

# TEXAS ETHICS COMMISSION

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December 2, 2024

Eric Beverly  
Executive Director  
Texas Sunset Advisory Commission  
PO Box 13066  
Austin, TX 78711

Re: TEC Response to Sunset Staff Report

Dear Mr. Beverly,

It is my honor to represent the Texas Ethics Commission's staff and governing board in expressing our appreciation for the thorough and thoughtful work of the Sunset Advisory Commission's staff. Your team was diligent, professional, and fair. The work it produced demonstrates a deep understanding of the TEC's operations, impediments, and opportunities.

The TEC is proud of the results of the Staff Report. Many of the recommendations are consistent with the work the TEC has been prioritizing over the past few years. Other recommendations bring forward new ideas that will help the TEC accomplish its mission more successfully and efficiently. The TEC looks forward to implementing Sunset's management actions and supports the adoption of its recommendations for statutory change.

The TEC has attached its comments to each recommendation, and it appreciates the Legislature's attention and support in producing a better, stronger, and more effective Texas Ethics Commission.

Thank you,

A handwritten signature in black ink, appearing to be "J.R. Johnson".

J.R. Johnson  
Executive Director

***Issue 1: Cumbersome Laws and Informal Management Practices Result in a Disclosure System that Limits TEC's Efficiency and Burdens the Regulated Community.***

The TEC agrees with Sunset's recommendations for statutory change. Should the Legislature decide to engage in a more comprehensive overhaul of the laws under the TEC's jurisdiction, the TEC is ready to help identify additional issues and potential solutions to promote clarity, consistency, and simplicity.

The TEC also agrees with Sunset's recommendations for changes in appropriations and management actions. The area of law administered and enforced by the TEC is complex, often resulting in unintentional violations by well-intentioned participants in the political process. That is why the TEC offers an on-demand legal helpline, legal resources on its website, and an electronic filing system that helps filers identify and solve errors before they submit a report. But the TEC agrees with Sunset's recommendation to make even better use of its technology. Over the past two years, the TEC has invested heavily in automating many of its back-end processes, resulting in a more efficient and scalable agency. But more can also be done to improve the TEC's public-facing systems. The TEC will develop a comprehensive plan for IT projects and improvements in accordance with Sunset's recommendation.

***Issue 1.1: The House Appropriations and Senate Finance committees should consider providing TEC additional guidance regarding the use of unexpended funds for IT improvements.***

The TEC agrees with this recommendation. The authority to use anticipated lapses for IT improvements would expedite the delivery of a better filing system. The TEC's funding for outside counsel has been instrumental in successfully defending the constitutionality and enforceability of state law, but the uncertainties of litigation have often led to lapses. Express authority to repurpose these and other anticipated lapses for IT improvements would expedite the TEC's ability to deliver a better filing system.

***Issue 1.2: Require TEC to adjust reporting and registration thresholds every 10 years instead of annually.***

The TEC agrees with this recommendation. Decennial adjustments would reduce the burden on the TEC and filers and provide clearer, easier-to-remember requirements.

***Issue 1.3: Align monthly reporting periods and deadlines.***

The TEC agrees with this recommendation. Aligned monthly reporting deadlines would reduce the burden on filers and the TEC.

***Issue 1.4: Align the itemization thresholds for electronic and non-electronic contributions.***

Sunset's recommendation would result in less disclosure of small contributions, but would also reduce the burden on filers and result in a consistent rule. This recommendation would neither decrease nor increase the burden on the TEC.

*Issue 1.5: Eliminate double counting of political expenditures made using credit cards.*

The TEC agrees with this recommendation. Removing the requirement for filers to report repayments made to credit card issuers would reduce the burden on filers, give the public a clearer picture of the true amount of expenditures made by campaigns, and result in a minimal reduction in disclosure. However, as noted in the report, it is not the only instance where double reporting is required by law.

*Issue 1.6: Remove prescriptive mailing requirements from statute.*

The TEC agrees with this recommendation. Eliminating mailing requirements would save the state money and help filers receive notices more quickly.

*Issue 1.7: Remove the electronic filing exemption for campaign finance reports.*

The TEC agrees with this recommendation. Removing the electronic filing exemption for campaign finance reports would improve disclosure and reduce the TEC's burden.

*Issue 1.8: Direct TEC to develop a comprehensive plan for short- and long-term improvements to the agency's IT resources.*

The TEC agrees with this recommendation. The TEC has made considerable progress on improving its filing system over the past two years, but the focus has been on producing a more scalable and automated system, resulting in a more efficient agency that is capable of handling Texas's continued growth. Some of those back-end improvements will also improve the filer's experience, including the ability to electronically request—and immediately receive—a waiver of a late-filing penalty pursuant to the TEC's rules (*e.g.*, for a first-time offense). But the TEC agrees that more can also be done to improve the agency's public-facing systems. The TEC is developing a comprehensive plan in accordance with Sunset staff's recommendations and will present it to the public during a meeting of the TEC in 2025.

*Issue 1.9: Direct TEC to improve its EFS contract monitoring practices.*

The TEC agrees with this recommendation. The TEC is establishing a formal, consistent process to outline expectations for contract monitoring, will complete more detailed evaluations of its filing system vendor, and will continue to meet statutory requirements to submit vendor performance reports to the comptroller.

*Issue 1.10: Direct TEC to ensure key contract management staff receive appropriate training.*

The TEC agrees with this recommendation. All TEC staff members involved in monitoring significant contracts will receive contracting training. The training will include best practices for contract monitoring, vendor performance review, and collecting and sharing performance data with agency leadership.

*Issue 1.11: Direct TEC to offer trainings to help filers navigate their disclosure requirements.*

The TEC agrees with this recommendation. The TEC understands the most cost-effective way to deliver on its mission is to minimize the number of unintentional violations. That

is why it offers on-demand legal assistance directly to its regulated community through a helpline that answers approximately 6,000 requests each year. The TEC also offers a number of legal resources on its website, including plain-language legal guides, training videos, and recorded seminars. The TEC believes the most effective way to reach a large and geographically-diverse audience is to make more resources available online, which is why it requested—and received—legislative appropriations to improve the user interface of its website and searchability of its data. The TEC also plans on conducting interactive training webinars, and it will also provide more in-person trainings if directed to by the Legislature.

*Issue 1.12: Direct TEC to coordinate helpline guidance among its divisions.*

The TEC agrees with this recommendation. The TEC currently coordinates helpline guidance among its divisions by holding a weekly inter-divisional meeting where legal and technical staff discuss any recent significant operational questions, including any difficult or novel inquiries from filers or the public. However, the TEC can improve upon existing practice by implementing a more formal system for tracking and documenting common caller issues.

***Issue 2: TEC’s Regulatory Tools and Practices Hinder Its Compliance Efforts and Prevent the Agency from Prioritizing Serious Violations of State Ethics Laws.***

The TEC agrees with Sunset’s statutory and management recommendations to better prioritize serious violations of state ethics laws.

*Issue 2.1: Require TEC to categorize violations of law within its jurisdiction according to seriousness.*

The TEC agrees with this recommendation and the criteria identified by Sunset. Categorizing violations of law within the TEC’s jurisdiction according to seriousness would help the public better understand the nature of violations and would help the TEC prioritize its regulatory processes.

*Issue 2.2: Restructure TEC’s audit function to better differentiate between facial compliance reviews and complete audits.*

The TEC agrees with this recommendation. The proposed statutory changes would improve the efficiency and effectiveness of the TEC’s audit function. The TEC has already begun to automate aspects of the facial compliance review using its electronic filing system, and it will continue to expand the filing system’s capabilities to automate even more.

*Issue 2.3: Require TEC to prioritize complaint investigations based on risk to full and accurate disclosure.*

The TEC agrees with this recommendation. Written policies that formally guide the prioritization of complaint investigations based on risk of harm would ensure a more efficient allocation of resources towards investigating alleged violations that pose a greater danger.

*Issue 2.4: Authorize the agency to increase penalties for filers who repeatedly file reports late.*

The TEC agrees with this recommendation. Escalating penalties are a greater deterrent to violating the law and promote confidence that repeat violators will face consequences.

*Issue 2.5: Require the TEC to develop a penalty matrix.*

The TEC agrees with this recommendation. The development of a penalty matrix would promote transparency and consistency.

*Issue 2.6: Require filers to provide supporting records and documentation upon request by TEC.*

The TEC agrees with this recommendation. Requiring campaign finance and lobby filers to produce the documents they are legally required to maintain would expedite the resolution of complaints and audits.

*Issue 2.7: Direct TEC to collect and use data to improve its compliance efforts.*

The TEC agrees with this recommendation. The TEC will develop a more robust strategy of tracking filing data and analyzing those data to inform the agency's educational and enforcement strategies.

***Issue 3: TEC's Sworn Complaint Process Fails to Promote Efficiency and Weakens the Commission's Role in Enforcing Disclosure Laws.***

As Sunset notes, the TEC efficiently handles the overwhelming majority of sworn complaints. And after an extensive review of pending and completed case files, Sunset found no evidence that the TEC abused its discovery process and no evidence of impropriety in its enforcement hearings. Cases take more time when respondents are nonresponsive or refuse to comply with requests for relevant documents or information. When that happens, the TEC must go to court to enforce subpoenas, which is a lengthy and expensive process for both respondents and the state.

*Issue 3.1: Restructure the preliminary review hearing to involve only a subset of commission members.*

While the TEC agrees with this recommendation, it disagrees that preliminary review hearings and formal hearings are duplicative. Preliminary review hearings offer respondents an early opportunity to seek dismissal. The commission does not determine whether a violation occurred until the formal hearing.

*Issue 3.2: Clearly authorize TEC to send formal hearings to SOAH.*

The TEC agrees with this recommendation but believes Sunset staff underestimates the fiscal impact of SOAH for both the state and respondents. The TEC's process is designed to resolve matters fairly and efficiently, and it accomplishes that goal so long as respondents do not cause unnecessary delay. Unless the TEC's *de novo* standard of review is revisited, the costs of sending formal hearings to SOAH are duplicative and wasteful.

*Issue 3.3: Require judicial review of commission decisions to be based on the substantial evidence rule.*

The TEC agrees with this recommendation. The *de novo* standard of review undermines the TEC's process, its work, its decisions, and its independence.

*Issue 3.4: Require TEC to implement discovery control plans.*

The TEC agrees with this recommendation. The TEC will develop and adopt rules regarding discovery control plans for sworn complaint investigations.

***Issue 4: TEC's Statute and Processes Do Not Reflect Some Standard Elements of Sunset Reviews.***

The TEC agrees that not enough has been done in the past to review and improve the TEC's administrative rules, which is why the TEC began a comprehensive rule review nearly two years ago. Since then, the TEC has completely overhauled the rules governing both late-filing penalties and sworn complaints, and it has also clarified several reporting and disclosure requirements for personal financial statements and political advertising. The TEC agrees with Sunset staff's other recommendations.

*Issue 4.1: Amend TEC's Sunset review date to 2037.*

The TEC agrees with this recommendation. The relationship between the Legislature and the TEC is complex and unique, but the TEC agrees that the public benefits from continued legislative oversight of the TEC.

*Issue 4.2: Update the standard across-the-board requirement related to commission member training.*

The TEC agrees with this recommendation. The TEC has updated its training manual for new commission members to include information about the commission's rulemaking authority.

*Issue 4.3: Direct the TEC to adopt a rule review plan.*

The TEC agrees with this recommendation. While the TEC has recently begun to comply with the statutory requirement to review its administrative rules every four years, more can be done to document the TEC's plan. That is why the TEC has released its comprehensive rule review plan to the public in advance of its December 3, 2024 meeting of commissioners.