

9

THE PLURAL EXECUTIVE AND THE BUREAUCRACY





LEARNING OBJECTIVES

In the 2006 gubernatorial elections, two longtime political rivals squared off against each other: Texas Comptroller Carole Keeton Strayhorn challenged sitting Governor Rick Perry. The race was a culmination of a bitter five-year duel over state authority. The apparent motive was a backroom dispute over funding for Strayhorn's pet project to provide a free community college education to high school graduates and Perry's decision to sign legislation that stripped the Comptroller's office of two popular programs.¹ The Texas comptroller audited the governor's office no less than seven times between 2002 and 2004. Perry responded by asking the State Auditor's Office to audit the Comptroller's Office to ensure state tax settlements were properly handled. "The mean-spirited vendetta continues today," Strayhorn said as she responded with more audits of the executive branch.² Perry beat Strayhorn and other candidates in the 2006 election, but he garnered less than 50 percent of the popular vote—a blow to the electoral punch governors need to push their agendas through the legislature.

Infighting weakens an already weak executive branch, but it is an inevitable result of the **plural executive**. The Texas Constitution fragments political power and policy management on purpose, so no single individual, group, or agency has the power to control government. The people elect the most powerful officers of the executive branch, including the lieutenant governor, the attorney general, the comptroller of public accounts, the land commissioner, and positions in dozens of boards and commissions that shape the policy direction of the state. The governor does not appoint many of them and has no direct authority over them.

9.1

Describe the roles, functions, and structure of the bureaucracy in Texas.

9.2

Explain the roles of the elected members of the executive branch.

9.3

Identify the functions of important governor-appointed, single-head agencies.

9.4

Describe the purposes important multimember agencies serve.

9.5

Differentiate between multimember elected commissions and hybrid agencies.

9.6

Assess how the plural executive influences policy and the methods of holding the bureaucracy in check.

plural executive: the diffusion of authority and power throughout several entities in the executive branch and the bureaucracy

● Former Lieutenant David Dewhurst shows off his roping skills. Like effective rodeo tie-down roping, navigating the Texas bureaucracy is a delicate art.



This structure creates an opportunity for friction within the executive branch itself because of the potential for internal disagreement and multiple executives running the show. Designed to prevent any one individual in the executive branch from acquiring too much power, the plural executive system can not only lead to slow, inefficient government but also to outright wastefulness, as officials use their power to engage in infighting. How serious a problem is this? Is there a solution?

To answer these questions, we must learn more about the executive branch, the plural executive, and the bureaucracy—the thousands of unelected individuals (bureaucrats) whom they oversee and who establish and enforce rules. In the sections that follow, we identify what a bureaucracy is, what it does, and how it is held accountable. The roles of the plural executive and bureaucracy have changed as the state has grown, and we chart the political implications of this expansion.



BUREAUCRACY IN TEXAS

9.1

Describe the roles, functions, and structure of the bureaucracy in Texas.

The largest but often most obscure level of the executive branch in Texas is the agencies and individuals who make and enforce the rules that govern us all. Yet this is the branch of government that directly touches everyone's life, whether they know it or not. Take student financial aid: more than 850,000 Texas college and university students are on financial aid, and they received more than \$9 billion in 2014 alone.³ The Texas Higher Education Coordinating Board, part of the Texas bureaucracy, sets rules for financial aid; and the Texas Education Agency, also part of the bureaucracy, collaborates with other agencies to use financial aid to increase enrollments, help students succeed, and achieve equality of opportunity. Even when you graduate, the Texas bureaucracy continues to touch your life. Did you graduate from a hairstyling school? Texas regulates health and safety standards for barber shops and establishes who can be certified to cut or shampoo hair, or own a salon.

bureaucracy: a government organization that implements laws and provides services to individuals

The state agencies that administer financial assistance to college students and regulate standards of the state's hair, nail, and beauty salons are all part of the **bureaucracy**. Bureaucracies set up a hierarchical chain of command: employees at each level report to a single boss. The legislature or governor assigns each agency its own specialized mission, such as dispensing financial aid or regulating cosmetology standards. As a result, bureaucrats in these agencies have knowledge of or experience in a single issue or topic needed to carry out their mission.

THE SIZE OF THE TEXAS BUREAUCRACY

Bureaucracies need staff to operate. Because of the size of the land mass, the number of businesses, the number of people, and the enormity of the economy, the executive bureaucracy in Texas is necessarily huge. However, when compared to other states, Texas has fewer bureaucrats per person—approximately 1 bureaucrat for every 3,500 Texas residents (see Figure 9.1). Still, over 7,800 people work for the Texas executive agencies, boards, and commissions that conduct most of the work in state government.⁴

Although it is comparatively smaller per person than most other states, why is the Texas bureaucracy as large as it is? The bureaucracy in the Lone Star State has expanded greatly since the early days of statehood. A growing population means more taxpayers, more driver's licenses, and more public school students. The bureaucracy administers to a growing population and must keep up with it. Likewise, Texas's economy has grown more diverse and larger—there are more agricultural products, more types of energy production, more technology firms, and hundreds more industries. The bureaucracy keeps track of these industries and oversees compliance with rules and regulations. So, although Texans generally dislike big government, the size of the bureaucracy reflects the services required by a diverse, modern economy.

WHAT THE TEXAS BUREAUCRACY DOES

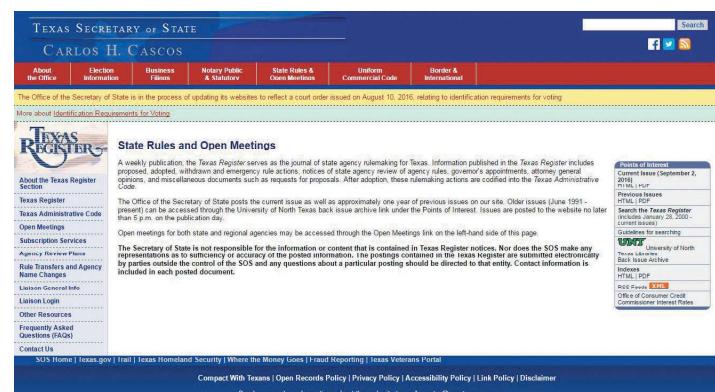
The bureaucracy often gets a bad rap. Politicians engage in “bureaucracy bashing” as a foil for their inability to make government work to their liking. Reporters often highlight the worst abuses, such as the denial of workers’ compensation claims, to hold the government responsible, but these events may be isolated incidents. Texans complain about “red tape,” hassles of simple procedures such as renewing a driver’s license or obtaining vehicle inspections. In reality, the bureaucracy in Texas, while imperfect, performs a wide variety of vital tasks.

Policy Implementation. Bureaucrats engage in **implementation** when they carry out laws and decisions made by the legislative, executive, or judicial branch. For instance, a 2001 Texas law required students in public elementary schools to participate in “physical activity” in a coordinated school health program but did not set a specific duration for the activity. The Texas Education Agency interpreted the new law to mean that each elementary student should exercise 30 minutes per day.

Rule-making. The legislature or the governor may establish a broad policy with broad goals, but bureaucrats create **rules** to make

implementation: the execution by the bureaucracy of laws and decisions made by the legislative, executive, or judicial branch

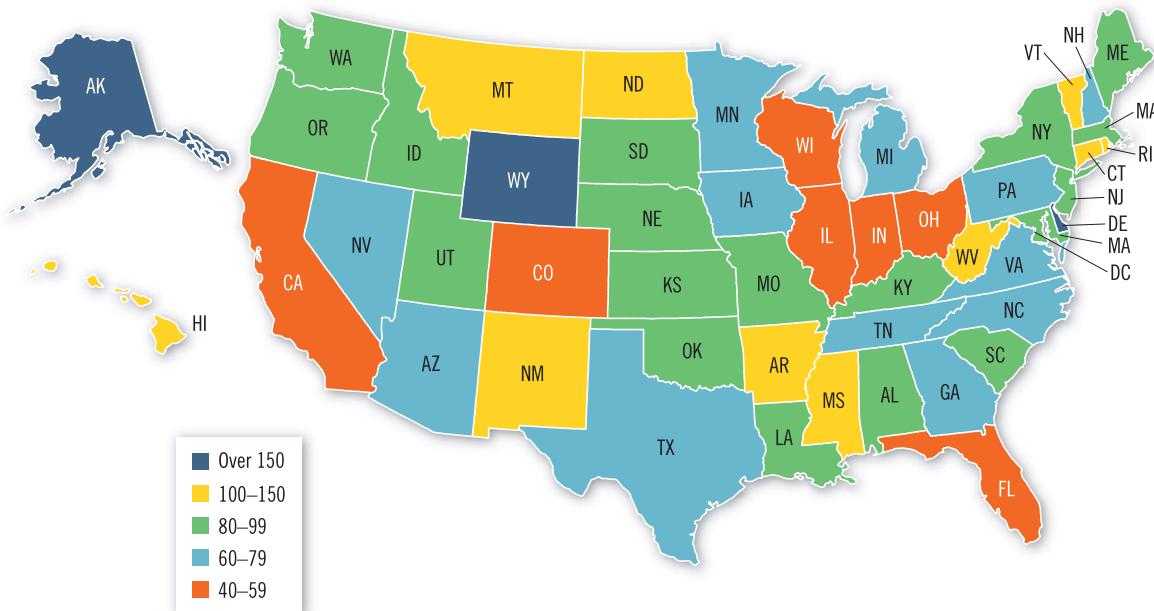
rules: regulations designed to control government or the conduct of people and industries



Where Can I Find All These Rules? The Texas Register, the journal of state agency rulemaking in Texas, keeps a record of rules proposed, adopted, and withdrawn. It can be accessed online.

IS IT BIGGER IN TEXAS?

FIGURE 9.1 State Employees Per 10,000 Residents, 2015



Source: US Census Bureau. Total includes non-education (primary, secondary, or higher) employees per 10,000 in 2012 estimated population.



COMMUNICATION:

Which states have larger bureaucracies?

- Smaller states such as Alaska, Delaware, and Wyoming have more employees per 10,000 residents. Texas falls toward the bottom of the list.
- States with smaller populations tend to have a modest staff size.



CRITICAL THINKING:

Why do some states have more employees per 10,000 residents than others?

- Even for small states, a certain minimum number of employees is necessary to run the government.
- States in fiscal trouble tend to reduce the number of employees. Fiscal troubles in Illinois and Wisconsin caused employee reductions between 2014 and 2015.
- Conservative states, which prefer small government, like Texas, attempt to keep the number of bureaucrats low. The same is true of other large southern states such as Florida, Georgia, and Tennessee.

sure that specific targets are met. For example, the Texas Racing Commission (TRC) created its own rules when it tried to expand “historic racing” in Texas. “Historic racing” used video of past races with the dates and names removed and allowed individuals to gamble on the results. The TRC established rules that equated this racing with live horse racing, allowing the racing industry to make money from the practice. The ruling did not sit well with socially conservative Texans who oppose gambling. The legislature, led by prominent social conservatives Lieutenant Governor Dan Patrick and Senator Jane Nelson, objected that only the legislature could decide what was technically gambling. Under pressure from the legislature that included threatening to kill the agency’s budget, the TRC voted to repeal the rule.

Regulation. Bureaucrats regulate industry, business, individuals, and other parts of government. **Regulations** are often used to protect people, such as environmental regulations, which the Texas Commission on Environmental Quality (TCEQ) uses to minimize air pollution. They also extend to projects that enrich communities, such as the guidelines for preservation of statewide historic sites issued by the Texas Historical Commission.

Licensing. **Licensing** gives a company, an individual, or an organization permission to carry out a specific task. For instance, if you wanted to sell gasoline, market a Texas-made item, sell plants, or cut flowers in the state of Texas, you’ll need a license from the Texas Department of Agriculture. If you want to become a teacher in one of the more than 8,000 public schools in the state, the Texas Education Agency sets out a criterion to become a certified educator. Opponents of big government argue that licensing leads to overregulation. In 2015, Governor Abbott signed legislation to lift regulations requiring a license to braid hair.

Enforcement. The power of **enforcement** of rules falls to bureaucratic entities in the state. If rules are broken, the bureaucratic agents can investigate, issue warnings, levy fines, or even refer criminal activity to the court system. In 2015, the Texas legislature passed a law that allowed properly licensed individuals to openly carry firearms in public. Religious institutions, courthouses, schools, and other institutions were allowed to ban openly displayed weapons with proper public notice. The Dallas and Houston Zoos, citing the large number of visitors that are families with small children, banned guns in their parks. Gun rights advocates objected, but the attorney general ruled in favor of the zoos, enforcing the ban.



The Texas bureaucracy regulates and licenses animal breeders. Here 500 dogs and cats are rescued from a puppy mill in Kaufman County.

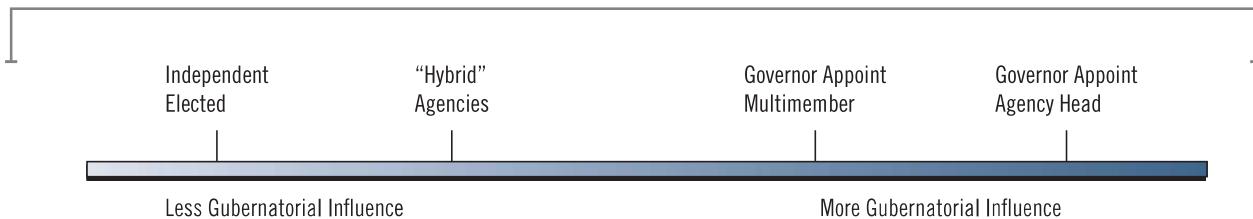
 **PERSONAL RESPONSIBILITY:** Should citizens only engage in business with licensed and regulated businesses? In what circumstances might you feel it acceptable to work with an unlicensed business or vendor? Why might you do so?

regulations: standards that are established for the function and management of industry, business, individuals, and other parts of government

licensing: the authorization process that gives a company, an individual, or an organization permission to carry out a specific task

enforcement: the carrying out of rules by an agency or commission within the bureaucracy

FIGURE 9.2 Scale of Governor Influence



Source: Texas Governor Website.

COMMUNICATION:

How much power over agencies does the governor have?

- When the governor appoints an agency head, with senate approval, the governor's influence is stronger.
- When the agency or board is headed by an individual or individuals elected outside of the governor's control, the governor's influence lessens.

CRITICAL THINKING:

Why?

- The more the appointee owes his or her office to the governor's appointment, the more likely they are to be beholden to the governor.
- Governors often appoint ideological allies or close friends to positions to maintain control over agency decisions.
- If a plural executive official is selected by other government officials or voters, the governor will have less sway in who is picked and therefore less control over that agency.

THE STRUCTURE OF THE TEXAS BUREAUCRACY

There are four broad types of bureaucracies in Texas. All of these entities perform similar types of functions, but each is unique in how the key personnel are selected. These organizations provide the governor and the other players in the state's plural executive a way to control (or not control) the actions of these bureaucratic organizations. These types of agencies include the following:

- Agencies headed by officials appointed by the governor
- Agencies headed by officials independently elected by the people, outside of the governor's control
- Boards and commissions headed by a multimember, governor-appointed board or commission
- Hybrid agencies where there is a mix of elected and appointed boards and commissions headed by a multimember appointed board or commission

The plural executive limits the influence the governor has over the bureaucracy (see Figure 9.2). The governor appoints some employees within the bureaucracy, particularly upper-level management, but most of them are hired by management and perform administrative roles. Do governors influence agency action? Undoubtedly, some governors require strict loyalty as repayment for appointment. Other governors are more hands off, like Governor Price Daniel (1957–1963), who, after watching the swearing in of the members of the State Board of Insurance, told the members “you’re on your own.”⁵

The governor has the least influence over independently elected officers, and so we turn our discussion to these rivals for political power.



TEXAS TAKEAWAYS

- 1 What functions do bureaucracies perform?
- 2 Why has the Texas bureaucracy grown?
- 3 What kinds of offices are more influenced by governors?

INDEPENDENTLY ELECTED OFFICERS

Every four years the citizens of Texas elect a range of important executive branch officials. The most powerful of these officers is the lieutenant governor, whose influence rivals the governor’s. But neither the comptroller, attorney general, nor the commissioners of agriculture and the General Land Office is beholden to the governor for their position, so they have a sizeable degree of autonomy and an ability to stir up trouble—like an armadillo in a garden, if they so desire.

9.2

Explain the roles of the elected members of the executive branch.

LIEUTENANT GOVERNOR

Unlike lieutenant governors in other states, and unlike the US vice president, the Texas lieutenant governor plays a formidable role within both the executive and legislative branches. The lieutenant governor’s duties are primarily managerial, but this responsibility makes him the most powerful force in state government on paper. When Governor Bush, a Republican, asked one of his consultants why he had a “Bob Bullock for lieutenant governor” bumper sticker on his car instead of a “Bush for governor” sticker, the consultant noted, “you don’t understand Governor, everyone in Texas works for Bullock.”

TABLE 9.1 Lieutenant Governors, Major Achievements/Controversies

LIEUTENANT GOVERNOR (PARTY)	CONTROVERSY
Ben Barnes (1969–1973)	Tainted by Sharpstown stock fraud scandal, eventually leading to him losing bid for reelection.
William “Bill” Hobby, Jr. (1973–1991)	Ordered the arrest of a dozen senators who were purposely not attending floor debates to block the passage of legislation.
Bob Bullock (1991–1999)	Hands-on management style and abusive behavior rubbed many the wrong way.
Bill Ratliff (2000–2003)	Broke from his party in joining Democratic state senators opposing redistricting proposals. Refused to bring the matter to the Senate floor.
David Dewhurst (2003–2015)	Embarrassing phone call made to Allen, Texas police, regarding jailed relative who was incarcerated during 2012 election.
Dan Patrick (2015–present)	Tweeted “a man reaps what he sows” hours after 50 people were killed at an LGBT night club in Miami. Patrick responded that the tweet was prescheduled and was removed.

Source: Information is from the *Texas Almanac*. Beginning in 1974, the electoral term changed from two to four years



PERSONAL RESPONSIBILITY:

Do Texas voters have the right to expect their elected officials to act in accordance with their moral values?

presiding officer: a role of the lieutenant governor who is in charge of the administrative and procedural duties of the Texas Senate

Since the end of the Second World War, the lieutenant governor has had a significant say in the administration of the state and lawmaking in Texas (see Table 9.1). The lieutenant governor serves as the **presiding officer** of the Texas Senate, meaning that he or she is in charge of the administrative and procedural duties of the chamber.

The lieutenant governor must be at least thirty years old, a US citizen, and a Texas resident for more than five years prior to the election. Because it is such an insider’s position, candidates for lieutenant governor tend to be politically connected and experienced. One exception was William Hobby, Sr., who was elected in 1915. On being asked to run, a surprised Hobby—who had no political experience—replied, “Why, I can’t tie a string cravat. I don’t even own a swallow-tailed coat. And my hair just won’t seem to grow down the back of my neck!”⁶ Hobby would go on to be elected governor, his son would go on to serve as lieutenant governor, and his grandson would serve as a member of the Texas Ethics Commission.

Lieutenant governors serve for four-year terms with no term limits and tend to stay longer in office by comparison to other elected officers. Since 1894, most lieutenant governors have served more than one term. Ben Ramsey holds the record at six consecutive terms.

A closer look at the duties of the lieutenant governor shows how the lieutenant governor has a foot in both the legislative and executive camps. The lieutenant governor has a role in both making and executing the laws. This combination is why the position is so powerful.

ANGLES OF POWER

The Power of the Lieutenant Governor Beyond Politics

The influence of the lieutenant governor can extend beyond legislative politics—even to the gridiron. In 1995, athletic conferences were negotiating directly with universities over television rights and revenue sharing. The Big 8 Conference was looking to expand to ten teams, and the University of Texas and Texas A&M University were being courted. This move would leave the Southwest Conference, once a powerhouse football conference, without two major schools; and TCU, Houston, Rice, SMU, Texas Tech, and Baylor would find themselves in a much weakened conference.

Lieutenant governor Bob Bullock, a graduate of both Texas Tech and Baylor, wanted his teams to join the expanding conference. Bullock summoned the presidents of UT and A&M and, glaring at the

two, said, “You’re taking Tech and Baylor, or you’re not taking anything. I’ll cut your money off, and you can join privately if you want, but you won’t get another nickel of state money.” Calling his bluff, the presidents attempted to negotiate. “If you want to try me, go ahead.” Observers reported that “at that moment, for all practical purposes, the Big 8 became the Big 12.”¹¹ Although not a policy over which he had direct control, the lieutenant governor was able to exert political pressure to get his way.



PERSONAL RESPONSIBILITY: Can a public official overstep his or her job description? In what circumstances do you think this is justified?

Working with the Governor. As we saw in the previous chapter, governors often must rely on lieutenant governors to advance their agendas. Republican Governor George W. Bush made friends with the normally prickly Democratic Lieutenant Governor Bob Bullock, known to be as tough on subordinates as on fellow politicians. Bush’s fondness for nicknames extended to the lieutenant governor, whom he called “Bully.” In his first year as governor, and on his signature issue of tort reform, Bush looked to Bullock to govern over a fragile coalition of Democrats in the Senate. Lobbyists tried to convince Bush to lower the ceiling on damages, but Bush stood by the compromise position to which he had worked with Bullock. The governor could have threatened a veto, but he wisely chose not to turn his back on a key ally. When working together, jocular Bush would sometimes ask of Bullock, “You gonna get mad at me today, Bully?”

Before the beginning of the eighty-fourth legislative session, Governor-elect Greg Abbott, Lieutenant Governor-elect Dan Patrick, and Speaker of the Texas House Joe Strauss convened a breakfast meeting, as is customary before the session starts, to talk about the session to come and outline priorities. The breakfast turned tense when Patrick declared he was tired of the other two “picking on him” because Patrick’s informal advisers had challenged the governor’s proposed pre-kindergarten program, which they said would force students into “a Godless environment.”⁷

Managing the Senate. As the leader of the Texas Senate, the lieutenant governor uses his discretion in following the chamber’s rules on proper parliamentary procedures, such as deciding when a bill will come up for a vote, when

INSIDER INTERVIEW**Bill Hobby, Former Democratic Lieutenant Governor of Texas**

How do all the power players balance competing interests in a tight budget?

I scrubbed [balanced] the budget nine times during the 18 years I was in office. There is nothing happening on that front now that didn't happen many times in the past and won't many times in the future. Only the names are different. So, when you hear someone talk about scrubbing the budget, ask them how many teachers they want to cut, how many children they want to let go without health care, and how many prison guards they want to cut? How many universities or community colleges does the thrifty legislator want to close in his district?¹³



 **CRITICAL THINKING:** Is the Lieutenant Governor's approach to budget-cutting appropriate? Should legislators think about their own districts or the needs of the state?

to allow a senator on the floor to speak, or how to deal with points of order (objections made to a bill).

One concern for the lieutenant governor is that contentious bills, with dozens of potential amendments, will stall Senate business and eat up too much precious time in a legislative session that lasts only 140 days, potentially killing many important but noncontroversial bills. Freshman Senator David Sibley attended a session in which Lieutenant Governor Bullock was “machine-gun” gaveling one bill after another to passage to move the process along. The senator asked to be recognized to complain that the Senate had not had a chance to study or debate the legislation being approved. After several such attempts, Bullock reluctantly relented: “The chair recognizes the crybaby from Waco,” he bellowed.⁸

Lieutenant governors adopt different management styles. Bob Bullock represented the firm-hand method, using rewards, old-fashioned threats, and sometimes name-calling to get the job done. On the other hand, Bill Hobby embodied the light touch method, pushing for nondramatic consensus on legislation.

Directing the Flow of Legislation. As the presiding officer in the senate, the lieutenant governor has primary responsibility for where legislation goes, referring bills to one of the standing committees. In effect, he is the traffic cop for moving legislation within and through the Texas Senate. Knowing which committees might favor or disfavor a certain kind of legislation, the lieutenant governor can promote or kill specific legislation by manipulating which committee takes first crack at a bill.

Lieutenant Governor Ben Ramsey (1951–1961) had an encyclopedic memory for senate rules and a deep sense of tradition in the chamber. Ramsey would

often tell his chief aide to “lose a bill” if the lieutenant governor opposed the legislation. When it came time for a senator’s bill to be addressed, the bill would be missing (on purpose). In other instances, Ramsey referred a bill to the “Committee on S—it” by tossing into his desk drawer, effectively killing the bill’s chances to be heard.⁹

Tiebreaking Vote in the Senate. Similar to the vice president, the lieutenant governor has the tiebreaking vote in the state senate if the chamber is evenly divided on a vote. In a close vote on the Tort Claim Act in 1969, waiving immunity for the government in civil lawsuits, the senate tied 15–15 (with one member skipping the vote). Lieutenant Governor Ben Barnes, a member of the moderate-conservative wing of the Democratic Party, unexpectedly voted for the act, shocking those in the senate gallery—including a lobbyist for the Texas Municipal League who, mouth wide open, dropped the pipe he was smoking onto the Senate floor below, burning a hole in the carpet.

Appointments to Senate Committees. The lieutenant governor is charged with appointing the legislative chairpersons and members of standing committees in the Texas Senate. This power, combined with the authority to dictate the flow of legislation, is a potent weapon in agenda control. Most lieutenant governors appoint sympathetic partisans to promote their party’s agenda. However, Lieutenant Governor Ben Barnes, a bridge-builder across the liberal and conservative wings of the Democratic Party in the 1960s, did something no lieutenant governor had done before: he appointed a senator from the opposite wing of his party to serve on the powerful Senate Finance Committee. Conservative Democrats howled, “what the devil are you doing?,” but the play was strategic. The appointed senator reported being “too busy” to make trouble.¹⁰

Efforts at political retaliation can backfire. The pugnacious Bob Bullock, first elected in 1990, resolved to show the teeth of the Democratic Party and declined to appoint any Republicans to lead legislative committees in the 1991–1992 session. He regretted it almost immediately. The Republicans used their legislative savvy to enforce minor rules and “knotted up things,” halting legislation in the senate. Realizing this mistake, Bullock made peace with the ringleader, Senator O. H. “Ike” Harris (a Republican from Dallas) and made him the chairman of the Senate Committee on Jurisprudence.

When necessary, the lieutenant governor can also set up a new standing committee or special committee to investigate or review issues or policies.

Membership on Key Legislative Boards. The lieutenant governor serves as chair of or as a member of several key boards that govern the state, including the Legislative Budget Board, the Legislative Council, and the Legislative Redistricting Board. The lieutenant governor shares appointment power with the governor on most of these boards, making cooperation essential to efficient government.

Involving Texans in the Law-Making Process. Like governors, lieutenant governors also form policy networks to help develop legislation. Newly elected Lieutenant Governor Dan Patrick created six citizen committees (including fifty-five Texas business leaders) to advise him on legislation and policy matters affecting taxes, transportation, water, energy, and the economy. Some of the members are nationally known entrepreneurs and business executives, including oilman T. Boone Pickens and Woody Hunt, Chairman of the Hunt Companies.¹² Many critics complained that the advisory groups were dominated by conservative Republicans. Lieutenant Governor Patrick responded that he had picked the best people for the job.

ATTORNEY GENERAL

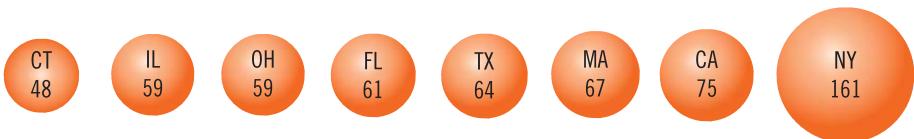
The attorney general (AG) is the state's lawyer, defending the laws and constitution of the State of Texas by representing the state in court. The attorney general provides legal services to the governor, state agencies, and local and state government entities. The AG's actions and opinions can actively shape state policies. When requested, the AG's office will file suit on behalf of state agencies in court (see Figure 9.3). The Texas Constitution does not specify that the attorney general be a licensed attorney, only that they "represent the state" in various legal capacities.

For instance, in the 1970s, Texans found themselves vulnerable to every manner of consumer fraud: negligent nursing home owners, con artists selling phony oil investments, and retailers advertising everyday prices as "sale prices." After a series of banking scandals swept the state, Attorney General John Hill sat down with his staff at a Tex Mex restaurant in Austin and came up with a bill that would give legal recourse to swindled Texans with small dollar claims. As they scribbled guidelines for how to deal with deceptive practices, they spilled chile con queso and salsa picante onto their papers.¹⁴ That "queso-stained plea for help for Texas's consumers" formed the basis of legislation that empowered consumers with courthouse access.¹⁵

The office's legal duties have spread into other areas as well. The AG's office enforces health, safety, and consumer regulations and protects the rights of the elderly and disabled. The AG's office investigates deceptive business practices, including car repair fraud, telemarketing scams, identity theft, "diploma mills," health care fraud, price gauging, and other consumer-related complaints. The AG is also responsible for enforcement of child support payments, including locating absent parents, establishing paternity, reviewing and adjusting child support payments, and collecting and distributing child support payments. The AG's office can also punish parents behind on their child support payments by blocking car registration renewal, revoking a license, or stripping someone of a professional license. From 2015 to 2016, the office collected more than \$3.86 billion in child support.¹⁶

IS IT BIGGER IN TEXAS?

FIGURE 9.3 State Attorneys General Cases Filed, 1980–2013



Source: Paul Nolette. 2015. *Federalism on Trial: State Attorneys General and National Policymaking in Contemporary America*. Lawrence, KS: University Press of Kansas.



COMMUNICATION:

How often is the Texas AG involved in lawsuits in comparison to other states?

- The most highly populated states appear in the top ten most frequent litigants, such as New York and California.
- Texas is a frequent litigant. Texas is a leader among all states in cases filed (ranked six out of fifty) in litigating these issues.



CRITICAL THINKING:

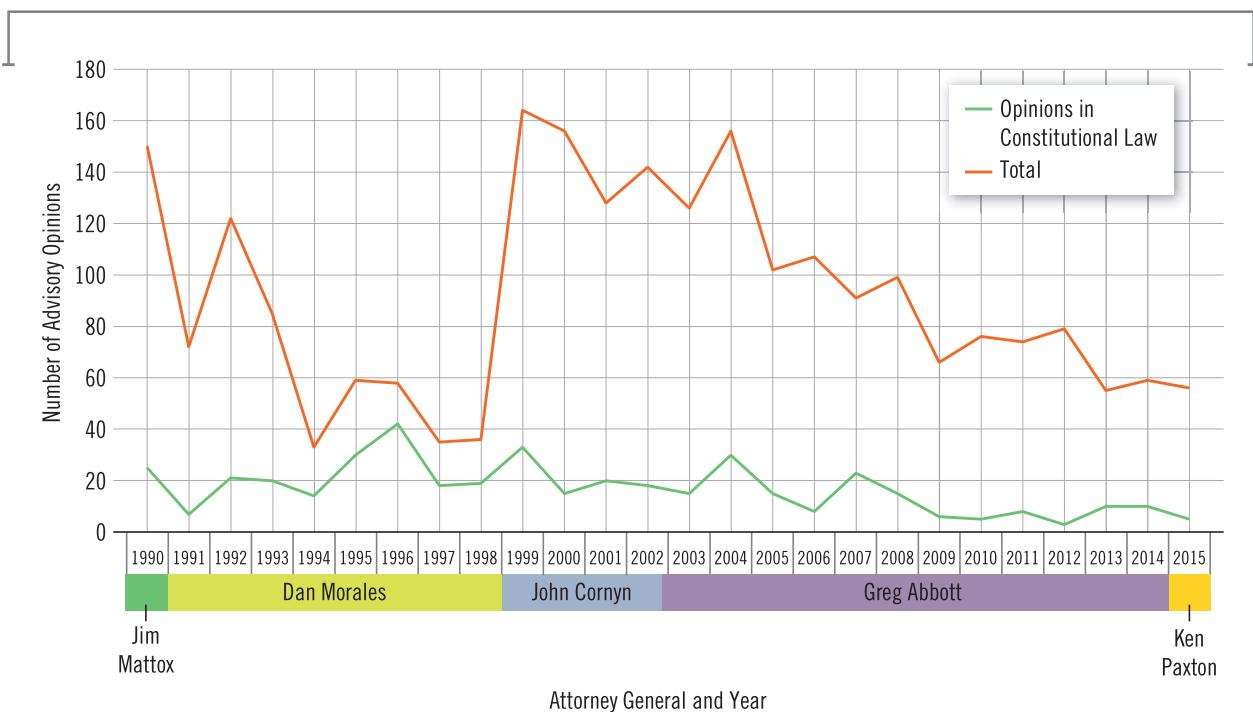
Why do some states' AGs file more suits?

- Federal policies often have a significant impact on larger states.
- States with more industry—either natural resources (Texas), pharmaceutical (New York), health care (California), or banking (Connecticut)—have more cases where the states challenge federal government regulations.

As a result of their constitutional role, lawyers from the AG's office spend a lot of time in court (see Figure 9.4). These cases fall into three categories: antitrust, consumer protection, and environmental. In one 2011 antitrust case, for example, the AG stopped a regional health care system in Wichita Falls from gaining a local monopoly on emergency and outpatient services. Cases are often filed *against* the federal government to challenge or provoke review of specific federal laws or regulations.

Another important function of the AG's office is to issue legal opinions to the governor, heads of state agencies, lawmakers, and local officials (see Figure 9.4). The courts view these opinions as so highly persuasive that the AG in effect makes policy by interpreting a statute, rule, or law that may serve as a basis for

FIGURE 9.4 Attorney General Advisory Opinions



Source: Attorney General's Office



COMMUNICATION:

How has the number of advisory opinions changed over time?

- The total number of advisory opinions decreased from 1999 to 2015, from 160 to around 60.
- The largest increase in advisory opinions was when John Cornyn (a Republican) took over as attorney general from Dan Morales (a Democrat).



CRITICAL THINKING:

What factors have caused the attorney general to weigh in on a case?

- A change in the party controlling the office from Democrat to Republican may have prompted more legal inquiries from the new AG. Republicans had captured control of both the legislature and the governor's office at the time, and government entities were looking for the AG to provide favorable rulings for them.
- The AG is also asked to rule on more constitutional cases when major issues are being considered by the legislature, such as changes to tax policy or public school funding.

TABLE 9.2 Key Attorney General Opinions

YEAR	ATTORNEY GENERAL	OPINION
1990	Democrat Jim Mattox	Both “excused” and “unexcused” school absences count as absences for attendance counts.
1992	Democrat Dan Morales	Bingo games with monetary prizes authorized only if conducted for charity.
1994	Democrat Dan Morales	School district sponsored extracurricular activities may not take place at an athletic club that discriminates.
2001	Republican John Cornyn	Government body cannot prohibit holder of concealed handgun onto government property unless public notification is given.
2006	Republican Greg Abbott	State can deny driver’s license renewal for failure to appear in municipal court or pay fines.

Source: Attorney General’s Office.



CRITICAL THINKING:

How do AGs shape public policy? Does the political party of the AG influence his or her decisions?

- Conservative Republicans tend to be tougher on crime and lawbreakers, such as Greg Abbott’s decision to deny driver’s license renewals for failure to pay fines.
- Democrats tend to fall in line with their party’s ideology. For example, Dan Morales held that school extracurricular programs may not discriminate.
- Republicans also play to party loyalty, such as John Cornyn’s finding that government organizations cannot prohibit concealed handguns without providing notification.

future legislative action (see Table 9.2). The power of the AG to interpret the constitution is second only to the Texas Supreme Court.

Consider, for example, the funding of education for veterans. The Hazelwood Act is a state law that covers the cost of tuition for military veterans and dates back to 1923, when the Texas Legislature directed state universities to cover college tuition costs for World War I veterans, nurses, and their children. In January 2015, a US District Court judge ordered universities not to exclude a veteran from the benefits solely because he or she enlisted in the army while living outside of Texas. Senator Jane Nelson, as head of the Senate Finance Committee, questioned this ruling in February 2015 by requesting an AG opinion about this section of the Hazelwood Act. The attorney general advised that it would be constitutional to include only those veterans who were Texas residents when they signed up for military service. The legislature,



In 2015, the attorney general was asked whether daily fantasy sports leagues, where players assemble teams online that are advertised with big payoffs, legally constitutes gambling. Like attorney generals in other states, AG Ken Paxton held that because the “house” takes a cut of the pot, it is gambling, and likely illegal under Texas law.



PERSONAL RESPONSIBILITY: If you were attorney general, how would you rule in this fantasy sports leagues case?

has promoted Mark White (governor), John Cornyn (US Senator), and Greg Abbott (governor).

COMPTROLLER OF PUBLIC ACCOUNTS

Sometimes referred to as the “tooth fairy of public accounts” for his or her silent but authoritative approach to budgeting, the state comptroller is a powerful figure in Texas politics. The comptroller’s role is to estimate revenue, certify budget funds, and chart state economic growth. The state’s budget operates on a **pay-as-you-go system**: state funds spent must equal state funds received. The legislature must craft a budget that is only as big as the comptroller says it is allowed to be. The constitution requires that all appropriations bills (bills to allow spending) from the legislature be approved by the comptroller’s office.

Bob Bullock reinvented the comptroller’s office when he was first elected in 1975. When he arrived in the office, “everything creaked: the procedures, the equipment, the employees.”¹⁸ Bullock established the comptrollers’ office as central in matters of taxes, schools’ finance, and agency funding. He also jealously guarded state funds. One day, he walked into the store of a delinquent liquor distributor in San Antonio and confronted him: “I’m Bob Bullock. You owe me \$236,000.” The dealer said, “Say again?” And Bullock said, “I’m the state comptroller, and you owe the people of Texas \$236,000 in sales taxes you haven’t paid and I’m here to collect it.” The dealer laughed and said he didn’t

pay-as-you-go system:

state funds spent must equal state funds received

however, was unable to agree to program changes and let the program stand as it was. An appeals court upheld a requirement that veterans be Texas residents when enlisting in order to receive benefits in 2016.

The AG often wades in tenuous, swampy water between the solid shore of legal representation and the murky marsh of politics. Journalists accused Republican Attorney General John Cornyn of being too cozy with industries he was litigating against and of allowing politics to influence his legal decisions. Two years into Cornyn’s tenure, journalist Paul Burka accused Cornyn of settling for less than expected on a water pollution suit against a pipeline company and of endorsing favorable settlements to health care providers.¹⁷

Because it is one of the most important and high-profile offices in the state, it has proven to be a good stepping stone to political advancement in recent years. The office

have that kind of money. Bullock retorted, “I think you’ve got that kind of whiskey.” And he turned to one of his employees and ordered, “Start hauling this shit out of here.” Bullock carried off two eighteen-wheelers full of whiskey. The media called the trucks Bullock’s Raiders.¹⁹

The comptroller has an early, primary say in the amount of money that Texas spends, giving them significant control over the pot of money the legislature has to work with. After submitting the budget, the comptroller can still give the legislature the go-ahead to spend extra money. The comptroller also certifies that Texas’s budget books are balanced.

The fiscal power of the comptroller also may extend into the political arena. Independent-minded Republican Comptroller Carole Keeton Rylander was a fiscal thorn in the side of Governor George W. Bush. Rylander reduced the previously plump revenue estimate by \$700 million in 1999, effectively jeopardizing the property tax cut that Governor Bush had promised voters. With the proposed reduction in state revenue at \$5.6 billion and projected slower growth of the economy, there would not be enough money to cover essential public services and public school enrollment growth and to reimburse local school districts for property tax revenue lost to the tax relief.

Misestimating this revenue can have serious ramifications for both politics and policy. In 2011, Comptroller Susan Combs overestimated tax revenue by a whopping \$11.3 billion, or 14 percent. Expecting economic bedlam, lawmakers cut more than \$5 billion from public education, impacting the delivery of quality public education, laying off thousands of teachers, and prompting a constitutional challenge over educational quality in the state. Less disastrous errors are not uncommon (see Figure 9.5). Estimates are most frequently wrong due to unexpected recessions, overestimated tax collections, or precipitous declines in energy prices. Estimates are also required to project up to thirty-two months into the future, a difficult challenge for any economist.

see for yourself 9.1



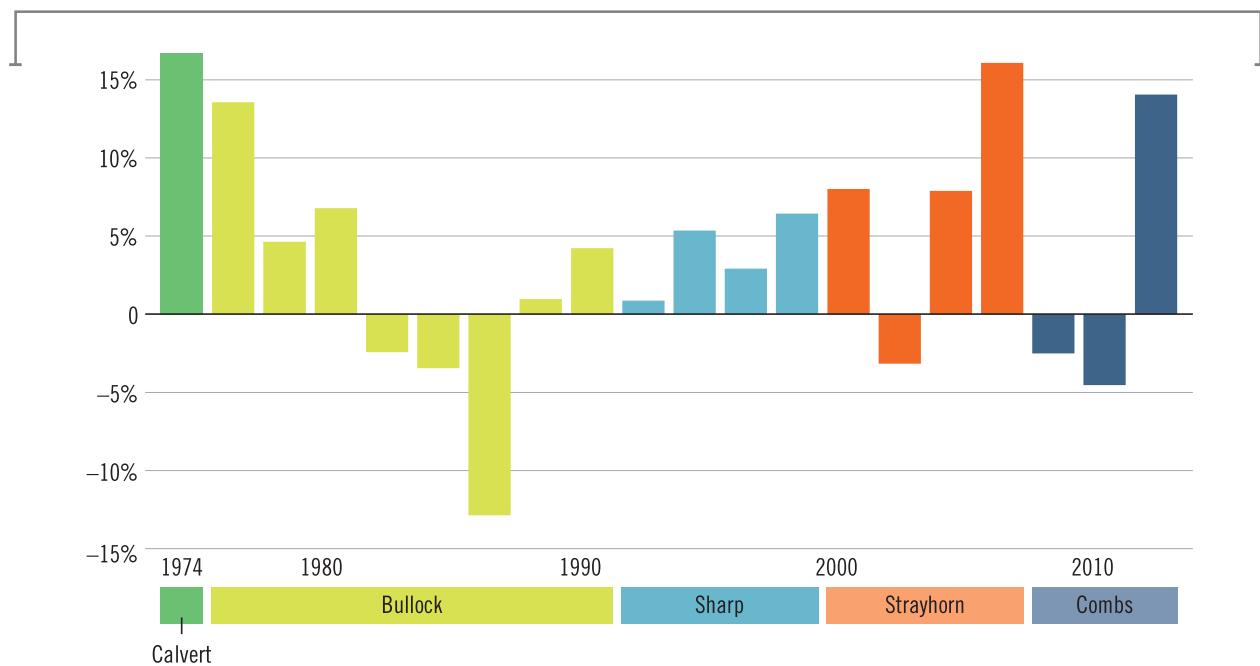
Watch Comptroller Glenn Hegar talk about his assessment of the Texas economy.

COMMISSIONER OF THE GENERAL LAND OFFICE

The land commissioner, the oldest continuously elected position in Texas history, oversees state-owned land, including open beaches and submerged land off the coast of the Gulf of Mexico. When Texas agreed to enter the Union in 1845, it negotiated to keep its public debt but also its public lands. The land commissioner administers these lands by leasing lands and generating funds from oil and gas production.

The General Land Office (GLO) pursues new revenue opportunities for the state. The GLO is investigating developing renewable offshore wind, solar, or geothermal energy on state lands. The GLO also has two functions nominally related to land: the Permanent School Fund, primarily because the proceeds from the sale of state lands and revenue from resource extraction from state lands fund public schools, and the Veteran’s Land Board, which makes low-interest loans available to veterans and oversees state veterans cemeteries and skilled-care facilities.

FIGURE 9.5 Difference between Estimated and Actual Tax Collections



Source: Texas Comptroller's Office.



COMMUNICATION:

When have revenue estimates been incorrect?

- Sharp decreases in the price of oil consistently put revenue estimates off base. This occurred frequently in the late 1980s.
- Unpredicted population growth, such as in the late 1970s and late 2000s, increases sales tax revenue, driving revenue higher than expected.



CRITICAL THINKING:

Why are some forecasts so wrong?

- Economic forecasts are based on assumptions. If these assumptions change, the forecasts change as well. Energy prices rise and fall, the housing market may be unpredictably weak in some areas of the state, or public spending (and therefore sales taxes) may slow down.

AGRICULTURE COMMISSIONER

The agriculture commissioner oversees the Department of Agriculture, which implements agricultural laws, promotes Texas's agriculture production and products, and administers school nutrition programs. The department also performs regulatory functions, such as protecting consumers from pesticides and certifying organic products. The simple acts of buying fruit at the grocery store or filling up your gas tank has you interacting with the Texas bureaucracy.

The Department of Agriculture certifies Texas-grown produce and inspects gas pumps for accuracy. Because one in every seven working Texans (14 percent) works in an agriculture-related job and the economic impact of agriculture-related production exceeds \$150 billion annually, the role of the department in managing agriculture issues is critical to the economic welfare of the state.

Like all agencies, the department's regulatory role is limited by available funds. Agriculture Commissioner Sid Miller reported in 2015 that Texas consumers are "getting screwed" by unscrupulous businesses because the Department of Agriculture has not been able to perform many of its regulatory functions—such as checking gas pumps for accuracy, verifying grocery store scanners work properly, and inspecting taxicab meters to verify that people aren't being overcharged. Commissioner Miller briefed the legislature on the matter, requesting more funds to take care of the backlog. State Senator Paul Bettencourt, Republican of Houston, remarked that he discovered the problems with the oversight of gasoline sales firsthand: "I learned about this when I drove my car in and filled up 27 gallons on a 19-gallon tank."²⁰



Agricultural Commissioner Sid Miller, in one of his first acts as agency head, granted full "amnesty" to cupcakes. Reminding Texans that the state had lifted the ban on selling cupcakes and other sugary treats, he delivered 181 cupcakes to the Capitol—enough for each member of the House and Senate.

 **SOCIAL RESPONSIBILITY:** Should the government be in the business of banning unhealthy foods? Why or why not?

PLURAL EXECUTIVE FEUDS

Internal feuding within the Texas executive branch harkens back to the first days of the state's constitution. Governor O'Daniel once labeled the Board of Control and the Game and Fish and Oyster Commission "giant oligarchies and juicy play-pretties of the professional politicians." The governor lamented that he was unable to meet public demand for reform because his office had been "stripped" of the power that was given to the bureaucrats. Today, both agencies are defunct, but the complicated arrangement between the most powerful offices within the executive branch remains.²¹

The governor and lieutenant governor should see eye to eye, especially if they are of the same party, but relations are not always cordial, making for diverging strategies. In 2016, after five Dallas Police officers were killed by a lone gunman during a Black Lives Matter march, Lieutenant Governor Dan Patrick called protesters "hypocrites" while Governor Greg Abbott wrote an open letter to Texans saying that "our hearts are heavy" as he called for mourning and respect for the officers lost. Patrick took a more combative tone while Abbott attempted to invoke unity.²²

Yet, despite the strength of the office, the lieutenant governor does not always win in internal fights with other executive officials. One heated exchange

see for yourself 9.2



Consider Agricultural Commissioner Sid Miller's view on cupcakes, fee increases, and the decline in rural population.

involved Attorney General Dan Morales's anger at Lieutenant Governor Bullock's office for hiring an outside attorney to consult on redistricting matters, a plum assignment because it involved the power to draw legislative district lines. Bullock became irritated by the attorney general's "incessant complaints" and physically challenged him by "bumping against him with his chest and lightly backhanding him."²³ The two were separated and the attorney general was eventually allowed to handle the redistricting issue.²⁴



TEXAS TAKEAWAYS

- 4 What are the key roles of the lieutenant governor?
- 5 What are the consumer-based functions of the attorney general's office?
- 6 What are the chief powers of the state comptroller?



GOVERNOR-APPOINTED, SINGLE-HEAD AGENCIES

9.3

Identify the functions of important governor-appointed, single-head agencies.

The governor-appointed, single-head agencies are more likely to be influenced by the governor's agenda because the governor has a direct say in who gets appointed. Of course, the Texas Senate must approve the individuals the governor selects, so the control is not absolute. Moreover, these agencies often pursue their own prerogatives and incentives, occasionally—as we shall see later—with politically damaging results.

SECRETARY OF STATE

Can dead people vote in Texas? After 239 "dead" people did just that in the May 2012 primaries,²⁵ Secretary of State Hope Andrade decided to purge the voter registration records of Texans she believed to be deceased. Unfortunately, four voters presumed dead (but not) sued Andrade, the first Latina Secretary of State, for civil rights violations and for suppression of minority voters. Secretary Andrade suspended the purge.

More than a figurehead, the secretary of state serves as the chief elections administrator, the steward of all state records, and an ambassador of the state to other nations. First, the secretary assists county election officials, ensures the uniform application of election laws throughout the state, and maintains the voter registration records for more than 14 million voters and several voter

education programs. Second, as the chief record keeper, the secretary publishes government rules and regulations and thus is often referred to as the “State’s Filing Cabinet.” Third, the secretary serves as the lead liaison on issues involving the Texas–Mexico border and Texas’s relations with Mexico.

COMMISSIONER FOR HEALTH AND HUMAN SERVICES

The Health and Human Services Commission (HHSC), headed by a commissioner selected by the governor, is responsible for the health and welfare of many needy Texans. Because of wide-ranging responsibility, the HHSC is massive. HHSC oversees the operations of most health-related programs including the following:

- Medicaid
- Children’s Health Insurance Program
- Texas Women’s Health Program
- Temporary Assistance for Needy Families
- Supplemental Nutrition Assistance Program

HHSC is a mega agency with four different departments, 58,000 employees, and a \$30 billion budget. The size and number of policies they implement make it one of the toughest to run in state government.

DEPARTMENT OF INSURANCE

Think you can get away with a fraudulent insurance claim about damage caused by the Memorial Day 2015 flooding? Think again. Insurance fraud costs millions of dollars to Texans and businesses annually, and the Fraud Unit of the Texas Department of Insurance (TDI) investigates more than 500 cases each year.

The TDI also regulates the insurance industry and provides consumer protection. In one recent case, the TDI caught a former insurance agent who convinced more than thirty elderly customers to liquidate insurance plans and hand over the funds to him.²⁶ Consumers can also comparison shop for various types of insurance through the TDI and register complaints against insurance companies, health maintenance organizations, insurance agents, or claims adjusters. TDI also oversees the allocation of workers’ compensation benefits.



TEXAS TAKEAWAYS

- 7 What does the Secretary of State do?
 - 8 Why is the HHSC so difficult to manage?
-



GOVERNOR-APPOINTED, MULTIMEMBER AGENCIES

9.4

Describe the purposes important multimember agencies serve.

Multimember agencies whose members are appointed by the governor are certainly influenced by the governor's agenda and ideology. This influence is lessened because there are many members of these organizations and the governor's reach may not grasp all of them all of the time. These groups operate largely independently

of the other executive agencies but are accountable to the legislature through periodic review.

multimember agencies:

bureaucratic organizations staffed by a minimum of three individuals

PUBLIC UTILITY COMMISSION

If you get an electricity bill that is alarmingly high, contact the Public Utility Commission (PUC). Created in 1975 to provide statewide regulation of the rates and services of electric and telecommunications utilities, the PUC offers Texans assistance in resolving consumer complaints about electricity rates. Consumers can also use the "Power to Choose" website to compare company prices; and, if the consumer feels exploited, they can file a complaint for PUC to investigate.²⁷

DEPARTMENT OF TRANSPORTATION



A large and diverse state provides many options for governors looking to add diversity to the executive branch in Texas. The growth of the Hispanic and Asian populations in Texas makes this more important. Many governors seek representatives from underrepresented groups to serve in Texas government.

 **SOCIAL RESPONSIBILITY:** Does diversity matter in gubernatorial appointments? In what way?

Ever been stuck in traffic and wondered whom to blame? The Texas Department of Transportation (TxDOT), although not responsible for your immediate traffic delays, is in charge of operations and maintenance of the state's massive 80,000-mile highway system, in addition to overseeing aviation, railroads, and other public transportation systems in the state.

TxDOT also awards state contracts for the building and maintenance of highways. With urbanization and a growing population, Texas has an all-time high number of vehicles on its roads and number of miles traveled. The state's current infrastructure is aging, with tens of thousands of lane miles in need of reconstruction. As we've seen, the state is struggling to fund road construction. In 2014, Texas voters passed a constitutional amendment to divert half of the general oil and gas revenue to the State Highway Fund.

TEXAS PARKS AND WILDLIFE DEPARTMENT

If you've ever wetted a fishing line, hunted a buck, paddled a canoe, or popped a tent in Texas, chances are you've encountered the Texas Parks and Wildlife Department (TPWD). TPWD manages and protects wildlife and wildlife habitats and acquires and manages Texas's state parks and historic areas. Specifically, TPWD sells hunting, fishing, and boating licenses; issues fees for service (such as state park entrance fees); and creates and enforces regulations to protect wildlife and stock fish. TPWD's law enforcement, both game wardens and park police forces, make the department the second-largest statewide law enforcement agency!

TPWD is a traditionally rural agency that is attempting to serve an increasingly urban state. If an alligator shows up on your patio some summer afternoon, you can't simply shoot it. Getting an Alligator Nuisance Control Permit requires completing a course and passing two exams—one written exam and one “live alligator handling exam.”²⁸ In 22 counties, hunters may secure a license but tag only one alligator per year and may only capture the creature with gigs and snares (although the alligator once caught can be “dispatched” with a firearm).



Hunting from a helicopter (“aerial management”) requires more than finding a buddy with a chopper and a rifle. To participate, hunters must file the proper paperwork with Texas Parks and Wildlife Department. Aerial hunters must only hunt feral hogs and coyotes. It is otherwise illegal to sport hunt from aircraft.

 **PERSONAL RESPONSIBILITY:** Would you fish or hunt without a license? How much should the state regulate hunting?

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

The TCEQ protects public health, preserves the natural resources of the state, maintains clean air and water, and assures the safe management of waste. The TCEQ is also responsible for licensing certain duties that have an environmental impact (such as wastewater operations), issuing permits to industry groups, and creating and enforcing environmental rules. TCEQ issues rules about responding to natural disasters, sets fees for environmental cleanups as necessary, and more tightly or loosely applies rules to industries.

The state clashes with both local and national actors on environmental protection, and not just for stringent pollution controls. Governor Abbott has consistently argued against tightening national emissions limits on smog-forming pollution on the grounds that these changes would hurt the Texas economy. Yes, Governor Abbott also recently sided with TCEQ in challenging a city ordinance in Houston that required pollution-emitting entities to register with the city and pay a fee. The governor argued that city rules are

preempted by state law and that the ordinance undermines TCEQ's "efforts to achieve voluntary remediation and compliance." He called the decision to impose criminal fines on polluters "a clumsy approach to a complex problem."²⁹ Governor Abbott sought looser controls and state superiority in environmental regulations over both local and national concerns.



TEXAS TAKEAWAYS

- 9 Distinguish between governor-appointed agencies run by a single head or by more than one person.
- 10 Name three responsibilities of the Texas Commission on Environmental Quality.

MULTIMEMBER ELECTED COMMISSIONS AND HYBRID AGENCIES

9.5

Differentiate between multimember elected commissions and hybrid agencies.

In some cases, voters themselves elect the members of a commission, giving the public a more direct say in the regulatory process. Elections to these multimember commissions are held either at the district or statewide level. In addition, some **hybrid agencies** comprise both elected and appointed officials.

hybrid agencies:

bureaucratic organizations whose leaders are selected by a mixture of appointments and elections

TEXAS RAILROAD COMMISSION

Ironically, the Texas Railroad Commission (TRC) has almost no authority over railroads in Texas! Originally created in 1891 to regulate corruption and monopolies in the railroad industry, TRC is Texas's oldest regulatory agency. In the late 1880s, to entice railroads to run their tracks through sparsely populated Texas, the legislature granted more than 24 million acres (38,000 square miles) to the railroads—an area larger than the state of Indiana—without oversight. The result was mayhem, fraud, and corruption. Public outcry and leadership from railroad-buster Governor James Hogg precipitated the creation of a regulatory agency to adopt necessary rates, correct abuses, and enforce penalties.

Decades after its creation, the TRC's book of responsibility has expanded significantly. Currently, the TRC's primary functions are the regulation of the oil and gas industry. The TRC issues permits for drilling for or extracting natural resources, inspects oil and gas facilities, licenses waste haulers, assesses fees for environmental damage in oil fields, and ensures that oil and natural

gas pipelines run safely. These dealings can place TRC in the center of a controversy. In 2014, citizens of Denton County voted to ban the practice of hydraulic fracturing (fracking), a practice regulated by the TRC. The legislature rejected local control of fracking and reaffirmed the TRC's central role in the commercial development of land. Local officials and other critics maintain that the TRC is protecting the industries it is supposed to regulate and local control is needed to protect the health and safety of citizens.

TEXAS ETHICS COMMISSION

Which organizations are backing your elected officials? How much money do politicians spend to get reelected? How much money does the beer industry spend on lobbyists to persuade legislators to support a bill? The Texas Ethics Commission (TEC) keeps track of these figures by overseeing campaign contributions and regulating and enforcing lobbying activities. In terms of enforcement, the TEC hears complaints related to filing violations and can fine individuals.

STATE BOARD OF EDUCATION

How much should teachers in Texas focus on Thomas Jefferson's faith as part of his political beliefs? Should the study of important confederate leaders be expanded on in the coverage of the Civil War in US history classes? These questions are principally decided by the State Board of Education (SBOE). The SBOE is responsible for the oversight of public primary and secondary education, setting curriculum standards, and establishing graduation requirements.

Because they have control over the curriculum taught in public schools in the state, SBOE is no stranger to controversy. Curriculum decisions—especially concerning the role of religion, the coverage of political figures, and the treatment of race—have sparked national debate. In 2010, the SBOE, led by conservative members, reduced the coverage of US Senator Ted Kennedy, elevated the prominence of President Ronald Reagan, and removed hip-hop music from a list of influential cultural music because of complaints about inappropriate lyrics.³⁰ In 2014, the SBOE approved of new history texts that, critics charge, exaggerate the influence of Moses in American democracy.³¹ Partisan politics plays a formidable role in these decisions. On a 10-to-5 vote, Republican appointees all supported the changes and the Democrats all opposed. Although the governor appoints the Commission of Education and the head of the board, the people elect all officials to the 15-member SBOE. So Texas voters can have a say in these controversial decisions.



TEXAS TAKEAWAYS

- 11 Name the primary functions of the Texas Railroad Commission.
 - 12 What is the main goal of the Texas Ethics Commission?
 - 13 Identify the primary responsibility of the State Board of Education.
-



CONTROLLING THE BUREAUCRACY

9.6

Assess how the plural executive influences policy and the methods of holding the bureaucracy in check.

Is the Texas bureaucracy too closely aligned with business interests at the expense of ordinary Texas citizens? Does the structure of the plural executive contribute to sluggish policy innovation and slow responses to state problems? Does the diffusion of power among the governor, the lieutenant governor, the comptroller, and the other executive officers, agencies, and commissions

mean that the people cannot hold the Texas government accountable? And has the weak structure of the executive, established to prevent the government from stamping out individual freedom, become too inefficient to meet the needs of a modernizing Texas? To begin to answer these questions, we need to take a look at how the selection of bureaucracy impacts policy, how the plural executive impacts efficiency, and what mechanism state representatives and the people can use to reform the bureaucracy.

SELECTION OF THE BUREAUCRACY

How the bureaucracy is selected influences public policy in many ways. Texas voters influence public policy when they elect members of the bureaucracy. Governor appointees often shape policy in line with the governor's preferences, but the state legislature often sets requirements for appointments. Governor Abbott appointed Josh McGee, an advocate for pension reform that may limit benefits, to head the Pension Review Board. One observer compared the choice to "appointing Godzilla to guard Tokyo."³² Although the Commissioner has limited power to change pensions, he has an influential voice in making changes to the pensions of state workers.

Often the legislature introduces requirements for appointments that limit the governor. For example, although the nine individuals who head the Texas Parks and Wildlife Department are appointed by the governor (with senate approval), the governor is obligated by law to attempt to include persons with expertise in diverse fields, such as historical preservation, conservation, and outdoor recreation. This limits—but does not remove—the influence of outside agents and improves the ability of an agency to act in the best interests of the people of Texas. Game wardens from the TPWD even filed state charges against Senate Majority Leader Lyndon Johnson in 1956 for shooting more than the legal limit of birds. The warden's charges were dismissed by a local justice of the peace who was politically friendly to Johnson.

Some agencies have appointees representing multiple interests across Texas government, attempting to balance the interests of all. The TEC's eight members are selected by three different officials: the governor appoints four members, the lieutenant governor appoints two members, and the speaker of the house appoints two members. As a result, no single part of government has full authority to staff the TEC with its associates. Given that the tasks of the

TEC are to serve as an enforcement agency on state ethics laws, this dispersion of power is important so that the commission is not beholden to any one individual. Governor Rick Perry himself was fined \$1,500 for failing to report income from a rental house.

Voters also have a hand in selection, especially to agencies that make important policy decisions, such as the SBOE and the TRC. When voters don't like the policy created, they can vote office holders out of these agencies. The SBOE's rewriting of history standards (referenced previously), including limiting discussion about race and gender issues and emphasizing gun rights and free markets, reflected the political values at the time of the Texans who voted for the SBOE members.³³ With only the voters to hold these agency representatives accountable, they have a great deal of autonomy to influence policy. Voters rejected these pitched partisan battles in 2014 when they elected more moderates to the board to replace several controversial board members.³⁴ The board toned down the rhetoric and looked to make more reasonable standards for textbooks.

Sometimes agency officials are selected from industry groups that are regulated by that agency—even when voters elect these officials. These candidates have an advantage in that they have expertise in the field and often considerable campaign funds. The TRC provides a good example of how this can influence policy. Critics of the TRC suggest that the agency is too close to the industry it regulates and the TRC's dual role of regulating industry and environmental stewardship creates conflicts of interest. In late 2013 and early 2014, a series of mysterious earthquakes rattled north Texas along the Barnett Shale, home to gas-rich fields. Regulators worried that oil- and gas-related activities contributed to the seismic activities, as suggested by reports carried out by energy experts and seismologists at Southern Methodist University. The TRC cleared two oil field companies of responsibility, arguing that the study was preliminary and that the link between extraction efforts and earthquakes is inconclusive. Environmental activists accused the TRC of siding with the industry and insisted that further investigations were warranted.

SLUGGISH POLICYMAKING

Much of the weakness in Texas government is due to the plural executive's diffusion of power and to bureaucratic policies that contribute to sluggish policy innovation and slow responses to state problems. Rules and regulations from a large bureaucracy choke government's ability to be agile. Proposed rules changes must be advertised for a specific period of time, open for public comment, and often face administrative delays. The legislature may use this formal rule-making process to slow down bureaucratic rule-making. Instead of fixing serious policy problems, the bureaucracy is often a victim of its own rules.

For example, the foster care system in Texas has let down the state's most vulnerable kids—highlighted by the number of delinquent cases, which rose

TABLE 9.3 Sunset Agency Review Process

SUNSET STAFF EVALUATION	SUNSET COMMISSION STAFF
Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.	<ul style="list-style-type: none"> • Reviews agency's Self-Evaluation Report • Receives input from interested parties • Evaluates agency and identifies problems • Develops recommendations • Publishes staff report
SUNSET PUBLISHES STAFF REPORT	
SUNSET COMMISSION DELIBERATION	PUBLIC HEARINGS
The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the Commission meets again to vote on which changes to recommend to the full Legislature.	<ul style="list-style-type: none"> • Sunset staff presents its report and recommendations • Agency presents its response • Sunset Commission hears public testimony • Staff compiles all testimony for Commission consideration • Sunset Commission meets again to consider and vote on recommendations
SUNSET COMMISSION RECOMMENDS ACTION	
LEGISLATIVE ACTION	TEXAS LEGISLATURE
The full legislature considers Sunset recommendations and makes final determinations.	<ul style="list-style-type: none"> • Sunset bill on an agency is drafted and filed • Sunset bills go through normal bill processes • The Senate and the House conduct committee hearings and debate the bill • Bill passes or fails adoption • Governor signs, vetoes, or allows bill to become law without signature
<p style="text-align: center;">Agency continues with improvements. OR Agency is abolished but may continue business for up to one year.</p>	

Source: Texas Sunset Advisory Commission.



COMMUNICATION:

How does the Sunset Advisory Commission review agencies?

The review process follows a simple three-step action:

- First, the staff of the commission works with each agency to collect information, performing extensive research to analyze and review the agency's required self-evaluation. Outside parties, including the public, weigh in at this stage as well. This first stage ends with a report with details about the efficiency of the agency, the success in achieving their mission, and the compliance with open government laws.
- In the second stage, the commission holds hearings on the preliminary report, receives a response from the agency, and votes on final recommendations to the legislature.
- The third stage involves the legislature, which turns the recommendations of the Commission into legislation to be sent through the normal legislative process, including a full vote of the House and Senate and the governor's signature.

17 percent. In addition, the Department of Family and Protective Services has overlooked dozens of cases of abuse, including one in which a young girl was killed by her foster family. Because of complex rules, the amount of paperwork, deadlines, and family visits creates a pressure-filled environment that pushes away experienced employees. The Commissioner of the Department of Family and Protective Services says part of the problem is that there are too many policies and rules, making it “impossible for people to know what the policies are.”³⁵

OVERSIGHT AND CHANGE

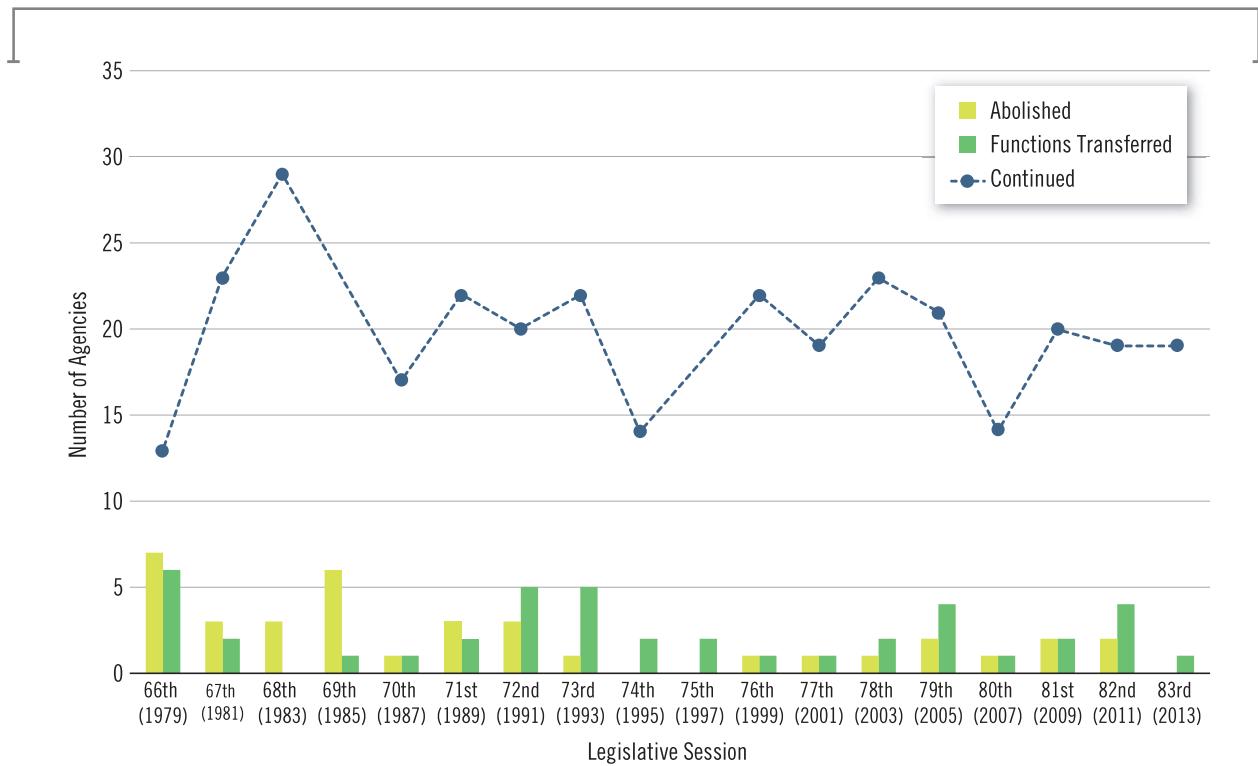
An accountable bureaucracy is the key to ensuring government is working properly and efficiently. With so many agency heads, staff, rules, and procedures, keeping tabs on the function of the bureaucracy in Texas is a massive task. Several players in government are in charge of reviewing agencies, monitoring their progress, evaluating their effectiveness, and altering or eliminating them.

Sunset Process. The Sunset Advisory Commission is a twelve-member commission established in 1977 whose responsibility is to review more than 130 state agencies on a twelve-year cycle. The Sunset process of agency review was set up to provide an ongoing evaluation of government efficiency and effectiveness. In the words of longtime journalist Paul Burka, “Sunset is not designed to change the world. It is designed to give government a periodic scrubbing.”³⁶ Texas is one of only a few states that has this process (the federal government does not either).

The Sunset Commission asks a simple question: does an agency’s function continue to be needed by the state? For each state agency, the legislature sets a date for its abolishment on a twelve-year calendar. The agency is set to be abolished unless legislation is passed to allow that agency to continue to function. The commission reviews agencies set to be “sunsetted” prior to that date, and the legislature decides whether to amend or abolish the agency. This process creates a unique opportunity for the legislature to establish rules and goals for agencies and to hold the bureaucracy accountable (see Table 9.3). Some boards or commissions are scheduled for periodic review, but not elimination, such as the Board of Pardons and Paroles. Between twenty and thirty agencies are reviewed every legislative session.

The good news for state agencies is that they are rarely given the death sentence (see Figure 9.6). Rather, specific functions are often transferred to another agency. For instance, Sunset recommendations for the Texas Higher Education Coordinating Board refocused the agency on coordination rather than regulation of higher education. The Sunset legislation removed significant pieces of the agency’s authority to consolidate or eliminate low-producing academic programs and their ability to approve capital projects at state colleges and universities.

FIGURE 9.6 Agencies Continued or Abolished



Source: Texas Sunset Advisory Commission.



COMMUNICATION:

When are agencies continued, abolished, or transferred?

- Most agencies are continued after Sunset review, generally between fifteen and thirty per year.
- Agencies are not very likely to be abolished. Abolishment was more likely to occur in the early days of the Sunset Commission's work—in 1979, 1981, and 1985.
- The Sunset recommendations are more likely to transfer functions to another agency than abolish an agency. Beginning in the 1991 session, more agencies were asked to transfer functions rather than dissolve.



CRITICAL THINKING:

Why are most agencies continued?

- Most agencies function well and efficiently, especially because Sunset regulations establish guidelines and benchmarks for success for agencies in years they are not reviewed.
- The process of shutting down an agency is difficult and is often enough to encourage agency officials and lawmakers to work together to reform a struggling agency.

Agencies that are abolished continue their function for one year as they transition into obscurity. Since 1977, seventy-nine agencies have been abolished or absorbed into other agencies. For example, in 2013, the Sunset recommendations abolished the Office of Fire Fighters' Pension Commissioner and put the Pension Review Board in charge of overseeing local firefighter pensions. The Commission estimates that it has generated almost one billion dollars since 1982 in savings or increased revenue; and for every dollar spent on the Commission, the state gets a return of approximately \$23.³⁷

The legislature has the authority to place some bodies that function like agencies under review, such as local transit agencies, the Port of Houston Authority, and the University Interscholastic League—important because it sets rules for and administers Friday Night Football in the state, along with other athletic, music, and academic contests.

Legislative Oversight. The legislature is tasked with overseeing agency compliance with legislative policies. Standing and special committees in the legislature investigate matters involving agency compliance. In 2015, the State Senate investigated how state agencies develop and manage contracts with outside organizations for services. The Senate Finance Committee

GREAT TEXAS POLITICAL DEBATES

Sunset Sunset?

At the close of the 2009 legislative session, Representative Carl Isett rose to give a personal privilege speech with dire warning: the state's Sunset system is broken and needs repair. Just before the House adjourned on a pivotal day in the legislature, the Lubbock Republican, who served as the outgoing chairman of the Sunset Advisory Commission, leveled that the system was "adulterated." He continued to say that instead of being used for realistic reform efforts, Sunset bills are seen by lobbyists, special interests, and legislators as "targets of opportunity" to eliminate provisions they disliked. Representative Isett concluded by saying that it was "time to sunset the Sunset process."³⁸ Despite the Sunset Advisory Commission's noble cause, the process has been compromised. Increasingly, interest group participation has shaped the Sunset process. In a review of the Department of Transportation, Speaker Joe Strauss, commenting

on the 250 amendments in front of him, said that he "couldn't even see the parliamentarian" and that the lobbyists have taken control of the process.³⁹

 **SOCIAL RESPONSIBILITY:** **Should the state reform the Sunset laws?**

NO: Periodic review of individual agencies provides careful planning and oversight and most agency reviews run smoothly. Any flaws are minor in comparison to achieving efficiency of government and mandatory review.

YES: With increasing power from lobbying interests in Austin and less oversight for the Sunset process, more transparency is needed with respect to participation in the process. Sunset Commission members should disclose potential conflicts of interest. Legislative rules must be changed to not allow Sunset bills to be delayed or to have other legislation attached to them.

looked into questions about possible abuses in state contracting and found that even basic information about the state's current contracts was unavailable for more than twenty state agencies. "We're not even letting the horses run out of the barn," said State Senator Paul Bettencourt, Republican from Houston. "They don't even know where the barn is."⁴⁰ The committee recommended legislation to require a central contract management database and a public vendor tracking system that state agencies would have to use to grade vendors. The legislature can also transfer administration of a program to another agency, stripping a problematic agency or agency personnel out of the process.

Gubernatorial Oversight. The governor has several ways to oversee and manage agencies. The Governor's Office of Budget and Planning prepares biennial budget recommendations for the legislature to consider and regularly monitors state appropriations and operations between formal Sunset reviews. The governor also has the power to direct state agencies to implement specific rules. In the aftermath of a 2015 scandal involving improper contracts being awarded to close business associates of an agency head, Governor Greg Abbott issued several rules designed to hold agency contracting accountable. These rules require agencies to publicly disclose no-bid contracts, justify these contracts, and ensure that agency employees involved in the contract disclose any possible conflicts of interest. If all else fails, the governor ask the agency head to resign (but not force them to).

Other Agencies with Oversight. Other state agencies also provide oversight. The State Auditor reviews fiscal and management responsibilities and evaluates the efficiency, effectiveness, and legal compliance of state agencies. The State Auditor may also monitor an agency's implementation of legislative or Sunset committee management recommendations. The Legislative Budget Board prepares biennial appropriations bills, assesses performance reports from agencies, and reviews agency strategic plans. All job openings must be listed with the Texas Employment Agency, which screens applicants.



TEXAS TAKEAWAYS

- 14 Describe the mission of the Sunset Commission.
 - 15 What are some measures taken by Texas to hold its bureaucracy accountable?
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 **THE INSIDER VIEW**

The dispersal of authority across several individuals, elected agency heads, and thousands of individual bureaucrats across state government often makes the bureaucracy feel remote from public interest. Yet these organizations are the cornerstone of the institutional power that runs Texas from the small (operating nursery floral businesses) to the large (regulating environmental outcomes). Past internal conflicts, friction within the executive branch, and serious efforts to make government accountable have established checks on the actions of the plural executive and bureaucratic organizations in the state. These barriers do not allow any one person, branch of government, or agency to become too powerful and allow for government to stay limited in scope. However, the way the bureaucracy is selected plays a part in its power—some agencies (such as the Railroad Commission) have close ties to the organizations they work with, whereas others (the Texas Ethics Commission) do not. Officials, like the Lieutenant Governor, have significant sway in state policymaking. However, public policies are—at times—a product of the struggles between officers and agencies within the plural executive. The public has several ways to intervene, including tracking what government does and participating in reforms.

**TEXAS TAKEAWAYS**

- 1 Bureaucracies administer rules, make rules, enforce laws, and provide services to individuals.
- 2 The Texas bureaucracy has grown due to a combination of population growth and economic expansion.
- 3 Agencies with more appointees from the governor are more indebted to the governor. Agencies that are elected independently are less likely to cater to the governor's will.
- 4 The lieutenant governor serves as the presiding officer of the Texas Senate, casts tiebreaking votes, and serves and appoints officials to key state boards and commissions.
- 5 The AG office's consumer functions involve enforcement of health, safety, and consumer regulations and protection of the rights of the elderly and disabled. The attorney general is also responsible for enforcement of child support payments, including locating absent parents, establishing paternity, reviewing and adjusting child support payments, and collecting and distributing child support payments.
- 6 The comptroller sets the revenue estimate and audits the budget.
- 7 The Secretary of State is the chief elections administrator, the steward of all state records, and an ambassador of the state to other nations.
- 8 The HHSC is so difficult to manage because it is a large agency and has many policies that it must implement.
- 9 In a governor-appointed, singled-headed agency, the appointee is often closer to the governor. Where there are more appointees on a larger commission, the governor may have less influence.
- 10 The Texas Commission on Environmental Quality deals with natural resources, maintains clean air and water, and protects the environment, among others.

- 11** The TRC's primary functions are the regulation of the oil and gas industry and environmental protection.
- 12** The main goal of the Texas Ethics Commission is to oversee, regulate, and enforce campaign finance and lobbying activities.
- 13** The State Board of Education oversees the curriculum standards for primary and secondary education.
- 14** The mission of the Sunset Commission is to periodically review the function and efficiency of agencies. An agency is set to be abolished unless legislation is passed to allow that agency to continue to function.
- 15** The state can hold the bureaucracy accountable in several ways, including the Sunset process and legislative, gubernatorial, and agency oversight.

KEY TERMS

bureaucracy
enforcement
hybrid agencies
implementation
licensing
multimember agencies
pay-as-you-go system
plural executive
presiding officer
regulations
rules

PRACTICE QUIZ

1. The diffusion of power and authority throughout several entities in the executive branch is called
 - a. Delegation
 - b. Reappraisal of Agencies
 - c. Reorganization Planning
 - d. Plural Executive
2. Regarding power and political role, the Lieutenant Governor in Texas is
 - a. Strong
 - b. Weak
 - c. Non-existent
 - d. None of the above
3. _____ is when a government agency gives a company, an individual, or an organization permission to carry out a specific task.
 - a. Regulation
 - b. Licensing
 - c. Enforcement
 - d. Rule-making
4. If the Senate is evenly split on a vote, which individual is responsible for being the “tiebreaking” vote?
 - a. Governor
 - b. Secretary of State
 - c. Lieutenant Governor
 - d. Senate Majority Leader
5. What is the name of the complex, professional organization that administers government actions through routine tasks?
 - a. The Legislature
 - b. The Vote Centers
 - c. The Office of the Governor
 - d. The Bureaucracy
6. What is the name of the organization that periodically reviews executive agencies for efficiency?
 - a. The Attorney General
 - b. Sunset Commission
 - c. Department of Licensing and Regulations
 - d. Texas Legislative Council

7. The Lieutenant Governor is the presiding officer of the Texas Senate.
 - a. True
 - b. False
8. The TRC's authority is limited to regulating railroads.
 - a. True
 - b. False
9. The Sunset Process is one of several ways that the state can hold the bureaucracy accountable.
 - a. True
 - b. False
10. The bureaucracy in Texas is made up of both independent agencies and agencies staffed by gubernatorial appointments.
 - a. True
 - b. False

[Answers: D, A, B, C, D, B, A, B, A, A]