

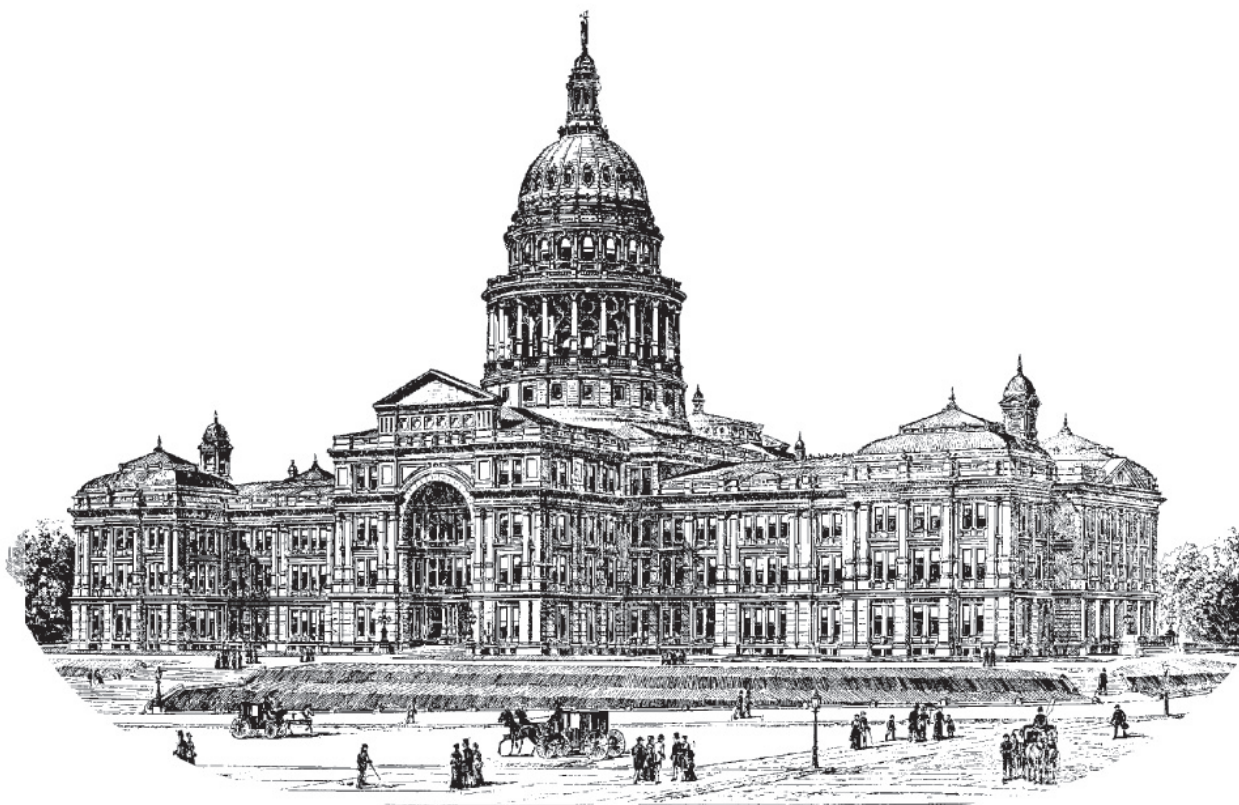


# INTERIM REPORT

## TO THE 83RD TEXAS LEGISLATURE

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HOUSE COMMITTEE ON  
**GOVERNMENT EFFICIENCY & REFORM**  
JANUARY 2013

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**HOUSE COMMITTEE ON GOVERNMENT EFFICIENCY & REFORM  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2012**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
83RD TEXAS LEGISLATURE**

**WILLIAM "BILL" CALLEGARI  
CHAIRMAN**

**COMMITTEE CLERK  
JONATHAN MATHERS**

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Committee On  
Government Efficiency & Reform

January 2, 2013

William "Bill" Callegari  
Chairman

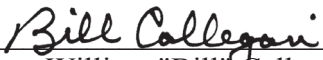
P.O. Box 2910  
Austin, Texas 78768-2910

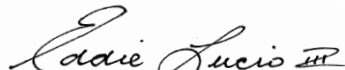
The Honorable Joe Straus  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:


The Committee on Government Efficiency & Reform of the Eighty-second Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-third Legislature.

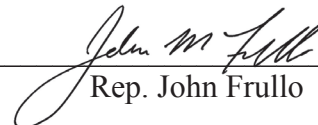
Respectfully submitted,

  
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Rep. William "Bill" Callegari

  
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Rep. Eddie Lucio III

  
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Rep. Linda Harper-Brown

  
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Rep. Bill Zedler

  
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Rep. John Frullo

  
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Rep. Sergio Muñoz, Jr.

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Rep. Erwin Cain

Rep. Eddie Lucio III  
Vice-Chairman

Members: Rep. Linda Harper-Brown, Rep. Bill Zedler, Rep. Erwin Cain, Rep. John Frullo, Rep. Sergio Muñoz, Jr.

**Please direct questions and comments to the following:**

**Representative William “Bill” Callegari, Chair  
House Government Efficiency & Reform Committee  
Texas Capitol  
P.O. Box 2910  
Austin, TX 78768  
512/463-0528**

**Interim Report developed by:**

**Jeremy Mazur, Chief of Staff  
Jonathan Mathers, Committee Clerk  
Steven Will, Legislative Aide**

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## INTRODUCTION

During the 82<sup>nd</sup> Legislative Session (2011), Speaker Joe Straus created the House Government Efficiency and Reform Committee. The creation of the Committee places a priority on insuring the state spends taxpayer money on governmental services wisely and the state delivers those services successfully and cost-effectively.

Throughout the interim the House Government Efficiency and Reform Committee held three hearings and invited more than 75 witnesses to provide testimony. These witnesses represented a cross-section of state agency personnel and state agency heads, private business owners, and concerned citizens. Additionally, the selection of witnesses encapsulated geographic, philosophical, and ethnic diversity. Invited witnesses were requested to provide written testimony before each hearing to allow the Committee to become familiar with their testimony and prepare for the hearings appropriately. Public testimony was encouraged and included in our agenda. This final report is the culmination of their testimony, Representatives' questions, and relevant research.

On October 20, 2011, Speaker Joe Straus issued the following six interim charges to the House Government Efficiency and Reform Committee to study and report back with facts, findings, and recommendations.

- *Examine and make recommendations on purchasing cooperatives created under Chapter 791 of the Texas Government Code, including the bid process and the role of inter-local contracts. Clarify for consistency the following terms: purchasing cooperatives, inter-local contracts, and inter-local agreements.*
- *Examine the utilization of alternative project delivery methods, such as design-build and construction-manager-at-risk, by municipalities, water districts, and authorities, and other local governmental entities since the passage of HB 1886, 80th Legislature.*
- *Examine interagency agreements and charges for providing information or personal identification documents at the request of a state agency to fulfill day-to-day operations at the expense of the requesting state agency.*

- *Examine areas of potential privatization of state services in an effort to achieve a higher level of service and greater efficiency for Texas taxpayers (Joint with the House Committee on State Affairs).*
- *Examine state agency rulemaking and consider ways to improve procedural efficiencies and public transparency, and to better inform policymakers as to their use, purpose, and cost-effectiveness, including an examination of the financial and other impacts such regulations have on both the license holder and the public (Joint with the House Committee on State Affairs).*
- *Monitor the agencies and programs under the Committee's jurisdiction and the implementation of relevant legislation passed by the 82nd Legislature.*

In addition, the Committee also embarked on a groundbreaking public policy, crowdsourcing website under the banner of *The Texas Red Tape Challenge*. The central idea behind the Challenge was to introduce specific state regulations for public review, and to invite participants to offer their ideas and recommendations on how the state could streamline, abolish, or otherwise reform those regulations. Once an individual submitted an idea on the Challenge website, other participants could comment on, and offer their recommendations on the initial proposal. The Committee details the results of the Challenge's collaborative process in this report.

The members of the House Government Efficiency and Reform Committee are grateful to the Speaker for the opportunity to address these critical issues and to submit this report. The Committee is also appreciative to the agencies, associations, and members of the public, who contributed their time and effort in developing this report.

## INTERLOCAL CONTRACTS

*Examine and make recommendations on purchasing cooperatives created under Chapter 791 of the Texas Government Code, including the bid process and the role of interlocal contracts. Clarify for consistency the following terms: purchasing cooperatives, interlocal contracts, and interlocal agreements.*

### Testimony

The House Government Efficiency and Reform Committee, in a joint hearing with House State Affairs Committee, heard testimony regarding this charge on July 12, 2012. The hearing included invited testimony from the following persons:

- Dr. Reese Blincoe, Superintendent, Brownwood ISD
- Michael DuCharme, Director of Product Marketing, Carlisle Construction Materials
- Don Elder, Marketing Consultant, Choice Partners Cooperative
- Steve Fisher, Marketing Director, BuyBoard Texas Association of School Boards (TASB)
- Brian Gardiner, Principal, Austech Engineering, Inc.
- Cyd Grimes, Purchasing Agent, Travis County
- Les Hooper, Executive Director, Harris County Department of Education
- Michael Huber, Director of Engineering, The Garland Company, Inc.
- Bill Johnson, CEO, Johnson Roofing, Inc.
- Joel King, Technical Director, U.S. Ply, Inc.
- Robert Marsh, private citizen
- Carmen Moreno, Board Member, Region IV Education Service Center
- David M. Naber, Principal Consultant, Tremco Incorporated
- Edis Oliver, Principal, Wiss, Janey, Elstner Associates
- Pete Pape, Chief Financial Officer, Goose Creek CISD
- Robert Pechacek, President & CEO, R4 Enterprises, LLC
- Ron Pigott, Director, TPASS Division Texas Comptroller of Public Accounts
- Rodney Ruebsahm, President & CEO, ARMKO Industries, Inc.
- Chris Szaniszló, Managing Director, First Public & Associate Executive Director, TASB Business Services
- Brian Utley, President & CEO, Periscope Holdings, Inc.
- Arthur P. Ward, III, Owner, AP Ward Consulting & President, RCI
- Dennis Wilson, Representative, Firestone Building Products



- William Woodring, Director, Technical Services, GAF

## Background

Chapter 791 of the Government Code authorizes the use of interlocal contracts to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with state agencies. Certain governmental entities have formed interlocal purchasing groups (referred commonly as cooperatives) under the authority of Chapter 791.

Members unite in a cooperative to access markets or services otherwise not available. Acting together gives members the advantage of economies of size and bargaining power. Cooperatives can provide vetted and low-cost options for many goods and services, especially for smaller governmental entities that may not have the same purchasing power as larger governmental entities. Cooperatives also attempt to generate margins from efficient operations or add value to products. Cooperatives take the earnings gained through these efficiencies and return them to members in the form of lower prices on a transaction-by-transaction basis or as refunds based on how much business each member conducts through the year.<sup>1</sup>

The Committee began looking at interlocal contracts at large but stakeholders and governmental entities directed the Committee to look specifically at roofing services purchased through cooperatives. Commercial or institutional building roof replacement, such as a school's roof, requires a complex design analyzing building codes, energy codes, and life safety requirements.<sup>2</sup> Many independent school districts (ISDs), especially small and midsize ISDs, rely on cooperatives to handle the myriad of products and services required for roofs. Allegations were made that a few unscrupulous roofing vendors are manipulating the contracting procedures of purchasing cooperatives to enrich themselves at the expense of local ISDs.<sup>3</sup>

During the 82<sup>nd</sup> Session, the House considered H.B. 800, but did not report the bill to the Senate, preferring instead to study the issue during the interim. The original filing of the bill would have amended the Government Code to prohibit the use of interlocal contracts for the purchase of roofing materials or services. The bill, as

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1 *Examine Purchasing Cooperative: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess. (Tex. 2012)* (Steve Fisher, Marketing Director, BuyBoard Texas Association of School Boards and Robert Pechacek, President & CEO, R4 Enterprises, LLC ).

2 See appendix for Steps to Engineering a commercial/institutional roof replacement

3 *Examine Purchasing Cooperative: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess. (Tex. 2012)* (Edis Oliver, Principal, Wiss, Janey, Elstner Associates; Rodney Ruebsahm, President & CEO, ARMKO Industries, Inc.; Bill Johnson, CEO, Johnson Roofing, Inc. and Dennis Wilson, Representative, Firestone Building Products).

amended in Committee, prohibited an interlocal contract between a governmental entity and a purchasing cooperative for the purposes of purchasing roofing materials or services from a person who provided consulting services to the cooperative on the contract, including providing specifications for bids on the contract.<sup>4</sup>

**Finding:** *Roofing designs should discourage the use of proprietary or exclusive specifications.*

In a 2009 audit of Wilson Education Center, the Indiana State Board of Accounts took issue with a particular cooperative roofing contract that provided no clear process that encouraged competition.<sup>5</sup> Indiana State Board of Accounts (SBOA) is an agency of the executive branch of the State of Indiana that audits the financial statements of all governmental units within the state, including cities, towns, utilities, schools, counties, license branches, state agencies, hospitals, libraries, townships, and state colleges and universities. In the audit, the SBOA gave an example of a particular high school roofing project that used the cooperative services of the Wilson Education Center.<sup>6</sup>

The high school purchased roofing materials from a specific manufacturer designated by the cooperative's contract. The SBOA conducted a price survey and found comparable roofing products from another manufacturer at a lower cost. The comparable products, which were less expensive, were not available through the cooperative's contract.<sup>7</sup>

In a separate roofing project completed by a different high school, the SBOA noted that the cooperative roofing contract by the Wilson Education Center combined the cost of materials and installation. The combined pricing caused the high school to pay an artificially higher cost for installation because the high school preferred a local roofing contractor for executing the installation.<sup>8</sup>

In contrast, Texas State University in San Marcos in 1995 asked vendors to submit multiple bids using comparable materials from different manufacturers for a roofing project. Using the bidding paradigm, the university saved approximately \$180,648 by awarding the contract to a vendor whose bid included materials that

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4 H.B. 800, 82<sup>nd</sup> Reg. Sess. (Tex. 2011).

5 State of Indiana, State Board of Accounts, *Examination Report of Wilson Education Center* at 31 (Feb. 5, 2010).

6 The Wilson Education Center serves Region Two, one of nine educational regions of Indiana, and provides services that include professional development, technology support, supplemental educational service, and cooperative purchasing to member school districts.

7 Id. at 32

8 Id. at 34

were available industry-wide and were not exclusive to a single company.<sup>9</sup>

The Committee heard testimony alleging anti-competitive practices of cooperative roofing contracts. In response, the Committee requested and received over 900 roofing contracts upon the Committee's request from one cooperative that willingly participated in the Committee's investigation. An informal audit showed that 60 percent of the roofing contracts used only three manufacturers, whose products were sold exclusively by two companies.<sup>10</sup> Similarly, some cooperatives may have only one manufacturer or one contractor to service a specific geographical region.<sup>11</sup>

When cooperatives seek information for putting together a request for proposal (RFP), they often seek information and input from industry experts. Some of these industry experts are associated with vendors who later bid and seek to be awarded the same contracts for which their employees offered technical advice.<sup>12</sup> This practice without any proper checks or balances could allow roofing material companies and roofing contractors to have improper influence over the contracting procedure of a cooperative.

The Committee does not believe any cooperative committed any wrongdoing. The cooperatives that were involved with the Committee's interim charge were accommodating whenever the Committee requested information. However, the Committee is concerned with ensuring proper competition, appropriate market choices, and believes cooperative roofing contracts can achieve greater transparency.

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9 State of Texas, Comptroller of Public Accounts, *Improve Specification Writing for Major Repair and Maintenance Contracts* (Dec., 2000); available at <http://www.window.state.tx.us/etexas2001/recommend/ch02/cg12.html>

10 Letter from Steve Fisher, Program Director, Buyboard to Rep. William Callegari, Chairman, Tex. H. Cmte. on Government Efficiency & Reform (Apr. 06, 2011) (on file with enclosed contact information with the Tex. H. Cmte. on Government Efficiency & Reform)

11 *Examine Purchasing Cooperative: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Robert Pechacek, President & CEO, R4 Enterprises, LLC).

12 H.B. 800, 82<sup>nd</sup> Reg. Sess. (Tex. 2011): *Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2011) (Steve Fisher, Marketing Director, BuyBoard Texas Association of School Boards).

## Recommendation

- **A qualified independent third-party architectural or engineering firm, with no contractual agreement or financial obligation with any bidders, should help develop and review cooperative roofing contracts to ensure any specifications are open, non-exclusionary, and clearly stated to give as many vendors the opportunity to bid as possible.**
- **All cooperative roofing contracts should utilize at least more than one contractor and manufacturer, using specific performance criteria or standards that are not proprietary.**

**Finding:** *The design phase and the construction phase of a roofing project should be a separate process.*

There are two distinct phases to a roofing project: the design phase and the construction phase. Ideally, an owner would separate the two so the designer of the project is not also the one allowed to build or provide materials to the project. It is harder for an independent school district (ISD) to determine their proper roofing needs when only the manufacturer and the contractor are there to decide what price value is best for them. Keeping the design phases and construction phase separate can help ensure a system of checks and balances for the protection of the owner.<sup>13</sup>

Purchasing cooperatives are required to competitively bid and award contracts to prospective vendors, in accordance with purchasing procedures mandated by statutory requirements. These contracts are then available for use by public and private schools, colleges and universities, cities, counties, non-profits, and all governmental entities.<sup>14</sup> Many cooperatives use a plethora of criteria in their methodology for awarding a contract, including price competitiveness, vendor reputation in past performance, product quality, packaging, warranties, and return policies. A cooperative may award a single vendor a contract due to certain quality-based metrics such as reputation. A cooperative also may execute multiple catalog awards.<sup>15</sup>

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13 *Examine Purchasing Cooperative: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Edis Oliver, Principal, Wiss, Janey, Elstner Associates; Rodney Ruebsahm, President & CEO, ARMKO Industries, Inc. and Bill Johnson, CEO, Johnson Roofing, Inc.).

14 Tex. Govt. Code § 791

15 *Examine Purchasing Cooperative: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Steve Fisher, Marketing Director, BuyBoard Texas Association of School Boards; Robert Pechacek, President & CEO, R4 Enterprises, LLC and Ron Pigott, Director, TPASS Division Texas Comptroller of Public Accounts).

Because of the well-known and perceived best practices of cooperatives operating in Texas, certain ISDs are apt simply to purchase roofing goods or services without thought to a review by an independent design professional. The smaller, mid-size, rural ISDs are the most vulnerable. Due to their size and funding, these members may not have the in-house expertise that larger ISDs may have.<sup>16</sup> After all, their primary objective and expertise is to educate the kids – not put construction projects together and oversee them. Therefore these ISDs often rely on "the good housekeeping seal of approval" of a cooperative to meet their roofing needs. This leaves them vulnerable to potential abuse if there are no checks and balances in place.<sup>17</sup>

There is already a natural check and balance accounted for in current law. A public entity is required to hire a design professional separate from the cooperative purchasing umbrella.<sup>18</sup> Additionally, the Engineering Practice Act requires a design professional on any roofing project over \$20,000 for a publicly owned building that involves one or more of the following:

- evaluation of structural framing members prior to the addition of roof mounted equipment or heavier roof covering;
- the change of roof pitch by the addition of structural framing members;
- evaluation and repair of roof structural framing found to be damaged during a roof repair project; or
- modification of an internal roof drainage system.<sup>19</sup>

Certain entities claim current law leaves a gray area and fails to delineate definitively the design phase and the construction phase, allowing for the potential violation of provisions in the building codes and energy codes that an independent design professional would prevent.<sup>20</sup> A blanket requirement for a design professional on any roofing project over \$20,000 would provide for natural oversight because, under current law, any design professional hired by an ISD would have to be outside the cooperative or any interlocal contract. Alternatively, the state could prohibit common ownership from any design professional providing design services and that of the contractor or manufacturer on roofing contracts.

However, such solutions could possibly interfere with a current legal “hybrid”

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16 Id. at Pete Pape, Chief Financial Officer, Goose Creek CISD and Rodney Ruebsahm, President & CEO, ARMKO Industries, Inc.

17 Id.

18 Tex. Govt. Code § 791.011

19 Tex. Govt. Code § 1001.054 and § 1001.0031

20 *Examine Purchasing Cooperative: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Pete Pape, Chief Financial Officer, Goose Creek CISD and Rodney Ruebsahm, President & CEO, ARMKO Industries, Inc.).

method of delivery for roofing goods and services that has emerged. Some manufacturers and contractors are offering free professional design services when an ISD purchases their roofing goods. For example, if a company can distribute their materials in a project, the company might offer professional design services free of charge to the ISD. The ISD can save money potentially by not having to pay for design fees. If for some reason the company is unable to distribute their materials for the project, the company might still perform the professional design work, but would charge for their design services.<sup>21</sup>

Another reason for this "hybrid" method of morphing design professionals with the manufacturer of the materials is that design professionals may not always be aware of all the material options available for roofing applications. The manufacturer of the materials can help provide the design professional with both the material recommendations (i.e. building occupancy, weather conditions, disruption to operations, interior sensitivity, et cetera) and the application procedures (i.e. building height, site/building access, staging, number of penetrations, slope, et cetera) for each unique building condition. Therefore, representatives of the manufacturer often serve as the bridge between the design professional and the roofing contractor.

The Committee is conscious of the fact that restriction of choices through legislation to remove certain aspects of cooperative procurement, not only hinders a public agency in acting in the best interest of the taxpayers they serve, but also may swing the competitive balance in favor of low quality products and less overall service, as bidders emphasize lower price over better quality in traditional design-bid-build methods.

Furthermore, the Committee is mindful of the fact that ISDs are independent political bodies overseen by locally elected officials. Cooperative procurement and interlocal contracts are purchasing options available to public agencies, in addition to the traditional public bid or competitive proposals. There are a variety of reasons and situations where public agencies may choose one option over another. The Committee does not want to limit the roofing options of ISDs. Notwithstanding, the Committee believes in separating the design phase and the construction phase and strongly encourages ISDs to seek the services of an independent design professional whenever attempting a roofing project.

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21 Id. at Rodney Ruebsahm, President & CEO, ARMKO Industries, Inc. and Michael Huber, Director of Engineering, The Garland Company, Inc.

## Recommendation

- **The state should not change current law in any way that would hinder the contracting options of local independent school districts by requiring an independent design professional on all roofing projects**

**Finding:** *Public entities could benefit from further knowledge of the market and business practices of the roofing industry.*

Throughout the Committee's deliberations on the interim charge, there was agreement from all stakeholders that the state would benefit from an audit on roofing contracts.<sup>22</sup> Cooperative procurement and interlocal contracts, like public bids and competitive proposals, can be structured in many different formats. An audit of roofing contracts could provide guidance to public entities and help them perform their due diligence on future roofing contracts. Public entities, design professionals, manufacturers, and contractors all agreed that the industry would benefit from a state audit.

The audit should include a wide variety of roofing contracts and should not be limited to just cooperative roofing contracts. While the report focuses on interlocal roofing contracts, the Committee heard testimony that the issues discussed in this report are not limited to cooperative roofing contracts.<sup>23</sup> An audit with a broad sampling of roofing contracts from a broad assortment of public entities would ensure the taxpayer that public entities are awarding roofing contracts fairly and efficiently, or identify measurable problems, using statistical data for correction.

## Recommendation

- **The Texas State Auditor's Office should perform a financial and performance audit on a sample of interlocal, as well as traditional design-bid-build, roofing contracts of Independent School Districts.**

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<sup>22</sup> See generally *Examine Purchasing Cooperative: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012)

<sup>23</sup> Id. at Bill Johnson, CEO, Johnson Roofing, Inc.

## **ALTERNATIVE DELIVERY**

*Examine the utilization of alternative project delivery methods, such as design-build and construction-manager-at-risk, by municipalities, water districts, and authorities, and other local governmental entities since the passage of HB 1886, 80th Legislature.*

### **Testimony**

The House Government Efficiency and Reform Committee, in a joint hearing with House State Affairs Committee, heard testimony regarding this charge on April 16, 2012. The hearing included invited testimony from the following persons:

- John A. Barton, Assistant Executive Director for Engineering Operations, Texas Department of Transportation
- Gordon Bowman, Attorney, City of Austin
- Melanie Callahan, Executive Administrator, Texas Water Development Board
- C. Brian Cassidy, Attorney & Partner, Locke Lord
- Perry Fowler, Director Heavy, Municipal & Utilities Divisions, The Associated General Contractors of Texas
- Mari Garza-Bird, Vice President, CDM Smith
- Douglas Herbst, Chair, DBIA Southwest Region
- David Lancaster, Executive Vice President, Texas Society of Architects
- Kyle Masters, Business Development Director, McCarthy Building Companies
- Timothy McKay, Senior Vice President, Rail Program Development at Dallas Area Rapid Transit
- Steven J. Raabe, Director of Technical Services, San Antonio River Authority
- William P. Stauber, Senior Project Engineer, Austin Water Utility
- Coy Veach, Vice President and Engineer VIII, Freese and Nichols

### **Background**

Public works projects have traditionally been procured using the design-bid-build delivery process. The governmental entity contracts with a design professional (architect or engineer) to draft the designs for a facility. Once complete, the governmental entity uses those designs to solicit bids from general contractors for the construction of the facility. After the governmental entity receives the bid, the



entity selects the contractor based on price. The contractor with the lowest bid wins the contract.

Alternative delivery methods are procedures that a governmental entity may use as an alternative to the traditional design-bid-build process. Governmental entities use alternative project delivery methods for a variety of reasons. Depending on the specific project, alternative delivery methods may offer cost savings, an expedited project completion date, best value, or a combination of these to the governmental entity.

Because of the change in traditional contractual relationship between the owner, designer, and contractor, alternative delivery methods may offer benefits over the traditional process in some instances. Entities typically go through an analysis prior to each project to determine the method (traditional or alternative) that offers the best value, with regard to cost, schedule or other factors for the entity.

State law prescribes six alternative project delivery methods available to state and local governmental entities. These methods are described below.

- **Design-Build:** A governmental entity contracts with a single entity or a joint venture between an architect/engineer and a contractor to provide both design and construction services for a project. The entity selected as the design-builder agrees to both design and construct the project under one contract, which sets this delivery method apart from most others. There are separate and different design-build procedures outlined in statute; one for buildings and one for civil works.<sup>1</sup>
- **Construction Manager-At-Risk (CMAR):** A governmental entity contracts with an architect or engineer for design services, and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction of a facility. The construction manager-at-risk assumes the risk for the construction of a civil works project at the contracted price, which may be a guaranteed maximum price (also known as the "GMP" or "GMax"). Under this arrangement, the construction manager-at-risk would pay for a project's costs that exceed the contracted price. State law prohibits the governmental entity's architect or engineer from serving as the construction manager-at-risk unless the design

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<sup>1</sup> Tex. Govt. Code §2267.301 & 2267.351

professional is hired to serve as the construction manager-at-risk under a separate or concurrent selection process.<sup>2</sup>

- **Construction Manager-Agent:** Although not, in the strictest sense, a construction project delivery method, construction manager-agent gives governmental entities the ability to contract with a construction manager-agent to provide consultation or administrative services during the design and construction phase of a project. The construction manager-agent also manages contracts with construction prime contractors and represents the governmental entity in a fiduciary capacity. The construction manager-agent cannot self-perform any aspect of the project or be a party to a construction subcontract. This method is limited to buildings.<sup>3</sup>
- **Competitive Bidding (Best Value):** Competitive Bidding deals strictly with the process of selecting the contractor once the design has been finished. A governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.<sup>4</sup>
- **Competitive Sealed Proposals:** This method, also dealing solely with the selection of the contractor once the design has been finished, allows a governmental entity to select the contractor based on considerations other than strict “low-bid.” An entity can consider a contractor’s reputation, quality of the services, past performance, long-term cost, schedule, or other factors spelled out in the request for proposals. A governmental entity request proposals, ranks the offers, negotiates a contract and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.<sup>5</sup>
- **Job Order Contracting:** Another way for a governmental entity to select a contract for the maintenance, repair, alternation, renovation, remediation, or minor construction of a facility, if the work is recurring in nature, but the delivery times, type, and quantity of work required are indefinite, and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks. As an example, a school district may contract with a job order company to repair windows and doors in all of its buildings.

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<sup>2</sup> Tex. Govt. Code §2267.301 & 2267.251

<sup>3</sup> Tex. Govt. Code §2267.301 & 2267.201

<sup>4</sup> Tex. Govt. Code §2267.301 & 2267.101

<sup>5</sup> Tex. Govt. Code §2267.301 & 2267.151

Governmental entities may only use job order contracts for work relating to buildings. Governmental entities cannot use this method for other civil works projects, such as roads, water plants, or drainage projects. The governing body of a governmental entity must approve each job, task, or purchase order that exceeds \$500,000.<sup>6</sup>

### **Legislative History**

The Texas Legislature first authorized school districts to use alternative project delivery methods with the passage of Senate Bill 1 in 1995. Six years later, in 2001, the Legislature passed Senate Bill 510 to allow cities, counties, and river authorities to use alternative project delivery methods.

In 2007, the Legislature approved House Bill 1886 expanding the design-build, construction manager-at-risk, and competitive sealed proposal methods to civil works projects. The bill allowed larger political subdivisions to use design-build procedures for civil works projects, including roads, bridges, utilities, water projects, wastewater plants, transit projects, storm drainage, and flood control projects. HB 1886 limited the number of projects that a governmental entity could procure using the design-build method in a given year. A governmental entity with a population of 500,000 or more may enter into three design-build contracts per fiscal year before September 1, 2013. After that date, those entities may enter into six design-build contracts per year. Political subdivisions with a population of 100,000 or more, but less than 500,000 may enter into two design-build contracts per fiscal year before September 1, 2015. These same subdivisions may enter into four design-build contracts per year after that time. Governmental entities with a population less than 100,000 are prohibited from entering into design-build contracts for civil works projects. All governmental entities, however, are permitted to use the design-build method for constructing buildings.

During the 82<sup>nd</sup> Session, the Legislature approved House Bill 628, the omnibus alternative project delivery bill. The bill accomplished several key objectives with regard to alternative project delivery. First, HB 628 consolidated the alternative project delivery processes defined within separate chapters of state law into one, comprehensive chapter of the Texas Government Code.<sup>7</sup> Second, the bill expanded the types of entities eligible to use alternative project delivery methods to include hospital districts, public junior colleges, and certain port authorities. The bill also allowed governmental entities to use construction manager-at-risk and competitive

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<sup>6</sup> Tex. Govt. Code §2267.301 & 2267.401

<sup>7</sup> Tex. Govt. Code §2267

sealed proposal methods for all types of public works projects, including water, wastewater, transportation, utilities, and other improvements to real property (originally done in HB 1886). House Bill 628 did not apply to port authorities, university systems and institutions of higher education, regional mobility authorities, county toll authorities, Texas Department of Transportation, and a few other entities.

**Finding:** *Utilization of alternative delivery methods under HB 1886 (80R) and HB 628 (82R) has allowed governmental entities the ability to tailor procurement methods to particular projects based on the entities' needs, which has resulted in the expedited delivery or the lowering of costs for various projects.*

The Committee asked the research staff of Legislative Council, in collaboration with Committee staff, to survey local governmental entities about their use of the competitive sealed proposal (CSP), construction manager-at-risk (CMAR), and design-build (DB) methods for civil works projects in the period between September 1, 2007, and the present.

### **Competitive Sealed Proposal (CSP)**

Governmental entities used the CSP method in approximately 31 projects since 2007, saving approximately \$5.3 million when compared to traditional methods (according to the survey). Approximately two-thirds of CSP projects (21 out of 31 projects) cost less than \$1 million. Only three of the projects cost more than \$10 million. The majority of CSP projects (18 out of 31 projects) were for improvement or expansion of infrastructure for electric or water services.<sup>8</sup>

One advantage of the CSP method is that it allows governmental entities to consider factors other than price.<sup>9</sup> Sometimes government entities do not consider the low bidder to be the ideal company for the project. For nearly one-third of CSP projects (10 out of 31 projects), respondents to the survey indicated that ensuring that the selected contractor was qualified was part of their rationale for choosing the CSP method. No government entity, contractor, or design firm expressed concerns with current law for CSP.<sup>10</sup>

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<sup>8</sup> Data compiled from Texas Legislative Council's report, *Utilization of Alternative Project Delivery Methods*, prepared for Representative Callegari's Office, 2012.

<sup>9</sup> Id.; see also, *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Coy Veach, Vice President and Engineer VIII, Freese and Nichols).

<sup>10</sup> Id.

## Design-Build (DB)

Governmental entities have used the DB method in approximately 17 projects since 2007. Governmental entities seem to prefer the DB method for large and complex projects requiring construction flexibility, as designers and contractors work together to identify solutions in the field without the need for change orders. As a result, DB projects tend to be large in scope; with more than two-thirds of DB projects (12 out of 17 projects) costing at least \$50 million. Nine of the 10 most expensive DB projects (ranging from \$89 million to \$1.5 billion) were for construction of roadways or light rail systems.<sup>11</sup>

While the DB method resulted in approximately \$267.9 million in cost savings when compared to traditional methods (according to the entities), almost all the governmental entities surveyed indicated that decreasing time to completion was a major part of their rationale for choosing the DB method.<sup>12</sup> Governmental entities stated that under traditional design-bid-build delivery, previously unknown site conditions would require delays to address change orders and project redesign.<sup>13</sup>

The individuals that testified did not express concern regarding the limitations on the number of projects for DB.<sup>14</sup> However, some testimony did express concern regarding the population limits.<sup>15</sup> More than 95% of cities in Texas have a population less than 100,000 and, thus, are not eligible to utilize DB as a project delivery option for civil works. Additionally, some governmental entities stated that although governmental entities must follow stringent confidentiality during the bidding of a DB project, current law might expose government entities to consequences for what could be an unintentional release, or perceived release, of a work product from an unsuccessful offer.<sup>16</sup>

Under current law, a governmental entity may offer a stipend to companies proposing on DB projects. The governmental entity however, must pay a stipend to

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11 Id; see also, *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Timothy McKay, Senior Vice President, Rail Program Development at Dallas Area Rapid Transit).

12 *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Timothy McKay, Senior Vice President, Rail Program Development at Dallas Area Rapid Transit and Steven J. Raabe, Director of Technical Services, San Antonio River Authority).

13 Id.

14 At the date of publication of this report, no governmental entity had hit the maximum project limit for design-build.

15 *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Douglas Herbst, Chair, DBIA Southwest Region; Mari Garza-Bird, Vice President, CDM Smith).

16 Tex. Govt. Code §2267.364

unsuccessful DB proposers for access to intellectual property contained in the unsuccessful proposals. The unsuccessful proposer may decline the stipend. If a stipend is not paid or rejected, the proposer retains access to the intellectual property, and the governmental entity is at risk for inappropriate use of the intellectual property. Some governmental entities believe that the contingent liability created by current law is a disincentive and not workable, and would like to see the stipend language modified to remove the potential liability. Others would like to see the move to a mandated stipend.

Supporters of stipends often surmise that payment of a stipend helps increase competition (especially in an economic environment called a contractor market place), enhances the quality of proposals received, helps lower cost by reducing risks due to prosecution of more advanced design work, assists the financial strain faced by small and emerging businesses that want to play the role of a significant subcontractor or joint venture partner, and shows an owner's true commitment to the proposing community as a partner. Stipend payments often challenge governmental entities because the tangible benefits of intellectual property and litigation avoidance for a single project seemingly do not outweigh tough budget decisions made on a daily basis due to shrinking funding sources.<sup>17</sup>

### ***Construction Manager-at-Risk (CMAR)***

Governmental entities used the CMAR method in approximately 11 projects since 2007, saving approximately \$10.6 million when compared to traditional methods (according to the entities). Six of the CMAR projects found through the survey, cost less than \$7 million, three projects cost between \$25 million and \$50 million, and two projects cost more than \$250 million.<sup>18</sup> For more than two-thirds of CMAR projects (8 out of 11 projects), respondents indicated that lowering costs or decreasing time to completion was part of their rationale for choosing the CMAR procurement method. The main advantage being the response time and the willingness of the CMAR to work with the governmental entity to provide the best value for each dollar spent.<sup>19</sup>

Some of the individuals that testified stated that CMAR has been used more frequently than DB due to the ability for governmental entities to tailor the

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17 *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Timothy McKay, Senior Vice President, Rail Program Development at Dallas Area Rapid Transit).

18 Data compiled from Texas Legislative Council's report, *Utilization of Alternative Project Delivery Methods*, prepared for Representative Callegari's Office, 2012.

19 *Id.*, see also, *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (William P. Stauber, Senior Project Engineer, Austin Water Utility).

procurement to meet their specific needs.<sup>20</sup> Specifically, CMAR does not have any population limits, stipend language, or other criteria that specifies every step of the procurement process. However, certain contractors expressed concern over instances where a consultant served as both the design engineer and CMAR for the same CMAR project.<sup>21</sup>

These contractors alleged that in this instance the consultant was assisting the owner in both the design procurement and the CMAR procurement. This means the consultant is helping the owner to prescribe the very prequalification criteria and technical specifications upon which the government entity will base the selection of the CMAR (or general contractor). In the event that design or engineering firm also has construction capabilities itself, or through a related entity, this has the potential of stifling competition by providing a significant competitive advantage to that company when the government entity solicits the separate CMAR contract because the company is able to compete with others for the CMAR contract. No governmental entity testified to this fact and the contractors did not provide any evidence to the Committee to support their allegations.

The scenario described essentially creates a de-facto design-build where one entity is acting as a design-build contractor without having necessarily to compete with other design-build teams for the project. Nevertheless, most governmental entities in metropolitan areas have the ability currently to do a straight DB project if they are so inclined.

Certain design firms and governmental entities raised concerns that CMAR as a specifically “open book” process was dropped from the statute last session; and the opportunity to participate with CMAR when bids are opened and reviewed for the first time is a key advantage to this contracting method. Likewise, without proper accounting processes in place by contract; the only view into the cost management of a CMAR contract may be when the CMAR opens sub-contractor bids for the first time.

Current law does not require bids from trade contractors to be opened in the presence of the governmental entity, even when the CMAR may be submitting a bid to self-perform work packages. Some design firms and governmental entities have requested clarification in the current law to make clear the ability of the

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20 *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Mari Garza-Bird, Vice President, CDM Smith).

21 Pursuant to Tex. Govt. Code §2267.364; *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Perry Fowler, Director Heavy, The Associated General Contractors and Coy Veach, Vice President and Engineer VIII, Freese and Nichols).

governmental entity to see and review bids from sub-contractors serving under the CMAR in a re-established CMAR open book process.<sup>22</sup> However, nothing in current law prohibits governmental entities from making such a requirement in their initial CMAR contract.

In summary, the state has given governmental entities the leeway to determine what practices are in their own best interest. Of the 104 entities to which legislative council staff sent the survey, 27 entities provided substantive information on a total of 59 projects.<sup>23</sup> The survey would seem to indicate that alternative delivery methods are still less familiar to governmental entities and the contracting community of Texas. Problems arise when governmental entities do not have adequate experience to understand best practices, or worse, receive advice from companies that benefit from the practices they recommend.

The survey and testimony before the Committee indicates that current law for alternative delivery methods is being utilized and being learned from. In many instances, it keeps project costs down, while completing them in a more efficient manner. As with any major change in law, minor adjustments may be required to correct inconsistencies or to apply "lessons learned," as local governmental entities and the contracting community, become more familiar with alternative delivery methods overtime.

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<sup>22</sup> *Examine Utilization of Alternative Delivery: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Gordon Bowman, Attorney, City of Austin).

<sup>23</sup> Data compiled from Texas Legislative Council's report, *Utilization of Alternative Project Delivery Methods*, prepared for Representative Callegari's Office, 2012.



<b>Alternative Project Delivery Method at a Glance</b>				
	<b>Competitive Bidding</b>	<b>Competitive Sealed Proposals</b>	<b>Construction Manager-at-Risk</b>	<b>Design/Build</b>
<b>Definition</b>	A delivery method wherein the Governmental Entity selects an architect/engineer to design and develop construction documents from which the Governmental Entity solicits lump sum bids. Selection is based on the lowest responsible bid and the contractor serves as a single point of responsibility for construction.	A delivery method similar to competitive bidding. The Governmental Entity selects an architect/engineer to design and develop construction documents. Once documents are fully complete the Governmental Entity solicits sealed proposals. Selection is based on a combination of price and other factors that the Governmental Entity deems provide best value.	A method where the construction manager serves as the general contractor providing pre-construction and construction services. The Construction Manager-at Risk provides design phase consultation in evaluating costs, schedule, implications of alternative designs, systems and materials during design and serves as a single point of responsibility contracting directly with the subcontractors during construction.	A method where a single entity is contracted to provide both design and construction. The Design/Build team consists of contractor, architect and engineer. The Design/Builder contracts directly with the subcontractors and is responsible for delivery of the project. Selection is based on the proposal offering the best value to the Governmental Entity.
<b>Pros</b>	<ul style="list-style-type: none"> <li>Familiar delivery method defined project scope</li> <li>Single point of responsibility for construction</li> <li>Open, aggressive bidding</li> </ul>	<ul style="list-style-type: none"> <li>Selection flexibility</li> <li>Defined project scope single point of responsibility for Construction</li> <li>No design phase assistance</li> </ul>	<ul style="list-style-type: none"> <li>Selection flexibility</li> <li>Design phase assistance</li> <li>Single point of responsibility for Construction</li> <li>Team concept</li> <li>Change flexibility</li> </ul>	<ul style="list-style-type: none"> <li>Selection flexibility</li> <li>Single point of responsibility for Design and construction</li> <li>Team concept</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>No design phase assistance</li> <li>Longer schedule duration</li> <li>Price not established until bidding is complete</li> <li>Potentially adversarial relationship</li> <li>Lack of flexibility for change</li> </ul>	<ul style="list-style-type: none"> <li>Price not established until design complete</li> <li>Adversarial relationship</li> </ul>	<ul style="list-style-type: none"> <li>Adversarial relationship reduced</li> <li>Difficult for Governmental Entity to evaluate GMP</li> </ul>	<ul style="list-style-type: none"> <li>Loss of check and balance</li> <li>More difficult for Governmental Entity to manage</li> <li>Potential adversarial relationship between Governmental Entity and Design/Builder</li> </ul>
<b>Best Suited</b>	New projects that are not schedule sensitive nor subject to potential change.	New projects that are not schedule sensitive nor subject to potential change.	Projects that are either larger or less defined with higher risk. For example, new or renovation projects that are schedule sensitive, difficult to define, or subject to change.	New or renovation projects that are schedule sensitive.
<b>Least Suited</b>	Complex projects that are sequence or schedule sensitive. Projects subject to potential change.	Complex projects that are sequence or schedule sensitive. Projects subject to potential change.	Projects that are clearly defined with very little risk, usually smaller projects.	Projects that are difficult to define, and are less schedule sensitive.

**Recommendation**

- The state should continue with the current practices of alternative delivery with minor changes as needed.**

## INTERAGENCY BILLING

*Examine interagency agreements and charges for providing information or personal identification documents at the request of a state agency to fulfill day-to-day operations at the expense of the requesting state agency.*

### Testimony

The House Government Efficiency and Reform Committee heard testimony regarding this charge on April 16, 2012. The hearing included invited testimony from the following persons:

- Michael Apperley, Assistant State Auditor, Texas State Auditor's Office
- Phillip Ashley, Director of Fiscal Management, Texas Comptroller of Public Accounts
- Rebecca Davio, Assistant Director of Driver License Division, Texas Department of Public Safety
- Skylor Hearn, Assistant Director of Law Enforcement Support, Texas Department of Public Safety
- Tracy Henderson, Chief Financial Officer, Health & Human Services Commission
- Cathleen Parsley, Chief Administrative Law Judge, State Office of Administrative Hearings
- Dee Wilson, Director of Reentry and Integration Division, Texas Department of Criminal Justice

### Background

Texas agencies use interagency contracts to pay for goods and services purchased from other state agencies. The purpose of interagency contracts can vary. Examples include the purchase of office furniture from the Texas Correctional Industries, to background checks performed by the Department of Public Safety (DPS) for the Department of Family and Protective Services. State agencies structure the financial transfer commonly as a lump sum paid yearly, or payment on a per-unit basis.

Chapter 771 of the Government Code, known as the *Interagency Cooperation Act*, governs interagency contracts for all state agencies, including public institutions of higher education.

The specifics of an interagency contract are up to the participating agencies to decide, including the amount and frequency of payment. Contracts must specify the services provided, the duration of the contract, and the basis for pricing goods received. Current law requires state agencies to bill at cost, or the nearest practical estimate of that cost, though other state or federal cost drivers can affect that amount. As an example, fees collected for the issuance of driver licenses by DPS do not cover the cost of DPS to issue driver licenses because current law dedicates the fees to the Texas Mobility Fund.<sup>1</sup>

Before an agency may provide or receive a service under an interagency contract, the agencies must enter into a written agreement or contract. The administrator of each agency must approve the agreement or contract.<sup>2</sup> A written agreement or contract is not required:

- in an emergency for the defense or safety of the civil population or in the planning and preparation for those emergencies;
- in cooperative efforts, proposed by the governor, for the economic development of the state; or
- a situation in which the amount involved is less than \$50,000.

The Office of the Comptroller has jurisdiction over payment disputes in existing contracts, and has successfully mediated such disputes in the past. However, it is rare that The Office of the Comptroller has had to exercise that authority.<sup>3</sup>

Statutes governing interagency contracts have been in place for over forty years. Under accepted practices, state agencies act similar to private companies, with separate and distinct budgets. Under most interagency contracts, the agency requesting services pays for services rendered from their appropriated budget to the agency performing the services. In most cases, the Office of the Comptroller transfers the funds between state agencies electronically under the rules of the uniform statewide accounting system.<sup>4</sup> The agency performing the services takes responsibility for both the billing and the invoice.

**Finding:** *The current practice of state agencies billing one another for goods and services has benefits from the prospective of efficiency and accountability.*

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1 Tex. Transportation §521.058 (2009).

2 Tex. Govt. §771.004 (2009).

3 *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Phillip Ashley, CPA, Director of Fiscal Management, Texas Comptroller of Public Accounts).

4 Id.

The ability to purchase and utilize the services and expertise of sister agencies saves taxpayer money by preventing duplication of services. For example, the Texas Department of Criminal Justice (TDCJ), Bureau of Vital Statistics of the Department of State Health Services (DSHS), and the Department of Public Safety (DPS) use interagency contracts to establish a process for the verification and issuance of a state identification card to released inmates.<sup>5</sup>

Likewise, the Texas Health and Human Services System (HHS) uses interagency contracts to pay for and/or receive payment for the provision of services within and external to the HHS system. HHS includes five agencies: Health and Human Services Commission (HHSC); Department of Aging and Disability Services (DADS); Department of Assistive and Rehabilitative Services (DARS); Department of Family and Protective Services (DFPS); and Department of State Health Services (DSHS). Together, these five agencies comprise about 25 percent of the total state budget and administer more than 200 programs, such as Medicaid, Child Protective Services, State Hospitals, State Supported Living Centers, Early Childhood Intervention, and regulatory and licensing functions – all using interagency contracts on a daily basis to complete state business.<sup>6</sup>

Interagency services require an agreed upon Interagency Contract (IAC) or a Memorandum of Understanding (MOU) between the agencies. Interagency payments made and received are processed in accordance with the Comptroller's Accounting Policy Statement 014 - Interagency Payments and Receipts for Goods and Services.

By having multiple agencies involved, the level of monitoring is increased, as one agency becomes a natural check on the other. Agencies that are appropriated funds for program activities, which contract with another agency, would be more likely to verify the expenditures related to those contracts were for appropriate expenditures.<sup>7</sup> In addition, the agency receiving the service can allocate their cost across appropriate funding sources, such as federal, state, and dedicated funding streams.

By posting the expenditure in the paying agency's accounting records, the state captures a more accurate representation of the true cost of administering a

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<sup>5</sup> *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Tracy Henderson, Chief Financial Officer Tracy, Health & Human Services Commission).

<sup>6</sup> *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Dee Wilson, Director of Reentry and Integration Division, Texas Department of Criminal Justice).

<sup>7</sup> *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Michael Apperley, Assistant State Auditor, Texas State Auditor's Office).

program. Direct appropriation of funds could create the necessity to adjust financial records to reflect accurately expenditure information by functional areas, and could result in the under use of appropriate funding sources, such as federal funds.<sup>8</sup>

Both the Office of the Comptroller and the State Auditor's Office noted that the current rules follow general accounting principles, and allow for a 3-way check of taxpayer money spent via an interagency contract.<sup>9</sup> Furthermore, representatives from both agencies believe the current system allows for legislative oversight and accountability within agency budgets.

### **The State Office of Administrative Hearings (SOAH)**

The State Office of Administrative Hearings (SOAH) is an independent agency within the executive branch of the State of Texas. SOAH conducts hearings and mediations in response to referrals from more than 50 state agencies and governmental entities. The agency's mission is to conduct fair, prompt, and efficient hearings and mediations, and to provide fair, reasoned, and timely decisions.<sup>10</sup>

SOAH has been a notable exception to the standard interagency contracting process by receiving funds through three methods of finance. SOAH receives a general revenue appropriation of approximately \$3.3 million, which funds cases referred from 33 agencies.<sup>11</sup> SOAH also receives appropriated funds of approximately \$3.2 million, under Fund 006, which funds the administrative license suspension cases referred from Department of Public Safety under the Texas Transportation Code.<sup>12</sup>

The remaining money SOAH receives is from interagency contracts that fall into two categories: lump sum and hourly. SOAH has lump sum contracts with the Texas Commission on Environmental Quality (TCEQ), the Comptroller of Public Accounts (CPA), and Texas Real Estate Commission (TREC). Hourly contracts are pursuant to an interagency contract with a referring agency. SOAH sends a monthly bill to the agency for time spent by SOAH's Administrative Law Judges

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8 Id.

9 *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Phillip Ashley, Director of Fiscal Management, Texas Comptroller of Public Accounts).

10 *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Statement of Cathleen Parsley, Chief Administrative Law Judge, State Office of Administrative Hearings).

11 General Appropriations Act of 2011, H.B. 1, 82<sup>nd</sup> Leg, Reg. Sess. (2011) at Article VIII-1.

12 Id. and Tex. Transp. § 522, 524, and 724.

(ALJ) on the agency's cases at the approved hourly rate of \$100.<sup>13</sup>

In 2002, the Sunset Commission made note of SOAH's unorthodox funding methodology, particularly in regards to receiving a large portion of their operational budget from interagency contracts.<sup>14</sup> While the Commission noted that caseload variations resulted in substantial budgetary uncertainties for SOHA, this is a small inconvenience to prevent SOAH from receiving a single lump sum from appropriations that risks overfunding SOAH for casework not needed or underfunding SOAH for an unexpected spike in required casework. The current method of funding for SOAH may also prevent state agencies from referring cases to SOAH unnecessarily as the referring agency would have to weigh the need for SOAH's services against the impact to their operational budget. In addition, the general revenue and Fund 006 provides SOAH with enough funding certainty to ensure the agency's survival.<sup>15</sup>

### **Recommendation**

- **Agencies should retain the flexibility to secure the expertise and core services of one another.**
- **The current statute includes appropriate audit provisions and provides sufficient accountability for legislative oversight.**

**Finding:** *Providing information or personal identification documents between state agencies presents unique challenges when constructing an interagency contract.*

The 81<sup>st</sup> Legislature adopted HB 2161. The bill requires the Texas Department of Criminal Justice (TDCJ) to submit to the Department of Public Safety (DPS), on behalf of an offender, who is discharged or released on parole, mandatory supervision, or conditional pardon, a request for issuance of a personal identification certificate. Without a state identification card, offenders are unable to secure employment, housing, public or private support services, federal benefits

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13 Contracts between SOAH and the Office of the Attorney General (OAG) and the Texas Department of Insurance Division of Workers' Compensation allow SOAH to bill those agencies \$50 per hour for paralegal time. The contract with the OAG allows billing at \$25 per hour for administrative support time. For both these agencies, there is a high volume of routine work that can be accomplished more efficiently by a paralegal or administrative assistant, which does not require an Administrative Law Judge's time or expertise, except to give final review and approval.

14 Sunset Advisory Commission, *State Office of Administrative Hearings: Staff Report*, (August 2002) at 13.

15 *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Statement of Cathleen Parsley, Chief Administrative Law Judge, State Office of Administrative Hearings).

and other services necessary for routine daily living activities. HB 2161 was designed to provide an identification card to the over 70,000 offenders released from TDCJ correctional facilities each year to assist in their successful reentry into society.<sup>16</sup>

The bill accomplishes this task by requiring TDCJ, DPS, and the Bureau of Vital Statistics of the Department of State Health Services (DSHS) to adopt a memorandum of understanding (MOU) that establishes the responsibilities related to the verification of the offender's identity. The bill also directs TDCJ to reimburse DSHS and DPS for any actual costs that each entity incurred in the performance of their respective functions in this process.

Certain security issues, statutory and administrative practices hinder implementation of the required interagency contract of HB 2161. For example, Texas uses a central production facility to issue cards that prohibits TDCJ from actually producing the final identification card. Similarly, DPS policies and procedures require the capture of the fingerprints at the time of application, which requires TDCJ to house sensitive equipment at additional cost.<sup>17</sup>

Despite the challenges presented in implementing this policy, the agencies have established a process to provide legally approved documents needed by DPS to issue a state identification card. This process includes implementation of an electronic information sharing process among the three agencies to minimize costs associated with labor and hard copies of documents.

The Committee anticipates that during 2013, TDCJ will utilize grant funding provided by the Governor's Criminal Justice Division to complete installation of equipment and the necessary programming, and will begin issuing identification cards to offenders at the time of their release.

### **Recommendation**

- **The Texas Legislature should continue oversight to ensure the implementation of HB 2161 (81R).**

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<sup>16</sup> H.B. 2161, 81<sup>st</sup> Reg. Sess. (Tex. 2009).

<sup>17</sup> *Examine Interagency Agreements: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Dee Wilson, Director of Reentry and Integration Division, Texas Department of Criminal Justice).

## PRIVATIZE SERVICES

*Examine areas of potential privatization of state services in an effort to achieve higher level of service and greater efficiency for Texas taxpayers (Joint with the House Committee on State Affairs).*

### Testimony

The House Government Efficiency and Reform Committee, in a joint hearing with House State Affairs Committee, heard testimony regarding this charge on July 11, 2012. The hearing included invited testimony from the following persons:

- Albert Cortez, private citizen
- Leonard Gilroy, Director of Government Reform, Reason Foundation
- Shar Habibi, Resource Center Director, In The Public Interest
- Terri Hall, Founder, Texans Uniting for Reform & Freedom
- Talmadge Heflin, Director of Center for Fiscal Policy, Texas Public Policy Foundation
- Richard Jackson, President, SpeakWrite
- Todd Kimbriel, Director of eGovernment, Department of Informational Resources
- Neal Oliver, American Federation of State, County & Municipal Employees
- Brian Olson, American Federation of State, County & Municipal Employees
- Karen Robinson, Executive Director, Department of Informational Resources
- Tom “Smitty” Smith, Texas Director, Public Citizen
- Thomas Suehs, Executive Commissioner, Texas Health and Human Services
- Wayne Wilson, Executive Director of Enterprise Contract and Procurement Services, Texas Health and Human Services

### Background

*Privatization*, also known as *contracting out*, *outsourcing*, *competitive sourcing* or *public-private partnerships*, contemplates the transfer of government responsibility to the private sector.<sup>1</sup> There exists innumerable ways government may bring the private sector into the process of provisioning a government good or service. In fact, in 2005, the state had approximately 21,664 contracts for the purchase or provision of approximately \$59.8 billion worth of goods and services, each

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<sup>1</sup> Paul Starr, *The Meaning of Privatization*, Yale Law and Policy Review 6 (1988)



representing a form of privatization.<sup>2</sup> By 2012, the State of Texas had contracts or provisions worth approximately \$82.08 billion.<sup>3</sup>

The term *privatization* can be ambiguous, the meaning of which can change by degrees depending on the user and the context. For example, the Congressional Budget Office (CBO) states *true privatization involves a genuine sale of assets and termination of a federal activity*.<sup>4</sup> The CBO definition seems limiting in light of the interim charge by Speaker Joe Straus that emphasizes the need to *achieve a higher level of service and greater efficiency*, which seems to require a more elegant solution than simply selling state lands or assets. A working definition more suitable to policy makers of the legislature may be that of *the use of the private sector in the provision of a governmental good or service, the components of which include the supplying, production, delivery, and quality control*.<sup>5</sup>

The privatization of governmental goods and services in the United States dates back to the founding of the country. The first U.S. Congress approved an Act that privatized essentially the operation of the nation's lighthouses, beacons, buoys, and public piers.<sup>6</sup>

A century and a half later, the U.S. government, to provide electricity for nine million people across seven southeastern states, established The Tennessee Valley Authority (TVA). The TVA also provides flood control, navigation, and land management for the Tennessee River system and assists utilities, states, and local governments with economic development.<sup>7</sup>

Since the 1970s, the practice of privatization has grown increasingly at all levels of government.<sup>8</sup> The trend stems from the common belief that private companies can help governments save or make money by doing jobs faster and cheaper, or

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2 Legislative Budget Board, *Contracts Reported by Texas State Agencies and Institutions of Higher Education* (Feb. 2011).

3 Texas Legislative Budget Board, *Construction, Consulting, Professional Services, Major Information Systems and Other Contracts* (Fiscal Year 2012).

4 Congressional Budget Office, *Third Party Financing of Federal Projects*, Economic and Budget Issue Brief 5 (June 1, 2005).

5 Kevin R. Kosar, Congressional Research Service, *Privatization and the Federal Government: An Introduction* 3 (RL 33777, DEC 28, 2006).

6 *it shall be the duty of the Secretary of the Treasury to provide by contracts, which shall be approved by the President, for building a lighthouse near the entrance of the Chesapeake Bay, and for rebuilding when necessary, and keeping in good repair, the lighthouses, beacons, buoys, and public piers in the several states* (*An Act for the Establishment and support of Lighthouse, Beacons, Buoys, and Public Piers*, 1 Stat. 54 (US Congress 1789); found at [http://www.lighthousefoundation.org/museum/natlighthouse\\_day\\_info.htm](http://www.lighthousefoundation.org/museum/natlighthouse_day_info.htm)).

7 *About TVA*. Tennessee Valley Authority, n.d. Web (JULY 04, 2012); found at <http://www.tva.com/abouttva/index.htm>

8 Savas, E. S., *Privatization and Public-Private Partnerships* (New York: Chatham 2000).

managing a public asset more efficiently. In fact, a recent review of more than 100 privatization studies found savings ranging from 20 percent to 50 percent.<sup>9</sup>

In 1992, the book *Reinventing Government* noted this revolutionary restructuring of the public sector by documenting a comprehensive compilation of the ideas and experiences of market forces in government. The book set forth ten operating principles that distinguish a new *entrepreneurial* form of government and spurred on the privatization growth of government.<sup>10</sup>

Due to the potential for savings and increase efficiency in providing services to taxpayers, the issue of privatization is non-partisan. The *Texas Public Policy Foundation*, stated that public policy in Texas should favor private production whenever possible *because government preempts competition, stifles entrepreneurial opportunity, destroys economic growth, and raises the price of doing business.*<sup>11</sup> Likewise, the *Center for Public Policy Priorities*, noted the benefits of *Strengthening Families*, a privatization program implemented by Texas in 2008. During the first 20 months of the program, approximately 1,300 families and 4,500 children participated in the program. An evaluation of the program estimated that the program prevented 248 children from becoming wards of the state, resulting in a savings in both federal and state dollars of \$8.2 million.<sup>12</sup>

The issue of privatization is not limited to Texas. In April of 2012, the City Council of Chicago, Illinois overwhelmingly approved a public-private partnership worth over \$7 billion to build new runways at O'Hare Airport; replace 1,650 miles of water and sewer pipes; create special routes for bus transit; modernizing schools, transit stations, and city buildings; as well as building 12 new parks and 20 new playgrounds.<sup>13</sup> The City of Sandy Springs, Georgia, is a "contract city" that effectively privatized the large majority of the municipal services by entering into a public-private partnership with CH2M HILL in 2005, a full-service operations company that now controls nearly all of the once-public sector, from road maintenance to cleaning up trash in the park. The city, a suburb of Atlanta with a 2010 population of 93,853, wanted to separate from what it saw as wasteful government spending in surrounding communities. However, not all of Sandy Springs' public services were privatized. Public safety continues to be handled by government police officers and firefighters, and the Fulton County School System

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9 Leonard Gilroy & Andrew More, *Ten Principles of Privatization*, Legislative Principles Series No 7 at 2.

10 David Osborne & Ted Gaebler, *Reinventing Government* (Addison-Wesley Publ. Co., 1992).

11 Ryan Brannan, Policy Analyst, Texas Public Policy Foundation's Center for Economic Freedom, Testimony before the Tex. H. Comm. on Government Efficiency & Reform (MAR 10, 2011).

12 Jane Burstain, PhD, Senior Policy Analyst, Center for Public Policy Priorities, Testimony before the Tex. S. Comm. on Finance (MAR 10, 2011).

13 Leonard Gilroy & Harris Kenny, *Look Who's Embracing Privatization - Big City Democrats*, July 6, 2012

still operates public schools within the city.<sup>14</sup>

While Texas has largely experienced success in privatization, the state has also experienced some failure. One often cited example is the *Texas Health and Human Services Commission* (HHSC) \$898,939,876 contract with the Texas Access Alliance (TAA) led by Accenture. HHSC signed the contract on June 29, 2005 for the operation of call centers, document-imaging services, Children's Health Insurance Program (CHIP) processing and eligibility determinations, maintenance of the eligibility automation system, and managed care plan enrollment services. Several of these functions had long been performed by private sector in Texas. The Commission's analyses estimated that outsourcing these function would achieve a five-year cost savings as high as \$646 million dollars when compared to an in-house model.

HHSC initiated a pilot with the vendor in 2006 to serve a limited geographic area to test the new model before rolling it out statewide. A few months into the pilot, performance had declined and call centers were jammed, HHSC cut people wrongfully from benefits, and it took months for services to begin once Texans applied.<sup>15</sup> In response to the operational problems, HHSC suspended the planned expansions of the pilot and the vendor's services in April 2006 and worked with TAA to develop an improvement plan. In May 2006, HHSC suspended the pilot indefinitely because the vendor had not made satisfactory progress, and HHSC took back some functions from the vendor. In December 2006, HHSC announced a plan to retain additional functions that HHSC had originally envisioned the private sector performing and reduced the term of the contract. On March 13, 2007, HHSC, and TAA reached a mutual decision to unwind the contract. Other private vendors now provide the services that HHSC privatized formally under the contact with TAA.<sup>16</sup>

Another bad experience of state privatization occurred in the past year with Texas' *Department of Informational Resources* (DIR), which provides the oversight for management of government information and communications technology for the state. In November of 2007, DIR entered into an \$863 million dollar contract with IBM for statewide data center consolidation and services. In August of 2010, DIR cut short its seven-year contract with IBM citing among other issues, the failure to

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14 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Leonard Gilroy, Director of Government Reform, Reason Foundation).

15 Robert T. Garrett, *The Dallas Morning News*, *State privatization champion gets contract to help clear up welfare mess* (MAR 13, 2010).

16 Health and Human Services Commission, *House Bill 3575, Health and Human Services Eligibility System Transition Plan* (OCT 2007).

perform computer back-ups properly, resulting in data loss; not providing qualified staff to perform services, causing severe backlogs; and failing to transfer all 27 agencies into "consolidated data centers" — only five have been completed at time of the contract being terminated.<sup>17</sup>

As the interim charge language suggests, privatization of government goods and services can be an effective way *to achieve a higher level of service and greater efficiency for Texas taxpayers*. The challenge for the Legislature will be to learn from past inefficient privatization efforts and to establish a system to help ensure the delivery of cheaper and better governmental goods and services that are often promised by privatization.

**Finding:** *State of Texas has a procurement problem, not a contracting problem.*

One may cite The Texas Department of Information Resources (DIR) and the Texas Health and Human Services Commission (HHSC) as negative examples of privatization. However, closer examination of the contracting process shows that HHSC and DIR still successfully privatized the services of the contracts in question. While DIR and HHSC learned certain contracting lessons, the issue was not whether to privatize services but what best practices and processes to use in privatizing certain governmental services.

### **Texas Health and Human Services Commission Contract**

The mission of the HHSC is to provide leadership and direction and to foster the spirit of innovation needed to achieve an efficient and effective health and human services system for Texans. The state's health and human services agencies spend more than \$30 billion a year to administer more than 200 programs, employ 56,000 state workers, and operate from more than 1,000 locations across the state.<sup>18</sup>

In 2003, because of a budget shortfall and rising caseloads at state eligibility offices, the state directed HHSC to evaluate whether call centers would be cost effective for the eligibility and enrollment process, and to contract with a private vendor to operate the call center unless it was determined not to be cost-effective. HHSC evaluated the addition of state-run call centers and an outsourced arrangement. The agency concluded that both options would save the state money,

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<sup>17</sup> Letter from Karen Robinson, Executive Director, Texas Department of Informational Resources to Cynthia McLean, Vice President and Global Project Executive, IBM (JULY 16, 2010 & AUG 16, 2010) (on file with Tex. H. Comm. on Government Efficiency & Reform).

<sup>18</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Thomas Suehs, Executive Commissioner, Texas Health and Human Services).

but the outsourced model saved more with a projected five-year cost savings as high as \$646 million.<sup>19</sup>

After establishing the business case, HHSC issued a request for proposals. At the time, Children's Health Insurance Program (CHIP) eligibility determinations, Medicaid and CHIP enrollments into a health plan (managed care enrollment broker services), and maintenance of the state's computer system for eligibility services - TIERS, were already outsourced under three separate contracts. The request for proposals included these functions in a single procurement and added integrated eligibility services for the Supplemental Nutrition Assistance Program (SNAP food benefits), Medicaid, and Temporary Assistance for Needy Families (TANF cash assistance) programs as new functions within the same procurement.<sup>20</sup>

Following a competitive procurement, HHSC entered into a contract in June 2005 with the Texas Access Alliance (TAA), which was comprised of Accenture as the prime contractor and a consortium of vendors including MAXIMUS, Image API, and 11 other companies. TAA would provide integrated eligibility services for SNAP, Medicaid, and TANF (including call center and document imaging services), CHIP processing and eligibility determination, TIERS maintenance, and enrollment broker services. The critical new elements in the contract included establishing call centers, document imaging, and moving some application support work, which state eligibility workers had performed previously, to the private sector.<sup>21</sup>

At the end of 2005, TAA assumed responsibility from the previous vendors for enrollment broker, TIERS maintenance, and CHIP eligibility. TAA planned a staggered rollout of call and document processing centers in Midland, Austin, Athens, and San Antonio. On January 20, 2006, the Integrated Eligibility and Enrollment pilot began in Travis and Hays counties, allowing potential clients to apply for services by phone, fax, over the Internet, or in person.<sup>22</sup>

The initial plan called for a full transition to the new system across the state through a series of geographic rollouts over a 12-month period, which was largely driven by HHSC's need to reduce staffing by 4,000. The first planned rollout into 20 additional counties was scheduled for April 2006, contingent on the results of the pilot. HHSC postponed expansion of the pilot when it was determined that improvements were needed in call center and processing center operations and

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19 Id.

20 Id.

21 Id.

22 Id.

technical performance. HHSC put expansion on hold until the issues identified in the pilot could be resolved.<sup>23</sup>

HHSC worked with TAA to develop an improvement plan and scheduled another review for May 2006. The improvement plan included improved training for customer service representatives in the call centers, a process to more quickly escalate and resolve complicated cases, better reporting tools to track cases and workload, and improved data collection.

Social service advocates critical of the initial contract claim that the number of kids on CHIP dropped from about 500,000 in 2003 to 330,000 last summer, when the decline began to level off. As proof, they point to the percentage of families renewing CHIP or children's Medicaid coverage. Prior to December, the CHIP renewal rate was about 80 percent each month. After Accenture took over in December, the rate dropped to 50 percent. Children's Medicaid, which covers 1.1 million kids and shrinking, has experienced a similar trend. It is unclear how much the decrease in enrollment can be attributed to administrative barriers due to privatization and how much may be due to budget cuts that also went into effect due to state budgetary restraints.

In May 2006, HHSC suspended the pilot indefinitely because they determined satisfactory progress had not been made toward the goals of the improvement plan. Ongoing evaluation of the new eligibility system and CHIP operations identified several additional problems in the vendor's performance:

- Processing times were too slow, leading to a backlog in the pilot area.
- Unnecessary letters were sent to CHIP applicants requesting more information. A review found that, in some of the cases, the requested information was either on the original application or had been received by the subcontractor and not attached to the case properly or within required timeframes. This issue led the state to implement additional quality control processes that ensured families were not inappropriately de-enrolled.
- Errors on SNAP, Medicaid, and TANF cases were too high and resulted in too many cases being returned to the vendor for corrections.
- The quality of information provided to callers involving complex cases was unacceptable. The cases should have been escalated to state staff sooner.

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<sup>23</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess. (Tex. 2012) (Wayne Wilson, Executive Director of Enterprise Contract and Procurement Services, Texas Health and Human Services).*

Social service advocates critical of the initial contract have pointed to the percentage of families renewing CHIP as evidence of the contract's poor performance.<sup>24</sup> Prior to TAA taking over in December 2005, the CHIP renewal rate was about 80 percent each month. In the first few months of operations under TAA, the renewal rate declined to 50 percent. Because of corrective actions taken by TAA and HHSC, the CHIP renewal rate recovered to 76 percent in June 2006.

Based on lessons learned in the pilot, HHSC and TAA announced a plan to restructure the contract in December 2006. The roles of the state and the vendor were to be rebalanced with vendor staff more clearly focused on clerical and support functions. As part of this strategy, the HHSC's eligibility workforce and local office structure were retained and enhanced. Contractor payments and fees were adjusted to reflect the reduced role of TAA in the eligibility system, and \$30 million in state costs were recovered through service credits and discounts. HHSC and TAA agreed to renegotiate the contract under this new direction.<sup>25</sup>

When agreement on specific contract terms could not be reached, HHSC and TAA announced a mutual agreement in March 2007 to end the contract early. All services covered by the contract were transitioned to other vendors or back to the state. By July 2007, HHSC had taken over management of CHIP and TIERS maintenance, and signed interim agreements with MAXIMUS to process CHIP applications, staff the call centers, image documents, and perform enrollment broker services to help clients enroll in health plans. In the final agreement reached in December 2008, TAA agreed to forgo \$70.9 million in payments for services provided to the state, pay \$20 million in cash, and provide \$10 million credit for future work performed by MAXIMUS.<sup>26</sup>

Following the decision to unwind the contract, HHSC revisited the procurement strategy and determined that separate procurements would best support the eligibility system going forward. To help minimize any impacts to clients and service delivery, HHSC extended the interim contracts until new procurements could be completed. HHSC has completed new procurements for the services that they had consolidated originally under the single TAA contract.

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<sup>24</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Tom "Smitty" Smith, Texas Director, Public Citizen).

<sup>25</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Wayne Wilson, Executive Director of Enterprise Contract and Procurement Services, Texas Health and Human Services).

<sup>26</sup> *Id.*

The functions and current vendors are as follows:

- Document Processing Services Contract: Image API
  - Electronic imaging of applications and other eligibility documents received via mail
- Eligibility Support Services Contract: MAXIMUS
  - CHIP eligibility processing
  - Eligibility support services for Medicaid, SNAP, and TANF, including call centers
- TIERS Software Development and Technical Support: Deloitte
  - Maintenance of eligibility automation system
- Enrollment Broker: MAXIMUS
  - Enrollment assistance for Medicaid and CHIP health plans

Today, two contracts provide direct support to HHSC applicants and clients, as well as HHSC staff tasked with determining eligibility for benefit programs: Document Processing Services and Eligibility Support Services. HHSC has focused the eligibility contracts to optimize the state's resources. By focusing vendors on administrative, process-related, and routine tasks, HHSC's eligibility staff are better able to focus on the tasks that require their expertise – such as conducting client interviews, making eligibility decisions, and processing changes that can impact eligibility or benefit levels. There have been no significant performance issues and vendors have met or exceeded most of their key performance requirements over the past year.<sup>27</sup>

Throughout the narrative of the HHSC contracting, one can point to some global best practices for privatization that were initiated. HHSC developed performance metrics and goals, and built those goals and benchmarks into the contract. Vendor payment and continuation of the vendor contract were tied to performance. HHSC enforced financial penalties for poor performance and rising costs. HHSC developed strong oversight and monitoring and protocols before entering into new contracts to ensure compliance. The lesson being that government's role does not end with the contract signing; rather, government's role shifts to rigorous monitoring and contract management.<sup>28</sup>

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<sup>27</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Thomas Suehs, Executive Commissioner, Texas Health and Human Services).

<sup>28</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Leonard Gilroy, Director of Government Reform, Reason Foundation).



## Texas Department of Information Resources Contract

In 1993, the 73rd Texas Legislature directed DIR to enter into a partnership with *Angelo State University* (ASU) to establish a State Disaster Recovery Facility and Operations Center on ASU's campus.<sup>29</sup> The facility opened for business in January of 1997 under a ten-year contract to a team led by IBM.

In 2005, the 79th Texas Legislature created the Texas Data Center Services (DCS) in order to offer mainframe, server, bulk print and mail, and co-location services to state agencies. The idea being to consolidate disparate legacy agency facilities, reduce statewide costs for services, modernize aging equipment, and increase security and disaster recovery capability.<sup>30</sup>

In November of 2007, DIR entered into an \$863 million dollar contract with IBM for statewide data center consolidation and services. In August of 2010, DIR cut short its seven-year contract with IBM citing among other issues, the failure to perform computer back-ups properly, resulting in data loss; not providing qualified staff to perform services, causing severe backlogs; and failing to transfer all 27 agencies into "consolidated data centers" — only five have been completed at time of the contract being terminated.<sup>31</sup>

Nevertheless, there were a number of gains from the original contract, including the construction of the 15,000 square foot Austin Data Center, physical security systems, dual grid power distribution system, centralized SAN data storage, and centralized print/mail facilities. All mainframe operations for nine agencies were consolidated into seven mainframes at the two consolidated data centers. Print and mail services were consolidated, totaling 228 million print pages and 42 million mailings per year. The consolidated centers now support over 3,000 terabytes of data capacity on the centralized SAN storage, over 75 times the size of the Library of Congress. The enterprise also supports 38,000 terabytes of data capacity on tape media, which is over 950 times the size of the Library of Congress.<sup>32</sup>

The difficulty in privatizing technological services is not unique to Texas. Virginia state auditors released a critical report of Virginia's *Department of Information Resource* 10-year, \$2.3 billion dollar IT contract with Northrop Grumman to run

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29 S.B. 5, Rider 5, 73rd Leg., Regular Session (Tex. 1993).

30 H.B. 1516, 79th Leg., Regular Session (Tex. 2005).

31 Letter from Karen Robinson, Executive Director, Texas Department Of Informational Resources to Cynthia McLean, Vice President and Global Project Executive, IBM (JULY 16, 2010 & AUG 16, 2010) (on file with Tex. H. Comm. on Government Efficiency & Reform) .

32 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Karen Robinson, Executive Director, Department of Informational Resources).

the state's computers, servers, e-mail systems and help desk services. The audit cited missed deadlines, cost overruns, technical failures, and poor service.<sup>33</sup>

The current DCS contracts are structured to reduce service delivery timelines to customers, achieve the expected consolidation levels, and expand the service offerings available to the participating state agencies. There are a number of key design changes that have already improved the DCS program.

DIR established an owner-operator contract governance model, engaging DCS customers at key organizational levels in governance decision making to ensure agencies have a voice in the vendor's delivery of services to their agencies. The model focuses on establishing program guidance at the lowest possible level and driving for consensus-based solutions involving service providers. When stakeholders cannot reach a consensus, there are escalation processes in place.<sup>34</sup>

A key element of this governance model is the Business Executive Leadership Council (BELC). The BELC is comprised of executive directors or their designees from data center partner state agencies. The BELC oversees an IT leadership committee established to define enterprise technology strategic goals for data center services. This committee includes customer members from partner agencies and focuses on service delivery, technology, transformation, and contracts/finance areas. This improved governance model utilized one of the best practices of privatization, which is to communicate early and often with stakeholder.<sup>35</sup> Thereby enabling service providers to standardize across agencies, thus improving the speed and cost of services delivered.<sup>36</sup>

During the re-procurement of the contract, DIR and these governance bodies worked together to develop requirements and to select the vendors offering the best value for the enterprise. Objectives of the new awards included improved service delivery; increased agency customer satisfaction; stabilized IT infrastructure environment to deliver secure, reliable services to state agencies; increased server consolidation to the state data centers to reduce costs; and increased efficiency and security.

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33 Auditor of Public Accounts, Commonwealth of Virginia, *Service Management Organization of the Virginia Information Technologies Agency* (FEB 2008).

34 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Todd Kimbriel, Director of eGovernment, Department of Informational Resources).

35 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Leonard Gilroy, Director of Government Reform, Reason Foundation).

36 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Karen Robinson, Executive Director, Department of Informational Resources).

In addition, DIR restructured the single-vendor DCS contract model, creating a Multi-Sourcing Integrator (MSI) role to deliver the industry's best tools, processes and program management. DIR solicited individual bids for each of these specialized functional components as well as soliciting separate bids for the MSI function. This sourcing model drew greater competition from the market, rather than limiting competition solely to the very large corporations with the capability to provide all services. DIR and the BELC then selected the top provider within each technical competency.<sup>37</sup>

In the DCS program, as well as all other DIR programs, DIR has focused on improving the customer experience and making it easy to do business with DIR. The DCS contract model offers greater flexibility, opportunities for efficiency, and access to the best of the new technologies that the industry has to offer.

Again, one can see through the narrative of the DIR contract process that the agency held contractors accountable through proper contract management and oversight. It is well documented that government entities that fail to provide adequate oversight and watch contractors closely increase the chances that they will experience cost overruns, missed deadlines, and costly mistakes that impact service quality and program integrity. Contracting public services requires greater agency management capacity. Agencies that do not staff up contract management functions make the mistake of under-resourcing the oversight and management of contracts.<sup>38</sup>

### **Successful State Privatization**

Last fiscal year state agencies of Texas had over 100,000 contracts worth approximately \$82.08 billion, many of which agencies executed successfully.<sup>39</sup> DIR's contract to administer Texas.gov is one example of many successful and profitable public-private partnerships that exist in Texas.

Texas.gov is the official web site for the State of Texas. It provides the Texas government with efficient, cost-effective ways to develop and maintain online services for all Texans. Texas.gov reduces time to market for government entities by eliminating the need for a costly and complex procurement process.

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<sup>37</sup> Id.

<sup>38</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Shar Habibi, Resource Center Director, In The Public Interest).

<sup>39</sup> Texas Legislative Budget Board, *Construction, Consulting, Professional Services, Major Information Systems and Other Contracts* (Fiscal Year 2012).

The portal offers over 1,000 services including occupational and facility licenses and permits; utility, fee or fine payments; enrollment in state programs and services; obtaining vital records (birth, death, and marriage certificates); renewing driver licenses, specialty license plates, and vehicle registrations, and applying for drilling permit.<sup>40</sup>

Texas.gov model is sustainable and effective through contractually defined and established roles, processes and governance. In this model, DIR provides contract management, strategic guidance and operational oversight, enterprise-level coordination, and advocacy. The private partner provides all other aspects of program management.

The success of Texas.gov relies on strong, flexible governance that involves the state agencies, municipalities, and counties whose applications and services comprise the portal. The Texas.gov governance model supports DIR's oversight authority of Texas.gov and provides ongoing opportunities for customer agency involvement in program governance. The governance model includes a Project Review Board, Change Control Board, Customer Advisory Council, Veterans Portal Advisory Council, Payment Engine Users Group, and an Executive Steering Committee.<sup>41</sup>

Since its inception in 2000, Texas.gov has (as of August 31, 2012) received over 200 million site visits; processed over 179 million financial transactions; collected and processed over \$26 billion in revenue, and contributed over \$131 million to the Texas State Treasury General Revenue fund.<sup>42</sup> In sum, Texas.gov is just one example of many public-private partnerships that state agencies executed successfully without public complaint.

State agencies have demonstrated a propensity to enter into public-private partnerships on a regular basis.<sup>43</sup> In the future, state agencies will have many opportunities to execute public-private partnerships.<sup>44</sup> Agencies have also shown their willingness to manage privatized contracts to protect the taxpayer from longer-term harm.

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40 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Leonard Gilroy, Director of Government Reform, Reason Foundation).

41 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Todd Kimbriel, Director of eGovernment, Department of Informational Resources).

42 *Id.*

43 Texas Legislative Budget Board, *Construction, Consulting, Professional Services, Major Information Systems and Other Contracts* (Fiscal Year 2012).

44 For an exhaustive list of private partnership opportunities see written testimony on file with committee, *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Talmadge Heflin, Director of Center for Fiscal Policy, Texas Public Policy Foundation).

The issue is not whether Texas can privatize services successfully, nor if Texas fails to privatize services when the opportunity presents itself.<sup>45</sup> Rather the question is whether there exists a tool to help state agencies procure privatized services, even though each agency and each procurement opportunity has its own unique circumstances.<sup>46</sup>

### **A Single eProcurement**

A single source eProcurement system takes disparate procurement functions and combines them to create an online, easy-to-access, easy-to-use, one-stop-shop for government users and vendors alike. A system of eProcurement would help the state's privatization by providing transparency and systematically tracking vendor performance. An eProcurement system integrates functionality like vendor registration, solicitation management, contract management, requisitions, purchase orders, electronic invoice, workflow, and business intelligence into one online system. An eProcurement system creates uniformity and efficiency across state government, makes it easier for all vendors, regardless of size, to do business with the state and creates detailed visibility into all state spending.<sup>47</sup>

Transparency is the key to spending accountability. Spend data belongs to the people, and should not be guarded by government officials. Taxpayers should be able to see exactly where and how state funds are spent.<sup>48</sup> Because eProcurement systems track all spending under management, it is easy to post all state contracts with corresponding spend-to-date information online in real-time. The public can access this information 24/7 via a website without having to jump through hoops or submitting open record requests. Currently, a taxpayer has to submit a costly open records request to obtain this information. The act of transparency alone would help insure competitive contracting, remove red tape obstacles to public sector innovation, and improve public access to information.<sup>49</sup>

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45 The committee did discover that certain individual agencies may be less aggressive on privatization than others and may miss opportunities ripe for privatization but the discovery did not indicate a statewide problem; see *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Albert Cortez, private citizen).

46 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Leonard Gilroy, Director of Government Reform, Reason Foundation).

47 *Examine Interlocal Contracts: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Brian Utley, President Periscope Holdings, Inc.).

48 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Tom “Smitty” Smith, Texas Director, Public Citizen); see also *Id.* at (Leonard Gilroy, Director of Government Reform, Reason Foundation).

49 *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Leonard Gilroy, Director of Government Reform, Reason Foundation).

With an eProcurement system, a purchasing official can pull reports quickly, identify areas of improvement, and have improved audit trails. For example, within seconds a procurement official can run reports to determine where off-contract spending occurs. With this intelligence readily available, procurement officials can determine where they have purchasing gaps and can take the necessary steps to strategically solicit contracts for commodities or services where holes might exist. Thereby identifying new areas or improving existing areas of public-private partnership.<sup>50</sup>

The State of Texas is an economic engine pumping millions of dollars into businesses across the state through privatization. All suppliers, regardless of business size or classification (minority, women, or veteran owned, etc.), should receive an equal opportunity to compete for business. An eProcurement system could help achieve this by posting all state contracts in one easily accessible location. This prevents smaller vendors from being overlooked by their larger counterparts and increases market competition to the benefit of the state.<sup>51</sup>

Additionally, conducting business with the state becomes easier using eProcurement because you provide a single location for suppliers to register, view solicitations, submit bids, process purchase orders, and submit invoices. State agencies can even certify and track small business participation at the time of vendor registration. Likewise, performance metrics and contact goals can be tracked systematically, which is an important best practice for successful public-private partnerships.<sup>52</sup>

Facing a \$1.4 billion budget shortfall, the State of Arizona replaced its multiple procurement systems with a “one-stop-shop” implementation of BuySpeed eProcurement. The transition to the new statewide purchasing gateway, branded “ProcureAZ” began in 2008. This single, web-based procurement and sourcing portal brought significant cost and work force efficiencies not only to the state, but to local governments and schools as well.<sup>53</sup>

Arizona implemented a one percent administrative fee for vendors on purchases made by local government entities. The administrative fee covered the entire cost for implementing the system within 18 months and has since maintained an

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<sup>50</sup> *Examine Interlocal Contracts: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess. (Tex. 2012) (Brian Utley, President Periscope Holdings, Inc.).*

<sup>51</sup> *Id.*

<sup>52</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess. (Tex. 2012) (Shar Habibi, Resource Center Director, In The Public Interest).*

<sup>53</sup> Press Release, Periscope Holdings, *Periscope Wins Best Fit Integrator Award*, (Aug. 7, 2012); available at <http://news.periscopeholdings.com/tag/procureaz/>.

average 15 percent increase in revenue annually.<sup>54</sup>

Currently, more than 4,500 active catalogs and 25,000 vendors are registered in ProcureAZ. Arizona has used the system to manage more than 1,200 solicitations, including 12 reverse auctions. The State has seen a 26 percent reduction on pricing in a representative sample of new solicitations for various commodities and services. Participation in Arizona's cooperative purchasing program has increased by 51 percent; this program allows local governments to leverage the State's cost savings by purchasing off statewide contracts through ProcureAZ.<sup>55</sup>

Michigan is embarking on the eProcurement implementation process and plans to mirror Arizona's innovative procurement paradigm, making its eProcurement investment available to all local agencies. *We're looking at the whole procurement system, from A to Z*, Michigan Budget Director, John Nixon said. The state chose to move forward with a single source statewide eProcurement system, envisioned to benefit state agencies and all other public procurement entities across the state, to provide a solution for better data tracking, and to help the state know how and when to get the best deals.<sup>56</sup>

Speaking to the significant value add of eProcurement, Kurt Weiss, a spokesman for Michigan's Department of Technology, Management and Budget stated, *It also will allow for quicker turnarounds on bids and easier communication between state purchasing office officials and vendors, which will increase efficiency.*<sup>57</sup>

The State of Texas is losing potentially millions of dollars in savings each year by providing disparate procurement functions across its multiple agencies. For example, state contracts (statewide agreements, agency contracts, multi-agency contracts, technology contracts, "go to" cooperative contracts, etc.) are not posted in one central location. The state runs six or seven different systems, has its own TxSmartBuy catalog, but also provides a catalog for state agencies to purchase technology through DIR.<sup>58</sup>

Although Texas agencies are governed by the same procurement code and the business processes are similar, the differences (an agency's organizational structure, purpose, and requirements) can be significant. The state's current

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54 Id.

55 Id.

56 Paul Egan, *State Evaluating Bids for New Online System*, Detroit Free Press, Jun. 21, 2012; available at <http://www.wzzm13.com/news/article/215833/233/State-evaluating-bids-for-new-online-system>.

57 Id.

58 *Examine Interlocal Contracts: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Brian Utley, President Periscope Holdings, Inc.).

procurement systems do not consider these important baseline differences and therefore create more work for agencies. For example, an agency user can find a contract and an item in TxSmartBuy but then will need to go through the approval process (funds checking, department approval, pre-encumbrance, etc.) that is needed according to that agency's policies. This scenario makes the agency user interact with multiple systems and therefore increases workload and frustration at the agency level.

In sum, *where the state continues to fail is in the procurement process, not the contracting process.*<sup>59</sup> The state needs to establish an eProcurement system to capture the entire procurement process from the issuance of requisitions, to processing contract/purchase orders, and assembling files - all in a paperless environment.<sup>60</sup>

### **Recommendation**

- **The State of Texas should consider initiating a pilot comprehensive eProcurement system and study its feasibility for statewide deployment.**

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<sup>59</sup> *Examine Privatize Services: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess. (Tex. 2012)* (Thomas Suehs, Executive Commissioner, Texas Health and Human Services).

<sup>60</sup> Id.



## AGENCY RULEMAKING

*Examine state agency rulemaking and consider ways to improve procedural efficiencies and public transparency, and to better inform policymakers as to their use, purpose, and cost-effectiveness, including an examination of the financial and other impacts such regulations have on both the license holder and the public (Joint with the House Committee on State Affairs).*

### Testimony

The House Government Efficiency and Reform Committee, in a joint hearing with House State Affairs Committee, heard testimony regarding this charge on July 11, 2012. The hearing included invited testimony from the following persons:

- Cary Austin, Technical Salesmen, Cycle Stop Valves, Inc.
- Linda Battles, Associate Commissioner, Texas Higher Education Coordinating Board
- Linda Brookins, Director of Water Supply Division, Texas Commission on Environmental Quality
- Katherine Minter Cary, Division Chief of General Counsel, Office of Attorney General
- Kathleen Hartnett White, Distinguished Senior Fellow-in-Residence & Director, Armstrong Center for Energy & the Environment, Texas Public Policy Foundation
- Wesley Hottot, Staff Attorney, Institute for Justice
- Bob Jackson, General Counsel, Texas Department of Transportation
- William H. Kuntz Jr., Executive Director, Texas Department of Licensing and Registration
- Caroline Sweeney, Deputy Director, Texas Commission on Environmental Quality
- Richard Viktorin, Director, Audits in the Public Interest

### Background

Statutes are created or amended by the Legislature; whereas rules are adopted by state agencies (Executive Branch), usually with specific rulemaking authority from the Legislature. The Legislature creates administrative agencies and empowers those agencies to achieve important governmental objectives. The basic purpose of allowing executive agencies to impose regulation is to implement the laws enacted by popularly elected representatives of the state legislature. These administrative

agencies receive their power or authority from Title II, III, and IV of the Texas Government Code. Responsibilities for the administration of government and enforcement of governmental policies and procedures are delegated to state agencies.

Texas Administrative Law embodies the rules and decisions of state agencies that carry out the work of the Executive, Judicial, and Legislative branches of government. Before 1975, Texas had no comprehensive, unified body of administrative law. Each agency determines their own requirements for hearings, proposed rules and adopted rules. Texas also had no central journal in which agencies published their rules and notices.

In 1975, the 64<sup>th</sup> Legislature passed SB 41, known as the *Administrative Procedure and Texas Register Act* (APA), which established minimum standards of uniform practice and procedure for state agencies. The bill also codified basic guidelines for public participation in the rulemaking process, notice of agency rules and actions through newspaper publication, and standings for judicial review.<sup>1</sup>

Today the APA is codified as Chapter 2001 of the Texas Government Code. Subchapter B describes the rulemaking procedures for all state agencies. These procedures detail the requirements for public posting, Legislative and state agency review, emergency rulemaking, as well as any studies that need to be completed before rule adoption. Subchapter B does not describe when state agencies should adopt new rules; rather, it establishes guidelines by which agencies should adopt new rules, when they so choose.

Before a state agency adopts any new rules, the agency must perform the following actions:

- Allow for public comment, with a public hearing required when requested by a governmental agency, 25 individuals, or association representing a minimum of 25 people requests one.<sup>2</sup>
- Provide a statement containing the reasons for and against a new rule, including the agency's rational for overruling any reasons against adoption.<sup>3</sup>
- Provide at least 30 days' notice before the implementation of a new rule. The notice must provide an explanation of the new rule, as well as any fiscal

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1 S.B. 41, 64th Leg., Regular Session (Tex. 1975).

2 Tex. Govt. Code §2001.029

3 Tex. Govt. Code §2001.030

costs or gains to state or local governments, and economic costs to affected persons and public benefits resulting from the new rule.<sup>4</sup>

- Perform an employment impact statement for any local economies impacted by a proposed rule for the first five years after adoption of the rule. Failure to comply with this requirement does not invalidate an adopted rule.<sup>5</sup>
- Any environmental rule exceeding standards set by federal law, and not required by state law, must contain a cost-benefit analysis of the rule as well as the rationale and scientific evidence supporting its adoption.<sup>6</sup>

Agency rules are subject to both Legislative and agency review. Appropriate standing committees in each Legislative chamber may review each proposed rule before its adoption. Furthermore, state agencies are required to review existing rules every four years. This reassessment must include whether the reasons for adopting the original rule still exist.

In 1977, the Texas Legislature created the Texas Administrative Code (TAC).<sup>7</sup> In the Administrative Code Act, the Legislature directed the Office of the Secretary of State to compile, index, and publish the Texas Administrative Code. TAC is a compilation of all of the state agency rules in Texas. There are 16 titles in the TAC; gaps are left in the numbering of the Titles, Chapters, and Sections of the Code to allow for future expansion. Each title represents a category and relating agencies are assigned to the appropriate title. The TAC is updated annually; whereas the *Texas Register* is quarterly and annually, follows the publication date of the TAC's main volume or supplement, and provides references to rules that have been affected by the particular issue.

**Finding:** *Public participation in the rulemaking process is not consistent across state agencies.*

Texas government comprises many diverse agencies with different missions, different challenges, different populations of employees, and different constituencies. Agencies have broad discretion to design rules that are related reasonably to their statutory mandates. Without slighting the importance of agency staff expertise in the rulemaking process, the more fundamental determinations in rulemaking will change in ways that are consistent with public comments. Therefore, agencies must take public comments seriously if rulemaking procedures are to have their intended effects.

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4 Tex. Govt. Code §2001.023-2001.28

5 Tex. Govt. Code §2001.024

6 Tex. Govt. Code §2001.0225

7 Tex. Govt. Code §2002.051-2002.056

Public comment is governed within the general parameters of the *Administrative Procedure and Texas Register Act* (APA); however, agencies vary in the handling of public input during the notice-and-comment process. Some agencies, such as the Texas Department of Licensing and Regulation, have established a culture of public inclusion in the rulemaking process. Other agencies have been criticized for having too little public input.

The Texas Department of Licensing and Regulation's (TDLR) rulemaking process complies with state law requirements for administrative rulemaking, yet provides additional opportunities for the public and stakeholders to give input beyond what is legally required through the use of 19 advisory boards (also known as advisory committees).<sup>8</sup>

TDLR is responsible for the regulation of 29 occupations and industries. TDLR drafts proposed rules in response to statutory changes enacted by the Legislature,

*An advisory committee is defined as a committee, board, council, commission, task force, or other entity with multiple members that has as its primary function advising a state agency in the executive branch of state government. Typically, advisory committees are standing committees with broad-based jurisdiction that can be created in statute or by a state agency. Advisory committees are subject to requirements in Chapter 2110 of the Texas Government Code (Sunset Advisory Commission, Texas Higher Education Coordinating Board: Staff Report, (June 2012) at 13).*

or in response to proposals from the advisory boards, members of the regulated industry, members of the public, or TDLR staff. Rule drafts are then presented to the appropriate advisory board at a public meeting for feedback and recommendations. The public and the regulated industry have an opportunity to comment at these advisory board meetings.<sup>9</sup>

Based on the recommendation of the advisory board, TDLR files the proposed rules, along with a detailed preamble explaining the proposal, with the *Texas Register*.<sup>10</sup> After the public comment period ends, the advisory board will often hold another public meeting to consider the comments and make a final recommendation to the Commission.<sup>11</sup> The public and the regulated industry also have an opportunity to comment at this public meeting.

Finally, the TDLR Commission adopts the rules at a public meeting. The Commission will consider the public comments, the advisory board's

<sup>8</sup> Like other state agencies, TDLR's rulemaking is governed by the Administrative Procedures Act, Chapter 2001 of the Government Code, and the administrative rules for the *Texas Register*, 1 Texas Administrative Code, Chapter 91.

<sup>9</sup> *Examine Agency Rulemaking: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (William H. Kuntz Jr., Executive Director, Texas Department of Licensing and Registration).

<sup>10</sup> Proposed rules must be filed with the *Texas Register* on a strict filing deadline (by 12:00 noon on Monday, published in the *Texas Register* on Friday of the next week – eleven days later).

<sup>11</sup> The public comment period of at least 30 days begins on the day the rules are published.

recommendation, and any recommendations from staff in making its decision and may make limited changes to the rules based on the comments received. The public and the regulated industry have yet another opportunity to comment at this public meeting. The impact of advisory boards results in real savings and efficiency within the agency. In fiscal year 2012, the TDLR lowered fees for 17 license types, which is projected to save \$200,535 annually and benefit more than 24,654 licensees.<sup>12</sup>

Texas Department of Transportation (TxDOT) has also used advisory boards, albeit in limited cases. A majority of TxDOT's rules are not regulatory in function or purpose and as such, tend to be non-controversial and therefore generate little public interest or participation during the notice-and-comment period. In 2010, however, TxDOT initiated a major transportation planning and development rulemaking project that affects transportation agencies throughout Texas. In addition, in 2011 the department went through a major rulemaking project regarding the regulation and licensing of off-premise outdoor advertising signs affecting many business, local governments, and advocacy organizations. TxDOT recognized there would be significant public interest, as both rules would affect many outside stakeholders. Therefore, the department found it appropriate and necessary to utilize some additional procedures permitted under the APA to ensure wide stakeholder participation and a full vetting of the issues during the rulemaking process.

TxDOT formed advisory committees of experts or interested persons or representatives of the public to advise the agency about contemplated rulemaking.<sup>13</sup> TxDOT developed a process to assure that there were representatives from as many of the interested stakeholders groups on the committee as possible.<sup>14</sup> Thereby allowing TxDOT to analyze how the rule would affect each stakeholder group and attempt through negotiations to build the largest consensus possible when drafting the rule.

Once the advisory committee was formed and appointed, TxDOT published in the Texas Register all dates and times of the meetings of the advisory committee and opened them to the public. During these meetings, the committee discussed, debated, took public input, and drafted the actual language of the rule. The

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12 *Study All Existing Occupational Licensing Programs: Public Hearing before the H. Comm. of Licensing & Administrative Procedures, 82<sup>nd</sup> Sess.* (Tex. 2012) (William H. Kuntz Jr., Executive Director, Texas Department of Licensing and Registration).

13 Tex. Govt. § 2001.031(b)-(c) makes advisory committees permissible but not required.

14 The department drafted rules to implement the advisory committee process and establish how they would operate, including giving the commission the power by order to appoint the advisory committee members (43 T.A.C. § 1.83).

committee shared publicly all drafts and edits. When the committee was finished drafting they held a vote on the actual language of the proposed rule. Upon approval of the committee, TxDOT staff then proposed the rule to the commission for public notice-and-comment.

TxDOT testified that the utilization of early notice-and-comment, and advisory committees for both of the above mentioned rulemaking projects allowed the agency to reach a consensus for adoption of the rules by the advisory committees. TxDOT and the commission viewed these rulemakings as a success for TxDOT and found the advisory committee process to be a practical tool for consensus building in the rulemaking process.

The Texas Higher Education Coordinating Board (THECB) provides leadership and coordination for the Texas higher education system. The THECB recently underwent review by the Sunset Advisory Commission (Sunset Commission). The Sunset Commission found that *the structure of the agency's advisory committees does not meet standard operating criteria and fails to provide the direct input and expertise needed to aid the governing board in setting policy and making decisions.*<sup>15</sup> THECB also testified to implementing cures that currently allow advisory committees to report their recommendations directly to the Board without filtering or dilution by agency staff.<sup>16</sup>

Often the objective of agency rules is not only to ensure compliance with a statute, but also to articulate clearly the objective of the applicable law, which often times is highly technical in nature. So even when agencies follow APA throughout the rulemaking process, and provide opportunities for public participation, there is opportunity for public misunderstanding of the process and for the agency to forgo free and expert advice of the public. Lack of public understanding of the process risks loss of meaningful input in the rulemaking process.

The Committee heard testimony from citizens who were frustrated with agency responses to proposed rule changes, even when agencies were in compliance with APA.<sup>17</sup> As the TDLR advisory board system illustrates, and the Sunset Commission report for THECB confirms, advisory boards can provide an understanding and expertise to relevant agency rulemaking issues, as well as create

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15 Sunset Advisory Commission, *Texas Higher Education Coordinating Board: Staff Report*, (June 2012) at 13.

16 *Examine Agency Rulemaking: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Linda Battles, Associate Commissioner, Texas Higher Education Coordinating Board).

17 *Examine Agency Rulemaking: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Cary Austin, Technical Salesmen, Cycle Stop Valves, Inc.); *see also*, *Examine Privatization of State Services: Public Hearing before the H. Comm. of Government Efficiency and Reform*, 82<sup>nd</sup> Sess. (Tex. 2012) (Albert Cortez, Public Testimony.)

stakeholder support for final agency rulemaking decisions.

Advisory committees could also potentially aid agencies in conflicts that sometimes arise between the Legislative Branch, which creates policy, and the Executive Branch, which implements the policy. Legislatures have handled such conflicts by being reactionary and passing legislation after the creation of agency rules.

Recently, the U.S. House of Representatives passed multiple bills to restrain regulatory excess.<sup>18</sup> One example is the REINS Act (Regulations from the Executive in Need of Scrutiny Act) that would have designated congressional authority to make the final decision about major regulations.<sup>19</sup> Under the 1996 Congressional Review Act, Congress already has the power to override proposed regulations by passing a joint “resolution of disapproval.” The REINS Act would change the process so that major regulations would be contingent on Congressional approval -- if a majority in each chamber does not vote “yes,” the agency is unable to enact the regulation.<sup>20</sup>

An example of the struggle between the Legislative and Executive Branches in Texas and their contending interests is the passage of SB 1134 by the 82<sup>nd</sup> Legislature in 2011. The bill was in response to an adopted state regulation, which significantly expanded regulatory requirements for thousands of oil and gas production facilities (OGS).<sup>21</sup> The bill prohibited the Texas Commission on Environmental Quality (TCEQ) from promulgating new or amending existing authorizations [Permits by Rule (PBR) or Standard Permits (SP)] for the oil and gas industry without performing a regulatory impact analysis (RIA), extensive monitoring, and correlated modeling. The bill also limited the use of worst-case modeling inputs and required actual credible air quality monitoring data. Air quality monitoring data and the evaluation of that data would be required to be scientifically credible and could be generated by an ambient air monitoring program conducted by or on behalf of the TCEQ, by a local or federal government entity, or a private organization.<sup>22</sup>

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18 *Examine Agency Rulemaking: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Kathleen Hartnett White, PhD, JD, Distinguished Senior Fellow-in-Residence & Director, Armstrong Center for Energy & the Environment, Texas Public Policy Foundation).

19 The US House approved H.R. 10, 112th Cong. (1st Sess. 2011) but was never considered by the US Senate.

20 See H.R. 10, 112th Cong. (1st Sess. 2011) (amending Chapter 8, Title 5, United States Code).

21 *Examine Agency Rulemaking: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Kathleen Hartnett White, PhD, JD, Distinguished Senior Fellow-in-Residence & Director, Armstrong Center for Energy & the Environment, Texas Public Policy Foundation).

22 S.B. 3114, 82<sup>nd</sup> Leg., Regular Session (Tex. 2011).

Presuming the Legislature even has the broad will to act given that Congress has only successfully wielded its power under the Congressional Review Act once. This occurred in 2001, when it voted to abolish the Department of Labor's ergonomics regulations.

The Legislature has other means of providing oversight on agency rulemaking besides the passage of legislation. The committees of the Texas' Legislature are empowered to review agency rules before adoption.<sup>23</sup> Agencies are required to review a rule no later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. Current law also requires state agencies' review of a rule to include an assessment of whether the reasons for initially adopting the rule continue to exist.

Other states require the Legislature's approval of select agency regulations.<sup>24</sup> However as again, these legislative measures tend to be reactionary and taken after an agency has created a regulation.

Some critics want to ensure proper agency rulemaking by making more prescriptive the cost-effectiveness analysis, particularly in regards to measuring the fiscal impacts of agency rules on the private sector in the APA.<sup>25</sup> The 82<sup>nd</sup> Texas House passed HB 125 in 2011 with the intent to provide additional regulatory transparency by requiring a simple, concrete *Regulatory Analysis of Major Environmental Rules* (RIA) in rules promulgated by TCEQ.<sup>26</sup> The Texas Senate never considered the bill. However, even if the Legislature could enhance the APA perfectly to clearly denote specific systems of measurements with pragmatic data points and even if such data could enlighten the Legislature of the true positive or negative influences of agency rules, the Legislature would still likely act after the fact. Meanwhile such enhancements to the APA could have the effect of slowing an already burdensome rules process with additional bureaucratic requirements.

When agency rulemaking utilizes advisory committees, the process permits broader participation by stakeholders and encourages comprehensive solutions to problems that go beyond the facts of individual cases that agency staff would be unable to measure precisely with pragmatic data points. Moreover, advisory

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23 Tex. Govt. § 2001.032.

24 See IDAHO CODE ANN. § 67-5291 (West 2012) (requiring Legislative approval of agency actions).

25 H.B. 125, 82d Leg., R.S. (2011); see also Kathleen Hartnett White, TEXAS PUBLIC POLICY FOUNDATION, *Regulatory Transparency is Good Governance: House Bill 125*, (March 27, 2011), available at <http://www.texaspolicy.com/pdf/2011-03-PB10-HB125-RegulatoryTransparency-khw.pdf>.

26 H.B. 125, 82d Leg., R.S. (2011); see also Kathleen Hartnett White, TEXAS PUBLIC POLICY FOUNDATION, *Regulatory Transparency is Good Governance: House Bill 125*, (March 27, 2011), available at <http://www.texaspolicy.com/pdf/2011-03-PB10-HB125-RegulatoryTransparency-khw.pdf>.



committees are ongoing and occur in real-time with the rulemaking process. They are not reactionary, unlike Legislative acts passed after the creation of an agency rule.

Having advisory committees assist with agency rulemaking would maintain rulemaking as an advantageous approach, both in terms of its fairness to individual citizens and in terms of democratic and effective policy development. Advisory committees would also address the concerns raised by the committee's *Texas Red Tape Challenge* and discussion regarding agency rulemaking, which centered on improving public participation and knowledge of agency rules.<sup>27</sup>

Advisory committees would likely limit rules from being arbitrary and capricious in the application of policy in individual cases and prevent retroactive sanctions against individuals for actions taken before the establishment of clear standards. Advisory committees would arguably make the process more transparent and more accountable under the APA than some undefined ad hoc approach. Advisory committees would enable agencies to accomplish their statutory objectives more expeditiously than they could through additional incremental policy developments imposed by the legislature.<sup>28</sup> The process of advisory committees would continue to grant the discretion to agencies to be the technical experts whose specialized knowledge is necessary to translate general statutory provisions into specific regulatory standards.

### **Recommendation**

- **The Legislature should formalize, standardize and require the process of advisory committees in the agency rulemaking process.**

**Finding:** *Occupational licensing programs administered by the State of Texas have grown to affect a significant portion of the state's workforce.*

Much of the testimony before the Committee noted Texas, whose population and economy is larger than many countries, and whose regulatory purview is vast, is known for regulating with a lighter hand than most states.<sup>29</sup> One major exception to

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27 Texas Red Tape Challenge, *A Policy Wiki Project of the House Government Efficiency & Reform Committee* (2012); available at <http://www.texasredtapechallenge.com>

28 Davis, Kenneth Culp, *Discretionary Justice: A Preliminary Inquiry* (Baton Rouge: Louisiana State University Press, 1975); see also, Peck, Cornelius, *The Atrophied Rulemaking Powers of the National Labor Relations Board* (Yale Law Journal 70(5) at 729– 61).

29 *Examine Agency Rulemaking: Public Hearing before the H. Comm. of Government Efficiency and Reform, 82<sup>nd</sup> Sess.* (Tex. 2012) (Kathleen Hartnett White, PhD, JD, Distinguished Senior Fellow-in-Residence & Director, Armstrong Center for Energy & the Environment, Texas Public Policy Foundation).

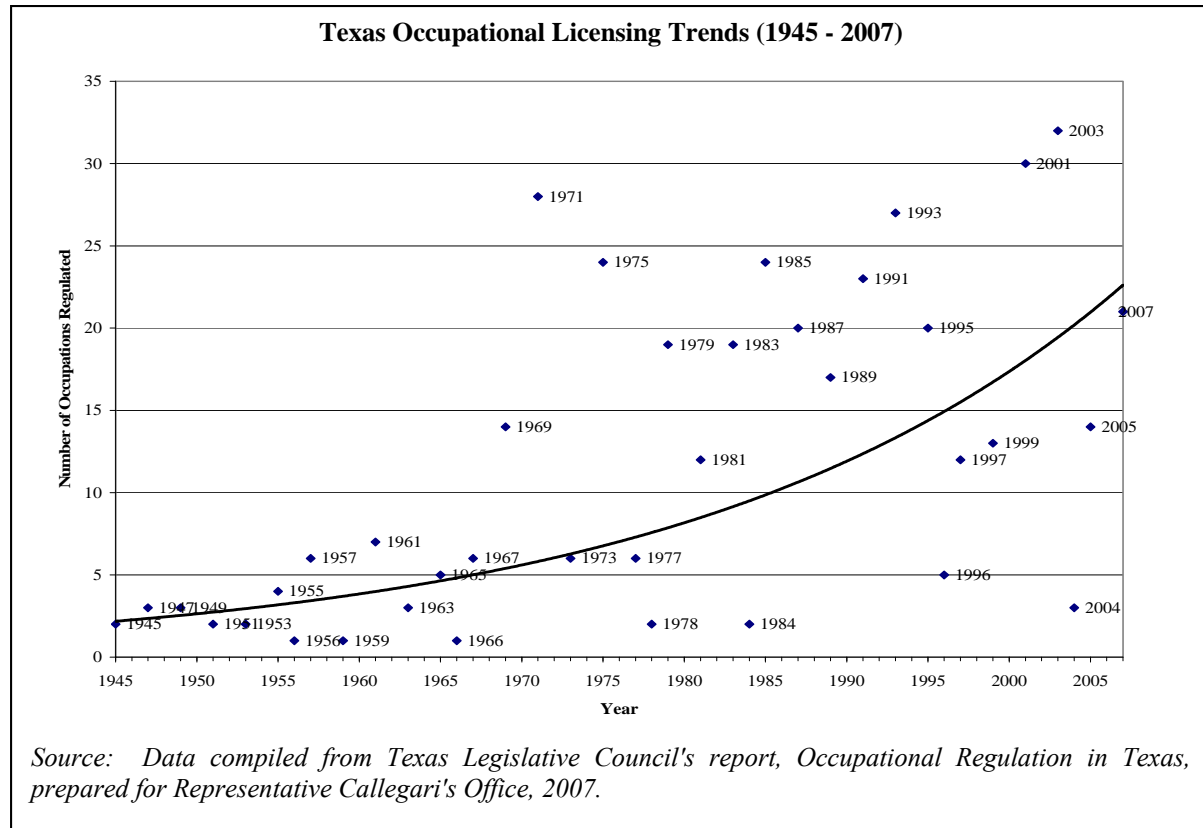
this generally accepted sentiment is the continued expansion of occupational licensing by the State of Texas.<sup>30</sup>

Since the regulation of medical physicians by the Republic of Texas in 1837, the State of Texas has expanded its regulatory oversight over its workforce. With the exception of the broad regulation of the alcohol industry at the end of the Prohibition Era in the mid-1930's<sup>31</sup>, the Texas Legislature rarely regulated occupations and businesses in Texas before the end of World War II. In fact, during the 19th century the Legislature approved the state regulation of only medical physicians (1837) and dentists (1889). In 2007 the Legislature approved state oversight for 21 types of jobs and businesses, including property tax lenders, residential fire alarm technicians, professional land surveying firms, air conditioning and refrigeration technicians, hair braiders and weavers, combative sports event coordinators, residential appliance installers, tow truck operators, and vehicle storage facility employees. At the beginning of the 2009 Legislative session, 514 occupations were regulated.

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30 For a more complete discussion and analysis of occupational licensing in Texas, please see H. Comm. of Government Reform, Jeremy Mazur, Interim Report, 80<sup>th</sup> Sess. (Jan 2009) at 43-63.

31 The repeal of the 18th Amendment -- the Prohibition Amendment -- in December 1933 inaugurated extensive regulations of the alcoholic beverage industry. In 1935 the Legislature met in special session and passed the Texas Liquor Control Act, which provided for the regulation and licensing of the manufacturing, sale, and distribution of alcoholic beverages.



The chart, *Texas Occupational Licensing Trends (1945 - 2007)*, depicts the number of occupations placed under regulation for each year since 1945. Each point within the chart represents the number of occupations regulated during a given year. The trend line inserted within the chart indicates a trend towards more occupational licensing programs in Texas.

Currently, the State of Texas regulates over 510 types of occupations, representing the jobs held by nearly 2,715,000 individuals and businesses in this state.<sup>32</sup> Nearly one out of every three Texas workers labors in a business or an occupation regulated by the state. In other words, nearly one-third of the Texas workforce is state-regulated, when measured against a workforce of nearly 8,631,000 non-government jobs in 2007 – a proportion higher than the national trend.<sup>33</sup> This statistic does not account for federal or local occupational licensing programs.

The proliferation of occupational licensing by the State of Texas can be to the detriment of the very consumer the licensing is professing to protect. First,

32 Data compiled from Texas Legislative Council's report, *Occupational Regulation in Texas*, prepared for Representative Callegari's Office, 2007.

33 Morris M. Kleiner, *Licensing Occupations, Ensuring Quality or Restricting Competition?*, 2006, page 12; see also, Suzanne Hoppough, "The New Unions," *Forbes*, 25 February 2008, page 100.

occupational licensing programs, by nature, limit the number of participants within an occupation. While such limitations may serve the public interest in certain instances, they may also limit job growth and consumer choices in others. Second, some occupational licensing programs offer clear advantages to members of the licensed profession, such as reduced competition and increased earnings.

Studies of the effects of occupational licensing programs demonstrate that they may increase licensed practitioners' earnings by as much as 10 to 12 percent.<sup>34</sup> Given these advantages, occupational licensing programs are typically advocated for and defended by members of the profession. In fact, consumers and consumer advocacy groups rarely advocate for the establishment of occupational licensing programs.<sup>35</sup> Of the 21 types of jobs and businesses regulated during the 80th Session, support for many of these proposed measures came from members of that industry.<sup>36</sup> The landscape irrigation industry's drive to enhance its own regulation is another example of this type of behavior. In 2005, irrigators petitioned TCEQ for stronger rules regulating their industry. The industry subsequently helped pass legislation requiring cities with a population of 20,000 or more to adopt an ordinance requiring that only licensed landscape irrigation installers install irrigation systems within city limits.<sup>37</sup>

The concern is that licensed members of a regulated occupation enjoy several advantages from the state's regulation of their trade. These advantages include less competition, improved job security, and greater profitability. This suggests that state regulatory policy may work to benefit a certain segment of a labor market to the detriment of job growth and consumer choice.

Implementing new occupational licensing programs requires more state spending and larger bureaucracies, and advocates for these programs frequently tout that they are revenue neutral or increase revenues for the state. To be sure, many of the licensing programs charge fees that cover the costs of regulation. Others actually pay more in fees than the cost of regulation. Although these licensing programs may be revenue neutral, or may even earn the state extra revenue, they still require more state spending and bureaucracy than would be required in the absence of regulation. The costs to the licensed practitioner for the licensure fees are, in turn, passed on to the consumer.

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34 Summers, *Occupational Licensing: Ranking the State and Exploring Alternatives*, page 15.

35 Summers, *Occupational Licensing: Ranking the State and Exploring Alternatives*, page 19.

36 As examples of this trend, legislation to license property tax lenders, land surveying firms, and air conditioning and refrigeration technicians were supported by associations representing practitioners of these occupations.

37 Witness List, HB 1656 80th Regular Session, House Committee Report.

Critics of occupational licensing programs label them as "new unions" or "modern day guilds" that shield existing licensees from competition.<sup>38</sup> These critics contend that established members within a regulated industry rely upon licensing programs to erect barriers to entry for newcomers, thereby protecting their practices from competition. Statutory requirements for barbering and cosmetology schools are illustrative of this practice. State law requires that a barber school be no less than 2,800 square feet, have 20 modern barber chairs and 20 instructional chairs, and at least seven specific areas within the school.<sup>39</sup> Cosmetology schools must, by law, have no less than 3,500 square feet, certain instruction areas, and equipment to educate a minimum of 50 students.<sup>40</sup> These requirements reflect a clear preference for larger schools -- which require greater start-up costs -- to the exclusion of smaller schools. Even though state law provides for the licensing of barbering and cosmetology-related specialties, such as hair braiding, hair weaving, and manicuring, the law precludes the creation of smaller, specialty schools to provide the instruction necessary for these licenses. More critically, the law prevents the creation of smaller barbering or cosmetology schools that may be able to serve a significant portion of the student population, including students that prefer a smaller, more intimate learning environment, or students in rural areas where the lesser population density precludes the creation of larger schools in their areas.

Judging from historic trends, Texas appears to be heading towards more, large-scale occupational licensing programs. Other states have implemented "sunrise" processes as a way to curb the growth of occupational licensing programs. Currently, the states of Colorado, Washington, West

Virginia, and Arizona have "sunrise" processes to evaluate the need for new occupational or business licenses. In general, each sunrise process requires an industry or consumer group to submit an application for an occupational regulation to the agency that conducts the sunrise review. The application must specify the

#### **Sunrise Criteria Used in Other States**

The sunrise review processes employed in the states of Arizona, Washington, and Colorado use the following criteria for evaluating proposed occupational licensing programs:

1. Whether the unregulated practice of an occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
2. Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
3. Whether the public cannot be effectively protected by other means in a more cost-beneficial manner.

*Sources: Colorado Department of Regulatory Activities; Arizona Joint Legislative Audit Committee; Washington State Department of Licensing.*

38 Hoppough, "The New Unions," *Forbes*, 25 February 2008, page 100.

39 Occupations Code, § 1601.353.

40 Occupations Code, § 1602.303.

actual harms to public safety in the absence of regulation, and demonstrate how those problems may be cured through regulation. Hypothetical or tenuous arguments regarding problems associated with the absence of regulation, such as "bad actors" or "fly-by-nights", are not acceptable. The agency or commission responsible for the review must evaluate the application, and conduct its own field research on the proposed regulation. The text box, *Sunrise Criteria Used in Other States*, describes the criteria employed by several agencies in other states when conducting sunrise reviews. Like a Texas Sunset Advisory Commission report, each state's sunrise review agency publishes its findings and recommendations regarding the proposed regulation. The Legislatures of each state with a sunrise process are not bound by their sunrise recommendations. These recommendations do, however, offer Legislators the opportunity to be better informed about proposed licensing programs before passing them into law.

The use of sunrise processes in other states has helped curb the growth in occupational licensing programs in the states that employ them. For example, the Colorado Department of Regulatory Agencies recommended against the regulation of landscape architects,<sup>41</sup> interior designers,<sup>42</sup> and sign-language interpreters,<sup>43</sup> all currently regulated in Texas, because the unregulated practice of each profession failed to demonstrate a significant harm to consumers. The West Virginia Legislature's Performance Evaluation and Research Division recommended against regulating athletic trainers and court reporters. The Division did, however, recommend regulating elevator workers and assisted living administrators.<sup>44</sup> The State of Washington's Department of Licensing has conducted 17 sunrise reviews since 1990. Recently, the Department recommended against regulating interior designers, while it recommended in favor of regulating soil scientists and home inspectors.

The Sunset Advisory Commission does have the authority to make recommendations regarding the continuation or structure of occupational licensing

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41 "[I]t is not clear that the unregulated practice of landscape architecture harms the public... [d]o not regulate the practice of landscape architecture." Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform, *2005 Sunrise Review: Landscape Architects*, 14 October 2005, page 30.

42 "Given the data submitted and obtained during this review, and that the unregulated practice of interior designers has not resulted in significant harm to Colorado consumers, this sunrise review contends that regulation of this occupation is unnecessary." Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform, *2000 Sunrise Review: Interior Designers*, 15 October 2000, page 25.

43 "[T]here is no evidence of harm to the deaf community caused by interpreters for the deaf. The harm that has been identified through research as well as an analysis of the submissions of harm by interested stakeholders cannot be definitively attributed to interpreters, regardless of their competency levels. As a result, regulation is not justified." Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform, *2006 Sunrise Review: Interpreters for the Deaf*, 12 October 2006, page 33.

44 West Virginia Legislature, Performance Evaluation and Research Division, <http://www.legis.state.wv.us/Joint/PERD/allreports.cfm>.

programs administered by the state. The Sunset Advisory Commission's statute limits the agency's review to "whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees."<sup>45</sup> The Commission's statute also specifies the criteria that must be used when evaluating the need for an agency's continuation. While the Sunset Commission has made recommendations regarding the discontinuation of certain occupational licensing programs, the Commission's statute does not require specifically the evaluation of occupational licensing programs. Nor does the Sunset Act prescribe any standards for the Commission's review of occupational licensing programs.

### **Recommendation**

- **The Legislature should implement a process to review proposals to regulate new occupations, as well as existing occupational licensing programs, based on real and documented harm to the public.**

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<sup>45</sup> Texas Sunset Act, Government Code, § 325.011.

## THE TEXAS RED TAPE CHALLENGE

*A crowdsourcing project of the House Government Efficiency and Reform Committee*

**Crowdsourcing:** *crowd-sourc-ing* \ noun \ 'kraüd-, sör-siŋ\ : the practice of obtaining needed services, ideas, or content by soliciting contributions from a large group of people and especially from the online community rather than from traditional employees or suppliers (*The Merriam-Webster Unabridged Dictionary*, 2012).

### Background

The Texas Red Tape Challenge was a web-based crowdsourcing project of the Texas House Government Efficiency and Reform Committee. The central idea behind the Challenge was to introduce specific state regulations for public review, and to invite participants to offer their ideas and recommendations on how those regulations could be streamlined, abolished, or otherwise reformed. Once an idea was submitted on the Challenge website, other participants could comment on, and offer their recommendations on the initial proposal. Ideally, the collaborative process would yield workable, perfected recommendations on how to eliminate state red tape for the Committee's consideration.

The crowdsourcing approach embodied by the Texas Red Tape Challenge offered several unique benefits to the Committee's interim research. Those benefits included:

- *Enhanced transparency:* The Texas Red Tape Challenge was conducted online, available for the public to view. Readers and participants could view all of the ideas, recommendations, and comments made and who made them.
- *Greater public participation:* The project offered a new, unique avenue to connect outside expertise with the Committee's deliberations. The Challenge offered the opportunity to include a broader range of citizen perspectives to inform the discussion, allowing parties outside of the typical legislative sphere to offer comments and recommendations. Further, the Challenge allows participants to remain engaged in the on-line dialogue.
- *Enhanced opportunity for innovation:* The collaborative approach encouraged by the crowdsourcing platform offered a greater opportunity for policy innovation. Like a virtual brainstorming meeting, participants had the opportunity to build on and further develop the insights offered by others.
- *Meaningful citizen participation:* Unlike a committee hearing, where individuals may testify "for", "against", or "on" a bill, the Challenge



empowered participants to engage in a dialogue aimed towards identifying recommendations for the Committee's consideration.

- *Integration of social media with the policymaking process*: The Challenge allowed participants to use available information technology in order to become better engaged in the policy-making discussion.

The conceptual genesis for this project stemmed from the book Wiki Government by Beth Simone Noveck. The first few chapters of the book describe how the US Patent and Trademark Office used an on-line forum to engage experts in the evaluation of patent applications. Known as the "Peer-to-Patent" program, the forum allowed for a broader pool of experts, and not just a single patent examiner, to evaluate the uniqueness of a proposed patent design. The project yielded several benefits, including quicker application processing and, more critically, a more thorough evaluation of patent applications.

Some governmental entities have implemented crowdsourcing as part of their policy-making processes. For example, in 2009 the US Environmental Protection Agency created a Watershed Central Wiki that allows stakeholders in participating watershed basins to share best practices.<sup>1</sup> The Agency developed the Watershed Central Wiki after a project the Agency conducted in November 2007 regarding the management of the Puget Sound in Washington State.<sup>2</sup> In that project, the EPA solicited input from federal, state, and private sector employees on how to clean-up and monitor the Puget Sound. During its brief iteration, the Puget Sound wiki elicited 175 contributions and nearly 17,000 page views.<sup>3</sup> One novel recommendation identified during this wiki project was to equip the Sound's ferryboats with environmental monitoring equipment.

Other jurisdictions have employed crowdsourcing to hone policy directives. The State of Utah's Department of Technological Services is using a wiki to develop a technological architecture for state agencies.<sup>4</sup> Across the Atlantic, the Cabinet Office of the United Kingdom's Prime Minister has unveiled its own Red Tape Challenge aimed towards eliminating some of the country's 21,000 plus

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1 The Watershed Central Wiki may be accessed at <http://water.epa.gov/type/watersheds/datait/watershedcentral/wiki.cfm>. For more information read: Kevin McCaney, "EPA Puts Wikis to Work on Ecosystem Support," *Government Computer News*, available on-line at <http://gcn.com/articles/2010/07/19/web-app-epa-wiki.aspx> (accessed 3 May 2012).

2 The Puget Sound Wiki may be accessed at: [http://pugetsound.epageo.org/index.php5?title=Main\\_Page](http://pugetsound.epageo.org/index.php5?title=Main_Page).

3 Chan Wade-Hahn, "4 Studies in Collaboration: Puget Sound Information Challenge," *Federal Computer Week*, available on-line at <http://fcw.com/Articles/2008/02/29/4-studies-in-collaboration-151-Case-3-Puget-Sound-Information-Challenge.aspx> (accessed 3 May 2012).

4 This Utah's Department of Technological Service's wiki may be accessed at: [www.utahta.wikispaces.net](http://www.utahta.wikispaces.net).

regulations.<sup>5</sup> To date, the UK's Red Tape Challenge has led to the repeal of 84 pieces of antiquated Trading with the Enemy laws adopted during the Second World War era.<sup>6</sup> Closer to home, the Federal Trade Commission used a wiki-like process to solicit input regarding the nation's broadband policies.<sup>7</sup> On Capitol Hill, the House Committee on Oversight and Government Reform, chaired by Congressman Darrell Issa, plans on launching the "Madison" project whereby the public may comment on legislation as it is being drafted.<sup>8</sup>

## Project Design

The Texas Red Tape Challenge was loosely modeled after the Red Tape Challenge administered by the UK Cabinet Office.

The Texas Red Tape Challenge centered on four policy focus areas, occupational licensing, the rulemaking process, public education mandates, and regulations affecting manufacturing in Texas. Each focus area included specific regulations for public review and comment. The table below, *Challenge Focus Areas and Regulations*, lists each of the regulations posted within the Texas Red Tape Challenge's respective focus areas.

Each regulation posted beneath the focus areas included a brief description of the regulation, as well as links to the applicable statutes. Information was also provided to the relevant rules and governing agencies. Also, and when possible, the description included a synopsis of the regulation's background and purpose.

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5 The UK's Red Tape Challenge may be accessed at: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>.

6 Available on-line at <http://www.redtapechallenge.cabinetoffice.gov.uk/regulations-weve-repealed/> (accessed 16 May 2012).

7 The Federal Trade Commission's Broadband site may be accessed at: <http://broadband.ideascale.com>.

8 For more information see: <http://sunlightfoundation.com/blog/2011/12/08/in-hackwetrust-the-house-of-representatives-opens-its-doors-to-transparency-through-technology/>.

<i>Challenge Focus Areas and Regulations</i>	
<i>Focus area</i>	<i>Regulations Included</i>
Occupational Licensing	Shorthand court reporters, barbering and cosmetology students, nurses, social workers, psychologists, marriage therapists, theater owners, landscape irrigators, hotel owners, professional counselors, dieticians, nurseries and florists, mobile home sellers, geoscientists, bottled and vended water operators, mass gathering promoters, secondhand watch vendors, process servers, public insurance adjusters, temporary common worker providers, beauty shops and schools, athletic trainers, locksmiths, shampooists, electrical sign contractors, code enforcement officers, sanitarians, used business machine sellers, pawnshop employees, vegetable seed sellers, auctioneers, and stevedores.
Agency Rulemaking	Regulatory analysis of major environmental rules, legislative intent, small business impact statements, negotiated rulemaking, contested case hearings, the Texas Register, electronic availability of agency rules, public input for rulemaking, and the Texas Administrative Code.
Public School Mandates	High school curriculum mandates, school accountability, school start date, State of Texas Assessments of Academic Readiness (testing), interlocal contracts and purchasing cooperatives, integrated pest management program, recycled materials management, inspection of portable school buildings, test administration and security, and public discussion of campus ranking.
Manufacturing Regulations	Bakeries, emissions facility preconstruction permits, Texas Environmental, Health, and Safety Audit Privilege Act, environmental compliance history, contested case hearing requirements for certain environmental permits, contested case hearing requirements for air quality permits, Clean Air Act notice requirements, water desalination, industrial homework manufacturers, brewers and beer manufacturers, brewpubs, wineries, bed manufacturers, commercial fertilizer manufacturers, animal feed manufacturers, and industrial alcohol manufacturers.

Participants were invited to review the regulation's description and the associated agency information and applicable statutes. If a participant had an idea on how to change a posted regulation, the Challenge program included a prompt whereby they could submit that recommendation. The idea prompt also included specific questions for participants to consider an answer. Examples of the questions used include: Describe your experience with this regulation. How could these regulations be simplified, reformed, or reformed? How can we reduce their

bureaucracy through better implementation? How could this regulation be done better? How would you change existing statute specifically in order to implement your idea? Participants were also asked to describe the costs or savings that may be generated by the idea offered. The questions were designed to engender responses that would inform the Committee members and other participants on how the ideas would work, and what problem(s) they would address.

Once an idea was submitted regarding a specific regulation, other registered participants could vote for or against the idea offered, or provide their own follow-up comment regarding the recommendation. Ideally, the on-line forum and discussion -- a component of crowdsourcing -- would help perfect the original idea and recommendations on how to change the applicable statutes for the Committee's consideration.

### **Participation**

Participation in the Texas Red Tape Challenge was open to all interested members of the public. While the information and comments on the Challenge site were available for public view, a person was required to register with the Challenge in order to participate.

The registration prompts for the Challenge were modeled after the Witness Affirmation Form used by committees of the Texas House of Representatives. Participants were required to provide their full name, title (if applicable), contact address, and phone numbers. Anonymous participation was prohibited. Registrants were also required to disclose if they represent themselves as a private individual, or if they served as the representative for a trade group or association. As a condition to registration, participants were also required to read and agree to the Terms and Conditions of Use for the Texas Red Tape Challenge.<sup>9</sup>

The Texas Red Tape Challenge had 960 users when it ended in October 2012.

### **Results**

The Texas Red Tape Challenge opened in early July and closed on 31 October 2012. Registered users submitted nearly 100 ideas. On December 6, the

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<sup>9</sup> The Terms and Conditions of Use were drafted by Committee staff with the advice of Texas Legislative Council. Generally, the terms required that users be truthful, avoid abusive behavior, and refrain from engaging in commercial solicitation or political campaigning on the Texas Red Tape Challenge site.

Government Efficiency and Reform Committee met to consider formally selected ideas that met specific criteria. Those criteria included:

- The idea had to relate to a regulation within a specific focus area of the Texas Red Tape Challenge. "Off topic" ideas, which were ideas relating to policy areas beyond those specified within the Challenge, were not included for the Committee's formal consideration.
- The idea needed to include a sound recommendation with regard to the policy focus area.
- The idea should have been substantively discussed within the Challenge.

All of the ideas presented before the Committee are included in this chapter of the Interim Report. *The Committee did not take any formal action in favor or in opposition to these ideas.* While the Committee did not endorse these recommendations, they are included in this report as examples of the types of recommendations generated by the Texas Red Tape Challenge crowdsourcing project.

**IDEAS FROM THE TEXAS RED TAPE CHALLENGE**

**Texas Higher Ed Open Government Challenge Focus Area: Providing Public Notice**
**Idea Submitted:** *Keep newspapers, incorporate Internet*

It is true that publishing public notice announcements in newspapers carries a cost, and those notices are reaching fewer citizens. However, Texas isn't yet at a point where the Internet can fully replace these notices. The newspaper was the ideal announcement medium when this statute was written because of its ubiquity. The state and local governments do not have websites that reach the majority of citizens. Governments should supplement — but not replace — newspaper announcements with posts and ads on social media websites, as well as announcements on local news websites.

How would you change existing statute specifically in order to implement your idea?: Current statute requires that notice be posted for 30 days. To fund additional outreach online, adds in all outside media must appear at least 30 days in advance, and for an equal number of nonconsecutive days after. This will spread the cost across all media. The notice must appear on the government website for the entire 30 days.

**Idea Author:**

Ms. Meghan Young  
LBJ School, University of Texas  
Austin, Texas  
Represents: self as private individual

**Vote Summary:**

**For:**  **Against:**

**Participant Comment:**

It seems it is a challenge to meet the communication needs of such a varied population and be cost-effective as well. I think posting notice in public places such as the library is wise, but perhaps the notice could be posted in grocery stores and post offices also. Computer generated notice will reach a number of people and completely exclude others. Would a postcard-type mailout be at all cost-effective instead of posting notice in newspapers? (Peggy Halamicsek, Schulenburg, Texas)

While not every Texas citizen has internet access or is computer savvy, newspapers are too costly and ineffective to continue as a standard for public notification. It is adequate to provide notice by posting the information at local public libraries and government offices. The majority of those who do not have or use internet will still have access to the information via these sites. And for those people who are homebound, information can still be obtained via phone calls to the relevant government offices. Finally, some communities already own their own television channel for public announcements and notices. While I do not think it is practical to require that every community go to this expense, those that already use it would be wasting effort and funds on duplication in newspapers. (Adrian Metzger, Dripping Springs, Texas)

I agree that advertising in newspapers is expensive. However, everyone has is not social media savvy or Internet savvy. By attempting to reach out to inform some, we may alienate others. This defeats the purpose. I think we should include various forms to inform the public about public notices. We should utilize social media, the Internet, postings at post offices, grocery stores. We might even consider if local TV stations would be willing to run the notice on the ticker at the bottom of the page like local news casts are doing for reporting synopsis of general news already covered or breaking news. (Yvette Morales, San Antonio, Texas)

News of government actions must be relayed to the public. The public obtains news in a variety of ways. Young adults look to the internet for news. Middle aged folks are split between internet and the newspaper. Our older generation still rely on the newspaper. In order to keep the public informed, internet and the newspaper must be providing public notice. (Jason Kroll-Rosen, San Antonio, Texas)

**Staff Comment:** This idea consists of comments that were offered as separate, yet similar, ideas to the Higher Ed Open Government Challenge.



**Texas Higher Ed Open Government Challenge Focus Area: Providing Public Notice**

**Idea Submitted:** *Local Government's Choice*

Local governments should be able to choose where to "advertise" public notices

How would you change existing statute specifically in order to implement your idea?: Legal Notice is a communication required to be made public by a state statute or state agency rule; or a notice required for judicial proceedings or by judicial decision. Councils should be free to decide where it is best to place public notices. More work needs to be done to clarify and standardise the content of public notices. Councils should publish notices online and offer users an email subscription service, allowing users to "opt-in" to receive public notices.

Describe the costs or savings that may be generated by this idea.: This would both improve effectiveness of "discussions and involvement of the local community" and give authorities flexibility to spend money "in the way they see fit to best engage their local communities".

**Idea Author:**

Ms. Sarah James  
 Texas State University  
 Driftwood, Texas  
 Represents: self as private individual

**Vote Summary:**

**For:**  **Against:**

**Participant Comment:**

Legal Notice is a communication required to be made public by a state statute or state agency rule; or a notice required for judicial proceedings or by judicial decision. Councils should be free to decide where it is best to place public notices. More work needs to be done to clarify and standardise the content of public notices. Councils should publish notices online and offer users an email subscription service, allowing users to "opt-in" to receive public notices. Describe the costs or savings that may be generated by this idea.: This would both improve effectiveness of "discussions and involvement of the local community" and give authorities flexibility to spend money "in the way they see fit to best engage their local communities". (Sarah James, Driftwood, Texas)

Due to the high cost and low circulation of newspapers, local governments should have the option to post public notices on their website or if they do not have one, in a newspaper. This would cut cost and be an efficient way to inform citizens in the modern world. The abundant amount of small towns in Texas cannot be ignored. Many towns do not have a functional website and citizens rely heavily on newspapers. In larger cities, the classified section is not read and instead, people turn to Craigslist. Having the option is crucial for implementation in the state. (JJ Rocha, Austin, Texas)

However, there would still need to be a clear, fair procedure to protect the public and allow for participation. (Clara Cobb, Austin, Texas)

I think one way to improve on newspaper-, city website-, and city hall-only notice would be allow governing

**Staff Comment:** This idea includes comments that were originally offered as separate ideas for the Texas Higher Ed Open Government Challenge, each centered on allowing local governments to decide on how to provide notice.

**Texas Higher Ed Open Government Challenge Focus Area: Rulemaking and Regulatory Negotiation Processes**

**Idea Submitted:** *Proactive Citizen Involvement Instead of Reactive Involvement*

The Texas Administrative Procedure Act focuses heavily on rules for how to handle a contested rule that has already been enacted. A more efficient way to encourage public participation in government is to involve citizens more in the rule-making process than just creating ways for them to contest rules once they are created. The Texas Administrative Procedure Act state that, "a state agency shall consider fully all written and oral submissions about a proposed rule." This is a very abstract statement, and it doesn't define exactly what the agency should do to prove "full consideration" of public comments. I think a step should be added in the rule-making process that requires the state agency to conduct a meeting addressing the comments made by citizens of the proposed rule and attempting to tailor the rule to satisfy the concerns presented. Without the step of truly integrating citizens' input into rules, the act of "considering" comments is pointless.

**Idea Author:**

Hannah Ging  
Texas State University  
San Marcos, Texas  
Represents: Self as A Private Individual

**Vote Summary:**

<b>For:</b>	2	<b>Against:</b>	1
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**Participant Comment:**

Statewide uniformity would be essential for any rulemaking and regulatory negotiation process. However, it does seem that the process is not practical for today. I agree with the previously stated opinion that argued that the process needed to be proactive and not reactive. (Peggy Halamiccek, Schulenburg, Texas)

The best way for people to undertand is to educate them on the process. This can be done through public access channels as well as public radio. The more informed citizens are, the more likely they are to participate. (Robin Bonner, San Antonio, Texas)

**Texas Higher Ed Open Government Challenge Focus Area: Providing Public Notice**

**Idea Submitted:** *Use Local Government Web Sites for Open Meeting Requirements.*

The Texas Open Meetings Act was passed when newspapers and bulletin boards were the primary sources of official public information. For all practical purposes the Internet has replaced both. The Texas Government Code should be updated to reflect this and all references to “bulletin boards” and “newspapers” can be eliminated. Instead, the Code should be rewritten to state that open meeting announcements, agendas, and minutes where required, must be posted in a tab on a home web page. There is already an example of this in the Code at in Section 551.056 directing

Sec. 551.056. “ADDITIONAL POSTING REQUIREMENTS FOR CERTAIN MUNICIPALITIES, COUNTIES, SCHOOL DISTRICTS, JUNIOR COLLEGE DISTRICTS, AND DEVELOPMENT CORPORATIONS. (a) This section applies only to a governmental body or economic development corporation that maintains an Internet website or for which an Internet website is maintained.

However, I would except Sec. 551.051. SCHOOL Districts. Bulletin boards are appropriate for that setting.

It is time to modernize, as the majority of the adult population is Internet literate, aware of web sites, and functional with search engines. The web page can be used announce open meetings and to publish minutes and agendas. This could have an additional benefit of spurring government bodies to adopt there own local “red tape challenges” to accomplish local streamlining of ordinances and policies and, similarly, save on notice costs.

Lastly, to accommodate the internet-illiterate population, public notices announcing this change in the current notification procedures should be published in all exiting newspapers slots and bulletin board for six consecutive months following adoption of the changes.

How would you change existing statute specifically in order to implement your idea?: Adopting the paragraph below and inserting into the beginning of Subchapter C would effect the change. POSTING REQUIREMENTS (a) This section applies to all governmental bodies or economic development corporations that maintain an Internet website or for which an Internet website is maintained. This section does not apply to a governmental body described by Section 551.001(3)(D). (b) All government bodies subject to this Code will develop a web site for the express purpose of public notification and, after six months of notification in the present channels, would cease using those channels”

Describe the costs or savings that may be generated by this idea.: The cost savings would be realized in the elimination of publishing fees. Also, bulletin boards could be rented fro advertising. There would also be future savings as the web sites would facilitate government bodies in instituting their own local red tape challenges

**Idea Author:**

Mr. William Courtney  
 Texas State University  
 New Braunfels, Texas  
 Represents: self as private individual

**Vote Summary:**

<b>For:</b>	2	<b>Against:</b>	0
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**Participant Comment:**

None.

## Texas Higher Ed Open Government Challenge Focus Area: State Agency Websites

### Idea Submitted: *Use Mobile Websites to Increase Accessibility*

State agencies should provide mobile websites in addition to a traditional website. A serious pitfall of governments providing information and services through the internet (known as e-government) is that it has exacerbated the problem of the digital divide. A possible solution to this problem may be the utilization of mobile technology as means to access e-government services and information through a mobile website. Mobile devices, such as smart phones, are becoming increasingly ubiquitous and due to market penetration may not have the same accessibility issues as traditional e-government. For a state agency a mobile website would allow citizens to easily access the information and services provided online using a smart phone or tablet. This would be a great benefit to citizens who do not own a computer and whose only access to the internet is through their phone or tablet. Traditional websites are often difficult to navigate and use with mobile devices. This is attributed to the fact that traditional websites are designed to be viewed through a computer screen and are best navigated by pointing and clicking with a mouse. Mobile websites allow for easier navigation using the smaller touch screens of today's smart phones and tablets. Additionally, a mobile website will enable citizens to easily access state agency information and services from any location there is cell phone reception. This would help provide easier access to information and services from locations where a computer with internet access is not readily available. In short mobile websites could increase accessibility to state agency services and help boost citizen engagement across multiple demographics and technology platforms.

#### Idea Author:

Jay Koltermann  
Texas State University  
Austin, Texas  
Represents: Self As A Private Individual

#### Vote Summary:

For:  Against:

#### Participant Comment:

Some state government agencies should consider using apps similar to the ones businesses use. For instance the Comptroller's office could have a taxpayers app that could assist taxpayers with taxpayer forms, deadlines, or contact info. Some people now do not even use laptops/computers. People are always on the go and would benefit from these apps. (Damon Fogley, Kyle, Texas)

**Texas Higher Ed Open Government Challenge Focus Area:** Rulemaking and Regulatory Negotiation Processes

**Idea Submitted:** *Set RTC as official forum for petition and comment.*

If the purpose of the Red Tape Challenge is to streamline or modernize policy in order to expand transparency, accountability, and efficiency, the best way to do this may be to apply the Red Tape Challenge idea to the state agency sites as an official form of petition and comment.

Subchapter B on Rulemaking, in the section on PETITION FOR ADOPTION OF RULES requires that:

"(a) An interested person by petition to a state agency may request the adoption of a rule."

The section on PUBLIC COMMENT in the same Subchapter also states:

"(a) Before adopting a rule, a state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing."

If we were to conflate the petition process with that of the public comments process, there is one way to cut down on bureaucratic red tape in a modernized way: the official adoption of the RTC as the method of public comment and petition. This being the case, government could more efficiently respond to public comments, ideas, and suggestions in a faster manner than is aligned with the requirements of the statute.

If you want to make government work more efficiently and transparently - put it at the finger tips of the people it serves and the people whom serve it directly as employees.

The Red Tape Challenge is a living example of how this idea could work when applied to the agency websites. The public would read a proposed rule and legislative mandate, and comment directly on the site. Government would then respond on the site in an official capacity thus fulfilling the mandate of the statute. There is no sound reason why the official method of petition for the adoption of a rule AND public comment on proposed rules should not be refashioned in the RTC manner.

Let the subchapter mandate that the methods of petition and comment be reflective of the RTC process.

**Idea Author:**

Mr. Joey Parr  
Austin, Texas

Represents: self as private individual

**Vote Summary:**

<b>For:</b>	<b>Against:</b>
<input style="width: 50px; height: 30px; border: 1px solid black;" type="text" value="2"/>	<input style="width: 50px; height: 30px; border: 1px solid black;" type="text"/>

**Participant Comment:**

The Texas Administrative Procedure Act state that, "a state agency shall consider fully all written and oral submissions about a proposed rule." In my opinion perhaps we need to include an addition to include online submission of comments, with a time frame for public comment. For example, an open forum online for thirty days. We can also have the town hall meetings requiring the agencies to conduct meetings to discuss the public comments made for and against the new laws/rules and ensuring that those comments were entered into the "public" record. (Yvette Morales, San Antonio, Texas)

**Texas Higher Ed Open Government Challenge Focus Area: Providing Public Notice****Idea Submitted:** *Get the word out in social media too*

To maximize viewership of public notices, the Legislature should amend the existing statute to include internet based public notices as well as some newspaper ads. The current newspaper circulation in addition to posting in public buildings does not reach enough of the population. Advertising in social media and on agency websites will improve viewership of public notices and hopefully increase public participation.

How would you change existing statute specifically in order to implement your idea?: I would change the current statute to include internet based advertising, but not just on the agency websites. Advertisement on social media is absolutely necessary to increase public engagement. For a little more freedom, the language might need to stipulate that public notice should be based on maximizing public viewership and advertising methods should be analyzed for breadth of circulation rather than just ease of notice. I assume cost would be analyzed in both situations. In the current environment, maximizing viewership would and should include the internet and especially social media. The problem with the current system is that conventional ways of reaching people aren't as prominent or reliable anymore. If the legislature is determined to advertise in newspapers and community newsletters around the state, their circulation will hit about 3.6 million people (at best, assuming <http://aggiejournalists.blogspot.com/2007/08/texas-papers-by-circulation.html> is correct). Add in posting in community centers and agency buildings and maybe the number increases, but in my 23 years of life experience I have yet to notice (maybe I saw it, but I definitely didn't notice) a public notice. If the legislature wants to improve its access to the public, the internet is probably the best medium. According to a 2010 Census Bureau study, 14 million out of 23 million Texans accessed the internet at home. 9 million accessed the internet outside of the home. However, I don't believe those millions gravitated toward Texas agency websites by choice very often. The Legislature would do well to promote websites via internet ads, perhaps in newspapers, but another medium which should be considered is Facebook. In Texas, approximately 12.7 million people use Facebook, about 11.4 million of them over 18 (<http://www.statista.com/statistics/187532/states-with-the-most-facebook-users-in-the-us/>, <http://www.statista.com/statistics/187731/facebook-user-age-distribution-in-texas-in-may-2011/>). Of the approximately 26 million people in Texas, almost 19 million are over 18 (<http://quickfacts.census.gov/qfd/states/48000.html>) which means about 61% of Texans over the age of 18 are on Facebook. The Texas Legislature or any other government agency could capitalize on this high density of Texans on one medium by posting public notices as ads on Facebook. Similarly, agencies can post public notices on Twitter or on their websites... as long as the agencies can garner followers before doing so. The agencies would benefit from at least initial Facebook ads to boost viewership on agency websites and/or Twitter. One caveat to pulling all paper advertising is the very LOW access of Facebook, Twitter, and the internet in general by the elderly. Some newspaper advertising of public notices should still be included.

Describe the costs or savings that may be generated by this idea.: Newspaper ads cost anywhere from \$6 for one black and white column in a local paper with a couple thousand people in its circulation to hundreds of dollars in a paper like the Houston Chronicle or the Austin American Statesman (<http://www.gaebler.com/Newspaper-Advertising-in-Texas>). For a day of advertising across Texas, the Legislature would need to spend about \$4500 to possibly reach up to 3.6 million people in a day. For a week, the ads would cost about \$31,000. For a month, the total newspaper budget for a public notice to the State (to reach a mere 14% of the population) would be about \$133,000. However, there is no guaranteeing any reader looked at the ad even if they received the paper. Also, a huge part of the Texas population would never see a public notice at all. On the other hand, Facebook ads average at \$0.91 per click in the US and can be catered to fit a certain demographic and certain budget. Since Facebook charges for advertising per click, Texas agencies would only be paying for ads that worked. If Texas agencies wanted to bid competitively, a Facebook ad would cost \$0.91. *(continued on next page)*

**Idea Submitted (continued):**

If each of the 11.4 million Facebook users in Texas over 18 clicked on an ad, the bill would be about \$10.5 million.

However, Texas agencies can choose to only bid for \$0.25 to \$0.5 slots or set a cap on its budget. A \$133,000 budget of \$0.5 ads would get the agency at least 266,000 views, which is only about 7% of the total readership of newspapers. However, the guaranteed view of an ad should be considered over a flip of the page over some ads in the newspaper. Tweeting and posting on agency websites is very low cost- the only fares being the time it takes to tweet (for Twitter) and the cost of a webmaster/designer to change the public notices (for agency websites). Combining Facebook ads with Twitter and the agency websites and still including some newspaper ads is probably the best way to maximize exposure for public notices and cut

**Idea Author:**

Ms. Margaret Cook  
University of Texas at Austin  
Austin, Texas  
Represents: self as a private individual

**Vote Summary:****For:**

0

**Against:**

0

**Participant Comment:**

None.

**Texas Red Tape Challenge Focus Area: Public School Testing****Idea Submitted:** *Change State Testing Requirements to NCLB Minimum*

For the purposes of discussion, I would like to introduce this idea to the Texas Red Tape Challenge. The other idea threads regarding school testing center on the issue of the magnitude of the testing involved in our schools. I do not disagree with these sentiments, and would like to move the discussion further. This idea, which was suggested in another thread, is to scale back the state's testing requirements to federal No Child Left Behind (NCLB) standards.

For the purposes of starting this discussion, I would like to introduce a bill draft, below, that does just that. And I want to emphasize here the use of the word "draft" -- consider it a working document open to comment and suggestions. Here are some of the specifics on what this draft does:

First, the bill requires that students in grades 3 through 8 be assessed through a nationally recognized, norm-referenced assessment instrument (such as the Iowa test) in the areas of reading, mathematics, and science. This is a change from the current law that requires the use of criterion-referenced assessment instruments (which is the STAAR) in the areas of reading, mathematics, and science as well as writing and social studies. This change scales the state's testing requirements to NCLB standards.

Second, this draft reduces the number of end-of-course tests that students must pass to graduate from high school. Currently, students are required to take end-of-course tests in Algebra I, Algebra II, geometry, biology, chemistry, physics, English I, English II, English III, world geography, world history, and United States history. This bill draft pares the number of required tests down to Algebra I, English III, and one of three science tests (in the areas of biology, chemistry or physics). The draft also eliminates the college readiness standards used for the English and Algebra tests. Again, this change scales the state's testing requirements to NCLB standards.

Third, the draft eliminates the requirement that students achieve a certain cumulative score on their end-of-course tests in order to graduate. As an alternative, the draft does require that students pass each individual test in order to graduate.

Fourth, the draft eliminates the requirement that a high school student's end-of-course tests count towards 15 percent of their final grade for that class. The draft does require that each school district adopt a policy addressing how a student's end-of-course exam will count towards their final grade.

Lastly, the bill draft provides that test results cannot be used for the purposes of teacher appraisals or pay raises.

Please note that this bill draft is being presented as a starting point for discussion. It is my hope that, through earnest dialogue, stakeholders can identify workable changes or additions to this draft. Towards that end, I encourage participants to consider this as a working document, and feel free to offer their own comments and even suggested changes to the bill's language. For example, although this draft starts with NCLB standards, Texas may want to add some tests at specific grade levels in order to monitor students' yearly progress.

Admittedly, this bill draft focuses on the issue of testing, which is a sub-set of the larger issue of school accountability. With regard to that topic, various individuals and organizations offer different interpretations of the meaning of the term "accountability". In addition to comments regarding this idea on school testing, I welcome Challenge participants to offer their own ideas regarding school accountability within that focus area.

At the end of this project, I am hopeful that we can find solutions that ensure our students' success with regard to their own educational opportunities and participation in the nation's workforce.



**Idea Author:**

Representative Bill Callegari  
Texas House of Representatives  
Katy, Texas  
Represents: Self as Private Individual

**Vote Summary:****For:**

5

**Against:**

3

**Participant Comment:**

As a teacher and a parent, I agree that there needs to be significant changes made to our accountability system. I would like to introduce the concept of changing from a one test on one day to a multi-day system. As it stands right now students take state mandated tests near the end of each school year. That data is used for a variety of purposes. There is a lot of pressure for all stakeholders.

Instead of that model what about a three times a year model. Beginning of year to determine where the student stands as far as grade level expectations (TEKS). This would help teachers know what skills need to be addressed with which students. Under the current system everything gets taught to all regardless of prior knowledge or mastery. Our best and brightest may be passing STARR, but they are being left behind. The next check point test would occur middle of the year. Again this allows for adjustment in instruction to be truly reflective of student needs, and will demonstrate growth. The last check point will occur at the end of the year with the summative exam. The scores of all three exams taken together gives a clearer picture of student growth and instructional effectiveness.

Under the current system a teacher can do a bang up job and work with a student making tremendous progress, but the student may not "pass" the STARR exam. On the converse side a gifted student may score at a "commended" level on the STARR, but spent many hours staring at the walls during the school day marking time while waiting for others to catch on to what they have already mastered. With the current system one students looks like we are failing them, and another student appears the opposite. By looking at year-long growth as opposed a snapshot we can get a truer picture of what our students are learning and the work our teachers are putting into the classrooms. (G. Tappan, Registration Incomplete)

I like the concept, and understand that this is just a working document. I don't like the idea of using the federal standards as ours. We can write better standards than DC, and we lose a little more sovereignty when we do what they want. I also think that going to complete local control of the schools would be better without a dept of Education at either the federal or state level. (Jim Baxa, Lubbock, Texas)

I do not want to see our standards so lowered. I come from a large family, all of us educated past high school, most with BA degrees. I have three children of my own, all currently in public school. I am a teacher here in the state of Texas. Although I do agree with some of the changes proposed, such as relieving some of the pressure and emphasis on test scores that we now have, and allowing districts in different regions to choose the starting class day that is best suited to their community and environmental needs, I do not want to see Texas reverting back to outdated and limited student expectations. We now live in a Global community; our "world" no longer consists of primarily the USA. We have to educate our students and increase their achievement to a high standard, in order for them to be competitive and marketable in their 21st century future.

We are competing against China, India, Japan, and other countries with strong educational prowess, within our very own "four walls", and we cannot let our students consistently come in at the bottom of the list, as we have seen occur over the last five to ten years. We have wonderful programs, research based, such as the IB philosophy, and Brain-Based models of instruction, and many others, that can and will increase our students skills in critical thinking, analysis, problem solving, and creativity

We need to raise our curriculum and teaching strategies and methods to a higher level, so that we can directly and indirectly have a positive effect . on student achievement, intelligence, and skills.

If we teach to high standards, and facilitate student learning at high levels, we do not have to fear the STAAR, or E-O-C exams. When the majority of our students do well on, or at least pass, all their exams, teachers will be very happy to accept the additional pay that comes with performance bonuses. The educational system in our country needs a major overhaul, but it must happen over time, and in gradual increments. If we focus on better curriculum, better methods, and best practice and strategies, it will happen. (Mary Ellis, Edinburg, Texas)

The concept is good, but NCLB is unrealistic and I think we could come up with better standards anyway. Students have very different learning styles as well as very different skills, and good teachers recognize and build on these strengths and weaknesses. It is a shame that standardized testing has become a way of life - it seems like there are more days than not that you can walk into a school and see "testing - do not disturb" signs everywhere. Learning should be fun and students should be actively engaged in learning. We do need high standards, and everything can't be changed all at once, but there is a lot of work that needs to be done on our educational system! (Candy Schoppa, Lubbock, Texas)

As a now-retired Texas public schoolteacher with 31 years experience, I strongly believe that the schools are spending too much time testing and "teaching to the tests!" My career spanned the years from the Stanford Achievement Test as the only standardized test given in Texas public schools and ended with the last year of the TAAS Test. I strongly believe that my students learned more when I could teach my students and not teach the test to my students. My kids had more fun, were more interested in the course material, and learned more because we weren't having to stop so often to do "practice tests." I definitely feel that we should do less testing and more teaching!! I also believe there ought to be more local control and no money tied to test scores. I do agree with others who have mentioned that Texans can come up with better standards than the NCLB; but, overall, I like the "working" document that the Rep. has proposed. (Linda Simcox, Houston, Texas)

I do believe that academic testing has become too burdensome, but I would like to see testing that would help individualize a student's overall plan, whether it is for college, two year college, occupational certificate. For instance, not all students learn the same way. By first grade, we should know which students learn by listening to a lecture, and which ones learn by doing. In middle school, some sort of aptitude test that would tell a student where his talents lie (mechanical? artistic? etc.) and then followup as to what sort of careers students might find interesting. Students need more information to make informed choices. (Lauria McAnally, Round Rock, Texas)

Several comments have been offered here suggesting that the state's standards should be different than NCLB's. Technically that is the case now, as the Representative's draft attempts to pare the state's testing requirements back to NCLB standards. For the purposes of this discussion, how should the state's standards be different from NCLB? How could those standards be better or more realistic than NCLB? Further, how could the Representative's draft be amended to incorporate those different standards? (Jeremy Mazur, Austin, Texas)

I believe that there needs to be a separation of testing as it regards high school and as it regards college/university. Let colleges/universities do their own testing--they usually do that anyway--redundancy reigns. So, quit laying the burden upon secondary students and teachers. Qualified applicants--in other words, those who pass college and university requirements, can be accepted or rejected on the basis of tests not related to secondary institutions' testing results. We have so muddled secondary and later education that no one can keep track of all of the testing. As regards testing in secondary institutions, let teachers test for the subjects which they teach.

Thank you Chairman Callegari for listening to a group of Superintendents from East Texas. The bill you have proposed reduces the number of end of course exams. We request you revisit HB 500 from last session and consider reducing the number of tests for grades 3-8. Your bill removes the cumulative score requirement and the test counting 15% of course grade. Thank you! (Mary Ann Whiteker, Lufkin, Texas)

## Texas Red Tape Challenge Focus Area: School Start Date

### Idea Submitted: *Let Local Districts Decide Their Own Start Date*

The State of Texas currently requires that school not begin before the fourth Monday in August. I think this regulation should be modified to allow each school district to determine their own start date.

How would you change existing statute specifically in order to implement your idea?: Allow each school district to determine their own start date. The districts can seek input from parents and teachers and reach a consensus about when to start school.

#### Idea Author:

Cindi Kirby  
Plano, Texas  
Represents: Self as Private Individual

#### Vote Summary:

For:

18

Against:

15

#### Participant Comment:

I agree that schools should be able to decide their own start date. With the mandated number of school days, plus the mandated start date many schools in my area have cut holidays throughout the course of the year in order to be able to not have to go very far in to June. (G. Tappan, Registration Incomplete)

The issue of when to start school needs to be up to the individual public school districts. The rural school districts have different circumstances than metropolitan areas. In the spirit of downsizing government, this is one area that applies. (Darlene Denton, Gainesville, Texas)

My high school followed quarters instead of semesters. Students had to attend three quarters per year, but could attend year-round if they so choose. It allowed greater flexibility for students and families, and greater (more efficient) use of the school facilities. (Greg Ellis, League City, Texas)

I think that school districts should be able to pick their own start dates. The idea of following quarters appeals to me, but I don't know if it would work for elementary school. A more efficient use of school facilities would be great! (Candy Schoppa, Lubbock, Texas)

How would the author of this idea or the other commentators (and voters) propose changing Section 25.0811 to allow school districts to select their own start date? Here are a few options to consider:

Option A. Allow districts to begin instruction the week in which 21 August falls. (This was the requirement between 2001 and 2006.)

Option B. Allow districts to petition the education commissioner for an exemption from the existing start date requirement, and start at a date of their own choosing.

Option C. Allow districts to petition the education commissioner for an exemption from the existing start date requirement, and be allowed to begin instruction no earlier than the second Monday in August.

Again, these are just some options to consider for discussion purposes. It would be useful to know precisely how districts should be allowed to select their own start date, and how 25.0811 could be changed to implement that idea. (Jeremy Mazur, Austin, Texas)

I like Option B. Let them pick their own date as long as it is approved by the commissioner. (Greg Ellis, League City, Texas)

Option D. Each district can choose their own start date without any restrictions or input from the education commissioner, or from any other state entity. (Cindi Kirby, Plano, Texas)

If districts can't decide independently when to start school, giving them the option to start 1-2 weeks earlier would be very helpful in balancing out the semesters. With the current restriction of the last week of August, the Fall semester is about 3 weeks longer than the Spring semester. This may not be a concern for year-long courses, but it makes a difference for courses only one semester long. (Cindi Kirby, Plano, Texas)

Option D. As defined by the State of Texas, the school year will begin no earlier than the day after Labor Day and to end no later than the Friday preceding Memorial Day. Children will be required to Read no less than 3 books during the summer as required by the school for which the Student attends (the "School") and provide a written book report as required by the School for each book. The child will not be eligible for the next grade level until the summer assignment is complete. (Robert Johnson, Registration Incomplete)

Within guidelines, schools should adopt their own calendars. Too much leeway leads to undue pressure on other industries, such as ours--summer camping industry. Interscholastic sports dates and others benefit from coordinated school dates, too. (Jane Ragsdale, Hunt, Texas)

Generally speaking, I do not like the state to tell the localities what to do. However, I do see this regulation as leading to less government because it causes the schools to be closed for longer into the summer. Without this regulation, some districts would turn into taxpayer funded day cares through the summer--and we certainly don't want that. I get the concerns that people have voiced and the desire to have more latitude, but I think this regulation at the state level limits government at the local level from growing out of control even more. (Jim Baxa, Lubbock, Texas)

I generally do not like state deciding local issues, but the start of school spans many areas - sports, band and other curricula's, divorced families with parents/kids in different districts trying to coordinate, summer employment for teachers and students, and families being able to vacation in the summer. When school started in early August not so long ago in some districts so that there could be breaks for those that could date is just a good idea in many ways. Summer school and other educational needs for remediation and such are outside the mandated calendar I think. (Registration Incomplete, New Braunfels, Texas)

Uniform start date has provided increased sales tax to the State that funds the school systems. Do you really want to cut your nose off to spite your face in the current environment of cuts? (Judy Young, Dallas, Texas)

I think we should keep the start date as is in August. It saves on utility bills, allows students to work during the summer, schools can set their calendars to end whenever they want so it will not affect holidays. It allows the tourism industry of Texas to plan their season. It increases taxes for the state if tourism is not cut by early start dates. It gives teachers more time during the summer to go back to school to earn their masters if they choose to. It has worked very well for many years so if not broke don't change it. (Richard Eastland, Hunt, Texas)

I don't understand how a different start date--or especially a uniform start date--has any impact on sale tax receipts. People mostly buy their school supplies during the tax holiday, but those who don't will make the purchase whether classes start in August, September or January. Please explain how different dates would affect the tax receipts. (Greg Ellis, League City, Texas)

Greg, the sales tax receipts in question are not related to school supplies or even necessarily back-to-school shopping. Texas enjoys a vibrant tourism industry-- lodging, attractions, historic sites, museums, and more, which generate millions of dollars in sales tax revenue for the state along with thousands of jobs (not to mention a lifetime of invaluable memories and learning experiences) during the month of August. A non-

uniform school start date impacts the ability of these attractions, lodging, etc to staff their businesses appropriately and to take in revenue during the month of August, when frankly it is too hot to cool our schools and buses adequately anyway.

Any way you look at it, abolishing the uniform school start date is a money-loser for the state--increased costs for school districts and lost sales tax revenues for thriving travel and tourism industry. (Mary Turner, Nacogdoches, Texas)

Option D makes the most sense to me. Local districts can make the best choices for their schools. They still have a requirement on the number of days (although I think this should be a minimum requirement, with districts having the option of having more school days if they deem it necessary). Give districts the ability to choose their own start dates and better serve their families. (Registration Incomplete, Austin, Texas)

**Texas Red Tape Challenge Focus Area: School Start Date**

**Idea Submitted:** *Uniform Statewide School Start Date Preferred*

As a camp owner and seasonal employer, I feel the uniform school start date benefits both Texas families with children in different schools and young people who need summer jobs working in Texas. As a parent, grandparent and business person, I realize there are diverse opinions but do feel the uniform start date, whatever it may be, is of greatest benefit. One large plus to the current date is the utility and related cost savings to the state. The comptroller did a major study of this several years ago and the savings were staggering.

How would you change existing statute specifically in order to implement your idea?: I feel regulation was established to eliminate burden on many Texas families and recreational employers.

**Idea Author:**

Kathy Ragsdale  
 Hunt, Texas

Represents: Self as Private Individual

**Vote Summary:**

**For:**

21

**Against:**

5

**Participant Comment:**

As a seasonal business that pays taxes, and is regulated by the State of Texas, summer camps need a set time period in which to operate. Before the uniform school start date, summer camps could not plan camp terms from year-to-year, as school dates varied by school district. Summer camps provide valuable wholesome enrichment, team-building and leadership skills that produce healthy, productive Texas citizens. Before the uniform start date, parents often had to choose between attending the start of school and finishing up camp and often the student missed school. Schools saved money by cutting operational costs when the start date was pushed back to the 4th Monday in August. The uniform school start date brings certainty to summer camps allowing them to touch the lives of more Texas children. (Margaret Lee, Marshall, Texas)

Before the uniform start date, parents of children who attended summer camp often had to choose between attending the start of school or attending the last week of summer camp. Often times, the student missed school. For people who have never experienced summer camp, this does not mean much. For people who have, it's life-altering. As a parent of a camper, I wouldn't think twice about my child missing the first week of school to finish out her camp term. No question about it; we would just catch up. I believe the state loses money when a child misses school, so if you are making a decision based on money, which I'm sure many people are, I can give you a list a mile-long of parents who would say the same thing.

As a former camper (went to summer camp 9 summers as a child), my life was totally changed by the experiences I had during the long summer terms I attended. The consistency of the PEOPLE that I spent my summers with was one of the key factors. Summer camp is a home away from home for so many children. For children who move often (due to jobs or divorce in the family or a parent being transferred due to military duties which happens so often) -summer camp is a safe haven that stays the same. A constant in their life where they are loved and welcomed and get to have a month of peace from the crazy schedules at home. If schools all over Texas were to start at different dates, this would dramatically change when each camper attended camp. The consistency of the PEOPLE at camp each term would no longer be there. This would

break my heart. Obviously, I'm passionate about camp, but I'm also passionate about children and I've learned that consistency is a huge benefit for them. (Sara Kendrick, Ingram, Texas)

Sounds like this idea is about the government picking winners (camps) and losers (local entertainment businesses). We can't have that. A uniform start date is a bad idea, because it takes all control to the state level. A limitation on starting too early is good because it saves utility costs and limits growth of local govt. (Jim Baxa, Lubbock, Texas)

As a leader of seasonal business (YMCA Camp) and a leading non-profit that provides services for children and families from all backgrounds, and is regulated by the State of Texas, summer camps need a set time period in which to operate. Before the uniform school start date, summer camps could not plan camp terms from year-to-year, as school dates varied by school district. Summer camps provide valuable character building, wholesome enrichment, team-building and leadership skills that produce healthy, productive Texas citizens. Before the uniform start date, parents often had to choose between attending the start of school and finishing up camp and often the student missed school. Schools saved money by cutting operational costs when the start date was pushed back to the 4th Monday in August. The uniform school start date brings certainty to summer camps allowing them to touch the lives of more Texas children. (William Hinton, Hunt, Texas)

I think we should keep the start date as is in August. It saves on utility bills, allows students to work during the summer, schools can set their calendars to end whenever they want so it will not affect holidays. It allows the tourism industry of Texas to plan their season. It increases taxes for the state if tourism is not cut by early start dates. It gives teachers more time during the summer to go back to school to earn their masters if they choose to. It has worked very well for many years so if not broke don't change it. (Richard Eastland, Hunt, Texas)

The uniform start date helps scheduling for kids across the state. The uniform start date helps seasonal business and summer camps! I loved going to Camp Stewart, and our girls enjoy camp. Plus, the uniform start date saves school districts money. Let's keep smart government going! (Brad Greer, Houston, Texas)

The uniform school start date brings certainty to summer camps allowing them to touch many lives of not only our children right here in Texas, but from all over. Summer camps provide a wholesome atmosphere where young people can develop outstanding personal qualities as well as self-esteem and self-confidence. It's a home away from home where they can come and have fun being themselves, while learning how to get along with others. Camping experiences help our young people to become leaders in their own schools by nurturing their individual character. Both my son and daughter were campers which provided them with life-long friends as well as life-long skills. (Betsy Althaus, Hunt, Texas)

I find it ironic that this is coming from the committee on efficiency and reform . The school start date has done both - the changes created more revenues coming into the state government because of the increased economic activity, thus more sales tax and payroll tax, hotel tax and gas taxes. And it has reduced costs by the difference of cooling the schools in August vs late May or early June when it is cooler. The reform - school start date - created the efficiencies I listed - why are we talking about this again? If we were to change it and go back to early August we would have LESS revenues and more expenses - that's the opposite of what we need. (Davis Phillips, San Antonio, Texas)

My daughter has been attending Camp Mystic for 4 summers and attend camp for two weeks in early August. I also attended the same camp for five years. I went for 5 weeks at a time but cannot afford to send my daughter for the entire 5 weeks. Luckily because of this law, the camp has been able to provide a two week session that I can afford. Although there are several campers that leave early from other states that require earlier start dates, they pay for camp and miss an entire week. It is only a two week camp so it seems



so unfair to only let my daughter go for one week and miss the second. Also, it would mean that part of my money is wasted. She cannot afford to miss school as, in Texas, students in 9th grade have strict attendance policies and the absences would not be excused; plus, she would miss too much coursework. Please keep the law in place so that her camp and others like it can keep their sessions in August. Thank you for your help. (Rebecca Bird, Round Rock, Texas)

As an employee of a seasonal Camp, I feel the uniform school start date benefits Texas families with children in different schools and young people who need summer jobs working in the state of Texas. Many families consider summer camp as an integral part of their children's personal, social, and educational development. A uniform school start date allows us to effectively offer our services to the public. It also allows us to employ thousands of college age students during our season that otherwise would not be employed in the state of Texas. (Registration Incomplete)

Uniform school start date gives all educators the ability to attend both summer school semesters to further their career. Previously the calendar enabled two weeks off in the first quarter of the calendar year, forcing parents to burn two weeks of vacation or increased child care(if you can find it). Changing uniform start date makes no sense ...since there hasn't been an increase in instructional days in decades. So, what would we need additional days to complete? Keep uniform school start date, save money on electricity and keeps kids

of buses when it is over 100. Uniform start date makes sound fiscal sense for Texas education. (Judy Young, Dallas, Texas)

As a DISD parent with children who attend summer camp, I prefer a uniform school start date. It doesn't matter if it's the 3rd or 4th Monday in August, but it needs to be set. Summer camps can't continue to operate if the school year continues to get longer and the beginning and ending dates fluctuate greatly from school district to school district. Summer camp was an important part of my childhood and I am sending my children to the same camp. They will be missing the last two days of school this year because of the late ending date in my district. If made to choose between attending camp and attending school, my children will miss school. Let our children keep their summer break. The life lessons learned at summer camp are invaluable. (Dauphin Ducayet, Dallas, Texas)

## Texas Red Tape Challenge Focus Area: High School Curriculum (4x4) Mandates

### Idea Submitted: *Revise Public Education*

For the last 40+ years Texas education has focused on preparing students for college. In examining this tract, how many students have failed to graduate from high school and how many of those that attended college actually graduated. It is my opinion that Texas has failed in providing education to the bulk of students that seek skills in industrial, construction, agricultural, and mechanical fields. Germany is providing education that is supportive of their economy and reduces welfare.

How would you change existing statute specifically in order to implement your idea?: Revise the entire education system to be meaningful to the majority of students

#### Idea Author:

Charles Durrett  
Granbury, Texas  
Represents: Self as Private Individual

#### Vote Summary:

For:

16

Against:

1

#### Participant Comment:

We are neglecting a large portion of the education of our children by not providing opportunities for them to learn industrial/manual/technical skills. Even those who go on to college need to learn some basic skills. (Darlene Denton, Gainesville, Texas)

I agree that we should provide teens with opportunities to learn a viable skill or trade so they may have a means of supporting themselves without going to college. (Rebecca Mitchell, Austin, Texas)

While I agree that trades should be taught, and Germany does a better job with education than we do, I don't agree that we should use the German model. I lived there and know that children are tested in 4th grade to determine which educational track they will take. If you do not test well then you are placed on the trade track where they will train you to become a hairdresser or prepare you for some other trade. You must train for 4 years to become a hairdresser. If you test well then you will continue on a path that will allow you to become an engineer or doctor.

Having your educational direction determined at 4th grade is crazy. Germans cannot just transition careers the way we can. To switch professions they must complete 5 or 6 more years of training and get the proper certifications and licenses from the gov't.

Even the children in the U.S. who go on to work in a trade, need to be better educated and technical training should be provided to those who do not believe they want to go to college. (Brandy Anderson, San Antonio, Texas)

But it is their training that gives them pride in their job and leads to much higher productivity that in the US. Also if you lived in Germany you should know that you are not stuck in that track. (Cheryl Winkler, Registration Incomplete)

The costs of a college education are now staggering and too many students graduate from college with huge college loans and, in this economy, with limited opportunities for employment. Therefore, our high school students need a more flexible curriculum. The high school curriculum should not be a one-size-fits-all program.

Not all students want to attend college. No students want to graduate from college with massive debt. By offering more trades and allowing more flexibility in the curriculum, kids can get a head start on life with vocational training or learn a trade that they can work at while they attend a 4-year college or university.

Flexibility can begin in middle school where kids can get a "taste" of what their interests and aptitudes are by providing at least one period per day where they get to explore a trade or skill. If a child spends 2 six weeks in an area of his/her choice, he/she can "explore" 3 vocational areas per year. By the time the youngster gets to high school, the he/she should have a pretty good idea as to whether they want to pursue a college-prep route or a vocational one.

Then, educators, legislators, and other stakeholders need to think outside the box when it comes to how to set up the high school curriculum. As a former high school teacher myself, I know that vocational training can provide "real world" opportunities for students to learn and apply sound reasoning skills, mathematical knowledge, reading skills, and writing skills-- and these skills can be made to be challenging, not watered down. Educational research has proven that kids can learn challenging material/skills when they have a reason for learning those skills/knowledge. Math, science, writing, and other skill-oriented subjects can be incorporated into vocational/elective curriculum offerings in very imaginative ways if the stakeholders (teachers, curriculum specialists, parents, students, and legislators) determine to do so.

As a result, our Texas students can be prepared for college and also be prepared to make a living without a college degree, if need be or if they want. (Linda Simcox, Houston, Texas)

Rather than following Germany's model of deciding a person's career in the fourth grade, our education system needs to be revised at the high school level. Students should have the opportunity to explore different career fields that make them excited about coming to school. Not everyone is meant for college. Thus, vocational careers should also be explored. Instead of focusing on preparing students for only college, high schools should strive to prepare students for life after high school, regardless of what that entails. If students are able to see more options for their future, we would see higher graduation rates. (Mandy Morris, San Marcos, Texas)

Germany's system does not determine your career in 4th grade. Rather that is where students are set up in different tracks but still have several options available to them. Also the reason you need to divide earlier is because our students are not coming to high school with the skills they need to prepare them for college. (Cheryl Winkler, Registration Incomplete)

The solution to the education problems is very simple. Close the US Department of Education, close all state offices of Education; restore the local school board and teachers power. (Ken Hargesheimer, Lubbock, Texas)

I agree that the goal of high schools should not be to prepare every child for college. That is unattainable and undesirable. We need to focus on teaching other skills and trades as well. To do this we need to greatly increase our vocational programs and have more than one track for students to complete high school, with one track focused on university prep and others on other goals. I agree that the Germans have a great system and part of that system is not trying to force everyone into the same program. (Cheryl Winkler, Registration Incomplete)

## Texas Red Tape Challenge Focus Area: Public School Interlocal Contracts and Purchasing Cooperatives

### Idea Submitted: *Use an eProcurement System & Improve Transparency in School Roofing*

The State of Texas needs a new way of doing business that is modern, cost effective and transparent. While other States have acquired procure-to-pay solutions with one code base, Texas relies on multiple old school systems that neglect small businesses, making it difficult for them to compete for state business. Not to mention, the state's current setup is hard to maneuver and confusing for first timers and casual users.

Texas should consider a source-to-settle eProcurement solution to drive savings and create transparency. A one-stop-shop would help level the vendor playing field, lower vendor pricing through competition, and increase personnel productivity. By implementing an eProcurement system, the state could provide a site for the general public to view all state contracts with corresponding spend-to-date. This transparency would create accountability. The state could also make its eProcurement system available to co-op members, (local governments, school districts, universities and political subdivisions, etc.) spreading value across the state.

#### Idea Author:

Brittany Devine  
Austin, Texas  
Represents: Self as Private Citizen

#### Vote Summary:

<b>For:</b>	<input type="text" value="2"/>	<b>Against:</b>	<input type="text" value="0"/>
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#### Participant Comment:

This is an interesting idea. Do you have any more information on how an eProcurement system would work? Do other states use this method? If so, how do they work? (Jeremy Mazur, Austin, Texas)

Yes, Arizona and Maryland have implemented eProcurement and Michigan's "technology" governor is following suite. The State of Arizona has seen a 26% reduction on pricing and over 40% reduction in cycle times since implementing their new system. All of AZ's active state contracts, with corresponding spend-to-date, are available for the public to view. Follow this link: <https://procure.az.gov/bs/>. (Brittany Devine, Austin, Texas)

I was doing research on what agencies are spending on DIR contracts. DIR told me that the only way to get that information is a formal Freedom of Information Act Request. Seems like a lot of work for me as well as a lot of work for the state employee that has to respond.

Just another example of how difficult Texas makes it to get detailed information on how our money is spent. Other states have their eProcurement solutions linked to websites where the public can find specifically what agencies are spending on specific contracts. (Brittany Devine, Austin, Texas)

## Texas Red Tape Challenge Focus Area: Geoscientists

### Idea Submitted: *Return to Y2K Level of Regulation*

Prior to 2001 there was no state Agency in Texas responsible for licensing geoscientists and things were fine. There was no concern on the part of the public that they were at risk and needed the State to intervene and regulate this profession. This board/agency could be eliminated returning to year 2000 levels of regulation with no real consequence to the wellbeing and safety of the public in Texas. The most significant population of geoscientists in Texas, those involved in oil and gas exploration, are exempt from the geoscientist licensure requirements anyway and other areas that geoscientists work in such as environmental are already regulated more effectively by other State Agencies such as TCEQ, the Railroad Commission or the Engineering Board.

How would you change existing statute specifically in order to implement your idea?: Eliminate and return to the level of regulation that was in place in the year 2000.

#### Idea Author:

Keith Linton  
Austin, Texas  
Represents: Self As A Private Individual

#### Vote Summary:

For:

17

Against:

36

#### Participant Comment:

Licensing geoscientists has three primary effects: it establishes yet another regulatory regime that burdens economic growth and expansion when we need it most; it creates a barrier to entry that further restricts economic development and increases the cost of doing business in Texas with no commensurate benefit; and it creates an unnecessary government bureaucracy that diverts funds from productive use in furthering economic expansion to perpetuate itself. None of these benefits the public. As noted in the original post, geoscientists are more appropriately and efficiently regulated through the previously existing state agencies - the geoscientist licensing requirements and board are redundant, are unnecessary to protect the public interest and should be eliminated. (Shelton Vaughan, Registration Incomplete)

1. If you have overlapping experience and education, the apply to the TBPG for a license. There are procedures in-place for that.
2. The TBPG serves the public by assuring that geology that is practiced before the public is done by people who are qualified in that subject. Previously, anyone who wanted to practice geology before the public could do so, and there was a substantial amount of bad geology being performed. I once had a client who had an unleaded gasoline pipeline break and the lawsuit against them was based on very bad geology. What was it? The thickness of the product ontop of the groundwater wasn't taken into account, so the flow direction of the contamination was in the wrong direction. This happened during the winter and homes began to blow up due to vapors penetrating their basements, where their furnaces were. Testing in the area of those homes showed the cause to be from diesel and #2 fuel oil from a pipeline break from a different company on the other side of the town. Unfortunately, the homeowners still insisted on using their geological assessment, even though it required the released unleaded gasoline to flow uphill 1/2 mile and change to diesel and #2 fuel oil.

3. The lobbyist was hired to help get the bill through the legislature, which had taken 8 years to get passed. All lobbying efforts, if any, since that time have been done by private individuals with no compensation. If using a lobbyist is so bad, I suggest you speak with the Professional Engineers of this State, who currently have several paid lobbyists protecting their interests.

4. Has the TBPG made some bad decisions? Yes, what Board hasn't, but the system to stop this has worked, as shown last year. Getting rid of the TBPG would only serve to bring us back to the days where public health, safety, and welfare were subject by sending us back to the days where anyone, qualified or unqualified, will be allowed to practice bad geology in the public sector.

5. If relying on the free market and third party certifications worked as well as you claim, the PE, Medical, and lawyer boards would also be unnecessary. The federal, and most state governments also don't recognize the use of third party certifications for anything submitted to them.

6. All boards and regulatory authorities (including the TBPG, TBPE, and TCEQ) have periodic reviews by the Texas Sunset (not sunrise) Commission. So far, they've seen the need for all three of these, and others.

7. As discussed earlier, dissolution of the TBPG would decrease the health, safety, and welfare of the general public by allowing geology to be practiced by unqualified persons.

8. Using the argument that prior to 2001 there was no PG board, so there was never a need for it is an extremely weak argument at best. If you look far enough back, you'll find that there was never any Board or Agency. Does that mean they aren't needed either? Perhaps we should get rid of all boards and agency, in that case. I'm not allowed to do any engineering because I don't have an engineering degree or courses. Is that fair to me? Obviously, I'm not qualified to build the space shuttle and shouldn't be allowed to. If you think you've got the qualifications necessary to get the PG license, apply for it. The TBPG has ways for people to obtain PG licenses who have vast amounts of experience in the field and can prove they're qualified. Why didn't you try to get grandfathered in when that option was open? (Henry Wise, Sugar Land, Texas)

I have studied the issues here for over ten years, in Texas and in other states, and have my disciplined opinions and many facts do not agree with many who prefer self-serving one-sided information to encourage the continuation of Texas state licensing. My goal has been to present the strengths and needs and also the weaknesses and liability increases of Texas State licensing of geology.

Those that the Board (TBPG) has licensed are mostly not qualified to do public service related geologic reviews and studies. Of those licensed, perhaps 500 to 800 may have the required experience to provide the level of knowledge needed for water resources or environmental planning or remedial work. The majority of those licensed by the Board (TBPG) applied out of fear. Fear was their primary reason for applying and paying a license fee. The numbers will change going forward. With only 500 to 800 thinking they are better off with a license that will bring the revenues below the costs, down to about \$150,000 to \$200,000 per fiscal year. That fact will inspire those state political leaders to abolish the Board in its entirety. A better use of the PG's license fees is to contribute the dollar amount to the HGS for continuing education or to apply for a peer reviewed meaningful, useful certification from the AAPG-Division of Professional Affairs. As a developer and advisor on public Earth resources, I trust peer reviews and distrust anyone with a Texas state license. Peer review by intelligent earth science community leaders is much more valuable to the general public than any rubber stamped state license. If you feel you need to protect the public, then tell me from what, for crying out loud? (Ralph Baird, Houston, Texas)

The engineers board does not regulate the practice of geology. TCEQ does not regulate the practice of geology

or insure those practicing geology are qualified. Only a licensing agency can do this. That is why there are licensing agencies. The bill to create the TBPG was introduced in 1993, 1995, 1997, 1999 and 2001. It was not sneaked by anyone. There were many negotiations that included the engineers, land surveyors, water well drillers, oil and gas industry (AAPG, DPA and others), geophysicists, soil scientists and physical geographers.

They all had input into the Texas Geoscience Practice Act. There were negotiations with the physical geographers as well. With all the negotiating going on, there was language that was agreed on that may be problematic. Until recently, the TBPG managed to avoid these issues for the greater good. It's time to clean up some of this language and move on. After all, no legislation is perfect. The engineers have modified their statute many times over the years. (W. Kevin Coleman, Cedar Hill, Texas)

The TBPG manages the licensing of geologists in Texas. Currently, licensing through the TBPG requires an application, an annual fee, passing the ASBOG exam and completion of annual professional development hours (PDH). The geologic community is very committed to continuing education and the quality of work. Many states require the licensing of Geologists, as they have recognized the importance of having competent professionals working on various projects that could affect the public. The regulation that created the TBPG does serve the public through its rules and regulations, and does not serve to promote the individual interests of any individual geologist. (Jerry McCalip, Dallas, Texas)

Organizations such as AIPG can certify qualified geologists, but have no legal authority to prevent unqualified people from practicing geology. Geological input into ground water, environmental and engineering projects has increased over the past 11 years since passage of the Texas Geoscience Practice Act. The engineers can now rely on sealed geoscience documents, as can TCEQ. Where movement of contaminants through ground water occur, the pathways are geological. Where they stop is geologically controlled. How fast they move and in which direction is geologically controlled. Whether in a clean sand, fracture system, or complex stratigraphy, its geologically controlled. Whether diffusion or advection/dispersion occurs is stratigraphically controlled. On the whole, biologists, chemists and environmental scientists are not qualified to address any of these issues. Through licensing, geologists are willing to sign and seal this type of work. I don't see anything wrong with that. Why would any state want to suddenly allow just anyone to do this type of work. I remember before geoscience licensing in Texas that the TCEQ was inundated by poorly conceived and poorly written reports. Now the investigations are performed better, the reports are better, and it should cost TCEQ much less to review them. To suddenly revoke geoscience licensing in Texas would certainly take us back to pre-2001 conditions, and that would not be a good thing.

That's just the environmental side. There are also groundwater supply issues in Texas that are critical. Federal governmental agencies are now requiring input from licensed geologists for federally funded engineering projects such as levees (since Hurricane Katrina), dams, tunnels and pipelines to name only a few. They are no longer allowing engineers to use unqualified technicians or drillers to log the soils and rock for these projects. In addition, they want the geological framework considered for these projects. In order to reduce the cost of unnecessary drilling, they are also relying on geophysical surveys to be able to omit unnecessary borings, thus reducing costs associated with these projects. So...the engineers are no longer shooting in the dark, drilling a boring every 1,000 feet in hopes of encountering all the adverse subsurface conditions associated with large projects. This is why we need geoscience licensing in Texas. So that others may rely on a State of Texas-regulated geoscience profession that will provide accurate geological and geophysical information for projects, just as the engineers do. (W. Kevin Coleman, Cedar Hill, Texas)

Mr. Coleman is no longer serving on the Texas Board of Professional Geoscientists, and his comments here are based solely on experience. There was a reason the geoscience community spent 10 years writing, developing and negotiating with various factions toward passage of the Texas Geoscience Practice Act. It was done to insure that geologic factors were considered where public health, safety and public welfare is

concerned, and where geologic factors were involved. That is why exploration and development geology was exempted. It was never intended to keep other scientists from doing what they do. It was just intended to make sure the geology, geophysics and soil science (mining reclamation and some environmental work) was done by qualified professionals. I shouldn't have to remind you about the TCEQ reviewer (environmental scientist or biologist) who demanded the geologist drill deeper into unweathered Austin Chalk to find ground water where perchloroethylene (a DNAPL contaminant) was involved. Geology should be left to the geologists, and the State of Texas should have the ability to determine who has the basic qualifications to practice geology, geophysics and soil science before the public.

People make mistakes. Boards make mistakes. Sometimes mistakes can be embarrassing for our leaders. Let's fix the problems as they come up, just as the engineers have done over the last 70 years. Let's not just throw the whole thing out the window because of a few problems.

The TBPG doesn't cost the State of Texas anything, and it provides an avenue to make sure geological issues on projects are done correctly by qualified professionals. (W. Kevin Coleman, Cedar Hill, Texas)

Colorado does not require licensure or registration of geologists. Colorado Revised Statutes do require that geologic reports be prepared or authorized by a professional geologist. Professional Geologist is a term defined in Colorado statutes. The references for these laws are shown here.

34-1-201 Definitions. As used in this Part Two, unless the context otherwise requires:

(1) "Geologist" means a person engaged in the practice of geology.

(2) "Geology" means the science which treats "of the earth" in general, the earth's processes and its history, investigations of the earth's crust and the rocks and other materials which compose it, and the applied science of utilizing knowledge of the earth's history, processes, constituent rocks, minerals, liquids, gasses, and other materials for the use of mankind.

(3) "Professional geologist" is a person who is a graduate of an institution of higher education which is accredited by a regional or national accrediting agency, with a minimum of 30 semester or 45 quarter hours of undergraduate or graduate work in a field of geology and whose post-baccalaureate training has been in the field of geology with a specific record of an additional five years of geological experience to include no more than two years of graduate work.

34-1-202 Reports containing geologic information. Any report required by law or by rule and regulation and prepared as a result of, or based on, a geologic study or on geologic data or which contains information relating to geology, as defined in section 34-1-201 (2) and which is to be presented to or is prepared for any state agency, political subdivision of the state or recognized state or local board or commission shall be prepared or approved by a professional geologist, as defined in section 34-1-201 (3). (Ralph Baird, Houston, Texas)

I was involved with issue for a time many years ago. Initially, I supported State licensing efforts, but in time I came to the opinion that licensing is nothing more than protectionism. If Texas doesn't want me to explore for oil, gas, or other resources in Texas, then so be it. There are lots of other places that I can look. We have already sold most of our Midland Basin interests anyway. (Richard Vance Hall, Tulsa, Oklahoma)

Texas geolicensure does not, nor was it ever intended to, apply to geoscientists practicing in the exploration for/development of O&G and mineral/rock resources. Act amending language, further clarifying & solidifying this exemption (will also apply to academic practice), will be introduced in the upcoming legislative session. (John Mikels, Austin, Texas)



**Texas Red Tape Challenge Focus Area: Geoscientists**

**Idea Submitted:** *Add License Exemption for State Regulators*

Currently Section 1002.252(2) of Texas Occupations Code states that "geoscientific work performed by an officer or employee of the United States practicing solely as such an officer or employee" does not require a license from the Texas geoscience board. This exemption should be extended to included State of Texas employees/regulators also. There is no reason for one Texas state agency to be paying another agency to effectively "regulate the regulators". This is true red tape. This proposed exemption would result in cost savings for the other agencies that employ geologists such as the TCEQ and would therefore be a savings for the taxpayers.

**Idea Author:**

Keith Linton  
Austin, Texas

Represents: Self As A Private Individual

**Vote Summary:**

**For:**

1

**Against:**

11

**Participant Comment:**

This would also open up state staff positions to the most qualified individuals for the job rather than limiting them to just licensed individuals from a specific group. (Keith Linton, Austin, Texas)

I believe Kevin Coleman answered this suggestion isn't a good idea elsewhere. (Henry Wise, Sugar Land, Texas)

The exemption for Federal Employees is there because the State has no jurisdiction over the Federal Govt. It is wholly appropriate for the State to regulate those who practice Geoscience whether it is in the public, Govt or private sector. The purpose of the license to protect the Public's health, Safety and Welfare holds true whether and individual is a consultant or a regulator. In fact it makes perfect sense for those who are regulators to be licensed since they are suppose to be looking after the Public's interest. (Matthew Cowan, Houston, Texas)

When qualifications are posted they include things such as education, experience and licensing.

Exempting regulators does not open it up for the most qualified. Instead it opens it to those who are the most unqualified. IF the activity is engineering related you want a licensed engineer. Why? Because his license demonstrates a level of competency above the average applicant. It also acknowledges his commitment to ethical behavior. IT acknowledges that he will not sign off on technically questionable material. The same goes wit ha Geologist. If it is dealing with the geological media you want the person whose training is with that media, whose experience is with that media and who is licensed with that media. The last thing you want is someone with a thinks or pretend they know something just because their degree has two cute words that conjours up being qualified.

Based upon your premise then there should be no minimum requirements to apply for any job. (Matthew Cowan, Houston, Texas)

State review/approval of work performed by TX PGs needs to be conducted by equally qualified professionals - level playing field! (John Mikels, Austin, Texas)

**Texas Red Tape Challenge Focus Area: Geoscientists**

**Idea Submitted:** *Fix Corrective Action License Exam Exemption for Geoscientists*

Over 90% of licensed geoscientists in Texas were grandfathered and were not required to pass the examination requirements of that program to obtain the geoscience license. Then by virtue of having that license they are exempt from the exam normally required to obtain TCEQ's Corrective Action (CAPM) license. This exemption on top of exemption does not appear to be in the interest of protecting the public and exacerbates the anticompetitive nature of the geoscience licensing program. The TCEQ CAPM exam is not material that a geologist would inherently know more than any other academic discipline involved in environmental work of this sort. The TCEQ CAPM exam exemption should be removed such that licensed geoscientists must pass the CAPM exam just like others if they wish to obtain a CAPM license. Simply remove the phrase "examination or" from Texas Water Code 26.367(c) to address this.

How would you change existing statute specifically in order to implement your idea?: This CAPM exam exemption was granted when the geoscience board was originally formed by the Texas 77th Regular Legislative Session in 2001. The TCEQ Corrective Action license changes were in House Bill 3111 of the 77th leg <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=77R&Bill=HB3111> Note that in 2001 the Texas Society of Professional Engineers testified against passage of this bill which exempted the geoscientists from the CAPM license exam. I don't know the nature of their testimony but see in the record that they testified against this bill: <http://www.capitol.state.tx.us/tlodocs/77R/witlistbill/html/HB03111H.htm> . Interesting that the committee designated the bill as "uncontested" which assured its passage by the rest of the legislature despite the engineers' testimony against the bill (a separate issue, please see post under "off-topic ideas".) I inquired previously with the TCEQ as to how this exam exemption could be viewed as protecting the public when they were also exempt from the exam to obtain the primary license that allowed them to be exempt from the exam for the other license. The written response from TCEQ was that I should discuss the issue with the legislature stating that "TCEQ is simply implementing the law". I appreciate that this forum is an opportunity to do just that.

**Idea Author:**

Keith Linton  
Austin, Texas  
Represents Self As A Private Individual

**Vote Summary:**

<b>For:</b>	2	<b>Against:</b>	14
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**Participant Comment:**

The CAPM was implemented to create accountability in the Petroleum Storage Tank Remediation Fund. The TCEQ or back then the TNRCC would reimburse the costs submitted. When the state stopped paying blindly and implemented pre-approvals for reimbursements the implemented the CAPM license as well. Since Reimbursement fund has been closed and it is now a State Lead Program, the certification has lost its meaning and usefulness and the CAPM program should be retired. The TBPE and the TBPG agencies are both capable of handling issues that arise in regards to the work performed by their respective license holders.

As to the issue of a Licensed Geoscientist being granted a CAPM by virtue of licensure by the TBPG is no different than the issuance of a CAPM to a Licensed Engineer by virtue of licensure by the TBPE. This was granted because they are QUALIFIED to do the work based upon their education and the accountability that each Agency brings to its licensees. The issue about Texas Licensees being grandfathered is no different than

the Engineers. They did not start requiring examination of "new" licensees until 1992. As it stands, any Engineer can be granted a CAPM regardless of their Degree in Engineering. But what stops them, as with the licensed Geoscientist, as PROFESSIONALS we PRACTICE only in those AREAS where COMPETENT. (Matthew Cowan, Houston, Texas)

Newly implemented regulations must be assessed as to their impact on commerce in Texas. Texas is a right to work state and in that spirit the implementation of a test that would interrupt commerce and shut down geological service businesses while an exam system was put in place was not acceptable. Therefore, a grandfathering period was implemented where the test was waived for a certain period if all other qualifications were met. The grandfathering period is over and all new entrants to the geoscience field are required to take the ASBOG exams. You may not agree with the procedure but the over-emphasis on this one component of licensure is not justified when many other facets such as a peer governance of this complex profession was a crowning achievement to truly protect Texas' resources and public. (Glenn Lowenstein, Houston, Texas)

The TBPG license requires that geoscientists only conduct work they are qualified for. The TBPG rules already cover this.

I took the CAPM exam prior to being licensed as a geoscientist. The exam was quite easy for a geoscientist who had experience in the LPST field. Passing the CAPM exam does show some level of knowledge, but is not adequate in my opinion.

When geologic reports are submitted to regulatory authorities the reports can be reviewed not only from the standpoint of approval or denial, but if errors or misrepresentations are made then the regulatory authority is capable of reporting the actions to the TBPG as opposed to merely denying the permit request, site closure, etc. The existence of the PG license first restricts the persons eligible to submit reports to authorities, but then provides a method of punitive actions to weed out unqualified or dishonest individuals. (Philip Pearce, San Antonio, Texas)

**Idea Submitted:** *Add Geoscience License Exemption For Environmental Work*

Add an exemption to Occupations Code 1002.252 for "multidisciplinary environmental assessment, cleanup and related services". Such studies are inherently multidisciplinary involving professionals from a variety of applicable academic backgrounds other than geology and the geology component of such work is essentially inseparable from the other scientific components. Such environmental work is subject to regulations and review by other state agencies such as TCEQ, therefore this exemption would not put the public at risk. There are a number of other similar exemptions already listed in the statute.

How would you change existing statute specifically in order to implement your idea?: This idea would leave the geoscience board intact but would eliminate one area of regulation where it is ineffective and burdensome.

**Idea Author:**

Keith Lint  
Austin, Texas  
Represents: Self As A Private Individual

**Vote Summary:**

<b>For:</b>	<input type="text" value="2"/>	<b>Against:</b>	<input type="text" value="13"/>
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**Participant Comment:**

I think we all agree that "environmental" work can be interdisciplinary, to varying degrees....a blend of geology, chemistry, biology, pedology, ecology, etc...tailored to the specific scope & objectives of the project. I've no fundamental problem w/ non-geoscientists including a geologic component in their reports, AS LONG AS it is limited to referenced citations of publically-available, published reports (USGS, BEG, TWDB, etc.) that address a site's geologic/hydrogeologic setting, framework, etc. However, if the investigation, and subsequent report, are to include the collection, analyses, and interpretation of new, site-specific GEOLOGIC data, that component of the project should be done by a PG, who bears the responsibility for their work. There will frequently be "fuzzy gray" interpractice areas in "environmental" projects, that will have to be navigated. A suggested solution....some collaborative dialogue between the geoscience & environmental science communities to reach some workable middle-ground, possibly including some tweaking of the PG Act/Rules and/or a written agreement...similar to the MOU between the PG & the PE Boards to address their practice areas overlap. Such an agreement needs to include a condition that, if a non-PG performs original (data collection/analyses/interpretation) geologic work & includes it in their work product, they clearly state as such and assume full responsibility for this work. Food for thought.

Although environmental work (however defined!) is not the major component of my practice area, when I am doing "environmental" work, and there are significant biological/ecological/non-geological components, I usually involve non-geo colleagues in the project or pass that component on to env/eco/bio firms. I know, and observe, my practice/skill boundaries; however, I've reviewed the work product of other non-geo "professionals" who did not observe such boundaries and it was apparent in their work product - particularly the geoscience components - that they did not have adequate geological knowledge/skills.

Final thought....If the "environmental" professionals believe that PG licensure is an intrusion into their practice area (very fuzzy boundary thereto) or impediment to their business (unclear point), they should consider establishing a licensure program for their practice....leveling the playing field, in some respects. I'm NOT a proponent of more/bigger government and additional constraints on professional practices, but would be supportive of such licensing - as long as the practice boundaries are well defined, similar to those between the PGs & PEs. Not a simple task....but worth some consideration. (John Mikels. Austin, Texas)

Licensed geoscientists sign and seal environmental work that contains interpretation and investigation of geological conditions (and/or soil science) that concerns and protects public health and safety. Just as an SPCC Plan requires a licensed engineer's seal - it is an environmental compliance document. To compare; if the environmental scientist applies the logic that they should be included with environmental geoscientific practice then the same logic should apply for any environmental work requiring a PE such as an SPCC Plan.

Environmental science as a practice is broad. I would advocate that environmental scientists be licensed for whatever area they feel would improve the overall quality of work that is done in their profession; just as we have seen an improved quality of work in environmental geology. A great example of where the environmental scientist or chemist could improve the overall quality of environmental work would be to require Data Usability Studies to be signed and sealed by a qualified person such as a chemist or someone with a certain amount of chemistry.

An important point to make is that one does not have to be a geologist to be a PG. Soil Scientists and geophysicists can be licensed and geologists cannot practice as a PG doing soil science. Environmental scientist can be PGs if they meet the requirements for soil science, geophysics or geology. The purpose of licensure is to ensure the person doing the specific work has a minimum amount of education, training and experience to complete the task correctly, and that they are willing to assume the associated liability.

I want to emphasize that with licensure comes liability and responsibility. I cannot, nor would I want to, sign and seal a document that is outside my area of expertise or practice. Just as an SPCC Plan is driven by environmental regulations it requires the seal of an engineer for all of the same reasons that geologists are required to sign and seal documents that are environmental in nature yet geology. It astounds me that environmental scientist continue to focus on the PG when it has added so much value to the environmental practice.

Please do not misinterpret my commentary - I value the work environmental scientists do and I would hope that they equally value the more specialized disciplines such as geology and engineering. (Diane Yeager, Houston, Texas)

What does sealing a document accomplish? The seal and signature of a licensee on a document indicates that the licensee takes professional responsibility for the work and to the best of the licensee's knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformance with normal and customary standards of practice. The seal is a "mark of reliance," indicating that a license holder attests that other people can rely on the information provided in the documents and drawings with a view to the safeguarding of life, health, property and public welfare.

As a result the licensee can be held accountable for failure to adhere to the standard of care. Like medical and legal professionals, professional geoscientists are licensed to be accountable to the public for their work. Their duty is to safeguard life, health, property, economic interests, the public welfare or the environment where geoscience is concerned. Professional geoscientist subscribe to a strict code of ethics and practice standards. (Matthew Cowan, Houston, Texas)

There is no need to add an exemption environmental work to the Geoscience Practice Act. The act is very clear as to what work is covered. IT covers any portion of work that deals with geoscience as properly defined in the act. All other "environmental work" such as those dealing with bugs, birds, animals, & vegetation do not require a Licensed Professional Geoscientist.

As already pointed out the primary concern of TRRP submissions relates to geoscience thus needing a licensed individual to sign off on the document.

As Ms. Yeager pointed out SPCC plans require an engineer to sign off on it, even though it is an "environmental" work, because it deals with the assessment and design of engineering structures. (Matthew Cowan, Houston, Texas)

It was pointed out that an alternative exemption could be limited to anyone who meets the EPA All Appropriate Inquiry definition. It is to be noted that the desired order of qualification for the AAI rule is for state licensing of an engineer or geologist. All other listings were secondary. The EPA desired accountability for those performing such AAI rule reports and a standard for licensing hence the desire for state licensing. Since not every state or territory had licensing boards they recognized the need for a lesser standard for qualification. Third party licensing was rejected. (Matthew Cowan, Houston, Texas)

The EPA standard recognized as documented in the significant volume of comments received on the issue of defining an "environmental professional" (I've studied them) that others besides engineers and geologists engage in environmental work and so they developed a reasonable way to set qualification standards that were not restricted to only the large organized and politically active professional unions. (Keith Linton, Austin, Texas)

Let me be clear, as it pertains to the AAI rule for Phase I Due Diligence reports, I never said that only an Engineer or a Geologist performed that service line. I pointed out that the EPA and its workgroup in its discussions preferred a P.E. or a P.G. because they were licensed by a State Board. The EPA desired accountability for those performing such AAI rule reports and a standard for licensing hence the desire for state licensing.

The other standards came about because the EPA and its workgroup rejected third party certification thus they came up with the other method of qualifying an "Environmental Professional" for the sole purpose of performing a Phase I Environmental Due Diligence with CERCLA Protection. It was NOT their first choice.

There were no discussions about finding some way that were not restricted to "politically active professional unions" whatever they may be. (Matthew Cowan, Houston, Texas)

Just because there are regulators who review work does not displace the need for licensing since not all geoscience work goes before the TCEQ. Furthermore, licensing put a greater degree of accountability on the report preparer. Since the TCEQ only approves or rejects reports, there is no mechanism to protect the Public's health, safety and welfare from unqualified individuals from offering services they are not licensed to do.

Furthermore, the CAPM was never intended to be a blanket license for doing "environmental" work. The purpose of the CAPM has already been discussed elsewhere. IT is a program that is anarchism and should be eventually discontinued. (Matthew Cowan, Houston, Texas)

Thanks for considering this idea. Yes I certainly do respect the discipline of geology and geologists. I would not consider requiring chemists to seal data usability reports a good thing but it is an example of the type of work included in documents that geologists currently seal. That is one example where the chemistry is separate. In other aspects geology and chemistry are intertwined, thus the birth of multidisciplinary environmental science college programs. I see geologists without a chemistry background doing data usability summaries that are pure chemistry, not geology, all the time. It's not a big deal. We all have science based educations and can read guidance and ask someone more knowledgeable when necessary. As for sealing documents I am not saying environmental scientists should be able to seal. I don't see that idea presented in any of my posts. Why is the default assumption that someone must "seal" those documents, what does it accomplish? Its easy to see what firm wrote the report and for whom without a seal. They are the ones responsible for any liability associated with that work, simple. I'm saying prior to 2003 no one was required to seal environmental investigation reports. It wasn't necessary. The state regulators reviewed them and still do. We were not an uncivilized society in 2003 and we can return to that level of regulation in environmental services through this proposed exemption while leaving the Board intact, without being exactly back in the dark ages. (Keith Linton, Austin, Texas)

The statement made that "prior to 2003 no one was required to seal environmental investigation reports. It wasn't necessary. The state regulators reviewed them and still do. We were not an uncivilized society in 2003 and we can return to that level of regulation in environmental services through this proposed exemption while leaving the Board intact, without being exactly back in the dark ages." is not valid. Over 21 states in the US currently have licensing requirements for geologists. Just because something was done in 2003 does mean it was the correct way to conduct business. State regulators are more over worked and with numerous budget cuts occurring since 2003, they are hard pressed to conduct their reviews. TRRP requirements for PG sealing of documents for environmental investigations that deal with any subsurface issues, such as aquifer classification, MUST require a licensed PG to ensure that an appropriately trained professional is preparing the assessment to ensure public protection. (Tricia Rittaler, Houston, Texas)

**Texas Red Tape Challenge Focus Area: Geoscientists**

**Idea Submitted:** *Move Environmental Geoscience to TCEQ Licensing Program*

Since the majority of the geologists licensed under the Texas geoscience board (oil and gas) are exempt from regulation, the geoscience board primarily regulates who can perform environmental work such as site investigation and remediation of contaminated sites. Since the geoscience board only really regulates environmental work, one way to address the anti-competitive and overreaching aspect of the geoscience board but still maintain occupational regulation over the environmental field (if necessary) is to eliminate the geoscience board but move this function under the TCEQ occupational licensing department such that all the current environmental P.G.s would be licensed under the TCEQ program. The TCEQ program would also be open to environmental professionals from other appropriate academic backgrounds besides geology (e.g., chemistry, toxicology, environmental science, engineering). This could be accomplished by using something like the existing TCEQ Corrective Action Project Manager (CAPM) license or expanding that program beyond its current scope which is limited to investigation and remediation of leaking petroleum storage tanks to include all environmental investigation and remediation. The TCEQ CAPM program licenses individuals from a variety of academic backgrounds and requires them to pass an exam (except P.E.s and P.G.s are exempt from the exam currently). Job postings like the example posted that currently are limited to geologists but in practice oversee multidisciplinary environmental work including chemistry and toxicology would be opened up to anyone who had the CAPM license (or whatever the expanded TCEQ license program were called maybe something broader to cover all environmental professionals) not just geologists. Geology is a component of environmental work but it is only one component and it is not practiced separate from the whole. Anyone with an applicable education and experience and examination should be eligible to oversee these multidisciplinary projects not just one of the professions involved that lobbied the legislature for control of an industry.

<http://www.tceq.texas.gov/assets/public/admin/jobs/docs/12209.pdf> (pdf also attached above). This approach would allow those in favor of maintaining occupational licensing in order to protect the public to continue to have that level of protection while eliminating the most obvious anti-competitive aspects of the current program. I can find all the Texas Code citations for the TCEQ CAPM and make specific suggestions on how to make the change but this is the basic concept. Since oil and gas geologists are exempt the current program regulates environmental primarily and therefore would be better handled under the TCEQ occupational licensing program. Any other areas that the geoscientists board will claim would be left unregulated under this approach (e.g., geotechnical, dams etc) would fall under the engineering board. The proposed approach makes more sense than mainting the current separate State Agency to administer licenses for thousands of geologists who are exempt from the licensure regulations and are therefore not regulated by this board at all. It is wasteful to have the agency to license geologists but then exempt most of them. Let's look at what is really being regulated here and revise the approach to regulate it more directly and leave the rest out and eliminate the anti-competitive component. This is a workable solution that makes sense but will just take a little bit of objectivity on the part of the geologists and effort on the part of the legislators and agencies involved to make it happen.

**Idea Author:**

Keith Linton  
 Austin, Texas  
 Represents: Self As A Private Individual

**Vote Summary:**

<b>For:</b>	2	<b>Against:</b>	23
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**Participant Comment:**

Move geologic registration to the TDLR would then place the determination of whether or not a geologist is competent into the hands of bureaucrats and other non-geologists who don't know anything about geology. If you're going to regulate geology, you need to have people overseeing it who understand it. The CAPM from the TCEQ doesn't understand geology. If you look at their continuing education approved courses you'll find very little geological courses there, and definitely none that deal with groundwater, which we're supposed to clean up. (Henry Wise, Sugar Land, Texas)

As far as having geology being performed by engineers (the natural result of putting that under the jurisdiction of the engineering board), look at how well they took into account geology in building and maintaining the New Orleans levees. (Henry Wise, Sugar Land, Texas)

Henry, I didn't say anything about TDLR so I'm not sure why your response kicked off talking about TDLR being bureaucrats. Your Agency is also staffed with bureaucrats. Your board includes (supposedly) some members of the public who are also not geologists but can still make decisions of the nature involved in this type of board. Your board/agency doesn't actually even review any geologic information to determine whether they agree with the geology work performed. They review bureaucratic information like license renewal dates and whether their seals are on file or whether people are current on fees. You said "if you're going to regulate geology you need to have people overseeing it who understand it". My point in this idea thread is that geology is not what's really being regulated here anyway. You have a geology board but then exempt most of the geologists that you license from any regulation. What you are effectively regulating then is not geology but one particular industry that a subset of geologists work in, environmental services. Therefore, if licensing is necessary at all then what you need is people who understand environmental sciences not just geology. TCEQ certainly does. You said "the CAPM from the TCEQ doesn't understand geology". The CAPM exam includes geology and chemistry and toxicology and safety and regulatory questions. It is a multidisciplinary license which is appropriate for a multidisciplinary field. You said "if you look at their continuing education approved courses you'll find very little geological courses there" but if you look at your geology board's continuing education it includes very few environmental courses (none). Are your licensed geologists qualified to perform environmental work? We don't know, some of them are, many probably not just because that is not what they studied or have experience in. But they have a license.

Here's an important policy point for someone in the legislature to think about if they really want to clean up this occupational licensing mess. If the state truly needs to intervene and protect the public by regulating who is qualified to do what type of job should they be regulating an occupation/profession or a particular academic discipline which may be employed across a variety of different occupations? This is the issue here. You have a geology board but then exempt most of them because you're not really regulating the practice of "geology". You are regulating a certain industry/occupation that a subset of geologists work in. Abolish the academic-discipline based license (geology) and license the occupation that is actually being regulated (environmental). In so doing you have the opportunity to keep your "public protection" without creating a non-competitive union type situation. Personally I don't think occupational licensing is necessary in this field. But if you (the state) are going to try to dictate who is allowed to do what then look into this; license the occupation not the individual academic discipline. In many cases multiple academic backgrounds are suitable for a particular occupation. It is messed up to license a specific academic discipline but then effectively give them control over a multidisciplinary occupation as has happened here. (Keith Linton, Austin, Texas)

Bifurcating the regulation of geology would be an utter disaster. The P.E. Board does NOT want to administer a separate program under their purview. As a Geologist, my work involves subjects that would fall under both agencies. That would require me being registered with two different agencies. How is that streamlining Govt? To suggest that the TBPG only regulates environmental work suggests that you are not aware of the wide,

variety of work that geologists perform. Areas such as but not limited to Coastal processes, coastal management Highway construction, geologic hazards and foundation geology to name a few. (Matthew Cowan, Houston, Texas) I am accused of deception now for trying to explain that TBPG doesn't actually regulate geoscience since they exempt most of the geoscientists they grant licenses to from regulation.

The regulation of geology in the current program is already bifurcated with oil and gas, the most significant component being separated out since they were not willing to be regulated under this regime. I wasn't suggesting a new program under the engineering board. Eliminating the geoscience board and getting thousands of unnecessary licenses for exempt individuals off the books and expanding the TCEQ license to cover the remaining environmental geoscience aspects would definitely be streamlining government. (Keith Linton, Austin, Texas)

No all licensees that are currently working in the Oil and Gas industry work exclusively in the Oil and Gas Industry. Also just because they do not use their license<sup>3</sup> at this time does not mean they will not be. It is just like engineers. No all license holders use their license but retain the option to do so depending on the work that they perform.

In Fact the AAPG Division of Professional Affairs recognized that "The history of the oil patch documents a very limited spectrum in which geologists work. There are a great number of areas in which we have input..."

They recognized that there is larger world beyond Oil and Gas. As I pointed out geoscience includes such areas as but not limited to Coastal processes, coastal management, Highway construction, geologic hazards and foundation geology to name a few.

The TBPG does review geologic work to see if the Standard of Care has been exercised. It does far more than bureaucratic functions as you describe. Herein lies the problem. You are unclear as to what Professional Boards functions and duties are. The TBPE and TBPG both review complaints that stem from poor/incompetent practice of their profession. They only concern themselves with those areas dealing with their respective license. In the case of the TBPG, they are only concern with the geoscience. They recognize that the responsibility for non-geoscience work belongs with others. The TBPG is only about the PROFESSION of GEOSCIENCE. (Matthew Cowen, Houston, Texas)

Keith, I'm not sure where I saw the reference to TDLR, perhaps I need to be working on this discussion earlier in the evening! As far as the TCEQ's concerned, they do not require a PG to stamp all of their reports, only those that deal with geology. If more than geology's involved, a CAPM can sign alone if the PG stamps his maps, etc. My understanding of the CAPM, however, is that it's used only for PST/LPST site evaluations and cleanups. Since the TCEQ sets the cleanup values, you don't have to be a geologist to know if you're above or below them, however, if you request any deviation, based on geology, you need to sign and seal it as a PG or PE. The TCEQ also has a State Lead contract out that's for designing and installing remediation systems which require the signature and stamp of a PE. I have no problem with this, since they're designing the remediation system. These sites have typically been assessed by a geologist previously. (Henry Wise, Sugar Land, Texas)

"...since they exempt most of the geoscientists they grant licenses to from regulation." By the Act & TBPG rules, geoscientists practicing in exempted areas (primarily O&G, mining, & academia) are NOT required, by TBPG, to have a license. So, if these exempt geoscientists obtain a license, they are doing so voluntarily for a variety of reasons (additional credentialing, anticipating future practice area change, occasional practice outside their exempt area {common amongst academics?}, etc.). TBPG is not requiring/pressuring these exempted geoscientists to get a license - they do so voluntarily for their own personal reasons.

Also, keep in mind that non-exempt practices areas go beyond "environmental"....engineering geology and hydrogeology being two examples. The majority of my practice is hydrogeology - characterization & development of groundwater resources....some times in deep (>1000ft) and geologically complex frameworks. (John Mikels, Austin, Texas)

Also, keep in mind that non-exempt practices areas go beyond "environmental"....engineering geology and hydrogeology being two examples. The majority of my practice is hydrogeology - characterization & development of groundwater resources....some times in deep (>1000ft) and geologically complex frameworks. (John Mikels, Austin, Texas)

Texas Association of Professional Geoscientists, I am not unclear about what professional boards functions and duties are. In this case you represent the business interests of your group and use the guise of public protection to obtain the power of law to manipulate the market for your benefit as seen in the attached job posting. This example position is actually a project manager responsible for review of chemical data collected from geologic media compared to toxicological standards using statistical calculations and determination of the appropriate engineering technologies for use to address the problems identified. This is clearly multi-disciplinary role but through your efforts only a geologist is eligible for this position and many like it now. Not even an environmental engineer licensed as a Texas P.E. is eligible for this position. A TCEQ "environmental sciences" type license that includes geoscientists and others, similar to the CAPM license, is a reform measure that would achieve public protection, reduction in government, and elimination of an anti-competitive occupational licensing board. This is not my preferred solution, it is a compromise idea that would merely improve the situation. (Keith Linton, Austin, Texas)

From your post are you suggesting that there is no harm to the public's health and safety from improper practice of geoscience? If you are, you would be mistaken. The job posting clearly is for someone to review Geoscience work.

The job is for a geoscientist since it is reviewing data from GEOLOGIC MEDIA. Understanding the role of toxicology in regards to the GEOLOGIC MEDIA is what Geologist do. Understanding the statistical significance from GEOLOGICAL MEDIA is what Geologist do. Understanding the appropriate remediation technology to use in regards to the GEOLOGIC MEDIA is another function of a geologist. Note the common thread here? It is the GEOLOGIC MEDIA. You have to understand the GEOLOGIC MEDIA and that is why a geologist is important.

The fact that the TCEQ would advertise for a Geologist is not surprising. The TCEQ has Chemist, toxicologist, biologist and engineers on staff. Each have their own job description and duties that are suited to their education and training just as the geologist has. (Matthew Cowen, Houston, Texas)

A more appropriate set of educational qualifications for licensure to perform environmental work is located in 30 TAC 30.180(4)(B) of the TCEQ CAPM license requirements:

"an individual must have received a bachelor's degree in the physical, natural, biological, or environmental sciences, engineering, applied geography, or a subject directly relevant to the environmental field, as approved by the executive director; and documented a minimum of two years' experience in corrective action services" (Keith Linton, Austin, Texas)

Geology is a physical science. Few occupations understand how fluid moves through geologic formations. Geologists are uniquely qualified to do this work. Any environmental scientist can collect a sample of ground water, if they have been trained to collect uncontaminated samples. (W. Kevin Coleman, Cedar Hill, Texas)

Alternatively let the geoscience board continue to exist but add an exemption to occupations code 1002.252 for individuals licensed through TCEQs CAPM program who perform environmental investigation and corrective action work subject to regulatory jurisdiction of another state agency including TCEQ and RRC. This would improve the program by allowing other qualified professionals to be in responsible charge of environmental services besides geologists which is better for employment and small business formation while maintaining state regulation over who engages in the work.

The board supporters suggest we improve the program rather than throw stones and try to eliminate it so here is an idea for improvement. Let's see whether they are truly interested in improvements..... (Keith Linton, Austin Texas)

Again, TBPG regulates geoscience in Texas, not environmental work. If the individual is certified through TCEQs CAPM program to do environmental work, they are already exempted. If you are seeking an exemption so that you can practice geoscience related to environmental work, that is a bad idea. You have not demonstrated that you are qualified to practice geoscience in Texas. What about engineering. Do you also want the P.E. board to exempt you from practicing engineering associated with remediation???? (W. Kevin Coleman, Cedar Hill, Texas)

## Texas Red Tape Challenge Focus Area: Geoscientists

### Idea Submitted: *Privatize Geologist Certification*

Texas Geologist licensing through the Texas TBPG serves no public purpose and does not protect the public. When the State of Texas or a private firm or member of the public requires a professional geologist he can contact the American Institute of Professional Geologists or AIPG. This non-profit and long standing organization provides reliable peer reviews of those geologists seeking voluntary certification of their education and experience.

How would you change existing statute specifically in order to implement your idea?: ----- Abolish the Texas TBPG and create a simple registration process if the State feels that they need to know the professional's name and current address.

#### Idea Author:

Ralph Baird  
Houston, Texas  
Represents: Self As A Private Individual

#### Vote Summary:

<b>For:</b>	6	<b>Against:</b>	23
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#### Participant Comment:

Recommendation #3:

Abolish ASAP the Texas TBPG so that no board of geologists is continuing to be established by statutory authority. Change Geologist certification in TEXAS to be based solely upon the registration requirements of the American Institute of Professional Geologists (AIPG). If a geologist is not already certified by the American Institute of Professional Geologists, contact it directly for an application package:

AIPG National Headquarters

12000 Washington St., Suite 285

Thornton, Colorado 80241-3134

(303) 412-6205

Upon issuance, TEXAS geologist certifications shall have no expiration date and require no renewal fees or continuing education. (Ralph Baird, Houston, Texas)

Public Comment in Houston's paper:

THE HOUSTON CHRONICLE: Another example: the Texas Board of Professional Geoscientists, an obscure agency whose mission it is "to protect public health, safety, welfare and the state's natural resources by ensuring only qualified persons carry out the public practice of geoscience and enforcing the professional code of conduct." Hard to believe, but Texas taxpayers will shell out almost \$1 million this biennium to protect themselves from roving bands of lawless professional geoscientists. (Ralph Baird, Houston, Texas)

If Texas is shelling out \$500k/yr for this board, that says more about how the board is being managed and its workload than about the need for Texas to ensure qualifications. (Brad Helland, Seattle, Washington)

The AIPG is a well-respected organization. I am not a member of AIPG. I am a licensed professional geologist in Texas. On the AIPG webpage, under their policies and procedures, and under State Licensure, they state the following:

AIPG fully supports the registration and licensure of geologists to protect the public health, safety, and welfare. Where there is no statutory regulation of geologists, the AIPG believes its certification of professionals by their peers as to their competence, integrity, and ethical behavior provides a standard to effectively protect public health, safety, and welfare. As the national organization of professional geologists, AIPG further recognizes the need for and advocates uniformity of standards so that the mobility of geologists will not be impeded, and so that their varied skills may be available throughout the nation.

I see no merit to those discussions in this forum supporting AIPG as the answer to governing geoscientists, while at the same time, advocating actions adverse to their stated policy, unless the statements made are by duly authorized representatives of AIPG. (Jerry McCalip, Dallas, Texas)

Jerry, the door is open here and thoughts and ideas and suggestions are relevant. This is an open path to Texas authorities to frame the issues and answer their requests/questions: does Texas state geologist licensing serve any worthwhile purpose and does it protect the public? (Ralph Baird, Houston, Texas)

Jerry, a Texas PG license is not required for the work that you do. At least that is what our researchers say after reviewing the list of services that you and your company offer. (Ralph Baird, Houston, Texas)

**YOU ARE NOT A LICENSED PROFESSIONAL GEOLOGIST.** You are a Texas Licensed Professional Geoscientist.

We agree you are a great and qualified professional geologist, but that is not your license title. What does your license say, your certificate, your seal? (Ralph Baird, Houston, Texas)

I do see merit in discussing moving to a privatized certification instead of a state licensing board in Texas regardless of AIPG's position on licensing. I think it's a very constructive idea to explore. (Keith Linton, Austin, Texas)

As has been discussed in other areas of these discussions, the AIPG certification, as well as other certifications, don't prevent unqualified persons from practicing geology because there's no legal ramifications for doing bad work. Also, the TBPG is also conducting peer review, just as much as the AIPG, plus it requires the passing of the ASBOG exam and on-going continuing certification. It's easier to become a member of the AIPG and others than it is to obtain a PG in Texas. The AIPG and others don't require continuing education, so once you graduate, you can forget about having to stay up with current technology. I assure you, much has changed since I graduated in 1977. The continuing education requirement gives you the incentive to keep up with things. (Henry Wise, Sugar Land, Texas)

**QUALIFIED PROFESSIONALS** keep up to date through seminars, research and even creating the new technology and studies. That makes the qualified professional competitive and valuable. Qualified professionals do not need the State telling them to continue their education: because . . . .they are already doing just that. (Ralph Baird, Houston, Texas)

There are two ways that I've found to understand a complex new concept. First, and easier of the two in my opinion, is to start at the highest level, observe how something functions, and then work your way down into the 'sausage making'; so to speak.

Second, is to start at the most fundamental level, and build your way up to the full complexity. As a physicist, I find the second approach; although more difficult, generally provides a better fundamental understanding.

### 1.) Top-Down

Since the system in place is very young, and obviously still changing, I think it's best to examine a similar government-controlled licensing system.

The Texas Electrical Safety and Licensing Act regulates electrical work. This act forms a Texas State regulatory board, similar to the TBPG, who's professed goal is to protect the interest and the safety of the public.

What's required to get a license: 1.) Fill out an application, pay \$20 app fee. 2.) Enroll in, and complete journeyman training at one of 39 programs in Texas (not sure of cost or length), 3.) Apply for Journeyman license, and pay \$35 fee 4.) Pass Journeyman Exam, administered by private company, PSI. Fee \$78.

The next logical step is to examine how the industry changed after the regulation was adopted. How did costs change? How did the number of professionals change? Etc. I'll have to dig a little deeper for this info. Maybe I can find enough to make some charts and link them here. Google has failed me in the short term.

### 2.) Ground-Up

Regarding potential government policy, I think it's always best to start at the foundation. In the case that Federal law takes precedence over state (? not sure), we can start with the US Constitution, then look at the Texas State Constitution.

The US Constitution defines individual rights that are not granted by a man, group of men, of government. These rights are granted by God/Nature and cannot be removed or legally violated from any of the aforementioned. Specifically, the right to life, freedom, and pursuit of property (changed to happiness).

The Texas Constitution, similar to the US, defines individual rights in section 3. All free men..., have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments (advantages in modern speak), or privileges, but in consideration of public services.

Public services means those services provided to the public by the government.

To condense and combine that: no man, nor government may violate the individual rights of anyone. Any law that violates individual rights should be deemed unconstitutional, and should not pass the acid test.

Does imposing mandatory regulation on private business, done by private individuals, who are not violating the rights of another individual, violate their rights? Does creating a government regulatory board effectively give an advantage to some, in the private domain (ie not a government provided service)? Does confiscating money from private individuals for a mandatory license violate their rights?

I think the answers to all of these questions is 'yes'. (Jerry Dumoit, Richmond, Texas)

The issue is not whether public safety is important or not; if there truly is such a thing; or such a thing as 'the public' for that matter; but that's a debate for another day.

No one here wants to harm another, do bad work, or condone bad practices. However, the proper, and only moral role for a government is to protect the individual rights of its citizens, and defend from foreign invasion.

While the sentiment is noble, the end never justifies the means. Government should not be involved in the private sector by its very nature.

Our government is absolutely vital to the success and survival of Texas and our nation. However, every possible option should be explored before new Law is even considered; especially one that gives power to the government over individuals.

It is never proper to legislate behavior. If a regulation is absolutely necessary, do it privately and have consumers and industry support it. (Jerry Dumoit, Richmond, Texas)

Jeremy, I don't believe it's appropriate to compare a geologist to an electrician. A geologist must have at least BA or BS. An electrician needs a high school degree, if that. I believe it's more appropriate to compare us with engineers, with whom we have a lot more in common.

As far as the rights of the individual are concerned, does that mean I should be allowed to practice medicine? After all, you can be fined and/or jailed for practicing without a license. Sometimes you need to restrict the rights of an individual when health, safety, and welfare of the public is concerned. Surely making recommendations for soil and groundwater remediation, for example, would be useless if the studies indicate the source from the wrong direction. I work on emergency responses to releases, among other things, and I can assure you that if you don't know the geology, you can't clean it up properly. (Henry Wise, Sugar Land, Texas)

I am licensed by examine in Georgia and Florida. There are many that meet the education, experience and "sponsor" requirements, but do not pass the required exams. The CPG lacks is additional safeguard. Furthermore, AIPG does not have regulatory authority or power in any state to prevent the public practice of geosciences (specifically geology) by those representing themselves as geoscientists. And yes there are those that have represented themselves as a geologist, or geoscientist, and do not have the educational credentials. The same things happens in other professions, check the TBPE disciplinary web site for an example. (Paul Moore, Wimberley, Texas)

As a requirement by TCEQ (formerly Texas Water Commission (TWC)) to do landfill certification work I became a CPG 23 years ago. So with respect to health safety and welfare of the public TWC sanctioned CPGs to conduct geologic (hydrogeologic) interpretation for such structures which were in dire need of technical upgrading for groundwater protection. Such structures, of course, were mostly engineering phenomena but the advancement of the solid waste practice was taking off and recognized the need for multi-discipline input where needed (especially applied hydrogeology). This provided incentive for former petroleum and "non petroleum" geologists to advance their careers along with the technical maintenance necessary through time as needed. Being a CPG provided me with timely status when needed. AIPG, though, tried to implement a CEU program that just didn't fly so, technical maintenance was encouraged. Leaving it to that I'd be surprised if most CPG pushed themselves toward 15+ hours of CEU including annual ethics requirement. AIPG should update their own yearly CPG requirements for CEU (PDH) for the promotion of good geology.



Back to Texas, I grandfathered in as a P.G. but believed I should champion my discipline as much as I can and passed both ASBOG exams first time after much studying and review. Only years in the practice enabled me to pass the practice portion of the exam. The exam presented questions on old and new concepts and showed me I had needed to review and study. This was my most valuable technical maintenance of recent time. Everyone should find time to do this. Being a P.G. not only encourages, but requires technical maintenance which enhances efficiency to our standards of practice. The TBPG is necessary to oversee geologic practice in Texas. At this point TCEQ should refine requirements for environmental work and existing PGs and PEs should test out for CAPM. (Donald James, Fort Worth, Texas)

Back to Texas, I grandfathered in as a P.G. but believed I should champion my discipline as much as I can and passed both ASBOG exams first time after much studying and review. Only years in the practice enabled me to pass the practice portion of the exam. The exam presented questions on old and new concepts and showed me I had needed to review and study. This was my most valuable technical maintenance of recent time. Everyone should find time to do this. Being a P.G. not only encourages, but requires technical maintenance which enhances efficiency to our standards of practice. The TBPG is necessary to oversee geologic practice in Texas. At this point TCEQ should refine requirements for environmental work and existing PGs and PEs should test out for CAPM. (Donald James, Fort Worth, Texas)

The comment that “I also have been to and researched the disciplinary actions in California and have studied transcripts of court civil suits in Texas and a few other states. My conclusion is that this is over-reach by the regulatory Boards.” shows a lack of knowledge of the profession. Having worked as a licensed PG for over 12 years (licensed in TX and other jurisdictions), numerous cases are documented that indicate the need for the TBPG. To minimize the need for this licensing is to be unaware of what has occurred across the US and other countries in relation to the practice of geology and the protection of public welfare. (Tricia Rittaler, Houston, Texas)

**Texas Red Tape Challenge Focus Area: Geoscientists**

**Idea Submitted:** *Remove Geoscientist Firm Registration Requirements*

Section 1002.351(a)(2) of the Occupations Code states that the principal of a firm, or an officer or a director of a corporation must be a licensed geoscientist in order for that firm to practice geoscience. The intent of that clause is clearly more market manipulation than public protection and should be removed. Likewise 1002.351(b) that allows the Board to make its own rules for firm registration should be deleted. The Board issued rules for firm registration in 22 TAC 851.30 that include a number of stipulations such as the "regular full-time employee" requirements that are unnecessary and serve an obvious purpose other than public protection. These provisions were promulgated by the Board (originally in a different section in 2006, see 31 TexReg 3152) ignoring public comments submitted at that time which were all opposed to the rulemaking on various grounds including even gender discrimination effects. It was an example of complete disregard for public input in a State Agency rulemaking process. Therefore a bill is needed from the legislature to correct this situation by eliminating the entire firm registration component (Occupations Code 1002.351) of the geoscience practice act.

How would you change existing statute specifically in order to implement your idea?: If each geoscientist must be licensed then registration of the firms is duplicative.

**Idea Author:**

Keith Linton  
Austin, Texas  
Represents: Self As A Private Individual

**Vote Summary:**

<b>For:</b>	8	<b>Against:</b>	14
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**Participant Comment:**

STATE DUPLICATION AND WASTE: Texas TBPG registration of firms, State corporations, limited partnerships, LLC's, and proprietorships amounts to duplication and wasted efforts.

Texas and Texas companies already have enough business compliance requirements. Of course firms will register when they are being told they have to. That does not make it right; and it demonstrates how arbitrary and expansive the dreams and imagination of the present and also the past Board members of the Texas TBPG will go to abuse their delegated authority. My recommendation as a qualified professional geoscientist for over 40 years, long before State licensing, and also a sought after common-sense problem solver and also a very active and well known Texas citizen and a voter, would be to "abolish the Texas TBPG" and consider any public need for registering as a function already provided by other State laws/agencies. Serious infractions will be settled in the proper way, in court. (Ralph Baird, Houston, Texas)

A few observations from an outsider here on the proposed idea.

The assertion that "that a licensed individual be an officer or director of the company" is not correct. Referring to 1002.351 (a), there are two provisions which requires that a firm have a licensed geoscientist on staff as Responsible Charge OR "that a licensed individual be an officer or director of the company". Therefore a company does not have to have an Officer or Director be licensed under 10002.351(a)(2) as long as they fulfill the requirements of 1002.351(a)(1)

The Legislature gave the board the ability to regulate a firm under Section 1002.351(b). That would include requiring firms to hire a "regular full-time" licensed geoscientist at each branch. Also this provision applies if that branch actually offers geosciences services to the public at that branch.

Whether a Board is responsive or not or whether they address the substance of a comment is in the eye-of the beholder. If a person would take the time, and attend a meeting, they will see that the Board does address the public's comments not only in committee but before the Board as a whole. To say that over one issue that the Board does not take into accounts the public's comments is absurd. The primary focus of the license is the Protection of the Public's Health, Safety and Welfare as well as Protection of the State's Natural Resources. Therefore I would expect the Board to respond to comments with such a focus.

The suggestion that the "public" quit making comments after the promulgation of the firm registration rules is utter rubbish. Not every rule is go draw out the same reaction. Not every person with registration will be an activist. What is seen with the Geosciences Board can be seen with any other Professional Board in this State as to participation with the public. It will ebb and flow.

The firm registration rule employed by the P.E. Board is essentially the same. Our firm follows those rules without issue and they are not a burden. As with most professions, as point out by the P.E. Board, a P.E. License is gives you the legal authority to practice engineering whereas Firm registration give an entity legal authority to offer their services to the public.

Firm registration offers a legitimate way to protect the public health and safety. It appears the meaning of what a Professional is and why Licensure matters is lost on a few. If the comments of those who oppose Licensure are genuine then I would expect them to pursue with equal vigor the abolishment of all licensing for all profession as as for Doctors, Lawyers, Dentist, Engineers ,and so forth. But I doubt they will or anyone else because the state in its rightful jurisdiction realized that there is a legitimate needs for certain professions to be regulated via licensing. (Julius Pratt, Natalia, Texas)

Mr. Pratt: Thank you for your feedback. May I respectfully reply. I appreciate the clarification on the "or" in the citation and understand your point. I still believe it is unnecessary for the State to dictate who should be a director or officer of a company in this manner and request that it be removed.

As for my "absurd" point that the board does not take into account public input I admit that I am speaking from my limited experience which was primarily through this one rule-making that I have attached for reference.

I assume the "if a person would take the time and attend a meeting..." means me. I have and obviously it is not easy for people with jobs to spend time during business hours in regulatory agency board meetings and so I appreciated it when the Board used to make those meetings available via the online video service which they no longer do.

The recurring phrase "this is necessary to protect the public" can be abused resulting in significant government intrusion into people's lives and interference in businesses such that I think its ok for us to stop and ask, exactly how is this protecting us and what other harm might it be doing in the process e.g., what liberty are we giving up for this "protection"?

As for the "utter rubbish" that the Board's unresponsiveness over this rulemaking caused the public to become disengaged in the actions of this agency, I am fairly sure that those who submitted comments on this proposed rulemaking have never bothered again to submit comments on another proposed rulemaking from this Board. It was clearly a waste of time. Occupations Code 1002.351(b) that gave this Board authority to issue registration rules should be removed.

This issue may have struck too close to the engineering board I gather from your response noting the engineering board registration rule which I really don't know anything about and am not interested in or questioning. I don't think its reasonable to say as all the geoscience board supporters on this forum have already said that if I'm against licensing geoscientists then I must be against licensing of doctors and engineers too, of course not. The geoscientists licensing/registration presents a unique set of problems which we could discuss at length but I think better to leave to other threads and try to focus on the specific firm registration requirements here.

Requiring that a firm hire a full time geologist in each branch office clearly doesn't do anything to protect the public and is an example of an over-reaching regulation that exacerbates the well-documented tendency for occupational licensing programs to be anti-competitive. You noted that registration of your firm by the P.E. board is not a burden. I suspect some geoscience firms may feel differently but the point of many of the comments in the attached rulemaking was not so much that the registration was a burden to the firms that register but that it adds unnecessary restrictions on business and employment without a commensurate benefit to public safety. This contributes to the over-reach of the licensing program beyond what is intended or necessary and should be scaled back. (Keith Linton, Austin, Texas)

I'm "on top of the fence" w/ respect to Firm Registration. Probably an issue for further debate and asking the TBPG to justify - in an open forum. I AM opposed to firm registration for licensed sole-practitioners (such as me)...since it in effect duplicates my license and I see no real benefit in nor purpose to this duplication. (John Mikels, Austin, Texas)

**Texas Red Tape Challenge Focus Area: Geoscientists**
**Idea Submitted:** *Revise the Definition of Geoscience*

The current definition of "geoscience" in Texas Occupations Code 1002.002(3) includes the phrase "the investigation of the earth's environment and its constituent soils, rocks,...". The phrase "environment and its" should be removed since investigation of the earth's environment is not purely or solely a geologic issue

**Idea Author:**

Keith Linton  
Austin, Texas  
Represents: Self As A Private Individual

**Vote Summary:**
**For:**

**Against:**

**Participant Comment:**

This would primarily be a cosmetic fix unless the concept is carried farther through the statute where the teeth are but this is an easy correction to make. (Keith Linton, Austin, Texas)

This would also allow non-geologists to practice geology. Again, not a good idea for reasons given elsewhere. (Henry Wise, Sugar Land, Texas)

The definition is clear. The legislature was clear in its intent and the definition is accurate. The whole definition is "Geoscience means the science of the earth and its origin and history, the investigation of the earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth."

The term investigation and environment is appropriate in the definition since the focus of the investigation is the earth and the environment defined is the earth. In essence the Geoscience Practice Act confines itself to the geologic as it pertains to "study of the natural and introduced agents, forces, and processes that cause changes in and on the earth." (Matthew Cowan, Houston, Texas)

I would like the definition to be revised to incorporate a less "academic" model and a more "applied" model where the application of geoscience is more defined as to its impact on human health and the environment. (Glenn Lowenstein, Houston, Texas)

Agree w/ you Glenn. I think the definition warrants some rethinking - possibly tweaking. The word "environmental" does give me pause for thought....it IS a broad, gray, multidisciplinary area. Hopefully some positive, collaborative thought would produce a better definition - while clearly preserving the underlying intent - that the geoscience components of environmental work be conducted by PGs. (John Mikels, Austin, Texas)

## Texas Red Tape Challenge Focus Area: Geoscientists

### Idea Submitted: *Tear Down Fences: Merge Geoscientists and Engineers Into One Board*

Water resources and environmental quality and engineering and geology and soils mechanics and geochemistry are merging as disciplines. That is a good thing and a trend that smart thinkers accept and support.

The licensing of geologists separate from other disciplines is non-productive and further polarizes those that should be learning to work together.

Combining licensing Boards would make a statement and get people working together on the same page, as it did in California and as it does in a different and even more logical way in Colorado. Those geologists that think they are not conducting engineering work need to think about that and start cooperating and start collaborating.

#### Idea Author:

Ralph Baird  
Houston, Texas  
Represents: Self As A Private Individual

#### Vote Summary:

For:

2

Against:

13

#### Participant Comment:

The California PG Board was merged with the Engineering Board with no prior consultation. Neither the Geologists nor the Engineers wanted it. Despite what you and others say, most geologists and engineers don't believe it's a good fit. (Henry Wise, Sugar Land, Texas)

While I am glad you see that you find merit in licensing, I find that there are distinct enough differences between the science of geological assessment and engineering design/build that merit separate licensing boards to create rules and establish best practices. The engineers can guide their folks best and do not want to establish rules for or judge other professions. I do agree that there is plenty of room/opportunities to collaborate on projects in the business world without the need to combine governance. (Glenn Lowenstein, Houston, Texas)

I served a full 6 year appointment as a TBPG professional member and am a past Chairman. I was grandfathered along with many other practitioners during the initial period of licensing but later (for fun, if you will) took and passed both ASBOG exams. (ASBOG = Association of State Boards of Geology.) After passing the exams I then became the Board's choice to represent Texas as the voting delegate to the national ASBOG conference for the next few years.

From that experience meeting and working with my peers from around the country, I can and do state emphatically that Texas geoscience professionals and the Texas Board of Professional Geoscientists are held in the very highest regard by the practitioners and boards in the other states. At every ASBOG meeting, I was approached by (mostly, geology) board members from other states who wanted advice on creating programs for their states similar to those we now have in Texas (e.g., the Geoscientist-In-Training program, firm registration and TBPG's ability to prepare binding advisory opinions). The individuals who bemoaned that their home boards did little or nothing to promote professionalism or raise the standard of practice to the benefit of the public were invariably from states with multi-disciplinary boards. Many of these board members saw themselves as simple license fee collectors, not as professionals who monitored and actively looked for ways to constantly improve the quality of the work provided to the public and state policy makers.

And specifically when the California geology board was abruptly eliminated and its duties assigned to the state's engineering board, the consensus among the ASBOG delegates was that this represented a major blow to the practice of geology as a profession and a loss for the citizens of California. (Lynn Clark, Farmers Branch, Texas)

The California merger still maintains separate licensing programs for engineers and geologists. (W. Kevin Coleman, Cedar Hill, Texas)

Licensing of Geosciences is not about keeping disciplines area separate nor does it. Those areas you listed are distinct areas of the Profession of Geoscience. Engineering is totally separate from Geoscience. It is a different profession. Licensed professionals should not be working in areas for which they are neither trained or Licensed! (Matthew Cowan, Houston, Texas)

Admittedly there is some overlap - gray-areas, if you will - in some practice areas of geoscience and engineering (e.g: engineering geology, environmental remediation, water resources). However, there are more than enough differences (education, skills, practice areas) to warrant separate licensing programs. Of note, is the fact that the TBPG and the TBPE crafted a MOU, several years ago, to address the practice gray-area between the two professions. (John Mikels, Austin, Texas)

As being educated as both a geologist and an engineer, the distinction between the two disciplines is apparent to me and therefore requires separate licensing. (Tricia Rittaler, Houston, Texas)

## Texas Red Tape Challenge Focus Area: Geoscientists

### Idea Submitted: *Revise or Abolish Geoscience Regulations*

As written, the regulation arguably gives the Geoscience Board authority over all environmental sciences, including biological and life sciences. This is overly broad and well beyond the technical and professional capability of a geoscientist to regulate. The regulations should be rewritten to focus on geosciences that relate only to geology or repealed entirely.

How would you change existing statute specifically in order to implement your idea?: If the intent is for the State to certify the qualifications of geoscientists for the purpose of validating their work, that could be done by limiting the authority to only geological sciences (i.e., geologists, geotechnical engineers) so that the "validation" would have focus and merit. However, there is no need for this "validation" that is any different from any other occupation in Texas.

#### Idea Author:

C. Keith Bradley  
 Owner, KBA EnviroScience, Ltd.  
 Registration Incomplete  
 Represents: Self As A Private Individual

#### Vote Summary:

<b>For:</b>	20	<b>Against:</b>	32
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#### Participant Comment:

The TBPG defines geology as the discipline of geoscience that addresses the science of the origin, composition, structure, and history of the earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gasses, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, volcanology, stratigraphic geology, engineering geology, and environmental geology. Nowhere does it say anything about biological or life sciences and it therefore doesn't limit environmental work to only geologists. It simply is trying to assure the public that any environmental work that involves geology is done by a competent person.

Prior to the establishment of the TBPG anyone could practice geology in the public sector, and did. This work was often poorly performed and it wasn't unusual for lawsuits, fines, etc. to be based on this poor work. This poor geology included ignoring geological factors that would influence contamination pathways and flow directions of subsurface contamination migration that were 180 degrees in the wrong direction.

Previous to the establishment of the PG board I had to work under an engineer who would approve or disapprove of my work. I've got two degrees in geology, and he had one course, yet he supposedly knew more about geology than I did, and he told me as much. "If you want geology done correctly, it should be done by an Engineer," he once told me.

I know of wells that were set in place for uranium ISR mining that were installed by engineers who didn't bother to take geology into account and never produced anything.



For AAI ESA Phase I's to be considered viable, the Federal Government has stated that they must be sealed by a Professional Engineer, Professional Geologist, or other qualified professional, so if this is your complaint, it's invalid. If you're complaining about the TCEQ requirements, they also have the CAPM and RCAS registrations, which were instituted prior to the establishment of the PG to provide a way of assuring that those persons performing environmental UST assessments and remediation knew what they were doing

Unfortunately, these certifications allowed anyone with the certification to certify anything, regardless of whether or not they were qualified to do the work. Improper geological assessments and recommendations were still being made on a regular basis. (Henry Wise, Sugar Land, Texas)

The Geoscience Practice Act was never intended to regulate petroleum geologists or geophysicists, nor was it ever intended to limit chemists or biologists from performing work germane to their education and training. Application of the geoscientist license with respect to performance of work on environmental projects is largely established by the TCEQ. While geoscience input is critical to understanding fate and transport of contaminants in the subsurface, as well as soil and rock characteristics and avenues for movement of contaminants in the subsurface, exclusion of chemists and biologists was never intended. The statute should be revised to clear up any misunderstandings.

In my experience, geotechnical engineers, on the whole are poorly educated/trained to deal with geological problems; particularly where they pertain to complex issues such as faults and fracture systems, facies changes, unconformities, and irregular stratigraphic conditions to name only a few. I have heard both sides of the argument that geotechnical engineers are qualified to do geoscience work, or that they are not. By far, most of the geotechnical engineers I have been associated with or talked to (there have been many) have a great respect for geological input by qualified geologists. Surprisingly, the geotechnical engineers that I know or have heard of who believe geotechnical engineers can deal with any geological problems have geologists on their staff to help them with that. I have found this very curious.

In my experience, engineers will not rely on the work of an unlicensed geologist, and professional omissions and errors insurance may be impossible to obtain. That being the case, geologists must work as "technicians" for engineers, and where the engineer does not "like" the geological input, the engineer is free to omit it from his sealed report as being irrelevant. I have had relevant geological input ignored (prior to geoscience licensure) by a geotechnical engineer. Most of the geotechnical engineers I know prefer to rely on geological input signed by a P.G. Some of these companies now use licensed "P.G." subcontractors to characterize geological conditions for critical projects such as levees, pipelines, tunnels, balancing reservoirs, and other public projects, and for large commercial projects.

The Texas Geoscience Practice Act needs to be revised so that it is not over-reaching. There are already plans to revise the legislation in the 2013 session. The Texas Geoscience Practice Act is already beginning to have a positive impact on protecting public health and safety by identifying and regulating qualified practitioners which allows them to practice as professionals, not technicians. If there are problems, they should be identified and dealt with.

The Texas Board of Professional Geoscientists (TBPG) deposits its collected fees into the Texas general revenue fund, and receives its biannual funding (much less than it contributes) from "general revenue". The TBPG is considered by the Legislative Budget Board to be a "Donor" agency because it contributes more than it takes out. It does not, nor has it ever cost the State of Texas any money.

All of the licensed geoscientist (P.G.) practitioners with whom I am associated, who perform engineering and environmental geoscience work, are happy to pay their annual fees and consider it the "cost of doing business", and not an undue burden. There are a few, (Very Few) licensed (P.G.) individuals that I have ever heard of that consider it an unfair tax, and complain about the license.

Let's clean up the Texas Geoscience Practice Act language to make sure it will not be "over-reaching", and limit the Board to rulemaking that is constructive and necessary. (W. Kevin Coleman, Cedar Hill, Texas)

How would you amend the Texas Geoscience Practice Act to answer the concern that it is overreaching? (Jeremy Mazur, Austin, Texas)

Add an exemption to Occupations Code 1002.252 for environmental studies. Such studies are inherently interdisciplinary involving professionals from a variety of applicable academic backgrounds other than geology. Environmental work is subject to regulations and review by other state agencies such as TCEQ, therefore this exemption would not put the public at risk. There are a number of other similar exemptions listed in the statute. (Keith Linton, Austin, Texas)

Adding an exemption to Occupations Code 1002.252 for environmental studies would allow non-geologists to practice geology in the public sector and put us back to where we were 10 years ago. Unqualified persons practicing geology in the public sector have led to improper conclusions for environmental assessments that closed sites that allowed closure of environmental cleanups that shouldn't have been closed. (Henry Wise, Sugar Land, Texas)

The definition of geoscience could be revised a bit to be a little more specific. The exemptions should be revised to be more specific about what is exempted, so there are no questions. We are in the process of reviewing the entire statute. The governor's office should have more powers under the act. There's more on the list. (W. Kevin Coleman, Cedar Hill, Texas)

Repeal it completely. While it has no effect on me personally, the precedent and ideology are troubling.

The only arguments that have been presented here for it are that geologists feel insulted working for engineers, private companies may drill dry wells if they hire the wrong people, and allegedly environmental assessments may have been handled improperly by non-geologists. The first two should not involve the government at all. Henry, please provide some specific cases of proven/documented mishandling of environmental assessments or cleanups by non-geologists. Also, please provide the same, but done by geologists; for a control. Can you prove lack of knowledge of geology was the direct cause of the mishandling? (Jeremy Dumoit, Richmond, Texas)

While I can appreciate anecdotal accounts, and believe you, voluntarily forfeiting rights to the government is a gravely serious matter, and a road, that once set down, is almost impossible to regress.

Things like the establishment and expansion of the TBPG should be treated as such, in my opinion. Establishment of government boards should not be based on whim, an impulse to try and quickly solve a problem, or an emotional response of any sort.

In fact, there is no place for emotion or impulse in any decision that affects anyone but oneself. (Even then, it is usually the wrong decision). Policy must be based entirely on rational thought, nothing else. If not, we are doomed. Look at our current federal government, for example.

I can empathize completely with being required to have your work approved by an engineer, even though you feel you are more qualified to make the decisions. I can also understand why, from an emotional standpoint, would advocate government regulation of your field; it somewhat 'levels the playing field' with PEs.

Perhaps it's too late since TBPG is already established, but I still think it's worth taking a look at documented evidence; preferably reports from PE's (just kidding), on harm caused by poor geological work.

We should examine all the evidence rationally, and determine if there's a real problem. If we conclude that there is a real problem, we should examine all possible solutions. Government intervention should be the absolute last resort. The projected impact of government regulation on the industry, historically on other industries, impact on productivity, revenue, etc, should be quantitatively examined; and all of these things taken into account before any law is put forward. (Jeremy Dumoit, Richmond, Texas)

The decision to get the TBPG legislation passed was neither quick nor unconsidered. We took a hard, unemotional look at this. Previous to the TBPG many of us had to work under engineers who had to approve our work, or we had to go back in and correct errors made by engineers doing geology with obviously little or no understanding. I first saw this in 1977 when I started working for US Steel as a Uranium Geologist. US Steel purchased a uranium mine from Amoco in George West that Arco (I think it was Arco, maybe Amoco, been too long) engineers had installed the well field. Many of those wells were installed without taking into account geology, including putting screens in cemented zones and areas where there was no uranium. It was in 1985 when I first heard the proposition of getting a PG law implemented in Texas. The first PG bill was put together in 1994 and took 8 years to get passed. I believe we thoroughly looked into alternatives before going this far and came to the conclusion that this was the best route. (Henry Wise, Sugar Land, Texas)

We had a situation whereby engineers were overseeing our work because they could be held legally responsible, while we could not. There were enough incidences whereby bad geology was being performed by people with little or no geologic background or because these same folks had control over geologists. The alternatives were do nothing, get a PE, or get the TBPG instituted.

The first alternative was not acceptable because it would simply be a continuance of the same problems.

The second alternative would have been ok in that it would have geologists being legally responsible for their own work, but the PE Board is controlled by Engineers, many of whom, again, don't have a lot of geologic background. The PE board would be determining whether or not we were conducting geology properly. Even in other states that have the PE board overseeing geology (California, for example) the geologists don't have control over geology because they're in a minority on those Boards. There was a proposal last legislative session to combine the PG and PE boards, along with architects and Surveyors. Of the 10 board members, half were to be PEs, 1 geologist, 1 architect, 1 surveyor, and 2 Public members. Even the Public would have been better represented than geologists.

That leaves us with the TBPG. It's the only way we can assure that geology is being performed by qualified persons and geologists control their own profession. In case there's any doubt about this, take a look at what the TBPG did last year and how they reacted to the general consensus of the Geologic community. I'd say the TBPG is being responsive to our needs. (Henry Wise, Sugar Land, Texas)

Since the Texas Geoscience Practice Act only regulates persons practicing geology in the public sector and specifically exempts those in Oil & Gas, and minerals, I don't see what needs to be amended. Those who are concerned that the Board is overreaching it's authority should address the Board with their concerns, but I fail to see any reason to specifically exempt those doing biologic, life sciences, and non-geologic environmental studies since they aren't geology in the first place. (Henry Wise, Sugar Land, Texas)

The Texas Geoscience Practice Act should completely exempt the practice of geoscience related to exploration and development of energy and mineral resources, precious metals.... and leave out ...in and for the benefit of private enterprise. That language should never have been included in the first place. Those who included it were thinking of energy and mineral exploration and development on Texas public lands. That should have been left up to the Railroad Commission.

We are in the process of reviewing all language in the Act and are working with Representative Hunter's office to file the changes in the next session. The regulated practice of geoscience should only pertain to those activities that are of a geological, geophysical or soil science nature. Some of the language is overreaching. There are participants from the oil and gas, environmental, ground water and engineering geology/geotechnical engineering industries. We hope to complete the review and come to a consensus, soon.

I believe the Texas Geoscience Practice Act already exempts other scientists work such as chemists and biologists. However, there are environmental people who just don't have enough education and experience in geology to practice it. One example that I am familiar with involved an employee of TCEQ who reviewed

and rejected a report under the voluntary cleanup program because the investigators did not drill deep enough into the unweathered Austin Chalk formation to find ground water. There is no free ground water in the unweathered Austin Chalk formation. The investigator had to go over her head, ultimately to a geologist who told her the same thing we were telling her. I believe she was a biologist.

The point is that geologists should be performing the geological parts of the environmental work. The remaining work should be done by whoever is qualified. No one is trying to tell the engineers in Texas they shouldn't be licensed. I believe the major part of the problem is that for most people, what geologists do is a mystery. Geologists have been contributing to not only environmental work, but ground water resources, dams, levees, high-rise buildings, tunnels, open excavations, stream erosion evaluation and protection (providing critical information to geotechnical and design engineers that previously would be unknown). Active faults in the coastal areas (particularly around Houston), threaten any structure, pipeline, road or anything else that is built across them. Other professions, including engineers typically don't have the skills I can think of one or two exceptions.

All that being said, all licensing in Texas was designed to protect public health and safety. Engineers, geoscientists (geologists, geophysicists and soil scientists), doctors, lawyers, land surveyors, real estate agents and brokers, real estate and right of way appraisers to name only a few are licensed to do this. In my personal experience, and the collective experience of many others I know, engineers either would not or could not rely on the work of an unlicensed geologist. Geologists who provided geological information for geotechnical engineering use worked as a technician under the engineer who supervised his/her work, and was free to use it or omit it because it was not engineering. The Texas Board of Professional Engineers has no requirement regarding the inclusion of geoscience work in geotechnical reports.

It seems that the opponents to geoscience licensing have no problem with engineers, doctors, lawyers and hairdressers being licensed...only geoscientists. I find that curious.

Currently, I'm working on a tunnel project here in Texas. Several borings at either end of the tunnel alignment have been drilled. Correlations between the borings suggests the presence of a fault. The fault has not been encountered yet, but we know to look for it. That is the value of geological work. It's something a geotechnical engineer wouldn't normally do. It's not in their normal scope of work. That's why we as licensed engineering geologists exist; so the engineers can rely on this type of input. Costs of large public projects will be much less through the inclusion of geologic and geophysical input. Same applies for environmental work if structured right. (W. Kevin Coleman, Cedar Hill, Texas)

This is getting obtuse, and I am slow, so I'd like to ask a few questions:

- 1.) What is the purpose of requiring a license to be a geophysicist? Is it to protect the public, customer, environment? How so? Or perhaps it's to restrict the job market to a fewer number of people? (ie restrict competition)
- 2.) How much does this process cost the taxpayers? Is it funded entirely from license fees? How much does a geoscientist have to pay to be 'legal'?
- 3.) How much time and productivity does it cost otherwise productive geoscientists to comply?
- 4.) How much revenue does the state expect to confiscate from private companies in the form of fines? Does this offset the cost, and provide a profit to the state?
- 5.) How will this affect professionals who don't have degrees directly related to geoscience, but have skillsets suitable to remain in and contribute productively to the field?
- 6.) What are the penalties for non-compliance?
- 7.) Does this effectively give government the power to dictate who may work in this field?

I'm too busy to read through the regulations; and I probably wouldn't really understand the legality of them

anyway... So how about some simple answers please?

On the surface this sounds like another extension of government to control peoples' lives; which, philosophically, we all should be against. (Jeremy Dumoit, Richmond, Texas)

In answer to your questions:

1. I'm not 100% sure on this, but I believe it was to allow geologists to declare specialties, much like engineers.
2. This process costs the taxpayers nothing. The TBPG actually takes in about twice what it spends. All of the money goes into the Texas State Fund and the State Legislature determines how much the TBPG gets to spend. If you have a problem with the fees associated with the PG license, I suggest you talk with your State Representative. The fees are set by the Board, yes, but they have to take into consideration how much the State will allow them to spend. The last increase was needed because the TBPG asked for an increase and was told to raise the fees to get what they needed.
3. The time and productivity cost to geologists to comply is minimal. Continuing education is the largest cost, and there are several ways to comply that require little or no cost. In the meantime, the benefit is that continuing education, in my opinion, is a good thing. If not for this requirement, many companies wouldn't allow geologists the time or funds to comply. Therefore, many geologists would stop learning of new techniques as soon as they graduate from school.
4. I don't know if the State makes predictions for funds arrived from fines. However, since the TBPG is already self-funding, and all Board members are non-paid volunteers, all fines are profit to the State of Texas.
5. The grandfathering period is over and has been for many years. The TBPG can be petitioned for a waiver of some of the requirements, but the individual has to make a good case for it and they need to take the ASBOG test.
6. I believe penalties for non-compliance are spelled out in the rules. The Board has some flexibility here, much like judges have a range of fines for individual crimes.
7. Yes, because you can't practice geology without a license, just like engineers and doctors.

Only geophysicists who work on projects that impact the public are required to be licensed. The geophysical techniques for the most part are shallow. These include refractive seismic soundings, shallow resistivity, conductivity, proton precession magnetometer surveys to name some common ones. Deeper seismic surveys for oil and gas E&P are exempt. You mentioned in another post that you build dams. You certainly would want to use not only people who are certified by an organization, but licensed by the state to make sure you have the ability to defend yourself if something goes wrong. ....yes, your honor, the work was performed by a licensed geophysicist in the State of Texas, and you can see that his seal is on this survey. In that way you have kept your end of the bargain, and the responsibility, or perhaps that part of it falls back on the geophysicist, and the state. Of course you want the best you can budget working on any project you work on, but you are further protected by the fact that he/she is licensed by the state. By the way, I appreciate your respectful approach to your posts, and will always reply in a manner befitting such a respectful approach. (W. Kevin Coleman, Cedar Hill, Texas)

Not only have I been an AAPG member since 1979, but I was involved in getting the TBPG legislation passed. I know that members of the AAPG Board knew of the legislation and supported it, and I personally wrote several letters and articles in the HGS Bulletin supporting it. The HGS is the largest local geological society in the world, and most of its members are also members of the AAPG. I'm guessing that most members of the AAPG weren't consulted because many live and work outside the State of Texas, and because Oil and Gas geologists are exempt from the regulations. For those not familiar with the AAPG, it's the American Association of Petroleum Geologists. (Henry Wise, Sugar Land, Texas)

**Texas Red Tape Challenge Focus Area: Brewpubs**
**Idea Submitted:** *Eliminate the 5,000 barrel per year limitation.*

This regulation is completely against the idea of the free market. A brewpub should be allowed to produce as much or a little as consumer demand provides.

This regulation suppresses small, local brewers across the state of Texas. We should not limit the potential of a small business. The elimination of this regulation would be more aligned with Texas and free market values.

How would you change existing statute specifically in order to implement your idea?: Repeal the 5,000 barrel per year limitation from the bill.

Describe the costs or savings that may be generated by this idea.: This idea would provide for the greater expansion of small businesses, possibly create more jobs, and thus provide more tax money.

**Idea Author:**

Mr. Joey Parr  
Austin, Texas  
Represents: self as private individual

**Vote Summary:**
**For:**

**Against:**

**Participant Comment:**

I personally don't drink, but I'd definitely support this regulation for the sake of the free market. (Benjamin Glass, Fresno, Texas)

This limitation is arbitrary and does nothing to improve or protect anyone's life. Get rid of it. (Jeff Greer, Richmond, Texas)

## Texas Red Tape Challenge Focus Area: Brewers and Beer Manufacturers

### Idea Submitted: *Allow breweries to sell to consumers on brewery premise.*

Currently, Texas breweries (holders of either a Manufacturers License or Brewers Permit) are restricted from selling their products to consumers who visit the brewery premise. In other states, breweries are allowed to sell at their on-site tap rooms, with the funds used to re-invest in their production capabilities or expand marketing efforts. Out-of-state craft breweries competing in this state have an advantage over Texas breweries in this state.

How would you change existing statute specifically in order to implement your idea?: Amend the Texas Alcoholic Beverage Code to allow breweries to sell directly to consumers, on the premise of the brewery, for on- or off-premise consumption.

Describe the costs or savings that may be generated by this idea.: No additional costs to the state, but the state would receive incremental excise tax revenue as brewpubs grow. Also, an Economic Impact Study by the Texas Craft Brewers Guild has shown the potential for up to \$5 billion of economic growth and 50,000 new jobs if changes like these are enacted.

#### Idea Author:

Mr. Scott Metzger  
CEO, Freetail Brewing Company  
San Antonio, Texas  
Represents: Texas Craft Brewers Guild

#### Vote Summary:

<b>For:</b>	31	<b>Against:</b>	0
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#### Participant Comment:

Thank you for offering this idea to the Texas Red Tape Challenge. I'd like to encourage other readers of this idea to offer their comments -- and not just votes -- on why this is a good (or bad) recommendation. Here are some questions to consider: How would you draft this idea as a bill (drafts can be uploaded under the attachments tab above)? How would this recommended change in law affect applicable breweries? Describe what breweries would do differently if this were to become law? How or why would that be a good or bad outcome? What do other states' laws say with regard to this type of activity? These are just a few questions for the purposes of encouraging discussion regarding the substance and merits of this idea. (Jeremy Mazur, Moderator)

To answer your other questions (and I am hoping other readers will chime in and participate here), the proposed change will allow affected breweries to sell pints to consumers who visit the brewery (which they can currently give away for free) or sell packaged beer to go for folks taking a tour. This would be a vital marketing tool for small breweries, who typically have little or no means of advertising. The law would preserve the 3-tier system by placing limits on the total quantity of beer that can be sold directly to consumers, and thus the bulk of a breweries sales would still be through a distributor on the way to the marketplace at large. Over half of the other states in the US have already enacted changes like these. Just last week, New Jersey Governor Christie signed into law a similar bill to foster the growth of the industry in that state. (Scott Metzger, San Antonio, Texas)

I've done a lot of beer tourism and I'm always thrilled when I get to a state (most of them) where I can take beer home with me from the brewery. But in Texas, we don't have this option. There's no doubt in my mind that there's missing tax revenue (I would not have bought many beers in other states if their breweries hadn't

**Participant Comment:**

offered them for sale, and I imagine visitors here feel the same way - they can't find the random few shops that offer rarer beers) and frankly I can't stand the idea of Texas being behind in anything where free market is concerned! (Nathan Miller, Houston, Texas)

I have no love for an enforced 3-tier system, and believe that the market ought to be left alone to figure it out. Having said that, it does the distributors no harm to let me pick up a case or two of beer for my fridge at the end of a tour at St. Arnold or No Label. None. And out-of-state visitors will be more likely to take some home with them, which would help tremendously with getting the word out about our state's fine breweries. This law will benefit ALL Texans - even those who don't like or consume alcohol - in that it makes visiting the state more attractive. The upside here far outweighs any downside. (Jeff Greer, Richmond, Texas)

Wineries, which traditionally sell stronger products, are not restricted due to successful lobby that left out breweries. That's biased law without any good reason. Let me as a consumer have the same choice across the board. (JP Sayers, Austin, Texas)

Having the ability to sell beer at brewing facilities does not affect consumers nor the market, it is a win-win situation for producers, consumers, visitors, tourists and tax collectors. (Javier Mere, San Marcos, Texas)

Beer and wine should be treated equally. They are essentially the same process/product but appeal different tastes. (William Courtney, San Marcos, Texas)

**Staff Comment:** This idea centers on re-introducing House Bill 2436 from the 82nd legislative session. Draft attached.



## Texas Red Tape Challenge Focus Area: Brewpubs

### Idea Submitted: *Allow brewpubs to sell to distributors.*

Currently, Texas law prohibits brewpubs from selling their beer to wholesalers/distributors. This means the only place you can buy a brewpub's beer is at their brewpub. Meanwhile, out-of-state brewpubs are allowed to do this. This limits the potential market for Texas brewpubs and restricts their growth.

How would you change existing statute specifically in order to implement your idea?: Amend Chapter 74 of the Texas Alcoholic Beverage code to allow Texas brewpubs to sell to licensed Texas wholesalers and distributors for resale. Also increase the limit on brewpub production to allow for growth as their products gain popularity in the marketplace.

Describe the costs or savings that may be generated by this idea.: No additional costs to the state, but the state would receive incremental excise tax revenue as brewpubs grow. Also, an Economic Impact Study by the Texas Craft Brewers Guild has shown the potential for up to \$5 billion of economic growth and 50,000 new jobs if changes like these are enacted.

#### Idea Author:

Mr. Scott Metzger  
CEO, Fretail Brewing Company  
San Antonio, Texas  
Represents: Texas Craft Brewers Guild

#### Vote Summary:

For:

23

Against:

0

#### Participant Comment:

Yes. This. No reason a tiny little beginning brewery should have to decide upfront whether to market directly to consumers or go through the distribution channels. Let them grow organically, and give them the flexibility to change their business models to meet local and current demands. Help these small businesses succeed! (Jeff Greer, Richmond, Texas)

**Staff Comment:** This idea suggests the reintroduction of House Bill 660 from the 82nd Legislative Session. Draft attached.

**Texas Red Tape Challenge Focus Area: Legislative Intent****Idea Submitted:** *Legislature Needs Advance Notification of Agency Rules*

Pursuant to TX. Govt. Code, Sec. 311, the exercise of rulemaking authority granted by statute must be based upon the statute; and the content and application of rules promulgated thereby must remain within legislative intent for the statute.

The Texas Supreme Court has two sources of rulemaking authority: 1) TX Const., Art. V, Sec. 31a; and (2) TX Govt. Code, Sec. 74.024(a-c). The Texas Constitution states that the Court may promulgate rules of administration not inconsistent with the laws of the State. TX Govt. Code, Sec. 74.024 provides eleven categories of administrative rule making.

Every year, under these provisions, the Supreme Court adopts Miscellaneous Docket Orders and adds to the Texas Rules of Judicial Administration. In June 2005, the Court adopted MDO 05-9122, creating a program of certification of private process servers. According to standards adopted by the Sunset Advisory Commission, this is the second most stringent form of regulation for an occupation in Texas; and is only expected to be implemented by the Legislature by way of regulatory statute.

In 2007, after 100% of the public comments received stated the Court did not have the authority to implement such a rule, citing its authority until TRJA 1 and TGC, Sec. 74.024, the Court adopted TRJA, Rule 14. This rule of “administration” reads like regulatory statute, and spells out the details of the State’s first ever judicial occupational regulation.

Nowhere in the eleven categories of “administrative” rulemaking of TGC, Sec. 74.024, is there the remotest opening for the Court to adopt regulatory rules. This is a deliberate violation of TGC, Sec. 311, defying legislative intent; especially when contrasted by the Legislature’s persistent refusal to pass over a dozen bills to regulate process servers, the most recent refusal coming just two months prior to the Court’s adoption of regulatory rules. Also, the seven laws this State has passed regarding process servers have been the polar opposite of regulation; thus the Court’s regulatory rulemaking authority derived from TX Const. Art. V, Sec. 31a also was exercised in violation of legislative intent.

The only statutory remedy to the Court’s rulemaking is found in TGC, Sec. 74.024(d) which affords the Legislature to object. The problem, however, is that the Court needs inform the Legislature of its adopted rules only one month prior to the commencement of the next legislative session; so, as in this case, rules defying legislative intent were implemented and a full regulatory program was operated for a year and a half before the Legislature was even made aware of the rules.

Rulemaking authority obviously is intended to simplify the “administrative” operation of a government body so it can accomplish its business without having to get a law passed. Rules of administration should pose little threat to the rule of law in this State; but when a government body (in this example, the Supreme Court) implements a non-administrative rule, for which it has no authority, it represents government gone rogue; and the rule of law is jeopardized. In the case of process servers, an entire occupation has suffered harshly at the hands of a non-legislatively created regulatory agency for seven years. It has changed the face and operation of the occupation unto measurable detriment.

If the objective of this study is to provide oversight to the legislative intent of rulemaking, it should be clear that it defeats the purpose to allow rules to be implemented a full year and a half before the legislature even has opportunity to review the rules. Legislative approval should be declared prior to the adoption of rules based on statutorily granted rulemaking authority, even if that approval is manifested by a refusal to object. This, however, would require rulemaking to be limited to every two years. However, if the Legislature created a joint committee (probably a minimum of three Representatives and three Senators; but preferably five each) to evaluate proposed rules, being given the authority to represent the Legislature as a whole, the

committee could meet quarterly to approve or disapprove rules on the basis of their compliance with legislative intent.

Any or all members receiving copies of the rules could contact the committee with their advice and suggestions before the committee issues a decision. If the Legislature at large disagreed with the Committee’s decisions, it could take up the specific rules in the following legislative session, thus providing a failsafe against error in judgment by the committee.

Rulemaking authority obviously is intended to simplify the “administrative” operation of a government body so it can accomplish its business without having to get a law passed. Rules of administration should pose little threat to the rule of law in this State; but when a government body (in this example, the Supreme Court) implements a non-administrative rule, for which it has no authority, it represents government gone rogue; and the rule of law is jeopardized. In the case of process servers, an entire occupation has suffered harshly at the hands of a non-legislatively created regulatory agency for seven years. It has changed the face and operation of the occupation unto measurable detriment. This would never have happened had the Legislature opportunity to screen the rules before their adoption.

How would you change existing statute specifically in order to implement your idea?: Require advance notification of proposed rules to the Legislature, and adoption of rules authorized by the consent of a joint committee of the Legislature created for this specific purpose. This way, there is little delay in implementation of acceptable rules; and no adverse effects caused by the adoption of rules that do not satisfy legislative

**Idea Author:**

Dana McMichael  
 Director, Civil Process Server Association of Texas  
 Austin, Texas  
 Represents: Civil Process Server Association of Texas

**Vote Summary:**

<b>For:</b>	7	<b>Against:</b>	3
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**Participant Comment:**

First, having no dealing with the Texas Supreme Court or other Texas courts, I have no opinion on the merits of the rules adopted by the Texas Supreme Court. However, I am greatly concerned that the legislative proposal described here runs counter to the division of powers set out in our state's constitution and to the long standing philosophy of governance embodied in that constitution.

Under the system adopted in 1876--and embodied also in earlier Texas constitutions--the legislature drafts and approves statutes as a whole body. The governor then has the option to veto statutes approved by the legislature. At that point it is up to independent executive agencies to implement those statutes--and in this case the Supreme Court is acting as an executive body rather than in its judicial capacity. Those executive agencies are run either by officials elected directly by the people of Texas--as in the case of the court--or by board and commission members appointed by our elected governor and approved by our elected Senate.

It is certainly true that agencies should and must comply with the legislative intent of statutes passed by the whole House and Senate and not vetoed by the governor. Legislative intent must be determined--where ever possible--by examining directly the express language of an approved bill. If further guidance regarding intent is needed, rule proposals should look to the context of other relevant statutes passed by the legislature. In extremely difficult cases, an examination of legislative floor debate and official documents attached to a bill considered on the floor.

At no time should the opinions of individual legislators--alone or in a group--that are stated after passage be considered as anything other than a comment from a member of the public. Our system of representative government is founded on the principle that statutory laws must be made by our legislature as a body. Any power to make additional law--which is what is really proposed here--would be in opposition to our constitution and to the tenets of our government. In short, it is a radical idea not in keeping with the conservative structure and history of our government. (Ted Melina Raab, Registration Incomplete)

## Texas Red Tape Challenge Focus Area: Regulatory Analyses of Major Environmental Rules

### Idea Submitted: *Require Estimate of Cost-Effectiveness of all Rules.*

In fact, the TX Administrative Procedures Act has long required an estimate of "fiscal implications" on state and local government. What Texas has lacked is a requirement to estimate a proposed reg's cost to the private sector ...whether that be the cost to the regulated entity, or the Texas public. The federal government and most other states do require an estimate of direct compliance cost on the privated entities regulated.

The 1997 legislation requiring a "Regulatory Analysis of Major Environmental Rules" has not worked at all. The law's definition of what is a major rule has so many loopholes that TCEQ has avoided identifying a rule as major for almost 15 years ... except in one case. Current law also requires a complicated, multiple step analysis which is not necessary.

EPA has elaborately manipulated the requirement to do a "cost-benefit" analysis of major rules to wildly exaggerate insubstantial health benefits and to downplay costs.

A better- less cumbersome and more objective- approach is to require an estimate of "cost-effectiveness" of all rules. Examples of "effectiveness" of an environmental rule would be the amount of emission reductions required by the rule.

How would you change existing statute specifically in order to implement your idea?: In the last session, the late Representative Ken Legler introduced a bill (HB 125) as a streamlined, clarified version of the General Govt Code's requirement for regulatory analysis of environmental rules. The bill required a cost-effectiveness analysis in contrast to a cost-benefit analyses. It passed in the House but was moved out of Senate Natural REsources too late to get to the floor. With some additional tweaks, HB 125 may be a good start. The U.S. Congress has filed- and in some cases- passed a number of bills to require clear, comprehensive, vigorous RIAs. Perhaps Texas would be wise to scour these new bill for new ideas.

#### Idea Author:

Kathleen Hartnett-White  
Senior Fellow, Texas Public Policy Foundation  
Austin, Texas  
Represents: Texas Public Policy Foundation

#### Vote Summary:

For:  Against:

#### Participant Comment:

The idea of cost effectiveness should consider all costs public and private. Also you have to make sure that the private sector includes everyone not just business. (Frank Matthews, Registration Incomplete)

If such a proposal is considered in the legislature, it should apply to all rulemaking agencies and the proposal should include a viable method to pay the additional cost of preparing these analyses. (Ted Melina Raab, Registration Incomplete)

The comments in the description regarding the EPA--a federal agency--appear to me to be irrelevant to this proposal regarding rulemaking by state agencies. (Ted Melina Raab, Registration Incomplete)

While I support state agencies obtaining some understanding of the impact of their regulations, we have to be careful not to create a huge burden on adopting rules. Ineffective rules can be altered or repealed, and the public comment process should include comments on the cost of the regulation compared to the cost of the ill that regulation is designed to prevent.

The more burden we put on the rulemakers the less likely they are to 1) make changes to proposed rules if they then are required to either re-publish or re-analyze the changes, or 2) amend existing rules.

Use the existing public comment process to provide the information and use the existing petition process to get agencies to alter or abolish unnecessary rules. (Greg Ellis, League City, Texas)

Great idea. I have considered this also. I am interested in comments from others regarding this issue, as well as suggestions relating to implementation. (Representative Bill Callegari, Katy, Texas)

**Texas Red Tape Challenge Focus Area: Contested Case Hearings**
**Idea Submitted:** *Curb Intergovernmental Lawsuits*

Too often disputes between two different governmental agencies ends up in litigation. SAWS v LCRA is a good example. Litigation between government agencies costs the taxpayers double: taxpayers pay lawyers for both sides. Because these disputes typically involve either 1) differences of policy opinion, 2) disagreement over statutory interpretation, or 3) argument over factual issues it should be possible to mediate these disputes. Just as Worker's Compensation is set by a special tribunal, intergovernmental disputes should be settled outside the courtroom. I recommend creating an agency to settle all intergovernmental disputes using mediation techniques and SOAH to develop the facts.

**Idea Author:**

Greg Ellis  
League City, Texas  
Represents: Self as Private Individual

**Vote Summary:**

<b>For:</b>	11	<b>Against:</b>	1
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**Participant Comment:**

I agree with you on this issue. I would like to see more discussion that will help to flush this issue out. Particularly, I encourage recommendations on bill language that will resolve this problem. (Representative Bill Callegari, Katy, Texas)

I don't have bill language prepared yet, but I can work on it. As a general outline, I think inter-agency disputes must go through ADR, and if that fails then submit the dispute to a hearing before a SOAH ALJ to develop the facts and a recommended resolution. The ALJ's Proposal for Decision would then be presented to a Dispute Resolution Committee (appointed by the Governor either as a part-time commission to hear these disputes or on an ad hoc basis). Either side could then appeal the committee's decision, but only if it involved a constitutional question or the dispute requires judicial interpretation (separation of powers doctrine may require a judicial determination of some issues). I am, of course, open to suggestions. (Greg Ellis, League City, Texas)

Basically I agree with this idea except for the part that creates another agency. I would vote for the Governor appointing a three member panel with a two year term to address this issue. (William Tasto, Goliad, Texas)

**Texas Red Tape Challenge Focus Area:** Off Topic

**Idea Submitted:** *Eliminate duplicative reporting efforts by health agencies.*

The Department of Aging & Disability Services (DADS) inherited a statute from 1991 to collect resident death information from Nursing Facilities and Intermediate Care Facilities for Persons with Intellectual Disabilities. This information is already collected by the Department of Health Services Bureau of Vital Statistics. The report has been produced fewer than three times since 1991 and had only been requested once in the last ten years. As a matter of compliance DADS spent one year of staff time to create a portal in which providers could enter the information, and pays yearly to the DHS to match their already existing data. DHS produces a more extensive trends report which duplicates the efforts of DADS.

How would you change existing statute specifically in order to implement your idea?: HSC 260.016A (formerly HSC 242.134 now )and HSC 252.134 should be stricken from statute.

Describe the costs or savings that may be generated by this idea.: One FTE at approximately \$56,000, data matching costs approximately \$25,000-\$27,000, and project management staff time \$25,000. Total estimated savings up to \$108,000, and a great deal of staff time.

**Idea Author:**  
 Ms. Leah Casey  
 Austin, Texas  
 Represents: Self as a private individual

**Vote Summary:**

<b>For:</b>	<input style="width: 40px; height: 20px; border: 1px solid black;" type="text" value="1"/>	<b>Against:</b>	<input style="width: 40px; height: 20px; border: 1px solid black;" type="text" value="0"/>
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**Participant Comment:**

This idea could save a great deal of money for the state. The downside, of course, is the jobs that would be lost as a result. I feel that anyone qualified to be a statistician could easily find duplicate work elsewhere. However, the scarcity of reporting and time in-between actual report submissions leads a general bystander to assume that not many jobs are created by this redundant agency. This seems like a large waste of tax dollars. I support an initiative to eliminate this report by DHS. (Hillary Anne, Austin, Texas)



## Texas Red Tape Challenge Focus Area: Shampoo Licenses

### Idea Submitted: *TDLR recommends abolishing shampoo licenses.*

During the recent Texas Department of Licensing and Regulation (TDLR) strategic planning process, we received feedback from the public and the cosmetology industry about eliminating the shampoo apprentice permit required under Sec. 1602.267 of the Cosmetology Law and Sec. 1601.261 of the Barbering Law, and the shampoo certificate as defined in Sec. 83.20(e) of the Cosmetology Administrative Rules and Sec. 82.20(j) of the Barbering Administrative Rules. One of our “Streamlining Regulations Initiatives” is to consider eliminating the barber and cosmetology shampoo permits and certificates, as identified on page 41 of the TDLR Strategic Plan for 2013-2017, which can be viewed at <http://www.license.state.tx.us/StratPlan/2013/stratplan2013.pdf>. We stand ready to discuss how we can further develop these ideas, and we welcome any suggestions from all interested parties.

#### Idea Author:

Mr. William H. Kuntz, Jr  
Executive Director, TDLR  
Austin, Texas

Represents: Texas Department of Licensing and  
Regulation

#### Vote Summary:

For:

24

Against:

1

#### Participant Comments:

I would like to thank the Texas Department of Licensing and Regulation for contributing this idea. The Texas Red Tape Challenge asks what we can do to streamline and reduce the burden of our regulations, and TDLR has provided a useful answer. I am particularly appreciative of how this idea pinpoints the specific provisions in the Occupations Code that would need to be amended to make this idea work. One of the underlying ideas behind the Texas Red Tape Challenge is to get participants to look at the specific laws involved (which we provide links to) and focus the discussion on how those statutes could be reformed for the better in the 83rd Session. Lastly, this project is open to everyone, and welcomes input from our state agencies too. I have always encouraged state agencies to bring their good ideas forward, and would like to thank Bill Kuntz and TDLR for being a leader in this regard. (Representative Bill Callegari, Katy, Texas)

It is absurd to believe that in order to shampoo hair any type of certificate or license is required. Sounds like another way for the State to make money from license fees. (Bob Squires, Webster, Texas)

I can think of no good reason to require someone to hold a license in order to wash my hair. Please eliminate this useless regulation. (Dempsy Winans, Arlington, Texas)

Great idea. And an interesting report from TDLR. For a \$24 million/year state agency that issues 155 different types of licenses, offering to eliminate the shampooing license isn't exactly an overwhelming reform measure but it's another brick in the wall. Let's keep going, there are a dozen more on page 7 that need to go this session. Looks like cosmetology is the largest license program at TDLR. I never once asked my barber if he had a license. I found him through the reviews on Yelp. (Keith Linton, Austin, Texas)

As a hairdresser, I see no need for a license. If the salon is not providing good service, let the public do the talking. (Tommie Leamon, Levelland, Texas)

**Texas Red Tape Challenge Focus Area: Temporary Common Worker Providers**
**Idea Submitted:** *Eliminate Low-Volume Temporary Common Worker Employers Program.*

In the recent Texas Department of Licensing and Regulation (TDLR) Strategic Plan, we recommend considering the elimination of the Temporary Common Worker Employers program. The program currently has only 105 licensees. We rarely receive complaints regarding licensees (or those who should be licensed): during the past four fiscal years (2009-2012) only two complaints have been filed.

As I testified in the Licensing and Administrative Procedures Committee meeting held July 18, 2012, we believe eliminating this low-volume program will reduce the size of government, streamline regulation, better align resources, and strengthen consumer protection.

You can view this recommendation and others on page 41 of the TDLR Strategic Plan for 2013-2017, available at <http://www.license.state.tx.us/StratPlan/2013/stratplan2013.pdf>.

**Idea Author:**

Mr. William H. Kuntz  
Executive Director, TDLR  
Austin, Texas

Represents: Texas Department of Licensing and  
Regulation

**Vote Summary:**
**For:**

**Against:**

**Participant Comment:**

No comments received.

**Staff Comment:** This idea was vetted through TDLR's strategic planning process. No substantive objections were raised through the Texas Red Tape Challenge.

**Texas Red Tape Challenge Focus Area: Nurses****Idea Submitted:** *Expand Access to High-Quality Health Care Using Advanced Practice Registered Nurses*

Texas needs to develop a more efficient regulatory model when it comes to Advanced Practice Registered Nurses (APRNs). Currently, Texas law grants APRNs prescriptive authority under a site-based model first enacted in 1989 that included sites serving medically underserved populations. In the decades since, amendments added physician primary practice sites, then facility based practices and, finally, alternate practice sites. Each site has its own set of restrictions – for some sites it is the number of APRN FTEs, for others it is the geographical distance from the physician, number of hours open, number of charts that must be reviewed, where the charts must be reviewed, etc., etc. The result is a hopelessly complex model with multiple restrictions which have little to do with quality of care and actually reduce access to care, e.g., the time a physician spends traveling from site to site to provide on-site supervision is time not spent seeing patients; the APRN who wants to practice in an underserved area must find a physician in that area willing to comply with the numerous restrictions required.

Texas cannot maintain the current site-based model and expect APRNs to effectively contribute to Texas' need for more providers – particularly primary care providers. Current Texas law allows a medical doctor to “oversee” up to 4 APRNs as long as the doctor’s primary practice is within a 75-mile radius and a retrospective review of a random 10% of the APRNs patient charts is completed each month. Does this sound like supervision? APRNs are free to work independently up to 90% of the time but required to have an agreement that takes a physician out of the office reducing patient load. In addition, the APRN must pay an exorbitant fee not reflective of the service the physicians provide. These physicians do not see the patients in the APRN’s practice nor do they oversee any aspect of that APRN’s practice.

These restrictions do nothing but increase cost for the state and for patients, limits patient choice, and prevents the full deployment of APRNs into the healthcare workforce.

How would you change existing statute specifically in order to implement your idea?: The proposed model is based on a model adopted by 17 of the 32 states that require physician involvement. (18 states + D.C. do not require physician involvement.) This model is referred to as a “collaborative agreement” model. Specifically, nursing is proposing to replace the current site-based model with a model which requires for an APRN to prescribe, that the APRN: 1) must be credentialed by the Texas Board of Nursing as qualified to prescribe (the same as current law); and 2) must have a collaborative prescriptive authority agreement with a physician or physician group that provides for consultation with and referral to the physician or physician group.

Describe the costs or savings that may be generated by this idea.: More fully utilizing advanced practice registered nurses in Texas would enhance efficiency, increasing state economic output by \$8 billion dollars annually and creating 97,205 permanent jobs, according to a report by noted economist Dr. Ray Perryman. The report – “The Economic Benefits of More Fully Utilizing Advanced Practice Registered Nurses in the Provision of Health Care in Texas: An Analysis of Local and Statewide Effects on Business Activity” – was prepared by Dr. Perryman, founder and president of Waco-based The Perryman Group. “Using APRNs more fully for treatment and for tasks clearly within the scope of their education and expertise can lead to significant health care savings and efficiencies,” Perryman said. “When these savings are spent for other productive purposes, the economy enjoys benefits. Moreover, as health care needs and costs increase and access becomes more challenging, these benefits also will rise.” Perryman found that at current levels of activity, the impact of efficiency gains from greater use of APRNs (including multiplier effects) would be 97,205 new permanent jobs, \$8 billion in annual economic output (gross product) and \$16.1 billion in total expenditures per year within Texas. The economic stimulus would spark additional yearly tax receipts of \$483.9 million to the State of Texas and \$233.2 million to local governments. (*idea continued on next page*)

**Idea Submitted (continued):**

Over time, economic benefits would grow, according to the report, which includes projections for 2020, 2030 and 2040. By 2040, the total impact would reach 177,220 permanent jobs with \$23.6 billion in economic output and almost \$46.9 billion in total expenditures each year. The State of Texas would see its annual tax receipts boosted by \$1.432 billion, with another \$538.1 million going to local government coffers. This Perryman Report is not the first economic impact or cost savings study produced that shows the financial rewards by greater utilizing APRNs. In fact, it is one of many. What the study does not address are the certain cost savings that would occur by increasing access to care in primary care settings which keeps patients out of the more expensive emergency room settings.

**Idea Author:**

Sandy J. McCoy  
 Plano, Texas  
 Represents: Texas Nurse Practitioners

**Vote Summary:**

<b>For:</b>	<b>114</b>	<b>Against:</b>	<b>2</b>
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**Participant Comment:**

Outdated laws and an ongoing turf battle led by TMA seek to continue prohibiting nurse practitioners from serving as equal partners and to the full extent of education and certification. No one genuinely believes we have the capacity or resources necessary to educate and train enough physicians to cover our current shortfall, much less the addition of an ever-expanding population.

Peer-reviewed research throughout the past 4 decades, show that NPs provide low-cost and high-quality primary care whose patient outcomes and satisfaction is at least on par with and sometimes exceeding that of a physician. Physicians want to solve the problem with adding more costs to the taxpayers while nurse practitioners want to solve the problem by lowering costs. TMA says that our system must change. Again, you are absolutely correct. But, nothing will change if we continue to limit the abilities and effectiveness of all providers. It is time for the physician organizations to work with their APRN colleagues to create a better situation for our citizens. (Cynthia Malowitz, Corpus Christi, Texas)

Texas, like other states around the nation is facing challenges to ensure patients have appropriate access to care. As a result, many states are modernizing regulations to reflect the expertise and skill of the existing nurse practitioner workforce and remove bureaucratic and competitive barriers that artificially impede care delivery. Statutory and regulatory modernization for nurse practitioner licensure is endorsed by multiple organizations including the Institute of Medicine, National Council of State Boards and the AARP. Underpinning this modernization are nearly fifty years of patient outcomes research showing nurse practitioners to be highly effective providers of health care. The professional regulatory body (Board of Nursing) should determine the licensure requirements and activities of practice that an individual licensee is allowed to provide, not another team-member--especially one from another discipline. Fifty years of studies have consistently demonstrated that nurse practitioners provide high quality, cost effective care to patients of all ages. It is crucial that licensure and regulation reflect the education, skill and expertise of clinicians to safely meet Texan's growing healthcare needs. Texas legislature needs to remove these barriers as 18 states and District of Columbia have already done. A collaborative agreement model is being proposed. A collaborative agreement model requires that the Advanced Practice Nurse be credentialed by the Texas Board of Nursing to prescribe medications (already in place) and have a collaborative prescriptive authority agreement with a physician or physician group for consultation or referral services as needed. Doing so

**Participant Comment:**

would improve access to health care for Texans; improve health care efficiencies while leading to significant health care savings for the State of Texas (AANP, 2012; Perryman Report, 2012). (Jan Zdanuk, Ft. Worth, Texas)

Texas should the access to healthcare with the incorporation of NP. The ability of a NP to perform at his or her scope of practice will improve the access to healthcare that patients require. It will decrease over use of ER. (Lutricia Harrison, registration incomplete)

The proposed model modernizes Texas legislation hopefully increasing access to care and still leaving safeguards for public safety. It is vital to the Texas economy to develop a proposal that allows greater access to care while providing for the public safety. Numerous studies indicate NPs provide safe care at a cost savings; check other states and with the federal government. Most of the elements TMA complaints about, liability, responsibility and cumbersome agreements that are time consuming are created by the legislation. Whether one reviews the Perryman report, Robert Wood Johnson Foundation, AANP or state board the research continues to bare out; NP can provide quality healthcare to the healthcare consumer, they are educated to a care for. Million of \$\$\$ in federal funds to the underserved area are at risk of going to other states that allow NPs to practice with more security. I do not want to watch these dollars go to citizens of Oklahoma, New Mexico, Louisiana, Arkansas, etc, because of Texas outdated antiquated legislation. NPs are only asking to perform within the boundaries of their education, experience and proven certification. (Lynn Roberts, Katy, Texas)

Texas is an anti-regulation state. This is a regulatory issue. Texans celebrate the free marketplace - let the marketplace decide. 35 states and DC allow NPs to diagnose and prescribe under regulation of the nursing board. 18 states, plus DC allow NPs to practice without physician involvement. Only Texas requires onsite physician involvement. 13% of Texans do not have access to healthcare. Texas ranks 47th in the ratio of primary care physicians per 100,000 population. Texas ranks 42nd in the ratio of physicians per 100,000. Consumers should have the option to choose care provided by an NP. The above comments provide objective data from reliable sources surrounding the safety and quality of NP care. (JoEllen Wynne, Austin, Texas)

I work in El Paso and have been trying to start my own practice for nurse practitioners who provide care to the poor and underserved areas. One of my problems is finding a physician who will support me. The first physician who agreed to be my delegating physician wanted to charge me every hour of the day. The second physician wanted 25% of everything I collect, the third physician had everything billed under his name and never paid me. Right now I am without a physician, unable to work in the state of Texas without a physician stating I can work. I am in the process of finding a new doctor developing a business proposal that we can all agree on, which will not put me out of business. The unfortunate part is El Paso is in need of providers. I have considered moving my practice 15 minutes away to New Mexico where I do not require a physician delegation. As a Texan I want to provide care to my people, however the legislation is making close to impossible for me to continue to have my business in Texas. I hope legislatures realize that nurse practitioners are leaving Texas to practice in areas that have less restrictions. (Christy Blanco, El Paso, Texas)

I'm shocked and disgusted at how unethical these physicians are who claim to care about patients, yet only care about the \$\$\$\$ in their back account. These are the kinds of stories that need to be told to the FTC in Washington, D.C. again and again. They need to put an end to these ridiculous restraint of trade practices that only hurt patients and benefit doctor's bank accounts. (Cynthia Malowitz, Corpus Christi, Texas)

If the State of Texas really cares for its citizens then it will do what is best for them. How can lack of access to care, complicated by multiple regulations improve access? The reason I became an advanced practice

**Participant Comment:**

nurse is because I care about my patients and want them to have the care that they need. Unfortunately, it is difficult to achieve this goal with the TMA wanting to control our profession. If there was not money involved the TMA would not be interested and not care about this issue. (Donna Jean Rich, Andrews, Texas)

As an APRN/CRNA, the focus should be to educate legislators there are currently 18 states, plus DC allowing APRNs to practice without physician involvement. The data of quality of care of APRNs from these locations must be highlighted. When Texas ranks lowest on so many areas of healthcare, our State is in a healthcare crisis. There is an easy answer when politics is placed to the side. (Timothy Jones, Dalhart, Texas)

CRNAs do not need anesthesiologists. Most of them "oversee" or "supervise" only (from the call room, or the break room, or home). They then pay the CRNA a salary and pocket the rest of the money the CRNA earns. Sounds like the government doesn't it ??? (Jeannean Newsom, Argyle, Texas)

In response to Mr. Mazur and Mathers agreed, and starting with a simplistic answer; some solutions are in correcting duplication. In the process of testing, obtaining credentials, being recognized by the Board of Nursing, getting DPS certification, going online and filling out your information to DPS then the supervising physician must log in and sign his/her name to you application and approve and submit his information. The supervising physician must make sure he/she has the right number of hours allocated to each NP or site he/she supervises. This very time consuming, then on to DEA application. This process takes literally 4-6 months, that is if your physician is computer savvy, and doesn't forget passwords or accounts and then they jiggle the hours for each NP or for some environments the miles. so, streamlining processes which the legislation appears to do cuts cost and possibly of errors. I believe this legislation will also allow for a more direct pathway to solving problems in the relationship and practice of both physician and NP. Today when problems arise, the practices of both are in conflict, and threats of litigation and neglect to patients begin which further the cost to taxpayers and licensing bodies. The new legislation appears to allow a gentler, fairer dissolution of that relationship. (Lynn Roberts, Katy, Texas)

It seems the statute should be amended to remove the need for physician supervision over the APN's. Patients are free to decide who they want to see for their health care needs and they are not placed in any danger when treated by APN's-as the list of published works demonstrates. Wait times to see healthcare providers continues to rise, especially in rural areas and by removing this supervision requirement, APN's will be able to open practices in under-served areas that will provide much better access to patients. Patients may have to travel many miles to get care that could be provided close to home if APN's were not so limited by the physician supervision rule. If the supervision rule can be removed, patients will benefit, access to care will be greater, more quality APN's will choose to work in Texas, and money will be saved by all-except those Doctors who are making money for not working. (Bryon Turner, San Marcos, Texas)

While I agree patients need access to health care, I do not agree that NPs need autonomy. If they wish to be a doctor than they should apply and go to medical school. If you see a patient and diagnose as well as order tests and prescribe you are practicing medicine, not nursing. Also, so many NPs practice outside of their area of certification. I do not believe that a lifetime license should be granted and re-certification by EXAM should be performed. Taking classes or weekend party meetings should not count as the only requirement. NPs are just after the same dollar as physicians but without the requirement of education, clinical exposure, residency and proficiency/knowledge proven by exam for certification and renewal. (Michael Odell, Lufkin, Texas)

**Participant Comment:**

Research, for decades, has shown NPs and physicians have statistically equal abilities to diagnose, order tests and prescribe. Unfortunately, it takes time to educate legislators the quality healthcare NPs provide to the community. If research from the 18 states, which allow complete autonomy from physicians indicated NP were practicing outside of their training, I would agree with you. Fortunately for NPs and their patients, high quality healthcare and safety have been demonstrated. (Tim Jones, Dalhart, Texas)

Read the original idea posting where you will see that nurse practitioners are not proposing autonomous practice. The proposal is called a collaborative prescriptive authority model that requires a nurse practitioner to have a collaborative agreement with a physician before exercising prescriptive privileges. (David Williams, Austin, Texas)

NPs are recertified every 5 years. We are required to complete 1,000 practice hours and 150 CEUs, if we don't, then we retake the certification exam (not a watered down version of it). NPs don't practice medicine, we practice ADVANCED NURSING. Multiple studies have proven that one doesn't need all that extra education in order to provide high quality primary care services. As a business owner, I can assure you, my reimbursements are much less than physicians, so I AM saving the system money and providing high quality health care services. Furthermore, are you not aware that about half the physicians in this state never completed a residency? However, even after finishing that mandatory 1 year of residency, they can practice in any field they desire. NPs are trained in a specific specialty, i.e. Pediatric NPs treat ages up to 18, Geriatric NPs ages 55 and up, Psych NPs treat pts with psych related illnesses, etc. Granting full independence to experienced NPs (and PAs) will most certainly reduce the cost of health care in this country. (Cynthia Malowitz, Corpus Christi, Texas)

**Texas Red Tape Challenge Focus Area: Locksmiths****Idea Submitted:** *Streamline Locksmith Regulations.* An Open Letter to Anyone in the Locksmith Industry

Wesley Hottot, an attorney with the Institute for Justice, sent an email a while ago requesting I participate in shaping future legislation as pertain to the locksmith industry. He suggested sending recommended changes in policies which regulate locksmith licensing in the State of Texas to The Texas Red Tape Challenge, a project arm of House Government Efficiency & Reform Committee, which will accept suggestions from all members of the locksmith industry until July 31, 012.

There are no provisions which exempt journeymen locksmiths from having to take mandatory continuing education classes. The Texas Private Security Board has taken the stance that a beginner locksmith is no different than a journeyman locksmith whose been applying his/her skills for an entire career and requires everyone to take the same continuing education courses.

My first recommendation would be to eliminate mandatory continuing education requirement for any locksmith who has 20 years or more in the business. Such a change in regulations would not bar veteran locksmiths from obtaining additional skills or education should they have an interest; instead it gives them credit for having acquired the necessary skills, by virtue of longevity in the area of locksmith work, to continue applying those very same skills without having to spend time and money taking a course he/she could probably teach.

Presently locksmith licenses must be renewed every two years; locksmith licenses should have a six year duration, similar to a driver's license and be issued on something more durable than a piece of scratch pad paper as is now done. Simplify the bureaucratic red tape and let folks get on with the business of doing business.

Locksmith licenses cost roughly \$500; nothing less than a tax on an individual's ability to earn money in his/her chosen field. This tax/fee goes far beyond covering any secretarial costs to manage the issuance of the license. There is no reason why a locksmith license should cost any more than a driver's license, somewhere between \$50 -\$60 dollars. The elevated expense serves only to limit individuals entering the locksmith industry as competition to existing locksmiths as well as preventing individuals who wish to participate in a part time enterprise. It is not the purpose of government to restrict qualified locksmiths from entering the work place.

Thank you for enlisting input from individuals who have invested their lives in the locksmith industry. Rules and regulations which govern our ability to earn a living may more properly be addressed by our combined efforts.

T.F. Stern

Texas Locksmith License B12254

How would you change existing statute specifically in order to implement your idea?: Read the letter posted in the Description box which outlines doing away with continuing education mandates for any locksmith with 20 yrs in the business. It also mentions reducing the cost of a locksmith license and lengthening it useful term to 6 years.



**Idea Author:**

Mr. Thomas F. Stern  
 (registration incomplete)  
 Represent: self as a private individual

**Vote Summary:****For:**

9

**Against:**

4

**Participant Comment:**

I worked and owned a locksmith business for a little over 10 years. In that time I took CE courses and became, in my opinion, profecient in the business. I agree that at some point there should no longer be a requirement for CE courses but 20 years is a bit of an overkill. If you have not become proficient in your craft within 10 years, additional training will not improve your skills. However, with that being said, it is still necessary for locksmith's to be aware of current state mandates and requirements. Let's keep it reasonable. (Bob Squires, Webster, Texas)

Squiresb; I agree with your proposal, 20 years is overkill. The mandate for CE courses could easily be done away with after 10 years; but knowing the DPS/PSB none of these recommendations will be applied. We now live in a totalitarian Texas where we report to our over lords. (Thomas Stern, registration incomplete)

There are always new concepts that need to be mastered. Also there should be some restraints on participation to keep criminals from the field. That said the registration process should require a reason for any delay or denial and a fair chance to appeal. (Frank Matthews, registration incomplete)

Biz, You said, "There are always new concepts that need to be mastered". This simply isn't so. Most concepts are mastered within the first couple of years of becoming a locksmith. There are new types of locks which come along; but just because they exist doesn't require all locksmiths to become familiar with them; let the competition have them if they don't fit in with your specialty field. As far as restrains to keep criminals out, there are already enough laws to enforce without making life difficult on legitimate locksmiths and taking a huge chunk of money out of their pockets to police them. I'm for free trade and letting customers decide who they want to do business with. (Thomas Stern)

Texas is a Right-To-Work State. The issuance of "licenses" does no more to curtail illegal activity or to assure the public of excellence in service. It serves only as a tax upon individuals and businesses that wish to make a living. And, to inflate government. Think of all of the paperwork it takes to maintain records of all of the so-called "licensed businesses" in Texas. Think of all of the individuals whose wages must be paid, with benefits, to maintain this taxation system of licensing. In the end, a license does nothing but penalize the business or business person. The Courts are filled with claims against licensed businesses and business people. That's where illegal activity and so forth is supposed to be dealt with--not in the "licensing offices". I'm a born and raised Texas and am now almost 74 years old. I see licensing as unconstitutional! jk (J.K. Salser, Jr., Garland, Texas)

Licensing locksmiths? Seriously?? The law should be perfectly capable of handling claims against locksmiths. Licensing on serves to grow government at the expense of legitimate business. I agree that licensing is unconstitutional in many cases, and this is one of them. (Tammy Blair, Bullard, Texas)

**Texas Red Tape Challenge Focus Area: Process Servers****Idea Submitted:** *End Judicial Regulation of Process Servers.*

In June 2005, after the Texas Legislature refused for the 14th time to regulate private process servers by statute, the Supreme Court implemented by Rule, full occupational regulation of process servers without any enabling legislation and in defiance of clear legislative intent.

TX Govt Code, Sec. 318.001 clearly establishes that all occupational regulation is the jurisdiction of the Legislature; and until the Supreme Court created its "certification program" administered by a "judicial agency" (The Process Server Review Board), no occupation in Texas had ever been regulated without statute. Thus, the Supreme Court's judicial regulation clearly defies the Texas Constitution's separation of powers clause (Art.II. Sec.A.1) (See attached letter by Chief Justice Jefferson stating the Court imposed regulation because the Legislature refused to do so.).

In TX Govt. Code, Sec. 318.001(4), the law states that the only basis for regulating an occupation in Texas is to provide protection to the safety, health or welfare of the residents of this State; yet there has never been a call from the public for the State to provide protection against the practices of private process servers.

The Supreme Court's certification program was also a violation of Texas Constitution, Art. V, Sec. 31a, that states the Court may promulgate rules of administration (not regulation) that are not inconsistent with the laws of the State. There are only seven laws this State has ever passed that relate to private individuals serving civil process, and all seven laws authorize any disinterested adult to serve the specified forms of civil process (without regard to training, experience, knowledge of the court system or criminal history). Thus, a full-blown regulatory program (which is not administrative at all) that oversees strict requirements and disciplinary government oversight is extraordinarily inconsistent with the laws of this State. (See attached file showing these seven laws, as well as other laws and rules authorizing any disinterested adult to serve court papers.)

The process serving occupation in Texas desperately needed statewide authority to serve civil process instead of having to obtain court orders from every court venue in 254 Counties. The Supreme Court had already announced its intention to implement the "notary public provision" which would have authorized notaries public to serve process, thus immediately enabling statewide authority. The Supreme Court rules attorney even testified under oath before a House committee of the 78th Legislature in 2003, that the Court was simply waiting for a body of rules to amend to release the notary public provision as an amendment to TRCP Rule 103.

The Supreme Court's judicial regulation of private process servers should be eliminated as quickly as possible in order to restore legitimacy to the separation of powers and the rule of law in Texas as it affects the private process serving industry. Statewide authority for process servers should be implemented consistent with Federal Rule 4, which provides authority to any disinterested adult to serve civil process. This would be consistent with the seven laws the Legislature has already passed regarding this matter.

How would you change existing statute specifically in order to implement your idea?: 1. Eliminate the program. The Legislature has a duty under TX Govt. Code, Ch. 74.024(d) to object to the Court's flagrant violation of its rule making authority under this chapter. 2. Implement a singular law, consistent with the other seven laws already passed, and authorize any disinterested adult to serve all forms of civil process that do not require an immediate enforcement action by the one serving the document.

**Participant Comment:**

On November 2, 2001, the Supreme Court Advisory Committee, with Supreme Court Justice Nathan Hecht in attendance, discussed the prospect of the Supreme Court providing regulation of the process server occupation. Mr. Orsinger stated (at 5247.1-25), "The problem is, first of all, that looks legislative and not rulemaking, even though it is, in fact a rule. And secondly, the Supreme Court doesn't have the authority to create an administrative agency and it doesn't have the money to fund it." His recommendation, consequently, was to create a task force to establish a body of acceptable standards that compliance with would enable any individual to obtain a court order that would authorized him/her to serve process. Unfortunately, that was already the procedure that had been in place since January 1988. The fact is, the Supreme Court's own Advisory Committee stated the Court did not have the authority to implement what it subsequently implemented a year and a half later. (Dana McMichael, Austin, Texas)

Please everyone, we have been mislead for too long. I am just a small business owner who is tired of paying too many fees and salaries to an Illegal Process Server Review Board. Let's get this Rule overturned this time. (Marsha Goforth, Burleson, Texas)

This challenge requires analysis of two aspects of process server regulation. One, is the regulation currently in place lawful and constitutional; and two, is the regulation necessary to protect the public? Regarding the legitimacy of the current regulation... In the purpose to this challenge, the writer states: "The Court Administration Act authorizes the Supreme Court to adopt rules for the operation and management of the court system and the efficient administration of justice." The Court Administration Act (Tx. Gov. Code, Sec. 74) does, in fact, give broad powers to the Texas Supreme Court. However, broad does not mean all-inclusive; they are broad, BUT LIMITED. The Court Administration Act does NOT give the Court the power to create occupational regulation for any private industry or occupation. For example, Court Reporters are regulated by the Court, but, only because of a law (statute) passed by the Legislature, TGC 52. Guardians Ad Litem are regulated by the Court, but, by law, TGC 111. There is no such statute for process server regulation and Ch. 74 simply does not give that authority to the Court. The Court's own rules establish this fact, to wit: Process server certification and Process Server Review Board actions are governed by Rule 14, Tx. Rules of Judicial Administration (TRJA.) The Court's authority to promulgate these rules is established in Rule 1 which reads: "TRJA 1, AUTHORITY- These rules are promulgated pursuant to Section 74.024 of the Texas Government Code." Point #1: All one has to do is look at TGC, Sec. 74.024 to see that it does not give the Court authority to regulate private citizens (see TGC 74.024 at <http://www.statutes.legis.state.tx.us>). Point #2: Both the Court and the PSRB have made it abundantly clear that all process servers, whether certified or not, are disinterested third-parties, not agents or employees of the court. PSRB Rules of Professional Conduct (proposed) read: "(8) Exaggerating Authority- A process server shall not exaggerate his authority, nor his position or affiliation with a court, or official agency or their authority to serve process, or to gain access in order to serve process." This well known industry fact is taught in the training courses and members of the PSRB have made numerous announcements in their public meetings that certification does not give a certified process server any authority above a non-certified process server (which happens to include every disinterested adult in the state.) The only authority certification conveys is permission to make the delivery. I find it an irrefutable fact that TGC 74.024 (including section (c)(9), the only section that could remotely be misconstrued as an authority to regulate) does not include certified private process servers. If a certified process server were to identify him/herself as "court personnel," he/she would find themselves in danger of having their certification revoked by the PSRB (at least one person has been revoked for identifying himself as court personnel.) This is not my opinion, but PSRB policy. The definition of "personnel" reads: "Personnel, noun. 1. a body of persons employed in an organization or place of work." Clearly, certified process servers are not court personnel and clearly, the Court does not have authority to administer (much less create) occupational regulation without an enabling statute. *(continued on next page)*

**Participant Comment:**

Point #3: These are issues we all learned in junior high... the separation of powers and the system of checks and balances. Whether you are pro or con on process server regulation makes no difference. If we, the people, don't act to protect these principles, government can, and will, go awry. As unbelievable as it may seem, the Texas Supreme Court is violating the separation of powers doctrine; and Sec. (d) of TGC 74.024 is the check and balance. Even for those who favor the Court's regulation, the end does not justify the means. What needs to be done is a demand by the people which will translate into action by lawmakers. The battle over regulation can, and likely will, continue to be fought where it should... at the Capitol, not the Court. We need to ask our State Senators and Representatives to act under TGC 74.024(d) and object to TRJA 14 for the purpose of repairing this breach of powers. Public comments to TRJA 14 were 100% opposed. Still, the Court implemented the rule anyway. Neither the public we serve nor the attorneys who hire us asked for this regulation. There are no process servers in jail for job related crimes; and there is no record of consumer complaints filed with the AG. The fact is, private process service has flourished in this state for one simple reason... attorneys choose us because we offer more efficient and reliable service than the constables, and certification is never a factor in their choice. Process server regulation is one area of Texas red tape that should be abolished, not so much because it has not been proven necessary to protect the public, but because, in its current form, it is unconstitutional and an affront to core principles of our government. Next comment... is the regulation necessary to protect the public? (Tod E. Pendergrass, Austin, Texas)

Issue No. 2, is the regulation necessary? "Necessary" being the key, here's what the LAW says:

"The interests of the residents of the state are served by the regulation of certain professions and other occupations. State government actions have produced a substantial increase in the number of regulatory programs. The legislature should review proposed regulatory programs to better evaluate the need for the programs and regulation should not be imposed on any profession or other occupation unless required for the protection of the health, safety, or welfare of the residents of the state." [Texas Government Code 318.001] The current certification program and the Process Server Review Board are in direct violation of this law. It is the Legislature's job to determine if occupational regulation is necessary. The Court violated this law when it created an occupational license without enabling statute. But, for the purposes of a red tape challenge and despite how it was created, is the regulation actually "necessary?"

Private process servers pose little or no threat to the public. Current law, both civil and criminal, covers any infraction a private process server might commit. Any question a private process server may have about their job can be answered by the licensed attorney who hires them. There are no known private process servers convicted of job related crimes in Texas and no known consumer complaints filed with the AG. The "public" (the group the LAW says needs to be protected) is not demanding regulation, which includes the licensed attorneys who choose service by private server. Legislative intent on this issue has been established in at least 7 "any disinterested adult" laws and a refusal to pass many licensing bills. So, who is this group demanding regulation? It is those who have pocketed hundreds of thousands of dollars selling the same unnecessary and "government mandated" training course over and over again.

Clearly, there is little or no evidence indicating the public is being harmed by untrained process servers. Training courses were available to anyone who wanted to take them long before the Court's program began in 2005. According to the LAW, "government mandated" training should only be required if the Legislature determines it necessary to protect the public. That has not happened.

After July 1, 2005, thousands of new inexperienced people became spellbound by the illusion that taking a  
(continued on next page)

**Participant Comment:**

training course meant one could step into a new, exciting, and lucrative career. The courses now exist only to tantalize today's job seekers with empty promises of an easy buck. Roughly three-quarters of process server trainees never go on to establish a career, many never serve a single paper and others don't even complete the application process. The training course instructors are happy to pocket the proceeds and advertise to their next class of unsuspecting students.

Many long-time servers like myself will be forced to take that same course a fourth time. The PSRB is the only regulatory agency that has members who also teach, sell and/or promote training courses. They won't allow or recommend on-line training because they know it will cut their profits. This is a huge Sunset violation for very good reasons. One being the PSRB often disciplines process servers by forcing them to re-take (and pay for) training; a course they are happy to sell them.

What about the PSRB's complaint record? It speaks for itself. Taking into account the fact that there is NO CODE OF CONDUCT for process servers, and PSRB members have received no board member training in regulatory or administrative law, the so-called "actionable" complaints totaled 27 in six years. That translates into a million dollars PER YEAR for the PSRB to resolve less than 5 complaints per year, none of which stemmed from or led to a criminal conviction. The program requires the revocation of any certified server who becomes convicted of a felony or misd. involving moral turpitude. To date... NONE have been revoked for that reason.

Whether you believe process server regulation is or is not necessary, please consider the current laws in place and these questions: If regulation were NECESSARY, why does the Court's TRCP Rule 176 give statewide authority to any disinterested adult to serve all subpoenas? If regulation were NECESSARY, why do several Texas LAWS give statewide authority to any disinterested adult to serve the EXACT SAME DOCUMENTS covered by certification? If regulation were NECESSARY, why did the Legislature give statewide authority to any disinterested adult to serve all criminal and grand jury subpoenas? If regulation were NECESSARY, why does the United States Supreme Court give nationwide authority to any disinterested adult to serve federal summons and subpoenas in all 50 states, including all criminal and grand jury subpoenas? IF REGULATION WERE NECESSARY WHY ISN'T CERTIFICATION MANDATORY? Why can any disinterested adult still serve by case-by-case or by county-wide blanket order? Why ISN'T the public considered in danger of those untrained, non-certified servers?

The real crux of certification is the "statewide authority" it provides. If the public is not in danger of local process servers, then they are not in danger of those having statewide authority. But, more importantly, if "statewide authority" can be conveyed by court rule, e.g. TRCP Rule 176, it can be conveyed by rule for service of citations and other writs. The Court's own rules establish the fact that "statewide authority" for any disinterested adult does not even need the Legislature's involvement.

The rules and laws currently in place represent a major discrepancy and inconsistency of the most extreme. Within one rule, the Court allows service by any disinterested adult on one hand and, on the other, the equivalent of full-blown licensing standards that rival the major professions (TRCP Rule 103.) Are process servers more like doctors, lawyers and policemen? Or, are they more like messengers? It's time to quit pretending this regulation is necessary.

So, why would the Legislature pass a law funding the program? To answer that would take a whole other post. But, the evidence is right there in the record and it reveals a somewhat elaborate scheme to force the  
*(continued on the next page)*

**Participant Comment:**

Legislature's hand last session; not to mention some of that training course money being returned to key legislators by way of campaign contributions; all legal, of course, but true nonetheless. Haven't even thought to look at the SC Justices campaign contributions yet. (Tod E. Pendergrass, Austin, Texas)

The PSRB has been guilty of a multitude of civil and criminal violations since its creation in 2005. It is mindboggling that the Supreme Court is willing to jeopardize its dignity, and the Justices, their careers, by allowing this rogue government agency to continue to operate under the Court's authority and watch.

As for process server regulation being necessary, the Court has NEVER published verbally, written or online any rationale for regulation being necessary. They haven't because this regulation is not about being necessary to protect the public. It is about generating a lot of money to a special interest group.

In my 30+ years as a citizen of this State, I have never been more ashamed of any element of Texas government than with the Supreme Court's operation of this blatant violation of the Constitution and State law. I don't know how the Legislature permits them to continue doing what the Legislature has 17 times refused to do; being the only branch of government with the authority to do it. (Dana McMichael, Austin, Texas)

I'm a former law enforcement officer who served civil process, a 20 law office veteran who's managed having process served for my employers, and 7 year business owner of a PI & process service company. As someone who is very familiar from working with legitimate state agencies with legitimate authority from our state legislature, this Process Review Board's existence is unneeded and I might add illegitimate. The people of Texas through their elected representatives are authorized to established regulatory agencies, not the Texas Supreme Court! I was so disgusted with the majority party membership in both the Texas House and Senate in the last legislative session, who know better, but went along with giving the PSRB & the high court the authority to act like they had lawful right to do what they're doing! (Rick Habecker, Cedar Park, Texas)

The Legislature was coopted into providing the Court the authority to fund their unlawful regulation of process servers. The Court Reporters and Guardians Ad Litem certification programs created by statute were dependant upon the PSRB receiving funding in order to be funded themselves. As it passed and was signed into law, SB1 of the Special Session now has the fees collected from process servers paying for all three occupational programs. This is beyond disgusting and unfair. It is just plain bad government. (Dana McMichael, Austin, Texas)

## **THE TEXAS HIGHER ED OPEN GOVERNMENT CHALLENGE**

In September, the Government Efficiency and Reform Committee launched a special project within the Texas Red Tape Challenge entitled the Texas Higher Ed Open Government Challenge (HEOGC). This project asked students enrolled within the state's graduate-level public policy and public administration schools how open government-related policies and programs may be streamlined, reformed, or otherwise modernized in order to improve government efficiency, transparency and accountability. Several of the ideas offered through the HEOGC are included in this interim report (see preceding ideas).

One of the focus areas for the HEOGC was the subject of the Texas Red Tape Challenge and crowdsourcing. Participants were provided a brief explanation of the Texas Red Tape Challenge's background and purpose, and information regarding the site's conceptual design. Students were asked to consider several questions aimed towards improving future applications of the Challenge or other crowdsourcing endeavors. The questions asked included: What did the Texas Red Tape Challenge do right? What could it do better? How could public participation in the Challenge be improved? What are the impediments to public participation on the Texas Red Tape Challenge? How can crowdsourcing improve state government transparency, accountability, and efficiency? Lastly, and generally, what would you do differently?

Participants offered several ideas relating to the Challenge and future uses for crowdsourcing. As these ideas may be instructive for future crowdsourcing projects, they are included here for further reference. The House Government Efficiency and Reform Committee did not formally endorse these ideas.

**IDEAS FROM THE TEXAS HIGHER ED OPEN GOVERNMENT CHALLENGE**



## Texas Higher Ed Open Government Challenge Focus Area: Texas Red Tape Challenge and Crowdsourcing

### Idea Submitted: *Clean it up and show you are listening.*

The website should be made more inviting by breaking up large blocks of text and by utilizing tabs to separate different sections like the higher ed challenge, manufacturing, etc. from the homepage. I fear that Texas's website is intimidating to people when they first see it, especially when compared to the UK's website which is colorful, has pictures, easy-to-follow links at the top of the page, and is generally clean. Additionally, I would release all of the topics at once instead of staggering them throughout the course of the challenge. Instead, certain topics could be featured on the homepage (assuming the site is redesigned) along with the most popular or commented posts.

In order to encourage future participation and transparency, it would be interesting to see some sort of acknowledgement of these ideas during or after the legislative session. Even if it's only an aesthetically pleasing list on the homepage detailing what happened to the most popular ideas, there needs to be a sense that these comments are being read and in some cases acted upon.

#### Idea Author:

Mr. Keith Salas  
LBJ School, University of Texas  
Austin, Texas  
Represents: self as private individual

#### Vote Summary:

<b>For:</b>	10	<b>Against:</b>	0
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#### Participant Comment:

Thanks for this idea, Keith! A note about the staggered focus areas: the initial design for the TRTC was to post all of the focus areas at once and to leave them open for idea submission and comment. One problem our team discussed with this approach was that the sheer volume of regulations we planned to post on the site could be intimidating to its users. Several experts in the area of crowdsourcing -- including Beth Noveck, the author of Wiki Government -- recommended that we roll out different slates of regulations over time. This approach would keep the Challenge subject matter fresh and, more critically, avoid the issue of intimidation (people wouldn't feel like they were asked to drink from the fire hose). Further, this rolling approach allowed us to issue press releases announcing the introduction of new slates. Notwithstanding the programming limitations within the site's platform, our intent was to keep the site from appearing dormant. (Jeremy Mazur, Moderator)

I became aware of the Texas Red Tape Challenge through the Texas Home School Coalition. Over the months that I've been following various topics, I've noticed that most ideas have very few comments and/or votes. I've tried to make friends aware of this website and their opportunity to make comments on issues that they have a stake in. However, I've only received feedback from one person who said she'd "look in to it." I agree with Keith when he says that the site is a bit unwieldy. It is NOT especially inviting, but it is valuable, and I appreciate the opportunity it's offered me to provide input into areas of concern. A re-designed website would be helpful, but this is, at least, a start. PSA's that let Texans know the website exists would be even more important. I think that a list of guidelines on an attractive Homepage might be helpful as well. This would be one way to make clear what the website is for and what it is NOT for. I would think that the Homepage should be the first thing a visitor sees every time they visit. Simplify, simplify, simplify! But, thanks for this beginning. Feedback on the issues posted on the website during the Challenge, during the legislative session, and after the legislature completes its work would also be appreciated. (Linda Simcox, Houston, Texas)

**Participant Comment:**

I imagine many potential contributors to the Red Tape Challenge were turned off by the cumbersome nature of the website. With three columns of equal-size text, the eye doesn't know where to go, or what sections are most important. A lighter, more user-friendly design would make the Challenge more approachable. The UK Red Tape Challenge, for example, has bold graphics and much less text on the home page. The UK site accomplishes this by linking to background information and frequently asked questions rather than including all this information on the home page. Another way to make the Challenge more approachable would be to include a one- or two-sentence executive summary of each topic. Some of the descriptions are quite long and use technical language, and an executive summary would help a potential contributor decide which topics he or she wanted to spend time reading and sharing ideas about. (Meghan Young, Austin, Texas)

This website is far too intimidating; from the stoic layout to the overly legalese language used in topics. I understand, and respect, that the purpose of the RedTape Challenge is to get ideas from people who “have a working understanding of relevant statutes, rules, agencies, history, and effects of policies they discuss,” but if those people feel their opinion is not truly welcome, they are not going to post. I am not trying to suggest that the website lose its professional feel, but to steal a phrase from the technology world, it needs to be more user friendly. Too much information is crammed into one page making it less inviting. The layout needs to incorporate social media, for instance Twitter and Facebook. The voting on ideas makes sharing information intimidating. People need to feel that they are free to share opinions without criticizing. (Lena Proft, Austin, Texas)

**Staff Comment:** This idea includes comments that were offered as separate ideas within the Higher Ed Open Government Challenge, each suggesting that the Challenge site include more user friendly features.

**Texas Higher Ed Open Government Challenge Focus Area: Texas Red Tape Challenge and Crowdsourcing****Idea Submitted:** *User Friendly Upgrades and Spreading the Word Might do the Trick*

I was made aware of The Texas Red Tape Challenge by my political science professor in my Graduate Program and as an avid consumer of information regarding various topics, and I was upset that I did not hear about this opportunity earlier. I recently heard about another similar idea through the U.S. government called the U.S. Cyber Challenge and I think that it is a very proactive and cheap way to get input and ideas from individuals outside of those who work in the fields professionally. With certain social networks that we have today and the technology that we used to develop them, I think that society has a higher expectation and appeals to using online forums and sites that are user friendly and aesthetically pleasing. I do not find The Texas Red Tape Challenge site to be aesthetically pleasing because it looks extremely bland. The white background and with black text makes people want to deter from visit the site and if they were to visit, would make them want to fall asleep. I do not find it to be user friendly because the average person is so accustomed to clicking on icons, pictures, or bright and bold text to navigate sites. I do find that the hyperlinks throughout the text allows people to navigate to different parts of the site quicker and also that the links on the side allow people quick access to the various topics that are being discussed. However, to make this section more visually appealing, I would add borders around each topic and instead of having the confusing (Expires on 10/31/2012) note on each topic, I would make all of the topic entries due on the same date, as they seem to be anyways and just put a countdown clock at the top of the page. I find that giving people a deadline and giving them a countdown allows them to be cognizant of the impending due date for their ideas and they can fit it into their schedule when they have time to complete it. I would also make it more similar to social networking sites like Twitter and Yahoo, that have a constantly updated list of the most talked about or most commented on topics; people like competition and the rankings of topics gives a competitive edge. Personally, I have a vested interest in the topic of State of Texas Assessments of Academic Readiness (Testing): Policy Focus Area Ideas. Due to my vested interest, I want this topic to be highly discussed and I am more likely to share the link and get my friends, family and social network involved if I am able to better visualize how this topic ranks in comparison to other topics in regards to comments and discussion levels. I did like the ability to see other peoples' ideas and comments and I feel that it will encourage people to expound on their own comments and ideas.

I took the time to do additional research and Googled The Texas Red Tape Challenge, just to see how well the word was spreading and in what venues people were using to spread the word. I found that a decent job was done to spread the word to local businesses; however, I did not find anything that was used to encourage the general public to participate. On the actual Texas Red Tape Challenge site I did see some attempt to push the use of Twitter and Facebook and it is evident that that method was a failed attempt. I think part of the problem was that the use of Social Networking was underestimated or at least it seemed to be because the ability to share the information is hidden below all of the topics of discussion. However, I did find that the TRTC did a great job of emphasizing the use of social media and put the links to tweet, like, email and follow particular comments and topics once a user clicks on a topic to review. I see one major impediment to public participation on the Texas Red Tape Challenge is that people are already inundated with Facebook messages and Twitter Feeds and not to mention the grind of life, that yet another site that is asking for feedback may be asking too much. Is there a way to work with Facebook or Twitter to allow posts on those sites to be put on the Texas Red Tape Challenge site as a comment or a new idea? I know that there has to be some way. As I mentioned, I was disappointed that I did not hear about this opportunity sooner and I feel that there may have been a break in th chain of communication. I have not seen one commercial, billboard, or sign that would have caught my eye to this opportunity to get involved. Lastly, I feel that crowdsourcing is a 21st century step to include the public and encourage them to be accountable and participate in their state government. *(continued on next page)*

**Idea Submitted (continued):**

How would you change existing statute specifically in order to implement your idea?: I don't believe that there would need to be any existing statute to specifically implement these ideas.

Describe the costs or savings that may be generated by this idea.: The few tweaks that need to be made to visually improve the site in order to encourage others to utilize social media to get the word out would cost minimal, if anything at all. By encouraging people to use social media more, there is a HUGE savings in time and money. People tweet and post meaningless things all the time and I am sure that there is at least one topic that they are interested in that would actually provide some meaning to their tweets and posts. Billboards, commercials and signs may be more expensive, but it would increase participation and allow people to know it exists.

**Idea Author:**

Ms. Kaitlyn McCanna  
Texas State University  
Seguin, Texas  
Represents: self as a private individual

**Vote Summary:****For:**

26

**Against:**

0

**Participant Comment:**

The Red Tape Challenge should require each agency to have a Red tape challenge Link on each homepage of all State agencies to get more input!!! (Collette Jamison, registration incomplete)

How can you crowd source without getting the word out? I definitely agree. This also arises question if this challenge should be limited to graduate students and professors in Public Administration. (Curtis Leeth, San Marcos, Texas)

Other users point out that more marketing for a wider audience would get a better result. Marketing, however, can be very expensive and would come at the tax-payers expense. Adding the banner to state agency websites, however, should be a fairly low-cost solution and is a good start for a project that will eventually gain a great deal of advertising through word-of-mouth. It tough economic times, it will be more practical to the taxpayer to implement advertising steps one piece at a time. (Adrian Metzger, Dripping Springs, Texas)

The Red Tape Challenge categories of Public School Mandates and Occupational Licensing have not received much feedback to date. Perhaps this is because groups effected by these policies do not know about the Red Tape Challenge. By informing these relevant populations of the existence of the challenge, you may increase not only the quantity but also the quality of feedback of these topics. This may be done by informing school Superintendents of the existence and purpose of the challenge. The Superintendent can then pass this information on to educators and administrators. Similarly, if you contact the heads of schools where licensed occupations are taught (such as cosmetology, nursing and social work schools), you may be better able to solicit appropriate feedback from students and teachers at these institutions. In this way you are targeting respondents who have a working knowledge of the policies being discussed and what the strengths and weaknesses of these particular policies are. (Camilla Armijogrover, Austin, Texas)

I think having a forum for input like this is a modern spin on the old-fashioned town hall meetings and it is relevant for today. However, I would never have heard about it if I had not been in a Graduate School class. I did a brief, informal survey of my friends and no one had ever heard or seen it mentioned on any news broadcast or in any newspaper. (Peggy Halamicek, Schulenburg, Texas)

**Participant Comment:**

The concept of this project is a great one; Giving people a place to voice critiques of government policies based on current facts, legislation, and policy is beneficial to effective government. An improvement I suggest is making the Texas Red Tape Challenge more well known. I think the recommendation made by another commenter of providing a link on every government agency's website is a good idea. But I think the ultimate way that the Texas Red Tape Challenge can improve public participation is guaranteeing that popular opinions posted on this site will be discussed and voted on by a legitimate government committee. The steps that the House Government Efficiency and Reform Committee will take to implement ideas generated from this Challenge need to be specifically defined and guaranteed to happen. People care more about giving their opinions when they know they will actually be considered and potentially put into action. (Hanna Ging, San Marcos, Texas)

This website is a wonderful idea and I am enjoying looking around a reading everyone's opinions. However, the only reason I knew about this website is my professor told me about it. When we were shown the letter sent to the dean of our department the entire class was left scratching their heads. The dean did not receive the letter until October the 12th and the website was created in September. To me, this does not make any sense. If the Department of Efficiency wanted prompt opinions about particular issues, why would they wait until the last possible minute to send notices out? Also, the publicity of this website is horrible. As far as I can tell, the only people who have heard of this website are college professors and their students. If the opinion of the people of the state of Texas is really wanted, then there should be commercials on public TV stations, newspapers, and other media sources to help spread the word. (Rose Pauler, San Marcos, Texas)

I just finished early voting this afternoon. I think a good solution to the combined issues of no public awareness and no advertising budget is to perhaps hand out a flyer or work some sort of information into the ballots at the polls. Even something as simple as printing a 'blurb' on the sample ballot that they hand out while you're waiting in line could increase awareness. Another positive factor about using polling places as platforms for free advertising is that the public outreach would be astronomical compared to any other sort of free publicity. (Hillary Anne, Austin, Texas)

It seems the general consensus thus far in this forum is that accessibility is key. Without receiving a letter regarding this forum, I would not have been aware of its existence. I agree that placing the link on state agency websites would be the first step in establishing accessibility. But I also have a couple of other suggestions. We are in the final days of an election and people are heated about issues. Presidential elections stir the pot and encourage people to feel like they are really able to contribute. Even sending out banners or flyers for polls to post in the area about a place where individual people can be heard would be a great start. But what about the times when we aren't in the middle of an election? People often think the only way they can be heard is to write their representative. Unfortunately, they will often receive a form letter that has adopted some personal details to make it seem more personalized. I suggest all elected officials in Texas be required to offer a link to an open forum such as this. This may seem like a small step, but I believe it will target those people who are ready to communicate their ideas and suggestions. What about sending out information to public libraries or other places where voters expect to access information. The library even offers voter registration cards. The library would also offer the support and equipment to access an online forum for those without a computer, internet access, or the technology skills. (Amy Greene, Cedar Park, Texas)

We need to have more formal announcements from our leaders regarding programs such as the Red Tape Challenge. I would not have heard of this had I not been enrolled in class. If this program has the full support

**Participant Comment:**

of the Governor, then he should make a public announcement of this new program encouraging Texans to "get involved." Information filtering down to those most affected by these kinds of programs will only receive a response if they know that there is a response to be made. I would like to have seen a big billboard ad on all the major interstate highways and a flag on each agency main face page. (Yvette Morales, San Antonio, Texas)

I found the site to be insightful and generally a good idea, however I only came across this website through the word of my professor. Our graduate class was shown a letter that the Dean of the Department received on October 12th. It is known, to the best of our knowledge, that the website was created in September. It seems nonsensical to have the Department of Efficiency request students go to this website and convey their opinions on particular issues/topics yet they send the notices out late, allowing the students only days to visit the website. I think public participation for the Challenge could have been improved with the general publicity/marketing of the Challenge itself. Like I mentioned, had it not been for my professor, I would not have heard about this site. While I understand that marketing campaigns can be expensive, social media would have been truly beneficial in a situation as this. (CJ Barela, Converse, Texas)

**Staff Comment:** This idea includes comments that were submitted as separate ideas within the Higher Ed Challenge, each addressing the need for greater publicity and a better user interface for the Challenge site.

**Texas Higher Ed Open Government Challenge Focus Area:** Texas Red Tape Challenge and Crowdsourcing**Idea Submitted:** *Combine Red Tape Challenge with Sunset Commission.*

It seems like there are similarities between the Texas Red Tape Challenge and the Sunset Advisory Commission. Going forward, the topics posted prior to each legislative session could be the agencies that are up for sunset review. The Red Tape Challenge would then become an additional avenue for the public to weigh in on whether these agencies should be maintained, reformed, or continued.

How would you change existing statute specifically in order to implement your idea?: Include as part of the Sunset Review law a provision that requires the creation of a wiki for the public to weigh in on the agencies up for review.

Describe the costs or savings that may be generated by this idea.: The public would have a more direct way to weigh in on ways to make agencies more efficient.

**Idea Author:**

Mr. Justin Sykes  
LBJ School, University of Texas  
Austin, Texas  
Represents: self as private individual

**Vote Summary:****For:**

1

**Against:**

**Texas Higher Ed Open Government Challenge Focus Area:** Texas Red Tape Challenge and Crowdsourcing**Idea Submitted:** *No hablo Ingles!*

I think the Texas Red Tape Challenge is a great idea to engage all Texans however I think it should include a tab/link to offer the information in Spanish as well

**Idea Author:**

Mr. Javier Mere  
Texas State University  
San Marcos, Texas  
Represents: self as private individual

**Vote Summary:****For:**

6

**Against:**

3

**Participant Comment:**

Great idea!! Seriously!! (Jennifer Fidler, San Marcos, Texas)

According to U.S. census bureau, 38.1% of Texas' population is of Hispanic/Latino descent, many of whom many struggle with English. Should this challenge offered by the Texas state government not include the language 38.1% of its population may speak? (Curtis Leeth, San Marcos, Texas)



## Texas Higher Ed Open Government Challenge Focus Area: Texas Red Tape Challenge and Crowdsourcing

### Idea Submitted: *Texas Red Tape Challenge Needs Targets*

Currently it is unclear how and how many of these ideas will be incorporated into legislation. If people knew that the top 5 or 10 ideas, or ideas with a certain number of up-votes, would be included, people might be more motivated to become involved.

Since the program is so new, there have not been any legislative successes. Until you can show that people's voices have been heard, an automatic trigger might gin up interest.

Of course you may have a bad idea reach the top, but the bill doesn't have to go anywhere during session. So far most of the ideas seem reasonable.

How would you change existing statute specifically in order to implement your idea?: No change. Administrative change to site.

Describe the costs or savings that may be generated by this idea: No savings.

#### Idea Author:

Mr. Bryce Adams  
LBJ School, University of Texas  
Austin, Texas  
Represents: self as private individual

#### Vote Summary:

For:

2

Against:

0

#### Participant Comment:

I believe this is a wonderful idea if utilized properly. People like to feel their opinions matter and are being taken into consideration when asked. I believe whatever ideas are implemented from this forum should receive recognition to show others that their opinions do matter and they are not falling on deaf ears. (Kimberlee King, San Antonio, Texas)