

SUNSET ADVISORY COMMISSION

*Final Results of
Sunset Reviews
2012-2013*

JULY 2013



Sunset Advisory Commission

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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.

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SUMMARY

Summary

Sunset had a difficult but predominantly successful review cycle over the past two years. The 2012-2013 reviews occurred in a challenging time in which most agencies experienced significant budget reductions affecting their operations and ability to perform as expected. Sunset recommendations targeted changes to enhance the structure and operations of the 24 entities under review, given constricted budgets and little opportunity for additional fiscal savings this cycle. In all, Sunset Commission members filed 20 Sunset bills affecting the entities and governmental functions under review, resulting in the abolishment of one agency and the significant improvement and realignment of others. However, the Legislature was unable to agree to pass two of these bills, and the Governor vetoed one bill.

The Legislature enacted 75 percent of the Sunset Commission's 278 recommendations.

Despite the outcome of these three bills, the Legislature enacted 75 percent of the 278 statutory recommendations of the Commission in the remaining 17 Sunset bills and several related pieces of legislation. These statutory improvements, along with the Sunset Commission's 70 management directives to the reviewed agencies, will have long-term positive impacts on the ability of these agencies to serve the people of Texas and achieve the results expected of Texas government. These impacts are the heart of the positive effect of the Sunset process.

This report summarizes the actions taken by the Sunset Commission and the 83rd Legislature on each of the 24 reviewed entities. Major changes adopted through the Sunset process this biennium are highlighted below.

- Based on Sunset recommendations, the Legislature abolished the Office of Fire Fighters' Pension Commissioner, making the Pension Review Board the agency overseeing local firefighter pensions. The Board will act as the single point of contact for technical assistance on firefighter pensions, training to local providers, and appeals of benefit decisions referred to the State Office of Administrative Hearings.
- For the first time, after three Sunset reviews over 20 years, the Legislature passed a Lottery Commission Sunset bill. Initially, the House expressed displeasure with raising revenue through gambling, voting down the bill before reconsidering the vote and ultimately agreed to study the lottery's abolishment and ways to raise comparable revenue for schools. The bill also seeks to increase the lottery's contribution to schools by eliminating the diversion of leftover unclaimed prize money and improves the agency's accountability and effectiveness by increasing the size of the Commission. In addition, the bill gives the agency regulatory tools and fee flexibility to strengthen regulation of charitable bingo.

- Six years after major legislative reforms, the Sunset review of the State’s adult criminal justice system determined the system is working well and achieving much of the intended results. Through the criminal justice agencies’ combined Sunset bill, the Legislature built on the proven success of investing in diversion strategies by requiring the agencies to better assess, rehabilitate, and reintegrate offenders back into society. The bill also requires the agencies to better measure and manage the performance of their programs to help the Legislature align funding with programs that work — those that reduce recidivism and incarceration costs — rather than on incarceration costs alone.
- The Public Utility Commission (PUC) Sunset bill transfers rate-related regulation for water and sewer utilities from the Texas Commission on Environmental Quality (TCEQ) to PUC, taking advantage of PUC’s historic ratemaking expertise while allowing TCEQ to focus on its core environmental mission. The bill revises this ratemaking process from its current one-size-fits-all design to better accommodate differences in size and capacity of these utilities and improve service to customers. The bill also adds provisions to strengthen PUC’s oversight of the Electric Reliability Council of Texas, helping ensure efficient and accountable operation of the state’s electric grid.
- Through the Sunset review of the Texas Higher Education Coordinating Board, the Legislature refocused the agency on coordination, and not regulation, of public higher education. The Sunset bill removed significant pieces of the agency’s authority, including authority to consolidate or eliminate low-producing academic programs and to approve capital projects at institutions of higher education. Other changes adopted through the Sunset process aim to improve the effectiveness of the agency’s coordination efforts and its relationship with higher education institutions through more meaningful consideration of input from stakeholders.
- A special Sunset review of the Port of Houston Authority provided the opportunity to change the culture and governance of an organization that had fallen into disfavor through a series of missteps and controversies in recent years. The Port’s Sunset bill makes immediate changes to the Authority’s governing board and, with numerous Sunset Commission management directives to improve its operating practices, will work to restore accountability and regain the public’s trust in this vital economic resource.

As referenced above, three Sunset bills were not enacted. The Sunset bills for the Texas Education Agency (TEA) and the Railroad Commission (RRC) failed to pass, though the Legislature continued them through separate legislation. The Ethics Commission Sunset bill made it through the legislative process, but the Governor vetoed the bill. As a constitutionally created agency, the Ethics Commission is not subject to abolishment and is set to be reviewed again on its regular schedule in 12 years.

The table on the following page, *Sunset Legislation – 83rd Regular Session*, lists the Sunset bill number, authors, fiscal impact and final action taken on each of the 24 entities under review. As discussed earlier, while the Sunset bills were able to shrink the array of state government programs under review, these recommendations presented far fewer opportunities for fiscal savings than in the past. While the Sunset Commission’s recommendations to the Legislature contained a positive fiscal impact of about \$7.8 million for the upcoming biennium, the methods chosen to implement the recommendations, along with the failure of three of the Sunset bills, reduced the final fiscal impact to only \$213,488.

The individual agency sections in this report provide a brief analysis of both the statutory and nonstatutory directives adopted for implementation by each agency. As required by law, Sunset staff, with assistance from the State Auditor’s Office, review these changes before the next legislative session to ensure that agencies implement recommendations adopted through the Sunset process.

Looking forward to the legislative session in 2015, the Sunset Commission will review 21 entities. The primary focus of the upcoming cycle is the vast array of health and human service agencies, programs and functions in Texas. Agencies up for review include the Health and Human Services Commission and all of the agencies under its umbrella, as well as the Texas Workforce Commission. Work will also continue on TEA, along with a special review of the University Interscholastic League. The appendix to this report provides a complete list of the agencies subject to Sunset review before the 84th Legislative Session.

Sunset Legislation – 83rd Regular Session

Agency	Bill Number	Bill Author		FYs 2014–2015 Fiscal Impact to the State	Final Action
		Senate	House		
Architectural Examiners, Texas Board of	H.B. 1717	Nichols	Price	\$112,000	Continued for 12 years
Arts, Texas Commission on the	S.B. 202	Huffman	Price	No Impact	Continued for 12 years
Criminal Justice Agencies Criminal Justice, Texas Board and Department of Correctional Managed Health Care Committee Pardons and Paroles, Board of Windham School District	S.B. 213	Whitmire	Price	No Impact	TDCJ continued for eight years, others reviewed in conjunction with TDCJ
Education Agency, Texas	S.B. 218	Patrick	Dutton	No Impact	Failed to pass, but continued for two years in H.B. 1675
Employee Charitable Campaign Policy Committee, State	S.B. 217	Patrick	Anchia	No Impact	Continued for four years
Engineers, Texas Board of Professional	S.B. 204	Nichols	Price	(\$88,000)	Continued for 12 years
Ethics Commission, Texas	S.B. 219	Huffman	Bonnen, D.	No Impact	Vetoed, not subject to abolishment, review in 12 years
Facilities Commission, Texas	S.B. 211	Nichols	Dutton	(\$70,000)	Continued for two years in H.B. 1675
Fire Fighters' Pension Commissioner, Office of	S.B. 220	Anchia	Birdwell	\$173,838	Abolished
Higher Education Coordinating Board, Texas	S.B. 215	Birdwell	Anchia	(\$665,734) ²	Continued for 12 years
Housing and Community Affairs, Texas Department of	H.B. 3361	Birdwell	Dutton	No Impact	Continued for 12 years
Information Resources, Department of ----- Procurement and Support Services Division of the Comptroller of Public Accounts	H.B. 2472	Birdwell	Cook	No Impact	Continued for eight years
Judicial Conduct, State Commission on -----	S.B. 209	Huffman	Dutton	No Impact	Not subject to abolishment, review in six years
	S.J.R. 42	Huffman	Dutton	No Impact	Approved for November ballot
Lottery Commission, Texas	H.B. 2197	Huffman	Anchia	\$290,054	Continued for 12 years

Sunset Legislation – 83rd Regular Session

Agency	Bill Number	Bill Author		FYs 2014–2015 Fiscal Impact to the State	Final Action
		Senate	House		
Pension Review Board, State	S.B. 200	Patrick	Anchia	No Impact	Continued for 12 years
Port of Houston Authority	H.B. 1642	Whitmire	Bonnen, D.	No Impact	Not subject to abolishment, review in four years
Preservation Board, State	S.B. 201	Birdwell	Price	No Impact	Continued for 12 years
Public Utility Commission of Texas	H.B. 1600	Nichols	Cook	No Impact ³	Continued for 10 years
Railroad Commission of Texas	S.B. 212	Nichols	Bonnen, D.	No Impact	Failed to pass, but continued for four years in H.B. 1675
Self-Directed Semi-Independent Agency Project Act	H.B. 1685	Whitmire	Price	\$461,270	Continued, but removed from future Sunset review
Fiscal Impact Total	\$213,428				

¹ Board of Pardons and Paroles not subject to abolishment.

² The Legislature did not adopt the Sunset Commission's recommendation to fund compliance monitoring out of existing funding sources, resulting in a cost of \$665,734 to the bill.

³ House Bill 1600 contains provisions related to consumer representation by the Office of Public Utility Council in water and sewer utility matters that originated in Senate Bill 567, a non-Sunset bill that also passed this session. For this reason, costs associated with these provisions, about \$1 million for the biennium, are not repeated here.

AGENCIES

Texas Board of Architectural Examiners

H.B. 1717 Price (Nichols)

Staff Contact: Carrie Holley-Hurt

The State exercises its power to regulate professions when an overriding interest in protecting the public exists. Licensing processes help ensure that individuals are competent to enter a regulated profession and enforcement helps ensure that regulated individuals maintain the required level of competence and comply with regulatory requirements or be subject to state sanction. As the State's authority over architects, landscape architects, and registered interior designers, the Texas Board of Architectural Examiners, perhaps more than other occupational regulatory agencies, encounters questions about the nature of public protection it ensures, especially regarding its regulation of interior designers. Aside from the basic question about the public protection provided by regulating interior design, the Board's registration process is weakened by a "grandfather" provision that allows the majority of registrants to hold this registration without having to pass the examination currently required for registration. This loophole undermines the promise of competence the registration is intended to provide. House Bill 1717, the Board's Sunset bill, addresses this problem by phasing out the grandfather provision for interior designers and requiring all registrants to demonstrate competence by passing the appropriate examination.

The bill also improves the Board's current criminal history background check by requiring electronic fingerprinting to provide more accurate, thorough, and timely information for determining the appropriateness of a person to be registered. In addition to provisions to make registration more meaningful to the public, H.B. 1717 ensures fairness and transparency for the registrant by creating consistency in how the Board applies professional and late renewal fees.

The following material summarizes results of the Sunset review of the Board, including a management action directed to the Board that did not require statutory changes. For additional information see the *Texas Board of Architectural Examiners Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation

- Continues the Texas Board of Architectural Examiners for 12 years.

Licensing

- Eliminates the grandfather provision for registered interior designers who have not passed the registration examination by requiring them to do so by September 1, 2017 to continue to renew their registration. Specifies that the registration examination is the examination adopted by the Board and in effect on January 1, 2014.
- Directs the Board to measure the effects its customer service and outreach efforts have on licensing and enforcement. (management action – nonstatutory)

Registration and Enforcement

- Clarifies that the Board must assess the \$200 professional fee at initial registration and renewal for all three regulated professions.
- Requires the Board to conduct fingerprint-based criminal background checks of applicants and licensees with active licenses.
- Clarifies a requirement for the Board to use only its own renewal fee when calculating penalties for late renewal.
- Authorizes the Board to apply administrative penalties per violation per day.

Fiscal Implication

House Bill 1717 will result in a positive fiscal impact to the State of an estimated \$112,000 for the 2014–2015 biennium, by requiring all architects to pay the \$200 professional fee at initial licensure. Clarifying that the penalty for late renewal would be based only on the agency’s renewal fee, and not the \$200 professional fee paid to the State, would reduce revenue to the agency by about \$155,000 annually. However, because the Board operates outside the legislative appropriations process as an SDSI agency, this change would not have an impact to the State.

Texas Commission on the Arts

S.B. 202 Huffman (Price)

Staff Contact: Emily Johnson

Texas benefits both socially and economically from public investment in the arts. Acknowledging these benefits, as well as improvements made by the Texas Commission on the Arts since its last Sunset review six years ago, Senate Bill 202 continues the agency for 12 years. Changes made through the legislation, including reducing the size of the agency's governing board and requiring the agency to adhere to additional best practices in its grant processes, will ensure the Commission continues operating efficiently into the future.

The following material summarizes results of the review of the Texas Commission on the Arts, including management actions directed to the Commission that do not require statutory changes. For additional information see the *Texas Commission on the Arts Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation

- Continues the Texas Commission on the Arts for 12 years.

Board Size

- Reduces the size of the Commission from 17 to nine members.
- Requires commission members to represent a diverse cross-section of the arts rather than all fields of the arts.
- Phases in the reduction so that no current members' terms are cut short.
- Requires two of the three appointments made to the Commission in 2015 for six-year terms to be from counties with a population of less than 50,000.
- Clarifies that the Commission operating with fewer than two rural members while the board reduction is being implemented is not a violation of law.

Grant Authority

- Clarifies the Commission may award grants to support its mission to advance the state economically and culturally by investing in the arts.
- The Commission should amend its grant guidelines to incorporate reporting requirements for subgrants and to better link on-site monitoring visits to risk. (management action – nonstatutory)
- The Commission should develop and track additional performance measures to evaluate the impact of its grants. (management action – nonstatutory)

Fiscal Implication

Senate Bill 202 will not have a significant fiscal impact to the State.

Texas Criminal Justice Agencies

S.B. 213 Whitmire (Price)

Staff Contact: Jennifer Jones

The Sunset review of the Texas Department of Criminal Justice (TDCJ), Correctional Managed Health Care Committee, Windham School District, and Board of Pardons and Paroles determined that overall, the State's adult criminal justice system is working well. Specifically, the Legislature's investments in treatment and alternatives to incarceration have significantly improved the system, evidenced by lower recidivism and reincarceration rates, and increased parole approval rates.

The Sunset review builds on the proven success of investing in these less costly diversion strategies by requiring these criminal justice agencies to better assess, rehabilitate, and reintegrate offenders back into society. The Sunset bill for these agencies, Senate Bill 213, requires the development of a single assessment tool for offenders, based on factors most likely to affect recidivism, and use of the tool throughout the system — from probation to parole. The bill also requires development of an individualized treatment plan for each offender based on their assessed risk and needs, as well as a comprehensive reentry plan to better coordinate and improve offender reentry services to reduce the likelihood of recidivism. Ultimately, to ensure these changes achieve the desired outcomes, the bill requires the agencies to better measure and manage the performance of their programs to help the Legislature align future funding with programs that work — those that reduce recidivism and incarceration costs.

Additional changes made in S.B. 213 help improve parole decision making to ensure more consistent and fair parole decisions. Regarding correctional healthcare, the bill clarifies the powers and duties of TDCJ and the Correctional Managed Health Care Committee to better align with the Legislature's previous decision to transfer the State's healthcare contracting authority from the Committee to TDCJ.

The following material summarizes results of the Sunset review of TDCJ, the Correctional Managed Health Care Committee, Windham School District, and Board of Pardons and Paroles, including management actions directed to the agencies that do not require statutory change. For additional information see the *Texas Department of Criminal Justice, Correctional Managed Health Care Committee, Windham School District, and Board of Pardons and Paroles Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Offender Rehabilitation and Reentry

- Requires TDCJ to implement a standardized risk and needs assessment instrument, based on criminogenic factors, for use in assessing and managing offenders on probation, in prison, and on parole.
- Requires TDCJ to establish a case management committee at every prison facility to assess inmates and ensure they are receiving appropriate services or participating in appropriate programs.
- Requires the Individual Treatment Plan to capture all of an offender's risk and needs information, as well as all participation in both state-funded and volunteer programs, for use in treatment planning.

- Directs the Parole Board to use the Individualized Treatment Plan in making programming placement decisions. (management action – nonstatutory)
- Requires TDCJ to develop and adopt a more comprehensive reentry and reintegration plan for offenders detailing the reentry goals and strategies, and how it will evaluate the plan.
- Expands the membership and duties of the Reentry Task Force.

Offender Education

- Requires the Windham School District to conduct biennial program evaluations to measure whether its academic, vocational, and life skills programs reduce recidivism and meet the District's other statutory goals.

Probation Grants and Funding

- Requires TDCJ's Community Justice Assistance Division (CJAD) to establish grant program goals and standard grant processes, including a system to routinely monitor grant performance and impact on recidivism.
- Requires CJAD to study the use of performance-based funding formulas, including using an offender's risk level or other appropriate factors, and report its recommendations to the Legislature.
- Changes the way state funding for Community Supervision and Corrections Departments' employees health insurance is appropriated by creating a new TDCJ budget strategy. (S.B. 1)

Parole

- Requires the Parole Board to establish and maintain a range of recommended parole approval rates for each category or score within the parole guidelines.
- Requires parole panels, when approving or denying an inmate's release, to provide a clear and understandable written explanation of the panel's decision, including only the reasons that relate specifically to the inmate.
- Authorizes the Parole Board to delegate all hearings, but not final determinations, to its hearing officers.
- Makes the process of submitting Victim Impact Statements more efficient.

Correctional Health Care

- Modifies the structure and functions of the Correctional Managed Health Care Committee to align with changes in the State's approach to providing offender health care.
- Removes funding for the salaries, operating expenses, and travel expenses of the Committee's staff. (S.B. 1, Rider 50)
- Clarifies TDCJ's powers and duties relating to correctional healthcare contracting, consistent with the Legislature's previous decision to transfer this authority from the Correctional Managed Health Care Committee to TDCJ.

- Clarifies TDCJ's authority to contract with any provider for offender health care, to include, but not limited to the University of Texas Medical Branch and the Texas Tech University Health Sciences Center.
- Requires TDCJ to adhere to standard contracting requirements for offender healthcare services contracts, and report healthcare cost and use information to the Governor and Legislative Budget Board.

Continuation

- Continues the Board and Department of Criminal Justice for eight years.
- Continues the Windham School District and Correctional Managed Health Care Committee, and requires them to be reviewed in conjunction with future Sunset reviews of TDCJ. The Parole Board will also continue to be reviewed by the Sunset Commission in conjunction with TDCJ.

Standard Sunset Review Elements

- Abolishes TDCJ's report on bed ratios for Substance Abuse Felony Punishment Facilities.
- Directs TDCJ to research and implement innovative alternatives to recruit a more diverse workforce. (management action – nonstatutory)

Fiscal Implication

Senate Bill 213 will not have a significant fiscal impact to the State.

Texas Education Agency

S.B. 218 Patrick (Dutton) — Not Enacted

Staff Contact: Karen Latta

Despite the inclusion of major changes to reshape the role and priorities of the Texas Education Agency (TEA), the Legislature did not pass the agency's Sunset bill, instead continuing it for another two years through separate legislation. Through its review of TEA, the Sunset Commission concluded that Texas clearly needs a state-level agency to oversee public education, but that changes are needed to allow TEA to focus on its key duties and improve its effectiveness. To focus more on the agency's mission of ensuring the delivery of quality primary and secondary education, the Sunset Commission recommended moving both regulation of the private driver training industry and management of the adult education program to other, more appropriate agencies, and eliminating a variety of outdated and unnecessary statutory requirements. Sunset also found that TEA would benefit from better tools to address schools with serious academic and financial accountability problems, in particular the few chronically poor-performing charter schools. In addition, the Sunset Commission determined that the remaining duties of the State Board for Educator Certification could be performed by the Commissioner of Education without the need for a separate Governor-appointed board.

The Sunset Commission's 56 statutory recommendations were incorporated into Senate Bill 218. The Senate Education Committee discussed a significant number of changes and additions to the bill, but pended those amendments for consideration by the full Senate. However, in the end, S.B. 218 never came up on the Senate floor.

Although S.B. 218 failed passage, the Legislature did adopt several Sunset Commission recommendations related to adult education, charter school regulation, and financial accountability in other legislation, as described below. The following material also lists management actions recommended by the Sunset Commission for implementation by the agency that do not require statutory changes. These management actions address contracting practices, educator certification, driver training regulation, and succession planning. Some of these recommendations have been modified to work within existing agency structures when suggested transfers were not enacted in law.

For additional information see the *Texas Education Agency Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation

- Continues TEA until 2015 and places the agency under a limited-scope Sunset review in the 2014–15 biennium. (H.B. 1675)

Adult Education

- Transfers responsibility for adult education from TEA to the Texas Workforce Commission. (S.B. 307)
- Creates an adult education and literacy advisory committee at the Texas Workforce Commission. (S.B. 307)

Charter Schools

- Requires revocation of a charter for failure to meet basic academic or financial accountability standards for three years in a row. (S.B. 2)
- Authorizes the Commissioner to revoke a charter that is on the verge of insolvency. (S.B. 2)
- Sets an initial five-year term and subsequent 10-year terms for charters and restructures the renewal process to ensure that failure to meet basic standards for accountability can lead to nonrenewal. (S.B. 2)
- Authorizes the Commissioner to reconstitute the governing board of a charter holder in certain circumstances. (S.B. 2)
- Applies standard prohibitions on nepotism to all charter schools, while providing an exception for existing employees. (S.B. 2)
- TEA should revise its practices for applying interventions and sanctions to clarify expectations and ensure appropriate and timely action against poor-performing charters. (management action – nonstatutory)

Financial Accountability

- Incorporates the financial solvency review into the FIRST financial accountability system. (H.B. 5)
- Requires TEA to project revenues and expenditures for districts and charters that will likely become insolvent within three years. (H.B. 5)
- Requires districts and charters that fail FIRST to prepare a corrective action plan, and authorizes TEA to apply its standard set of sanctions to schools that fail to submit or implement adequate plans. (H.B. 5)
- Requires TEA to re-evaluate all FIRST indicators every three years. (H.B. 5)

Reporting Requirements

- Makes the *Comprehensive Annual Report to the Legislature on Texas Public Schools* biennial. (S.B. 59)

Contracting

- TEA should improve collection and reporting of all contract sanctions. (management action – nonstatutory)
- TEA should ensure staff follow guidelines regarding contracting with education service centers. (management action – nonstatutory)
- TEA should complete training of the agency’s contract managers by April 1, 2013. (management action – nonstatutory)
- Direct TEA to include a section on ethics in contracting in its contracting manual. (management action – nonstatutory)

- Direct TEA to ensure staff assess all contracts to identify lessons learned and report assessments of major contracts to senior management. (management action – nonstatutory)

Educator Certification

- Direct the State Board for Educator Certification (SBEC) to adjust fees in rule for educator certification and educator preparation programs to ensure they adequately cover costs and are equitable across fee payers. Originally written for the Commissioner of Education, this recommendation would now apply to SBEC. (management action – nonstatutory)
- TEA should provide a more comprehensive preliminary criminal history evaluation for individuals who may later apply for educator certification. (management action – nonstatutory)
- Direct TEA staff to comprehensively track and analyze enforcement data for educator misconduct cases. (management action – nonstatutory)
- TEA should encourage the use of mediation in educator misconduct cases as an alternative to formal administrative hearings. (management action – nonstatutory)
- Direct TEA to develop procedures outlining all phases of the educator preparation program complaint process and track and analyze complaint data. (management action – nonstatutory)

Driver Training

- TEA should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner. Originally written for the Texas Department of Licensing and Regulation (TDLR), this recommendation would now apply to TEA. (management action – nonstatutory)
- TEA should make public final driver training school disciplinary orders and sanctions on its website. Originally written for TDLR, this recommendation would now apply to TEA. (management action – nonstatutory)

Succession Planning

- TEA should develop and implement a succession plan to prepare for impending retirements and other potential workforce changes. (management action – nonstatutory)

Fiscal Implication

None of these provisions will have a significant fiscal impact to the State.

State Employee Charitable Campaign

S.B. 217 Patrick (Anchia)

Staff Contact: Joey Reed

Created as a benefit for state employees to make charitable donations through payroll deduction, the State Employee Charitable Campaign (SECC) is not a state agency, receives no state appropriation, and has no dedicated staff. The Legislature placed SECC under Sunset review in 2011, providing the first in-depth look at SECC's structure and operations since it was created in 1993. The Sunset review revealed that since SECC's first Campaign, the world of charitable giving has changed significantly, but SECC has not. SECC continues to operate as it always has, with a paper-based donation system, an unwieldy administrative structure, and little attention given to the cost or effectiveness of its operations to ensure continued success.

Within this context, the SECC Sunset bill, Senate Bill 217, provides SECC with the leadership, structure, and guidance necessary to not only bring the Campaign into the 21st Century, but to also allow it to continue to adjust to the changing needs of its participants. Senate Bill 217 charges the State Policy Committee with providing the leadership needed to modernize and improve the Campaign, including moving to an online donation system. The bill also requires the State Policy Committee to determine the structure that best meets the needs of its participants and to ensure Campaign costs do not exceed 10 percent of donations by streamlining the Campaign and reducing costs.

The following material summarizes results of the Sunset review of SECC, including a management action directed to the State Policy Committee that does not require statutory change. For additional information see the *State Employee Charitable Campaign Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation and Governance

- Continues SECC for four years until 2017.
- Restructures the composition and terms of the State Policy Committee and applies standard Sunset Across-the-Board recommendations to the Committee.
- Specifically charges the State Policy Committee with providing leadership for the Campaign, including developing a strategic plan and overall budget.

Campaign Eligibility and Structure

- Removes the statutory exemption that allowed charities that participated in the Campaign before 2003 to continue to participate even though their administrative costs exceeded 25 percent of revenues.
- Requires the State Policy Committee develop and enter into a contract with the State Campaign Manager to administer the Campaign.
- Requires the existence of both statewide and local campaigns, but removes the statutory requirements and specificity for Local Employee Committees and Local Campaign Managers.

- Requires the State Policy Committee to ensure the appropriate distribution of state employee and retiree donations to charities.
- Requires the Comptroller to provide the State Policy Committee with administrative assistance in overseeing the Campaign.
- Restructures the State Employee Charitable Campaign Advisory Committee.

Administrative Efficiency

- Clarifies that the combined administrative expenses of the Campaign cannot exceed 10 percent of all charitable donations raised.
- Directs the State Policy Committee to evaluate and streamline SECC's current processes, organization, and structure. (management action – nonstatutory)
- Requires the State Policy Committee, in conjunction with the State Campaign Manager, to maintain on the SECC website, annual summary information about the Campaign's performance.

Fiscal Implication

Senate Bill 217 will not have a fiscal impact to the State. Since SECC receives no state appropriation, costs to administer SECC will continue to come from a portion of employee donations made through the Campaign, capped at 10 percent of total donations raised.

Texas Board of Professional Engineers

S.B. 204 Nichols (Price)

Staff Contact: Steven Ogle

The practice of engineering is an established and respected profession, and the ability and character of those who meet the State's requirements to become professional engineers are not in question. However, the work professional engineers do has a significant bearing on the safety and welfare of all Texans that justifies the continuing need for state regulation. For that regulation to be effective, the Texas Board of Professional Engineers must have the proper tools to deal with those who do not comply with established requirements and pose a risk to the public.

The Sunset review of the Board focused on its ability to effectively enforce the Engineering Practice Act to ensure proper practice and to protect the public. Senate Bill 204, the Sunset bill for the Engineers' Board, addresses these needs by enabling the Board to take advantage of new technology to help it meet current requirements and giving it additional authority to act against individuals who violate the law. The bill gives the Board flexibility to administer the national accrediting examination electronically, and provides for electronic fingerprinting to ensure complete and accurate criminal history record information that is already part of the Board's license application process. The bill also gives the Board new tools to take meaningful action against individuals who violate the Act or Board rules. The bill authorizes the Board to take immediate action against professional engineers whose misdeeds pose an immediate threat to the public and to deter unlicensed activity. The bill also increases administrative penalties against violators to enhance the deterrent effect of the Board's enforcement efforts.

The following material summarizes results of the Sunset review of the Board. For additional information see the *Texas Board of Professional Engineers Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Licensing

- Requires the Board to adopt clear policies governing the testing process and removes a specific testing requirement that limits flexibility in how future testing is administered.
- Requires the Board to conduct fingerprint-based criminal background checks to review complete federal and state criminal history information on all applicants and current licensees.
- Prohibits the Board from collecting the \$200 professional fee before applicants satisfy licensing requirements as Professional Engineers.

Enforcement

- Increases the Board's administrative penalty authority from \$3,000 to \$5,000 per violation per day for violations of the Engineering Practice Act or Board rules.
- Authorizes the Board to suspend a license on an emergency basis for actions that present an immediate harm to the public.

- Grants cease-and-desist authority to the Board for the unlicensed practice of engineering.

Continuation

- Continues the Texas Board of Professional Engineers for 12 years.

Fiscal Implication

Senate Bill 204 will have a small, negative fiscal impact to the State of \$88,000 for the next biennium, with a loss of \$66,000 to General Revenue and \$22,000 to the Foundation School Fund. This loss will result from the Board no longer collecting the professional fee from applicants who fail to earn their professional engineer license.

Texas Ethics Commission

S.B. 219 Huffman (D. Bonnen) — Vetoed

Staff Contact: Karl Spock

Strongly held values, divergent public and individual interests, and a sometimes ruthless political environment make crafting and enacting workable solutions in ethics matters a struggle. Complicated, arcane ethics laws are difficult to understand, much less fix. The stakes are high and the perceived effects of changes on potential winners and losers can polarize discourse and harden positions, making common ground hard to find. Expectations for dramatic change can overwhelm other more easily achievable solutions, making such efforts seem small and pointless.

The Sunset review of the Ethics Commission occurred on just such a treacherous landscape and resulted in Senate Bill 219, the Ethics Commission Sunset bill, falling to a gubernatorial veto. The vetoed bill included a Sunset Commission recommendation that revised the Ethics Commission's enforcement authority to distinguish between minor reporting errors and more serious offenses. This revision was intended to clarify for the public the significance of violations, help remove the stigma unfairly placed on public officials accused of being "ethics violators" for minor reporting issues, and allow the agency to better focus its efforts on more significant violations to ensure the integrity of the overall process. Other Sunset Commission recommendations in the bill would have updated the disclosure process in light of technological changes and clarified various provisions in the lobby law to make expectations on lobbyists more apparent.

The Legislature added other provisions to S.B. 219 beyond those recommended by the Sunset Commission. The bill included a "resign-to-run" provision that required a member of the Railroad Commission to resign after announcing or becoming a candidate for other elective office. This provision was intended to keep a sitting commissioner's attention focused on agency business and to discourage use of the office to promote campaign donations in support of another elected position. The bill also enacted a modest reporting fee, effective in fiscal year 2016, to provide more secure funding for ongoing improvements to the Commission's computer systems, critical to efficient and user-friendly reporting. The shortcomings of the agency's technology highlighted in the Sunset review supported the Legislature's ultimate decision to appropriate \$3.5 million to the agency to overhaul its computer technology. The bill also included a series of other provisions changing disclosure or lobby laws.

The Governor's veto proclamation included the bill's resign-to-run and fee provisions among the reasons for the veto. According to the proclamation, the resign-to-run requirement would change the structure of a constitutional agency without the consent of the Texas voters. The proclamation also noted that those filing campaign finance reports should not be charged for participating in a process intended to be transparent to pay for a state agency.

The Ethics Commission is created by state constitution and is not subject to abolishment under the Texas Sunset Act. The next Sunset review of the agency is scheduled for 2025.

The Sunset review of the Texas Ethics Commission resulted in one Sunset Commission recommendation being enacted in legislation other than S.B. 219, and two management actions that are nonstatutory, as summarized below. For additional information see the *Texas Ethics Commission Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

- Clarifies in the Lobby Law that a lobby registrant does not lose any protection under the Lobby Law if reporting a portion of a joint expenditure made by a non-registrant. (H.B. 2984)
- Directs the agency to strengthen systems to verify the completeness and accuracy of disclosure information. (management action – nonstatutory)
- Directs the agency to better track and analyze information such as call volume detail and sworn complaint allegations. (management action – nonstatutory)

Fiscal Implication

The Sunset review resulted in no fiscal impact to the State.

Texas Facilities Commission

S.B. 211 Nichols (Dutton)

Staff Contact: Christian Ninaud

The Sunset review of the Texas Facilities Commission (TFC) brought to light the combined concerns of legislators and the public regarding the use of public-private partnerships (P3s) to develop state land under the relatively untested Public-Private Facilities Infrastructure Act (P3 Act). These concerns — including TFC's quick acceptance and use of this authority with limited direction, involvement, or oversight — dominated the discussion about the need for and role of the agency throughout the review. Ultimately, the review of TFC produced needed changes to ensure that TFC specifically, and other governmental entities generally, proceed more carefully with private development of public land.

Senate Bill 211, the TFC Sunset bill, makes significant strides toward developing state land with appropriate planning, greater transparency, stakeholder involvement, consideration of local community needs, and external oversight. These changes also aim to better balance the undeniable tension between developing state properties for a public purpose, while still benefiting both the State and private partners. In particular, the bill ensures that the development of the Capitol Complex, the heart of Texas government, is done carefully in collaboration with key stakeholders, and is agreed to and approved by state leadership.

The continuing controversy and concerns about the use of P3s to develop state properties also resulted in the Legislature enacting House Bill 3436, which places a statewide ban on any state agency P3 developments for one year. This ban is an extension of a nonstatutory Sunset Commission recommendation that directed TFC to delay any formal action on P3 proposals until September 1, 2013. Senate Bill 211 specifically improves TFC's approach to development of P3s by requiring TFC to provide sufficient rational and information to the public to justify decisions to pursue P3 proposals, and requires the expertise needed to effectively evaluate, implement, and oversee these projects. Beyond TFC's use of P3s, S.B. 211 also enacts significant changes to the broad P3 Act to protect the State's property rights, ensure consideration of local zoning and land use regulations, and require P3 projects to have a clear public purpose.

Considering the significance and importance of the changes in S.B. 211 regarding TFC's responsibilities, the Legislature chose to continue TFC for only two years. House Bill 1675 continues TFC until September 1, 2015 and requires the agency to undergo a limited Sunset review. This shorter review date provides the Legislature the opportunity to evaluate TFC's progress in implementing S.B. 211 sooner, and make any additional statutory changes that may be needed.

The following material summarizes results of the Sunset review of TFC, including management actions that do not require statutory change. For additional information see the *Texas Facilities Commission Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Development of the Capitol Complex and State Land

- Requires TFC to develop and formally adopt a Capitol Complex Master Plan to guide decision making on the Complex's future development.

- Prohibits TFC from selling, leasing (other than space in state office buildings and garages), or disposing of real property within the Capitol Complex.
- Requires TFC to submit the Capitol Complex Master Plan to the State Preservation Board (SPB), General Land Office, and Partnership Advisory Commission (PAC) for review and comment, and final approval by SPB and the PAC.
- Requires the Legislature to authorize, and the PAC to approve, each P3 project within the Capitol Complex, and otherwise excludes projects within the Capitol Complex from the P3 Act.
- Exempts the Capitol Complex from the state-owned properties the General Land Office is required to evaluate and make recommendations on regarding highest and best use, and possible sale.
- Requires TFC to develop and adopt a comprehensive planning process that guides and ensures more meaningful public and stakeholder input for its planning and development responsibilities.
- Ensures TFC Commission members receive advance notice of development projects in municipalities.
- Clarifies that Chapter 2166, Government Code, relating to construction and acquisition of state buildings, applies to property bought and sold for state purposes.
- Directs TFC staff to present information to the Commission at least 30 days before the Commission votes on an item related to development of TFC property. (management action – nonstatutory)

TFC's P3 Projects

- Requires TFC to include in its P3 Guidelines, specific review criteria and documentation to guide the initial review of P3 proposals, including professional expertise needed, and to make the evaluation results publicly available.
- Requires the Commission to use a value for money analysis, but authorizes the use of an alternative analysis methodology if a value for money analysis is not appropriate.
- Requires TFC to hold a public hearing on a P3 proposal before submitting it to the PAC, and to incorporate the public comments into the proposal submission.
- Requires TFC to submit each P3 contract to the Contract Advisory Team for review and comment before adoption by the Commission.
- Specifically authorizes TFC to charge a reasonable proposal fee to recover the costs of processing, reviewing, and evaluating P3 proposals.
- Prohibits outside employment of TFC P3 program staff in fields or activities related to their responsibilities at the agency.
- Directs the Commission to delay formal action on P3 proposals until after September 1, 2013. (management action – nonstatutory) The Legislature expanded this recommendation by enacting a statewide ban on any state agency P3 developments before September 1, 2014. (H.B. 3436)
- Directs TFC to provide financial information and analysis related to any P3 revenues to the Legislative Budget Board. (management action – nonstatutory)

Other P3 Projects

- Partnership Advisory Commission (PAC)
 - Requires the PAC to approve all state entities' P3 guidelines.
 - Requires the PAC to approve or disapprove each P3 proposal submitted for review and prohibits further negotiation of any P3 proposal disapproved by the PAC.
 - Specifies PAC meetings are subject to the Open Meetings Act.
 - Requires TFC to provide professional services to support the PAC in its review and evaluation of P3 proposals with the costs of these services recovered from fees.
- Public-Private Facilities and Infrastructure Act (P3 Act)
 - Ensures protection of the State's property and financial interests over those of private partners.
 - Authorizes the adoption of development plans on state property to conserve and enhance the value of the property, and sets out requirements of these plans.
 - Establishes a Special Board of Review and process to hear appeals of decisions on application of local zoning regulations to development on state property.
 - Adds new requirements for state and local government P3 Guidelines, including criteria for evaluating project design quality and life-cycle costs.
 - Establishes new criteria for P3 proposals, including requiring a statement of public purpose and evaluation of quality, conformity with community plans, historical significance, and environmental impact.
 - Clarifies proposal information not subject to public disclosure, including trade secrets and work products that would provide a competing proposer an unjust advantage.
 - Creates new requirements for public hearings and notice of P3 proposals.
 - Establishes conflict-of-interest and employment-prohibition requirements for employees involved in developing and implementing a P3 project.
 - Clarifies definitions in the P3 Act, including revenue, improvement, private entity, property, proposer, real property, revenue, and state entity.

Contracting

- Directs the Commission to formally adopt policies on contracting methods and indefinite delivery/indefinite quantity contracts in a public meeting. (management action – nonstatutory)
- Directs TFC to revise its policy on the use of interagency contracts and develop a policy for bundled contracts. (management action – nonstatutory)
- TFC should improve its procedures for soliciting and awarding contracts, including performing risk and needs assessments and documenting needed information. (management action – nonstatutory)

- Directs TFC to apply certain contracting standards to better align its contract administration procedures with commonly accepted best practices. (management action – nonstatutory)
- TFC should develop a policy to apply contracting standards to P3 contracts when applicable. (management action – nonstatutory)

TFC Deferred Maintenance

- Requires TFC to develop and regularly update a comprehensive capital improvement and deferred maintenance plan.
- Directs TFC to better track and report management and performance data about its deferred maintenance program and the condition of its building systems. (management action – nonstatutory)
- Transfers facilities maintenance services for the Texas School for the Blind and Visually Impaired and Texas School for the Deaf to TFC.

Other TFC Programs

- Specifies that lease revenues equal to certain costs associated with the parking program be appropriated back to TFC.
- Prohibits recipients of state surplus property from disposing of property for two years.

Continuation

- Continues TFC until 2015 and places the agency under a limited-scope Sunset review in the 2014-15 biennium. (H.B. 1675)

Standard Sunset Review Elements

- Continues all of TFC's reporting requirements, but aligns the due dates and recipients of selected reports to allow for report consolidation.
- Applies the standard Sunset Across-the-Board recommendation for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Fiscal Implication

Senate Bill 211 will not have a significant fiscal impact to the State, but could result in an estimated \$35,000 annual decrease in parking program revenues deposited to the General Revenue Fund and an increase by the same amount in Appropriated Receipts to TFC for parking lot and garage maintenance.

Office of Fire Fighters' Pension Commissioner

S.B. 220 Birdwell (Anchia)

Staff Contact: Joe Walraven

A central tenet of the Sunset process is that over time almost every state agency, no matter how obscure, has its time in the spotlight, where it must answer hard questions about what it does and why and whether it is needed or if other approaches could better meet the same objectives. For the Office of Fire Fighters' Pension Commissioner, a small agency created in 1937 to provide assistance, training, and other services to local firefighter pension plans, the answers initially seem obvious. Some functions, like providing state financial assistance to these local plans has long since ceased. Other activities, like meaningful financial or actuarial oversight, training, and hearing appeals of decisions by local plans largely occur through other agencies. Technical assistance and advocacy provided by a state agency to these local plans — however worthy — looks unfair and vaguely inappropriate. With this view, the Sunset Commission recommended that the Office and its functions with regard to these local firefighter retirement plans were not needed.

In the course of the legislative session, the answer became a little more nuanced. The Legislature did not see the Office so much as an anachronism whose duplicative functions were not needed, as it did an extra player that itself was not needed to provide the activities for these local firefighter plans that could be capably provided elsewhere. Senate Bill 220, the Sunset bill for the Office, reflects this subtle shift by not just abolishing the Office, but also providing for accommodating its training and assistance functions and its role as an intermediary for benefit appeals from local plans at the Pension Review Board. Under the bill, the Board is to designate a point of contact to assist these local retirement plans and serve as a conduit between local plans and the State of Office of Administrative Hearings, which will decide these appeals.

The Sunset experience for the other Office activity related to the Texas Emergency Services Retirement System (TESRS) follows a more linear narrative. The Fire Fighters' Pension Commissioner's responsibility to administer TESRS was never a good fit, given TESRS' own Governor-appointed Board of Trustees responsible for managing the fund and benefits. Senate Bill 220 eliminates the Commissioner's involvement, makes TESRS an independent entity with the authority to hire its own staff, and makes TESRS subject to future Sunset review. The bill also increases oversight of the TESRS Board's spending of state funds by requiring the Board to report more detailed information about TESRS' actuarial valuation to the Legislature and state leadership, and to conduct certain actuarial audits as a best practice. Increased legislative oversight will help minimize Board decisions that could increase the State's liability and costs from the system.

The Legislature also adopted provisions in Senate Bill 1, the appropriations bill, to ensure that the needed transfer of funds to continue the identified activities in the absence of the Office. Senate Bill 1 provides funding directly to TESRS to cover its own administrative costs and provides funding to the Pension Review Board to provide for the single point of contact for local firefighter plans. The bill also ensures that the State Office of Administrative Hearings continues to receive funding for appeals of benefit decisions from local plans.

The following material describes the results of the review of the Office of Fire Fighters' Pension Commissioner and notes which provisions are management directives not requiring statutory change and which changes are in appropriation. For additional information see the *Office of Fire Fighters' Pension Commissioner Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Abolishment

- Abolishes the Office of Fire Fighters' Pension Commissioner both in its roles for local firefighter retirement systems and for administering TESRS.
- Eliminates the Office's authority to collect reports from local firefighter retirement systems.
- Eliminates the Commissioner's role in hearing benefit appeals from local firefighter systems and the TESRS Board and establishes processes at the Pension Review Board and the TESRS Board for handling these appeals.
- Eliminates the Office's authority to conduct seminars or workshops.
- Requires the State Pension Review Board to provide technical assistance, training and information to boards of trustees of local firefighter retirement systems.

TESRS Oversight and Administration

- Authorizes the Governor to appoint a retiree to one of the current six TESRS board member positions reserved for active members.
- Makes TESRS subject to Sunset review every 12 years.
- Provides a direct appropriation to TESRS for staffing and administration. (S.B. 1)
- Updates and applies standard Sunset Across-the-Board recommendations to TESRS statute.

TESRS Funding

- Requires the TESRS Board to provide the Legislature with a range of options for meeting the State's contribution requirement should the Fund experience significant losses or increased liabilities.
- Requires the TESRS actuarial valuation to include detailed information on the impact of assuming both a full state contribution and no state contribution.
- Requires the TESRS Board to regularly conduct actuarial audits and experience studies to ensure accurate pension assumptions and valuation.

TESRS Contracting

- Requires TESRS to adopt a clear policy on contract management and oversight.
- The TESRS Board should designate staff to participate in contract management and oversight training. (management action – nonstatutory)
- The TESRS Board should adopt a rule containing the Comptroller's Historically Underutilized Businesses. (management action – nonstatutory)

Fiscal Implication

Senate Bill 220 will result in net savings to General Revenue of \$173,838 over the biennium, and the reduction of 2.5 staff. Initial savings of \$346,000 biennially were reduced by the cost of the Pension Review Board designating a staff person to work with local fire fighter plans.

Texas Higher Education Coordinating Board

S.B. 215 Birdwell (Anchia)

Staff Contact: Sarah Kirkle

The primary result of the Sunset review of the Texas Higher Education Coordinating Board was to refocus the agency on coordination, and not regulation, of public higher education. Specifically, the Coordinating Board's Sunset legislation, Senate Bill 215, removed the agency's authority to consolidate or eliminate low-producing degree or certificate programs and to approve capital projects at institutions of higher education. Senate Bill 215 also provided that powers not expressly delegated to the Coordinating Board by law are reserved to higher education institutions and their governing boards.

Other changes made through the Coordinating Board's Sunset review aim to improve the effectiveness of the agency's coordination efforts through more meaningful consideration of input from stakeholders. The Sunset bill renews the importance of stakeholder input by ensuring that valuable feedback from the public, stakeholders, and advisory committees is provided directly to the Board, and not filtered through agency staff. The legislation also includes requirements for the agency to engage in negotiated rulemaking.

The Sunset Commission also adopted a series of directives to focus the agency's leadership on more strategically managing the agency's operations. Most significantly, appointment of a single executive manager and revamping the agency's strategic plan will help the agency's management, stakeholders, and the Legislature narrow the agency's priorities and understand how well the agency is performing. Senate Bill 215 also clarified the Board's major functions and removed outdated and unnecessary statutory provisions, programs, and reporting requirements that divert the agency's focus from its core functions.

Several of the State's largest financial aid programs experienced changes through the Sunset review. For both TEXAS Grants and B-On-Time Loans, the Sunset bill removed students at two-year institutions from eligibility in the programs because these students often do not meet program requirements. Instead, the Legislature increased funding for these students through the Texas Educational Opportunity Grant program, which is specific to the needs of students at two-year institutions. The Sunset bill also enacted measures to address the B-On-Time Loan Program's three largest problems: low student participation rates, low loan forgiveness rates, and high loan default rates.

Senate Bill 215 also resulted in significant changes to the Texas Guaranteed Student Loan Corporation. The bill changes the Corporation from a public nonprofit corporation within state government to a private nonprofit corporation. In addition, the bill makes the Coordinating Board the state entity responsible for providing financial aid services, including awareness efforts relating to available grant and loan programs and prevention of student loan default.

The following material summarizes results of the Sunset review of the Coordinating Board, including management actions directed to the Board that do not require statutory change. For additional information see the *Texas Higher Education Coordinating Board Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Powers and Duties

- Limits the Coordinating Board's authority to expressly granted powers and reserves other powers to higher education institutions and their governing boards.
- Removes the Board's authority to approve capital projects for public higher education institutions.
- Redefines the Coordinating Board's powers and duties in statute to reflect the major functions of a modern higher education coordinating entity.
- Combines and simplifies long-range planning requirements for higher education in statute.
- Eliminates 20 unfunded and unnecessary programs from statute and four unnecessary reporting requirements.
- Requires the Coordinating Board to periodically re-evaluate the ongoing need for all existing data requests it imposes on higher education institutions through rule or policy.
- Provides for the Coordinating Board to administer pilot projects to identify best practices only in circumstances where other entities cannot or will not administer the programs.

Academic Program Oversight

- Updates the Coordinating Board's statute to clearly define its academic program approval authority in one section of law.
- Prohibits the Board from ordering the consolidation or elimination of a degree or certificate program.
- Caps the number of hours required for an associate's degree.
- Prohibits the Board from issuing a certificate of authority to a foreign post-secondary institution.
- Places conditions on the Board's review and approval of certain degree programs.
- Requires institutions to secure preliminary approval from the Board when an institution proposes to implement, instead of when it begins to plan for, a new degree program. Provides that a new degree or certificate program is automatically approved if the Board doesn't act within one year and prohibits the Board from disapproving a program without completing its review.

Transfer of Credit

- Requires an institution to annually update its list of courses in the common course numbering system and prohibits discrimination of transfer credits based on accreditation of the sending institution.
- Limits articulation agreement requirements for junior colleges offering a baccalaureate degree in applied science or applied technology.

Stakeholder Input

- Requires the Coordinating Board to provide opportunities for public comment as an agenda item for each board meeting.
- Requires negotiated rulemaking for certain policy areas, such as admissions and transfer policies.

- Requires the Coordinating Board to strengthen its internal controls for allocating financial aid and other trusteed funds and ensure stakeholder input by adopting allocation methodologies in rule.
- Requires the Coordinating Board to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria, and report recommendations directly to the Board.
- Directs the Coordinating Board to restructure and reduce its number of advisory committees. (management action – nonstatutory)

Strategic Agency Management

- Directs the Commissioner of Higher Education to ensure that a single high-level executive manages and coordinates the agency’s day-to-day operations. (management action – nonstatutory)
- Directs the Coordinating Board to revamp its statutorily required strategic plan to be specific to the agency’s goals and functions. (management action – nonstatutory)
- Directs the Coordinating Board to redesign its websites to better meet the needs of its stakeholders and ensure centralized control over the sites’ content and organization. (management action – nonstatutory)
- Directs the Coordinating Board to work toward revamping its budget pattern and performance measures to better reflect the agency’s functions. (management action – nonstatutory)

Compliance Monitoring

- Requires the Coordinating Board to establish a risk-based, agency-wide compliance monitoring function to help ensure the proper use of its funding and the accuracy of its data.
- The Coordinating Board’s Office of Internal Auditor should prioritize its core functions over other duties that divert its focus or impair its ability to independently evaluate the agency’s operations. (management action – nonstatutory)

B-On-Time Loan Program

- Removes all two-year institutions from participation in the B-On-Time Loan Program and increases the funding for public two-year institutions in a program better suited to those institutions’ needs.
- Changes the basis for the program’s funding allocation from an institution’s enrollment to the proportion of dedicated tuition set-asides paid by the institution.
- Grants higher education institutions discretion to determine the amount of an individual B-On-Time loan.
- Requires the Board to develop measures to address low participation and forgiveness rates for the program, and requires the Board to provide loan counseling to address high loan default rates.
- Requires an institution with a default rate that exceeds, or a forgiveness rate that is below, the program’s state average to provide loan repayment and default prevention counseling.

- Directs the Coordinating Board to seek a revision to federal regulations for alternative loans to exclude restrictions on state-sponsored loan programs. (management action – nonstatutory)
- Requires the Coordinating Board to include information about the B-On-Time Loan Program's progress in its annual financial aid report. (management action – nonstatutory)

Financial Aid and Research

- Removes two-year institutions from eligibility in the TEXAS Grant Program and expands the eligibility for transfer students to receive a TEXAS Grant.
- Requires the Board to study the creation of a state financial assistance program for competency-based online colleges and universities.
- Makes cosigners of a student loan liable for a defaulted loan and designates Travis County as the venue for suits.
- Creates the Student Loan Default Prevention and Financial Aid Literacy Pilot Program.
- Creates the Texas Competitive Knowledge Fund in statute.

Texas Guaranteed Student Loan Corporation

- Changes the Texas Guaranteed Student Loan Corporation from a public nonprofit corporation within state government to a private nonprofit corporation.
- Makes the Coordinating Board the state entity responsible for providing financial aid services, including awareness efforts relating to available grant and loan programs and prevention of student loan default.

Continuation

- Continues the Texas Higher Education Coordinating Board for 12 years.

Fiscal Implication

Fiscal implications of the Sunset review result only from provisions of the Sunset bill. The bill will have an estimated fiscal impact to the State of \$665,734 over the biennium to fund four additional staff for the agency's compliance monitoring function.

Texas Department of Housing and Community Affairs

H.B. 3361 Dutton (Birdwell)

Staff Contact: Eric Beverly

This special-purpose Sunset review of the Texas Department of Housing and Community Affairs follows a full review of the agency in 2011 in which changes were not enacted because the Governor vetoed the agency's Sunset bill. During a special session that summer, the Governor's concerns were resolved by the transfer of the Department's disaster recovery functions to the General Land Office. The Legislature continued the Department under Sunset review for two years, directing Sunset to review the appropriateness of the recommendations previously adopted.

With the exception of the disaster recovery recommendations, the Sunset Commission concluded that most of its previous recommendations remained appropriate. These changes were incorporated into House Bill 3361 and include improvements to the Department's low income housing tax credit program, compliance efforts, and oversight of the manufactured housing industry.

The following material summarizes the recommendations adopted as part of this special-purpose Sunset review of the Department. For additional information see the *Texas Department of Housing and Community Affairs Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Tax Credits

- Replaces neighborhood organization letters with voted resolutions from local city councils or county commissioners courts as a principle tax credit scoring item, but continues consideration of neighborhood organization letters as a lesser scoring item.
- Eliminates the requirement for letters of support from state senators, but continues consideration of letters from state representatives as a lesser scoring item.
- Allows the Department to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.
- Establishes local threshold requirements for noncompetitive 4 percent low income housing tax credit applications.

Compliance

- Clarifies the Department's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.
- Requires judicial review of appeals of the Department's decisions to be based on the substantial evidence rule, instead of a de novo review.

- Authorizes the Department to use debarment as a sanction and protection in all its programs.
- Specifies that the Department must provide development owners with certain periods of time to correct violations that fail to meet compliance requirements.

Manufactured Housing

- Requires the Manufactured Housing Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.
- Grants cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.
- Authorizes the Division to order direct refunds as part of the manufactured housing complaint settlement process.
- Authorizes Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.
- Eliminates manufactured housing branch and rebuilder licenses from statute.
- Authorizes the Division to collect a fee for reprinted manufactured housing licenses.
- Applies the standard Sunset Across-the-Board Recommendation for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Reporting Requirements

- Abolishes the Department's reports relating to energy and peak demand savings, the statutory Contract for Deed Conversion Guarantee Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.

Continuation

- Continues the Texas Department of Housing and Community Affairs for 12 years.

Fiscal Implication

House Bill 3361 will not have a significant fiscal impact to the State.

Department of Information Resources Comptroller Procurement and Support Services Division

H.B. 2472 Cook (Birdwell)

Staff Contact: Amy Tripp

The Sunset review of the Department of Information Resources (DIR) and the Texas Procurement and Support Services Division at the Comptroller's Office (Division) resulted in changes that set the stage for a future comprehensive evaluation of and improvements to the State's overall approach to purchasing and contracting for goods and services.

House Bill 2472, the DIR and Division Sunset bill, maintains the State's two statewide procurement programs within the separate agencies, but requires more formal coordination between them to identify areas of overlap, and opportunities for collaboration and possible consolidation of state procurement functions. The bill also requires the collection and analysis of comparable procurement data to better inform future decision making. Using the data collected through this effort, the bill requires the Sunset Commission to conduct a comprehensive evaluation of the State's approach to contracting and procurement in 2021, which will coincide with the next Sunset reviews of DIR and the Division. This evaluation will provide the Legislature the opportunity to consider and make more meaningful, overarching changes to the State's highly decentralized procurement and contracting systems.

House Bill 2472 also enacts nearly all of the changes made to DIR through its 2010 Sunset review, which were adopted by the 82nd Legislature but ultimately vetoed by the Governor. These changes address concerns with DIR's oversight, management of administrative fees and costs, and contracting practices. DIR has mostly addressed and corrected these previous concerns, but H.B. 2472 contains the statutory changes needed to ensure their ongoing implementation.

The following material summarizes results of the Sunset review of DIR and the Division. For additional information see the *Department of Information Resources and Comptroller Procurement and Support Services Division Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation, Coordination, and Future Evaluation

- Continues DIR for eight years and requires DIR to establish a customer advisory committee.
- Retains the Division's functions at the Comptroller's Office for eight years.
- Requires formalized coordination and improved data collection between DIR and the Division to allow for a more complete evaluation of their procurement programs in 2021.
- Requires the Sunset Commission to evaluate the State's overall approach to procurement and contracting in 2021 to coincide with the next DIR and Division Sunset reviews.

DIR Cost-Recovery Programs

- Requires DIR to establish clear procedures for setting, adjusting, and approving administrative fees for each of its cost-recovery programs as part of its annual budget process.
- Requires DIR to report its administrative fees and the methodology used to set them to the Legislative Budget Board annually, and post all fee information on its website.
- Establishes each of DIR's accounts in statute and limits expenditures to program purposes.

DIR Contracting Practices

- Strengthens and improves the Board's oversight of DIR's contracting functions.
- Establishes stricter conflict-of-interest provisions in DIR's statute.
- Requires DIR to consistently measure and report cost savings and project status for IT consolidation projects.
- Requires DIR to establish formal contract governance structures and management plans for each of its major outsourced contracts.
- Directs DIR to develop a clear policy governing the appropriate use of staff augmentation contractors and outside consultants.
- Requires DIR to better maximize the State's buying power through the agency's cooperative contracts program.
- Requires DIR to create a contract management guide to provide a clear, overall approach to managing its major outsourced contracts.
- Requires DIR to develop and implement an agencywide training policy for all staff involved in contract management and Board members.
- Requires DIR to respond to Contract Advisory Team feedback on solicitations.

DIR Internal Audit

- Requires DIR to establish an Internal Audit Division.
- Requires the DIR Board to maintain an audit subcommittee.

Standard Sunset Review Elements

- Applies the standard Sunset Across-the-Board requirement for DIR to develop a policy regarding negotiated rulemaking and alternative dispute resolution.
- Continues all of DIR's reporting requirements, but changes the due date for the Texas.gov reporting requirements.
- Abolishes the Division's report on Texas Correctional Industries products sold and continues the Division's other reports.

- Modifies the due date of the Division's Historically Underutilized Business (HUB) Education and Outreach Report and modifies the due dates and updates the recipients of the Annual and Semi-Annual HUB Reports.

Fiscal Implication

House Bill 2472 will not have a significant fiscal impact to the State.

State Commission on Judicial Conduct

S.B. 209 and S.J.R. 42 Huffman (Dutton)

Staff Contact: Erick Fajardo

Senate Bill 209 and Senate Joint Resolution 42 bring greater transparency to the State's oversight of judges in Texas. The bill, in conjunction with voter approval of the constitutional amendment proposed in the joint resolution, will authorize the State Commission on Judicial Conduct to use its full range of sanctions following formal proceedings, removing current law's disincentive for the Commission to conduct cases important to the public in open, formal proceedings.

An additional provision of the bill aimed at making the Commission more transparent and accessible to the public requires the Commission, after dismissing a complaint, to provide the reason(s) in plain language why the complaint failed to meet the definition of judicial misconduct. The bill also requires the Commission to hold an open hearing once every two years to allow the public to offer input on the Commission's mission and operations.

In future Sunset reviews, Senate Bill 209 requires the Commission to provide Sunset staff with access to observe its closed meetings and review confidential records to ensure a complete and thorough evaluation of the Commission's activities. The bill clarifies that Sunset staff must maintain the confidentiality of this information. As the Commission's confidentiality provisions limited Sunset's ability to conduct a full evaluation of the Commission's processes during this current review, Senate Bill 209 provides for the next review to occur in six years, rather than the standard 12-year period. After 2019, the Commission reverts back to a periodic Sunset review every 12th year.

The following material summarizes the results of the Sunset review of the Commission. For additional information see the *State Commission on Judicial Conduct Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Range of Sanctions

- Authorizes the Commission to use its full range of sanctions following open, formal proceedings.
- Authorizes a Court of Review to hear appeals of sanctions following formal proceedings based on a review of the record, in the same manner as it hears appeals of censures.

Procedural Rules

- Requires the Commission to report to the Supreme Court as needed on suggested changes to update the Commission's procedural rules.

Complaint Dismissals

- Requires the Commission, after dismissing a complaint, to provide the individual who filed the complaint with the reason(s) in plain language why the allegation made in the complaint failed to meet the definition of judicial misconduct.

Public Input

- Requires the Commission to hold an open hearing once every two years to allow the public to offer input on the Commission's mission and operations.

State Agency Status

- Clarifies that the Commission is a state agency for the administration of judicial discipline, and does not have the power and authority of a court.

Future Sunset Reviews

- Requires the Commission to provide Sunset staff with access to observe its closed meetings and review its confidential records to ensure a complete and thorough evaluation of the Commission's activities.
- Requires a Sunset review in six years, rather than the standard 12-year period.
- Maintains in law the requirement for the Commission to distribute an annual report on its activities to protect the public from judicial misconduct.

Fiscal Implication

Senate Bill 209 and Senate Joint Resolution 42 will not have a significant fiscal impact to the State.

Texas Lottery Commission

H.B. 2197 Anchia (Huffman)

Staff Contact: Amy Trost

The 83rd Legislature passed the first Lottery Commission Sunset bill since the agency's inception in 1993, but the path was anything but smooth. The controversial nature of the agency's business — administering the state lottery and regulating charitable bingo — contributed to the failure of Sunset bills in 2003 and 2005. While these failures did not threaten the agency's ability to continue operating the lottery, this time, concern about the lottery almost led to its abolishment. After initially voting down House Bill 2197, the House reconsidered, passed the bill, and required a legislative study regarding eliminating the lottery and the potential revenue impacts of doing so. The dramatic pendulum swings again demonstrate the tightrope the agency walks in balancing legislators' disdain for the lottery with a desire for the money it raises.

Besides continuing the agency, the lottery, and charitable bingo, the passage of House Bill 2197 enacts several changes that increase the agency's accountability and effectiveness and seek to increase the lottery's contribution to Texas schools. Among other provisions, the bill increases the size of the Commission to better oversee the business of the agency, especially the agency's major contracts and business processes to improve operating efficiency. The bill also eliminates the diversion of leftover unclaimed prize money currently going to General Revenue to ensure that more lottery money goes to the Foundation School Fund.

The Sunset review highlighted the deep budget cuts experienced by the agency's bingo program in recent years and identified strategies for improving regulation and recovering costs of this regulatory effort. House Bill 2197 gives the agency regulatory tools and fee flexibility to achieve more effective bingo regulation. The Legislature also enacted a Sunset Commission recommendation in Senate Bill 1 to help ensure that appropriations decisions regarding bingo regulation are based on the true cost of the program and not prize fee revenues passed through to local governments. Senate Bill 1 also expands on Sunset directives for the agency to seek to cover the full cost of bingo regulation by approving additional funding and staffing to restore the recent budget cuts, contingent on the agency increasing revenue from licensing fees. These changes will help ensure the agency can more effectively regulate the complex, cash-based bingo industry.

The following material describes the results of the Commission's Sunset review and notes which provisions are management directives not requiring statutory change and which are changes in appropriation. For additional information see the *Texas Lottery Commission Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Commission Size and Responsibility

- Increases the Texas Lottery Commission from three to five public members.
- Requires the Lottery Commission to approve major contracts.

Legislative Review Committee

- Establishes a 10-member legislative committee to study both the impact of eliminating the state lottery and aspects related to the distribution of revenue for charitable bingo.

Unclaimed Lottery Prizes

- Requires unclaimed lottery prize money that is currently going to General Revenue to be deposited in the Foundation School Fund.
- Specifies that if the Legislature appropriates general revenue for the three programs currently designated to receive unclaimed lottery prize money, then all unclaimed prize money must go to the Foundation School Fund.

Contracting

- The Commission should improve collection and dissemination of information about contract sanctions, outcomes of negotiations, and contract close-out results. (management action – nonstatutory)

Business Planning

- Requires the Lottery Commission to develop a comprehensive business plan including specific evaluations of, and goals tied to, efficiency and performance.

Foreign Language Disclosures

- Requires the Lottery Commission to adopt rules requiring any scratch-off game ticket that contains a number of words in another language to include disclosures in that language.

Bingo Regulation and Funding

- Removes the fixed license amendment fee from statute, and requires the Commission to adjust fees by rule to cover the costs of processing amendments.
- Authorizes the agency to charge a fee to cover the costs of adding bingo hall workers to the Registry of Approved Bingo Workers.
- Requires the agency to use risk analysis to select licensees for bingo inspections, and put its inspection policies in rule.
- Requires the Commission to develop a goal to audit all of the highest-risk bingo licensees within a certain timeframe, and put its audit policies in rule.
- The Commission should reassess the full cost of bingo regulation and seek to adjust license fees and its legislative appropriations request accordingly. (management action – nonstatutory)

Bingo Prize Fees

- Removes bingo prize fees from the Lottery Commission's bill pattern. (S.B. 1)

Bingo and Lottery Licensing Standards

- Requires the Commission to address felony and misdemeanor convictions in bingo regulation according to established standards in the Occupations Code.
- Requires the agency to create a standard bingo license renewal process, and removes the nonstandard provisions for two-year bingo license fees.
- Removes the statutory fee levels for bingo manufacturer and distributor licenses.
- Requires the Commission to develop procedures for the entire complaint process for both bingo and lottery, including an analysis to identify trends or issues relating to violations and provisions for reporting on and addressing the trends and issues.
- Conforms the Lottery Act and Bingo Act to the Commission's current practice of conducting hearings through the State Office of Administrative Hearings.
- Authorizes the Commission to place suspended bingo licensees and registered workers on probation.
- Requires the Commission to amend its current bingo penalty schedule to include a full range of sanctions.
- Expands the Lottery Commission's authority to temporarily suspend bingo licenses to prevent financial losses to the State.

Across-the-Board Recommendations and Reporting Requirements

- Updates and applies standard Sunset Across-the-Board recommendations to the Lottery Commission.
- Eliminates the Commission's report on lottery tickets sold and prizes awarded and continues the Commission's other reports.

Continuation

- Continues the Texas Lottery Commission for 12 years.

Fiscal Implication

House Bill 2197 will result in a gain to the General Revenue Fund of about \$290,000 biennially, based on the Lottery Commission's adjustments to bingo licensing fees. The bill will also result in a gain to the Foundation School Fund of \$43.7 million in fiscal year 2014 and \$43.9 million in fiscal year 2015, and a loss to General Revenue in equal amounts. These changes result from the deposit of unclaimed lottery prize money into the Foundation School Fund that was previously deposited to General Revenue.

State Pension Review Board

S.B. 200 Patrick (Anchia)

Staff Contact: Michelle Kranes

The economic downturn, which by many accounts began in 2007, has shown how quickly public pensions that appear financially and actuarially healthy can become dangerously underfunded. States and cities facing burdensome, unfunded liabilities to their public employees find themselves having to make difficult, but necessary, pension reforms that likely should have been foreseen.

Recognizing the long-term financial risks associated with public pensions, the Texas Legislature created the State Pension Review Board (PRB) in 1979 to monitor the state's public pensions to help detect and address funding problems before they become insurmountable. The Pension Review Board monitors Texas' 360 state and local public retirement systems that represent approximately 2.3 million public employees, retirees, and beneficiaries and have assets totaling more than \$196 billion. After the Sunset review and action by the Legislature, PRB continues to be needed with a clearer focus on its core mission of overseeing the actuarial soundness of traditional defined benefit retirement plans.

Senate Bill 200, the PRB Sunset bill, relaxes reporting requirements for certain types of retirement plans that do not pose the kind of financial or actuarial risk that warrants state oversight. This change allows PRB to focus its limited resources on monitoring the larger, traditional defined benefit pensions that do present serious funding risks to their members, sponsors, and taxpayers. Along these lines, the bill strengthens reporting requirements for defined benefit pensions to allow PRB to fully evaluate their financial and actuarial condition. The bill also improves PRB's delivery of critical training to reach plans with fewer resources and a greater need for assistance. Reflecting the enhancements to PRB's oversight role, the bill removes the two legislative members from the Board, bringing PRB in line with most state oversight agencies, which have Governor-appointed boards.

The following material summarizes results of the Sunset review of PRB, including management actions directed to the agency that do not require statutory changes. For additional information see the *State Pension Review Board Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation and Governance

- Continues the State Pension Review Board for 12 years.
- Removes the two legislative members from the Board, reducing the Board's size from nine to seven members, each of whom is appointed by the Governor.

Focused Reporting

- Exempts defined contribution and local volunteer firefighter pension plans from PRB reporting requirements except for registration and basic plan information.
- Directs the agency to stop collecting unnecessary quarterly financial data from retirement systems. (management action – nonstatutory)

Enhanced Reporting Requirements

- Requires public retirement systems to provide PRB with a summary of significant plan changes within 30 days, rather than 270, of their adoption.
- Requires public retirement systems that conduct experience studies to submit copies of the studies to PRB.
- Clarifies in statute that sponsoring entity audits do not satisfy retirement systems' annual financial reporting requirements.

Retirement System Training

- Clarifies the agency's authority to provide training in a way that is accessible to all public retirement system trustees and administrators.
- Directs PRB to develop training content that more directly assists public retirement systems with managing their plans. (management action – nonstatutory)

Prohibition on Investments with Iran

- Prohibits the statewide retirement systems from investing in companies engaged in certain business operations with the government of Iran. The bill requires PRB to create and maintain a list of those companies and provide it to the statewide retirement systems.

Across-the-Board Recommendations and Reporting Requirements

- Applies standard Sunset Across-the-Board recommendations to the State Pension Review Board.
- Continues requiring PRB to submit its biennial report to the Legislature.

Fiscal Implication

Senate Bill 200 will not have a significant fiscal impact to the State.

Port of Houston Authority

H.B. 1642 D. Bonnen (Whitmire)

Staff Contact: Katharine Teleki

The Port of Houston Authority is a 100-year old organization that has largely escaped scrutiny and close accountability because of its location between state, county, and city governments, away from their direct oversight or control. The Sunset review provided a unique opportunity for opening up the Authority to the reforms needed to restore trust following a series of missteps and controversies that have rocked the organization in recent years. The resulting changes will help the Authority move beyond these distractions and refocus on its important mission as a market player and steward of the Houston Ship Channel, a key economic asset not just for the Houston region, but also the state and nation.

House Bill 1642, the Sunset bill for the Authority, addresses concerns about the Authority's governance by requiring an immediate leadership change. The bill removes long-tenured Port Commissioners, while maintaining local control over appointments and allowing for the transfer of institutional knowledge through the current Chair and more recently-appointed members. The bill also provides for the orderly transition of leadership in the future by adding appointment deadlines, clear terms, and term limits. These changes will help ensure governance going forward is about objective oversight focused on furthering the strategic goals of the Authority and not on appointing entities concentrating and holding power or Port Commissioners distracted by extraneous matters or the perks of office.

Aside from these well-publicized changes to Port Commission appointments, House Bill 1642 also includes many other provisions to promote ethics, good governance, and oversight. The bill adds financial disclosure and conflict-of-interest requirements for Port Commissioners, and improved ethics standards for both Commissioners and Authority staff. The bill makes the Authority more accountable to its stakeholders by specifying public engagement and complaints standards, and requiring more comprehensive and transparent strategic and capital planning. The bill also requires improved guidelines for promotional spending to end the controversy and distraction these expenditures have caused for many years. Finally, House Bill 1642 ensures the Authority's operations are subject to ongoing oversight through a standard internal audit program, financial audits by the Harris County Auditor, and a follow-up Sunset review in four years. The bill does not address continuation of the Authority because it is not subject to abolishment under the Sunset Act.

Beyond these specific changes, the Sunset review process provided opportunities for making other improvements through the drafting of House Bill 1642 and through directives the Authority's management can implement without the need for statutory change. The bill pulls together the Authority's tangled session laws dating back to 1927 and places them in one chapter in the codes, where responsibilities and powers can be more clearly presented and understood. Through the review, the Sunset Commission also directed the Authority's management to standardize procurement procedures and provide additional attention to its safety program and role to oversee the Houston Pilots. Ultimately, of course, it will require committed leadership to fully implement these and other Sunset recommendations and ensure that meaningful and lasting culture change occurs.

The following material summarizes results of the Sunset review of the Authority, including management actions directed to the Authority that do not require statutory change. For additional information see the *Port of Houston Authority Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Governance

- Maintains a locally appointed, seven-member Port Commission, but adds term limits of 12 years, replaces long-serving members by October 2, 2013, and adds procedures to encourage timely appointments.
- Requires the Commission to develop and implement policies clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Authority's Executive Director and staff.
- Requires standard best practices to promote ethics and good governance for the Commission and Authority staff.

Public Engagement

- Requires the Authority to develop and implement a policy to guide and encourage more meaningful stakeholder involvement efforts.
- Requires the Authority to develop a standard process to receive, respond to, document, and analyze complaints.

Strategic Planning

- Requires the Authority to create a comprehensive strategic planning process, including long-range strategies and shorter-range implementation plans tied to financial and capital planning.

Audit Oversight

- Requires the Authority to establish an internal audit function following accepted internal auditing standards.
- Authorizes audit oversight of the Authority by the Harris County Auditor based on risk and clarifies related statutory provisions.
- Removes outdated provisions prescribing the Harris County Auditor's Authority-related audit duties.

Financial Controls

- Requires the Port Commission to adopt comprehensive and publicly available policies and provide detailed reporting on the Authority's use of the Promotion and Development Fund.
- Requires the Authority to adopt travel and expense policies to include generally accepted expenditure control elements with clear lines of accountability for both staff and Commissioners.
- Requires the Port Commission to accept gifts more than \$500 in an open meeting, and to document the purpose of these gifts in the Commission's minutes, similar to standards applying to state agencies.

Procurement

- The Authority should take steps to better manage and align its organizational approach to procurements. (management action – nonstatutory)
- The Authority should review small business goals and selected functions. (management action – nonstatutory)
- The Authority should eliminate or better manage ongoing professional services contracts. (management action – nonstatutory)
- The Authority should improve disclosure and communications policies for solicitations. (management action – nonstatutory)
- The Authority should take steps to improve the evaluation and award of contracts. (management action – nonstatutory)
- The Authority should establish a training program on conflicts of interest and other aspects of contracting. (management action – nonstatutory)

Safety

- The Authority should take aggressive steps to implement a coordinated and comprehensive safety program. (management action – nonstatutory)

Pilot Oversight

- The Port Commission, acting as the Pilot Board, should take a more active role in oversight of the Houston Pilots. (management action – nonstatutory)

Codification

- Transfers the Authority's un-codified source law into the Special Districts Local Laws Code for clarity, repeals obsolete provisions, and makes technical changes.

Additional Sunset Review

- Subjects the Authority to Sunset review but not abolishment in four years, and requires the Authority to pay the cost of the review.

Fiscal Implication

House Bill 1642 will not have a significant fiscal impact to the State. Provisions contained in the legislation and management directives are designed to improve the Authority's internal operations and efficiency, but the exact impact will depend on implementation. The bill also requires the Authority to pay for the cost of another Sunset review, estimated at \$240,093 during the 2016–2017 biennium.

State Preservation Board

S.B. 201 Birdwell (Price)

Staff Contact: Faye Rencher

The State has made a significant investment in the construction, restoration, and preservation of several historic and notable buildings, including the Capitol, 1857 General Land Office Building, Governor's Mansion, and Bob Bullock Texas State History Museum. The State Preservation Board (SPB) is the agency responsible for protecting and maintaining these irreplaceable elements of Texas heritage. The Sunset review of SPB produced comprehensive improvements to the governance and overall operations of the agency to allow it to more successfully manage its expanding duties, diverse operations, and funding limitations.

Senate Bill 201, the SPB Sunset bill, enacts changes to strengthen SPB's unique governance structure. The bill requires the Board to meet more regularly to provide the level of direction and oversight typical of most other state agencies, but allows its busiest members — the Governor, Lieutenant Governor, and Speaker of the House of Representatives — to appoint designees for needed flexibility. A series of directives made through the Sunset review also ensure the Board and agency establish needed and more transparent budget and planning tools to effectively manage agency operations and finances, particularly as SPB continues to rely more on its earned revenues and less on state funding.

Other changes made through the Sunset review help secure the future of the Bob Bullock Texas State History Museum, as it begins to carry out a \$10 million strategic plan designed to bring the Museum into national prominence. Senate Bill 201 establishes the museum director position in statute to clarify responsibility for the management of the Museum and to support efforts to earn national accreditation. The review also directs better use of the Museum Fund and more controls over partnerships with affiliated nonprofits, and allows for the naming of areas within the Museum in honor of donors or benefactors, to help it achieve greater financial stability.

The following material summarizes results of the Sunset review of SPB, including management actions directed to the Board and agency that do not require statutory change. For additional information see the *State Preservation Board Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation and Governance

- Continues the State Preservation Board for 12 years.
- Allows certain Board members to designate representatives to participate in meetings.
- Requires the Board to meet at least twice per year.
- The Board should resume oversight of SPB at a level typical of other agencies. (management action – nonstatutory)

Agency Operations

- Guides development of needed budgeting and planning tools.
 - Directs SPB to create and maintain an agency operating budget that includes all areas of expenditure and funding. (management action – nonstatutory)

- Establishes the Governor’s Mansion Renewal Trust Fund for the maintenance and preservation of the Governor’s Mansion.
- Directs SPB to create a comprehensive five-year capital improvement plan across all properties it manages and an annual project schedule. (management action – nonstatutory)
- SPB should conduct a regular, comprehensive assessment of the agency’s enterprise functions to evaluate potential for optimizing revenue. (management action – nonstatutory)
- The Board should modify its proposed rules governing SPB’s relationships with its affiliated nonprofit organizations to specifically address standards of conduct and ensure adherence to accepted best practices. (management action – nonstatutory)
- Authorizes development of staff policies and procedures.
 - SPB should develop and implement a succession plan to prepare for impending retirements and workforce changes. (management action – nonstatutory)
 - Directs SPB to formally document and regularly update its key duties and procedures in writing, and make them available electronically. (management action – nonstatutory)
 - Directs SPB to develop and implement an agencywide staff training and development policy. (management action – nonstatutory)

Museum Operations

- Requires the SPB executive director to employ a museum director to operate and manage the Museum.
- Requires the Board to adopt reasonable policies for naming areas within the Bob Bullock Texas State History Museum.
- Directs the Board to adopt a policy that clearly defines the roles and responsibilities of the museum director and the executive director in the management of the Museum. (management action – nonstatutory)
- Directs the agency to develop a separate strategic plan and annual report for the Museum by January 2013, and continue to provide the Museum Fund Annual Report. (management action – nonstatutory)
- Directs the Board to develop a policy on the use of the Museum Fund that governs the Fund’s balances by January 2013. (management action – nonstatutory)
- Provides the museum director with authority to create an advisory council to provide additional advice and expertise on Museum programming and operations by January 2013. (management action – nonstatutory)

Fiscal Implication

None of these changes will have a significant fiscal impact to the State.

Public Utility Commission of Texas

H.B. 1600 Cook (Nichols)

Staff Contact: Karl Spock

The Public Utility Commission (PUC) is the most reviewed agency in Sunset history. The importance of electric and telephone services and the evolution of electric and telephone industries from monopoly to restructured markets promoting competition underlie the legislative scrutiny PUC receives.

This cycle's review of PUC fits this historic pattern. The agency underwent Sunset review in 2011, but the Sunset bill failed to pass. The Legislature directed the Sunset Commission to immediately review PUC again for the 2013 legislative session, focusing on an assessment of the continuing relevance of Sunset Commission recommendations from the preceding review. This biennium's Sunset review of PUC resulted in the enactment of House Bill 1600, which includes most of the Sunset Commission recommendations from last biennium.

House Bill 1600 features the transfer of rate-related regulation of water and sewer utilities from the Texas Commission on Environmental Quality (TCEQ) to PUC, allowing TCEQ to concentrate on its core environmental mission while taking advantage of PUC's historic ratemaking expertise. The bill also revises water and sewer utility ratemaking from its current one-size-fits-all design to better accommodate differences in size and capacity available in the state's water and sewer utilities and improves services to consumers. The legislation gives the Office of Public Utility Counsel (OPUC) broad authority to advocate for residential and small commercial customers in this revised regulatory system.

The bill also gives PUC more tools to help ensure efficient and accountable operation of the state's electric grid and better protect electric customers. Of particular importance, House Bill 1600 adds provisions to strengthen PUC's oversight of the Electric Reliability Council of Texas (ERCOT). House Bill 1600 also includes provisions to improve PUC's governance. The bill requires commissioners to have specific types of relevant experience to help ensure that agency leadership is qualified to address complicated and critical utility issues.

The following material summarizes results of the Sunset review of PUC. For additional information see the *Public Utility Commission of Texas Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Water and Sewer Utility Economic Regulation

- Transfers responsibility for regulating water and wastewater rates and services from TCEQ to PUC on September 1, 2014.
- Revises water and sewer utility ratemaking to accommodate the differing regulatory needs and capacities of water and sewer utilities, with rules adopted by September 1, 2015.
- Provides for OPUC to represent residential and small commercial interests relating to water and wastewater utilities, beginning September 1, 2013.
- Requires PUC to make a comparative analysis of statutory ratemaking provisions under its authority to determine opportunities for standardization.

- Requires PUC and OPUC to analyze their staffing requirements and report potential changes in staffing needs to the Legislative Budget Board and the Governor’s budget office.
- By rider in Senate Bill 1 (General Appropriations Act), transfers funding and personnel from TCEQ to PUC and appropriates new funding and personnel for OPUC to carry out the agencies’ new responsibilities related to the economic regulation of water and sewer utilities. (See the Fiscal Implication section for more detail.)

Regulation and Oversight

- Authorizes PUC to issue emergency cease-and-desist orders to electric industry participants in circumstances such as those that threaten reliable electric service or create an immediate danger to public safety.
- Adds prohibitions related to the use of data from an advanced metering system.
- Requires PUC to provide for the renewal of certificates for Competitive Local Exchange Carriers.
- Requires PUC to exercise additional oversight authority over ERCOT through:
 - review and approval of annual budgets for ERCOT on a timeframe determined by PUC;
 - prior review and approval of all debt financing, except as negotiated by PUC and ERCOT; and
 - annual review of PUC-approved performance measures tracking ERCOT’s operations.
- Requires ERCOT’s System Administration Fee to vary when needed to match revenues to the budget approved by PUC.

Reports

- Abolishes PUC’s report relating to customer awareness for telecommunications markets and the System Benefit Fund report to the now abolished Electric Utility Restructuring Legislative Oversight Committee.

Governance and Continuation

- Prohibits PUC Commissioners from being employed by ERCOT for two years after leaving PUC, and makes other changes related to Commissioner or executive director conflicts of interest.
- Adds qualifications to help ensure the competence of PUC Commissioners.
- Continues PUC for 10 years.

Fiscal Implication

Fiscal implications of the Sunset review result from provisions of House Bill 1600 and related legislation. Senate Bill 1 makes the following rider transfers and expenditures from the Water Resource Management Account:

- transfers from TCEQ to PUC \$1,429,818 and 20 FTEs on September 1, 2014, for costs associated with the current level of TCEQ’s regulatory activity;

- transfers from TCEQ to PUC \$184,000 on September 1, 2014 to fund water and utility case hearings at the State Office of Administrative Hearings; and
- appropriates to OPUC an additional \$499,680 annually, beginning September 1, 2013 for five additional employees. This funding is a result of Senate Bill 567, a non-Sunset bill that also expands OPUC’s duties related to water and sewer utilities. Although these provisions were also added to House Bill 1600, in a “belts and suspenders” approach to better ensure passage, the costs are attributed to Senate Bill 567 and not the Sunset bill.

Railroad Commission of Texas

S.B. 212 Nichols (D. Bonnen) — Not Enacted

Staff Contact: Joey Reed

For the second consecutive legislative session the Railroad Commission's Sunset bill failed passage. Initially reviewed in 2011, the Railroad Commission's Sunset bill did not pass and the 82nd Legislature continued the Railroad Commission under Sunset review for another two years.¹ In 2013, the Sunset Commission again found a need for the functions of the Railroad Commission. However, with the significant and ongoing boom in oil and gas production, the Sunset Commission concluded having a more transparent and objective regulator was more important than ever.

To address these concerns, the Sunset Commission recommended changing the agency's name, limiting when Commissioners could solicit and receive campaign contributions, and requiring the automatic resignation of a Commissioner running for another elected office. The Sunset Commission also recommended several funding changes, including eliminating the statutory cap on the Oil and Gas Regulation and Cleanup Fund and creating a new pipeline permit fee to help support the agency's pipeline safety program.

The Sunset recommendations were incorporated into Senate Bill 212. The Senate passed this bill intact, but ultimately the bill was left pending in the House Energy Resources Committee. Although the agency's Sunset bill failed passage for a second time, the 83rd Legislature did address a key Sunset Commission concern in other legislation by increasing, rather than eliminating, the cap on the Oil and Gas Regulation and Cleanup Fund. The Legislature also continued the agency for four years, subject to Sunset review again in 2017. One provision — requiring the automatic resignation of a Commissioner running for another elected office — was adopted by the Legislature in S.B. 219, the Ethics Commission Sunset bill, that was later vetoed by the Governor.

The following material summarizes Sunset recommendations adopted in other legislation and management actions directed to the agency that do not require statutory changes. For additional information see the *Railroad Commission of Texas Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation

- Continues the Railroad Commission for four years until 2017; requires the Sunset review to include an assessment of other state agencies that are able to perform the Railroad Commission's functions; and requires the Railroad Commission to pay all costs of the review. (H.B. 1675)

Ethics

- Directs the Commission to review its recusal policy, and revise as necessary to ensure Commissioner's awareness of, and compliance with, these requirements. (management action – nonstatutory)

Funding Cap

- Increases the statutory cap on the Oil and Gas Regulation and Cleanup Fund from \$20 million to \$30 million, and increases the Fund's floor from \$10 million to \$25 million. (H.B. 3309)

Mineral and Land Owner Rights

- Directs the Commission to study the use and development of telecommunication technology designed to increase the transparency of, and the public's participation in, agency hearing processes and better protect the rights of mineral owners and land owners in the state of Texas. (management action – nonstatutory)
- Directs the Commission to develop a fee schedule for increased charges associated with re-filing previously withdrawn applications for forced pooling or field spacing exceptions. (management action – nonstatutory)

Fiscal Implication

These Sunset recommendations will not have a significant fiscal impact to the State.

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¹ S.B. 652, 82nd Texas Legislature, Regular Session, 2011.

Self-Directed Semi-Independent Agency Project Act

H.B. 1685 Price (Whitmire)

Staff Contact: Steven Ogle

Much has been made about how the Self-Directed Semi-Independent (SDSI) Agency Project Act enables the Accountancy, Architectural, and Engineering boards to operate outside the appropriations process by setting fees and raising revenue to pay for their regulatory programs. However, the Legislature also benefits under this arrangement. The Legislature is freed from having to set appropriations and performance measures for the agencies and is able to raise almost \$1.6 million in revenue to the State each year from these agencies for their participation in this process. In this light, absent significant misbehavior or poor performance by participating agencies, the results of a Sunset review of the SDSI Act would seem almost preordained.

The Sunset review, in fact, found that the SDSI Act was working as intended, that the agencies were operating responsibly, and that the initiative should be continued. At the same time, the review noted the dangers of relaxed oversight posed by SDSI status and the risk of increasing the number of SDSI agencies, especially under different statutory standards. The Sunset evaluation did not review the appropriateness of granting other agencies SDSI status, although the Legislature has scheduled a Sunset review in 2015 of the standards for granting SDSI status to future agencies, providing the opportunity to address such concerns.

The Sunset review of the Act produced several recommendations to ensure adequate oversight of the SDSI agencies and to set up the Act as the future means for governing SDSI status for state agencies. House Bill 1685, the SDSI Sunset bill, continues the SDSI Act, removing the Act's project status and separate Sunset date. Removing the Act's project status provides for codifying the Act in the Government Code as a standard approach should the Legislature choose to include additional agencies. An agency's status under the Act will be evaluated during its separate Sunset review. The bill also expands on existing reporting requirements by SDSI agencies to include more information, presented in trend format, to better enable oversight entities to see how the agencies have operated over time.

House Bill 1685 adds safeguards to the law to ensure that the agencies continue to operate under the same requirements as state agencies generally, and that they continue to use the State's payment and accounting system. The bill removes the possible incentive for these agencies to mix enforcement action with revenue generation by requiring them to remit administrative penalties to General Revenue. The bill also ensures that the agencies operate independent of State resources by requiring them to pay the cost of future Sunset reviews.

The following material summarizes results of the Sunset review of the Act, including new provisions added by the Legislature. For additional information see the *Self-Directed Semi-Independent Agency Project Act Sunset Final Report with Legislative Action* available on the Sunset Commission website at www.sunset.state.tx.us.

Continuation

- Continues the SDSI Act, removing the Act's project status and separate Sunset date.
- Expands the data in the current reports required by agencies subject to the SDSI Act.

Oversight

- Clarifies provisions of general law that do not conflict with SDSI status apply to the project agencies.
- Clarifies that agencies subject to the Act must use the Comptroller to make all payments, except for direct payments to the Safekeeping Trust Company from each agency's Trust Company account.
- Requires agencies subject to the Act to remit all administrative penalties to General Revenue.
- Requires agencies subject to the SDSI Act to pay the cost of their Sunset review.
- Clarifies that authorized scholarship fees do not have to be remitted to the State.

Fiscal Implication

House Bill 1685 will result in a positive fiscal impact of \$461,270 to the State for the 2014-2015 biennium, resulting from the agencies remitting administrative penalties to General Revenue. In addition, H.B. 1685 will result in future revenue gains in Appropriated Receipts resulting from SDSI agencies paying the cost of Sunset reviews.

APPENDIX

Appendix: Sunset Review Schedule 2015

21 Reviews

Administrative Hearings, State Office of
Aging and Disability Services, Department of
Assistive and Rehabilitative Services, Department of
Children With Special Needs, Interagency Task Force for
Developmental Disabilities, Texas Council for
Education Agency, Texas*
Education Agency, Texas – Contracts for Assessment Instruments*
Entry Criteria for Self-Directed Semi-Independent Agencies*
Facilities Commission, Texas*
Family and Protective Services, Department of
Health and Human Services Commission
Health Care Information Council, Texas
Health Services, Department of State
Health Services Authority, Texas
People with Disabilities, Governor’s Committee on
Purchasing from People with Disabilities, Texas Council on
Soil and Water Conservation Board, State*
Tax Division, State Office of Administrative Hearings
University Interscholastic League
Workforce Commission, Texas
Workforce Investment Council, Texas

* Limited-scope or special-purpose review.

