

From: [Sunset Advisory Commission](#)
To: [Elizabeth Jones](#)
Subject: FW: Texas Racing Commission Response to Sunset Staff Report
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From: Robert Elrod
Sent: Monday, September 21, 2020 10:58:52 AM (UTC-06:00) Central Time (US & Canada)
To: Sunset Advisory Commission
Subject: Texas Racing Commission Response to Sunset Staff Report

Please see the attached response from the Texas Racing Commission. Thank you.

Robert Elrod
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Texas Racing Commission
512.490.4032

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TEXAS RACING COMMISSION

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Sept. 21, 2020

Jennifer Jones
Executive Director, Sunset Advisory Commission
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Dear Ms. Jones:

Thank you for allowing us the opportunity to submit these comments in response to your staff report on the Sunset Advisory Commission's review of the Texas Racing Commission (TxRC). As you are aware, TxRC has faced many challenges in recent years, primarily related to our funding structure and the fragile condition of the state's pari-mutuel racing industry.

We would like to thank Lauren Ames and her colleagues for the time and effort they put into the process. While we understood that the report would focus on areas where the agency was falling short, we appreciate their acknowledgement of our hard-working and dedicated staff that frequently has to juggle the duties of multiple positions, the dynamic that has given the industry too much influence over our operations, and the agency being strained beyond its means by unsustainable funding and regulatory structures.

We welcome the opportunity to improve how we do the critical work of regulating the Texas racing industry. This process has resulted in thoughtful recommendations for improving the efficiency and effectiveness of this agency's mission to enforce the Texas Racing Act and agency rules to ensure the safety, integrity, and fairness of Texas pari-mutuel racing, regardless of which state agency umbrella under which the mission falls. Accordingly, we respectfully submit the following responses.

ISSUE 1: The Texas Department of Agriculture (TDA) Could Regulate Pari-Mutuel Racing More Efficiently and Effectively Than the Texas Racing Commission.

SUNSET STAFF RECOMMENDATION

Change in Statute

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

AGENCY RESPONSE

We agree that the recommendation to merge TxRC into a larger agency would result in greater efficiency in carrying out the agency's mission and, to that extent, we support recommendation 1.1. However, we do not take a position on whether that should be the Texas Department of Agriculture or another agency, and we are concerned that this action would not fully resolve our funding issues.

It is important to note that the Racing Commission receives no general revenue from the state; rather, the agency's revenue currently comes from two main sources: license fees and the tax on simulcast wagers that was redirected to the agency effective September 1, 2019, and which enabled a significant reduction in racetrack license fees.

Accordingly, while a merger would likely provide additional resources where they are sorely needed, under the current funding structure, the potential savings as outlined in the staff report (approximately \$2.8 million over the next five fiscal years) would not likely result in any actual savings to the state but rather to license holders in the form of potential fee reductions.

Additionally, although the more substantial infrastructure of a larger agency would be beneficial to the effective regulation of pari-mutuel racing in Texas, if the industry is still required to cover all of its own regulatory costs, including its portion of shared resources, the underlying issue of an inadequate/unreliable revenue stream and tension with the racetrack license holders who provide a significant portion of that revenue remains.

Without further statutory modification to ensure the certainty of funding to support the agency's mission, the future efficacy of the state's regulation of the racing industry remains in doubt. We would suggest that the Sunset bill should include some change to the funding structure that would reduce the burden on the regulator to establish racetrack license fees, whether by codifying the fees, accessing other revenue to offset track fees, or otherwise.

ISSUE 2: The Texas Racing Commission Does Not Effectively Administer Its Horse Industry Grant Program.

SUNSET STAFF RECOMMENDATIONS

Change in Statute

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

Management Action

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

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

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

AGENCY RESPONSE

We appreciate Sunset staff reporting that while the 86th Legislature added a significant source of funding for the HIEA, it did not provide for any further resources or staff to administer the new funds. Regardless, even without additional staff with grant-program expertise and despite many COVID-19-related challenges, the Commission was still able to create a workable application process that reviewed 58 grant applications in FY 2020 and approved 54 worth approximately \$6.5 million.

Nonetheless, we agree that transferring responsibility for administering the HIEA to an agency with experience administering grant programs would increase the effectiveness of this program.

ISSUE 3: Key Elements of the Texas Racing Commission's Statute and Rules Do Not Conform to Common Licensing Standards.

SUNSET STAFF RECOMMENDATIONS

Change in Statute

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

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

3.3 Remove subjective licensure requirements from statute.

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

Management Action

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

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

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

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

AGENCY RESPONSE

Overall, we agree with these recommendations; however, for the purpose of clarification, we would like to call attention to the following points:

- **License Categories, 36-Month Fingerprint Requirement (3.1 and 3.2)**

We agree that a revision of the Act to conform to the FBI's statutory requirements for conducting fingerprint-based background checks would be beneficial and likely result in greater efficiency.

With regard to the 36-month fingerprint requirement, we also agree that a change in the Act would be beneficial. From a practical standpoint, this requirement has largely been eliminated (any applicant who has submitted prints to the agency since June 2015 is already exempt from resubmission, assuming their TxRC license has not been lapsed for more than one year). A change in the statute would impose a short-term additional burden on agency licensing staff, but also would result in long-term benefits in efficiency and a cost savings to licensees.

Commission staff are currently revising policies and procedures to transition all remaining licensees away from the 36-month resubmission requirement with an implementation goal of no later than Jan. 1, 2021. However, it should be noted that it will take a full three years from implementation to complete this transition as the current 36-month submissions expire.

- **Testing Policies, Examination Process (3.5, 3.6)**

We agree with the recommendations to establish and consistently apply policies for testing certain licensure applicants to remove potential barriers to licensing in its examination process.

Commission staff are currently reviewing policies and procedures to determine which elements of the licensing and testing process for certain applicants require

TxRC Response to SAC Staff Report (continued)

modification with an implementation goal of no later than Jan. 1, 2021. One issue already identified and addressed is the role previously played by the Texas Horsemen's Partnership (THP) both prior to a prospective trainer's license applicant scheduling a written test, as well as during the practical examination. Staff have revised policies and procedures to remove THP from this process and eliminate any potential for anti-competitive behavior and/or the appearance thereof.

Staff also will consult and work with industry stakeholders to safeguard against any changes negatively impacting the Commission's mission to ensure the safety, integrity, and fairness of Texas pari-mutuel racing.

- **Reciprocity Authority (3.7)**

We agree that the Commission should implement clear new rules and/or policies addressing reciprocity for out-of-state applicants. Toward that end, Commission staff are currently reviewing and identifying how to most fairly and effectively recognize qualified license applicants from other states with substantially similar requirements.

This effort will include a survey of all other U.S. pari-mutuel racing jurisdictions to create a matrix that will provide clear guidance to staff and applicants on which jurisdictions' requirements do or do not appropriately match up with those of TxRC. While this effort will proceed with all due haste, it must be also be a deliberative and thorough process, as all requirements need to be in line with the agency's mission.

The staff report also states that TxRC's requirement for all applicants to undergo a fingerprint-based background check even if an applicant is licensed for the same activity in another state with the same or similar criminal history requirements as Texas creates "an unnecessary barrier to entry for a mobile and geographically diverse industry." While we agree that the requirement to provide an original set of fingerprints for background-check purposes can present an obstacle to out-of-state applicants, it is necessary under current Federal Bureau of Investigations (FBI) rules and/or policies.

The submission of an original set of fingerprints is currently *required* for the Commission to participate in the FBI's Rap Back program, which allows authorized government agencies to receive on-going status notifications of any criminal history record information reported to the FBI and State (if applicable) after the initial processing and retention of criminal transactions. By using fingerprint identification to identify individuals arrested and prosecuted for crimes, Rap Back provides a nationwide notice to non-criminal justice authorities regarding subsequent actions.

TxRC Response to SAC Staff Report (continued)

While Commission staff will continue to study and investigate this issue, it is likely that this obstacle will necessarily remain until or if the FBI changes its requirements for participation in the Rap Back program.

- **Racetrack Inspections (3.8)**

We agree that the Commission cannot fully or objectively enforce safety standards at racetracks without a clear policy addressing the seriousness of violations and their consequences.

Commission staff always conduct inspections prior to the beginning of any live race meet; however, the disparity between the number of racetrack inspections in 2015 and 2019 (106 to eight) was partially due, in addition to fewer race dates, to a deliberate effort on the part of agency staff to consolidate what had previously been six to eight separate inspections into one comprehensive inspection and report. In addition, the elimination of unannounced inspections was largely in response to staffing issues and the increasing brevity of live-racing meets (e.g.: Retama Park's Summer 2020 meet featured just 24 race dates), which effectively reduced both the practicality and cost-effectiveness of surprise inspections.

Additional veterinary and investigative staff would undoubtedly aid in the enforcement of safety protocols in pari-mutuel racing. However, even with seriously overstretched staff resources, at least eight TxRC employees are present for any live racing and have effectively managed to address any problems or deficiencies as they occur up to, and including, halting racing if necessary. For example, between lockdown¹ on June 23, 2020, and the end of the Retama Park Quarter Horse meet on Aug. 29, TxRC staff logged more than 3,500 hours *onsite* specifically towards that meet, while other employees (including many of the same individuals) supported two other live meets simultaneously at Lone Star Park and Gillespie County Fair. This constant and visible onsite presence allows staff to identify and address many issues *as they occur and/or are observed*.

Further, though not addressed in the staff report, the state's pari-mutuel industry has experienced its lowest horse injury rates over the last two years. This coincided with the Commission's implementation of its morning training oversight program, which allows Commission Veterinarians the opportunity to monitor training sessions for signs of unsoundness and/or lameness and, when necessary, notify trainers of

¹ Lockdown: 10 days prior to the opening of a live race meet, "lockdown" begins and continues through the end of the meet. During lockdown, access to the backside and all other restricted areas on the premises of a track is strictly limited to appropriately TxRC-licensed individuals and Commission staff.

TxRC Response to SAC Staff Report (continued)

issues *before* the horses race.

Again though, additional veterinarians and investigators would only enhance the Commission's efforts to ensure the safety, integrity and fairness of Texas pari-mutuel racing.

ISSUE 4: The Texas Racing Commission's Statute Does Not Reflect Some Standard Elements of Sunset Reviews.

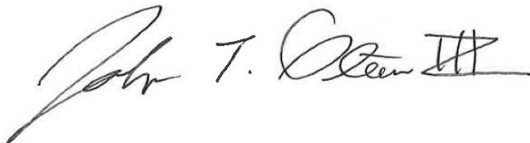
AGENCY RESPONSE

We agree.

CONCLUSION

Again, overall, we concur with the recommendations set forth in the staff report and look forward to working with your staff and the members of the 87th Legislature in the months ahead. Once more, we thank the staff of the Sunset Advisory Commission for their professional and thorough work under unprecedented circumstances, and would like to emphasize our commitment to cooperation and responsiveness as this process moves forward.

Thank you on behalf of the Texas Racing Commission.



John T. Steen III, Chair



Chuck Trout, Executive Director