

# SUNSET ADVISORY COMMISSION

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## COMPLIANCE REPORT



### Implementation of 2019 Sunset Recommendations

2020–2021

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87<sup>TH</sup> LEGISLATURE

# SUNSET ADVISORY COMMISSION



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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood*

# **IMPLEMENTATION OF 2019 SUNSET RECOMMENDATIONS**

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# SUMMARY

An important element of the Sunset process is a check on agencies' progress in implementing Sunset recommendations from the previous legislative session. The Legislature expects agencies to effectively implement both the management recommendations of the Sunset Commission and the statutory provisions of an agency's Sunset bill. The Sunset Act requires the commission to review agencies' implementation of the commission's recommendations.

In 2019, the 86th Legislature passed 25 of the 26 bills containing the Sunset Commission's statutory recommendations. Sunset staff assessed each agency's efforts to implement the required statutory changes, a total of 252 provisions. Agencies fully implemented almost 90 percent of these changes, with most of the remainder in progress. The chart on page 3, *2019 Sunset Legislation Implementation by Agency*, shows the progress of each agency in implementing its changes. Key changes implemented as a part of the Sunset process include the following:

- Making significant changes to the state's complex alcohol laws, including dramatically streamlining the licensing structure, eliminating antiquated and duplicative regulations, and strengthening the ability of the Texas Alcoholic Beverage Commission's governing body to regulate the industry and oversee the agency.
- Creating the Texas Behavioral Health Executive Council by combining four behavioral health professions under one umbrella licensing agency to improve regulation and increase administrative efficiencies.
- Transferring the poorly run motorcycle and all-terrain vehicle safety training program from the Department of Public Safety to the Texas Department of Licensing and Regulation, and eliminating almost 27,000 unnecessary individual licenses regulating the private security industry.
- Transferring historic sites not attached to a state park from the Texas Parks and Wildlife Department to the Texas Historical Commission and establishing clear contract requirements and goals for the Heritage Trails Program.
- Consolidating the struggling Texas Board of Professional Land Surveying with the existing board regulating engineers, creating the Texas Board of Professional Engineers and Land Surveyors to regulate both related professions.

One Sunset bill, which would have continued regulation of plumbers by transferring the functions of the Texas State Board of Plumbing Examiners to the Texas Department of Licensing and Regulation, failed to pass during the 86th Legislature. This lapse effectively abolished both the board and the Plumbing License Law. On June 13, 2019, Governor Abbott issued an executive order to suspend the abolishment of the Texas State Board of Plumbing Examiners and the Plumbing License Law until May 31, 2021.

Detailed information on the statutory provisions in progress, partially implemented, or not implemented is provided for each agency in the following exception charts. The *Implementation Key* textbox on the following page explains the terms used to describe the status of the provisions.

In addition to statutory changes, the Sunset Commission adopted 226 management recommendations for improvements to agencies under review in 2019. As directed by statute, the State Auditor's Office

will evaluate the agencies' implementation of 181 of the management recommendations Sunset staff rated as having a high or medium priority.<sup>1</sup>

#### Implementation Key

- **Implemented:** The agency has fully implemented the provision.
- **In Progress:** The agency has begun efforts to implement the provision but has not completed or fully realized implementation of the provision.
- **Partially Implemented:** The agency has fully implemented some parts of the provision but has not taken any action to implement other parts.
- **Not Implemented:** The agency has not implemented or begun the process of implementing the provision.

**2019 Sunset Legislation Implementation by Agency**

<b>Agency</b>	<b>Statutory Changes Required</b>	<b>Changes Implemented</b>	<b>In Progress</b>	<b>Partially Implemented</b>	<b>Not Implemented</b>
Texas State Board of Public Accountancy	9	8	1	0	0
Texas Alcoholic Beverage Commission	25	18	7	0	0
Texas Behavioral Health Executive Council	16	14	2	0	0
Office of Consumer Credit Commissioner	6	6	0	0	0
Finance Commission of Texas, Texas Department of Banking, and Department of Savings and Mortgage Lending	6	6	0	0	0
Texas Funeral Service Commission	10	9	0	1	0
Texas Board of Professional Geoscientists	7	7	0	0	0
Guadalupe-Blanco River Authority	7	6	1	0	0
Texas Historical Commission	6	6	0	0	0
Texas Board of Professional Land Surveying*	11	10	1	0	0
Texas State Library and Archives Commission	10	10	0	0	0
Lower Colorado River Authority	5	5	0	0	0
Texas Medical Board	15	15	0	0	0
Texas Military Department	2	2	0	0	0
Texas Department of Motor Vehicles	24	22	2	0	0
Nueces River Authority	6	3	3	0	0
Department of Public Safety	27	25	2	0	0
Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board	15	14	0	1	0
Red River Authority of Texas	8	8	0	0	0
State Office of Risk Management	3	2	1	0	0
School Land Board	7	7	0	0	0
State Securities Board	5	5	0	0	0

Agency	Statutory Changes Required	Changes Implemented	In Progress	Partially Implemented	Not Implemented
Texas Veterans Commission	6	4	1	1	0
Veterans' Land Board	2	2	0	0	0
Texas Windstorm Insurance Association	14	13	0	1	0
<b>Totals</b>	<b>252</b>	<b>227</b>	<b>21</b>	<b>4</b>	<b>0</b>
<b>Percentage</b>		<b>90.1%</b>	<b>8.3%</b>	<b>1.6%</b>	<b>0%</b>

\*Now the Texas Board of Professional Engineers and Land Surveyors

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.012(d), Texas Government Code.

# BILL PROVISIONS

## Texas State Board of Public Accountancy

House Bill 1520, as adopted by the 86th Legislature, continues the Texas State Board of Public Accountancy for 12 years. The legislation included a total of nine changes requiring action. The following chart summarizes one provision that is in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees, phased in over a two-year period. Exempts licensees currently on “retired” status unless they decide to resume their practice with an active license.	In Progress	The board has implemented a fingerprint-based criminal background check for all licensure applicants and licensees. H.B. 1520 allowed the board until September 1, 2021, to complete all background checks. As of mid-November 2020, 24 percent of active licensees had not yet completed the check, due to the phase-in of the provision and limitations in accessing fingerprinting services associated with the COVID-19 pandemic.

## Texas Alcoholic Beverage Commission

House Bill 1545, as adopted by the 86th Legislature, continues the Texas Alcoholic Beverage Commission (TABC) for 12 years. The legislation included a total of 25 changes requiring action. The following chart summarizes seven provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Combines several subordinate licenses and permits to authorize the corresponding primary licenses and permits to transport and store alcoholic beverages, conduct product tastings, operate hotel minibars, and import and transport malt beverages	In Progress	<p>TABC has created an internal workgroup to develop strategies, tasks, and timelines to implement the transition to the new licensing structure that will take effect September 1, 2021. As part of this effort, TABC has:</p> <ul style="list-style-type: none"> <li>• Adopted rules related to temporary events.</li> <li>• Developed a schedule of additional rules that will need changing.</li> <li>• Developed a draft list of activities and associated timelines for completion, including updating application forms, website content, and other publications, and developing an industry communications plan.</li> <li>• Planned outreach to local beer-only jurisdictions to confirm their wet or dry status.</li> </ul> <p>TABC has also worked to ensure the new licensing structure and changes to excise taxes and other regulations are taken into account in building its new licensing management system, for which the Legislature appropriated funds during the 2020–21 biennium.</p>
2. Combines five temporary event permits for charitable, nonprofit, fraternal, veteran, religious, civic, and political entities into a single temporary event permit to sell, serve, and auction alcoholic beverages. Combines six subordinate temporary event permits with the associated primary licenses and permits.	In Progress	
3. Combines three similar late hours licenses and permits into a new Late Hours Certificate for retailers in areas with extended hours for alcoholic beverage sales.	In Progress	
4. Combines four separate passenger transportation permits into a new Passenger Transportation Permit authorizing airlines, trains, buses, and passenger boats to sell and/or serve alcohol onboard.	In Progress	
5. Modernizes and streamlines Texas' regulation of malt beverages by eliminating distinctions between beer and ale, and restructuring corresponding licenses and permits accordingly.	In Progress	
6. Eliminates licensing fees and surcharge authority in the code and requires TABC to set licensing fees in rule and periodically review and update them to ensure regulatory costs are fairly allocated.	In Progress	<p>TABC is considering several options for developing new fees that will take effect September 1, 2021, simultaneous with the new licensing structure. However, the agency does not have an anticipated timeline for publishing the proposed new fees. Once adopted, TABC plans to incorporate the new fees into its IT and budget systems, communicate changes to the industry and local governments, and publish the required local fee information on its website.</p>
7. Maintains the authority of cities and counties to levy a local fee for TABC permits and licenses issued within their jurisdiction by specifying they can collect a fee up to one-half of the fee that is in statute as of August 31, 2021, and requires TABC to publish those fees on its website.	In Progress	

## Texas Behavioral Health Executive Council

House Bill 1501, as adopted by the 86th Legislature, creates the Texas Behavioral Health Executive Council, an umbrella agency made up of the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Examiners of Psychologists, and the Texas State Board of Social Worker Examiners. The legislation included a total of 16 changes requiring action. The following chart summarizes two provisions that are in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires the executive council to adopt a policy clearly separating the policymaking responsibilities of the executive council from the management responsibilities of the executive director.	In Progress	The executive council is in the process of drafting and reviewing the required policy and anticipates final adoption no later than May 2021.
2. Requires the executive council to adopt a policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures.	In Progress	The executive council is in the process of drafting and reviewing the required policy and anticipates final adoption no later than May 2021.

## Texas Funeral Service Commission

House Bill 1540, as adopted by the 86th Legislature, continues the Texas Funeral Service Commission for 12 years. The legislation included a total of 10 changes requiring action. The following chart summarizes one provision that is partially implemented and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Updates the standard across-the-board requirements related to commission member training. Requires board members to submit a statement acknowledging they received and reviewed the training manual.	<b>Partially Implemented</b>	While the agency has updated commissioners' training materials according to Sunset's across-the-board provisions, the commissioners have not been required to submit a statement acknowledging they received and reviewed the training material.

## Guadalupe-Blanco River Authority

Senate Bill 626, as adopted by the 86th Legislature, improves asset management and provides for basic good government standards at the Guadalupe-Blanco River Authority (GBRA). The legislation included a total of seven changes requiring action. The following chart summarizes one provision that is in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires GBRA to develop and maintain a comprehensive asset management plan and post it on its website.		GBRA has created an asset management program, including hiring a full-time asset manager. Under this program, GBRA has begun to inventory and assess the risk of all its infrastructure and capital assets. However, GBRA has not yet completed the assessments and therefore has not created, nor posted online, an asset management plan. GBRA intends to complete the first draft of the plan by September 2021.
	In Progress	

## Texas Board of Professional Land Surveying

House Bill 1523, as adopted by the 86th Legislature, abolishes the Texas Board of Professional Land Surveying and creates the Texas Board of Professional Engineers and Land Surveyors. The legislation included a total of 11 changes requiring action. The following chart summarizes one provision that is in progress, and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Specifies the fingerprint background check requirement applies only to licenses, and not firm registrations or certificates, and only applies to an applicant or renewal filed with the board on or after September 1, 2020.	In Progress	The agency started renewing land surveying licenses for the first time since the bill's effective date beginning September 1, 2020, and renewals are due by December 31, 2020. The agency notified all licensees eligible for renewal about the change, updated application forms and its website, and anticipates completing this provision by the end of 2020.

## Texas Department of Motor Vehicles

Senate Bill 604, as adopted by the 86th Legislature, continues the Texas Department of Motor Vehicles (TxDMV) for 12 years. The legislation included a total of 24 changes requiring action. The following chart summarizes two provisions that are in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires the board to adopt rules and policies to establish clear standards for conduct and handling of contested cases coming before the board for final decisions. Requires the adopted rules and policies to specify the role of TxDMV personnel in managing contested protest cases before the board, limit arguments and discussion to evidence in the record from the State Office of Administrative Hearings, address ex parte communications, and distinguish between industry expertise and representing or advocating for an industry.	In Progress	TxDmv published proposed rules in the Texas Register on August 21, 2020. However, the agency did not adopt these rules at its December board meeting and pended the discussion for a future meeting. While implementation of the provision is in progress, the proposed rules insufficiently address the problems identified in the Sunset report and do not ensure current and future board members and stakeholders appropriately limit discussions regarding contested cases.
2. Requires TxDMV to create a risk based system of monitoring and preventing fraud related to vehicle registration and titling.	In Progress	TxDmv published proposed rules in the Texas Register on August 21, 2020. However, the agency did not adopt these rules at its December board meeting and pended the discussion for a future meeting.

## Nueces River Authority

Senate Bill 625, as adopted by the 86th Legislature, improves strategic planning and provides for basic good government standards at the Nueces River Authority (NRA). The legislation included a total of six changes requiring action. The following chart summarizes three provisions that are in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires NRA to adopt a policy encouraging the use of alternative dispute resolution.	In Progress	Due to complications from staffing changes, the authority did not complete implementation of these provisions. Staff is working to write these policies and expects to complete and implement them in 2021.
2. Requires NRA to adopt a policy governing the separation of duties between agency staff and the board.	In Progress	
3. Requires NRA to adopt a formal, written five-year strategic plan and engage in a regular strategic planning process. Requires the strategic plan to be posted online at the time of its completion and updated regularly when needed.	In Progress	NRA began a process of gathering input from throughout the basin to ensure its strategic plan would meet its constituents' basic needs. Because the process largely relied on in-person meetings, it was hindered by the COVID-19 pandemic, but is now almost complete. NRA expects to finish gathering information in early 2021 and complete its strategic plan by the end of 2021.

## Department of Public Safety

Senate Bill 616, as adopted by the 86th Legislature, continues the Department of Public Safety (DPS) for 12 years. The legislation included a total of 27 changes requiring action. The following chart summarizes two provisions that are in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Clarifies the Public Safety Commission's responsibility to take final enforcement actions for regulatory programs under DPS' jurisdiction, and prohibits the commission from delegating that responsibility to the director.	In Progress	The Public Safety Commission has made all final enforcement decisions and actions for regulatory programs since September 1, 2019. To fully implement the provision, DPS proposed updated administrative rules to the commission at its December 10, 2020, meeting. After the comment period, DPS will present the rules for adoption at the commission's February 11, 2021 meeting.
2. Discontinues regulation of precursor chemical and laboratory apparatus sales and transfers.	In Progress	Effective September 1, 2019, DPS ceased issuing new precursor chemical and laboratory apparatus permits, and all existing permits expired. The Public Safety Commission updated numerous rules to implement this provision. DPS also updated two memoranda of understanding, one that has been executed with the Texas Higher Education Coordinating Board, and one DPS is waiting for the Texas Education Agency to finalize.

## Texas Real Estate Commission and Texas Appraiser Licensing and Certification Board

Senate Bill 624, as adopted by the 86th Legislature, continues the Texas Real Estate Commission (TREC) and Texas Appraiser Licensing and Certification Board for six years. The legislation included a total of 15 changes requiring action. The following chart summarizes one provision that is partially implemented and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Updates the standard across-the-board requirements related to commission member training. Requires commission members to submit a statement acknowledging they received and reviewed the training manual.	<b>Partially Implemented</b>	While TREC has updated the commissioners' training materials according to Sunset's across-the-board provisions, not all of the commissioners have submitted a statement acknowledging they received and reviewed the training materials.

## State Office of Risk Management

Senate Bill 612, as adopted by the 86th Legislature, continues the State Office of Risk Management (SORM) for 12 years. The legislation included a total of three changes requiring action. The following chart summarizes one provision that is currently in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires SORM to review risk management guidelines at least biennially, update the guidelines at least every five years, and solicit feedback from state entities on topics to include ways to make the guidelines more user-friendly before updating. Requires SORM to review and update the guidelines by September 1, 2020.	In Progress	SORM completed a review of its risk management guidelines and prepared draft revisions in August 2020. The agency also convened a stakeholder group that will meet through July 2021 to provide feedback on the guidelines. The board will review and consider approval of the updated guidelines in July 2021.

## Texas Veterans Commission

Senate Bill 601, as adopted by the 86th Legislature, continues the Texas Veterans Commission (TVC) for 12 years. The legislation included a total of six changes requiring action. The following chart summarizes one provision that is partially implemented and one provision that is in progress, and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires TVC to annually evaluate and set priorities for all programs.		The agency implemented a requirement for each program to set goals through biennial program operational plans. While these plans are reviewed annually for any needed changes, goals are set every other year rather than annually as required by statute.
	<b>Partially Implemented</b>	
2. Requires TVC to create and track meaningful outcome measures for all programs.		The agency created outcome measures as directed by statute, but is still in the process of tracking and reporting all the measures. The agency expects to provide this information to its commission by February 2021.
	<b>In Progress</b>	

## Texas Windstorm Insurance Association

Senate Bill 615, as adopted by the 86th Legislature, helps ensure the Texas Windstorm Insurance Association (TWIA) communicates effectively with stakeholders, handles claims in a timely and fair manner, and minimizes surprises when policyholders go through the claims process. The legislation included a total of 14 changes requiring action. The following chart summarizes one provision that is partially implemented and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Applies the standard across-the-board requirement related to board member training and requires each TWIA board member to attest to both receiving and reviewing the training manual.		TWIA board members have signed a statement attesting to receiving and reviewing the training manual. However, the manual is missing information on the scope of the board's rulemaking authority, including the board's role in proposing rules to the Texas Department of Insurance, and the board's responsibility and authority to make rules generally.
	Partially Implemented	



# *Implementation of 2019 Sunset Recommendations*

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