



John Keel, CPA  
State Auditor

A Review of  
**State Agencies' Implementation of  
Sunset Advisory Commission Management Actions**

August 7, 2008

Members of the Legislative Audit Committee:

The State Auditor's Office has reviewed the status of 11 state agencies' implementation of 28 non-statutory recommendations (management actions) included in the *Sunset Advisory Commission Report to the 80th Legislature*. Nineteen of the 28 recommendations were reported as having been fully or substantially implemented.

The following five agencies reported that they had fully implemented all management actions:

- Commission on the Arts.
- Comptroller of Public Accounts - Prepaid Higher Education Tuition Board.
- Historical Commission.
- Teacher Retirement System.
- Library and Archives Commission.

The following six agencies reported that they had fully implemented or were in the process of implementing all management actions:

- Animal Health Commission.
- Criminal justice agencies (Department of Criminal Justice, Correctional Managed Health Care Committee, and Board of Pardons and Paroles).
- Real Estate Commission.
- Department of Agriculture – Structural Pest Control Board.
- Veterans Commission.
- Board of Nursing.

The table in the attachment to this letter summarizes the implementation status of the management actions at the 11 agencies reviewed.

**Objective, Scope, and Methodology**

Texas Government Code, Section 325.012 (b), provides for the State Auditor's Office's examination of the non-statutory management actions that the Sunset Advisory Commission (Commission) recommends.

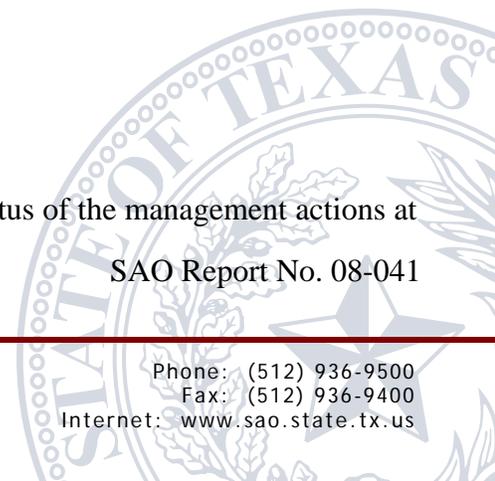
The objective of this review was to determine the implementation status of non-statutory recommendations (management actions) included in the Commission's report to the 80th Legislature.

The scope included 11 agencies to which the Commission directed management actions in its report to the 80th Legislature.

This review relied on self-reported information provided by the agencies. The information in this report was not subjected to all the tests and confirmations that would be performed in an audit.

The following members of the State Auditor's staff performed the review:

- Lauren Godfrey, CGAP (Project Manager).
- J. Scott Killingworth CIA, CGAP, CGFM (Quality Control Reviewer).
- Babette Laibovitz, MPA (Audit Manager).



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We appreciate the agencies' cooperation during this review. If you have any questions, please contact Babette Laibovitz, Audit Manager, or me at (512) 936-9500.

Sincerely,

John Keel, CPA

State Auditor

Attachment

cc: Mr. Joey Longley, Director, Sunset Advisory Commission  
Boards, commissions, and executive management of the following agencies:  
Animal Health Commission  
Commission on the Arts  
Criminal Justice Agencies (Department of Criminal Justice, Correctional Managed Health Care Committee, and Board of Pardons and Paroles)  
Comptroller of Public Accounts – Prepaid Higher Education Tuition Board  
Historical Commission  
Library and Archives Commission  
Board of Nursing  
Real Estate Commission  
Department of Agriculture – Structural Pest Control Board  
Teacher Retirement System  
Veterans Commission



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# Attachment

## *Agencies' Implementation of Sunset Advisory Commission Management Actions*

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Table 1 presents information on agencies' implementation of non-statutory recommendations (management actions) in the *Sunset Advisory Commission Report to the 80th Legislature*. The definitions of each implementation status are as follows:

- **Fully Implemented:** Successful development and use of a process, system, or policy to implement a prior recommendation.
- **Substantially Implemented:** Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation.
- **Incomplete or Ongoing:** Ongoing development of a process, system, or policy to address a prior recommendation.
- **Not Implemented:** Lack of a formal process, system, or policy to address a prior recommendation.

Table 1

Status of Agencies' Implementation of Sunset Advisory Commission Management Actions		
Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
Real Estate Commission		
Direct the Real Estate Commission (Commission) to improve on its collection of complaint and violation statistics and to develop a method for complaint trend analysis.	Incomplete/ Ongoing	<p>The Commission agrees with the need to keep more detailed statistics regarding complaints to enable agency staff and others to analyze and respond to trends.</p> <p>At present, the Commission's licensing and complaint database captures, among other data, the dates on which enforcement cases are opened and closed, the types of complaints that are opened for investigation, and a single, broad category of cases that are determined to be non-jurisdictional. However, the system cannot currently generate the reports identified in this recommendation. The Technology Services Division has undertaken a programming project to create reports that can be automatically generated at regular intervals to reflect enforcement case resolution time frames by case type; numbers, types, and ages of open complaints at any given time; and specific types of non-jurisdictional complaints. Once these reports are available, it will be possible to begin assembling monthly, quarterly, and annual trend data for further analysis. (Due to systems limitations, these reports will be available from the point of implementation forward; it will not be possible to generate them based on previous time periods.) This process (development of the system enhancements) has been delayed by the fact that the Technology Services staff has been stretched to its limits to address new statutory changes, such as fingerprinting, while keeping a core system that was developed in the 1980s and is now operating well beyond its functional life expectancy.</p>

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The Commission, Appraiser's Board, Department of Savings and Mortgage Lending, and Department of Insurance should coordinate their enforcement efforts.	Incomplete/ Ongoing	<p>The Commission agrees that agencies regulating related industries should coordinate enforcement efforts and should memorialize the inter-agency cooperation that already exists. This is already occurring on an informal basis, but a formal document among the agencies has not been ratified.</p> <p>Pursuant to House Bill 716 (80th Legislature), the Commission participates in the Mortgage Fraud Task Force, which provides for widespread coordination of enforcement efforts regarding mortgage fraud, encompassing not only the state agencies identified in this recommendation, but also the Office of the Attorney General and local law enforcement agencies.</p> <p>The Commission has also drafted and circulated for consideration a memorandum of understanding (MoU) regarding the referral of non-jurisdictional complaints among the agencies identified in this recommendation. Administrator Tim Irvine (who is also the Appraiser Licensing and Certification Board Commissioner) has distributed the MoU to the Insurance Commissioner and the Savings and Mortgage Lending Commissioner, as well as their general counsels. The other agencies have expressed agreement, and it is anticipated that the MoU will be executed shortly.</p>
<b>Department of Agriculture - Structural Pest Control Board</b>		
The Department of Agriculture should increase coordination with other agencies and use other resources to disseminate information and seek out unlicensed noncommercial activity.	Incomplete/ Ongoing	<p>Effective September 1, 2007, House Bill 2458 (80th Legislature) abolished the Structural Pest Control Board (Board) and transferred its responsibility of licensing and regulation to the Texas Department of Agriculture (TDA). TDA completed the following activities since September 2007, to transition the functions of the Board:</p> <ul style="list-style-type: none"> <li>▪ Evaluated and revised all job descriptions for the former Board's full-time equivalent (FTE) positions.</li> <li>▪ Posted, interviewed for, and hired all structural pest control FTE positions.</li> <li>▪ Closed and moved the former Board's office to the TDA location.</li> <li>▪ Conducted new employee orientation.</li> <li>▪ Transferred the existing regulations for structural pest control to TDA.</li> <li>▪ Adopted new regulations for the newly created Structural Pest Control Advisory Committee (Advisory Committee) in October 2007.</li> <li>▪ Conducted structural pest control field inspector training in October 2007 implementing a shift in focus from a strict civil and criminal enforcement approach to an approach of employing a wider range of enforcement options and incorporating a compliance assistance concept into routine inspections.</li> <li>▪ Provided inspectors new computers, printers, and cameras in October 2007.</li> <li>▪ Solicited applications for appointment to the Advisory Committee in November 2007 and completed appointments in January 2008.</li> <li>▪ Ordered and issued state vehicles to structural pesticide inspectors in January 2008.</li> <li>▪ Conducted an initial Advisory Committee meeting in March 2008 and a second meeting in May 2008.</li> <li>▪ Began cross training and incorporated structural pest control inspectors into the statewide pesticide inspector training in April 2008 to begin making the inspections similar.</li> <li>▪ Proposed changes to the structural pest control regulations in July 2008 for public comment and possible adoption by September 2008.</li> </ul> <p>TDA still uses the Board's processes, business practices, and licensing system for continuity of services. However, TDA's Pesticide Division is currently working with TDA's Information Management Division to gather the requirements necessary to incorporate the structural pest control</p>

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		<p>component into its information management system platform used to conduct electronic inspections. Priority has been given to activities needed to transition the program.</p> <p>The Structural Pest Control Service has modified its inspection process to incorporate a compliance assistance component to ensure that inspected noncommercial entities currently being inspected understand the pesticide regulatory requirements pertaining to structural pest control. A primary focus of TDA in management of regulatory programs is to increasingly utilize the public to draw feedback on program management and to seek out regulatory concerns, such as unlicensed commercial activity. To expand outreach efforts, TDA plans to use its Pesticide Division's established working relationship with the Texas AgriLife Extension Service and the Texas Department of State Health Services to develop new and expand existing outreach efforts focused on noncommercial activity.</p>
The Department of Agriculture should track and analyze enforcement data by license type to support its development of a risk-based approach to inspections.	Incomplete/ Ongoing	<p>Effective September 1, 2007, House Bill 2458 (80th Legislature), abolished the Structural Pest Control Board (Board) and transferred its responsibility of licensing and regulation to the Texas Department of Agriculture (TDA). See response to the recommendation above for an explanation of activities since September 2007 that were priorities to accomplish the transitioning of the Board functions in the last 10 months.</p> <p>TDA still uses the Board's processes, business practices, and licensing system for continuity of services. TDA has taken preliminary actions toward implementation. However, the limited amount of enforcement data currently captured by the Board's system limits TDA's ability to implement this recommendation. Currently, extensive resources would be needed to manually gather additional data. TDA began working in April 2008 to gather the requirements necessary to incorporate the structural pest control component into its information management system platform. TDA will have the capability to capture comprehensive enforcement data once the system upgrades are complete. Then reports will be available to evaluate enforcement data to identify compliance trends and modify inspection needs based on the noncompliance risks identified.</p>
The Department of Agriculture should conduct criminal background checks for all license applications and renewals.	Fully Implemented	
Board of Nursing (Formerly the Board of Nurse Examiners)		
The Board of Nursing (Board) should review and revise its education rules, policies, and procedures to ensure they do not exceed the Board's responsibility to certify minimum competence to enter the profession of nursing.	Incomplete/ Ongoing	<p>The Board through consultation with the Advisory Committee on Education (composed of constituents representing nursing education and practice and professional organizations) has reviewed all education rules and processes relating to vocational and professional nursing education. The mission of the Board was a major focus during the review to ensure that the Board's responsibility was met but not exceeded. Rule revisions have already been approved and implemented. Some rule revisions relate to other Sunset recommendations, which required rule revisions for activation. Additional rule revisions will be presented to the Board at the July 17-18, 2008, meeting. Following the Board's approval, staff will begin revisions of associated Board policies and education guidelines with an anticipated completion date in Spring 2009. The Advanced Practice Nursing Advisory Committee plans to begin a review of Rule 219 related to Advanced Practice Nursing Education in Spring 2009.</p> <p>The following items have been <b>fully implemented</b>:</p> <ul style="list-style-type: none"> <li>▪ New rules empowering dean/directors to grant faculty waivers.</li> <li>▪ New rules delineating the flexibility of clinical faculty ratios.</li> <li>▪ New rules allowing qualified RNs to function as clinical teaching assistants.</li> </ul>

**Status of Agencies' Implementation of Sunset Advisory Commission Management Actions**

Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
		<ul style="list-style-type: none"> <li>▪ New rules eliminating faculty-to-student ratios in all clinical learning experiences except those involving direct patient care.</li> <li>▪ Adopted a process whereby a career school/college may submit a proposal for a new professional nursing educational program while awaiting accreditation.</li> <li>▪ Adopted a process to allow approval of nursing programs outside Texas' jurisdiction to conduct clinical learning experiences in Texas.</li> </ul> <p>The following items are <b>incomplete/ongoing</b>:</p> <ul style="list-style-type: none"> <li>▪ Collaborated with Texas Workforce Commission and Texas Higher Education Coordinating Board to reduce duplicative processes in the approval of new nursing educational programs, streamlining the process. Will be presented to the Board July 17-18, 2008.</li> <li>▪ Collaborated with nursing accreditation agencies to compare accreditation standards and Board approval criteria in order to select an accreditation agency(ies) with acceptable standards. Will be presented to the Board July 17-18, 2008.</li> <li>▪ Developed a process allowing for Board approval of hospital-based diploma programs. Will be presented to the Board July 17-18, 2008.</li> </ul>
The Board should develop a process to allow for Board approval of hospital-based diploma programs.	Incomplete/ Ongoing	A process to allow for Board approval of hospital-based diploma programs has been developed and will be presented to the July 17-18, 2008, Board meeting for approval. Implementation will follow.
The Board should approve nursing education programs for a period longer than one year.	Incomplete/ Ongoing	<p><b>Substantially Implemented:</b> The Advisory Committee on Education approved moving program approval from one year to two years at the August 28, 2007, meeting. Board approved at the October 18-10, 2007, meeting.</p> <p>The Board in collaboration with the Texas Center for Nursing Workforce Studies have redesigned two data tools to gather ongoing data important to both agencies. The first is an annual data form entitled the "Nursing Educational Program Information Survey (NEPIS)" and the second a biennial compliance audit, the "Compliance Audit for Nursing Educational Programs (CANEP)." The NEPIS gathers data related to student, faculty, and program factors affecting admission and graduation rates. The CANEP validates program compliance with Texas rules and regulations. Required information will be limited for programs accredited by national nursing accreditation organizations.</p> <p><b>Incomplete/Ongoing:</b> In regards to requirements for programs to develop a self-study report following a low NCLEX examination pass rate, when the pass rate seems to be related to a small number of students taking the examination, out of sequence test-takers, or other mitigating factors, the program is requested to provide a letter of explanation rather than a self-study report. Board staff conducted a study in 2007 of effective corrective measures implemented by programs who had experienced a low pass rate on the NCLEX examination. Self study reports for two years were reviewed and corrective measures were classified and analyzed. It was found that 95 percent of programs who wrote a self-study were able to bring the pass rate up above 80 percent in the following examination year. Programs frequently attest to the value of critically evaluating their programs for factors which may have contributed to the low pass rate.</p> <p>Board staff will continue to consider and evaluate the self-study process in order to make it a valuable activity rather than a burden on programs.</p>
The Board should establish a process to ensure that it consistently evaluates complaints involving impaired nurses suspected of also violating standards of practice.	Fully Implemented	

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The Board should post information about disciplinary actions on its Web site.	Fully Implemented	
<b>Animal Health Commission</b>		
The Animal Health Commission (Commission) should make its compliance database available to its employees statewide to facilitate better sharing of information and consistency in staff's approach to compliance.	Fully Implemented	
The Commission should develop and implement a succession plan to prepare for impending retirements and workforce changes.	Incomplete/ Ongoing	<p>The Commission began review of possible strategies for implementing a Commission-wide succession plan in the summer of 2006. Human resources and administration staff attended training presented by the State Auditor's Office on succession planning. Implementation and brainstorming sessions were held with the Deputy Director of Administration and Finance and human resource staff to determine the correct course of action.</p> <p>The Commission's performance appraisal form was updated in September 2006. The form contains a section dedicated to career planning. It is being used to determine employees' career goals. The document lines out the steps required to move the employee toward his/her career objectives, including additional training, and coaching and mentoring needs. Each year during the employee's performance appraisal these objectives are reviewed to determine if progress has been made toward stated career goals. The performance appraisal document has therefore become an effective succession planning tool for the Commission.</p> <p>The Commission has also expanded training opportunities for staff through the Governor's Center for Management Development and various outside sources for technical/specialized training. This training allows employees to better serve in current job capacities, but it also provides tools needed to advance into areas of greater responsibility.</p> <p>During the summer of 2007, Commission staff began succession planning for line staff by updating career ladder modules. These modules are designed to develop requisite knowledge, skills, and abilities of staff, including management training at the top tier of the career ladders, to ready staff for the possibility of promotion into supervisory/management positions.</p> <p>The career ladders have not been fully implemented at this time because a component of advancement is salary enhancement when certain milestones are reached throughout an employee's advancement. The Commission is evaluating the cost of full implementation to determine if sufficient funds are available or if additional funding must be requested through the Legislative Appropriation Request to fulfill this important initiative.</p> <p>During the development of 2009-2013 workforce plan, the executive staff and division/department heads were consulted about critical knowledge shortages, now and in the future, so that the Commission can continue to develop strategies for recruiting, hiring, retaining, and/or developing the needed talent for continuance of Commission success. This information will be used to determine where training expenditures should be concentrated to ensure current and future staff has the knowledge, skills, and abilities needed to perform seamless service to the citizens of the state of Texas, now and in years to come.</p>
<b>Criminal Justice Agencies (Department of Criminal Justice, Board of Pardons and Paroles, and Correctional Managed Health Care Committee)</b>		
The Department of Criminal Justice (TDCJ) should conduct routine program evaluations of all rehabilitation programs designed to reduce	Incomplete/ Ongoing	TDCJ created a position within the agency's Executive Services Department for the purpose of conducting program evaluations designed to determine the impact of rehabilitation programs on reducing recidivism as well as conducting other statistical analysis. Rehabilitation tier programs included in the report to the 81st Legislature will include the Substance Abuse Felony

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reincarcerations and revocations, and report the findings to the Legislature.		Punishment, In-Prison Therapeutic Community, Pre-Release Therapeutic Community, Pre-Release Substance Abuse, Sex Offender Treatment, Sex Offender Education, and Innerchange Program. The methodology used for measuring recidivism will be consistent with previous evaluations of these programs in order to facilitate comparisons of program effectiveness over time. Targeted date for submission of first biennial report to Legislature is December 31, 2008.
TDCJ's Health Services Division and the university providers should provide more useful information in response to offender grievances.	Fully Implemented	
<b>Teacher Retirement System</b>		
The Teacher Retirement System should improve the convenience of counseling services for its members.	Fully Implemented	
<b>Historical Commission</b>		
Direct the Texas Historical Commission (THC) to establish a clear and open process to prioritize projects for financial assistance from Friends of the Texas Historical Commission, Inc.	Fully Implemented	
Direct the agency to help build the capacity of county historical commissions to more effectively research and evaluate resources appropriate for official historical markers.	Fully Implemented	
Direct THC staff to evaluate and prioritize its many programs and initiatives, linking them back to the agency's most important goals.	Fully Implemented	
<b>Veterans Commission</b>		
The Veterans Commission (Commission) should explore ways to better integrate its new programs into the agency's overall mission.	Fully Implemented	
The Commission should adopt rules to guide its programs.	Fully Implemented	
The Commission should reduce the number of training conferences it conducts.	Fully Implemented	
The Commission should develop and implement a succession plan to prepare for impending retirements and workforce changes.	Fully Implemented	
The Commission should formally document its duties in writing by	Substantially Implemented	

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Management Action	Implementation Status	Agency Comments for Management Actions that Are Incomplete, Ongoing, or Not Implemented
updating its manuals and making them available to all employees electronically.		
The Commission should evaluate its promotion and evaluation policies and revise them to include measures of job performance.	Fully Implemented	
<b>Library and Archives Commission</b>		
The Library and Archives Commission should use its Library Systems Act Advisory Board in the development of a new system formula.	Fully Implemented	
<b>Comptroller of Public Accounts - Prepaid Higher Education Tuition Board</b>		
The Prepaid Higher Education Tuition Board (Board) should consider restructuring its next Request for Proposals for the Savings Plan manager to encourage a wider variety of respondents.	Fully Implemented	
The Board should regularly evaluate the impact of its advertising campaign to ensure that it is cost-effectively generating new enrollment.	Fully Implemented	
<b>Commission on the Arts</b>		
The Commission on the Arts should evaluate the agency's programs and initiatives to ensure compliance with the legislative direction to focus on arts promotion and grants.	Fully Implemented	

Summary for All Agencies Reviewed					
Number of Management Actions	Fully Implemented	Substantially Implemented	Incomplete/Ongoing	Not Implemented	Total
		18	1	9	0