

Decision Meeting Material

January 11, 2017

Health Licensing Consolidation Project

Texas State Board of Examiners of Psychologists

Texas State Board of Examiners of Marriage and Family Therapists

Texas State Board of Social Worker Examiners

Texas State Board of Examiners of Professional Counselors

Texas Optometry Board

Texas Medical Board

Texas Department of Transportation

HEALTH LICENSING CONSOLIDATION PROJECT

The Independent Structure of the State's Health Licensing Agencies Is Antiquated and Inefficient. (Page 1)

Change in Statute

Rec. 1.1 *(Page 13)*

Transfer 10 health occupational licensing programs to the Health Professions division at the Texas Department of Licensing and Regulation (TDLR) and reconstitute the associated regulatory boards as advisory boards.

Chairman Gonzales Proposed Modification 1

In lieu of staff Recommendation 1.1, continue the functions and consolidate the five behavioral health boards and programs currently at the Department of State Health Services with the Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council, a functionally aligned umbrella licensing agency, by September 1, 2018 with a Sunset date of 2029.

The Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, Texas State Board of Social Worker Examiners, and Council on Sex Offender Treatment, along with regulation of Licensed Chemical Dependency Counselors, would merge with the Texas State Board of Examiners of Psychologists. The current governor-appointed boards would remain intact and retain responsibility for developing, guiding, and establishing matters relating to their respective professions.

Each board would appoint one public member and one professional member to serve on the nine-member Executive Council. The Governor would appoint a public member to serve as chair. The Executive Council would hire an Executive Director and have review and approval authority over the rules relating to scope of practice, standards of care, and ethics written by the independent boards. The Executive Council would have the responsibility to adopt rules relating to Council operations and standardized regulatory procedures.

Sunset staff is directed to make changes necessary to ensure all subsequent recommendations are consistent with the above modification.

Chairman Gonzales Proposed Modification 2

Continue the Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, Texas Board of Occupational Therapy Examiners, and Texas Board of Chiropractic Examiners for 12 years.

Representative Raymond Proposed Modification 3

Continue the Texas Board of Physical Therapy Examiners and Texas Board of Occupational Therapy Examiners under the administration of the Executive Council of Physical Therapy and Occupational Therapy Examiners until 2029.

Representative Thompson Proposed Modification 4

Transfer the Texas State Board of Podiatric Medical Examiners to the Texas Department of Licensing and Regulation on September 1, 2017. Abolish the podiatry board's independent regulatory board and reconstitute it as a governor-appointed advisory board at TDLR with the same composition currently prescribed in statute.

Sunset Modification Proposal

Sunset Commission Member: Chairman Gonzales

Staff Contact: Chris Sanchez

Name of Agency: Health Licensing Consolidation Project

Indicate one of the following: Modification to Issue # 1.1

Title of modification or new issue:

Consolidate the five behavioral health boards and programs at the Department of State Health Services with the Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council.

Describe how modification or new issue is supposed to work:

This modification would create the Texas Behavioral Health Executive Council as a functionally aligned umbrella licensing agency by merging the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, Board of Social Worker Examiners, and Council on Sex Offender Treatment with the Board of Examiners of Psychologists.

- **Composition of individual boards.** The Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, Board of Social Worker Examiners, Board of Examiners of Psychologists, and Council on Sex Offender Treatment would each retain their current governor-appointed board, with each board's current composition.
- **Board authority.** Each board would retain responsibility for developing, guiding, and establishing all matters relating to their respective professions, including originating all rules related to standard of care and practice, license qualifications, examinations, criminal conviction guidelines, penalty matrices, and continuing education requirements. The boards would also participate as needed on enforcement panels and as expert witnesses for standard of care or ethics complaints.
- **Behavioral Health Executive Council composition.** The executive council would be composed of one public member and one professional member from the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, Board of Social Worker Examiners, and Board of Examiners of Psychologists appointed by the individual boards. The presiding officer of the executive council would be a public member appointed by the governor. Therefore, the executive council would have nine total members, four members representing the professions and five public members. Members of the executive council would serve staggered two-year terms.
- **Executive council authority.**
 - **General.** The executive council would hire the executive director of the Behavioral Health Executive Council, and all staff would report to the executive director. The executive council would set appropriate fees for licenses or services performed by the executive council. The executive council would have sanction and administrative penalty authority using the penalty matrices adopted by the boards.
 - **Rulemaking.** The executive council would have review and approval authority over rules relating to scope of practice, standards of care, and ethics written by the independent

boards. If the executive council fails to approve a rule, it would return the rule to the board with an explanation of the reasons for the denial. The executive council would have final authority for rules relating to agency operations and standardized regulatory procedures (e.g. license application procedures and complaint intake and resolution) and other administrative rules.

- **Staff responsibilities.** The executive council would develop and implement policies that clearly define the respective responsibilities of the executive council and the staff of the executive council. Under a functional organization the staff would conduct licensing and customer service activities, perform complaint investigation and prosecution, and conduct all administrative services such as accounting and human resources. Staff would consult with the boards or contract for expertise as necessary for practice-related licensing and enforcement matters.
- **Timeline.** This modification would establish the Behavioral Health Executive Council September 1, 2017. This modification would transfer the Board of Examiners of Marriage and Family Therapists, Board of Examiners of Professional Counselors, Board of Social Worker Examiners, Council on Sex Offender Treatment, and the regulation of licensed chemical dependency counselors from Department of State Health Services (DSHS) and the Health and Human Services Commission (HHSC) to the Board of Examiners of Psychologists under the Behavioral Health Executive Council no later than August 31, 2018. To support the transition of programs without any loss of services, the Legislature would need to enact appropriation contingency riders to allow for interagency financial agreements between DSHS, HHSC, the Behavioral Health Executive Council, and the Board of Examiners of Psychologists for the 2018-19 biennium.
- **Incubation through the Texas Behavioral Health Incubation Taskforce.** This modification would establish a Behavioral Health Incubation Taskforce for fiscal year 2018, consisting of representatives from Texas Department of Licensing and Regulation (TDLR), DSHS/HHSC and the administratively attached boards, and the Board of Examiners of Psychologists. TDLR, DSHS/HHSC, and the Board of Examiners of Psychologists would enter into a memorandum of understanding to allow the taskforce to aid and assist in the establishment of the Behavioral Health Executive Council. The taskforce would at minimum provide guidance to the agencies on hiring the executive director of the executive council, how to coordinate transition of data, revise existing rules to ensure alignment of administrative functions, develop function alignments in staff structure, establish the necessary accounts and reporting requirements, and effectively engage stakeholders in the transition process. TDLR and the taskforce would not be responsible for the administration of any of the programs, but would lend expertise and input on the process of consolidating licensing programs efficiently.
- **Sunset provisions.** This modification would continue the functions of each licensing program and remove the Sunset provision in the enabling statutes of each of these programs, as they would be subject to review under the Behavioral Health Executive Council's Sunset provision. The enabling statute for the Behavioral Health Executive Council would have a Sunset date of September 1, 2029.
- **Coordination of transition.** Each board and DSHS/HHSC would provide the Board of Examiners of Psychologists, Behavioral Health Executive Council, and TDLR access to all systems and information needed to effectively transfer the programs, including licensing, revenue, and expenditure systems; rights to service contracts and licensing agreements; use of online renewal and new application systems; and review and resolution of pending judgments and outstanding expenditures.
- **Drafting issues.** This modification would direct Sunset staff to work with staff from the Board of Examiners of Psychologists, DSHS, HHSC, TDLR, and the Texas Legislative Council in the drafting of legislation to accurately account for any other legal and administrative aspects a transfer of this

magnitude entails. This would include aligning the statutory frameworks of each regulatory program with Chapter 51 of the Texas Occupations Code and the functional regulatory models of TDLR and Executive Council of Physical Therapy and Occupational Therapy Examiners.

- **Board travel.** The executive council and existing boards would receive reimbursement for travel and other necessary expenses incurred in performing official duties as allowed by the General Appropriations Act.
- **Regulation of licensed chemical dependency counselors.** This modification would transfer regulation of licensed chemical dependency counselors from DSHS to the Behavioral Health Executive Council. As a management action, this modification would direct the Behavioral Health Executive Council to appoint an advisory committee of licensed chemical dependency counselors, as necessary, to provide input on licensing, enforcement, and rulemaking related to their licensees. This licensee population does not currently have a board or advisory committee.
- **Council on Sex Offender Treatment responsibilities beyond licensee regulation.** The Council on Sex Offender Treatment would retain current responsibilities beyond licensee regulation, including providing expertise to the Sex Offender Deregistration Program and participation on the Risk Assessment Review Committee.

Talking points for the modification or new issue you wish to provide:

- This modification would ensure each behavioral health board retains independent board status and regulation of the profession, while gaining efficiencies and economies of scale through shared staff and streamlining of administrative processes.
- The structure of the executive council and the board's relationship to the executive council is modeled after the Executive Council of Physical Therapy and Occupational Therapy Examiners, which has ensured effective and efficient regulation while keeping regulation of the profession in the hands of practitioners.
- The Council on Sex Offender Treatment would retain their independent board status and current responsibilities, but would not be represented on the executive council. Statute requires licensed sex offender treatment providers to hold a license from one of the four boards represented on the executive council, or be a physician. Current Council on Sex Offender Treatment members include two psychologists, a licensed social worker, and a licensed professional counselor.
- The incubation period and taskforce oversight would exist from September 1, 2017 to August 31, 2018.
- Key duties of the taskforce would include:
 - Executive leadership
 - Contracts
 - Space allocation matters
 - Communication and professional outreach
 - Reporting requirements
 - Human resources support
 - Strategic planning
 - Travel reimbursement
 - General counsel support
 - Meeting notices and posting
 - Open records requests

- Digital presence
 - Website development
 - Social media support
- Organizational structure and logistics
 - Facilities
 - Fiscal matters
 - Executive council meetings
 - Information technology infrastructure
 - Procurement
- The executive council would employ an executive director no later than April 1, 2018.
- The executive council would adopt procedural rules no later than July 31, 2018.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Chairman Gonzales

Staff Contact: Chris Sanchez

Name of Agency: Health Licensing Consolidation Project

Indicate one of the following: Modification to Issue 1.1

Title of modification or new issue: Continue the Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, Texas Board of Occupational Therapy Examiners, and Texas Board of Chiropractic Examiners for 12 years.

Describe how modification or new issue is supposed to work:

This modification would continue the Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, Texas Board of Occupational Therapy Examiners, and Texas Board of Chiropractic Examiners as currently structured in each individual act until 2029.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Rep. Raymond

Staff Contact: David Leo

Name of Agency: Health Licensing Consolidation Project

Indicate one of the following: Modification to Recommendation 1.1

Title of modification or new issue: *In lieu of the staff recommendation, continue the executive council, PT board, and OT board for 12 years.*

Describe how modification or new issue is supposed to work:

Continue the Texas Board of Physical Therapy Examiners and Texas Board of Occupational Therapy Examiners under the administration of the Executive Council of Physical and Occupational Therapy Examiners until 2029.

Talking points for the modification or new issue you wish to provide:

Sunset Modification/New Issue Proposal

Sunset Commission Member: Rep. Thompson

Staff Contact: Brete Anderson

Name of Agency: Health Licensing Consolidation Project

Indicate one of the following: Modification to Recommendation 1.1 (statutory)

Title of modification or new issue:

Transfer the Texas State Board of Podiatric Medical Examiners to the Texas Department of Licensing and Regulation on September 1, 2017.

Describe how modification or new issue is supposed to work:

Transferring the podiatry board to the Texas Department of Licensing and Regulation (TDLR) would keep all current licenses intact while gaining efficiencies through a functional approach to regulatory and administrative operations. At TDLR, a governor-appointed advisory podiatry board would develop and initiate all rules related to practice of the profession and provide expertise on licensing or standard of care enforcement matters as needed. Meanwhile, TDLR would handle all administrative matters, process licenses, perform investigations, and carry out enforcement processes.

- **Timeline.** The regulation of podiatrists would be transferred to TDLR on September 1, 2017.
- **Advisory board.** Under this modification, the podiatry board's independent regulatory board would be abolished on September 1, 2017 and would be reconstituted as a governor-appointed advisory board to match TDLR's operational model. Like the other health programs previously transferred to TDLR, the advisory board would keep the same composition of three public and six professional members currently prescribed by statute. To ensure continuity, TDLR should use current board members as an advisory working group until a majority of new advisory board members have been appointed by the governor and qualified. Current board members would be eligible for appointment to the new advisory board.

The advisory board would be responsible for development of all practice-related rules. Such rules require the experience and expertise of highly trained members of the podiatric profession. The all-public member TDLR commission would consider these practice-related rules for final approval and could adopt or return the rules to the advisory board, but could not amend them. TDLR would have responsibility for registering, certifying, licensing, and taking enforcement action against practitioners. TDLR would make all final regulatory decisions currently requiring board action, including decisions regarding the establishment of fees.

- **Sunset provision.** This modification would continue the functions of the podiatry board and remove the Sunset provision in its enabling statute, as it would be subject to review under TDLR's existing Sunset provision, currently set for September 1, 2019.

- **Coordination of transition.** The podiatry board would provide TDLR access to all systems and information needed to effectively absorb the program, including licensing, revenue, and expenditure systems; rights to service contracts and licensing agreements; use of online renewal and new application systems; and review and resolution of pending judgments and outstanding expenditures.
- **Drafting legislation.** This modification would direct Sunset staff to work with staff from TDLR, the podiatry board, and the Texas Legislative Council in the drafting of legislation to accurately account for any other legal and administrative aspects a transfer. This would include aligning the statutory framework of the podiatry board with Chapter 51 of the Texas Occupations Code and TDLR's regulatory model.

Talking points for the modification or new issue you wish to provide:

- The Podiatry Board is the smallest of the health licensing agencies under review, with four staff and a budget of about \$280,000 a year. The board struggles to carry out its mission with its limited resources.
- In response to the Health Consolidation project report, the Podiatry Board commented it supports transferring the regulation of podiatry to TDLR.

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Issue 1

The Board's Oral Exam Is an Unnecessary Requirement for Licensure. (Page 9)

Change in Statute

Rec. 1.1 (Page 12) Eliminate the statutory authority for the psychology board to administer an oral exam.

Issue 2

Requiring a Year of Post-Doctoral Supervision Is an Unnecessary Hurdle to Licensure, Potentially Contributing to the Mental Health Care Provider Shortage in Texas. (Page 15)

Change in Statute

Rec. 2.1 (Page 17) Remove the statutory requirement for psychologists to earn half of their supervised work experience after receiving their Ph.D.

Issue 3

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards. (Page 19)

Change in Statute

Rec. 3.1 (Page 23) Remove the statutory limitation restricting the board's authority to set fees.

Rec. 3.2 (Page 23) Remove subjective licensure qualifications.

Rec. 3.3 (Page 23) Remove the requirement for a separate provisional psychologist license and instead authorize the board to grant provisional status to applicants for full licensure.

Rec. 3.4 (Page 23) Authorize the board to provide biennial license renewal.

Rec. 3.5 (Page 23) Authorize the board to issue remedial plans to resolve minor complaints.

Rec. 3.6 (Page 23) Clarify the agency's authority to require physical or mental evaluations and hold related hearings for noncompliance.

Rec. 3.7 (Page 24) Extend confidentiality of complaint and investigative information to applicants and non-licensees.

Management Action

Rec. 3.8 (Page 24) Direct the board to remove the requirement for letters of reference.

Rec. 3.9 (Page 24) Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint.

Issue 4

Texas Should Continue Regulating Psychologists, but Decisions on the Structure of the Texas State Board of Examiners of Psychologists Await Further Review.
(Page 27)

Change in Statute

Rec. 4.1 (Page 31) Continue the regulation of psychologists, but postpone the decision on continuation of the Texas State Board of Examiners of Psychologists until completion of the Sunset reviews of other health licensing agencies.

Rec. 4.2 (Page 32) Update the standard across-the-board requirement related to board member training.

Issue 5

A Recent Court Decision Opens the Door to Unlicensed Practice of Psychology.
(Page 33)

Management Action

Rec. 5.1 (Page 36) Direct the Texas State Board of Examiners of Psychologists to develop proposed definitions of the practice of psychology.

Vice Chair Taylor Proposed Modification

Adopt Recommendation 5.1, but modify it to direct the Texas State Board of Examiners of Psychologists to appoint a working group of stakeholders to develop proposed definitions of the practice of psychology, rather than the board. Also, specify that the proposals should include at least one broad and one narrow definition of psychology.

Rec. 5.2 (Page 36)

Request the Senate Health and Human Services Committee and the House Public Health Committee to take action to define the practice of psychology, as well as to potentially clarify the scope of practice of other mental health professionals.

Proposed New Issues

Representative Thompson Proposed New Issue 1

Allow Licensed Specialists in School Psychology to practice in both public and private schools.

Representative Thompson and Senator Hinojosa Proposed New Issue 2

Rename licensure as a “Licensed Specialist in School Psychology” to licensure as a “School Psychologist.”

Vice Chair Taylor Proposed New Issue 3

Adopt the Psychology Interjurisdictional Compact (PSYPACT) to enable reciprocity between member states.

Senator Hinojosa Proposed New Issue 4

Allow a licensed psychological associate to practice independently, without supervision, if they meet certain increased requirements. Psychological associates would be required to hold a psychology-related master’s degree that consists of a minimum of 60 semester credit hours. Psychological associates would also be required to obtain at least 3,000 hours of practice supervised by a licensed psychologist after receiving their degree, to be eligible to practice independently.

Vice Chair Taylor Proposed New Issue 5

Direct the Texas State Board of Examiners of Psychologists to evaluate all rules in the context of the Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* to ensure rules do not run afoul of the anti-competitive prohibitions of the Sherman Antitrust Act and clearly reflect state policies expressed by the Legislature in statute. The board should repeal any rule that, after its evaluation, it deems susceptible to legal challenge. (Management action – nonstatutory)

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Van Taylor

Staff Contact: Richard Gee

Name of Agency: Texas State Board of Examiners of Psychologists

Indicate one of the following: Modification to Recommendation 5.1 (management action – nonstatutory)

Title of modification or new issue:

Direct the Texas State Board of Examiners of Psychologists to appoint a working group of stakeholders to develop proposed definitions of the practice of psychology.

Describe how modification or new issue is supposed to work:

Rather than directing the Texas State Board of Examiners of Psychologists to develop proposed definitions of the practice of psychology, this modification would direct the Psychology Board to appoint a working group of stakeholders to develop the proposed definitions for consideration by the Senate Health and Human Services Committee and the House Public Health Committee.

Amend recommendation 5.1 as follows:

This recommendation would direct the psychology board to appoint a working group of stakeholders that may include, but not be limited to: psychologists, counselors, therapists, life coaches, self-help groups, and medical professionals and their respective associations to develop no less than three proposals offering different approaches to defining the practice of psychology in response to the 5th Circuit's opinion. At least one of the proposals should be a broad definition with some exceptions, and at least one of the proposals should be a narrow definition with fewer exceptions. The narrow definition should attempt to capture what core psychological services are as compared to other similar services such as counseling or therapy.

The board should provide ~~these~~ the working group's proposals, ~~ranked or unranked,~~ to the Senate Health and Human Services Committee and the House Public Health Committee no later than January 31, 2017. A copy of these proposed definitions should also be provided to the Sunset Commission. ~~In developing the recommended definitions, the agency should solicit input from all relevant stakeholder organizations and hold at least one public meeting to discuss possible language and stakeholder concerns. Stakeholders would be allowed to submit their own recommended definitions to the committees and the Sunset Commission as well.~~

Talking points for the modification or new issue you wish to provide:

While the board has done an excellent job of reaching out to stakeholders during the mandatory public comment period, the definition of psychology is a complicated issue that deserves additional scrutiny from various stakeholders who may be influenced by the changes.

This recommendation provides two frameworks under which the working group can come together and agree upon a definition for Psychology in the context of the Serafine v Branaman ruling.

The working group provides an opportunity for those with competing viewpoints to come together to develop and propose definitions, both narrow and broad, that are agreeable to all parties.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Representative Thompson

Staff Contact: Brete Anderson

Name of Agency: Texas State Board of Examiners of Psychologists

Indicate one of the following: New Issue (statutory)

Title of modification or new issue:

Allow licensed specialists in school psychology/school psychologists to practice in private schools.

Describe how modification or new issue is supposed to work:

Statutorily authorize a licensed specialist in school psychology/school psychologist to practice in both public and private schools in Texas.

Talking points for the modification or new issue you wish to provide:

1. Currently, by rule, a licensed specialist in school psychology (LSSP) may only provide school psychological services in public schools. (22 T.A.C. 465.38)
2. There are 834 accredited private schools in Texas, serving 250,000 students. If approximately 10% of school-age students experience learning difficulties and educational disabilities, these schools represent more than 25,000 children who may not be receiving targeted, evidence-based interventions designed by school psychologists to improve their learning experiences.
3. School psychologists are trained and have experience in helping ALL children to achieve educational success, whether in public or private school settings.
4. As a result, students in private schools may not have access to these specialized, psychological services that are afforded to students in the public school system, which, in turn, may prevent students with disabilities or social/emotional concerns from receiving needed services.
5. This recommendation would give more Texas school children broader access to school-based psychological services.
6. This recommendations would not have a fiscal impact.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Representative Thompson
Senator Hinojosa

Staff Contact: Brete Anderson
Jennifer Saenz

Name of Agency: Texas State Board of Examiners of Psychologists

Indicate one of the following: New Issue (statutory)

Title of modification or new issue:

Rename "Licensed Specialist in School Psychology" (LSSP)

Describe how modification or new issue is supposed to work:

Rename licensure as a "Licensed Specialist in School Psychology" to licensure as a "School Psychologist."

Talking points for the modification or new issue you wish to provide:

1. Currently, a school psychologist in Texas can only call themselves a "licensed specialist in school psychology."
2. Parents/teachers and the public are often confused by this term and sometimes children don't get services because parents/school officials are unaware of what an LSSP does.
3. 47 of the 50 states already allow school psychologists to use the title of "School Psychologist."
Exceptions: Texas, Louisiana, and Arkansas
4. This recommendation would allow a school psychologist to call themselves a "school psychologist" if they meet the national standards set by the National Association of School Psychologists and state licensure qualifications. This is a high bar.
5. The Tex. Education Code 21.003 already uses the term "school psychologist." This change would make it consistent with the Education Code.
6. This recommendation would not have a fiscal impact.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Van Taylor

Staff Contact: Richard Gee

Name of Agency: Texas State Board of Examiners of Psychologists

Indicate one of the following: New Issue (statutory)

Title of modification or new issue:

Adopt the Psychology Interjurisdictional Compact

Describe how modification or new issue is supposed to work:

This recommendation adds the Psychology Interjurisdictional Compact (PSYPACT) language to statute.

PSYPACT allows reciprocity between states that have adopted the compact and becomes active once seven states pass the legislation. Psychologists of each of those seven states may work in other PSYPACT states. Psychologists wishing to practice under the compact will obtain an Interjurisdictional Practice Certificate (IPC) for temporary (30 days) face-to-face practice and an "E. Passport" certification for telepsychology.

PSYPACT states exchange information regarding disciplinary action and license verification.

Talking points for the modification or new issue you wish to provide:

PSYPACT enables reciprocity between member states, expanding the pool of psychologists that may work with Texans who need care.

This compact also increases client and patient mobility by facilitating continuity of care when either relocates. This ensures that certain state lines do not disrupt the ability of psychologists to continue to help their existing clients.

PSYPACT will play a critical role in increasing availability of care to underserved or rural areas in Texas. Psychologists with an IPC may come from out of state to set up practices immediately in areas of need, and Psychologists with an E. Passport may extend their services to through telemedicine without additional licensure burdens.

PSYPACT states retain their ability to regulate telepsychology and face-to-face practice, and disciplinary actions amongst PSYPACT states are shared between states.

The Texas State Board of Examiners of Psychologists voted unanimously to support PSYPACT during their November 10, 2016 board meeting.

This compact does not expand scope of practice.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Hinojosa

Staff Contact: Jennifer Saenz

Name of Agency: Texas State Board of Examiners of Psychologists

Indicate one of the following: New Issue (statutory)

Title of modification or new issue:

Allow psychological associates to practice independently once they meet increased requirements.

Describe how modification or new issue is supposed to work:

This recommendation would allow a licensed psychological associate to practice independently, without supervision, if they meet certain increased requirements.

Statute would continue to require a psychological associate to hold a master's degree from an accredited university or college in a program that is primarily psychological in nature, but this recommendation would require the degree to consist of a minimum of 60 semester credit hours (rather than the 42 semester hours currently required in rule).

This recommendation would also require a psychological associate to obtain at least 3,000 hours of supervised practice by a licensed psychologist after receiving their degree to be eligible to practice independently.

Statute would continue to require the psychology board to set standards for the issuance of licenses to psychological associates, but the board would need to update its rules to reflect the new requirements.

Talking points for the modification or new issue you wish to provide:

Currently, licensed psychological associates must practice under the supervision of a licensed psychologist. This restriction is a permanent limitation to the associate license - no matter how much training or experience an associate has, they must always be supervised by a psychologist forever.

While some associates receive substantial, direct supervision from a psychologist, many associates receive only minimal supervision (one hour per week), particularly those with many years of experience. To an average citizen, there is often little to distinguish between the services provided by a psychologist and an associate, except for the person's title.

Texas faces a shortage of mental health care providers. Allowing licensed psychological associates to practice independently will allow associates to offer services in more rural counties where a supervising psychologist may not currently be available.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Van Taylor

Staff Contact: Richard Gee

Name of Agency: Texas State Board of Examiners of Psychologists

Indicate one of the following: New Issue (management action – nonstatutory)

Title of modification or new issue:

Direct the board to evaluate all rules in the context of FTC v North Carolina.

Describe how modification or new issue is supposed to work:

In light of the FTC v North Carolina Supreme Court decision, this recommendation would direct the Texas State Board of Examiners of Psychologists to evaluate all rules to ensure that none run afoul of the anti-competitive prohibitions of the Sherman Antitrust Act. Rules adopted by the board that are not clearly articulated and do not affirmatively express a policy set by a sovereign branch of government do not fall under the state-action exemption of the Sherman Anti-Trust Act. In the absence of rules that mirror the Legislature's will as evidenced in statute, the board should repeal any rule that, after its evaluation, it deems as susceptible to legal challenge based on the precedent set in the Supreme Court's ruling in FTC v North Carolina.

If the board is unclear as to whether any particular rule may violate this act, the board should consider requesting an opinion from the Attorney General.

Talking points for the modification or new issue you wish to provide:

Testimony during the December 9th, 2016 Sunset Hearing raised concerns that the board may have adopted anti-competitive rules. This recommendation directs the board to evaluate their rules to ensure fairness to all licensees and to protect itself from future lawsuits.

Rules not clearly articulated and affirmatively expressed by the legislative branch of government do not carry immunity from anti-trust liability.

The composition of the board -- market participants regulating their respective industry -- open the board up for legal challenges from precedent set in FTC v North Carolina.

To the extent that the board does not ensure its rules comply with the Anti-Trust Act, the board puts Texas taxpayers at risk to fight future legal battles as well as the board's own members from damages it may incur.

This recommendation encourages, but does not require, the board to request an opinion from the Attorney General. This proposal suggests the Attorney General be used as a resource if needed.

TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

Issue 1

The Texas Department of Licensing and Regulation Should Regulate Marriage and Family Therapists, Professional Counselors, and Social Workers. (Page 9)

Change in Statute

Rec. 1.1 (Page 15) Continue regulation of marriage and family therapists, professional counselors, and social workers at the Texas Department of Licensing and Regulation.

Issue 2

The Behavioral Health Boards' Dysfunctional Enforcement Processes Fail to Adequately Regulate Licensees and Protect the Public. (Page 19)

Change in Statute

Rec. 2.1 (Page 27) Abolish the boards' complaints and ethics committees and ensure board members are not involved in complaint investigations.

Management Action

Rec. 2.2 (Page 27) Ensure TDLR develops policies for prioritizing complaints and directs staff to prioritize complaint investigations based on these policies.

Rec. 2.3 (Page 27) Direct TDLR to develop policies to settle cases informally.

Rec. 2.4 (Page 27) Ensure TDLR updates its enforcement plan, including appropriate penalty matrices.

Issue 3

Key Elements of the Behavioral Health Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards. (Page 29)

Change in Statute

- Rec. 3.1** (Page 36) Require TDLR to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Rec. 3.2** (Page 36) Authorize TDLR to check for disciplinary actions in other states or from other licensing boards as part of the license application and renewal process, and to pursue any necessary enforcement actions based on the results.
- Rec. 3.3** (Page 36) Remove the “good moral character” standard as a criterion for marriage and family therapist applicants.
- Rec. 3.4** (Page 36) Remove the statutory limitation currently restricting the boards’ authority to lower fees.
- Rec. 3.5** (Page 36) Remove the statutory requirement that marriage and family therapist applicants have 750 hours of direct clinical services and authorize the Texas Commission of Licensing and Regulation to establish the required hours by rule.

Management Action

- Rec. 3.6** (Page 37) Direct TDLR to standardize conditions for inactive licensees.
- Rec. 3.7** (Page 37) Direct TDLR to remove unnecessary and restrictive education requirements for professional counselor applicants for licensure.
- Rec. 3.8** (Page 37) Direct TDLR to reduce the burden of supervision requirements on licensees, supervisors, and staff.
- Rec. 3.9** (Page 37) Direct TDLR to fully implement expedited processing for military applications and renewals for marriage and family therapists, professional counselors, and social workers.
- Rec. 3.10** (Page 38) Direct TDLR to enhance the continuing education provider registry and comply with statute by approving continuing education courses.

TEXAS OPTOMETRY BOARD

Issue 1

Key Elements of the Agency's Licensing Functions Do Not Conform to Common Licensing Standards. (Page 11)

Change in Statute

- Rec. 1.1** (Page 17) Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Rec. 1.2** (Page 17) Authorize the agency to provide biennial license renewal.
- Rec. 1.3** (Page 17) Remove subjective qualification required of applicants for licensure.
- Rec. 1.4** (Page 17) Remove the notarization requirement for individuals applying for licensure.
- Rec. 1.5** (Page 18) Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Rec. 1.6** (Page 18) Require the agency to check for disciplinary or other legal actions in other states for license applications and renewals, and authorize the agency to pursue any necessary enforcement action.
- Rec. 1.7** (Page 18) Eliminate the provision requiring five affirmative votes of the nine-member board to take an enforcement action.
- Rec. 1.8** (Page 18) Replace archaic and subjective disciplinary provisions such as "habitual drunkard" with more specific disciplinary criteria, and authorize the agency to order physical and mental examinations if probable cause exists to do so.

Management Action

- Rec. 1.9** (Page 18) Direct the agency to accept all license applications and fee payments online.
- Rec. 1.10** (Page 18) Direct the agency to update its website.
- Rec. 1.11** (Page 19) Direct the agency to make all formal disciplinary orders easily accessible and readily available on its website.

Rec. 1.12 *(Page 19)* Direct the agency to report all letters of formal agreement to the National Practitioner Data Bank unless discussions with agency counsel and the federal administrator indicate otherwise.

Rec. 1.13 *(Page 19)* Direct the agency to maintain complainants' confidentiality when possible.

Senator Schwertner Proposed Modification

Adopt staff Recommendation 1.13, but also statutorily require the board to maintain confidentiality of investigative information. Require the board to protect the complainant's identity to the extent possible, but require the board to notify the licensee of the identity of complainants who are insurance agents, insurers, pharmaceutical companies, or third party administrators, unless it would jeopardize an investigation. Finally, prohibit the board from accepting anonymous complaints.

Issue 2

Texas Should Continue Regulating the Practice of Optometry. (Page 21)

Change in Statute

Rec. 2.1 *(Page 25)* Continue the state's regulation of optometrists, regardless of organizational setting.

Chairman Gonzales Proposed Modification

In addition to continuing the state's regulation of optometrists, continue the Texas Optometry Board as an independent agency for 12 years.

Rec. 2.2 *(Page 25)* If regulation of optometry is not transferred to the Texas Department of Licensing and Regulation, update the standard across-the-board requirement related to board member training.

Proposed New Issues

Senator Hinojosa Proposed New Issue 1

Require the Texas Optometry Board to query the Prescription Monitoring Program on a periodic basis for potentially harmful prescribing patterns among its licensees. The Texas Optometry Board would work with the Pharmacy Board to establish potentially harmful prescribing patterns that the Texas Optometry Board should monitor by querying the database for optometrists who meet those prescribing patterns. Based on the information obtained from the Prescription Monitoring Program, the Texas Optometry Board would be authorized to open a complaint for possible non-therapeutic prescribing.

Senator Hinojosa Proposed New Issue 2

Beginning September 1, 2018, require optometrists to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. An optometrist who does not check the program before prescribing these drugs would be subject to disciplinary action by the Texas Optometry Board.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Schwertner

Staff Contact: Drew Graham

Name of Agency: Texas Optometry Board

Indicate one of the following: Modification to Issue 1.13

Title of modification or new issue: Maintain complainant confidentiality and prohibit anonymous complaints

Describe how modification or new issue is supposed to work: Adopt staff recommendation 1.13 and add the following as a statutory change:

Require the board to maintain confidentiality of investigative reports, adverse reports, complaints, the identity of a nontestifying complainant, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, license application, or criminal investigation or proceeding. Require the board to protect the identity of the complainant to the extent possible.

Prohibit the board from accepting anonymous complaints.

Require that complaints filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a licensee must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint.

Require the board to notify, within 15 days of the complaint being filed, the licensee who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Talking points for the modification or new issue you wish to provide:

Sunset Modification/New Issue Proposal

Sunset Commission Member: Chairman Gonzales

Staff Contact: Chris Sanchez

Name of Agency: Texas Optometry Board

Indicate one of the following: Modification to recommendation 2.1

Title of modification or new issue: Continue the Texas Optometry Board for 12 years.

Describe how modification or new issue is supposed to work: In addition to continuing the state's regulation of optometrists, continue the Texas Optometry Board as an independent agency for 12 years.

Talking points for the modification or new issue you wish to provide:

- The Health Licensing Consolidation Project recommended the transfer of optometry regulation to the Health Professions Division of the Texas Department of Licensing and Regulation (TDLR).
- This modification would continue the Texas Optometry Board as an independent agency for 12 years, instead of transferring it to TDLR.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Hinojosa

Staff Contact: Jennifer Saenz

Name of Agency: Texas Optometry Board

Indicate one of the following: New Issue

Title of modification or new issue: Require Texas Optometry Board to periodically search the Prescription Monitoring Program.

Describe how modification or new issue is supposed to work: Require the Texas Optometry Board to query the Prescription Monitoring Program on a periodic basis for potentially harmful prescribing patterns among its licensees. The Texas Optometry Board would work with the Pharmacy Board to establish potentially harmful prescribing patterns that the Texas Optometry Board should monitor by querying the database for optometrists who meet those prescribing patterns. Based on the information obtained from the Prescription Monitoring Program, the Texas Optometry Board would be authorized to open a complaint for possible non-therapeutic prescribing.

Talking points for the modification or new issue you wish to provide:

Overprescribing of pain medication by optometrists can be the start of opioid addiction. The Texas Optometry Board should make use of the state's new Prescription Monitoring Program to proactively monitor potentially harmful prescribers and prescribing patterns.

Not all optometrists have prescriptive authority. Only Optometric Glaucoma Specialists may prescribe controlled substances in Schedules III-V.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Hinojosa

Staff Contact: Jennifer Saenz

Name of Agency: Texas Optometry Board

Indicate one of the following: New Issue

Title of modification or new issue: Require optometrists to check the Prescription Monitoring Program before prescribing certain drugs.

Describe how modification or new issue is supposed to work:

Beginning September 1, 2018, require optometrists to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. An optometrist who does not check the program before prescribing these drugs would be subject to disciplinary action by the Texas Optometry Board.

Talking points for the modification or new issue you wish to provide:

This recommendation would require optometrists to register for and use the Prescription Monitoring Program to check their patient's prescription history before prescribing the most addictive controlled substances to their patients. Overprescribing of pain medication by optometrists can be the start of opioid addiction.

Not all optometrists have prescriptive authority. Only Optometric Glaucoma Specialists may prescribe controlled substances in Schedules III-V.

TEXAS MEDICAL BOARD

Issue 1

Untargeted Inspections and Unclear Statutory Authority Limit the Effectiveness of Pain Management Clinic Regulation. (Page 11)

Change in Statute

Rec. 1.1 (Page 14) Authorize the Medical Board to seek court enforcement of its administrative subpoenas.

Rec. 1.2 (Page 14) Amend the pain management clinic statute to clarify the definition of “inappropriate prescribing.”

Rec. 1.3 (Page 14) Clarify statute to authorize the Medical Board to inspect an unregistered pain management clinic.

Senator Schwertner Proposed Modification

Adopt Recommendation 1.3, but modify the recommendation to require the Medical Board’s rules regarding the grounds for inspecting a clinic not registered as a pain management clinic with the board to define the types of prescribing activity that would warrant a Medical Board inspection of the clinic. Specifically, the rules should establish the population of patients served at the clinic, the volume and combination of drugs prescribed to patients served at the clinic, and any other criteria the board deems necessary to require a medical board inspection of the clinic.

Management Action

Rec. 1.4 (Page 15) Direct the Medical Board to use Prescription Monitoring Program data, along with other factors, to establish a risk-based approach to scheduling pain management clinic inspections.

Issue 2

Key Elements of the Texas Medical Board’s Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards. (Page 17)

Change in Statute

Rec. 2.1 (Page 21) Remove unnecessary provisions regarding good moral character.

- Rec. 2.2** *(Page 21)* Remove affidavit requirement for individuals applying for licensure.
- Rec. 2.3** *(Page 21)* Authorize the Medical Board to provide biennial license renewal for all license types.
- Rec. 2.4** *(Page 21)* Remove the statutory limitations on the Medical Board’s authority to set fees.
- Rec. 2.5** *(Page 21)* Authorize the board to deny renewal applications from noncompliant applicants.
- Rec. 2.6** *(Page 22)* Remove the limitation on the number of times an applicant can take the board’s jurisprudence exam.
- Rec. 2.7** *(Page 22)* Clarify statute to authorize the board to conduct fingerprint-based criminal background checks of all applicants.
- Rec. 2.8** *(Page 22)* Clarify statute and provide direction for the Medical Board to monitor physician and physician assistant prescribing of controlled substances.
- Rec. 2.9** *(Page 22)* Authorize the board to establish a risk-based approach to its office-based anesthesia inspection, focusing on the length of time since equipment and procedures were last inspected.
- Rec. 2.10** *(Page 23)* Remove the requirement that the Medical Board’s formal complaints filed with the State Office of Administrative Hearings be sworn to.

Management Action

- Rec. 2.11** *(Page 23)* Direct the board to make consumer information available to the public on its website.

Issue 3

Streamlining the Medical Radiologic Technology Program Would Increase Fairness to Licensees and Administrative Efficiency. (Page 25)

Change in Statute

- Rec. 3.1** *(Page 27)* Abolish the limited medical radiologic technologist certification.
- Rec. 3.2** *(Page 27)* Eliminate duplication by removing dual-registry requirements for noncertified technicians.

Issue 4

The Current Process for Authorizing Qualified Physicians to Practice in Texas Does Not Maximize Mobility Within the Profession. (Page 29)

Change in Statute

Rec. 4.1 (Page 32) Adopt the Interstate Medical Licensure Compact.

Issue 5

An Undefined Structure and Few Funding Sources Limit the Texas Physician Health Program's Success. (Page 35)

Change in Statute

Rec. 5.1 (Page 37) Require the Texas Medical Board and Texas Physician Health Program to develop a memorandum of understanding covering services and operations, including performance measures and auditing requirements.

Rec. 5.2 (Page 37) Authorize the Texas Physician Health Program to accept gifts, grants, and donations.

Issue 6

The State Has a Continuing Need to Regulate the Practice of Medicine and the Other Allied Health Professions at the Texas Medical Board. (Page 39)

Change in Statute

Rec. 6.1 (Page 43) Continue the Texas Medical Board for 12 years.

Rec. 6.2 (Page 43) Apply the standard Sunset across-the-board recommendations to the medical, physician assistant, acupuncture, respiratory care, and medical radiologic technology boards.

Proposed New Issues

Vice Chair Taylor Proposed New Issue 1

Require the Texas Medical Board to process and issue physician assistant licenses within the same amount of time that it takes to issue a physician license. (Management action — nonstatutory)

Senator Schwertner Proposed New Issue 2

Direct the Board to develop rules that provide a concise application for a temporary license to a sports physician traveling to Texas with athletic competitors or a team of athletic competitors. These rules would apply to a physician licensed in another state who is treating a UIL, NCAA, or professional athlete or team while the athlete or team is in the state. (Management action — nonstatutory)

Senator Hinojosa Proposed New Issue 3

Authorize the Texas Physician Assistant Board, after hearing all evidence and arguments in an open meeting, to conduct deliberations relating to license applications and disciplinary actions in executive sessions. Under this provision, the board would still be required to vote and announce its decisions in open session.

Senator Hinojosa Proposed New Issue 4

Beginning September 1, 2018, require physicians and physician assistants to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. A physician who does not check the program before prescribing these drugs would be subject to disciplinary action by the Texas Medical Board. A physician assistant who does not check the program before prescribing these drugs would be subject to disciplinary action by the Texas Physician Assistant Board.

Senator Hinojosa Proposed New Issue 5

If the Legislature requires a prescriber to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, exempt prescribers who prescribe such drugs to a cancer patient or a patient in a hospice setting only if the prescriber includes on the prescription for a cancer patient or a patient in a hospice setting the patient's diagnosis or the basis for the exemption. Including a patient's diagnosis on the prescription would assist with an investigation in the event that nontherapeutic prescribing is suspected.

Senator Watson Proposed New Issue 6

If the Legislature requires a physician to search the Prescription Monitoring Program and review a patient’s prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, exempt physicians who prescribe such drugs to a patient in hospice care, undergoing cancer treatment, or being treated for cancer-related pain.

Senator Schwertner Proposed New Issue 7

Authorize the Medical Board to offer a remedial plan — which is a nondisciplinary action for less serious violations — for a physician at most once every five years, instead of once per lifetime.

Senator Watson Proposed New Issue 8

Remove the exemption from surgical assistant licensure that currently allows an unlicensed individual to perform as a surgical assistant under a physician’s delegated authority. This provision would not prevent the following individuals from continuing to provide surgical assistant services: a student enrolled in a surgical assistant education program who is assisting in an operation as part of the program, a federally employed surgical assistant performing duties related to that employment, a licensed health care worker acting within the scope of the person's license, a registered nurse, or a licensed physician assistant.

In addition, require the Texas Medical Board to develop rules that authorize temporary licenses for individuals who are in the process of obtaining the statutorily required 2,000 hours of surgical assisting to be eligible to apply for a surgical assistant license. The rules would specify that temporary license holders are subject to the enforcement authority of the Medical Board.

Representative Thompson Proposed New Issue 9

Remove the exemption from surgical assistant licensure that currently allows an unlicensed individual to perform as a surgical assistant under a physician’s delegated authority. In addition, require the Texas Medical Board to develop rules that authorize temporary licenses for individuals who are in the process of obtaining the statutorily required 2,000 hours of surgical assisting to be eligible to apply for a surgical assistant license. The rules would specify that temporary license holders are subject to the enforcement authority of the Medical Board.

Representative Thompson Proposed New Issue 10
Senator Watson submitted the same New Issue

Clarify that a licensed surgical assistant is required to be reimbursed for providing surgical assistant services to Medicaid patients.

Senator Watson Proposed New Issue 11

Prohibit a chiropractor from practicing acupuncture in Texas unless the chiropractor holds a license to practice acupuncture issued by the Texas State Board of Acupuncture Examiners.

Senator Watson Proposed New Issue 12

Direct the Texas Medical Board to dedicate one page of its quarterly newsletter bulletin to three topics in continuing medical education that the board considers relevant. The board may change the topics promoted in this portion of its quarterly newsletter bulletin, but at least one of the annual 12 continuing medical education topics must be related to tick-borne diseases. (Management action – nonstatutory)

Senator Watson Proposed New Issue 13

Remove the statutory hardship exemption from licensure for an employer's inability to attract and retain individuals certified as medical radiologic technologists, limited medical radiologic technologists, or non-certified technicians to perform radiologic procedures when employing such individuals.

Representative Thompson Proposed New Issue 14

Establish in statute an advanced-level medical radiologic technologist (MRT) certificate and define the term "radiologist assistant" as an individual who holds an advanced-level MRT certificate. Require that radiologist assistants only practice under the supervision of a radiologist, and require the Texas Board of Medical Radiologic Technology, with approval of the Texas Medical Board, to adopt rules for education and training, practice restrictions, and supervision levels required for radiologist assistants.

Representative Burkett Proposed New Issue 15

As part of an informal settlement conference for a case involving an allegation of a standard of care violation, require the Texas Medical Board to share with the license holder who is the subject of the allegation a complete copy of each preliminary written report produced by each expert physician reviewer for the license holder's case, not just the final report currently required by law. As part of this provision, require the Medical Board to redact all identifying information of each expert physician reviewer, except the reviewer's specialty.

Representative Flynn Proposed New Issue 16

As part of their evaluation of whether a physician has committed a violation of the standard of care, require members of the informal settlement conference disciplinary panel to consider whether the physician was practicing medical innovation.

Representative Flynn Proposed New Issue 17

Require the Texas Medical Board to post to its website on a quarterly basis the board's ongoing litigation costs, including the cost of cases being formally contested at the State Office of Administrative Hearings and district court.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Charles Schwertner

Staff Contact: Drew Graham

Name of Agency: Texas Medical Board

Indicate one of the following: Modification to Issue # 1

Title of modification or new issue: *Establish more specific parameters for the board's rules on criteria for inspecting unregistered clinics.*

Describe how modification or new issue is supposed to work: Adopt recommendation 1.3, but modify the recommendation to require the Medical Board's rules regarding the grounds for inspecting a clinic not registered as a pain management clinic with the board to define the types of prescribing activity that would warrant a Medical Board inspection of the clinic. Specifically, the rules should establish the population of patients served at the clinic, the volume and combination of drugs prescribed to patients served at the clinic, and any other criteria the board deems necessary to require a medical board inspection of the clinic.

Talking points for the modification or new issue you wish to provide:

The purpose of recommendation 1.3 is to clarify the medical board's authority to inspect a clinic not registered with the board but, due to the prescribing activity that occurs in the clinic, should be registered with board. Part of the recommendation includes a requirement that the medical board adopt rules that determine the grounds under which an inspection of a clinic not registered with the board would be warranted.

To ensure the medical board's rules are not overly broad such that more physician and physician assistant practice settings than intended become subject to board inspection, this modification establishes more specific parameters for the board's rules on criteria for the prompting of a board inspection of an unregistered clinic.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Van Taylor

Staff Contact: Jeremy Mazur

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue:

Require that the Texas Medical Board process and issue physician assistant licenses within the same time frame that licenses are issued for physicians. (*Management Action*)

Describe how modification or new issue is supposed to work:

This management action recommendation requires that the Texas Medical Board process and issue physician assistant licenses within the same amount of time that it takes to issue a physician license.

Talking points for the modification or new issue you wish to provide:

TMB works to complete and issue physician licenses within an average of 51 days. While the agency aims to complete physician license applications expeditiously, no such requirement or goal exists for the processing of physician assistant licenses.

Testimony from the December public hearing regarding the TMB review revealed that physician assistant license applicants typically wait longer for their license than do applicants for a physician license. Anecdotal evidence collected by the Texas Academy of Physician Assistants reveals that some applicants have had to wait several months before having their license approved by TMB.

The physician assistant licensure backlog has grown to a point where, in August 2016, the Chair of the Texas Physician Assistant Board called for a special meeting to approve pending applications.

Excessive delays in processing physician assistant license applications hurts eligible applicants. In some cases, individuals lose income and even job opportunities due to TMB's delays.

This new issue, introduced as a management action and not a change in statute, instructs that the Texas Medical Board process applications for a physician assistant license in the same amount of time that the agency takes to issue a medical physician license.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Charles Schwertner

Staff Contact: Drew Graham

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Concise temporary license application for traveling sports physicians from out-of-state*

Describe how new issue is supposed to work: Direct the Board to develop rules that provide a concise application for a temporary license to a sports physician traveling to Texas with athletic competitors or a team of athletic competitors. These rules would apply to a physician licensed in another state who is treating a UIL, NCAA, or professional athlete or team while the athlete or team is in the state.

Talking points for the modification or new issue you wish to provide:

Sunset New Issue Proposal

Sunset Commission Member: Senator Hinojosa

Staff Contact: Jennifer Saenz

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of new issue: Authorize the Texas Physician Assistant Board to deliberate in executive session during its licensing committee and disciplinary committee meetings.

Describe how new issue is supposed to work:

Authorize the Texas Physician Assistant Board, after hearing all evidence and arguments in an open meeting, to conduct deliberations relating to license applications and disciplinary actions in executive sessions. Under this provision, the board would still be required to vote and announce its decisions in open session.

Talking points for new issue you wish to provide:

Currently the Texas Physician Assistant Board does not have the authority to go into executive session during either disciplinary or licensing meetings. This does not match the practice of the Texas Medical Board.

This modification will allow the Texas Physician Assistant Board to conduct deliberations relating to license application and disciplinary actions, which often include confidential or sensitive information, in executive sessions.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Hinojosa

Staff Contact: Jennifer Saenz

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of new issue: Require physicians and physician assistants to check the Prescription Monitoring Program before prescribing certain drugs.

Describe how new issue is supposed to work:

Beginning September 1, 2018, require physicians and physician assistants to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. A physician who does not check the program before prescribing these drugs would be subject to disciplinary action by the Texas Medical Board. A physician assistant who does not check the program before prescribing these drugs would be subject to disciplinary action by the Texas Physician Assistant Board.

Talking points for the new issue you wish to provide:

This recommendation would require physicians and physician assistants to use the Prescription Monitoring Program to check their patient's prescription history before prescribing the most addictive controlled substances to their patients. Overprescribing of pain medication by physicians and physician assistants can be the start of opioid addiction.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Hinojosa

Staff Contact: Jennifer Saenz

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of new issue: Exempt prescribers treating certain patients from having to query the Prescription Monitoring Program before issuing a prescription.

Describe how new issue is supposed to work:

If the Legislature requires a prescriber to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, exempt prescribers who prescribe such drugs to a cancer patient or a patient in a hospice setting only if the prescriber includes on the prescription for a cancer patient or a patient in a hospice setting the patient's diagnosis or the basis for the exemption. Including a patient's diagnosis on the prescription would assist with an investigation in the event that nontherapeutic prescribing is suspected.

Talking points for the new issue you wish to provide:

Use of the Prescription Monitoring Program is critical to ensuring public safety and preventing the overprescribing of pain medication which can be the start of opioid addiction. However, cancer patients and patients in a hospice setting are a unique population and should be exempt from PMP regulations in recognition of the unique nature of their disease and its treatment.

Providers who treat cancer-related pain and patients in hospice settings may prescribe relatively large numbers of opioids or provide multiple controlled substances at relatively high doses. Failure to exempt these vulnerable patients may lead to increased suffering from these already vulnerable and unique patients.

This modification will exempt prescribers who prescribe controlled substances to a cancer patient or to a patient in a hospice setting. The prescriber must also include on the prescription the patient's cancer diagnosis or the basis for the exemption. This will assist with a potential investigation in the event that nontherapeutic prescribing is suspected.

Sunset New Issue Proposal

Sunset Commission Member: Sen. Kirk Watson

Staff Contact: Ryan Alter

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Exempt physicians treating cancer and hospice patients from having to query the Prescription Monitoring Program before issuing a prescription.*

Describe how modification or new issue is supposed to work: If the Legislature requires a physician to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, exempt physicians who prescribe such drugs to a patient in hospice care, undergoing cancer treatment, or being treated for cancer-related pain.

Talking points for the new issue you wish to provide:

- While it is very important to have a strong Prescription Monitoring Program (PMP), the implementation of such a system should be done in a way as to not hurt patients.
- This proposal addresses the potential harm vulnerable populations, such as cancer patients and those in hospice care, who have incredibly low rates of prescription drug issues, could experience if not exempted from the PMP.
 - The AMA, in calling for a PMP, stated that certain population groups, including these, should be exempt because of their unique pain management needs.
 - The CDC has also recognized a difference in prescribing practices with regard to these populations.
- Multiple other states have included such an exception in their PMP programs, including Maryland, Ohio, Kentucky, and Arizona.
- The Texas Medical Association acknowledged in their written testimony on Dec. 9th that they encourage the commission “to be mindful of imposing additional burdens on physicians and patients and the special needs of patients in emergency situations, those suffering through cancer treatment and those dealing with pain management in end of life care” when creating mandates around the use of PMPs.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Charles Schwertner

Staff Contact: Drew Graham

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: Options for physician use of a remedial plan.

Describe how modification or new issue is supposed to work:

Allow the Medical Board to offer a remedial plan for a physician at most once every five years.

Talking points for the modification or new issue you wish to provide:

Currently, a physician can only use a remedial plan for an administrative violation once in their lifetime as a physician. This lifetime cap seems arbitrarily low when considering how many administrative violations are possible in the daily practice of a physician. This modification would give the Medical Board the authority to offer a physician another opportunity to learn from a mistake once every five years.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Kirk Watson

Staff Contact: Ryan Alter

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Prevent unlicensed individuals from practicing as surgical assistants*

Describe how modification or new issue is supposed to work:

Remove the exemption from surgical assistant licensure that currently allows an unlicensed individual to perform as a surgical assistant under a physician's delegated authority. This provision would not prevent the following individuals from continuing to provide surgical assistant services: a student enrolled in a surgical assistant education program who is assisting in an operation as part of the program, a federally employed surgical assistant performing duties related to that employment, a licensed health care worker acting within the scope of the person's license, a registered nurse, or a licensed physician assistant.

In addition, require the Texas Medical Board to develop rules that authorize temporary licenses for individuals who are in the process of obtaining the statutorily required 2,000 hours of surgical assisting to be eligible to apply for a surgical assistant license. The rules would specify that temporary license holders are subject to the enforcement authority of the Medical Board.

Talking points for the modification or new issue you wish to provide:

- Not all surgical assistants are required to be licensed because of certain exceptions in statute.
- One of these exceptions allows a person "acting under the delegated authority of a licensed physician," to surgically assist.
- Under this exception, individuals who may have no training to be a surgical assistant can serve as a surgical assistant. This does not properly protect patients.
- In order to be licensed, a surgical assistant must have completed 2,000 hours "as an assistant in surgical procedures for the three years preceding the date of application."
- This proposal would remove the delegated authority exception, but still allow for those seeking to obtain their 2,000 hours for licensure by creating a temporary license.
- By making this change, patients will be better protected, while also preserving an individual's ability to obtain the necessary training for licensure.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Rep. Senfronia Thompson

Staff Contact: Brete Anderson

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Prevent unlicensed individuals from practicing as surgical assistants*

Describe how modification or new issue is supposed to work:

Remove the exemption from surgical assistant licensure that currently allows an unlicensed individual to perform as a surgical assistant under a physician's delegated authority. In addition, require the Texas Medical Board to develop rules that authorize temporary licenses for individuals who are in the process of obtaining the statutorily required 2,000 hours of surgical assisting to be eligible to apply for a surgical assistant license. The rules would specify that temporary license holders are subject to the enforcement authority of the Medical Board.

Talking points for the modification or new issue you wish to provide:

Background: Currently, Texas law provides for licensure of several thousand persons practicing as surgical assistants in Texas hospitals and surgery centers. These licensees are regulated by the Texas Board of Nursing (Registered Nurse First Assistants, or RNFAs, Advanced Practice Registered Nurses, or APRNs, and other surgically trained registered nurses) and the Texas Board of medicine (Physician Assistants, or PAs, and Surgical Assistants, or SAs). It is estimated that approximately 4,000 licensed persons practice surgical assisting in Texas, either as independent practitioners, hospital employees, or employees of surgeons or surgical practices. Licensed Surgical Assistants ("LSAs") who are neither RNFAs, APRNs, RNs nor PAs comprise approximately 450 practitioners of this overall licensee number.

Explanation: When the Legislature licensed surgical assistants in 2001, the enabling legislation (HB 1183) contained several exceptions to requiring a license to surgically assist (also referred to as "first assisting"). The exceptions, typical of a licensing bill, include a student enrolled in a surgical assistant program, a surgical assistant employed in the service of the federal government, and a licensed health care worker acting within the scope of the person's license.

The one that is not so typical creates an exception for a person "acting under the delegated authority of a licensed physician." This exception may have been inserted to allow an otherwise qualified surgical assistant license candidate to complete "at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of application," a requirement for licensure. Since

the 2,000 hours must be completed prior to the date of application, license applicants needed a way to obtain the 2,000 hours without a license.

This exception has led to the unintended consequence of individuals surgically assisting in Texas operating rooms without a license or oversight by the TMB, exposing patients to potential harm. This fault or loophole in the statute can be corrected by removing the exception and granting a provisional license to qualified applicants until they have completed the required 2,000 hours in surgical procedures.

This change requiring licensure of all Surgical Assistants brings this profession and professionals in line with licensed nurses (RNs, RNFAs, APRNs), physician assistants (PAs) and physicians (MDs) who may perform the same assisting services, tasks and functions during operative procedures. Texas surgical patients are entitled to know, and be assured, that every person assisting on their surgical procedures is appropriately licensed and regulated.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Rep. Senfronia Thompson

Staff Contact: Brete Anderson

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Reimbursement to licensed surgical assistants for Medicaid patients*

Describe how modification or new issue is supposed to work: Clarify that a licensed surgical assistant is required to be reimbursed for providing surgical assistant services to Medicaid patients.

Talking points for the modification or new issue you wish to provide:

Background: Currently, Texas law provides for licensure of several thousand persons practicing as surgical assistants in Texas hospitals and surgery centers. These licensees are regulated by the Texas Board of Nursing (Registered Nurse First Assistants, or RNFAs, Advanced Practice Registered Nurses, or APRNs, and other surgically trained registered nurses) and the Texas Board of medicine (Physician Assistants, or PAs, and Surgical Assistants, or SAs). It is estimated that approximately 4,000 licensed persons practice surgical assisting in Texas, either as independent practitioners, hospital employees, or employees of surgeons or surgical practices. Licensed Surgical Assistants (“LSAs”) who are neither RNFAs, APRNs, RNs nor PAs comprise approximately 450 practitioners of this overall licensee number.

Explanation: When the Legislature licensed surgical assistants in 2001, the enabling legislation (HB 1183), amended the Insurance Code and the Human Resources Code to authorize LSAs to bill insurance companies and Medicaid for first assisting services. LSAs have been properly reimbursed by insurance companies, but HHSC has not recognized LSAs as health care providers that provide surgical assisting services to Texas Medicaid patients. As a result, LSAs are not compensated as required by the 2001 legislation, yet in many cases continue to provide services without reimbursement to Texas Medicaid patients.

According to CMS, there is nothing to prevent Medicaid from reimbursing the Licensed Surgical Assistants, and the legislative history makes it clear that was the legislature’s intention. The annual cost to the state is estimated to be approximately \$50,000 - \$100,000 a year. However, because a LSA is much more cost effective than a physician providing the same service, and because a skilled surgical assistant can shorten surgery times and improve outcomes, the net cost to the state may be neutral.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Kirk Watson

Staff Contact: Ryan Alter

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Reimbursement to licensed surgical assistants for Medicaid patients*

Describe how modification or new issue is supposed to work: Clarify that a licensed surgical assistant is required to be reimbursed for providing surgical assistant services to Medicaid patients.

Talking points for the modification or new issue you wish to provide:

- As was discussed at the hearing, the statute that licensed surgical assistants in 2001 intended for surgical assistants to be reimbursed for their services to Medicaid patients. However, HHSC is not interpreting the statute this way.
- Private insurance interpreted the statute to provide LSAs with reimbursement.
- This change clarifies that these professionals are to be reimbursed for the work they are performing.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Kirk Watson

Staff Contact: Ryan Alter

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: Limit the practice of acupuncture by chiropractors.

Describe how modification or new issue is supposed to work:

Prohibit a chiropractor from practicing acupuncture in Texas unless the chiropractor holds a license to practice acupuncture issued by the Texas State Board of Acupuncture Examiners.

Talking points for the modification or new issue you wish to provide:

- Public testimony and discussion at the Medical Board hearing revealed an issue with chiropractors practicing acupuncture.
 - One of the largest concerns was the level of training for chiropractors performing acupuncture and how this affects patient safety.
- The cause of this issue is an Attorney General opinion (DM-471), that permitted the Chiropractic Board to issue rules permitting its licensees to perform acupuncture.
 - These rules require the chiropractor to either complete:
 - At least 100 hours training in undergraduate or post-graduate classes in the use and administration of acupuncture;
 - The national standardized certification examination in acupuncture for chiropractors, or the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine; or
 - At least 100 hours training in the use and administration of acupuncture in a course of study approved by the board.
- These requirements are significantly less than those for acupuncturists, whose licensure requirements include:
 - Completion of 1,800 hours of acupuncture training from an accredited acupuncture school;
 - Passage of the full NCCAOM examination; and
 - Taking and passage of the CCAOM Clean Needle Technique Course and Practical Examination.

- This disparity in training highlights why if a chiropractor wants to practice acupuncture, that individual should be licensed by the Acupuncture Board.
- In addition to the safety aspect of this issue, there has also been extensive litigation surrounding this issue. By making this change, the request by the court for the legislature to clarify this issue will be met.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Kirk Watson

Staff Contact: Ryan Alter

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Promote continuing medical education related to tick-borne diseases*

Describe how modification or new issue is supposed to work:

Direct the Texas Medical Board to dedicate one page of its quarterly newsletter bulletin to three topics in continuing medical education that the board considers relevant. The board may change the topics promoted in this portion of its quarterly newsletter bulletin, but at least one of the annual 12 continuing medical education topics must be related to tick-borne diseases. (Management action – nonstatutory)

Talking points for the modification or new issue you wish to provide:

- The Texas Medical Board's mission statement establishes the importance of education. Through education, medical professionals are able to provide quality health care for Texans.
- One issue raised during public testimony was the lack of awareness by some doctors in Texas about tick-borne diseases. By providing these doctors with information about CMEs they can take in this and other areas, Texans will be better served by their doctors.
- SB 1360 (82R - Harris) "encouraged" doctors whose practice includes the treatment of tick-borne diseases to include in their CME hours, some CME class(es) related to tick-borne diseases. This encouragement is to occur both at the renewal of their license as well as simply to a license holder.
 - There is no definition of what "encourage" means. To date, in order to meet this requirement the Board has included information about tick-borne diseases in their bulletin in 2012 and the upcoming bulletin this December.
 - This bulletin is only provided electronically.
 - This management action aims to establish an appropriate level of encouragement, by asking the board to notify doctors of educational opportunities in a host of relevant issues in the medical field, including Lyme disease.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Sen. Kirk Watson

Staff Contact: Ryan Alter

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Improve the qualifications for a hardship exemption to the state's regulation of medical radiologic technology*

Describe how modification or new issue is supposed to work:

Remove from statute an employer's inability to attract and retain individuals certified as medical radiologic technologists, limited medical radiologic technologists, or non-certified technicians to perform radiologic procedures as grounds for a hardship exemption from employing such individuals.

Talking points for the modification or new issue you wish to provide:

- Sunset and the Medical Board both agree that the administration of the LMRT license is very cumbersome. One area that requires a substantial amount of time for the Board is the review of hardship exemptions for MRTs, LMRTs, and NCTs.
- A hardship exemption is provided to doctors who are unable to hire an MRT, LMRT, or NCT. The Board has established different categories for such an exemption, but the most popular is "option A," which grants the exemption to a licensee if the applicant is "unable to attract or retain an MRT, LMRT, or NCT... at a comparable salary for the area." The applicant must show "evidence of recruiting efforts during the 30 day period prior to application for the hardship exception."
- This change would remove this category of exemption, but still leave other exemptions in place, such as option B, which allows for rural doctors to hire the necessary radiological staff.
- Since February 2016, TMB received 129 hardship exemptions, of which:
 - 10 were approved,
 - 74 are pending, and
 - 45 were granted – 42 to option A applicants, and 3 to option B.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Rep. Senfronia Thompson

Staff Contact: Brete Anderson

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Create an advanced-level medical radiologic technologist certificate for radiologist assistants*

Describe how modification or new issue is supposed to work: Establish in statute an advanced-level medical radiologic technologist (MRT) certificate and define the term “radiologist assistant” as an individual who holds an advanced-level MRT certificate. Require that radiologist assistants only practice under the supervision of a radiologist, and require the Texas Board of Medical Radiologic Technology, with approval of the Texas Medical Board, to adopt rules for education and training, practice restrictions, and supervision levels required for radiologist assistants.

Talking points for the modification or new issue you wish to provide:

BACKGROUND

The Sunset Commission’s Staff Report on the Texas Medical Board, Recommendations 3.1 and 3.2, relate to the streamlining of the Medical Radiologic Technologist (MRT) license. The Modification outlined in this document falls in the same section of statute as Recommendation 3.1.

Our goal is to amend the MRT license in Ch. 601 of the Occupations Code to authorize those MRT license holders that have obtained advanced education and training in their field. We do not want to impact existing MRT license categories (although the 2017 Sunset legislation may attempt to eliminate or revise certain of these categories) and we especially do not want to create an entirely new license type.

MRTs with advanced education and training are known throughout the country as Radiologist Assistants (RAs). We would like minimal statutory change (outlined below) with broad authority delegated to the Texas Medical Board (TMB). RAs currently practice in Texas via MRT licenses and physician delegation authority, but have difficulty with obtaining certain hospital credentials.

There is no known opposition to this initiative. Over the last few sessions, legislation has been filed which would have created an entirely new license type for RAs, but was not successful. Last session was SB 848.

SUMMARY

We believe the following statutory changes need to be made:

- Define “Radiologist”
- Define “Radiologist Assistant” as one holds an advanced-level MRT license (this will align Texas with the other 31 states for terminology purposes as well as Medicare billing issues, etc.
- Add a certificate type under Occupations Code 6001.102 for an “advanced” MRT certificate
- Require that Radiologist Assistants/advanced MRT certificate holders may only practice under the supervision of a radiologist
- Require TMB to establish rules for:
 - o Education and training of Radiologist Assistants/advanced MRT certificate holders
 - o Restricting Radiologist Assistants/advanced MRT certificate holders from interpreting images, making diagnoses or prescribing medications or therapies
 - o Supervision levels for Radiologist Assistants/advanced MRT certificate holders

STATUTORY CHANGES

The following is suggested statutory language to affect the changes noted above:

Sec. 601.002(10) “Radiologist” means a physician specializing in radiology certified by or board-eligible for the American Board of Radiology, the American Osteopathic Board of Radiology, the British Royal College of Radiology, or the Canadian College of Physicians and Surgeons.

Sec 6001.002 (11) “Radiologist Assistant” means an advanced-level medical radiologic technologists who is certified as a registered radiologist assistant by the American Registry of Radiologic Technologists or as a radiology practitioner assistant by the Certification Board for Radiology Practitioner Assistants.

Sec. 601.102. CLASSES OF CERTIFICATES. (a) The advisory board shall establish classes of certificates to include all radiologic procedures used in the course and scope of the practice of practitioners licensed in this state.

(b) The advisory board may issue to a person:

(1) a general certificate to perform radiologic procedures; or

(2) a limited certificate that authorizes the person to perform radiologic procedures only on specific parts of the human body.; or

(3) a radiologist assistant certificate to perform radiologic procedures for a person educated and trained as a radiologist assistant .

(A) A person holding a radiologist assistant certification shall perform radiologic procedures under the supervision of a radiologist and may not interpret images, make diagnoses or prescribe medications or therapies.

(B) the Board shall have rulemaking authority to determine the required level of education and training for a person to qualify for an radiologist assistant certificate.

(c) The advisory board may issue to a person a temporary general certificate or a temporary limited certificate that authorizes the person to perform radiologic procedures for a period not to exceed one year.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Rep. Cindy Burkett

Staff Contact: John McCord

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue

Title of modification or new issue: *Provide license holders in informal settlement conferences a copy of each preliminary expert report produced for the license holder's case*

Describe how modification or new issue is supposed to work:

As part of an informal settlement conference for a case involving an allegation of a standard of care violation, require the Texas Medical Board to share with the license holder who is the subject of the allegation a complete copy of each preliminary written report produced by each expert physician reviewer for the license holder's case, not just the final report currently required by law. As part of this provision, require the Medical Board to redact all identifying information of each expert physician reviewer, except the reviewer's specialty.

Talking points for the modification or new issue you wish to provide:

Sunset Modification/New Issue Proposal

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue (statutory)

Title of modification or new issue: *Evaluation of standards of care must consider innovation*

Describe how modification or new issue is supposed to work:

As part of their evaluation of whether a physician has committed a violation of the standard of care, require members of the informal settlement conference disciplinary panel to consider whether the physician was practicing medical innovation.

Talking points for the modification or new issue you wish to provide:

- Too much evidence that the TMB is slow to move, slow to accept and slow to innovate or accept innovation in the standard of care as evidenced in its investigations
- Will save money and time by providing clarity, reducing legal costs and be much more fair to Texans and those to which TMB provides oversight

Sunset Modification/New Issue Proposal

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: Texas Medical Board

Indicate one of the following: New Issue (statutory)

Title of modification or new issue: *Enhance Transparency for the Medical Board's Legal Expenses*

Describe how modification or new issue is supposed to work:

Require the Texas Medical Board to post to its website on a quarterly basis the board's ongoing litigation costs, including the cost of cases being formally contested at the State Office of Administrative Hearings and district court.

Talking points for the modification or new issue you wish to provide:

- Unchecked spending of Texas taxpayer dollars has to stop.
- Too much evidence that the TMB is slow to move, slow to accept and slow to innovate or accept innovation in the standard of care as evidenced in its investigations and would rather litigate.
- Will save money and time by providing clarity and a standard, reducing legal costs and be much more fair to Texans and those to which TMB provides oversight

TEXAS DEPARTMENT OF TRANSPORTATION

Issue 1

TxDOT's Progress Toward a More Transparent, Performance-Based Transportation Planning Process Is Far From Complete. (Page 17)

Change in Statute

Rec. 1.1 (Page 27) Require TxDOT to adopt one clear set of overall transportation system goals and associated measures to consistently carry through all planning documents.

Rec. 1.2 (Page 27) Require TxDOT to publish an analysis illustrating the link between funding decisions in the Unified Transportation Program and progress toward overall transportation goals.

Rec. 1.3 (Page 28) Require TxDOT to revise its approach to distributing transportation funding to better align with established priorities and performance goals.

Senator Schwertner Proposed Modification

As part of the rulemaking process require TxDOT to take local government investments into consideration as a factor for the revised funding formulas, with the goal to ensure local areas investing in their own infrastructure are not penalized by receiving less funding from TxDOT.

Rec. 1.4 (Page 28) Require TxDOT to create a prominently displayed online dashboard report clearly communicating the adopted goals for Texas' transportation system and regularly updating progress toward meeting them.

Rec. 1.5 (Page 28) Require TxDOT to evaluate a project's strategic need and potential impact on transportation goals before and separately from other factors when selecting and prioritizing projects.

Rec. 1.6 (Page 29) Require TxDOT to clarify roles and responsibilities of the department and planning organizations through a rulemaking process.

Rec. 1.7 (Page 29) Require TxDOT to adopt rules streamlining and clarifying public information requirements relating to changes to the Unified Transportation Program.

Rec. 1.8 (Page 29)

Require TxDOT to regularly evaluate and make improvements to the online project tracker system and adopt related rules.

Representative Flynn Proposed Modification

Require TxDOT to develop a standard newsletter template for each district engineer to use in sending monthly project status updates to local officials. District engineers would be required to send a monthly newsletter following the standard template to interested local officials.

As a related management action, TxDOT should allow local officials to sign up for this newsletter and other correspondence, such as press releases, through its agency website.

Rec. 1.9 (Page 30)

Maintain oversight of TxDOT's delivery of significant new funds and progress toward performance-based planning through a joint oversight committee on transportation planning and performance.

Senator Nichols Proposed Modification

Replace Recommendation 1.9 with a request to the House Committee on Transportation and the Senate Committee on Transportation to provide necessary oversight of the state's significant transportation investment and TxDOT's progress toward performance-based planning. The committees would be asked to monitor the same topics listed in Recommendation 1.9.

Each committee should adopt a meeting schedule in consultation with TxDOT twice per year at similar or approximate times (fall/spring) for at least four years, to monitor the annual adoption and subsequent update process for the Unified Transportation Program. As a related management action, TxDOT should support the committees as requested, including, at a minimum, providing all needed data and information relating the committee's oversight activities. TxDOT should also provide a detailed report with a status update and information on each of the items listed above, and any other information requested by the committee prior to each meeting. (Recommendation to legislative committees—nonstatutory)

Representative Raymond Proposed Modification

Replace Recommendation 1.9 with a request to the House Committee on Transportation and the Senate Committee on Transportation to provide necessary oversight of TxDOT's progress toward implementing both statutory changes and management actions resulting from the 2017 Sunset review. Each committee should adopt a meeting schedule in consultation with TxDOT, and meet at least twice per year. As a related management action, TxDOT should support the committees as requested, including, at a minimum, providing all needed data and information relating to the committees' oversight activities. TxDOT should also provide a detailed report with a status update and information on Sunset implementation, and any other information requested by the committees prior to each meeting. (Recommendation to legislative committees—nonstatutory)

Issue 2

TxDOT Must Quickly Finalize Ongoing Project Development Fixes to Eliminate Backlogs and Prepare for the Future. (Page 33)

Change in Statute

Rec. 2.1 *(Page 41)* Require TxDOT to finalize implementation of its new project portfolio review process and publicly share resulting performance information.

Management Action

Rec. 2.2 *(Page 41)* TxDOT should provide regular analysis and monitoring reports to the Transportation Commission about the department's efforts to correct issues with underperformance in key budget measures, letting controls, and right-of-way backlogs.

Rec. 2.3 *(Page 42)* TxDOT should develop a more risk-based, cross-functional focus to its internal project development activities.

Rec. 2.4 *(Page 42)* Direct TxDOT to regularly report on its progress implementing the Modernize Portfolio and Project Management system to ensure visibility and oversight of this important but high-risk project.

Rec. 2.5 (Page 43)

TxDOT should make efforts to improve proactive external stakeholder outreach to avoid conflicts with future planned transportation projects.

Issue 3

TxDOT Lacks Critical Contract Oversight Tools to Efficiently Spend Billions in Taxpayer Dollars and Better Deliver Construction Projects on Time. (Page 45)

Traditional Low–Bid Highway Contracts

Change in Statute

Rec. 3.1 (Page 59)

Require TxDOT to include a range of contract remedies in its traditional low-bid highway contracts.

Representative Flynn Proposed Modification

Require TxDOT to specifically consider retaining payments as a performance contract management tool to address issues with construction contractors. TxDOT would be authorized to define specific contract performance criteria triggering payment retainage as part of the rulemaking process required in 3.1.

Representative Flynn Proposed Modification

As a management action TxDOT should develop a process to assist the public in filing damage claims with contractors for vehicle damage experienced in construction work zones. TxDOT would provide an informational page on its website for the public regarding the filing of damage claims with construction contractors. The information should include information about eligibility, documents needed to submit a claim, and expectations for time needed to process a claim. TxDOT should designate a staff person to answer these inquiries and actively assist the public in filing damage claims with construction contractors. (Management action—nonstatutory)

Rec. 3.2 (Page 59)

Require TxDOT to adopt rules implementing the existing statutory requirement to reflect accurate costs of project delays in liquidated damages.

Rec. 3.3 (Page 59)

Require TxDOT to conduct contractor evaluations and consider past performance in determining bid capacity through a process defined in rule.

Management Action

- Rec. 3.4** *(Page 59)* Direct TxDOT to develop clear criteria for applying sanctions.
- Rec. 3.5** *(Page 60)* Direct TxDOT to develop and implement a process for regular, centralized monitoring of construction contract delays.
- Rec. 3.6** *(Page 60)* Direct TxDOT to develop criteria for applying project incentives such as milestone incentives and A+B bidding.
- Rec. 3.7** *(Page 60)* Direct TxDOT to update production rate information for estimating project timelines and establish a schedule for regular revisions.

Professional Engineering Contracts

Management Action

- Rec. 3.8** *(Page 61)* Direct TxDOT to provide guidance for district management of construction engineering inspectors, including how to perform staffing analyses and manage these expanding contracts.
- Rec. 3.9** *(Page 61)* Direct TxDOT to better monitor and enforce the existing requirement that professional service project managers complete engineering contractor evaluations.
- Rec. 3.10** *(Page 61)* Direct TxDOT to improve the availability of comparative information needed for districts to effectively negotiate the scope of work for professional engineering contracts.

Oversight and Support of Newly Decentralized Functions

Management Action

- Rec. 3.11** *(Page 61)* Direct TxDOT to develop additional training and monitoring processes to oversee districts' management of large, complex contracts, such as design-build.
- Rec. 3.12** *(Page 62)* Direct TxDOT to provide comprehensive guidance and monitoring for decentralized procurement of professional engineering services contracts.

Contract Review and Monitoring

Management Action

- Rec. 3.13** (Page 62) Direct TxDOT to develop a risk-based approach to centrally reviewing contracts.
- Rec. 3.14** (Page 63) Direct TxDOT to update its signature authority based on risk, eliminating unnecessary delays while preserving the appropriate level of review.
- Rec. 3.15** (Page 63) Direct TxDOT to develop and monitor performance measures for contract procurement.

Issue 4

TxDOT Has Not Taken Proactive Steps to Improve Contracting Opportunities for Disadvantaged Businesses. (Page 65)

Management Action

- Rec. 4.1** (Page 71) Direct TxDOT to align its business opportunity goal setting with state and federal guidelines to more actively promote higher participation.
- Rec. 4.2** (Page 71) Direct TxDOT to develop a standard process for addressing failure to meet business opportunity program goals.
- Rec. 4.3** (Page 72) Direct TxDOT to actively recruit new businesses for certification and provide training on contracting with TxDOT.
- Rec. 4.4** (Page 72) Direct TxDOT to improve central monitoring and support for its business opportunity programs.
- Rec. 4.5** (Page 72) Direct TxDOT to evaluate the small business enterprise program and develop policies and rules to provide meaningful opportunities for small businesses.
- Rec. 4.6** (Page 73) TxDOT should streamline certification to actively certify SBE-eligible businesses and increase participation of businesses eligible for multiple programs.

Issue 5

TxDOT's Process Improvement Efforts Lack Clear, Measurable Results. (Page 75)

Management Action

Rec. 5.1 (Page 77) Direct TxDOT to centrally coordinate and track results of business process improvement efforts, including the use of private management consultant contracts.

Rec. 5.2 (Page 78) Direct TxDOT to consider implementing a rapid process improvement program similar to the Texas Workforce Commission model.

Issue 6

TxDOT Does Not Effectively Oversee or Support Its 25 Districts. (Page 79)

Management Action

Rec. 6.1 (Page 83) Direct TxDOT to actively and consistently monitor, evaluate, and report district performance.

Rec. 6.2 (Page 84) Direct TxDOT to improve communication with and support of the districts.

Issue 7

The State's Aging Aircraft Fleet Raises Questions About Its Future and Requires More Accountability for Its Use. (Page 87)

Change in Statute

Rec. 7.1 (Page 93) Require TxDOT to provide the Legislature a thorough range of analyses and options for deciding the future of the state aircraft fleet within its long-range fleet plan.

Senator Schwertner Proposed Modification

Add a requirement for TxDOT to analyze how it could include capital costs in TxDOT flight rates charged to customers, including, at a minimum, information about the potential impact on the fleet replacement schedule and customer utilization.

Also, clarify TxDOT's authority to include capital costs in flight services rates charged to customers if TxDOT's analysis shows this is practicable as a fleet replacement strategy. To set aside any potential funds collected to recover costs of replacing the aircraft fleet, this recommendation would also create a subaccount within the State Highway Fund dedicated to this purpose.

Rec. 7.2 (Page 93) Tighten statutory criteria for use of state aircraft to prioritize cost effectiveness and need over convenience.

Rec. 7.3 (Page 94) Clarify statute to specify state agency heads are responsible for ensuring their employees' use of state aircraft meets statutory criteria.

Management Action

Rec. 7.4 (Page 94) Direct TxDOT to track specific statutory justifications for state aircraft use.

Rec. 7.5 (Page 94) Direct TxDOT to adopt a clear internal policy governing the appropriate use of the state aircraft fleet by department staff and regularly monitor usage.

Issue 8

Paper Crash Reports Increase Administrative Costs and Limit the Reliability and Timeliness of Vital Safety Data. (Page 97)

Change in Statute

Rec. 8.1 (Page 100) Require law enforcement agencies to submit crash reports electronically to TxDOT by September 1, 2019.

Rec. 8.2 (Page 100) Eliminate the wasteful administrative requirement to submit drivers' crash report forms to TxDOT.

Issue 9

Texas Has a Continuing Need for the Texas Department of Transportation. (Page 103)

Change in Statute

Rec. 9.1 (Page 107) Continue the Texas Department of Transportation for 12 years.

Issue 10

The Department's Statute Does Not Reflect Standard Elements of Sunset Reviews. (Page 109)

Change in Statute

Rec. 10.1 (Page 112) Update the standard across-the-board requirement related to commission member training.

Rec. 10.2 (Page 112) Discontinue two of TxDOT's reporting requirements and modify four others.

Senator Schwertner Proposed Modification

This modification would add two additional elements to the existing Long-Term Plan for Statewide Passenger Rail:

- Analysis of the short- and long-term impacts of a proposed passenger rail line on state and local road connectivity, including impacts to oversize/overweight vehicles and other commercial traffic
- Analysis of the impacts of a proposed line on statewide transportation planning, including impacts on future state and local road construction and maintenance needs

Management Action

Rec. 10.3 (Page 112) Direct TxDOT to more proactively implement and monitor its efforts to increase workforce diversity.

Proposed New Issues

Vice Chair Taylor Proposed New Issue 1

Direct TxDOT to compile and analyze data by county on tolls paid and publish a biennial report containing this data. TxDOT should submit the report to the governor, lieutenant governor, House and Senate Transportation Committees, and members of the Legislature. TxDOT should also post this report on its website. (Management action—nonstatutory)

Representative Raymond Proposed New Issue 2

Require TxDOT to remove tolls from all on-system highways if the related toll revenue is not

- dedicated to pay debt incurred on that specific highway;
- pledged for system-wide transportation debt;
- developed or operated under a comprehensive development agreement; or
- collected as part of a managed lane approved by a metropolitan planning organization.

This requirement would apply to state highways operated directly by TxDOT or by regional mobility authorities in conjunction with TxDOT.

Representative Flynn Proposed New Issue 3

Require TxDOT to contract with the Texas Parks and Wildlife Department to provide security services along Marine Highway 69.

Sunset Modification

Sunset Commission Member: Senator Schwertner Staff Contact: Joseph Halbert

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 1.3

Title of modification or new issue: Consideration of proactive project funding and delivery by local governments

Describe how modification or new issue is supposed to work: Amend Recommendation 1.3, which requires TxDOT to convene a stakeholder committee to evaluate the current transportation funding categories and allocation formulas and adopt updated rules no later than September 1, 2018.

As part of the rulemaking process, require TxDOT to take local government investments into consideration as a factor for the revised funding formulas, with the goal to ensure local areas investing in their own infrastructure are not penalized by receiving less funding from TxDOT.

Talking points for the modification or new issue you wish to provide:

Sunset Modification Proposal

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 1.8 (Statutory)

Title of modification or new issue: Standard monthly project status newsletter

Describe how modification or new issue is supposed to work:

Require TxDOT to develop a standard newsletter template for each district engineer to use in sending monthly project status updates to local officials. District engineers would be required to send a monthly newsletter following the standard template to interested local officials.

As a related management action, TxDOT should allow local officials to sign up for this newsletter and other correspondence, such as press releases, through its agency website.

Talking points for the modification or new issue you wish to provide:

- No way to really push information uniformly now.
- Will save money and time and be much fairer to Texans and local officials.
- Ensures local elected officials are 'in the know.'

Sunset Modification

Sunset Commission Member: Senator Nichols

Staff Contact: Jonathan Sierra-Ortega

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 1.9

Title of modification or new issue: Request necessary oversight from the standing House and Senate transportation committees in lieu of creating a separate joint oversight committee on transportation planning and performance as proposed by Recommendation 1.9.

Describe how modification or new issue is supposed to work:

Replace recommendation 1.9 with a request to the House Committee on Transportation and the Senate Committee on Transportation to provide necessary oversight of the state's significant transportation investment and TxDOT's progress toward performance-based planning. The Sunset Commission would request the committees monitor TxDOT's

- overall planning, programming, and funding of the state's transportation system, particularly its response to increased funding availability;
- integration and reporting of long-range goals in the statewide transportation plan as related to annual funding allocation and project selection decisions;
- use of performance-based measures to allocate funds and select projects, including review of rules relating to funding categories and allocation formulas;
- internal department processes for planning, delivering, and evaluating projects according to performance criteria;
- collaboration with planning organizations and other transportation stakeholders;
- transparency and public information regarding the planning and project delivery process overall, including information regarding long-term transportation plans and goals, programming documents, and the online project tracker system;
- quality and availability of data and analysis tools to evaluate transportation system and TxDOT performance toward achieving established performance goals; and
- any other transportation planning matter the committees considers appropriate.

Each committee should adopt a meeting schedule in consultation with TxDOT twice per year at similar or approximate times (fall/spring) for at least four years, to monitor the annual adoption and subsequent update process for the Unified Transportation Program. As a related management action, TxDOT should support the committees as requested, including, at a minimum, providing all needed data and information relating the committee's oversight activities. TxDOT should also provide a detailed report with a status update and information on each of the items listed above, and any other information requested by the committee prior to each meeting.

Talking points for the modification or new issue you wish to provide: Modification simply makes the House Committee on Transportation and the Senate Committee on Transportation as the oversight committees instead of creating a separate joint oversight committee.

Sunset Modification

Sunset Commission Member: Representative Raymond

Staff Contact: N/A

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 1.9

Title of modification or new issue:

In lieu of creating a separate joint oversight committee as proposed by Recommendation 1.9, request the standing House and Senate Transportation Committees to oversee TxDOT's implementation of the adopted Sunset recommendations.

Describe how modification or new issue is supposed to work:

Replace recommendation 1.9 with a request to the House Committee on Transportation and the Senate Committee on Transportation to provide necessary oversight of TxDOT's progress toward implementing both statutory changes and management actions resulting from the 2017 Sunset review. Each committee should adopt a meeting schedule in consultation with TxDOT, and meet at least twice per year. As a related management action, TxDOT should support the committees as requested, including, at a minimum, providing all needed data and information relating to the committees' oversight activities. TxDOT should also provide a detailed report with a status update and information on Sunset implementation, and any other information requested by the committees prior to each meeting.

Talking points for the modification or new issue you wish to provide:

Sunset Modification

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 3.1 (Statutory)

Title of modification or new issue: Payment retainage as a construction contract management tool

Describe how modification or new issue is supposed to work: Add an additional element to Recommendation 3.1 which requires TxDOT to include a range of contract remedies in its traditional low-bid highway contracts. As part of the recommendation, require TxDOT to specifically consider retaining payments as a performance contract management tool to address issues with construction contractors. TxDOT would be authorized to define specific contract performance criteria triggering payment retainage as part of the rulemaking process required in 3.1.

Talking points for the modification or new issue you wish to provide:

- TxDOT need the authority to hold contractors accountable to Texas and to the citizens individually.
- Helps TxDOT with leverage with contractors to 'do the right thing.'
- Protects the ordinary citizen and gives TxDOT the power to act on their behalf.

Sunset Modification

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 3.1 (Management Action)

Title of modification or new issue: Assisting the public in filing claims for work zone vehicle damage

Describe how modification or new issue is supposed to work: In addition to the additional contract remedies specified in Recommendation 3.1, as a management action TxDOT should develop a process to assist the public in filing damage claims with contractors for vehicle damage experienced in construction work zones. As part of this recommendation, TxDOT would provide an informational page on its website for the public regarding the filing of damage claims with construction contractors. The information should include information about eligibility, documents needed to submit a claim, and expectations for time needed to process a claim. TxDOT should designate a staff person to answer these inquiries and actively assist the public in filing damage claims with construction contractors.

Talking points for the modification or new issue you wish to provide:

- Provides customer service to the ordinary Texan.
- Protects ordinary citizens from lawyers and insurance agencies.
- Provides an avenue to 'do the right thing' and encourage contractors to do the same.

Sunset Modification Proposal

Sunset Commission Member: Senator Schwertner **Staff Contact:** Joseph Halbert

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 7.1 (statutory)

Title of modification or new issue: Aircraft capital replacement cost recovery and impact analysis

Describe how modification or new issue is supposed to work: Modify Recommendation 7.1 and clarify related statutory authority, as follows:

- **Capital Cost Recovery Impact Analysis:** Expand the long-range state aircraft fleet plan required in Recommendation 7.1 by adding a requirement for TxDOT to analyze how it could include capital costs in TxDOT flight rates charged to customers, including, at a minimum, information about the potential impact on the fleet replacement schedule and customer utilization.
- **Capital Cost Recovery Authority:** As a related statutory change, clarify TxDOT's authority to include capital costs in flight services rates charged to customers if TxDOT's analysis shows this is practicable as a fleet replacement strategy. To set aside any potential funds collected to recover costs of replacing the aircraft fleet, this recommendation would also create a subaccount within the State Highway Fund dedicated to this purpose.

Talking points for the modification or new issue you wish to provide:

Sunset Modification Proposal

Sunset Commission Member: Senator Schwertner

Staff Contact: Joseph Halbert

Name of Agency: Texas Department of Transportation

Indicate one of the following: Modification to Recommendation 10.2 (statutory)

Title of modification or new issue: New elements for TxDOT's existing Long-Term Plan for Statewide Passenger Rail.

Describe how modification or new issue is supposed to work: Current law specifies a list of required information and analysis TxDOT must include in its existing Long-Term Plan for Statewide Passenger Rail. This modification would add two additional elements to those already listed in statute:

- Analysis of the short- and long-term impacts of a proposed passenger rail line on state and local road connectivity, including impacts to oversized/overweight vehicles and other commercial traffic; and
- Analysis of the impacts of a proposed line on statewide transportation planning, including impacts on future state and local road construction and maintenance needs.

Talking points for the modification or new issue you wish to provide:

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Van Taylor **Staff Contact:** Ryan Paylor

Name of Agency: Texas Department of Transportation

Indicate one of the following: New Issue

Title of modification or new issue: Require that TxDOT publish a report indicating which counties pay the most in tolls.

Describe how modification or new issue is supposed to work:

The new modification is a management recommendation that directs the Texas Department of Transportation to compile and analyze data on tolls paid by county and publish a biennial report indicating which counties pay the most in tolls. The report must be submitted to the Governor, Lieutenant Governor, House and Senate Transportation Committees, members of the legislature and posted on the department's website.

Talking points for the modification or new issue you wish to provide:

The Texas Department of Transportation does not know how much each county is paying in tolls.

As the state plans for future transportation projects it is important to consider what counties are contributing to transportation infrastructure in excess of what is funded through traditional means.

The new management recommendation simply directs the Texas Department of Transportation to compile and analyze data on tolls paid by each county and issue a biennial report indicating what each county pays.

The report will be submitted to the Governor, Lieutenant Governor, House and Senate Transportation Committees, members of the legislature and posted on the department's website.

Sunset New Issue Proposal

Sunset Commission Member: Representative Raymond

Staff Contact: N/A

Name of Agency: Texas Department of Transportation

Indicate one of the following: New Issue (statutory)

Title of modification or new issue:

Require TxDOT to remove tolls from all state highways under certain conditions.

Describe how modification or new issue is supposed to work:

TxDOT would be required to remove tolls from all on-system highways if the related toll revenue is not:

- dedicated to pay debt incurred on that specific highway;
- pledged for system-wide transportation debt;
- developed or operated under a comprehensive development agreement; or
- collected as part of a managed lane approved by a metropolitan planning organization.

This requirement would apply to state highways operated directly by TxDOT or by regional mobility authorities in conjunction with TxDOT.

Talking points for the modification or new issue you wish to provide:

Sunset New Issue Proposal

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: TxDOT

Indicate one of the following: New Issue (statutory)

Indicate one of the following: New Issue

Title of modification or new issue:

Marine Highway Safety

Describe how modification or new issue is supposed to work:

Marine Highways such as Marine Highway 69 in Houston (Houston Ship Channel) need to be patrolled and monitored for safety and security. In Texas the force to do this is the Game Warden of TPWD. TxDOT should contract with the TPWD for services provided as part of its contracting.

Talking points for the modification or new issue you wish to provide:

- TxDOT has responsibility including security and they need to exercise it with a contract for services with TPWD.
- Will provide a greater level of safety and security for Houston and other cities.
- TPWD/Game Wardens are the only State force certified to do shipboard inspections of large vessels by the US Coast Guard.