



Contact: Tom "Smitty" Smith
smitty@citizen.org
Conor Kenny
ckenny@citizen.org
(512) 477-1155 (office)
(512) 479-8302 (fax)
1002 West Ave
Austin, TX 78701

Fact Sheet: Reforms to the Texas Ethics Commission in CSHB 1606

"Not an enforcement agency"

The Texas Ethics Commission was created in 1991 with a constitutional amendment to enforce the state's ethics and campaign laws. It has a poor record. Since its creation the Commission has never initiated its own complaint, audited a campaign, or subpoenaed a witness or document. The Commission has held only one formal hearing on a minor matter. Many public interest advocates claim that the Commission was "designed to fail."

The Commission's Chair, during testimony at to the Sunset Commission, stated that they think of themselves "as an advisory agency primarily, not an enforcement agency."

Reforms

CSHB 1606 is the TEC sunset bill, and as such contains a number of reforms to toughen and streamline the Commission:

1. Separates the Commission's policymaking duties from the agency's management functions.
2. Requires the Commission to perform random facial (completeness) audits or reports.
3. Creates a two-tiered enforcement process to provide for faster resolutions of minor complaints.
4. Shifts from the Commission to the executive director the responsibility for determining whether a complaint is in the jurisdiction of the Commission.
5. Shifts from the Commission to the staff the responsibility to promptly conduct a preliminary review of complaints.
6. Abolishes one step in the complaint resolution process.
7. Allows Commission staff to pose written questions to the complainant, respondent, and witnesses during the preliminary review and require response under oath.
8. Extends the Commission's ability to subpoena witnesses and documents to the preliminary review stage (formerly only available at the formal hearing).
9. Allows Commission staff to disclose information needed to investigate a complaint (formerly a Class A misdemeanor).
10. Only requires a finding of a preponderance of evidence (as opposed to the stronger clear and convincing) for a violation, like other agencies.
11. Reduces the number of votes for a violation finding from six to five.
12. Makes all Commission votes record votes.



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17 Ways the Texas Ethics Commission is Different than other State Agencies¹ (A Chronically-Troubled Agency)

1. TEC proceedings (with the exception of formal hearings—there has been one in 12 years). Are closed to the public. FL and CA have open proceedings after a finding of probable cause.
2. Staff essentially cannot interview third party witnesses due to draconian penalties (a Class A misdemeanor) for revealing the nature of an investigation—unlike any other agency.
3. Board micro-management: The Board is involved in all day-to-day aspects of investigations, unlike any other law-enforcement agency board.
4. Multiple enforcement stages: The TEC has 6 bureaucratic stages, whereas a typical Texas agency has two: an investigation and a formal hearing stage.
5. The TEC staff lacks subpoena power for documents and witnesses, unlike most other Texas enforcement agencies.
6. Higher standard of proof: Civil liabilities for an elections violation requires clear and convincing evidence, a much higher standard than for most Texas civil matters, which require a preponderance of evidence.
7. Despite the multiple stages of investigation and resolution, a respondent may appeal a TEC decision de novo (starting completely over) to district court. Most other Texas agency decisions give deference to the agency's decision and hearing process.
8. No random audits: The TEC does not even do facial audits (making sure all the form's blanks are filled in), much less audit whether completed forms are accurate.
9. TEC staff does not initiate investigations unless a complaint has been filed, even if a violation comes to their attention via the media or another source. Texas agencies generally initiate complaints on their own when they have credible evidence of a violation.
10. Unlike other Texas enforcement agencies, the TEC has no dedicated enforcement staff. Staff spend most of their time answering phone calls and providing advice.
11. The TEC lacks the budget and personnel necessary to enforce the law. Texas' ethics agency has 6.5 to California's 29, for example.
12. All other Texas statutory agencies have an odd number of staff to prevent deadlock, unlike the TEC, which has an even number.
13. The TEC has an unusually high quorum of a "hard six" of eight members.
14. Complainant's names are confidential, even if they don't want them to be.
15. A frivolous complaint with the TEC carries the unusually high penalty of \$10,000, even if the respondent incurs no damages, unlike at other state agencies.
16. The TEC has authority over local complaints, but local records are kept with local authorities, who have no authority to enforce state ethics laws. Most state agencies possess the records whose accuracy and compliance they are charged with enforcing.
17. The TEC is charged in the Constitution with recommending salary increases for legislators. They have not done so, ever.

¹ From the Campaigns For People report: "18 Ways the TEC is Different than any other Enforcement Agency".