



**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Office of Interstate Oil Compact Commissioner for Texas
Office of Interstate Mining Compact Commissioner for Texas
Office of Southern Interstate Nuclear Compact Board Member for Texas
Texas Commission on Interstate Cooperation
Texas Commission on Uniform State Laws
Texas Committee on Purchases and Services of Blind and Severely Disabled Persons
Council for Social Work Certification

A Staff Report
to the
Sunset Advisory Commission



1982

SUNSET ADVISORY COMMISSION

STAFF REPORT

on the

OFFICE OF INTERSTATE MINING COMPACT COMMISSIONER FOR TEXAS

1982

FOREWORD

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

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

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

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

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

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

INTRODUCTION AND ORGANIZATION OF AGENCY REVIEWS

The Texas Sunset Act abolishes several agencies on September 1, 1983 unless each is re-established by the 68th Legislature.

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

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

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

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

SUMMARY OF STAFF FINDINGS AND CONCLUSIONS

SUMMARY

Organization and Objectives

The Interstate Mining Compact was established in 1971 for the purpose of addressing the problems of surface mining through interstate action. Kentucky, Pennsylvania, North Carolina, and Oklahoma were the original states to enter into the compact. Since its creation, another 12 states have entered the compact: West Virginia, South Carolina, Maryland, Tennessee, Indiana, Illinois, Texas, Alabama, Virginia, Ohio, Louisiana, and Arkansas. Texas entered into the compact in 1975 and is an active participant.

The compact provides for the creation of an Interstate Mining Compact Commission composed of one representative from each member state. Texas' legislation names the governor as the compact commissioner for Texas, provides for an advisory body to assist the governor in considering problems related to mining, and provides the governor with the authority to appoint a representative to act in his place. Commissioner Mack Wallace of the Texas Railroad Commission serves as Governor Clements' appointed alternate to the commission.

The commission's areas of responsibility include: 1) advancing the protection of the land, water, and other resources affected by mining; 2) assisting in the reduction of pollution and the conservation of resources affected by mining; 3) encouraging state programs to achieve comparable results in protecting, conserving, and improving the usefulness of natural resources; 4) assisting the states in efforts to facilitate the use of land and other resources affected by mining; and 5) assisting in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Administrative support for compact activities and those of the Mining Council are provided by the Railroad Commission staff. Texas' membership contribution for 1981 totaled \$9,155 with payment made from general revenue appropriations through the governor's office.

The review of the activities of the mining compact commission member indicated that Texas has been well represented on the compact and has benefited from the activities of the Mining Council. However, certain modifications can be made to improve the activities related to compact membership. First, the governor's alternate on the compact should be designated as the chairman of the Mining Council, thus providing continued coordination of the council's advisory functions with activities related to participation in the compact.

Second, improvements can be made related to the membership of the Mining Council. The Sunset Commission's definition of public members should be included to prevent the possibility of a conflict of interest. Also, appointments to the council should be made in a timely manner and should conform to the statutory requirements for appointment.

The third improvement relates to information concerning Texas' participation in the compact. Currently, there is no annual report detailing compact and council

activities. This report would increase the general awareness concerning the activities of the compact commissioner and the mining council.

Need to Continue Functions

The review indicated that there is a continuing need for Texas to exchange information and influence federal decisions related to mining.

Approaches for Sunset Commission Consideration

I. MAINTAIN COMPACT MEMBERSHIP WITH MODIFICATIONS

A. Policy-making structure

1. Statutory

a. The statute should be modified to require that the governor's alternate to the compact serve as the chairman of the Texas Mining Council.

b. The statute should be modified to ensure that the public members currently required to be appointed to the Texas Mining Council meet the Sunset Commission definition of a public member.

2. Management improvement (non-statutory)

a. Appointments to the Texas Mining Council should be made in a timely manner and should conform to the statutory requirements for appointment.

B. Agency operations

1. Statutory changes

a. The statute should be modified to require an annual report detailing the activities and expenditures associated with Texas' participation in the compact. This report should be included in the annual financial report of the Office of the Governor.

II. ALTERNATIVES (statutory)

A. Amend the statute to designate a member of the Railroad Commission to serve as the governor's alternate on the Interstate Mining Compact Commission.

Currently, there are no statutory restrictions placed on the appointment of the governor's alternate. This approach would provide a means by which one of the statewide elected officials having primary responsibility for state mining policy could be represented on the compact. It would also provide a central point for payment of expenses of the Texas Mining Council. Under this approach, details of the activities and expenditures related to Texas' participation in the compact would be included in the annual report of the Railroad Commission.

AGENCY EVALUATION

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

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

BACKGROUND

Historical Development

The Office of the Interstate Mining Compact Commissioner for Texas was established in 1975 with the enactment of legislation which provided for Texas' membership in the Interstate Mining Compact. To understand Texas' involvement in the compact, it is helpful to briefly trace the compact's history.

The Interstate Mining Compact was created as a result of concerns being raised primarily over surface mining for coal and other mining activities in the 1960s. States began to realize that this type of mining was increasing, and that controls over surface mining practices were inadequate to protect the environment. As a result, in 1964 the Southern Governors Conference requested that the Council of State Governments assist interested states in forming a compact to provide a focal point for sharing information and discussing common problems related to the control of surface mining. The compact was drafted and became available for adoption by interested states in 1966. Kentucky became the first member followed by Pennsylvania and North Carolina. With the entry of Oklahoma in 1971, the compact became operational. Since that time, 12 additional states have become members: West Virginia, South Carolina, Maryland, Tennessee, Indiana, Illinois, Texas, Alabama, Virginia, Ohio, Louisiana, and Arkansas. The terms of the compact require that the governor from each of these member states serve as a commissioner on the compact's policy-making body, the Interstate Mining Compact Commission. In addition, the compact requires each state to establish a body to advise the governor on mining-related matters.

In looking at the reasons underlying Texas' entry into the Interstate Mining Compact in 1975, it can be seen that this period of time was marked by rapid increases in the use of surface mining in the state. As a result, there was concern that problems associated with increased surface mining be avoided. In addition, the state was aware that the federal government was considering legislation to regulate surface mining activities. With this knowledge came the concern that federal action might not meet the state's needs.

Responding to these concerns, the 64th Legislature took the dual course of enacting the Texas Surface Mining and Reclamation Act, Texas' first regulatory effort in this area, and entering the Interstate Mining Compact. The compact was

viewed as a useful means to gain access to the knowledge of other states and surface mining as well as to influence federal regulatory activities in favor of the state's needs.

Since Texas' entry into the compact, surface mining has continued to be an important activity in the state. Regulation of the industry has been an ongoing concern to both the state and the federal government which enacted regulatory legislation in 1977. Reflecting these circumstances, Texas has been an active participant in the mining compact from the beginning of its membership to the present time.

Current Programs and Objectives

The activities of the compact are supported by dues paid by member states. In 1981, the total compact budget was \$104,489, with Texas' share being \$9,155 from the General Revenue Fund. Contributions are determined by dividing one-half of the total budget in equal shares among the states, with the remainder assigned in proportion to the value of minerals, ores, and other solid matter mined in each state. However, state contributions are limited by statute to a maximum of \$10,000 per year. Overall compact activities are coordinated by an executive director and two support staff headquartered in Lexington, Kentucky.

REVIEW OF OPERATIONS

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

Policy-Making Structure

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

The mining compact statute provides that the governor represent Texas on the Interstate Mining Compact Commission. The governor is required to designate an alternate to represent him when he is unable to attend compact commission meetings or perform any other function related to commission business. Generally, as is the case in Texas, the governor's alternate attends the compact meetings and participates in other compact activities. Since Texas joined the compact in 1975, Mack Wallace, one of the three members of the Railroad Commission, has been the governor's designated alternate.

The statute also establishes an advisory body, the Texas Mining Council, to assist and advise the governor on matters relating to participation in the compact and on other mining matters. The council, composed of 11 members, includes representatives of the general public with demonstrated conservation interests; heads of state agencies, boards or commissions; and representatives of the mining industry.

The review of the policy-making structure indicated that, while Texas has been well represented on the compact commission and has benefited from the

activities of the mining council, the structure could be improved by making adjustments in the composition of the council and the selection of its members. The first area of improvement relates to selection of the council chairman. Currently, no statutory procedure exists for the election of a chairman, and the council has made this decision by a simple majority vote. The current chairman is the governor's alternate to the compact. This is beneficial in two ways. First, as mining council chairman, the governor's alternate is able to coordinate the council's advisory functions with the activities performed by the compact. Second, the Railroad Commission staff has been available to carry out the administrative functions of the mining council while the chairman has been a member of the Railroad Commission. There is, however, no assurance that the governor's alternate will continue to serve as chairman, thus continuing the benefits described above. In order to provide this assurance, the statute should be amended to require that the governor's alternate to the compact serve as the chairman of the mining council.

The second area of improvement related to the policy-making structure deals with the membership of the mining council. The first concern involves public representation on the council. The statute requires that at least three members be representatives of the general public with a demonstrated interest in conservation matters. However, there is no statutory provision preventing members of the general public with mining-related interests from appointment in this category. The Sunset Commission has developed an across-the-board recommendation which expands the definition of public membership to exclude industry-related persons from appointment as representatives of the general public. The statute should be amended to include this definition.

An additional concern with council membership relates to the appointment of members. First, appointments have not always been made in a timely manner. Current members, whose terms have expired, are serving until new appointments are made. Second, the statutory requirement that at least two members of the council be heads of state agencies, boards, or commissions has not been consistently followed in the appointment of council members. In order to address these concerns, these appointments should be made in a timely manner with attention given to requirements for appointment. The governor's office has indicated that attention will be given to this situation in the future.

Summary and Recommendations - Policy-Making Structure

The Mining Compact statute provides that the governor represent Texas on the Interstate Mining Compact Commission. The governor is required to designate an alternate to represent him when he is unable to represent Texas on compact matters. The governor's alternate has been Mack Wallace, one of the members of the Railroad Commission since Texas joined the compact in 1975. The statute also establishes an advisory body, the Texas Mining Council, which assists and advises the governor on compact matters and other mining concerns.

The review of the policy-making structure indicated that while Texas has been well represented on the compact and has benefited from the activities of the mining council, the structure can be improved in two areas: composition and selection of members. The first improvement relates to the selection of the mining council chairman. The governor's alternate on the commission should be specified by statute as the council chairman. This would allow the governor's alternate as council chairman to continue coordinating the council's advisory functions with the activities carried out by the compact.

The second area of improvement relates to the membership of the mining council. First, there is no statutory provision which excludes persons with mining interests from appointment as public members. The statute should be changed to include the Sunset Commission's definition of public members which excludes industry-related persons from appointment and prevents the possibility of a conflict of interest. Second, appointments have not been made in a timely manner, and statutory requirements related to the appointments of members have not been followed consistently. These problems should be addressed when new appointments are made.

The following recommended changes to the mining compact statute or practices were developed to address the above concerns.

- 1. The statute should be modified to require that the governor's alternate to the compact serve as the chairman of the Texas Mining Council.*

2. *The statute should be modified to ensure that the public members currently required to be appointed to the Texas Mining Council meet the Sunset Commission's definition of a public member.*
3. *Appointments to the Texas Mining Council should be made in a timely manner and should conform to the statutory requirements for appointment.*

Overall Administration

The evaluation of the overall agency administration focused, on determining whether the operating policies and procedures of the agency provide a framework which is adequate for the internal management of personnel and cash resources and which satisfies reporting and management requirements placed on the agency and enforced through other state agencies.

The review of the Office of the Mining Compact Commissioner for Texas and the Texas Mining Council indicated that there is no overall agency administration in the general sense. Administrative functions are limited to the processing of travel vouchers, payment of compact dues, and some clerical duties. Travel vouchers for the alternate and staff are paid through the Railroad Commission while vouchers for mining council members are paid through the governor's office. Compact dues are also paid from the governor's office. Most clerical services are provided by Railroad Commission staff.

However, a review of the statute of the Compact Commissioner showed that there is no provision for an annual report, a requirement generally placed on other agencies as a part of their overall administrative responsibilities. Reports of this nature are required because they are one of the few ways by which the public, the legislature, and state agencies can be informed of the activities of an agency.

Although Texas has participated in the compact since its inception and was instrumental in its creation, the review was able to document few pieces of information on the activities of the Office of the Compact Commissioner for Texas.

Requiring an annual report could increase general awareness concerning the activities of the compact commissioner and it would require relatively little effort or cost to include this information in the annual financial report required of the Office of the Governor.

Summary and Recommendations - Overall Administration

Although there is no administration in the general sense, administrative activities related to compact participation and the mining council have been provided by the Railroad Commission and the governor's office. One area of concern relates to the availability of information concerning compact and council activities. In order to increase the awareness concerning the activities of the commissioner and the council and increase the availability of information, an annual report to the legislature should be required.

The following recommended change to the mining compact statute or practices was developed to address these concerns.

- 1. The statute should be modified to require an annual report detailing the activities and expenditures associated with Texas' participation in the compact. This report should be included in the annual financial report of the governor's office.*

**NEED TO CONTINUE AGENCY FUNCTIONS
AND
ALTERNATIVES**

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

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

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

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

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

NEED

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

Functions

A review and analysis of materials relating to the creation of the compact and Texas' membership in the compact shows that the single function of the compact was, and is still, to provide an active forum through which member states could impact: 1) the development of a consistent approach to address the problems associated with surface mining; and 2) the development of an appropriate national policy concerning the regulation of surface mining.

The need for such a forum only exists as long as the type of problems it was created to address continue to exist. Interviews with personnel of the Texas Railroad Commission indicated that past efforts of the compact commission had resulted in changes in federal mining regulations which have benefited the state.

States representing the compact have maintained constant contact with the Office of Surface Mining of the Department of the Interior which is the federal agency responsible for promulgating and enforcing federal surface mining rules and regulations. Partly through compact efforts, federal regulations have been changed so that surface mining states are no longer treated as a single geographic entity, with greater allowances now being made for differences in physical characteristics of the states. Another change in federal regulations allowed the states to be responsible for their own surface mining regulation with approval from the Office of Surface Mining. The compact served as a useful forum for working with the federal government on this change and in helping Texas become the first state to be given such authority.

While changes in federal surface mining regulations have occurred, there are issues that have not been resolved and which are important to Texas. Currently, the Office of Surface Mining is reviewing all of the federal mining regulations in an attempt to change these regulations to reflect the present administration's policies. The compact commission will continue to work with the Office of Surface Mining to help ensure that these changes are in the best interests of the member states, including Texas.

In light of the fact that policy issues concerning the regulation of surface mining are yet to be resolved by the federal government, there is a continuing need for the involvement of Texas in the activities of the Interstate Mining Compact Commission.

Agency

Texas participation in the compact is provided through membership on the commission. There is no agency in the normal sense. A review and analysis of whether the current organizational structure is the only practical means of performing the function is not appropriate. However, one element of the structure of the Office of the Compact Commissioner was reviewed as to its appropriateness.

Currently, the statute provides that the governor appoint an alternate to represent him on the board as necessary. From the time that Texas entered the compact, the alternate has been a member of the Railroad Commission. Since this agency is primarily responsible for surface mining regulation in the state, appointment of a commissioner has ensured that the alternate is knowledgeable in this general mining area. However, there is no requirement to ensure that future alternates come from such a background. Reflecting this concern, the review also indicated that at least one other state is considering changing its statute to require that its alternate be a member of the agency responsible for the regulation of surface mining. As a possible approach, the law could be changed to require that the governor's alternate to the compact commission be a member of the Railroad Commission. This approach would provide a means by which one of the statewide elected officials having primary responsibility for surface mining regulation would represent the state in the governor's absence. Naming a person with such responsibility is beneficial in that there would be greater assurance that the decisions of the Mining Compact Commission would be closely linked with the surface mining activities and policy needs of the state. If the alternate is appointed from the Railroad Commission, details of the activities and expenditures related to Texas' participation in the compact would be included in the annual report of the Railroad Commission. In addition, as chairman of the Texas Mining Council, all administrative expenses such as travel reimbursement for this group could be centralized in the Railroad Commission.

Summary of Need and Alternatives

The review indicated that participation is necessary and that Texas should remain active in this area. Texas has benefited from the efforts of the compact which have influenced federal regulations. Also, there are issues related to federal regulations which still require the attention of the compact commission.

While participation is necessary, the review indicated that it would be possible to strengthen the type of representation provided through the alternate. The suggested approach which follows was developed to implement this alternative.

- 1. Amend the statute to designate a member of the Railroad Commission to serve as the governor's alternate on the Interstate Mining Compact Commission.*

Currently, there are no statutory restrictions placed on the appointment of the governor's alternate. This approach would provide a means by which one of the statewide elected officials having primary responsibility for state mining policy could be represented on the compact. It would also provide a central point for the payment of expenses of the Texas Mining Council. Under this approach, details of the activities and expenditures related to Texas' participation in the compact would be included in the annual report of the Railroad Commission.

ACROSS-THE-BOARD RECOMMENDATIONS

**OFFICE OF THE INTERSTATE MINING COMPACT
COMMISSIONER FOR TEXAS**

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X			1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
		X	7. Board members shall attend at least one-half of the agency board meetings or it may be grounds for removal from the board.
		X	8. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	9. Review of rules by appropriate standing committees.
	X		10. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	11. Require the board to establish skill oriented career ladders.
		X	12. Require a system of merit pay based on documented employee performance.
		X	13. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	14. Provide for notification and information to the public concerning board activities.
		X	15. Require the legislative review of agency expenditures through the appropriation process.

**Office of the Interstate Mining Compact
Commissioner for Texas
(continued)**

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