



SUNSET ADVISORY COMMISSION

Texas Funeral
Service Commission



Staff Report
November 2002

TEXAS FUNERAL SERVICE COMMISSION

SUNSET STAFF REPORT

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SUMMARY



Summary

Sunset Staff Report

Texas Funeral Service Commission

In 1999, the Legislature attempted to address problems identified at the Texas Funeral Service Commission (TFSC) by changing the Board and moving up its regular Sunset review from 2003 to 2001. In 2001, the Sunset Commission found continued problems with TFSC's ability to function as an effective regulatory agency. The Commission's high turnover and ongoing management problems were seriously affecting the agency's ability to enforce its statute, track and summarize licensing information, and address consumer concerns. TFSC also lacked basic legal and information technology resources. Despite the problems, the Sunset Commission found an ongoing need for regulating the funeral industry to protect consumers from deceptive practices. Based on the recommendation of the Sunset Commission, the 77th Legislature continued the agency for a two-year probationary period. TFSC was expected to make much needed improvements in its operations, including establishing clearer penalty guidelines and a fairer complaint process, as well as significantly improving its information technology.

In the current review, Sunset staff evaluated TFSC's progress to determine whether the agency had improved enough to warrant a 12-year continuation. Sunset staff found that TFSC had made substantial efforts to address the Legislature's concerns, fulfilling more than 90 percent of the statutory changes as recommended. TFSC has established new procedures to ensure that investigations are fair to both the licensee and the consumer, and ensure that sanctions are applied more consistently. In addition, the agency anticipates having a new computer system in operation in early December 2002 that should address many of the problems identified in 2001. Based on these changes, Sunset staff concluded that the agency should be continued for 12 years. Sunset staff also recommend one other change, to ensure stakeholder involvement TFSC's rule development process, which would further help the agency improve its regulation of the industry.

The Commission has improved enough to warrant continuation as the regulator of the funeral industry.

For more information, contact Erica Wissolik, (512) 463-1300. Sunset staff reports are available online at www.sunset.state.tx.us.

Issue / Recommendations**Issue 1 Texas Has A Continuing Need for the Texas Funeral Service Commission.****Key Recommendations**

- Continue the Texas Funeral Service Commission for 12 years.
- Require the Commission to develop guidelines for the early involvement of consumer and industry stakeholders in its rulemaking process.

Fiscal Implication Summary

If the Legislature continues the current functions of the Commission, its average annual appropriation of about \$500,000 would be required for the agency's operations.

ISSUE / RECOMMENDATIONS

Issue 1

Texas Has A Continuing Need for The Texas Funeral Service Commission.

Summary

Key Recommendations

- Continue the Texas Funeral Service Commission for 12 years.
- Require the Commission to develop guidelines for the early involvement of consumer and industry stakeholders in its rulemaking process.

Key Findings

- In 2001, the Legislature continued the Texas Funeral Service Commission for a two-year probationary period and directed the Sunset Commission to evaluate the agency's implementation of needed changes.
- The Commission has contracted for new information technology resources that should greatly improve its reporting and tracking of licensing and complaint activities.
- The Commission has improved its understanding and interpretation of its statute, and the extent and limits of its regulatory authority.
- The Commission has implemented most of the provisions of HB 3067.
- The Commission is not taking advantage of consumer and industry input when developing or changing its rules.

Conclusion

The 2001 Sunset Review of the Texas Funeral Service Commission (TFSC) found numerous problems preventing the agency from effectively regulating the funeral industry and protecting consumers. Despite the problems at that time, the Sunset Commission concluded that TFSC's role in regulating funerals was necessary to protect consumers from potentially deceptive or unfair practices, and required substantial improvements in the agency's policies and operations. The current Sunset review focused on TFSC's efforts to implement criteria put forth as part of its probationary continuation. Sunset staff evaluated the agency's compliance with legislative recommendations adopted in HB 3067, as well as the management actions adopted by the Sunset Commission, and found that the agency has displayed a commendable effort to comply with the recommendations. However, Sunset staff did identify one additional opportunity for the Commission to further improve its management and regulatory efforts by working with both consumers and the funeral industry during development of its rules.

Support

In 2001, the Legislature continued the Texas Funeral Service Commission for a two-year probationary period and directed the Sunset Commission to evaluate the agency's implementation of needed changes.

In 2001, serious organizational problems were hindering TFSC's regulation of the funeral industry.

- During its review of the Texas Funeral Service Commission (TFSC) prior to the 2001 legislative session, the Sunset Commission found serious problems with the agency and its operations, but an ongoing need for regulation to protect consumers from deceptive funeral practices. TFSC was experiencing substantial turnover, having lost its Executive Director and almost 100 percent of its staff within a few months. The Commission hired a new Executive Director in the same month the Sunset review began, but had no one to acquaint the Director with daily operations or to train new staff. In addition, the Commission was facing lawsuits charging poor administration and unfair regulation.
- At the time, Sunset staff had difficulty accessing necessary information on complaint procedures and regulatory requirements. Several providers of funeral-related services were not regulated at all, resulting in confusion for both consumers and the agency about who was professionally responsible for certain aspects of the final disposition of a body.
- These problems, coupled with the lack of a basic computer system, hindered the agency's ability to fairly and efficiently regulate the funeral industry. The 77th Legislature, based on the Sunset Commission's recommendations, passed House Bill 3067 continuing TFSC for a two-year probationary period and requiring the Commission to fulfill specific requirements to justify a 12-year continuance. The textbox, *HB 3067 Evaluation Criteria*, lists these requirements.
- Recognizing that the agency's Executive Director and most of the staff were new, HB 3067 created a Task Force of state agency, funeral industry, and consumer representation to assist and guide TFSC's implementation of needed improvements. The textbox, *Funeral Service Commission Task Force*, gives specific information on the six-member Task Force. TFSC

HB 3067 Evaluation Criteria

HB 3067 listed criteria for the Sunset Commission's evaluation of TFSC, as follows.

- Significantly improved information technology capable of compiling standard information and statistics.
- Improved understanding of statutory authority rules, policies, and procedures to reduce the need for outside legal interpretations and assistance.
- Establishment of clearer guidelines for more effective use of penalties.
- Establishment of a risk-based approach to scheduling inspections to ensure efficient use of limited resources.
- Establishment of new rules to outline a more fair and open complaint process.
- Implementation of all other provisions included in HB 3067.

Funeral Service Commission Task Force

Created in October 2001, and due to expire in January 2003, the Task Force meets at least once a month and includes representatives of:

- Comptroller of Public Accounts (Chair),
- Office of the Attorney General,
- Department of Information Resources,
- Office of the State Auditor,
- consumer groups, appointed by the Comptroller, and
- the funeral industry, appointed by the Comptroller.

reported quarterly to Sunset staff and the Task Force on the agency’s implementation of changes. Task Force members indicated to Sunset staff that the Commission had adequately addressed the mandated requirements, and should be able to succeed as an independent agency.

- HB 3067 also required that TFSC contract with the Office of the Attorney General (OAG) to gain a better understanding of its statutory authority and improve legal interpretations of the statute; and with the Department of Information Resources (DIR) for assistance with purchasing new computers and software, necessary to improve information management. This legislatively required assistance from other agencies helped the Commission implement the new directives.
- Sunset staff’s current evaluation of the Commission focused on the agency’s compliance with the six criteria put forth as part of its probationary continuation, and compliance with the management actions adopted by the Sunset Commission. The following material outlines the Commission’s implementation of recommended changes in these areas, as well as one opportunity for the Commission to further improve its regulatory process by ensuring stakeholder involvement during development of the agency’s rules.

TFSC’s implementation of needed changes was the focus of this Sunset review.

TFSC’s Compliance with Continuation Criteria

The Commission has contracted for new information technology resources that should greatly improve its reporting and tracking of licensing and complaint activities.

Criteria #1	Status
Significant improvements in information technology to enable the agency to compile standard information and statistics.	Partially Implemented. The Commission anticipates full compliance when the agency’s new computer system becomes operational in early December 2002.

- HB 3067 required TFSC to contract with DIR to improve the agency’s information technology resources. During the 2000 Sunset review, staff identified the need to update computers and to install a fully integrated information system to manage the agency’s licensing and enforcement databases. Lack of both sufficient hardware and software had resulted in TFSC inaccurately reporting critical information to the Legislature, as well as the inability to report information that Sunset staff needed to review the Commission’s efficiency and effectiveness.

TFSC's new computer should enable the agency to better track its licensees and complaints.

- In 2001, the Legislature appropriated a capital fund to TFSC to purchase hardware and a customized database, giving TFSC the tools needed to accurately track licensing and enforcement information. As of September 2002, DIR had successfully identified equipment vendors and a consultant who designed a program specifically for TFSC's use. DIR indicates that the new system should be fully operational by early December 2002. At that time, TFSC should be able to begin producing reports summarizing licensing and complaint statistics, as well as begin conducting technology-dependent activities the Sunset Commission recommended, such as staggering license renewals.
- TFSC's contract with DIR expires at the end of FY 2003, but technical support will remain in the form of an information services support contract between TFSC and the vendors who provided the new technology. In addition, the consultant customized a manual that will aid TFSC staff in using the new database.

The Commission has improved its understanding and interpretation of its statute, and the extent and limits of its regulatory authority.

Criteria #2	Status
Improve understanding of statutory authority, rules, policies, and procedures to reduce the need for outside legal interpretations and assistance.	Implemented.

- During the 2000 Sunset review, Sunset staff found that TFSC had difficulty interpreting its basic regulatory authority, and repeatedly consulted the OAG for basic statutory interpretations.¹ The Sunset Commission recommended, because the Executive Director and staff were new, that TFSC should have temporary access to additional, more substantive OAG support until they were able to become fully familiar themselves with the agency's operations. HB 3067 required the Commission to contract with the OAG for regular consultations on the agency's daily procedures, as well as legal interpretations of the statute.²

While this special additional funding ends in August 2003, OAG will continue to provide part-time legal services, similar to those OAG provides to other small agencies without an in-house attorney.³ Legal services include assistance with rule development and representing the agency during formal hearings at the State Office of Administrative Hearings.

- The primary OAG attorney assigned to TFSC under the contract expressed confidence that the staff now understands its legal authority, and should be able to function effectively with fewer day to day legal consultations once the new information technology enables routine operations. Also, Sunset staff observed that TFSC's staff had significantly increased its understanding of the statute and regulatory responsibilities since the last Sunset review. For example, during the previous Sunset review, the agency was investigating complaints involving casket sellers, an entity not covered under Texas funeral law. With the OAG assistance, TFSC staff now have a much clearer understanding of which entities are under the agency's jurisdiction.

The Commission displays a much better understanding of its law and regulatory role.

The Commission implemented a penalty matrix to more objectively and consistently sanction licensees who violate the law or the agency's rules.

Criteria #3	Status
Establish clearer guidelines for the more effective use of penalties.	Implemented.

- During the previous Sunset review of the Commission, Sunset staff found that TFSC most frequently used administrative penalties (or fines), despite having the authority to impose a full range of sanctions, including license suspension or revocation. Sunset staff also found that TFSC used no guidelines when applying fines. As a result, TFSC appeared at times to be arbitrarily assessing administrative penalties.
- Sunset staff recommended that the Commission study the penalty matrices of other Texas licensing agencies and establish a similar penalty matrix in rule. Following the example set by the other agencies, the Commission created and began using a matrix to set administrative penalty amounts in FY 2002. The matrix ensures that the Commission uses a list of standard factors (including the threat to the public safety and recidivism) to measure the seriousness of each violation. Sunset staff observed the Executive Director using the matrix on a sampling of penalty cases, and determined that cases were being sanctioned more consistently.
- The Commission continues to predominately use administrative penalties to sanction licensees, stating that sanctions such as license revocation or suspension require a formal hearing before SOAH, and therefore increase costs and lengthen the time to remedy a consumer complaint.⁴ The Executive Director acknowledges that these sanctions could more effectively deter unprofessional behavior,

Fines are based on standard criteria tied to the seriousness of the violation.

In 2002, the Commission denied or revoked 12 licenses involving fraud or deceit.

but TFSC pursues these stronger penalties only in the most egregious cases. In fiscal year 2002, the Commission denied license renewals or revoked licenses in 12 cases involving complaints about licensees who misappropriated funds or engaged in negligent conduct that was likely to deceive or defraud the public.

The Commission has established a risk-based approach to inspections to allow for more efficient use of the agency's limited resources.

Criteria #4	Status
Establishment of a risk-based approach to scheduling inspections to ensure efficient use of limited resources.	Implemented.

- HB 3067 required the Commission to adopt a risk-based approach to scheduling inspections. Prior to the 2001 Sunset review, TFSC employed two inspectors to drive throughout Texas inspecting all 1,300 licensed funeral establishments once a year. This practice significantly burdened the small staff and diverted the agency's focus from addressing consumer complaints.
- Beginning in September 2001, TFSC began assessing the risk that each funeral establishment posed to determine which establishments warranted an annual inspection.⁵ For establishments which posed a low risk, TFSC renewed licenses without a physical inspection in that year. Because TFSC inspectors did not drive to all 1,300 locations, the agency was able to focus the inspectors' efforts on facilities that posed greater risks, thus enhancing consumer protection.

TFSC now targets its inspections on facilities that pose the most risk.

The Commission has improved its complaint process to allow for a more fair and effective disciplinary process.

Criteria #5	Status
Establishment of new rules to outline a more fair and open complaint process.	Implemented.

- HB 3067 required the Commission to adopt rules comprehensively outlining its complaint process. During the 2001 Sunset review, Sunset staff had found that neither licensees nor the public had meaningful opportunities to participate in the complaint resolution process and, because Commission members participated in every point, the process subjected licensees to a potentially unfair appeal structure.

- The Commission adopted new rules on the complaint process to ensure fair and appropriate avenues for appeals. The rules detail the procedure for appeal of a complaint if a respondent does not agree with the Commission’s assessment of a penalty. The new rules ensure that the public has the opportunity to provide input at all phases of the process. Additionally, the rules establish that Commission members cannot make the initial decision regarding a complaint, and cannot participate in an informal hearing. The flowchart, *TFSC Complaint Process*, details the improved complaint process, and is found in the Agency Information section of this report.

Commission members are no longer involved in appeals of cases they initially decided.

The Commission has implemented most of the provisions of HB 3067 – the agency’s 2001 Sunset bill.

Criteria #6	Status
Implementation of all other provisions included in HB 3067.	The Commission has implemented 91 percent of these recommendations as of November 2002.

- Overall, the Commission has complied with 91 percent of the provisions in HB 3067. The recommendations that TFSC has not yet fully implemented are dependent upon the new computers and databases. For example, the Legislature gave TFSC the authority to stagger the renewal of its 5000 individual funeral director and embalming licenses. TFSC has not yet staggered license renewals because these activities depend upon a database that allows staff to track licensee information. The new databases and computers should be fully operational before the end of December 2002, and TFSC plans to begin staggering license renewals when the next group of licenses expires in May 2003.
- One of the key provisions of the bill that TFSC implemented involved the regulation of cemeteries and crematories, which Texas did not previously regulate. Sunset staff found that these activities, tied to the final disposition of bodies, also resulted in consumer complaints and went beyond the responsibilities of embalmers or funeral directors. HB 3067 gave the Commission limited authority to regulate cemeteries and crematories to better protect consumers from false or deceptive practices during all events related to final disposition.⁶

TFSC anticipates full compliance with HB 3067 by December 2002.

In FY 2002, the Commission adopted rules requiring all cemeteries and crematories in Texas to register with TFSC to operate a facility.⁷ As of September 2002, the Commission had registered 178 cemeteries and crematories. TFSC requires these establishments to disclose price and service information to consumers. The

TFSC now has limited authority, based on consumer complaints, to regulate cemeteries and crematories.

Commission may inspect cemeteries and crematories only upon receipt of a complaint, and only has the authority to take enforcement action regarding specified violations, such as failure to supply a price list.

- The other implemented provisions of H.B. 3067 required TFSC to improve standard regulatory practices and procedures. For example, the Commission established rules requiring regular ethics training for funeral industry professionals. One-third of continuing education credits must now cover the principles of ethics and standards of professional behavior. Appendix A includes a detailed listing of all of the bill's provisions and the agency's implementation efforts.

TFSC's Compliance with Sunset Management Recommendations

The Commission has implemented all management recommendations as adopted by the Sunset Commission.

- During the last Sunset review, the Sunset Commission recommended several management practices that did not require legislation. These practices either ensured that the agency operated more efficiently, or ensured that the agency conveyed more complete information. The SAO audited TFSC's efforts to implement all six of the Sunset Commission's management recommendations.⁸ Appendix B, *TFSC Compliance with Sunset Management Recommendations*, discusses TFSC's compliance with these recommendations in more detail. For example, to save costs, the TFSC relocated its offices from a commercial building to a state-owned building. Also, TFSC has improved the quality and accessibility of information by adding consumer information to its Web site and producing a quarterly newsletter for the funeral industry.

TFSC has improved public access to consumer information on funerals via its Web site.

Opportunity for Additional Improvement

The Commission is not taking advantage of consumer and industry input when developing or changing its rules.

- According to industry and consumer groups, TFSC has no process to solicit stakeholder input during the agency's rule development process prior to the publication of proposed rules in the Texas Register. Agency staff write TFSC rules and submit them to the full Commission without any involvement from the individuals affected by rules. This approach to rulemaking has often created controversy among stakeholders. Both consumers and industry groups have expressed concerns about rules written and proposed solely by TFSC staff.⁹

Other state agencies take advantage of stakeholder input early during rule development to avoid controversies and allow for more efficient rulemaking. The textbox, *Other Texas Agencies' Stakeholder Input*, shows examples of other state agencies that have established procedures for allowing early inclusion of stakeholder input. Beginning in 2003, some of these problems may be resolved when OAG staff begin drafting the rules to ensure more efficient and legally accurate rulemaking. However, OAG staff indicate that they would welcome early stakeholder input to promote fairness and avoid any potential problems that could be resolved earlier in the process.

Other State Agencies' Stakeholder Input

The Texas Department of Health (TDH) – created a stakeholder development process, which includes a checklist of rule development methods; a list of stakeholders by interest area used when mailing notices of rule development; and a broad, expandable definition of stakeholder.

The Texas Water Development Board (TWDB) –includes public participation at each step during development of the State Water Plan. TWDB seeks the input of an advisory stakeholder group and the public when making changes to the plan, and has established a goal of public participation as a primary element of its procedures.

The Texas Commission on Environmental Quality (TCEQ) – offers several ways for the public to participate in rulemaking. Its Web site offers a page called *Tracking and Participating in TCEQ Rulemaking*, and the agency holds Regulatory Forums to provide information to the public regarding rulemaking and related topics.

Recommendation

Change in Statute

1.1 Continue the Texas Funeral Service Commission for 12 years.

This recommendation would continue the Texas Funeral Service Commission until 2015.

1.2 Require TFSC to develop guidelines for the early involvement of consumer and industry stakeholders in its rulemaking process.

The Commission should provide the funeral industry and consumers with the opportunity for a stronger role in the development of rules, before formal proposal in the Texas Register. Of course, stakeholders would continue to have an opportunity to oppose or suggest alternatives during the public comment period provided by the Administrative Procedures Act rulemaking process.

The guidelines should ensure that the Commission obtains the early advice and opinions of interest groups affected by a proposed rule, before publishing the rule. The Commission should obtain input from persons affected by the changes, such as, but not limited to, the Texas Funeral Directors Association, independent funeral directors, cemetery and crematory associations, and consumer groups. In developing these guidelines, the Commission should use the Texas Department of Health's stakeholder development process as a general model. Another option for early involvement would be to include the proposed rules in the Commission newsletter to solicit input.

The full Commission should also consider creating a special subcommittee of the Commission to handle rulemaking. This subcommittee could invite and take public testimony at subcommittee meetings to ensure the early input of consumer and industry stakeholders.

Impact

Based on legislative requirements, the Sunset staff reviewed the Texas Funeral Service Commission's implementation of mandated improvements to the regulation of the funeral industry. Sunset staff found that TFSC had implemented most of the requirements of HB 3067, and that the agency should be continued. The requirements the agency has not yet implemented are dependent upon new information technology resources. Once the new databases and computers are operational in early December 2002, the agency will begin implementing the remainder of the improvements. In addition, early involvement of the funeral industry and consumers, in rulemaking would help to ensure a more effective and fair regulatory system.

Fiscal Implication

If the Legislature continues the current functions of the Commission, its average annual appropriation of about \$500,000 would be required for the agency's operations.

¹ Prior to 1999, TFSC employed a full-time attorney. The 76th Legislature eliminated the agency's authority to hire an attorney, and staff relied on OAG assistance in handling legal issues, as well as day-to-day interpretations of the agency's statute.

² The Legislature appropriated additional funds FY 2003 and 2003, providing for the additional legal support. TFSC then paid these funds to the OAG under the contract.

³ For example, the OAG writes rules for the Texas Board of Chiropractic Examiners.

⁴ TFSC, like most regulatory agencies, may impose a sanction of license revocation or suspension upon an individual licensee or licensed establishment. Each license holder has the right to either accept the sanction or request a formal hearing before the State Office of Administrative Hearings (SOAH). Because most license holders will request the formal hearing in such cases, TFSC has approximately 20 complaint cases waiting for formal hearings at SOAH.

⁵ Risk is based upon number of violations identified in a previous inspection and number of consumer complaints.

⁶ Final disposition includes but is not limited to burial, entombment, or inurnment.

⁷ The Commission also established, in rule, a fee structure to cover the cost of registering these establishments. Texas Administrative Code, Title 22, part 10, rules 205.1 and 205.2.

⁸ As reported by the State Auditor's Office, and confirmed by Sunset staff.

⁹ During the last year, the Texas Funeral Director's Association (TFDA) had concerns that both current and proposed new rules were either unconstitutional or exceeded TFSC's statutory authority. TFDA specifically cited 23 current and proposed rules and asked that the agency consider amendments to current rule language or reconsider proposed language on new rules.

AGENCY INFORMATION

Agency Information

Agency at a Glance

The Texas Funeral Service Commission (TFSC) regulates the funeral industry to protect the public from deceptive funeral practices. To accomplish its mission, the Commission:

- licenses funeral directors and embalmers, and ensures compliance with continuing education requirements;
- inspects and licenses funeral homes and commercial embalming establishments;
- registers cemeteries and crematories; and
- investigates and resolves complaints regarding the industry from consumers or initiated by the agency.

Key Facts

- **Funding.** In fiscal year 2002, the Commission operated on a \$1 million budget and collected \$1.2 million in revenue from industry fees.
- **Staffing.** The Commission employs 12 people, all of whom work in Austin.
- **Licensing and Registration.** The Commission licenses about 5,000 funeral directors or embalmers, and 1,280 funeral homes or embalming establishments. As of September 2002, the agency had also registered 178 cemeteries and crematories.
- **Complaints.** In fiscal year 2002, the Commission reviewed 580 complaints. Of these complaints, 141 were carried over from FY 2001 and 439 were filed in FY 2002. Consumers generated about 70 percent of these complaints, with the remainder initiated by the agency.
- **Investigations.** Of the 580 complaints reviewed in fiscal year 2002, the staff administratively dismissed 128 after finding no fault, transferred 21 non-jurisdictional complaints to other agencies, and investigated the remaining 431.
- **Inspections.** In fiscal year 2002, the Commission inspected approximately 962 funeral establishments. Inspections of funeral homes and embalming establishments must occur at least once every

Mission Statement

The mission of the Texas Funeral Service Commission is to protect the public from deceptive practices by gaining compliance with the laws of the State of Texas and rules of the Commission through a process of impartial enforcement, inspection, and education to insure that the final disposition of every citizen is conducted at the highest level of professional standards and ethical conduct.

Information about the Commission is available at www.tfsc.state.tx.us

two years. Inspections of cemeteries and crematories occur only upon receipt of a complaint.

- **Sanctions.** In fiscal year 2002, the Commission took disciplinary action in 129 cases. Of those cases, sanctions included 12 losses of license and 24 administrative penalties. The rest of the sanctions were letters of warning or probated administrative penalties. The Commission collected \$54,766 in administrative penalties, all of which was transferred to General Revenue.

Major Events in Agency History

1903 The Legislature established the State Board of Embalming to license and regulate embalmers in Texas. The law focused on containment of contagious diseases.

1938 The Legislature added licensing of funeral directors to the Board's functions.

1979 The agency went through Sunset review and was continued for 12 years with expanded authority to protect the public.

1987 The Legislature changed the name of the agency to the Texas Funeral Service Commission and expanded its enforcement authority to include administrative penalties.

1991 The Commission went through Sunset review and was continued with changes to improve accountability. The Legislature changed the composition of the Board to require a majority of public members.

1999 The Legislature made a number of further changes to increase the accountability of the agency. The Legislature changed the Commission membership from five public and four professional members, to four public and two professional members, and required that the Chair and Vice Chair be public members. Additionally, the Legislature changed the Sunset review date for the Commission from 2003 to 2001.

In August 1999, due to significant turnover and the lack of an Executive Director, the Governor's Office requested that the Texas Comptroller of Public Accounts assist the Commission with its operations.

2001 The agency went through Sunset review and was given only a two-year continuation. The Legislature adopted substantive changes, and directed the Sunset Commission to evaluate and report on the agency's implementation of needed changes prior to the 2003 session. These changes are discussed in the textbox, *Key Legislative Changes to TFSC in 2001*.

Key Legislative Changes to TFSC in 2001

- Authorized the Commission to register and enforce professional practices among cemeteries and crematories, and added a representative of the cemetery or crematory industry to the Board.
- Gave the Commission additional funds and authority to work with the Office of the Attorney General for additional legal assistance and with the Department of Information Resources for computer and database assistance.
- Instituted guidelines for assessing penalties.
- Required the agency to schedule establishment inspections based upon a risk assessment tool.
- Removed Commission member participation from informal hearings.

Organization

Policy Body

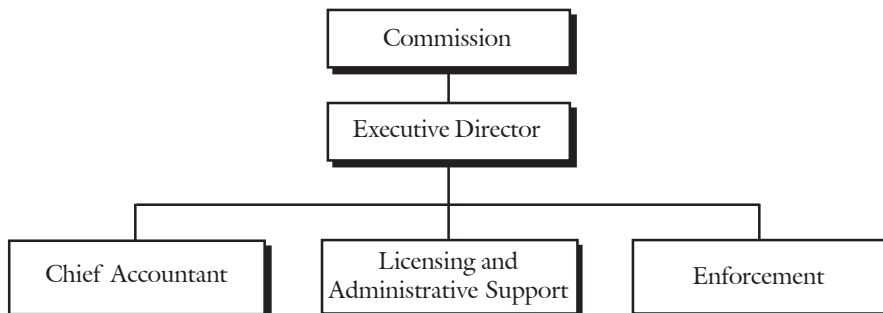
The seven-member Funeral Service Commission sets policy to regulate the funeral industry, oversees the operations of the agency, hires the Executive Director, and takes final action on complaints and sanctions against funeral industry licensees. The Governor appoints all seven members, four representing the public and three representing the industry. The Chair, designated by the Governor, and Vice Chair, elected annually by the Commission, must be public members. Members serve staggered six-year terms. The chart, *Funeral Service Commission Members*, identifies current members, when their term expires, and their place of residence. The Commission, which meets in Austin at least quarterly, has no committees and makes all decisions as one body.

Funeral Service Commission Members			
Name	Term Expires	Membership	Residence
Harry M. Whittington, Presiding Officer	2007	Public	Austin
Martha J. Rhymes, Assistant Presiding Officer	2003	Public	White Oak
Dorothy L. Grasty	2005	Public	Arlington
Martha Greenlaw	2007	Public	Houston
Janice Howard	2007	Cemetery Owner/ Operator	Missouri City
John Q. Taylor King, Ph.D.	2003	Funeral Industry	Austin
Jim C. Wright	2005	Funeral Industry	Wheeler

Staff

The agency employs 12 staff including the Executive Director, all of whom work in its Austin headquarters. The Commission has no field offices. The staff travel throughout the state to conduct inspections, investigations, and informal proceedings. The Office of the Attorney General provides legal counsel as needed. The chart, *Texas Funeral Service Commission Organizational Chart*, depicts the organization of the Commission's staff.

**Texas Funeral Service Commission
Organizational Chart**



Funding

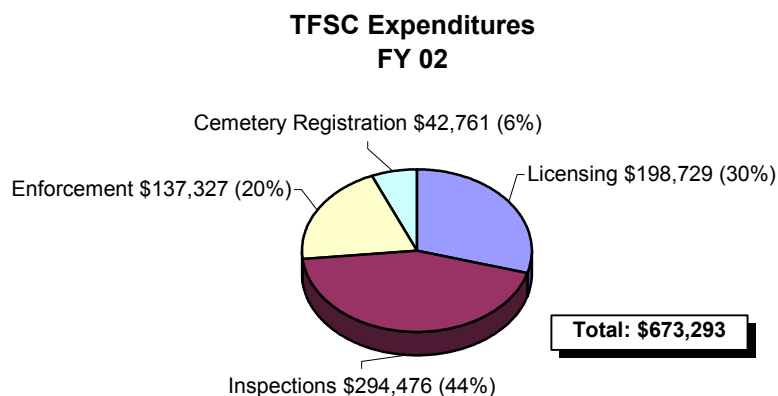
Revenues

The Commission received funding from General Revenue, totaling about \$1 million in fiscal year 2002. To cover its costs, TFSC raises revenue through licensing fees, which are deposited into the General Revenue Fund. In FY 2002, the Commission collected \$1,145,995 in professional licensing and continuing education fees, and \$54,766 in administrative penalties assessed against licensees.

TFSC collected almost \$55,000 in administrative penalties in fiscal year 2002.

Expenditures

In fiscal year 2002, the Commission expended \$673,293. Expenditures are shown in detail in the pie chart, *TFSC Expenditures*. The agency has unexpended revenue of about \$330,000, to support a capital budget for new computers, software, and other encumbrances, which TFSC will expend in early fiscal year 2003.



Agency Operations

The following information summarizes the Commission's three key functions - licensing and registering funeral industry professionals and facilities, inspecting funeral establishments, and enforcing the statutes related to final disposition of a body.

Licensing and Registration

The Texas Occupation Code authorizes the Commission to license individual funeral directors and embalmers; license funeral homes and embalming establishments; administer a written examination on Texas funeral law to funeral directors; register cemeteries and crematories;

and to set and collect fees to cover the costs of regulation. See the textbox, *Funeral Industry Regulation*, for definitions of the regulated entities.

Funeral Director and Embalmer Licensing

The Commission issues a provisional license, an initial license, or a renewed license after an individual has satisfied statutorily required minimum qualifications. As of September 2002, the Commission licensed about 5,000 individuals under one of the three types of licenses.

With a provisional license, applicants serve a one- to two-year apprenticeship, after which, if the provisional licensee satisfies all requirements, the Commission issues the initial license, which remains in effect for two years.

Under new statutory requirements, all licenses will be renewed on a staggered basis. To be renewed, licensees must submit a renewal application and satisfy continuing education requirements. Unless TFSC finds problems when reviewing a licensee's record of compliance with the Commission's statute and rules, the staff renew the licenses for another two-year period. The Commission renewed about 2,000 licenses in FY 2002. The statute also provides for individuals from other states to be reciprocally licensed as a funeral director or embalmer in Texas.

Funeral Establishment Licensing

The Commission issues two annual licenses for funeral establishments: one for funeral homes that offer a full range of funeral services, and one for establishments that perform only embalmings. Embalming establishments work as subcontractors, providing services for licensed funeral homes and by statute do not have direct contact with the consumer. As of September 2002, the Commission licensed 1,280 funeral homes or commercial embalming establishments.

Cemetery and Crematory Registration

As of September 2001, the Commission began annually registering all cemeteries and crematories in Texas that sell services related to the final disposition of a body. Final disposition includes, but is not limited to, burial in the ground, entombment in a mausoleum, or cremation and inurnment. As of September 2002, the Commission had registered 178 cemeteries and crematories. Owners and operators of these facilities need not meet any specific preliminary qualifications or continuing education requirements.

Funeral Industry Regulation

Funeral Director - A person licensed to sell services to prepare a body, other than embalming, and arrange a funeral.

Embalmer - A person licensed to use chemicals to disinfect and preserve a body.

Funeral Home - A place of business used in the care and preparation for burial of a body.

Embalming Establishment - Any place of business used only for embalming a body.

Cemetery - A place used for interment, including a graveyard, burial park, or mausoleum.

Crematory - A facility containing a furnace used for the cremation of human remains.

*TFSC licensed 5,000
funeral directors and
embalmers in fiscal year
2002.*

The Commission inspects all funeral establishments at least once every two years.

Inspections

The Commission ensures compliance by regularly inspecting funeral homes and embalming establishments. TFSC conducts an initial inspection before licensing a facility, and a follow-up inspection at least once every two years before renewing the license of a funeral home or embalming establishment. The agency bases the frequency of follow-up inspections upon a risk-based inspection formula that considers the history of complaints and past inspection results. In fiscal year 2002, the agency inspected about 75 percent of the 1,280 licensed funeral establishments. The agency inspects cemeteries and crematories only upon receipt of a complaint.

Inspectors perform unannounced inspections, during which inspectors use a checklist of the various statutory and rule requirements to note any current violations and check that past violations have been corrected. The establishment has 15 days to submit a report explaining how it will address and correct any deficiencies. If corrected, the Commission renews the facility's license.

Enforcement

The Commission investigates complaints against its licensees to protect the public. Anyone can initiate a complaint, including Commission staff, consumers, and funeral establishments. In fiscal year 2002, the agency reviewed 580 complaints, including 141 carried over from fiscal year 2001. The Commission resolved 314 complaints and carried the

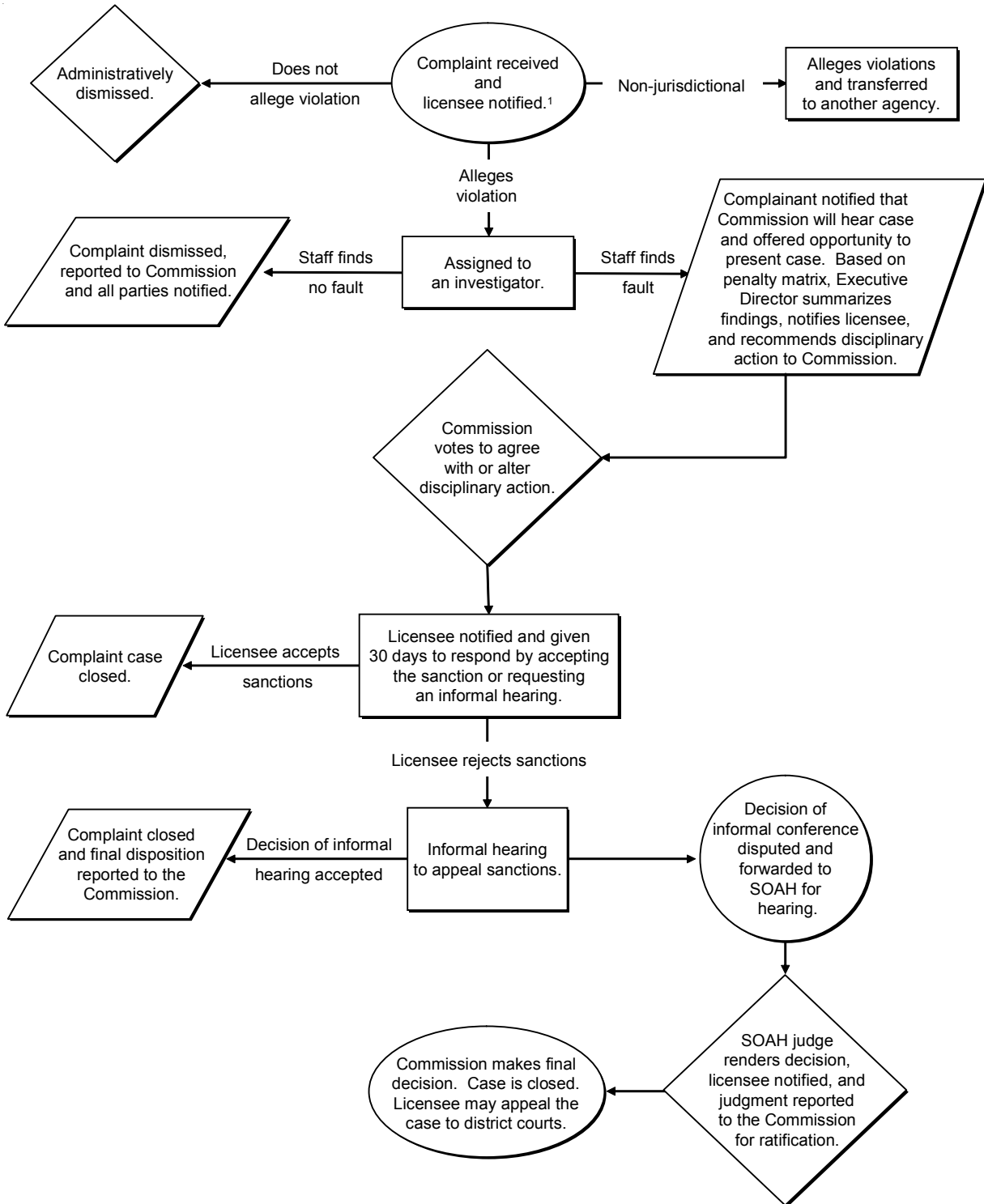
remainder - which were either still under investigation or pending informal or formal hearings - into the current fiscal year.

Several of the Sunset Commission's recommendations adopted by the Legislature in 2001 altered the agency's complaint process. Key changes include allowing staff to administratively dismiss cases, enabling complainants and licensees to fully participate in the process, and ensuring that Commission members do not make initial decisions in a complaint case. The flowchart on the following page, *TFSC Complaint Process*, illustrates how the Commission currently handles complaints.

The chart, *Funeral Industry Violations*, gives a breakdown of number and types of violations that occurred in fiscal year 2002.

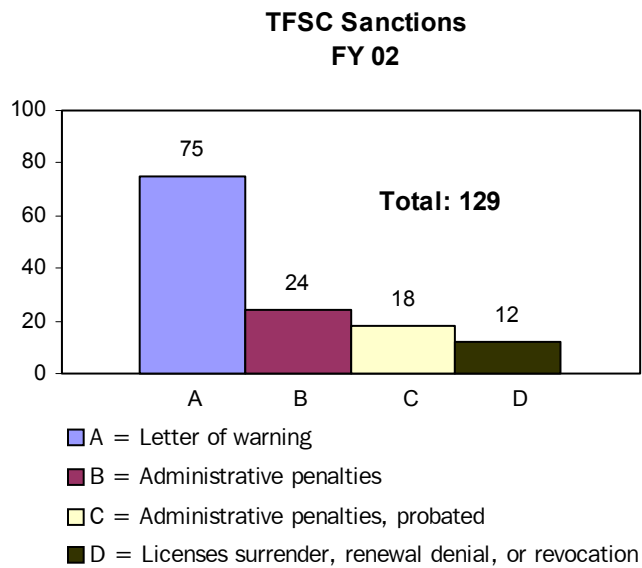
Funeral Industry Violations FY 02	
Violation Type	Number of Violations
Improper use of a dead body or noncompliance with ordered penalties.	99
Failure to comply with funeral related portions of the Health and Safety and Banking codes.	37
Negligence, fraud, or deceit in services.	29
Failure to disclose information to customers.	9
Giving false information regarding funeral merchandise or services.	3
Fraud and deception of qualifications.	1
Unethical or misleading advertising.	1
Total	179

TFSC Complaint Process



¹ Complainant notified within 10 days of receipt and updated every three months of complaint status until case closed.

The chart, *TFSC Sanctions*, illustrates how the Commission sanctioned the individuals or establishments found to have committed violations. The number of violations does not equal the number of sanctions because each sanction may contain more than one violation.



APPENDICES

Appendix A

TFSC Compliance with HB 3067		
Number*	Bill Provision	Implementation Status
1.1	Require the Commission to base establishment inspections on a risk assessment tool, making sure that each establishment is inspected at least once every 2 years. TFSC should adopt rules by March 1, 2002.	Implemented. The Commission adopted rules in February 2002.
1.2	Expand the Commission's authority to stagger the renewal of individual licenses to include establishment licenses.	Partially implemented. TFSC plans to stagger all individual and establishment licenses in 2003, when the new regulatory database is fully operational.
2.1	Require the Commission to adopt rules that comprehensively outline a complaint process. TFSC's rules must include procedures defining the receipt, investigation, and disposition of complaints, and informal and formal hearings. Processes should allow staff to administratively dismiss cases; ensure that Commission members do not make initial decisions; and enable complainants and licensees to fully participate.	Implemented. The Commission adopted rules in December 2001. In FY 2002, TFSC used its new authority and administratively dismissed 128 cases. Complainants and licensees are notified at regular intervals throughout an investigation and given the opportunity to respond.
2.2	Remove the provision authorizing TFSC member participation in informal hearings. TFSC should adopt rules by March 1, 2002.	Implemented. The Commission adopted rules in December 2001. TFSC amended its complaint process to remove Commission members from making initial decisions in complaint cases, and from the informal hearings process.
3.1	Require TFSC to use a penalty matrix when setting administrative penalties.	Implemented. The Commission adopted a penalty matrix in December 2001.
3.2	Require TFSC to adopt rules defining guidelines for consistently linking violations with the appropriate sanction or fine. TFSC should, adopt rules no later than March 1, 2002. Rules should define and summarize the most common violations and establish a matrix to grade violations before applying sanctions.	Implemented. The Commission adopted rules in December 2001. TFSC staff created an "Executive Director Assessment," which includes fields for factoring where a violation falls in the matrix. For example, 10 to 20 points warrants a penalty between \$1,000 and \$2,000. The Executive Director presents the assessment to the Commissioners, along with the investigation findings.
	Deviations must be explained in writing to the licensee.	Implemented. All deviations of the matrix are explained in writing to the licensee. Findings of facts and

Appendix A

TFSC Compliance with HB 3067		
Number*	Bill Provision	Implementation Status
3.2		conclusions of law are sent to each licensee cited for violations. A copy of the investigative summary is also provided, if requested.
	Before developing these rules, the Commission should use focus groups to obtain industry and consumer input.	Implemented. TFSC formed a committee consisting of industry and consumer group members to review Title 22, Part 10, Chapters 201 and 203 (licensing and enforcement), but the committee made no recommendations for substantial changes. TFSC subsequently repealed, amended, or proposed as new, thirty rules in Chapters 201, 203, and 205. TFSC proposed the rules, held a public hearing, and posted each proposed rule in the Texas Register. All comments were reported to the Commissioners before they adopted the rules.
	The matrix should be posted on the Commission's Web site.	Implemented. The matrix is posted on the agency's Web site at http://www.tfsc.state.tx.us under the link, "Facts about Funerals." The Web page also refers users to a link called "Governing Laws," where they can find the Texas Administrative Code and TFSC's statute.
4.1	Require owners or operators of cemeteries and crematories to register with TFSC.	Implemented. The Commission adopted rules in February 2002. As of September 2002, TFSC had registered 178 cemeteries and crematories.
4.2	Require cemeteries and crematories to disclose information to consumers.	Implemented. The disclosure requirements for funeral homes was extended to include cemeteries and crematories.
4.3	Authorize TFSC to enforce violations of unprofessional conduct by cemeteries and crematories, as defined by TFSC rules.	Implemented. H.B. 3067 gave the Commission authority to investigate and inspect cemeteries and crematories after receiving a complaint. Enforcement is limited to the following violations: not supplying a price list or purchase agreement, fraud, lack of fitness to practice, and making false statements.

Appendix A

TFSC Compliance with HB 3067		
Number*	Bill Provision	Implementation Status
4.4	Authorize TFSC to set in rule, fees to cover costs of registering cemeteries and crematories.	Implemented. The Commission adopted rules in February 2002. Fees are \$100 annually with \$100 late penalty.
4.5	Ensure that funeral directors are responsible for services and goods they subcontract or arrange for as part of a package funeral, including cemetery and crematory services.	Implemented. TFSC's Executive Director informed the licensees of this responsibility at meetings of funeral directors' associations and crematory and cemetery associations, as well as through continuing education legal updates. TFSC is also adding the information to the Commission newsletter.
5	Expand the Commission from 6 to 7 members by adding a funeral industry representative.	Implemented. Statute effective September 2001. The Governor appointed a new member to the Commission in FY 2002.
6.1	Continue TFSC as an independent agency until 2003, with changes. Not later than December 1, 2001, TFSC shall develop a plan detailing the manner in which the agency will implement the DIR and OAG contracts.	Implemented. On November 30, 2001, TFSC submitted the Information Resources and Legal Plans to Sunset staff as required by H.B. 3067.
	TFSC must report quarterly to Sunset staff and the Task Force on the status of its efforts regarding the DIR and the OAG contracts.	Implemented. As of September 2002, TFSC had submitted four quarterly reports to Sunset staff, dated 11/30, 2/28, 5/31, and 8/31. The Task Force will continue to meet until the 78 th Legislature begins on January 15, 2003.
	Before September 1, 2002, TFSC must report to the Sunset Commission on status of actions required by HB 3067.	Implemented. Sunset staff began the follow-up review of the mandated improvements in September 2002. At that time, TFSC provided updated information and statistics on agency activities.
	TFSC must develop and implement a temporary contract with DIR to significantly improve the compilation of statistics and other information resources. The information to be compiled electronically must include the following:	Partially implemented. The Legislature appropriated \$240,200 to TFSC for new information technology - both licensing software and hardware. DIR and TFSC anticipate the system to be operational by December 2002, and able to compile necessary complaint information.

Appendix A

TFSC Compliance with HB 3067		
Number*	Bill Provision	Implementation Status
6.1	<p>(1) data about complaints, licenses, registrations, and sanctions, including the number of new individual versus dual licenses issued,</p> <p>(2) the number of complaints received that are outside of the funeral commission's jurisdiction,</p> <p>(3) the average cost of complaints resolved,</p> <p>(4) summaries of violations and actions taken, and</p> <p>(5) any information necessary to help OAG enforce delinquent child support orders among persons licensed or registered by the funeral commission.</p>	<p>TFSC manually compiled complaint statistics for Sunset staff during the current review.</p> <p>DIR indicates that the new databases are programmed to save and report this information and that TFSC will be able to transmit licensee information to OAG once the new databases are fully installed in December 2002.</p>
	<p>TFSC must develop and implement a temporary contract with OAG for legal services to ensure adequate access to legal services to assist with the daily operations of the Funeral Commission, including complaint, inspection, and other enforcement procedures; and legal interpretations regarding Occupations Code, Chapter 651.</p>	<p>Implemented.</p> <p>During FY 2002, the OAG invested approximately 1,600 hours in assistance to the Commission. These hours included daily legal consultations, legal assistance during informal and formal hearings, and assistance in writing new rules as H.B. 3067 required.</p>
6.2	<p>Create a Task Force to direct and assist TFSC in implementing the changes.</p>	<p>Implemented.</p> <p>Task Force members have met monthly since October 2001. Sunset staff met with all members of the Task Force to discuss their concerns and perceptions of TFSC's efforts to implement mandated improvements and changes. Overall, the members noted that TFSC operations and efficiency have improved in the past year.</p>
6.3	<p>Add TFSC as a member of the Health Professions Council (HPC).</p>	<p>Implemented.</p> <p>TFSC indicated that membership in the HPC has helped the agency with administrative functions, such as LAR preparation and training staff, as well as obtaining information about other licensing agencies' practices for investigation and complaint procedures.</p>
7	<p>Give the Commission authority to revoke, without a hearing, a funeral industry license if the licensee is convicted of a felony related to the funeral industry.</p>	<p>Implemented.</p> <p>The Commission has not yet used this authority. As of October 2002, the agency had one investigation involving a felony underway, but the case had not been closed.</p>

Appendix A

TFSC Compliance with HB 3067		
Number*	Bill Provision	Implementation Status
Across-the-Board (ATB) Recommendations General		
ATB 2	Conflicts of Interest	Implemented.
ATB 7	Board Member Training	Implemented. TFSC now has a policy charging the Executive Director with providing new members, within several months of the member's appointment, with training on subjects including the statute, ethics, and conflicts of interest.
ATB 8	Separation of Functions	Implemented. The Commission adopted a policy statement to clarify the Commission's policymaking responsibilities and the Executive Director's management responsibilities.
ATB 10	Complaint Information	Implemented.
ATB 11	Equal Employment	Implemented.
ATB 12	Employee Incentive Program	Implemented. The Texas Incentive and Productivity Commission staff, the state agency responsible for the SEIP program, have provided training for TFSC staff twice in the last year.
Licensing		
ATB 1	Time Frames	Implemented.
ATB 2	Notification of Exam Results	Implemented.
ATB 4	Provisional Licenses	Implemented.
ATB 5	Staggered Renewal of licenses	Partially implemented. The Commission plans to implement the staggered renewal system in 2003 once the new computer system is in place.

* The numbers correspond with the sections in the *Sunset Advisory Commission Report to the 77th Legislature*.

Sunset staff prepared this checklist using the *Sunset Advisory Commission Report to the 77th Legislature*; the enrolled version of HB 3067; the Occupations Code, Chapter 651, as amended by HB 3067, 77th Legislature; and the Texas Administrative Code, Title 22, Part 10, TFSC Rules.

Appendix B

TFSC Compliance with Management Recommendations		
Number*	Management Action Recommendation	Implementation Status
1.4	Relocate to the Hobby Building.	Implemented. TFSC relocated to the Hobby Building in December 2001.
2.1	Add consumer information to the Web site. The information should include information on funeral prices and sanctions taken by the agency.	Implemented. TFSC provides figures on the average cost of funeral services and merchandise on the agency's Web site, and via mail or fax at a consumer's request. TFSC staff took the average pricing information from a national survey, with a disclaimer that consumers should contact local funeral businesses for exact pricing information. For information on sanctions, the Web site lists fiscal year performance measures on the number of complaints and their disposition. Web site users are also directed to a link to TFSC's rules and governing statute for further explanation of the sanctions.
2.2	Provide information to the industry to keep them informed of changes and activities of the Commission.	Implemented. TFSC produced a brochure entitled "Information Every Licensee Needs to Know" to be included with every license renewal application and license sent out. Also, the agency initiated a quarterly newsletter in June 2002. Additional information is available on the Commission's Web site.
3.3	The Commission should implement a complaint resolution system that ranks complaints according to the order of initial receipt and severity of the alleged violation.	Implemented. SAO audit of Sunset recommendations indicates that TFSC now ranks complaints by order of receipt and severity of the alleged violation.
5.3	Agency staff should report annually to the Commission members, a summary of all confirmed violations and the sanctions imposed.	Implemented. On August 31, 2002, TFSC staff issued "Violations Cited and Penalties Assessed: Investigation of Complaints FY 2002." Sunset staff received a copy of this summary as an attachment to the fourth quarterly report of the Funeral Task Force, submitted to Sunset staff in accordance with HB 3067. TFSC staff indicated that this same report would be submitted to the Commission members to satisfy this management recommendation. Strategic Plan for fiscal years 2003-2007 includes a graph summarizing FY 2001 violations.

Appendix B

TFSC Compliance with Management Recommendations		
Number*	Management Action Recommendation	Implementation Status
9.1	Require TFSC to establish in rule ethics training in the continuing education requirements for funeral industry professionals.	Implemented. The Commission adopted rules in December 2001, requiring two hours of continuing education in ethics.

* The numbers correspond with the *Review of Implementation of Sunset Recommendations*, State Auditor's Office No. 02-366.

Sunset staff prepared this compliance checklist using the *Review of Implementation of Sunset Recommendations*, State Auditor's Office No. 02-366, and followed up on each recommendation with the TFSC staff.

**SUNSET REVIEW OF THE
TEXAS FUNERAL SERVICE COMMISSION**

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