



Sunset Advisory Commission

2023 Legislative Session Forecast

State Bar of Texas

Legislative and Campaign Law Section

December 9, 2022

WHAT IS SUNSET?

- Sunset is the regular assessment of the continuing need for a state agency or program to exist.
 - ✓ Is the agency, including its functions, and programs, needed?
 - ✓ Does the agency present the best organizational structure to provide these services?
 - ✓ Does the agency's mission need to be redirected or modernized?
 - ✓ Is the agency achieving its statutory objectives?

Why Does Texas Have Sunset?

- Turbulent 1970s, with budget and trade deficits, rising inflation and unemployment, OPEC energy crisis, Vietnam War, national Watergate political scandal; a major stock fraud scandal in Texas.
- Public concerns with government growth and spending, and the need for more legislative control of state agencies and programs.
- In response, the Texas Legislature created the Sunset Advisory Commission in 1977 to hold agencies accountable, limit government growth, and improve government programs and services.
- Texas was the second state (behind Colorado in 1976) to create a Sunset process. Today, 36 states have some form of sunset process for occupational licensing laws.

How Does Sunset Work?

- Sunset is an effective oversight tool the Legislature uses to regularly evaluate state government in a structured and focused way.
- Sunset evaluates the need for state agencies, and their efficiency, effectiveness, fairness, and accountability in delivering services and programs for Texans.
- Sunset works by automatically abolishing an agency unless the Legislature passes a bill to continue it.
- This process creates a strong incentive to assess the need for an agency and its performance and make changes to streamline and improve state government.

Sunset Review Criteria and Recommendations

Staff apply criteria in the Texas Sunset Act to identify issues and recommend solutions during the review.

- **Fairness:** Do processes account for due process, objectivity, and reasonableness?
- **Effectiveness:** Is the state getting its money's worth?
- **Efficiency:** Is there a more cost-effective, less cumbersome, or more cohesive way to perform a certain function?
- **Accountability:** Is the public able to participate in its government? Is the agency transparent to stakeholders, the Legislature, and executive leadership?

The Sunset Commission may modify, adopt, or not adopt staff recommendations. Commission members also may propose new recommendations for the commission to consider adopting.

- **Statutory changes** are put into a bill and must be approved by the Senate and House like any other legislation.
- **Management actions** do not require legislative action and take effect upon adoption by the Sunset Commission.

2022–2023 Review Cycle

- Anatomical Board of the State of Texas
- Economic Development and Tourism Office, Texas
- Environmental Quality, Texas Commission on
 - Low-Level Radioactive Waste Disposal Compact Commission, Texas
- Juvenile Justice Department, Texas
 - Independent Ombudsman for the Juvenile Justice Department, Office of
- Law Enforcement, Texas Commission on
- Public Utility Commission of Texas
 - Electric Reliability Council of Texas
 - Public Utility Counsel, Office of
- Soil and Water Conservation Board, Texas State
 - Invasive Species Coordinating Committee, Texas
- State-Federal Relations, Office of
- Veterinary Medical Examiners, State Board of
- Water Development Board, Texas
 - Water Implementation Fund of Texas, State
- River Authorities
 - Bandera County River Authority and Groundwater District
 - Lavaca-Navidad River Authority
 - San Antonio River Authority
 - San Jacinto River Authority
 - Upper Guadalupe River Authority

Sunset Commission Members

2021-2023 Review Cycle

Senate Members

Charles Schwertner, M.D., Chair

Nathan Johnson

Angela Paxton

Charles Perry

Drew Springer, Jr.

James "Jim" Lee, Public Member

House Members

Justin Holland, Vice Chair

Keith Bell

Terry Canales

Travis Clardy

Craig Goldman

Jeff Austin III, Public Member

Jennifer Jones, Executive Director

Sunset Review Process

Phase 1: Sunset staff evaluation and staff report

- Agency submits self-evaluation reports to the Sunset Commission.
- Sunset staff performs extensive research and analysis on the need for, performance of, and improvements to the agency.
- Sunset staff publishes report on the agency with findings and recommendations to the Sunset Commission.
- Public input is confidential *before* the staff report is published.

Phase 2: Sunset Commission public meetings

- The Sunset Commission holds a public hearing on the staff report, followed a month later by a decision meeting on recommendations to the Legislature.
- Public input is not confidential *after* the staff report is published.

Phase 3: Legislative action

- The Legislature introduces a Sunset bill.
- The public may participate as usual during the legislative session.

Texas Commission on Environmental Quality

- Issue 1: Public engagement and transparency
 - Expand opportunities for public comment and requesting contested case hearings
 - Direct TCEQ to adopt clearer guidelines on toxicity/health risk, affected person determinations
 - Require TCEQ to improve website accessibility, including by posting all permit applications and materials
 - Expand use of electronic notices and virtual public meetings (commission recommendation)
- Issue 2: Enforcement functions
 - Require TCEQ to focus on risk analysis, including its definition of repeat violations and recordkeeping violations
 - Direct TCEQ to update its compliance rating formula and guidance regarding affirmative defenses
 - Create an enforcement diversion program for small business and local governments (commission recommendation)
 - Increase administrative penalty caps from \$25,000 to \$40,000 per day (commission recommendation)
- Issue 3: Water issues
 - Refocus the legislative Environmental Flows Advisory Group, creating a biennial statewide work plan
- Issue 4: Office of Public Interest Council
- Issue 5: Continuation of TCEQ
- Issue 6: Texas Low-Level Radioactive Waste Disposal Compact Commission

Texas Water Development Board

- Issue 1: Efficiency of Project Review
 - Require TWDB to develop and analyze performance metrics and establish timeline goals for its review process
 - Authorize TWDB to implement a risk-based approach to its review process
- Issue 2: Financial assistance outreach
 - Direct TWDB to collect and analyze certain information about its outreach programs and financial assistance applicants
 - Direct TWDB to develop an outreach plan to promote programs more efficiently and improve agency operations
- Issue 3: Standard Sunset elements
- Other commission recommendations:
 - Authorize regional water planning groups to use a drought worse than the drought of record as the baseline for future planning
 - Require TWDB to conduct a feasibility review of certain large projects in the State Water Plan
 - Direct TWDB to work with the state climatologist to gather information about regions of the state likely to experience extreme rainfall or drought when preparing future regional and state water plans

Texas State Soil and Water Conservation Board

- Issue 1: Dam structural repair program
 - Require TSSWCB to develop a clear set of priorities and goals and update its policies for administering the program
 - Direct TSSWCB to maintain a centralized master file system for the program
 - Direct TSSWCB to proactively inform dam sponsors about structural repair funding availability
- Issue 2: Invasive Species Coordinating Committee
- Issue 3: Continuation of TSSWCB
 - Require Sunset staff to conduct a limited-scope review in 2026-2027 on the dam structural repair program
- Issue 4: Standard Sunset elements

Texas Juvenile Justice Department

- Issue 1: Staffing and Regionalization
 - Suggest the Legislature consider appropriating funds for constructing two new state facilities and capacity building at county facilities
 - Require TJJJ to update its regionalization plan biennially and to incentivize diversion programs
 - Continue TJJJ for only two years and direct Sunset staff to conduct a limited-scope review
- Issue 2: Governance
 - Sweep the existing TJJJ board and reduce its size from 13 to nine members
 - Amend statutory qualifications for TJJJ's executive director
 - Increase data tracking and reporting to and from the TJJJ board
- Issue 3: Licensing and Inspections
 - Require TJJJ to focus on risk-based inspections
- Issue 4: Office of the Independent Ombudsman
- Issue 5: Standard Sunset elements
- Other commission recommendations:
 - Adjust sentencing and confinement requirements for youth, including expanding eligibility for determinate sentences and requiring TJJJ to recommend transfer to adult prison for certain youth

Public Utility Commission / Electric Reliability Council of Texas

Staff recommendations

- Issue 1: Decision-making processes
 - Suggest the Legislature consider appropriating funds for a data analytics team and engineering expertise
 - Require PUC to establish a clear processes for giving direction to ERCOT that allows for adequate stakeholder input
 - Direct PUC to develop a state reliability definition
- Issue 2: Public communication efforts
 - Require PUC to develop a strategic communications plan and make other improvements to PUC's methods for interacting with and informing the public
 - Direct PUC and ERCOT to better coordinate public communications
- Issue 3: Water and wastewater regulation
 - Suggest the Legislature consider appropriating funds to fully support PUC's water and wastewater functions
- Issue 4: Data practices
 - Direct PUC to prioritize improving its case data collection and analysis
- Issue 5: Continuation of PUC
- Issue 6: Office of Public Utility Council

River Authorities

Staff recommendations

- San Antonio River Authority
 - Conduct more inclusive strategic planning and publish more digestible public information online (commission adopted)
 - Adopt best practices for interacting with an associated nonprofit (commission adopted)
- Lavaca-Navidad River Authority
 - Adopt standard practices to ensure impartiality and good stewardship when awarding grant funds
- Upper Guadalupe River Authority
 - Adopt a reserve fund balance policy to guide the growth and depletion of reserve funds
- San Jacinto River Authority
 - Develop a communications plan to improve transparency and public relations
- Bandera County River Authority and Groundwater District
 - Remove Bandera County River Authority from Sunset review

Texas Economic Development and Tourism Office

Office of State-Federal Relations

Staff Recommendations

- Issue 1: Continue EDT
- Issue 2: Bank programs
 - Require EDT to adopt rules governing disbursement of funds, as well as a plan for administering and communicating about its lending programs
 - Require additional reporting to the Legislature on program results
- Issue 3: Tourism expansion
 - Consider adjustments to tourism assessment procedures to improve efficiency and expand impact
 - Develop accessible research and educational opportunities for communities
- Issue 4: Continue OSFR

Texas Commission on Law Enforcement (re-review)

Staff Recommendations

- Issue 1: Regulation of law enforcement
 - Establish a blue-ribbon panel to make comprehensive recommendations for regulatory changes
- Issue 2: Licensing and enforcement
 - Direct TCOLE to subscribe to DPS rap backs on fingerprint-based background checks
 - Authorize complaint confidentiality
 - Allow TCOLE to temporarily suspend a license in cases of imminent threat to public health, safety, or welfare
 - Require TCOLE to establish a system for LEAs to report failed fit-for-duty exams
- Issue 3: Standard Sunset elements

Anatomical Board of the State of Texas (re-review)

Staff Recommendations

- Issue I: Effective oversight of whole body donation
 - Options presented to Sunset Commission from stand-alone board with full regulatory function to an advisory body attached to an existing state agency
 - Invited Legislature to consider regulation of Non-Transplant Anatomical Donation Organizations

State Board of Veterinary Medical Examiners (special purpose review)

Commission direction:

- Direct Sunset staff to identify options for addressing systemic issues at the State Board of Veterinary Medical Examiners and submit the options to the Sunset Commission prior to the January meeting.

Learn More About Sunset

www.sunset.texas.gov

- *Sunset in Texas*: downloadable PDF with the Texas Sunset Act, 12-year review schedule, review criteria, and more.
- Separate web pages with reports and staff contact for each agency under review.
- Sunset Commission members, staff, and meeting agendas.
- Past Sunset reviews, reports, and results.
- Sign up for Sunset e-mail lists.

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Questions?