

SUNSET ADVISORY COMMISSION

FINAL REPORT



Texas Racing Commission

*Equine Research Account
Advisory Committee*

July 2011

Sunset Advisory Commission



Senator Glenn Hegar, Jr., Chair

Representative Dennis Bonnen, Vice Chair

Senator Juan “Chuy” Hinojosa

Representative Rafael Anchia

Senator Joan Huffman

Representative Byron Cook

Senator Robert Nichols

Representative Linda Harper-Brown

Senator John Whitmire

Representative Larry Taylor

Charles McMahan, Public Member

Lamont Jefferson, Public Member

Ken Levine

Director

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

*Texas Racing Commission
Equine Research Account
Advisory Committee*

SUNSET FINAL REPORT
JULY 2011

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, November 2010* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
 - *Hearing Material, December 2010* – Summarizes all responses from agency staff and the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission at its public hearing.
 - *Decision Material, January 2011* – Includes additional responses, testimony, or new policy issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Commission Decisions, January 2011* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
 - *Final Report, July 2011* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.
-

Table of Contents

	PAGE
SUMMARY	
.....	1
Staff Recommendations (page 2)	
Summary of Legislative Action (page 4a)	
STATUS OF 2008 SUNSET COMMISSION RECOMMENDATIONS	
TEXAS RACING COMMISSION	
EQUINE RESEARCH ACCOUNT ADVISORY COMMITTEE	
.....	5
AGENCY AT A GLANCE	
.....	7
COMMITTEE AT A GLANCE	
.....	11
ISSUES/RECOMMENDATIONS	
1 The Commission Lacks Certain Regulatory Tools Needed to Oversee Today's Racing Industry	13
Commission Decision (page 18e)	
Legislative Action (page 18e)	
2 Weaknesses Exist in the Commission's Approach to Licensing Racing Industry Occupations.....	19
Commission Decision (page 22b)	
Legislative Action (page 22b)	
3 The Statutory Automated Teller Machine Withdrawal Limit at Racetracks Unduly Restricts Patrons From Accessing Their Funds	23
Commission Decision (page 24a)	
Legislative Action (page 24a)	

	PAGE
4 Texas Has a Continuing Need for the Texas Racing Commission.....	25
Commission Decision (page 28a)	
Legislative Action (page 28a)	
5 The State No Longer Needs the Equine Research Account Advisory Committee.....	29
Commission Decision (page 30c)	
Legislative Action (page 30c)	

NEW ISSUES

.....	31
Commission Decision (page 32)	
Legislative Action (page 32)	

PROVISIONS ADDED BY LEGISLATURE

.....	33
-------	----

APPENDICES

Appendix A — Racetrack Licenses in Texas.....	35
Appendix B — Occupational License Types and Associated Fees.....	37
Appendix C — OUTs Payments by Racetracks	39
Appendix D — Texas Racing Industry Performance	41
Appendix E — State Tax Revenue Generated From Pari-mutuel Wagering.....	43
Appendix F — Glossary of Select Racing Terms.....	45

Summary

Summary

These special purpose reviews of the Texas Racing Commission and the Equine Research Account Advisory Committee follow up on the full Sunset reviews conducted in 2008. At that time, the Sunset Commission adopted and forwarded to the 81st Legislature recommendations on the Texas Racing Commission and the Advisory Committee. However, the Legislature did not pass the Sunset bill on either entity. Instead, the Legislature continued both for two years in separate legislation, and focused the current Sunset staff reviews on the appropriateness of the recommendations voted on and adopted by the Sunset Commission in 2008.

Since that time, the horse and greyhound racing industries in Texas have continued to experience a steady decline in attendance and revenues. Further, the regulatory mission and tools of the Texas Racing Commission continue to need adjustment to adapt to this decline. Based on this re-examination, Sunset staff concluded a majority of the Sunset Commission's previous recommendations remain appropriate with a few modifications, and that statutory authority and direction are needed to implement them. Of the 12 recommendations on the Texas Racing Commission from 2008, Sunset staff recommends eight for consideration again in 2010, finding that the agency has already implemented four management recommendations. These recommendations are discussed in Issues 1, 2, 3, and 4 of this report. Of note, Issue 1 incorporates certain changes made to the 2008 Sunset recommendations during the legislative session to address concerns raised by the racing industry.

*A majority of Sunset's
2008 recommendations
remain appropriate with
a few modifications.*

In 2008, the Sunset Commission made only one recommendation related to the Advisory Committee, which was to abolish it. That recommendation continues to be appropriate, as discussed in Issue 5 of this report.

The current status of each recommendation is shown in the chart, *Status of 2008 Sunset Commission Recommendations*, on page 5. The following material summarizes the 2008 recommendations that continue to be appropriate for consideration in 2010. For additional information on the Sunset Commission's 2008 decisions, see the Sunset Advisory Commission's Report to the 81st Legislature, published in February 2009, and for more detailed information on the original Sunset staff recommendations, see the Sunset Advisory Commission's Final Report on the Texas Racing Commission and Equine Research Account Advisory Committee, published in July 2009. Both reports are available on the Sunset Commission's website.

Issues and Recommendations

Texas Racing Commission

Issue 1

The Commission Lacks Certain Regulatory Tools Needed to Oversee Today's Racing Industry.

Recommendations

- Require the Commission to designate each racetrack license as either active or inactive and develop renewal criteria for inactive licenses.
- Clarify the Commission's authority and ability to revoke a license.
- Authorize the Commission to require license holders to post security at any time.
- Eliminate uncashed winning tickets as a source of Commission revenue.
- Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.
- The Commission should review the operations and management of all active racetrack licenses.

Issue 2

Weaknesses Exist in the Commission's Approach to Licensing Racing Industry Occupations.

Recommendations

- Require the Commission to license only those individuals who can affect pari-mutuel racing.
- Require the Commission to obtain criminal history reports every three years.

Issue 3

The Statutory Automated Teller Machine Withdrawal Limit at Racetracks Unduly Restricts Patrons From Accessing Their Funds.

Recommendation

- Eliminate current statutory limitations which prevent track patrons from being able to withdraw more than \$200 from a checking or savings account.

Issue 4

Texas Has a Continuing Need for the Texas Racing Commission.

Recommendations

- Continue the Texas Racing Commission for six years.
- Apply the standard Sunset across-the-board requirements to the Commission.

Equine Research Account Advisory Committee

Issue 5

The State No Longer Needs the Equine Research Account Advisory Committee.

Recommendation

- Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

Fiscal Implication Summary

None of the recommendations in this report would have a significant fiscal impact to the State.

Summary of Legislative Action

H.B. 2271 Anchia (Hinojosa)

House Bill 2271 continues the Racing Commission for 12 years and abolishes the Equine Research Account Advisory Committee. The Legislature adopted all of the Sunset Commission's recommendations and added several other statutory modifications to H.B. 2271. Most of the Legislature's modifications affect the Commission's application approval process and the process for identifying tracks as active or inactive, and how these two types of licenses are reviewed. The list below summarizes the major provisions of H.B. 2271, and more detailed discussion is located in each issue.

Sunset Provisions

1. Provide the Commission regulatory tools to ensure proper oversight of today's racing industry.
2. Strengthen the Commission's oversight of racing industry occupations.
3. Continue the Texas Racing Commission for six years.
4. Abolish the Equine Research Account Advisory Committee.

Provisions Added by Legislature

1. Modify the definition of greyhound performance.
2. Authorize the executive director to review and modify disciplinary decisions of stewards and judges.
3. Specify that the Comptroller will sweep from the agency's account only funds above \$750,000 at the end of each biennium.
4. Eliminate the statutory limitation of \$200 on ATM withdrawals at racetracks.
5. Require the Commission to establish a process and schedule for conducting active racetrack reviews.
6. Require the Commission to make a determination on a racetrack application within 120 days from the time the application is administratively complete.

Fiscal Implication Summary

House Bill 2271 will not have a fiscal impact to the State.

*Status of 2008 Sunset Commission
Recommendations*

Texas Racing Commission

*Equine Research Account
Advisory Committee*

**Status of 2008 Sunset Commission Recommendations on the
Texas Racing Commission
Equine Research Account Advisory Committee**

2008 Recommendation	Status
Issue 1 – The Commission Lacks Certain Regulatory Tools Needed to Oversee Today’s Racing Industry.	
Change in Statute	
1.1 Require the Commission to review each racetrack license on a periodic basis and develop renewal criteria along with associated sanctions for failure to comply.	<p>Not Implemented – See Issue 1 of this report.</p> <p>The agency continues to need statutory and legislative direction to implement these recommendations, although some modifications are appropriate to reflect language in the bill from the 81st Session.</p>
1.2 Clarify the Commission’s revocation authority and ability to refuse to renew a racetrack license and modify the Texas Racing Act to allow the Commission to require racetrack licensees to post security at any time.	
1.3 Eliminate uncashed winning tickets as a source of Commission revenue.	
1.4 Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.	
Management Action	
1.5 Direct the agency to adopt a plan to further integrate field staff into the Commission’s overall racetrack enforcement plan.	<p>Implemented – Commission staff at each racetrack complete a review after each meet, including noting areas that need attention or improvement. In addition, the Commission has strengthened its regular visitation of each racetrack, and Commission field staff conduct pre-meet and random, unannounced inspections to cross-check the information provided by post-meet reviews.</p>
Issue 2 – Weaknesses Exist in the Commission’s Approach to Licensing Racing Industry Occupations.	
Change in Statute	
2.1 Require the Commission to license only those individuals who can affect pari-mutuel racing.	<p>Not Implemented – See Issue 2 of this report.</p> <p>The agency continues to need statutory and legislative direction to implement these recommendations.</p>
2.2 Require the Commission to obtain criminal history reports every three years.	
Management Action	
2.3 The Commission should develop a faster method of obtaining criminal history reports.	<p>Implemented – The Commission now uses electronic fingerprinting to obtain criminal history reports. Although this change has increased the time necessary to take a set of fingerprints by several minutes, the electronic request of records results in the Commission obtaining criminal history reports in around one week, compared to the previous three-week delay.</p>

**Status of 2008 Sunset Commission Recommendations on the
Texas Racing Commission
Equine Research Account Advisory Committee**

2008 Recommendation	Status
2.4 The Commission should develop processes for overseeing practical examinations.	Implemented – The Commission has now implemented a three-part process for administering practical examinations. Further, each examination is overseen by a panel consisting of a steward, a veterinarian, and a representative from the Texas Horsemen’s Partnership.
2.5 The Commission should ensure that licensee oversight is consistent from racetrack to racetrack.	Implemented – The Commission has created a manual that details investigation and inspection procedures to ensure consistent oversight practices by investigators at each racetrack.
Issue 3 – The Statutory Automated Teller Machine Withdrawal Limit at Racetracks Unduly Restricts Patrons From Accessing Their Funds.	
Change in Statute	
3.1 Eliminate the current statutory limitation which prevents track patrons withdrawing more than \$200 from a checking or savings account.	Not Implemented – See Issue 3 of this report. This recommendation requires a change in statute.
Issue 4 – Texas Has a Continuing Need for the Texas Racing Commission.	
Change in Statute	
4.1 Continue the Texas Racing Commission for six years.	Not Implemented – See Issue 4 of this report. This recommendation requires a change in statute.
Issue 5 – The State No Longer Needs the Equine Research Account Advisory Committee.	
Change in Statute	
5.1 Abolish the Equine Research Account Advisory Committee and continue Texas Agrilife Research’s authority to expend appropriated Equine Research Account funds.	Not Implemented – See Issue 5 of this report. This recommendation requires a change in statute.

Agency at a Glance
(November 2010)

Agency at a Glance

The Texas Racing Commission (Commission) regulates all aspects of horse and greyhound racing to protect the animals and participants involved in live racing, and to ensure the integrity of pari-mutuel wagering. The Legislature authorized pari-mutuel wagering on horse and greyhound races in 1986 by passing the Texas Racing Act, and established the Texas Racing Commission to oversee the racing industry and promote the economic and agricultural development of racing.

To accomplish its mission, the Commission:

- licenses racetrack facilities and all 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 all pari-mutuel wagering activity, including wagers placed on simulcast races; and
- administers the Accredited Texas-bred Incentive Program.

Key Facts

- **Commission.** The Commission consists of seven members appointed by the Governor and confirmed by the Senate, and two voting ex officio members – the chair of the Texas Department of Public Safety and the Comptroller of Public Accounts, or their designees. Five of the seven Governor-appointed members represent the public and must have a general knowledge of business or agribusiness. Of the remaining two members, one must have a background in horse racing and one in greyhound racing. Additionally, one of the five public members may be a licensed veterinarian. The chart, *Texas Racing Commission Members*, lists the current members and the expiration date of their terms of office. Generally, the Commission’s main duties are to grant racetrack licenses, approve live racing dates, adopt rules to govern live racing, and hire the agency’s Executive Director. The Commission meets at least six times per year, usually in Austin.

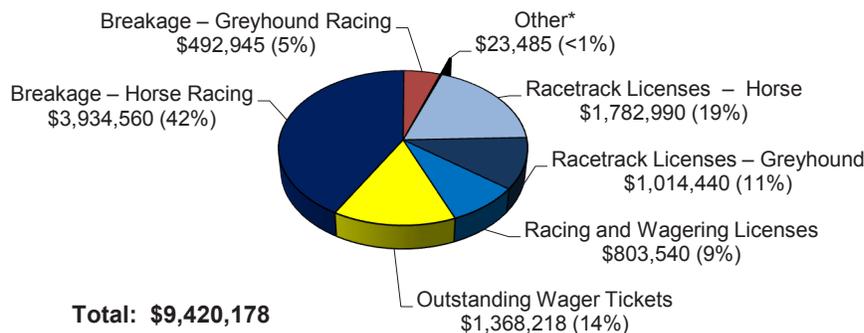
Texas Racing Commission Members

Member	City	Qualification	Term Expires
Rolando B. Pablos, Chair	San Antonio	Public Member	2013
Robert Schmidt, M.D., Vice Chair	Fort Worth	Public Member	2011
Ronald F. Ederer	San Antonio	Background in Horse Racing	2013
Scott Haywood	Austin	Public Member	2015
Gloria Hicks	Corpus Christi	Background in Greyhound Racing	2011
Michael Martin, D.V.M.	San Antonio	Public Member, Veterinarian	2015
Vicki Smith Weinberg	Colleyville	Public Member	2015
C. Thomas Clowe, Jr.	Waco	Ex Officio, Department of Public Safety	N/A
The Honorable Susan Combs	Austin	Ex Officio, Comptroller of Public Accounts	N/A

- **Staff.** The Executive Director manages the agency’s day-to-day operations, assisted by about 65 staff. Although based in Austin, the Commission maintains a significant presence statewide, with about half of staff located at the seven operational racetracks throughout the state. Field staff perform on-site licensing, enforcement, and monitoring functions. A map of operational and non-operational racetracks in Texas is included in Appendix A.
- **Funding.** In fiscal year 2009, the Commission collected a total of about \$9.4 million, primarily from fees assessed to racetracks and occupational licensees. Additionally, the Commission received other revenue collected from uncashed winning tickets, called OUTs, as well as 50 percent of the

total horse racing breakage – the amount left over after payoffs to winning ticket holders are round down to the nearest dime. The pie chart, *Texas Racing Commission Revenue*, details the agency’s sources of revenue. The Commission’s revenue is deposited into a dedicated account in the General Revenue Fund. Any revenues not used during the first year of the biennium may be carried over to the following year.

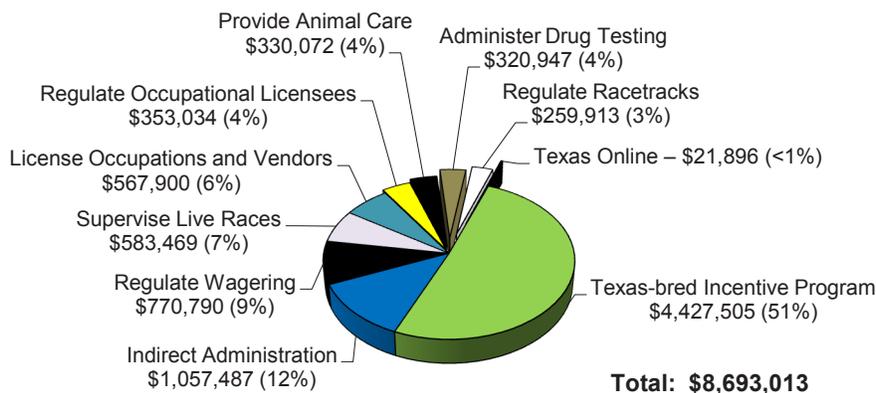
Texas Racing Commission Revenue FY 2009



* Combines fees for copies or filing of records and third party reimbursements.

In 2009, the Commission expended about \$4.3 million in four main areas: live racing regulation, regulation of racing participants, regulation of pari-mutuel wagering, and agency administration. The Commission also distributed as pass-through funds the more than \$4.3 million in breakage to the Accredited Texas-bred Incentive Program, which encourages Texas horse and greyhound breeding by supplementing purses and giving monetary awards. The pie chart, *Texas Racing Commission Expenditures*, provides a breakdown of the Commission’s expenditures in fiscal year 2009.

Texas Racing Commission Expenditures FY 2009



- **Racetrack Licensing.** To ensure the integrity of racetrack operations, the Commission licenses all racetracks where pari-mutuel wagering on horse and greyhound race events occurs. Under the Texas Racing Act, the Commission accepts applications for either a class one, two, three, or four horse racetrack or a greyhound racetrack. Applications include detailed personal and financial information, a long-range business plan, proposed site locations, and vendor contracts. Once the Commission grants a racetrack license, agency staff oversee the design and construction process for the racetrack and facilities. In fiscal year 2009, the Commission approved no new racetrack licenses, keeping the total racetrack licensees overseen by the Commission at 13 – seven active racetracks and six inactive. Since the 2008 Sunset review, Corpus Christi Greyhound Racetrack reopened as an operational greyhound racetrack called Gulf Coast Racing. However, during the same period, Manor Downs horse racetrack in Manor, Texas, closed its operations.
- **Racetrack Supervision.** Once a racetrack is licensed, Commission staff perform regular inspections of the racetrack and other facilities to ensure the safety and security of the race animals, racing participants, and wagering public. Commission staff and racing officials also supervise each race during live racing events, monitoring the quality and soundness of the racetrack and the general conditions of the facility. In fiscal year 2009, Commission staff performed 139 inspections and discovered 66 items in need of corrective action in 35 of those inspections. To verify racetrack management made the necessary repairs, staff completed 36 follow-up inspections.
- **Occupational Licensing and Enforcement.** To ensure that only qualified people enter the racing industry and to protect against a breach in racing integrity, the Commission licenses all racing participants, including jockeys, and stable-area and kennel-area professions, like trainers, farriers, and kennel helpers and groomers. The Commission also licenses all employees and vendors of the racetrack. In total, the agency offers 55 different kinds of licenses. Appendix B provides more detailed information. In fiscal year 2009, Commission staff issued 10,695 occupational licenses and 81 business licenses, overseeing a total of more than 13,685 licensees. In addition, the Commission employs peace officers and investigation staff to monitor occupational licensees, perform weekly and unannounced inspections of racetrack facilities, and provide an enforcement presence at each live race. In fiscal year 2009, investigators performed 116 compliance inspections, resulting in 16 contraband cases, and opened 254 cases for rule violations. Racing officials ultimately issued a total of 480 disciplinary rulings and 316 fines.
- **Pari-mutuel Wagering Regulation.** To safeguard trust in the wagering systems used by the Texas racing industry, the Commission's pari-mutuel audit department regulates all wagering transactions at Texas racetracks. On a daily basis, the audit department confirms wagering totals and payouts made by pari-mutuel tellers on all simulcast races and live racing events, as well as on wagers placed on exported simulcast events, and keeps track of all uncashed winning tickets. The Commission also certifies the accuracy of each computer that keeps track of bets and calculates payoffs. In fiscal year 2009, Commission staff audited more than 7,435 live races and nearly 700,000 simulcast races to ensure proper collection of wagers and distribution of funds. Only two racetrack violations were filed by the Commission, and both involved problems with simulcast contracts.
- **Veterinary Care and Drug Testing.** Before each live racing event, Commission veterinarians perform a pre-race examination on all animals slated to race to look for current injuries or the potential for injuries while racing. Based on their professional opinion, Commission veterinarians have the authority to remove animals from the race if they feel that an animal is in danger of injuring itself or others. In fiscal year 2009, Commission veterinarians performed 40,494 pre-race examinations on greyhounds and 22,520 pre-race examinations on horses. In addition, Commission

veterinarians oversee the collection of blood and urine samples from winning race animals to ensure they did not place in a race with the aid of a prohibited substance. In fiscal year 2009, the agency collected 7,639 samples from greyhounds and 5,626 samples from horses, finding only 14 drug positives in greyhounds and 50 drug positives in horses.

- **Accredited Texas-bred Incentive Program.** The Accredited Texas-bred Incentive Program encourages Texans to breed race animals by supplementing purses and by offering monetary awards to breeders. The Texas Racing Act defines which breed registries in the state are eligible for Program funds, and Commission staff are responsible for ensuring that each breed registry receives the correct allocation.

Committee at a Glance
(November 2010)

Committee at a Glance

The Equine Research Account Advisory Committee (Committee) helps address the informational needs of the equine breeding and racing industries by recommending funding for equine research at Texas universities. In 1991, the Legislature amended the Texas Racing Act to dedicate a small amount of horse-racing wagers for equine research. These funds are deposited into the Equine Research Account, which is administered by the Director of Texas AgriLife Research, a system agency part of the Texas A&M University System. The Committee, also created in 1991, provides subject matter expertise to AgriLife Research’s Director when making grant decisions.

To accomplish its mission, the Committee sets grant topics, reviews grant proposals, and recommends grant awards. The Committee is also statutorily charged with holding an annual conference on relevant equine research topics.

Key Facts

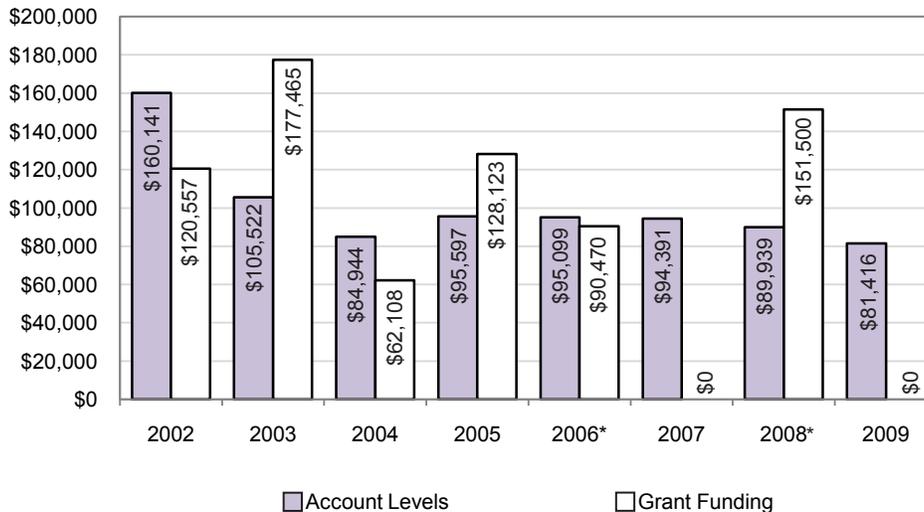
- Committee Membership.** The Committee consists of 11 members that represent the horse industry and academia. Of the members, four must be faculty from Texas A&M University – two from the College of Agriculture and Life Sciences and two from the College of Veterinary Medicine. Two members must also be affiliated with research organizations that have equine research capabilities. The remaining five members must be Texas residents who have a demonstrated interest in the horse racing and breeding industries, with one of the five selected from a nominee of a major horse association. Texas AgriLife Research’s Director selects all Committee members, and the Committee members select one member to serve as the presiding officer. The chart, *Equine Research Account Advisory Committee*, lists the current members of the committee and their qualifications for appointment.

Equine Research Account Advisory Committee

Member	City	Qualification
David Forrest, Ph.D., Chair	College Station	Texas A&M Faculty
Dickson Varner, D.V.M., Vice Chair	College Station	Texas A&M Faculty
Larry Boleman, Ph.D.	College Station	Texas A&M Faculty
Heidi Brady, Ph.D.	Lubbock	Texas Tech University (Research Organization)
Kent Carter, D.V.M.	College Station	Texas A&M Faculty
Charles Graham, D.V.M.	Elgin	Texas Resident
Don Henneke, Ph.D.	Stephenville	Tarleton University (Research Organization)
Lex Smurthwaite	Fort Worth	Texas Resident
Claudia Spears	Willis	Texas Resident
Barry Thompson, Ph.D.	West	Texas Resident
Randi Yocum	Fayetteville	Texas Resident

- Funding.** Statute dedicates a small portion of money wagered on pari-mutuel horse racing to fund the Equine Research Account (Account). The Account receives 2 percent of total horse racing breakage – the amount left over after payoffs to winning ticket holders are rounded down to the nearest dime. In addition, the Account receives 0.02 percent of the exotic wagering pool – bets other than a typical Win, Place, or Show. The graph, *Equine Research Account Levels and Funding*, shows the amount of money deposited in the Account during the past eight years and the total amount of funding granted each year.

**Equine Research Account Levels and Funding
2002 – 2009**



* Funded by Texas AgriLife Research for a biennium.

Since 2005, the Legislature has not appropriated Equine Research Account funds. As a result, Texas AgriLife Research provided agency funds to award equine research proposals in the past few bienniums. In fiscal years 2008 and 2009, the Committee recommended, and the Director approved, funding seven research proposals at a total of \$151,500. Although Texas Agrilife Research has chosen to fund no projects for the 2010-2011 biennium, the Director has committed to provide \$142,500 in fiscal years 2012 and 2013.

- Research Projects.** The Committee assists in administering the Equine Research Account by helping to determine what areas of research and which equine research projects to fund using Account funds. These research projects have included topics that focus on health, nutrition, and breeding issues in the equine racing industry. Each year, the Committee sets a priority for the upcoming grant proposal process. Applicants for research grants must be affiliated with a Texas-based institution of higher education. After agency staff have reviewed all submitted proposals and solicited peer reviews of the proposals, the Committee meets in an open meeting to consider the proposals and peer review recommendations, and recommends final decisions to award funds to Texas AgriLife Research’s Director.

Issues

Issue 1

The Commission Lacks Certain Regulatory Tools Needed to Oversee Today's Racing Industry.

Background

The Texas Racing Commission (Commission) is charged with regulating and supervising all aspects of the pari-mutuel horse and greyhound racing industries, including defining the Rules of Racing, which protect the safety of all race participants and the betting public. To accomplish this mission, the Commission's duties include issuing racetrack licenses, overseeing the wagering process, licensing racetrack employees and other occupations involved in the racing industry, and enforcing the Texas Racing Act (Act) and Rules of Racing. The Commission oversees seven active racetracks and six non-operational racetracks. The Commission operates on a budget of about \$4.3 million, all of which comes from industry-related fees and uncashed winning tickets.

Findings

The Commission continues to need statutory authority to create a renewal process for racetrack licenses and clarification regarding the Commission's authority to revoke those licenses.

In 2008, the Sunset review found that over the last two decades the Texas racing industry has experienced a steady decline in racetrack attendance and the total amount of money wagered. Racetrack profits have decreased, and some racetracks have gone through periodic closings because of insufficient wagering revenue. Other racetrack license holders have failed to even choose a racetrack location or build facilities. In crafting the Act, the Legislature charged the Commission with controlling the anticipated growth of the racing industry, and did not foresee regulating a declining industry whose members might not fulfill the basic promise to conduct live races. The statutory tools adopted by the Legislature at that time do not reflect the current state of racing in Texas and no longer meet the regulatory needs of the Commission.

In response to these challenges, the Sunset Commission recommended requiring the Texas Racing Commission to develop a license renewal process for racetracks. Before granting an initial racetrack license, the Commission reviews the financial soundness of each applicant, as well as the applicant's proposed steps to begin holding live races. Once an applicant is licensed, though, the Commission does not have clear oversight of these integral aspects of soundly operating a racetrack. Most licensing programs use a renewal process to help ensure continued competence and provide evidence of a licensee's compliance with agency regulations. The Sunset review found that the Act's granting of racetrack licenses "in perpetuity" conflicted with this best practice for licensing programs.

However, as the Sunset Commission's recommendations moved through the legislative process, racing industry stakeholders raised concerns about

*Granting
racetrack licenses
"in perpetuity"
conflicts with
licensing program
best practices.*

conditioning all licenses on a renewal process since the uncertainty of renewal could potentially discourage necessary and substantial investments in a racetrack. A more targeted renewal process could focus on an inactive license holder's failure to take steps to meet the obligation of its license to hold live races and withdraw the license if the holder does not work towards those obligations. In contrast, active license holders have met their obligation or taken significant steps to hold live races, requiring Commission oversight of their activities rather than an evaluation of whether the license obligations are being fulfilled. Thus, periodic reviews would be more appropriate for active license holders and could occur under the Commission's current authority to review the ownership and management of each racetrack every five years.¹

The Commission needs clearer authority to revoke a license.

In the absence of a renewal process for active license holders, the Commission would need clearer authority to revoke a license for significant noncompliance with the Act or Commission rules. As a general principle for licensure and permitting programs, an agency's range of penalties for noncompliance typically includes revocation of a license. While the Texas Racing Act provides the Commission clear authority for revocation for an applicant, it does not clearly extend revocation for existing licenses. A clear license revocation process would give the Commission necessary oversight of an active racetrack license holder and the ability to take appropriate regulatory action against licensees that commit significant violations of the Act or Commission rules.

The statutory method of financing the Commission with uncashed winning tickets continues to be an unreliable source of revenue for the agency.

The 2008 Sunset review found the Commission relies heavily on uncashed winning tickets, or OUTs, to supplement other racing-associated fees as a source of revenue. In fiscal year 2009, OUTs continued to constitute approximately one-third of the Commission's operating budget. However, the agency is unable to predict how much revenue each racetrack might produce. As the overall amount of wagers placed decreases, so does the amount of

uncashed winning tickets. In addition, the Texas Racing Act authorizes the Commission to reimburse all Texas racetracks for drug testing costs with revenue from OUTs. Finally, changes in wagering technology that improve the ability of bettors to cash winning tickets have further threatened the Commission's funding. The chart, *OUTs Revenue*, shows uncashed ticket revenue beginning in fiscal year 2001.

***OUTs Revenue
FYs 2001 – 2009***

Fiscal Year	Outstanding Ticket Balance	Drug Expenses Allowed	Total Amount of OUTs Payments
2001	\$3,511,926	(\$1,130,797)	\$2,212,353
2002	\$3,342,730	(\$1,219,962)	\$1,964,464
2003	\$3,256,675	(\$1,247,864)	\$1,907,110
2004/2005	\$4,836,598	(\$2,190,309)	\$2,646,289
2006	\$3,076,798	(\$1,010,207)	\$2,066,591
2007	\$2,795,266	(\$1,043,554)	\$1,751,712
2008	\$2,808,207	(\$1,041,358)	\$1,766,849
2009	\$2,094,535	(\$726,332)	\$1,368,218

Further, the manner in which OUTs revenue is collected places an inequitable burden on the racing industry. As described in Appendix C, racetracks that hold more live races, requiring more Commission oversight and enforcement, do not contribute a proportionate share in OUTs revenue. In contrast, other licensee fees reflect the amount of regulatory attention paid to each racetrack by the Commission.

Texas would still benefit from amendment of the Texas Racing Act to control new wagering alternatives that expand Texans' ability to gamble.

The Sunset review found that the racing industry and the State continue to lose money because of unregulated online and phone account wagering sites that take bets from Texas customers and offer Texas races to non-Texans. Though the Act limits many types of pari-mutuel horse and greyhound race betting within Texas, it does not expressly address wagering alternatives made possible by advances in technology. Because the Act is silent on online or phone account wagering, out-of-state online wagering companies interpret the Act to allow Texas residents to place bets online or by phone on pari-mutuel horse and greyhound races, as long as the race occurs outside the state. Though the State generally receives between 1 percent and 1.25 percent of the wager placed at a racetrack, the State does not receive any portion of a bet placed with an out-of-state entity. During the past few years, online wagering companies continue to report significant increases in pari-mutuel handle, meaning that the State and the industry continue to lose money each year.

The State and the racing industry continue to lose money each year to unregulated online and phone account wagering sites.

Recommendations

Change in Statute

1.1 Require the Commission to designate each racetrack license as either active or inactive and develop renewal criteria for inactive licenses.

Under this recommendation, the Commission would be required to determine whether each racetrack license holder is actively working to fulfill the basic obligations of a license and then designate each racetrack license either active or inactive. The Commission would devise criteria by rule regarding standards to be considered an active license holder, such as holding live races or making good faith efforts to hold live races, and would use the criteria to conduct an assessment of the operation of each license holder. The Commission would complete assessments of all existing racetrack license holders by September 1, 2012, and would complete assessments of all new licenses within one year of license issuance. The Commission would designate each license inactive or active based on the results of the assessment. In addition, the Commission would monitor the status of each racetrack license, changing a license's designation in the future if conditions warranted. Inactive licenses would be subject to an annual license renewal process until active status is achieved or the Commission refuses to renew the license. Active licenses would have their operations reviewed by the Commission every five years, as required in statute and further explained in Recommendation 1.6.²

The Commission would devise, by rule, a renewal process for licenses designated as inactive. In developing this process, the Commission should consider factors reviewed during the initial licensure process, including financial soundness and the ability to conduct live races. The Commission should also consider the length of time needed to conduct a thorough review of each license holder. The Commission would be authorized to charge inactive racetracks a fee to cover any additional costs associated with processing license renewals. The development of this process should involve members of the racing industry and other key stakeholders to ensure that the renewal criteria are clear and easily understood. The Commission would review each inactive racetrack license holder, no later than one year after the designation of the license as inactive, to determine whether the licensee has taken sufficient steps to meet the obligations of a license holder. Additionally, the Commission would be authorized to not renew an inactive license if it finds the licensee has not made a good faith effort to conduct live racing or if continuing to grant the license is not in the best interests of the racing industry or the public. If renewed, the Commission would annually review an inactive license for as long as the license remains inactive.

1.2 Clarify the Commission's authority and ability to revoke a license.

This recommendation would clearly grant the Commission authority to revoke a license from any license holder for significant violations of the Act or Commission rules. The recommendation would require the Commission to adopt rules clearly outlining the revocation process. Under this recommendation, licenses would no longer be held in perpetuity.

1.3 Authorize the Commission to require license holders to post security at any time.

This recommendation would allow the Commission to require racetrack license holders to post security at any time, instead of only when a new license is issued. This would assist the Commission to ensure that license holders fulfill their statutory obligations to build their tracks and run live races. Further, the requirement to post security would guarantee all license holders, particularly those with inactive racetracks, would contribute to the financial stability of the racing industry and the Commission.

1.4 Eliminate uncashed winning tickets as a source of Commission revenue.

This recommendation would remove uncashed winning tickets as a method of finance for the Commission. Racetracks would be allowed to keep all revenue from uncashed winning tickets and continue to use that revenue to offset the cost of drug testing race animals. The Commission would need to replace the lost revenue by adjusting other racing-related regulatory fees paid by each licensed racetrack.

1.5 Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.

Under this recommendation, the Texas Racing Act would be amended to clarify that no entity, including out-of-state businesses that offer online or phone accounts, can accept wagers on horse or greyhound races by Texas bettors unless sanctioned by the Act. While some online betting sites would clearly ignore such a change in Texas law, many have legitimate licenses in other states and contracts with out-of-state racetracks that could be jeopardized if they do not follow Texas law. As a result, at least partial compliance is expected from this clarification of law.

Management Action

1.6 The Commission should review the operations and management of all active racetrack licenses.

This recommendation would direct the Commission to begin conducting reviews of racetrack licenses under the agency's existing authority to review license holders.³ The Commission would conduct thorough, but abbreviated, reviews that do not overwhelm staff's ability to conduct the reviews while also completing other necessary agency tasks. Further, the Commission should develop a schedule for reviews that would allow it to continue conducting reviews on each racetrack license every five years as currently set out in statute.

Fiscal Implication Summary

These recommendations would not have a significant fiscal impact to the State. The Commission would be authorized to charge inactive racetracks a fee to cover any additional costs associated with processing license renewals. The agency would compensate for the elimination of uncashed tickets as a source of agency funding by adjusting other racing-associated fees, which the Commission is authorized to do.

By clarifying that entities not licensed by the Commission are prohibited from allowing Texas residents to place bets with their companies, the State could experience an additional gain in pari-mutuel tax. However, the amount of additional revenue cannot be estimated for this report.

1 Texas Racing Act, sec. 6.06 (k).

2 Ibid.

3 Ibid.

Responses to Issue 1

Recommendation 1.1

Require the Commission to designate each racetrack license as either active or inactive and develop renewal criteria for inactive licenses.

Agency Response to 1.1

The agency agrees with this recommendation, presuming that sufficient resources are appropriated for implementation. Currently, the licensing process does not provide for dedicated staff. This recommendation would require regular, ongoing monitoring of licensee status and annual reviews and renewals of inactive tracks. This recommendation, combined with the recommendation in 1.6 to require thorough and abbreviated five-year reviews of licenses, would necessitate creation of a small, dedicated licensing program.

Each inactive racetrack license presents different substantive issues for review and analysis. The circumstances of each license vary significantly ranging from tracks that have not been built to existing tracks that have closed or are operating on a limited basis due to financial challenges. The Commission estimates that each review of an inactive license will take 8 weeks to 18 weeks, assuming that each license is renewed. Licenses that are not renewed will require a hearing before the State Office of Administrative Hearings that may last one to two years, depending upon how vigorously the licensee litigates.

For those active licenses where tracks are built and actively conducting live racing, the five-year reviews could be conducted relatively quickly. The agency regularly evaluates the physical condition of operating racetracks and the licensure of racing officials, therefore a thorough but abbreviated review would focus primarily on refreshing the background checks of racetrack owners and evaluating the association's financial condition. However, for those racetracks that are not yet operational but which are deemed to be active due to their good faith efforts, the agency's review could be more frequent than every five years and require a more customized review depending upon the track's situation.

Two additional full-time staff, an attorney, and a program specialist, will be necessary to implement this recommendation. These two staff will cover the activities related to recommendation 1.1 and 1.6 to include: legal review and analysis of all statutory criteria; research and evaluation of financial documents; development of a database to track information; coordination of meetings and correspondence development; and records management. The Commission estimates total costs including salaries for the two FTEs, associated travel costs, equipment, supplies, and other relevant start-up costs, to range from \$300,000 to \$350,000. Although the agency would incur costs, there would be no impact to the state's General Revenue Fund since the Commission would be authorized to charge a renewal fee to collect additional revenue from racetracks to cover additional staff needed to process racetrack license renewals. (Charla Ann King, Executive Director – Texas Racing Commission)

For 1.1

Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.

Against 1.1

None received.

Modification

1. Make the standard for designating a track as active whether the track is holding live pari-mutuel races or making good faith efforts to hold live pari-mutuel races. (Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.)

Recommendation 1.2

Clarify the Commission's authority and ability to revoke a license.

Agency Response to 1.2

The agency agrees with this recommendation. (Charla Ann King, Executive Director – Texas Racing Commission)

For 1.2

Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.

Against 1.2

None received.

Modifications

2. Clarify that violations of the Act or rule that result in license revocation should be of a nature that constitutes a significant threat to public safety or a significant threat to the integrity of pari-mutuel racing. (Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.)

3. Keep the current statutory language specifying that licenses are “held in perpetuity,” adding the phrase “subject to revocation.” (Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.)

Recommendation 1.3

Authorize the Commission to require license holders to post security at any time.

Agency Response to 1.3

The agency agrees with the recommendation. As indicated within the Sunset Staff Report, the Texas Racing Act directs most of its oversight authority for racetracks towards new applicants, not existing licensees. As such, §6.04(b) of the Act requires new racetrack licensees to post security to ensure compliance with the Act and the Rules. The statute should be changed to specifically provide that the Commission may also require security after a license has been issued.

With its most recently issued licenses, the Commission used the security bond as a tool to fulfill the statutory intent of ensuring that licensees actually build their tracks. The Commission required its three newest licensees (Laredo Downs, Laredo Race Park, and Valle de los Tesoros) to each post at least \$140,000 in security. Failure to build according to schedule resulted in forfeiture of the security, and the Commission retained the authority in its order to require the licensees to post additional security.

When two existing long-term inactive licensees (Saddle Brook Park and Austin Jockey Club) were originally licensed in 1989, the Commission did not require either to post security. Neither of these licensees have built their facilities or conducted a single day of racing. The Act did not envision that licensees would not build their tracks, or close and become inactive for an indefinite period of time, and so failed to provide the tools necessary to address the problem.

Ensuring the Commission’s ability to require security at any point in the lifetime of a license is also an equity issue. The Commission has now required the new licensees to post security to ensure economic benefit to the state and the industry, while the longest standing inactive licensees are contributing nothing but license fees. The requested statutory modification will ensure that all licensees are treated equally and are subject to the same requirements. (Charla Ann King, Executive Director – Texas Racing Commission)

For 1.3

None received.

Against 1.3

None received.

Recommendation 1.4

Eliminate uncashed winning tickets as a source of Commission revenue.

Agency Response to 1.4

The agency agrees with the recommendation to remove uncashed winning tickets as a method of finance. Racetrack license fees would be adjusted to replace this source of revenue. (Charla Ann King, Executive Director – Texas Racing Commission)

For 1.4

None received.

Against 1.4

None received.

Recommendation 1.5

Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.

Agency Response to 1.5

The agency agrees with the recommendation. (Charla Ann King, Executive Director – Texas Racing Commission)

For 1.5

Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.

Against 1.5

None received.

Modifications

4. Allow Texas racetracks to offer advanced deposit wagering to residents of Texas. (Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc. and Mike Heimbach, Bridge City)
5. Allow Texas residents to place online wagers for races conducted at Texas tracks. (Mike Heimbach, Bridge City)

6. Allow Texans to legally wager by means of their choice such as over the Internet, through Advanced Deposit Wagering, or legal phone betting accounts. (David Hooper, Executive Director - Texas Thoroughbred Association, Austin)

Recommendation 1.6

The Commission should review the operations and management of all active racetrack licenses.

Agency Response to 1.6

The agency agrees with the recommendation. (Charla Ann King, Executive Director – Texas Racing Commission)

For 1.6

None received.

Against 1.6

None received.

Commission Decision

Adopted Recommendations 1.1 through 1.6, with a modification to 1.1 below.

Clarify that the standard for designation as an active track is holding live pari-mutuel races or making good faith efforts to hold live pari-mutuel races.

Legislative Action

House Bill 2271 grants the Commission authority to determine whether each racetrack license holder is actively conducting, or working towards conducting, live racing and then to designate each racetrack license either active or inactive. Inactive licenses are subject to an annual license renewal until active status is achieved or the Commission refuses to renew the license. The Commission is authorized to charge inactive racetracks a fee to cover any additional costs associated with processing license renewals, and the Commission is authorized to not renew an inactive license. The Legislature modified the Sunset provision to require the Racing Commission to establish renewal criteria in rule and to develop rules on what constitutes good faith efforts to conduct live racing. (Recommendation 1.1 as modified)

The bill clarifies the Commission's authority to revoke a license from any license holder for significant violations of the Racing Act or Commission rules and provides that licenses are not held in perpetuity. (Recommendation 1.2) The Legislature modified the Sunset provision to specify that an active racetrack license is effective unless designated as inactive and non-renewed,

or is surrendered, suspended, or revoked. The Legislature also modified the Sunset provision to make clear that the Commission may only use revocation when it reasonably determines that other disciplinary actions are inadequate.

The bill also authorizes the Commission to require racetrack license holders to post a bond at any time, instead of only when a new license is issued. (Recommendation 1.3) The Legislature modified the Sunset approach to provide that the posting of security be in an amount reasonably necessary to ensure compliance with the substantive requirements of the Racing Act and Commission rule.

In addition, the bill eliminates uncashed winning tickets as a source of Commission revenue, allowing racetracks to keep revenue from uncashed winning tickets. The Commission will replace the lost revenue by adjusting other racing-related regulatory fees paid by each licensed racetrack. (Recommendation 1.4) Finally, the bill clarifies that all unlicensed entities are prohibited from accepting wagers placed by Texas residents. (Recommendation 1.5)

As a management recommendation not needing statutory change, Recommendation 1.6 did not result in legislative action.

Issue 2

Weaknesses Exist in the Commission's Approach to Licensing Racing Industry Occupations.

Background

The Texas Racing Commission (Commission) licenses all occupations at a racetrack to help ensure a safe racing and wagering environment. The Commission offers 55 types of occupational licenses, which provide varying levels of access to different parts of the racetrack. For example, a vendor license does not give access to the wagering room or the backside of the racetrack (stables, test barns, kennels), while a trainer license provides full access to the backside of the racetrack but does not provide access to the secure rooms on the frontside of the racetrack, such as mutuel areas. In fiscal year 2009, the Commission issued 3,844 new occupational licenses and renewed 6,851 occupational licenses at an average cost of about \$50 per licensee.

The Commission employs five commissioned peace officers, called investigators, to enforce licensee compliance with the Texas Racing Act and the Commission's Rules of Racing. Investigators are on-site during live racing events and when racetracks conduct simulcast wagering. Investigators review criminal history reports on all licensees, investigate complaints against licensees, and perform unscheduled racetrack inspections with the help of Department of Public Safety (DPS) officers. In fiscal year 2009, agency investigators opened 254 new enforcement cases against licensees.

Findings

The Sunset Commission's 2008 recommendation to require the Commission to cease licensing individuals who do not have influence over pari-mutuel wagering continues to be appropriate.

Statutory change is still necessary to remove the Texas Racing Act requirement that the Commission license all people involved in racing, without consideration of an individual's level of involvement in pari-mutuel racing. As a result of this requirement, the Commission licenses occupations heavily involved in racing events such as trainers, jockeys, and grooms, while also licensing occupations that have nothing to do with pari-mutuel racing, such as concession-stand workers. The Commission's licensing practices result in licensing many individuals who have little or no chance to affect pari-mutuel wagering and some that do not interact with the public in any way that differs from a concession worker at a local ballpark. For example, the agency licenses parking lot attendants, delivery people, and popcorn vendors.

The Sunset Act provides that an agency's regulation should be limited to the minimum level necessary to protect the public. Licensing individuals who do not affect pari-mutuel racing results in the Commission overseeing a much larger number of individuals than is needed and incurring added costs to conduct such oversight. In 2009, the Commission licensed more than 1,900 licensees whose occupations do not affect pari-mutuel racing. In processing those license applications, the Commission ultimately lost nearly \$34,000,

The agency must license parking lot attendants, delivery people, and even popcorn vendors.

as the license fees collected by the Commission from those individuals did not cover the cost to the agency to run the required criminal history checks. Further, Commission investigators must spend time overseeing these licensees, even though they represent a minority of violators.

The Commission continues to need statutory direction to obtain criminal histories every three years, though the 2008 recommendation should be implemented over time to account for recent increases in cost to the Commission.

The 2008 Sunset review found that the Commission needed to more frequently obtain criminal history reports for occupational licensees. Investigators rely on updates from DPS, which alert the Commission if a licensee is arrested in Texas, instead of performing more frequent background checks. However, DPS updates do not show arrests or convictions outside Texas. Individuals who participate in racing tend to travel from racetrack to racetrack throughout the United States. As a result, so long as a licensee was not arrested in Texas, the Commission might not be aware of a licensee's complete criminal history.

Racing industry standards suggest a full criminal history check of licensees every three years.

The 2008 Sunset review also found a consensus among the racing industry that a three-year renewal period is necessary to ensure full public protection. The Association of Racing Commissioners International, of which Texas is a member, created a set of model racing rules that states can follow. These model rules suggest that a license should not be renewed unless the Commission conducted a full criminal history check in the last three years.¹ Following this recommendation's adoption by the Sunset Commission, the Racing Commission implemented an internal policy requiring criminal background checks every three years but continues to need statutory direction to make permanent the practice of obtaining criminal histories every three years.

However, a recent increase in the amount the Commission must pay to process criminal history background checks suggests a need for the recommendation to be implemented over time. To adjust for this added cost, the Commission estimates it will need to reduce the frequency of background checks back to five years and gradually work up to a three-year period over the next few years.

Recommendations

Change in Statute

2.1 Require the Commission to license only those individuals who can affect pari-mutuel racing.

This recommendation would require the Commission to license only those directly involved with pari-mutuel racing. The recommendation would reduce the number of licensees the Commission oversees by more than 1,900. The Commission would continue to license occupations that need significant access to the backside of a racetrack or restricted areas of the frontside as part of their job duties. The Commission would retain authority over non-licensed frontside employees through their employers. Racetracks would be responsible for ensuring employees' compliance with the Racing Act and Rules of Racing.

By shifting the responsibility for overseeing these licensees to racetrack associations, Commission investigators would be able to focus their attention on the other licensees who account for more than 90 percent of all violations. The Commission would also save costs of running criminal history checks for these occupations, as the fee for these licenses does not cover the Commission's costs for performing basic criminal history checks.

2.2 Require the Commission to obtain criminal history reports every three years.

This recommendation would require the Commission to perform criminal history checks every three years instead of the current five-year time period. Doing so would provide better public protection and bring Texas in line with national racing industry standards. The Commission would have to fully implement this requirement by September 1, 2014. Additionally, the Commission should continue to stagger the renewal period for current licensees to avoid a rush in processing criminal history checks.

Fiscal Implication Summary

None of these recommendations would have a significant fiscal impact to the State. Although the Commission would license fewer individuals, the Commission would potentially save money overall, as the cost of licensing occupations eliminated in this Issue exceeds the amount of fees collected. However, exact savings could not be estimated for this report, as the costs incurred by the Commission for each criminal history background check for a license has recently increased. The Commission could readjust fees for its licensees to account for any increase or decrease in revenue.

.....
¹ Association of Racing Commissioners International Model Rules Ch. 8.010(b). Online. Available: www.ua-rtip.org/industry/modelrules_pdfs/chapter8.pdf. Accessed: October 5, 2010.

Responses to Issue 2

Recommendation 2.1

Require the Commission to license only those individuals who can affect pari-mutuel racing.

Agency Response to 2.1

The agency agrees with this recommendation. In a previous review, the Commission's criminal history checks of those who would not be licensed under this recommendation revealed that a fair number of individuals (35 in fiscal year 2007, for example) failed to disclose criminal convictions. Many of these individuals had convictions for felonies or crimes of moral turpitude. These convictions make these individuals unqualified to work at a racetrack, even if the Commission no longer licenses them. Therefore, the Commission will adopt rules establishing minimum standards for working at a racetrack in a non-pari-mutuel capacity and a procedure for auditing licensed employers' hiring practices to ensure that appropriate background checks are being conducted.

Agency Modification

1. The agency should retain the authority to require racetrack associations to conduct background checks and the authority to audit these background checks to ensure that individuals employed at the racetrack have clean criminal histories.

(Charla Ann King, Executive Director – Texas Racing Commission)

Staff Comment: The staff recommendation allows the Commission to retain authority over non-licensed racetrack employees through their employers' licenses, and allows the Commission the ability to accomplish the suggested modification through the rulemaking process.

For 2.1

None received.

Against 2.1

None received.

Recommendation 2.2

Require the Commission to obtain criminal history reports every three years.

Agency Response to 2.2

The agency agrees with this recommendation and already has implemented a rule requiring criminal history reports every three years. (Charla Ann King, Executive Director – Texas Racing Commission)

For 2.2

None received.

Against 2.2

None received.

Commission Decision

Adopted Recommendations 2.1 and 2.2.

Legislative Action

House Bill 2271 limits Commission licensure of racing industry occupations to only those individuals directly involved with pari-mutuel racing. (Recommendation 2.1) The bill also requires the Commission to perform criminal history checks on licensees every three years. (Recommendation 2.2)

Issue 3

The Statutory Automated Teller Machine Withdrawal Limit at Racetracks Unduly Restricts Patrons From Accessing Their Funds.

Background

Texas law currently prohibits patrons who are withdrawing money from an Automated Teller Machine (ATM) at a horse or greyhound racetrack facility from withdrawing more than \$200 in a given day from their checking or savings accounts. The purpose of this restriction is to discourage patrons from gambling more money than they intend. The restriction on the amount of allowed withdrawal does not apply to ATMs located off of racetrack property.

Finding

No significant changes have occurred to impact the 2008 Sunset Commission's recommendation that the cap on amounts patrons may withdraw from ATMs should be eliminated.

In 2008, the Sunset Commission determined it was no longer necessary to restrict the amount of money patrons at racing events are allowed to withdraw from their checking or savings accounts. The Commission found that the Texas Racing Commission's mission was to ensure the integrity of wagers and to protect the wagering public, and that a statutory limit of \$200 in ATM withdrawals per day at racetracks does neither. Rather, the limit only served to inconvenience patrons, while doing little to prevent excess gambling. The recommendation to remove this statutory cap remains appropriate.

The \$200 limit on ATM withdrawals at racetracks does little to prevent excess gambling.

Recommendation

Change in Statute

- 3.1 Eliminate current statutory limitations that prevent track patrons from being able to withdraw more than \$200 from a checking or savings account.**

This recommendation would remove the statutory cap that prevents racetrack patrons from withdrawing more than \$200 in a given day from an ATM located on racetrack property. Going forward, no statutory cap would exist on the amount of money a patron could withdraw. This change would not affect withdrawal limits set by ATM-card issuers.

Fiscal Implication Summary

This recommendation would have no fiscal impact to the State.

Responses to Issue 3

Recommendation 3.1

Eliminate current statutory limitations that prevent track patrons from being able to withdraw more than \$200 from a checking or savings account.

Agency Response to 3.1

The agency takes no position on this recommendation. (Charla Ann King, Executive Director – Texas Racing Commission)

For 3.1

Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.

Against 3.1

None received.

Commission Decision

Not adopted. The Sunset Commission took no action on Issue 3.

Legislative Action

House Bill 2271 eliminates the current statutory limitation of \$200 on ATM withdrawals at racetracks, as recommended by Sunset staff in Recommendation 3.1. See Provision 4 on page 33 of this report for further explanation.

Issue 4

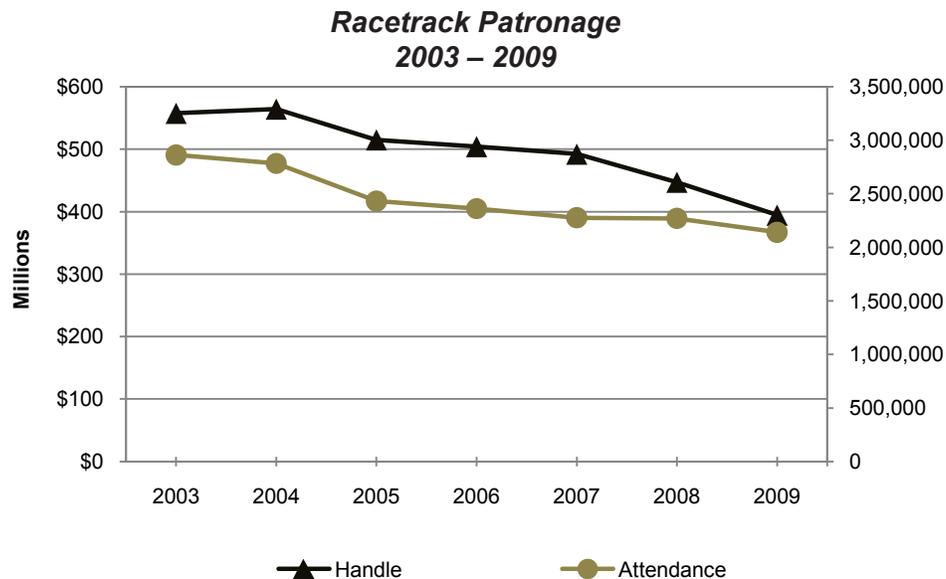
Texas Has a Continuing Need for the Texas Racing Commission.

Background

In 1986, the State passed the Texas Racing Act (Act), allowing pari-mutuel wagering on horse and greyhound races and creating the Texas Racing Commission (Commission) to oversee the racing industry. Shortly after the Legislature's approval, Texas voters approved pari-mutuel racing in a statewide referendum, and Texas' first racetrack opened in the fall of 1989.

The Commission's mission is to protect the health, safety, and welfare of race animals and race participants, as well as to safeguard the interests of the betting public. The Commission is also charged with managing the growth of the racing industry. To accomplish this mission, the Commission licenses racetrack facilities and all individuals involved in pari-mutuel racing, monitors wagering systems, enforces the Texas Racing Act and the Rules of Racing, and ensures the health and safety of race animals. The Commission also oversees dedicated funds that support the horse and greyhound breeding industries.

Texas' racing industry continues to experience a steady decline in both spectators and total amount of wagers placed, called handle. For example, according to the Commission, in 2003, about 2.8 million people visited Texas' eight racetracks, betting a total of nearly \$558 million on live and simulcast races. However, in 2009, only about 2.14 million people visited Texas' seven remaining racetracks, and total handle has fallen by about \$163 million. The graph, *Racetrack Patronage*, details total attendance and handle at Texas racetracks during the past seven years. In reviewing each racetrack's annual financial reports, the Commission estimates that the majority, if not all, of Texas' racetracks are losing money.



Findings

Despite declining wagers and a shrinking industry, Texas has a clear and continuing interest in regulating pari-mutuel racing.

In 2008, the Sunset Commission determined that, because the pari-mutuel racing industry involves gambling and because of the very nature of gambling, the industry continues to need strict state oversight. Particularly, the Sunset review noted a continuing need for the Commission to license racetrack facilities and certain people working at those facilities, to oversee each racetrack's wagering system, and to provide an ongoing enforcement presence at racetracks. Further, although the racing industry continues to experience a steady decline in both spectators and total amount of wagers placed, the pari-mutuel tax continues to be a source of state revenue. The racing industry provides jobs to many Texans and impacts the state and local economies beyond employment.

In addition, the Sunset review found that if the decline of the racing industry continues and revenue losses increase, the State's role in protecting those involved in live racing and those betting at Texas racetracks will be needed even more. In times of economic distress, resources for general racetrack maintenance and wagering systems upkeep may suffer, potentially threatening the safety of racing participants and betting integrity. Because of these risks, although the Commission may ultimately decrease its size to reflect the declining industry, a basic level of state regulation is needed to oversee the racing industry.

No significant changes have occurred to affect the Sunset Commission's determination that the Texas Racing Commission is the most appropriate agency to regulate the pari-mutuel racing industry.

While other organizational options are available, the Commission effectively oversees the pari-mutuel horse and greyhound racing industries as an independent agency. The 2008 Sunset review considered the possibility of transferring the regulation of pari-mutuel racing to either the Texas Lottery Commission or the Department of Public Safety but determined neither was equipped to handle oversight of racing-specific functions. Further, the review found that 39 other states allow pari-mutuel racing, and most regulate the racing industry in a similar way to Texas' system of an independent commission or board.

The Commission's statute does not reflect standard language typically applied across the board during Sunset reviews.

The Commission's governing statute does not include a standard provision relating to alternative rulemaking and dispute resolution that the Sunset Commission routinely applies to agencies under review. Without this provision, the agency could miss opportunities to improve rulemaking and

With the decline of the racing industry the State's role in protecting the public will be needed even more.

No other state agency is equipped to handle oversight of racing-specific functions.

dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

In addition, language in the Commission's statute regarding conflicts of interest should be updated to prohibit a person from serving as a Commission member or high-level agency employee if the person, or their spouse, is an officer, employee, or paid consultant of a Texas trade association in the racing industry. This provision eliminates both actual and perceived conflicts of interest that may affect Commission members or high-level employees' ability to perform their duties.

Recommendations

Change in Statute

4.1 Continue the Texas Racing Commission for six years.

This recommendation would continue the Commission as an independent agency for six years, instead of the standard 12 years. This would allow the Legislature the opportunity to re-evaluate the Commission's role in regulating a declining industry at that time. While the State should continue regulating the pari-mutuel racing industry, the future of the industry is unknown, and the Commission may need additional tools to again readjust to a further decline or a revived industry.

4.2 Apply the standard Sunset across-the-board requirements to the Commission.

This recommendation would ensure that the Commission develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expense.

In addition, this recommendation would update language in the Commission's statute to more fully conform to the across-the-board Sunset provision regarding conflicts of interest. The provision would ensure that Commission members and high-level employees are free from both actual and apparent conflicts of interest in the performance of their duties.

Fiscal Implication Summary

If the Legislature continues the current functions of the Texas Racing Commission, the need for the agency's annual appropriation of approximately \$10 million from the Commission's General Revenue Dedicated Account would continue. The Commission would continue to pass through about half of these funds to the horse and greyhound breeding industries, as required by statute. The agency's appropriation is entirely paid for by racing-related fees, fines, and pari-mutuel wagers. Applying the Sunset across-the-board provisions would not have a fiscal impact to the State.

Responses to Issue 4

Recommendation 4.1

Continue the Texas Racing Commission for six years.

Agency Response to 4.1

The agency agrees with the recommendation. (Charla Ann King, Executive Director – Texas Racing Commission)

For 4.1

Joey Longley, Consultant – Blackridge, on behalf of the following 11 organizations: Austin Jockey Club Ltd., Gulf Coast Racing LLC, Gulf Greyhound Partners Ltd., Laredo Race Park LLC, LRP Group Ltd., Manor Downs Ltd., MEC Lone Star L.P., Retama Development Corporation, Sam Houston Race Park Ltd., Valle de los Tesoros Ltd., Valley Race Park Inc.

Against 4.1

None received.

Recommendation 4.2

Apply the standard Sunset across-the-board requirements to the Commission.

Agency Response to 4.2

The agency agrees with the recommendation. (Charla Ann King, Executive Director – Texas Racing Commission)

For 4.2

None received.

Against 4.2

None received.

Commission Decision

Adopted Recommendations 4.1 and 4.2.

Legislative Action

House Bill 2271 continues the Racing Commission as an independent agency for six years, instead of the standard 12 years. This will allow the Legislature a sooner opportunity to re-evaluate the

Commission's role in regulating a declining industry. (Recommendation 4.1) In addition, the bill applies the standard Sunset across-the-board requirements to the Commission regarding alternative dispute resolution and Commission member conflicts of interest. (Recommendation 4.2)

Issue 5

The State No Longer Needs the Equine Research Account Advisory Committee.

Background

In 1991, the Legislature amended the Texas Racing Act to create the Equine Research Account (Account), which uses a dedicated amount of wagering proceeds to fund equine research benefiting the horse racing and breeding industries. The Legislature charged the Director of Texas AgriLife Research to administer Account funds and created the Equine Research Account Advisory Committee (Committee) to advise the Director during the research proposal and grant award process.

The Committee's primary role in overseeing Account funds is to select research priority topics and then review and recommend research funding. The Committee does not have a staff of its own but relies on staff from the Director's office to provide administrative support. In addition, statute requires Texas AgriLife Research to hold an annual conference showcasing racing-related equine research, using Account funds to defray conference costs.

Finding

The Sunset Commission's 2008 finding that Texas does not need a separate committee to review and recommend equine research grants continues to be appropriate.

The 2008 Sunset review determined that Texas AgriLife Research has a sufficient process in place to administer Equine Research Account Funds, as it does with other research programs, without the added advice of a committee. While the Committee structure allows members of the racing industry to interact with equine researchers from various universities to discuss research funding, the Committee does not have ultimate control over grant recipients or the amount of funding awarded to those recipients.

The Committee relies heavily on Texas AgriLife Research to complete its mission. Staff in the Director's office draft the requests for proposals, compile the submitted proposals, coordinate the peer review process, and act as a liaison between the Director and Committee members. In addition, staff plan the Committee's meetings, and the agency pays the cost of the meetings. The Committee's only functions are to set research priorities and review the peer review recommendations to provide additional insight. While these functions certainly incorporate another viewpoint – the racing industry's – these opinions can be obtained in other ways. A state-created entity is not required for this discussion to occur.

In addition, the review found that limited funding continues to lead to small-scale research projects. The Committee lacks the financial resources to provide significant funding for equine research. For the past three legislative sessions, the Legislature has not appropriated Account funds. Instead, Texas

A state-created entity is not required to obtain racing industry viewpoints.

AgriLife Research has gifted the Committee all of the grant money awarded and has covered the minimal cost of administrative support. Further, the Committee's limited resources and minimal administrative support result in insufficient performance review and analysis of the impact of research that is funded.

Recommendation

Change in Statute

5.1 Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

This recommendation would eliminate the Equine Research Account Advisory Committee from statute and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds. In expending these funds, Texas AgriLife Research would use its existing research proposal review and award process, including involving subject-matter experts to evaluate proposals when needed, and would adhere to Texas A&M University System conflict of interest provisions. Texas AgriLife Research would also be able to pair Equine Research Account funds with other agency revenue or funding sources to create larger funding pools for long-term research initiatives. Under this recommendation, Texas AgriLife Research would also use existing agency resources to communicate the impact of funded research projects to the racing industry, including the Texas Racing Commission.

Abolishing the Committee would simplify the process for awarding grants to Texas' equine research community, while providing greater oversight of research projects funded using Account funds. Using existing agency processes, Texas AgriLife Research would also provide greater oversight of grants awarded. While, under this recommendation, Account funds would be directly associated with the Texas A&M University System, other Texas university faculty would be allowed to partner with A&M System faculty to receive funds, as is commonly done now.

Fiscal Implication Summary

This recommendation would not have a fiscal impact to the State. Texas AgriLife Research would administer any appropriated funds in the Equine Research Account, and any savings in administrative costs would be used to fund additional research proposals.

Responses to Issue 5

Recommendation 5.1

Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

Committee Response to 5.1

The Committee does not support the recommendation to abolish the Texas Equine Research Account Advisory Committee. Committee members believe that abolishing the ERAAC would be detrimental to the advancement of equine research in the State of Texas. Justification for the continuation of the ERAAC includes, but is not limited to, the following:

The current structure of the Committee is designed to ensure representation by a broad and diverse group including industry and academia. The Committee serves a valuable role in providing an inclusive approach to fostering research relating to the horse-racing and breeding industries. The varying perspectives of the Committee members provide important expertise for submission and evaluation of research proposals.

Maintaining the Committee enhances prospects for funding to faculty outside of the Texas A&M University System.

The Committee structure serves important functions in addition to the review and recommendation of funding equine research grants. The Committee serves as a conduit for the exchange of ideas and identification of equine research issues among faculty, the horse racing industry, breed associations and horse breeders. Representatives from the Texas Racing Commission regularly attend the meetings of ERAAC and provide important insight into research priorities for the race horse industry. If the Legislature chooses not to abolish the Committee, the Committee would support the addition of members from the Texas Racing Commission and from other industry groups. This action would broaden the scope of the Committee to expand representation of the race horse industry on the Committee.

Committee Modification

1. If the Legislature chooses not to abolish the Committee, provide for representatives from the Texas Racing Commission and other industry groups to serve as Committee members.

(David Forrest, Ph.D., Chair – Equine Research Account Advisory Committee)

Affected Agency Response to 5.1

Texas AgriLife Research is flexible on the recommendation. The agency has received great value from the Committee, especially when funds have been appropriated to the Equine Research Account, in defining priorities, communicating research impacts to the racing community, and providing guidance on funding allocations.

The agency appreciates the confidence placed in Texas AgriLife Research that the authority to expend Equine Research Account funds be continued. The agency understands that equine research is important to the State, which is why, as a result of the Legislature not appropriating Equine Research Account funds, Texas AgriLife has funded projects over the last two biennia.

If the Legislature chooses to abolish the Committee, Texas AgriLife Research is confident in its ability to continue fair and effective administration of the Equine Research Fund and would likely continue using a similar ad hoc external committee to provide input.

Texas AgriLife Research Modification

2. If the Legislature chooses to not abolish the Committee, increase the diversity of Committee members by adding members of the Texas Racing Commission and other industry groups.

(Craig L. Nessler, Ph.D., Director – Texas AgriLife Research)

Affected Agency Response to 5.1

The Texas Racing Commission agrees that the efforts of the Equine Research Advisory Committee have suffered in recent years. The Committee's opportunities to improve the health and safety of racehorses in Texas have been diminished by the decline in the industry and by the Legislature's sweep of the pari-mutuel revenue dedicated to the purpose of equine research.

In the recent years, Racing Commission staff members increased their participation at the Committee level and found interaction with the Committee to be beneficial. The agency's chief veterinarian now attends the meetings regularly and has been communicating the need for scientific research to support the State's regulation and control of drugs and medications used in racing. Additional benefit came recently through the Committee at the national conference of state racing regulators, which focused its equine research forum on results of projects recently funded by the Equine Research Advisory Committee.

Although it appears from the Sunset staff's review that the Committee does overlap with Texas AgriLife Research and that Texas AgriLife Research has significant resources to offer the equine research process, the current recommendation to blend the committee process into Texas AgriLife Research does not address all of the concerns cited by Sunset staff. These concerns included:

- the need for research to more directly target racing-related equine issues,
- the need for broader assessment of the impact of the research,
- the need for improved communication and knowledge of research results, and
- the lack of access to the dedicated revenue stream.

Modifications to address these concerns are listed on the following page.

In addition, every effort should be made to restore the equine funding as intended by the statute. Perhaps the value of equine research in regard to the welfare of racehorses in Texas and nationwide has not been effectively communicated through the legislative appropriations process. Regaining access to this dedicated-revenue stream may be a matter of clarifying to members of the Legislature the importance of equine research in protecting the health and safety of equine athletes.

Texas Racing Commission Modifications

3. Modify statute to require equine research, funded through pari-mutuel revenue, to benefit the racing industry.
4. Designate the Texas Racing Commission, representatives of the breed registries, and the official horsemen's organization to provide input into the research funding process.
5. Direct Texas AgriLife Research to provide in its assessment of the research conducted a review of the impact on the racing industry.
6. Require enhanced distribution of research results including a report to the Texas Racing Commission and to the relevant legislative committees.

(Charla Ann King, Executive Director – Texas Racing Commission)

For 5.1

None received.

Against 5.1

None received.

Commission Decision

Adopted Recommendation 5.1.

Legislative Action

House Bill 2271 abolishes the Equine Research Account Advisory Committee and continues Texas AgriLife Research's authority to expend appropriated Equine Research Account funds. (Recommendation 5.1)

New Issues

New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

6. Provide the Executive Director the authority to review and modify decisions of the stewards and judges and enable the Executive Director the authority to levy enhanced penalty options to include a fine up to \$10,000, a suspension of not more than two years, or both a fine and suspension. (Charla Ann King, Executive Director – Texas Racing Commission)
7. Amend the definition of “Performance” to provide flexibility to meet changing conditions in the greyhound racing environment to mean a specified number of greyhound races to be determined by the Commission. (Charla Ann King, Executive Director – Texas Racing Commission)
8. Make technical corrections to the Racing Act to remove obsolete language and provide clarity and consistency, including:
 - a) replace a reference to a repealed section of the Act regarding expiration dates of winning tickets with a reference to the agency's rules – Section 3.07(e);
 - b) update a reference to a repealed section of the Act regarding expiration dates of winning tickets, and clarify the distribution of breakage according to a 1993 Attorney General Opinion – Section 6.09(a) and (d); and
 - c) make statute consistent by clarifying that associations pay the Commission breakage due to breed registry and that the Commission remits the funds to the breed registry – Section 10.05(Charla Ann King, Executive Director – Texas Racing Commission)
9. Remove Accredited Texas-Bred Incentive Program funds from the Texas Racing Commission's budget. (Pancho Villarreal, President – Texas Paint Horse Breeders Association, Fort Worth and David Hooper, Executive Director – Texas Thoroughbred Association, Austin on behalf of the Texas Quarter Horse Association and Texas Arabian Breeders Association)
10. After Accredited Texas-Bred Incentive Program funds are removed from the Texas Racing Commission's budget, require each racetrack to transfer the funds weekly to the respective state breed registries. (David Hooper, Executive Director – Texas Thoroughbred Association, Austin on behalf of the Texas Quarter Horse Association, Texas Arabian Breeders Association, and Texas Paint Horse Breeders Association)
11. Eliminate the Texas Racing Act requirement that Texas residents comprise at least 51 percent ownership interest in any racetrack license not held by a publicly traded corporation. (David Hooper, Executive Director – Texas Thoroughbred Association, Austin)

Commission Decision

The Commission did not adopt any new issues.

Legislative Action

No action needed.

*Provisions Added by
Legislature*

Provisions Added by Legislature

1. Modify the definition of greyhound performance.

House Bill 2271 removes from statute the specific number of greyhound races that make up a “performance” and allows the Racing Commission to determine the number of races in rule.

2. Authorize the executive director to review and modify disciplinary decisions of stewards and judges.

The bill provides the director of the Racing Commission with authority to review and modify decisions made by racetrack stewards and judges regarding unethical practices or violations of racing rules, and to levy enhanced penalties including a fine of up to \$10,000, a suspension of not more than two years, or both.

3. Specify that the Comptroller will sweep from the agency’s account only funds above \$750,000 at the end of each biennium.

The bill specifies that unspent funds exceeding \$750,000, instead of all funds, that remain in the Commission’s account at the end of the biennium shall be transferred to the General Revenue Fund.

4. Eliminate the statutory limitation of \$200 on ATM withdrawals at racetracks.

The bill removes the statutory cap on ATM withdrawals of \$200 per day at a racetrack, allowing patrons to withdraw up to the limit imposed by their financial institution.

5. Require the Commission to establish a process and schedule for conducting active racetrack reviews.

The bill requires the Commission to set up a staggered schedule for review of racetrack licenses that have been designated active.

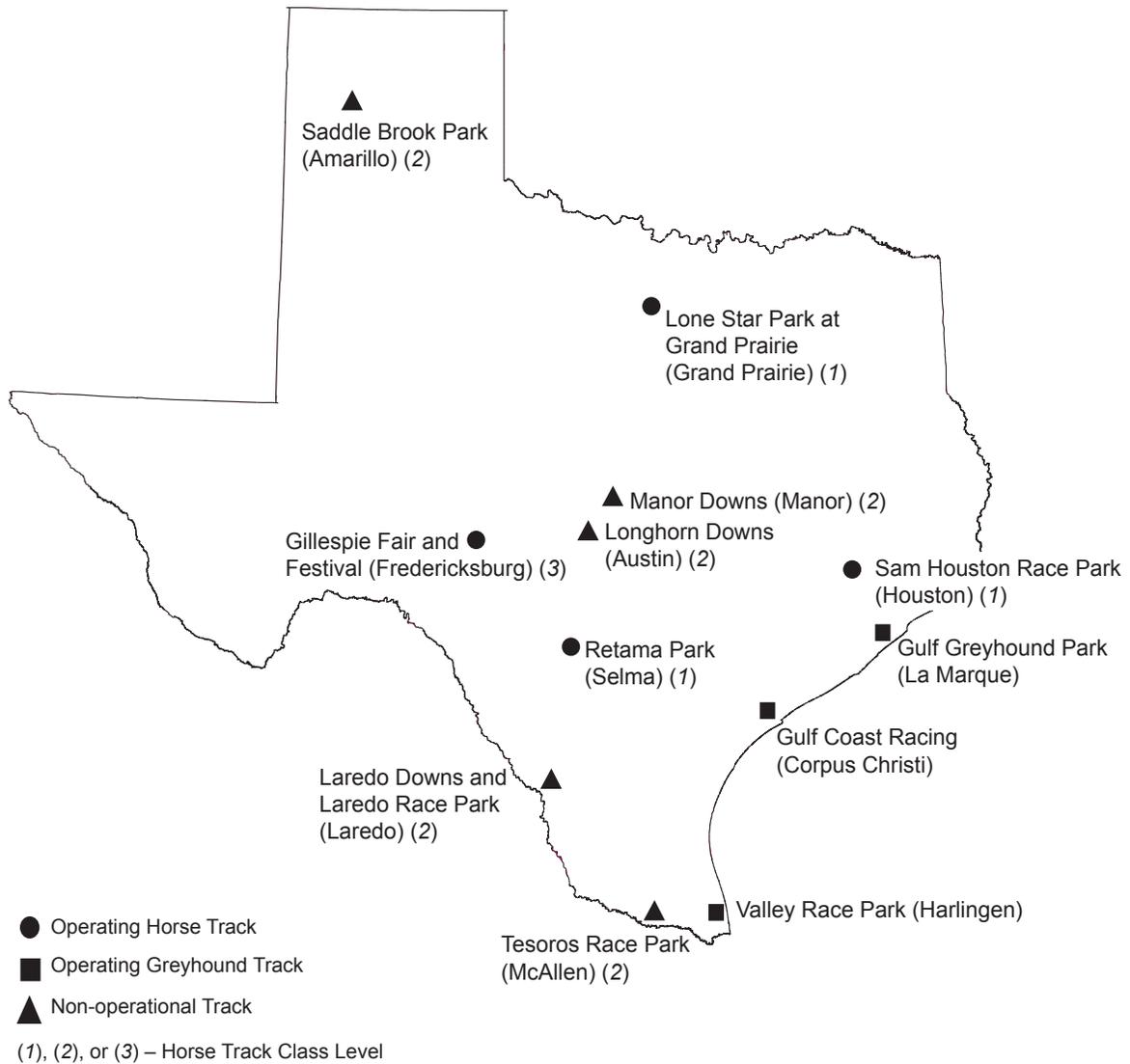
6. Require the Commission to make a determination on a racetrack application within 120 days from the time the application is administratively complete.

The bill requires the Commission to make a final determination on an application for a racetrack license within 120 days from the time the Commission receives all information required from the applicant by the Racing Act. At this time, the Commission must send a notice informing the applicant that the application is complete.

Appendices

Appendix A

Racetrack Licenses in Texas



Appendix B

Occupational License Types and Associated Fees

Adoption Program Personnel	\$25
Announcer.....	\$35
Apprentice Jockey.....	\$75
Assistant Farrier / Plater / Blacksmith	\$25
Assistant Starter	\$25
Assistant Trainer.....	\$100
Assistant Trainer / Owner	\$100
Association Assistant Management.....	\$50
Association Management Personnel.....	\$75
Association Officer / Director	\$100
Association Other	\$75
Association Staff.....	\$35
Association Veterinarian.....	\$75
Authorized Agent.....	\$15
Chaplain.....	\$25
Chaplain Assistant	\$25
Exercise Rider.....	\$25
Farrier / Plater / Blacksmith.....	\$75
Groom / Hot Walker.....	\$25
Jockey*	\$100
Jockey Agent	\$100
Kennel	\$75
Kennel Helper	\$25
Kennel Owner*	\$100
Kennel Owner / Owner*	\$100
Kennel Owner / Owner-Trainer*	\$100
Kennel Owner / Trainer*	\$100
Lead-out.....	\$25
Maintenance.....	\$35
Medical Staff.....	\$35
Miscellaneous	\$25
Multiple Owner*	\$35
Mutuel Clerk.....	\$35
Mutuel Other	\$35

Appendix B

Owner	\$100
Owner-Trainer*	\$100
Pony Person	\$25
Racing Industry Representative	\$100
Racing Industry Staff	\$30
Racing Official	\$50
Security Officer	\$30
Stable Foreman	\$50
Tattooer	\$100
Test Technician	\$25
Tooth Floater	\$100
Trainer*	\$100
Training Facility Employee	\$30
Training Facility General Manager	\$50
Valet	\$25
Vendor Concessionaire	\$100
Vendor / Concessionaire Employee	\$30
Vendor / Totalisator	\$500
Vendor / Totalisator Employee	\$50
Veterinarian*	\$100
Veterinarian Assistant	\$30

* The Commission offers a license valid for two or three years instead of the standard annual renewal timeframe.

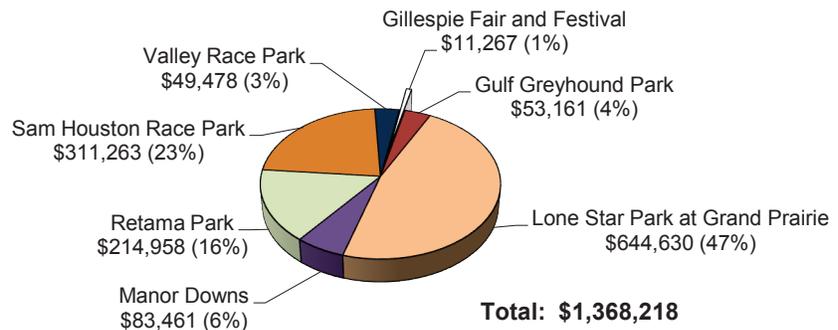
Appendix C

OUTs Payments by Racetracks

The Texas Racing Commission relies on uncashed winning tickets (OUTs) to supplement other racing-associated fees as a source of revenue. However, the manner in which uncashed ticket revenue is collected typically places an inequitable burden on the racing industry. The pie chart, *OUTs Payments by Racetrack*, shows the breakdown of payment made by each operating racetrack during fiscal year 2009.

For example, in 2009, the Lone Star Park racetrack paid over 47 percent of the OUTs payments collected by the Commission. While Lone Star Park paid by far the largest portion of uncashed ticket payments, the racetrack did not offer the majority of live race days. The chart, *Live Race Performances*, details the number of live races each active racetrack hosted in 2009.

OUTs Payments by Racetrack – FY 2009



Live Race Performances – 2009

Racetrack	Live Performances	Percentage of Live Performances
Gulf Greyhound Park	314	46%
Gulf Coast Racing	0	0%
Valley Race Park	124	18%
Sam Houston Race Park	69	10%
Lone Star Park at Grand Prairie	93	13%
Retama Park	59	9%
Manor Downs	18	3%
Gillespie Fair and Festival	8	1%

Racetracks offering fewer live race dates do not have as many drug testing-related expenses as other racetracks, increasing the portion of OUTs the racetrack must submit to the Commission. Yet racetracks that hold more live race dates require more Commission oversight and thus more of the agency's revenue to perform the enforcement function.

Appendix D

Texas Racing Industry Performance 1989 – 2009

The table below details racetrack revenues and other indicators of industry success since Texas' first racetrack opened in 1989. Overall, the racing industry has experienced a steady decline during the past two decades. For example, attendance at Texas' racetracks has decreased nearly 45 percent since its peak in 1993, and during that same timeframe, live handle decreased by more than 88 percent. As a result of decreased wagering, state pari-mutuel tax and the amount of purses paid to winning race entries have also declined.

Year	Number of Racetracks	Live Handle/ Live Race Dates	Simulcast Handle/ Number of Signals Taken	Total Handle	Total Attendance	State Pari-mutuel Tax	Total Purses Paid
1989	1	\$366,059 24	N/A	\$3,800,000	51,760	\$193,302	N/A*
1990	5	\$44,999,387 225	N/A	\$44,999,387	560,722	\$2,384,261	\$3,054,354
1991	6	\$262,107,332 1,158	\$1,079,138 3 days**	\$263,768,178	2,480,941	\$11,900,421	\$16,239,026
1992	7	\$296,107,332 1,340	\$24,673,726 292 days**	\$320,781,058	2,733,950	\$4,758,083	\$23,928,460
1993	7	\$437,444,294 1,689	\$72,501,554 760 days**	\$509,945,848	3,853,785	\$10,864,563	\$33,231,422
1994	8	\$354,817,092 1,846	\$164,621,820 2,077 days**	\$519,438,912	3,772,317	\$8,633,684	\$39,402,952
1995	9	\$262,654,405 1,686	\$258,840,661 10,835	\$521,495,066	3,534,208	\$7,386,299	\$36,544,986
1996	8	\$171,798,417 1,264	\$335,472,828 15,490	\$507,271,245	3,036,702	\$6,285,622	\$30,575,571
1997	7	\$204,470,138 1,294	\$377,322,976 19,736	\$581,793,114	3,510,281	\$6,815,182	\$41,822,609
1998	7	\$186,298,579 1,256	\$434,277,050 28,287	\$620,575,629	3,508,490	\$9,353,898	\$46,607,818
1999	7	\$172,397,736 1,272	\$451,928,576 35,802	\$624,326,312	3,375,588	\$4,676,860	\$48,170,585
2000	8	\$157,839,705 1,285	\$475,868,631 44,980	\$633,708,336	3,307,714	\$4,933,323	\$51,768,317
2001	8	\$146,527,915 1,354	\$473,486,206 54,821	\$620,014,121	3,191,420	\$4,936,353	\$50,806,825
2002	8	\$131,282,149 1,365	\$477,657,907 58,800	\$608,940,056	3,052,598	\$4,982,805	\$52,307,192
2003	8	\$114,414,754 1,395	\$443,112,863 64,036	\$557,527,617	2,862,501	\$4,615,249	\$47,114,548

Appendix D

Year	Number of Racetracks	Live Handle/ Live Race Dates	Simulcast Handle/ Number of Signals Taken	Total Handle	Total Attendance	State Pari-mutuel Tax	Total Purses Paid
2004***	8	\$117,674,166 1,352	\$446,623,183 66,542	\$564,297,349	2,783,720	\$4,650,399	\$58,168,384
2005	8	\$89,095,132 1,228	\$425,979,354 64,022	\$515,074,486	2,432,071	\$4,441,690	\$44,085,864
2006	8	\$82,985,634 1,298	\$421,247,936 67,118	\$504,233,570	2,361,397	\$4,398,721	\$43,524,681
2007	8	\$74,989,502 1,255	\$417,210,488 67,727	\$492,199,990	2,276,747	\$4,351,865	\$41,664,542
2008	7	\$62,255,153 733	\$384,980,770 58,119	\$447,235,923	2,270,483	\$4,009,199	\$38,673,756
2009	8	\$50,523,025 578	\$344,010,842 61,264	\$394,533,867	2,140,925	\$3,591,738	\$33,591,795

* G. Rollie White Downs, in Brady, Texas, was the first racetrack to open in Texas. The racetrack conducted 265 races in 1989, with at least \$193,302 paid to purses, however the exact amount of purses paid is unknown.

** Before 1995, the Commission only tracked the total number of days racetracks took simulcast signals, instead of the total number of signals taken, which the Commission now tracks.

*** In 2004, Lone Star Park at Grand Prairie hosted the Breeders' Cup races, resulting in a unique, positive impact on live and simulcast handle and attendance rates, as well as other associated outcomes, such as the amount of purses offered.

Appendix E

State Tax Revenue Generated From Pari-mutuel Wagering

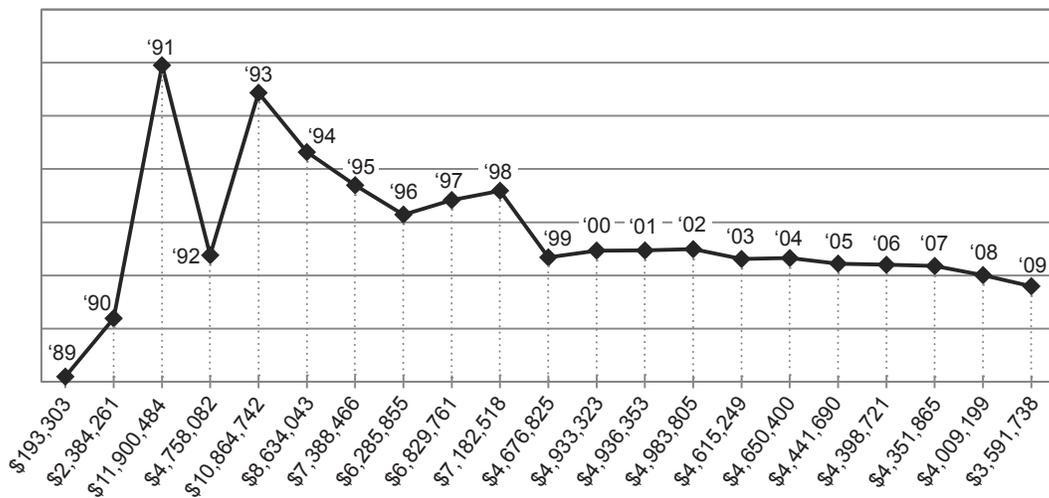
Pari-mutuel wagering generates revenue for the State through a pari-mutuel tax paid by each racetrack to the Comptroller of Public Accounts. The chart, *Live Racing Pari-mutuel Tax Rates*, details the State's pari-mutuel tax schedule for live racing events.

Live Racing Pari-mutuel Tax Rates

Total Handle	Tax Rate
\$100 million to \$200 million	1%
\$200 million to \$300 million	2%
\$300 million to \$400 million	3%
\$400 million to \$500 million	4%
\$500 million and more	5%

During the past two decades, the State collected more than \$49 million in pari-mutuel tax revenue from live racing events. The State also requires all racetracks to pay a 1 percent tax on same-species simulcast wagers and a 1.25 percent tax on all cross-species simulcast wagers, which the State began collecting in 1991. Today, the State only collects simulcast tax revenue because none of the Texas racetracks has met the live racing handle threshold since 1999. In total, the State has collected almost \$67 million in simulcast same-species and cross-species tax revenue. The graph, *State Pari-mutuel Tax Receipts*, details the tax revenue generated by live and simulcast racing since 1989.

State Pari-mutuel Tax Receipts 1989 – 2009



Appendix F

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.

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.

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.

Appendix F

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.

SUNSET STAFF REVIEW OF THE
TEXAS RACING COMMISSION
EQUINE RESEARCH ACCOUNT ADVISORY COMMITTEE

REPORT PREPARED BY:

Steven Ogle, Project Manager

Kelly Kennedy

Robert Romig

Amy Trost

Janet Wood

Ken Levine, Project Supervisor

Ken Levine
Director

Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

www.sunset.state.tx.us

(512)463-1300 Fax (512)463-0705