

SUNSET ADVISORY COMMISSION

STAFF REPORT



Texas Racing Commission

2020–2021

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 RACING COMMISSION

SUNSET STAFF REPORT

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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).

CURRENT VERSION: 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.

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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SUMMARY OF SUNSET STAFF REPORT

In 1986, facing a budget shortfall, the Legislature passed the Texas Racing Act, which authorized pari-mutuel wagering on horse and greyhound races and created the Texas Racing Commission to regulate the industry. At that time, the Legislative Budget Board estimated racing would contribute about \$110 million annually to the state coffers through taxes on racetracks and revenue from wagers.¹ However, the Texas racing industry has never been the economic driver originally envisioned. As racetrack attendance, race days, and wagers have declined, so have the commission's revenue and ability to most effectively regulate racing in Texas. The review found the commission's unsustainable funding structure has hamstrung the commission, resulting in inefficient and weakened regulation. As a result, Sunset staff determined the commission can no longer efficiently carry out its mission of ensuring the safety, integrity, and fairness of Texas pari-mutuel racing and wagering, and recommends transferring this responsibility to the Texas Department of Agriculture (TDA).

Strict regulation of pari-mutuel racing is necessary to protect the health and safety of human and animal participants, ensure races and wagering are fair, and prevent crime. However, having the commission's funding tied to and dependent upon racetrack fees creates an untenable situation where strong regulatory enforcement can undermine the funding needed to provide effective regulation.

The commission can no longer efficiently regulate Texas pari-mutuel racing.

Over the last decade, the number of horse and greyhound race days in Texas have drastically declined, along with the industry's contribution to general revenue. Additionally, the Sunset review occurred during the COVID-19 pandemic, which exacerbated the commission's already dire funding situation. The lack of revenue during the pandemic almost forced the commission to close in July 2020, jeopardizing the continued operation and regulation of the Texas racing industry.

Meanwhile, the commission's relatively small but hardworking and dedicated staff struggle to provide licensees the appropriate level of regulation and customer service. Individual staff members must fill multiple roles, juggling regulatory and administrative duties to keep the agency functioning. Due to staffing limitations and budget cuts, the commission has reduced or ceased some important regulatory functions, such as audits that help ensure racing and pari-mutuel wagering are conducted fairly. The commission also has reduced the number of racetrack inspections it conducts, and lacks policies to ensure the inspections it does conduct are performed equitably. In addition, the commission does not comply with some common licensing standards for its more than 6,000 licensees, including failing to consistently offer reciprocity to applicants licensed in other states. The review also found the commission does not effectively administer its horse event grant program. Ultimately, Sunset staff determined TDA could more efficiently and effectively regulate pari-mutuel racing in Texas, with its more stable funding, larger regulatory and

administrative capacity, and familiarity with the commission and its operation, since the Commissioner of Agriculture serves as an ex officio member of the commission.

The following material highlights Sunset staff's key recommendations for the Texas Racing Commission.

Sunset Staff Issues and Recommendations

ISSUE 1

The Texas Department of Agriculture Could Regulate Pari-Mutuel Racing More Efficiently and Effectively Than the Texas Racing Commission.

Texas has a continuing need to regulate pari-mutuel racing to protect the health and safety of participants, ensure races and wagering are fair, and prevent crime. However, the Texas Racing Commission's unsustainable funding and regulatory structures have created an agency strained beyond its means, leading to weakened oversight of the industry. Transferring the commission to TDA would take advantage of its significantly larger administrative and regulatory capacity, and ties to Texas agribusiness, resulting in more efficient regulation of pari-mutuel racing and more effective oversight of the industry.

Key Recommendation

- Transfer the regulation of pari-mutuel racing to the Texas Department of Agriculture and reconstitute the Texas Racing Commission as a governor-appointed advisory board.

ISSUE 2

The Texas Racing Commission Does Not Effectively Administer Its Horse Industry Grant Program.

The Texas Racing Commission administers the Horse Industry Escrow Account, which provides supplemental funding for purses and horse industry events. In 2019, the Legislature added an additional source of funding for the account and established a grant program for events related to the horse industry. However, the commission lacks the expertise and resources to administer the grant program, and the agency's mission conflicts with the grant's purpose. TDA could more effectively administer the Horse Industry Escrow Account, including the grant program, and provide needed improvements to ensure the grant application and award process is fair and effective.

Key Recommendations

- Transfer administration of the Horse Industry Escrow Account to the Texas Department of Agriculture.
- Direct the Texas Department of Agriculture to develop guidelines for evaluating grant applications, monitoring processes, and a consistent timeline for grant applications.

ISSUE 3

Key Elements of the Texas Racing Commission's Statute and Rules Do Not Conform to Common Licensing Standards.

The Texas Racing Commission oversees 57 license types for different entities involved in pari-mutuel wagering and horse and greyhound racing, which allow access to restricted areas of racetracks. Sunset staff found the commission's statute contains outdated licensing requirements and lacks the necessary specificity to ensure continued use of federal background checks for license applicants. In addition, the commission lacks objective and uniform policies for licensing and enforcement of regulation, resulting in subjective barriers to licensure, inconsistent reciprocity for out-of-state licensees, and ineffective inspections of racetracks.

Key Recommendations

- Clearly define the categories of licenses requiring a fingerprint-based criminal background check and remove the requirement for licensees to resubmit fingerprints every 36 months.
- Direct the commission to remove potential barriers to licensing in its examination process.
- Direct the commission to establish policies for uniform use of its reciprocity authority.
- Direct the commission to adopt policies to improve racetrack inspections.

ISSUE 4

The Texas Racing Commission's Statute Does Not Reflect Some Standard Elements of Sunset Reviews.

Among the standard elements considered in a Sunset review are across-the-board recommendations that reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. The commission's statute does not contain updated requirements for public membership or commission member training, such as a training manual and discussion of the board's rulemaking authority. The commission's statute also contains terms that are not consistent with the person-first respectful language initiative.

Key Recommendations

- Update the standard across-the-board requirements related to public membership on the commission.
- Update the standard across-the-board requirement related to commission member training.
- Update statute to reflect the requirements of the person-first respectful language initiative.

Fiscal Implication Summary

Overall, the recommendations in this report would result in an estimated savings of \$2.4 million in general revenue-dedicated funds and a reduction of 4.5 FTEs over the next five fiscal years.

Issue 1 — Transferring state regulation of pari-mutuel racing from the commission to TDA would result in an overall savings of \$480,000 per year from consolidating administrative functions, including a reduction of 4.5 FTEs and elimination of a \$15,000 duplicative internal audit contract. Beginning in fiscal year 2023, an additional annual savings of \$105,000 would result from eliminating the cost of renting the commission's separate building.

Issue 3 — The recommendation to require administrative penalties be deposited into the General Revenue Fund would result in a gain of \$387,250 over the next five fiscal years and a corresponding loss to the commission's general revenue-dedicated account. The recommendation to discontinue the 36 month re-fingerprinting requirement will save licensees \$28.25 every three years. The other recommendations streamline processes and ensure consistent application of racing licensure and enforcement standards, and could be implemented with existing resources.

Texas Racing Commission

Fiscal Year	Savings to the General Revenue Dedicated – Texas Racing Commission Account	Loss to the General Revenue Dedicated – Texas Racing Commission Account	Gain to the General Revenue Fund	Change in Number of FTEs From FY 2021
2022	\$480,022	\$77,450	\$77,450	-4.5
2023	\$585,022	\$77,450	\$77,450	-4.5
2024	\$585,022	\$77,450	\$77,450	-4.5
2025	\$585,022	\$77,450	\$77,450	-4.5
2026	\$585,022	\$77,450	\$77,450	-4.5

¹ Chapter 19 (S.B. 15), Acts of the 69th Texas Legislature, 2nd Called Session, 1986.

AGENCY AT A GLANCE

Established in 1986, the Texas Racing Commission regulates pari-mutuel horse and greyhound racing to protect the animals and participants involved. Currently, there are four horse racetracks and two greyhound racetracks active in Texas. In a pari-mutuel race, the total amount wagered on each race is divided among the winners in proportion to how much each person wagered. Additional racing terms are defined in Appendix A. The commission's mission is to ensure the safety, integrity, and fairness of Texas pari-mutuel racing and wagering by enforcing the Texas Racing Act and the rules of racing.¹ To accomplish this mission, the commission performs the following key activities:

- Licenses racetrack facilities and racing industry occupations.
- Enforces the Texas Racing Act and establishes rules for racing conduct.
- Allocates race dates, and supervises licensee and animal conduct during live racing events.
- Oversees pari-mutuel wagering activity, including wagers placed on simulcast races.

Key Facts

- **Governance.** The commission consists of seven members appointed by the governor and confirmed by the Senate, and two ex officio members.² Five of the seven governor-appointed members represent the public and must have a general knowledge of business or agribusiness, which may be demonstrated by licensure as a veterinarian.³ Of the remaining two governor-appointed members, one must have a background in horse racing and one in greyhound racing.⁴ The commission member with a background in greyhound racing had not been designated at the time of publication. The chairman of the Texas Department of Public Safety and the Commissioner of Agriculture serve as ex officio voting members. The chart, *Texas Racing Commission*, lists the current members.

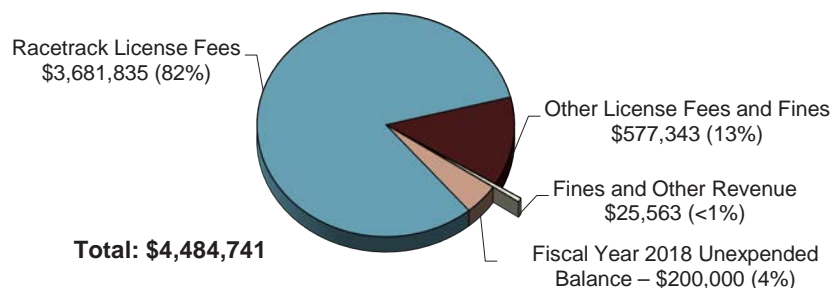
Texas Racing Commission

Member	Qualification	Term Expires
John T. Steen III, Chairman	Public Member	2019
Ronald F. Ederer, Vice Chairman	Background in Horse Racing	2019
Margaret Martin	Public Member	2021
Connie McNabb, D.V.M.	Public Member, Veterinarian	2021
Michael "Mike" Moore	Public Member	2023
Robert C. Pate	Public Member	2023
Arvel "A.J." Waight Jr.	Public Member	2021
The Honorable Sid Miller	Ex Officio, Texas Department of Agriculture	N/A
Steven P. Mach	Ex Officio, Department of Public Safety	N/A

- **Funding.** In fiscal year 2019, the commission received approximately \$4.5 million in revenue, deposited into a dedicated account in the General Revenue Fund. The commission's funding comes primarily

from racetrack and other license fees as detailed in the chart, *Texas Racing Commission Sources of Revenue*. The commission carried forward about \$200,000 in unspent funds from fiscal year 2018 to fiscal year 2019. That same year, the Legislature authorized the commission to receive the proceeds of a tax assessed on simulcast races and the commission began receiving those funds in fiscal year 2020.⁵ As of May 2020, the commission had received about \$1.4 million in simulcast tax revenue.

Texas Racing Commission Sources of Revenue – FY 2019

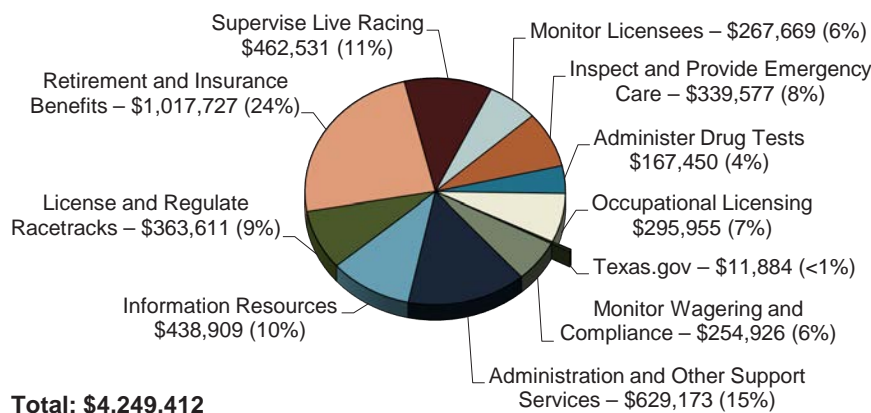


In fiscal year 2019, the commission spent more than \$4.2 million, including \$1 million for retirement and health insurance benefits, detailed in the chart, *Texas Racing Commission Expenditures*. Separate from the commission's own revenue and expenditures, it also distributes \$2.8 million for the Accredited Texas-Bred Incentive Program, which provides monetary awards for breeders and owners of animals bred in Texas. The commission also administers funds from the Horse Industry Escrow Account, detailed in the accompanying textbox. Appendix B describes the commission's use of historically underutilized businesses in purchasing goods and services for fiscal years 2017–19.

Horse Industry Escrow Account

The Horse Industry Escrow Account exists outside the state treasury and is funded by a percentage of racetrack wagers and taxes on sales of horse-related items in Texas. Horse racetrack associations may apply to the commission to receive up to 70 percent of the funds to use as monetary awards at races. Horse breed registries may apply to receive the remainder of the funds for events that further the horse industry.

Texas Racing Commission Expenditures – FY 2019



- **Staff.** The commission, headquartered in Austin, employed 34 staff in fiscal year 2019. Twenty-three staff, including stewards, judges, technicians, investigators, veterinarians, and one auditor, work in the field at six active racetracks located throughout the state. Appendix C compares the commission's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years.
- **Racetrack licensing.** The commission licenses horse and greyhound racetracks where pari-mutuel wagering occurs. Commission staff perform inspections of licensed racetracks to ensure the safety and security of race animals, racing participants, and the wagering public. The textbox, *Classes of Horse Racetracks*, describes the various types of horse racetracks regulated by the commission. Greyhound racetracks must be located in three coastal counties but are not categorized by class. Appendix D shows the locations of racetracks in Texas. In fiscal year 2019, the commission regulated 10 licensed racetracks, including seven horse and three greyhound racetracks.⁶ However, three of the currently licensed horse racetracks are inactive, and, in the last decade, four racetracks have closed their operations completely, including Gulf Greyhound Park, which closed in June 2020. The remaining two greyhound racetracks still licensed by the commission hosted simulcast races but no live races in fiscal year 2019. In fiscal year 2019, commission staff performed eight racetrack inspections and discovered 25 deficiencies in need of corrective action.
- **Access to restricted areas.** The commission licenses all individuals in positions that could influence pari-mutuel wagering and those with access to the "backside," or restricted area of the racetrack, such as jockeys, trainers, kennel helpers, and grooms. In total, the commission offers 57 different kinds of licenses, listed in Appendix E. In fiscal year 2019, the commission issued 4,571 licenses, found more than 200 cases of rule violations, and ultimately issued 213 disciplinary rulings and imposed \$77,450 in fines.
- **Regulation of pari-mutuel wagering.** The commission regulates all pari-mutuel wagering transactions at Texas racetracks by confirming daily wagering totals and payouts made on all live races and simulcast events. The commission also certifies the accuracy of each computer system that tracks bets and calculates payoffs. In fiscal year 2019, commission staff audited more than 1,700 live races and more than 630,000 simulcast races to ensure proper collection of wagers and distribution of funds.
- **Veterinary care and drug testing.** Before each live race, commission veterinarians perform pre-race examinations and observe training sessions for the racing animals to identify any injuries or potential for injuries while racing. Commission veterinarians may remove animals from the race if they determine the animal is in danger of injuring itself or others. In fiscal year 2019, commission veterinarians performed 2,839 pre-race examinations of greyhounds and 10,618 pre-race examinations

Classes of Horse Racetracks

Class 1

- Limited to three racetracks.
- No limit on race days per year.
- Located in, or adjacent to, a county with a population of at least 1.3 million.

Class 2

- No limit on number of racetracks.
- Generally limited to 60 race days per year, or more if located in a historic district.

Class 3

- No limit on number of racetracks.
- Limited to 16 race days per year if in operation since 1986.
- Operated by a county or nonprofit fair.

Class 4

- No limit on number of racetracks.
- Limited to five race days per year.
- Operated by a county fair.

of horses. In addition, commission veterinarians collect blood or urine samples from winning race animals and any animals suspected of racing with prohibited substances. In fiscal year 2019, the commission collected 418 samples from greyhounds and 2,740 samples from horses, and found 59 medication violations.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 2021.002, Texas Occupations Code.

² Section 2022.001, Texas Occupations Code.

³ Sections 2022.001(c)(1) and 2022.001(d), Texas Occupations Code.

⁴ Sections 2022.001(c)(2) and 2022.001(c)(3), Texas Occupations Code.

⁵ Chapter 49 (H.B. 1995), Acts of the 86th Texas Legislature, Regular Session, 2019; Section 2028.202, Texas Occupations Code.

⁶ Unlike horse racetrack licenses, statute caps the number of greyhound racetrack licenses at three and strictly regulates the counties in which they may operate. Sections 2025.151 and 2025.152, Texas Occupations Code.

ISSUE 1

The Texas Department of Agriculture Could Regulate Pari-Mutuel Racing More Efficiently and Effectively Than the Texas Racing Commission.

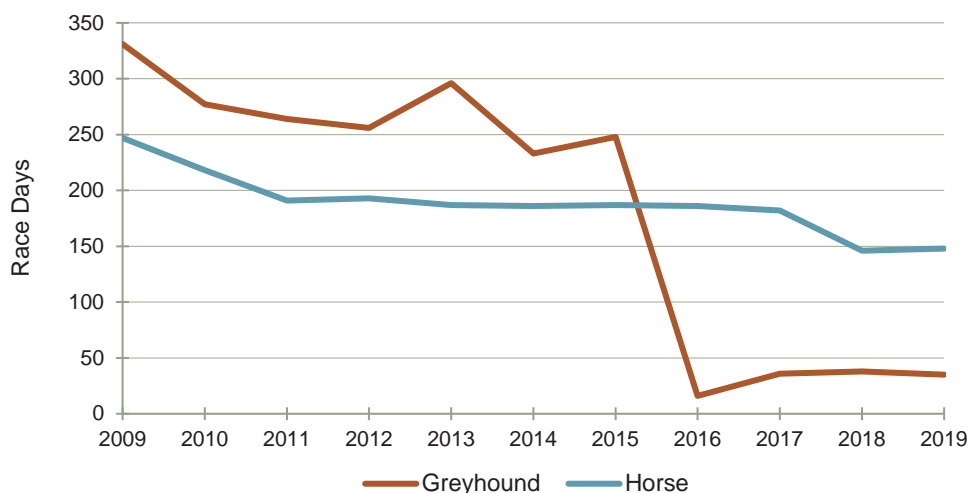
Background

In 1986, the Legislature passed the Texas Racing Act, allowing pari-mutuel wagering on horse and greyhound races and creating the Texas Racing Commission to regulate the pari-mutuel racing industry.¹ Shortly after the Racing Act passed, Texas voters approved a statewide referendum that gave counties the option to legalize pari-mutuel wagering on horse racing across the state and greyhound racing in Cameron, Galveston, and Nueces counties. The commission licensed its first racetrack after the referendum in the fall of 1989.

The commission's mission is to ensure the safety, integrity, and fairness of Texas pari-mutuel racing. To accomplish this mission, the commission licenses racetrack facilities and individuals involved in pari-mutuel racing, monitors wagering systems, and enforces the Racing Act and the rules of racing. In addition, the commission ensures the health and safety of race animals and protects the interests of the betting public. The commission regulates racetracks with 34 staff and an annual budget of approximately \$4.5 million, primarily from racetrack and other licensing fees and simulcast tax revenue. In fiscal year 2019, the commission licensed 4,571 individuals who participate in pari-mutuel racing at Texas racetracks.

Over the last decade, the Texas racing industry has seen a decline in the number of live race days, as shown in the chart, *Greyhound and Horse Race Days*, as well as attendance and the amount wagered. For example, in 2009, horse racetracks held 247 days of live racing and greyhound racetracks held 331, with 2.1 million patrons wagering \$395 million. In 2019, horse racetracks held 148 days of live racing and greyhound racetracks held 35, with 1.4 million patrons wagering \$285 million. Several racetracks have also closed over the last 10 years. In June 2020, the last greyhound track to host live races in Texas — Gulf Greyhound Park — permanently closed and subsequently surrendered its license, leaving the state with only four active horse racetracks, three inactive horse racetracks, and two greyhound tracks that host simulcast events but not live racing.

**Greyhound and Horse Race Days
Calendar Years 2009–2019**



Findings

Texas has a continuing need to regulate pari-mutuel racing.

Texas law requires state regulation of pari-mutuel racing and wagering.

State law requires strict oversight of pari-mutuel racing to protect the health and safety of human and animal participants, to ensure races and wagering are fair, and to prevent crime.² As attendance and spending at racetracks continues to decline, state regulatory oversight becomes even more important to ensure cost saving measures do not endanger the health and safety of race participants. Declining race days and attendance have led to decreased revenue for racetracks, which may have less money for grounds maintenance and upkeep of wagering systems. In turn, unsafe conditions and outdated equipment can lead to injuries and jeopardized betting integrity, which are the very problems and concerns regulation is meant to prevent. In addition, as long as counties continue to allow pari-mutuel racing, Texas law requires state regulation to allow for legal wagering on these races.³

With constrained funding and limited resources, the commission cannot efficiently or effectively regulate pari-mutuel racing in Texas.

- **Unsuccessful funding structure.** When the Legislature created the commission in 1986, the Legislative Budget Board estimated racing would contribute about \$110 million annually to the General Revenue Fund through taxes on racetracks and revenue from wagers.⁴ However, racing has not become the economic driver once envisioned. Over the last five fiscal years, the contribution to general revenue from racing industry regulation has steadily decreased, from \$3 million in fiscal year 2015 to \$2.7 million in fiscal year 2019, as fewer patrons attended races.⁵

The lack of anticipated revenue due to COVID-19 almost forced the commission to close in July.

As the industry has declined, so has the funding for the commission to effectively regulate it. In 2019, the Legislature redirected tax revenue from simulcast wagers to fund the commission's operations. However, the lack of anticipated simulcast tax revenue in 2020 due to the COVID-19 pandemic significantly reduced the commission's revenue in March and almost forced the commission to close in July, jeopardizing the continued operation and regulation of the Texas racing industry. Additionally, the commission will not have any excess revenue to contribute to the General Revenue Fund in fiscal year 2020. The *Continued Effects of COVID-19 on the Commission and Industry* textbox on the following page details the pandemic's continued impact on the commission and the racing industry.

- **Untenable regulatory structure.** A regulatory agency should be structured in a way that protects the public, but in some cases, the structure can create conflicts between the regulated industry and the public interest. The commission is largely dependent on licensing fees, primarily from racetracks, to fund its operations. Simultaneously, the racing industry is regulated by the commission, which it funds. This creates a constant push and pull between the commission as the regulator and racetracks as

Continued Effects of COVID-19 on the Commission and Industry

The COVID-19 pandemic has exacerbated the commission's lack of funding. In 2020, to keep the commission operating, racetracks pre-paid their licensing fees for July. After pre-paying the July fees, the racetracks were shortly thereafter given seven business days' notice to pay an additional fee in July to help keep the commission afloat. Although the commission adopted a rule in 2019 that authorizes increased fees if simulcast tax revenue decreases, the abrupt requirement to pay additional licensing fees surprised some stakeholders who provided input to Sunset. Gulf Greyhound Park, the last greyhound racetrack in Texas holding live races, permanently closed in June partially because of its inability to pay. Several other racetracks have had to reduce the number of racing days due to COVID-19, and many are limiting the number of participants who can watch the races in person, further reducing the revenue for the racetracks and the commission. If more racetracks are unable, or refuse, to pay their licensing fees, the commission may not have enough funds to continue to operate. Additionally, even if the commission canceled more live race dates to lower its operating costs needed to regulate the races, the racetracks' revenue loss could still ultimately lead to the commission's closure.

the licensees, and the level of regulation can become contingent on the amount of funding the licensees are willing and able to pay. This places the commission in an untenable position where firm regulatory enforcement could undermine the very funding it needs to provide effective regulation. Meanwhile, the commission's relatively small staff struggles to conduct inspections, maintain health and safety at racetracks for participants and animals, and ensure the security of wagering, while also managing the typical administrative work of a state agency.

- **Poor communication.** Licensees report the commission is continually slow to respond to inquiries, sometimes taking up to a week to answer basic questions about race days and annual reporting requirements, which may be due in part to the agency being understaffed. Commission staff also took several months to develop an application form and clear guidelines for the Horse Industry Escrow Account grant program, as further discussed in Issue 2.

The commission also did not clearly communicate critical information to licensees during the COVID-19 pandemic. For example, after the governor issued an executive order in March 2020 requiring certain businesses to temporarily close, racetracks requested guidance from the commission about how the closure would affect their employees and whether parts of a racetrack could remain open for horses to train.⁶ To assist with their insurance claims, the racetracks also asked the commission to clarify in writing whether racetracks had to close due to COVID-19 and the governor's order. The commission did not provide this information. While the commission does not have the authority to order racetracks to close, regulatory agencies should provide clear information about state and county-ordered closures to their licensees. For example, other agencies, such as the Texas Department of Licensing and Regulation, provided clear guidance to their licensees, including letters about the governor's ordered closures and updates about the impact of COVID-19 on their industries.⁷

- **Weakened regulation.** Legislative budget cuts in 2017 and 2019, decreasing revenue, and a staff stretched thin have caused the commission to reduce

The commission's small staff struggles to serve as an effective regulator while managing administrative tasks.

The commission
no longer has
resources to
conduct audits
of race winnings.

or cease some nonessential regulatory functions. While nonessential, these functions play a role in ensuring racing and pari-mutuel wagering are conducted fairly. For example, the commission no longer has resources to conduct audits on the tens of millions of dollars distributed as race winnings, the breed registry accounts, or even the Accredited Texas-Bred program administered by the agency. Without these audits, the commission cannot ensure the correct amount of money is deposited into the right account and must rely on race participants and the breed registries to identify and report any discrepancies.

Further, the commission's reduced workforce and several vacancies in key positions have required staff to wear multiple hats, detailed in the accompanying textbox, *Understaffing*. To combat the strain on its staffing resources and to respond to the reduced number of race dates, the commission has reduced the number of racetrack inspections it conducts

Understaffing

- The executive director also serves as the agency's information technology (IT) director, currently leading the agency through a major database upgrade.
- The general counsel also manages the Horse Industry Escrow Account grant program.
- The public information officer also serves as a licensing technician.
- The licensing director also serves as a licensing technician and a race steward.
- The director of administration also serves as acting chief financial officer.

— from 106 inspections in 2015 to eight in 2019 — and switched from unannounced to scheduled inspections, as discussed in Issue 3. In addition, other states, such as Oklahoma and New Mexico, have chosen to employ an extra steward or judge to ensure safety and effective regulation at each race.⁸ Instead of expanding staff presence at races, the commission has deferred hiring a veterinary medical director and reduced the number of staff veterinarians who inspect animals before races to prevent animal doping or serious injuries, choosing to use contracted veterinarians instead. Unlike staff veterinarians who are regularly available at racetracks to inspect animals when they train between races, contracted veterinarians only work on race days.

The Texas Department of Agriculture could provide more efficient and effective regulation of pari-mutuel racing in Texas.

With its significantly larger administrative and regulatory capacity, the Texas Department of Agriculture (TDA) could easily assume regulation of pari-mutuel racing and provide more effective oversight of the industry. TDA administers several programs similar to the commission, such as occupational licensing, regulation, and grant programs, and has existing ties to the racing industry through its inspection of race horses in state export pens. Further, the Commissioner of Agriculture is an ex officio member of the commission's governing board, which provides TDA institutional knowledge of the commission's programs and governance.

- **Greater regulatory independence.** Unlike the commission that relies on racetrack licensing fees as a significant source of funding and is severely affected if one racetrack does not pay, TDA has several sources of funding

and is not beholden to the same push-pull dynamic with its regulated populations. As an agency with a \$707 million budget, TDA is not dependent on the funding of any single program to ensure the department's ongoing operations. TDA would be better able to leverage its existing resources to streamline and reduce expenditures for the commission's programs and could more easily adjust to potential future revenue shortfalls, as compared to the commission.

- **Administrative efficiencies.** TDA has large, established administrative departments, such as human resources, communications, and IT, and could readily absorb and improve these functions of the commission, where staff currently get pulled between their regulatory and administrative workloads. TDA also has experience in licensing and inspections and has existing field offices that could better support the functions of staff inspecting and regulating live races. As discussed in Issue 2, the commission, lacking a grants department and dedicated grants staff, struggles to administer the Horse Industry Escrow Account grant program. TDA has a robust grants department, which could more effectively manage this program. Transferring the regulation of pari-mutuel racing to TDA also would eliminate the need for the commission to have its own building.
- **Improved communication.** Unlike the commission, TDA has a large communications office dedicated to proactively providing information to and responding to inquiries from the public, media, and stakeholders. During the COVID-19 pandemic, TDA provided a dedicated website with information about how the department was responding to COVID-19 and how it would affect regulated industries.⁹ In addition, TDA has significant experience forming working groups and gathering industry input. With the regulation of pari-mutuel racing housed at TDA, stakeholders would have more opportunities to provide input on proposed rules and other issues affecting pari-mutuel racing and would benefit from more consistent communication from TDA.
- **Board support.** TDA successfully supports a variety of boards within its organizational structure, including the Boll Weevil Eradication Foundation and the Structural Pest Control Board. Housed within TDA, these boards have access to administrative support, legal counsel, and expertise in subjects related to their different missions. In turn, TDA uses each board's expertise in a given industry to help develop and enforce rules for the industry. Sunset staff recently concluded its review of TDA, finding TDA is efficiently and effectively serving the state in carrying out its statutory duties. As such, TDA is well positioned to include the commission as an additional advisory board and accompanying regulatory program under its umbrella.
- **Racing regulatory structures in other states.** Nine states, such as Florida and Kentucky, house the regulation of pari-mutuel racing within a large umbrella state agency rather than a stand-alone agency. Other states, including Maine and Pennsylvania, house the regulation of racing within their state's equivalent of TDA.

TDA could leverage its resources to streamline functions and reduce expenditures.

Sunset staff's recent review of TDA concluded it is efficiently and effectively carrying out its statutory duties.

Sunset Staff Recommendation

Change in Statute

1.1 Transfer the regulation of pari-mutuel racing to the Texas Department of Agriculture, and reconstitute the Texas Racing Commission as a governor-appointed advisory board.

This recommendation would transfer the regulation of pari-mutuel horse and greyhound racing in Texas to TDA by March 1, 2022. TDA would be responsible for strictly enforcing the Texas Racing Act. TDA has the ability and capacity to provide administrative support services and the animal and agricultural industry expertise to efficiently regulate pari-mutuel racing, reduce the administrative strain on regulatory staff, strengthen regulation, and improve customer service for licensees. This recommendation would include the following provisions.

- **Reconstitute the Texas Racing Commission as an advisory board.** The Texas Racing Commission would become a governor-appointed advisory board within TDA to provide expertise to the Commissioner of Agriculture related to pari-mutuel racing. The advisory board would retain the composition of the current commission without its ex officio members, for a total of seven members. The advisory board would be responsible for proposing rules and recommended sanctions for rule violations related to racing licensees, but final authority would reside with the Commissioner of Agriculture.
- **Duty to enforce.** Statute would clarify TDA must strictly enforce the Texas Racing Act, ensuring the health and safety of race participants and animals and protecting the wagering public.
- **Sunset provision.** This provision would remove the separate Sunset review date from the commission's statute, as the advisory board would be subject to review during TDA's next Sunset review.
- **Coordinate to provide for seamless administrative transition.** This provision would require the commission to provide TDA access to all systems, data, and information needed to effectively absorb the program, including licensing, revenue, and expenditure systems; IT databases; rights to contracts and agreements; use of renewal and application systems; and review and resolution of pending judgments and outstanding expenditures. The commission also would work with TDA to implement any management actions adopted by the Sunset Advisory Commission that apply to the commission, which could be implemented before the transfer has been completed.
- **Legislative issues.** This provision would direct Sunset staff to work with staff from TDA, the commission, and Texas Legislative Council in the drafting of bill language to accurately account for any other legal and administrative aspects the transfer entails. To support the transition without any loss of services, the Legislature would need to enact appropriations contingency riders to allow for interagency financial agreements between TDA and the commission.

Fiscal Implication

Overall, the recommendation to transfer state regulation of pari-mutuel racing from the Texas Racing Commission to TDA would result in an estimated savings of about \$2.8 million in general revenue-dedicated funds over the next five fiscal years. The savings would result primarily from consolidating the administrative functions of the commission at TDA, as well as eliminating six associated positions, a \$15,000 duplicative internal audit contract, and, beginning in fiscal year 2023, the \$105,000 annual cost of renting a separate building. TDA would need one additional staff position to audit purses, breed registry accounts, and the Accredited Texas-Bred program, and one half-time staff position to administer the Horse Industry Escrow Account grants program, resulting in a total net reduction of 4.5 FTEs.

On March 1, 2022, TDA would assume responsibility for the commission's functions. The commission is authorized to employ 39 FTEs, 34.5 of which would transfer to TDA to regulate pari-mutuel horse and greyhound racing in Texas.

Texas Racing Commission

Fiscal Year	Savings to the General Revenue Dedicated – Texas Racing Commission Account	Cost to General Revenue Dedicated – Texas Racing Commission Account	Net Savings to General Revenue Dedicated – Texas Racing Commission Account	Net Change in Number of FTEs From FY 2021
2022	\$622,087	\$142,065	\$480,022	-4.5
2023	\$727,087	\$142,065	\$585,022	-4.5
2024	\$727,087	\$142,065	\$585,022	-4.5
2025	\$727,087	\$142,065	\$585,022	-4.5
2026	\$727,087	\$142,065	\$585,022	-4.5

¹ Chapter 19 (S.B. 15), Acts of the 69th Texas Legislature, 2nd Called Session, 1986.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 2021.002, Texas Occupations Code.

³ Section 2027.002, Texas Occupations Code.

⁴ Chapter 19 (S.B. 15), Acts of the 69th Texas Legislature, 2nd Called Session, 1986.

⁵ Texas Racing Commission, *2015 Annual Report*, accessed August 13, 2020, <http://www.txrc.texas.gov/agency/reports/AnnualRpt/AnnualReport2015.pdf>; Texas Racing Commission, *2019 Annual Report*, accessed August 13, 2020, http://www.txrc.texas.gov/agency/reports/AnnualRpt/2019TxRC_Annual_ReportFinal.pdf.

⁶ "Governor Abbott Issues Executive Order Implementing Essential Services and Activities Protocols," Office of the Texas Governor, last modified March 31, 2020, <https://gov.texas.gov/news/post/governor-abbott-issues-executive-order-implementing-essential-services-and-activities-protocols>.

⁷ "TDLR Takes Action in Response to COVID-19 Threat," Texas Department of Licensing and Regulation, accessed July 22, 2020, <https://www.tdlr.texas.gov/covid19.htm>.

⁸ "ROAP Conference Identifies Importance of Safety Stewards," Thoroughbred Horsemen's Association, last modified April 5, 2017, <http://tharacing.com/roap-safety-stewards/>.

⁹ "COVID-19 Coronavirus Updates," Texas Department of Agriculture, accessed July 20, 2020, <https://www.texasagriculture.gov/NewsEvents/COVID19CoronavirusResponsePage.aspx>.

ISSUE 2

The Texas Racing Commission Does Not Effectively Administer Its Horse Industry Grant Program.

Background

In 1997, the Legislature created the Horse Industry Escrow Account and tasked the Texas Racing Commission with using a portion of wagers placed at greyhound racetracks to supplement purses awarded at live horse races.¹ In 2019, the Legislature added an additional source of funding for this account and required the commission to award grants for events related to the horse industry.² The textbox, *Horse Industry Escrow Account*, provides more detail on the program and recent legislative changes. The graphic on the following page, *Horse Industry Escrow Account Funding*, shows how money flows into and out of the account. The commission does not receive any funding to manage the account or administer the grant program.

After legislation authorizing the new funding and grant program took effect in September 2019, the commission created an application process and advisory committee for the program. Five official registries representing horse breeds in Texas may apply for grant funding on a rolling basis to help increase interest in Texas-bred horses and racing.³ The initial grant awards in fiscal year 2020 ranged from \$3,500 for barrel races to \$685,000 for a race meet, and the average grant award was about \$93,500. The advisory committee, comprised of two commission members, meets on an ad hoc basis to review applications and make funding recommendations, and the full commission makes grant decisions at its regular meetings.

Horse Industry Escrow Account

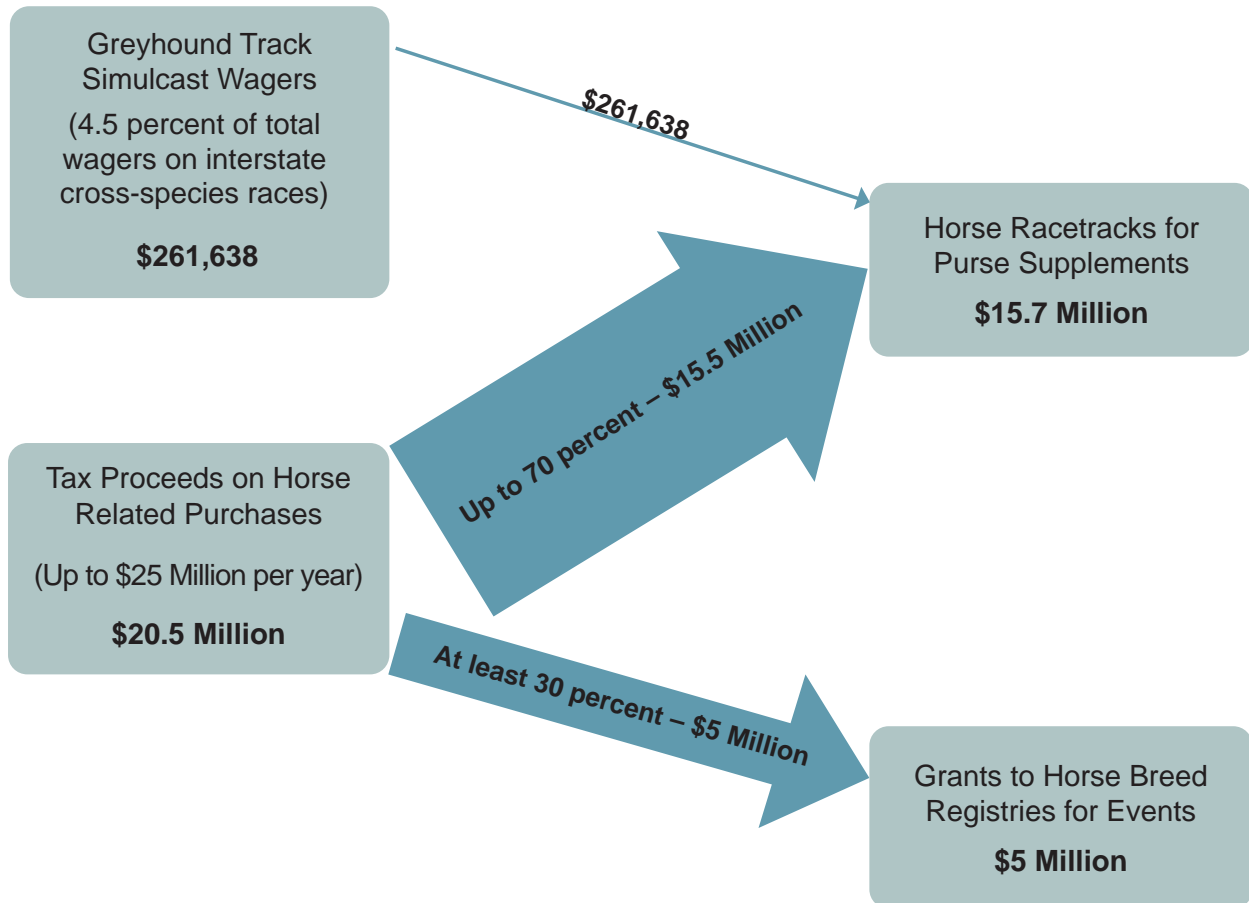
- A portion of wagers at greyhound tracks for simulcast races is deposited into the account, typically about \$650,000 per fiscal year.
- Up to \$25 million per fiscal year is deposited in the account from tax proceeds on horse-related purchases, such as feed and grooming supplies.
 - The commission distributes up to 70 percent, or about \$17.5 million, to racetracks through a negotiated formula to supplement purses for horse owners.
 - The commission awards the remainder, or about \$7.5 million, to official registries representing each breed of horse racing in Texas for events furthering the horse industry.

Findings

The commission does not have the necessary expertise or resources to effectively administer the Horse Industry Escrow Account grant program.

- **Lack of needed resources and grant expertise.** Agencies should have appropriate resources and expertise to administer grant programs in compliance with state law and grant management best practices. The commission does not receive any funding to administer the Horse Industry Escrow Account grant program and has never managed a traditional grant program before. The commission has no excess staffing or resources to dedicate solely to the grant program. Instead, commissioners and

Horse Industry Escrow Account Funding FY 2020 (through June 30, 2020)



commission staff must administer the program along with their other duties, which detracts from the agency's core function of regulating pari-mutuel racing in Texas.

The
commission's
grant program
detracts from its
core function of
regulating racing
in Texas.

Currently, the agency's general counsel manages the new grant program, which at times requires as much as 100 percent of her time to review applications and answer frequent questions from applicants. Commission staff indicated they have minimal time to devote to other grant tasks, such as monitoring how recipients use grant proceeds, because of the lack of resources for the program. The two commissioners serving on the grants advisory committee also dedicate significant time to review applications, a role often filled by staff or outside review committees at other agencies.

- Conflicting mission and purpose.** Although the commission previously promoted pari-mutuel racing as part of its mission, in 1997, the Legislature changed the commission's mission to focus solely on regulating the industry.⁴ While the Horse Industry Escrow Account grants are meant to advance the horse racing industry in Texas, only five official breed registries are currently eligible for these grants.⁵ As such, the commission is placed in

the awkward position of awarding and denying grants to a small sector of the industry it regulates, which can create an appearance of bias. The commission awards grants for events at the same racetracks to which they also allocate live race dates. These dates determine when and where the different horse breeds will race, affecting how much money the racetracks and race winners bring in. The breed registries have an agreement among themselves for how much event funding each should receive, which the commission and its staff allude to but cannot factor in when making funding decisions. Awarding grants to the regulated industry has created additional tension and confusion between the commission and grant applicants, exacerbated by the intertwined regulatory relationship between the commission and racing industry, as discussed in Issue 1.

Awarding grants to the industry has created tension between the commission and grant applicants.

The Texas Department of Agriculture has the expertise necessary to more effectively administer the Horse Industry Escrow Account, including the grant program.

The Texas Department of Agriculture (TDA) successfully administers its own robust grant programs and could easily absorb the Horse Industry Escrow Account grant program. As part of its objectives to promote agriculture and support economic development, TDA administers several grant programs, including Rural Community Development, Specialty Crop, and Texans Feeding Texans grants, disbursing hundreds of millions of dollars per year. TDA has dedicated grants staff, including staff certified in grant and contract management, and TDA staff have already been instrumental in helping the commission develop its new grant program, providing the application template and other assistance. Additionally, one of the two members on the commission's grant advisory committee is the TDA representative who has also helped the commission begin to address problems with its grant program.

TDA already uses many grant management best practices and processes that are missing from the commission's grant program. These grant processes and practices include having clear timelines for applications and grant periods, rigorous evaluation criteria and processes, clear policies and guidance for applicants, and a process for monitoring and compliance. TDA is also launching a new grants management system in fiscal year 2021 to streamline its entire grant process. Additionally, as a large umbrella agency with separate promotional and regulatory functions, including a stand-alone grants office not responsible for industry regulation, TDA would be better positioned to make unbiased decisions on Horse Industry Escrow Account grant awards. TDA's mission to promote agriculture also corresponds with the purpose of the commission's grant program, which seeks to further the horse industry in Texas.

TDA already uses many grant management best practices the commission lacks.

Regardless of the administrator of the Horse Industry Escrow Account, the grant program needs improvements to ensure the application and award process is fair and effective.

The commission has not clearly defined what qualifies as an event eligible to receive a grant.

- **Unclear policies for evaluating grant applications.** The process for evaluating applications should be fair and reasonably transparent. The commission does not have clear policies or criteria for evaluating grant applications. The Texas Racing Act provides only a broad, general definition for eligibility — “any event that furthers the horse industry” — and the commission has not yet clearly defined the eligible events in rule, relying instead on their judgment.⁶ Applicants have interpreted the statutory definition of “event” broadly, applying for funding to support horse-related nonprofit organizations, transport horses for breeding, and assist with COVID-19 relief. In response, the commission recently proposed rules to define eligible events, but stakeholders have expressed concerns the definition is overly restrictive. Stakeholders also said the lack of clear guidance around grant requirements makes it difficult to know what is needed for a successful application. In practice, the commission approves awards on a first-come, first-served basis if applicants generally meet application requirements. As of June 30, 2020, the commission approved 54 out of 58 total applications received since the program began. Better evaluation criteria would ensure the grant funds go to the most worthwhile projects and meet the stated purpose of improving the horse racing industry in Texas.

The commission does not collect data to better direct grant funds to more impactful events.

- **Limited monitoring and performance measurement.** Agencies should regularly monitor grant recipients to ensure they comply with grant terms, require evidence of grant program results, and use results to improve the grant program. The commission lacks a well-developed monitoring process and does not rigorously review the quarterly and annual information it does receive to ensure compliance with grant terms. Further, the commission does not require grant recipients to report any performance measures to show the impact of grant funds. For example, the commission does not require grant recipients to provide information on increased attendance and wagering for races receiving grant funds, even though that data could help the commission better direct grant funds to more impactful events in the future.
- **Inconsistent funding cycle.** Grant cycles, or the timeline for applying for and awarding grants, should be practical and meet the needs of both the agency and applicants. The commission lacks a reliable grant funding cycle, which complicates the application process for applicants planning events and agency staff and advisory committee members reviewing applications. The commission accepts applications on a rolling basis, and there is no set time period in which an event must occur. The advisory committee’s two members are sometimes overwhelmed by applications, as applicants seek to submit applications for all their future events without knowing when the applications will be reviewed and grants awarded. Breed registries indicated they have difficulty planning events because of the uncertainty

of the grant timeline, and in some cases decided not to hold some events due to uncertainty of when the commission would award the grants. The advisory committee meets and simply reviews as many applications as possible, deferring all other applications to a future meeting. The commission has met and awarded grants four times.

Sunset Staff Recommendations

Change in Statute

2.1 Transfer administration of the Horse Industry Escrow Account to the Texas Department of Agriculture.

This recommendation would transfer the Horse Industry Escrow Account to TDA, including administration of the account's purse funds distributed by formula and the grant program, which would be administered with TDA's other grant programs. Administration of the account would transfer by March 1, 2022. This recommendation would allow an agency with expertise and resources to administer the grant program more efficiently and effectively.

Management Action

2.2 Direct the Texas Department of Agriculture to develop and publish guidelines for evaluating grant applications.

This recommendation would direct the department to develop clear guidelines for evaluating applications to ensure the evaluation process is clear and fair. The department would develop grant program requirements, including defining eligible events and allowable expenditures, and make these requirements available to applicants as part of the application materials. The department would evaluate applications based upon compliance with these requirements. The department should develop and publish these guidelines by March 1, 2022.

2.3 Direct the Texas Department of Agriculture to develop processes for monitoring grant recipients and tracking performance measures.

Under this recommendation, the department should develop an internal policy to regularly monitor grant recipients by reviewing the quarterly and annual reports recipients are already required to submit. The department could consider periodically auditing a sample of grant recipients, based on available staff resources. This recommendation would also direct the department to establish performance measures for grants that better illustrate the impact of the grant funds in furthering the horse racing industry in Texas, with input from stakeholders. The department would track these measures as part of the existing quarterly reporting process and use the information to assess compliance and determine monitoring needs. The department should develop these processes by March 1, 2022.

2.4 Direct the Texas Department of Agriculture to develop and implement a consistent timeline for grant applications.

This recommendation would direct the department to create a timeline for receiving, reviewing, and awarding grant applications each year. The department should seek stakeholder input on timing for applications and awards potentially based on the typical racing season. The department should develop and publish the grant timeline by March 1, 2022, to take effect for the fiscal year 2023 grant cycle. This recommendation would allow applicants and department staff to better plan for, award, and manage grants.

Fiscal Implication

These recommendations would not have a fiscal impact to the state. The commission does not receive any funding to administer the Horse Industry Escrow Account. The Texas Department of Agriculture currently manages 15 grant programs and, as the horse industry event grants program has no funding for its administration, could administer the horse industry event grants with its current staff and resources. Recommendations 2.2, 2.3, and 2.4 would direct TDA to implement grant program best practices for the Horse Industry Escrow Account event grants, many of which the department already follows. The transfer would ultimately result in more efficient and effective administration of the grant program.

¹ Chapter 1275 (H.B. 1445), Acts of the 75th Texas Legislature, Regular Session, 1997.

² Chapter 1365 (H.B. 2463), Acts of the 86th Texas Legislature, Regular Session, 2019.

³ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 2028.204(b) and 2030.002, Texas Occupations Code. The eligible breed registries are the Texas Thoroughbred Breeders Association, the Texas Quarter Horse Association, the Texas Appaloosa Horse Club, the Texas Arabian Breeders Association, and the Texas Paint Horse Breeders Association.

⁴ H.B. 1445, 1997.

⁵ Section 2028.204(b), Texas Occupations Code.

⁶ Ibid.

ISSUE 3

Key Elements of the Texas Racing Commission's Statute and Rules Do Not Conform to Common Licensing Standards.

Background

The Texas Racing Commission oversees 57 license types for different entities involved in pari-mutuel wagering and horse and greyhound racing. Most commission licenses are simply credentials for individuals to access restricted parts of the racetrack, especially the “backside” where stables are located. While some licenses require applicants to complete a practical examination, most only require a completed application, licensing fee, and fingerprint-based background check. Appendix A contains a glossary of common racing terms and Appendix D contains a list of licenses issued by the commission. The commission issues fines or suspensions for violations of its statute and rules, and reports criminal activity to state or local law enforcement for prosecution. In fiscal year 2019, the commission issued 213 disciplinary rulings against 162 licensees, and reported an estimated 10 cases of suspected criminal activity to law enforcement.

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 commission's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

Findings

Nonstandard and subjective regulatory requirements and practices reduce the commission's efficiency and fairness.

- **Insufficient and outdated fingerprint-based background check authority.**

To help protect the public, licensing agencies commonly conduct criminal background checks using the Department of Public Safety's fingerprint system, which identifies the individual, uncovers criminal history on applicants and licensees nationwide, and provides automatic criminal history updates. Currently, the commission is able to obtain full criminal background checks, including federal criminal history information. However, statute lacks the specificity federal law and FBI guidance requires as to which types of occupations require fingerprint-based criminal background checks, which could jeopardize the commission's ability to obtain a full criminal history record for all of its licensees. To continue to effectively use the Department of Public Safety's fingerprint system, including access to criminal records from the FBI, the commission's authority to obtain criminal history for different license types should be more clearly defined in statute.

Statute lacks the specificity required for fingerprint-based criminal background checks.

Additionally, statute requires the commission to obtain criminal history information on each license holder every 36 months, reflecting an outdated and inefficient process that is no longer necessary to ensure oversight of licensees.¹ The FBI no longer requires the regular submission of fingerprints to obtain updated criminal history information, so properly authorized agencies now only need applicants or license holders to submit fingerprints once to receive current information for the entirety of each individual's licensure. Requiring the commission to obtain new fingerprints from licensees every 36 months is burdensome and does not benefit licensees or the commission.

- **Subjective qualifications for licensure.** Qualifications for licensure should be clear and not unreasonably restrict entry into practice.

Commission staff subjectively determine which applicants must take an exam to be licensed.

Inconsistent testing. The commission requires applicants for certain types of licenses, such as trainers and jockeys, to complete a practical exam, but in practice whether a particular applicant must take the exam is left to the discretion of the commission staff on site.² The commission has no written policy for when an applicant should be given a practical exam, which could lead to inequitable application of licensure standards and introduces subjectivity into the licensure process. Clear and consistently applied procedures for examinations would ensure consistent and fair treatment of applicants.

Potential industry bias in testing. Generally, an agency should not delegate exam administration to a trade association that advocates for industry participants, as this may create an incentive to restrict entry into practice. The commission uses the Texas Horsemen's Partnership, recognized by the commission as the official horsemen's organization, to conduct the required trainer orientation prior to testing and to grade a section of the practical examination. A commission steward and licensed veterinarian grade the other sections. Limiting the role of trade associations in the licensing process would eliminate any potential for anti-competitive behavior.

Unclear reciprocity requirements. An agency should not arbitrarily apply its authority to overburden out-of-state applicants for a Texas license. Although the commission has statutory authority to recognize licenses from states with substantially equivalent standards, it has no formal rules or policies addressing reciprocity and has issued guidance that licensees are not eligible for reciprocity.³ In practice, however, commission staff may exempt out-of-state applicants from certain requirements on a case-by-case basis. For example, commission staff may exempt an applicant from a testing requirement if the applicant comes from another racing jurisdiction the staff member is familiar with.

The commission has no formal rules or policies addressing reciprocity.

The commission's unclear guidance and practices lead to out-of-state applicants from the same state or similarly qualified applicants from different states receiving unequal treatment. In addition, the commission requires all applicants to undergo a fingerprint-based background check even if the

applicant is licensed for the same activity in another state with the same or similar criminal history requirements as Texas, creating an unnecessary barrier to entry for a mobile and geographically diverse industry.

Subjective standards. Statute authorizes the commission to refuse to issue, suspend, or revoke a license if the applicant or license holder does not have “good moral character” or has a bad reputation.⁴ While of course Texas wants licensees to have good character, the phrase “good moral character” and a person’s good or bad reputation are subjective, vague requirements that may be determined inconsistently. Removing the statutory requirements for applicants to be of good moral character and have a good reputation would align with the commission’s current practice of objectively reviewing an applicant’s criminal history and determining whether to deny a license on the basis of standards relevant to the license being sought.

Statute contains vague and subjective requirements for license applicants.

- **Ineffective inspections.** Agencies should conduct inspections in a manner that focuses on the highest risk areas to the public and promotes timely compliance from regulated entities. The commission inspects racetracks to ensure conditions are safe for the animals, participants, and patrons, and to ensure wagering equipment is functioning properly. However, after a reduction in race days and budget cuts in 2017, the commission began conducting only scheduled, rather than unannounced, inspections. Scheduled inspections are usually reserved for low-risk situations, as licensees can prepare ahead of time and may hide problem areas. Additionally, the commission lacks a policy providing guidance on which violations present a serious enough risk to merit postponing a race, risking subjectivity in its process and the safety of race participants. For example, in 2019, a commission inspection of one racetrack found 10 health and safety deficiencies, including maintenance issues that had gone unaddressed for several years, but the commission did not postpone racing at that racetrack. Without a clear policy addressing the seriousness of violations and their consequences, the commission cannot fully or objectively enforce safety standards at racetracks.

The commission’s fee authority creates the appearance of an incentive to fine licensees.

Fines should be deposited to general revenue to mitigate the potential for agencies to abuse their enforcement authority by issuing administrative penalties to fund their operations. The commission’s statute directs all penalties be deposited into the same dedicated fund the commission uses for its operations.⁵ The table, *Penalties Assessed*, shows the amount of penalties the commission has assessed in the past three fiscal years. To remove the potential conflict of interest where the commission has an incentive to fund its operations through increased fines, all penalties should be deposited into the General Revenue Fund.

Penalties Assessed FYs 2017–2019

FY 2017 – \$101,925
FY 2018 – \$269,575
FY 2019 – \$77,450

Sunset Staff Recommendations

Under Recommendation 1.1 in this report, the Texas Department of Agriculture would implement the following statutory recommendations.

Change in Statute

3.1 Clearly define the categories of licenses requiring a fingerprint-based criminal background check.

This recommendation would direct Sunset staff to work with the agency and the Texas Legislative Council to revise the Texas Racing Act to conform to the FBI's statutory requirements for conducting fingerprint-based background checks.

3.2 Remove the requirement for licensees to resubmit fingerprints every 36 months.

This recommendation would remove the outdated statutory requirement to obtain new criminal history information for licensees every 36 months. Under this recommendation, license holders would no longer be required to submit new fingerprints for license renewal, but the agency would still require applicants to submit fingerprints with the initial license application. Removing this requirement would streamline the licensing process for licensees and reduce the agency's workload.

3.3 Remove subjective licensure requirements from statute.

This recommendation would remove the outdated requirements that license applicants be of "good moral character" and not have a "reputation ... [that] is bad." These standards are unclear, subjective, and difficult to enforce. The agency would continue to assess applicants by receiving and reviewing criminal history information to determine eligibility for licensure.

3.4 Require administrative penalty revenue be deposited into the General Revenue Fund.

Under this recommendation, the agency's administrative penalties would be deposited into the General Revenue Fund, as is common practice for most other state regulatory agencies. This change would help instill confidence in enforcement actions by removing the appearance that penalties generate revenue for the agency.

Management Action

3.5 Direct the commission to establish and consistently apply policies for testing certain licensure applicants.

Under this recommendation, the commission should adopt clear policies that specify which licenses require a practical exam, and require staff to consistently apply these policies to all applicants. These changes would help eliminate subjectivity from the licensing process by providing clear direction to licensing staff and treating applicants equally.

3.6 Direct the commission to remove potential barriers to licensing in its examination process.

Under this recommendation, the commission would assume responsibility for administering and scoring the practical examination for trainers. The Texas Horsemen's Partnership, a trade association, would no

longer score part of the practical examination, eliminating potential conflicts of interest and bias in the examination process.

3.7 Direct the commission to establish policies for uniform use of its reciprocity authority.

The commission should establish a policy using objective criteria for uniformly recognizing out-of-state licenses from states with substantially similar requirements. This policy would remove subjectivity from the licensing process and create uniformity in licensing standards, making it easier for licensees to work in Texas.

3.8 Direct the commission to adopt policies to improve racetrack inspections.

Under this recommendation, the commission should adopt policies to better identify, address, and deter inspection violations at pari-mutuel racetracks. These policies should require both announced and unannounced inspections, and guidelines for when to conduct each type. These policies should also identify which violations warrant postponing or canceling a race, and ensure compliance following an inspection by providing acceptable timeframes for correcting lower-risk problems and specifying when conducting re-inspections is necessary. Establishing more robust inspection policies would help ensure the most efficient allocation of agency resources while addressing the highest risks to the public.

Fiscal Implication

Overall, these recommendations would have a positive fiscal impact to the state. The recommendation to require administrative penalties be deposited into the General Revenue Fund would result in a gain of \$387,250 over the next five fiscal years and a corresponding decrease in revenue to the commission's dedicated fund. This amount is based on the fines assessed in fiscal year 2019, which totaled approximately \$77,450. In addition, the recommendation to discontinue the 36 month re-fingerprinting requirement will save licensees \$28.25 every three years.⁶ The other recommendations streamline processes and ensure consistent application of racing licensure and enforcement standards, and could be implemented with existing resources.

Texas Racing Commission

Fiscal Year	Gain to the General Revenue Fund	Loss to General Revenue Dedicated – Texas Racing Commission Account
2022	\$77,450	\$77,450
2023	\$77,450	\$77,450
2024	\$77,450	\$77,450
2025	\$77,450	\$77,450
2026	\$77,450	\$77,450

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 205.258(b), Texas Occupations Code.

² Section 205.252, Texas Occupations Code; 16 T.A.C. Section 311.2(c); “License Types,” Texas Racing Commission, last modified March 19, 2020, http://www.txrc.texas.gov/txo/license_types.php. The Texas Racing Commission lists all licenses and requirements for each, including “stewards may require a practical examination” and “judge may require” a “hands-on test” or “examination.”

³ Section 205.261, Texas Occupations Code; “Licensing FAQs,” Texas Racing Commission, last modified February 25, 2019, http://www.txrc.texas.gov/txo/content-new_faq-oct.php.

⁴ Sections 205.201(a)(8) and 205.262(8), Texas Occupations Code.

⁵ Section 203.053(a), Texas Occupations Code.

⁶ “Fingerprint Fees for Renewals,” Texas Racing Commission, accessed July 14, 2020, <http://www.txrc.texas.gov/licensing/FingerprintFees-Renewals-Eff-1-1-2019.pdf>.

ISSUE 4

The Texas Racing Commission's Statute Does 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 conform the Texas Racing Commission's statutes to standard Sunset language generally applied to all state agencies, address the need for the commission's required reports, and update statute to reflect the state's person-first respectful language initiative.

- **Sunset across-the-board provisions (ATBs).** 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 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.
- **Reporting requirements.** 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.¹ 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.
- **Person-first respectful language.** Statute requires Sunset to consider and recommend, as appropriate, statutory revisions in accordance with the person-first respectful language outlined in general law.² 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.

Findings

The commission's statutes do not reflect standard language typically applied across the board during Sunset reviews.

- **Public membership.** The commission's statute does not include the full standard provision relating to public membership on state agency policymaking bodies that prevents a person from serving as a public member of the commission if the person or the person's spouse meets certain criteria, such as using or receiving a substantial amount of tangible goods, services, or money from the commission. This provision better ensures the agency is more responsive to the public's broad interests rather than the regulated

profession affected by the activities of the commission. The commission's statute includes the prohibitions for public members, but not their spouses.

- **Board member training.** The commission's statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the commission's rulemaking authority. Statute also does not require that the agency create a training manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.

The commission's sole reporting requirement continues to be needed.

Statute requires the commission to produce an annual report regarding the agency's operations, horse and greyhound breeding and racing in Texas, and organized crime and illegal gambling.³ Sunset staff found this report includes useful information about the agency's programs, the state of the racing industry in Texas, and criminal activity related to racing, and should be continued.

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

The commission's statute contains terms that are not consistent with the person-first respectful language initiative.⁴ The commission's Sunset bill should revise the statute to use person-first respectful language.

Sunset Staff Recommendations

Change in Statute

4.1 Update the standard across-the-board requirement related to public membership on the commission.

This recommendation would update the prohibition of a public member from serving on the commission if the person's spouse meets certain criteria, including using or receiving a substantial amount of tangible goods, services, or money from the agency other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

4.2 Update the standard across-the-board requirement related to commission member training.

This recommendation would require the agency to develop a training manual that each commission member attests to receiving annually, and require existing commission member training to include information about the scope of and limitations on the commission's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

4.3 Update statute to reflect the requirements of the person-first respectful language initiative.

This recommendation would direct the Texas Legislative Council to revise the Texas Racing Act to conform to the person-first respectful language requirements found in Chapter 392, Texas Government Code.

Fiscal Implication

These recommendations would not result in a fiscal impact to the state. While some of these recommendations would require effort, they relate to basic management responsibilities and can be accomplished within existing resources.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

² Section 325.0123, Texas Government Code.

³ Section 2023.061, Texas Occupations Code.

⁴ Sections 2025.201(a)(10) and 2025.262(9), Texas Occupations Code.

APPENDIX A

Glossary of Select Racing Terms

- Accredited Texas-bred race animal – a Texas-bred horse or greyhound that meets the accreditation requirements of the particular state breed registry for that breed.
- Backside – the back part of a racetrack where race animals are cared for and housed.
- Breakage – the pennies that are left over after winning payoffs are rounded down to a multiple of 10 cents, except in the event of a negative pool, in which case the breakage is based on multiples of five cents.
- Breed registries – official state registries for greyhounds and various breeds of horses, responsible for setting qualifications for animals participating in the Accredited Texas-Bred incentive programs, and distributing purse awards.
- Cross-species signal – a horse race simulcast signal broadcast at a greyhound racetrack facility or vice versa.
- Exotic pool – a pari-mutuel pool that involves wagers on more than one entered horse or greyhound, or on entries in more than one race.
- Handle – the total amount of money wagered at a racetrack during a given time period.
- Judge – a racing official who is appointed by the Racing Commission, who works in a group of three, to call the order of finish in a greyhound race and ensure that all participants race on their own merits and adhere to the rules of racing.
- Multiple-two wager – a wager placed on two animals in one race or on one animal in two races.
- Multiple-three wager – a wager placed on three or more animals in one or more races.
- Odds – an estimation of the chance of an entered race animal winning, shown as the figure or fraction by which the racetrack offers to multiply a bettor's wager if their selection wins.
- Outstanding ticket – a winning pari-mutuel ticket that is not cashed before the end of the race day for which the ticket was purchased, also referred to as "OUTs."
- Pari-mutuel wagering – a betting system in which all bets of a particular type are placed together in a pool; taxes, fees, and other takeouts are removed; and payoff odds are calculated by sharing the pool among all placed bets.
- Place – a race finish in second place.
- Placing judge – a racing official employed by a racetrack association that calls the order of finish in a horse race.
- Purse – horse or greyhound owners' cash winnings for a live racing event.
- Show – a race finish in third place.

Appendix A

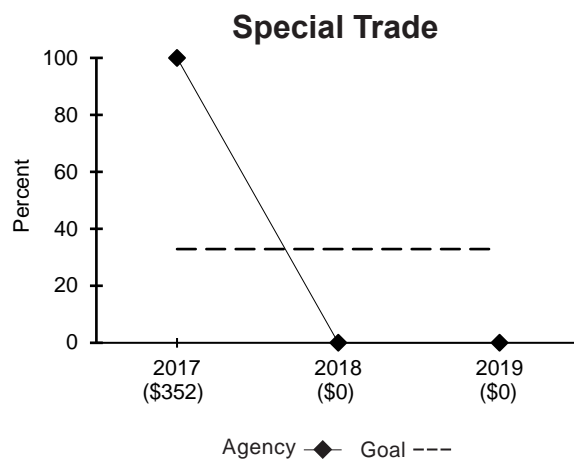
- Simulcast – the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering on the race at the receiving location.
- Simulcast pari-mutuel pool – the total amount of money wagered by patrons at a racetrack on the result of a particular simulcast race or combination of simulcast races.
- Stakes race – races that derive added purse money from the stake, or entry fee, owners must pay to enter the race.
- Steward – a racing official appointed by the Racing Commission, who works in a group of three, to oversee live horse racing events, ensuring that every participant competes on its own merits, verifying the order of finish, and imposing penalties for any breach of the rules of racing.
- Takeout – a percentage deducted from pari-mutuel pools that is shared by the racetrack association and the state in the form of profits, purses, and taxes.
- Win – a race finish in first place.

APPENDIX B

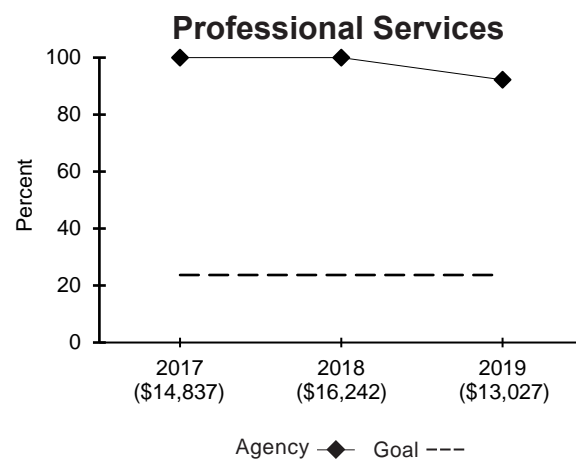
Historically Underutilized Businesses Statistics, FYs 2017–2019

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.¹

The following material shows trend information for the Texas Racing Commission's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2017–19. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency consistently met or exceeded the statewide HUB spending goals for the last three fiscal years.

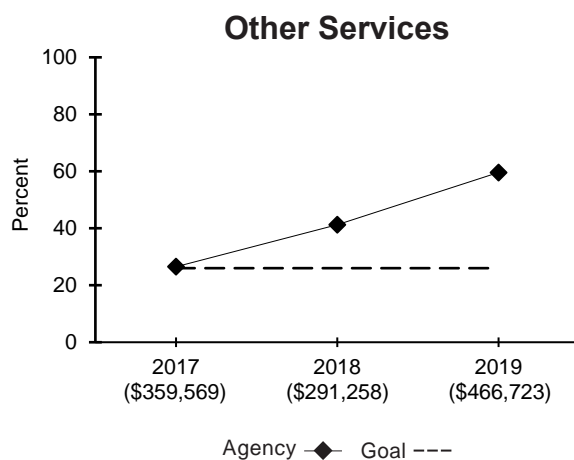


The agency significantly exceeded the statewide goal for HUB spending in the special trade category in fiscal year 2017. The agency did not have any spending in this category in fiscal years 2018 and 2019.

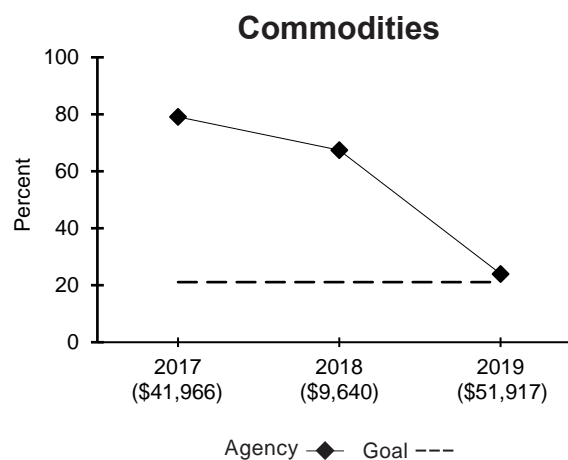


The agency significantly exceeded the statewide goal for HUB spending for professional services in the last three fiscal years.

Appendix B



The agency exceeded the statewide goal for HUB spending for other services in the last three fiscal years.



The agency exceeded the statewide goal for HUB spending for commodities in the last three fiscal years.

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

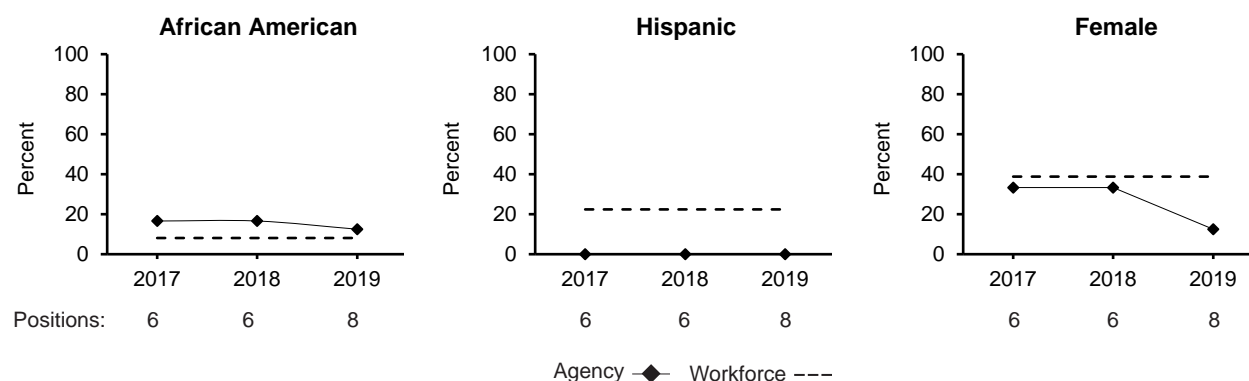
² Chapter 2161, Texas Government Code.

APPENDIX C

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 Racing Commission.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from fiscal years 2017–19.⁴ Generally, the agency struggled to meet state civilian workforce percentages in each job category for the last three fiscal years, though the agency has had mixed success in the administration and administrative support categories. The agency had no employees in the technical, service and maintenance, and skilled craft categories during the last three fiscal years.

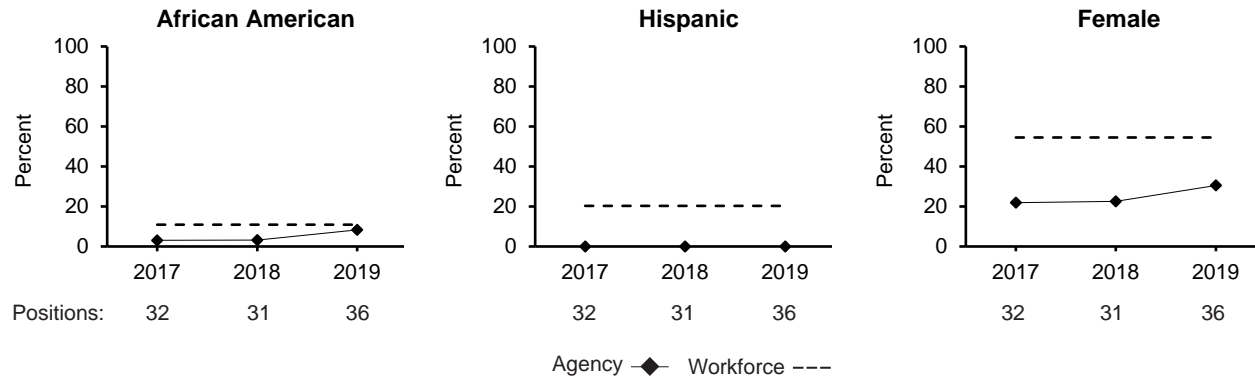
Administration



The agency had few employees in the administration category and exceeded the statewide civilian workforce percentages for African Americans in the last three fiscal years. The agency fell significantly below the civilian workforce percentages in the last three fiscal years for Hispanic employees. The agency has struggled to meet civilian workforce percentages for female employees in each of the last three fiscal years, falling significantly short in fiscal year 2019.

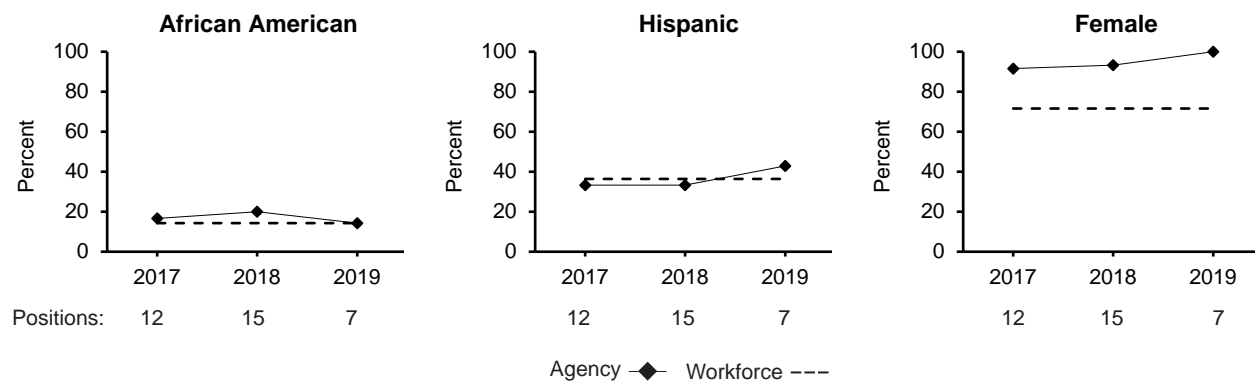
Appendix C

Professional



The agency consistently fell below the statewide civilian workforce percentages for African American, Hispanic, and female employees in each of the last three fiscal years.

Administrative Support



The agency exceeded the statewide civilian workforce percentages for female employees in each of the last three fiscal years. The agency fell slightly below the statewide civilian workforce percentages for Hispanic employees in fiscal years 2017 and 2018 and for African American employees in fiscal year 2019.

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

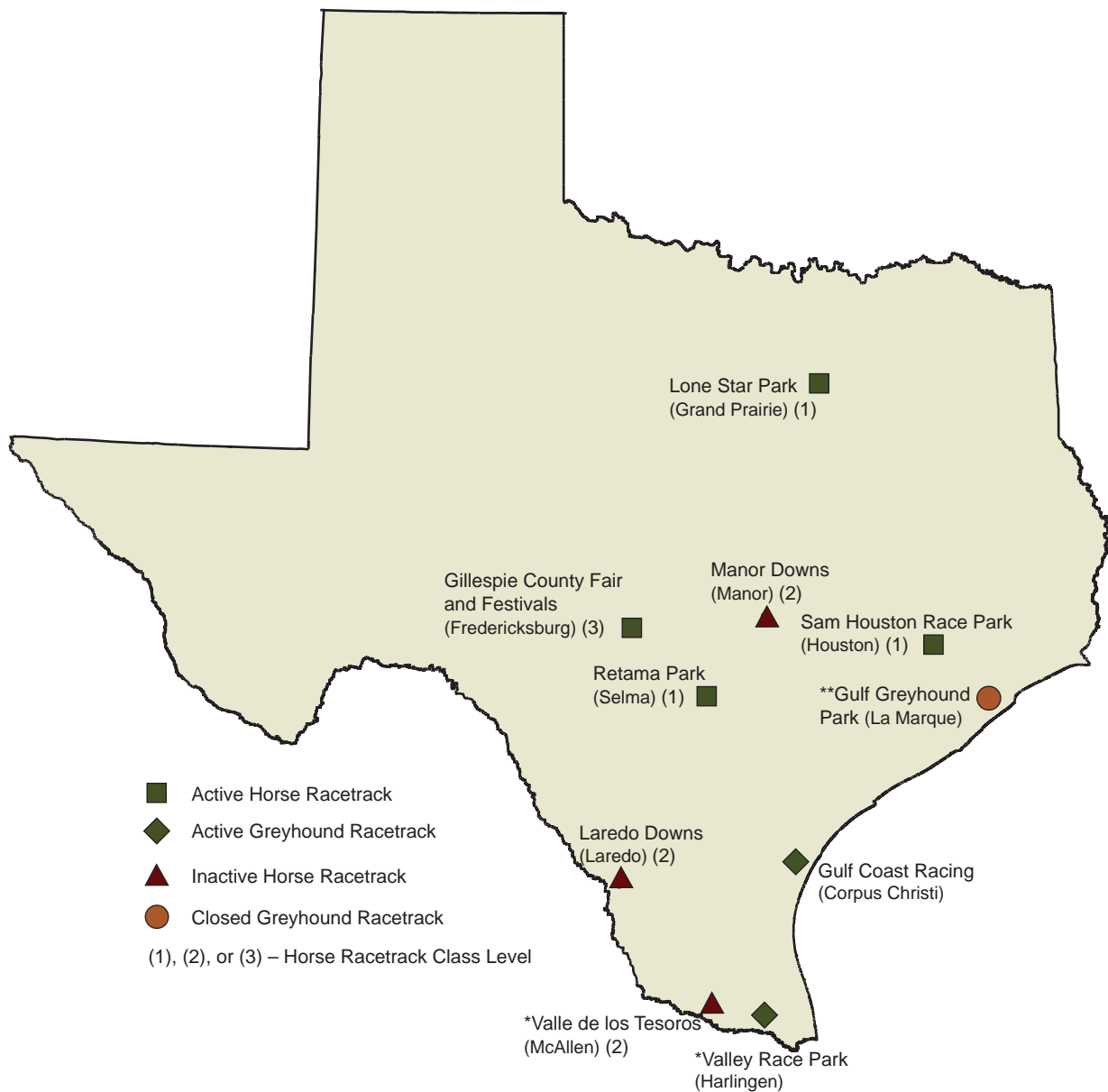
² Section 21.501, Texas Labor Code.

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

⁴ Commission staff often perform functions in multiple employment categories. Therefore, the agency's reported numbers include employees who were counted in more than one employment category.

APPENDIX D

Texas Racing Commission Map of Licensed Racetracks



* In 2019, Valle de los Tesoros and Valley Race Park only offered simulcast races.

** Gulf Greyhound Park closed in June 2020.

APPENDIX E

Texas Racing Commission License Types and Fees¹

License Type	Number of Licensees FY 2019	Current License Fee
Adoption Program Personnel	0	\$0
Announcer	4	\$35
Apprentice Jockey	7	\$75
Assistant Farrier/Plater/Blacksmith	1	\$25
Assistant Starter	43	\$25
Assistant Trainer	53	\$100
Assistant Trainer/Owner	21	\$100
Association Assistant Management	11	\$50
Association Management Personnel	39	\$75
Association Officer/Director	27	\$100
Association Other	15	\$75
Association Staff	121	\$35
Association Veterinarian	1	\$75
Authorized Agent	19	\$15
Chaplain	3	\$0
Chaplain Assistant	1	\$0
Equine Dental Provider	1	\$100
Exercise Rider	103	\$25
Farrier/Plater/Blacksmith	33	\$75
Groom/Exercise Rider	51	\$25
Groom/Hot Walker	550	\$25
Groom/Pony Person	9	\$25
Jockey	143	\$100
Jockey Agent	8	\$100
Kennel Helper	8	\$25
Kennel Owner	2	\$100
Kennel Owner/Owner	6	\$100
Kennel Owner/Owner/Trainer	7	\$100
Kennel Owner/Trainer	0	\$100
Kennel Registration	0	\$75
Lead-Out	34	\$25
Maintenance	37	\$35
Medical Staff	2	\$35
Miscellaneous	13	\$25
Multiple Owner/Stable/Farm Registration	568	\$35

Appendix E

License Type	Number of Licensees FY 2019	Current License Fee
Mutuel Clerk	201	\$35
Mutuel Other	12	\$35
Owner	1,849	\$100
Owner-Trainer	377	\$100
Pony Person	47	\$25
Racing Industry Representative	4	\$100
Racing Industry Representative Staff	2	\$30
Racing Official	74	\$50
Security Officer	109	\$30
Stable Foreman	99	\$50
Tattooer	0	\$100
Test Technician	30	\$0
Trainer	115	\$100
Training Facility Employee	2	\$30
Training Facility General Manager	1	\$50
Valet	10	\$25
Vendor Concessionaire	1	\$100
Vendor Employee	220	\$30
Vendor – Totalisator Company	3	\$500
Vendor – Totalisator Employee	137	\$50
Veterinarian	14	\$100
Veterinarian Assistant	9	\$30

¹ 16 T.A.C. Section 311.5(d); Licensees may hold more than one type of license.

APPENDIX F

Staff Review Activities

During the review of the Texas Racing Commission, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended commission 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 this agency:

- Interviewed Texas Racing Commission members.
- Attended advisory committee meetings.
- Conducted a survey of stakeholders, including occupational licensees and racetrack license holders.
- Interviewed staff from the Texas Department of Agriculture, Texas Animal Health Commission, Department of Information Resources, and Department of Public Safety.

Sunset Staff Review of the *Texas Racing Commission*

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