

The Texas Constitution: The People, History, and Government of the Lone Star State

Chapter 7 The Texas Executive Branch

The Texas executive branch bears little resemblance to the United States executive branch. The notion that the Texas governor serves as the state equivalent to the president at the national level is false, and must be discarded before delving into a study of the Texas executive branch. This section describes the Texas plural executive and discusses the ways in which the state executive branch differs from the national executive branch. At the conclusion of this subsection, students should be able to identify:

- The unique features of the Texas executive branch and the ways it differs from the national executive branch
- The key offices of the Texas plural executive and the roles and functions of each office
- The ways in which separate elections of members of the executive branch impacts Texas government
- The role of state boards and commissions in the Texas executive branch

Readers of this text have at this point in the semester gained familiarity with the executive branch of the United States. A summary of some of the features of the national executive branch serves to highlight the numerous ways in which the Texas executive branch differs from the United States executive branch. First, the national executive branch has one clear leader - the President of the United States. The president's immense power over the executive branch is the result of both historical change and constitutional mandates. Although the United States Constitution states that the president and vice president are to be chosen separately, the common practice of selecting vice presidents since the 19th century has been for electors to the Electoral College to pledge to vote for the presidential and vice presidential candidates that are together presented by a given political party. The modern practice of selecting presidents and vice presidents together has served to eliminate problems that surfaced early in the nation's history when electoral procedure, established before the rise of modern American political parties, called for the candidate with the highest number of votes to serve as president and the candidate with

the second highest number of votes to serve as vice president. Today, the practice of electors pledging to vote for the winning party's presidential/vice presidential ticket largely eliminates the likelihood that a president and vice president from competing political parties will serve together in office. Furthermore, presidents are constitutionally empowered to hand select the top executive officials that will serve under him or her during the duration of their term, subject to confirmation by the Senate. Appointed executive officials act as the heads of national administrative agencies charged with assisting the president in carrying out the executive duties and functions of the nation. High-ranking executive officials serve completely at the discretion of the president. While Senate approval is required before a federal executive appointee may assume office it is not required when a president decides to remove an appointed official from office. James Comey Jr.'s appointment to the high-ranking executive post of Director of the Federal Bureau of Investigations, for example, required Senate confirmation when he was first appointed to the position by President Barack Obama in 2013; but, President Donald Trump's decision to remove Comey from the office in 2017 was unilateral and required no Senate approval.

In addition to the president's authority and discretion over personnel that comprise the top tier of the national executive branch, three features of the national executive should be noted before beginning our discussion of the Texas executive. The first involves the **22nd Amendment** to the United States Constitution. The 22nd Amendment, ratified in 1951, establishes presidential term limits. No United States president may be elected to more than two consecutive terms. Second, in *Clinton v. City of New York* (1998), the United States Supreme Court ruled that presidential **line item vetoes** violated the Presentment Clause of the United States Constitution. Line item veto allows executives to reject or eliminate one part of a budget bill while leaving the remainder of the bill intact. After the *Clinton* decision, presidents retain the power of regular veto (the ability to reject an entire bill subject to override by a 2/3rd majority vote by both chambers of Congress), but no longer have the power to line item veto part of a budget bill presented to him or her by the legislative branch. Finally, presidents have the power to appoint judges to the federal judiciary. Federal judges, upon nomination by the President and confirmation by the

Senate, serve life terms on the bench except in cases of resignation, retirement, and impeachment.

❖ **The Offices Comprising the Texas Plural Executive**

Executive authority and discretion over personnel, term limits, the president's inability to line item veto, and the president's power to appoint judges are four major ways in which the Texas executive branch differs from the national executive branch. Many students of Texas government are surprised to learn that executive power in the state is divided between a number of state executive offices, and that in the division of power the governor holds the least amount of constitutional power. While national executive power is concentrated in one leader – the president – state executive power in Texas is constitutionally divided between six elected officials and one appointed official together known as the **plural executive**. The elected members of the plural executive are the Governor, Lieutenant Governor, Comptroller of Public Accounts, Land Commissioner, Agriculture Commissioner, and Attorney General. The seventh member, the Secretary of State, is appointed by the governor.

The elected members of the Texas plural executive are selected by the state's voters separately, meaning voters are free to select candidates from different parties to different executive offices. Unlike the United States system in which the president and vice president are for all practical purposes chosen together on the same ticket and the president is able to hand-pick all high-ranking executive officials subject to confirmation by the Senate, the Texas system allows the state's voters to choose the members of the plural executive from across parties and to "split their tickets" between parties and offices. Examples of ticket splitting by Texas voters were evident in the election of 1990 when Democrat Ann Richards was elected to serve as Governor and Republican Rick Perry was elected to serve as Agricultural Commissioner, and in the election of 1994 when Republican George W. Bush was elected to serve as Governor and Democrat Bob Bullock to elected to serve as Lieutenant Governor. The ability to ticket split means the Texas plural executive may at any time consist of members from different parties with different ideological views on the role of state government and how the Texas executive branch should function.

Ticket splitting by Texas voters significantly declined in the late 20th century. Since 2000, every elected member of the Texas plural executive has been a member of the Republican

Party. One-party dominance of the Texas executive branch does not, however, necessarily mean cohesion within the plural executive. Separate elections promotes a political climate in which members of the same party are not directly dependent on one another for reelection and therefore tend to appeal directly to the state's voters rather than to the party or fellow office seekers and office holders. A governor or other member of plural executive may, for example, be deeply concerned with organizational efficiency and want all members of the plural executive to work well together. But, other executive officials may determine they are better able to fulfill the duties and obligations of their office by working independent of the other members of the plural executive and have a greater chance at reelection if they promote themselves, their agendas, and their professional successes among the voters rather than directly among their elected colleagues. Independence and self-promotion are particularly important for officials hoping to use their current executive positions as a launching pad from which to gain electoral support for possible future runs for more visible (if less powerful) executive offices such a governor.

Lack of cohesion in the Texas plural executive is further exacerbated by the fact that the framers of the Texas Constitution clearly intended state executive power to be divided among several offices rather than concentrated in the hands of one person or group of people. The Texas Constitution grants the **governor** very limited powers, and the powers that are retained in the office overwhelmingly emanate from statutory grants of power by the Texas legislature and informal political skills such as persuasion, charm, and charisma that may be possessed by the person holding the office. The governor has statutory or constitutional authority to appoint the secretary of state and fill offices left vacant due to death, retirement, or impeachment until an election can be held; to veto legislation passed by the state legislature subject to a two-thirds majority override vote by both chambers of the legislature; and, to call out the Texas National Guard when the Guard has not been federalized (called into service) by the President of the United States. Unlike the president, the Texas governor also has the power of line item veto over budget bills. If, for example, the governor wanted to approve all sections of a budget bill except for one that appropriates funds to construct a new building at Texas A&M University, the governor could use the power of line item veto to reject only that section of the bill that appropriates building funds for Texas A&M while leaving intact all other sections of the bill. A standard

(non-line item) veto by the governor eliminates a bill in its entirety and is subject to a two-thirds majority vote in both legislative chambers.

Also unlike the national executive branch, the governor as well as all elected members of the Texas plural executive are not subject to term limits. State-level elected executives may continue to be reelected as long as the voters of Texas continue to choose them over their opponents. Former Texas Governor Rick Perry, for example, began his tenure as governor in December 2000 when, as Lieutenant Governor, he assumed the office of Governor of Texas after Governor George W. Bush vacated the office to become President of the United States. Perry was subsequently elected governor in the 2002 elections and reelected in the 2006 and 2010 elections. Despite the lack of term limits and the power of line item veto, the governor has extremely limited discretionary authority over the personnel in the state's executive branch. All decisions by the governor to dismiss executive branch personnel must be approved by the Texas Senate unlike the sweeping power of the President of the United States to remove high-ranking executive officials without approval by the United States Senate.

The office of the **lieutenant governor** – not the governor – possesses the greatest amount of constitutional and statutory power in the Texas plural executive. The Texas Constitution establishes the office of lieutenant governor as part of the state executive branch; but, in order to keep the officeholder in check, the powers designated to the office are largely legislative rather than executive in nature. Two legislative powers held by the lieutenant governor deserve elaboration. First, state statutes empower the lieutenant governor to serve as the chair of the very powerful **Legislative Budget Board (LBB)**. The LBB is responsible for preparing the state's legislative budget which is subsequently submitted to the state House and Senate for approval. Second, the Texas Constitution calls for the lieutenant governor to serve as President of the Texas Senate. You will recall in our studies of American government that the vice-president of the United States serves as president of the Senate; however, the legislative powers granted to the United States President of the Senate are extremely limited and consist almost exclusively of casting the tie-breaking vote in case of a tie vote in the Senate. The Texas lieutenant governor also has the power to break a tie vote; but, his or her role as President of the Texas Senate is much more expansive than that of the President of the United States Senate. As President of the

Texas Senate, the lieutenant governor presides over the Senate in ways similar to those of the Speaker of the House presiding over the House of Representatives. The lieutenant governor has immense influence over the Texas legislature in his or her ability to select the chairs and members of all Senate committees and subcommittees.

The **comptroller of public accounts** also plays a critical role in the functioning of the state. The comptroller sets the state legislature's spending limit for the **biennium**, or two-year legislative cycle. Unlike the United States Congress, the Texas legislature meets in regular session only once every other year in odd-numbered years; therefore, the budget set by the state comptroller must project and apply to a two-year rather than one-year legislative cycle. The comptroller's budgeted spending limit is important because it helps ensure the legislature does not spend more money than the state can afford. Unlike the United States Congress, the Texas legislature is constitutionally restricted by a **balanced budget** requirement meaning the legislature cannot enact appropriation bills without the existence or projected existence of state funds available to cover the cost of the appropriation.

The three remaining elected offices in the Texas plural executive have less direct involvement with the legislature than do the governor, lieutenant governor, and comptroller, and primarily work to carry out and enforce state policies and administrative regulations. The **land commissioner**, elected by the voters of Texas to four-year terms, manages all state-owned lands, mineral rights, assets, and income derived from Texas public lands. Managing Texas lands and their assets is no small task given that Texas holds land and mineral rights totaling nearly 13 million acres.¹ Texas lands include vast properties in West Texas; the Gulf Coast region including beaches, bays, and all "submerged" lands 10.35 miles out into the Gulf of Mexico; and, acreage and timberlands in East Texas.² The primary responsibility of the **General Land Office** is to lease public lands for the benefit of the Permanent School Fund, an endowment fund established in 1876 specifically designated to benefit Texas public education.³ The office also manages royalties

¹ The Texas General Land Office, TXGLO, "Land and Land Management," 2017, <http://www.glo.texas.gov/land/land-management/overview/index.html>.

² The Texas General Land Office, TXGLO, "Land and Land Management," 2017, <http://www.glo.texas.gov/land/land-management/overview/index.html>.

³ The Texas General Land Office, TXGLO, "Land and Land Management," 2017, <http://www.glo.texas.gov/land>

derived from oil and gas production on state lands; is responsible for developing state environmental protection policies; and administers services for Texas veterans through public land income. The **agriculture commissioner**, also elected to four-year terms, is responsible for regulating all fuel pumps, weights and measures, residential and commercial pesticide use and application, and organic agricultural products. The agriculture commissioner's office is also charged with protecting and advocating on behalf of the state's \$106 billion agricultural sector, which comprises 10% of the Texas economy;⁴ overseeing healthy living initiatives such as national school lunch and breakfast programs; providing financial assistance to Texas farmers and ranchers; and offering infrastructure grants to rural communities.⁵ Occasionally, the agriculture commissioner is faced with politically charged issues such as recent approval by the Texas Department of Agriculture (headed by the agriculture commissioner) for private individuals and the state to use the poison warfarin to help control the state's estimated 2 million wild hogs.⁶ The state **attorney general**, also elected by Texas voters to four-year terms, serves as legal counsel for the state. The Texas Constitution charges the attorney general with defending the laws and Constitution of Texas; representing the state in federal and state litigation; and approving public bond issues. Over time, nearly 2000 state statutes have greatly expanded the responsibilities of the office to include representation of the state's interests in cases involving health, safety, and consumer regulations; educational outreach programs; and protection of the elderly and disabled. The attorney general is also statutorily charged with collecting court-ordered child support and administering the state's Crime Victims' Compensation Fund.⁷

The only non-elected member of the Texas plural executive is the **secretary of state**. The Texas secretary of state is appointed by the governor, confirmed by the state Senate,

/land-management/overview/index.html.

⁴ Texas Department of Agriculture, "What does the Texas Department of Agriculture (TDA) do?" 2017, <http://www.texasagriculture.gov/About/WhatdoesTDA.do.aspx>.

⁵ Texas Department of Agriculture, "What does the Texas Department of Agriculture (TDA) do?" 2017, <http://www.texasagriculture.gov/About/WhatdoesTDA.do.aspx>.

⁶ Smith, Morgan, "In private meeting, [Agriculture Commissioner] Sid Miller says hog poison safeguard is not 'doable,'" *The Texas Tribune*, May 15, 2017, <https://www.texastribune.org/2017/05/15/private-meeting-sid-miller-says-hog-poison-restrictions-not-doable/>.

⁷ Office of the Attorney General, "Duties and Responsibilities of the Office of the Attorney General," <https://www.texasattorneygeneral.gov/agency/duties-responsibilities-of-the-office-of-the-attorney-general>.

and is constitutionally charged with overseeing all elections in the state. While elections and voter registration are carried out by Texas county officials, the secretary of state is responsible for maintaining over 14 million voter registration records on behalf of the state as well as administering and enforcing the Texas Election Code that regulates Texas voters, elections, voting systems, candidates, and political parties.⁸ Additionally, the Business and Public Filings Division of the Office of Secretary of State maintains filings and records related to Texas corporations and public organizations, and publishes the weekly *Texas Register* which publicizes official state rules, meetings, opinions, and proclamations.⁹ The responsibilities and functions of the Texas secretary of state have historically held no resemblance to the United States secretary of state in terms of the latter's role as senior official to the president in matters concerning foreign policy. More recently, however, the role of the Texas secretary of state has been extended into the realm of foreign policy through executive orders issued by the Governor of Texas. Today, the appointed secretary of state serves as the governor's lead liaison for Texas Border and Mexican Affairs and chief international protocol officer of the state. As chief international protocol officer, the secretary of state receives international dignitaries and delegations on behalf of the governor and represents the governor at meetings and events attended by the international diplomatic corps.¹⁰

❖ **Texas Executive Branch Boards and Commissions**

In addition to major agencies that are part of the plural executive, Texas has approximately 200 state boards and commissions that constitute a large portion of the state's executive branch but are not officially considered part of the plural executive.¹¹ The roles and responsibilities of state boards and commissions are to carry out and enforce laws passed by the Texas legislature and to establish and promulgate rules and policies that govern their respective administrative agencies. Among the most important state boards, commissions, and agencies are the State Board of Education, the Texas Board of Criminal Justice, and the Texas Alcoholic Beverage Commission. The **State Board of**

⁸ Texas Secretary of State, "Constitutional Duties," <http://www.sos.state.tx.us/about/duties.shtml>.

⁹ Texas Secretary of State, "Constitutional Duties," <http://www.sos.state.tx.us/about/duties.shtml>.

¹⁰ Texas Secretary of State, "Constitutional Duties," <http://www.sos.state.tx.us/about/duties.shtml>.

¹¹ A list of the state agencies, boards, and commissions can be found at: Texas State Directory, <https://www.txdirectory.com/online/abc/>.

Education (SBOE) sets policies and standards for Texas schools including curricular requirements, textbooks, graduation requirements, and final review of rules governing the State Board for Educator Certification.¹² The SBOE also serves as the policymaking body of the Texas Education Agency which coordinates all primary and secondary public school activity. Members of the State Board of Education are elected by the voters of the state from single-member districts to serve four-year terms. One commissioner of education is nominated by the elected board and appointed by the governor with the advice and consent of the Texas Senate.¹³ The **Texas Board of Criminal Justice** consists of nine members appointed by the governor to staggered, six-year terms. The board is charged with overseeing Texas Department of Criminal Justice which provides confinement, supervision, rehabilitation, and reintegration of the state's convicted felons,¹⁴ and houses a number of state agencies including the Texas Board of Pardons and Paroles and the Office of the Inspector General. The **Texas Alcoholic Beverage Commission (TABC)** regulates all phases of the alcoholic beverage industry in Texas. It consists of a three-member governing board appointed by the governor with the advice and consent of the Senate to staggered six-year terms. The Commission's duties include the regulation of sales, importation, manufacturing, transporting, and advertising of alcoholic beverages, as well as the collection of state taxes and fees on alcohol which annually contribute to the state's coffers more than \$300 million.¹⁵

Conclusion

Our review of the Texas executive branch highlights several unique features of the executive branch of government and demonstrates ways in which the Texas executive branch differs from the national executive branch. Members of the plural executive as well as those serving on various boards and commissions play important roles in the day-to-day operation of Texas government. While some high-ranking executive officials in Texas such

¹² "SBOE – State Board of Education," Texas Education Agency, http://tea.texas.gov/About_TEA/Leadership/State_Board_of_Education/SBOE_-_State_Board_of_Education/.

¹³ "Texas State Board of Education," Texas State Library and Archives Commission, <http://www.lib.utexas.edu/taro/tslac/30140/tsl-30140.html>.

¹⁴ "Texas Board of Criminal Justice: Overview," Texas Department of Criminal Justice, <http://www.tdcj.state.tx.us/tbcj/index.html>.

¹⁵ "The Organization," Texas Alcoholic Beverage Commission, http://www.tabc.state.tx.us/about_us/the_organization.asp.

as the secretary of state and members of the Board of Criminal Justice and the Alcoholic Beverage Commission are appointed by the governor with approval of the Senate, the governor may not remove appointed executive officials without the approval of the state Senate, and many important executive positions are elected directly by the voters of the state. The question of whether or not it is wise to vest Texas voters with such tremendous authority over the state's executive branch is a valid one particularly given the state's history of extremely low voter turnout in statewide elections. It is, however, clear that a majority of the framers of the Texas Constitution overwhelmingly preferred popular elections over gubernatorial appointments especially in light of the post-Reconstruction, post-Edmund Davis era in which the current Constitution was written. As we will see in the following chapter on the Texas judicial branch, the framers' affinity for elections over appointments extended well beyond the selection of executive officials.

Key Terms

22 nd Amendment	<i>Clinton v. City of New York</i>	line item veto
"plural" executive	Texas Governor	Lieutenant Governor
Legislative Budget Board	Comptroller of Public Accounts	biennium
Balanced budget	Land Commission	General Land Office
Agriculture Commissioner	Attorney General	Secretary of State
State Board of Education	Texas Board of Criminal Justice	
Texas Alcoholic Beverage Commission		