

SUNSET ADVISORY COMMISSION

Report to the 88th Legislature

2022-23
88TH LEGISLATURE



SUNSET ADVISORY COMMISSION



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood



SUNSET ADVISORY COMMISSION

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February 14, 2023

The Honorable Greg Abbott
Governor of Texas

The Honorable Dan Patrick
Lieutenant Governor of Texas

The Honorable Dade Phelan
Speaker, Texas House of Representatives

Honorable Members of the 88th Legislature
Assembled in Regular Session

Ladies and Gentlemen:

As we begin the 88th Legislative Session, the members of the Sunset Advisory Commission present to you the enclosed results of the many hours of staff work, hearings, debate, and decisions of the commission. As you know, the Texas Sunset Act directs commission members and staff to evaluate the performance of agencies scheduled for review each biennium and recommend abolishing or continuing these agencies, propose statutory or management changes needed to better serve Texans, and prepare legislation to implement the commission's proposed statutory changes.

The Sunset Commission reviewed 21 entities for the 88th Legislative Session, resulting in 235 recommendations to streamline state government while enhancing services to our citizens. Generally, the recommendations eliminate unnecessary regulations, improve accountability, align agencies' procedures with best practices, and strengthen effective delivery of services to Texans. Notably, the commission is making several appropriate recommendations, which is atypical for Sunset, to the House Appropriations and Senate Finance committees to consider funding increases for the Texas Juvenile Justice Department to increase capacity of juvenile justice facilities and address chronic staff retention issues, and for the Public Utility Commission of Texas to improve oversight of the electric and water utility industries. Other recommendations include transferring the functions of the Anatomical Board of the State of Texas to the Texas Funeral Service Commission to improve regulation of whole body donation in Texas, and temporarily attaching the State Board of Veterinary Medical Examiners to the Texas Department of Licensing and Regulation to provide the board with oversight, guidance, and support.

On behalf of the Sunset Advisory Commission, we are pleased to share with you the commission's findings and recommendations to streamline and improve state government for the benefit of those we serve — the people of Texas.

Respectfully submitted,

Senator Charles Schwertner, M.D.
Chair
Sunset Advisory Commission

Representative Justin Holland
Vice Chair
Sunset Advisory Commission

REPORT TO THE 88TH LEGISLATURE

2022-23

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INTRODUCTION

Sunset is the regular assessment of the continuing need for a state agency or program to exist. The Sunset process works by setting an automatic termination (Sunset) date in state law on which an agency will be abolished unless the Legislature passes a bill to continue it, typically for another 12 years. This date determines when an agency is subject to Sunset review, providing the Legislature a unique opportunity and a strong incentive to closely examine an agency's mission, priorities, and performance and take action to address problems identified.

Sunset for the 88th Legislative Session

The Sunset Commission conducted a total of 21 reviews this biennium. Natural resources and energy featured prominently, with reviews of the Texas Commission on Environmental Quality (TCEQ), Public Utility Commission of Texas (PUC), Office of Public Utility Counsel, Texas State Soil and Water Conservation Board, and the State Water Implementation Fund for Texas Advisory Committee. Criminal justice and law enforcement was another focus area, including a review of the Texas Juvenile Justice Department (TJJD) and a limited scope re-review of the Texas Commission on Law Enforcement (TCOLE). Other reviews included the Anatomical Board of the State of Texas, Texas Economic Development and Tourism Office, Office of State-Federal Relations, and a special-purpose review of the State Board of Veterinary Medical Examiners. The Sunset Commission additionally reviewed nine entities not subject to abolishment — the Electric Reliability Council of Texas, Texas Low-Level Radioactive Waste Disposal Compact Commission, Office of the Independent Ombudsman, Texas Water Development Board (TWDB), and five river authorities, including the Bandera County River Authority and Groundwater District, Lavaca-Navidad River Authority, San Antonio River Authority, San Jacinto River Authority, and Upper Guadalupe River Authority.

Sunset adopted 235 recommendations to improve the 21 entities reviewed.

Results

After extensive analysis, testimony, and deliberations, the Sunset Commission recommends the 88th Legislature pass legislation to continue 11 agencies and committees, abolish the Anatomical Board of the State of Texas and transfer its functions to the Texas Funeral Service Commission, temporarily transfer the State Board of Veterinary Medical Examiners to the Texas Department of Licensing and Regulation until 2027, and remove the Bandera County River Authority and Groundwater District from Sunset review. The chart on Page 3, *88th Session Sunset Summary Information*, summarizes the Sunset Commission's decisions regarding the continuation of the agencies under review. Every biennium, Sunset makes recommendations to improve the efficiency, effectiveness, transparency, and accountability of state government.

In total, the Sunset Commission adopted 235 recommendations — 145 that require statutory change, 85 non-statutory management actions, and five changes in appropriation — to improve these agencies' accountability and operations, use their available funds more efficiently, and position them to better serve and protect the people of Texas.

A hallmark of the Sunset process is elimination of unnecessary or burdensome regulation, and the Sunset Act specifically requires an assessment of whether regulation can be less burdensome while still adequately protecting the public. To this end, the commission recommends adjusting TJJD's certification processes and requirements to remove unnecessary barriers to entry for county-level employees and directing PUC to conduct a comprehensive review of its water and wastewater regulations to identify efficiencies for the industry and reduce the regulatory burden on small utilities. Other recommendations improve agencies' effectiveness and accountability, including modernizing TCEQ's administrative procedures by providing information online, and eliminating inefficiencies in TWDB's project review process. Recommendations to consolidate and transfer agencies, while expected to save money over time, may require some upfront investments in the upcoming biennium.

The Sunset Commission's recommendations for 15 entities will have no fiscal impact to the state, and six will have a fiscal impact the commission could not estimate at the time of the review. Recommendations for TJJD and PUC included appropriative recommendations to the House Appropriations and Senate Finance committees to consider funding increases to increase capacity of juvenile justice facilities, address chronic staff retention issues, and improve oversight of the electric and water utility industries. The introduced versions of HB 1 and SB 1 allocated \$200 million in fiscal year 2024 to implement Sunset recommendations related to juvenile state facility construction, \$22 million across the biennium for county capacity building, and \$51 million across the biennium for a salary increase to county-level staff working in juvenile facilities and local communities. Sunset recommendations support four new employees and approximately \$7.4 million across the biennium in the exceptional items in PUC's Legislative Appropriations Request. Several other entities subject to Sunset review also included exceptional items to fund Sunset recommendations in their Legislative Appropriations Requests.

Guide to Recommendations

Individual sections in this report summarize the Sunset Commission's recommendations for each agency under review this biennium, including the three types of recommendations described below, followed by the fiscal impact of the recommended changes.

- **Statutory Change.** Changes in law that require consideration and action by the full Legislature and are drafted into Sunset legislation on each agency.
- **Management Action.** Changes that require consideration and action by the agency and do not require legislative action. As adopted by the Sunset Commission, these recommendations should be implemented by each agency over the next two years or as specified by the commission.
- **Appropriations Change.** These changes articulate to the appropriative committees the Sunset Commission's interest in changes to agencies' appropriations. These changes are not contained in the Sunset bills for those agencies.

The discussion of the Sunset Commission's recommendations has been shortened for this report. However, more detailed information on the recommended changes can be found in the individual Sunset staff report on each agency, available on the commission's website, www.sunset.texas.gov, or by contacting Sunset staff directly.

88th Session Sunset Summary Information

Agency	Action
Anatomical Board of the State of Texas ^{1,2}	Abolish and Transfer
Bandera County River Authority and Groundwater District ³	Remove from Sunset
Texas Economic Development and Tourism Office	Continue
Electric Reliability Council of Texas	N/A
Texas Commission on Environmental Quality ¹	Continue
Texas Low-Level Radioactive Waste Disposal Compact Commission	N/A
Texas Juvenile Justice Department ¹	Continue
Office of the Independent Ombudsman	N/A
Lavaca-Navidad River Authority	N/A
Law Enforcement, Texas Commission on (Limited Review)	Continue
Public Utility Commission of Texas ¹	Continue
Public Utility Counsel, Office of	Continue
San Antonio River Authority	N/A
San Jacinto River Authority	N/A
Texas State Soil and Water Conservation Board	Continue
Texas Invasive Species Coordinating Committee	Continue
State-Federal Relations, Office of	Continue
Upper Guadalupe River Authority	N/A
Veterinary Medical Examiners, State Board of (Special-Purpose Review) ^{1,4}	Continue and Temporarily Transfer
Texas Water Development Board ¹	N/A
State Water Implementation Fund for Texas Advisory Committee	Continue

¹ For these reviews, the two-year fiscal impact to state general revenue appropriations could not be estimated at the time of the review.

² The Sunset recommendation would abolish the Anatomical Board of the State of Texas and instead establish a seven-member whole body donation advisory committee at the Texas Funeral Service Commission.

³ The Legislature established Bandera County River Authority and Groundwater District (BCRAGD) as a hybrid entity, both granting the authority of a groundwater conservation district and transferring to BCRAGD the authority and functions of the preexisting Bandera County River Authority (BCRA). However, the Legislature did not legally merge the two entities or abolish the river authority. As a result, BCRAGD took over the river authority's functions while BCRA became a defunct entity without a governing body, funding, staff, or programs. Since BCRA is a defunct authority, the Sunset Commission recommends removing it from Sunset review. Likewise, Sunset lacks clear authority to review BCRAGD.

⁴ The Sunset recommendation would establish a temporary, four-year relationship between the Texas Department of Licensing and Regulation (TDLR) and the State Board of Veterinary Medical Examiners to provide policymaking and administrative oversight, guidance, and support. During this time, the Veterinary Board would become an advisory board to TDLR.

ANATOMICAL BOARD OF THE STATE OF TEXAS

Darren McDivitt, Project Manager

Summary

Sunset reviewed the Anatomical Board of the State of Texas (SAB) during the 2020–21 biennium, but its Sunset bill did not pass during the 87th Legislative Session. Instead, the Legislature placed SAB under full Sunset review again in the 2022–23 biennium. In this second review of SAB, Sunset staff found many of the same previously identified problems and again determined while the state continues to have an interest in overseeing whole body donations, SAB cannot continue to perform this oversight effectively.

Instead of presenting definitive recommendations to the Sunset Commission, Sunset staff proposed a series of options to the commission, and ultimately the Legislature, to consider when determining the organizational and regulatory structure needed to best meet the needs of the state in overseeing whole body donation in Texas.

SAB cannot continue to effectively oversee whole body donation in Texas.

In January 2023, the Sunset Commission adopted a new recommendation raised during the commission meeting to transfer SAB's functions to the Texas Funeral Service Commission (TFSC) and clarify the regulation of whole body donation organizations unaffiliated with higher education institutions, known as non-transplant anatomical donation organizations (NADOs) in Texas.

Recommendation

Abolish and Transfer

- Abolish the Anatomical Board of the State of Texas and transfer its functions to the Texas Funeral Service Commission.
 - Establish a seven-member whole body donation advisory committee at TFSC, including two members from higher education institutions with willed body programs (WBPs), two members from NADOs, two members from anatomical facilities, and one public member.
 - Require WBPs and NADOs to register with TFSC.
 - Require registrants to obtain informed donor consent and require tracking and recordkeeping from intake to final disposition.
 - Require NADOs to be accredited by the American Association of Tissue Banks and exempt NADOs from certain regulatory requirements, including inspections.
 - Authorize TFSC to enforce Chapter 691 of the Texas Health and Safety Code and to establish fees for facility inspections.

- Prohibit TFSC members and licensees from owning more than a 10 percent interest in a NADO.
- Direct Sunset staff to work with the Texas Legislative Council, SAB, and TFSC to ensure these changes are accurately included in the Sunset legislation.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendation is designed to clarify statute and increase the effectiveness of the regulation of whole body donation in Texas. However, the exact fiscal impact of the Sunset Commission's recommendation cannot be fully estimated at this time. While the recommendation would transfer SAB's fund balance to TFSC, the agency would incur costs to administer the regulation, which it should cover through fees in the future. The Legislature would determine the amount of funding for this regulation as part of the appropriations process in future years.

TEXAS ECONOMIC DEVELOPMENT AND TOURISM OFFICE

OFFICE OF STATE-FEDERAL RELATIONS

Erick Fajardo, Project Manager

Summary

The mission of the Texas Economic Development and Tourism Office (EDT), a trusted program within the Office of the Governor, is to market and promote Texas as a premier business location and travel destination. While local and regional entities engage in their own economic development and tourism promotion, the Sunset Commission found the Texas economy benefits from a state-level economic development function and recommends continuing EDT for 12 years.

However, the commission also found EDT has not adequately addressed or communicated to state leadership the problems with some of its financial incentives and assistance programs. The Product Development and Small Business Incubator (PDSBI) program, EDT's bond-supported lending program, has underperformed, jeopardizing its long-term financial stability at a potential future cost to the state. Additionally, confusion between EDT and its lending partners has resulted in no new enrolled loans for four years under EDT's Original Capital Access Program (OCAP), despite the program's current unused balance of \$3.7 million. Accordingly, the commission recommends abolishing the PDSBI program and OCAP.

EDT has not adequately addressed problems with some of its financial incentives and assistance programs.

The Sunset Commission also concluded that adopting clearer rules and developing a plan for administering and communicating about its lending programs would help ensure EDT is better-positioned to administer such programs in the future. In addition, the commission recommends EDT take advantage of opportunities to strengthen supports for communities establishing or growing their travel and tourism economies, and increase efficiency by reallocating resources toward more community-focused tourism development.

The Sunset Commission also reviewed the Office of State-Federal Relations (OSFR), another trusted program within the Office of the Governor, which is responsible for coordinating state and federal programs and informing Texas leaders about federal actions that could affect state policy. The commission found Texas benefits from having a designated state liaison in Washington, D.C. and recommends continuing the office for 12 years. However, the commission recommends OSFR's statute be updated to reflect the office's actual activities and capabilities.

Recommendations

Continue

- Continue the Texas Economic Development and Tourism Office for 12 years and remove the Sunset date of EDT's enabling statute.
- Continue the Office of State-Federal Relations for 12 years and remove the Sunset date of the office's enabling statute.

Eliminating Troubled Lending Programs

- Eliminate the Product Development and Small Business Incubator (PDSBI) program.
- Remove the Original Capital Access Program (OCAP) from statute, and require EDT to adopt rules for its new access to capital programs.

Reporting Requirements and Communication

- Require EDT to develop a plan for administering and communicating about its lending programs.
- Require the *Annual Bank Report* to include additional information on the status of each program to better inform the Legislature.
- Consolidate four of EDT's reporting requirements and abolish one.
- Amend OSFR's annual reporting requirement to remove outdated provisions and require OSFR to post each annual report on its website.
- OSFR should consider opportunities for improving the distribution process for its weekly update. (Management action — nonstatutory)

Governance and Advisory Committees

- Authorize EDT to create advisory committees in rule.
- Remove the Aerospace and Aviation Advisory Committee from statute.
- Continue the Small Business Advisory Task Force and exempt it from automatic abolishment.
- Repeal outdated and unnecessary statutory provisions relating to OSFR's federal funds management.

Travel and Tourism

- Require EDT and its MOU partners to produce the state's strategic tourism plan biennially, and update statutory submission deadlines.
- EDT should consider adjusting its community tourism assessment procedures to improve their efficiency and expand their impact. (Management action — nonstatutory)
- EDT should consider increasing accessible research and educational opportunities for communities attempting to boost their tourism economies. (Management action — nonstatutory)
- EDT should consider creating a Tourism Friendly Community designation to foster additional economic development across Texas. (Management action — nonstatutory)

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a fiscal impact to the state and could be implemented with existing resources. While some recommendations would require staff time to complete, others should improve efficiencies in the long term. The recommendation to abolish the PDSBI program would not result in a cost to the state as EDT already has the funding and authority to pay down the bond debt and remaining program administration and financial services costs.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

Robert Romig, Project Manager

Summary

As the state's environmental regulator, the Texas Commission on Environmental Quality (TCEQ) must balance protecting Texans from the dangers associated with pollution while also ensuring its regulation of industries that cause pollution does not unduly impede the state's economic growth. TCEQ performs admirably administering many complex programs, and the Sunset Commission recommends the agency be continued. However, the commission also found confusion and misperceptions persist about TCEQ's role and authority, necessitating greater transparency from TCEQ's commission regarding its decision-making processes and additional opportunities for public input and dissemination of public information. The Sunset Commission also concluded TCEQ should update its enforcement practices to better focus on the riskiest actors and ensure staff treat potential violations consistently and based on severity, including through updates to its compliance history rating formula and raising administrative penalties from a maximum of \$25,000 to \$40,000 per day.

Confusion and misperceptions persist about TCEQ's role and authority.

The Sunset Commission also reviewed the Texas Low-Level Radioactive Waste Disposal Compact Commission. Under the terms of a compact between Vermont and Texas, the compact commission approves and monitors the importation and exportation of low-level radioactive waste in these two states. Considering the importance of monitoring such a hazardous material and the interest of the state in overseeing the compact's implementation, the Sunset Commission recommends extending the compact commission's Sunset date for 12 years.

Recommendations

Continue

- Continue the Texas Commission on Environmental Quality for 12 years and remove the Sunset date of the agency's enabling statute.
- Amend the Texas Low-Level Radioactive Waste Disposal Compact Commission's Sunset review date to 2035.

Transparency

- Direct TCEQ's commission to vote in a public meeting on the acceptable level of health-based risk used in the development of toxicity factors for permitting and other regulatory actions. (Management action — nonstatutory)
- Direct TCEQ to develop a guidance document that explains what information the commission needs to evaluate whether a person is potentially affected by a permit application and states that each request is reviewed on a case-by-case basis, considering all the factors in its rule, including — but not limited to — distance. (Management action — nonstatutory)
- Require TCEQ-regulated entities with temporary or open-ended permits to annually confirm their operational status.
- Require TCEQ to review and update its website to improve accessibility and functionality, including by posting all permit applications and associated materials on TCEQ's website once the agency determines the application to be administratively complete and by making its database of water districts easily accessible to the public and regional water planning groups.
- Direct TCEQ to evaluate its current use of advisory committees to provide more public involvement in rulemaking and other decision-making processes, and continue advisory committees by rule, as appropriate. (Management action — nonstatutory)

Public Input

- Expressly authorize the commission the discretion to hold virtual public meetings in lieu of in-person public meetings, but require TCEQ to accommodate affected persons in areas lacking internet availability.
- Direct TCEQ, upon receiving public comments that are not under the jurisdiction of the agency, to answer the comment with information on the agency or organization with the relevant jurisdiction. (Management action — nonstatutory)
- Direct TCEQ to prepare and deliver a report by September 1, 2023, to the Legislature on its efforts to enhance public participation and language access as part of its November 3, 2020, Informal Resolution Agreement with the EPA. (Management action — nonstatutory)
- Direct TCEQ to consider developing Spanish language versions of its online form through which individuals may submit a complaint. (Management action — nonstatutory)

Permit Application and Notice Requirements

- Create a new permit for the operation of a temporary concrete batch plant that supports a public works project, which operates under the existing environmental regulations required by the standard concrete batch plant permit and can only be used in conjunction with a specific public works project.
- Expand TCEQ's authority to include both newspaper and electronic publication, such as posting on a website, as notice for pending environmental permit applications, but require TCEQ to meet federal publication requirements and accommodate affected persons in areas lacking internet availability.
- Require the public comment period for a permit application, and deadline to request a contested case hearing, remain open for at least 36 hours after the conclusion of a public meeting for air permit

applications with a consolidated notice of receipt of application and intent to obtain permit (NORI) and notice of application and preliminary decision (NAPD), if a public meeting is held.

- Require TCEQ, when posting or sending out notices on all permit applications and permit amendments, to include, at a minimum, the name of the applicant, type of permit, and address of the proposed or existing site.
- Require TCEQ to provide notice when it receives an application to create a new district, such as a municipal utility district, to state representatives and senators that represent any portion of the proposed district's boundaries.

Enforcement and Compliance

- Increase statutory limits on administrative penalties for all violations with a current cap of \$25,000 per day to \$40,000 per day.
- Create the Compliance Training and Safety Program within TCEQ's Small Business and Local Government Assistance program. As part of this recommendation, authorize TCEQ to divert qualifying facilities to receive additional training and on-site follow-up by TCEQ staff in response to minor or moderate violations that do not present an imminent threat to public health or safety, rather than formal enforcement action. Establish that facilities would be eligible for participation in the program once in a 24-month period.
- Authorize TCEQ to review and potentially suspend a facility's compliance history rating in the event of exigent circumstances, such as an emergency event causing death or injury.
- Direct TCEQ to review and regularly update the agency's compliance history rating formula, considering a regulated entity's record of major, moderate, and repeated minor violations, as well as site complexity and cumulative violations, and to develop a separate compliance history rating formula if necessary for facilities that are sufficiently complex to warrant application of a separate formula.
- Direct TCEQ to evaluate its compliance history rating formula to ensure a facility's compliance rating does not improve if the facility reports an unauthorized air pollution emission and seeks an affirmative defense. (Management action — nonstatutory)
- Require TCEQ to consider all violations when classifying an entity as a repeat violator.
- Direct TCEQ to reclassify recordkeeping violations based on the potential risk and severity of the violation. (Management action — nonstatutory)
- Direct TCEQ to develop and implement clear guidance to evaluate affirmative defense requests for unauthorized air pollution emissions and to establish a centralized committee of agency staff authorized to review and approve all applications for an affirmative defense. (Management action — nonstatutory)
- Direct TCEQ to modify its approach to nuisance complaints to make better use of the agency's investigative resources. (Management action — nonstatutory)

Water Availability

- Continue the E-Flows Advisory Group and E-Flows Science Advisory Committee, as well as the Bay and Basin Stakeholder Committees and Expert Science Teams with renewable five-year terms,

and require the advisory group to adopt a biennial statewide work plan for adaptive management updates of environmental flow standards.

- Direct TCEQ to publish a report on its website on the status of its water availability models (WAMs) as they are updated, including the development and structure of WAMs, information on ongoing WAM updates, prioritization for other WAM dataset updates, and estimated cost for the prioritized updates. (Management action — nonstatutory)

Office of Public Interest Counsel

- Direct OPIC to consider developing and using umbrella contracts to procure expert assistance. (Management action — nonstatutory)
- Direct TCEQ commissioners to take formal action on OPIC's rulemaking recommendations. (Management action — nonstatutory)

Governance

- Direct TCEQ to adopt a policy guiding its rule review process to ensure that identified deficiencies in the rules are addressed. (Management action — nonstatutory)
- Update the standard across-the-board requirements related to board member training and the separation of duties of commissioners from those of staff.

Fiscal Implication Summary

Overall, most of the Sunset Commission's recommendations could be implemented by TCEQ using existing resources and would not have a fiscal impact to the state. Some recommendations may result in a positive or negative fiscal impact, as discussed below, though the exact impact cannot be estimated at this time. The recommendation to extend the Sunset date for the Texas Low-Level Radioactive Waste Disposal Compact Commission would not have a fiscal impact to the state.

- The recommendation to post permit application documents online and improve the agency's website could require additional resources, depending on the nature of the changes the agency makes to its website and IT infrastructure. However, expanding TCEQ's authority to use electronic publication notice for pending environmental permit applications could result in greater efficiencies.
- The recommendations to regularly update compliance history ratings and to develop an online system for regulated entities to report continued operations would require additional resources to develop new or improved software, but exact costs will depend on how TCEQ decides to utilize existing or new systems and cannot be estimated at this time.
- The recommendation to remove the abolishment clause for the E-Flows Advisory Group and E-Flows Science Advisory Committee and require the advisory group to adopt a biennial statewide work plan could require additional resources depending on the number of river basins scheduled for environmental flow standards updates.
- The recommendation to increase the statutory limits on administrative penalties from \$25,000 to \$40,000 could have a positive fiscal impact to the state, depending on the number of violations resulting in increased penalties, but cannot be estimated at this time.

- The recommendation to create the Compliance Training and Safety Program could have a negative fiscal impact to the state resulting from the loss of administrative penalty revenue as some permit holders are diverted from the enforcement process. The exact fiscal impact, however, cannot be estimated at this time.

TEXAS JUVENILE JUSTICE DEPARTMENT

OFFICE OF THE INDEPENDENT OMBUDSMAN

Rachel Gandy, Project Manager

Summary

In response to reports of scandal and inefficiencies, the Legislature abolished the state's two juvenile justice agencies in 2011 and merged their functions into the newly created Texas Juvenile Justice Department (TJJD). Today, the unified agency both manages state facilities and oversees county juvenile probation departments, but it remains caught in the longstanding cycle of instability that plagued its predecessors. Chronic staff shortages fuel TJJD's current turmoil, heightening safety risks and decreasing access to rehabilitation inside state facilities. Employee turnover understandably consumes TJJD's attention but also prevents greater focus on reforms designed to keep youth closer to home. Meanwhile, the agency's governing board has failed to provide the proactive leadership needed to improve outcomes for youth, TJJD staff, and local stakeholders.

TJJD remains caught in the longstanding cycle of instability that plagued its predecessors.

Given TJJD's complex needs and high-stakes mission, the Sunset Commission recommended a limited-scope review in two years so the Legislature can more quickly assess the agency's progress. Additionally, the commission made recommendations that would increase funding for state-level facility construction and county-level capacity building; advance planning efforts to serve more youth locally; restructure the governing board; revise certain sentencing and confinement requirements; and reduce barriers to entry for county-level employees, among other changes.

Finally, while subject to Sunset review but not abolishment, the Office of the Independent Ombudsman (OIO) continues to fulfill a critical role in the state's juvenile justice system by investigating, evaluating, and securing youth rights. Nonetheless, the office's statutory authority and internal procedures require updates to minimize unnecessary risks and ensure rights violations do not slip through the cracks.

Recommendations

Continue

- Continue the Texas Juvenile Justice Department for two years until September 1, 2025, and direct Sunset Commission staff to conduct a limited-scope review of TJJD during the 2024-25 biennium.

Facility Capacity

- Express the will of the Sunset Commission that the Legislature consider appropriating additional funding to TJJD for the construction of two new state secure facilities near population centers. (Change in appropriation)
- Require TJJD to adopt rules authorizing county juvenile probation departments to confine youth committed to TJJD within either a pre- or post-adjudication facility as the youth awaits transfer to the state's custody.
- Authorize TJJD and county juvenile probation departments to use or contract with a facility that was constructed or previously used for the confinement of adult offenders, provided the facility is appropriately retrofitted to accommodate youth-specific requirements and needs.

Board Governance and Agency Administration

- Sweep the existing TJJD board, and reduce its size from 13 to nine members.
- Require the board to provide oversight and accountability for any duties delegated to the executive director.
- Establish minimum education and experience requirements for TJJD's executive director.
- Update statute to reflect the across-the-board requirement related to board member training and the person-first respectful language initiative.
- Direct the board to evaluate and update its own policies and practices to more efficiently and effectively perform its duties. (Management action — nonstatutory)
- Direct TJJD's board to periodically convene state staff and county stakeholders to gather feedback on the implementation of and any needed changes to the Texas Model for Reform in state- and county-level facilities. (Management action — nonstatutory)
- Direct TJJD to seek representation by the Office of the Attorney General to pursue a modification of the Parrie Haynes and John C. Wende trusts that would appoint a qualified third party trustee and an advisory committee to assist the trustee. (Management action — nonstatutory)
- Direct TJJD to adopt a four-year rule review plan and rules that are required by statute. (Management action — nonstatutory)

Regionalization and County Resources

- Express the will of the Sunset Commission that the Legislature consider appropriating additional funding to TJJD specifically to increase the capacity of pre- and post-adjudication facilities operated at the county level of the juvenile justice system. (Change in appropriation)
- Express the will of the Sunset Commission that the Legislature consider amending Rider 4 of TJJD's bill pattern in the General Appropriations Act by authorizing local juvenile probation boards to provide certain salary increases for individual personnel. (Change in appropriation)
- Authorize TJJD to incentivize diversion within and collaboration between Texas counties through its grantmaking processes.

- Require TJJD, in consultation with the Advisory Council on Juvenile Services, to adopt rules specifying county juvenile probation departments must apply for state diversion funding before a juvenile court commits a youth to TJJD, unless the youth committed certain high-level offenses, as defined in rule.
- Require TJJD to identify resource gaps impacting justice-involved youth by partnering with a university to inventory existing resources and adopting rules regarding the collection of relevant county-level data.
- Require TJJD to update its regionalization plan biennially to ensure its contents are up-to-date and actionable.
- Direct TJJD to complete statutorily required regionalization duties that remain unfinished or underdeveloped. (Management action — nonstatutory)

Sentencing and Confinement

- Prohibit the certification of youth as adults in the criminal justice system if they commit a state jail felony.
- Require TJJD to transfer a youth to the most restrictive setting appropriate as the youth awaits a juvenile adjudication or adult conviction for committing a first- or second-degree felony while in TJJD's custody.
- Specify individuals are not eligible for adult community supervision if they were convicted of a felony that occurred when they were at least 17 years old, committed to TJJD's custody, and confined in a TJJD facility.
- Require TJJD to refer certain youth to a juvenile court for approval of a transfer to the Texas Department of Criminal Justice for confinement.
- Allow a youth who commits a first-, second-, or third-degree felony while in TJJD's custody to be eligible for a determinate sentence.
- Direct TJJD to consult with the Office of the Inspector General and Special Prosecution Unit before discharging or releasing under supervision certain youth who have completed their minimum length of stay. (Management action — nonstatutory)

Licensing and Regulatory Standards

- Require TJJD to establish a risk-based approach to inspections for county- and state-level entities, including contract facilities operated by private entities.
- Remove prescriptive education and experience requirements for juvenile probation officers from statute, and prohibit TJJD from adopting rules that may create barriers to certification.
- Clearly require TJJD to develop guidelines for evaluating applicants' criminal history for all of its certifications.
- Remove subjective certification requirements for county-level officers.
- Authorize TJJD to issue provisional certifications to officer applicants upon employment with a county juvenile probation department or relevant private entity while they complete their required training.

- Require TJJD to adopt rules governing its administrative investigation process to provide adequate due process for certified officers.
- Require TJJD to collect, maintain, and make publicly available detailed statistical information on complaints regarding certified officers.
- Direct TJJD to comply with statutory requirements by developing rules and procedures regarding certification of military service members, veterans, and military spouses. (Management action — nonstatutory)
- Direct TJJD to develop a formal process to refer nonjurisdictional complaints to the appropriate agency. (Management action — nonstatutory)

Working with Advisory Committees and Other Agencies

- Authorize the board to appoint advisory committees as needed, and abolish an existing yet inactive statutory committee.
- Require TJJD to create a Youth Career & Technical Education advisory committee and adopt rules for the existing Advisory Council on Juvenile Services.
- Update the composition of the Advisory Council on Juvenile Services to include representation from the Department of Family and Protective Services (DFPS), and require the council to assist TJJD in assessing information-sharing processes between youth-serving entities.
- Direct TJJD, in consultation with the Advisory Council on Juvenile Services and DFPS, to develop written comments on the implementation status of legislation designed to improve information sharing about youth who are dually involved in the juvenile justice and child welfare systems. (Management action — nonstatutory)
- Direct TJJD to seek guidance from the State Office of Risk Management to develop strategies for addressing and minimizing employee injuries. (Management action — nonstatutory)

Public Information and Reports

- Require TJJD to track the frequency with which the executive director takes certain discretionary actions and report the resulting data to the board and Sunset Commission quarterly.
- Require TJJD to publish certain aggregated data on the number of youth committed to its custody on a quarterly and annual basis.
- Combine two TJJD reports related to the effectiveness of youth rehabilitation efforts, and continue all other reporting requirements for TJJD.
- Direct TJJD to improve and update its website content. (Management action — nonstatutory)

Office of the Independent Ombudsman

- Require TJJD and county juvenile probation departments to notify OIO about contract facilities in which they place post-adjudicated youth.
- Require OIO to establish a risk-based approach to site visits for county- and state-level entities, including contract facilities operated by private entities.

- Update the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public.
- Direct OIO to create policies and procedures for consistently collecting and tracking findings from its site visits. (Management action — nonstatutory)
- Direct OIO to formalize its policies and procedures for including key site visit findings and trends in its quarterly reports. (Management action — nonstatutory)
- Direct OIO to develop clear procedures for referring and tracking nonjurisdictional complaints regarding licensed professionals to relevant state agencies for further inquiry. (Management action — nonstatutory)

Fiscal Implication Summary

While some of the Sunset Commission's decisions would have a fiscal impact to the state, the exact costs cannot be estimated at this time. For example, recommendations for the House Appropriations and Senate Finance committees to consider funding increases for TJJD would require the state's investment over multiple biennia, but the Legislature must determine the level of funding needed and available to implement improvements. Further, reducing the board's size may result in a positive fiscal impact from decreased reimbursements to members for incurred expenses, but any changes would depend on the board's future practices, such as how often and where members convene. Recommendations for both TJJD and OIO to revamp their inspection processes should increase efficiency by targeting resources based on risk, but the fiscal impact would depend on the results of each agency's assessment tools. Other recommendations adopted by the commission would require staff time to complete, but TJJD and OIO could implement them with existing resources.

TEXAS COMMISSION ON LAW ENFORCEMENT

Andrew McConnell, Project Manager

Summary

Sunset reviewed the Texas Commission on Law Enforcement (TCOLE) during the 2020-21 biennium, but its Sunset bill, House Bill 1550, did not pass during the 87th Legislative Session. Instead, the Legislature passed Senate Bill 713, which continued TCOLE for an additional two years and directed Sunset to conduct a limited scope review of TCOLE in the 2022-23 biennium.

The Sunset Commission recommends continuing TCOLE for 12 years and adopted several recommendations to improve the efficiency and effectiveness of law enforcement regulation in Texas, including aligning TCOLE's statutes and procedures with best practices. The commission also recommends requiring TCOLE to set and enforce standards for law enforcement agencies (LEA). Finally, to improve law enforcement hiring and separation practices, the commission recommends requiring law enforcement agencies to check a national decertification database before hiring, as well as eliminating discharge categories from the F-5 separation form.

The commission recommends requiring TCOLE to set and enforce standards for law enforcement agencies.

Recommendations

Continue

- Continue the Texas Commission on Law Enforcement for 12 years instead of two years.

Law Enforcement Agencies

- Amend statute to require TCOLE, with input from an advisory committee, to set and enforce minimum standards for law enforcement agencies in rule.
- Require law enforcement agencies to conduct a review of a national law enforcement database prior to hiring and before a license is granted.

F-5 Form

- Remove the separation categories of honorable, general, and dishonorable from the F-5 form.

Licensing

- Explicitly authorize TCOLE to temporarily suspend a license in cases of imminent threat to public health, safety, or welfare, and require a timeline for due process hearings.
- Require TCOLE to establish and maintain a system for LEAs to report failed fit-for-duty exams or refusals to be examined, and authorize TCOLE to suspend licensees under limited circumstances.
- Clearly define TCOLE's authority to issue administrative subpoenas.

- Clearly authorize TCOLE to maintain confidentiality of complainants when possible.
- Remove a subjective qualification for licensure from statute.
- Direct TCOLE to work with the Department of Public Safety to subscribe to rap backs on fingerprint-based criminal background checks for all licensure applicants and licensees. (Management action — nonstatutory)

Peace Officer Database

- Require TCOLE to create a public facing, searchable database that identifies information about a peace officer's license status.

Continuing Education

- Remove the statutory deadlines for all TCOLE licensees' continuing education requirements and require TCOLE, by rule, to establish deadlines aligned with the agency's established training cycle.

Governance

- Update the standard across-the-board requirement related to commission member training.
- Update the agency's statute to reflect the requirements of the person-first respectful language initiative.
- Authorize the commission to establish advisory committees in rule.

Continuity of Care Query System Report

- Direct TCOLE to report on what the requirements would be for peace officers and 911 dispatchers to access the Continuity of Care Query system to the Sunset Commission and the appropriate legislative committees. (Management action — nonstatutory)

Fiscal Implication Summary

The Sunset Commission's recommendations would not result in a significant fiscal impact to the state.

PUBLIC UTILITY COMMISSION OF TEXAS

ELECTRIC RELIABILITY COUNCIL OF TEXAS

OFFICE OF PUBLIC UTILITY COUNSEL

Emily Johnson, Project Manager

Summary

Following deregulation of major portions of the electric market in 1999, Texas' "energy-only" electric market operated as designed, with lucrative competition keeping electricity prices low. With the various market participants and the Electric Reliability Council of Texas (ERCOT) generally managing the grid, the Public Utility Commission of Texas (PUC) never had cause to take a step back and consider how things were working, how it might improve operations, or what funding and staff may be needed to do so. Winter Storm Uri completely changed this dynamic. In February 2021, Winter Storm Uri exposed unacceptable vulnerabilities in the state's electric grid. Critical electric and water utilities failed, almost 11 million Texas homes and businesses lost power or water for days, and tragically, more than 200 people died.

PUC is woefully under-resourced given its critical responsibilities and work that still lies ahead.

In response to the disaster, the 87th Legislature completely overhauled PUC's and ERCOT's governance structures and made numerous changes to the electric industry and market designed to prepare for, prevent, and respond to extreme weather and generally enhance the electric grid's reliability. To keep a close watch on the implementation of these significant changes and identify other needed changes to their operations, the Legislature also moved up the Sunset date for these entities, as well as the Office of Public Utility Counsel (OPUC), two years to 2023.

Public Utility Commission of Texas

In 2021, the Legislature made it clear PUC would be a more active overseer of ERCOT and the market participants, in addition to conducting its day-to-day regulatory operations for more than just electric utilities. The Sunset Commission found PUC was ill-prepared for the task and is woefully under-resourced given its critical responsibilities and the work that still lies ahead. As such, the Sunset Commission recommends increasing the agency's funding specifically to support its exceptional item requests related to analyzing electric market data and information and fully covering its cost associated with regulating water and wastewater utilities.

Beyond additional resources, the Sunset Commission found PUC needs more formalized structures and processes when giving ERCOT direction

that affects the electric industry and millions of Texans and recommends a series of changes to enhance the transparency of the agency's decision making. Other recommendations seek to improve PUC's water and wastewater regulation and force the agency to be more strategic and proactive in its public communications and data management. Finally, the Sunset Commission recommends continuing PUC for just six years so the Legislature can fully evaluate the final outcomes and benefits of ongoing changes and others sure to come in the 88th Legislative Session.

Electric Reliability Council of Texas

ERCOT is essentially a large, sophisticated IT organization that manages the flow of electricity through the "ERCOT grid," delivering power to more than 26 million Texas customers, representing about 90 percent of the electricity consumed in the state. With many of Sunset's standard review criteria not applying to ERCOT, the Sunset Commission focused on ERCOT's governance and evolving relationship with PUC and ensuring ERCOT provides clear information to PUC and the Legislature necessary to evaluate its performance and future needs of the grid.

Office of Public Utility Counsel

OPUC represents the interests of residential and small commercial consumers in electric and water utility proceedings at PUC. Though not impacted by Winter Storm Uri to the same degree as PUC and ERCOT, OPUC's role following the storm is particularly important to help raise concerns when market decisions have a detrimental effect on residential and small commercial consumers. The Sunset Commission found the state has a continuing interest in advocating for these consumers in utility proceedings and recommends continuing OPUC for six years to align with the next PUC Sunset review.

Recommendations

Continue

- Continue the Public Utility Commission of Texas for six years and remove the Sunset date of the agency's enabling statute.
- Continue the Office of Public Utility Counsel for six years and remove the Sunset date of the agency's enabling statute.

Governance and Organizational Best Practices

- In addition to the chair of PUC, add an additional commissioner as a nonvoting member of the ERCOT Board of Directors.
- Amend Texas Utilities Code Section 39.1511(a) to specify that ERCOT may enter into executive session closed to the public only to address contracts, competitively sensitive information, information related to the security of the regional electrical network, or any matter authorized under Texas Government Code Section 551, Subchapter D (Open Meetings Act) that also applies to PUC.
- Abolish two and modify four of PUC's reporting requirements.
- Update the standard across-the-board requirement related to commissioner training.

- Direct ERCOT to include appropriate funding in its budget for qualified economic planning staff to conduct robust economic analyses for transmission planning and other market or planning studies requiring economic analysis. (Management action — nonstatutory)
- Direct PUC to update its policy guiding the agency’s rule review process to ensure identified deficiencies in the rules are addressed. (Management action — nonstatutory)
- Direct OPUC to formalize and document certain contracting processes for legal expert witnesses. (Management action — nonstatutory)

Decision Making

- The House Appropriations and Senate Finance committees should consider appropriating PUC its exceptional item requests for funding a data analytics team and additional engineering expertise. As a management action, direct PUC to work with the Legislative Budget Board and Sunset Commission staff to update the agency’s General Appropriations Act performance measures to track the agency’s achievement in using any funds appropriated for these exceptional items. (Change in appropriation)
- Authorize PUC to issue directives to ERCOT through written memos and orders, in addition to rulemaking and contested cases, and authorize stakeholders to formally provide input on these directives. Clarify that PUC can only direct ERCOT outside of these methods in an emergency or other urgent situation. As a management action, direct the ERCOT chief executive officer to provide an update about any new directive issued by PUC to ERCOT at the first ERCOT board meeting following the directive’s issuance.
- Clarify PUC’s authority over ERCOT protocols to include the ability to reject or remand them.
- Authorize ERCOT to restrict PUC commissioners’ presence at executive sessions.
- Consolidate the *Report on Constraints and Needs* with other key information into a new *Electric Industry Report*.
- Direct PUC to develop a state reliability standard no later than May 1, 2023. (Management action — nonstatutory)
- Direct ERCOT to re-evaluate its performance measures, with input from PUC. (Management action — nonstatutory)
- Direct PUC, in coordination with ERCOT, to approve assumptions used in electric industry reports. (Management action — nonstatutory)
- Direct the commission to develop policies regarding separating commissioner roles and responsibilities. (Management action — nonstatutory)

Public Communications

- Require PUC to develop and regularly update a strategic communications plan.
- Require PUC to allow public testimony at commission meetings on agenda items.
- Direct PUC and ERCOT to create a guidance document to better coordinate public communications. (Management action — nonstatutory)

- Direct PUC to provide up-to-date, easily accessible information as part of its current website redesign efforts. (Management action — nonstatutory)
- Direct PUC to prepare minutes of commission meetings and provide them on its website. (Management action — nonstatutory)

Water Regulation

- The House Appropriations and Senate Finance committees should consider increasing PUC's appropriation to ensure it can recover its costs to regulate water and wastewater utilities efficiently. As a management action, direct PUC to work with the Legislative Budget Board and Sunset Commission staff to update the agency's General Appropriations Act performance measures to track the agency's achievement in using any funds appropriated for water-related exceptional items. (Change in appropriation)
- Amend statute to extend the length of an emergency temporary manager appointment.
- Direct PUC to comprehensively review its water and wastewater rules, processes, and guidance documents to identify and address areas for improvement. (Management action — nonstatutory)

Contract and Data Management

- Direct PUC to develop a plan to prioritize improving its case data collection and analysis. (Management action — nonstatutory)
- Direct PUC's Legal Division and Office of Policy and Docket Management to develop comprehensive policies and procedures. (Management action — nonstatutory)
- Direct PUC to create and maintain a precedent manual, prioritizing rulings related to water and wastewater regulation. (Management action — nonstatutory)
- Direct PUC to update its contract manager guide and handbook. (Management action — nonstatutory)

Fiscal Implication Summary

The Sunset Commission's recommendations would have a fiscal impact to the state, but the exact costs cannot be estimated at this time. Recommendations for the House Appropriations and Senate Finance committees to consider increasing PUC's appropriation aim to improve the agency's oversight of the electric and water industries and cover the costs of regulation. However, the Legislature must determine the level of funding needed and available to implement improvements. Some other PUC recommendations, such as directing the agency to develop a plan to improve its case data collection and analysis, should increase efficiency in the long term by allowing the agency to identify and eliminate procedural bottlenecks and better allocate staff resources. However, given the agency's resource constraints, additional funding recommendations may not cover the costs associated with implementing the recommendations. The recommendation for ERCOT to include funding in its budget for economic planning staff could result in increased costs to ERCOT but, because ERCOT does not receive state appropriations, would not have a fiscal impact to the state. Other recommendations related to ERCOT and OPUC would require staff time to complete but could be implemented with existing resources.

RIVER AUTHORITIES

LAVACA-NAVIDAD RIVER AUTHORITY

UPPER GUADALUPE RIVER AUTHORITY

SAN JACINTO RIVER AUTHORITY

BANDERA COUNTY RIVER AUTHORITY AND GROUNDWATER DISTRICT

Robert Romig, Project Manager

LAVACA-NAVIDAD RIVER AUTHORITY

Summary

The Lavaca-Navidad River Authority's (LNRA) functions include providing raw water to municipal water providers and industry, monitoring water quality, and maintaining parks and event venues on its lands surrounding Lake Texana in Jackson County. The Sunset Commission found LNRA to be generally well run, particularly its water operations, but identified ways the authority could strengthen its policies and procedures to ensure it manages various administrative practices in a fair and effective manner. For example, LNRA's grant programs benefit its local community but lack certain standard practices government entities use to ensure impartiality and good stewardship when awarding grants. LNRA also lacks policies to govern the management and growth of its reserve funds.

Recommendations

Governance

- Amend the Lavaca-Navidad River Authority's Sunset review date to 2035.
- Apply standard across-the-board requirements regarding board membership, appointment of a presiding officer, board member training, board member removal, separation of board and staff duties, public testimony, and complaints to the authority.
- Amend LNRA's board member terms to four years to comply with constitutional requirements.
- Direct LNRA to develop and implement a reserve fund balance policy. (Management action — nonstatutory)
- Direct the Texas Legislative Council to update LNRA's governing law. (Management action — nonstatutory)

Grant Program

- Direct LNRA to establish policies requiring conflicted members of its grant review committee, staff, and the board to recuse themselves from the grant award process. (Management action — nonstatutory)
- Direct LNRA to establish and document in writing the goals, terms, and conditions for partnership grants. (Management action — nonstatutory)
- Direct LNRA to establish policies and procedures for formally monitoring grant awardees. (Management action — nonstatutory)
- Direct LNRA to develop policies to consider the past performance of grantees before awarding future grants. (Management action — nonstatutory)
- Direct LNRA to create and publish policies and procedures governing the service grant and publicly post information about the grant. (Management action — nonstatutory)

UPPER GUADALUPE RIVER AUTHORITY

Summary

The Upper Guadalupe River Authority (UGRA) monitors the portions of the Guadalupe River and its tributaries within Kerr County to protect the watershed from threats such as flooding, sedimentation, water pollution, and invasive species. Through its work with stakeholders and partners in Kerr County, UGRA is highly regarded in the community, with a reputation for leveraging its small staff to create meaningful improvements in the water quality of the Guadalupe River. While UGRA performs its operations well, the Sunset Commission found some areas where the authority could benefit from adopting good governance practices, including contracting best practices and policies for managing its reserve fund.

Recommendations

Governance

- Amend the Upper Guadalupe River Authority's Sunset review date to 2035.
- Apply standard across-the-board requirements regarding appointment of a presiding officer, board member training, board member removal, separation of board and staff duties, public testimony, and complaints to the authority.
- Amend UGRA's board member terms to four years to comply with constitutional requirements.
- Direct UGRA to improve its contracting processes to ensure sufficient consistency and transparency. (Management action — nonstatutory)
- Direct UGRA to develop and implement a reserve fund balance policy. (Management action — nonstatutory)
- Direct the Texas Legislative Council to update UGRA's governing law. (Management action — nonstatutory)

SAN JACINTO RIVER AUTHORITY

Summary

The San Jacinto River Authority (SJRA), one of the largest river authorities in the state with an annual budget of over \$100 million, is the primary wholesale water provider for Montgomery County. In the previous Sunset review that took place during the 2020-21 biennium, the Sunset Commission found public trust in SJRA had suffered due to drawn-out legal disputes over contracting issues and water policy decisions related to lake levels. After the authority's Sunset bill did not pass, the Legislature placed SJRA under Sunset review again for the 2022-23 biennium. The commission found SJRA has made concerted efforts to meaningfully engage with the public, including improving its website. However, SJRA's protracted and contentious legal disputes with retail water providers continue to strain the authority's relationship with the general public and customers, leaving room for some additional improvement.

Recommendations

Public Engagement

- Statutorily require SJRA to adopt a public engagement policy that guides and encourages public involvement on key decisions.

Governance

- Amend the San Jacinto River Authority's Sunset review date to 2035.
- Apply standard across-the-board requirements regarding appointing a presiding officer, board member training, board member removal, separation of board and staff duties, public testimony, and complaints to the authority.
- Amend SJRA's board member terms to four years to comply with constitutional requirements.
- Direct the Texas Legislative Council to update SJRA's governing law. (Management action — nonstatutory)

BANDERA COUNTY RIVER AUTHORITY AND GROUNDWATER DISTRICT

Summary

In 1989, the Legislature created the Bandera County River Authority and Groundwater District (BCRAGD) to protect and preserve both groundwater and surface water resources in Bandera County. The Legislature established BCRAGD as a hybrid entity, both granting the authority of a groundwater conservation district and transferring to BCRAGD the authority and functions of the preexisting Bandera County River Authority (BCRA). However, the Legislature did not legally merge the two entities or abolish the river authority. As a result, BCRAGD took over the river authority's functions while the

BCRA became a defunct entity without a governing body, funding, staff, or programs. Since BCRA is a defunct authority, the Sunset Commission recommends removing it from Sunset review. Likewise, Sunset lacks clear authority to review BCRAGD.

Recommendation

Oversight

- Remove the Bandera County River Authority from Sunset review.

Cross-Recommendation — Apply to Multiple River Authorities

River Authority Uniformity

- Direct Sunset staff to study administrative operations and structure across all Texas river authorities during the 2024-25 review cycle and make recommendations to the 89th Legislature regarding options to create uniformity across all river authorities that ensure each authority effectively represents its geographic river basin while also maintaining efficient administrative operations. This study would be based on past Sunset river authority reviews and is not expected to involve Sunset having to request new documents from river authorities. (Management action — nonstatutory)

Fiscal Implication Summary

The Sunset Commission's recommendations would not result in a significant fiscal impact to the state or the river authorities under review. Most recommendations relate to basic administrative responsibilities the river authorities could implement with their existing resources. Since BCRAGD is not subject to Sunset review, it will not be required to pay the Sunset Commission for the cost of the review, resulting in a savings of approximately \$52,000 to BCRAGD.

SAN ANTONIO RIVER AUTHORITY

Sadie Smeck, Project Manager

Summary

Since its creation in 1937, SARA has managed the creeks and rivers in the San Antonio River basin, encompassing Bexar, Wilson, Karnes, and Goliad counties. Through its extensive work with stakeholders and partners in the basin, SARA is regarded as generally well-run, with a reputation for strong leadership and highly-respected expertise across the various areas in which it works. However, the basin's rapid population growth has resulted in increasing demand for SARA's services, and the authority needs to evolve quickly to meet these new demands.

The Sunset Commission recommends SARA develop processes to be more transparent and accountable in its strategic planning and project selection processes, as well as in managing its various reserve funds. The commission also recommends SARA better align its nonprofit partnerships with best practices, and a number of standard contracting practices to ensure consistency and transparency in the way SARA awards and manages its contracts. Taken together, these recommendations would help ensure SARA is best equipped to continue to be effective in the face of population growth and evolving demands on its services in the basin.

Rapid population growth increased demand for SARA's services.

Recommendations

Sunset Review

- Amend the San Antonio River Authority's Sunset review date to 2035.

Planning and Transparency

- Direct SARA to conduct more comprehensive, inclusive strategic planning. (Management action — nonstatutory)
- Direct SARA to establish guidelines for evaluating and selecting projects and publish them on its website. (Management action — nonstatutory)
- Direct SARA to publish more digestible information about its tax revenue spending and rate setting process on its website. (Management action — nonstatutory)
- Direct SARA's board to update its fund balance policy. (Management action — nonstatutory)

Governance and Organizational Best Practices

- Apply standard across-the-board requirements regarding board member training, the separation of board and staff duties, and public testimony to SARA.

- Apply the standard across-the-board requirement regarding developing and maintaining a system for receiving and acting on complaints to SARA.
- Direct SARA to improve its contracting processes to ensure sufficient consistency and transparency. (Management action — nonstatutory)
- Direct the Texas Legislative Council to update SARA's governing law. (Management action — nonstatutory)

Nonprofit Relationships

- Clearly authorize SARA to work with nonprofits.
- Prohibit SARA staff and limit SARA board members from serving on an affiliated nonprofit's board.
- Require SARA to develop a policy governing affiliated nonprofit fundraising and criteria for corporate sponsorships.
- Direct SARA to review its relationships with affiliated nonprofits every five years. (Management action — nonstatutory)
- Direct SARA to develop a policy governing the support its staff can provide to nonprofits. (Management action — nonstatutory)

Outdated Master Plan Requirement

- Remove Section 4-A ("Master Plan") of SARA's enabling law, to eliminate an outdated requirement that does not reflect the authority's current practice of participating in regional water and flood planning groups sponsored by the Texas Water Development Board.

Fiscal Year Update

- Establish a fiscal year that begins on October 1, rather than July 1, to align SARA's budget process with the release of the certified tax rolls.

Fiscal Implication Summary

The Sunset Commission's recommendations would not have a significant impact to the state or SARA. SARA should be able to implement the recommendations within its existing resources, though the full impact on the authority will depend on the implementation of recommendations and cannot be estimated.

TEXAS STATE SOIL AND WATER CONSERVATION BOARD

TEXAS INVASIVE SPECIES COORDINATING COMMITTEE

Lauren Ames, Project Manager

Summary

The Texas Legislature created the Texas State Soil and Water Conservation Board (TSSWCB) in 1939 as part of a national movement to mitigate the effects of the Dust Bowl. Overall, the Sunset Commission concluded TSSWCB successfully works with landowners on conservation, and recommends continuing TSSWCB for 12 years. However, the last full Sunset review of TSSWCB in 2011 found the Legislature had expanded the agency's budget and responsibilities related to flood control. Twelve years later, this Sunset review found that despite the Legislature appropriating \$150 million from the Economic Stabilization Fund for TSSWCB's dam structural repair grant program in 2019, the agency did not develop the clear goals and updated processes necessary to transparently and effectively handle the significant growth of the program.

TSSWCB must be able to justify its grant funding decisions.

The commission determined the agency must be able to demonstrate and justify to the state and taxpayers its decisions to prioritize and fund certain dam repair projects over others, and recommends several changes to improve the agency's grant administration and management practices. Additionally, TSSWCB should report on the status of these recommendations by January 1, 2023, and undergo a limited scope Sunset re-review of the dam structural repair grant program in the 2026-27 biennium.

The commission also recommends TSSWCB include additional information in its annual report, including its funding activities related to dam safety grants and outreach, nonpoint source pollution grants, and activities and programs related to on-the-ground conservation. Finally, the commission recommends continuing the Texas Invasive Species Coordinating Committee for 12 years with statutory updates to refocus its responsibilities on interagency coordination.

Recommendations

Continue

- Continue the Texas State Soil and Water Conservation Board for 12 years and remove the Sunset date of the agency's enabling statute, with a limited scope re-review during the 2026-27 biennium.
- Continue the Texas Invasive Species Coordinating Committee, require it to be reviewed at the same time as TSSWCB, and modify statute to better align with the committee's current needs.

Grant Programs

- Require TSSWCB to develop and adopt one clear set of overall priorities, goals, and measures for the dam structural repair program; update the “Ten-Year Plan;” and ensure the local match requirement for state-funded dam upgrades and state-funded dam repairs equitably accounts for the financial capacity of local sponsors and high-hazard dams.
- Direct TSSWCB to establish and update its policies for administering the dam structural repair program by January 1, 2023. (Management action — nonstatutory)
- Direct TSSWCB to maintain a centralized master file system for dam structural repair grants and implement it by January 1, 2023. (Management action — nonstatutory)
- Direct the TSSWCB board to approve all grants and contracts over \$1 million and implement this change by January 1, 2023. (Management action — nonstatutory)
- Direct TSSWCB to proactively inform dam sponsors and co-sponsors about dam structural repair funding availability and implement this change by January 1, 2023. (Management action — nonstatutory)
- Direct TSSWCB to include, within its current annual report, its funding activities related to dam safety grants and outreach, nonpoint source pollution grants, and activities and programs related to on-the-ground conservation. (Management action — nonstatutory)

Governance

- Direct TSSWCB to develop a board member recusal policy, including a written explanation for the recusal. (Management action — nonstatutory)
- Direct TSSWCB to improve its district director training, including providing a training manual the directors would have to attest to receiving and reviewing annually. (Management action — nonstatutory)
- Update the standard across-the-board requirements related to board member training, separation of duties of board members and staff, and complaints.
- Direct TSSWCB to adopt a policy guiding its rule review process. (Management action — nonstatutory)
- Direct TSSWCB to recertify its records retention schedule and develop a records retention policy. (Management action — nonstatutory)

Fiscal Implication Summary

Overall, the Sunset Commission’s recommendations would not have a fiscal impact to the state. Some recommendations would require staff time to complete, but should improve internal operations to better maximize state funding in the long term.

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Steven Ogle, Project Manager

Summary

The State Board of Veterinary Medical Examiners has undergone three Sunset reviews over the last six years. These reviews have repeatedly documented significant data collection, reliability, and analysis issues and poor enforcement procedures that have plagued the agency. In November 2022, a special-purpose Sunset review found the agency had improperly contracted for a new database it never received and indications the agency was continuing to struggle with data collection, tracking, reliability, and analysis. As a result of these and other findings, the Sunset Commission directed staff to identify options to address the systemic issues at the Veterinary Board and submit them to the commission.

Significant data collection, reliability, and analysis issues and poor enforcement procedures plague the Veterinary Board.

In January 2023, Sunset staff proposed a series of options for the commission and ultimately, the Legislature, to consider. The Sunset Commission adopted Option 1, which recommends temporarily attaching the Veterinary Board to the Texas Department of Licensing and Regulation (TDLR) for a four-year period during which TDLR would provide the Veterinary Board with policymaking and administrative oversight, guidance, and support. The Veterinary Board would serve as an advisory board during this period, and at the end of the four-year attachment, the Veterinary Board would return to its independent agency status. In addition, TDLR and the Department of Information Resources (DIR) would determine the Veterinary Board's database needs and help acquire and implement a suitable database.

Recommendations

Sunset Review

- Amend the State Board of Veterinary Medical Examiners' Sunset date from 2029 to 2027.

Temporary Administrative Attachment

- Temporarily attach the State Board of Veterinary Medical Examiners to TDLR for four years.
- Establish a temporary, four-year relationship between TDLR and the Veterinary Board to provide the Veterinary Board with policymaking and administrative oversight, guidance, and support, until September 1, 2027.
- The agency's governing board would become an advisory board to TDLR.

- During the four-year temporary attachment, all current and any subsequent members of the governing board would serve as an advisory board to TDLR and the Texas Commission of Licensing and Regulation (TCLR) would have final rulemaking authority except where specifically noted. TCLR would be responsible for ensuring compliance with all laws regarding the rulemaking process.
- TCLR would not be able to adopt a new rule relating to the scope of practice of, a health-related standard of care for, or the ethical practice of the profession of veterinary medicine unless the rule has been proposed by the advisory board. TCLR would adopt rules prescribing the procedure by which the advisory board may propose rules relating to the scope of practice of, a health-related standard of care for, or the ethical practices of the profession of veterinary medicine. TCLR would either adopt such rule proposals relating to standard of care or return the rule to the advisory board for revision.
- TDLR would not be responsible for providing any administrative support to the Veterinary Board, including payroll, human resources, or IT support.
- Agency staff would shadow TDLR staff to be trained in licensing, inspection, and enforcement policies and procedures.
- The agency would work with both TDLR and DIR to determine its database needs, and to acquire and implement a suitable database.
- Prior to the 89th Legislative Session, TDLR would be required to provide statutory recommendations designed to improve the agency's operations to the Sunset Commission and the standing committees with jurisdiction over the Veterinary Board.
- The Sunset Commission would make a recommendation to the appropriate committees to request additional funding to support TDLR's expanded workload and authorize TDLR to pay an independent management consultant to assist in administering the Veterinary Board, at TDLR's discretion.
- Sunset Staff will work with the Texas Legislative Council, the Veterinary Board, and TDLR to ensure these changes are accurately included in the Sunset legislation.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendation would provide the Veterinary Board with support to improve the efficiency and effectiveness of its operations, while also ensuring the agency has access to the expertise to procure a database that meets its current and future needs. However, the exact fiscal impact of these recommendations cannot be estimated at this time, as the Legislature would determine the amount of any funding provided for the attachment to TDLR through the appropriations process.

TEXAS WATER DEVELOPMENT BOARD

STATE WATER IMPLEMENTATION FUND FOR TEXAS ADVISORY COMMITTEE

Darren McDivitt, Project Manager

Summary

The Texas Water Development Board (TWDB) is essentially a large infrastructure bank, providing loans and grants for water supply, water and wastewater treatment, flood control, and agricultural water conservation projects. While the agency is generally successful at getting dollars out the door for projects, a significant increase in workload and responsibilities combined with stagnant staffing levels and outdated technology have challenged TWDB's ability to administer this key function. As such, the Sunset Commission addressed statutory limitations and recommends other improvements to increase the efficiency of TWDB's project review process and prevent it from contributing to increased project delays and costs.

In addition to its role funding water and wastewater projects, TWDB administers the state's water supply planning process to ensure adequate water supply for Texas' future. To make this process more robust, the commission recommends changes such as authorizing regional planning groups to use a more severe planning baseline than the state's worst drought and requiring TWDB to review the feasibility of certain projects in the state water plan.

The commission determined a more data-driven, comprehensive effort toward developing and coordinating TWDB's outreach activities would better inform potential programmatic changes and enhance the agency's ability to meet the needs of current and future customers. The commission also recommends a series of other changes to align TWDB's statute and processes with current best practices standard to Sunset reviews. Finally, because TWDB is constitutionally created and not subject to abolishment, the commission did not address the continuing need for the agency. However, the State Water Implementation Fund for Texas (SWIFT) Advisory Committee is subject to abolishment and the commission found a continuing need for the committee.

To manage its financial assistance programs as efficiently as possible, TWDB must get back to the basics.

Recommendations

Continue

- Amend the Texas Water Development Board's next Sunset review date and continue the State Water Implementation Fund for Texas Advisory Committee to 2035.

Project Review

- Require TWDB to develop, collect, and analyze performance metrics and establish goals for evaluating its project review process.
- Authorize TWDB to implement a risk-based approach to project review.
- Direct TWDB to develop a plan to prioritize improving its project review process to eliminate inefficiencies and inconsistencies. (Management action — nonstatutory)
- Direct TWDB to work with the Legislative Budget Board (LBB) to update the agency's General Appropriations Act performance measures to include elements of the project review process. (Management action — nonstatutory)

Outreach

- Direct TWDB to collect and analyze information about its financial assistance applicants and outreach efforts to better inform and more effectively target agency activities; as part of this, direct TWDB to work with LBB to report money and projects awarded to rural and economically disadvantaged communities separately and not as a combined number. (Management action — nonstatutory)
- Direct TWDB to develop a coordinated outreach plan to more efficiently promote agency programs, improve operations, and ensure its outreach efforts meet entities' needs and expectations; additionally, direct TWDB to use funds from the Rural Water Assistance Fund to work with rural communities to help navigate TWDB's funding application process. (Management action — nonstatutory)

Water Planning

- Require TWDB to conduct a feasibility review of certain projects in the state water plan.
- Authorize regional water planning groups, by statute, to use a drought worse than the drought of record as the baseline for planning purposes.
- Direct TWDB to consult with the Office of the State Climatologist at Texas A&M University in the preparation of regional and state water plans. (Management action — nonstatutory)

Governance

- Update the standard across-the-board requirement related to board member training.
- Abolish TWDB's reports on the Water Loan Assistance Program, Water Bond Insurance Program, and Storage Acquisition Fund, and continue all other reporting requirements.
- Direct TWDB to update its policy regarding the separation of duties of board members from those of staff. (Management action — nonstatutory)
- Direct TWDB to adopt a rule review plan. (Management action — nonstatutory)

Fiscal Implication Summary

Overall, the fiscal impact of the Sunset Commission's recommendations cannot be estimated at this time. Some recommendations would require staff time to complete, but should improve internal operations and efficiency in the long term. While the Sunset Commission's recommendation to conduct a feasibility review of certain projects in the state water plan could require additional resources and expertise the agency currently does not have, the recommendation's exact fiscal impact would depend on TWDB's implementation and cannot be estimated.

APPENDIX A

Sunset Review Schedule — 2025

27 Reviews¹

Architectural Examiners, Texas Board of
Arts, Texas Commission on the
Criminal Justice, Texas Department of
Correctional Managed Health Care Committee²
Pardons and Paroles, Board of²
Windham School District, Texas Department of Criminal Justice²
Employee Charitable Campaign Policy Committee, State
Engineers and Land Surveyors, Texas Board of Professional
Ethics Commission, Texas
Geoscientists, Texas Board of Professional
Higher Education Coordinating Board, Texas
Housing and Community Affairs, Texas Department of
Information Resources, Department of
Injured Employee Counsel, Office of
Insurance, Texas Department of
Joint Underwriting and Advisory Organizations, Texas Department of Insurance²
Insurance Counsel, Office of Public
Judicial Branch Certification Commission
Judicial Conduct, State Commission on
Lottery Commission, Texas
Pension Review Board, State
Preservation Board, State
River Authorities
Angelina and Neches River Authority
Lower Neches Valley Authority
Sabine River Authority of Texas
Trinity River Authority of Texas
Workers' Compensation, Texas Department of Insurance Division of

Appendix A

¹ The Sunset Commission has also recommended conducting a limited-scope review of the Texas Juvenile Justice Department during the 2024-25 biennium, which would require approval by the 88th Legislature.

² Statute requires the agency be reviewed in conjunction with the agency listed above it.

APPENDIX B

Summary of the Texas Sunset Act

Sunset Act

The Texas Sunset Act (Chapter 325, Government Code) went into effect in August 1977. It provides for automatic termination of most agencies under Sunset review, although a few agencies under review are exempt from automatic termination.

Sunset Advisory Commission

The 12-member Sunset Advisory Commission has five members of the Senate, five members of the House, and two public members, appointed by the lieutenant governor and the speaker of the House, respectively. The chairmanship rotates between the Senate and the House every two years.

Reviewing an Agency

When reviewing an agency, the commission's staff must consider statutory criteria as shown in the textbox, *Sunset Review Questions*, on the following page. The commission's report on most agencies must include a recommendation to abolish or continue the agency, and may contain recommendations to correct problems identified during the review. These problems may include other agencies not under review that overlap or duplicate, or otherwise relate to the agency under review.

Continuing an Agency

If the commission recommends that an agency be continued, it has legislation drafted for that purpose, and to correct the problems found during the Sunset review. Sunset legislation usually continues an agency for 12 years.

Abolishing an Agency

If the commission recommends abolishment of an agency, the agency generally has a one-year period to wind down its operations. The agency retains full authority and responsibility until the end of that year, at which time its property and records are transferred to the appropriate state agency.

Compliance Reviews

The commission is required to examine an agency's actions after a Sunset bill is passed to determine if the agency has implemented the new statutory requirements. In addition, the state auditor may evaluate the agency's compliance with nonstatutory management changes recommended by the commission.

Appendix B

Sunset Review Questions

All Agencies

1. How efficiently and effectively do the agency and its advisory committees operate?
2. How successful has the agency been in achieving its mission, goals, and objectives?
3. Does the agency perform any duties that are not statutorily authorized? If so, what is the authority for those activities and are they necessary?
4. What authority does the agency have related to fees, inspections, enforcement, and penalties?
5. In what ways could the agency's functions and operations be less burdensome or restrictive and still adequately protect and serve the public?
6. How much do the agency's programs and jurisdiction duplicate those of other agencies and how well does the agency coordinate with those agencies?
7. Does the agency promptly and effectively address complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions?
9. How has the agency complied with state and federal requirements regarding equal employment opportunity, the rights and privacy of individuals, and purchasing guidelines for historically underutilized businesses?
10. How effectively does the agency enforce rules on potential conflicts of interest of its employees?
11. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
12. Would abolishing the agency cause federal government intervention or loss of federal funds?
13. Do the agency's statutory reporting requirements effectively fulfill a useful purpose?
14. Does the agency comply with cybersecurity best practices?

Occupational Licensing Agencies

1. Does the agency's occupational licensing program serve a meaningful, defined public interest and provide the least restrictive form of regulation that adequately protects the public interest?
2. To what extent may the program's regulatory objective be achieved through market forces, private or industry certification and accreditation programs, or enforcement of other law?
3. To what extent do licensing criteria ensure applicants entering the occupation have competencies consistent with the public interest and what impact do these criteria have on applicants?
4. What is the impact of the regulation on competition, consumer choice, and cost of services?