inform decisions on resource allocation and program operations to increase efficiencies.

## **Fiscal Implication**

Overall, these recommendations would not have a significant fiscal impact to the state. The recommendations to improve coordination with other agencies and focus the department's regulatory efforts through data and risk analysis are designed to improve TDA's efficiency and should be cost-neutral to the state. In addition, the department is required to generate revenue to cover the cost of regulation, so any loss in licensing fee revenue or additional expenditures that result from these recommendations should be cost-neutral.<sup>11</sup>

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<sup>1</sup> 4 T.A.C. Section 7.130.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Chapter 55, Texas Occupations Code; rules explicitly required in Sections 55.002, 55.004, 55.0041, 55.007, and 55.008, Texas Occupations Code.

<sup>3</sup> 4 T.A.C. Sections 7.25(e) and (g).

<sup>4</sup> 4 T.A.C. Sections 7.125(c) and 7.127(h).

<sup>5</sup> Section 55.010, Texas Occupations Code.

<sup>6</sup> Section 62.005(a)(1), Texas Agriculture Code.

<sup>7</sup> Section 12A.003, Texas Agriculture Code.

<sup>8</sup> Section 14.059, Texas Agriculture Code.

<sup>9</sup> Sections 13.035 and 13.039, Texas Agriculture Code.

<sup>10</sup> “Child Care Licensing,” Texas Health and Human Services, accessed May 14, 2020, <https://hhs.texas.gov/doing-business-hhs/provider-portals/protective-services-providers/child-care-licensing>; “Day Activity Health Service,” Texas Health and Human Services, accessed May 14, 2020, <https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/day-activity-health-services/how-become-a-dahs-provider>.

<sup>11</sup> Section 24 (Appropriations Limited to Revenue Collections: Cost Recovery Program), page VI-8, Article VI (H.B. 1), Acts of the 86th Legislature, Regular Session 2019 (the General Appropriations Act).



## ISSUE 5

## Texas Has a Continuing Need for the Texas Department of Agriculture.

### Background

The Legislature created the Texas Department of Agriculture (TDA) in 1907 to foster the development of the state's agriculture industry by researching plant diseases and pests, gathering statistical information on agricultural production, and promoting agricultural products. Over the last century, the department's responsibilities have expanded to include regulatory functions, consumer protection services, rural economic development, and nutrition assistance, as shown in the textbox, *Major Events in TDA History*. Today, the department supports and promotes the state's nearly \$25 billion agriculture industry while overseeing more than 124,000 licensees to protect the public and regulate the industry.<sup>1</sup>

#### Major Events in TDA History

1907	TDA created
1925	Functions of the Office of the Commissioner of Markets and Warehouses transferred to the Commissioner of Agriculture
1967	TDA authorized to oversee the creation of agricultural commodity boards
1981	TDA becomes lead agency for agricultural pesticide regulation in Texas
1987	Texas Agricultural Finance Authority created
1997	Texas Boll Weevil Eradication Foundation placed under TDA supervision
1999	GO TEXAN marketing program created Prescribed Burning Board created as a separate entity within TDA
2003	National School Lunch Program administration transferred from Texas Education Agency to TDA GO TEXAN program expanded to include non-agricultural products
2007	Certain federal nutrition programs transferred from Health and Human Services Commission to TDA Structural Pest Control Board transferred to TDA
2011	Texas Department of Rural Affairs transferred to TDA

### Findings

#### The department's functions continue to be needed.

As the third-largest agricultural producer in the United States, Texas has a vested interest in regulating and promoting the state's agriculture industry, which includes a wide range of commodities, as shown in the table on the following page, *Top Agricultural Products in Texas*.<sup>2</sup> The services provided by the department support the state's nearly 250,000 farms covering over 127 million acres, as well as Texas' rural population of approximately 3.8 million.<sup>3</sup>

### Top Agricultural Products in Texas – FY 2019

Product	Production Value
Cotton	\$2,139,066,000
Corn	\$1,229,585,000
Hay and Haylage	\$1,161,442,000
Sorghum	\$318,030,000
Wheat	\$306,680,000
Peanuts	\$144,832,000
Rice	\$140,056,000
Potatoes	\$87,360,000
Watermelons	\$83,202,000
Pecans	\$70,210,000
Grapefruit	\$65,200,000

TDA provides access to healthy foods for nearly 2.8 million school children.

- **Agricultural regulation and consumer protection.** The department's regulatory functions support the state's agriculture industry while protecting Texas consumers. TDA enforces state and federal quarantines to prevent the spread of pests and diseases that threaten Texas crops — such as citrus greening, the pecan weevil, and the Mexican fruit fly. TDA also licenses more than 124,000 businesses and individuals in the agriculture industry and conducted more than 84,000 inspections of these licensees in fiscal year 2019 to protect consumers from fraud, ensure agricultural products are labeled correctly, and confirm the safe use of dangerous pesticides.
- **Nutrition assistance.** TDA administers numerous federal and state grants that provide access to nutritional meals for historically vulnerable populations, including school children, home-bound older adults, individuals affected by natural disasters, and child and adult daycare facilities. In fiscal year 2019, TDA's nutrition programs provided access to healthy foods for nearly 2.8 million school children and approximately 400,000 home-bound older adults.
- **Rural development.** TDA provides assistance for rural and economic development through the administration of federal community development block grants, awarding more than \$66 million for projects in rural and small Texas communities in 2019. The department's State Office of Rural Health provides assistance to the state's rural hospitals, awarding nearly \$3 million in grants in 2019 for rural hospitals to make capital improvements to their facilities, update payment systems, and receive technical training.

### No substantial benefit would result from transferring the department's functions to another agency.

While other state agencies also perform functions affecting the agriculture industry, Sunset staff determined no substantial benefit would result from transferring functions or merging the department with another state agency. These agencies, which include the Texas Parks and Wildlife Department, Texas Animal Health Commission, and Texas A&M AgriLife Extension Service, focus more narrowly on certain agriculture-related issues such as preventing animal diseases or performing research. Additionally, TDA's statewide presence enables it to effectively address issues facing the agriculture industry and rural Texas, which many smaller agencies would be ill-equipped to handle. The Legislature has continually acknowledged TDA's effectiveness by creating new programs at the department and transferring the duties of other agencies to it, like the Texas Department of Rural Affairs and the Structural Pest Control Board.

### While organizational structures vary, all states regulate and promote the agriculture industry.

Forty-eight states have dedicated departments of agriculture, while the two remaining states — Alaska and Rhode Island — have divisions of agriculture housed within other state agencies. The organizational structures of these departments vary, but they all have similar functions that focus on agriculture promotion and regulation, and consumer protection. The majority of states have governor-appointed agency heads, but 12 states, including Texas, have statewide elected commissioners, listed in the textbox, *States With Elected Agriculture Commissioners*.

#### States With Elected Agriculture Commissioners

Alabama	Mississippi
Florida	North Carolina
Georgia	North Dakota
Iowa	South Carolina
Kentucky	Texas
Louisiana	West Virginia

### TDA misses opportunities to better inform stakeholders about its programs.

Stakeholders rely on an agency's website for critical information about agency programs, but TDA's website lacks consistent, up-to-date information. Some stakeholders expressed concern with this lack of information, and Sunset staff found numerous webpages with broken links and outdated or undated material. For example, TDA's quarantines page omits 60 percent of active quarantines and does not distinguish between official quarantine requirements and general best practice advice.<sup>4</sup> The *TDA Webpage Problems* textbox lists additional website issues.<sup>5</sup> The department plans to address outdated and inaccurate website information as part of migrating to a new website content management system, but procurement of the new system has lagged for more than a year.

#### TDA Webpage Problems

- "Recent Rule Changes" page not updated since 2015, despite new rules for programs like hemp licensing and prescribed burning.
- Community Development Block Grant annual plan not posted since 2017.
- Most recently posted Specialty Crop Block Grant final report is from 2015.
- Broken search feature for licensed pest control businesses.

### The Early Childhood Health and Nutrition Interagency Council no longer operates.

The Early Childhood Health and Nutrition Interagency Council (ECHNIC) has a sunset date of September 1, 2021, but is no longer operational or necessary. Created in 2009, the Legislature directed the council to review current research and best practices related to early childhood nutrition and physical activity, develop a six-year plan, and file annual reports on the progress of its member agencies.<sup>6</sup> In 2018, the council issued what it considered to be its final report and disbanded.

Reconstituting the council is unnecessary, as its statutory functions duplicate the work of the Early Childhood Obesity Prevention Committee currently administered by the Texas Department of State Health Services. This interagency committee includes representatives from the same state agencies as ECHNIC, listed in the textbox, *ECHNIC Membership*, and has a similar goal of improving nutrition and physical activity practices in Texas early childcare settings. The committee is active with an established work plan for the 2020–2021 biennium and has received five years of grant funding from the Centers for Disease Control and Prevention.



**ECHNIC Membership**

Texas Department of Agriculture  
 Department of Family and Protective Services  
 Department of State Health Services  
 Health and Human Services Commission  
 Texas A&M AgriLife Extension Service  
 Texas Education Agency  
 Texas Workforce Commission

**The Texas Rural Foundation is inactive and unable to perform its statutory mission.**

The Legislature created the Texas Rural Foundation in 2001 to finance rural health, community, and economic development projects, but the foundation has been unable to raise adequate funds to fulfill its mission. To date, the foundation has only raised around \$40,000, largely from a single private grant fund. Additionally, the foundation board has not met in several years or maintained the foundation's tax-exempt status, which further hinders its ability to raise funds. Even if the

foundation raised sufficient funds in the future, its administration would duplicate existing programs at TDA that award grants to support these same rural development goals. These programs have stable funding sources and well-developed grant awarding and monitoring processes, which the foundation would have to create before it could begin supporting projects.

**Sunset Staff Recommendations*****Change in Statute*****5.1 Continue the Texas Department of Agriculture for 12 years.**

This recommendation would continue TDA as an independent agency until September 1, 2033.

**5.2 Abolish the Early Childhood Health and Nutrition Interagency Council.**

This recommendation would remove the defunct Early Childhood Health and Nutrition Interagency Council from statute. A similar and active committee administered by the Texas Department of State Health Services will continue to improve childhood nutrition and promote other healthy practices in early childcare settings.

**5.3 Eliminate the Texas Rural Foundation.**

This recommendation would remove the inactive Texas Rural Foundation from statute. TDA will continue to support rural economic development and provide rural health assistance through its existing programs. Upon dissolution of the foundation, TDA shall ensure any funds in the foundation's possession are returned to the granting authority.

***Management Action*****5.4 Direct TDA to improve its stakeholder engagement, website content, and public information.**

This recommendation would direct the department to ensure the information on its website is accurate and up-to-date, including updated regulatory and grant program information. This recommendation could be completed in conjunction with the department's migration to a new website content management system.

## Fiscal Implication

These recommendations would not result in a fiscal impact to the state. Continuing TDA with its existing organizational structure would require an annual appropriation of approximately \$706 million. The department currently updates the content on its website with existing resources, which would continue with TDA's new content management system and would therefore not result in a fiscal impact. The other recommendations to improve transparency and eliminate inactive committees are designed to improve the department's efficiency and should be cost-neutral to the state.

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<sup>1</sup> U. S. Department of Agriculture National Agriculture Statistics Services (USDA NASS), *2017 Census of Agriculture State Profile*, accessed May 14, 2020, [https://www.nass.usda.gov/Publications/AgCensus/2017/Online\\_Resources/County\\_Profiles/Texas/cp99048.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Texas/cp99048.pdf).

<sup>2</sup> USDA NASS, *2019 State Agriculture Overview—Texas*, accessed May 14, 2020, [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=TEXAS](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=TEXAS).

<sup>3</sup> USDA NASS, *2017 Census of Agriculture; Texas Demographic Center, Urban Texas*, accessed May 14, 2020, [https://demographics.texas.gov/Resources/publications/2017/2017\\_08\\_21\\_UrbanTexas.pdf](https://demographics.texas.gov/Resources/publications/2017/2017_08_21_UrbanTexas.pdf).

<sup>4</sup> “Pest and Disease Alerts,” Texas Department of Agriculture (TDA), accessed May 14, 2020, <https://www.texasagriculture.gov/RegulatoryPrograms/PlantQuality/PestandDiseaseAlerts.aspx>; 4 T.A.C. Chapter 19.

<sup>5</sup> “Recent Rule Changes,” TDA, accessed May 14, 2020, <https://texasagriculture.gov/NewsEvents/NewsEventsDetails/tabid/76/Article/3078/Recent-Rule-Changes.aspx>; “Reports and Publications,” TDA, accessed May 14, 2020, <https://www.texasagriculture.gov/ReportsPublications.aspx>; “Specialty Crop Block Grant Program,” TDA, accessed April 28, 2020, <https://www.texasagriculture.gov/GrantsServices/SpecialtyCropBlockGrantProgram.aspx>; “Structural Pest Control Business Licensee Web Search,” TDA, accessed April 8, 2020, <https://texasagriculture.gov/RegulatoryPrograms/StructuralPestControlService/PestControlBusinessLicenseeWebSearch.aspx>.

<sup>6</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 116.009 and 116.011, Texas Health and Safety Code.



## ISSUE 6

# TDA's Statutes and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.

### Background

Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified changes needed to encourage meaningful review of the Texas Department of Agriculture's (TDA) rules, conform the department's policies to standards Sunset generally applies to all state agencies, address the need for the department's statutory advisory committees and required reports, and update statute to reflect the state's person-first respectful initiative.

### Findings

#### **The department does not meaningfully review and revise its rules every four years.**

The Sunset Act directs the Sunset Commission to assess each agency's rulemaking process, including the extent to which agencies encourage public participation in rulemaking.<sup>1</sup> As part of this assessment, Sunset considers an agency's compliance with statutory requirements in the Administrative Procedure Act, including an agency's review and consideration of the continuing need for each of its rules every four years from the date each rule took effect.<sup>2</sup>

While TDA regularly readopts its rules, the department fails to use the review process to carefully consider the continuing need and appropriateness of its rules. The four-year rule review process is intended to be more than simply posting rules in the *Texas Register* for public comment before readoption. A meaningful rule review should consider whether the initial factual, legal, and policy reasons for adopting each rule are still relevant.<sup>3</sup> As part of its analysis, an agency should consider the practical experience the agency, stakeholders, and the public have had with each rule over the past four years.<sup>4</sup>

TDA's rule review procedure is superficial and does not include needed actions the process is designed to facilitate, such as repealing or updating rules when statute changes to ensure they reflect current authority and practice. For example, in 2016, TDA presented 27 of its 29 administrative code chapters, representing hundreds of rules, for simultaneous readoption with no analysis or proposed changes.<sup>5</sup> While continuation of many rules was likely warranted, TDA's process did not identify several needed updates, many of which have still not been addressed as shown in the textbox on the following page, *TDA Rule Review Omissions*.<sup>6</sup>

TDA regularly readopts its rules with no analysis or proposed changes to improve them.

### TDA Rule Review Omissions

- Penalty matrixes not updated in rule to reflect current agency practices; some matrixes have not been changed in 20 years.
- Failed to update rules for a wine marketing committee the Legislature abolished and replaced in 2015.
- Community development grant regional allocation formula not adopted in rule, as required by law.
- Readopted rules for programs that were defunct, had lost funding, or had no statutory basis, including the Healthy Students = Healthy Families Advisory Committee.
- A full four-year rule review not conducted since 2016 for:
  - Texas Agricultural Finance Authority
  - Texas Citrus Pest and Disease Management Corporation
  - Prescribed Burning Board

### The composition of the State Seed and Plant Board does not meet current legal requirements.

The State Seed and Plant Board operates as a semi-independent board within TDA to implement the state's seed certification program. The board establishes standards necessary for a seed to be certified as having a genetic purity or identity, approves applications for seed producers, and acts as an arbiter for complaints related to seed purity. The board's composition is statutorily set at six members, as detailed in the *Board Composition* textbox.<sup>7</sup> However, under the Texas Constitution, all boards and commissions must be composed of an odd number of three or more members.<sup>8</sup> Further, including a TDA employee as a voting member of the board blurs the line between the policymaking functions of the board and the day-to-day management within the agency, and is not necessary to ensure board access to staff input and expertise.

### Board Composition

- Three industry participants, appointed by the Commissioner of Agriculture:
  - A licensed seed producer
  - An individual that sells certified seed
  - An individual actively engaged in farming that does not produce or sell seed
- One member of the Texas A&M University Soils and Crop Sciences Department
- One member of the Texas Tech University Department of Plant and Soil Sciences
- Head of TDA's seed division

**The department lacks standard policies typically required across the board during Sunset reviews.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board provisions (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

While the department’s statute contains the standard provision relating to negotiated rulemaking and alternative dispute resolution, the department has not adopted the required policies.<sup>9</sup> Stakeholders in multiple programs expressed concern about TDA’s inconsistent engagement on rulemaking and other regulatory processes. Without adopting and implementing these policies, the department could miss ways to improve rulemaking and dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

In addition, statute contains a standard provision requiring the State Seed and Plant Board to adopt policies separating the policymaking functions of the board from management responsibilities of the department.<sup>10</sup> The board’s authority overlaps some functions performed by TDA, which, without a clear policy of separation, can undermine the agency’s effectiveness. For example, while the board sets standards for certifying Texas seed, department staff inspect and certify seed, and TDA sets the standards for seeds coming from outside the state.<sup>11</sup> Similarly, while the department is responsible for investigating and taking enforcement action against seed producers, the board has authority to hear appeals of the department’s actions.<sup>12</sup> However, the board has not adopted the required policy to clearly delineate these functions, which would help avoid confusion regarding authority over agency operations. Although the board and TDA currently work well together, ambiguity as to regulatory rulemaking and enforcement could lead to future conflicts.

Unclear rulemaking and enforcement authority in the seed program could lead to future conflicts.

**Some of the department’s statutory advisory committees have expired.**

Under the Sunset Act, an agency’s advisory committees are abolished on the same day as the agency unless expressly continued by law, but continuing the agency does not automatically continue its advisory committees by extension.<sup>13</sup> Additionally, other law provides that a statutory advisory committee expires four years after the date it was established unless either (1) statute exempts the advisory committee from that provision, or (2) the agency sets a later date for expiration in rule.<sup>14</sup> However, not all agencies have authority to create advisory committees in rule, and some may still be subject to the same



### Abolished Advisory Committees

Agriculture Technology Review Committee  
 Boll Weevil Foundation Rules Advisory Committee  
 Citrus Budwood Advisory Council  
 Cotton Pest Administrative Committees (14 local committees)  
 Food & Fibers Research Council  
 Shrimp Marketing Assistance Program Advisory Committee  
 Texas Rural Health and Economic Development Advisory Council  
 Texas-Israel Exchange Advisory Committee  
 Wine Industry Development Advisory Committee

### Continued Advisory Committees

Structural Pest Control Advisory Committee  
 Texas Olive Oil Industry Advisory Board  
 Texas Organic Agriculture Industry Advisory Board

four-year limitation. As a result, Sunset must sometimes determine whether an agency's advisory committees should be continued.

Appendix E lists TDA's 27 advisory committees authorized in statute. The department does not currently have authority to establish advisory committees in rule, and the department has taken no action to forestall the expiration of its committees. As a result, 22 advisory committees have expired by operation of law, listed in the textbox, *Abolished Advisory Committees*. The remaining five advisory committees are statutorily exempt from the four-year limitation. Of those five, Sunset staff determined the three advisory committees shown in the textbox, *Continued Advisory Committees*, serve an ongoing purpose and should be continued, but the two discussed below are no longer needed. Also, given the diverse group of stakeholders TDA impacts, the department would benefit from statutory authority to formally establish advisory committees in rule, including the date on which each committee expires consistent with state law.

- **GO TEXAN Partner Program Advisory**

**Board.** Statute requires this board to review applicants for the GO TEXAN Partner Program and advise TDA on the program's rules and statutorily dedicated account. This account and the program have not been funded since 2015, and the advisory board is inactive.<sup>15</sup>

- **Texas Nursery and Floral Advisory Council.** Statute requires the council to advise the department on the most effective methods for marketing the nursery and floral industries. The council is inactive and stakeholders have indicated the department would benefit from industry input on topics other than marketing.<sup>16</sup>

### The department has several reporting requirements that need to be eliminated or modified.

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.<sup>17</sup> The Sunset Commission has interpreted these provisions as applying to reports 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, or posting requirements.

Statute requires TDA to produce seven reports that are specific to the department, listed in Appendix F. Three of these reporting requirements continue to be useful. However, Sunset staff found three reports are no longer needed and one that should be modified.

- **Farmers market special nutrition report.** Statute requires TDA to prepare a report about the performance of the Farmers Market Nutrition program, including the number of persons served and the funds received and expended.<sup>18</sup> This program does not receive any state funding and is subject to audit by the U.S. Department of Agriculture (USDA). The department produces a report with similar information for USDA and could provide the information in this report if requested.
- **Citrus marketing report.** Statute requires the department to prepare a report about the transactions and administrative hearings held by TDA on certain citrus marketing agreements during the preceding biennium.<sup>19</sup> Due to significant changes in the Texas citrus industry, TDA has had no reportable transactions or hearings in at least 30 years, and therefore no information to report.
- **Rural Health and Economic Development Advisory Council's findings and Texas Rural Foundation's activities report.** Statute requires the department to submit the findings of an advisory council that creates a rural policy plan to the Legislature. The department also reports on the activities of the Texas Rural Foundation.<sup>20</sup> However, the advisory council that creates the rural policy plan is abolished by operation of law and the foundation is inactive.
- **Beef Promotion and Research Council of Texas report.** Statute requires the Beef Promotion and Research Council of Texas to annually report on its activities.<sup>21</sup> While other commodity producers boards report to TDA, the beef council is also required to submit its report to the Legislature. While this reporting requirement continues to be useful, it should be modified to align with other commodity boards' practice of only reporting to TDA, which has direct oversight responsibility. This information would still be available to members of the Legislature if requested.

### **The department's statute does not use appropriate language when referring to persons with disabilities.**

Statute requires Sunset to consider and recommend, as appropriate, statutory revisions in accordance with the person-first respectful language outlined in general law.<sup>22</sup> The stated intent of the law is to try to affect society's attitudes toward people with disabilities by changing the way the language refers to them. Sunset only changes language that occurs in chapters of law that are opened by the Sunset Commission's recommendations. The governing statutes for TDA contain a term that is not consistent with the person-first respectful language initiative.<sup>23</sup> The department's Sunset bill should revise the statutes to use person-first respectful language, as needed.

## Sunset Staff Recommendations

### *Change in Statute*

#### **6.1 Remove the TDA staff appointee from the State Seed and Plant Board to align with constitutional requirements.**

This recommendation would remove the head of TDA's seed division from membership on the State Seed and Plant Board, reducing the board's composition to a constitutionally-permissible five members. The department's seed division staff would continue to provide support to the board and manage the overall operations of the seed certification program, and could still give input on matters before the board upon any member's request.

#### **6.2 Authorize the department to create advisory committees in rule.**

This recommendation would authorize TDA to establish advisory committees subject to the requirements of Chapter 2110 of the Texas Government Code to provide expertise for rulemaking and policy development, and for other purposes as needed. The department should adopt rules regarding each advisory committee, including:

- Purpose, role, goals, and duration
- Appointment procedures, composition, terms, and quorum requirements
- Membership qualifications, such as experience, representation of various industry segments, or geographic location
- Conflict-of-interest policies
- Compliance with the requirements of the Open Meetings Act

In its analysis, TDA should examine all of its programs to evaluate whether an advisory committee for the program would improve the department's operations and engagement with stakeholders.

#### **6.3 Remove abolished advisory committees from statute.**

This recommendation would remove the following committees from statute, since they have expired by operation of law or are no longer needed:

- Agricultural Technology Review Committee
- Boll Weevil Foundation Rules Advisory Committee
- Citrus Budwood Advisory Council
- Cotton Pest Administrative Committees
- Food & Fibers Research Council
- GO TEXAN Partner Program Advisory Board
- Shrimp Marketing Assistance Program Advisory Committee
- Texas-Israel Exchange Advisory Committee

- Texas Nursery and Floral Advisory Council
- Texas Rural Health and Economic Development Advisory Council
- Wine Industry Development Advisory Committee

If Recommendation 6.2 is adopted and TDA determines some functions of these expired advisory committees continue to serve a meaningful purpose, the department should establish new, more focused advisory committees to provide input and assistance in those areas.

#### **6.4 Continue three of TDA's statutory advisory committees.**

This recommendation would continue the following statutory advisory committees, which are active and continue to serve an ongoing need:

- Structural Pest Control Advisory Committee
- Texas Olive Oil Industry Advisory Board
- Texas Organic Agricultural Industry Advisory Board

#### **6.5 Abolish three and modify one of TDA's reporting requirements.**

This recommendation would eliminate TDA's reports on the farmers market nutrition program, citrus marketing, and Rural Health and Economic Development Advisory Council's findings and Texas Rural Foundation's activities. Additionally, this recommendation would remove the requirement to send the Beef Promotion and Research Council of Texas report to the Legislature. The department's three other reporting requirements would continue.

#### **6.6 Update the department's statute to reflect the requirements of the person-first respectful language initiative.**

This recommendation would direct the Texas Legislative Council to revise the department's governing statutes to conform to the person-first respectful language requirements found in Chapter 392, Texas Government Code, as needed.

### ***Management Action***

#### **6.7 Direct the department to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.**

This recommendation would direct the department to adopt a policy requiring and establishing the process for the four-year review of its rules. The policy should require the review to include the consideration of current factual, legal, and policy reasons for readopting each rule, as well as practical experience the department, regulated community, and public have had with each rule over the past four years. Undergoing a more substantive analysis would allow the department to better engage the public and maintain its rules based on current circumstances and factors. The department should also develop a plan for updating its penalty matrixes and reviewing any sections of TDA's administrative code that were not included in its 2016 rule review, and address other deficiencies in that rule review. The department would be required to provide an update on its progress toward implementing this recommendation to the Sunset Commission by December 1, 2020.

**6.8 Direct TDA to adopt policies implementing alternative rulemaking and dispute resolution.**

Under this recommendation, TDA would fully implement the statutory directives to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution, in accordance with law. Adopting such a policy would increase opportunities for the department to engage with stakeholders to improve its regulations and programs. The department should adopt these policies and report its progress to the Sunset Commission by December 1, 2020.

**6.9 Direct the State Seed and Plant Board to adopt policies regarding the separation of duties of board members from those of the department.**

Under this recommendation, the board and TDA would fully implement the statutory directive to develop and implement policies to clearly separate board policy functions from the department's management functions. The board should adopt these policies and report its progress to the Sunset Commission by December 1, 2020.

**Fiscal Implication**

These recommendations would not have a fiscal impact to the state. Any advisory committee travel reimbursements are subject to the appropriations process, and engaging in meaningful reviews of rules, as required by law, should not require additional resources.

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(8), Texas Government Code.
- <sup>2</sup> Section 2001.039, Texas Government Code.
- <sup>3</sup> Ronald L. Beal, *Texas Administrative Practice and Procedure*, Section 3.8, 36–37.
- <sup>4</sup> Ibid.
- <sup>5</sup> 41 TexReg 9745–9746 (December 9, 2016).
- <sup>6</sup> Section 7, Chapter 846 (S.B. 880), Acts of the 84th Texas Legislature, Regular Session, 2015; 4 T.A.C. Chapter 29; 41 TexReg 9745 (December 9, 2016); 42 TexReg 247 (January 20, 2017).
- <sup>7</sup> Section 62.002, Texas Agriculture Code.
- <sup>8</sup> Section 30a, Article XVI, Texas Constitution.
- <sup>9</sup> Section 12.0203, Texas Agriculture Code.
- <sup>10</sup> Section 62.0026, Texas Agriculture Code.
- <sup>11</sup> Section 62.009, Texas Agriculture Code.
- <sup>12</sup> Section 62.010, Texas Agriculture Code.
- <sup>13</sup> Section 325.013, Texas Government Code.
- <sup>14</sup> Section 2110.008, Texas Government Code.
- <sup>15</sup> Section 46.010(d), Texas Agriculture Code; *Texas Department of Agriculture, Self-Evaluation Report* (Austin: Texas Department of Agriculture, 2019), 216.
- <sup>16</sup> Section 12.0178, Texas Agriculture Code.
- <sup>17</sup> Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.
- <sup>18</sup> Section 15.006, Texas Agriculture Code.
- <sup>19</sup> Section 102.167(e), Texas Agriculture Code.
- <sup>20</sup> Section 487.804(b), Texas Government Code.
- <sup>21</sup> Section 41.154, Texas Agriculture Code.
- <sup>22</sup> Section 325.0123, Texas Government Code.
- <sup>23</sup> Section 12.042, Texas Agriculture Code.





ISSUE 7

Texas Has a Continuing Need for the Texas Boll Weevil Eradication Foundation.

Background

The Legislature created the Texas Boll Weevil Eradication Foundation in 1993, after previously declaring the eradication of the boll weevil a public necessity.<sup>1</sup> The boll weevil, a beetle that feeds on cotton buds and flowers, has caused more than \$23 billion in economic losses to the cotton industry since its migration from Mexico to the United States in the 1890s.<sup>2</sup> To combat this threat, the foundation employs 106 full-time and 146 seasonal employees at 21 locations throughout the state to eliminate the boll weevil through a combination of trapping and pesticide applications. In 2019, the foundation captured nearly 46,000 boll weevils and treated approximately 1.5 million cotton acres. A combination of federal funds, state appropriations, and grower assessments fund the foundation’s operations, providing \$24.8 million in revenue in calendar year 2019. The Texas Department of Agriculture (TDA) determines the assessment rate a grower will pay on their cotton production after receiving recommendations from the foundation’s 16 informal and voluntary grower steering committees, which are composed of local cotton growers in a region.<sup>3</sup>

Findings

Texas has a continuing interest in protecting the cotton industry from the boll weevil.

As the largest cotton producer in the United States, Texas has a continuing interest in the suppression and eradication of the boll weevil.<sup>4</sup> In 2017, Texas farmers produced 8.9 million bales of cotton, accounting for approximately 44 percent of the nation’s total cotton production.<sup>5</sup> The foundation has dramatically reduced the boll weevil population across Texas during its 27-year history, but the pest still maintains a presence in the Lower Rio Grande Valley due to the region’s subtropical climate and inconsistent boll weevil treatment in Mexico. The foundation’s eradication and maintenance efforts serve to eliminate the boll weevil from that region and prevent its spread to other areas of the state.

As the only state with an active presence of boll weevils, Texas plays a critical role in preventing the re-infestation of the boll weevil in the nation’s 16 other cotton-producing states, listed in the textbox, *Other States With Cotton Production*.<sup>6</sup> National eradication efforts began in Virginia and North Carolina in 1978, and gradually eliminated the boll weevil from every state except Texas. With the exception of California and Kansas, all other cotton-producing states continue to participate in boll weevil eradication programs, but their efforts are now primarily focused on monitoring for the return of the boll weevil.<sup>7</sup> Many of these states recognize the importance of preventing an outbreak in Texas that could spread to the rest of the country by voluntarily contributing to the Boll Weevil Protection Fund. The fund is administered by the National Cotton Council of America

Other States With Cotton Production	
Alabama	Mississippi
Arizona	Missouri
Arkansas	New Mexico
California	North Carolina
Florida	Oklahoma
Georgia	South Carolina
Louisiana	Tennessee
Kansas	Virginia

to supplement active eradication efforts in years when costs exceed revenue. Texas is currently the only state eligible to access this fund.

### **The Texas Boll Weevil Eradication Foundation has been a successful model to eliminate the boll weevil.**

The foundation has helped increase the state's cotton yields by 56 percent since 1993.

In addition to contributing to the successful eradication of the pink bollworm in 2018, the foundation has also eliminated the boll weevil from 97 percent of the state's cotton acres through a combination of trapping and pesticide applications.<sup>8</sup> The foundation maintains areas it has successfully eradicated by monitoring boll weevil populations and treating any instances of re-infestation. The foundation's efforts have helped increase the state's cotton yields by 272 pounds per acre, or 56 percent, since 1993. An additional benefit has been the decreased amount of pesticides applied to farmland, which allows beneficial insects that would otherwise be killed by these pesticides to thrive.<sup>9</sup>

The foundation's structure as a nonprofit, quasi-governmental agency enables it to operate with the support of cotton growers across the state who elect to participate in the foundation via referendum and are heavily involved at every stage of the foundation's decision-making process. TDA provides oversight and enforcement for the foundation, which allows the latter to serve as an educator and cooperative partner in the eradication process while still protecting the state's interest in compliance with eradication efforts.

### **The foundation lacks a formal reserve fund balance policy to guide funding decisions to address future outbreaks.**

The foundation's reserves totaled nearly \$102 million at the end of 2019.

The foundation collects assessments paid by cotton growers often in excess of its operational expenses, which then accrue in the foundation's account without clearly documented objectives for future use. While maintaining a reserve fund balance to address potential boll weevil outbreaks is essential, the foundation does not have a policy to determine the ideal amount of reserves that accounts for current operation costs, revenue sources, projected cotton acreage, and other considerations. At the end of calendar year 2019, the foundation had nearly \$102 million in reserves after expending \$29.7 million in annual operations. Without a reserve fund balance policy, the foundation risks having its fund balance grow unchecked or fall below necessary reserve levels. Instituting a detailed reserve fund balance policy would also better inform both legislators during the appropriations process and the grower steering committees who recommend grower assessment amounts to fund the foundation's operations.

### **The foundation's statute does not reflect some standard elements of Sunset reviews.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board provisions (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from

occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

- **Policymaking and staff functions.** The foundation’s governing law does not provide for separating the policymaking functions of the board from the day-to-day administrative functions of managing the foundation. Such a provision would help avoid confusion about who is in charge of operations, which could undermine the foundation’s effectiveness.
- **Complaint information.** The foundation’s governing laws do not require the foundation to maintain complete information on complaints. Maintaining a system for acting on complaints and keeping proper documentation helps protect the public by ensuring the foundation addresses problems in a timely fashion.

Statute does not require the foundation to maintain complete information on complaints.

### **The foundation’s reporting requirement continues to be needed.**

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.<sup>10</sup> The Sunset Commission has interpreted these provisions as applying to reports 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, or posting requirements.

Statute requires the foundation to send an annual report detailing its eradication and maintenance efforts to TDA and the appropriate Texas House of Representatives oversight committee.<sup>11</sup> This report presents detailed information on the foundation’s regional operations and financial information, and lists current challenges facing the eradication program. The report continues to be needed to provide TDA and the Legislature an overview of the foundation’s performance.

The foundation should continue reporting on its operations and finances to TDA and the Legislature.

## **Sunset Staff Recommendations**

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

#### **7.1 Continue the Texas Boll Weevil Eradication Foundation for 12 years.**

This recommendation would continue the Texas Boll Weevil Eradication Foundation as a quasi-governmental agency with oversight from TDA until September 1, 2033. The foundation would maintain responsibility for boll weevil eradication efforts across the state.

#### **7.2 Apply the standard across-the-board requirement regarding the separation of duties of board members from those of foundation staff.**

This recommendation would require the foundation to adopt policies to clearly separate board policy functions from the foundation staff’s day-to-day operations.

### 7.3 Apply the standard across-the-board requirement regarding developing and maintaining a system for receiving and acting on complaints and making information on complaint procedures available to the foundation.

This recommendation would require the foundation to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. The foundation would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints.

## Management Action

### 7.4 Direct the foundation to implement a reserve fund balance policy.

This recommendation would direct the foundation to develop a reserve fund balance policy that would establish the amount necessary to support current operations and address a potential boll weevil outbreak. The policy should include the basis for adjusting the growth or reduction of the fund balance to account for changes in revenue and expenditures, and identify factors on which to base that decision. This recommendation would provide greater transparency for legislators during the appropriations process and cotton growers who recommend assessment amounts to TDA. The foundation should adopt this policy by December 1, 2020, and include the estimated necessary reserve amount in its annual reports to TDA and the appropriate Texas House of Representatives oversight committee.

## Fiscal Implication

Continuing the Texas Boll Weevil Eradication Foundation would not result in a fiscal impact to the state. Based on fiscal years 2020–21 appropriations, continuing to fund the foundation through the boll weevil eradication cost-share program would require \$9.7 million. The other recommendations would not have a fiscal impact to the state.

<sup>1</sup> Chapter 8 (S.B. 30), Acts of the 73rd Texas Legislature, Regular Session, 1993.

<sup>2</sup> U.S. Department of Agriculture Office of Inspector General, *Texas Boll Weevil Eradication Foundation Cooperative Agreement Audit Report 33099-0001-23*, (Washington, DC: U.S. Department of Agriculture Office of Inspector General, 2018), 1.

<sup>3</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 74.203, Texas Agriculture Code.

<sup>4</sup> U.S. Department of Agriculture National Agriculture Statistics Services, *2017 Census of Agriculture – State Data*, accessed May 14, 2020, [https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_2\\_US\\_State\\_Level/st99\\_2\\_0001\\_0001.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_0001_0001.pdf).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.; U.S. Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), “Questions and Answers: Boll Weevil Eradication,” May 2013, [https://www.aphis.usda.gov/publications/plant\\_health/2013/faq\\_boll\\_weevil\\_erad.pdf](https://www.aphis.usda.gov/publications/plant_health/2013/faq_boll_weevil_erad.pdf).

<sup>7</sup> Ibid.

<sup>8</sup> U.S. Department of Agriculture, “Eradication of Pink Bollworm: A Proclamation,” October 19, 2018, <https://www.usda.gov/sites/default/files/documents/usda-pink-bollworm-proclamation.pdf>.

<sup>9</sup> USDA APHIS, “Questions and Answers.”

<sup>10</sup> Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

<sup>11</sup> Section 74.128, Texas Agriculture Code.

# APPENDIX A

## Texas Department of Agriculture Programs

### Agricultural Regulation

- **Aquaculture** licenses businesses that produce and sell fish and other aquatic species raised in aquaculture facilities. In fiscal year 2019, TDA issued 177 licenses.
- **Citrus health** certifies citrus nursery stock and budwood are pest- and virus-free. Diseased citrus trees are destroyed to prevent the spread of pests and diseases, such as citrus greening disease and citrus canker.
- **Cotton stalk destruction**, in cooperation with the Texas Boll Weevil Eradication Foundation, regulates the destruction of cotton stalks after harvest to suppress boll weevil populations in Texas.
- **Nursery floral licensing** prevents the introduction and spread of agricultural pests and diseases in nursery plants by licensing and inspecting nursery growers and dealers. In fiscal year 2019, TDA licensed more than 15,500 growing facilities and dealers.
- **Phytosanitary inspections** certify agricultural products and field equipment are free of pests and diseases. TDA performed 9,729 inspections in fiscal year 2019.
- **Quarantine authority** allows TDA to set quarantines for pests or diseases that could be dangerous to Texas agriculture. The department can perform inspections of agricultural products and field equipment to prevent quarantined pests from being introduced into Texas through out-of-state shipments or transportation from quarantined to pest-free areas within the state.

### Nutrition Assistance – Federal Programs

- **Child and Adult Care Food Program** assists child and adult care providers across the state in serving meals to children and adults of low-income households, with 766,000 children and 237,000 adults served in fiscal year 2019.
- **Commodity Supplemental Food Program** provides access to U.S. Department of Agriculture (USDA) products for seniors of low-income households, with 23.7 million pounds of commodities distributed in fiscal year 2019.
- **Farmers Market Nutrition Program** provides qualified participants with vouchers for healthy, locally grown foods from participating farmers markets, with 102,000 vouchers distributed in fiscal year 2019.
- **Food Assistance for Disaster Relief** distributes USDA donated commodities for use in congregate meal services provided to disaster victims, with \$648,000 dollars worth of food distributed to Hurricane Harvey victims.
- **Fresh Fruit and Vegetable Program** provides access to federal funds to qualified elementary schools to purchase fresh fruits and vegetables for consumption outside of school nutrition programs, with 184,000 participants enrolled in fiscal year 2019.



## Appendix A

- **National School Breakfast Program** provides breakfasts to children daily during the school year at public schools, private nonprofit schools, and residential child care institutions, with 1.6 million children served daily in fiscal year 2019.
- **National School Lunch Program** provides lunches to children daily during the school year at public schools, private nonprofit schools, and residential child care institutions, with 2.8 million children served daily in fiscal year 2019.
- **Senior Farmers Market Nutrition Program** provides seniors of low-income households with vouchers for healthy, locally grown foods from participating farmers markets, with 26,000 vouchers distributed in fiscal year 2019.
- **Special Milk Program** provides children from low-income households with access to milk at schools, child care centers, and summer camps that do not participate in the school nutrition programs, with 34,000 pints served in fiscal year 2019.
- **Summer Feeding Program** includes Summer Food Service and Seamless Summer Option, which provide children with access to meals and snacks during the summer months, with 245,000 children served daily in fiscal year 2019.
- **The Emergency Food Assistance Program** distributes USDA products to food pantries for qualifying low-income households, with 148.7 million pounds of commodities distributed in fiscal year 2019.
- **USDA Food Distribution Program** provides funds for schools and residential child care institutions to purchase foods from local distributors or directly from USDA, with 192.8 million pounds of commodities distributed in fiscal year 2019.

### Nutrition Assistance – State Programs

- **Home Delivered Meal Grant Program** helps supplement and extend current home delivered meal funding for seniors and individuals with disabilities, with 185 awards granted in fiscal year 2019.
- **Nutrition Education Grants Program** includes:
  - **Establishing the 3Es Grant Program**, which provides competitive grants to child care institutions and community organizations to incentivize nutrition education, exercise, and eating right programs for children, with 13 grants awarded in fiscal year 2019.
  - **Expanding the 3Es Grant Program**, which provides competitive grants to Texas public schools to help expand programs that educate students about good nutrition, with seven grants awarded in fiscal year 2019.
- **Surplus Agricultural Products Grant Program** provides funding to a statewide nonprofit for the collection and distribution of surplus agricultural products to food banks and other charitable organizations throughout Texas.
- **Urban Schools Grant Program** provides funding to elementary and middle schools for agricultural demonstration projects to improve students' understanding of agriculture, with four awards granted in fiscal year 2019.

## Appendix A

### Consumer Protection

- **Egg quality** enforces egg grade standards by licensing egg producers, wholesalers, and distributors, and inspecting eggs at packing plants, distribution centers, and retail outlets. In fiscal year 2019, the department licensed 388 sellers and performed more than 2,000 egg quality inspections.
- **Grain warehouse** protects depositors of grain by licensing public grain warehouses and conducting on-site inspections and financial audits of facilities that store grain to ensure quantity and quality of stored grain as well as company solvency. TDA staff performed 192 inspections and audits of the 119 licensed grain warehouses in fiscal year 2019.
- **Handling and Marketing of Perishable Commodities** licenses individuals and businesses who purchase perishable Texas commodities on credit, to protect producers from failure to receive payment. License fees maintain the Produce Recovery Fund, which indemnifies producers who do not receive compensation. In fiscal year 2019, TDA paid out more than \$252,000 to producers in claims made against the fund, though this included a backlog of claims made in prior fiscal years.
- **Organics** certifies organically produced commodities to ensure the integrity of agricultural commodities produced and manufactured in Texas. TDA completed 128 inspections and issued 225 organic certifications in fiscal year 2019.
- **Pesticides** regulates labeling requirements, distribution, use, and application of pesticides from residential to commercial use, according to state and federal law. In fiscal year 2019, the program included 33,864 structural pest control licensees, which generally use pesticides in and around buildings, and 46,810 agricultural pesticide applicator licensees, which use dangerous pesticides in outdoor settings.
- **Seed certification** performs voluntary seed testing to certify if seed meets established standards of genetic purity and identity. TDA performed 2,712 certification tests in fiscal year 2019.
- **Seed law** performs seed testing on randomly selected seed sold in the state to confirm the seed germinates or sprouts as stated on the label and produces the variety of plants represented on the label. In fiscal year 2019, TDA performed 4,634 random tests of seed sold by 158 of the 344 growers registered to sell in Texas.
- **Weights, measures, and metrology** regulates commercial weighing or measuring devices such as grocery store scales and retail price scanners to ensure acceptable calibration. TDA registered measuring devices at 26,423 locations and conducted 58,868 inspections in fiscal year 2019. During such inspections, TDA staff also examines commodities sold in packages to ensure proper net contents and labeling and tests price scanners for accurate price representations. TDA's metrology lab maintains the official standards used to certify weights and measures equipment used by TDA inspectors and service technicians.

### Rural Development

- TDA awards **community development block grants** funded by the U.S. Department of Housing and Urban Development for housing and economic development projects in rural communities. TDA awarded approximately \$66.6 million in funding in fiscal year 2019.

## **Appendix A**

- **The State Office of Rural Health** within TDA provides technical and financial assistance to rural healthcare facilities by administering grants, creating partnerships with rural health stakeholders, and other programs. In fiscal year 2019, TDA awarded more than \$2.9 million for rural healthcare improvement.
- **The Texas Agricultural Finance Authority** provides financial assistance for producers to establish or improve their agriculture operations. Awards offered include interest rate reductions, loan guarantees, and grants for young farmers.

### **Agricultural Promotion Activities**

- **GO TEXAN** promotes products grown, processed, or manufactured in Texas. In fiscal year 2019 program membership included 1,451 retail businesses, restaurants, cities, and other entities.
- **Marketing programs** also support both the Texas wine and wild-caught Gulf shrimp industries, through partnerships with producers, restaurants, and other retailers and through various outreach and education activities.
- **International trade programs** include TDA's membership in the United States Livestock Genetics Export, Inc. and the Southern United States Trade Association, which both assist Texas producers with exporting products throughout the world. TDA's livestock export pens ensure livestock are inspected before exportation.

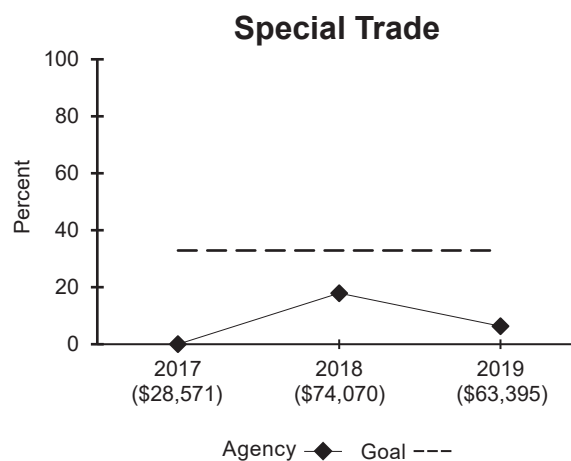
# APPENDIX B

## Texas Department of Agriculture Historically Underutilized Businesses Statistics, FYs 2017–2019

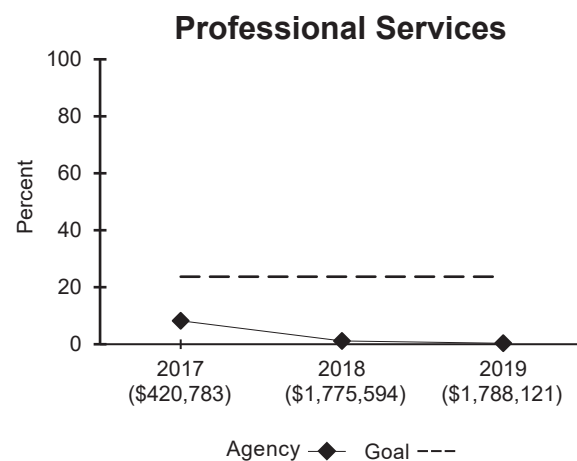
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules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

The following material shows trend information for the Texas Department of Agriculture's (TDA) use of HUBs in purchasing goods and services. The department maintains and reports this information under guidelines in statute.<sup>2</sup> 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 department spending with HUBs in each purchasing category from fiscal years 2017–19. Finally, the number in parentheses under each year shows the total amount the department spent in each purchasing category.

TDA failed to meet the state's goal for HUB spending in the special trade and professional services categories each year from fiscal years 2017–19. During the same period, the department exceeded goals for HUB spending in commodities and had mixed success in meeting goals in the other services category. The department did not have significant spending in the heavy construction or building construction categories.

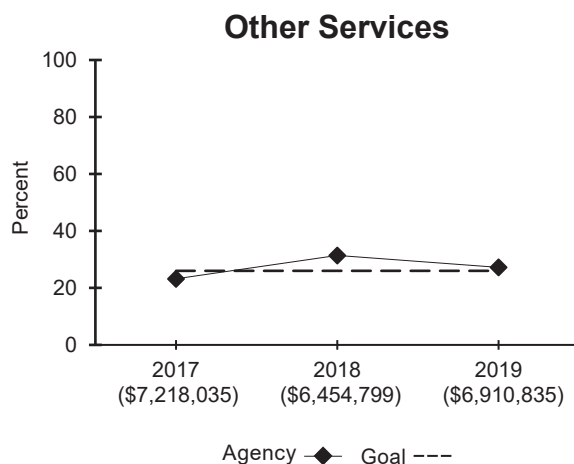


The department failed to meet the state goal for HUB spending in the special trade category in each of the last three fiscal years.

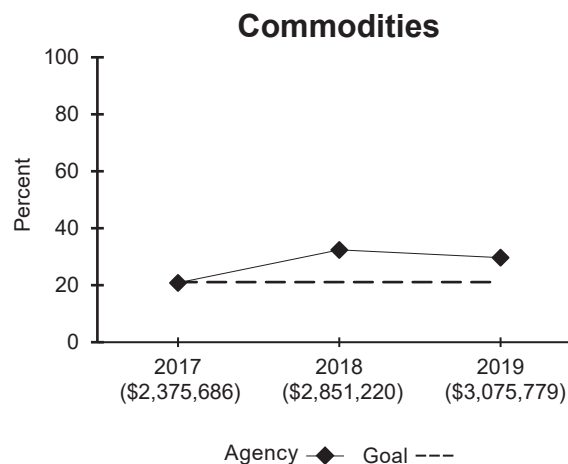


The department failed to meet the state goal for HUB spending in the professional services category in each of the last three fiscal years.

## Appendix B



The department exceeded the state goal for HUB spending in the other services category in fiscal years 2018 and 2019, though it fell just short of the state goal in fiscal year 2017.



The department met or exceeded the state goal for HUB spending for commodities in each of the last three fiscal years.

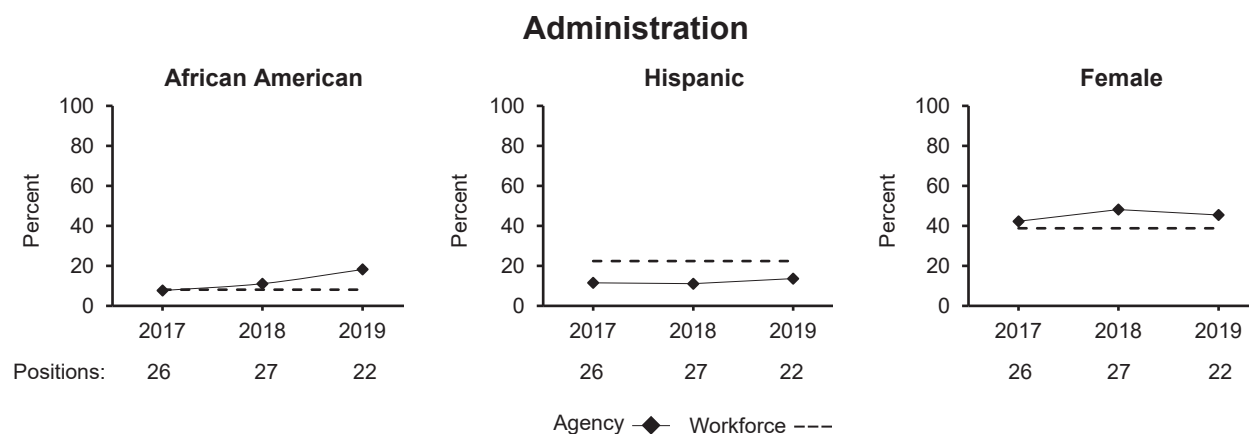
<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

<sup>2</sup> Chapter 2161, Texas Government Code.

# APPENDIX C

## Texas Department of Agriculture Equal Employment Opportunity Statistics, FYs 2017–2019

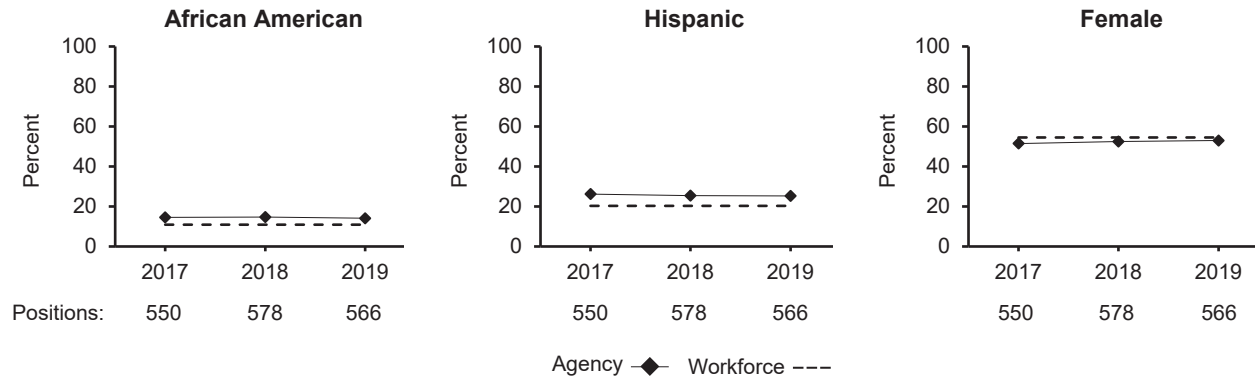
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Department of Agriculture.<sup>1</sup> The department maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the department's actual employment percentages in each job category from fiscal years 2017–19. The department met or exceeded the civilian workforce percentages in most categories, but failed to meet statewide percentages for African Americans and females in the technical category. The department also failed to meet statewide civilian workforce percentages for Hispanics in the administration category. The department had too few employees in the service/maintenance and skilled craft categories to make a meaningful comparison to the overall civilian workforce.



The department met or exceeded statewide civilian workforce percentages for African Americans and females in each of the last three fiscal years, but failed to meet the statewide civilian workforce percentages for Hispanics in that same time period.

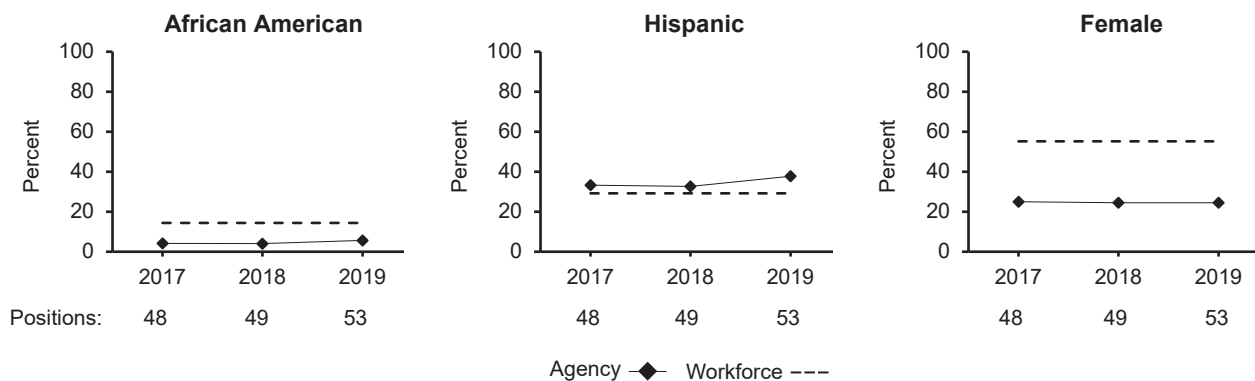
## Appendix C

### Professional



The department exceeded statewide civilian workforce percentages for African Americans and Hispanics in each of the last three fiscal years, but fell just short of the statewide civilian workforce percentage for females in that same time period.

### Technical

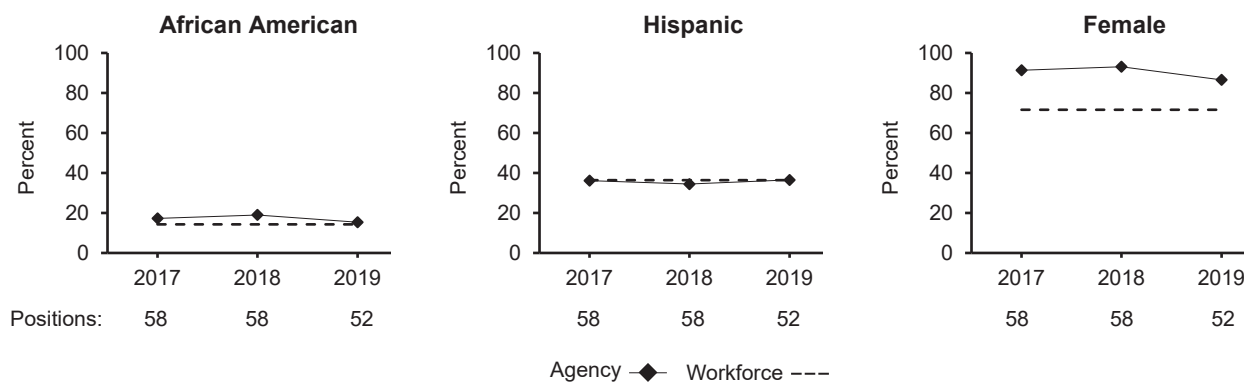


The department failed to meet statewide civilian workforce percentages for African Americans and females in each of the last three fiscal years. However, the department exceeded the statewide civilian workforce percentage for Hispanics in that same time period.



## Appendix C

### Administrative Support



The department met or exceeded statewide civilian workforce percentages for African Americans and females in each of the last three fiscal years. The department met the statewide civilian workforce percentage for Hispanics in fiscal years 2017 and 2019, but fell just short in fiscal year 2018.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

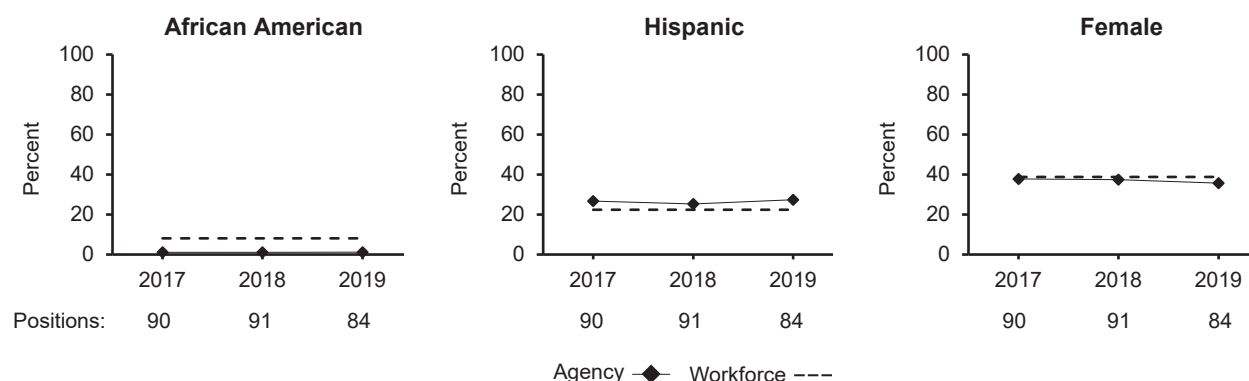


# APPENDIX D

## Texas Boll Weevil Eradication Foundation Equal Employment Opportunity Statistics, FYs 2017–2019

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 Boll Weevil Eradication Foundation.<sup>1</sup> The foundation maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the foundation's actual employment percentages in each job category from 2017 to 2019. The foundation generally met or exceeded the civilian workforce percentages in most job categories for Hispanics, but failed to meet the percentages for African Americans in every category. The foundation met or nearly met percentages for females in the administrative support and administration categories, but fell short of the percentages in every other category.

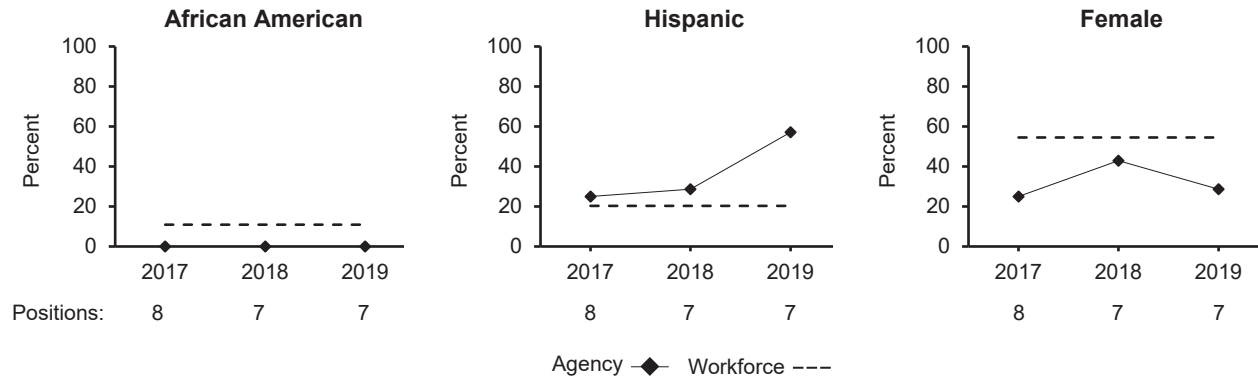
### Administration



The foundation exceeded the statewide civilian workforce percentages for Hispanics in each of the last three fiscal years. The foundation met or fell just short of statewide percentages for females and did not meet the statewide percentages for African Americans.

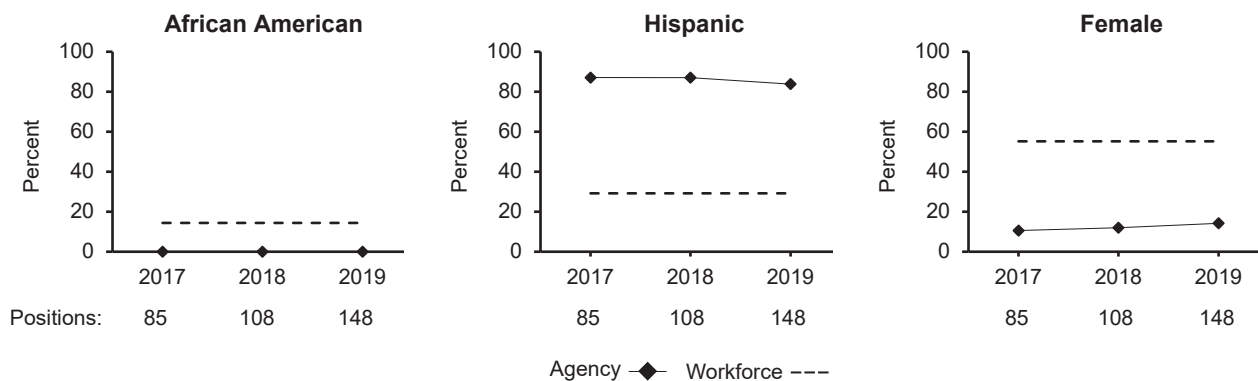
## Appendix D

### Professional



The foundation exceeded the statewide civilian workforce percentages for Hispanics in each of the past three fiscal years, but failed to meet statewide percentages for African Americans and females every year.

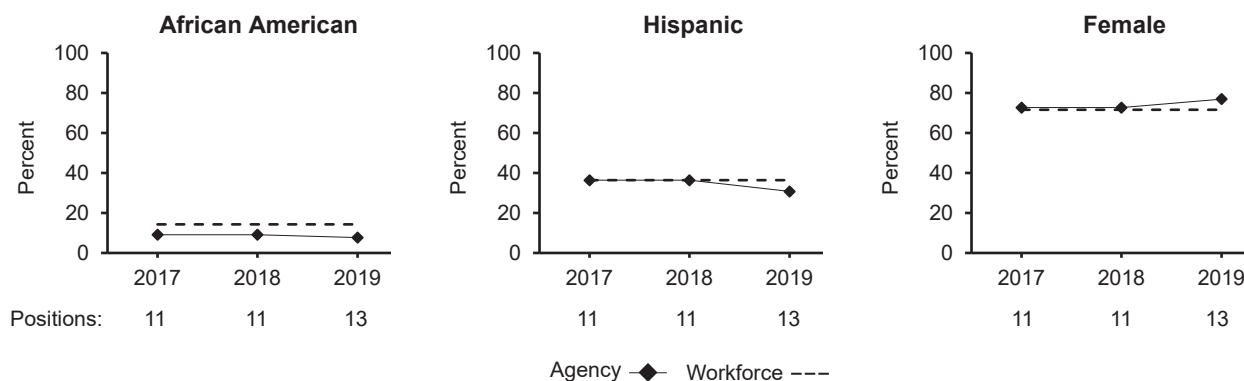
### Technical



The foundation exceeded the statewide civilian workforce percentages for Hispanics in each of the past three fiscal years. The foundation failed to meet statewide percentages for African Americans and females during all three fiscal years.

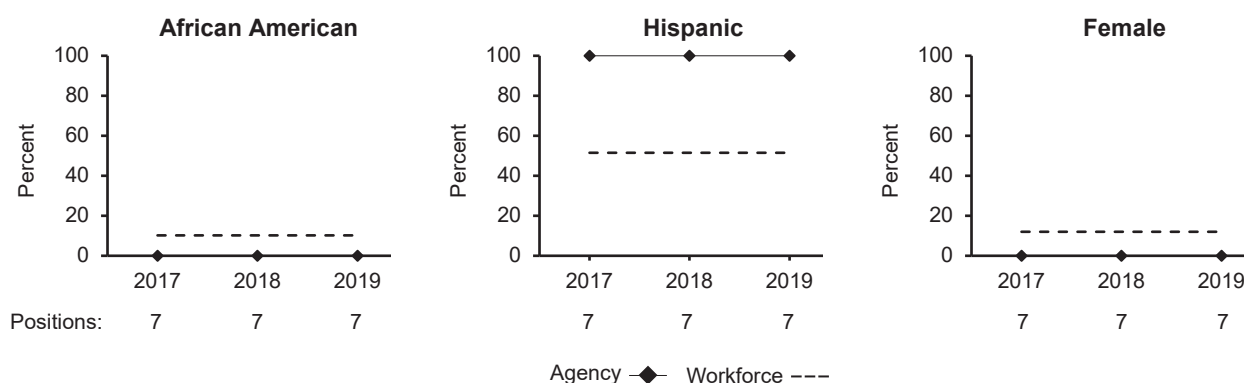
## Appendix D

### Administrative Support



The foundation met or exceeded the statewide civilian workforce percentages for females in each of the past three fiscal years. The foundation met or fell just short of statewide percentages for Hispanics and failed to meet percentages for African Americans during the same time period.

### Skilled Craft



The foundation exceeded the statewide civilian workforce percentages for Hispanics in each of the past three fiscal years. The foundation failed to meet statewide percentages for African Americans and females during all three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.



# APPENDIX E

## Texas Department of Agriculture Advisory Committees

Advisory Committee	Statute	Sunset Evaluation
Agricultural Technology Review Committee	Section 49.006, Texas Agriculture Code	Abolish
Boll Weevil Foundation Rules Advisory Committee	Section 74.120(d), Texas Agriculture Code	Abolish
Citrus Budwood Advisory Council	Section 19.005, Texas Agriculture Code	Abolish
Cotton Pest Administrative Committees (14 local committees)	Section 74.003, Texas Agriculture Code	Abolish
Food & Fibers Research Council	Section 42.002, Texas Agriculture Code	Abolish
GO TEXAN Partner Program Advisory Board	Section 46.010(d), Texas Agriculture Code	Abolish
Shrimp Marketing Assistance Program Advisory Committee	Section 47.053, Texas Agriculture Code	Abolish
Structural Pest Control Advisory Committee	Subchapter C, Chapter 1951, Texas Occupations Code	Continue
Texas-Israel Exchange Advisory Committee	Section 45.009, Texas Agriculture Code	Abolish
Texas Nursery and Floral Advisory Council	Section 12.0178, Texas Agriculture Code	Abolish
Texas Olive Oil Industry Advisory Board	Chapter 50D, Texas Agriculture Code	Continue
Texas Organic Agriculture Industry Advisory Board	Chapter 50C, Texas Agriculture Code	Continue
Texas Rural Health and Economic Development Advisory Council	Section 487.802, Texas Government Code	Abolish
Wine Industry Development Advisory Committee	Section 50B.002, Texas Agriculture Code	Abolish





# APPENDIX F

## Texas Department of Agriculture Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Beef Promotion and Research Council of Texas Report	Section 41.154, Texas Agriculture Code	Details council efforts and activities to promote, market, research, and educate about beef and beef products.	Commissioner, House and Senate oversight committees	Modify
2. Citrus Marketing Report	Section 102.167, Texas Agriculture Code	Lists transactions and administrative hearings held by TDA on citrus marketing agreements during the preceding biennium.	Governor	Abolish
3. Farmers Market Nutrition Program Report	Section 15.006, Texas Agriculture Code	Reports on the condition of the program, number of persons served, amount of food coupons redeemed, and funds received and expended.	Governor, Lieutenant Governor, Speaker of the House	Abolish
4. Report on the findings of the Rural Health and Economic Development Advisory Council and Texas Rural Foundation	Section 487.804(b), Texas Government Code	Reports the findings of the Rural Health and Economic Development Advisory Council's rural policy plan and the activities of the Texas Rural Foundation.	Legislature	Abolish
5. Summer Nutrition Programs Report	Section 12.0029, Texas Agriculture Code	Lists school districts who are required to have a summer nutrition program and notes if they have implemented a program or not. Also identifies what funds are used to provide a program.	Legislature	Continue
6. Texas Citrus Pest and Disease Management Corporation Report	Section 80.029, Texas Agriculture Code	Details the corporation's efforts to plan, carry out, and operate suppression programs to control citrus pests and diseases.	Commissioner, House oversight committee	Continue
7. Texas Economic Development Fund Report	Section 12.0273, Texas Agriculture Code	Provides information on the status of the Economic Development Fund, including loans and grants made using the fund's money.	Governor, Lieutenant Governor, Speaker of the House, chairs of the House and Senate committees of primary jurisdiction over TDA	Continue



# APPENDIX G

## Staff Review Activities

During the review of the Texas Department of Agriculture (TDA) and Texas Boll Weevil Eradication Foundation, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with department personnel; attended board meetings; 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; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to TDA:

- Toured and interviewed staff at the department's regional offices; the metrology, seed, and pesticide labs; and livestock export pens.
- Interviewed and shadowed field staff on inspections for the nursery/floral, pesticide, weights and measures, egg quality, grain warehouse, plant health and Texas Cooperative Inspection programs.
- Observed program activities and interviewed GO TEXAN members at the State Fair of Texas and Houston Rodeo.
- Observed meetings of or met with board members from the Prescribed Burning Board, Structural Pest Control Advisory Committee, State Seed and Plant Board, Beef Promotion Research Council of Texas, Citrus Pest and Disease Management Corporation, Shrimp Marketing Assistance Program Advisory Committee, Wine Industry Development Advisory Committee, and Texas Olive Oil Industry Advisory Board.
- Interviewed staff from other state and federal agencies, including the U.S. Department of Agriculture, Texas Parks and Wildlife Department, Texas Commission on Environmental Quality, Texas Department of Licensing and Regulation, Texas Education Agency, Texas Department of State Health Services, State Office of Administrative Hearings, Texas A&M AgriLife Extension Service, and Texas A&M Forest Service.

Sunset staff also performed the following activities unique to the Texas Boll Weevil Eradication Foundation:

- Attended a board meeting of the Texas Boll Weevil Eradication Foundation.
- Interviewed foundation staff and toured office facilities in Abilene and Harlingen.
- Toured cotton fields with active boll weevil monitoring traps.
- Attended a cotton grower steering committee meeting and met with steering committee and Cotton Pest Administrative Committee members.



Sunset Staff Review of the  
*Texas Department of Agriculture*  
*Texas Boll Weevil Eradication Foundation*  
*Prescribed Burning Board*  
*Early Childhood Health and Nutrition Interagency Council*

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