

## VII. Guide to Agency Programs

<b>A. Provide the following information at the beginning of each program description.</b>
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<b>Name of Program or Function</b>	Legal Services Program
<b>Location/Division</b>	William P. Hobby Building, Tower I, 10th Floor
<b>Contact Name</b>	Sara Shiplet Waitt, Senior Associate Commissioner
<b>Actual Expenditures, FY 2006</b>	\$2,269,064.45
<b>Number of FTEs as of August 31, 2006</b>	39

<b>B. What is the objective of this program or function? Describe the major activities performed under this program.</b>
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Legal Services counsels the agency on all matters, including operations, personnel, contracts, open records, and policymaking. The program interprets statutes; drafts rules, opinions, and bulletins; and assists the Financial Program with financial and receivership matters.

Legal Services has three sections, Agency Counsel, Financial Counsel, and Policy Development Counsel. The major activities of each section follow.

**Agency Counsel** provides legal services to the Commissioner of Insurance, the Commissioner of Workers' Compensation, and agency staff. These services include:

- advising the agency on applicable state and federal employment laws
- drafting bid documents and monitoring agency contracts
- overseeing the agency's open records process
- drafting rules for the Administrative Operations Division
- reviewing and revising TDI's policies and procedures manuals.

**Financial Counsel** provides legal services to the Financial Program and other agency programs. Services include:

- interpreting statutes, rules, and case law
- drafting and reviewing orders, rules and potential legislation
- assisting in the establishment of tax rates
- advising on company financial examination issues, administrative appeals, and other issues related to oversight of financially troubled companies
- representing and advising the Commissioner as receiver.

**Policy Development Counsel** provides legal services to TDI's Life, Health, and Licensing; Property and Casualty; and Consumer Protection programs and to the Division of Workers' Compensation. Assistance provided includes:

- interpreting statutes, rules, and case law
- drafting rules, bulletins, and potential legislation
- reviewing agency publications for legal accuracy.

**General Management** is the agency’s liaison to the National Association of Insurance Commissioners. This function involves coordinating coverage of various committee meetings and communicating the agency’s position on issues.

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

Legal Service’s effectiveness is demonstrated by the lack of negative consequences to the agency. No rule or regulatory bulletin drafted by Legal Services has been successfully challenged in the past decade. Contracts and personnel actions generally occur without incident. In addition, Legal Services responds to a large number of open records requests within statutory deadlines and with a high degree of customer satisfaction.

**Agency Counsel**

The following statistics for fiscal years 2006 and 2007 (through June) demonstrate Agency Counsel’s effectiveness:

- Open records requests: 5,172 and 10,808
- Subpoenas: 187 and 198
- Citations: 367 and 217
- Requests for representation by the OAG: 85 and 67
- Orders for appointments to advisory boards and committees: 58 and 18
- Contract review and negotiation: approximately 500 for each fiscal year.

To measure customer satisfaction with the open records process, Agency Counsel conducted customer service surveys in 2004 and 2006. Eighty-seven percent of respondents rated TDI’s open records services as “very good” or “good” in 2004. In 2006, 92 percent said they were “very satisfied” or “satisfied” with the service received. The 2006 survey asked respondents to compare TDI with other state agencies. Sixty percent indicated that working with TDI was “much better” than working with other state agencies.

**Financial Counsel**

Financial Counsel handles approximately 150 assignments from the Financial Program at any given time. Additionally, Financial Counsel reviews approximately 90 orders each quarter, including orders granting charters and certificates of authority, orders related to the structure of insurance companies, and orders approving or denying changes of administrative control of insurance entities.

Financial Counsel has a performance measure counting the number of days from when a company is identified as “at risk” to the date of regulatory action. The section routinely exceeds the target for the measure. The following table reflects a five-year performance history.

<b>2.1.1 outcome 4 – Average number of days from company “at risk” identification to the date of solvency-related regulatory action</b>					
	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Actual Performance	31	15	24	15	23
Annual Target	42	42	31	31	31
Percentage of Target	73.80%	35.71%	77.42%	48.39%	74.19%
Analysis/Variance Explanation	These actions did not require notice of hearing; therefore, TDI was able to take action immediately, resulting in fewer days than the target, which is favorable for this measure.				

### Policy Development Counsel

Agency programs typically request Policy Development Counsel to provide legal opinions and responses to legal-related inquiries. The section handles responses to approximately 150 requests at any given time.

Policy Development Counsel drafted:

- 24 rules in FY 2006 and 22 rules through June FY 2007
- 30 bulletins in FY 2006 and two bulletins through June FY 2007.

**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.**

**2006** – The Commissioner of Insurance created two separate programs, Legal Services and Enforcement, in recognition of the separate services these divisions provide the agency. Legal Services focuses on policy issues affecting the insurance industry.

**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.**

Legal Services impacts the following persons and entities:

- Agency staff = 1,627.1 as of August 31, 2006
- Companies = 2,437 insurers and various other types of insurance-related entities
- Agents and adjusters = 347,830 total active licenses
- Consumers = 23,507,783 (2006 U.S. Census estimate for Texas).

**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

The Legal Services Program is led by a Senior Associate Commissioner. Each section is managed by a Section Chief.

Legal Services trains attorneys in various ways. New attorneys are mentored by more experienced lawyers and experts from program areas. Continuing legal education requirements are met through a contract with the State Bar of Texas. TDI also provides specialized training on management and other issues. Legal Services will conduct a survey in the summer of 2007 to determine additional training needs.

Legal Services receives formal referrals and informal requests for assistance. The Section Chiefs work closely with program staff to establish priorities and address issues. TDI's Compliance Intake Unit (CIU) receives formal referrals, opens case files, and enters the referrals into the Case Tracking System for assignment to the appropriate Legal Services section. Upon completion of assignments, staff attorneys notify CIU and the applicable programs to close the cases.

Informal requests are routed directly to the Section Chief or a staff attorney who is familiar with a particular issue. In some sections, if it appears that an informal request may take more than four hours or may involve a complex issue, the Section Chief or the assigned staff attorney may request a formal

referral from the program. Legal Services is evaluating potential process improvements for tracking assignments.

Staff attorneys refer to the TDI Rule Form and Procedures Manual for agency procedures regarding rule proposals and adoption orders, regulatory orders, hearing notices, and bulletins.

Legal Services follows written procedures for reviewing orders drafted by the programs. Financial Counsel staff also follow written procedures to track allocation of staff time. This tracking allows Financial Counsel to recover expenses from companies that are successfully rehabilitated. Legal Services relies on specific statutes and rules to define case parameters and refers to its forms library and previously drafted letters, orders, and memos.

Legal Services staff participate in agency workgroups and in the Financial Program's Recommendation Committee and Rehabilitation Planning Team. Agency workgroups include the Complaints Workgroup, the Texas State Disaster Coalition, and the Senior Action Team. The Recommendation Committee is an ad hoc group to address a specific company that appears to be in hazardous financial condition. The Rehabilitation Planning Team meets regularly to assess the status of companies that are the subject of administrative proceedings.

**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).**

The primary funding sources are general revenue and dedicated general revenue funds, which finance over 96 percent of the agency's operations. Maintenance taxes and fees are the two main revenues that fund the agency's appropriations to regulate the insurance and workers' compensation industries.

The salaries of employees who work on receiverships are paid from the receiverships' assets. Funds maintained under Texas Insurance Code, Article 21.28, Section 8(j), pay for activities that are not chargeable to the receivership and for activities performed for receiverships with insufficient assets to pay expenses. These funds are derived from claim payments that have been abandoned by their owners under TIC Article 21.28, Section 8(i).

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

The following internal programs perform services similar to the Legal Services Program:

#### **TDI and DWC General Counsels**

TDI's General Counsel reviews and advises the Commissioner of Insurance on agency rules, bulletins, and orders that have been drafted and prepared by staff attorneys in the Legal Services Program. The General Counsel serves as the Commissioner's direct representative. The General Counsel review supplements the legal work performed by the Legal Services Program. It provides an opportunity for the General Counsel to ask questions and correct any issues before presenting an item to the Commissioner of Insurance. The DWC General Counsel performs similar activities for the Commissioner of Workers' Compensation.

#### **Enforcement**

The Enforcement Program pursues administrative action to address violations of statutes or regulations by regulated entities. In pursuing a company for noncompliance, Enforcement must interpret rules, bulletins, and legislation. Generally, Legal Services has previously interpreted – and sometimes written – the rules, bulletins, and legislation. Legal Services and Enforcement work together to maintain consistent positions on these matters.

### **Division of Workers' Compensation (DWC)**

DWC's Legal Services Section provides legal services similar to those of TDI's Legal Services Program.

TDI's Legal Services Program provides support for the entire agency, including DWC. In contrast, DWC Legal Services functions are limited to workers' compensation issues and provisions of the Texas Labor Code. TDI's Agency Counsel Section provides legal advice to the Commissioner of Workers' Compensation and DWC staff regarding internal agency operations, including personnel matters, open records requests, and contracts. Legal Services, particularly Policy Development Counsel, often serves as a resource to DWC for rulemaking and drafting bulletins and proposed legislation.

### **Other TDI programs**

Other agency programs perform some similar activities to Legal Services. For instance, program staff may write a first draft of rules and bulletins related to their technical area. Legal Services then reviews and revises these for compliance with rules, statutes, and agency policy. Each TDI program has staff to respond to open records requests. To ensure consistency and compliance with applicable laws, Legal Services coordinates the agency's open records process, including billing and tracking.

**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.**

Legal Services regularly coordinates activities with the General Counsels, Enforcement, DWC, and other agency programs.

### **General Counsels**

General Counsel reviews supplement the legal work performed by Legal Services. They are an additional level of review that contributes to the effectiveness of the agency.

### **Enforcement**

The Legal Services and Enforcement Programs meet monthly to discuss issues that may affect both divisions. Additionally, Enforcement circulates "major case memos" that address significant enforcement cases. This allows Legal Services to review Enforcement's legal stance in these cases.

### **Division of Workers' Compensation**

Agency Counsel meets regularly with DWC representatives, including the DWC General Counsel, on legal issues to avoid duplication or conflict.

### **Other TDI programs**

Legal Services reviews rules and bulletins initiated by other program areas. Agency Counsel meets regularly with the open records liaisons in the program areas to discuss policies, procedures, and other pertinent information.

**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.**

Agency Counsel staff attend the monthly State Agency Coordinating Council (SACC) Legal Subcommittee meetings. Staff also regularly coordinate with counterparts at other state agencies.

Legal Services occasionally seeks advice from the OAG, particularly on issues that are controversial or that could result in litigation. In accordance with state law, the OAG represents TDI in state and federal court. Legal Services works closely with the OAG on these cases. Agency Counsel oversees compliance with open records provisions and routinely contacts the representatives of the OAG's Open Records Division.

Legal Services occasionally works with other federal and states agencies on discreet issues. These agencies include:

**Federal:**

- U.S. Department of Agriculture, Federal Crop Insurance Corporation
- Centers for Medicare and Medicaid Services
- National Institute of Occupational Safety and Health
- U.S. Department of Labor.

**State:**

- Office of Public Insurance Counsel
- Office of Injured Employee Counsel
- Office of the Comptroller
- Health and Human Services Commission
- Department of Assistive and Rehabilitative Services
- Department of State Health Services
- Department of Aging and Disability Services
- Department of Banking
- State Office of Administrative Hearings
- State Office of Risk Management
- Texas Workforce Commission
- Texas Medical Board
- Department of Housing and Community Affairs.

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

- the amount of those expenditures in fiscal year 2006;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

An attachment to TDI's Self-Evaluation Report provides agency contract expenditures by program.

**L. What statutory changes could be made to assist this program in performing its functions? Explain.**

Not applicable.

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

Not applicable.

**N. 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.

Not applicable.

**O. 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.**

Not applicable.