

TEXAS DEPARTMENT OF PUBLIC SAFETY

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November 25, 2014

Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

Re: Sunset Advisory Commission Staff Report on State Office of Administrative Hearings,
November 2014

Dear Director Levine:

Thank you for the opportunity to respond to the Sunset Advisory Commission Staff Report on the State Office of Administrative Hearings. The staff report contains findings and recommendations that would affect the Administrative License Revocation (ALR) program administered by DPS. Specifically, the report recommends the transfer of scheduling responsibilities for ALR original hearings from DPS to SOAH.

DPS identifies two issues for consideration as the Commission considers the details of implementing the staff recommendations. First, the ALR scheduling system should continue to meet the legislative directive that initial hearings be scheduled within 40 days. Shifting scheduling and docketing responsibilities to SOAH without sacrificing the 40-day directive will pose some challenges. Because of the immediate licensing impact on drivers either requesting or foregoing hearings, initial hearing requests, of necessity, will continue to be sent to DPS. DPS would counsel against any statutory mandates requiring that all scheduling and docketing be accomplished by SOAH. DPS agrees with the general goal of the staff recommendation to move toward SOAH as the primary ALR scheduling entity. However, in our opinion, such a shift will not require a statutory change. Rather, the agencies should work together under the current statutory framework and within the rulemaking process. Rulemaking rather than statutory amendments will allow the flexibility necessary to achieve the staff report's goals.

Our second concern relates to shifting the responsibility of receiving "five-day" continuances and rescheduling hearings arising from those continuances from DPS to SOAH. The five-day continuance arises from a statutory provision allowing a defendant to receive one continuance automatically without a need to show cause if the request is made within five days of the scheduled hearing. The volume of requests for these automatic continuances is very high. It is critical that DPS attorneys immediately communicate to law enforcement witnesses who have been subpoenaed to attend a hearing that they will not be needed. By requiring that automatic five-day continuance requests be processed through DPS, the legislature has placed DPS in a position to notify law

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enforcement witnesses of postponed hearings at the earliest opportunity and, consequently, the current system serves to reduce time in which officers are taken from enforcement duties.

The Sunset Commission staff report has helpfully directed needed focus to the challenges of scheduling and docketing that are inherent in the ALR program. We look forward to working collaboratively with SOAH and your staff to continually improve the efficiency in which this important program contributes to highway safety in Texas. Please feel free to contact me with further questions at (512) 424-2503.

Sincerely,



D. Phillip Adkins
General Counsel

DPA:js

cc: Steven McCraw, Director, Department of Public Safety
Joe Peters, Assistant Director, Driver License Division
Louis Beaty, Deputy Chief, Legal Operations, Office of General Counsel
Lanette Rusmiser, Director of Hearings, Administrative License Revocation
Cheryl Garren, Manager, Enforcement and Compliance Service, Driver License Division