

Sunset Commission Meeting December 8, 2020

Decision Material

Prepaid Higher Education Tuition Board

Texas Department of Agriculture

Texas Boll Weevil Eradication Foundation

Prescribed Burning Board

Early Childhood Health and Nutrition Interagency Council

Texas Animal Health Commission

Texas Parks and Wildlife Department

Credit Union Department

Anatomical Board of the State of Texas

PREPAID HIGHER EDUCATION TUITION BOARD

Issue 1

The State Has a Continuing Need for the Prepaid Higher Education Tuition Board.
(Page 9)

Change in Statute

Rec. 1.1 (Page 13)

Continue the Prepaid Higher Education Tuition Board for 12 years.

Rec. 1.2 (Page 13)

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

Rec. 1.3 (Page 13)

Authorize the board to appoint advisory committees by rule.

Management Action

Rec. 1.4 (Page 14)

Direct the board to update its websites to provide more user-friendly information, including information about the board and its operations.

Proposed New Recommendations

None received.

TEXAS DEPARTMENT OF AGRICULTURE
TEXAS BOLL WEEVIL ERADICATION FOUNDATION
PRESCRIBED BURNING BOARD
EARLY CHILDHOOD HEALTH AND NUTRITION
INTERAGENCY COUNCIL

Issue 1

The GO TEXAN Program Lacks the Guidance and Direction Needed for a Successful Program. (Page 15)

Change in Statute

Rec. 1.1 (Page 18)

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

Senator Lucio Proposed Modification

Modify Recommendation 1.1 to ensure the new statutory framework for the GO TEXAN program includes all elements of the current program, including promotion of agricultural, non-agricultural, and value-added products in Texas.

Management Action

Rec. 1.2 (Page 19)

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

Rec. 1.3 (Page 19)

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

Rec. 1.4 (Page 19)

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

Issue 2

TDA's Aquaculture Licensing Program Is Not Necessary to Protect the Public. (Page 21)

Change in Statute

Rec. 2.1 (Page 23)

Eliminate TDA's Aquaculture program.

Issue 3

The Regulation of Prescribed Burning Should Be Continued and Consolidated Within the Texas Department of Agriculture. (Page 25)

Change in Statute

Rec. 3.1 (Page 27)

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

Vice Chair Buckingham Proposed Modification

Modify Recommendation 3.1 to clearly authorize the Prescribed Burning Board to adopt all rules related to prescribed burning, including the schedule of sanctions currently adopted TDA, and continue the board as semi-independent board administratively attached to the department.

Rec. 3.2 (Page 28)

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

Chair Cyrier Proposed Modification

Modify Recommendation 3.2 to provide clear statutory authority for the Prescribed Burning Board to issue licenses by reciprocity for substantially equivalent states.

Management Action

Rec. 3.3 (Page 28)

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

Issue 4

Key Elements of the Department's Statute and Rules Do Not Conform to Common Regulatory Standards. (Page 31)

Change in Statute

Rec. 4.1 (Page 35)

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

Rec. 4.2 (Page 35)

Remove subjective licensure provisions for seed producers.

Rec. 4.3 (Page 35)

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

Management Action

Rec. 4.4 (Page 35)

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

Rec. 4.5 (Page 36)

Direct TDA to establish a risk-based approach to inspections.

Chair Cyrier Proposed Modification

Modify Recommendation 4.5 to make it a statutory recommendation that requires TDA to develop a strategic plan with public input for inspections that tracks and measures the effectiveness of the program.

Rec. 4.6 (Page 36)

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

Rec. 4.7 (Page 36)

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

Rec. 4.8 (Page 36)

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

Issue 5

Texas Has a Continuing Need for the Texas Department of Agriculture. (Page 39)

Change in Statute

Rec. 5.1 (Page 42)

Continue the Texas Department of Agriculture for 12 years.

Rec. 5.2 (Page 42)

Abolish the Early Childhood Health and Nutrition Interagency Council.

Rec. 5.3 (Page 42)

Eliminate the Texas Rural Foundation.

Management Action

Rec. 5.4 (Page 42)

Direct TDA to improve its stakeholder engagement, website content, and public information.

Issue 6

TDA's Statutes and Processes Do Not Reflect Some Standard Elements of Sunset Reviews. (Page 45)

Change in Statute

Rec. 6.1 (Page 50)

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

Rec. 6.2 (Page 50)

Authorize the department to create advisory committees in rule.

Rec. 6.3 (Page 50)

Remove abolished advisory committees from statute.

Vice Chair Buckingham Proposed Modification

Modify Recommendation 6.3 to also direct TDA to provide a list to the Commission by December 31, 2020, of any committees under this recommendation to be removed from statute that are being actively used and that TDA intends to re-create. (*Management action – non-statutory*)

Representative Canales Proposed Modification

Modify Recommendation 6.3 to also recreate the Citrus Budwood Advisory Council in statute and do not subject it to the expiration provisions of Government Code Chapter 2110. The recommendation would continue the composition, responsibilities, and oversight of the council currently found in Agriculture Code Chapter 19.

Rec. 6.4 (Page 51)

Continue three of TDA’s statutory advisory committees.

Rec. 6.5 (Page 51)

Abolish three and modify one of TDA’s reporting requirements.

Rec. 6.6 (Page 51)

Update the department’s statute to reflect the requirements of the person-first respectful language initiative.

Management Action

Rec. 6.7 (Page 51)

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

Rec. 6.8 (Page 52)

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

Rec. 6.9 (Page 52)

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

Issue 7

Texas Has a Continuing Need for the Texas Boll Weevil Eradication Foundation.
(Page 55)

Change in Statute

Rec. 7.1 (Page 57)

Continue the Texas Boll Weevil Eradication Foundation for 12 years.

Rec. 7.2 (Page 57)

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

Rec. 7.3 (Page 58)

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

Management Action

Rec. 7.4 (Page 58)

Direct the foundation to implement a reserve fund balance policy.

Proposed New Recommendations

None received.

TEXAS ANIMAL HEALTH COMMISSION

Issue 1

The Texas Animal Health Commission's Laboratory Is No Longer Needed or Cost-Effective, and Should Be Closed. (Page 11)

Change in Statute

Rec. 1.1 (Page 17)

Require TAHC to close its laboratory and designate TVMDL as the state's regulatory animal health laboratory in statute.

Senator Paxton Proposed Modification 1

Require TAHC to close its laboratory and designate TVMDL as the state's regulatory animal health laboratory in statute to the extent testing is available, efficient, and cost effective. Allow flexibility for TAHC to use other labs if cost-effective if a test is not offered by TVMDL.

Senator Paxton Proposed Modification 2

Require TVMDL, once it becomes the state regulatory animal health lab, to provide access to all necessary disease testing data, including both positive and negative test results, to TAHC. Upon request by the TAHC Executive Director or their designee, TVMDL would be required to provide regulatory disease records and statistical and survey information related to regulatory, reportable, and other diseases or pests of concern that could affect livestock or poultry, in a timely manner. This requirement would be included in the MOU and contract required by staff Recommendation 1.1.

Issue 2

The Texas Animal Health Commission's Inconsistent and Weak Enforcement Efforts May Increase the Risk of Animal Diseases in Texas. (Page 21)

Change in Statute

Rec. 2.1 (Page 26)

Require TAHC to regularly conduct trend analysis of its compliance data.

Management Action

Rec. 2.2 (Page 27)

Direct TAHC to complete and implement its penalty matrix.

Rec. 2.3 (Page 27)

Direct TAHC to include explicit guidance in all field manuals on documenting incidents of noncompliance and corresponding educational conversations.

Rec. 2.4 (Page 27)

Direct TAHC to share its compliance database with regional office staff to facilitate information flow between Austin and the field.

Rec. 2.5 (Page 27)

Direct TAHC and the Texas Department of Agriculture to enter into a memorandum of understanding to ensure TAHC is notified when animals are rejected at state animal export facilities.

Senator Paxton Proposed Modification

Statutorily authorize TAHC to prescribe, by rule, reporting and movement requirements for animals rejected at all export facilities to allow TAHC to more effectively and efficiently mitigate disease exposure and threats from high-risk livestock rejected in international trade, and ensure private and public export facilities have consistent reporting requirements.

Amendment 1 by Senator Paxton

Replace the proposed modification with the following: Direct TAHC to work with TDA to conduct a study that tracks animals rejected at any export facility. The study should track the reason for rejection, length of time between when a rejection occurs and when it is reported to TAHC, final resolution of rejection, solutions to resolve any gaps in reporting requirements at export facilities, and any other significant findings. TAHC should report its findings to the Legislature and the Sunset Commission by June 30, 2022.

Rec. 2.6 (Page 28)

Direct TAHC to review and update all training materials and guidelines for consistency and conformity with statute and rules.

Issue 3

The Texas Animal Health Commission's Outdated Laws, Deficient Rulemaking, and Inadequate Communications Do Not Best Serve Industry or Public Interests. (Page 29)

Change in Statute

Rec. 3.1 (Page 37)

Remove outdated, overly prescriptive, restrictive provisions in statute to provide TAHC more flexibility to prevent, manage, and eradicate reportable animal diseases.

Rec. 3.2 (Page 38)

Authorize TAHC to establish advisory committees by rule.

Management Action

Rec. 3.3 (Page 38)

Direct TAHC to provide clear, consistent public information about state animal health laws and rules, regulatory programs, and appeals processes.

Rec. 3.4 (Page 39)

Direct TAHC to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.

Rec. 3.5 (Page 39)

Direct TAHC and Texas A&M AgriLife Extension Service to enter into a memorandum of understanding to jointly develop and coordinate educational programs and information about animal health.

Issue 4

Texas Has a Continuing Need for the Texas Animal Health Commission. (Page 41)

Change in Statute

Rec. 4.1 (Page 44)

Continue the Texas Animal Health Commission for 12 years.

Rec. 4.2 (Page 45)

Update the standard Sunset across-the-board requirements on commission member training and grounds for removal.

Proposed New Recommendations

None received.

TEXAS PARKS AND WILDLIFE DEPARTMENT

Issue 1

The State Has a Continuing Need for the Texas Parks and Wildlife Department.
(Page 9)

Change in Statute

Rec. 1.1 (Page 13)

Continue the Texas Parks and Wildlife Department for 12 years.

Rec. 1.2 (Page 13)

Apply the standard across-the-board requirements regarding commission member training and maintaining a system for receiving and acting on complaints.

Rec. 1.3 (Page 14)

Update TPWD's statute to reflect the requirements of the person-first respectful language initiative.

Management Action

Rec. 1.4 (Page 14)

Direct TPWD to actively monitor its efforts to increase workforce diversity and report success measures to the Texas Parks and Wildlife Commission.

Issue 2

Some Elements of TPWD's Licensing and Enforcement Functions Are Inconsistent and Lack Transparency. (Page 15)

Change in Statute

Rec. 2.1 (Page 21)

Require TPWD to provide an opportunity to access an informal review process for nonrecreational license and permit types.

Mr. Duggins Proposed Modification

Change Recommendation 2.1 to a management action, allowing the Texas Parks and Wildlife Commission to determine whether or not to have a review panel process. Any review panel process should occur prior to a revocation or suspension of a license. (Management action – non-statutory)

Amendment 1 by Mr. Duggins

Amend the proposed modification to clarify that any review panel process should occur after the agency sends notice of its intent to revoke or suspend a license.

Rec. 2.2 (Page 21)

Require TPWD to establish a risk-based approach to inspections.

Mr. Duggins Proposed Modification

Change Recommendation 2.2 to a management action suggesting the Texas Parks and Wildlife Commission should use a risk-based approach to inspections.
(Management action – non-statutory)

Management Action

Rec. 2.3 (Page 22)

Direct the agency to adopt policies for using its full range of existing enforcement authority, including revocation and suspension in appropriate cases.

Rec. 2.4 (Page 22)

Direct TPWD to clearly and actively communicate enforcement processes and outcomes to licensees.

Rec. 2.5 (Page 22)

Direct TPWD to standardize administration of its regulatory programs to the extent possible.

Senator Paxton and Mr. Duggins Proposed Modification

Direct TPWD to standardize administration of its regulatory programs to the extent feasible and appropriate rather than to the extent possible, as this may lead to increased costs that must be borne by the agency.

Rec. 2.6 (Page 23)

Direct TPWD to review and update all reporting deadlines and timeframes for licenses.

Issue 3

TPWD Needs to Improve Strategic Management Processes to Ensure It Can Best Meet the Future Needs of Texans. (Page 25)

Change in Statute

Rec. 3.1 (Page 30)

Require TPWD to measure the effectiveness of the Land and Water Plan and refine its scope.

Management Action

Rec. 3.2 (Page 30)

Direct the Texas Parks and Wildlife Commission to establish a conservation and recreation planning subcommittee.

Rec. 3.3 (Page 31)

Direct TPWD to improve and use the Natural Agenda as the agency's sole, agencywide strategic plan.

Rec. 3.4 (Page 31)

Direct TPWD to institute processes to better ensure consistent, actionable policies and practices across the agency's divisions.

Issue 4

TPWD's Internal Auditing Program Does Not Identify or Address All the Agency's Risks, Limiting Its Effectiveness. (Page 33)

Management Action

Rec. 4.1 (Page 36)

Direct the Texas Parks and Wildlife Commission to formally establish an internal audit subcommittee.

Rec. 4.2 (Page 36)

Direct TPWD to fully identify and prioritize the risks of all of the agency's activities in its risk assessment process.

Rec. 4.3 (Page 37)

Direct TPWD to develop a more complete and diversified internal audit plan.

Rec. 4.4 (Page 37)

Direct TPWD to use its newly developed quarterly audit status report to provide more information about the status and implementation of audit recommendations.

Proposed New Recommendations

Senator Lucio Proposed New Recommendation 1

Review and revise hunting and fishing licenses to:

- Provide for annual renewal of fishing licenses based on the date of purchase;
- Improve utilization of a mobile app to track endorsements, education certificates, and tags; and
- Institute tiered pricing for seniors, children, and new 30-day licenses.

Amendment 1 by Vice Chair Buckingham

Amend Proposed New Recommendation 1 to direct the Texas Parks and Wildlife Department to study the feasibility and potential fiscal impacts of transitioning to annual fishing licenses that expire a year from date of purchase; improving utilization of a mobile app to track endorsements, education certificates, and tags; and instituting a new 30-day license. The agency shall report its findings to the Sunset Commission no later than February 1, 2021. (Management action – non-statutory)

Amendment 2 by Senator Lucio

Replace the first bullet of Proposed New Recommendation 1 with the following language:

- Make all fishing licenses Year-From-Purchase fishing licenses rather than expiring on a date set by the Texas Parks and Wildlife Commission;

Replace the third bullet of Proposed New Recommendation 1 with the following language:

- Create a 30-day fishing license.

Representative Canales Proposed New Recommendation 2

Direct the agency to ensure there is an opportunity for the public to submit written comments online for every Commission action item that requires a vote. (Management action – non-statutory)

Representative Canales Proposed New Recommendation 3

Direct the agency to improve transparency of its advisory committees by providing easy access to the names of the advisory committees, the members and who they represent, and the committees' meeting dates and minutes. (Management action – non-statutory)

CREDIT UNION DEPARTMENT

Issue 1

The Department Lacks Key Data and Processes to Ensure Adequate Resolution of Regulatory Complaints. (Page 11)

Change in Statute

Rec. 1.1 (Page 17)

Require the department to track more comprehensive complaint and enforcement data to support analysis and guide regulatory activities.

Management Action

Rec. 1.2 (Page 17)

Direct the department to regularly analyze and report on complaint and enforcement data and trends.

Rec. 1.3 (Page 18)

Direct the department to establish clear procedures for processing and investigating all complaints it receives.

Rec. 1.4 (Page 18)

Direct the department to disclose summary complaint resolution information to complainants and document final disposition.

Rec. 1.5 (Page 18)

Direct the department to develop a penalty matrix.

Rec. 1.6 (Page 19)

Direct the department to more clearly communicate its authority, processes for investigating complaints, and complaint determinations.

Rec. 1.7 (Page 19)

Direct the department to incorporate examiners' review of all jurisdictional complaints into the exam process.

Issue 2

The Department Should More Effectively Use Its SDSI Status to Provide Adequate Resources and Improve Operations. (Page 21)

Management Action

Rec. 2.1 (Page 26)

Direct the Credit Union Commission to implement a more streamlined and reliable fee assessment policy and process.

Rec. 2.2 (Page 26)

Direct the commission to update its reserve fund policy to address long-term capital funding needs and maintain an adequate reserve balance.

Rec. 2.3 (Page 26)

Direct the commission to implement an independent audit process for the department.

Issue 3

Texas Has a Continuing Need for the Credit Union Department. (Page 29)

Change in Statute

Rec. 3.1 (Page 33)

Continue the Credit Union Department for 12 years.

Rec. 3.2 (Page 33)

Require the department to develop a process for notifying credit unions about federal regulatory changes that override state regulations.

Rec. 3.3 (Page 33)

Eliminate the statutory notarization requirement for articles of incorporation in new charter applications.

Rec. 3.4 (Page 34)

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

Management Action

Rec. 3.5 (Page 34)

Direct the department to regularly update its website content.

Proposed New Recommendations

None received.

ANATOMICAL BOARD OF THE STATE OF TEXAS

Issue 1

Texas' Higher Education Institutions Could Continue to Effectively Operate Willed Body Programs Without the State Anatomical Board. (Page 7)

Change in Statute

Rec. 1.1 (Page 13)

Abolish the Anatomical Board of the State of Texas.

Vice Chair Buckingham Proposed Modification

Modify Sunset Staff Recommendation 1.1 to abolish the State Anatomical Board (SAB) and transfer its functions to the Texas Funeral Service Commission (TFSC). As part of this modification, TFSC members would appoint an advisory committee composed of higher education institutions with willed body programs to provide expert advice to the agency. Administrative provisions in TFSC's statute would replace similar provisions in SAB's statute, including TFSC's full range of enforcement authority, and TFSC's statute would clearly authorize fees for anatomical facility inspections. If adopted, Recommendations 1.2 and 1.3 would no longer apply.

Amendment 1 by Vice Chair Buckingham

Add the following to the proposed modification: Prohibit the Texas Funeral Service Commission from adopting rules relating to standards of practice, ethics, license qualifications, and disciplinary sanctions, unless the rule is proposed by the appointed advisory committee of higher education institutions with willed body programs. For these rules, specify the Texas Funeral Service Commission may only adopt the rules as proposed or return the rule to the advisory committee for revision and provide an explanation of why it rejected the rule in its current form.

Rec. 1.2 (Page 14)

Authorize Texas colleges and universities with WBPs to form a consortium. *(If the Sunset Commission adopts Vice Chair Buckingham's modification to Recommendation 1.1, Recommendation 1.2 would no longer apply.)*

Management Action

Rec. 1.3 (Page 14)

Direct Texas colleges and universities with WBPs to consider adopting certain best practices. *(If the Sunset Commission adopts Vice Chair Buckingham's modification to Recommendation 1.1, Recommendation 1.3 would no longer apply.)*

Proposed New Recommendations

None received.