

**Self-Evaluation Report
Texas Funeral Service Commission**



***Presented to
Sunset Advisory Commission
August 2017***

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Texas Funeral Service Commission Self-Evaluation Report

I. Agency Contact Information

Texas Funeral Service Commission Exhibit 1: Agency Contacts

	Name	Address	Telephone & Fax Numbers	Email Address
Agency Head	Janice McCoy	PO Box 12217 Austin, TX 78711	512-936-2472 512-479-5064	Janice.mccoy@tfsc.texas.gov
Agency's Sunset Liaison	Janice McCoy	Same	Same	Same

II. Key Functions and Performance

A. Provide an overview of your agency's mission, objectives, and key functions.

The mission of the Texas Funeral Service Commission is to protect the public from deceptive practices in the funeral and death care industry through a process of impartial enforcement, inspection, licensing and education in order to guarantee that every person's final disposition is conducted professionally and ethically.

The first operational goal of the agency is to manage a program of examination and licensure to ensure the development of competent funeral professionals who have high standards of ethical conduct. The goal's objective is to ensure licensing functions are managed in a timely and cost-effective manner. In order to meet the objective, the agency issues and renews licenses, manages a provisional licensing program and monitors a continuing education program.

The second operational goal of the agency is to aggressively and effectively provide enforcement and protect the public. The goal's objectives are to ensure protection of the general public by inspecting 100 percent of all licensed funeral establishments each year and to ensure fair and immediate due process for all complainants and respondents by initiating the disciplinary/adjudicatory process within 90 days of identification of violations.

B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

The agency finds each of its key functions continues to serve a clear and ongoing objective.

Texans of every race, age, religion and socioeconomic group are impacted by the funeral and death care industry. A family's economic situation impacts the amount spent on a funeral. The Federal Trade Commission (FTC) has said "the purchase of a funeral is the third largest single expenditure many consumers will ever have to make after a home and a car."

Inherent in the process of purchasing a funeral at the time of death is a trust by the purchaser in the professional competency of funeral directors and embalmers. Individuals purchasing a funeral are generally grieving and in state of emotional distress. Without the key functions of licensing and enforcement, the Commission would be unable to ensure that only competent, scrupulous, and ethical providers practiced funeral directing and embalming, and the public would be unable to evaluate the qualifications and professional history of a provider.

Additionally, the industry is regulated under the Federal Trade Commission (FTC). The agency assists the FTC to ensure federal regulations (which have been incorporated into state regulations) are followed.

C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?

Based on the Commission's performance measures, disciplinary data, customer service survey results, and general feedback received from the public, the agency believes it is a model of an effective and efficient regulatory body.

By way of example, the Commission is responsible for licensing, regulating, and monitoring the status of approximately 5,029 individual and 1,550 establishment licenses, and investigating approximately 180 complaints filed each year. In FY2016, the Commission accomplished its mission with 12 full time employees and expenditures of \$816,217.

Individual licensees renew their licenses biannually and in FY2016 the agency renewed approximately 2,206 individual licenses, with 81 percent being renewed online. In that same year the agency issued 370 new licenses to funeral directors and/or embalmers. Establishments renew their licenses annually and in FY2016 the agency renewed approximately 1537 licenses. In that same year the agency issued 86 new licenses to funeral establishments, crematories, and cemeteries.

Over 186 complaints were received by the agency in FY2016 and 149 were disposed of that same year. In FY 2016, the agency inspected 100% of all establishments thereby ensuring compliance with all laws and statutes.

The Commission has historically solicited information from its customers about the quality of services it performs. Generally, the responses are favorable to the Commission and its staff. The most recent customer survey results can be found on the Commission's website at: <http://tfsc.texas.gov/files/Statute/FY%202016%20Customer%20Service%20Report.pdf>.

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions?

Yes, Chapter 651, Occupations Code generally continues to correctly reflect the mission, objectives, and approach to performing the Commission's function. However, see Section H for specific obstacles in statute.

E. Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

The Commission generally works with stakeholder groups, including the Texas Funeral Directors' Association (TFDA), to support statutory changes. For the most recent two regular legislative sessions, the agency took its suggested legislative changes to the TFDA. After deliberation at its annual meeting, the TFDA determined to support and advocate for those changes with the agency acting only as a resource. There was legislation filed in in both the 2015 and 2017 legislative sessions to update and clarify the agency's enabling statute (See 85R HB1292). Those changes were not adopted.

F. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?

The Commission's functions do not overlap or duplicate those of another state agency. The agency works closely with its partner agencies (including the Texas Department of Banking, the Texas Department of Insurance and the Texas Department of Health) to ensure there is no duplication of functions between the agencies.

Some of the Commission's compliance functions do overlap with the FTC. The FTC has implemented the "Funeral Rule" which governs certain behaviors of funeral providers. The agency has incorporated the provisions of this rule into its administrative rules. Consumers can, and do, file complaints with either or both the FTC and the Commission. The agency does not coordinate with the FTC to avoid duplication. The agency will proceed with an investigation and findings even if the FTC is reviewing the same allegations.

G. In general, how do other states carry out similar functions?

The majority of states regulate the funeral profession similar to how it is done in Texas. The International Conference of Funeral Service Examining Boards has issued a report with jurisdiction-specific information for all 55 Conference member boards. The report can be found at the following: <https://theconferenceonline.org/wp-content/uploads/2017/07/Regulations-in-Licensing-2017.pdf>.

H. What key obstacles impair your agency's ability to achieve its objectives?

The key obstacle the Commission has identified that impairs its ability to achieve its objectives is circular or confusing language in the Cemetery & Crematory Services, Funeral Directing and Embalming Act (Tex. Occ. Code Chapter 651). Additionally, there are sections of the Act that do not reflect current industry practice. By way of example:

- The statute requires a license holder to display his/her license in every location where he or she works, but it only allows them to get a duplicate license if the first license is lost or destroyed.

- In two separate sections, the statute provides for the renewal of expired license by out-of-state practitioner, but sets different renewal rates for that license.
- In current statute, the hearings process for complaints seems to be circular in nature – and is not clear what hearing needs to come first.
- The Act contains several sections of law that the agency has never utilized and which do not support the agency’s mission.

I. Discuss any changes that could impact your agency’s key functions in the near future (e.g., changes in federal law or outstanding court cases).

For several years, there has been discussion on amending the “Funeral Rule” as adopted by the Federal Trade Commission. Depending on the amendment, the Commission’s rules would need to be updated to reflect those changes.

J. What are your agency’s biggest opportunities for improvement in the future?

The Commission is committed to its mission to protect the public through the establishment of appropriate licensing standards and impartial oversight and discipline of unethical providers. The agency works with its state and national partners to keep up with any changes in the funeral industry.

The Commission continues to look for new approaches to streamline and modernize its licensing and enforcement features to better serve its constituency. The agency has taken significant steps toward improving the efficiencies of its operations, including updating its forms and applications, implementing an online law exam, and revising its compliance procedures.

If resources are available, the agency would like to increase its use of technology in both the licensing and enforcement processes.

K. In the following chart, provide information regarding your agency’s key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures. Please provide information regarding the methodology used to collect and report the data.

**Texas Funeral Service Commission
Exhibit 2: Key Performance Measures — Fiscal Year 2016**

Key Performance Measures	FY 2016 Target	FY 2016 Actual Performance	FY 2016 % of Annual Target
Percent of Licensees with No Recent Violations	98%	98.54%	100.55%
Percent of Licensees Who Renew Online	80%	81%	101.25%
Number of New Licenses Issued to Individuals	370	370	100%
Number of Individual Licenses Renewed	2,250	2,206	98.04%
Number of New Licenses Issued to Facilities	90	86	95.56%
Number of Facility Licenses Renewed	1,600	1,537	96.06%

Key Performance Measures	FY 2016 Target	FY 2016 Actual Performance	FY 2016 % of Annual Target
Total Number of Individuals Licensed	4,750	5029	105.87
Total Number of Facilities Licensed	1,600	1,550	96.88%
Number of Establishments Inspected	1,500	1,500	100%
Percent of Complaints Resolved Resulting in Disciplinary Action	35%	26%	74.29%
Percent of Complaint Resolved Within Six Months	62%	93%	150%
Number of Complaints Resolved	190	149	78.42%
Number of Complaints Pending	80	28	35%
Average Time for Complaint Resolution	250	71.17	28.47%
Average Time to Resolve Complaints Pending Litigation	800	254.5	31.81%
Number of Jurisdictional Complaints Received	175	149	85.14%

Table 1 Exhibit 2 Key Performance Measures

The methodology used to collect and report performance measure data can be found in “Schedule B” of the agency’s 2017-2021 Strategic Plan found on the agency’s website at <http://tfsc.texas.gov/files/Statute/2017-2021%20TFSC%20Strategic%20Plan.pdf>.

- L. **Please discuss any “high-value data” your agency possesses, as defined by Section 2054.1265 of the Government Code. In addition, please note whether your agency has posted those data sets on publically available websites as required by statute.**

N/A

III. TFSC History and Major Events

1903	The State Board of Embalming was established to license and regulate embalmers. The focus of the law was to protect the public health by preventing the spread of contagious disease.
1938	The law was amended to include funeral directors in its licensing requirements.
1958	The name of the agency was changed the State Board of Morticians
1977	First Sunset Review. Sunset Commission recommended agency be abolished and responsibilities placed within Texas Department of Health.
1979	Agency was continued by Legislature. Legislation expanded the board to nine members consisting of five industry and four public members. The authority to protect the public was expanded.
1984	Federal Trade Commission promulgated the “funeral rule” which contains key consumer protection provisions the funeral industry must follow.
Mid-80s	Agency adopted funeral rule components into its administrative rules.
1987	Agency renamed Texas Funeral Service Commission. Enforcement authority expanded to include administrative penalties.
1989	Second Sunset Review. Sunset staff recommended abolishment of agency and termination of specific regulation of funeral industry. Sunset Commission recommended

	agency not only be continued, but additional provisions added to strengthen regulation of industry.
1991	<p>Agency was continued by Legislature (See 72R SB 284). Key provisions include:</p> <ul style="list-style-type: none"> • Majority public members (5) with four industry members • Require independent hearings officer to rule on disciplinary cases • Prohibit commissioner participation in informal hearings • Decreased number of required provisional cases from 60 to 40 • Changed from annual inspection to biennial inspections of establishments • Required MOUs between Department of Banking, Board of Insurance and TFSC regarding pre-need funeral sales and between Department of Health and TFSC regarding vital statistic issues. • Eliminated practical exam for embalmer applicants • Authorized Commission to require continuing education • Deleted authority of Commission to approve mortuary schools
1993	<p>73R Legislature adopted HB 466. Key provisions include:</p> <ul style="list-style-type: none"> • Changed name of apprentice program to “provisional license program” • Specified two commissioners could participate in informal conference relating to case that awaits a hearing • Raised passing grade on required exams for licensure from 70 to 75 • Gave Commission authority to require applicant to appear before it prior to application approval • Adjusted number of required provisional cases from a minimum of 40 to a minimum of 60 • Changed funeral home inspection requirement from biennial inspection to annual inspection • Hearings officer optional at discretion of Commission • Made changes in penalty provisions of law.
1995	<p>74R HB 1483 required that a school/college of mortuary science cannot use a dead human body for educational or instructional purposes without written consent.</p>
1997	<p>75R HB 1672 modified disclosure language on notices that must be printed on a funeral establishment’s retail price list or on the written memorandum that itemizes the cost of funeral services or merchandise selected by a customer.</p>
1999	<p>76R HB 3516 adopted. Key provisions include:</p> <ul style="list-style-type: none"> • Reduced size of Commission from 9 to 6, with four public members and 2 industry members • Required industry members to be both funeral director and embalmer • Specified Governor designate public member as presiding officer and commissioners elect a public member as assistant presiding officer • Required Commissioner with personal/private interest in pending matter to recuse him/her self from participating • Eliminated authority for agency to employ in-house general counsel • Changed reciprocity requirements • Created exemption from preparation room requirement • Required disciplinary hearings to be held before ALJ at SOAH • Eliminated Commission’s authority to contract for services of investigator • Eliminated specific licensing or employment requirements that in-house investigator must meet to be hired by Commission.

1999	76R HB 2255 modified requirements related to merchandise funeral establishments must display.
1999	76R SB 440 / HB 2954 changed TFSC Sunset date from 2003 to 2001.
2000	Third Sunset Review. Sunset Staff recommended to continue agency for two year probationary period (through 2003) and made other recommendations. Sunset Commission recommended agency be continued for two year probationary provision. Additional recommendations include making Commission member of Health Professions Council, relocate agency to Hobby Building, put funeral prices/sanctions on its web-site, change to biennial inspection of establishments, stagger renewals of licenses, create system to rank and respond to complaints, update complaint process, require registration of cemeteries and crematories, expand Commission from 6 to 7 members, require ethics training in continuing education requirements.
2001	77R HB 3067 adopted. Key provisions include: <ul style="list-style-type: none"> • Continued agency for 2-year probationary period • Required biennial inspection but allow Commission to base inspections on risk • Required staggered license renewals • Required rules to outline complaint process • Removed authorization for Commission member to participate in informal hearings • Required clear guidelines for sanctions/fines • Required registration of cemeteries and crematories and create regulatory system for licensure and compliance • Expanded Commission from 6 to 7 members by adding cemetery member • Added Commission to Health Professions Council • Allowed for automatic revocation of license if convicted of felony
2002	Sunset Commission recommended continuing agency for 12 years.
2003	78R HB 1538 adopted. Key provisions include: <ul style="list-style-type: none"> • Continued agency for 12 years • Required consumer/industry input on rules • Gave Commission greater regulatory/enforcement authority over cemeteries and crematories, prohibited inspections of perpetual care cemeteries • Delineated authority to address consumer complaints about cemeteries • Clarified TFSC's authority to define standards of professional and ethical conduct • Prohibited funeral providers from making misleading statements • Established rotating public/industry terms for presiding officer • Created more effective complaint process • Updated provisional license time limits and training requirements
2007	80R HB 755 prohibited agency from taking action against licensee under H&S Code Chapter 193 under certain late filings for death certificates
2009	81R HB 1468 adopted. Key agency provisions include: <ul style="list-style-type: none"> • Granted authority to ask OAG to bring injunctive relief against cemetery violation certain provisions of H&S Chapter 711 • Updated statute regarding cremation and prohibited action against crematories if certain conditions occurred. • Updated individual license renewal requirement, included for suspended or revoked licenses • Modified display requirements for funeral establishments

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	<ul style="list-style-type: none"> • Exempted perpetual care cemeteries from registering with Commission • Created defense to prosecution for funeral directors who act on direction of person who states he/she is authorizing agent
2009	81R HB 2927 updated Commission authority to adopt rules to regulate certain parts of H&S Chapter 711 and granted authority to ask OAG to bring injunctive relief against cemetery violation certain provisions of H&S Chapter 711
2009	81R SB 755 allowed a public postsecondary school that provides funeral service education to operate a funeral establishment (on-campus embalming facilities).
2011	82R SB 652 moved Commission sunset date from 2015 to 2019.
2011	82R HB 2286 required funeral directors (or their agents) to be present until decedent is interred, entombed or transferred out of state.
2011	82R SB 864 updated terms of provisional license, required General Price List to list cost of filing insurance paperwork, and updated when Commission could charge Funeral Director in Charge with violation in lieu of charging licensee who committed violation
2013	83R HB 2710 allowed Commission to hire Staff Attorney
2013	83R SB 221 allowed Commissioners to be reappointed to sit on Commission
2015	<p>84R HB 1219 updated requirements of provisional licensing program. Key provisions include:</p> <ul style="list-style-type: none"> • Required licensees to be employed by a funeral establishment • Required TFSC to waive to educational requirements for a period of up to 12 months • Lowered minimum number of cases that must be performed from 60 to 45 • Required provisional licensee must identify himself/herself as provisional during first contact with a family • Authorized case completed for school credit may also be counted toward the cases needed as part of the provisional program • Clarified term of provisional license is 12 consecutive months to be renewed one time for a total period of no more than 24 months • Clarified license canceled if requirements for licensure are not met in 24 month period • Allowed a provisional licensee to exit the provisional program to full licensure at the time he/she satisfies all statutory requirements • Allowed provisional ONE opportunity to re-apply for provisional license if failed to complete within original 24 month period

IV. Policymaking Structure

A.

Texas Funeral Service Commission Exhibit 3: Policymaking Body

Member Name	Term / Appointment Dates / Appointed by	Qualification	City
Jean Olinger Presiding Officer	Six Years / Appointed by Governor 2012-2013 / 2013-2019 Presiding Officer – 2015-2018	Public Member	Blanco
Larry Allen	Six Years / Appointed by Governor 2015-2021	Public Member	Mesquite
Greg Compean	Six Years / Appointed by Governor 2015-2021	Industry Member	Houston
Joyce Odom	Six Years / Appointed by Governor 2007-2011 / 2011-2017	Public Member	San Antonio
Jonathan Scepanski	Six Years / Appointed by Governor 2013-2019	Public Member	Edinburg
Gary Shaffer	Six Years / Appointed by Governor 2013-2019	Industry Member (Cemetery slot)	San Angelo
W. Scott Smith	Four Years / Appointed by Governor to fill vacated position 2014-2017	Industry Member	Murphy

Table 2 Exhibit 3 Policymaking Body

B. Describe the primary role and responsibilities of your policymaking body.

The primary role of Commissioners is to:

- Set policy for the Commission.
- Promulgate rules to implement Chapter 651, Texas Occupations Code, including setting licensing and renewal fees.
- Hire an Executive Director and other staff as desired.
- Hold at least four annual meetings.
- Approve various required agency reports and plans, including the strategic plan, legislative appropriations request, and annual financial report.
- Assess financial status of the agency on a quarterly basis.
 - Review other key documents such as performance measure reports, risk assessments, and audits.
- Evaluate the Executive Director on an annual basis.
- Consult with the General Counsel on legal matters affecting the agency.
- Monitor licensing and enforcement operations.
- Respond to formal inquiries.
- Take disciplinary action against licensees by approving proposals for decision issued by Administrative Law Judges (SOAH).

C. How is the chair selected?

The Presiding Officer is designated by the Governor for a three year term. The Presiding Officer must rotate between a public and an industry member. The Assistant Presiding Officer is selected by Commissioners for a one year term and must be a public member.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

Unique to the Texas Funeral Service Commission, the majority of Commissioners (four) must be public members with no ties to the funeral industry. The remaining members (three) must either be licensed as funeral directors/embalmers (two) or a cemetery owner (one).

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2016? In FY 2017?

By statute the Commission meets quarterly and did so in both FY 2016 and FY 2017. Future meeting dates are published on the agency's website.

F. What type of training do members of your agency's policymaking body receive?

Standard training is provided to appointees by the Governor. As required by Tex. Occ. Code Chapter 651.0511, one on one training on functions, budget, and rules of agency is provided by Executive Director prior to first meeting.

The training consists of many facets including Commission functions and operations, the Act and rules, policies and procedures, as well as the Texas Public Information Act, Texas Open Meetings Act, administrative rule making, state budgeting, performance measures, and agency publications including the website.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

Commissioners routinely provide authority to the Executive Director to take action on specific items. Currently these policies are not centralized but can be found in the official minutes of the Commission. Since 2014, the Commission has granted the Executive Director the authority to approve applicants with certain criminal histories without having to appear before the Commission.

Additional authority is granted to the Executive Director throughout the agency's administrative rules.

The adoption of a Delineation of Authority policy will be on the September 2017 Commission meeting agenda.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

At quarterly meetings, Commissioners are provided information to ensure they are informed of the agency's performance and issues affecting the agency. Specifically, Commissioners are updated on the agency's operating budget, quarterly performance measures, legal report noting complaint resolution (fine paid, settled, appeal to SOAH), and executive director report (varies from meeting to meeting, but could include updates on Legislature, Sunset, Criminal history evaluations, etc.).

Commissioners also are presented with all available annual or periodic audit reports conducted specific to the agency.

Lastly, Commissioners receive updates from the Executive Director via email and telephone calls, as needed.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

The Commission obtains input from the public by the following actions:

- Posting proposed rules for comment in the Texas Register
- Allowing for public comment at every Commission meeting
- Providing updates and news on its website
- Publishing staff emails on its website
- Use of ad hoc advisory committees to solicit input on potential rule changes and/or policy changes
- Surveying its customers (licensees and complainants) in its customer service survey
- Providing information as a result of inquiries via phone, fax, email or letter

The Commission incorporates input from the public by the following:

- Revising, deleting or creating new rules, policies or procedures
- Making changes to the agency's website
- Making changes to the agency's forms and applications
- Making budget or law revision requests to the Legislature
- Seeking Attorney General Opinions

J. Subcommittees and Advisory Committees

The agency does not have any standing subcommittees or advisory committees. On occasion, the presiding officer will designate a subcommittee for a specific purpose (such as hiring an executive director) and for a specific period of time.

V. Funding

A. Provide a brief description of your agency's funding.

The agency is funded through general revenue and appropriated receipts. The TFSC is a self-funded agency meaning that the fees the agency collects from its applicants, examinees and licensees must cover the amount appropriated by the Legislature.

B. List all riders that significantly impact your agency’s budget.

- Art. VIII, Section 2 Appropriations Limited to Revenue Collections
- Art. VIII, Section 3 Funding for Health Professions Council
- Art. VIII, Section 4 Texas.gov Appropriation
- Art. IX, Section 8.14. Cost Recovery of Application or Testing Fees

C. Show your agency’s expenditures by strategy.

**Texas Funeral Service Commission
Exhibit 5: Expenditures by Strategy — 2016 (Actual)**

Goal / Strategy	Amount Spent	Percent of Total	Contract Expenditures Included in Total Amount
Goal 1.1 / Competent Licensees	271,072	33%	0
Goal 1.2 / Texas.gov	45,696	6%	0
Goal 2.1 / Inspections	157,006	195	0
Goal 2.2 / Rule Compliance	339,326	42%	0
Goal 3.1 / Indirect Administration – Licensing	1,635	< 1%	0
Goal 3.2 / Indirect Administration – Inspections	416	< 1%	0
Goal 3.3 / Indirect Administration – Rule Compliance	1,066	< 1%	0
GRAND TOTAL:	816,217	100%	0

Table 3 Exhibit 5 Expenditures by Strategy

D. Show your agency’s sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.

**Texas Funeral Service Commission
Exhibit 6: Sources of Revenue — Fiscal Year 2016 (Actual)**

Source	Amount
General Revenue	739,279
Appropriated Receipts	76,940
TOTAL	816,631

Table 4 Exhibit 6 Sources of Revenue

E. If you receive funds from multiple federal programs, show the types of federal funding sources.

N/A

F. If applicable, provide detailed information on fees collected by your agency.

**Texas Funeral Service Commission
Exhibit 8: Fee Revenue — Fiscal Year 2016**

Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited
Individual License / 651.154(a)(1)	\$175-\$350 (pro-rated)	151	\$21,734.47	General Revenue
Upgrade License from Single to Dual / 651.154(a)(1)	\$175 (pro-rated)	20	\$2,104.21	General Revenue
Individual Renewal – Single / 651.154(a)	\$185	699	\$124,315	General Revenue
Individual Renewal – Dual / 651.154(a)	\$320	1,213	\$388,160	General Revenue
Individual Renewal – Active Retired-Disabled	\$92.5 - \$160	78	\$7,215	General Revenue
Individual Reinstatement	\$350-\$600	23	\$11,550	General Revenue
Individual Renewal Late Penalty / 651.165	\$25- \$320	153	\$23,082.50	General Revenue
Provisional Application Fee / 651.154(b)	\$90	334	\$30,060	General Revenue
Provisional Renewal Fee / 651.154(b)	\$65	159	\$10,335	General Revenue
Provisional Renewal Late Penalty	\$66	23	\$1,518	General Revenue
Individual Application Fee / 651.154(a)	\$90	0	0	General Revenue
Reciprocal License Fee – Single / 651.259	\$300	5	\$1,500	General Revenue
Reciprocal License Fee – Dual / 651.259	\$600	30	\$9,000	General Revenue
Continuing Education Provider Fee / TAC 203.8	\$250	29	47,250	General Revenue
Continuing Education Course Fee / TAC 203.8	\$50	66	\$13,150	General Revenue
Continuing Education Non-Compliance Fee / TAC 203.8	\$300	0	0	General Revenue

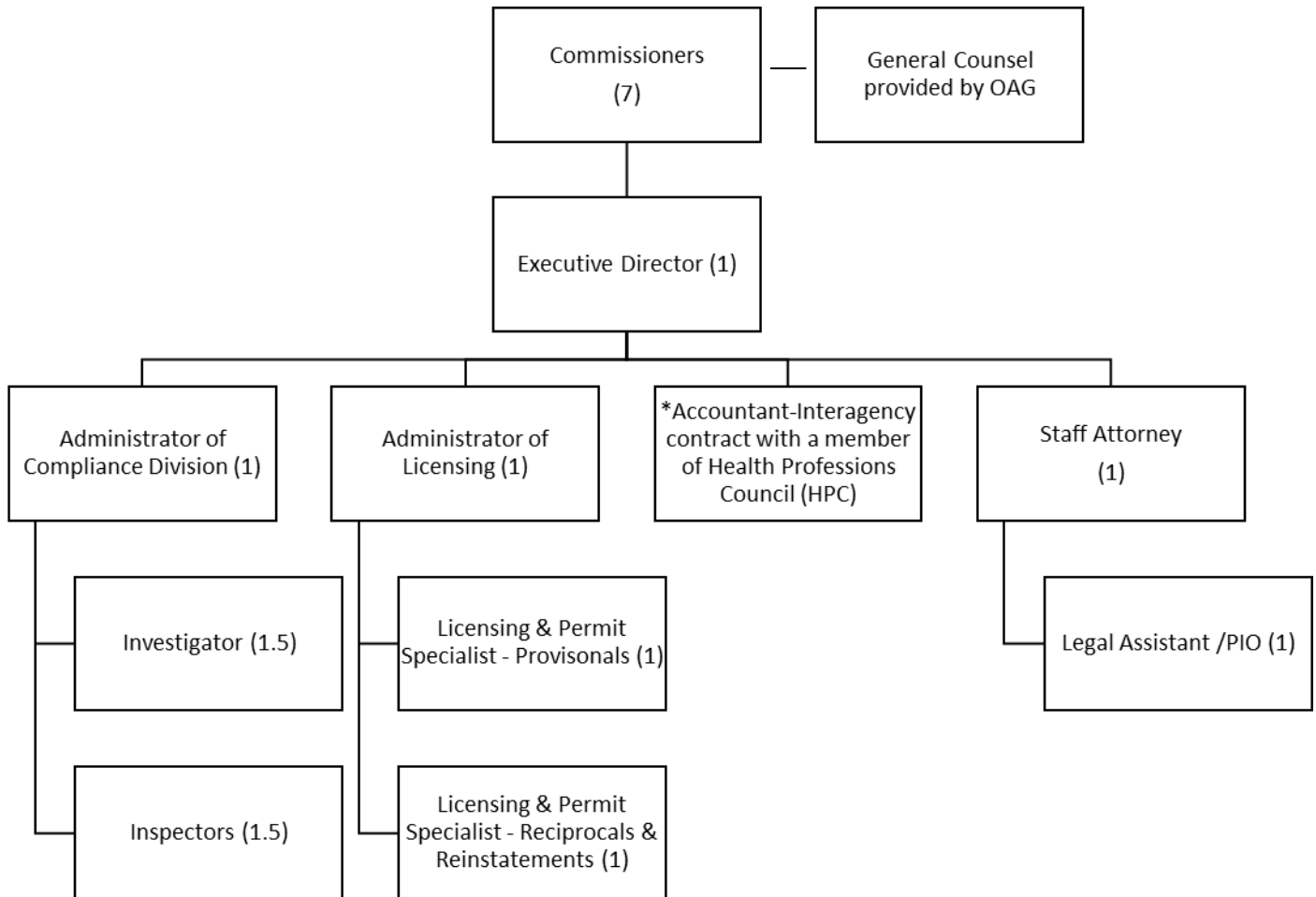
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Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited
Mortuary Law Exam / 651.154(a)(b)	\$55	543	\$29,865	General Revenue
Mortuary Law Exam (Art. IX, Section 8.14. Cost Recovery of Application or Testing Fees)	\$34	363	\$12,342	Pass Through to Vendor
Criminal History Evaluation Application – TAC 203.17	\$95	7	\$665	General Revenue
Establishment License Fee / 651.154(a)(2)	\$457	86	\$39,302	General Revenue
Establishment Renewal Fee / 651.154(a)(2)	\$521	1,525	\$794,525	General Revenue
Establishment Renewal Late Penalty / 651.354(b)	\$521	169	\$88,049	General Revenue
Cemetery License Fee / 651.353	\$100	0	0	General Revenue
Cemetery Renewal Fee / 651.354(a)	\$100	4	\$400	General Revenue
Cemetery Renewal Late Penalty	\$100	3	\$300	General Revenue
Open Records Fees – 473.8	Varies	0	0	Appropriated Receipts
Verification of License Fees	\$30 - \$50	35	\$1,710	Appropriated Receipts
TFSC Law Book	\$15	52	\$1,270	Appropriated Receipts
Facts About Funerals Brochure	Varies (\$40/100 Brochures)	576	\$73,960	Appropriated Receipts
Duplicate License Fee / 651.154(a)(1)	\$5	2,613	\$12,660	General Revenue
OPP Fee, New License – 101.307	\$5- \$10	455	\$2,750	General Revenue Dedicated Account
OPP Fee, Renewals – 101.307	\$1 (est.) \$2 (ind.)	\$1,688 \$2,037	\$1,688 \$2,037	General Revenue Dedicated Account
Texas.gov Subscription Fee - Renewals – 2054.252	\$10 (ind.) \$4 (prov.) \$15 (est.)	2,037 159 1,525	\$20,370 \$636 \$22,875	General Revenue
Administrative Penalties / 651.552	\$100-\$5,000	unknown	\$40,140	General Revenue

Table 5 Exhibit 8 Fee Revenue

VI. Organization

A. TFSC Organizational Chart (as of August 2017 showing 10 FTEs).



B. Field or regional offices.

**Texas Funeral Service Commission
Exhibit 9: FTEs by Location — Fiscal Year 2016**

Headquarters, Region, or Field Office	Location	Co-Location? Yes / No	Number of Budgeted FTEs FY 2016	Number of Actual FTEs as of August 31, 2016
Headquarters	Austin	No	12	12

C. What are your agency’s FTE caps for fiscal years 2016–2019?

12 FTE for each year specified.

D. How many temporary or contract employees did your agency have as of August 31, 2016?

None.

E. List each of your agency’s key programs or functions, along with expenditures and FTEs by program.

**Texas Funeral Service Commission
Exhibit 10: List of Program FTEs and Expenditures — Fiscal Year 2016**

Program	Number of Budgeted FTEs FY 2016	Actual FTEs as of August 31, 2016	Actual Expenditures
Licensing	4.1	4.1	316,768
Enforcement	7.9	7.9	496,332
Central Administration	0	0	3,117
TOTAL	12	12	816,217

Table 6 Exhibit 10 List of Program FTEs and Expenditures

VII. Guide to Agency Programs

Licensing

A. Provide the following information at the beginning of each program description.

Name of Program or Function: Licensing

Location/Division: Headquarters (Austin)

Contact Name: Janice McCoy / Nikki Smith

Actual Expenditures, FY 2016: \$316,768

Number of Actual FTEs as of June 1, 2017: 4 direct

Statutory Citation for Program: Tex. Occ. Code Chapter 651.151 (individuals); Tex. Occ. Code Chapter 651.351 & 651.352 (establishments); Tex. Occ. Code Chapter 651.656 (crematories)

B. What is the objective of this program or function? Describe the major activities performed under this program.

The licensing division’s objective is to ensure licensing functions are managed in a timely and cost-effective manner. It was created to implement laws that require individuals and establishments who provide funeral services to be licensed. The licensing division also functions

as the initial contact for the agency and disseminates inquiries to the appropriate staff for handling.

This division performs its functions by:

- Preparing and providing copies of the various kinds of application packets upon request
- Reviewing and analyzing applications in order to issue licenses to qualified applicants
- Establishing new files (electronic or paper as appropriate) for applicants for licensure
- Processing fees received regarding licensing and examinations
- Communicating by phone, email, and written correspondence with licensees, applicants, prospective applicants, and members of the public
- Verifying licensure to other states, governmental entities, employers, and members of the public
- Maintaining files of applicants and licensees via an imaging system
- Monitoring continuing education requirements for renewals
- Processing continuing education provider/course applications and maintaining database of continuing education providers
- Reviewing and approving renewals for all licenses (individuals biennially, Provisionals annually, establishments annually)
- Processing individual name and address changes
- Processing ownership changes for establishment licensees
- Processing criminal background checks on new individual applicants
- Preparing information for board book on applicants with criminal history
- Fulfilling orders for the “Facts About Funerals” brochures and Mortuary Law Book
- Answering questions regarding law as it relates to licensing requirements

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

A good measure of the effectiveness and efficiency of the Commission’s Licensing Division is its outcome/output performance measures. Methodology used to calculate performance measures is described in the agency’s most recent strategic plan.

Outcome/Output Performance Measures	FY 2016 Target	FY 2016 Actual Performance	FY 2016 % of Annual Target
Percent of Licensees with No Recent Violations	98%	98.54%	100.55%
Percent of Licensees Who Renew Online	80%	81%	101.25%
Number of New Licenses Issued to Individuals	370	370	100%
Number of Individual Licenses Renewed	2,250	2,206	98.04%
Number of New Licenses Issued to Facilities	90	86	95.56%
Number of Facility Licenses Renewed	1,600	1,537	96.06%
Total Number of Individuals Licensed	4,750	5029	105.87%
Total Number of Facilities Licensed	1,600	1,550	96.88%

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In recent years, the trend at the agency has been to reduce, simplify, and clarify licensing requirements and processes to better assist applicants and prospective applicants in achieving full licensure.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Texans of every race, age, religion and socioeconomic group are impacted by the funeral and death care industry. According to the Texas State Data Center the estimated Texas population for 2016 was 27,862,596. The Department of State Health Services Vital Statistics Division reports that there were approximately 189,166 deaths in Texas during 2015.

Specifically, the licensing program impacts those individuals who wish to become licensed as a funeral director and/or embalmer. To be licensed as a funeral director or embalmer, a person must meet the requirements set out in Tex. Occ. Code Chapter 651.253 including be at least 18 years of age, have a high school diploma (or equivalent), graduated from accredited college of mortuary science, passed proficiency exam, and passed mortuary law exam. Additionally the person must have completed the state's provisional license program or reciprocate a license from another state.

It also impacts those persons (corporate or otherwise) who wish to open a funeral establishment, commercial embalming facility, crematory or cemetery. Funeral establishments and commercial embalming facilities must meet the requirements set out by Tex. Occ. Code Chapter 651.351 and 651.352. Crematories must meet the requirements set out by Tex. Occ. Code Subchapter N.

In 2016, the Commission licensed 5,029 individuals and 1,550 establishments. The exact number fluctuates. However, in November 2016 there were approximately:

• Active Individuals	4194
• Inactive Individuals	189
• Provisionals	447
• Embalming Facilities	51
• Funeral Homes	1352
• Crematories	157
• Cemeteries	5

The Commission renews approximately 2,250 individual licenses each year (or 4,500 each biennium) and 1,500 establishment licenses each year.

- F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

Steps in the licensing process are attached as an addendum. The agency does not have field or regional services.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General Revenue and Appropriated Receipts

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

There are no programs that provide identical or similar licensing services or functions to individuals or establishments in the Texas funeral industry. Without a license issued by the Commission, an individual or establishment is prohibited from providing at-need funeral services in Texas.

Similar functions are provided by funeral licensing boards of other states. Some Texas individual licensees have chosen to be licensed in other states so that they can provide funeral services in those states.

The agency is a member of the Health Professions Council (HPC). The agency shares many services with the other HPC entities to coordinate activities and achieve efficiencies. Specifically for the licensing population, the agency shares a document management system to maintain a record of licenses issued and to allow for a system of online renewals.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

N/A.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

The licensing program does not work with local, regional or federal units of government.

- K. If contracted expenditures are made through this program please provide:**
- a short summary of the general purpose of those contracts overall;

- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

N/A

L. Provide information on any grants awarded by the program.

N/A

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

The statute could be clarified and reorganized to help both the licensee population and the agency, but there are no challenges to impede the program's performance. Additionally, there are items discussed in the major policy issues that could be addressed to help staff better understand the intent of the law.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Each of the three current licensing staff handles a specific license type, with one licensing staff serving as supervisor of the program. These staff are cross-trained in each other's basic duties so that operations can continue if one of the staff members is out for an extended period of time.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

For individuals, the licensing and examination of new applicants and the biennial renewal with mandated continuing education are needed activities because they help promote and ensure competent delivery of funeral services. Persons who are licensed by this Commission have met certain standards of competency as demonstrated through their formal training, experience and testing. Ongoing competence is maintained by the Commission's requirement for continuing education.

The agency randomly audits 10% of its licensees that are scheduled to renew each month. The licensees who receive the letter about the audit must provide documents showing continuing education requirements are met. Licensees who fail to provide the required documents will not have their licensed renewed.

For entities, the licensing and inspection of new applicants and the annual inspection and renewal are needed activities because they help promote and ensure competent delivery of services. Facilities must contain certain required elements in order to provide at-need funeral services. Additionally, facilities must be licensed to protect the public because a majority of people choose a funeral provider based on the reputation of the establishment and not necessarily the individual working in that establishment.

The agency is required by law to inspect each licensed entity every two years. The inspection process involves a review of the facilities and paperwork to ensure required elements are present in the facility. The procedures for inspections and follow-up are discussed under the next major program - Enforcement.

Additionally, the procedures outlining the complaint process, including sanctions, also are discussed under the next major program - Enforcement.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.**

Information and data on complaints can be found under the next major program - Enforcement.

Enforcement

- A. Provide the following information at the beginning of each program description.**

Name of Program or Function: Enforcement

Location/Division: Headquarters

Contact Name: Janice McCoy / Rodney van Oudekerke

Actual Expenditures, FY 2016: \$496,332

Number of Actual FTEs as of June 1, 2017: 6 direct

Statutory Citation for Program: Tex. Occ. Code Chapter 651.157 (inspections); Tex. Occ. Code Chapter 651.202 (compliance)

- B. What is the objective of this program or function? Describe the major activities performed under this program.**

The division’s objectives are to ensure protection of the general public by inspecting 100 percent of all licensed funeral establishments each year and to ensure fair and immediate due process for all complainants and respondents by initiating the disciplinary/adjudicatory process within 90 days of identification of violations.

The division has two major activities: compliance and inspections. It performs its functions by:

- Conducting all enforcement activities in compliance with Tex. Occ. Code Chapter 651 as well as agency rules, policies and procedures
- Creating and maintaining electronic and paper files on all complaints
- Investigating complaints and documenting all essential steps
- Writing Investigative reports for use by Staff Attorney, Executive Director during informal negotiations
- Filing complaints against licensees when inspection violations are not corrected
- Filing complaints against licensees when made aware of possible violations via the news media, legislators, or other sources
- Initiating cease and desist directives against individuals/entities who fail to renew license
- Negotiating agreed orders for disciplinary action
- Monitoring payment of sanctions imposed
- Interacting with parties to complaints, witnesses, and legal representatives
- Resolving complaints at SOAH if fail to resolve informally
- Recommending dismissal of complaints for which there is not sufficient evidence
- Providing information to public by telephone, written correspondence,
- Inspection of licensed facilities at least biennially
- Inspection of all facilities with pending new application prior to licensure
- Ensuring database is updated with complaint information and resolution

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

A good measure of the effectiveness and efficiency of the Commission’s Enforcement Division is its outcome/output performance measures. Methodology used to calculate performance measures is described in the agency’s most recent strategic plan.

Key Performance Measures	FY 2016 Target	FY 2016 Actual Performance	FY 2016 % of Annual Target
Number of Establishments Inspected	1,500	1,500	100%
Percent of Complaints Resolved Resulting in Disciplinary Action	35%	25%	74.29%
Percent of Complaint Resolved Within Six Months	62%	93%	150%
Number of Complaints Resolved	190	149	78.42%
Number of Complaints Pending	80	28	35%

Key Performance Measures	FY 2016 Target	FY 2016 Actual Performance	FY 2016 % of Annual Target
Average Time for Complaint Resolution	250	71.17	28.47%
Average Time to Resolve Complaints Pending Litigation	800	254.5	31.81%
Number of Jurisdictional Complaints Received	175	149	85.14%

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

While the intent of the program has not changed, the agency has updated its process to be more effective and efficient. Most of the change was the result of the agency being authorized to hire a staff attorney instead of relying on the Office of the Attorney General to handle appeals to the State Office of Administrative Hearings.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Texans of every race, age, religion and socioeconomic group are impacted by the funeral and death care industry. According to the Texas State Data Center the estimated Texas population for 2016 was 27,862,596. The Department of State Health Services Vital Statistics Division reports that there were approximately 189,166 deaths in Texas during 2015.

The compliance program impacts those licensees (both individuals and entities) who are alleged to have committed a violation by a consumer or the agency itself. The investigation of a complaint could involve contacting the complainant, any witnesses provided by the complainant, the entity, the Funeral Director in Charge, the licensed funeral director, and the licensed embalmer.

The inspection program impacts all licensed entities. By statute, the Commission is required to inspect all entities biennially. However, it may only inspect cemeteries if an interment has occurred within the previous two years.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

Steps in the enforcement process are attached as an addendum. The agency does not have field or regional services.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The Federal Trade Commission (FTC) has implemented the “Funeral Rule” which governs certain behaviors of funeral providers. The agency has incorporated the provisions of this rule into its administrative rules. Consumers can, and do, file complaints with either or both the FTC and the Commission.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency’s customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The agency does not coordinate with the FTC to avoid duplication. The agency will proceed with an investigation and findings even if the FTC is reviewing the same allegations.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Before an inspection or investigation, agency staff may coordinate with local county or city health officials to obtain any information they might have on the performance of a funeral establishment. No memorandums of understanding (MOUs), interagency agreements, or interagency contracts exist with local agencies.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

N/A

L. Provide information on any grants awarded by the program.

N/A

M. Are there any barriers or challenges that impede the program’s performance, including any outdated or ineffective state laws? Explain.

The statute could be clarified and reorganized to help both the licensee population and the agency, but there are no challenges to impede the program's performance. Additionally, there are items discussed in the major policy issues that could be addressed to help staff better interpret and enforce the intent of the law.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Until the Governor's hiring freeze in 2017, the enforcement staff was divided into either inspection or compliance duties, with very little crossover. However, since the hiring freeze and loss of a lead inspector, the division's investigators have been splitting time between investigations and inspections. Having investigators in the field has been beneficial to the entire enforcement division.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Enforcement activities are needed in that they further the mission of the Commission to protect the public. All funeral contracts are required to have a disclosure indicating complaints against the funeral provider can be filed with the Commission, giving the address and phone number.

The Commission has the authority to investigate complaints received to determine if a violation has occurred. If so, the Commission can take disciplinary action against the licensee through an agreed order to by taking the case to the State Office of Administrative Hearings. The Commission will open every complaint received and will follow the complaint process guidelines outlined in its administrative rules (see Title 22, Tex. Admin. Code 203.40-42).

Primarily the Commission issues disciplinary action in the form of an administrative penalty, but also has the authority to sanction a license through suspension or revocation. The Commission's schedule of sanctions is found at Title 22, Tex. Admin. Code 203.43.

The agency's workflow process for complaints can be found on the agency's website at: <http://tfsc.texas.gov/files/Complaints/Complaint%20Resolution%20Chart.pdf>

The agency's inspection procedures are attached as an addendum. An entity that fails an inspection is given 15 days to provide proof the violation has been corrected. If the entity fails to provide satisfactory evidence, the inspector forwards information to an investigator and the agency initiates a complaint against the entity. Investigations of inspection violations follow the same compliance procedures outlined above.

P.

**Texas Funeral Service Commission
Enforcement Division
Exhibit 11: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2015 and 2016**

	Fiscal Year 2015	Fiscal Year 2016
Total number of regulated persons	4,811	5,029
Total number of regulated entities	1,553	1,550
Total number of entities inspected	1,487	1,500
Total number of complaints received from the public	152	148
Total number of complaints initiated by agency	24	22
Number of complaints pending from prior years	84	31
Number of complaints found to be non-jurisdictional	34	34
Number of jurisdictional complaints found to be without merit	139	112
Number of complaints resolved	204	149
Average number of days for complaint resolution	220	72
Complaints resulting in disciplinary action:		
administrative penalty	35	26
reprimand	10	5
probation	0	0
suspension	1	4
revocation	6	0
Other – Agreed Order	10	2
Other – SOAH order to dismiss	3	0

Table 7 Exhibit 11 Information on Complaints Against Persons or Entities

Methodology used to calculate performance measures is described in the agency’s most recent strategic plan. Other data provided was calculated via the agency’s database.

VIII. Statutory Authority and Recent Legislation

A.

Texas Funeral Service Commission Exhibit 12: Statutes / Attorney General Opinions

Statutes

Citation / Title	Authority / Impact on Agency
Tex. Occ..Code Chapter 651	Enabling statute granting authority to license and regulate funeral providers
Tex. H&S Code Chapter 716	Provides guidance on operation of crematories
Tex. H&S Code Chapter 193	Provides guidance to funeral providers on death records
Tex. H&S Code Chapter 695	Provides guidance to funeral providers on casket identification
Tex. H&S Code Chapter 711.002	Provides guidance to funeral providers on right to control disposition
Tex. H&S Code Chapter 711	Provides guidance to cemeteries on how to operate.
Tex. H&S Code Chapter 711.012	Authorizes Commission to adopt rules, establish procedures, and prescribe forms to enforce and administer Sections 711.003, 711.008, 711.0105, 711.021-711.034, 711.038, 711.0395, 711.041, 711.042, 711.052, 711.061, 711.063, and 711.064 relating to cemeteries that are not perpetual care cemeteries.
Tex. H&S Code Chapter 711.0515	Authorizes Commission to ask OAG for injunctive relief to enforce Chapter 711
16 CFR, Part 453	Funeral Rule as adopted by the Federal Trade Commission

Table 8 Exhibit 12 Statutes

Attorney General Opinions

Attorney General Opinion No.	Impact on Agency
KP-0083 (May 9, 2016)	No impact on agency. Direct financial impact on families and/or funeral directors.

Table 9 Exhibit 12 Attorney General Opinions

B.

Texas Funeral Service Commission Exhibit 13: 85th Legislative Session

Legislation Enacted

Bill Number	Author	Summary of Key Provisions
N/A		

Table 10 Exhibit 13 Legislation Enacted 85th Leg

Legislation Not Passed

Bill Number	Author	Summary of Key Provisions / Reason Bill Did Not Pass

Self-Evaluation Report

Bill Number	Author	Summary of Key Provisions / Reason Bill Did Not Pass
HB 1155	Davis	Would have provided an alternate definition of cremation. The bill was passed out of the House Committee on Public Health, but never set on a calendar.
HB 1292 *	Raymond	Would have updated and clarified Tex. Occ. Code Chapter 651. Limited substance change. The bill passed out of the House, but was never heard by a Senate Committee. See Addendum.
HB 3802	Dutton	Would have authorized Commission to ask DPS to suspend a driver’s license for person who failed to pay an administrative penalty. Bill was referred to committee but never received a hearing.
HB 3945	Faircloth	Would have required one Commissioner to also be associated with crematory. Bill was passed out of House Committee on Public Health, but never set on a calendar. Additionally, language of bill was added as amendment to HB 1292 on House floor.
SB 65	Zaffirini	Would have required Commission to ask OAG for injunction against cemeteries who violate H&S 711.032. Bill was referred to committee but never received a hearing.
SB 125	Huffines	Would have required Commission to broadcast its meetings over the Internet. Bill was referred to committee but never received a hearing.
SB 983 *	Estes	Companion to HB 1292. Bill was referred to committee but never received a hearing.
SB 1044	Hughes	Companion to HB 3802. Bill was referred to committee but never received a hearing.
SB 2062	Kolkhorst	Companion to HB 3945. Bill was referred to committee but never received a hearing.

Table 11 Exhibit 13 Legislation Not Passed 85th Leg

IX. Major Issues

Major Issue #1 – First Call vs. Removal of Body

Tex. Occ. Code Chapter 651.401 should be amended to clarify the difference between what constitutes a first call and what constitutes removal of a body.

First Call is defined in statute as “the beginning of the relationship and duty of a funeral director to take charge of a dead human body and have the body prepared for burial or disposition by embalming, cremation, or another method...”

The Commission routinely gets calls to interpret Tex. Occ. Code Chapter 651.401. The Commission has attempted to clarify the statute through Title 22, Tex. Admin. Code 203.21. The agency is directly involved in the issue because a violation of the First Call provision could result in an investigation and possible sanctions against a licensee.

The Commission assumes the “first call” happens when the authorizing agent for the decedent first contacts a funeral home to make arrangements – usually by phone. In most cases, the first call does not happen when an agent of the funeral home arrives to pick up the body. A change to this section of the statute could create clarity for the industry on when “first call” actually begins and who is authorized to pick up a decedent once that first contact has been made.

Clarification to the statute was proposed during the 2015 and 2017 legislative sessions. Possible clarification could be similar to the text below:

SECTION 29. Section 651.401, Occupations Code, is amended to read as follows:

Sec. 651.401. REMOVAL OF DEAD HUMAN BODY [~~FIRST CALL~~]. (a) A funeral director [~~or embalmer~~] must direct [~~and personally supervise~~] the pickup of a dead human body [~~on first call~~].

(b) A dead human body may be transferred without a funeral director directing [~~personally making~~] the transfer at the direction of a justice of the peace or other law enforcement official[:

~~[(1) from one funeral establishment to another;~~

~~[(2) from a funeral establishment to and from a morgue in which an autopsy is performed;~~

~~[(3) to and from an airport, crematory, or both; or~~

~~[(4) in circumstances in which there is no reasonable probability that an unlicensed person will encounter a family member or other person with whom funeral arrangements are normally made by a funeral director or embalmer].~~

(c) A funeral director may direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead human body. A funeral director who directs the removal of a dead human body by an unlicensed person is strictly accountable for compliance with the requirements of this chapter. If an unlicensed person, a provisional license holder, or an embalmer inadvertently encounters a family member or other person with whom funeral arrangements are normally made, the [~~unlicensed~~] person shall restrict communication with

the family member or other person to:

- (1) identifying the ~~[unlicensed]~~ person's employer; and
- (2) ~~[arranging an appointment with the unlicensed person's employer for a family member or other person who indicates a desire to make funeral arrangements for the deceased; and~~
- ~~[(3)]~~ making any disclosure to the family member or other person that is required by federal or state law or regulation.
- ~~[(d) A funeral director or embalmer who directs the removal or transfer of a dead human body without personally supervising the transfer is strictly accountable for compliance with the requirements of first call as provided by this section.]~~

The proposed change will provide clarity between the initial contact (first call) by a decedent's authorizing agent and removing the decedent from the place of death. The proposed change will have no impact on the agency's performance and there will be no fiscal impact to the agency.

Major Issue #2 – Unlicensed Activity

Tex. Occ. Code Chapter 651.551 authorizes the Commission to assess administrative penalties against "a person regulated under this chapter" yet the statute prohibits a person from acting as a funeral director or embalmer without a license. Routinely the Commission has found unlicensed persons acting a funeral directors or embalmers in violation of the law. This unlicensed activity typically occurs by people formerly licensed by the Commission or by people working in a licensed facility.

A recent letter from an Administrative Law Judge questioned the Commission's ability to assess a penalty against these unlicensed persons. The Commission would like the Legislature to clarify how it should treat unlicensed activity and if/how that activity should be punished.

Depending on the direction the Legislature chooses, the proposed change could impact performance measures related to complaints filed and closed. Determining the agency should not assess an administrative penalty against unlicensed activity could have a negative fiscal impact.

Major Issue #3 – Preparation Room Exemptions

Tex. Occ. Code Chapter 651.351(d)(5) requires every funeral establishment to have a preparation room to provide embalming services. The law authorizes the Commission to grant an exemption in very limited circumstances.

The Commission is routinely asked to provide exemptions for those funeral establishments that do not perform embalming for either religious reasons or for environmental reasons. Those requests are always denied. The Legislature should consider expanding the reasons why an exemption could be granted.

The agency is directly involved in the issue because the requirement for a preparation room is one of the key components of an inspection. Funeral establishments regularly fail an inspection because the preparation room does not meet legal requirements.

Allowing additional preparation room exemptions would not have an impact on the agency's performance measures. Allowing more funeral homes to eliminate the preparation room could have a positive fiscal impact as the time needed for inspections would be reduced allowing for more inspections to occur in a single day.

Major Issue #4 – Hearing Process

In current statute, the hearings process for complaints seems to be circular in nature. Tex. Occ. Code 651.506 states a disciplinary proceeding must occur after a hearing as provided by Sec. 651.551. However, Tex. Occ. Code 651.551 states the penalty may be assessed after a hearing outlined by the subchapter or after a hearing outlined by Sec. 651.506.

With input from the Office of the Attorney General, the Commission has developed a process by administrative rule whereby it notifies a party of a violation and allows for an informal settlement. If a settlement is reached, an Agreed Order is executed between the party and the Executive Director. If a settlement is not reached, the case is then appealed to the State Office of Administrative Hearings (SOAH). The decision from SOAH is reviewed and accepted/modified by Commissioners.

The agency believes its process satisfies the statute, but would like the statute clarified to ensure due process is being granted to those parties found in violation of the statute.

If the Legislature chooses to codify the agency's practice, there would be no impact on the agency's performance measures and no fiscal impact.

Major Issue #5 – Assessing Violation

The statute is not clear when/how the agency can issue a violation against an establishment. Tex. Occ. Code 651.460 lays out the violations for a "person" and for a "funeral establishment."

Most individuals seeking funeral services do so based on the reputation of the establishment not based on particular individuals working in that establishment. Prior to determining what funeral home to use, people checking the agency's database for violations would search on the funeral establishment name, but not on the individual funeral director as that relationship has not been developed.

In some cases, it makes sense for a violation to be charged against a funeral home and not the licensed individual. Because the public may only know the reputation of the establishment and not the individuals who work there, the Legislature should consider amending statute to provide the Commission more discretion to find violations against either an establishment or a licensed individual.

Major Issue #6 – Cemetery Regulation

In 2003, the Commission was granted authority to register and license certain cemeteries. Currently, the Commission licenses less than 10 cemeteries. The Commission also is granted broad authority to adopt rules to implement and enforce certain sections of the Health & Safety Code Chapter 711. The Commission has not implemented any rules regarding cemeteries as it is unclear of the administrative process by which cemeteries not licensed by the Commission would be required to respond to the Commission.

The Legislature should consider either increasing the type of cemetery subject to licensure by the Commission or clarifying how the Commission can effectively enforce Health & Safety Code Chapter 711 for those cemeteries not licensed.

Adding to the number of cemeteries required to be licensed could have a negative fiscal impact as the Commission may need additional resources to handle the expanded duties. There should be no impact on the agency’s performance measures.

X. Other Contacts

A.

**Texas Funeral Service Commission
Exhibit 14: Contacts**

Interest Groups

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Funeral Consumers Alliance / Jim Bates	2875 East Parker Road Plano, TX 75074-1703	(972) 509-5686	jimbates@airmail.net
Commonwealth Institute of Funeral Service / Jason Altieri	415 Barren Springs Dr. Houston, TX 77090	(281) 873-0262	altieri-jc@lycos.com
Dallas Institute of Funeral Service / James Shoemake	3909 S Buckner Blvd. Dallas, TX 75227	(214) 388-5466	jshoemake@dallasinstitute.edu
Alamo Colleges / Jose Luis Moreno	1300 San Pedro Avenue San Antonio, TX 78212	(210) 486-9241	jmoreno144@alamo.edu

Table 12 Exhibit 14 Interest Groups

Interagency, State, or National Associations

Group or Association Name/ Contact Person	Address	Telephone	Email Address
International Conference of Funeral Service Examining Boards / Dalene Paul (ED)	1885 Shelby Lane Fayetteville, AR 72704	??	director@theconferenceonline.org
Texas Funeral Directors’ Association / Ann Singer (ED)	1513 South I-35 Austin, TX 78741	(512) 442-2304	ann@tfda.com
Independent Funeral Directors Association of	2434 MLK Jr. Blvd. Dallas, Texas 75215	(214) 428-3170	Website: http://www.ifdatexas.org/index.html

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Texas / Janice Matthews President			
Texas Cemeteries Association / Gregg Driggers President	P. O. Box 471457 Fort Worth, Texas 76147- 1376	(817) 339-8210	tca@txca.us
Cremation Association of North America / Barbara Kemmis Executive Director	499 Northgate Parkway Wheeling, IL 60090-2646	(312) 245-1077	barbara@cremationassociation.org

Table 13 Exhibit 14 Interagency, State, and National Association

Liaisons at Other State Agencies

Agency Name / Relationship / Contact Person	Address	Telephone	Email Address
Texas Department of Banking / Russell Reese		(512) 475-1324	russell.reese@dob.texas.gov
DSHS - Bureau of Vital Statistics / Victor Farinelli		(512) 776-7368	victor@texasvsu.org
Office of the Governor / Logan Mims		(512) 463-1778	Logan.mims@governor.texas.gov
LBB / Andrew Overmyer		(512) 463-1200	Andrew.Overmyer@lbb.state.tx.us
OAG / Sarah Wolfe		(512) 699-9067	Sarah.Wolfe@oag.texas.gov
TDI / Latif Almanzan (CP Director of Complaints Resolution)			Latif.Almanzan@tdi.texas.gov

Table 14 Exhibit 14 Liaisons at Other State Agencies

XI. Additional Information

- A. Texas Government Code, Sec. 325.0075 requires agencies under review to submit a report about their reporting requirements to Sunset with the same due date as the SER. Include a list of each agency-specific report that the agency is required by statute to prepare and an evaluation of the need for each report based on whether factors or conditions have changed since the statutory requirement was put in place. Please do not include general reporting requirements applicable to all agencies, reports that have an expiration date, routine notifications or notices, posting requirements, federally mandated reports, or reports required by G.A.A. rider.**

**Texas Funeral Service Commission
Exhibit 15: Evaluation of Agency Reporting Requirements**

Report Title	Legal Authority	Due Date and Frequency	Recipient	Description	Is the Report Still Needed? Why?
N/A					

Table 15 Exhibit 15 Agency Reporting Requirements

- B. Has the agency implemented statutory requirements to ensure the use of "first person respectful language"? Please explain and include any statutory provisions that prohibits these changes.**

The Commission has found one instance in its rules where a change could be warranted. The rule currently creates a Disabled, Active or Disabled, Inactive status on a license but not does not specifically refer to individuals as disabled. The Commission will review the rule with its General Counsel to determine compliance with Ch. 392, Government Code.

- C. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.**

**Texas Funeral Service Commission
Exhibit 16: Complaints Against the Agency — Fiscal Years 2015 and 2016**

	Fiscal Year 2015	Fiscal Year 2016
Number of complaints received	0	0
Number of complaints resolved	0	0
Number of complaints dropped / found to be without merit	0	0
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	0	0

Table 16 Exhibit 16 Complaints Against the Agency

The agency rarely receives written complaints against the agency. Typically, the agency receives complaints from a party to an investigation if the investigation did not have the outcome

desired. Most of these complaints are phone calls and agency staff does not track them. Any serious issues would be reflected in the customer service survey results.

D. Fill in the following charts detailing your agency's Historically Underutilized Business (HUB) purchases.

**Texas Funeral Service Commission
Exhibit 17: Purchases from HUBs**

Fiscal Year 2015

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal*	Statewide Goal
Heavy Construction	0	0	0	0	11.2%
Building Construction	0	0	0	0	21.1%
Special Trade	0	0	0	0	32.9%
Professional Services	0	0	0	0	23.7%
Other Services	\$20,120	\$294	1.5%	1%	26.0%
Commodities	\$22,806	\$14,490	63.5%	35%	21.1%
TOTAL	\$42,926	\$14,784	34.4%		

Table 17 Exhibit 17 HUB Purchases for FY 2015

* The agency sets its agency-specific HUB goals via its Annual Report of Non-Financial Data.

Fiscal Year 2016

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	0	0	0	0	11.2%
Building Construction	0	0	0	0	21.1%
Special Trade	0	0	0	0	32.9%
Professional Services	0	0	0	0	23.7%
Other Services	\$14,766	\$294	1.99%	1%	26.0%
Commodities	\$3,444	\$2,428	70.51%	50%	21.1%
TOTAL	\$1,8210	\$2,722	14.95%		

Table 18 Exhibit 17 HUB Purchases for FY 2016

Fiscal Year 2017 (estimated)

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	0	0	0	0	11.2%
Building Construction	0	0	0	0	21.1%
Special Trade	0	0	0	0	32.9%
Professional Services	0	0	0	0	23.7%
Other Services	\$13,000	\$1,352	10.4%	1.5%	26.0%
Commodities	\$10,000	\$8,900	89%	60%	21.1%
TOTAL	\$23,000	\$10,252	45%		

Table 19 Exhibit 17 HUB Purchases for FY 2017

E. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.286c)

The agency has created Internal Purchasing Procedures (submitted to Comptroller) which state the agency will attempt to obtain at least three informal bids, including a minimum of two bids from HUBs, on all commodity purchases in excess of \$5,000 and three formal bids, including a minimum of two bids from HUBs, on all commodity purchases in excess of \$25,000.

The agency’s FY17 goal is to purchase at least 60% of commodities from HUB vendors and 1.5% for all other services. If a performance shortfall occurs, goal percentages for the next fiscal year are adjusted.

F. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.285).

N/A

G. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.

N/A

H. Fill in the charts below detailing your agency’s Equal Employment Opportunity (EEO) statistics.

**Texas Funeral Service Commission
Exhibit 18: Equal Employment Opportunity Statistics**

1. Officials / Administration

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	1	0	7.4%	0	22.1%	100	37.4%
2016	1	0	7.4%	0	22.1%	100	37.4%
2017	1	0	7.4%	0	22.1%	100	37.4%

Table 20 Exhibit 18 EEO Statistics for Officials/Administration

2. Professional

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	6	33%	10.4%	17%	19.3%	50%	55.3%
2016	6	33%	10.4%	17%	19.3%	33%	55.3%
2017	6	33%	10.4%	17%	19.3%	33%	55.3%

Table 21 Exhibit 18 EEO Statistics for Professionals

3. Technical

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	2	0	14.4%	0	27.2%	0	55.3%
2016	2	0	14.4%	0	27.2%	0	55.3%
2017	2	0	14.4%	0	27.2%	0	55.3%

Table 22 Exhibit 18 EEO Statistics for Technical

4. Administrative Support

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	3	0	14.8%	33%	34.8%	100%	72.1%
2016	4	0	14.8%	50%	34.8%	75%	72.1%
2017	3	0	14.8%	75%	34.8%	66%	72.1%

Table 23 Exhibit 18 EEO Statistics for Administrative Support

5. Service / Maintenance

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	0	0	13.0%	0	54.1%	0	51.0%
2016	0	0	13.0%	0	54.1%	0	51.0%
2017	0	0	13.0%	0	54.1%	0	51.0%

Table 24 Exhibit 18 EEO Statistics for Service and Maintenance

6. Skilled Craft

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	0	0	10.6%	0	50.7%	0	11.6%
2016	0	0	10.6%	0	50.7%	0	11.6%
2017	0	0	10.6%	0	50.7%	0	11.6%

Table 25 Exhibit 18 EEO Statistics for Skilled Craft

I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?

The Commission addresses EEO shortfalls by re-examining its EEO efforts whenever there is a job vacancy to ensure that qualified minorities and women are represented in TFSC’s Equal Employment Opportunity (EEO) defined job categories.

XII. Agency Comments

The agency has no additional comments, but stands ready to answer questions or provide additional data as needed.

ATTACHMENTS ---

Attachments Relating to Key Functions, Powers, and Duties

1. Agency's enabling statute – electronically submitted
2. Annual reports published by the agency from FY 2015–2017 – N/A
3. Internal or external newsletters published by the agency from FY 2016–2017 – electronically submitted
4. List of studies that the agency is required to do by legislation or riders – N/A
5. List of legislative or interagency studies relating to the agency that are being performed during the current interim – N/A
6. List of studies from other states, the federal government, or national groups/associations that relate to or affect the agency or agencies with similar duties or functions.

See: <https://theconferenceonline.org/model-practice-act/>

Attachments Relating to Policymaking Structure

7. Biographical information of all policymaking body members – electronically submitted
8. Agency's most recent rules – electronically submitted

Attachments Relating to Funding

9. Agency's Legislative Appropriations Request for FY 2018–2019 - electronically submitted
10. Annual financial reports from FY 2015–2016 – electronically submitted
11. Operating budgets from FY 2015–2017 – electronically submitted

Attachments Relating to Organization

12. If applicable, a map to illustrate the regional boundaries, headquarters location, and field or regional office locations – N/A

Attachments Relating to Agency Performance Evaluation

13. Quarterly performance reports completed by the agency in FY 2015–2017 - electronically submitted
14. Any recent studies on the agency or any of its functions conducted by outside management consultants or academic institutions – N/A

Self-Evaluation Report

15. Agency's current internal audit plan – N/A
16. Agency's current strategic plan - electronically submitted
17. List of internal audit reports from FY 2013–2017 completed by or in progress at the agency – N/A
18. List of State Auditor reports from FY 2013–2017 that relate to the agency or any of its functions - electronically submitted
19. Any customer service surveys conducted by or for your agency in FY 2016–2017 - electronically submitted

Attachments as Addendums to SER

1. Licensing Manual
2. Compliance Manual
3. Inspections Manual
4. 85R HB 1292 Section by Section