

SUNSET ADVISORY COMMISSION

*Summary of
Sunset Legislation
82nd Legislature*

July 2011



Sunset Advisory Commission



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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 state agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

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Summary

Summary

This report is the culmination of an arduous, but successful two-year journey for the Sunset Commission and staff, and the 29 entities that underwent Sunset review in the 2010-11 biennium. For most of these entities, the journey is nearly over. Legislation to continue and strengthen these agencies has passed. However, two agencies' Sunset bills did not pass and the Governor vetoed two other Sunset bills, a historic first for the Sunset process in Texas. For these four agencies the journey continues, as each was reauthorized for two years by other legislation, and will undergo Sunset review again before the 83rd Legislative Session.

This report summarizes the changes in law adopted by the 82nd Legislature based on recommendations from the Sunset Commission. Of the bills enacted, the Legislature adopted the large majority of the Sunset Commission's recommendations and added several key modifications to further improve the operations of the agencies under review. Altogether, these changes will result in a positive fiscal impact of more than \$161 million over the next two years.

The table, *82nd Legislature Sunset Summary Information*, lists the action taken on each of the agencies, the bill number and the author/sponsor of the legislation, and the related fiscal impact. The individual agency sections in the report provide a brief analysis of the legislation, including a discussion of the fiscal impact.

The Sunset process resulted in the abolishment of six of the 29 entities reviewed this cycle. Most significantly, the Legislature abolished and merged the functions of the Texas Youth Commission and Texas Juvenile Probation Commission into a single new agency, the Texas Juvenile Justice Department. The Legislature also abolished the Coastal Coordination Council, On-Site Wastewater Treatment Research Council, and Equine Research Account Advisory Committee. The Electronic Government Program Management Office of the Department of Information Resources expired without legislative action due to its inactive status.

Through Sunset legislation, the 82nd Legislature enacted numerous significant changes to improve the efficiency and effectiveness of the reauthorized agencies, as highlighted below.

- Senate Bill 1420 makes critical changes to help restore public trust and confidence in the Texas Department of Transportation (TxDOT) by improving its transparency, accountability, and reliability. The bill establishes a more integrated and understandable transportation planning process, increases public involvement, and strengthens the agency's internal controls. The bill also expands and strengthens the Department's contracting tools and removes unnecessary restrictions to help TxDOT

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and local entities better meet the State's growing transportation needs. To ensure TxDOT fully implements these long-needed changes, the bill provides for Sunset review of the agency again in four years.

- House Bill 2694 puts structures in place to ensure that the Texas Commission on Environmental Quality (TCEQ) can take appropriate enforcement action against regulated entities, to increase transparency in the way TCEQ makes and communicates its decisions, and to provide more consistent funding mechanisms for TCEQ to meet its responsibilities while limiting its reliance on general tax dollars. The bill continues the agency for 12 years.
- Senate Bill 653 unifies the State's two juvenile justice agencies into a single agency focused on diverting youth from state institutions and serving them more effectively in their local communities. The bill establishes a new policy board made up of local-level judges, experienced juvenile probation professionals, experts in adolescent mental health and education, and public members. The bill places the new Texas Juvenile Justice Department under Sunset review again in six years.
- House Bill 2605 streamlines the State's workers' compensation process by improving the functions of the Division of Workers' Compensation (DWC) at the Texas Department of Insurance. The bill simplifies the resolution of disputes, improves oversight of medical care provided, and strengthens DWC's ability to take enforcement actions to protect system participants. Given the ongoing implementation of legislative reforms to the workers' compensation system, the bill provides for a Sunset review of DWC again in six years.

*23 entities are set
for Sunset review
in FY 2012-13.*

As discussed previously, four Sunset bills encountered serious difficulties during the legislative process. In the end, the four associated agencies were continued, but each one must undergo another Sunset review in two years. The Sunset bills on the Railroad Commission and Public Utility Commission failed to pass, but the Legislature continued them for another two years through Senate Bill 652, which also makes adjustments to the Sunset Commission's review schedule for several upcoming biennia. The Governor vetoed two Sunset bills which would have resulted in the abolishment of the Department of Information Resources and Department of Housing and Community Affairs. However, the 82nd Legislature passed separate legislation during its 1st Called Session reauthorizing both agencies for two years and placing them again under Sunset review.

Looking forward to the 83rd Legislative Session in 2013, the Sunset Commission will be reviewing 23 entities. Major reviews for the upcoming cycle include the Texas Department of Criminal Justice, Texas Education Agency, Higher Education Coordinating Board, and Lottery Commission. Work will also continue on the four agencies placed under Sunset review in two years. The appendix to this report provides a complete list of the agencies subject to Sunset review before the 83rd Legislative Session.

82nd Legislature Sunset Summary Information

Agency	Bill Number	Bill Author		Action	2012-13 Net Fiscal Impact
		Senate	House		
Capital Metropolitan Transportation Authority	S.B. 650	Hegar	Cook	Not subject to abolishment	\$11.8 million ¹
Coastal Coordination Council	S.B. 656	Huffman	Bonnen	Abolished	No Impact
Electronic Government Program Management Office of the Department of Information Resources	No Legislation Needed			Abolished	No Impact
Emergency Communications, Commission on State	H.B. 1861	Whitmire	Anchia	Continued for 12 years	No Impact
Environmental Quality, Texas Commission on ----- On-site Wastewater Treatment Research Council	H.B. 2694	Huffman	Smith, W.	Continued for 12 years ----- Abolished	\$56.3 million
Forest Service, Texas	S.B. 646	Nichols	Cook	Continued for 12 years	No Impact
Hearing Instruments, State Committee of Examiners in the Fitting and Dispensing of	S.B. 663	Nichols	Anchia	Continued for six years	\$16,456
Housing and Community Affairs, Texas Department of	H.B. 2608	Hinojosa	Harper-Brown	Vetoed and continued for two years in S.B. 1, 1st C.S.	No Impact
Housing Corporation, Texas State Affordable	H.B. 1818	Hinojosa	Harper-Brown	Continued for 12 years	No Impact
Information Resources, Department of	H.B. 2499	Nichols	Cook	Vetoed and continued for two years in S.B. 1, 1st C.S.	\$4.3 million ²
Injured Employee Counsel, Office of	H.B. 1774	Huffman	Taylor, L.	Continued for six years	No Impact
Insurance, Texas Department of	H.B. 1951	Hegar	Taylor, L.	Continued for 12 years	No Impact
Insurance Counsel, Office of Public	S.B. 647	Hegar	Taylor, L.	Continued for 12 years	No Impact
Juvenile Justice Agencies Youth Commission, Texas Juvenile Probation Commission, Texas Office of Independent Ombudsman	S.B. 653	Whitmire	Madden	Merged into a single agency with review in six years	\$3.3 million

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¹ This figure represents savings to local funds, as Capital Metro does not receive state appropriations and is supported mainly by local sales tax revenue.

² This gain to the General Revenue Fund resulted from the Sunset Commission's recommendations to the 82nd Legislature and was adopted in House Bill 4, the supplemental appropriations bill, which credited the gain to fiscal year 2011.

82nd Legislature Sunset Summary Information

Agency	Bill Number	Bill Author		Action	Two-Year Net Fiscal Impact
		Senate	House		
Public Finance Authority, Texas	H.B. 2251	Whitmire	Bonnen	Continued for 12 years	\$33.3 million
Public Utility Agencies Public Utility Commission of Texas	S.B. 661	Nichols	Solomons	Failed to pass and continued for two years in S.B. 652	No Impact
Electric Reliability Council of Texas				Failed to pass and subjected to future Sunset review in S.B. 652	
Public Utility Counsel, Office of				Failed to pass and continued for 12 years in S.B. 652	
Racing Commission, Texas Equine Research Account Advisory Committee	H.B. 2271	Hinojosa	Anchia	Continued for six years Abolished	No Impact
Railroad Commission of Texas	S.B. 655	Hegar	Keffer	Failed to pass and continued for two years in S.B. 652	\$50.4 million
Soil and Water Conservation Board, Texas State	H.B. 1808	Nichols	Cook	Continued for 12 years	No Impact
Speech-Language Pathology and Audiology, State Board of Examiners for	S.B. 662	Nichols	Anchia	Continued for six years	\$9,269
Transportation, Texas Department of	S.B. 1420	Hinojosa	Harper-Brown	Continued for four years	No Impact
Water Development Board, Texas Joint Resolution-Additional Bond Authority	S.B. 660 S.J.R. 4	Hinojosa Hinojosa/ Fraser/ Hegar	Ritter Ritter	Not subject to abolishment Approved for placement on November ballot	No Impact (\$105,495)
Workers' Compensation of TDI, Division of	H.B. 2605	Huffman	Taylor, L.	Continued for six years	\$2.4 million
Fiscal Impact Total					\$161.7 million

Agencies

Capital Metropolitan Transportation Authority

Staff Contact: Christian Ninaud

S.B. 650 Hegar (Cook)

Summary

Created in 1985, the Capital Metropolitan Transportation Authority (Capital Metro) provides public transportation services for the Austin area and some outlying communities. These services include bus services, paratransit services for persons with disabilities, and commuter rail from Austin to Leander. Capital Metro does not receive state appropriations, and funds its operations primarily through sales tax revenues and federal transportation funds. An eight-member Board, three of whom are locally elected officials, oversees Capital Metro. Capital Metro is subject to review, but not abolishment, under the Sunset Act.

Senate Bill 650 makes needed changes in law to ensure that Capital Metro follows through in more responsibly managing its finances and reserves, lowering its excessive labor costs, and prioritizing needed maintenance of its outdated railroad bridges. The Legislature adopted the majority of the Sunset Commission's recommendations, removing only a few provisions already implemented by Capital Metro. The Legislature also added a new provision to address how to maintain services for certain people with disabilities in areas that withdrew from Capital Metro's service area. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Require the Board to revamp Capital Metro's reserves and budgeting practices to ensure its finances are responsibly managed.

Senate Bill 650 requires the Board to maintain a reserve equal to at least two months of actual operating expenses, or about \$27.5 million. The Legislature modified this provision to allow the Board five years to establish the reserve amount, but requiring Capital Metro to report to the Legislature in three years on its progress in meeting the reserve. The bill allows the Board to spend from reserves only to address unanticipated circumstances, and requires the Board to adjust reserve amounts at least once a year. The Legislature expanded on this provision by requiring the Board to post on its website the balances, deposits, expenditures, and interest income for all its financial accounts, as well as for its reserve account.

The bill requires Capital Metro to develop a new strategic plan that establishes its mission and goals, and sets policy and service priorities to drive budget development and allocation of resources. The bill also requires Capital Metro to develop a system for tracking the progress of its capital projects, and prohibits Capital Metro from spending more on these projects than provided for in the budget.

Senate Bill 650 requires the Board to develop a five-year capital improvement plan, with public comment, that links to Capital Metro's strategic goals. The capital plan must address various elements including project prioritization and proposed financing. The Legislature added that the capital plan must include policies on cost-benefit analysis of projects and participation of Historically Underutilized Businesses.

2. Require Capital Metro to competitively bid all transit services not directly provided by its own employees.

Senate Bill 650 requires Capital Metro to use a competitive bidding process to contract out for any transit services not provided directly by Capital Metro employees, including bus and paratransit services, no later than September 1, 2012. This provision will effectively dissolve Capital Metro's relationship with StarTran, its in-house non-competitively bid service provider. This change should significantly reduce costs to Capital Metro, as StarTran's costs far exceed similar services provided by peer transit systems and those already competitively bid by Capital Metro. Any contracts for transit services must include performance and cost control measures, incentives for performance, penalties for non-compliance, and contract end dates. The Legislature also added a provision authorizing Capital Metro to issue bonds to help spread out the costs of pension liabilities resulting from implementing this requirement.

3. Enhance the ongoing safety of Capital Metro's commuter rail system.

The bill requires Capital Metro to adopt a comprehensive rail safety plan that covers all rail activities, including commuter and freight. The safety plan must emphasize the safety of Capital Metro's railroad bridges, and include specifics such as hazard analyses, risk assessments, and safety audits. The Legislature modified this provision by requiring Capital Metro to provide the Texas Department of Transportation any rail safety-related reports that Capital Metro also provides to federal transportation agencies.

4. Require Capital Metro to develop a policy to more effectively engage stakeholders and to help rebuild the public's trust.

Senate Bill 650 requires Capital Metro to develop a public involvement policy that ensures full opportunity for the public to help shape decisions on Capital Metro's plans and transportation projects. The policy must provide for public comment on issues in advance of Board decisions, an approach for obtaining input throughout the year, and information on how the public can be involved. The bill requires that Capital Metro post the public involvement policy on its website.

Provision Added by the Legislature

5. Require Capital Metro to provide services to certain persons with disabilities living in communities that withdrew from its service area.

The bill requires Capital Metro to provide limited transportation services to persons with disabilities that were disabled and lived in outlying communities at the time these communities withdrew from Capital Metro's service area. These communities will pay the costs associated with providing the transportation services. This bill provision expires on January 1, 2020.

Fiscal Implication Summary

Senate Bill 650 will not have fiscal implications for the State, because Capital Metro does not receive state appropriations. If Capital Metro opts to contract out for transit services, this is expected to result in significant savings, as summarized in the chart below. The chart does not show a savings in 2012 because Capital Metro will need time to transition to contracting for services. The next three years show the costs to Capital Metro for paying out StarTran pension liabilities and vacation or sick leave for StarTran employees, before realizing greater savings in 2016. These estimates may vary depending on how the Board approaches the contract, particularly if the Board opts to maintain some level of current salaries and benefits during the transition.

Fiscal Year	Savings to Capital Metro	Costs to Capital Metro	Net Savings to Capital Metro
2012	\$0	\$0	\$0
2013	\$22,200,000	\$10,400,000	\$11,800,000
2014	\$22,200,000	\$6,000,000	\$16,200,000
2015	\$22,200,000	\$6,000,000	\$16,200,000
2016	\$22,200,000	\$0	\$22,200,000

Coastal Coordination Council

Staff Contact: Amy Tripp

S.B. 656 Huffman (Bonnen)

Summary

The Coastal Coordination Council (Council) is a 12-member interagency board that administers Texas' federally approved Coastal Management Program (CMP). The Council's mission is to coordinate Texas' approach to managing its coastal resources and responding to coastal issues. The Council is housed within and staffed by the General Land Office (GLO). The Council awards about \$2.5 million per year in federal coastal management grant funds to local entities for coastal improvement projects; reviews state and federal agency decisions that affect the Texas coast to ensure they are consistent with the State's CMP; and provides information and assistance regarding permits in the coastal region.

In Senate Bill 656, the Legislature adopted all of the Sunset Commission's recommendations regarding the Council, including abolishing the Council and transferring its functions to GLO, and added other statutory provisions. A discussion of the bill's major provisions follows.

Sunset Provision

1. Abolish the Coastal Coordination Council and transfer its functions to the General Land Office.

Senate Bill 656 abolishes the Council on September 1, 2011 and transfers its functions and authority to GLO. The bill requires the Land Commissioner to adopt a comprehensive plan to ensure the smooth transition of all programs from the Council to GLO. The bill also requires GLO to consult with the National Oceanic and Atmospheric Administration as necessary during the transition to ensure continued compliance with federal requirements and to maintain federal approval of the Texas Coastal Management Program.

The bill requires the Land Commissioner, by rule, to establish the Coastal Coordination Advisory Committee to provide advice on matters related to the CMP, and to comply with federal requirements for interagency coordination. Membership of the Coastal Coordination Advisory Committee will closely mirror the makeup of the Council, including a representative from each of the current Council-member agencies and four members appointed by the Land Commissioner representing specific coastal interests.

Senate Bill 656 also requires the Land Commissioner to evaluate the functions, membership, and usefulness of the Permitting Assistance Group (PAG) by January 1, 2012. This evaluation must include input from all PAG members and the Coastal Coordination Advisory Committee. The bill authorizes the Land Commissioner to adopt rules to restructure or abolish, expand the functions of, or add members to PAG based on the results of the evaluation.

Provisions Added by the Legislature

2. Ensure the current Council-member agencies and citizen members continue to have input into the state and federal consistency review processes.

Senate Bill 656 allows the Coastal Coordination Advisory Committee to refer state and federal consistency issues to the Land Commissioner for review if three members of the Committee agree there is a significant unresolved dispute regarding a proposed action's consistency with the goals and policies of the CMP.

3. Remove unnecessary statutory language detailing the federal consistency review process.

The bill deletes outdated and unnecessary statutory language regarding specific elements of the federal consistency review process. This language was removed at the request of the National Oceanic and Atmospheric Administration to allow the consistency process be adopted in rule so the State can react and update the process more quickly when federal law or guidelines change.

4. Require the Attorney General rather than the Land Commissioner to review consistency determinations made by GLO, the Land Commissioner, or the School Land Board.

Senate Bill 656 prohibits the Land Commissioner from reviewing a consistency determination made by GLO, the Land Commissioner, or the School Land Board. The bill instead requires the Land Commissioner to refer these consistency determinations to the Attorney General for review to prevent any conflicts of interest. The bill requires the Attorney General to determine whether the referred actions are consistent with the goals and policies of the CMP and allows the Attorney General to protest an action.

Fiscal Implication Summary

Senate Bill 656 will not have a fiscal impact to the State.

Commission on State Emergency Communications

Staff Contact: *Faye Rencher*

H.B. 1861 Anchia (Whitmire)

Summary

The Commission on State Emergency Communications (Commission) contracts with the 24 Regional Planning Commissions to provide 911 service to about one third of Texans, mostly in rural areas. The Commission's role is limited to the delivery of emergency calls and does not include the answering of the call or dispatch of emergency services. Emergency Communications Districts and Municipal Emergency Communications Districts provide 911 service to the rest of the state. The Commission also administers the Texas Poison Control Network by funding and overseeing the six regional poison control centers. These centers provide treatment information through a toll-free number (1-800-222-1222) to persons suspecting a poisoning or toxic exposure.

House Bill 1861 continues the Commission on State Emergency Communications for 12 years and clarifies its authority regarding development and implementation of the State's evolving emergency communications system. The Legislature adopted all of the Sunset Commission's recommendations, and a discussion of the bill's major provisions follows.

Sunset Provision

1. Continue the Commission on State Emergency Communications and provide adequate tools to help the Commission oversee the State's evolving emergency communications system.

House Bill 1861 authorizes the Commission, with the assistance of an advisory committee, to coordinate the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network. The bill defines this network as one that is used for communications between and among entities that provide emergency call handling and response, and that will be a part of the Texas Next Generation Emergency Communications System.

If the Commission exercises this authority, H.B. 1861 requires the Commission to establish policy and oversee agency involvement in the development and implementation of the network, and to appoint an advisory committee. The advisory committee must include at least one representative from each of the three 911 entities in the state, including Regional Planning Commissions, Emergency Communications Districts, and Municipal Emergency Communications Districts. The bill also requires the Commission to consult with Regional Planning Commissions and Emergency Communications Districts throughout the state when appointing these members, and to ensure each member has appropriate training, experience, and knowledge in 911 systems and network management to assist in the implementation and operation of a complex network.

Finally, the bill continues the Commission as an independent agency responsible for the provision of 911 and poison control services for 12 years, and applies the standard Sunset across-the-board requirements to the Commission regarding negotiated rulemaking and alternative dispute resolution.

Fiscal Implication Summary

House Bill 1861 will not have a fiscal impact to the State.

Texas Commission on Environmental Quality On-site Wastewater Treatment Research Council

Staff Contact: *Chloe Lieberknecht*

H.B. 2694 W. Smith (Huffman)

Summary

The Texas Commission on Environmental Quality (TCEQ) serves as the State's umbrella agency to regulate environmental quality. TCEQ's mission is to protect Texas' human and natural resources consistent with sustainable economic development, and its goals are clean air, clean water, and safe management of waste. TCEQ has regulatory oversight over air emissions, water use, wastewater discharges, and radioactive and solid waste disposal. To fulfill its mission, TCEQ issues permits, registrations, licenses, and other authorizations to entities or individuals whose actions may affect the environment or human health; monitors and assesses air and water in Texas; develops plans to maintain and improve air and water quality; oversees the remediation of sites contaminated by toxic releases; ensures compliance with environmental laws and rules by inspecting regulated entities and taking enforcement action when necessary; and helps entities avoid polluting through technical assistance and grant programs, such as the Texas Emissions Reduction Plan.

In 1987, the Legislature established the On-site Wastewater Treatment Research Council (Council) to award competitive research grants to improve the quality and affordability of on-site wastewater treatment systems; and enhance technology transfer of on-site wastewater treatment through educational courses and other forms of information dissemination. Although the Council receives administrative support from the Texas Commission on Environmental Quality, it operates as an independent entity and has a separate Sunset date.

The Legislature adopted most of the Sunset Commission's recommendations to put structures in place to help ensure appropriate action may be taken against regulated entities, to make TCEQ more transparent in the way it makes and communicates its decisions, and to provide proper funding mechanisms for TCEQ to meet its responsibilities. The Legislature also added several other statutory provisions to House Bill 2694. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Continue the Texas Commission on Environmental Quality and transfer certain oil- and gas-related regulatory activities to the Railroad Commission.

House Bill 2694 continues TCEQ for the standard 12-year period. In addition, the bill applies the standard Sunset across-the-board requirement for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

The bill transfers from TCEQ to the Railroad Commission the authority for making groundwater protection recommendations regarding oil and gas activities relating to three types of wells: oil and gas

wells, injection wells for oil and gas waste, and injection wells for geologic storage of anthropogenic carbon dioxide. This provision adds language to the Railroad Commission's statute to provide clear authority to determine the depth of surface casing needed during the drilling of certain oil and gas wells to protect usable groundwater in the State. The bill requires the Railroad Commission to adopt rules to establish groundwater protection requirements for all operations within its jurisdiction.

The bill removes the existing fee provision in TCEQ's statute regarding surface casing recommendations and authorizes the Railroad Commission to charge a fee for groundwater protection determinations for oil and gas wells. In addition to this basic authority, the bill provides for the same expedited letter process at the Railroad Commission as currently exists at TCEQ, subject to the same expedited letter fee not to exceed \$75. As part of this provision, responsibility for digitizing drilling well maps will transfer from TCEQ to the Railroad Commission with clear authority added to the Railroad Commission's statute for this activity.

2. Coordinate and focus TCEQ's public assistance efforts.

The bill charges the Executive Director with providing assistance and education to the public on environmental matters under the agency's jurisdiction. As part of this provision, the bill specifies that the Office of Public Interest Counsel's (OPIC) primary duty is to represent the public interest in matters before the Commission. The Office's current statutory charge to ensure responsiveness to environmental and citizens' concerns, including environmental quality and consumer protection, shifts to the Executive Director. TCEQ will assess the public assistance functions within the agency, and develop and implement a program to provide the public a centralized access point to the agency, and ensure that the agency is able to strategically assess the public's concerns and respond as necessary.

House Bill 2694 requires the Commission, after considering recommendations from OPIC, to adopt rules that include factors to determine the nature and extent of the public's interest, and factors to consider in prioritizing OPIC's workload. The bill also provides for OPIC to formally report to the Commission, in time for the Commission to include in its own reports, information about the Office's performance in representing the public interest, its budget needs including the need to contract for outside expertise, and any legislative and regulatory recommendations. OPIC and the Commission must work cooperatively to identify internal performance measures to best assess the Office's effectiveness.

3. Revamp TCEQ's approach to compliance history to ensure it fairly and accurately measures entities' performance.

The Legislature adopted the Sunset Commission provision to remove from statute the uniform standard requirement for evaluating compliance history, but slightly modified the provision to require TCEQ to develop standards, instead of a method, for evaluating and using compliance history consistently. TCEQ may also account for differences among regulated entities in developing the standards. The bill removes the requirement for TCEQ to assess the compliance history of entities for which it does not have adequate compliance information, essentially removing the average-by-default classification that skews the overall classification.

The Legislature modified the Sunset Commission provision relating to the factors that TCEQ uses in compliance history and added several new provisions to the bill related to TCEQ's use of compliance history. House Bill 2694 removes the requirement for components of compliance history to include consent decrees and criminal convictions under federal law related to compliance with legal requirements of the Environmental Protection Agency (EPA), and instead provides for consent

decrees and criminal convictions relating to violations of EPA rules to be included as components of compliance history to the extent they are readily available. In addition, the bill removes the requirement to include criminal convictions relating to violations of laws of other states. The bill requires TCEQ, in evaluating compliance history, to take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to federal Title V requirements.

The Legislature also modified the Sunset provision regarding factors to consider in determining compliance history to require TCEQ to include Notices of Violation, but for only one year after issuance. TCEQ may not include self-reported information received by TCEQ as required by Title V of the federal Clean Air Act, unless the Commission issues a written Notice of Violation. TCEQ may consider final enforcement orders or judgments resulting from self-reported Title V deviations or violations as components in determining compliance history.

The Legislature added language requiring TCEQ to establish a set of standards for classification of compliance history in rule as a means of evaluating compliance history and authorizing TCEQ to consider the person's classification when using compliance history in regulatory actions. House Bill 2694 changes the classification category of "poor" performers to "unsatisfactory" performers, and defines "unsatisfactory" as performing below minimal acceptable performance standards established by TCEQ. The bill also changes the classification of "average" performers to "satisfactory" performers, and defines "high" performers as regulated entities that have an above-satisfactory compliance record. In setting standards for the classification of compliance history, TCEQ may establish a category of unclassified performers or regulated entities for which it does not have adequate information. The bill removes language that prohibited the Commission from performing announced inspections for persons whose compliance history is classified as the lowest classification.

In classifying a person's compliance history, TCEQ must establish criteria for classifying a repeat violator giving consideration to the size of the site at which the violations occurred, rather than the number of facilities owned or operated, and limiting consideration to violations of the same nature and the same environmental media that occurred in the preceding five years. TCEQ must also consider the size and complexity of the site generally, including whether the site is subject to federal Title V requirements, and consider the potential for a violation at the site that is attributable to the nature and complexity of the site.

The Legislature added language to specify that compliance history may be used for administrative penalty enhancement, but limits the amount of enhancement to 100 percent of the base penalty for an individual violation. The Legislature also added language to require TCEQ to evaluate compliance performance information through a quality assurance and control procedure, including a 30-day period for the owner or operator of the site to review and comment on the information, before the information may be placed on the Internet.

House Bill 2694 makes changes to the Regulatory Flexibility program, requiring TCEQ to exempt an applicant from a pollution control or abatement law or Commission rule if the applicant proposes a control or abatement by an alternative standard that is *as* protective of the environment, instead of *more* protective as currently required in law. The bill makes several additional changes related to the process by which an entity applies for regulatory flexibility and TCEQ approves the application. Finally, the bill applies TCEQ's compliance history program to subsurface area drip dispersal systems; and programs for removing, collecting, and recovering convenience switches from end-of-life vehicles.

4. Improve TCEQ’s ability to take appropriate enforcement actions, and bring predictability and transparency to TCEQ’s enforcement process.

House Bill 2694 requires TCEQ to structure its general enforcement approach in rule. In addition, the bill requires TCEQ to regularly assess, update, adopt, and make public its specific enforcement policies, including its policy on the calculation of penalties. The Legislature modified the Sunset provision to require TCEQ to include consideration of deterrence to prevent the economic benefit of noncompliance in its enforcement policies. The bill increases the administrative penalty caps for 20 of TCEQ’s programs. The table, *Penalty Cap Level*, shows what each new penalty cap is under this legislation.

Penalty Cap Level

Program Violation	Cap	Program Violation	Cap
Air Quality	\$25,000	Underground Injection Control	\$25,000
Edwards Aquifer	\$25,000	Underground Water	\$25,000
Industrial and Hazardous Waste	\$25,000	Waste Tires	\$25,000
Land over Municipal Solid Waste Landfills	\$25,000	Water Quality	\$25,000
Medical Waste	\$25,000	Occupational Licenses	\$5,000
Municipal Solid Waste	\$25,000	On-Site Sewage Disposal	\$5,000
Petroleum Storage Tanks	\$25,000	Used Oil	\$5,000
Radioactive Substances	\$25,000	Used Oil Filter	\$5,000
Subsurface Excavation	\$25,000	Water Saving Performance Standards	\$5,000
Toxic Chemical Release Reporting	\$25,000	Public Water Utilities	\$5,000

The bill authorizes TCEQ to consider Supplemental Environmental Projects for local governments that would improve the environment, including bringing the respondent into compliance or remediating harm. The bill requires TCEQ to develop a policy to prevent regulated entities from systematically avoiding compliance. This policy will include an assessment of the entity’s financial ability to pay administrative penalties, the ability to come into compliance or remediate harm, and the need for corrective action.

5. Provide TCEQ with tools to effectively protect surface water availability during drought or emergency conditions.

House Bill 2694 authorizes the Executive Director to temporarily suspend a water rights holder’s water use or otherwise temporarily adjust the diversion of water to water rights holders, during a water shortage or other emergency. Legislative modifications to the Sunset provision clarify that such a suspension or adjustment will be in accordance with the first in time, first in right doctrine for surface water that is in current law. Specifically, the bill provides that in suspending or adjusting water rights, the Executive Director will ensure that the action taken will minimize the impact on water rights holders; maximize the beneficial use of water; prevent waste; consider the rights holder’s use of water conservation and

drought contingency plans required by law; conform with preferences of uses of surface water in current law; and not require the release of water that has already been diverted and stored according to a water rights permit. TCEQ must adopt rules, including defining a drought or other emergency shortage of water; and specifying the conditions under which the Executive Director may issue an order, the terms of the order including the maximum duration, and procedures for appealing an order.

The bill requires water rights permit holders to maintain water-use data on a monthly basis during the months the permittee uses water, and to make that information available to TCEQ staff upon request. TCEQ will be able to request this information as needed in drought or other emergencies, and the Legislature modified the Sunset Commission provision to allow TCEQ to ask for the information in response to a complaint. The Legislature also modified the provision to clarify that the water-use reporting provisions do not apply to the authority of watermasters, who have reporting authority elsewhere in statute.

House Bill 2694 requires TCEQ's Executive Director to assess, at least once every five years, whether a watermaster program is needed in river basins not in a program and report findings and recommendations to the Commission. TCEQ will determine the factors to be used in its evaluation, and will include findings and recommendations in its biennial report to the Legislature.

6. Provide TCEQ with tools to prevent and remediate groundwater contamination from leaking petroleum storage tanks.

House Bill 2694 prohibits common fuel carriers from delivering regulated substances to tanks unless the tank has been issued a valid and current registration and certification from TCEQ, as provided for in other law. TCEQ may assess administrative penalties for violations, and the Commission must adopt rules to enforce this provision. The Legislature modified the Sunset Commission provision by creating an affirmative defense if the person delivering the fuel relied on a valid, paper certificate shown or displayed by the owner/operator; a temporary delivery authorization; or information obtained from TCEQ's website not more than 30 days before the delivery.

The bill reauthorizes five petroleum storage tank (PST) remediation fees by removing language providing for their expiration on August 31, 2011, and changes the current fee levels to caps. The Commission must set fees in rule, up to the cap in statute, in an amount not to exceed the amount necessary to cover the cost of the program, as appropriated to the agency by the Legislature.

The bill allows TCEQ to use PST remediation funds to take corrective action to remove petroleum storage tanks that are non-compliant, out of service, pose a contamination risk, and are owned or operated by a person who is financially unable to remediate the tank. The Commission must adopt rules relating to this provision, including determining financial ability to pay and an assessment of potential contamination risk, to prevent PST owners from abusing the system in ways that would force the State to pay for PST remediation when the owner should be responsible.

The Legislature added to the Sunset Commission provisions to allow TCEQ to enter into direct award contracts for petroleum storage tank remediation projects, under certain circumstances, that transition from the responsible party reimbursement remediation program to the state-lead program, as the reimbursement program winds down.

7. Create a structure to fund the Texas Low-Level Radioactive Waste Disposal Compact Commission.

House Bill 2694 creates a new General Revenue dedicated account to fund the Compact Commission. The bill requires TCEQ to deposit the portion of the compact waste disposal fee allocated to the Compact Commission into the account, which may only be used to support the operations of the Compact Commission. The Legislature will appropriate funds to the Compact Commission from this account through the Compact Commission's rider in TCEQ's appropriations pattern.

8. Eliminate three existing water and wastewater utility application fees, and make rate case information electronically available.

House Bill 2694 contains part of the Sunset Commission provision related to funding utility regulation at TCEQ, but does not include any adjustment in the regulatory assessment fee level. The bill repeals filing fees for applications for rate change; Certificates of Convenience and Necessity (CCNs); and the sale, transfer, or merger of a CCN. The Legislature added language to provide that assessments collected may be appropriated by rider to an agency with duties related to water and sewer utility regulation or to an agency with a duty to represent residential and small commercial consumers.

The Legislature modified a Sunset Commission provision to require the regulatory agency overseeing water and wastewater utility rates to provide electronic copies of all water rate case information obtained from the utility upon request and at a reasonable cost, to the extent that the information is electronically available and not confidential. The bill also requires information provided to the regulatory agency to be provided to the Office of Public Utility Counsel, upon request, at no cost. However, separate legislation giving the Office responsibility for representing consumers in water utility matters did not pass.

9. Focus TCEQ's dam safety program on high-hazard dams, and exempt certain low- and significant- hazard dams from regulation.

House Bill 2694 provides that in implementing its dam safety regulations, TCEQ focus its efforts on the most hazardous dams in the state. The Legislature added to the Sunset Commission provision to exempt from safety requirements dams that are on private property, not located within a municipality, have a maximum capacity of less than 500 acre feet, are classified as low or significant hazard, and are in a county with population of less than 215,000. Dam owners will still have to comply with maintenance and operation requirements. These exemption provisions expire in four years.

The bill also authorizes TCEQ to enter into a compliance agreement with a dam owner who is required to reevaluate the adequacy of an existing dam because of a hazard reclassification by TCEQ. The compliance agreement may include timeframes to bring the dam into compliance with TCEQ's criteria and could include compliance deferral, if the Commission determines that it is appropriate.

10. Require members of the TCEQ Commission to resign from office if running for elected office.

House Bill 2694 requires a member of the Texas Commission on Environmental Quality running for elected office to resign from office before accepting any campaign contributions.

11. Abolish the On-site Wastewater Treatment Research Council, and transfer the authority to award grants for on-site sewage research to TCEQ.

House Bill 2694 removes the On-site Wastewater Treatment Research Council and its Sunset date from statute, and transfers its grantmaking functions to TCEQ. The bill authorizes TCEQ to administer and award grants for the same purposes currently allowed under the Council, and assume all existing Council grants, contracts, and projects. TCEQ must seek input from stakeholder experts when choosing research topics, awarding grants, and holding the educational conference. The bill moves the Council's future fee revenue from undedicated General Revenue to the Water Resource Management Account.

Provisions Added by the Legislature

12. Amend the process for contested case hearings for permits, including party status.

House Bill 2694 requires the Executive Director to participate as a party in contested case hearings at the State Office of Administrative Hearings. The Executive Director's role in a contested case hearing is to provide information to complete the administrative record and to support the Executive Director's position developed in the proceeding. A state agency, not including a river authority, may not contest the issuance of a permit, but may submit comments. Finally, the bill requires all discovery to be completed before the prefiled testimony deadline in a contested case hearing at the State Office of Administrative Hearings, with the exception of water and wastewater utility ratemaking hearings.

13. Create an expedited public hearing process for permit amendment applications for electric generating facilities to comply with Maximum Achievable Control Technology standards.

The bill requires TCEQ to provide an opportunity for public hearing and comment, in accordance with current law for federal operating permits, for permit amendment applications to allow electric generating facilities to comply with Maximum Achievable Control Technology (MACT) standards. The bill requires TCEQ to issue a draft permit within 45 days of receiving the application; requires submission of requests for a contested case hearing within 30 days of the draft permit's issuance; and provides that if a hearing is requested, TCEQ must issue or deny a permit within 120 days of the draft permit's issuance. The bill provides for notice, motions for rehearing, and judicial review in accordance with current law. The Commission must adopt rules for this process within 180 days of the effective date of the bill. These provisions expire on the sixth anniversary of the date the Environmental Protection Agency approves MACT standards.

14. Create timelines for TCEQ to review and approve amendments to certain water management plans.

The bill addresses TCEQ's review of certain applications to amend water management plans. The provision applies to an application consisting of a reservoir operation plan for the operation of two water supply reservoirs, for a plan that was originally required by court order adjudicating the water rights for those reservoirs. The bill requires the Executive Director to complete a technical review

within one year of the application's administrative completion. The bill allows the applicant 30 days to provide additional information to TCEQ and provides for a tolling period. House Bill 2694 provides for public comment opportunities, and requires the Commission to act on a hearing request and the application within 60 days.

15. Expand the Water Code's definition of agriculture to include aquaculture.

House Bill 2694 expands the definition of agriculture to include aquaculture, defined as the business of producing and selling cultured species raised in private facilities, for the purposes of TCEQ's water rights regulation.

16. Change the requirements for water district financial reporting to TCEQ.

The bill changes the threshold, from \$100,000 to \$250,000, in gross receipts collected by a water district for it to be able to elect to file an annual financial report with TCEQ instead of a full financial audit.

17. Amend rate change notification requirements for certain utilities.

House Bill 2694 extends time for notification of a rate change to rate payers for a municipally owned utility or political subdivision to 60 days, instead of the 30 required by current law. The bill also authorizes municipally owned utilities or political subdivisions to provide the notice electronically.

Fiscal Implication Summary

House Bill 2694 will have an overall gain of about \$56.3 million to the State during the 2012-13 biennium.

Transferring the responsibility for groundwater protection recommendations for oil and gas drilling from TCEQ to the Railroad Commission will not have a net fiscal impact to the State, but will require the transfer of \$931,256 in annual costs from the Water Resource Management Account No. 153 to the General Revenue Fund. In addition, nine full-time equivalent employees will transfer from TCEQ to the Railroad Commission.

Prohibiting the delivery of certain petroleum products to uncertified petroleum storage tanks will lead to an estimated gain to the General Revenue Fund of \$560,000 annually resulting from administrative penalties. This estimate is based on TCEQ's past experience when the prohibition was in law before being repealed in 2005.

Extending the petroleum storage products delivery fee would have a positive fiscal impact to the Petroleum Storage Tank Remediation Account No. 655 of about \$28 million per fiscal year. The revenue amount shown in the table for fiscal year 2012 is only \$25,833,000 because it reflects the additional amount that would be collected above the \$2,469,000 already included in the Comptroller's Biennial Revenue Estimate for 2012-13. This estimate assumes that the fees will be charged at the maximum level, as happens currently, but revenues could be lower depending on actual fee reductions to reflect legislative appropriations. Also, since the fee is continued, the Comptroller will collect a 2-percent service charge that will be a gain to General Revenue ranging from \$500,000 in fiscal year 2012 to \$600,000 in fiscal year 2016.

Eliminating three existing water and wastewater utility application fees will result in an estimated loss of \$30,000 to the Water Resource Management Account No. 153.

Abolishing the On-site Wastewater Treatment Research Council and transferring its grantmaking authority to TCEQ will not have a fiscal impact to the State, but will transfer \$330,000 annually from the General Revenue Fund to the Water Resource Management Account No. 153.

Fiscal Year	Net Gain to the General Revenue Fund	Net Loss to General Revenue Dedicated – Water Resource Management Account No. 153	Gain to General Revenue Dedicated – PST Remediation Fund No. 655
2012	\$1,087,000	\$30,000	\$25,833,000
2013	\$1,043,000	\$30,000	\$28,396,000
2014	\$1,045,000	\$30,000	\$29,569,000
2015	\$1,049,000	\$30,000	\$29,724,000
2016	\$1,051,000	\$30,000	\$29,896,000

Texas Forest Service

Staff Contact: Amy Trost

S.B. 646 Nichols (Cook)

Summary

Created in 1915 as part of the Texas A&M University System, the Texas Forest Service assists landowners and communities with the management and protection of forests and trees. Originally focusing on the forests of East Texas, the Forest Service has established a statewide presence over the last 20 years, especially in its wildfire prevention and suppression role. To accomplish its mission, the Forest Service provides personnel and grant funding to help volunteer firefighters suppress wildfires; responds to other incidents such as hurricanes and floods and trains teams of local emergency response staff; and helps landowners and communities with sustainable forestry practices.

Senate Bill 646 continues the Texas Forest Service for 12 years and contains all of the Sunset Commission's recommendations to improve the agency's wildfire planning, protection, and response roles. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Continue the Texas Forest Service for 12 years.

The bill continues the Forest Service as an agency at Texas A&M University System for the standard 12-year period. The bill also authorizes the agency's all-hazard emergency management functions of training regional response teams and maintaining a response team composed of its own staff.

2. Grant the Texas Forest Service clear authority for its wildfire response and planning role.

Senate Bill 646 clarifies the agency's authority to take all needed actions to respond to wildfires statewide as it currently does for forest fires that occur in East Texas. The bill also authorizes the Forest Service to develop a method for allowing volunteer firefighters to assist the agency with wildfire response when demands on local resources are exceeded, as determined by the agency. To the extent that resources are available, the agency may compensate volunteer firefighters or fire departments for labor, expenses, and equipment. The agency may also establish minimum qualifications a volunteer firefighter must meet to be compensated. In determining the appropriate wildfire response, the Forest Service must use the most cost-effective combination of volunteer firefighters, temporary employees, and out-of-state personnel and equipment.

Finally, the bill requires the Forest Service to develop its existing conceptual wildfire protection plan into a more robust plan with a sufficient level of detail to guide the State's approach towards managing wildfires. Among the elements that must be included, the plan must detail the respective roles of the Forest Service and volunteer fire departments in wildfire response matters; describe the expected revenue, expenditures, and staffing needs to implement the plan; and estimate savings resulting from the plan.

3. Update the Volunteer Fire Department Assistance Program to better serve the Texas Forest Service’s strategic wildfire protection goals.

The bill requires the Forest Service to add criteria that account for risk factors such as wildfire occurrence, size, severity, and potential for property loss when awarding Volunteer Fire Department Assistance Program grants to eligible departments. Senate Bill 646 also authorizes the Forest Service to make a small portion of grant funding available to volunteer fire departments to meet Federal Emergency Management Agency and any other federal cost-share requirements. Finally, the bill requires the Forest Service to develop and adopt a set of grant program policies and procedures through the rulemaking process and hold public meetings when making program decisions.

Provision Added by the Legislature _____

4. Update Texas Forest Service statute to be gender-neutral.

The Legislature added a provision to the bill that removes references to “his,” “he,” and “men” to make the Forest Service statute gender-neutral.

Fiscal Implication Summary _____

Senate Bill 646 will not have a significant fiscal impact to the State.

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Staff Contact: Erick Fajardo

S.B. 663 Nichols (Anchia)

Summary

The Legislature created the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids in 1970 as an independent state agency to regulate individuals who measure human hearing for the purpose of selling devices for hearing loss treatment. In 1993, the Legislature discontinued the Board as an independent agency, changing its name to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (Committee) and administratively attaching it to the Department of State Health Services (DSHS). Today, the Committee regulates hearing instrument fitters and dispensers through licensing and enforcement as a means to protect Texas consumers and to maintain standards for the profession.

Senate Bill 663 continues the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years and contains all of the Sunset Commission's recommendations, including removing unnecessarily restrictive continuing education and residency requirements, and ensuring consistency and fairness in the Committee's operations. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Continue the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years.

Senate Bill 663 continues the Committee for six years, administratively attached to DSHS. This shorter Sunset date will allow the Sunset Commission to evaluate the Committee together with seven other licensing programs administered by DSHS' Professional Licensing and Certification Unit that are scheduled for Sunset review in 2017. In addition, the bill applies the standard Sunset across-the-board requirements to the Committee regarding public membership, conflicts of interest, presiding officer designation, grounds for removal, board member training, separation of duties, and public participation.

2. Make the Committee's continuing education requirements less restrictive for both licensees and sponsors.

Senate Bill 663 changes the current 20-hour continuing education requirement from an annual requirement to a biennial requirement beginning May 1, 2012. The bill also requires the Committee to adopt rules to establish reasonable requirements for continuing education sponsors and courses, and to clearly define what constitutes a manufacturer or non-manufacturer sponsor. The bill requires DSHS, rather than the Committee, to review and approve continuing education sponsors and course applications, but allows DSHS to request assistance from licensed members of the Committee with the approval process.

Senate Bill 633 also requires the Committee, by rule, to adopt requirements for online continuing education sponsors and courses, and requires the Committee to allow a license holder to obtain at least 10 hours of continuing education online.

3. Remove the Committee's unnecessary residency restriction for out-of-state hearing instrument fitters and dispensers.

Senate Bill 663 removes the statutory requirement that hearing instrument fitters and dispensers licensed in other states establish Texas residency before applying for a Texas license. The bill also requires DSHS, rather than the Committee, to review and approve or deny out-of-state licensure applications.

4. Better ensure fairness and objectivity in the Committee's examination practices.

Senate Bill 663 requires the Committee to adopt rules establishing qualifications for practical exam proctors. The rules must require a proctor to be licensed as a hearing instrument fitter and dispenser in good standing; specify the number of years a proctor must be licensed; and specify the disciplinary actions or other actions that disqualify a person from serving as a proctor. The bill also requires the practical exam be administered by one or more qualified proctors, selected and assigned by DSHS. The Legislature modified this Sunset provision to clarify that the Committee shall develop and maintain an examination that may include written, oral, or practical tests, and DSHS shall administer or arrange for the administration of the exam.

5. Conform key elements of the Committee's licensing and regulatory functions to common licensing standards.

Senate Bill 663 includes six provisions that bring the Committee in line with standard licensing agency practices, including the following.

- Requires the Committee to obtain a fingerprint-based criminal history check on each applicant and license holder.
- Authorizes the Committee to order a license holder to pay a refund to a consumer who returns a hearing instrument during the required 30-day trial period.
- Prohibits a Committee member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint from voting on the matter at a Committee meeting related to the complaint.
- Requires the Committee to appoint at least one public member to each of its subcommittees.
- Requires the Committee, by rule, to adopt procedures governing informal proceedings and informal settlement conferences, and to approve informal agreements made by DSHS staff with licensees through the informal settlement conference process.
- Authorizes the Committee to issue a cease-and-desist order for unlicensed practice of fitting and dispensing hearing instruments; and allows the Committee to impose an administrative penalty against an individual who violates a cease-and-desist order.

6. Ensure consistency in the sale of hearing instruments.

Senate Bill 663 requires the Committee and the State Board of Examiners for Speech-Language Pathology and Audiology (Board), with DSHS assistance, to jointly adopt rules to establish requirements for each sale of a hearing instrument. The rules must address the information and other provisions required in each written contract; records that must be retained; and guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument. The bill stipulates the Committee and Board must adopt the joint rules by May 1, 2012. The bill also requires the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be written in plain language designed to be easily understood by the average consumer.

Fiscal Implication Summary

Senate Bill 663 will result in a gain of \$8,228 to General Revenue each fiscal year, beginning in fiscal year 2012. The bill requires the Committee to obtain a fingerprint-based criminal history check on each hearing instrument fitter and dispenser applicant and license holder, and authorizes the Department of Public Safety (DPS) to administer these checks. Implementing this provision will require performing an estimated 484 additional checks each fiscal year. The fee for performing each check is \$34.25 which is deposited into General Revenue, but a portion of this fee, \$17.25 per check, is returned to the FBI for professional services as required by federal law. These additional checks will account for a small percentage of the criminal history checks DPS facilitates each year, so any additional operational costs will be absorbed within existing DPS resources.

Fiscal Year	Gain to the General Revenue Fund	Cost to the General Revenue Fund
2012	\$16,577	\$8,349
2013	\$16,577	\$8,349
2014	\$16,577	\$8,349
2015	\$16,577	\$8,349
2016	\$16,577	\$8,349

Texas Department of Housing and Community Affairs

Staff Contact: Leah Daly

*82nd Legislature, Regular Session
H.B. 2608 (Vetoed) Harper-Brown (Hinojosa)*

*82nd Legislature, 1st Called Session
S.B. 1 Duncan (Pitts)*

Summary

Created by the Legislature in 1991, the Texas Department of Housing and Community Affairs (TDHCA) works to ensure the availability of affordable single- and multifamily housing, provides funding for community-based support services, and regulates the manufactured housing industry. Over the last several years, TDHCA has also helped funnel billions of dollars of federal aid to help Texas recover from hurricanes and the economic downturn.

The Sunset Commission determined that the functions of TDHCA continue to be needed, and recommended continuing the Department for 12 years. The Commission found that the Department administers its single- and multifamily housing programs well, but would benefit from certain statutory changes to its disaster recovery and housing tax credit programs, as well as its enforcement process. The Commission also found that manufactured housing regulation should remain at TDHCA, but with changes to improve its oversight.

The Commission recommended that the State implement a long-term disaster recovery plan to prevent delays in funding to hard hit Texas communities. For the housing tax credit application scoring process, the Sunset Commission recommended eliminating the requirement for letters from state legislators and replacing letters from neighborhood organizations with voted resolutions from locally elected bodies. To improve enforcement, the Commission recommended transferring the Department's penalty appeals hearings to the State Office of Administrative Hearings, and authorizing TDHCA to use debarment as a sanction in all its programs. The Sunset Commission also recommended improvements to the Manufactured Housing Division's inspection process and to certain education, licensing, and enforcement practices. These Sunset recommendations and others were incorporated into House Bill 2608. The Legislature added multiple provisions and passed H.B. 2608, but the Governor ultimately vetoed the bill.

Although H.B. 2608 was vetoed, the Legislature later continued TDHCA for two years and adopted several other Sunset provisions related to the agency as part of Senate Bill 1, 82nd Legislature, 1st Called Session. A discussion of these provisions follows.

Sunset Provisions Adopted in Other Legislation

1. Continue the Texas Department of Housing and Community Affairs for two years.

Senate Bill 1 modifies the Sunset provision to continue the Texas Department of Housing and Community Affairs as an independent agency for two years, instead of 12. The bill also continues the Manufactured Housing Division, within the Department, and maintains its separate board. In addition, Senate Bill 652, 82nd Legislature, Regular Session directs the Sunset Commission to focus its next review of TDHCA on the appropriateness of its recommendations to the 82nd Legislature.

2. Remove statutory impediments to the effective awarding of Texas' low-income housing tax credits.

Senate Bill 1 allows the Department to update the qualified allocation plan (QAP), required to administer federal tax credits, every two years. However, the bill does not restrict the Department's ability to update the QAP more frequently if the Board finds it necessary.

3. Clarify application of the regional allocation formula to activities funded by the State's Housing Trust Fund.

Senate Bill 1 clarifies that the Department should not apply the regional allocation formula to an activity funded by the Housing Trust Fund unless the activity received more than \$3 million in funding for that application cycle.

4. Improve the State's oversight of manufactured home installations.

Senate Bill 1 increases the Manufactured Housing Division's inspection requirement from 25 percent to 75 percent of all manufactured housing installations, and requires the Division to report to the Legislative Budget Board, Governor's Office of Budget, Planning, and Policy, and the legislative committees of jurisdiction on meeting the new inspection goal before the legislative session in 2015. If the Division cannot complete 75 percent of installation inspections by 2015, the bill requires the Division to establish a third-party inspection process to supplement existing state inspections, and requires the Division to establish maximum fees, in rule, for third-party installation inspections.

5. Conform two elements of the Manufactured Housing Division's education requirements to commonly applied licensing practices.

Senate Bill 1 includes two provisions that bring the Division in line with standard licensing agency practices in education. The bill reduces the core curriculum for all new manufactured housing licensees from 20 to eight hours, and requires installers and retailers to obtain an additional four hours of specialized instruction in their specific occupations. The bill also requires each licensed retailer location to have at least one individual who has met necessary education requirements and who will have actual authority over any employees involved in the sale of manufactured homes.

Fiscal Implication Summary

These provisions will not have any significant fiscal impact to the State.

Texas State Affordable Housing Corporation

Staff Contact: Christian Ninaud

H.B. 1818 Harper-Brown (Hinojosa)

Summary

Created in 1995, the Texas State Affordable Housing Corporation (Corporation) is a self-sustaining nonprofit entity that helps Texans obtain affordable housing. To achieve its mission, the Corporation issues bonds to help teachers, firefighters, police officers, and low-income families purchase homes; provides loans to affordable housing developers; and seeks private funds to help support affordable housing. The Corporation self-funds its operations, including raising \$1.7 million in grants and donations in fiscal year 2010, and receives no state-appropriated funding. A five-member, Governor-appointed Board oversees the Corporation.

House Bill 1818 continues the Corporation for 12 years, requiring the Corporation to report additional financial information to the Legislature and placing new stakeholders on the Board. The Legislature adopted all of the Sunset Commission's recommendations and added several statutory modifications to H.B. 1818, primarily to increase the transparency of Board decisions. A discussion of the bill's major provisions follows.

Sunset Provision

1. Continue the Texas State Affordable Housing Corporation for 12 years, and ensure the Corporation operates with greater transparency and accountability.

House Bill 1818 continues the Corporation for 12 years, and requires it to regularly provide the Legislature information showing its effectiveness at raising funds and awarding grants. The bill maintains the current five member size of the Corporation's Board and requires one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations. The bill requires the Corporation to add a range of enforcement options in all multifamily development contracts it finances. In addition, the bill updates standard Sunset across-the-board requirements for the Corporation regarding conflicts of interest, designation of the presiding officer, board member training, and complaint information.

Provisions Added by the Legislature

2. Require the Corporation to make its meetings and information related to its meetings open and easily available to the public.

The bill clarifies that the Board must conduct its meetings in accordance with the Open Meetings Act. In addition, H.B. 1818 requires the Corporation to post meeting-related information provided to the

Board on its website at least three days in advance of meetings and make it available in hardcopy at meetings, post complete transcripts of Board meetings on its website, provide for public comment on Board agenda items, and adopt rules ensuring reasonable opportunity for public testimony at Board meetings.

3. Exempt certain public housing authorities from requirements to appoint resident members to their governing boards.

The bill exempts a public housing authority that oversees 150 units or fewer from requirements to appoint a tenant member to its board, if the authority provides public notice of the vacancy and cannot fill the seat within 60 days. The bill also exempts these public housing authorities from restrictions on board members serving more than two consecutive two-year terms.

4. Require the Corporation to make a good faith effort to contract with Historically Underutilized Businesses.

The bill requires the Corporation to make a good faith effort to provide opportunities for, and to increase contract awards to, Historically Underutilized Businesses (HUBs). The bill also specifies that, in accordance with the Comptroller's HUB rules, a good faith effort must include awarding to HUBs at least a portion of its contract value each year.

Fiscal Implication Summary

House Bill 1818 will not have a fiscal impact to the State.

Department of Information Resources

Staff Contact: Katharine Teleki

82nd Legislature, Regular Session

H.B. 2499 (Vetoed) Cook (Nichols)

H.B. 1 Pitts (Ogden)

H.B. 4 Pitts (Ogden)

82nd Legislature, 1st Called Session

S.B. 1 Duncan (Pitts)

Summary

The Department of Information Resources (DIR) is the State's information technology and telecommunications agency. The Legislature created DIR in 1989 to set the overall strategic direction for state agencies' use and management of information technology (IT). Since then, DIR's responsibilities have expanded significantly. DIR now coordinates and supports several critical functions for state agencies and local governments including data center services consolidation; cooperative contracts for information and communications technology (ICT) services and commodities; the State's telecommunications network (TEX-AN); the Capitol Complex Telephone System; and the State's official website (Texas.gov).

The Sunset Commission determined that DIR's functions continue to be needed, and that a stand-alone agency is warranted to carry out these functions. However, to increase efficiency and oversight, the Sunset Commission recommended transferring the ICT cooperative contracts program from DIR to the Comptroller of Public Accounts, and replacing DIR's Board with new members with specific expertise. The Sunset Commission also made recommendations to improve accountability of DIR, including establishing an internal audit department, requiring clear procedures for setting and reporting fees, and improving the management and oversight of DIR's extensive contracting functions. These recommendations and other provisions were incorporated into House Bill 2499 and passed by the 82nd Legislature, but the bill was ultimately vetoed by the Governor.

Although H.B. 2499 was vetoed, the Legislature adopted several of the Sunset Commission's recommendations and additional legislative provisions relating to the Sunset review of DIR in other legislation, as described below.

Sunset Provisions Adopted in Other Legislation

1. Continue the Department of Information Resources until 2013, and direct the Sunset Commission to re-examine the agency and make recommendations to the 83rd Legislature.

The Legislature adopted the Sunset recommendation to continue DIR for six years in H.B. 2499 during the Regular Session. However, after the Governor's veto of the bill, the Legislature continued DIR for two years in Senate Bill 1, 82nd Legislature, 1st Called Session. Senate Bill 1 continues DIR until 2013, and provides for the Sunset Commission to re-examine DIR and make any recommendations it considers appropriate to the 83rd Legislature.

2. Transfer a portion of DIR's surplus fund balances to General Revenue.

In its review of DIR, the Sunset Commission recommended that the Legislature transfer a portion of DIR's surplus fund balances in the Telecommunications Revolving Fund and Clearing Fund to the General Revenue Fund. This recommendation was made to the Legislature and the relevant appropriative committees, and was adopted in House Bill 4, 82nd Legislature, Regular Session, the supplemental appropriations bill for fiscal year 2011. The provision makes a one-time transfer of \$4.3 million in fiscal year 2011 from DIR's accounts to the General Revenue Fund, including \$1.75 million from the Clearing Fund and \$2.55 million from the Telecommunications Revolving Fund.

3. Increase monitoring and oversight of DIR's appropriations.

The Sunset Commission made several recommendations to limit DIR's spending authority and increase oversight of DIR's appropriations and fund balances. These recommendations were made to the Legislature and the relevant appropriative committees, and were adopted in House Bill 1, 82nd Legislature, Regular Session, the 2012-13 General Appropriations Act. House Bill 1 includes provisions to increase oversight and accountability of DIR's appropriations and fund accounts, and limits appropriations from revenue generated by DIR's cost-recovery programs to specified not-to-exceed amounts for each of DIR's funds. The bill requires DIR to submit annual reports regarding the amount of unexpended and unobligated balances carried forward in the funds to the Governor, Legislative Budget Board, and Comptroller. House Bill 1 also requires DIR to obtain written approval from the Legislative Budget Board before it may expend funds in excess of appropriated amounts, and requires DIR to return money collected in excess of its operating expenses to customers.

4. Improve oversight of DIR's contracts and clarify revolving door provisions.

Senate Bill 1, 82nd Legislature, 1st Called Session, includes two Sunset recommendations to increase oversight and accountability of DIR's contracting practices. The bill requires the DIR Board to establish approval requirements for all contracts, including a monetary threshold above which Board approval is required before a contract may be executed. Senate Bill 1 also clarifies that standard revolving door provisions for regulatory agencies apply to DIR.

5. Keep the ICT cooperative contracts program at DIR, but require DIR to obtain best value and consider using strategic sourcing.

The Legislature had adopted the Sunset recommendation to transfer DIR's ICT cooperative contracts program to the Comptroller of Public Accounts in H.B. 2499 during the Regular Session. However, after the Governor's veto of the bill, the Legislature instead directed DIR to make improvements to the program in Senate Bill 1, 82nd Legislature, 1st Called Session. Senate Bill 1 also requires DIR to negotiate with vendors to obtain the best value for the State in the purchase of IT commodity items, and authorizes DIR to consider strategic sourcing and other methodologies to select the vendor offering the best value.

Fiscal Implication Summary

The Sunset Commission provision to transfer a portion of DIR's surplus fund balances in the Telecommunications Revolving Fund and Clearing Fund to the General Revenue Fund, which was adopted in H.B. 4, 82nd Legislature, Regular Session, resulted in a gain of \$4.3 million to the General Revenue Fund in fiscal year 2011.

Office of Injured Employee Counsel

Staff Contact: Kelly Kennedy

H.B. 1774 L. Taylor (Huffman)

Summary

The Legislature created the Office of Injured Employee Counsel (Office) in 2005 as an independent agency to represent the interests of workers' compensation claimants. To achieve its mission, the Office assists unrepresented injured employees in navigating the Division of Workers' Compensation's (DWC's) dispute resolution process, advocates on behalf of injured employees as a class in rulemaking and judicial proceedings, and educates injured employees regarding the Texas workers' compensation system.

House Bill 1774 continues the Office of Injured Employee Counsel for six years to coincide with the next review of DWC. The Legislature adopted all of the Sunset Commission's recommendations and added two other provisions to H.B. 1774. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Continue the Office of Injured Employee Counsel for six years.

House Bill 1774 continues the Office as an independent agency for six years, instead of the standard 12 years. The shorter continuation date coincides with that of the Division of Workers' Compensation, giving the Legislature the opportunity to monitor the ongoing implementation of major reforms from 2005. In addition, the bill applies standard Sunset across-the-board requirements including requiring the Office to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. The bill also adds standard Sunset language requiring the Office to maintain information on all complaints and notify the parties about policies for and status of complaints.

2. Limit the Office's authority to access claim files for injured employees the Office is not directly affecting.

House Bill 1774 removes existing language that exempts the Office from the confidentiality requirements surrounding claim file information and that directs the Division of Workers' Compensation to release such information to the Office. The bill also removes language granting the Office broad access to information from all executive agencies. The Legislature modified these Sunset provisions to clarify that the Office has access to claim information when assisting an injured employee, specify that claim information includes the claim number, and apply these changes in information access to all pending and future claims before the Office.

Provisions Added by the Legislature

3. Allow the Office of Injured Employee Counsel an additional month in preparing its legislative report.

House Bill 1774 amends current law to allow the Office an additional month in preparing its legislative report – a document that includes a description of the Office’s activities and identifies problems within the workers’ compensation system – as the Office is dependent on information compiled by the Division of Workers’ Compensation.

4. Allow the Office of Injured Employee Counsel to seek and receive grants to fulfill the agency’s mission.

Fiscal Implication Summary

House Bill 1774 will not have a significant fiscal impact to the State.

Texas Department of Insurance

Staff Contact: *Chloe Lieberknecht*

H.B. 1951 L. Taylor (Hegar)

Summary

The Texas Department of Insurance (TDI) regulates the insurance industry in Texas to ensure that Texas consumers have access to competitive and fair insurance products. TDI regulates insurance companies' solvency, rates, forms, and market conduct; licenses individuals and entities involved in selling insurance policies; provides consumer education on insurance and resolves consumer complaints; investigates and takes enforcement action against those who violate insurance laws or rules; and provides fire prevention services across the state through the State Fire Marshal's Office. The Department also regulates workers' compensation in Texas through the Division of Workers' Compensation. Information about the Division can be found in a separate section of this report.

House Bill 1951 continues TDI for 12 years. The Legislature adopted all of the Sunset Commission's recommendations and added several other statutory modifications to H.B. 1951. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Provide clarity, predictability, and transparency to rate regulation of property and casualty insurance.

House Bill 1951 establishes deemer dates for the Department's review of all property and casualty rate filings. The Department will have 30 days to request information from insurers, conclude rate review, and disapprove rates as necessary. The Commissioner is authorized to extend the review period for one additional 30-day period only, and only for good cause. If TDI requests additional information from insurers, the time it takes for insurers to respond to TDI's requests will not count against the Department's review period.

Insurers will continue to be permitted to use rates as soon as they are filed, if they choose. The provision only affects filings not immediately used, and is not intended to change the Department's ability to disapprove rates under current law, nor to give the Department the authority to approve rates under this regulatory system. The bill permits TDI to administratively disapprove rates until the point that companies implement rates, or the expiration of the review period, whichever event occurs first. If TDI wants to disallow a rate following the review period, the Department will have to disapprove the rate following its implementation, using the contested case process, as currently laid out in state law.

The bill requires TDI to further define, through rulemaking, the process for requesting supplemental information from insurers during its review of property and casualty rates. The review process will require, at a minimum, that TDI:

- make requests in a timely manner, enabling insurers to respond to requests and implement rates more quickly;

- reduce the number of separate requests;
- more specifically define the kinds of information that the Department can request during a rate review; and
- track and routinely analyze the volume and content of information requests to identify trends and ensure that requests are reasonable.

The provision also requires the Department to track and analyze the factors that contribute to administrative disapproval of rates. TDI must track precedent related to disapprovals to help ensure that the Department consistently applies rate standards. In conjunction with analyzing disapprovals, TDI will make information about the Department's general process for rate review, and factors that contribute to disapprovals, available to the public on a yearly basis. All information provided to the public must be general, so as not to infringe upon any individual company's proprietary rate development data or techniques.

House Bill 1951 requires TDI to further define, through rulemaking, guidelines that constitute rating practices, financial conditions, or statewide emergencies that could subject an insurer to prior-approval review. This provision does not require the agency to enumerate specific practices or circumstances. The Commissioner maintains the authority to determine if an individual company's practices or statewide situations warranted additional scrutiny through prior approval.

The bill requires TDI to periodically assess whether insurers need to remain under prior approval for rate filings. To clarify expectations, the bill requires TDI to provide companies with written information, when they are placed under prior approval, detailing the steps they must take to return to file-and-use review. When an insurer meets the stated conditions, this provision requires the Commissioner to issue an order stating that the financial condition, rating practices, or statewide emergency no longer exists, and that future company filings will be subject to file-and-use.

House Bill 1951 requires TDI to collect aggregate claims data including the number of claims filed; pending, including pending litigation; closed with or without payment; and carrying over during the reporting period; as well as any other relevant information relating to the processing of claims. The bill requires this information to be collected on an annual basis, with the information broken down by quarter. In addition to collecting the data, TDI is required to publish or disseminate the collected information to the general public via the agency's website. The provision authorizes TDI to adopt rules as necessary to implement a plan for collecting and publishing claims data.

2. Require TDI to assess what information is needed to promulgate title insurance every five years.

House Bill 1951 requires the Commissioner of Insurance to assess, at least once every five years, the expense data collected for purposes of promulgating title rates and consider whether the data should be revised to capture additional or different information, or whether any items no longer remain necessary.

3. Eliminate 15 of TDI's advisory committees from statute.

House Bill 1951 eliminates the following 15 committees currently in statute:

- Agents Study Proposal/Vendor Committee;
- Consumer Assistance Program for Health Maintenance Organizations Advisory Board;

- Examination of License Applicants Advisory Board;
- Fire Alarm Advisory Committee;
- Fire Extinguisher Advisory Council;
- Fire Sprinkler Advisory Council;
- Fireworks Advisory Council;
- Health Maintenance Organization Solvency Surveillance Committee;
- Insurance Adjusters Advisory Board;
- Public Insurance Adjusters Examination Advisory Committee;
- Technical Advisory Committee on Claims Processing;
- Technical Advisory Committee on Electronic Data Exchange;
- Texas Health Coverage Awareness and Education Program Task Force;
- Texas Residential Property Insurance Market Assistance Program Executive Committee; and
- Utilization Review Advisory Committee.

The Commissioner of Insurance will be allowed to create or re-create advisory committees in rule, as necessary, to provide expertise and to advise the Department. The bill requires the Commissioner of Insurance to adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, structure, and use of the Department's advisory committees. This provision requires TDI to routinely evaluate advisory committees to ensure that they continue to serve a purpose. TDI will be allowed to retain or develop committees to meet its changing needs. All committees will be structured and used to advise the Commissioner, the State Fire Marshal, or staff, but not be responsible for rulemaking or policymaking. Committee meetings must be open to the public.

4. Target the State Fire Marshal's Office's inspections of buildings to reduce the risk of fire hazard.

As state law already requires of state-owned buildings, H.B. 1951 requires the State Fire Marshal's Office (SFMO) to periodically inspect state-leased buildings, and to take action necessary to protect state employees and the public from fire hazards in state-leased buildings. The provision requires the SFMO to share and coordinate state-leased building inspection information with affected agencies, the Texas Facilities Commission, and the State Office of Risk Management, as already required with state-owned buildings. The bill will allow agencies to make informed decisions regarding lease agreements, but will not pre-empt compliance with locally adopted fire safety codes.

House Bill 1951 requires the SFMO to create a risk-based approach to conducting its routine inspections of state buildings. As part of this change, SFMO will develop guidelines for assigning potential fire safety risks to state buildings. As a part of TDI, the Commissioner of Insurance will adopt these guidelines as rules, allowing for public input. To ensure that even low-risk buildings are inspected at some point, the rules must address a planned timeframe for continuing to inspect all buildings under the SFMO's purview. This change will not affect the SFMO's response to complaints and requests for inspections, as these cannot be assigned a risk and must be dealt with on an as-needed basis. The SFMO must also periodically report its findings on state-owned and state-leased building inspections to the relevant committees of the Legislature.

The bill statutorily authorizes the SFMO to establish a reasonable fee for performing private building inspections. The Commissioner of Insurance will adopt these guidelines as rules, allowing for public input. In developing the fee amount, the SFMO must consider its overall costs in performing these inspections, including the approximate amount of time staff needs to perform the inspection, travel costs, and other expenses.

5. Provide the State Fire Marshal's Office the ability to issue fines to ensure licensee compliance.

House Bill 1951 requires the Commissioner of Insurance to establish, by rule, a penalty matrix for SFMO licensee violations to ensure fair and consistent application of fines. Further, the bill requires the Commissioner by rule to delegate the administration of these penalties to the SFMO, which will give the SFMO the ability to issue fines to violators without referring the violations to TDI's broader enforcement function. In developing the penalty matrix, the Commissioner will take into account factors including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The penalty amounts must reflect the severity of the violation and serve as a deterrent to violations. The Commissioner must also adopt rules defining which types of enforcement actions will be delegated to the SFMO, and outlining the process with which the SFMO will assign penalties. The bill also provides for due process by authorizing a licensee to dispute the fine, and request a contested case hearing. If a licensee does not pay the fine, the SFMO will refer the case to TDI's enforcement division.

6. Amend the Insurance Code to clearly permit businesses and consumers to conduct business electronically if the parties agree.

House Bill 1951 clarifies the applicability of existing and future provisions in the Insurance Code to permit electronic commerce transactions. The provision supplements existing laws by removing barriers to electronic commerce transactions. The Department will provide businesses and consumers with standards for electronically delivering documents. The bill does not require parties to conduct business electronically, but will facilitate transactions in which the parties agree to conduct business electronically.

7. Require TDI to study the accuracy of the designation of areas underserved for residential property insurance and the qualifications for reduced rate filing requirements for insurers serving these areas.

House Bill 1951 requires the Commissioner to study the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements, and to include the study results in the Department's biennial report. The bill expands the factors that the Commissioner must consider when designating areas of the state as underserved to include reasonable access to the full range of coverages and policy forms. Finally, the bill requires the Commissioner, at least once every six years, to determine which areas to designate as underserved and to study the accuracy of current designations for the purposes of increasing and improving access to insurance in these areas.

8. Continue the Texas Department of Insurance for 12 years.

House Bill 1951 continues TDI as an independent agency for 12 years. In addition, the bill better defines the agency's overall duties in statute by updating existing language to charge the agency with

protecting and ensuring the fair treatment of consumers; and ensuring fair competition in the insurance industry, thus fostering a competitive market. The bill also applies the standard Sunset across-the-board requirement for the Commissioner to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Provisions Added by the Legislature

9. Specify that property and casualty rate filings are public information subject to the State's open records law.

House Bill 1951 specifies that property and casualty rate filings and any supporting information filed with TDI are public information subject to the State's open records law, including the law's applicable exceptions from required disclosure; rather than open to public inspection as of the date of the filing, as is current practice. In addition, the bill redefines "supporting information" to include any information TDI receives from a rate filer in response to a request from the Department.

10. Prohibit a personal property and casualty insurer from reporting inquiries to a claims database until a claim has been filed.

The bill prohibits an insurer or insurer agent from reporting to a claims database information relating to policyholders' inquiries regarding coverage, unless or until the policyholder files a claim. The provision applies only to residential property and personal auto lines.

11. Require certain health care plans to provide enrollees a 60-day notice of premium increases and enhanced consumer information.

These provisions cover health care coverage provided through Health Maintenance Organization plan policies, individual accident and health plan policies, and small employer benefit plan policies. The bill requires these plans to provide each enrollee with written notice of a premium increase not less than 60 days before the effective date, and requires the plan to provide a table with the actual dollar amount of the current charge and the increased charge, and the percentage of change. House Bill 1951 provides that the notice requirements do not prevent the plan and enrollee from negotiating a coverage or rate change after the notice. The provisions further prohibit a plan from requiring an enrollee to respond to or take action on the notice to renew coverage before the 45th day after notice is given. Finally, the bill requires the notice to include information about contacting and filing complaints with TDI and other consumer assistance resources.

12. Authorize TDI to adopt rules necessary to increase the availability of insurance to children under 19 years of age.

House Bill 1951 authorizes the Commissioner of Insurance to adopt rules necessary to increase the availability of coverage to children younger than 19 years of age; establish an open enrollment period; and establish qualifying events as exceptions to an open enrollment period, including loss of coverage when a child becomes ineligible for coverage under the state child health plan. The bill allows the Commissioner to adopt rules on an emergency basis using procedures under the Government Code.

13. Prohibit health plans from requiring a therapeutic optometrist or ophthalmologist to participate in a particular vision panel as a condition for inclusion in the plan’s medical panel.

House Bill 1951 prohibits a managed care plan from requiring, as condition to be included in the plan’s medical panel, a therapeutic optometrist or ophthalmologist to be included in, or accept the terms of payment under or for, a particular vision panel.

14. Provide an exemption from agent licensure for persons writing a limited amount of job protection insurance.

The bill exempts a person from property and casualty insurance agent licensing requirements, if that person sold job protection insurance policies that generated less than \$40,000 in direct premium in the previous year.

15. Amend reinsurance requirements for certain companies writing surety bonds in Texas.

For surety companies without a certificate of authority from the United State Secretary of the Treasury to execute certain surety bonds that exceed \$100,000, the bill increases the monetary threshold requiring reinsurance from “any liability in excess of \$100,000” to “any liability in excess of \$1 million.” The bill also removes a provision of state law that prohibits an amount reinsured by a reinsurer from exceeding 10 percent of the reinsurer’s capital and surplus.

16. Amend the requirements for licensure as a residential fire alarm technician.

For residential fire alarm technicians, H.B. 1951 reduces the minimum number of curriculum hours required for licensure from eight hours to seven hours. Additionally, the bill requires that one of those minimum hours be dedicated to completing the course exam. The provision requires the course examination to contain a minimum of 25 questions, and requires that an applicant accurately answer at least 80 percent of the questions to pass the examination.

17. Establish an Insurance Adjuster Advisory Board.

House Bill 1951 establishes a nine-member adjuster advisory board to make recommendations to the Commissioner of Insurance on issues related to licensing and regulation of insurance adjusters; professionally relevant issues such as claims handling, ethics, and catastrophic loss preparedness; and any matter the Commissioner submits for recommendation. The bill requires the Commissioner to appoint to the Board two public insurance adjusters; two members representing the general public; two independent adjusters; one adjuster representing a domestic insurer authorized to engage in business in the state; one adjuster representing a foreign insurer authorized to engage in business in the state; and one representative of the Independent Insurance Agents of Texas.

Fiscal Implication Summary

House Bill 1951 will not have a fiscal impact to the State.

Office of Public Insurance Counsel

Staff Contact: *Chloe Lieberknecht*

S.B. 647 Hegar (L. Taylor)

Summary

The Office of Public Insurance Counsel (OPIC) represents the interests of consumers as a class in insurance matters. The Legislature created OPIC in 1991 as an independent agency to advocate for consumers in rate, form, and rule proceedings primarily at the Texas Department of Insurance (TDI). To accomplish its mission, OPIC reviews rate and policy form filings, and works with TDI and insurance companies to negotiate changes advantageous to consumers; participates in contested rate cases and industry-wide rate hearings; advocates on behalf of consumers in rulemaking procedures at TDI; and provides information to consumers regarding insurance coverage and markets.

The Legislature adopted all of the Sunset Commission's recommendations, and Senate Bill 647 continues the Office for 12 years. A discussion of the bill's provisions follows.

Sunset Provision

1. Continue the Office of Public Insurance Counsel for 12 years.

Senate Bill 647 continues OPIC as an independent agency for 12 years. In addition, the bill applies the standard Sunset across-the-board requirement for the Office to develop a policy regarding alternative dispute resolution.

Fiscal Implication Summary

Senate Bill 647 will not have a fiscal impact to the State.

Juvenile Justice Agencies

Texas Youth Commission

Texas Juvenile Probation Commission

Office of Independent Ombudsman

Staff Contact: Leah Daly

S.B. 653 Whitmire (Madden)

Summary

Originally established in 1949, the Texas Youth Commission (TYC) is the State's juvenile corrections agency. TYC supervises youth committed to state confinement by local courts. TYC promotes public safety by operating juvenile correctional facilities; supervising youth released on parole; and operating numerous education, treatment, and skills programs to assist youth in reintegrating into their communities. The Legislature created the Office of Independent Ombudsman (OIO) as part of the 2007 reforms of TYC. The OIO is tasked with investigating, evaluating, and securing the rights of youth committed to TYC.

In 1981, the Legislature created the Texas Juvenile Probation Commission (TJPC) to ensure access to juvenile probation services throughout the state. TJPC supports and oversees 165 juvenile probation departments serving all of Texas' 254 counties.

Senate Bill 653 abolishes both agencies and transfers their functions to a newly created state agency, the Texas Juvenile Justice Department, with a Sunset date of 2017. The Legislature adopted the Sunset Commission's recommendations and added numerous provisions to S.B. 653. Generally, the Legislature's additions either make adjustments to the new agency's governance structure, modify the process for consolidation, or clarify the functions and responsibilities of the new agency. A discussion of the bill's major provisions follows.

Sunset Provision

- 1. Abolish TYC and TJPC, and transfer their functions to a newly created state agency, the Texas Juvenile Justice Department, headed by a 13-member Board and with a six-year Sunset date of 2017.**

Senate Bill 653 creates a unified juvenile justice system anchored by a single state agency, the Texas Juvenile Justice Department, with a Sunset date of 2017. The Legislature modified the Sunset Commission's approach by shortening the transition period from one year to three months, with creation of the new Department on December 1, 2011. The bill specifies that the mission of the new Department reflect the goal of prioritizing local probation above state commitment.

In S.B. 653, the Legislature adjusted the board composition proposed by the Sunset Commission resulting in a 13-member Juvenile Justice Board with the following composition:

- one member who is a district court judge of a court designated as a juvenile court;
- three county commissioners court members;
- one prosecutor in juvenile court;
- three chief juvenile probation officers representing small, medium, and large counties;
- one adolescent mental health treatment professional;
- one educator; and
- three members of the general public.

The bill specifies that no two board members may represent the same county or judicial district. Senate Bill 653 requires board members that are chief juvenile probation officers to recuse themselves if the Board deliberates on an issue that solely affects their department. The bill specifically prohibits a chief juvenile probation officer from voting or making decisions regarding matters of abuse and neglect affecting the chief's own department.

The bill establishes a seven-member juvenile justice services and facilities transition team to develop a transition plan with short-, medium-, and long-term goals, and to assist the Board in the organization of the new agency. The Governor and the TYC and TJPC boards will appoint the team members, who will begin work on September 1, 2011 and disband on March 1, 2012, or as soon thereafter as possible. The team will be composed of the following:

- one representative of the Governor, who will chair the team;
- one representative chosen from a list submitted to the Governor by the Lieutenant Governor;
- one representative chosen from a list submitted to the Governor by the Speaker of the House;
- one representative each of TYC and TJPC, appointed by their respective boards;
- one member who represents the interests of offenders or the families of youthful offenders, an organization that advocates on behalf of youthful offenders or the families of youthful offenders, or an organization that advocates on behalf of the victims of delinquent or criminal conduct; and
- one member with experience in organizational mergers.

The bill allows the State to transfer any closed TYC facility, in a county with a population of less than 100,000, to the county or city in which the facility is located.

Finally, the Legislature added numerous provisions to the bill to clarify that the new Department retains all powers, duties, and functions previously granted to TYC and TJPC.

Provisions Added by the Legislature

2. Establish statutory purposes and goals for the new Department.

Senate Bill 653 establishes the purpose of the new Department, and provides that the Department shall be a unified state juvenile justice agency that works with stakeholders; provides a full continuum of effective supports and services to youth; and creates a juvenile justice system that produces positive outcomes for youth, families, and communities.

The bill further establishes the goals of the Department to:

- support a county-based continuum of services for youth and families that reduces the need for out-of-home placement;
- increase use of alternatives to placement and commitment to secure state correctional institutions;
- locate facilities as geographically close as possible to necessary workforce and other services while supporting youths' connections to their families;
- encourage regional cooperation that enhances county collaboration;
- enhance the continuity of care throughout the juvenile justice system; and
- utilize secure facilities whose size supports effective youth rehabilitation and public safety.

3. Expand the composition and functions of the Advisory Council on Juvenile Services.

Senate Bill 653 adjusts the composition of the existing Advisory Council on Juvenile Services to include:

- the executive director of the Department or the executive director's designee;
- the director of probation services of the Department or the director's designee;
- the executive commissioner of the Health and Human Services Commission or the commissioner's designee;
- one representative of the county commissioners courts appointed by the board;
- two juvenile court judges appointed by the board; and
- seven chief juvenile probation officers appointed by the board.

The bill prescribes specific methods for the board's appointment of advisory council members representing county commissioners courts, juvenile courts, and local probation departments. Senate Bill 653 requires members, other than ex officio members, to serve two-year terms.

The bill adjusts the Council's functions to require the Council to assist the Department in determining the needs and problems of county juvenile boards and probation departments; conduct long-range strategic planning; review existing or newly proposed standards affecting juvenile probation programs, services, or facilities; analyze the potential cost impact on probation departments of new standards proposed by the Board; and advise the Board on any other matter on the request of the Board.

4. Require the Inspector General to report to the Department's Board.

The bill specifies that the Inspector General reports to the Department's Board, not the Executive Director, and requires the Board to appoint the Inspector General.

5. Clarify the role of the Office of Inspector General in handling complaints related to probation services.

The bill requires the Office of Inspector General (OIG) for the Department to refer any criminal complaints received relating to probation services or facilities to the appropriate local law enforcement entities. Senate Bill 653 also requires the Department to provide immediate notice to a local probation department of any complaint received via the hotline or other mechanism, relating to the services or facilities of a probation department. The bill requires the Board to establish policies, by rule, for the referral of noncriminal complaints to the appropriate division of the Department.

6. Define the role of the Office of Independent Ombudsman in probation services.

Senate Bill 653 expands the duties of the OIO to include reviewing and analyzing probation complaint data for trends. The bill requires the Ombudsman to report any possible standards violations to the appropriate probation monitoring entity within the Department.

To facilitate the Ombudsman's review, the bill requires that the Department provide to the OIO any data submitted by local probation departments concerning abuse, neglect, exploitation, or programs complaints.

7. Require status reports on abuse, neglect, and exploitation investigations.

Senate Bill 653 requires the Department to give monthly status updates, and immediate updates upon decisions, to county juvenile probation departments against which the Department has a pending abuse, neglect, or exploitation case.

8. Streamline the operations of the new Department's toll-free hotline.

Senate Bill 653 requires the Department to operate a single toll-free number to receive information concerning the abuse, neglect, or exploitation of children in the custody of the Department or housed in a local probation facility. The bill requires the Department to operate and answer the hotline 24 hours per day, every day of the year, and to share complaints received on the hotline with the OIG and OIO.

9. Consolidate Reentry and Reintegration Plan provisions for youth leaving state custody.

Senate Bill 653 consolidates existing Comprehensive Reentry and Reintegration Plan provisions for youth exiting state custody on supervision into one section of law. The bill also requires the Department to clearly explain a youth's reentry plan to a youth exiting state custody under supervision, and requires the youth under supervision to acknowledge and sign the conditions of supervision before release.

10. Establish a program evaluation system for state and county programs for youth.

The bill requires the Department to establish and implement a system to evaluate the effectiveness of state and county programs and services for youth, including performance measures in its strategic plan. Measures must evaluate the effectiveness of programs on outcomes for youth, public safety, and victims. The bill requires the Board to make the measures available online, and use these measures to determine funding levels for programs and services.

11. Authorize charters for education programs in residential facilities for youth on probation.

Senate Bill 653 authorizes the State Board of Education to grant charters to detention, correctional, or residential facilities for juveniles on probation. The bill requires these charters to comply with all opportunities and services required of other charter schools. The bill provides that such charters will not be counted against the State's statutory cap on charter schools.

12. Improve coordination and planning for educational services for youth on probation.

Senate Bill 653 requires the Department to encourage compliance with state or federal educational service standards by facilitating interagency coordination and collaboration among juvenile probation departments, school districts, and the Texas Education Agency; and developing a plan to ensure continuity of educational services to juvenile offenders, including special education for youth with disabilities.

13. Establish prevention and early intervention services at the new Juvenile Justice Department.

Subject to available funding, S.B. 653 requires the Department to provide prevention and early intervention services for at-risk youth and their families. The Department must provide services to at-risk youth, ages six to 18, who are subject to compulsory school attendance or under the jurisdiction of a juvenile court.

14. Strengthen requirements for the initial examination of youth committed to state custody.

State law requires that youth committed to the State's custody receive an initial examination and assessment. The bill requires the Department to conduct its initial exam on committed youth within three days of commitment. The bill also requires that the initial exam include specialized treatment planning, and consideration of sex offender history and violent offense history, in addition to other factors already in law. The bill requires the Department to develop a written treatment plan for the child outlining identified specialized treatment needs and recommendations for treatment goals, objectives, and timelines. Senate Bill 653 clarifies that the Department may use a psychiatric evaluation completed within 90 days before commitment, in lieu of conducting a new psychiatric examination, to satisfy initial examination requirements.

15. Provide that data obtained through a risk and needs assessment not be used against a child in a hearing.

Senate Bill 653 provides that, similar to data obtained in mental health screenings, data obtained from youth during the course of a risk and needs assessment by a juvenile probation department is not admissible against the child in any other hearing.

16. Clarify provisions related to use of gifts, grants, and donations.

The bill authorizes the Department to apply for and accept gifts and grants from any public or private source; requires the Department to deposit money received under this section in the state treasury; and authorizes the use of the money for funding any activities of the Department.

17. Exempt the Juvenile Case Management System from inclusion in the State’s data center.

The Juvenile Case Management System (JCMS) is the newly developed juvenile justice information and case management system. When fully deployed, JCMS will provide statewide data sharing between all local juvenile probation departments. This system is a public-private initiative involving TJPC, counties, and private partners. Consolidating TJPC and TYC will require that various TJPC information systems become part of the State’s data center consolidation project managed by the Department of Information Resources. Senate Bill 653 specifically exempts JCMS from the data center consolidation project.

Fiscal Implication Summary

Consolidating the Texas Youth Commission and Texas Juvenile Probation Commission will result in an overall savings of about \$3.3 million through the next biennium. The consolidation will result in the reduction of about 21 FTEs.

Annual savings of between \$1.4 million and \$2.1 million will come from the elimination of nine full-time executive positions and a reduction of five percent in central office staff, including salaries and fringe benefits, that will be redundant in the new agency.

The Department will incur an estimated \$7,000 in expenses to support the transition team in 2012, and between \$100,000 and \$120,000 in each year of the biennium to support costs associated with incorporating TJPC’s computer and data systems, not including JCMS, into the State’s Data Center Consolidation project.

Further significant savings could be realized through the closure of Texas Youth Commission facilities, but such closures were not specifically addressed in S.B. 653.

Fiscal Year	Savings to the General Revenue Fund	Change in the Number of FTEs From FY 2011
2012	\$1,314,449	-21
2013	\$1,981,847	-21
2014	\$1,984,489	-21
2015	\$1,984,148	-21
2016	\$1,984,148	-21

Texas Public Finance Authority

Staff Contact: Michelle Downie

H.B. 2251 Bonnen (Whitmire)

Summary

The State of Texas sells millions of dollars in bonds to finance projects as wide-ranging as building construction, cancer research, and major technology purchases. Rather than every state agency going out on its own to issue and market bonds, the Legislature has centralized much of the State's debt issuance into one agency, the Texas Public Finance Authority (TPFA). TPFA's main role is to cost-effectively issue bonds and service debt for 23 state agencies and universities that generally use debt financing infrequently and lack in-house bond expertise.

House Bill 2251 continues TPFA for 12 years. The Legislature adopted all but one of the Sunset Commission's recommendations and voted to make the legislation effective immediately, maximizing the fiscal savings provided by the bill. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Continue the Texas Public Finance Authority for 12 years.

House Bill 2251 continues TPFA as an independent agency, responsible for issuing and managing debt on behalf of other state entities, for 12 years. The bill also applies the standard Sunset across-the-board requirement for TPFA to develop a policy regarding alternative dispute resolution.

2. Remove a multi-million dollar obstacle to efficiently issuing state debt for cancer research bonds.

House Bill 2251 removes the requirement that the Cancer Prevention and Research Institute (CPRIT) escrow multi-year grant awards. This provision led to TPFA having to issue the total amount of bonds at one time regardless of market conditions. The bill extends TPFA's standard authority to stagger debt issuance to include CPRIT's grants, allowing TPFA to minimize debt service costs to the State. House Bill 2251 also improves the timing of debt issuance by adding CPRIT's grants to the list of projects funded by general obligation bonds that can move forward before TPFA has issued the debt, as long as TPFA and the Bond Review Board have approved the issuance.

3. Provide flexibility to state colleges and universities to use TPFA when cost-efficient.

House Bill 2251 authorizes TPFA to provide debt issuance services, upon agreement, to state colleges and universities that generally issue their own debt, and to be reimbursed for these services. The bill also removes the requirement that TPFA issue bonds for Stephen F. Austin State University, allowing the University to use TPFA or to issue its own debt for legislatively authorized projects.

Provision Added by the Legislature

4. Make the bill effective immediately.

The Legislature added a provision to make the bill effective immediately to maximize the debt service savings for this year's cancer research bonds. The bill received the constitutionally required two-thirds vote of both houses for immediate effect.

Fiscal Implication Summary

House Bill 2251 contains provisions with a positive fiscal impact of more than \$33 million through the biennium ending August 31, 2013, with additional savings in future biennia. The savings result from postponing cancer research debt issuance until CPRIT actually needs funds to reimburse its grantees. The estimates in the chart below may fluctuate based on TPFA's choice of financing methods, actual market conditions, and CPRIT's timing of grant awards in the future.

Fiscal Year	Savings to the General Revenue Fund
2012	\$8,892,602
2013	\$24,424,609
2014	\$30,280,192
2015	\$40,447,198
2016	\$42,728,190

Public Utility Agencies

Public Utility Commission of Texas Electric Reliability Council of Texas Office of Public Utility Counsel

Staff Contact: Karl Spock

S.B. 661 Nichols (Solomons)

S.B. 652 Hegar (Bonnen)

S.B. 980 Corona (Hancock)

Summary

The Public Utility Commission (PUC) oversees electric and telecommunications companies in Texas, including aspects of restructuring and deregulating major portions of electric and telecommunications markets. The Electric Reliability Council of Texas (ERCOT) manages the electric grid for most of Texas. ERCOT is primarily regulated by PUC and is governed by a 16-member Board of Directors as a nonprofit corporation. In 2009, the Legislature placed ERCOT under a one-time, special purpose Sunset review. The Office of Public Utility Counsel (OPUC), created by the Legislature in 1983, is an independent agency established to represent the interests of residential and small commercial customers in state electric and telecommunication utility matters.

The Sunset Commission recommended giving the agency better tools for oversight of the electric market, including increased penalties for violations that threaten the reliability of the electric grid and authority to require alleged violators to halt dangerous or damaging practices immediately. The Sunset Commission recommended strengthening PUC's oversight of ERCOT's budget and debt and providing greater independence on the ERCOT Board of Directors. The Sunset Commission also recommended that regulation of water and wastewater rates and services be transferred from the Texas Commission on Environmental Quality to PUC, and that the Office of Public Utility Counsel represent residential and small commercial interests in this regulatory area. These recommendations and others were incorporated into Senate Bill 661.

The bill passed by the Senate included all Sunset recommendations except provisions to streamline outdated telecommunication regulations, which were covered in similar provisions in Senate Bill 980. The Senate also added a provision ensuring that an electric market participant fined for a reliability-related violation by the federal government would not be fined for the same violation by PUC.

The House State Affairs Committee reported S.B. 661, keeping Senate language but making modifications related to the ERCOT Board and adding several new provisions. These provisions included giving PUC the authority to order disgorgement of all excess revenue resulting from violations related to the wholesale electric market; making it easier for persons to engage in "distributed renewable generation"; and creating an additional means for certain landowners not receiving water or sewer service to petition for expedited release from a certificate of convenience and necessity. However, S.B. 661 did not pass the House.

Although S.B. 661 failed passage, the Legislature adopted several Sunset Commission recommendations in other legislation, as described below.

Sunset Provisions Adopted in Other Legislation ---

Public Utility Commission

1. Continue the Public Utility Commission until 2013, and place the agency under a limited scope Sunset review in the 2012-13 biennium.

Senate Bill 652 continues PUC until 2013 and directs the Sunset Commission to assess the appropriateness of its recommendations to the 82nd Legislature and make any recommendations it considers appropriate to the 83rd Legislature in 2013. The Sunset Commission had recommended continuing PUC for 12 years.

2. Eliminate outdated and rarely used regulatory provisions related to the telecommunications industry.

Senate Bill 980 eliminates the requirement for PUC to approve customer-specific contracts, the requirement for telecommunications providers to file contracts for private networks with PUC, and the process for establishing new extended area service. These provisions essentially accomplish the same purpose as the Sunset Commission recommendations.

Electric Reliability Council of Texas

1. Require the Electric Reliability Council of Texas to be reviewed periodically under Sunset, concurrent with reviews of the Public Utility Commission.

Senate Bill 652 subjects ERCOT to periodic Sunset review, concurrent with reviews of PUC, as recommended by the Sunset Commission. The bill also contains a caveat that ERCOT will not be reviewed in the 2012-13 biennium when the Sunset Commission re-examines PUC.

Office of Public Utility Counsel

1. Continue the Office of Public Utility Council for 12 years.

Senate Bill 652 continues OPUC for the standard 12-year period, as recommended by the Sunset Commission.

Fiscal Implication Summary ---

None of these provisions will have a significant fiscal impact to the State.

Texas Racing Commission

Equine Research Account Advisory Committee

Staff Contact: Steven Ogle

H.B. 2271 Anchia (Hinojosa)

Summary

In 1986, the Legislature passed the Texas Racing Act, allowing pari-mutuel wagering on horse and greyhound races and creating the Texas Racing Commission (Commission) to oversee the racing industry. The Commission's authority spans from licensing racetracks and their employees, to overseeing live racing events, and monitoring and certifying wagering transactions. Last fiscal year, the Commission spent about \$4.3 million for its operations, funded by fees, fines, and a portion of wagers. The State also received about \$3.6 million in pari-mutuel taxes.

Created by the Legislature in 1991, the 11-member Equine Research Account Advisory Committee recommends funding for equine research projects, initially using a portion of the wagers placed on Texas horse races. The Director of Texas AgriLife Research makes the final grant awards. For the past three Sessions, the Legislature has not appropriated Account funds and instead, Texas AgriLife funded grants recommended by the Committee.

House Bill 2271 continues the Racing Commission for six years and abolishes the Equine Research Account Advisory Committee. The Legislature adopted all of the Sunset Commission's recommendations and added several other statutory modifications to H.B. 2271. Most of the Legislature's modifications affect the Commission's application approval process and the process for identifying tracks as active or inactive, and how these two types of licenses are reviewed. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Provide the Commission regulatory tools to ensure proper oversight of today's racing industry.

House Bill 2271 grants the Commission authority to determine whether each racetrack license holder is actively conducting, or working towards conducting, live racing and then to designate each racetrack license either active or inactive. Inactive licenses are subject to an annual license renewal until active status is achieved or the Commission refuses to renew the license. The Commission is authorized to charge inactive racetracks a fee to cover any additional costs associated with processing license renewals, and the Commission is authorized to not renew an inactive license. The Legislature modified the Sunset provision to require the Racing Commission to establish renewal criteria in rule and to develop rules on what constitutes good faith efforts to conduct live racing.

The bill clarifies the Commission's authority to revoke a license from any license holder for significant violations of the Racing Act or Commission rules and provides that licenses are not held in perpetuity. The Legislature modified the Sunset provision to specify that an active racetrack license is effective

unless designated as inactive and non-renewed, or is surrendered, suspended, or revoked. The Legislature also modified the Sunset provision to make clear that the Commission may only use revocation when it reasonably determines that other disciplinary actions are inadequate.

The bill also authorizes the Commission to require racetrack license holders to post a bond at any time, instead of only when a new license is issued. The Legislature modified the Sunset approach to provide that the posting of security be in an amount reasonably necessary to ensure compliance with the substantive requirements of the Racing Act and Commission rule.

In addition, the bill eliminates uncashed winning tickets as a source of Commission revenue, allowing racetracks to keep revenue from uncashed winning tickets. The Commission will replace the lost revenue by adjusting other racing-related regulatory fees paid by each licensed racetrack. Finally, the bill clarifies that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.

2. Strengthen the Commission’s oversight of racing industry occupations.

House Bill 2271 limits Commission licensure of racing industry occupations to only those individuals directly involved with pari-mutuel racing. The bill also requires the Commission to perform criminal history checks on licensees every three years.

3. Continue the Texas Racing Commission for six years.

The bill continues the Racing Commission as an independent agency for six years, instead of the standard 12 years. This will allow the Legislature a sooner opportunity to re-evaluate the Commission’s role in regulating a declining industry. In addition, the bill applies the standard Sunset across-the-board requirements to the Commission regarding alternative dispute resolution and Commission member conflicts of interest.

4. Abolish the Equine Research Account Advisory Committee.

The bill abolishes the Equine Research Account Advisory Committee and continues Texas AgriLife Research’s authority to expend appropriated Equine Research Account funds.

Provisions Added by the Legislature _____

5. Modify the definition of greyhound performance.

House Bill 2271 removes from statute the specific number of greyhound races that make up a “performance” and allows the Racing Commission to determine the number of races in rule.

6. Authorize the executive director to review and modify disciplinary decisions of stewards and judges.

The bill provides the director of the Racing Commission with authority to review and modify decisions made by racetrack stewards and judges regarding unethical practices or violations of racing rules, and to levy enhanced penalties including a fine of up to \$10,000, a suspension of not more than two years, or both.

7. Specify that the Comptroller will sweep from the agency's account only funds above \$750,000 at the end of each biennium.

The bill specifies that unspent funds exceeding \$750,000, instead of all funds, that remain in the Commission's account at the end of the biennium shall be transferred to the General Revenue Fund.

8. Eliminate the statutory limitation of \$200 on ATM withdrawals at racetracks.

The bill removes the statutory cap on ATM withdrawals of \$200 per day at a racetrack, allowing patrons to withdraw up to the limit imposed by their financial institution.

9. Require the Commission to establish a process and schedule for conducting active racetrack reviews.

The bill requires the Commission to set up a staggered schedule for review of racetrack licenses that have been designated active.

10. Require the Commission to make a determination on a racetrack application within 120 days from the time the application is administratively complete.

The bill requires the Commission to make a final determination on an application for a racetrack license within 120 days from the time the Commission receives all information required from the applicant by the Racing Act. At this time, the Commission must send a notice informing the applicant that the application is complete.

Fiscal Implication Summary

House Bill 2271 will not have a fiscal impact to the State.

Railroad Commission of Texas

Staff Contact: Kelly Kennedy

82nd Legislature, Regular Session

S.B. 655 Hegar (Keffer)

S.B. 652 Hegar (Bonnen)

82nd Legislature, 1st Called Session

S.B. 1 Duncan (Pitts)

S.B. 2 Ogden (Pitts)

Summary

The Railroad Commission of Texas serves as the State's primary regulator of the oil and gas industry. The agency's mission is to ensure the efficient production, safe transportation, and fair price of the State's energy resources, with minimal impacts to the environment. To fulfill its mission, the Commission oversees all aspects of oil and natural gas production; permits, monitors, and inspects surface coal and uranium exploration, mining, and reclamation; inspects intrastate pipelines to ensure the safety of the public and the environment; sets gas utility rates and ensures compliance with rates and tax regulations; and promotes the use of propane and licenses all propane distributors.

The Sunset Commission determined that the functions of the Railroad Commission continue to be needed, and that a stand-alone agency is warranted to carry out these functions. However, to increase accountability and responsiveness, the Sunset Commission recommended establishing the Texas Oil and Gas Commission, governed by a single, elected Commissioner, to assume the regulatory role currently served by the Railroad Commission. In addition to this change in agency name and governance, the Sunset Commission recommended requiring the agency's Oil and Gas program to be self-supporting, strengthening the agency's enforcement processes, and transferring certain contested case hearings to the State Office of Administrative Hearings (SOAH). These recommendations and others were incorporated into Senate Bill 655.

Senate Bill 655, as passed by the Senate, included all of the Sunset Commission's recommendations, as well as a provision to suggest that the first Governor-appointed Oil and Gas Commissioner be the last elected Railroad Commissioner. The House amended S.B. 655, maintaining many of the Sunset Commission's recommendations, but significantly modifying the provisions relating to governance. Notably, the House altered the bill to maintain a three-member, elected commission and establish an elected chairman. The House also removed the provisions in the bill that transferred certain hearings to SOAH, and added a number of provisions, including limiting campaign contributions and requiring a commissioner to resign before seeking another elected office. The bill went to conference committee, but the committee did not come to an agreement regarding the bill's provisions. As a result, the Legislature did not pass S.B. 655.

Although S.B. 655 failed passage during the Regular Session, the Legislature adopted several of the Sunset Commission's key funding-related recommendations and continued the agency for two years in other legislation. A discussion of these provisions follows.

Sunset Provisions Adopted in Other Legislation

1. Continue the Railroad Commission of Texas until 2013, and allow the Sunset Commission to re-examine the agency and make recommendations to the 83rd Legislature.

Senate Bill 652, 82nd Legislature, Regular Session, continues the agency until 2013, and provided for the Sunset Commission to re-examine the Railroad Commission in full and make recommendations to the 83rd Legislature regarding its continuation and functions.

2. Require the Railroad Commission to reduce reliance on General Revenue Funds used to support the agency's Oil and Gas program.

Senate Bill 1, 82nd Legislature, 1st Called Session, directs the agency to establish surcharges on its oil- and gas-related fees to replace General Revenue in its Oil and Gas program, and Senate Bill 2, 82nd Legislature, 1st Called Session, reduces General Revenue for that program over the 2012-13 biennium, replacing that amount with fees and surcharges. Unlike the Sunset Commission recommendations, S.B. 1 caps each surcharge at 185 percent of the base fee and authorizes the agency to spend additional General Revenue Funds appropriated by the Legislature. Senate Bill 1 also reconstitutes the Oil Field Cleanup Fund as the Oil and Gas Regulation and Cleanup Fund, and redirects fines previously deposited in the Fund to General Revenue. Finally, S.B. 1 requires the Railroad Commission to establish specific performance goals for oil and gas regulation through the appropriations process.

Fiscal Implication Summary

The Sunset Commission provisions to require the Railroad Commission's Oil and Gas program be self-supporting as contained in S.B. 1 will result in a positive fiscal impact to the State of more than \$50 million each biennium. Authorizing the Commission to levy surcharges and replacing General Revenue funding for its Oil and Gas program with fees and surcharges to cover the costs of regulation will result in an estimated savings to General Revenue of \$45.4 million in the 2012-13 biennium. Redirecting administrative penalties to the General Revenue Fund to avoid potential conflicts of interest will result in an additional \$5 million gain to General Revenue in that biennium. These provisions will have no impact on the Commission's staffing levels.

Fiscal Year	Savings to the General Revenue Fund	Gain to the General Revenue Fund	Net Positive Fiscal Impact to the General Revenue Fund
2012	\$22,716,209	\$2,500,000	\$25,216,209
2013	\$22,666,472	\$2,500,000	\$25,166,472
2014	\$22,666,472	\$2,500,000	\$25,166,472
2015	\$22,666,472	\$2,500,000	\$25,166,472
2016	\$22,666,472	\$2,500,000	\$25,166,472

Texas State Soil and Water Conservation Board

Staff Contact: Sarah Kirkle

H.B. 1808 Cook (Nichols)

Summary

The Texas State Soil and Water Conservation Board (State Board) works directly with owners and operators of agricultural land to develop and implement conservation plans involving land treatment measures for erosion control, water quantity, and water quality purposes. To achieve its mission, the State Board provides technical assistance to 216 local soil and water conservation districts; serves as the lead state agency for the prevention, management, and abatement of agricultural and forestry-related nonpoint source pollution; and administers grant programs for the maintenance and repair of flood control dams, water supply enhancement, development of water quality management plans, and management and abatement of agricultural nonpoint source pollution. All of the State Board's programs and services are voluntary in nature, and the agency performs no enforcement functions.

House Bill 1808 continues the State Board for 12 years, but requires a special purpose review of the State Board's implementation of Sunset Commission decisions in four years. The bill also contains the Sunset Commission's recommendations aimed at providing processes and systems to ensure that agency programs are effective and accountable. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Require the State Board to establish a clearer framework for showing what the State gets for its investment in certain grant programs.

House Bill 1808 requires the agency to develop appropriate program goals for its competitive grant programs funded primarily by the State, including defining the beneficiaries of each program and the anticipated program results. The bill requires the State Board to establish statewide policies in each state-funded grant program to ensure grantees continue to meet responsibilities over the life of the grant. The agency must also collect and analyze comprehensive data on status reviews or other verification activities to ensure statewide and region-specific activities are sufficient to guarantee grant conditions are met.

The bill also requires the agency to create a centralized complaint tracking system to complement the complaint reviews performed in its grant programs by each State Board office. Finally, the State Board must measure grant impact, using either empirical or non-empirical methods, and report program results publicly via the agency's website or through any existing statutorily required annual publication.

2. Clarify the focus of the State Board’s brush control activities on water supply enhancement, and require a system to rank and prioritize water supply enhancement projects based on water conservation need and water yield.

House Bill 1808 changes the statutory name of the Texas Brush Control Program to the Water Supply Enhancement Program and clarifies the Program’s purpose as enhancing available surface and groundwater through the removal of brush species detrimental to water conservation. The Program does not, however, limit the State Board’s brush control authority as a general land improvement measure. The State Board must define specific goals for the Program, such as water use and benefitting populations of the Program.

The bill also removes the requirement for the State Board to rank areas of the state in need of a brush control program. Instead, the bill requires the State Board to develop a system to rank water supply enhancement project proposals each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest potential water yield. The bill requires project applications to include projected water yield, modeled by a person with appropriate expertise in areas such as water resources or hydrology, and provides for stakeholder input for standardized reporting of projected water yield.

The State Board must rank project proposals based on the following selection criteria:

- water conservation need, based on information presented in the State Water Plan;
- projected water yield, based on soils, slope, land use, vegetative or brush type and distribution, and proximity of the brush to the stream or channel;
- description of the project plan, including:
 - methods of brush removal,
 - landowner cost-share rates,
 - location and size of the proposed project,
 - budget and grant funding request, and
 - implementation schedule over the grant timeframe; and
- any other criteria the State Board deems relevant to implement the Program effectively, efficiently, and in line with research related to brush removal for water supply enhancement.

For water supply enhancement project proposals that have not modeled potential water yield for their project, the State Board must establish a process to contract for completion of a feasibility study by a person with appropriate credentials that would model water yield results in the proposed watershed location.

The State Board must continue to require follow-up brush control treatment, at no cost to the State, in 10-year water supply enhancement plans as part of cost-share contracts. As part of its annual report to the Legislature on the Water Supply Enhancement Program, the State Board must include a comprehensive analysis of the Program, including a review of its effectiveness and the level of noncompliance with follow-up brush control treatment.

3. Clarify the State Board’s ability to accept funds on behalf of the Texas Invasive Species Coordinating Committee.

This provision allows the State Board to accept grants, loans, or other funds in its role as administrator of the Committee. The Legislature modified the Sunset provision to remove language specifying that the State Board is the lead agency for the control of terrestrial invasive plant species.

4. Continue the Texas State Soil and Water Conservation Board for 12 years, but require a special purpose review of the State Board’s implementation of Sunset Commission recommendations in four years.

House Bill 1808 continues the Texas State Soil and Water Conservation Board for 12 years. The bill also requires the Sunset Advisory Commission to conduct a special purpose review of the State Board for the 2015 Legislature regarding the agency’s implementation of recommendations made by the Sunset Commission to the 82nd Legislature.

The bill applies standard Sunset across-the-board requirements to the State Board. The bill adds standard language regarding impartial appointments to the State Board and the development of a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. The bill modifies across-the-board requirements specifying the grounds for removing a State Board member and requiring members of the State Board to complete training before assuming their duties to apply the language to appointed, as well as elected, board members. The bill also updates a provision requiring the State Board to maintain information on all complaints and notify the parties about policies for and status of complaints.

Fiscal Implication Summary

House Bill 1808 will not result in a significant fiscal impact to the State.

State Board of Examiners for Speech-Language Pathology and Audiology

Staff Contact: Erick Fajardo

S.B. 662 Nichols (Anchia)

Summary

In 1983, the Legislature created the State Committee of Examiners for Speech-Language Pathology and Audiology and administratively attached it to the Texas Department of Health. Ten years later, the Legislature changed the name to the State Board of Examiners for Speech-Language Pathology and Audiology (Board). In 2004, the nine-member Board was administratively attached to the newly created Department of State Health Services (DSHS). The Board protects and promotes public health by designing and enforcing licensure rules and regulations for speech-language pathologists (SLPs) and audiologists in Texas. SLPs evaluate and treat disorders related to communication, language, and swallowing. Audiologists evaluate and treat ailments related to hearing functions, including the fitting and dispensing of hearing instruments, commonly known as hearing aids.

Senate Bill 662 continues the Board of Examiners for Speech-Language Pathology and Audiology for six years, and makes several changes to the Board's administration to enhance the efficiency, fairness, and public protection of its operations. The Legislature adopted all of the Sunset Commission's recommendations, but removed the exemption of certain SLPs from the Board's required fingerprint criminal background check. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Continue the State Board of Examiners for Speech-Language Pathology and Audiology for six years.

Senate Bill 662 continues the Board for six years, administratively attached to DSHS. This shorter Sunset date will allow the Sunset Commission to evaluate the Board together with the seven other licensing programs administered by DSHS' Professional Licensing and Certification Unit scheduled for Sunset review in 2017. In addition, the bill applies the standard Sunset across-the-board requirements to the Board regarding public membership, conflicts of interest, presiding officer designation, grounds for removal, and Board member training.

2. Ensure consistency in the sale of hearing instruments.

Senate Bill 662 requires the Board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (Committee), with DSHS assistance, to jointly adopt rules to establish requirements for each sale of a hearing instrument. The rules must address the information and other provisions required in each written contract; records that must be retained; and guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument.

The bill stipulates the Board and Committee must adopt the joint rules by May 1, 2012. The bill also requires the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be written in plain language designed to be easily understood by the average consumer.

3. Conform key elements of the Board's licensing and regulatory functions to common licensing standards.

Senate Bill 662 includes four provisions that bring the Board in line with standard licensing agency practices, including the following.

- Requires the Board to obtain a fingerprint-based criminal history check on each applicant and license holder. The Legislature modified this Sunset provision by removing the exemption from the fingerprint-based criminal history check for licensed SLPs and SLP assistants employed by a K – 12 school.
- Authorizes the Board to order an audiologist to pay a refund to a consumer who returns a hearing instrument during the required 30-day trial period.
- Prohibits a Board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint from voting on the matter at a Board meeting related to the complaint.
- Authorizes the Board to issue a cease-and-desist order for unlicensed practice of speech-language pathology and audiology; and allows the Board to impose an administrative penalty against an individual who violates a cease-and-desist order.

Fiscal Implication Summary

Senate Bill 662 will have a positive fiscal impact to the State of \$9,269 in the 2012-2013 biennium. The bill requires the Board to obtain a fingerprint-based criminal history check on each SLP and audiologist applicant and license holder, and authorizes the Department of Public Safety (DPS) to administer these checks. Implementing this provision will require performing an estimated 8,680 additional background and criminal history checks in both fiscal year 2012 and fiscal year 2013, and an estimated 1,959 checks for new applicants in each subsequent fiscal year. The fee for performing the check is \$34.25, but a portion of this fee, \$17.25 per check, is returned to the FBI for professional services as required by federal law.

DPS assumes some additional personnel and operating costs will be needed to perform these checks. Although the bill authorizes DPS to recover the costs incurred in conducting the check from each applicant, DPS's operational costs are paid out of State Highway Fund 6, not General Revenue where the fee to recover the cost of the check is deposited. As a result, the Legislature included a contingency rider in the General Appropriations Act (Article IX, Sec. 18.73) appropriating needed amounts to cover these operational costs from State Highway Fund 6 and authorizing the additional employees.

Fiscal Year	Gain to the General Revenue Fund	Cost to the General Revenue Fund	Cost to the State Highway Fund 6	Change in Number of FTEs From FY 2011
2012	\$297,290	\$149,730	\$154,054	+1.8
2013	\$297,290	\$149,730	\$131,797	+1.8
2014	\$67,096	\$33,793	\$131,797	+1.8
2015	\$67,096	\$33,793	\$136,157	+1.8
2016	\$67,096	\$33,793	\$149,292	+1.8

Texas Department of Transportation

Staff Contact: Jennifer Jones

S.B. 1420 Hinojosa (Harper-Brown)

Summary

The Texas Department of Transportation (TxDOT) began in 1917 as the State Highway Department. Since that time, the Department has evolved from its original responsibilities of granting financial aid and directing county road construction programs, to a much broader mission of delivering a 21st century transportation system to address the State's growing transportation needs. To fulfill its mission of providing safe and efficient movement of people and goods, and enhancing economic viability and improving the quality of life for people that travel in Texas, TxDOT:

- plans, designs, constructs, and maintains the State's transportation system, including roads, bridges, public transportation, railroads, airports, the Gulf Intracoastal Waterway, and ferry systems;
- develops and operates a system of toll roads using public- and private-sector partners and financing options; and
- manages operations on the state highway system, including improving traffic safety, providing rest areas and travel information, and regulating outdoor advertising.

Senate Bill 1420 continues TxDOT for four years to keep the agency under closer legislative scrutiny and includes several changes to improve the transparency, accountability, and reliability of the Department. The Legislature adopted most of the Sunset Commission's recommendations and added several other statutory modifications to the bill. A discussion of the major provisions in S.B. 1420 follows.

Sunset Provisions

1. Maintain TxDOT's current Commission structure, but continue TxDOT for only four years to ensure needed changes have occurred.

The Legislature did not adopt the Sunset provision to replace the Transportation Commission with an appointed Commissioner, retaining the current five-member Commission, but defining the rural member as being a registered voter in a county with a population of less than 150,000. The bill also prohibits a member of the Commission from accepting a campaign contribution if running for an elected office, and considers a member to have resigned from the Commission if such a contribution is accepted.

The bill continues TxDOT for four years to provide increased oversight to ensure needed changes have occurred to re-establish the Legislature's and the public's trust and confidence in the Department. The Legislature added a provision to require TxDOT, in preparation for its Sunset review, to submit to the Sunset Commission a complete and detailed financial audit conducted by an independent certified public accountant.

Finally, the bill updates standard Sunset across-the-board requirements to make current eligibility provisions for the Commission members apply at the time of taking office instead of at the time of appointment, and applies the standard Sunset across-the-board requirement regarding alternative dispute resolution.

2. Improve TxDOT's internal controls to ensure transparency and accountability necessary to maintain public trust and confidence.

The Legislature modified the Sunset provision regarding the Chief Financial Officer to specify the Officer's duties include ensuring that the Department's financial activities are conducted in a transparent and reliable manner, and certifying each month that construction and maintenance contracts will not create a state liability that exceeds the Department's most recent cash flow forecast. The Legislature also added two provisions to further strengthen TxDOT's internal controls by requiring staff to deliver the Department's legislative appropriations request to the Commission at least 30 days before submitting it to the Legislative Budget Board, and requiring TxDOT's General Counsel to be licensed as an attorney in Texas.

Senate Bill 1420 also requires TxDOT to evaluate the performance of its staff to determine whether employees should retain their positions within the Department. The bill requires the annual performance evaluation to include an evaluation of an employee's professionalism, diligence, and responsiveness to directives and requests from the Commission and the Legislature. The Legislature modified the Sunset provision to require the Commission to consider terminating employees at or above the level of district engineer or division or office director whose performance is deemed unsatisfactory. The Department shall consider terminating employees below the level of district engineer. The bill also requires the Department to provide a report to the Commission regarding employees with unsatisfactory performance who were not terminated.

Senate Bill 1420 requires all TxDOT employees to annually affirm their adherence to the Department's ethics policy and requires the Department to establish and operate a telephone hotline for reporting, anonymously or not, alleged fraud, waste, or abuse or an alleged violation of the ethics policy. The Legislature modified this Sunset provision to require the Commission to establish a compliance program, including a compliance office to oversee the program and operation of the hotline. The bill specifies the responsibilities of the compliance office, including acting to prevent, detect, and investigate serious breaches of departmental policy; fraud, waste, and abuse of office; and criminal activity or allegations of wrongdoing within the Department.

3. Establish an integrated and understandable transportation planning and project development process within TxDOT.

Senate Bill 1420 makes several key statutory changes to better integrate and improve the coordination and transparency of the State's transportation planning processes, as described below.

Long-Range Planning in the Statewide Transportation Plan. The bill adds to existing statutory provisions relating to the Statewide Transportation Plan to integrate all of TxDOT's long-range planning efforts into this single, 24-year plan. The bill requires the Statewide Transportation Plan to contain specific, long-term transportation goals for the state and measurable targets for each goal, and to identify priority corridors, projects, or areas of the state that are of particular concern to the Department in meeting these goals. TxDOT must develop a participation plan for obtaining input from state and local entities and the public on the plan's goals and priorities, annually report on progress

towards meeting these goals, including making this information available on its website, and update the plan every four years or more frequently as necessary. The bill requires both TxDOT and Metropolitan Planning Organizations (MPOs) to work together to develop mutually acceptable funding assumptions to guide long-term transportation planning.

Mid-Range Project Programming in the Unified Transportation Program. Senate Bill 1420 establishes the Unified Transportation Program (UTP) covering a period of 10 years in statute to guide development and authorize construction of transportation projects. The program must list all projects TxDOT intends to develop or begin construction of during the program period. The Commission, by rule and in collaboration with local transportation entities, must establish criteria for selecting projects; definitions for program funding categories including safety, maintenance, and mobility; and definitions for each phase of a major transportation project. The Commission must establish criteria for designating major transportation projects and develop benchmarks for evaluating their progress and readiness to be implemented. The Commission, by rule, must also establish categories in the UTP, assign each project to a category, and designate the priority ranking of each project within each category, with the highest priority projects being major transportation projects. TxDOT must annually update the UTP, including a forecast of all funds the Department expects to receive to help guide planning. In addition, TxDOT must prepare and publish a 20-year cash flow forecast by September 1 of each year. Finally, the bill requires TxDOT to publish the entire UTP and summary documents in appropriate media and on the agency's website.

The Legislature modified the Sunset provision to include specific requirements for funding categories and funding allocation formulas within the UTP. Senate Bill 1420 requires the Commission, by rule, to specify formulas for allocating funds to TxDOT districts and MPOs for seven funding categories specified in statute, including preventive maintenance and rehabilitation, mobility, and congestion mitigation; and requires the Commission to update the formulas at least every four years. The bill requires the Commission to determine the allocation of funds for all other funding categories, subject to applicable state and federal law. The bill requires TxDOT to allocate funds to its districts based on these formulas and specifies the Department may not exceed the cash flow forecast.

Short-Range District Work Programs. The bill requires each TxDOT district to develop a consistently formatted work program based on the UTP, containing all of the projects the district proposes to implement during a four-year period. The work program must contain information regarding the progress of major transportation projects according to the benchmarks and timelines established in the UTP, and a summary of the progress on other district projects. The bill also requires TxDOT to publish the work programs in appropriate media and on its website, and to use the work programs to monitor and evaluate the performance of districts and district employees.

Online Reporting Systems. Senate Bill 1420 requires the Department to establish an online project information reporting system and a transportation expenditure reporting system. The Legislature modified the Sunset provision to require specific types of project, funding, and expenditure information through the online systems.

The information reporting system must contain information about all of the Department's transportation plans and programs, and each Department project, including the status, source of funding, and timelines for project completion. The bill requires this system to also contain information about the Department's funds, including the amount and general type of each expenditure as described in the Comptroller's statewide accounting system. In developing this system, TxDOT must collaborate with the Legislature, local transportation entities, and the public, and make statistical information

available on the Department's website. The transportation expenditure reporting system must contain information regarding the priorities of expenditures for identified transportation projects, including the effectiveness of the Department's expenditures on transportation projects, pavement and bridge conditions, travel congestion, and traffic fatalities. This information must be made available in a format that allows for electronic searches by specific county, highway, or type of road. The Legislature also added a provision requiring TxDOT to retain and archive appropriate documentation supporting the information provided in the reporting systems, according to records retention rules promulgated by the Texas State Library and Archives Commission.

Statewide Transportation Report. Senate Bill 1420 requires the Department to annually evaluate and publish a report regarding the status of each transportation goal for the State, including the progress of long-term goals identified by the Statewide Transportation Plan, the status of major priority projects, a summary of benchmarks completed, and information about the accuracy of previous Department financial forecasts. The bill requires the Department to disaggregate this information by TxDOT district and provide this information to each member of the Legislature and political subdivisions, and make the information available on its website. The bill also allows the Department to combine required reports to avoid duplication.

4. Improve TxDOT's public involvement efforts to better ensure consistent, unbiased, and meaningful public involvement.

Senate Bill 1420 requires TxDOT to develop and implement a policy that guides and encourages public involvement with the Department. The bill requires the policy to include specific elements, such as using techniques that target different groups and individuals, making efforts to clearly tie public involvement to the decisions the Department makes, and applying the policy to all public input with the Department. The bill also requires TxDOT to document the number of positive, negative, or neutral comments received regarding all environmental impact statements and provide this information to the Commission and the public. The Legislature added language to require a person who makes or submits a public comment to disclose in writing on a witness card whether the person does business with the Department, may benefit monetarily from a project, or is a TxDOT employee.

Senate Bill 1420 requires TxDOT to develop policies and procedures to formally document and effectively manage the complaints it receives agencywide. The bill requires TxDOT to adopt rules that clearly define the agency's complaint process from receipt to disposition, for each of its divisions and districts. The bill requires TxDOT to develop a standard form for the public to make a complaint to the Department, make the form available on its website, and allow for electronic submission of complaints. The Department must compile detailed statistics and analyze complaint information trends, including the nature of complaints and their disposition, the number of similar complaints filed, and the length of time to resolve complaints. The Department must also report the information, statistics, and analysis monthly to administration and quarterly to the Commission. The bill also updates the standard Sunset across-the-board language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints.

Senate Bill 1420 prohibits Commission members and TxDOT employees from using money under the agency's control or engaging in activities to attempt to influence the passage or defeat of legislation, and specifies that such activity is grounds for dismissal of an employee. The Legislature modified this provision to prohibit TxDOT from spending appropriated funds for the purpose of selecting, hiring, or retaining a registered lobbyist, unless the expenditure is allowed under state law. The bill also

repeals the statutory provision for the Commission to report to the Legislature concerning potential statutory changes to improve the Department's operations. However, the Legislature modified the Sunset provision to allow the Commission and Department employees to provide public information responsive to a request, and to communicate with the federal government in pursuit of federal appropriations or programs.

5. Remove unnecessary restrictions on TxDOT's contracting practices.

Senate Bill 1420 continues the authority of TxDOT to enter into design-build contracts for tolled highway projects, and authorizes the use of design-build contracts for nontolled highway projects. The bill defines a design-build contract as an agreement with a private entity for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project. The Legislature modified the Sunset provision to specify the Department may only enter into a design-build contract for a highway project costing \$50 million or more, and may only enter into three design-build contracts each fiscal year until August 31, 2015, when the limitation on the number of projects expires. The bill also specifically prohibits a private entity from having a leasehold interest in the highway project or the right to operate or retain revenue from the operation of a transportation project. The Legislature added language to ensure the private entities can meet the requirements of the project and that they will not change their contract team except under certain circumstances. The Legislature further modified the provision by setting out the requirements and procedures TxDOT and a design-build contractor must follow in using the design-build method.

The bill removes a statutory provision requiring TxDOT to publish, in local newspapers, notice of the time and place at which bids on a construction and maintenance contract will be opened and awarded and instead requires the Commission, by rule, to determine the most effective method for providing this notice.

6. Improve regulation of oversize and overweight vehicles.

Instead of requiring TxDOT to review ways of improving the regulation of oversize and overweight vehicles, the Legislature modified the Sunset provision to transfer the regulation of oversize and overweight vehicles from TxDOT to the Department of Motor Vehicles (DMV) by January 1, 2012. Senate Bill 1420 provides for TxDOT to retain responsibility for certain oversize and overweight matters, including setting maximum vehicle and load weights; the certification of vertical clearance of structures such as bridges or underpasses for purposes of operating vehicles; erecting signs regarding weight and load limits; and conducting engineering and traffic studies related to setting maximum width of a vehicle.

7. Standardize the Department's regulation of outdoor advertising on federal-aid and rural roads.

Senate Bill 1420 requires an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads. The bill clarifies the Department's enforcement authority to deny a license renewal and subjects licenses for outdoor advertisers on rural roads to the same enforcement authority as currently governs the federal-aid road license. Additionally, the bill clarifies the existing administrative penalty authority as an enforcement tool for regulating outdoor advertising on rural roads and extends this authority to violations of

regulations on federal-aid roads. The bill also removes the standard for imposing an administrative penalty for an *intentional* violation on a rural road, and changes the standard for judicial review from de novo to substantial evidence.

The bill standardizes the appeals process by eliminating the Board of Variance for hearing appeals of rural road sign permit denials. TxDOT will use the same review process for rural road permit appeals as currently exists for federal-aid roads and the agency head will have authority to grant variances from the rural road sign standards.

Senate Bill 1420 requires TxDOT to deposit all outdoor advertising fees into the State Highway Fund. The fees collected for signs along federal-aid roads will be deposited into the State Highway Fund, the same as fees collected for signs along rural roads, instead of the Texas Highway Beautification Account in General Revenue.

The bill also requires the Department, by rule, to establish a process and procedures for tracking and reporting outdoor advertising complaints, and providing information to the public about how to file a complaint. The Legislature modified the Sunset provision requiring the Department to provide a simple form for filing complaints, by removing the requirement that the form be adopted in rule.

8. Direct TxDOT to actively manage Dynamic Message Signs to ease traffic flows.

Senate Bill 1420 requires the Department, in cooperation with local governments, to actively manage Dynamic Message Signs on highways to help mitigate traffic congestion by providing current information including traffic incidents, weather conditions, road construction, and alternative routes when applicable.

Provisions Added by the Legislature

9. Authorize comprehensive development agreements for select transportation projects.

The bill authorizes TxDOT to enter into comprehensive development agreements (CDAs) only for all or part of the following projects, with this authority expiring on August 31, 2015 for all of the projects except the State Highway 99 (Grand Parkway) project:

- the State Highway 99 (Grand Parkway) project;
- the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;
- the North Tarrant Express project in Tarrant and Dallas Counties, including on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E); on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);

- the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;
- the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;
- the State Highway 288 project in Brazoria County and Harris County; and
- the U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99.

The bill also authorizes TxDOT or certain Regional Mobility Authorities (RMAs) to enter into a CDA relating to improvements to or construction of the following projects, with this authority expiring on August 31, 2015:

- the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;
- the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; or
- a project consisting of the construction of the Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847; and the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100.

Before entering into a CDA for these projects, the Department or RMA as applicable must obtain the appropriate environmental clearance by August 31, 2013 for any project other than the State Highway 99 (Grand Parkway) project, and present a full financial plan for the project, including costing methodology and cost proposals, to the Commission. The bill also requires the Department or RMA to present a report to the Commission on the status of each CDA project, including status of environmental clearance, explanation of any project delays, and anticipated procurement completion date, by December 1, 2012.

The bill specifies that the CDA for the North Tarrant Express project entered into on June 23, 2009, may provide for negotiating and entering into facility agreements for future phases or segments of the project, and provides the current developer with a right of first negotiation. The bill authorizes TxDOT to forgo the use of any further competitive procurement process for any subsequent facility agreements related to the North Tarrant Express project. Finally, the bill specifies these facility agreements must terminate on or before June 22, 2061, and may not be extended or renewed.

10. Authorize Regional Mobility Authorities to enter into certain design-build contracts.

The bill continues the authority of RMAs to enter into design-build contracts, but authorizes the use of these contracts to include the financing of a transportation project. The bill limits an RMA to entering into no more than two design-build contracts in any fiscal year and sets out the requirements and procedures an RMA and design-build contractor must follow in using the design-build method. The bill also specifically prohibits a private entity from having a leasehold interest in the highway project or the right to operate or retain revenue from the operation of the transportation project.

11. Establish procedures to expedite the environmental review process for certain highway projects.

Senate Bill 1420 authorizes a procedure and requirements for expediting the environmental review process for certain transportation projects. The bill allows the Department or a local government sponsor defined as a city, county, regional tollway authority, regional mobility authority, local government corporation, or transportation corporation to prepare an environmental review document for highway projects in TxDOT's approved transportation programs or identified by the Commission as being eligible. Local governments can prepare an environmental review document for a highway project not meeting the above criteria by notifying the Department and submitting a fee set by the Commission to cover the cost of review. The bill also requires the Commission to establish standards for these environmental reviews, including issues to be included, content of documents, procedures, and review deadlines. The bill allows the standards to include a process and criteria for prioritizing environmental review documents if the Department lacks adequate resources to timely process all documents it receives.

The bill also authorizes the Department and a local government sponsor to enter into an agreement that defines the relative roles and responsibilities of the parties in the preparation and review of environmental review documents for a specific project, and authorizes the Federal Highway Administration to be a party to such an agreement in specified instances. The bill also requires the Department to submit to the Commission and Legislature and post on its website reports regarding the status of projects undergoing expedited environmental review procedures.

The bill allows the Department or a county, regional tollway authority, or RMA to enter into an agreement to provide funds to a state or federal agency to expedite the agency's environmental review process. The bill provides that the agreement may specify transportation projects considered priorities for review, must require the agency to complete the review in less time than is customary, and must be available on the website of the entity entering into the agreement. The bill specifies an agreement does not diminish or modify the rights of the public regarding review and comment on transportation projects. The bill also requires the Department, by rule, to establish a process to certify Department district environmental specialists to work on all documents related to state and federal environmental review processes.

12. Clarify funds in regional subaccounts may only be allocated for Department-approved projects.

Senate Bill 1420 specifies the money TxDOT currently holds in a subaccount for the benefit of the region in which a toll project or system is located can only be allocated for projects approved by the Department and specifies the money must not only be allocated, but also distributed at the time the project is approved by the Department.

13. Establish a committee to help determine financial aspects of certain toll projects.

The bill adds a provision determining financial terms for toll projects in which a private entity has a financial interest, and for which certain local dedicated funds and revenues will be used and right of way provided. For such projects, the distribution of financial risk, method of financing, and tolling structure and methodology must be determined by a committee consisting of a representative

of TxDOT; any local toll project entity in the area in which the project is located; the applicable Metropolitan Planning Organization; and each municipality or county that has provided revenue or right-of-way for the project.

14. Allow transfers of real property to governmental entities for public road purposes.

Senate Bill 1420 adds a provision to TxDOT's existing authority to transfer property to a governmental entity to allow the Department to waive payment for highway right-of-way no longer needed for a state highway purpose that is transferred to a governmental entity if the entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes. The bill specifies if the transferred property ceases to be used for public road purposes, it immediately and automatically reverts back to the State.

15. Clarify municipal and county use of transportation reinvestment zone revenues.

Senate Bill 1420 authorizes a county to establish an ad valorem tax increment account for a transportation reinvestment zone, funded through taxes collected on property in the zone. The county may abate all or a portion of the county's property taxes imposed in the zone. The bill also authorizes a municipality or county to issue bonds to pay all or part of the cost of a transportation project within a transportation reinvestment zone, and to use funds in the zone's tax increment account to secure the bonds. For municipalities, any remaining money in the account may be used for other purposes as determined by the municipality.

16. Designate the Edmund P. Kuempel Rest Areas in Guadalupe County.

Senate Bill 1420 designates the eastbound and westbound rest areas on Interstate Highway 10 in Guadalupe County as the Edmund P. Kuempel Rest Areas. TxDOT is not required to design, construct, and erect necessary markers unless a grant or donation of private funds covers the cost.

17. Authorize TxDOT to designate wildfire emergency evacuation routes.

The bill authorizes TxDOT to designate an emergency evacuation route for use in a wildfire emergency in a county with a population of less than 75,000 and with a verifiable history of wildfire. The bill allows TxDOT to establish criteria to determine which areas of a county are subject to a potential wildfire emergency, and requires the criteria to provide for the evacuation of commercial establishments such as motels, hotels, and other businesses with overnight accommodations. The bill also authorizes TxDOT to assist in the improvement of a designated wildfire emergency evacuation route and allows a designated route to include federal or state highways or county roads.

Fiscal Implication Summary

Senate Bill 1420 will not have a significant fiscal impact to the State. However, eliminating the requirement that TxDOT publish notice of bid openings in local newspapers will result in an estimated annual savings of \$1 million to the State Highway Fund. Any savings realized will be reallocated by TxDOT for other transportation planning purposes and to implement other provisions in the bill. In addition, transferring TxDOT's oversize and overweight vehicle programs to DMV will result in the transfer of an estimated 116 employees and approximately \$8 million in funding each year from TxDOT to DMV. Any unobligated and unexpended TxDOT appropriations from the 2010–11 biennium relating to the transferred programs will be re-appropriated to DMV to cover any additional transition costs, and any further costs associated with the transfer will be absorbed within existing resources.

Texas Water Development Board

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Summary

The Texas Water Development Board (Board) was created in 1957 through a state constitutional amendment that authorized the Board to issue general obligation water development bonds to provide financial assistance to political subdivisions. To address the State's water needs, the Board provides loans and grants through state and federal programs to Texas communities for water and wastewater projects, supports the development of regional water plans and prepares the State Water Plan, and collects, analyzes, and disseminates water-related data.

Senate Bill 660 contains the Sunset Commission's recommendations for clarifying matters regarding the Board's bond issuance, strengthening the process for developing desired future conditions (DFCs) for the State's aquifers, and improving aspects of the State's water planning process. The bill does not address continuation of the agency because the Board is not subject to abolishment under the Sunset Act. The bill also does not contain the Sunset Commission's recommendation to remove the Board's process for judging the reasonableness of a DFC, leaving the current Board process in place. Senate Joint Resolution 4 contains a Sunset Commission recommendation to provide additional bond authority to the Board so it may continue its financial assistance programs. A discussion of the major provisions contained in the Board's Sunset legislation follows.

Sunset Provisions

1. Authorize the Board to issue additional Development Fund bond authority to fulfill its constitutional responsibility.

Senate Joint Resolution 4 proposes a constitutional amendment to authorize the Board to issue Development Fund general obligation bonds on a continuing basis, such that the aggregate principal amount outstanding at any time does not exceed \$6 billion. The constitutional amendment will be placed on the ballot and submitted to voters on November 8, 2011.

2. Clarify the treatment of the Board's Development Fund general obligation bonds, and mitigate default risk across the Board's financial assistance programs.

Senate Bill 660 clarifies current practice whereby the Board's Development Fund bonds that have been authorized, but not issued, are not considered state debt payable from the General Revenue Fund for purposes of calculating the constitutional debt limit, unless the Legislature appropriates funds for debt service on the bonds. The bill clarifies the role of the Bond Review Board in approving bond issues, and provides a process for reclassification of bonds payable from General Revenue if the bonds are backed by payment from another source, or if the Board demonstrates that the bonds no longer require payment from General Revenue.

Senate Bill 660 also authorizes the Board to request that the Attorney General take legal action, including receivership, to compel a financial assistance program recipient to cure a default in payment, a breach of terms of a financing agreement, or other failure to perform an obligation. The bill ensures the Board has full statutory authority across all funding programs to request the Attorney General compel borrowers to perform specific duties legally required of them in documents such as bond covenants and loan and grant agreements.

3. Coordinate the process for establishing desired future conditions with the regional water planning process.

Senate Bill 660 adds a representative of each groundwater management area that overlaps with a regional water planning group as a voting member of that regional water planning group. The groundwater management area representative must come from a groundwater conservation district that overlaps with the regional water planning group.

The bill also requires regional water planning groups to use the DFCs in place at the time of adoption of the Board's State Water Plan in the subsequent regional water planning cycle. The provision allows groundwater management areas to make changes to their DFC, if they choose, by a certain date, with assurance that the new modeled available groundwater number will be used in the next regional – and state – water plan adopted by the Board. As a result, DFCs adopted at any point before January 5, 2012 will be used in the water planning cycle resulting in the 2017 State Water Plan.

4. Strengthen the process for developing desired future conditions of aquifers.

Senate Bill 660 adds requirements and guidelines, many of which were modified by the Legislature, for developing and adopting DFCs by groundwater conservation districts within each groundwater management area. The bill requires representatives of each groundwater conservation district located wholly or partially in each groundwater management area to convene at least annually to conduct joint planning and to review proposals to adopt new or amend existing DFCs every five years. The bill strengthens the public notice and posting requirements for joint meetings in groundwater management areas and for district hearings before adopting desired future conditions.

The bill requires districts to consider the following factors in developing DFCs:

- aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
- water supply needs and water management strategies included in the State Water Plan;
- hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
- other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
- impact on subsidence;
- socioeconomic impacts reasonably expected to occur;
- impact on the interests and rights in private property, including the ownership of groundwater;

- feasibility of achieving the desired future condition; and
- any other information relevant to the specific desired future conditions.

Districts must also balance the highest practicable level of groundwater production with the conservation, preservation, protection, recharge, and prevention of waste of groundwater and control of subsidence in the management area. Proposed DFCs require support from two-thirds of all districts in a management area before being submitted to individual districts for consideration. Before districts reconvene in a joint meeting to formally adopt a DFC, a public comment period of not less than 90 days must be provided, during which time each individual district must conduct a public hearing on any proposed DFC relevant to their district and make a copy of the proposed DFC and any supporting materials available to the public in the district's office. Each district must prepare a summary of relevant public comments and suggested revisions to proposed DFCs for consideration at the next joint planning meeting.

Districts in a management area must reconvene to review the summaries and comments from individual districts, and consider revisions to the proposed DFC. Upon final adoption of the DFCs at a joint meeting, the districts must prepare an explanatory report to:

- identify each DFC;
- provide the policy and technical justifications for each DFC;
- include documentation that the factors were considered by the districts and a discussion of how the adopted DFCs impact each factor;
- list other DFC options considered, if any, and the reasons why those options were not adopted; and
- discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the DFC.

The bill requires individual districts to adopt relevant DFCs after they are adopted at a joint meeting. As a requirement for the Board to accept a DFC as administratively complete, the districts in a management area must submit a copy of the explanatory report and must provide proof of notice for the joint planning meeting.

Districts in a management area may appoint and convene non-voting advisory committees to assist in the development of DFCs. Both the Board and the Texas Commission on Environmental Quality (TCEQ) must make technical staff available to serve in a non-voting advisory capacity if requested.

Senate Bill 660 also modifies the petition process at TCEQ to change eligible petitioners from a legally defined interest to an affected person and defines affected person. The bill adds deadlines for districts to update district rules and management plans, and ensures the reasons for filing a petition with TCEQ correspond with the bases for the Commission to take action to ensure consistency.

5. Clarify the duties of the Texas Natural Resources Information System and abolish the Texas Geographic Information Council.

Senate Bill 660 provides for the Board's Executive Administrator to designate the Director of the Texas Natural Resources Information System (TNRIS) as the State Geographic Information Officer and sets forth the Officer's duties regarding coordinating and advancing geographic information systems

initiatives. The bill requires the Board to submit a report at least once every five years to the Governor, Lieutenant Governor, and Speaker of the House of Representatives regarding geographic data needs and initiatives. The bill also abolishes the Texas Geographic Information Council, as its functions are either no longer needed or already performed by the Board through TNRIS.

6. Require the Board to obtain and evaluate data to determine whether implementation of conservation and other water management strategies is meeting the State’s future water needs.

Senate Bill 660 requires the Board, as part of the State Water Plan, to evaluate the State’s progress in meeting its water needs by evaluating the extent to which water management strategies and projects implemented since the last State Water Plan have affected that progress. Additionally, the Board must continue its analysis of how many implemented State Water Plan projects received its financial assistance, and include that analysis in the State Water Plan.

The Legislature modified a Sunset provision requiring the Board and TCEQ, in consultation with the Water Conservation Advisory Council, to develop consistent methodologies and guidance for municipalities and water utilities to use in calculating water use in water conservation plans and water conservation-related reports. The bill requires a methodology for classifying water users within sectors and for calculating residential municipal water use in gallons per capita per day. The bill also requires a method of calculating water use in industrial, agricultural, commercial, and institutional sectors, in addition to the municipal sector. Additionally, the bill requires the Board to submit a report to the Legislature each odd-numbered year relating to statewide water usage in the sectors and data collection programs. The bill specifies that data in these water conservation reports is not the only factor considered by TCEQ in determining the highest practicable level of water conservation and efficiency achievable for purposes of granting an application for an interbasin transfer.

7. Apply standard Sunset across-the-board requirements to the Texas Water Development Board.

Senate Bill 660 updates the Board’s complaint information requirements to clarify that the Board must maintain complaint information on all complaints, not just written complaints, and must provide information on its complaint procedures to the public. The bill also ensures the Board develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution.

Fiscal Implication Summary

Senate Bill 660 will not have a significant fiscal impact to the State. Senate Joint Resolution 4 will not have a significant fiscal impact to the State, other than the publication cost for placing the constitutional amendment on the ballot. The cost to the State for publication is \$105,495.

Division of Workers' Compensation – Texas Department of Insurance

Staff Contact: Kelly Kennedy

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Summary

The 79th Legislature made sweeping changes to the workers' compensation system including abolishing the standing regulatory agency and creating the Division of Workers' Compensation (DWC) within the Texas Department of Insurance (TDI). Today, as a division of TDI, DWC oversees the workers' compensation system by regulating carriers and health care providers to ensure the prompt payment of income benefits and that injured employees receive high-quality, necessary medical care. To accomplish this goal, DWC monitors the system through a variety of compliance efforts, taking enforcement action when necessary, and administers a dispute resolution process, acting as the neutral adjudicator of claim disputes.

House Bill 2605 continues the Division of Workers' Compensation, which has a separate Sunset date from TDI, for six years. The Legislature adopted the majority of the Sunset Commission's recommendations and added other statutory modifications to help ensure injured employees receive prompt, high-quality medical care and all entitled benefits. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Streamline the dispute resolution process to provide a quicker, more accessible alternative to the courts.

House Bill 2605 requires injured employees, employers, health care practitioners, insurance carriers, and other parties to a dispute to obtain information necessary to facilitate resolution of the dispute as part of the initial request for a Benefit Review Conference (BRC). The bill authorizes DWC staff to deny the request for a BRC if participants have failed to attest to having necessary documentation, such as medical records. The bill also requires parties to a dispute to provide notice to DWC before rescheduling a BRC. Failure to abide by the DWC-approved system for rescheduling would result in forfeiting an opportunity to attend a Benefit Review Conference. Parties to a dispute who reach the statutory two-BRC limit could resolve the dispute themselves or proceed to a formal Contested Case Hearing.

House Bill 2605 requires parties to a non-network medical fee dispute to participate in a BRC administered by DWC as a prerequisite to filing an appeal for a Contested Case Hearing. Non-network medical fee disputes will remain subject to an initial staff review and decision process. However, parties dissatisfied with the staff decision would file an appeal for mediation as a prerequisite to proceeding

to a Contested Case Hearing. As part of the mediation process, parties to the dispute will be able to resolve issues, such as billing discrepancies, but will not be authorized to negotiate fees outside of the Division's adopted fee guidelines.

The bill also augments the current appeal process for network medical necessity disputes by restructuring appeals of Independent Review Organization determinations to include a Contested Case Hearing before the Division, instead of a direct appeal to district court. Contested Case Hearings held on network medical necessity disputes will conform to the same procedures outlined in the Labor Code as those Contested Case Hearings conducted on appeals of non-network medical necessity disputes. The Legislature modified the Sunset provision to clarify that medical necessity disputes arising between injured employees and their political subdivision employer are subject to the same Contested Case Hearing process as other network medical necessity and fee disputes. House Bill 2605 also adjusts the standard of review in district court for these cases to a substantial evidence review, allowing the judge to review the formal record resulting from a Contested Case Hearing before the Division.

House Bill 2605 shifts the dispute resolution process for medical necessity and medical fee cases. All Contested Case Hearings for medical necessity cases will be held before the Division, with appeals of medical necessity Contested Case Hearing decisions, including those decisions related to spinal surgery cases, no longer subject to the Division's Appeals Panel review before appealing to district court. All medical fee Contested Case Hearings will be held before the State Office of Administrative Hearings (SOAH). Also, the bill requires the losing party appealing DWC's staff-level medical fee decision to pay all associated hearing costs at SOAH. Because medical fee cases involve DWC-adopted fee guidelines, the bill authorizes the Commissioner of Workers' Compensation to intervene in cases sent to SOAH that involve issues of fee guideline interpretation.

Finally, the bill allows the Division's Appeals Panel to issue written decisions affirming Contested Case Hearing decisions on only the following types of cases:

- cases of first impression;
- cases that are impacted by a recent change in law; and
- cases involving errors which require correction but which do not affect the outcome of the dispute.

2. Improve the medical quality review process to ensure thorough and fair oversight of workers' compensation medical care.

House Bill 2605 requires the Division to develop criteria, subject to the Commissioner's approval, to further improve the medical quality review process. In developing such guidelines, the bill requires the Division to consult with the Medical Advisor and consider input from key stakeholders. The Division is also required to define, at a minimum, a fair and transparent process for the handling of complaint-based cases, and selection of health care providers and other entities for review. Once developed, the bill requires the Division to make the adopted process for conducting both complaint-based and audit-based reviews available to stakeholders on its website.

The bill also establishes the Quality Assurance Panel in statute, providing a second level of evaluation for all medical case reviews. The Legislature modified the Sunset provision to require members of the panel to evaluate medical care and recommend enforcement actions to the Medical Advisor; and for the panel to meet periodically to discuss issues and offer assistance to the Medical Advisor.

House Bill 2605 requires the Commissioner, subject to input from the Medical Advisor, to adopt rules outlining clear prerequisites to serve as a medical quality review process expert reviewer, including necessary qualifications and training requirements. In developing these policies, the bill requires the Division to include:

- a policy outlining the composition of expert reviewers serving on the Medical Quality Review Panel (MQRP), including the number of reviewers and all health care specialties represented;
- a policy outlining the length of time a member may serve on MQRP;
- procedures defining areas of potential conflicts of interest between MQRP members and subjects under review and the avoidance of such conflicts; and
- procedures governing the process and grounds for removal from the Panel, including instances when members are repeatedly delinquent in completing case reviews or submitting review recommendations to the Division.

The bill also requires the Division to develop rules on training, including educating MQRP members about the status and enforcement outcomes of cases resulting from the medical quality review process, and requires MQRP members to fulfill training requirements to ensure panel members are fully aware of the goals of the Division's medical quality review process and the Texas Workers' Compensation Act.

Finally, H.B. 2605 requires the Division, in consultation with the Medical Advisor, to work with health licensing boards, beyond just the Texas Medical Board and the Texas Board of Chiropractic Examiners, as necessary, to expand the pool of health care providers available as expert reviewers. The bill also requires the Division to work with the Texas Medical Board to increase the pool of specialists available, as necessary, enabling the Division to better match a MQRP member's expertise to the specialty of a physician under review.

3. Strengthen the Division's ability to take timely and efficient enforcement actions to protect workers' compensation system participants.

House Bill 2605 amends the Division's current investigative authority to clarify that it can conduct onsite inspections in investigating potential violations of the law, rule, or order. In addition, the bill authorizes DWC to perform both announced and unannounced inspections. To ensure that all regulated entities are treated fairly and consistently, the bill also requires the Division to develop clear procedures defining the entities and records subject to inspection, and how it will use its unannounced inspection authority.

The bill clarifies the Division's authority to refuse to renew a Designated Doctor's biennial certification. Doctors disagreeing with DWC's decision to refuse to renew are entitled to a hearing at the State Office of Administrative Hearings.

The bill authorizes the Commissioner of Workers' Compensation to issue cease-and-desist orders in emergency situations. The Division can use this authority if a system participant's actions are violations of law, rule, or order, and would result in harm to the health, safety, or welfare of other participants. The bill provides for notice and opportunities for expedited hearings, similar to the Insurance Code's provisions relating to emergency cease-and-desist authority, and authorizes DWC to assess administrative penalties against persons or entities violating cease-and-desist orders.

The bill adds language to the Labor Code specifying that any appeal of a Commissioner enforcement order is subject to the substantial evidence rule.

House Bill 2605 removes final decision authority from SOAH in enforcement cases involving monetary penalties, and requires the Commissioner of Workers' Compensation to enter final orders upon consideration of a proposal for decision from SOAH. The bill requires the Commissioner to adhere to provisions in the Administrative Procedure Act governing how an agency may consider, adopt, or change proposals for decision, and requires the Division to amend its current memorandum of understanding with SOAH to include procedures for handling SOAH proposals for decision for monetary penalties, as it is already generally required to do by statute.

House Bill 2605 removes outdated language referencing specific classes of violations or penalty amounts. The bill also removes language relating to notice requirements for subsequent violations under the Labor Code that suggest conflict with DWC's broader administrative penalty authority. The bill clarifies what DWC's full range of administrative sanctions are for all system participants, and locates all sanctioning authority in the same piece of statute, to ensure that system participants are aware of DWC's complete enforcement authority.

Finally, the bill amends the Labor Code to require that all administrative penalties assessed and collected by the Division be deposited into the General Revenue Fund, aligning the administrative penalty collection process with other state agencies and resulting in a gain to General Revenue.

4. Increase the Division's oversight of Designated Doctors to ensure meaningful use of expert medical opinions in dispute resolution.

House Bill 2605 requires the Commissioner of Workers' Compensation to develop a certification process, in rule, that effectively uses the spectrum of eligibility, training, and testing to assess the general proficiency of Designated Doctors. The bill requires DWC to develop a process that ensures doctors have either the appropriate specialty qualification, through educational experience or previous training, or demonstrated proficiency, through additional training and testing, to serve as a Designated Doctor. If the Division chooses to continue to rely on an outside provider, the bill requires Division staff be involved in the development of course materials and tests, and all final products should be Commissioner approved. Finally, the bill requires the Division to formulate a process for maintaining and regularly updating course materials, regardless of whether training and testing materials are developed in-house or by an outside provider.

The bill also requires the Commissioner of Workers' Compensation to develop, by rule, certain circumstances permissible for a Designated Doctor to discontinue service in a particular area of the state or with a particular case. Such circumstances could include the decision to stop practicing in the workers' compensation system, relocation, or other instances where the doctor is no longer available. Designated Doctors choosing to no longer practice in a county are expected to remain available as a resource and to perform subsequent exams for the same injured employee throughout the life of the claim for any cases previously assigned, unless the Division authorizes otherwise.

Finally, the bill provides the Division with additional criteria to aid in the Designated Doctor assignment process, ensuring the Designated Doctor has the appropriate training and background needed to adequately assess an injured employee's specific injury.

5. Continue the Division of Workers' Compensation for six years.

House Bill 2605 continues DWC for six years, as a division within TDI, instead of the standard 12-year period. This shortened Sunset date will give the Legislature the opportunity to re-evaluate the continued implementation of reforms passed in previous legislative sessions.

In addition, the bill requires DWC to develop standard procedures to formally document and analyze complaints, including both formal and informal complaints. The bill requires DWC to compile statistics, including the number, source, type, length of resolution time, and disposition of complaints, and to analyze complaint information trends.

Provisions Added by the Legislature

6. Expedite medical claims for certain seriously injured first responders.

House Bill 2605 establishes a process for expediting claims and benefits for first responders employed by or volunteering for political subdivisions. The bill requires DWC to expedite a Contested Case Hearing or appeal request submitted by a first responder who has sustained a work-related, serious bodily injury. The bill also requires a political subdivision, insurance carrier, and DWC to accelerate and give priority to a first responder's claim for medical benefits.

7. Authorize injured employees to obtain a second opinion for certain medical determinations.

House Bill 2605 authorizes an employee who is required to be examined by a Designated Doctor for an initial determination of Maximum Medical Improvement or an Impairment Rating to request a re-examination from either their treating doctor or another doctor if they are dissatisfied with the Designated Doctor's opinion. The bill also guarantees payment for these exams. Finally, the bill requires the Division to adopt guidelines prescribing the situations where a treating doctor exam is appropriate after a Designated Doctor exam for all issues that the Designated Doctor can review.

Fiscal Implication Summary

House Bill 2605 contains one provision that will provide a positive fiscal impact to the State. Depositing all administrative penalties assessed and collected by the Division in the General Revenue Fund, instead of the Texas Department of Insurance operating account, will result in a gain to the General Revenue Fund of \$1.2 million annually.

Fiscal Year	Gain to the General Revenue Fund
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

Appendix

Appendix: Sunset Review Schedule – 2013

23 Reviews

Architectural Examiners, Texas Board of
Arts, Texas Commission on the
Criminal Justice, Texas Board and Department of
Education Agency, Texas
Engineers, Texas Board of Professional
Ethics Commission, Texas
Facilities Commission, Texas
Fire Fighters' Pension Commissioner, Office of
Higher Education Coordinating Board, Texas
Housing and Community Affairs, Texas Department of *
Information Resources, Department of
Judicial Conduct, State Commission on
Lottery Commission, Texas
Pardons and Paroles, Board of
Pension Review Board, State
Port of Houston Authority
Preservation Board, State
Procurement and Support Services Division of the Comptroller of Public Accounts*
Public Utility Commission of Texas*
Railroad Commission of Texas
Self-Directed Semi-Independent Agency Project Act
State Employee Charitable Campaign Policy Committee
Windham School District within Texas Department of Criminal Justice*

* Subject to a limited scope or special purpose review.

