

## Empowering the Texas Ethics Commission Is Good Politics

With national attention on Enron scandals and campaign finance, state media focus on Tony Sanchez' wealth and a study on lobbyist influence on legislation, Texans are wondering who is watching the statehouse. Fortunately, such questions coincide with the Sunset Review of the Texas Ethics Commission, which is an opportunity to work for necessary and positive changes that can help answer those concerns. Texans depend on TEC to keep politics ethical, but TEC desperately needs reform. The legislature needs to give TEC more authority and make five changes that allow for real enforcement, real disclosure, a reduction in conflict of interest, real contribution limits and reasonable legislative salary raises. Through the Sunset process, TEC can become an effective agency that truly serves the public interest.

The fall of Enron and the passage of a major campaign finance reform bill at the federal level have turned the spotlight on ethics standards nationwide. In Texas, charges of ethics violations have led to calls for more stringent regulation and enforcement of campaigns and conflicts of interest.

The Texas Ethics Commission (TEC) was created by the legislature 12 years ago to oversee political campaigns, register lobbyists and recommend legislative salaries. Unfortunately, the agency has failed to adequately perform these duties. Despite its statutory functions, TEC has experienced chronic problems with enforcement and disclosure that handcuff the agency and rob it of any real effectiveness.

The Sunset review process<sup>1</sup> provides an opportunity to reform and empower TEC. The Sunset Staff Report has made important recommendations, but TEC needs more complete reform to be a real enforcement and advisory agency. Legislation should require TEC to fulfill its duties as well as increase its authority as an enforcement agency.

### Real Enforcement

Currently, TEC faces enormous obstacles to conducting comprehensive investigations of complaints: it doesn't have enough authority and is handcuffed by excessive confidentiality requirements. While most state agencies place no specific confidentiality restrictions on their staff, TEC staff members face misdemeanor

charges if they say anything about an investigation, from the preliminary review to the hearing. Further, TEC staff can't interview third-party witnesses or subpoena documents, severely limiting the amount of information available to TEC. These are huge deterrents to investigation, and they prevent TEC from effectively enforcing the law.

TEC needs the authority to initiate investigations and conduct them thoroughly. Since its inception, TEC has failed to fulfill these essential functions. In ten years, TEC has held only one formal hearing and has never initiated a complaint, audited a campaign or subpoenaed a witness or document. The Sunset Staff Report calls for an increase in TEC staff authority by granting the ability to subpoena records, interview witnesses, and loosen confidentiality requirements. These reforms don't go far enough. Like other commissions (the Commission on Judicial Conduct, the Attorney General's office), TEC should have internal rules on what information can be disclosed. Further, TEC should have open hearings and conduct random audits to ensure ethical conduct. Only legislation to increase TEC's authority will allow for real enforcement, and only real enforcement by TEC will keep the system clean.

### Real Disclosure

In addition to a handicapped enforcement function, Texas' financial disclosure system is

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*Outdated disclosure forms need to be updated to reveal conflicts of interest*

*In ten years, TEC has held only one formal hearing and has never initiated a complaint, audited a campaign or subpoenaed a witness or docu-*

dated and uninformative, which makes pinpointing conflicts of interest extraordinarily difficult. TEC should be required to update campaign contribution/expenditure and personal financial disclosure forms. By only requiring the name and zip code of campaign contributors, it is impossible to determine the actual source of campaign funds. There might be 20 “Tom Smiths” in a particular zip code: without disclosing the contributor’s profession the true source of a candidate’s support is unclear. Knowing that substantial support comes from consumer advocates, real estate lawyers or oil and gas barons is crucial information voters ought to have.

Texas’ personal financial disclosure forms are also inadequate. Texas needs to make the value ranges on personal disclosure forms more specific by increasing the number and the cap. Currently, Texas’ highest check-off on these forms is \$25,000; there is no way of knowing if stock holdings made up \$26,000 or \$2 million of a legislator’s net worth. Further, Texas only has four value ranges on these forms, which allows for very little specificity. Hawaii’s state disclosure form provides a good example of how to improve: they have eleven value ranges, from “less than \$1,000” to “at least \$1 million or more.” Their divisions better illustrate public officials’ relationships with particular companies and businesses.

### **Reduce Conflict of Interest**

Real disclosure is crucial to detecting conflicts of interest. According to the Center for Public Integrity, Texas legislators lead the nation in ties to businesses that lobby the government.<sup>ii</sup> Certainly, having business connections does not automatically give rise to conflicts of interest, but invariably conflicts occur. Members of the legislature have: carried legislation that would increase personal earnings or benefit their clients, contracted or subcontracted with the state, appeared before state agencies to ask for favors for their clients, and consulted with groups seeking contracts from the state. Two Chairmen of the Public Utility Commission have resigned due to ties to companies that could benefit from their actions. These relationships were not fully disclosed at the time of appointment.

The current disclosure system is not detailed enough to reduce conflicts of interest as it provides no accurate picture of where state officials’ assets lie. The standards for recusal are both unclear and unenforceable, and they too must be reevaluated to effectively reduce conflicts. Current law bars legislators from voting on bills that affect a business in which they have a controlling interest, *unless the measure affects the entire class of business entities*.<sup>iii</sup> This loophole severely weakens attempts to prevent conflicts of interest, and it should be closed.

### **Real Contribution Limits**

The other primary source of conflicts of interest are massive, unregulated campaign contributions to state officials by businesses. Texas’ failure to institute limits on such contributions, limits which have been in place at the federal level for thirty years, leads to a cynical and disengaged public. Correlation between large contributions and legislation that benefits the contributor feeds the common conception that special interests run the government by purchasing favors, and that the individual citizen has no voice. It is time to get rid of even the appearance of impropriety and restore public faith in government. Partly in response to the Enron scandal, the U.S. Congress passed campaign finance reform legislation that renewed public confidence in the federal government. Texas, too, needs legislation that caps contributions at the federal limits.

### **Reasonable Raises**

Better disclosure helps to detect conflicts of interest, but inadequate legislative salaries help explain why conflicts arise in the first place. The annual salary for Texas legislators is \$7,200. States of comparable size and populations, like New York and California, pay their legislators \$79,000 and \$99,000 respectively. Poorly paid by the state, legislators need to earn a living and may more likely have ties to lobbyists and interested businesses.

According to a recent survey conducted by Public Citizen and Common Cause, 74 percent of Texas legislators work over 60 hours per week during the session, and 27 percent work more than 80 hours. The majority work

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more than 30 hours per week during the interim or campaigning. Most legislators gave up their full-time jobs in order to serve, sacrificing over \$50,000 annually—almost a quarter lose \$75,000.<sup>iv</sup>

Because it reduces potential conflicts of interest, and since legislators work so hard and make such sacrifices, they deserve a raise. It is TEC's responsibility to make that suggestion: they were empowered to recommend raises and put the question directly to voters. But, in ten years, they never have. TEC should ensure that state legislators are paid a fair wage by requiring a review and recommendations for appropriate raises at least every ten years. Indexing legislative salaries to the average wage in Texas is a fair and realistic goal.

**Recommendations:**

TEC is currently under Sunset Review. The Sunset Staff Report found the agency lacking in many of the areas mentioned above and made important suggestions, but their recommendations don't do enough to empower TEC. To preserve public confidence in state government, Texas needs an Ethics Commission that works. Reforms are needed that allow for Real Enforcement, Real Disclosure, Reduced Conflicts of Interest, Real Contribution Limits and Reasonable Raises.

**Real Enforcement:**

- Give the staff the power (standard to any enforcement agency) to subpoena witnesses and documents to conduct effective investigations.
- Remove TEC's current confidentiality agreement which stifles any effort to initiate or pursue investigations.
- Require TEC staff to randomly audit five percent of campaign contribution/expenditure and personal financial disclosure forms.

**Real Disclosure:**

- Require TEC to update its personal and campaign financial disclosure forms. Specifically:
  1. Require campaign contributors to indicate their employer and occupation.<sup>v</sup>

2. Change the value ranges on all forms to provide a valid description of legislator assets.

**Reduce Conflicts of Interest:**

- Add a mandatory check-off to indicate if a particular business interest represents more than 10 percent of a legislator's assets.
- Update and clarify standards for recusal—require legislators not vote on bills that affect more than 10 percent of personal assets.
- Allow the Lt. Governor or someone else to step in for the Governor on a particular matter when there is a conflict of interest.

**Real Contribution Limits:**

- Introduce legislation to place limits on campaign contributions comparable to the national standards.

**Reasonable Raises:**

- Require TEC to review and recommend necessary increases in legislative salaries at least every ten years.
- As a first step, TEC should consider indexing legislative salaries to the average wage in Texas (\$35,000).

**What Can You Do?**

Contact the ten Sunset Commission members and urge them to adopt the 5 "R's" to empower the Texas Ethics Commission.

<p><u>Senate</u> Jane Nelson (chair) Mike Jackson Eddie Lucio Jr. Eliot Shapleigh Dr. Tim Roth (public)</p>	<p><u>House</u> Warren Chisum (vice chair) Jim Dunnam Pete Gallego Burt Solomons Libby Linebarger (public)</p>
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<sup>i</sup> The Sunset Act provides that a group of eight legislators and two public members, the Sunset Commission, must periodically evaluate a state agency to determine if the agency is needed, is effective, and if tax dollars are well spent. Based on the recommendations of the Sunset Commission, the Texas Legislature ultimately decides what changes are needed to improve an agency's effectiveness and efficiency.  
<sup>ii</sup> Center for Public Integrity, *Our Private Legislatures*, May 21, 2000.  
<sup>iii</sup> TEX. GOV. CODE § 572.053  
<sup>iv</sup> Public Citizen, Common Cause Legislator Survey conducted April, 2002. Survey responses were received from 51 of 181 legislators (28%).  
<sup>v</sup> Alabama's "Statement of Economic Interest" form requires legislators to disclose earnings from consulting work and lists employment categories for consultant clients. This list is a good example of the options and specificity Texas should require campaign contributors to disclose regarding their employment.



# Texas Legislator Survey Results

As some surveys were incomplete, the percentages have been calculated using the number of responses to the individual questions, not overall responses.

**Total Response: 51 of 181 (28%)**

*During the 77<sup>th</sup> Legislative Session, how many hours did you work each week on average in your capacity as a legislator?*

- a) 20-40 hours 4%
  - b) 40-60 hours 22%
  - c) **60-80 hours 47%**
  - d) more than 80 hours 27%
- (n=49)

*During the interim, when the Texas Legislature is not in session, how many hours do you work each week on average in your capacity as a legislator?*

- a) 5-15 hours 14%
  - b) 15-30 hours 30%
  - c) **30-45 hours 42%**
  - d) more than 45 hours 14%
- (n=50)

*During the campaign season, how many hours do you spend each week on average campaigning?*

- a) 5-15 hours 12%
  - b) 15-30 hours 28%
  - c) 30-45 hours 20%
  - d) **more than 45 hours 40%**
- (n=50)

*Does your work as a Texas legislator reduce the number of hours you work per week in your regular job? If so, by about how many hours?*

- a) 10-20 hours 0%
  - b) 20-40 hours 29%
  - c) **more than 40 hours 61%**
  - a) none 0%
- (n=49)

*During the interim:*

- a) **10-20 hours 40%**
  - b) **20-40 hours 40%**
  - c) more than 40 hours 13%
  - c) none 11%
- (n=48)

*During the campaign:*

- a) 10-20 hours 16%
  - b) **20-40 hours 38%**
  - c) more than 40 hours 36%
  - d) none 11%
- (n=45)

*In how many interim committees do you participate?*

- a) 1 0%

- a) 2 32%
  - b) **3 42%**
  - c) 4 or more 26%
- (n=50)

*How many trips do you take each month, from your district to Austin, on legislative business during the interim?*

- a) Less than 3 22%
  - b) **3-6 65%**
  - c) 7-10 4%
  - d) more than 10 6%
- (n=49) [1 "other" response]

*Please estimate your lost wages per year from another job due to your work as a legislator.*

*During the session:*

- a) no lost wages 10%
  - b) \$5,000 - \$25,000/year 8%
  - c) \$25,000 - \$50,000/year 27%
  - d) **\$50,000 - \$75,000/year 31%**
  - e) \$75,000+ per year 24%
- (n=49)

*During the interim:*

- a) no lost wages 12%
  - b) \$5,000 - \$25,000/year 19%
  - c) **\$25,000 - \$50,000/year 45%**
  - d) \$50,000 - \$75,000/year 12%
  - e) more than \$75,000/year 12%
- (n=49)

*During the campaign:*

- a) no lost wages 13%
  - b) \$5,000 - \$25,000/year 23%
  - c) **\$25,000 - \$50,000/year 30%**
  - d) \$50,000 - \$75,000/year 15%
  - e) \$75,000+/year 19%
- (n= 47)

*How much of your campaign funds do you spend on officeholder expenses?*

*For the entire session:*

- a) \$1,000 - \$5,000 22%
  - b) \$5,000 - \$10,000 17%
  - c) \$10,000 - \$15,000 13%
  - d) **\$15,000 - \$20,000 24%**
  - e) **more than \$20,000 24%**
- (n=46)

*For the interim:*

- a) \$1,000 - \$5,000 22%
  - b) \$5,000 - \$10,000 11%
  - c) \$10,000 - \$15,000 20%
  - d) \$15,000 - \$20,000 11%
  - e) **more than \$20,000 36%**
- (n=45)

**42% of survey respondents worked 30-45 hours per week on legislative duties during the interim**

**55% of survey respondents lost over \$50,000-in wages during session years**



## Texas Legislator Survey Results

*Survey respondents reported additional income from a variety of sources*

*What is your primary means of financial support during the legislative session?*

- a) savings 29%
  - b) income from employment 37%
  - c) earnings: investments, real estate 18%
  - d) spouse's income 35%
- (n=49) [many checked several options]

*There have been several proposals to raise legislator salaries by indexing them to various benchmarks in Texas. Which of the following pay proposals do you favor? (please rank them in order of preference)*

- A** no increase in legislator salary
- B** index salary to that of a 1<sup>st</sup> year teacher (currently pays \$24,240)
- C** index salary to the average wage in Texas (currently pays \$34,948)
- D** index salary to that of a Texas Supreme Court Justice (currently pays \$113,000) and ban other sources of income

[The choices (labeled above) are on the top row; the ranks assigned by respondents, on the left column. Listed in the table are the raw number of respondents who ranked the option 1-4.]

Rank Option	A	B	C	D
1	(8)	(9)	(18)	(8)
2	(1)	(8)	(9)	(1)
3	(4)	(5)	(4)	(4)
4	(6)	(1)	0	(7)
<b>Total Responses (by option)</b>	<b>19</b>	<b>23</b>	<b>31</b>	<b>20</b>

*Should pay levels be lower during the interim than during the session? If so, by what percent?*

- a) 30% or less 39%
  - b) 30% - 50% 11%
  - c) 50% - 70% 6%
  - d) more than 70% 0%
- (n=36)



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*In this Paper:*

*5 Ways To Improve Texas' Ethics System*

*Texas Legislator Survey Results*

## How Much Should Texas Legislators Make?

*Many Legislators Feel at least \$30,000/year  
(See details inside)*

*Public Citizen is a non-profit consumer advocacy organization. We fight for openness and democratic accountability in government, for the right of consumers to seek redress in the courts; for clean, safe and sustainable energy sources; for social and economic justice in trade policies; for strong health, safety and environmental protections; and for safe, effective and affordable prescription drugs and health care.*