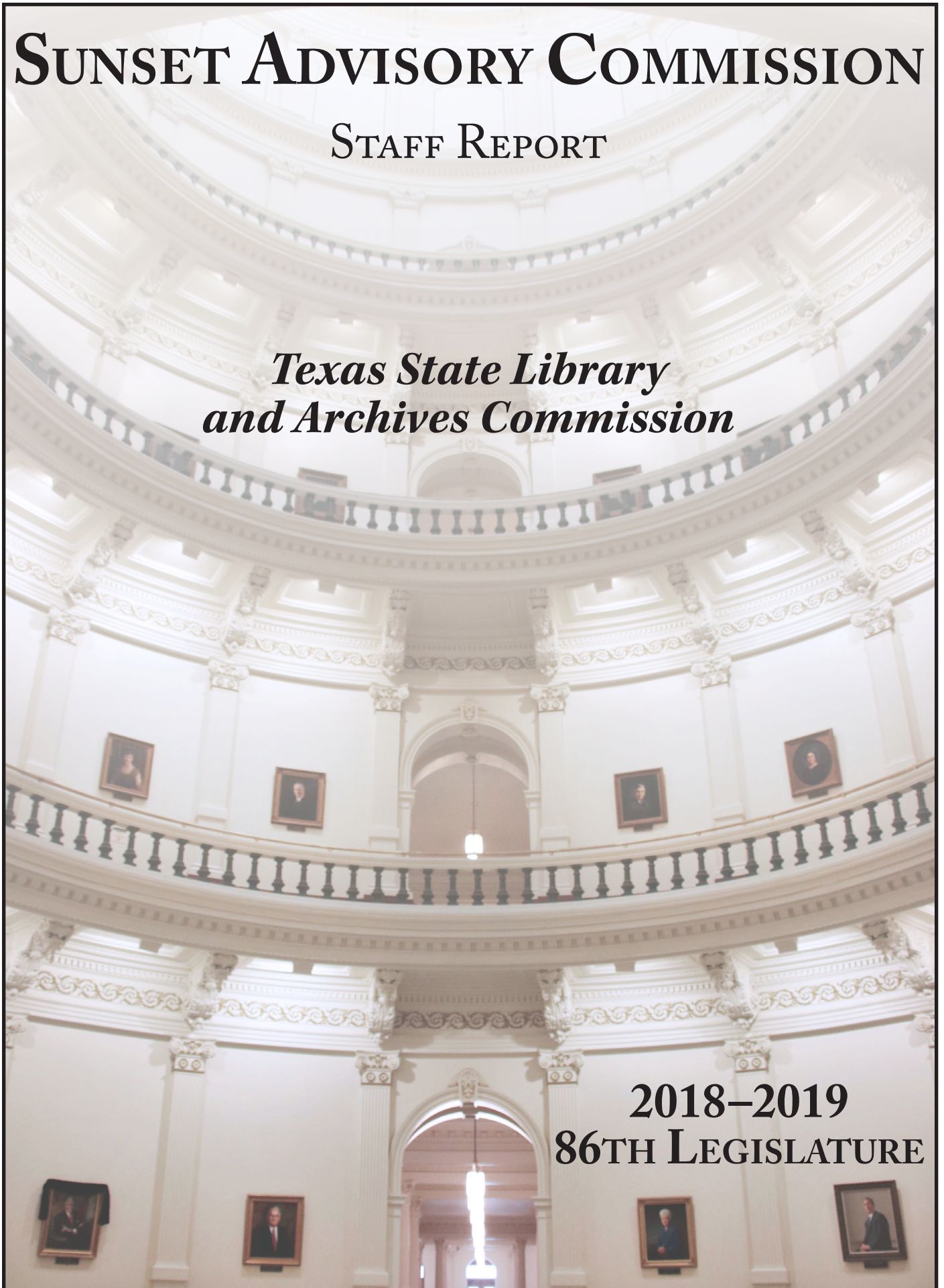


SUNSET ADVISORY COMMISSION

STAFF REPORT

Texas State Library and Archives Commission

2018–2019
86TH LEGISLATURE



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Cover Photo: The Texas Capitol rotunda houses the Texas Governors and Presidents Portrait Gallery. The gallery includes portraits of every government leader in Texas' history, including several presidents when Texas won its independence from Mexico and became a republic. Photo Credit: Janet Wood

**TEXAS STATE LIBRARY
AND ARCHIVES COMMISSION**

SUNSET STAFF REPORT

2018-2019

86TH LEGISLATURE

HOW TO READ SUNSET REPORTS

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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SUMMARY OF SUNSET STAFF RECOMMENDATIONS

SUMMARY

The Texas State Library and Archives Commission (TSLAC) zealously performs its mission to provide Texans with the information needed to lead informed, productive, and fulfilled lives. The agency's professional and dedicated staff support libraries throughout the state, manage the state archives, help government agencies properly manage records, and directly circulate audiobooks to thousands of Texans with disabilities. Overall, Sunset staff found Texas benefits from these programs, identified no benefit from organizational change, and recommend continuing the agency for the standard 12-year period.

Since the previous Sunset review in 2006, the agency's library support role has shifted as a result of budget changes. With less direct state funding for libraries available, TSLAC now primarily provides federally funded library grants and training and lowers public library costs by aiding interlibrary loans and group purchasing of expensive electronic databases. With libraries generally reporting satisfaction with TSLAC's services, the Sunset review identified only minor improvements needed for the library grant programs. The review instead shifted focus to the agency's role managing the state archives and promoting sound records management practices for both state and local government entities. These mundane-sounding tasks form the backbone of government transparency and openness, as public information laws would otherwise be of little use.

The agency has struggled to manage the influx of records in recent years, thwarting easy public access.

In the state archives, TSLAC preserves and provides access to the state's rich history, from the early days of the Texas Declaration of Independence and Travis' Alamo letter to electronic reports and correspondence showing the inner workings of every branch of state government. The agency has a daunting task to manage the existing archives while constantly taking in new records in different formats and spending significant effort responding to requests for information, all with limited staff and resources. Overall, the Sunset review found the agency has struggled to manage the influx of records in recent years, leading to a growing backlog of unprocessed archival material, thwarting easy public access. The agency also faces unique challenges responding to a rising number of Public Information Act requests, which further taxes its ability to make progress on the backlog. A more strategic approach to reducing the backlog and categorizing research requests would help the agency better manage its workload while improving public access.

The review also identified opportunities to improve several aspects of TSLAC's records management program. In particular, the agency struggles with managing one class of records with unique confidentiality protections, those of state legislators. TSLAC lacks a well-documented, formal system for tracking whether members of the Legislature choose to keep their confidential correspondence closed or open to the public upon leaving office. TSLAC also

makes inconsistent decisions on members' requests to store their records in universities or museums outside the state archives. Clarifying procedures for legislative records and working more collaboratively with legislative staff would help the agency provide a better framework for these unique records.

Finally, the agency would benefit from streamlining its responsibilities relating to local government records, for example, by removing a requirement to approve more than 10,000 local government entities' retention schedules. Adjusting these duties would help the agency better focus on its core records management duties, such as providing more updated and useful guidance for state and local entities to follow.

The following material summarizes Sunset staff's recommendations for TSLAC.

Issues and Recommendations

Issue 1

TSLAC Does Not Strategically Manage the State Archives to Maximize Access to Texas' History.

TSLAC manages the state archives, a collection of permanently valuable records and other materials documenting Texas' history, and makes the archives available to the public for research and public information requests. The archives include a significant backlog of records that are not fully processed, almost 41 percent of the total 80,000 cubic feet stored. The backlog limits public access to the archives and creates numerous management inefficiencies. However, TSLAC has not adequately planned to reduce the backlog by clearly defining the problem, establishing prioritized goals, maximizing limited staff resources, or leveraging partnerships with outside entities. In addition, state law limits TSLAC's ability to make common sense decisions when handling frequent and large Public Information Act requests, further straining limited staff capacity and disrupting other archives projects.

Key Recommendations

- Require TSLAC to develop a strategic plan for managing the state archives, with targets for addressing the backlog and regular reporting on progress.
- Authorize TSLAC to distinguish between different types of information requests to better manage archives workload.
- Direct TSLAC to adopt a fee schedule for Public Information Act requests.

Issue 2

TSLAC's Records Management Program Needs Refocusing to Ensure Effective Handling of State and Local Documents.

The agency supports government records management in Texas, a critical component of open government and risk management, but TSLAC lacks an effective approach for some records and also faces unnecessary statutory requirements that strain staff resources. The agency lacks clear procedures for managing legislator records, risking inappropriate release of documents with statutory confidentiality requirements. Additionally, TSLAC does not coordinate effectively with other legislative entities that play key roles in managing legislators' records. The agency also assists state entities and local governments with records

management through training and developing model records retention schedules, but the state retention schedule is outdated and lacks the guidance agencies need to manage records properly. Finally, statutory requirements for TSLAC's role in local government records management unnecessarily stretch both the agency and local entities by requiring TSLAC to approve thousands of local government retention schedules and placing control of local records stored in local depositories with TSLAC.

Key Recommendations

- Clarify the processes for waiving confidentiality protections on legislative records and for approving institutions outside the state archives to store legislator records.
- Remove the requirement for TSLAC to approve local government retention schedules.
- Authorize the agency to transfer custody of certain local records to local institutions.

Issue 3

TSLAC's Grant Program Needs Improvements to Increase Transparency and Fairness.

TSLAC awards grants to public and academic libraries through six primarily federally funded grant programs. Sunset staff found lacking best practices in how the agency uses peer reviewers that could impact the fairness and transparency of grant evaluations and awards. The agency selects librarians without an application process and peer reviewers are able to apply for the same grant program they score. In addition, TSLAC tends to award grants to the same small pool of libraries, limiting the diversity of recipients and the statewide impact of federal funding for libraries.

Key Recommendations

- Direct TSLAC to prohibit grant reviewers from applying for grants in the same categories they score.
- Direct TSLAC to openly solicit peer grant reviewers.
- Direct TSLAC to adjust grant award criteria and scoring to better disperse grant funding to a wider pool of libraries.

Issue 4

The State Has a Continuing Need for the Texas State Library and Archives Commission.

Texas benefits from a state agency to support library services and preserve and provide access to historic documents and government records. In addition, Texas receives nearly \$11 million in federal funds annually to support libraries throughout the state. Overall, Sunset staff concluded TSLAC serves a unique role in state government and little benefit would result from organizational change.

Key Recommendation

- Continue the Texas State Library and Archives Commission for 12 years.

Fiscal Implication Summary

Overall, the recommendations in this report would not have a fiscal impact to the state and can be achieved with existing agency resources. Many recommendations are designed to improve internal operations and efficiency at the agency in ways that have minimal impact on resources.

AGENCY AT A GLANCE

AGENCY AT A GLANCE

The Texas State Library and Archives Commission's (TSLAC's) mission is to ensure citizens of Texas have access to the information they need to lead informed, productive, and fulfilled lives. The agency works to support the efforts of local libraries across the state and provides its own information services, serving as the state archives and working with other state and local entities to preserve government records. The origin of today's state library dates to 1839, when Mirabeau B. Lamar established the National Library of the Republic of Texas. Later, the Legislature expanded the library's role to include serving as a depository and archive of historic materials. Today, to accomplish its mission, the agency carries out the following key activities:

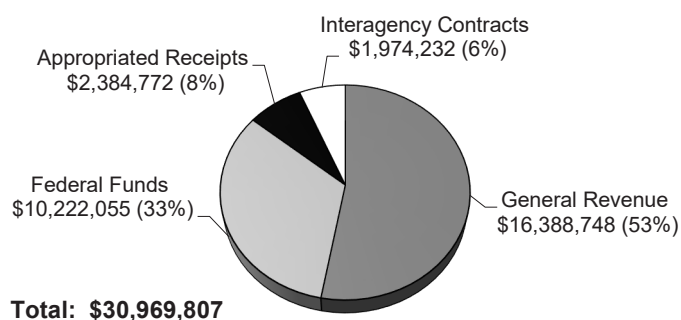
- Enhances the service capacity of Texas' public, academic, and school libraries through training, consultation, and resource sharing
- Provides direct library services to Texans with disabilities
- Assists state and local government entities in managing government records
- Ensures access to important historical documents by preserving the archival records of Texas

Key Facts

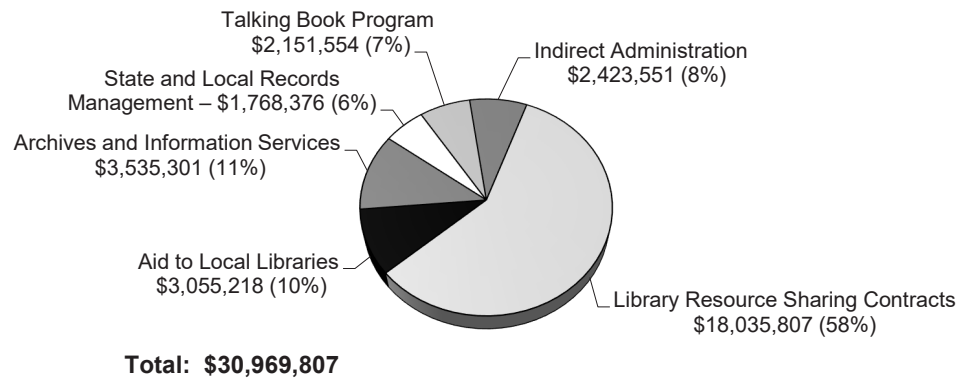
- **Governance.** The Texas State Library and Archives Commission is the governor-appointed policymaking body that oversees the agency.¹ The commission consists of seven public members, appointed to six-year, staggered terms. Three advisory committees provide input and recommendations to the commission on historical records, public library requirements, and library databases.
- **Funding.** In fiscal year 2017, the agency's budget was \$30.9 million, about half of which was general revenue and one-third federal funding, as shown in the pie chart, *Texas State Library and Archives Commission Sources of Revenue*. The agency receives interagency contract revenue for services provided at the State Records Center and appropriated receipts from libraries' contributions to resource sharing services such as databases.

The pie chart on the next page, *Texas State Library and Archives Commission Expenditures*, shows the agency's key expenditures. In fiscal year 2017, the agency's largest expenditure by far was \$18 million in contracts for library resource sharing services. Appendix A describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2015–2017.

**Texas State Library and Archives Commission
Sources of Revenue – FY 2017**



**Texas State Library and Archives Commission
Expenditures – FY 2017**



- Staffing.** In fiscal year 2017, TSLAC employed 151 staff, most of whom worked in Austin at either the Lorenzo de Zavala headquarters building or the State Records Center. Six employees worked in Liberty at the Sam Houston Regional Library and Research Center. Appendix B compares the agency's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years.
- Records management.** The appropriate management of records is vital to an open and transparent government and helps to identify and protect items eligible for long-term preservation in the archives. TSLAC helps other state and local government entities with records management by approving records retention schedules and training about 150 state records management officers and thousands of local records management officers. The textbox, *Records and Archives*, explains the distinction between these two categories of documents and how they relate.

The agency also operates the State Records Center in Austin as a voluntary and full cost recovery storage service for state and local government records. In fiscal year 2017, the State Records Center stored 397,000 cubic feet of records at an annual cost of \$2.88 per cubic foot. The State Records Center's rates are lower than commercial alternatives in the Austin area; one large agency estimated an annual savings of \$151,000 by using the state facility over private services.

Records and Archives

Records are documents generated as part of day-to-day government operations. Records are typically retained for a fixed period of time depending on their usefulness and then destroyed. Typical records include contracts, financial reports, and correspondence.

Archives store historically valuable documents that serve as a permanent record of government activity. A limited subset of records eventually become archives once they are no longer useful for business purposes and are deemed to have archival value, such as final government reports, case files, and original maps.

- Texas state archives.** The agency identifies, collects, and preserves historically valuable Texas documents and makes them available to the public at the Lorenzo de Zavala building in Austin. The state archives hold more than 80,000 cubic feet of materials, including significant documents such as original copies of the Texas Declaration of Independence and the Texas Constitution, along with Texas government records, collections of private papers, maps, letters, photographs, books, and periodicals. The state archives building has many workspaces open to the public, including a reading room for genealogy research. The agency also digitizes some archival documents and makes them

available online through the Texas Digital Archive. In fiscal year 2017, staff fielded more than 4,300 research requests for archival information and users accessed more than 175,000 files from the Texas Digital Archive.

- **Library development.** The agency helps improve services at libraries across the state by providing continuing education and consulting services and by providing access to resource sharing networks, detailed in the textbox, *TexShare and TexQuest*. More than half of the funding for the agency's library programs comes from federal grants and cost sharing from the libraries themselves. TSLAC accredits public libraries to ensure they meet minimum standards for library services and availability before becoming eligible for state services.² The agency separately works with the Texas Education Agency to provide voluntary standards for school libraries to encourage best practices.

TexShare and TexQuest

The agency coordinates two statewide consortiums for the group purchasing of resource databases and subsidizes the cost for participating libraries.

TexShare provides general information and educational resources for 679 public, academic, and clinical medicine libraries, such as academic databases, career resources, and e-books.

TexQuest provides educational resources for public school libraries in more than 800 school districts.

The agency operates other programs targeted to specific library needs across the state, including the Small Library Management Program, which provides training for libraries serving communities with populations of less than 25,000. The Interlibrary Loan Program allows library patrons access to books from more than 500 participating libraries and benefits smaller libraries that typically have more limited collections. The agency also administers six grant programs to support libraries throughout the state and awarded 91 grantees a total of \$2 million in fiscal year 2017.

- **Talking Book Program.** The agency runs the federal Talking Book Program in Texas, loaning audio, large-print, and Braille books to patrons with visual, physical, or learning disabilities. In fiscal year 2017, the agency provided more than 770,000 books at no cost to 16,766 qualifying Texans. Patrons can either receive materials through the mail or download audiobooks to their own devices using a mobile app. The Talking Book Program also relies on volunteers who spent more than 11,000 hours recording about 100 Texas-specific audiobooks and magazines in fiscal year 2017 to augment the federal collection.
- **Sam Houston Regional Library and Research Center.** The agency operates the Sam Houston Regional Library in Liberty, along with six historic buildings and a museum on the more than 100-acre property originally donated by former Governor Price Daniel. The facility is the only regional depository library operated by TSLAC, storing local government records for a 10-county region of southeast Texas and serving as a general research library for the area.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 441.001(a), Texas Government Code.

² 13 T.A.C. Chapter 1, Subchapter B.

ISSUES

ISSUE 1

TSLAC Does Not Strategically Manage the State Archives to Maximize Access to Texas' History.

Background

The Texas State Library and Archives Commission (TSLAC) manages the state archives, a collection of permanently valuable records and other materials documenting Texas' history. To carry out this responsibility, TSLAC identifies and preserves important items, catalogs and stores materials, and provides public access. TSLAC houses the nearly 80,000 cubic feet of archives in two locations in Austin, with a little more than half stored at the Lorenzo de Zavala building in the Capitol Complex and the remainder at the State Records Center in Austin due to space constraints.

State agencies, the Legislature, the governor's office, and the Supreme Court of Texas send key records to the state archives for review once they no longer need to be kept for legal or business purposes. TSLAC also accepts donations and requisitions official documents that have fallen into private ownership. Generally, one of TSLAC's nine archivists appraises new files to determine archival merit and processes the documents into the collection, as described in the textbox, *Archival Appraisal and Processing*.

TSLAC is the legal owner of all materials in the archives and is responsible for fulfilling requests for information under the Public Information Act (PIA). TSLAC's archivists and reference staff also respond to thousands of informal research requests each year. Large requests can take months to complete, and TSLAC works closely with researchers to help identify relevant documents and, where appropriate, narrow the area of inquiry so the project is manageable for both staff and the requester. The agency also seeks to make the most commonly requested items available online in the Texas Digital Archive, such as maps and historical photographs. The table, *Usage of the State Archives*, has more information about how the public accessed archival materials in fiscal year 2017.

Archival Appraisal and Processing

Appraisal. TSLAC conducts an initial review for archival merit. Records such as final reports, policy memos, and official correspondence are generally archival, while intermediate drafts and everyday business communications are not.

Processing. TSLAC processes records to varying degrees of thoroughness, following established archival standards. At a minimum, archivists conduct a basic inventory to identify the origin and general scope of the records. Ideally, archivists then completely process the records to produce a detailed, file-level finding aid, allowing the public to identify specific files of interest in online catalogs.

Usage of the State Archives – FY 2017

Type of Request	Description	Quantity
Research Request	General requests for information held in the archives, commonly from individuals looking for genealogical information or researching the history of a state service or institution.	4,327
Formal Request Under the Public Information Act	Formal request for public access to government information, often requiring redaction of confidential information. Formal PIA requests might be from a lawyer or journalist needing sensitive documents or someone seeking an expedited response.	490
Texas Digital Archive	Online access to certain digitized archives without needing assistance from agency staff. Key online collections include Governor Perry's records, photographs from some early legislative sessions, and Civilian Conservation Corps drawings and maps.	178,858 (page views)

Findings

TSLAC has not strategically addressed a significant backlog of unprocessed records, limiting public access to the state's archival resources.

- **Backlog problem.** The agency has not kept up with the large amount of records submitted to the state archives, resulting in a substantial backlog that limits public access and creates management inefficiencies.

TSLAC has not fully processed 32,900 cubic feet of the state archives, almost 41 percent of the total.

Large scope. As of June 2018, TSLAC has not fully processed about 32,900 cubic feet of the state archives, almost 41 percent of the total. While TSLAC has made progress processing backlogged files, the agency continues to take in more records than it is able to process each year, causing the backlog to grow over time. TSLAC now only adds files to the archives after an initial appraisal, so all newer files have at least been appraised to ensure they have archival value.

Public access limited. The backlog inhibits access to the archives by limiting the information publicly available about archival holdings and lengthening request response time. Although TSLAC is generally aware of the contents of unprocessed files, such as the time period and agency of origin, the agency is unable to easily pull information to respond to requests. The agency's archivists must review files on-demand to properly respond to requests, lengthening response time and pulling archivists off of other important tasks. TSLAC is also unable to list unprocessed files in online catalogs because the agency does not have the level of detail required.

Inefficient use of space. As is typical in archives, any files that are not yet appraised may contain records that are not of archival merit, furthering the agency's space constraints. While TSLAC intends for agencies to submit organized files to the archives, TSLAC sometimes receives disarrayed or non-archival materials. While reviewing backlogged materials during the past six years, TSLAC identified 370 cubic feet of records without archival merit, occupying valuable and limited space.

Without a clearly defined scope of the problem, TSLAC cannot effectively address the backlog.

- **Inadequate plan to address backlog.** TSLAC has not taken a proactive or systematic approach to effectively eliminate the archives backlog, operating under an outdated and insufficient work plan that lacks key elements, as described below.

Poorly defined scope. The agency is unable to clearly define the scope of the backlog, making it difficult to plan improvements. The agency last comprehensively estimated the backlog in 2012 and has only made minimal updates since. Without a clearly defined problem, the agency cannot effectively address the significant and growing volume of material awaiting processing or estimate the degree of effort required to make improvements.

Plan not prioritized. While the agency has taken steps to consider how to improve the important historical collections in its care, the current 2012 archives management plan reads as a list of isolated projects rather than overall prioritization of work. The agency will never have the resources to accomplish all of its goals for the archives. Without considering priorities, the agency risks taking a scattershot approach to management that produces few strategic successes.

No set goals or targets. While the agency has general goals to reduce the backlog and to appraise new files as they arrive, it lacks a clearly stated set of targets or deadlines for achieving them. Without clear targets, the agency is unable to measure success, evaluate the distribution of staff resources, or fully plan workload. The lack of clear goals also prevents effective communication with the commission and Legislature about resource needs and potential tradeoffs to inform decision making.

The agency lacks clear targets or deadlines for achieving its archives goals.

Insufficient reporting. The agency only reports the amount of cubic feet accepted and processed since the last report to the commission, without any context about the total volume of the archives or the overall size of the backlog. Without such information, the commission and other decision makers cannot fully grasp the problem, properly resource agency needs according to priority, or hold staff accountable for progress.

No formal staffing analysis. TSLAC's archives division staff includes 12 reference staff who serve patrons and researchers and 12 archival staff dedicated to archival management, digitization, and fulfilling complex requests. TSLAC received appropriations for two additional employees to assist with the backlog in fiscal year 2014 and has analyzed staffing needs for particular projects, but has not performed an overall staffing analysis for the archives division to maximize staff resources, such as creating focused teams to accomplish specific backlog-reduction goals or hiring more paraprofessionals to conduct basic processing tasks.

Limited collaboration with partners. TSLAC's current archives work plan contains many needed projects to improve access to specific collections of records, such as Supreme Court files from the 1840s–1930s and an extensive manuscript collection. Despite interest from stakeholders, the agency has not maximized opportunities to work with potential partners to help increase access to the archives through collaborative processing and digitization projects. The projects TSLAC has recently allowed have produced positive results, such as working with Ancestry.com to digitize confederate pension records for genealogical research and the Legislative Reference Library to process and digitize all bill files back to the first legislative session. However, during the Sunset review other potential collaborators reported difficulties working with TSLAC and establishing agreements for projects.

Potential collaborators reported difficulties working with TSLAC.

- **National Archives example.** Backlogs are common issues in archives, as many operate with limited resources. However, other archives have developed plans to systematically reduce backlogs to increase public access. For example, in 2005, the National Archives increased its focus on a significant backlog and implemented a successful plan to address it, described in the textbox, *National Archives Backlog Reduction*.¹

National Archives Backlog Reduction

In 2005, the National Archives had a backlog of one million cubic feet of records and took the following steps to address the backlog.

Scoping study. The agency completed a three-month study to determine the extent of the problem, finding that over 75 percent of the archives were not processed sufficiently for a researcher to identify specific records of interest.

Staffing analysis. The agency analyzed staff time for archival processing and reference services. Based on the staffing analysis, the agency reduced the number of reference staff and established discrete teams dedicated to appraising new records, addressing the backlog, and cataloging documents.

Specific goals. The agency set an initial 10-year goal of having 95 percent of holdings sufficiently processed for research purposes by 2016.

Results. The new staffing teams were able to process 10 percent of the backlog in the first full year of the new staffing plan. By 2017, the plan had fallen short of its original goal but reduced the backlog significantly, to less than 25 percent of the archives.

Statute limits TSLAC from making common sense decisions for handling public access requests for its unique collections.

TSLAC receives thousands of requests for public access to the archives each year, but lacks the tools to respond most efficiently, as described below.

- **Research versus PIA requests.** The PIA is a cornerstone of open government, but its application to TSLAC's holdings causes unique challenges. When receiving information requests, TSLAC does not have a clear process to distinguish formal requests under the PIA from routine research inquiries that could be handled in the normal course of business with a lower level of scrutiny and effort. The textbox on the following page, *Public Information Act Requirements*, provides more information on the requirements triggered by a PIA request.²

TSLAC responds to thousands of inquiries each year to fulfill its primary mission of helping Texans access information about the whole of state government. Under the PIA, any written request for information from a state agency must be treated as a public information request, triggering PIA requirements and deadlines.³ As a result, when a researcher emails a detailed inquiry to TSLAC, the agency must process the request under the PIA's strict protocols. This approach creates delays and inefficiencies for both the researcher and TSLAC. For example, a researcher interested in the history of education policy may not need or want information about

*TSLAC faces
unique challenges
under the Public
Information Act.*

specific students that would require a permissive exception, but may word the request in such a way as to include potentially protected records. Under TSLAC's current process, archivists often spend significant time reviewing and redacting records to respond to such a request.

Public Information Act Requirements

Broad public access. The PIA allows all citizens access to government information upon written request, unless confidential or otherwise protected.

Timeline. The PIA requires agencies to provide the information to the requester promptly — generally within 10 days, or provide a written explanation of a reasonable date the information will be available.

Mandatory exceptions. Any information released under the PIA must be screened for mandatory exceptions, such as personally identifiable information.

Permissive exceptions. The PIA creates categories of information that may be withheld, known as permissive exceptions, due to other confidentiality concerns. Before withholding information under a mandatory or permissive exception, the agency must request an attorney general opinion, notify the requester of the referral to the attorney general, and notify any relevant third parties.

Legal risks. Responding to PIA requests poses significant legal risks. Violations of the PIA can result in costly lawsuits for failure to provide or timely provide requested documents, and the responding agency is also legally responsible for any accidental release of confidential information. TSLAC must frequently consult with the agency that created the archived record and the attorney general's office to properly respond to PIA requests.

- **Work disruption.** Classifying so many inquiries as formal PIA requests compounds TSLAC's struggle to manage the workload of its archives staff and slows progress on the significant archives backlog and other needed projects. In fiscal year 2017, TSLAC classified 490 inquiries as PIA requests, requiring about 1,360 hours of staff time to locate, review, and redact documents. Because a formal PIA request requires a quick turnaround, archivists often stop other work to respond.⁴ When PIA requests include information from the unprocessed archives backlog, archivists must spend additional time searching for and processing relevant material. Independent of the Sunset review, TSLAC has identified the need for a staff attorney and a dedicated staff person to handle PIA requests and plans to request necessary resources, but still lacks a clear process to better communicate with requesters to minimize the impact of PIA requests on other archives projects.
- **Lacking fee schedule.** The PIA authorizes agencies to assess fees for certain requests, but TSLAC does not charge fees for any PIA requests.⁵ The PIA allows agencies to charge for providing public information, including materials, labor, and overhead, if the request is for more than 50 pages of records.⁶ TSLAC has not created a fee schedule because of its mission to provide information to Texans, missing out on an opportunity to recoup some of the significant resources needed to respond to PIA requests. Use of a fee schedule could also help communicate the workload involved in responding to a PIA request and encourage those not needing the expedited timeframe or permissive exceptions to access the information through a more informal research inquiry.

*Treating
information
inquiries as PIA
requests diverts
staff from the
unprocessed
archives backlog.*

Recommendations

Change in Statute

1.1 Require TSLAC to develop a strategic plan for managing the state archives, with targets for processing the backlog, analyzing staffing needs, and regularly reporting on progress.

This recommendation would require TSLAC to create a comprehensive strategic plan for the state archives to clearly map and measure goals and provide needed information to decision makers for determining priorities. The agency would solicit stakeholder input and adopt an initial plan no later than September 1, 2020, and every five years thereafter. As a related management action, TSLAC should prioritize and address the backlog on an ongoing basis, using the overall archives plan to guide projects. The agency's archives plan should include the following elements:

- An updated assessment of the backlog to clearly define the scope of the problem
- A prioritized list of needed projects, such as full processing or digitization of specific collections with high value or interest
- An evaluation of staffing or other resource needs to achieve stated goals, including the impact of different options on goals, such as reallocating division staff between reference and archives, creating special teams, or using more paraprofessionals to assist in processing work
- Performance measures and targets for achieving goals in specified timeframes, such as a percentage of backlogged files to process each year or over the plan's duration
- Regular reports to the commission on progress toward achieving goals
- Opportunities for collaboration with stakeholders to help with certain projects, such as allowing outside entities access to certain collections for digitization projects, and standards for entering into such agreements

1.2 Authorize TSLAC to distinguish between different types of information requests to better manage archives workload.

This recommendation would clearly authorize TSLAC to adopt a form that individuals must use when requesting information from the state archives. Statute would create an exception to the PIA to specify that an individual must use the adopted form for TSLAC to consider any request under the PIA. At any point, the requester should be able to withdraw a research request and re-submit as a formal PIA request. The form should include guidance on the differences between PIA requests and general research requests, including a balanced presentation of the benefits, drawbacks, and requirements for each type of request. TSLAC should develop the form by March 1, 2020. This recommendation would help TSLAC better manage and respond to requests for information by allowing researchers to submit written requests for archives that do not clearly trigger PIA requirements.

Management Action

1.3 Direct TSLAC to adopt a fee schedule for PIA requests.

This recommendation would direct TSLAC to adopt a fee schedule in accordance with the PIA no later than December 1, 2019. The agency should use the office of attorney general's guidance and cost estimate model in developing the fee schedule for certain large requests. TSLAC would still handle

small PIA requests and routine research inquiries with no fee. Charging a fee for materials, labor, and overhead on large requests would help offset TSLAC's resources to respond to PIA requests.

Fiscal Implication

These recommendations focus on maximizing the effectiveness of the agency's current available resources and would not result in a significant fiscal impact. The agency could develop the plan required in Recommendation 1.1 within current resources. Recommendation 1.3 would allow TSLAC to recoup the costs of some PIA requests, but the amount collected would depend on the impact of Recommendation 1.2, which could reduce the number of formal PIAs, so could not be estimated at this time.

Ultimately, reducing the archives backlog will eventually require additional resources. An effort of that size may require contracting for services and additional or temporary staff. The results of the planning effort in Recommendation 1.1 will provide the information necessary for an accurate analysis of these costs.

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¹ Bucciferro, Ashley, "Attacking the Backlog: NARA Archivists Mobilize to Make Unprocessed Records Available to the Public," *Prologue Magazine*: Summer 2008, Vol. 40, No. 2, <https://www.archives.gov/publications/prologue/2008/summer/backlog.html>; National Archives, *Strategic Plan: Fiscal Year 2018–2022*, accessed June 20, 2018, <https://www.archives.gov/files/about/plans-reports/strategic-plan/2018/strategic-plan-2018-2022.pdf>.

² All citations to Texas statutes are as they appear on <http://statutes.legis.texas.gov/>. Chapter 552, Texas Government Code.

³ Tex. Att'y Gen. ORD-304 (1982).

⁴ Section 552.221(a), Texas Government Code.

⁵ Chapter 552, Subchapter F, Texas Government Code.

⁶ Section 552.261, Texas Government Code.

ISSUE 2

TSLAC's Records Management Program Needs Refocusing to Ensure Effective Handling of State and Local Documents.

Background

The Texas State Library and Archives Commission (TSLAC) supports government records management in Texas. Public entities create voluminous records as they carry out their missions — such as reports, employee data, electronic information, and contracts — and must properly manage and store records for business and transparency purposes. Records management programs are a critical component of open government, ensuring the public has access to materials under the Public Information Act.¹ Managing records effectively also helps agencies mitigate liability and risk.

TSLAC serves a broad range of customers, including all state government entities plus local governments. State law requires executive branch agencies, the judiciary, the Legislature, state universities, and local governments to have detailed records retention schedules specifying the minimum amount of time for keeping different types of records.² TSLAC's nine records management staff approve records retention schedules and provide training and technical assistance, as described in the textbox, *Records Retention Schedules*. Once the minimum retention period has passed, agencies may destroy the records, unless they have historic significance. State entities transfer records to the state archives for review and permanent archiving.³ Local governments archive their own records or may place them in one of Texas' 23 Regional Historical Resource Depositories, described in the textbox below.⁴

Records Retention Schedules

State Entities

- TSLAC develops one minimum state retention schedule for executive, legislative, and judicial agencies and state universities.
- TSLAC must approve each state entity's retention schedule every five years. Individual schedules may contain additional types of records not included in the state minimum schedule.

Local Governments

- TSLAC develops 12 retention schedules for different types of local government agencies, such as county clerks, public school districts, and public safety agencies.
- State law requires local governments to have an approved retention schedule on file with TSLAC, which may be their own unique schedule or one of TSLAC's 12 schedules. State law does not require regular updates.

Regional Historical Resource Depositories

- Legislature created the program in 1971
- 23 facilities across state; TSLAC operates one at the Sam Houston Center in Liberty
- Typically located within a university or public library
- Hold inactive, historically valuable local government records and some state records
- TSLAC has legal custody of both local and state records stored at all depositories

Findings

Unclear procedures for managing legislator records risk inappropriate release or loss of these unique, statutorily protected documents.

The unique nature of the legislative process is not adequately reflected in TSLAC's current system for managing legislator records, as described below.

Unique confidentiality provisions give legislators freedom to explore creative solutions to thorny problems.

- **Inadequate confidentiality waiver process.** Like state agencies, members of the Legislature generate records that may be historically significant and worthy of archiving. But unlike state agencies, members of the Legislature have unique confidentiality provisions — described in the accompanying textbox — designed to facilitate the legislative process by giving legislators the freedom to explore creative solutions to address thorny problems.⁵ A legislator may choose to waive his or her statutory legislative confidentiality by signing a TSLAC waiver form when leaving office, opening protected communications for the public to view immediately or at a future date.⁶

Legislative Confidentiality

- By default, state law protects two classes of legislative records, which may not be released to the public: constituent correspondence and communication with the Texas Legislative Council, which provides legal and technical support to legislators.
- State law allows members of the Legislature to waive legislative confidentiality and disclose confidential records if they so choose.

The agency's informal system creates obvious risks that should be immediately addressed.

TSLAC's process for managing the waivers is too informal and does not ensure proper tracking of the decisions and ultimate status of legislator records in the archives. TSLAC tracks legislator confidentiality elections on an internal spreadsheet, and Sunset staff could not always determine whether TSLAC had uniformly applied waiver requirements to all legislators or properly recorded individual legislators' confidentiality decisions. Additionally, TSLAC does not have a clearly documented procedure for handling unclear waiver forms or determining the confidentiality of records generated before the agency created the waiver process in 2002. While Sunset staff did not discover evidence of improperly released records, such an informal system creates obvious risks that should be immediately addressed. Finally, the waiver form lacks plain-language information about the importance and impact of waiving legislative confidentiality, and does not clearly state that a legislator's election is only valid if the member completes and signs the form before leaving office.

- **Inconsistent decisions on legislator archive locations.** Over the years, many members of the Legislature have donated their records to various universities and other institutions upon leaving office. However, state law and TSLAC policy do not clearly define the process for deciding whether

to allow these transfers, creating a patchwork of inconsistent standards, decisions, and legislator archive locations. As a result, legislators do not fully understand their options, TSLAC cannot make consistent decisions in the best interest of the state, and the public does not have full information about where legislators' records may be accessed.

Statute generally allows TSLAC to place any state record in one of the 23 designated Regional Historical Resource Depositories rather than the state archives, and TSLAC rule sets out minimum requirements for these institutions.⁷ However, TSLAC has not always approved these institutions to house legislator records. Additionally, some members of the Legislature have transferred records to other institutions, for which TSLAC does not have any standard criteria. In some cases, TSLAC has approved a member's choice of institution, only to decline in other instances for unclear reasons, leading to frustration among some legislators and their staff. The textbox, *Alternative Depositories for Legislator Records*, provides examples of inconsistent decisions. Ultimately, the perception of TSLAC's decisions being arbitrary or unfair may lead to loss of these records as some legislators may simply decide to keep their records permanently closed or not give them to the state archives at all.

Alternative Depositories for Legislator Records

Approved by TSLAC:

- Angelo State University*
- Midwestern State University*
- Paris Junior College*
- Prairie View A&M University
- Texas Tech University*

Rejected by TSLAC:

- Baylor University*
- Texas Southern University
- University of Texas at El Paso*
- University of Texas at San Antonio

* Denotes Regional Historical Resource Depository

- **Poor records management coordination within unique legislative environment.** Multiple entities and individuals play important roles in legislative records management without a formal structure, leading to overlapping responsibilities and poor coordination. The House and Senate each have a records management officer who, like all state records managers, receive training from TSLAC and manage the records retention schedule. The House and Senate records management officers have primary responsibility for training and facilitating records management within their chambers, but in the fast-paced legislative environment, delivering records training is not easy and is not always a top priority. TSLAC has tried to fill gaps by reaching out directly to individual legislators and their staff, but such efforts bypass the designated records managers and create confusion, especially in the hectic time when a member leaves office. Additionally, Texas Legislative Council provides technical and legal support to legislators and maintains legislators' electronic records, but lacks a formal working relationship with TSLAC on legislator records issues. Likewise, the Legislative Reference Library indexes legislative information and provides research services to the Legislature and members of the public and has a wealth of knowledge about the types of legislative records most useful for research purposes, but also lacks a formal mechanism to coordinate and

TSLAC's training efforts bypass designated records managers and create confusion.

provide input to TSLAC. Finally, TSLAC faces other unique problems relating to legislator records, such as whether to keep or destroy permanently closed legislator records held in the archives, but lacks a formal input mechanism to help resolve these challenges.

TSLAC has not provided proactive support for diverse state records management needs.

TSLAC's single records retention schedule for all state entities to use is outdated and takes a one-size-fits-all approach that does not provide the guidance state entities need to effectively manage their records, as described below. The textbox, *Records in the State Schedule*, provides examples of the general types of records described in the current minimum retention schedule.

Records in the State Schedule

- Administrative records, including audits, organizational charts, and reports
- Electronic data processing records, such as software programs, system monitoring records, and internet cookies
- Personnel records, including applications and payroll information
- Fiscal records, such as financial reports, receipts, and ledgers
- Support services records, including contracts and facility and vehicle information

- **Outdated retention schedule.** TSLAC updates the state records retention schedule infrequently, risking outdated guidance in the fast-changing field of records management. The last comprehensive update to the records retention schedule was in 2007. Since then, the agency has only made minor changes, most recently in 2016 to reflect updated statutory requirements for contracting. The agency requires state entities to update their retention schedules every five years, but has no similar requirement for TSLAC's own minimum schedule used statewide.⁸
- **Lack of direction and input.** The state retention schedule does not provide the guidance TSLAC's customers need, and TSLAC does not seek sufficient input on how to improve it. TSLAC focuses on retention needs and the potential archival value of state documents, but does not effectively assist

Common Record Categories Omitted From State Schedule

- Licensing and enforcement information for regulatory agencies
- Bill files for legislative agencies
- Case files for courts
- Land records for natural resource agencies
- Medical records for health and human services agencies

its customers with integrating records management into day-to-day business operations. The current schedule template only includes basic categories of records and lacks many records different types of state entities frequently use. The textbox, *Common Record Categories Omitted From State Schedule*, provides some examples. While TSLAC works with each state entity to customize their approved records schedule, this approach tasks entities with developing their own records management solutions and leads to inconsistencies among similar types of agencies and records.

To meet the needs of one group of customers, institutions of higher education, TSLAC worked collaboratively to develop a draft records retention schedule incorporating the unique university environment, such as addressing admission, health, and academic affairs records. While developing this draft schedule was a slow process taking more than six years, the agency took a positive step to support one set of customers. However, TSLAC has not taken a similar approach to solicit input from other state entities and develop additional tailored information to meet more customers' needs. The agency also has no regular mechanism for entities to give specific feedback on needed improvements. While TSLAC conducts a biennial customer satisfaction survey, the agency does not ask specific questions about the usability or content of the schedule itself to hear from a range of entities of various sizes or areas of government.

The agency has no regular mechanism for entities to give specific feedback on needed improvements.

TSLAC plays unnecessary roles in local government records management, creating burdens for both itself and local entities.

TSLAC's significant roles supporting local entities, including more than 10,000 local government entities and 23 Regional Historical Resource Depositories, tax the agency's ability to focus on its core duties and provide meaningful records management support.

- **Burdensome local records retention schedule approvals.** TSLAC's requirement to review and approve local government records retention schedules does not create enough benefit to justify the agency's efforts and diverts staff from more effective records retention work. The agency has sought to streamline the process by developing 12 retention schedules that local government entities may choose to adopt, but TSLAC must still process either compliance forms or unique retention schedules for more than 10,000 local government entities. In fiscal year 2017, TSLAC staff spent 880 hours assisting about 3,300 local government entities with records retention schedules or other records management issues. The Local Government Records Act provides requirements for local governments to designate a records management officer, manage their records effectively, and ensure proper retention and public access.⁹ TSLAC provides numerous model retention schedules, training, and one-on-one consultation to support local governments. Statutory requirements and TSLAC assistance provide a framework for local governments to properly manage their records without the need for TSLAC to approve each and every local government entity's retention schedule.
- **Statutory barrier to local control over local records.** TSLAC maintains legal custody of all records, both local and state, stored in the 23 Regional Historical Resource Depositories. TSLAC sets standards for the depositories to follow, but the institutions carry out the day-to-day management and public access to these records.¹⁰ For example, the Sam Houston State University depository in Huntsville manages a collection including local land records dating to the Republic of Texas era. Given the backlog in the

state archives discussed in Issue 1, TSLAC lacks the bandwidth to monitor and preserve records held in the regional depositories, especially local records. However, statute prohibits TSLAC from transferring ownership of local records to regional depositories, even when the depository wants the ownership and is capable of preserving and providing access to the records independently. This limitation also prevents a regional depository from seeking grants to preserve and digitize collections or accepting new local records. Many regional depositories are equipped to take legal custody of the local records they have housed for decades.

Recommendations

Change in Statute

2.1 Clarify the process for waiving confidentiality protections on legislative records when legislators leave office.

This recommendation would require any form waiving the confidentiality of legislative correspondence to include, at a minimum, a plain-language description of existing protections and the effects of waiving this right. Statute would also require TSLAC, when interpreting a waiver form, to presume legislators intend to maintain confidentiality unless the legislator clearly waives the right in writing before leaving office. The agency should also adopt rules to address TSLAC's internal process for reviewing, interpreting, and tracking the forms and the roles and responsibilities of TSLAC, House and Senate records managers, and legislators' offices in distributing information about the process and collecting the forms. As part of the rulemaking process, TSLAC and stakeholders should consider whether to discontinue the use of forms for members choosing to keep their records permanently closed, as no action is legally needed to retain an existing protection. TSLAC should seek input from the working group described in Recommendation 2.5 when developing the rules, which would be adopted by September 1, 2020. This recommendation would ensure all participants clearly understand the process and that TSLAC only allows public access to records for which legislators have clearly waived statutory legislative confidentiality.

2.2 Clarify the process for legislators to store legislative records at approved institutions outside the state archives.

This recommendation would create a clear exception to the requirement that state legislator records be stored in the state archives like all other state records. Statute would authorize legislators to apply to TSLAC to transfer their records to an approved depository outside the state archives according to clear standards and approval procedures established by TSLAC in rule. TSLAC should seek input from current and former members of the Legislature, legislative staff, and potential depositories and adopt rules defining the requirements and process for approving a depository by September 1, 2020. As part of this recommendation, TSLAC should develop a list of pre-approved depositories legislators can easily access, including Regional Historical Resource Depositories and other alternative locations. This recommendation would not change state law giving TSLAC authority over state records, regardless of where they are stored, and TSLAC would maintain responsibility for tracking the location of legislative records and working with approved depositories on research and Public Information Act requests. This recommendation would only apply to members leaving office after September 1, 2020, and would not affect legislative records currently stored outside the state archives. This recommendation would ensure a fair and transparent process for legislators who open their records to choose a preferred location to maximize access for their local constituents.

2.3 Discontinue the unnecessary requirement for TSLAC to approve local government records retention schedules, while keeping general state requirements and support for local government records management.

Under this recommendation, TSLAC would no longer spend time reviewing and approving individual retention schedules for local governments, but would continue to develop and update model local government records retention schedules and provide related support to promote best practices. State law would continue to require local governments to retain records and make them available to the public and to designate a records management officer to communicate with TSLAC on records issues. This recommendation would reduce the significant staff time needed to approve local records retention schedules and allow the agency to focus on higher-value activities such as providing more robust training and assistance for local governments.

2.4 Authorize TSLAC to transfer custody of certain local records to local institutions, as appropriate and mutually agreed upon.

This recommendation would remove the requirement that TSLAC always retain legal ownership of local records stored in Regional Historical Resource Depositories. Instead, statute would authorize the agency to approve requests from regional depositories who want legal custody of the local records they store, when such a transfer is in the best interest of the state. This recommendation would require TSLAC to work with regional depositories to develop rules outlining standards and an application process by September 1, 2020. This recommendation would not apply to state records stored in regional depositories, which would remain under TSLAC's authority. TSLAC would also still provide standards and support for regional depositories as required in current law. Making these changes would reduce administrative burden on TSLAC and increase the ability of regional depositories to preserve, grow, and increase access to the local records collections already in their care.

Management Action

2.5 Direct TSLAC to create a working group for legislative records issues.

This recommendation would direct the agency to formally coordinate with key stakeholders on legislative records issues to enhance collaboration and improve legislative records management practices. The agency should create a working group including the House, Senate, and Legislative Council records management officers; the House executive director; the secretary of the Senate; the director of the Legislative Reference Library; and any other appropriate stakeholders. The working group should meet at least semiannually for the next two years. By September 1, 2020, the working group should

- clearly define roles and responsibilities of each party for developing policies, training, and day-to-day records management support and activities;
- provide specific input to clarify the process for waiving legislative privilege and storing legislative records outside the state archives, as discussed in Recommendations 2.1 and 2.2;
- discuss needed improvements to the House and Senate records retention schedules;
- determine whether closed, confidential legislator records should continue to be permanently stored in the state archives; and
- develop and submit recommendations for any other needed improvements to TSLAC and the Legislature for consideration and action.

2.6 Direct TSLAC to gather customer input and regularly update the minimum state records retention schedule.

This recommendation would direct TSLAC to review and update the minimum records retention schedule to better reflect the types of records most commonly used by different types of state government entities. The agency should begin this process by convening a working group and developing a plan with specific milestones leading to a complete update and adoption of a new schedule by September 1, 2020. To guide future updates, the agency should develop an internal policy to comprehensively review and update the state records retention schedule at least every 10 years, or more frequently as needed. TSLAC should regularly seek input from state entities on additional records series that should be added to the state schedule or additional schedules that may be needed, similar to the process the agency used to develop the draft university records retention schedule. For example, TSLAC could include specific questions about needed updates during its existing biennial records management survey. This recommendation would help TSLAC better serve its customers and improve records management by making the process more user-friendly for state records managers to implement.

Fiscal Implication

These recommendations would not have a fiscal impact to the state. The agency can make changes to its records management assistance program and enhance legislative records management procedures with existing resources. Removing the requirement that TSLAC approve local government records retention schedules would eliminate some of the agency's workload, which could increase bandwidth to help with the more frequent updates to the state records retention schedule. Finally, devolving local records back to qualified regional depositories would not save significant TSLAC staff time but would ultimately help improve the preservation of and access to certain local records collections.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Chapter 552, Texas Government Code.

² Section 441.185, Texas Government Code and Section 203.041, Texas Local Government Code.

³ Section 441.186, Texas Government Code.

⁴ Section 441.153, Texas Government Code.

⁵ Sections 306.003, 306.004, 323.017, and 323.018, Texas Government Code; Steven F. Huefner, "The Neglected Value of the Legislative Privilege in State Legislatures," *William & Mary Law Review* 45, Issue 1 (2003): 279, <http://scholarship.law.wm.edu/wmlr/vol45/iss1/4/>.

⁶ Sections 306.003(a), 306.004(c), and 323.017, Texas Government Code.

⁷ Section 441.155, Texas Government Code; 13 T.A.C. Section 7.3.

⁸ 13 T.A.C. Section 6.3(b).

⁹ Chapters 201–205, Texas Local Government Code.

¹⁰ Section 441.153(f), Texas Government Code; 13 T.A.C. Section 7.3.

ISSUE 3

TSLAC's Grant Program Needs Improvements to Increase Transparency and Fairness.

Background

The Texas State Library and Archives Commission (TSLAC) awards six categories of primarily federally funded grants to public and academic libraries, as described in the table, *TSLAC Grants*. In fiscal year 2017, TSLAC awarded 91 grants totaling \$2 million, \$138,000 of which was state funds. The federal Institute of Museum and Library Services gives TSLAC wide discretion on how to use federal funding for direct library services, including the option to create a grant program following general guidance.¹ In addition, Texas statute generally requires TSLAC to offer grants to libraries and specifically requires the Texas Reads grant program.² TSLAC awards all grant categories except one through a competitive process.

TSLAC Grants – FY 2017

Grant Program	Maximum Award	Purpose	Number Awarded	Total Funding
Texas Reads	\$5,000*	Supports public library programs promoting reading and literacy; partially funded by about \$3,000 in annual revenue from Texas Reads license plates.	9	\$24,710
Impact	\$10,000	Provides seed funding for new initiatives focused on community needs such as career development, traditional and digital literacy, and electronic information.	21	\$184,633
TexTreasures	\$25,000, or \$35,000 for projects with two sponsors	Provides funding for projects making special archival collections available to the public through digitization, microfilming, or cataloging; TSLAC also offers a TexTreasures Basic grant of up to \$7,500 for small libraries with limited digitization experience.	13	\$231,008
Special Projects	\$75,000	Funds programs providing outreach or increased accessibility to library services for underserved populations.	16	\$617,101
Library Cooperation**	\$75,000	Funds programs promoting cooperative projects for learning and access to information.	9	\$550,590
Family Place Libraries (non-competitive)	\$18,000	Supports the development of early literacy spaces and programs in Texas libraries through training funds and materials support. All libraries that apply and meet minimum requirements receive funding.	21	\$378,000

* Will increase to \$10,000 in 2019

** Will be phased out in 2019

All of TSLAC's grants are one-year reimbursement grants for one-time projects or program initiation, although libraries can generally reapply for up to three years for the same project. The textbox, *TSLAC Grant Timelines*, details the annual application and evaluation process. Applicants use TSLAC's online grant management system to submit applications, which panels of peer librarians from around the state score. Grants staff select and train between five and eight peer reviewers for each of the review panels and the commission makes the final award decisions based on the panels' scores.

TSLAC Grant Timelines

January – Guidelines and application forms published
 March – Applications due
 April and May – Applications scored by review panels
 August – Commission votes on awards
 September 1 – Grant period begins

Over the past 40 years, Sunset staff has reviewed numerous state agencies that provide grants to individuals, units of government, and other entities, identifying and compiling standard features and best practices that contribute to an efficient, effective, and accountable grant program. These standards serve as guidelines for evaluating agencies' grant programs as part of an overall effort to improve grant-making practices. While TSLAC's grant programs generally work well and Sunset staff identified no significant problems, applying common best practices to the agency's grant-making activities would help further strengthen grant programs. The following material describes areas where the agency's grant-making activities would benefit from these best practices.

Findings

The grant review process does not adequately protect against conflicts of interest, risking subjectivity in awards.

Agency grant programs should not present conflicts of interest and the process for evaluating grant applications should be fair and transparent. While TSLAC's use of peer reviewers to score grant applications allows for valuable insight from librarians, the agency does not adequately protect against possible conflicts of interest in scoring or promote a fully open review process.

Allowing peer reviewers to apply in the same grant program they score creates the potential for bias.

- **Potential for conflicts of interest in scoring.** TSLAC's conflict-of-interest policy for grant reviewers inappropriately allows reviewers to apply for grants in the same program for which they score grants, so long as they abstain from scoring their own applications. While reviewers cannot impact their own application scores, reviewers who have also applied for the same grant may have potential bias and mixed incentives in scoring other applications. Standard practice is to keep grant reviewers objective and disinterested from any award decision.
- **Limited pool of reviewers.** The agency's process for selecting peer grant reviewers does not promote a fully open evaluation process. The agency directly invites specific librarians to be reviewers, rather than announcing opportunities for any interested librarian to apply. During the Sunset review, some librarians reported they were unaware of opportunities to serve on a panel at all. While the agency strives for geographic diversity

in the review panels and seeks to choose well-qualified librarians, the lack of an open application process limits diversity of opinion, especially from librarians less involved with the agency.

A small number of libraries receive repeated grants, limiting the diversity of recipients and statewide impact of funds.

Grant application solicitation and awards should be fair, transparent, and targeted to reach the most qualified and needy applicants. TSLAC has an additional responsibility to ensure the federal funds it distributes through grants meet the overall intent to support a broad range of libraries across the state, serving as many Texans as possible.³

In practice, a small pool of libraries have mastered the TSLAC grant application process and repeatedly apply for and receive grants, regularly applying for multiple TSLAC grants in a single cycle. Out of more than 600 eligible libraries, just 23 libraries received 47 percent of all TSLAC grants and 56 percent of the funding from fiscal years 2015–2018. One library received 14 grants over the four-year period. While TSLAC’s overall vetting and award process results in funding worthy projects, the agency has no policy to discourage multiple or repeat applications or incentivize new libraries to apply, resulting in a few libraries receiving a disproportionate share of grants.

Just 23 out of 600 eligible libraries received 56 percent of grant funding from 2015 to 2018.

While TSLAC provides two grant-writing training sessions for applicants and reviews applications upon request before the submission deadline, libraries are still competing on an uneven playing field. Typically, libraries do not have a dedicated grant writer, and some smaller libraries may not have the resources to apply for grants or to follow through with grant proposals. In 2016, TSLAC created one grant program targeted specifically toward smaller libraries with limited resources, the TexTreasures Basic grant. However, TSLAC has awarded only three of these grants since the program’s inception.

Recommendations

Management Action

3.1 Direct TSLAC to prohibit grant reviewers from applying for grants in the same categories they score.

This recommendation would reduce the potential for bias in grant scoring by requiring TSLAC to prohibit reviewers from applying for grants in the same grant categories they score. This standard prohibition would ensure TSLAC’s grant evaluation process is fair and free of any appearance of conflict of interest. TSLAC should amend its current conflict-of-interest policy to reflect this change by January 1, 2019, to take effect before the 2020 grant application cycle begins.

3.2 Direct TSLAC to openly solicit peer grant reviewers.

This recommendation would require TSLAC to use an open application process to seek and select grant reviewers rather than inviting specific librarians with whom the agency already has a relationship. Soliciting applications would promote transparency into how the review panels operate, avoid creating

the appearance of bias, and encourage broader perspectives. TSLAC should widely announce the application period to allow all interested librarians the opportunity to participate, while continuing its current practice of selecting reviewers from diverse geographic regions and types of libraries. TSLAC should implement an application process for grant panels by January 1, 2019, to take effect for the 2020 grant cycle.

3.3 Direct TSLAC to adjust grant award criteria and scoring to better disperse grant funding to a wider pool of libraries.

This recommendation would direct TSLAC to adjust the grant evaluation process with the goal to more widely distribute grant funding to libraries of all sizes across the state. For example, TSLAC could expand the use of grant programs like the TexTreasuries Basic grant, which targets smaller libraries with less capacity, or the agency could adjust grant scoring rubrics to provide extra points to libraries that have not recently received grant funding or have limited resources. By elevating applications from libraries that have not recently received TSLAC grant funding or have limited resources, the agency could distribute funds to more Texas libraries, ultimately benefitting a broader range of Texans. TSLAC should incorporate these changes to the grant criteria and scoring process by January 1, 2019, to take effect for the 2020 application cycle.

Fiscal Implication

These recommendations would not result in a fiscal impact to the state. Making changes to the conflict-of-interest policy and implementing a grant reviewer application process can readily be accomplished within the agency's existing resources. Modifying the grant evaluation process would not require additional resources or grant funds, but would help distribute existing grant funds more widely.

¹ 20 U.S.C. Section 9141(a); 2 C.F.R. Part 200.330.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 441.0091, 441.0092, and 441.135, Texas Government Code.

³ 20 U.S.C. Section 9141; Section 441.135(b)(4), Texas Government Code.

ISSUE 4

The State Has a Continuing Need for the Texas State Library and Archives Commission.

Background

The Texas State Library and Archives Commission (TSLAC) is the state agency for library development and services, the state archives, and records management coordination. The agency's mission is to ensure Texans have access to the information they need to lead informed, productive, and fulfilled lives. To accomplish this mission, TSLAC provides support for about 520 public libraries, 800 school libraries, and 160 academic or clinical medicine libraries; preserves and provides access to historical documents in the state archives; helps state agencies and local governments manage and store government records; and circulates alternative format books to Texans with disabilities.

Findings

Texas benefits from supporting library services and preserving and providing access to historic documents and government records.

- **Supporting Texas libraries.** Libraries have widely varying capabilities, often due to limited resources and experience. TSLAC helps level the playing field for Texans by providing critical support for Texas libraries, including grant funding and facilitating resource sharing between libraries across the state. Texans of all ages use libraries to access information including books, databases, and career resources. Computers in public libraries are crucial for Texans without computer or internet access at home. The agency supports all of these efforts, as well as providing direct library services through the Talking Book Program to Texans with disabilities who would otherwise face isolation.
- **Federal requirements.** Under federal law, Texas must have a library agency to receive federal library funds.¹ In fiscal year 2017, Texas received nearly \$11 million in federal money from the Institute for Museum and Library Services, which TSLAC spent to support libraries through grants, training, and comprehensive online databases for library patrons to use. The agency receives additional federal support through materials and postage paid for the Talking Book Program.
- **Making government records and historic state archives accessible.** Appropriately maintaining and providing access to government documents continue to be in the state's vital interest to promote transparency in government, as public information and open records laws would otherwise be of little use. The agency provides records management support to both state agencies and local governments, helping ensure proper retention of

The agency receives nearly \$11 million annually in federal funds to support libraries.

In fiscal year 2017, TSLAC staff responded to more than 4,300 research requests.

public records and providing low-cost records storage and imaging services at the State Records Center for day-to-day needs, which are often extensive.

The agency's ultimate preservation of historic Texas documents in the state archives also helps Texans connect with the state's rich culture and history for generations to come. The agency provides researchers, journalists, and the general public with access to hundreds of years of Texas history for genealogical and historic research. In fiscal year 2017, TSLAC staff responded to more than 4,300 research requests for archival resources.

While other state agencies perform historical and cultural functions, consolidation offers little benefit over the current structure.

Sunset staff looked at organizational alternatives for providing library support, records management assistance, and state archival preservation and access, but determined no substantial benefits would result from such a change. The Legislature has tasked several agencies with preserving different aspects of Texas history, including the overall management of government records and archives at TSLAC; oversight of physical historic sites and related resources at the Texas Historical Commission and Texas Parks and Wildlife Department; and control of the state's land deeds and maps at the General Land Office. Additionally, the Legislative Reference Library and State Law Library provide specialized library services for unique state purposes. While these duties overlap conceptually, the practical differences in responsibilities and scope of each agency would require a similar level of expertise and funding as is currently allotted across the agencies to continue managing these varied programs.

While organizational structures vary, all other states provide library and archives services.

Texas is one of 10 states with a joint library and archives agency.

All 50 states have a state library and state archives. Texas is one of 10 states with a joint library and archives agency, which also includes Florida, Oklahoma, and Tennessee. About one-third of state libraries are independent agencies, while other states house the library agency within the education, historical, or state departments.

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

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

The agency's statute does not reflect updated requirements for commission member training. The agency's statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain a newer requirement that the agency create a training manual for all commission members or specify that the training must include a discussion of the scope of and limitations on the commission's rulemaking authority.

Some of the agency's statutory advisory committees have expired.

The Sunset Act directs the Sunset Commission to evaluate the need for an agency's advisory committees.² TSLAC has five statutory advisory committees, three of which actively meet, as detailed in the table, *TSLAC Advisory Committees*.³ Texas statute establishes the duration of statutory advisory committees at four years from the anniversary of the advisory committee's creation.⁴ The Legislature has not enacted a statutory provision for any of these advisory committees for more than four years, meaning these committees were effectively abolished pursuant to law. Currently, statute does not authorize the agency to establish advisory committees in rule, limiting TSLAC's flexibility to establish these or other committees in the future. Given the diverse group of stakeholders impacted by TSLAC's work, the agency would benefit from statutory authority to formally establish advisory committees in rule as needed.

TSLAC would benefit from authority to establish advisory committees in rule as needed.

TSLAC Advisory Committees

Advisory Board	Role	Status	Created	Expired
Library Systems Act Advisory Board	Advises commission on services for public libraries; hears accreditation appeals.	Active	1987	1991
TexShare Advisory Board	Advises commission on TexShare database sharing for public and academic libraries.	Active	1997	2001
Texas Historical Records Advisory Board	Federally required board; advises commission on records management and archival and records storage standards.	Active	1997	2001
Electronic Recording Advisory Committee	Recommends rules to be adopted under electronic recording act.	Inactive	1999	2003
Public Advisory Committee	Created to evaluate the operation of an electronically searchable central database of state-issued grants.	Inactive	2003	2007

The commission's sole statutory reporting requirement continues to be useful.

The Sunset Act establishes a process for the Sunset Commission to consider whether reporting requirements of agencies under review need to be continued or abolished.⁵ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend beyond the scope of the agency under review. Reporting requirements with deadlines or expiration dates are not included,

nor are routine notifications or notices, posting requirements, or federally mandated reports. Reports required by rider in the General Appropriations Act are typically omitted under the presumption that the appropriations committees have vetted these requirements each biennium. The agency has one statutory reporting requirement, a biennial report to the Legislature and the governor on TSLAC activities, which Sunset staff found is useful and should be continued. Additionally, since 2007, the agency has compiled the biennial Report of Reports detailing statutorily required reports prepared by and submitted to state agencies, as required by a rider in the General Appropriations Act.⁶ Sunset staff evaluated this long-standing reporting requirement and determined the report is still useful to its recipients and state agencies in general.

The commission should continue to implement state cybersecurity requirements and industry best practices.

The 85th Legislature tasked Sunset with assessing cybersecurity practices for agencies under review.⁷ To assess cybersecurity, staff focused on identifying whether the agency complied with state requirements and industry cybersecurity best practices. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the agency's technical infrastructure. Sunset staff found no issues relating to the agency's cybersecurity practices that require action by the Sunset Commission or the Legislature and communicated the results of this assessment directly to the agency.

Recommendations

Change in Statute

4.1 Continue the Texas State Library and Archives Commission for 12 years.

This recommendation would continue the commission as an independent agency for 12 years, until 2031. As part of this recommendation, the agency's statutory biennial reporting requirement would also continue because it serves a useful purpose to evaluate the agency's activities.

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

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

4.3 Authorize the commission to establish advisory committees in rule as needed.

This recommendation would authorize TSLAC to create advisory committees in rule, as needed, to provide special expertise. The commission should adopt rules regarding the agency's committees in compliance with Chapter 2110 of Texas Government Code, including

- the purpose, role, responsibility, and goals of the committees;
- the size and quorum requirement of the committees;
- qualifications of the members, such as experience or geographic location;
- the appointment procedures for the committees;
- the terms of service;
- training requirements;
- a process to regularly evaluate the need for each committee; and
- the requirement that the committees comply with the Open Meetings Act.

Fiscal Implication

The recommendations would not have a fiscal impact to the state. Based on fiscal year 2018 appropriations, continuing TSLAC would require approximately \$37 million in federal and state funds annually to cover the cost of the agency's current operations.⁸

¹ 20 U.S.C. Section 9133.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.013, Texas Government Code.

³ Sections 441.010(g), 441.124, 441.226, and 441.242, Texas Government Code; Section 195.008, Texas Local Government Code.

⁴ Section 2110.008, Texas Government Code.

⁵ Section 325.012(a)(4), Texas Government Code.

⁶ Rider 4, page I-76, Article 1 (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

⁷ Section 325.011(14), Texas Government Code; Chapter 683 (H.B. 8), Acts of the 85th Texas Legislature, Regular Session, 2017.

⁸ Article I (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

APPENDICES

APPENDIX A

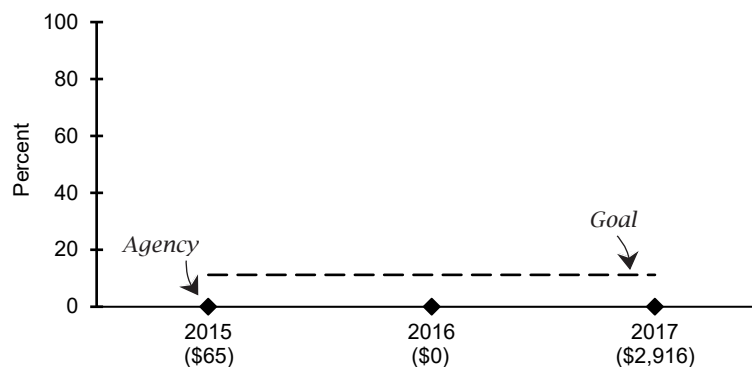
Historically Underutilized Businesses Statistics 2015 to 2017

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

The following material shows trend information for the Texas State Library and Archives Commission's (TSLAC's) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

TSLAC's significant contracts for online databases do not have available HUB vendors, driving poor performance in its largest purchasing category, other services. The agency has better results in other categories with more available HUB vendors, such as professional services and commodities. The agency has a HUB coordinator and a mentor-protégé program, but has not established its own HUB forum.

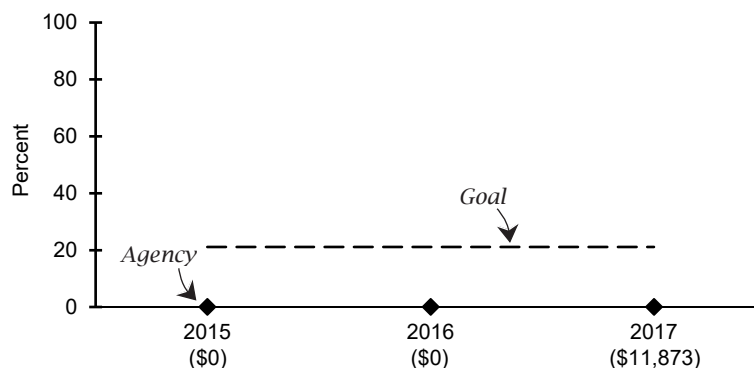
Heavy Construction



Over the past three fiscal years TSLAC consistently fell below the state goal in heavy construction, but had minimal contracting in this category.

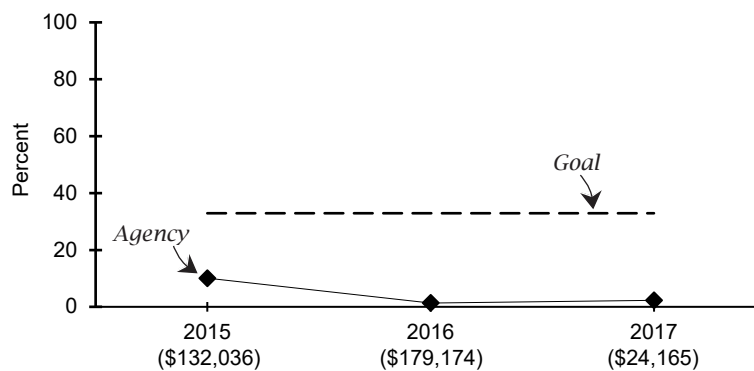
Appendix A

Building Construction



The agency had no spending on building construction in fiscal years 2015 and 2016 and fell below the state goal with minimal spending in fiscal year 2017.

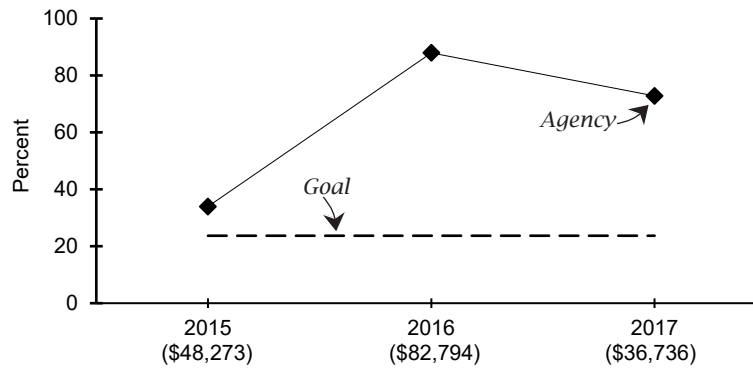
Special Trade



The agency fell below the state goal in special trade over the past three fiscal years. The higher expenditures in fiscal years 2015 and 2016 were for repairs at the Sam Houston Center in Liberty.

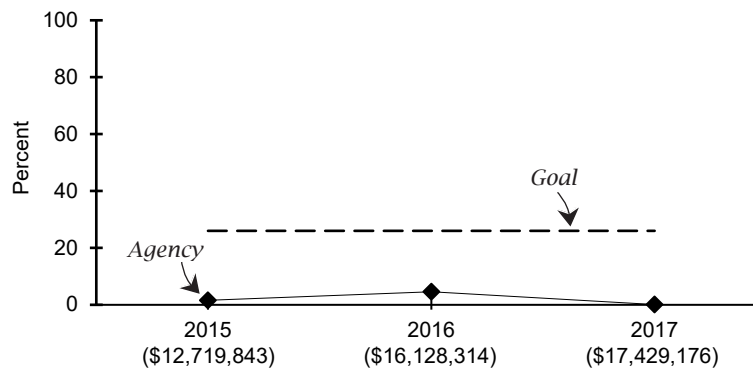
Appendix A

Professional Services



The agency exceeded the state goal in the past three fiscal years in contracting for professional services.

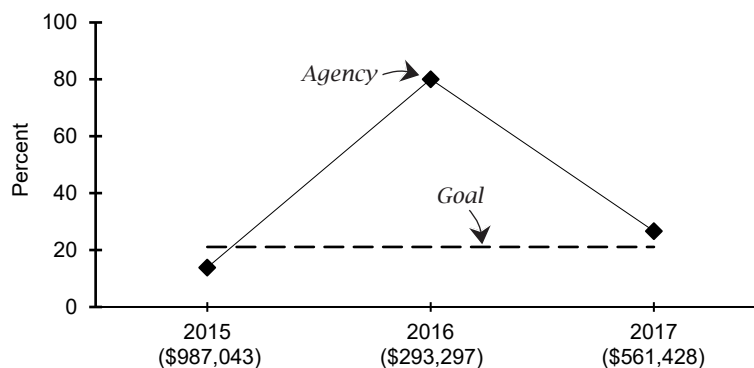
Other Services



The agency consistently fell below the state goal in other services, its largest area of contracting. The low HUB usage is primarily due to large expenditures on online resource sharing databases for which no HUB vendor is available.

Appendix A

Commodities



The agency fell below the state goal for HUB usage in commodities in fiscal year 2015, but exceeded the state goal in fiscal years 2016 and 2017.

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

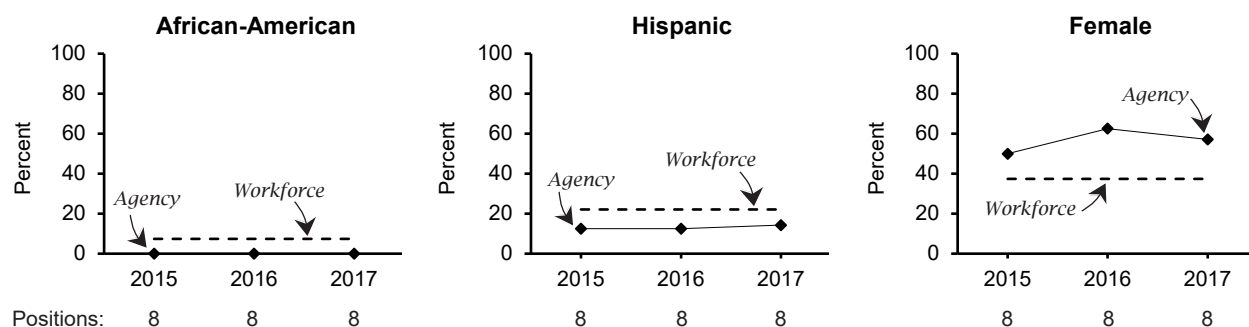
² Chapter 2161, Texas Government Code.

APPENDIX B

Equal Employment Opportunity Statistics 2015 to 2017

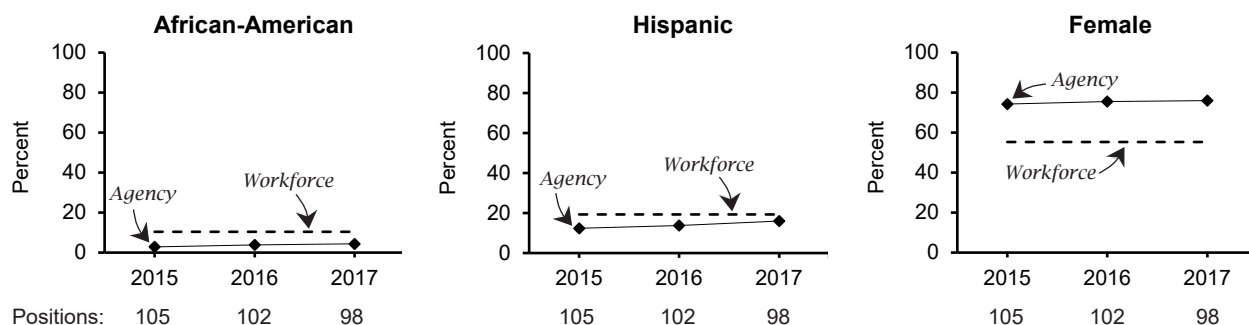
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas State Library and Archives Commission (TSLAC).¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The agency exceeded state civilian workforce averages for females in most categories, but fell consistently below the averages for African-Americans and Hispanics. The technical, service/maintenance, and skilled craft categories had too few employees to conduct a meaningful comparison to the overall civilian workforce.

Administration



The agency has few employees in this category. In the past three fiscal years, TSLAC exceeded the state civilian workforce average for female employees in administration, but fell short for minorities.

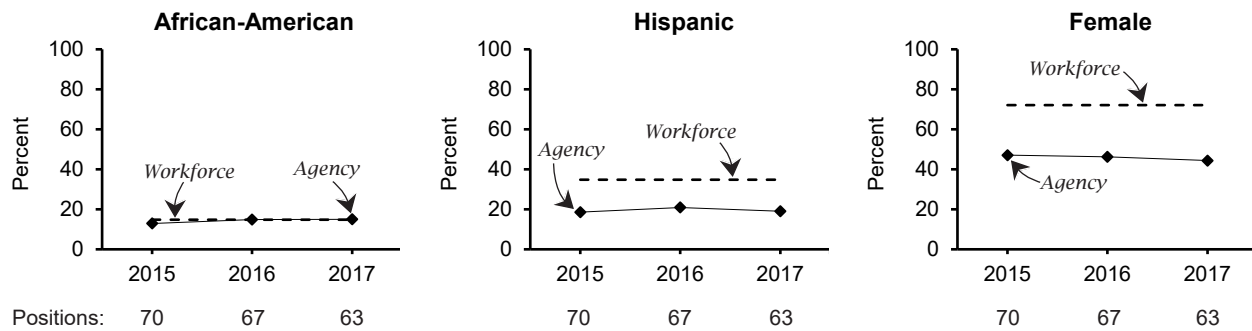
Professional



For its most significant employment category, the agency exceeded civilian workforce averages for females, but fell below average for Hispanic and African-American employment.

Appendix B

Administrative Support



The agency met the statewide civilian workforce average for African-American employees over the last three fiscal years but fell below average for Hispanic and female employees.

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

² Section 21.501, Texas Labor Code.

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

APPENDIX C

Staff Review Activities

During the review of the Texas State Library and Archives Commission, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended commission and advisory committee meetings; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to the Texas State Library and Archives Commission:

- Toured the State Records Center and Talking Book Program facilities
- Toured the Lorenzo de Zavala building, including the state archives and public research areas
- Attended the Texas Library Association conference
- Interviewed librarians from public, academic, and school libraries
- Attended records management workgroup and committee meetings
- Observed grant review panel meetings
- Conducted two stakeholder surveys to gather feedback on the agency's performance and evaluated the 621 responses

Sunset Staff Review of the *Texas State Library and Archives Commission*

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