Texas Sunset Advisory Commission

STAFF EVALUATION

Banking Department

Savings and Loan Department

Office of Consumer Credit Commissioner

Finance Commission

Texas Library and Archives Commission

A Staff Report
to the
Sunset Advisory Commission

FINANCE COMMISSION

FOREWORD

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that the normal pressures of the legislative process tend to prevent a systematic review of the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which a review and redefinition of state policy can be accomplished on a regular systematic basis.

The Texas Sunset Act (Article 5429K, V.A.C.S., as amended) was enacted by the 65th Legislature in 1977. Under the provisions of the Act, agencies are automatically terminated according to a specified timetable, unless specifically continued by the legislature.

To assist the legislature in making the determination of whether an agency should be continued and, if continued, whether modifications should be made to its operations and organizational structure, the Act establishes a ten-member Sunset Advisory Commission composed of eight legislative members and two public members. The commission is required to evaluate the performance of the agency in accordance with specific criteria set out in the Act and to recommend necessary changes resulting from the findings of the evaluation.

The process by which the commission arrives at its recommendations moves through three distinct phases beginning with a self-evaluation report made by the agency to the commission. The second phase involves the preparation of a report to the commission by its staff, evaluating the activities of the agency, and proposing suggested changes for commission consideration. The final phase involves public hearings on the need to continue or modify an agency and the development of commission recommendations and legislation, based on the agency self-evaluation, staff report, and public testimony.

The Sunset Commission's findings, recommendations, and proposed legislation are then required to be transmitted to the legislature when it convenes in regular session.

INTRODUCTION AND ORGANIZATION OF AGENCY REVIEW

The Texas Sunset Act abolishes this agency on September 1, 1983 unless it is re-established by the 68th Legislature.

The staff reviewed the activities of this agency according to the criteria set out in the Sunset Act and has based its conclusions on the findings developed under these criteria.

Taken as a whole, these criteria direct the review of an agency to answer four primary questions:

1. Does the state need to perform the function or functions under review?
2. Could the public still be adequately served or protected if the functions were modified?
3. Is the current organizational structure the only practical way for the state to perform the function?
4. If the agency is continued and continues to perform the same functions, can changes be made which will improve the operations of the agency?

The report is structured to present the performance evaluation of the agency. The application of the across-the-board recommendations developed by the commission to deal with common problems are presented in a chart at the end of the report and are not dealt with in the text except in one instance. When the review develops a position which opposes the application of a particular recommendation, the rationale for the position is set forth in the text.

SUMMARY OF STAFF FINDINGS AND CONCLUSIONS

SUMMARY

Organization and Objectives

The Finance Commission was created in 1943 and is currently active. The commission's areas of responsibility include: 1) appointing the executive heads of the Banking Department, the Savings and Loan Department, and the Office of the Consumer Credit Commissioner; 2) periodically examining these agencies' financial records and transmitting an annual report to the governor; 3) approving departmental budgets; 4) reporting to house and senate committees considering relevant legislation; and 5) approving rules and regulations necessary to enforce the Consumer Credit Code.

The results of the review indicated that the agency generally functions in an efficient and effective manner. It was determined that the need to perform the functions of the commission still exist; however, the review showed that there are organizational alternatives to the current structure which could be considered. The review also indicated that if the commission is continued, several modifications should be made to improve its operations.

Approaches for Sunset Commission Consideration

I. MAINTAIN THE COMMISSION WITH MODIFICATIONS

A. Policy-making structure

1. Modify the composition of the commission to include two members representing financial institutions licensed by the Consumer Credit Commissioner, other than banks and savings and loan associations, and one additional public member. (statutory)
2. Amend the statute to create a consumer credit section of the commission with responsibilities comparable to the banking and savings and loan sections. (statutory)
3. Provide a right of appeal of cease and desist orders issued by the Savings and Loan Commissioner and the Consumer Credit Commissioner to the appropriate sections of the commission. (statutory)
4. The banking and savings and loan sections of the commission should formally adopt, as rules and regulations, all informal policies and guidelines currently in use. (management improvement - non-statutory)

II. ALTERNATIVES

A. Agency Reorganization

1. Modify the structure of the departments under the commission to provide centralized administrative services. Under this approach, the Finance Commission's structure would be modified so that individual departments currently under the commission would become divisions of the new agency. The new agency would provide some administrative services such as budgeting, record-keeping, and data processing, while each division would retain authority over such functions as chartering and examinations. The benefits include more consistent and uniform regulation, reductions in the costs of administration achieved through better utilization of existing personnel, equipment, supplies and office space, and access to a greater range of services and expertise.

2. Modify the structure of the departments under the commission to create a consolidated agency organized by regulatory function. This approach would create a centralized agency organized around the regulatory functions of administration, chartering, examinations and complaints rather than by type of financial institution regulated. A single administrator would be responsible for regulatory decisions on banks, savings and loans, and consumer finance companies. The greatest consistency in regulation and cost savings would be achieved under this alternative since a single administrator could ensure coordination of policies and the most efficient use of staff and other resources.

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
2. Does the agency operate efficiently?
3. Has the agency been effective in meeting its statutory requirements?
4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
5. Is the agency carrying out only those programs authorized by the legislature?
6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?

BACKGROUND

Organization and Objectives

The Texas Bank Law was revised in 1943. One of the significant changes which occurred as a part of this revision was the creation of the Finance Commission. The commission and the banking and savings and loan sections created within the commission were given oversight responsibilities for the regulation of state chartered banks, savings and loan and credit unions. Since the creation of the commission, statutory changes which have altered the commission's areas of responsibilities include: 1) the creation of a separate department for the regulation of savings and loan associations in 1961; 2) expansion of the commission's oversight responsibilities to include regulation of small loan lenders through the Office of the Consumer Credit Commissioner in 1963; and 3) the transfer of the regulation of credit unions from the Finance Commission to the Credit Union Commission in 1969.

The Texas Finance Commission, established in 1943, is currently active. The commission is composed of nine members appointed by the governor with consent of the senate for six-year overlapping terms. The nine members are divided into a six-member banking section and a three-member savings and loan section. Although there is no statutorily created consumer credit section, it has been the practice to assign three commission members to oversee the Office of the Consumer Credit Commissioner.

Qualifications for the six members of the banking section require that four of the members have five or more years executive experience in a state bank immediately preceding their appointment, and at the time of appointment, are officers in a state bank which falls within one of the four quartiles (as defined in statute) of the total number of state banks. The remaining two members are appointed by the governor on the basis of recognized business ability.

Qualifications for the three members of the section require that two members of the savings and loan section must be savings and loan executives with five or more years experience immediately preceding their appointment, in a state or federal savings and loan association. One of the two must be an executive in a state savings and loan association, which at the time of the appointment, has gross assets over $20,000,000; the other must be an executive in a state savings and loan association with assets under \$20,000,000. The remaining member of the section is is appointed by the governor on the basis of recognized business ability.

No two members of the same section may be residents of the same senatorial district, and no member may act at any meeting of the commission, or of either section, when the matter under consideration specifically relates to any corporation in which he or she is an officer, director or stockholder.

The basic role of the commission is to act as a policy body. In this capacity the commission's responsibilities include: 1) appointing the executive head of each department; 2) periodically examining the financial records of each department, and transmitting an annual report to the governor; 3) approving the annual operating budgets of the departments; 4) reporting to the appropriate committees of the house and senate charged with considering legislation pertaining to banking and savings and loan associations; and 5) promulgating rules and regulations necessary to enforce the Consumer Credit Code.

Support services for the Finance Commission are provided by the Department of Banking, the Savings and Loan Department and the Office of the Consumer Credit Commissioner. The general counsel of the Banking Department serves as secretary to the commission. During 1981, \$6,000 was budgeted by the three departments supervised by the commission for travel expenses and per diem incurred by commission members.

The review of the Finance Commission indicated the commission has been generally effective in carrying out its responsibilities. However, a number of areas were identified where modifications would increase the efficiency and effectiveness of the commission's activities. Results of the evaluation follow.

REVIEW OF OPERATIONS

The evaluation of the operations of the Finance Commission is divided into general areas which deal with: 1) a review and analysis of the policy-making body to determine if it is structured so that it is fairly reflective of the interests served by the agency; and 2) a review and analysis of the activities of the agency to determine if there are areas where the efficiency and effectiveness can be improved both in terms of overall administration of the agency and in the operation of specific programs.

Policy-Making Structure

In general, the structure of a policy-making body should have as basic statutory components, specifications regarding the composition of the body and the qualifications, method of selection, and grounds for removal of the members. These should provide executive and legislative control over the organization of the body and should ensure that the members are competent to perform required duties, that the composition represents a proper balance of interests impacted by the agency's activities, and that the viability of the body is maintained through an effective selection and removal process.

The Finance Commission is composed of nine members appointed by the Governor with consent of the senate for six-year overlapping terms. The commission is divided into a six-member banking section and a three-member savings and loan section. The banking section is composed of four active bankers with not less than five years executive experience and two citizen members appointed on the basis of recognized business experience. The savings and loan section is composed of two savings and loan executives with not less than five years experience and a third citizen member appointed on the basis of recognized business experience.

The review of the policy-making structure focused on whether the board has an appropriate representational make-up to carry out its role effectively, whether the oversight provided to each of the departments supervised by the commission is consistent, and whether the statutory responsibilities assigned to each section are being carried out. While the review indicated that the commission has been generally effective in carrying out its responsibilities, several areas were identified where modifications to its structure would improve the operation of the Finance Commission.

As the commission is currently organized and operated, certain responsibilities such as making studies and reporting to the legislature on banking and savings and loan statutes, approving the budgets of the departments, selecting the banking, savings and loan and consumer credit commissioners, and making annual reports to the Governor concerning the revenues and expenditures of the departments are the responsibility of the Finance Commission. The review indicated that while the responsibilities assigned to the Finance Commission as a whole for the three agencies were generally consistent, the activities and responsibilities of the three sections under the commission which carry out the primary oversight responsibilities for the departments were not always comparable. Several areas were identified during the review which could be changed to improve the effectiveness of the commission's operations.

Oversight of Consumer Credit Activities. The review of the activities of the consumer credit section of the Finance Commission showed that unlike the banking and savings and loan sections, the consumer credit section is not authorized by statute and all oversight functions for the office are assigned to the Finance Commission as a whole. The review indicated that in practice the chairman assigns three members of the commission to act as a consumer credit section in addition to serving as members of their respective sections. However, the consumer credit section did not meet during the four year period under review. During this same period of time the banking section met on nine occasions and the savings and loan section met fifteen times. In addition, the review indicated that although the Office of the Consumer Credit Commissioner is responsible for the regulation of finance companies, pawnbrokers, and other institutions and concerns offering consumer credit, there is no representation of these regulated industries on the Finance Commission.

Since the results of the review indicated that the activities of the sections generally provide the primary oversight of the departments under the commission, the lack of an active section including individuals with extensive knowledge about the consumer credit industry with specific statutory responsibilities results in comparatively less oversight over the activities of the Office of the Consumer Credit Commissioner than the other departments. In order to ensure that the commission represents a proper balance of the interests impacted by the commission's activities and to provide additional expertise in the consumer credit industry, the composition of the Finance Commission should be expanded to include three additional members appointed by the Governor. Two of these members should represent financial institutions licensed by the Consumer Credit Commissioner, other than banks and savings and loan associations, and the third should be a member of the general public. The statutes should also be amended to specifically create a consumer credit section with policy-making responsibilities comparable to those assigned to the banking and savings and loan sections.

Uniformity of Appeals from Commissioner's Orders. Currently, the Savings and Loan Commissioner may issue a cease and desist order whenever he has cause to believe an association has engaged in unsafe or unsound practices or is in violation of its charter or bylaws or any law governing its operations. In addition, whenever the commissioner believes a director or officer of an association has committed any violation of the law or regulations governing savings and loan associations, has failed to comply with a cease and desist order, or engaged in unsafe or unsound practices, he can issue an order removing that director or officer from office. The Act provides for appeals of such orders; however, because the statute requires that the appeal be made to the commissioner, the process results in an aggrieved party appealing the commissioner's decision to the commissioner. In addition, a similar situation exists regarding appeals of cease and desist orders of the Consumer Credit Commissioner. Basic principles of due process require that any determination of legal rights and principles be rendered by an impartial decision-maker removed from investigation of the case. This guarantee currently exists under the Banking Code which provides for appeal of these orders to the banking section of the Finance Commission. Amending the Savings and Loan Act and the Consumer Credit Code to provide a right of appeal to the appropriate section would guarantee parties aggrieved by the commissioner's cease and desist or removal order, a review by an impartial body clearly removed from the original decision.

Adoption of Policies as Rules. The review indicated that in administering and enforcing provisions of the Banking Code, the Banking Department is currently following a number of policies, both written and unwritten, regarding bank practices and powers that have not been adopted as rules. These policies represent how the agency is interpreting certain requirements of the Code and fall generally within such areas as: 1) corporate practices, including bank bylaws, shareholders' and directors' meetings, and duties of directors; 2) loans and investments, including investment in the banking house, the legal loan limit, and reporting of officer borrowings; 3) confidentiality of records; 4) the branch banking prohibition; and 5) legal holidays for banks or trust companies.

The review also indicated that the Savings and Loan Department is currently following a set of written policies developed by the staff concerning requirements for new charters or plans for merger of existing savings and loan assocications. These policies concern minimum capital requirements and chartering criteria concerning the need for an association and undue harm to existing associations.

The Administrative Procedure Act defines a rule as "...any agency statement of general applicability that implements, interprets or prescribes law or policy or describes the procedure or practice requirements of any agency" and sets out the procedures for adopting such rules. The policies described above currently used by the agencies clearly fall within this definition. The banking and savings and loan sections of the Finance Commission should initiate the formal adoption as rules of all informal policies and guidelines wherever practicable in order to comply with requirements of the Administrative Procedure Act; to afford the public and the industry with adequate, equal notice of how the agency is interpreting the Banking Code and the Savings and Loan Act; and to ensure consistency and fairness in the administration of the Acts.

EVALUATION OF OTHER SUNSET CRITERIA

The review of the agency's efforts to comply with overall state policies concerning the manner in which the public is able to participate in the decisions of the agency and whether the agency is fair and impartial in dealing with its employees and the general public is based on criteria contained in the Sunset Act.

The analysis made under these criteria is intended to give answers to the following questions:

1. Does the agency have and use reasonable procedures to inform the public of its activities?
2. Has the agency complied with applicable requirements of both state and federal law concerning equal employment and the rights and privacy of individuals?
3. Has the agency and its officers complied with the regulations regarding conflict of interest?
4. Has the agency complied with the provisions of the Open Meetings and Open Records Act?

EVALUATION OF OTHER SUNSET CRITERIA

Other Sunset Criteria

The operations of the Finance Commission were reviewed to determine compliance in the areas of Open Meetings/Open Records, public participation, EEOC/Privacy and conflicts of interest.

During the review it was noted that staff support for the Finance Commission is supplied by the employees of the Banking Department, the Savings and Loan Department, and the Office of the Consumer Credit Commissioner. Employee policies and procedures in the areas reviewed are discussed in the reports on those agencies.

The review showed that commission members are generally in compliance with the state's conflict of interest provisions. An examination of the commission's compliance with the Open Meetings Act showed that the commission, as well as the banking and savings and loan sections, have usually filed timely notice with the Secretary of State's Office. However, one instance was identified where the savings and loan section held an executive session which was not posted. The review of the minutes of the savings and loan section during the period under review also indicated a number of other instances where the use of executive sessions was not in compliance with the statute. The section's minutes indicate that the department's proposed budget has consistently been discussed, in part, and approved in executive session. In addition, other discussions, such as the naming of an acting deputy commissioner have been voted on in executive session. The Open Meetings Act requires that all final actions, decisions or votes with regard to any matter discussed in a closed meeting shall be taken in a meeting open to the public. The Savings and Loan Commissioner has indicated that these statutory requirements will be discussed with the members of the section.

NEED TO CONTINUE AGENCY FUNCTIONS

AND

ALTERNATIVES

The analysis of the need to continue the functions of the agency and whether there are practical alternatives to either the functions or the organizational structure are based on criteria contained in the Sunset Act.

The analysis of need is directed toward the answers to the following questions:

1. Do the conditions which required state action still exist and are they serious enough to call for continued action on the part of the state?
2. Is the current organizational structure the only way to perform the functions?

The analysis of alternatives is directed toward the answers to the following questions:

1. Are there other suitable ways to perform the functions which are less restrictive or which can deliver the same type of service?
2. Are there other practical organizational approaches available through consolidation or reorganization?

NEED

The analysis of need and alternatives is divided into: 1) a general discussion of whether there is a continuing need for the functions performed and the organizational setting used to perform the functions; and 2) specific discussion of practical alternatives to the present method of performing the functions or the present organizational structure.

Functions

A review of the information relating to the creation of the Finance Commission indicates that the original function of the commission was to provide oversight over the operations of the Banking Department. The commission's responsibilities were subsequently expanded to include oversight responsibilities over the Savings and Loan Department and the Office of the Consumer Credit Commissioner.

The review indicated that the need for a policy-making body for these state agencies still exists. Policy-making boards are an important component of state government in Texas. The Finance Commission, along with other boards, serves to: 1) employ chief executives for each of the departments; 2) ensure that the agencies are operated efficiently, effectively, and in accordance with statutory requirements; 3) articulate and implement broad legislative mandates through the promulgation of rules and regulations; and 4) establish agency budgets. This kind of oversight is especially important for the departments supervised by the commission since they are not subject to other kinds of general oversight activities available for agencies subject to the legislative appropriations process.

Based on the analysis of need, it was determined that the need to perform many of the policy-making functions assigned to the Finance Commission still exist; however, there are alternatives to the present organizational structure.

ALTERNATIVES

Agency Reorganization

While providing one policy-making body for three of the regulatory agencies concerned with financial regulation does achieve a degree of consolidation not available under independent boards, the review indicated that in practice, the statutorily created sections of the commission tend to provide the primary oversight of the departments' activities and operate in a manner similar to that of independent boards. Based on the range of financial regulatory structures in other states and the current organization of financial regulation in Texas, greater consolidation of the departments supervised by the commission was identified as a possible alternative to the present structure.

To assess the advantages and disadvantages of these organizational alternatives, the review sought to determine if consolidation or reorganization of functions would provide a significant number of the following benefits: 1) regulation would be more consistent and uniform; 2) the costs of administration of the functions would be reduced; 3) utilization of existing personnel, equipment, supplies and office space would be improved; 4) regulation would be simplified by a reduction in the number of agencies serving a similar population; 5) access to a greater range of services and level of expertise would be provided; and 6) increased accountability would result. The review determined that the benefits to be derived from any reorganization of the regulatory functions under the Finance Commission would depend on the degree of consolidation achieved by either of the following alternatives.

Modify the structure of the departments under the commission to provide centralized administrative services. Under this approach the Finance Commission's operations would be modified to create an agency that provides some administrative services including budgeting, record keeping, data processing and personnel services. The individual agencies under the commission would become divisions of the new agency, retaining their authority in such matters as chartering, examinations and handling of complaints. Benefits to be derived from this approach would include more consistent and uniform regulation, reductions in the costs of administration achieved through better utilization of existing personnel, equipment, supplies and office space, and access to a greater range of services and level of expertise.

Modify the structure of the departments under the commission to create a consolidated agency organized by regulatory functions. This alternative would result in a centralized agency that performs all regulatory functions and administrative duties. Under this approach the agency would be organized around the regulatory functions of administration, chartering, examinations and complaints rather than by type of financial institution regulated. A single administrator appointed by the Finance Commission, would be responsible for regulatory decisions on banks, savings and loan associations, finance companies and pawnbrokers. The greatest consistency in regulation and cost savings would be achieved under this alternative since a single administrator could ensure coordination of policies and the most efficient use of staff. In addition, the number of agencies the public would have to deal with would be minimized.

A survey of partially or fully consolidated financial regulatory agencies in 43 states conducted by the Kansas Legislative Post Audit Committee indicated that many of the potential benefits mentioned above were achieved with better use of staff, cost savings, more consistent and uniform regulation, greater efficiency of operations and exchange of information about different financial institutions cited most often. Frequently cited disadvantages of consolidated regulation included difficulties in balancing responsibilities in several areas and administering various operations within one agency, and the difficulty in one agency becoming knowledgeable in all areas of financial regulation. While this study confirms that improvements in efficiency and policy coordination resulting from consolidation may be at least partially offset by increased problems in coordination of operations, the fact that 30 states consolidate regulatory activities in a single agency suggests that the difficulties can be overcome. However, the extent of benefits that can be achieved through adoption of any of these organizational alternatives is dependent on the degree of consolidation chosen.

ACROSS-THE-BOARD RECOMMENDATIONS

FINANCE COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
X*			1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
			7. Board members shall attend at least one-half of the agency board meetings or it may be grounds for removal from the board.
X			8. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X*			9. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	10. Require the board to establish skill oriented career ladders.
		X	11. Require a system of merit pay based on documented employee performance.
		X	12. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	13. Provide for notification and information to the public concerning board activities.
		X	14. Require the legislative review of agency expenditures through the appropriation process.

*Already in the statute.

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.