



**TEXAS RACING COMMISSION**  
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April 3, 2008

Mr. Joey Longley, Director  
Sunset Advisory Commission  
1501 North Congress  
6<sup>th</sup> Floor, Robert E. Johnson Building  
Austin, TX 78701

Dear Mr. Longley:

On behalf of the Texas Racing Commission, I wish to thank you and your staff for your professionalism, time, and consideration in conducting the review of the agency. We are especially grateful for the level of detail that Ken Levine, Kelly Kennedy, Stephen Ogle, and Janet Wood gave to the review and their effort to understand the mission and operations of the Commission.

The agency agrees with the staff recommendations presented in the staff report. Included in our response are suggestions for modifications. They will help clarify and strengthen the proposed statutory changes for both the Racing Commission and the Equine Research Advisory Committee. In regard to the management actions, the agency fully supports the suggested changes and has begun working on implementation of the improvements. In addition, we have included one new issue at the request of Commissioner Sonny Sowell.

Thank you for the opportunity to provide feedback about the staff report. Participation in this review has given our agency a constructive opportunity to closely examine the work we do. We look forward to participating in the public hearing. We also look forward to the improvements that the Sunset process will bring to the regulation and oversight of the Texas pari-mutuel racing industry.

Sincerely,

A handwritten signature in cursive script that reads "Charla Ann King".

Charla Ann King  
Executive Director

CAK:mjc

Enclosure: Texas Racing Commission Response to Sunset Advisory Commission Staff Report



# **TEXAS RACING COMMISSION**

## **RESPONSE TO SUNSET ADVISORY COMMISSION STAFF REPORT**

**APRIL 3, 2008**

# TEXAS RACING COMMISSION

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## **AGENCY MISSION**

The Commission will vigorously enforce the Texas Racing Act and its rules to ensure a consistent and accurate revenue stream to the state and racing participants, safe racing facilities, fair and honest racing activities, and accountable use of economic incentives funded through pari-mutuel racing. The Commission will conduct its regulatory activities courteously and efficiently and will facilitate communication and cooperation among and between the public and the various interests within the racing industry.

***Issue 1: The Commission lacks certain regulatory tools needed to oversee today's racing industry.***

**Recommendations for Statutory Changes:**

**1.1 Require the Commission to review each racetrack license on a periodic basis and develop renewal criteria along with associated sanctions for failure to comply.**

**Agency Response:**

The agency agrees with this recommendation, presuming that sufficient resources are appropriated to implement the reviews. The recommendation states that "the Commission should institute a staggered schedule that allows for an abbreviated, yet complete, review..." However, because each racetrack license will have different substantive issues for review and will require different emphasis in analysis, an abbreviated review would be difficult to implement. The issues will range from those tracks with no site or facility, to those that are built and operational but have significant financial challenges. The Commission estimates that each review will take 8 weeks to 18 weeks, assuming that each license is renewed. Licenses that are not renewed will require a hearing before the State Office of Administrative Hearings and may last one to two years, depending upon how vigorously the licensee litigates.

To conduct a sufficient review of each racetrack license will require three additional full-time staff: an attorney, a program specialist, and an administrative assistant. These three staff will cover the following activities related to processing an application: legal review and analysis of all statutory criteria; research and evaluation of financial documents; develop a database to track information; coordinate meetings and develop correspondence; and records management. The Commission estimates total costs including salaries for the three FTEs, associated travel costs, equipment, supplies, and other relevant start-up costs, to range from \$350,000 to \$400,000. Although the agency would incur costs, there would be no impact to the state's General Revenue Fund since the Commission would be authorized to charge a renewal fee to collect additional revenue from racetracks to cover additional staff needed to process racetrack license renewals.

**1.2 Clarify the Commission's revocation authority and ability to refuse to renew a racetrack license.**

**Agency Response:**

The agency agrees with this recommendation and requests a statutory modification to enhance the Sunset recommendation. As indicated within the Sunset Staff Report, the Texas Racing Act directs most of its oversight authority for racetracks towards new applicants, not existing licensees. As such, § 6.04(b) of the Act requires new racetrack licensees to post security to ensure compliance with the Act and the Rules. The statute should be changed to specifically provide that the Commission may also require security after a license has been issued.

With its most recently issued licenses, the Commission is using the security bond as a tool to fulfill the statutory intent of ensuring that licensees actually build their tracks. The Commission required its three newest licensees (Laredo Downs, Laredo Race Park, and Valle de los Tesoros) to each post at least \$140,000 in security. Failure to build according to schedule will result in

forfeiture of the security, and the Commission has the authority to require the licensees to post additional security.

When two existing long-term inactive licensees (Saddle Brook Park and Austin Jockey Club) were originally licensed in 1989, the Commission did not require either to post security. Neither of these licensees have built their facilities or conducted a single day of racing. In addition, a third license has become inactive due to the recent closure of Corpus Christi Greyhound Race Track. Failure to reopen this track will tie up a greyhound track license, which is one of only three authorized by the Texas Racing Act. The Act did not envision that licensees would not build their tracks, or close and become inactive for an indefinite period of time, and so failed to provide the tools necessary to address the problem.

Ensuring the Commission's ability to require security at any point in the lifetime of a license is also an equity issue. The Commission has now required the new licensees to post security to ensure economic benefit to the state and the industry, while the longest standing inactive licensees are contributing nothing but license fees. The requested statutory modification will ensure that all licensees are treated equally and are subject to the same requirements.

**1.3 Eliminate uncashed winning tickets as a source of Commission revenue.**

**Agency Response:**

The agency agrees with the recommendation to remove uncashed winning tickets as a method of finance. Racetrack license fees would be adjusted to replace this source of revenue.

**1.4 Clarify that all unlicensed entities are prohibited from accepting wagers placed by Texas residents.**

**Agency Response:**

The agency agrees with the recommendation.

**Recommendation for Management Action:**

**1.5 Direct the agency to adopt a plan to further integrate field staff into the Commission's overall racetrack enforcement plan.**

**Agency Response:**

The agency agrees with the recommendation.

***Issue 2: Weaknesses exist in the Commission's approach to licensing racing industry occupations.***

**Recommendations for Statutory Changes:**

**2.1 Require the Commission to license only those individuals who can affect pari-mutuel racing.**

**Agency Response:**

The agency agrees with this recommendation. However, the agency should retain the authority to require racetrack associations to conduct background checks and the authority to audit those background checks to ensure that individuals employed at the racetrack have clean criminal histories.

In FY 2007, the Commission's criminal history checks of those who would not be licensed under this recommendation revealed that 35 individuals failed to disclose criminal convictions. Twenty of these individuals had convictions for felonies or crimes of moral turpitude. These convictions make these individuals unqualified to work at a racetrack, even if the Commission no longer licenses them. Therefore, the Commission will adopt rules establishing minimum standards for working at a racetrack in a non-pari-mutuel capacity and a procedure for auditing licensed employers' hiring practices to ensure that appropriate background checks are being conducted.

**2.2 Require the Commission to obtain criminal history reports every three years.**

**Agency Response:**

The agency agrees with this recommendation and will propose a rule amendment to implement this recommendation even without statutory amendment.

**Recommendations for Management Action:**

**2.3 The Commission should develop a faster method of obtaining criminal history reports.**

**Agency Response:**

The agency agrees with the recommendation.

**2.4 The Commission should develop processes for overseeing practical examinations.**

**Agency Response:**

The agency agrees with the recommendation.

**2.5 The Commission should ensure that licensee oversight is consistent from racetrack to racetrack.**

**Agency Response:**

The agency agrees with the recommendation.

***Issue 3: Texas has a continuing need for the Texas Racing Commission.***

**Recommendation for Statutory Change:**

**3.1 Continue the Texas Racing Commission for six years.**

**Agency Response:**

The agency agrees with the recommendation.

#### ***Issue 4: The State no longer needs the Equine Research Account Advisory Committee***

##### **Recommendation for Statutory Change:**

#### **4.1 Abolish the Equine Research Account Advisory Committee and continue Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.**

##### **Agency Response:**

The agency requests a modification to the recommendation.

The agency agrees that the efforts of the Equine Research Advisory Committee have suffered in recent years. The Committee's opportunities to improve the health and safety of racehorses in Texas have been diminished by the decline in the industry and by the Legislature's sweep of the pari-mutuel revenue dedicated to the purpose of equine research.

Funding for equine research is important to the effective regulation of Texas horse racing. Indeed, research topics in areas such as horse genetics, nutrition, and medication/drug testing are critical to improvements in the welfare of racehorses and the development of regulations to protect the equine athlete.

In the past two years, TxRC members increased their participation at the Committee level and found interaction with the Committee to be beneficial. The agency's Chief Veterinarian now attends the meetings regularly and has been communicating the need for scientific research to support the State's regulation and control of drugs and medications used in racing. Additional benefit came recently through the Committee at the national conference of state racing regulators, which focused its equine research forum on results of projects recently funded by the Equine Research Advisory Committee.

Although it appears from the Sunset staff's review that the Committee does overlap with Texas AgriLife Research and that Texas AgriLife Research has significant resources to offer the equine research process, the current recommendation to blend the committee process into Texas AgriLife Research does not address all of the concerns cited by Sunset staff. These concerns included:

- the need for research to more directly target racing-related equine issues,
- the need for broader assessment of the impact of the research,
- the need for improved communication and knowledge of research results, and
- the lack of access to the dedicated revenue stream.

Whether the Equine Research Advisory Committee is abolished or continued, the statute should be changed in the following ways.

- Require equine research, funded through pari-mutuel revenue, to benefit the racing industry.
- Designate the Texas Racing Commission, representatives of the breed registries, and the official horsemen's organization to provide input into the research funding process.
- Direct Texas AgriLife Research to provide in its assessment of the research conducted a review of the impact on the racing industry.

- Require enhanced distribution of research results including a report to the Texas Racing Commission and to the relevant legislative committees.

In addition, every effort should be made to restore the equine funding as intended by the statute. Perhaps the value of equine research in regard to the welfare of racehorses in Texas and nationwide has not been effectively communicated through the legislative appropriations process. Regaining access to this dedicated-revenue stream may be a matter of clarifying to members of the Legislature the importance of equine research in protecting the health and safety of equine athletes.

## ***Consideration of New Issue***

### ***Proposed by Commissioner Charles L. "Sonny" Sowell***

#### ***The Commission should be authorized to support the economic growth of the racing industry.***

Commissioner Charles L. "Sonny" Sowell believes the Commission should be authorized to support the growth of the racing industry and offers the following comments and suggested recommendations which he believes are appropriate for an agency that oversees an agricultural- and tourism-based industry.

#### **Background/Discussion:**

Economic development is a common governmental practice but the racing industry has been left behind because of the singular focus on regulation. The current statute actually includes numerous elements of economic benefit and development. Being a convener and coordinator of discussions about the industry's well-being would not be disruptive to the regulatory effort. The State has a duty and made a commitment to the industry but it is not being performed at this time.

The Commission could assist in the economic growth of the industry by leading discussions that focus on supporting the industry and finding ways to make Texas racing more well known. This could be done by:

- Providing a venue for discussions of the economic health of the industry.
- Coordinating efforts for the development of economic impact information.
- Providing an inventory of successful strategies and approaches used in other states to assist policymakers making changes to the Texas Racing Act.

The Commission could periodically review the racing industry's economic condition. This review would include assessing the industry's affect on small business development, earnings income and job growth, both agricultural and nonagricultural, to help clarify the industry's impact on the economy and identify its strengths and weaknesses

The Commission could coordinate with other state agencies that perform economic development duties. This coordination would allow the Commission to:

- Partner with other state agencies and colleges and university groups that already have expertise in economic and industry assessments adding to the state's current economic development activities.
- Work directly with the Texas Department of Agriculture, the Texas Economic Development and Tourism Office, and Texas AgriLife Research.

The Texas Department of Agriculture's GO TEXAN programs are an excellent example of the State's commitment to promoting the products, culture and communities of Texas. According to the Department of Agriculture, the GO TEXAN logo, a brand in the shape of Texas, taps into the Lone Star loyalty, working to persuade the 22 million Texans who shop, dine and travel to

choose Texas products. Adding horse and greyhound racing products to this program would be beneficial to the State.

**Suggested Action:**

Recommendation 1: The Commission should provide venues for discussions of the economic health and development of the racing industry.

Recommendation 2: The Commission should periodically issue a report on the racing industry's economic condition.

Recommendation 3: The Commission should partner with the Texas Department of Agriculture, the Texas Economic Development and Tourism Office, Texas AgriLife Research, and any other state agency or college or university group charged with furthering economic development in Texas.