
*Recommendations to the
Governor of Texas
and Members of the
Seventy-Second Legislature*

Sunset Advisory Commission



Final Report

March 1991

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Chapter 1

General Overview



Chapter 1

Introduction

Over the past decade, there has been a sustained interest among the states in a new concept in legislative review popularly described as a 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 unless legislative bodies are given a structured approach, no systematic review will be directed toward the efficiency and effectiveness with which governmental programs are operated. The sunset process is, then, an attempt to institutionalize change and to provide a process by which this can be accomplished on a regular systematic basis.

A variety of approaches to the basic sunset concept have been enacted into law by different states, including one shot reviews of all agencies; staggered review of designated agencies over a defined time period; reviews that allow the reviewing body to determine the time periods and agencies; and reviews that are directed not to agencies but to selected functional groupings of state services.

The sunset process and approach finally adopted by Texas in 1977 was developed around concepts proposed by the Constitutional Convention in 1974 and the Joint Advisory Committee on Government Operations in 1976. Under the Texas Sunset Act, over 200 state agencies and advisory committees are scheduled for review or automatic termination at specified intervals.

To assist the legislature in its decision to continue or abolish an agency, the Act provides for a Sunset Advisory Commission. Membership of the commission consists of four members of the House of Representatives and one public member, who are appointed by the Speaker of the House, and of four members of the Senate and one public member, who are appointed by the Lieutenant Governor. Legislative members serve staggered four-year terms and public members serve two-year terms. The chair and vice-chair alternate every two years between the Senate and House of Representatives appointees. The commission is authorized to appoint a director and to employ sufficient staff to discharge its responsibilities in regard to agency reviews. The Sunset Advisory Commission is responsible for recommending to the legislature whether the agencies under review and their functions should be abolished or continued in some form.

The process of arriving at commission recommendations moves through four distinct phases beginning with an agency self-evaluation report to the commission. The second phase involves the preparation of an evaluation report by the staff of the commission. The third phase involves a public hearing at which the information contained in the reports and testimony by the public is considered. The final phase involves a decision by the commission of any changes it wishes to recommend to the legislature and incorporation of those recommendations into legislation. Traditionally, the legislation has been sponsored by the legislative members of the commission.

To date, the commission has reviewed 197 agencies. Actions taken by the 66th through the 71st Legislatures, under the sunset process, have been positive in terms of incorporating the concept into the existing legislative process.

Overview of Sunset Action

From 1979 to 1991

	1979	1981	1983	1985	1987	1989	Totals
Legislative Session	66th	67th	68th	69th	70th	71st	
Agencies Reviewed	26	28	32	31	20	30	167
Agencies Continued	12	22	29	23	18	25	129
Agencies Abolished Outright	8	2	3	6	1	3	23
Agencies Abolished & Functions Transferred	1	3	0	0	1	2	7
Agencies Combined	4	1	0	1	0	0	6
Agencies Separated	1	0	0	1	0	0	2

Across-the-Board Recommendations

Introduction

From its inception, the Sunset Commission has identified common problems with agencies reviewed. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for all agencies undergoing sunset review. These Across-the-Board Recommendations are listed below along with their justifications.

Recommendations Applied to All Agencies

1. Require public membership on boards and commissions.

The purpose of government is to protect the health, welfare and safety of the public. However, some agencies do not have public members on their boards. Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This potential problem can be addressed by giving the general public a direct voice in the activities of the agency through representation on the board.

2. Require specific provisions relating to conflicts of interest.

An agency may develop close ties with professional trade organizations and other interested groups which may not be in the public interest. Conflict-of-interest provisions are necessary to prevent these kinds of relationships from developing.

3. Prohibit a person required to register as a lobbyist from acting as general counsel to the board or commission or serving as a member of the board or commission.

Conflicts of interest can result when board members and agency general counsel are involved in lobbying. This guideline reduces the possibility of such conflict.

4. Require that appointment to the board or commission be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.

It is essential that state agencies be fair and impartial in their operations. The achievement of this goal is aided by the existence of policy-making boards whose appointees have been chosen on an impartial and unbiased basis.

5. Specify grounds for removal of a board or commission member.

Several of the preceding across-the-board provisions set out appointment requirements for board members (e.g., conflict-of-interest requirements). This provision specifies directly that it is grounds for removal of a board member if these requirements are not met. In addition, the provision clarifies that if grounds for removal exist, the board's actions taken during the existence of these grounds are still valid.

6. Require the board or commission to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.

The requirement of annual reports of all agency receipts and disbursements increases legislative overview of agency fiscal activities.

8. Require a system of merit pay based on documented employee performance.

Policies resulting from this recommendation create a framework for rewarding outstanding performance by agency employees.

9. Provide for notification and information to the public concerning board or commission activities.

The sunset review has shown that the public is often unaware of the regulatory activities of licensing agencies. Consequently, the effectiveness of licensing agencies in serving the general public may be limited. To help insure public access to the services of licensing agencies, steps should be taken to provide information on their services to the general public.

10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.

Various licensing agencies are not subject to legislative control through the appropriation process of the state. This lack of fiscal control by the legislature severely weakens the accountability of those agencies to the legislature and, ultimately, the public at large. By bringing these "independent" agencies within the appropriations process, the legislature and the public could be assured of: 1) full accountability for all state funds on a uniform basis for all agencies; 2) periodic review by the Governor's Budget Office, the Legislative Budget Board, and the legislature; and 3) increased efficiency of state operations through implementation of uniform budgeting, accounting, reporting, and personnel policies.

11. Require files to be maintained on complaints.

The sunset review process has shown that complete and adequate complaint files are not maintained by some agencies. This situation has increased the time involved in resolving complaints and limited the agencies' ability to protect the consuming public. The suggested approach would serve to lessen the problem by insuring that, at a minimum, files be developed and maintained on all complaints.

12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.

This provision ensures that all parties to a complaint are made aware of the status of the complaint and are provided with current information regarding the substance of the complaint as well as agency policies and procedures pertaining to complaint investigation and resolution.

13. Require development of an EEO policy.

This recommendation ensures that each agency develops a written, comprehensive Equal Employment Opportunity plan which is filed with the governor's office and updated annually. Agency efforts in this area are further enhanced by requiring the agency to file semi-annual progress reports with the governor's office.

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| <p>14. Require the agency to provide information on standards of conduct for board or commission members and state employees.</p> | <p>This recommendation ensures that the board informs its members and employees as to the provisions in state law concerning standards of conduct for state officers or employees.</p> |
| <p>15. Provide for public testimony at agency meetings.</p> | <p>This requirement ensures the opportunity for public input and participation in activities of the agency.</p> |
| <p>16. Require that the policy body of an agency develop and implement policies which clearly define board or commission functions and staff functions.</p> | <p>This recommendation establishes the executive director/administrator as the individual in charge of managing the agency's day to day activities. It removes the possibility of the board administering the agency in addition to setting agency policy.</p> |
| <p>17. Require development of a program accessibility plan.</p> | <p>This recommendation ensures that the agency addresses the need to make state-supported services accessible to non-English speaking people and people with physical or mental disabilities.</p> |
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Recommendations Applied to Agencies with Licensing Functions

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|--|--|
| <p>1. Require standard time frames for licensees who are delinquent in renewal of licenses.</p> | <p>Variations occur among licensing agencies in requirements concerning the number of days a license renewal may be delinquent before penalties are brought into effect. This provision is aimed at insuring comparable treatment for all licensees, regardless of their regulated profession.</p> |
| <p>2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.</p> | <p>This provision insures the timely reporting of examination results. The timely notification is important to those persons whose future plans are contingent on their examination scores.</p> |

3. Provide an analysis, on request, to individuals failing the examination.

This provision insures that examinees are informed of the reasons for examination failure. Such knowledge serves to protect the examinee from arbitrary restrictions, as well as protecting the public by insuring that deficiencies are adequately addressed and corrected before reexamination.

4. Require licensing disqualifications to be: 1) easily determined; and 2) related to currently existing conditions.

The statutes of many licensing agencies contain licensing disqualifiers which are vague and hard to define (such as the requirement that licensees be of "good moral character"). In addition, many provisions can permanently disqualify a person for licensure even though the disqualifying condition (such as drug addiction) is corrected. This across-the-board approach has been applied on a case-by-case basis in an effort to eliminate such vague and inequitable disqualifying provisions.

**5. (a) Provide for licensing by endorsement rather than reciprocity.
(b) Provide for licensing by reciprocity rather than endorsement.**

A policy of licensure by endorsement provides for the licensing of any out-of-state applicant by Texas without examination if the applicant is licensed by a state which possesses licensing requirements substantially equivalent to, or more stringent than, Texas' requirements. The endorsement policy protects the public interest, imposes uniform requirements on all applicants, and spares the already-licensed practitioner the cost and time required in "retaking" an examination previously passed in another state.

6. Authorize the staggered renewal of licenses.

This type of provision encourages the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. The staggering procedure improves the efficient utilization of agency personnel by establishing a uniform workload throughout the year and eliminating backlogs in licensing efforts and the need for seasonal employees.

7. Authorize agencies to use a full range of penalties.

As a general principle, an agency's range of penalties should be able to conform to the seriousness of the offenses presented to it. However, in many cases, licensing agencies are not given a sufficient range of penalties. This provision is intended to ensure that appropriate sanctions for offenses are available to an agency.

8. Specify board hearing requirements.

The statutes of varying licensing agencies contain board hearing provisions which parallel or were suspended by the provisions enacted in the Administrative Procedure and Texas Register Act. This across-the-board approach is a "clean-up" provision which directly specifies that a person refused licensure or sanctioned by a board is entitled to a hearing before the board, and that such Open proceedings are governed by the Administrative Procedure Act.

9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.

The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such a restriction limits public access to information regarding professional services and hampers the consumer's efforts to shop for "a best buy." Elimination of these rules or statutes restores a degree of free competition to the regulated area to the benefit of the consumer.

10. Authorize the board to adopt a system of voluntary continuing education.

This provision is applied on a case-by-case basis. It was determined that, with respect to certain professions, proper protection of the public was dependent on practitioners having a working knowledge of recent developments and techniques used in their trades. The continuing education requirement provides one proven means of ensuring such upgrading.

Overview of Sunset Commission Activities

During the past 18 months, from September 1989 through January 1991, the Sunset Commission conducted 10 days of public hearings to hear public testimony concerning the agencies under review. During these public hearings, over 200 people testified in person and sent in written suggestions and comments.

As a result of nearly 120 hours of public hearings and work sessions, the commission completed decisions on all of the 30 agencies under review. The overall actions by the commission are shown at the right.

Overall Commission Action	
Abolish	3 agencies
Abolish/Transfer	3 agencies
Combine	1 agency
Continue with modifications	23 agencies
Total	30 agencies

Actions taken by the Sunset Commission on the agencies under review reflect substantive policy changes in several areas. Several of the major policy changes are highlighted below.

Improving Agency Accountability to the Governor

The commission continued its approach to increase accountability between agency boards and the governor. A recommendation that the governor be given the authority to designate the chair of the policy body has been included in the reports for most of the agencies under review.

Increasing Public Membership on Agency Boards and Commissions

The commission determined that the balance between public members and licensee members serving on a board should be changed where the agency deals primarily with consumer complaints. In those cases, the commission recommended that there be a majority of public members appointed to the board or commission.

Improving Opportunities for Minorities and Women

The commission made several recommendations to specifically strengthen opportunities for minorities and women. These include:

- Providing a clear statutory structure for the Texas Department of Highways and Public Transportation and the Purchasing and General Services Commission to deal with increasing contracting opportunities for minority and women-owned businesses.
- Providing greater opportunities for minority law firms to share in the business of providing outside legal counsel to state agencies.
- Strengthening minority hiring requirements to put as a priority constant efforts to increase the pool of minority applicants and hires for state agency employment.

Reorganizing Strategic Planning for Health and Human Services Agencies

The Commission, through the review of the Health and Human Services Coordinating Council determined that the current structure used by the state to develop strategic plans for health and human services agencies had been so loaded down with operational functions that it could not effectively plan. An alternate structure that places the responsibility for planning in the Office of the Governor was developed and it was recommended that the Health and Human Services Coordinating Council be abolished.

Strengthening Environmental Protection

The Commission developed recommendations that strengthen policies relating to environmental protection, both for individual consumers, through changes in the Structural Pest Control Board to strengthen laws dealing with pesticide application for for the general public through requiring that the Department of Highways and Public Transportation develop environmental impact rules for state funded highway projects.

Improving the Structure Used to Regulate and Discipline Lawyers

The Commission, in the second sunset review of the State Bar, again recommended that the structure set up for lawyer discipline be changed to bring it in line with standards developed for all other agencies that license professions. These statutory changes generally track those developed by the State Bar and adopted by the membership of the State Bar.

Summary of Sunset Commission Action on Agencies Scheduled for Review by the 72nd Legislature

Agency	Date Created	Commission Decision
Accountancy, Texas State Board of Public	1915	Continue with changes
State Aircraft Pooling Board	1979	Continue with changes
Architectural Examiners, Texas Board of	1937	Continue with changes
Bar of Texas, State	1939	Continue with changes
Barber Examiners, State Board of	1929	Continue with changes
Capital Metropolitan Transportation Authority	1985	Continue with changes
Civil Defense and Disaster Compact Administrator for Texas, Office of	1951	Abolish
Conservation Foundation, Texas	1969	Abolish
Contracts for Correction Facilities and Services	1987	N/A
Cosmetology Commission, Texas	1971	Continue with changes
Dallas Area Rapid Transit Authority	1984	Continue with changes
Disabilities, Council on	1983	Abolish/transfer functions
Fire Fighters' Pension Commissioner, Office of	1937	Continue with changes
Fire Protection Personnel Standards and Education, Office of	1969	Continue with changes
Funeral Service Commission, Texas	1903	Continue with changes
Good Neighbor Commission	1945	Abolish
Health and Human Services Coordinating Council, Texas	1983	Abolish/transfer functions

Agency	Date Created	Commission Decision
Highways and Public Transportation, State Department of	1917	Continue with changes
Housing Agency, Texas	1979	Combine with another agency
Irrigators, Texas Board of	1979	Continue with changes
Jail Standards, Commission on	1975	Continue with changes
Land Surveying, Texas Board of Professional	1979	Continue with changes
Law Examiners, Board of	1919	Continue with changes
Long-Term Care Coordinating Council for the Elderly	1983	Abolish/Transfer functions
Motor Vehicle Commission, Texas	1971	Continue with changes
Pension Review Board, State	1979	Continue with changes
Pest Control Board, Texas Structural	1971	Continue with changes
Purchasing and General Services Commission, State	1979	Continue with changes
Real Estate Commission, Texas	1939	Continue with changes
Research Laboratory Commission, Texas National	1985	Continue with changes
Tumpike Authority, Texas	1953	Continue with changes

Overall Fiscal Impact for Sunset Reviews - 72nd Legislature

Agency	Estimate of Fiscal Impact: FY 92	Estimate of Fiscal Impact: FY 93
Accountancy, Texas State Board of Public	\$ 467,470	\$ 477,320
State Aircraft Pooling Board	20,460	20,460
Architectural Examiners, Texas Board of	258,378	194,002
Bar of Texas, State	(3,208,059)	(3,031,374)
Barber Examiners, State Board of	(42,726)	(41,106)
Capital Metropolitan Transportation Authority	(50,000)	0
Cosmetology Commission, Texas	54,021	54,021
Dallas Area Rapid Transit	0	0
Disabilities, Council on	16,136	17,756
Fire Fighters' Pension Commissioner, Office of	(1,905)	(1,905)
Fire Protection Personnel Standards and Education, Commission on	0	0
Funeral Service Commission, Texas	78,732	80,352
Health and Human Services Coordinating Council, Texas	1,158,489	1,302,780
Highways and Public Transportation, State Department of	4,234,358	3,764,699
Housing Agency, Texas	312,971	341,260
Irrigators, Texas Board of	(3,000)	(3,000)
Jail Standards, Commission on	35,700	35,700

Agency	Estimate of Fiscal Impact: FY 92	Estimate of Fiscal Impact: FY 93
Land Surveying, Texas Board of Professional	(6,400)	(6,400)
Law Examiners, Board of	(7,020)	(7,020)
Long-Term Care Coordinating Council for the Elderly	0	0
Motor Vehicle Commission, Texas	(75,687)	(75,687)
Pension Review Board, State	0	0
Pest Control Board, Texas Structural	0	0
Purchasing and General Services Commission, State	2,428,165	2,444,165
Real Estate Commission, Texas	29,000	54,000
Research Laboratory Commission, Texas National	0	0
Turnpike Authority, Texas	3,300	3,300
Total Per Fiscal Year	\$5,702,383	\$5,623,323

Sponsors of Sunset Commission Legislation

Agency	House Sponsor	Senate Sponsor
Accountancy, Texas State Board of Public	Smith, A.	Barrientos
State Aircraft Pooling Board	Cain	Carriker
Architectural Examiners, Texas Board of	Gibson	Green
Bar of Texas, State	Hury	Green
Barber Examiners, State Board of	Black	Green
Capital Metropolitan Transportation Authority	Naishtat	Barrientos
Civil Defense and Disaster Compact Administrator for Texas, Office of	No Legislation	
Conservation Foundation, Texas	No Legislation	
Cosmetology Commission, Texas	Edwards	Carriker
Dallas Area Rapid Transit Authority	Cain	Johnson
Disabilities, Council on	Schechter	Carriker
Fire Fighters' Pension Commissioner, Office of	Robnett	Carriker
Fire Protection Personnel Standards and Education, Commission on	Black	Carriker
Funeral Service Commission, Texas	Granoff	Barrientos
Good Neighbor Commission	No Legislation	
Health and Human Services Coordinating Council, Texas	Schechter	Carriker
Highways and Public Transportation, State Department of	Cain	Barrientos
Housing Agency, Texas	Turner	Barrientos

Agency	House Sponsor	Senate Sponsor
Irrigators, Texas Board of	Gibson	Henderson
Jail Standards, Commission on	Black	Carriker
Land Surveying, Texas Board of Professional	Gibson	Henderson
Law Examiners, Board of	Gibson	Green
Long-Term Care Coordinating Council for the Elderly	Schechter	Carriker
Motor Vehicle Commission, Texas	Cain	Carriker
Pension Review Board, State	Finnell	Green
Pest Control Board, Texas Structural	Gibson	Parker
Contracts for Correction Facilities and Services	No Legislation	
Purchasing and General Services Commission, State	Gibson	Barrientos
Real Estate Commission, Texas	Smith, A.	Green
Research Laboratory Commission, Texas National	Von Dohlen	Henderson
Turnpike Authority, Texas	Cain	Green

Chapter 2

Commission Recommendations

Chapter 2

Commission Recommendations to the 72nd Legislature

Texas State Board of Public Accountancy

Board Members

William R. Cox, Chair, Houston
Ronnie Rudd, Vice-chair, Houston
Ladelle M. Human, Secretary, Houston
Roger B. Clark, Treasurer, Stamford
Jarman Bass, Dallas
Stanley L. Blend, San Antonio
Leopoldo P. Botello, Jr., San Antonio
Nancy R. Brannon, Flower Mound
Paul W. Hillier, Jr., Dallas
Dwight L. Kinard, Abilene
Ear C. Lairson, Houston
John F. Lanier, Jr., Austin
William H. Quimby, Dallas
Rowland D. Pattillo, Waco
I. Lee Wilson, Dallas

Agency Functions

The Texas State Board of Public Accountancy was created in 1915 and is responsible for certifying and licensing people practicing public accounting in Texas. The board also registers the offices of partnerships and corporations performing accounting services in the state. Currently, there are over 44,000 certified public accountants and over 10,000 registered accounting firms in Texas. The agency is responsible for administering the national CPA examination in Texas, certifying and annually licensing CPAs, annually registering accounting firms, administering a program of mandatory continuing education and enforcing the requirements of the board and state law. Enforcement activities include disciplinary actions against licensees in violation of the law and legal action against persons practicing public accounting without a license. The agency

is also developing a quality review program to oversee the work products of CPAs licensed by the board.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 2,782,633	\$ 3,055,611
Percent of General Revenue	-0-	-0-
Number of Positions (1991)	40 FTE	

Commission Findings and Recommendations

The review of the Texas State Board of Public Accountancy included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the continued regulation of public accountancy in Texas. The Commission concluded that continued regulation is warranted to protect the public from the economic harm that might result from incompetent or substandard public accounting work or the rendering of unreliable opinions on financial statements. The Commission recommended that the regulation of the occupation of public accountancy be continued.

Assessment of Organizational Alternatives

The Sunset Commission assessed the potential benefits of transferring the regulation of public accountancy to the Texas Department of Licensing and Regulation, which licenses many businesses and occupations in the state. The Commission decided that due to the technical nature of the complaints regarding CPAs and the significant workload involved in administering the CPA examination in Texas, there would not be significant benefits from transferring the

duties of the board to a centralized licensing agency. The Commission recommended that the board be continued as a separate agency.

Major Recommendations

The Sunset Commission made several other recommendations related to the continued operations of the Texas State Board of Public Accountancy including the following major changes:

- Require the governor to designate the chair. Currently, the board's chair is selected by its members. This approach is not the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability by the board to the governor.
- Require one-third of the board to be public members. Currently only three out of the fifteen members on the board represent the public. This change will increase the number of public members to five to help ensure that the actions of the board reflect the interests of the public as well as those of the profession.
- Maintain the requirement for all CPA candidates to complete at least 150 hours of college credit after August 31, 1997, but reduce the number of accounting hours required from 42 to 30 and reduce the experience requirement from two years to one year. Require the Texas Higher Education Coordinating Board to report to the legislature in 1993 on the progress of universities toward implementing 150-hour, or five-year accounting programs. Establish a scholarship fund to assist accounting students in completing the additional hours necessary to meet the 150-hour requirement. These changes, while maintaining the 150-hour requirement, are aimed at making the other requirements for certification after 1997 less restrictive, ensuring that Texas colleges and universities will be prepared to offer 150-hour accounting programs by 1997, and minimizing any negative financial impacts on students through the development of the scholarship program.

- Authorize the board to use administrative penalties against any person who violates the Public Accountancy Act. Limit penalties to no more than \$1000 per violation and require all penalties to be deposited in the state treasury. This change will provide the board with an additional enforcement tool that can be adjusted, depending on the amount of the fine, to appropriately sanction licensees for a variety of violations.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$467,000 in fiscal year 1992 and \$477,000 in fiscal year 1993.

Complete List of Recommendations

1. Require one-third of the board to be public members.
2. Require the governor to designate the chair of the board.
3. Maintain the 150-hour educational requirement which goes into effect on September 1, 1997, but reduce the years of experience and the number of hours in accounting required at that time.
4. Require the Texas Higher Education Coordinating Board to report to the legislature in January 1993 on the progress of colleges and universities toward implementing 150-hour accounting programs to prepare students for meeting the increased education requirements that go into effect in 1997.
5. Establish a scholarship fund to assist accounting students in completing the additional hours necessary to meet the requirement for at least 150 hours of education after August 31, 1997; provide for funding of the scholarship program through an increase in CPA license fees; and provide for administration of the fund through the Texas Higher Education Coordinating Board.

6. Authorize the use of administrative penalties.
7. Remove age and citizenship requirements for certification.
8. Change individual license renewal from annual to biennial renewal.
9. Change the continuing education requirement from 120 hours every three years to 80 hours every two years to coincide with the biennial license renewal period.
10. Require public member representation on enforcement committees.
11. Require all final orders of the board regarding disciplinary actions against licensees to be open to the public.
12. Require the board to develop an improved complaint tracking system.
13. Exempt current internal auditors employed by a state agency from the new requirements for state agency internal auditors.
14. Specify board hearing requirements. (ATB)
15. Specify grounds for removal of a board member. (ATB)
16. Require development of an E.E.O. policy. (ATB)
17. Require files to be maintained on complaints. (ATB)
18. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
19. Require development of accessibility plan. (ATB)

20. Require standard time frames for licensees who are delinquent in renewal of licenses. (ATB-modified)
21. Require a system of merit pay based on documented employee performance. (ATB)
22. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
23. Require specific provisions relating to conflicts of interest. (ATB)
24. Require that appointments to the board be made without regard to race, color, handicap sex, religion, age, or national origin of the appointee. (ATB)
25. Require the board to establish skill-oriented career ladders. (ATB)
26. Require the board to develop and implement policies which clearly separate board and staff functions. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

State Aircraft Pooling Board

Board Members

Don Adams, Austin, Chair
James E. "Pete" Laney, Hale Center
Richard A. Box, Austin

Agency Functions

The State Aircraft Pooling Board was established in 1979 to assume custody, control, operation and maintenance of all aircraft owned or leased by the state. The board maintains ownership of all 61 state-owned aircraft and has operational control of 13 planes from its facilities at Robert Mueller Airport in Austin. The remaining 48 aircraft are operated by various state agencies around the states.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 2,404,296	\$ 3,446,903
Percent of General Revenue	15%	5%

Number of Positions (1991)

66 FTE

Commission Findings and Recommendations

The review of the board included an assessment of the need for the functions of the board; benefits that could be gained by performing the functions through another organizational structure; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the function of the board. The Commission concluded that the primary function of the board, to provide air transportation to state officers and employees traveling on official state business, should be continued. Commercial airlines do not provide

air transportation to many locations in the state where state business is conducted. In addition, air transportation provided by the board is often a more convenient and economical means of traveling to those locations than commercial airlines or private charter companies.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of allowing a private charter company to perform the functions of the board if a comparable service at a reduced cost. The Commission decided to recommend continuation of the board as a separate agency because the board is able to provide air transportation at a lower cost with greater flexibility than private companies.

Major Recommendations

After concluding that the function performed by the agency was needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes.

- Place planes owned by Texas A&M University under the jurisdiction of the State Aircraft Pooling Board. The planes owned by The Texas A&M University System are the only state planes not included in the state's aircraft pool. Placing the planes owned by Texas A&M University under the jurisdiction of the board would complete the centralization of the state's aircraft under the board.
- Authorize the State Aircraft Pooling Board to contract with the federal government and other governmental entities for the sale of aircraft fuel and maintenance services. The board currently lacks this authority which unnecessarily restricts the board's ability to generate additional revenue which could reduce overall costs to the state.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$20,000 in fiscal year 1992 and in fiscal year 1993.

Complete List of Recommendations

1. Remove the provision in statute that exempts planes owned by Texas A&M University from the jurisdiction of the board. Specifies that the planes owned by Texas A&M shall be based in College Station, that the plane's pilots must be employees of Texas A&M University, and Texas A&M is in primary control of flight scheduling with aircraft available to other agencies on a fee basis when available;
2. Authorize the board to contract with the federal government and other governmental entities for the sale of aircraft fuel and maintenance services;
3. Require public membership on boards and commissions (ATB);
4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee (ATB);
5. Specific grounds for removal of a board member (ATB);
6. Provide that 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 (ATB);
7. Require specific provisions relating to conflicts of interest (ATB);
8. Require development of an E.E.O. policy (ATB);
9. Require the board develop and implement policies which clearly separate board and staff functions (ATB);
10. Require a system of merit pay based on documented employee performance (ATB);

11. Require the board to establish skill-oriented career ladders (ATB);
12. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute (ATB);
13. Require the agency to provide information on standards of conduct to board members and employees (ATB);
14. Require development of accessibility plan (ATB);
and
15. Provide for public testimony at agency meetings (ATB);

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Board of Architectural Examiners

Board Members

Thomas W. Parker, Bryan, Chair
Earl P. Broussard, Jr., Austin, Vice-Chair
Jerry E. Yancey, Plano, Secretary/Treasurer
Morris A. Graves, Missouri City
James Langford, El Paso
Bob J. Wise, San Antonio
Dee Lynn Aguilar, Fort Worth
Cleveland Turner, III, Amarillo
George Ray Rodgers, Marshall

Agency Functions

The Texas Board of Architectural Examiners was created in 1937 to register and regulate the architectural profession in Texas. As a result of the agency's first sunset review in the 1977-1978 biennium, the board assumed responsibility for registering and regulating landscape architects in 1979. In fiscal year 1990, there were 9,424 registered architects and 1,185 registered landscape architects.

The main responsibilities of the agency are to examine and register qualified applicants as architects or landscape architects and to prescribe and maintain standards of professional conduct for these professions. The agency also evaluates the qualifications of applicants for registration, and investigates complaints related to architecture and landscape architecture. The board enforces a title act for both architecture and landscape architecture, restricting the use of the title of architect or landscape architect and the ability to offer services entitled architectural or landscape architectural services to individuals who have been registered by the board. Since January 1990 the board has also regulated the practice of architecture, prohibiting individuals who are not registered architects from providing architectural services for certain types of buildings. The profession of landscape architecture remains regulated through title restrictions only, so persons may still perform

landscape architectural services without being registered as long as they use a title other than landscape architect.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 673,951	\$ 747,781
Percent of General Revenue	-0-*	-0-*

* The agency's appropriations come from special funds supported solely by fees and penalties collected by the agency.

Number of Positions (1991)	55 FTE
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Commission Findings and Recommendations

The review of the agency included an assessment of the need for continued regulation of architects and landscape architects; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the state to remain involved in the registration and regulation of architects and landscape architects. The Commission concluded that there was a continued need to regulate architecture and landscape architecture to ensure that individuals have the education, experience and the demonstrated professional competence to enable them to practice in a way that protects the health, safety, and welfare of the public.

Assessment of Organizational Alternatives

The Sunset Commission further concluded that providing these functions through the current structure is the most logical alternative because of the expertise in architecture and landscape architecture needed for the effective regulation of these professions. In addition, the review was unable to identify any benefits that would be gained from merging or transferring the functions to another entity.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to designate the chair. Currently, the board's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the board to the governor.
- Charge the board with the registration and regulation of the profession of interior design. This recommendation would restrict use of the title "interior design" or "interior designer" to those who are licensed by the board. Applicants for licensure would have to complete at least six years of combined education and experience in the field, and to pass a licensing examination. The board would be authorized to establish fees for licenses, license renewals, and examinations. Fees would be deposited into the special fund already established for architects in the state treasury. The board would have the authority to revoke, suspend, or deny a license, place a licensee on probation after a license is suspended, or reprimand a licensee for a violation of the statute or rules.
- Require that a registered architect must prepare the architectural plans and specifications for any alteration or addition to a public building if the construction costs

exceed \$50,000 and the alteration will require the removal, relocation, or addition of a wall or the alteration or addition of an exit. Under current law, the statute specifies that architects are required on alterations to public buildings when those alterations involve structural or exitway changes that are "substantial and major." The addition of this language will ensure that public entities will know when to use architects for alterations to their buildings.

- Clarify that the owner of a building may choose either a registered architect or a licensed engineer as the prime professional for any construction, alteration or addition project. Currently, the statute does not prohibit this, but because it also does not expressly allow it, there has been some concern that owners of public buildings might be confused.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$258,000 in fiscal year 1992 and \$194,000 in fiscal year 1993.

Complete List of Recommendations

1. Establish regulation of the profession of interior design.
2. Require the governor to designate the board chair.
3. Specify that an architect would be required for alterations to public buildings when the construction costs exceed \$50,000 and the alteration will require the removal, relocation or addition of a wall or the alteration or addition of an exit.
4. Clarify that a registered architect or a licensed engineer may be the prime professional for public building projects.
5. Provide guidelines for assessing administrative penalties in the regulation of architecture.

6. Consolidate the landscape architects' fund with the architectural examiners fund; specify that interior designers' fees shall be deposited in the architectural examiners' fund and rename the architects' fund.
7. Change the composition of the board to make it four architects, one landscape architect, one interior designer, and three members of the general public; specify that one of the public members must be a person with a physical disability.
8. Authorize the board to set a fee for any action of the board involving an administrative expense in the regulation of architects or landscape architects.
9. Delete age requirement for registration as a landscape architect.
10. Change references to the word "license" to the word "registration" for statutory provisions regarding interior designers, architects, and landscape architects.
11. Require public membership on boards and commissions. (ATB)
12. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
13. Require specific provisions relating to conflicts of interest. (ATB)
14. Specify grounds for removal of a board member. (ATB)
15. Authorize the board to adopt a system of voluntary continuing education. (ATB)
16. Require development of accessibility plan. (ATB)
17. Provide for public testimony at agency meetings. (ATB)

18. Provide that 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. (ATB)
19. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading. (ATB)
20. Require files to be maintained on complaints. (ATB)
21. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
22. Require development of an E.E.O. policy. (ATB)
23. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
24. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. (ATB)
25. Require the board to establish skill-oriented career ladders. (ATB)
26. Require a system of merit pay based on documented employee performance. (ATB)
27. Provide for notice to a person taking an architecture examination of the results of the exam within a reasonable time of the testing date. (ATB)
28. Provide an analysis, on request, to individuals failing the architecture examination. (ATB)
29. Provide for registration as an architect by endorsement rather than reciprocity. (ATB)

30. Authorize the board to use a full range of penalties in the regulation of architecture. (ATB)
31. Specify board hearing requirements in the regulation of architecture. (ATB)
32. Require standard time frames for architecture registrants who are delinquent in renewal of registrations. (ATB)
33. Authorize the staggered renewal of architecture registrations. (ATB)
34. Provide for notification and information to the public concerning board activities. (ATB)
35. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
36. Provide for notice to a person taking a landscape architecture examination of the results of the exam within a reasonable time of the testing date. (ATB)
37. Provide an analysis, on request, to individuals failing the landscape architecture examination. (ATB)
38. Provide for registration as a landscape architect by endorsement rather than reciprocity. (ATB)
39. Require standard time frames for landscape architect registrants who are delinquent in renewal of registrations. (ATB)
40. Authorize the staggered renewal of landscape architecture registrations. (ATB)
41. Authorize agencies to use a full range of penalties in the regulation of landscape architecture. (ATB)

42. Specify board hearing requirements in the regulation of landscape architects. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

State Bar of Texas

Board Members

James Parsons, III, Palestine, President
Charles Dunn, Houston, President-Elect
Darrell Jordan, Dallas, Immediate Past President
Richard Hile, Jasper, Board Chair
Willis Gresham, Jr., Lamesa, Immediate Past Chair
Kirk Watson, Austin, President, TYLA
Charles Beckham, Jr., El Paso, Pres.-Elect, TYLA
Judge Michael Bradford, Beaumont, Immediate
Past President, TYLA
George Chapman, Dallas
Tom Cunningham, Houston
Martha Dickie, Austin
Larry Langley, Austin
Jerry Secrest, Temple
Sarilee Ferguson, Waco
Antonio Alvarado, Laredo
James Alsup, Midland
Charles Aycock, Farwell
Jerry Bain, Tyler
George Coleman, Dallas
James Coleman, Dallas
Preston Dial, Seguin
John Fostel, Decatur
John Foster, Del Rio
Preston Henderson, Edinburg
Larry Hicks, El Paso
Richard Hile, Jasper
T. Allan Howeth, Fort Worth
Mike Joplin, Dallas
Raymond Kerr, Houston
Charles Lummus, Cleburne
J. Michael Lytle, Richmond
Robert MacIntyre, Houston
Edward McDonough, Houston
M. Colleen McHugh, Corpus Christi
Harold Metts, Houston
Robert Middleton, University Park

Jack Pasqual, San Antonio
Spencer Relyea, Dallas
Carl Roth, Marshall
J. Lindsey Short, Jr. Houston
Ewing Werlein, Houston
Eduardo Aguirre, Houston
Willie Chapman, Austin
Christine Hernandez, San Antonio
Charles O'Reilly, Plano
Jan Wilbur, Houston
Gloria Leal, Austin
Judge Sheila Jackson Lee, Houston
Thelma Sanders, Dallas

Liaison Members

Honorable Raul A. Gonzalez, Justice,
Supreme Court of Texas, Austin
Honorable Bill White, Judge, Court of
Criminal Appeals, San Antonio
Honorable Barefoot Sanders, Judge,
U.S. District Court, Dallas

Ex Officio Members

Karen Johnson, Executive Director

Agency Functions

The State Bar of Texas was created in 1939 as the professional association for lawyers in the state and the agency responsible for discipline of attorneys. The state bar is an administrative agency of the judicial branch of state government under the oversight of the Supreme Court of Texas. Membership in the state bar, currently almost 55,000, is mandatory for all attorneys licensed to practice law in the state. The state bar is funded through membership dues and other generated income maintained outside the state treasury and the legislative appropriations process. The state bar performs a number of functions which are similar to those of other state agencies which license and regulate professions. These include monitoring the membership status of attorneys and their participation in specialty areas of practice, enforcing minimum legal education requirements, operating a disciplinary system to resolve complaints against attorneys, and operation of a client security fund. The state bar also performs a number

of functions which are more characteristic of a professional trade association such as a lawyer referral service, a system which provides for free legal service and numerous public service projects carried out by a section of the bar, the Texas Young Lawyers Association.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 21,658,216	\$ 22,745,025
Percent of General Revenue	-0-	-0-

Number of Positions (1991)	218 FTE
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Commission Findings and Recommendations

The review of the state bar included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the legislature to remain involved in the regulation of attorneys. While the supreme court has the inherent power to regulate the practice of law, the Commission concluded that the legislature should continue to aid the court in the regulation of attorneys through continuation of the state bar's statute.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of separating the professional and regulatory functions of the state bar by repealing the provision of statute which integrated the state bar. The supreme court would be left to judge whether it would be necessary to have an integrated bar and to develop a structure through the court's inherent power to regulate the practice of law. Regulatory functions would continue to be guided by statute. Because of the benefits of the current integrated bar structure the Commission decided to recommend its continuation and the current overall agency structure.

Major Recommendations

After concluding that the legislature should remain involved in the regulation of attorneys and the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operations of the agency. The recommendations include the following major changes:

- Place the general structure of the state bar's recently revised grievance process in statute. Require that the Commission for Lawyer Discipline, created to oversee the state bar's grievance procedure, be composed of an equal number of attorney and public members. Require that the commission select a chief disciplinary counsel to serve as administrator of the grievance process. Allow both parties to complaints to be present during all testimony taken in investigatory hearings. The process adopted by the state bar, with the changes suggested above, will address concerns raised about the current complaint process. These concerns include the need for separation of the grievance process from the "professional association" functions of the state bar and the need for public input in the oversight of the process.
- Provide for processing and investigation of all complaints by state bar staff using standardized procedures. Methods used to process complaints across the state have depended on the preference of the independent local committee responsible for the complaint. Important steps in the process, such as investigations, are left to local discretion resulting in inconsistent handling of complaints. Where paid staff are currently used by committees, standard procedures are followed with timely investigations and uniform treatment of complaints. These standard procedures should be followed when processing all complaints. Using staff for all investigations will help ensure standardized processing.
- Increase efforts to improve the public's awareness of the complaint process including notice to clients by attorneys of the existence of the state bar's grievance process. The public is not well enough informed about

the existence of the attorney grievance process and is receiving limited information on the opportunity to file a grievance against an attorney. The changes suggested will provide multiple opportunities to increase public awareness and ensure that clients are aware of the process if they need it.

- Require the Commission for Lawyer Discipline to develop rules governing the use of private reprimands. Limit to one the number of private reprimands an attorney may receive for the same type of offense and do not allow private reprimands in cases involving theft or intentional misuse of funds. Current use of private reprimands by the state bar can unnecessarily restrict the public's access to information on certain disciplinary actions against attorneys. The state bar has indicated that the private reprimand is useful to address primarily one-time minor infractions. Requiring the commission to adopt rules governing the use of private reprimands will ensure consistent use of the sanction. The restrictions on when a private reprimand can be used will ensure that the public has access to information on the more serious types of violations as final disciplinary action in those cases will be open to the public.
- Establish the state bar's client security fund in statute under oversight of the supreme court. Increase the limit for claims from \$20,000 to \$30,000 and require a beginning of the year balance of \$1.25 million. The client security fund is not statutorily required and is the only component of the grievance process outside the direct oversight of the supreme court. Current procedures restrict payment of funds and do not provide a stable, adequate level of funding.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a negative fiscal impact of approximately \$3.2 million in fiscal year 1992 and \$3 million in fiscal year 1993.

Complete List of Recommendations

1. Establish a statutory outline of the state bar's grievance process; create a Commission for Lawyer Discipline to oversee the state bar's grievance procedure; specify that the commission shall be composed of an equal number of attorney and public members; require that the commission select a chief disciplinary counsel to serve as administrator of the grievance process; and allow both parties to complaints to be present during all testimony taken in investigatory hearings.
2. Provide for processing and investigation of all complaints by state bar staff using standardized procedures and require that complainants be provided explanations on each dismissed action.
3. Increase efforts to improve the public's awareness of the complaint process including notice to clients by attorneys of the existence of the state bar's grievance process.
4. Require the Commission for Lawyer Discipline to develop rules governing the use of private reprimands; limit to one the number of private reprimands an attorney may receive for the same type of offense; and do not allow private reprimands in cases involving theft of intentional use of funds.
5. Require the state bar to develop a standard fee dispute resolution procedure that can be used by a bar committee or another organization.
6. Establish the state bar's client security fund in statute under oversight of the supreme court; set limit for claims at \$30,000; and require a beginning balance of \$1.25 million.
7. Require the state bar, within two years, to report to the legislature on a mandatory pro bono program.
8. Create four minority voting positions on the state bar board of directors appointed by the state bar president.

9. Improve the complaint tracking process by requiring tracking of complaints by category, method of resolution, and length of time required for resolution.
10. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
11. Authorize the staggered renewal of licenses. (ATB)
12. Provide for public testimony at agency meetings. (ATB)
13. Require development of accessibility plan. (ATB)
14. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. (ATB)
15. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
16. Require the board to make annual written reports to the governor, the supreme court, and the legislature accounting for all receipts and disbursements made under its statute. (ATB modified)
17. Specify grounds for removal of a board member. (ATB modified)
18. Provide that 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. (ATB)
19. Require development of an E.E.O. policy. (ATB modified)
20. Require a system of merit pay based on documented employee performance. (ATB)

21. Require files to be maintained on complaints. (ATB)
22. Require the board to establish skill-oriented career ladders. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

State Board of Barber Examiners

Board Members

Helen Spears, Dallas, Chair
 Thelma Walker, Fort Worth, Vice-Chair
 Joe Turner, Midland
 Santa Morales, Brownsville
 David McCall, Austin
 Sharon Carper, Lubbock

Agency Functions

The State Board of Barber Examiners was created in 1929 to regulate the barbering profession. The board is responsible for registering, examining, and licensing barbers, barber shops, and barber schools as well as inspecting barber establishments and investigating complaints. The board prescribes and maintain standards for over 22,000 barbers, 9,000 barber shops, and 40 barber schools. The board is funded from fee revenues deposited in special fund No. 040 in the state treasury.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 556,763	\$ 556,948
Percent of General Revenue	-0-	-0-

Number of Positions (1991)

17.3 FTE

Commission Findings and Recommendations

The review of the State Board of Barber Examiners included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the legislature to remain involved in the regulation of barbers. The Commission recommended the continued regulation of barbers in order to maintain the legislature's oversight of the barber industry including the training of barbers and the effective practice of barbering.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of transferring the agency to the Texas Department of Licensing and Regulation. In addition, the Commission considered merging the State Board of Barber Examiners with the Texas Cosmetology Commission into a single agency. Although cost savings may have been gained through transfer or merger, the Sunset Commission recommended to continue the current overall agency structure.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to appoint the chair. Currently, the board's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair would promote accountability of the board to the governor.
- Require regulation of barber schools to parallel key elements of other Texas proprietary school regulations. Changes include additional student protection provisions to ensure that students receive adequate tuition refunds and information about the school and instructional programs. The agency will also be required to maintain information on student completion rates, job placement, and employment rates, as well as verifying a school's financial soundness and capability to complete student training.

- Require the board to use a national written examination and prohibit administration of a practical exam. The written examination currently used by the board has not been validated to ensure use of objective, unbiased questions. Failure to validate the examination grants the opportunity for a legal challenge from examinees. The practical exam primarily tests stylistic abilities and is likely to result in a subjective evaluation of the examinee. Use of a national examination, without the practical portion of the exam, will ensure use of validated exam procedures, remove potential bias and relieve the state from evaluating matters of hair style.
- Reduce the regulation of manicurists, barber technicians, and wig specialists and instructors to a one-time certification upon graduation from an approved school. In addition, discontinue the licensure and inspection of specialty shops. The subcategories of barbering practices are not sufficiently threatening to the public to warrant state involvement through licensure, examination, and inspection of barber shops. The public would continue to be assured that persons manicuring or performing wig and other specialty services have achieved a basic level of competence through the certification process that requires completion of an approved training program.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in net negative fiscal impact of approximately \$43,000 in fiscal year 1992 and \$41,000 in fiscal year 1993.

Complete List of Recommendations

1. Require regulation of barber schools to parallel key elements of Texas proprietary school regulation.
2. Require the use of a national written examination and prohibits the use of a practical examination.
3. Reduce the regulation of specialty licensees including barber technicians to certification and discontinues inspection of specialty shops.
4. Require the governor to designate the chair of the board.

5. Require barber schools to obtain a bond for refunds of student tuition.
6. Prohibit the board from requiring a personal interview as part of the application process.
7. Remove unused and difficult to enforce statutory language relating to grounds for license denial or revocation.
8. Provide for licensing by endorsement rather than reciprocity.
9. Provide an analysis, on request, to individuals failing the examination. (ATB)
10. Specify grounds for removal of a board member. (ATB)
11. Provide a definition of public member. (ATB)
12. Specify board hearing requirements. (ATB)
13. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB)
14. Provide that 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. (ATB)
15. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
16. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading. (ATB)
17. Provide for public testimony at board meetings. (ATB)

18. Require development of accessibility plan. (ATB)
19. Require files to be maintained on complaints. (ATB)
20. Require specific provisions relating to conflicts of interest. (ATB)
21. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
22. Provide for notification and information to the public concerning board activities. (ATB)
23. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
24. Require the board to develop and implement policies which clearly separate board and staff functions. (ATB)
25. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
26. Require the board to establish skill-oriented career ladders. (ATB)
27. Require a system of merit pay based on documented employee performance. (ATB)
28. Require development of an E.E.O. policy. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.



Capital Metropolitan Transportation Authority

Board Members

Sander Shapiro, Austin, Chair
 Barbara Burton, Austin, Vice-Chair
 Bobbie Marie Roe, Jonestown, Secretary
 Dennis Garza, Austin
 Allen Kaplan, Austin
 Lyndon Henry, Austin
 Charles Croslin, Austin

Agency Functions

The Capital Metropolitan Transportation Authority was created by voter approval in 1985 and given the responsibility for developing and operating a public transit system in the Austin area. The authority is primarily funded through revenues from a local sales tax of 3/4 of one percent. Capital Metro provides local fixed-route services, a downtown shuttle service, park and ride service to suburban areas, personalized commuter services, and special transit services for passengers with mobility impairments. Capital Metro also contracts to provide shuttle bus service to the University of Texas campus. In addition to those services, the authority is responsible for long-range planning to meet future transit needs in the Austin area.

Agency Funding

'90 Expended **'91 Budgeted**

\$ 45,869,351 \$ 49,156,517

Percent of
 General Revenue

-0-

-0-

Number of Positions (1991)

774.5 FTE

Commission Findings and Recommendations

The Capital Metropolitan Transportation Authority is one of four Texas transit authorities that have been placed under the Sunset Act. The application of the sunset review process to these transit authorities is limited in that there is no automatic termination if legislation continuing the agency is not enacted. For that reason, the review did not include an assessment of the need to continue the agency or of other organizational alternatives for carrying out Capital Metro's functions. Rather, the review of Capital Metro focused on an assessment of the authority's operations, external oversight and overall accountability to the public and local and state officials.

Major Recommendations

The Sunset Commission developed a number of recommendations to improve the operation of Capital Metro, including the following major changes:

- Require Capital Metro to report the results of its annual financial audit to the state auditor and authorize the state auditor to perform an independent audit of the authority if necessary. This would provide state oversight of the expenditure of sales tax funds authorized to be collected for transit purposes under state law.
- Require Capital Metro to contract to have an independent performance audit conducted every four years with reports to the board and various local and state officials. This would provide a periodic outside evaluation of the authority's operations to assist Capital Metro in improving its efficiency and effectiveness. It would also provide information necessary for oversight of the authority by state and local officials.
- Grant the Texas Air Control Board the authority to waive or modify the alternative fuel requirements placed on Capital Metro. Limit this authority to situations in which Capital Metro can certify that it cannot obtain the necessary equipment without incurring greater net costs than would be incurred by continued use of traditional fuels or that there is no central refueling station for alternative fuels in the area.

These changes would maintain the current alternative fuel conversion requirements, but would provide Capital Metro with the same means for exemption as are currently in place for school districts and state agencies.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a negative fiscal impact of approximately \$50,000 in fiscal year 1992 and no fiscal impact in fiscal year 1993.

Complete List of Recommendations

1. Require review of Capital Metro's financial audits by the state auditor; remove the requirement that Capital Metro obtain approval by the state auditor of its selection of an accountant to perform its annual financial audit.
2. Require outside performance audits of Capital Metro's operations.
3. Modify Capital Metro's alternative fuel requirements to allow certain exemptions if approved by the Texas Air Control Board.
4. Require clearly defined goals and an annual evaluation of the costs and benefits of a free-fare program run by Capital Metro.
5. Change the terms of Capital Metro board members from four to two years; provide for staggered terms; and limit members to a total of eight years on the board.
6. Provide specific grounds for the removal of Capital Metro board members.
7. Establish a general structure for the appointment, composition and use of advisory committees by the Capital Metro board.
8. Clarify the duties of the general manager and require the board to develop a policy separating Capital Metro board and staff functions.

9. Authorize Capital Metro to establish retirement plans and require state oversight of Capital Metro's retirement plans.
10. Require Capital Metro to request an advisory opinion from the U.S. Department of Labor to determine if its retirement plan is subject to federal oversight.

Office of the Interstate Civil Defense and Disaster Compact Administrator for Texas

Board Members None

Agency Functions

The Texas Legislature ratified the Interstate Civil Defense and Disaster Compact in 1951. The purpose of the civil defense compact is to furnish a legal framework for those states involved in providing mutual aid in the case of civil emergency or disaster. The compact legislation establishes a system of reciprocity for states rendering and receiving aid. Under the framework of the compact, when civil defense forces cross state lines during an emergency, it is clear how member states will be compensated for resources delivered and that licenses and certificates of out-of-state medical personnel and other professionals rendering aid will be recognized.

Since ratification of the compact, federal and state governments have established emergency management programs to cope with emergencies and disasters on a nationwide and regional basis. As a result, the provisions of the compact have never been implemented.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 0	\$ 0
Percent of General Revenue	N/A	N/A

**Number of Positions
(1991)** 0

Commission Findings and Recommendations

The review of the Office of the Interstate Civil Defense and Disaster Compact Administrator for Texas assessed whether there was a purpose in retaining the authority for this compact in statute since the provisions of the compact have not been used in its 40 years of existence.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the functions of this compact. The Commission found that many times a function is authorized by the legislature but is not implemented or is left unfunded after its period of usefulness has ended. Leaving the dormant statutes in place at best serves no purpose and at worst may result in confusion as to their application. The Commission concluded that the provisions of the compact are now outdated since the reciprocal agreements it establishes are superseded by the federal emergency management program. The Sunset Commission recommended that the statute authorizing Texas' participation in the Interstate Civil Defense and Disaster Compact be repealed and the authority for the office of the compact administrator be abolished.

Fiscal Impact

The recommendations of the Sunset Commission are not anticipated to result in any fiscal impact.

Texas Conservation Foundation

Board Members None

Agency Functions

The Texas Conservation Foundation was established as a state agency in 1969 to solicit private donations for the state's parks, wildlife programs, historic site preservation, and land conservation. The agency was also active in recruiting and coordinating a large volunteer effort to remove trash from Texas lakes and beaches.

The agency ceased operations September 1, 1989 after its FY 1990-91 state appropriation was vetoed by Governor Clements. The statutory authority for the agency continues through September 1, 1991.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 0	\$ 0
Percent of General Revenue	N/A	N/A

**Number of Positions
(1991)** 0

Commission Findings and Recommendations

The review of the Texas Conservation Foundation assessed whether there was a purpose in retaining the authority for this agency in statute since all the activities of the foundation have either been taken over by another state agency or been discontinued.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the functions of this agency. The Commission found that many times an agency or foundation is authorized by the legislature but is

not implemented or is left unfunded after its period of usefulness has ended. Leaving the dormant statutes in place at best serves no purpose and at worst may result in confusion as to their application. The Commission concluded that the powers and duties assigned by statute to the foundation are found in the general powers of other agencies, therefore no transfer of these powers to other agencies is needed. The Sunset Commission recommended that the statute authorizing the Texas Conservation Foundation be repealed.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any fiscal impact.

Texas Cosmetology Commission

Commission Members

Evelyn Hunter, Dallas, Chair
 Lucille Garcia, San Antonio
 Lois Cohen, Mineral Wells
 Sergio Shearer, Mc Allen
 Nedom Muns, Huntsville
 Jack Risinger, Austin, Ex-Officio
 One vacancy

Agency Functions

The Texas Cosmetology Commission was created in 1971 to replace the State Board of Hairdressers and Cosmetologists. The commission regulates the cosmetology industry in Texas by issuing and renewing licenses, providing licensure examinations and investigating complaints related to individuals or establishments. The agency also inspects beauty salons and beauty culture schools. Over 130,000 licensed cosmetologists and approximately 200 private beauty schools pay licensing and inspection fees which are deposited in the state's general revenue fund. In turn, the commission receives a legislative appropriation for agency operations.

Agency Funding

'90 Expended **'91 Budgeted**

\$ 1,427,479 \$ 1,434,115

Percent of
 General Revenue

94%

94%

Number of Positions (1991)

48 FTE

Commission Findings and Recommendations

Assessment of Need for Agency Functions

The review of the Texas Cosmetology Commission included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

The Sunset Commission reviewed the need for the legislature to remain involved in the regulation of cosmetologists. The Commission recommended the continued regulation of cosmetologists in order to maintain the legislature's oversight of the cosmetology industry including the training of cosmetologists and the effective practice of cosmetology.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of transferring the agency to the Texas Department of Licensing and Regulation. In addition, the Commission considered merging the Texas Cosmetology Commission with the State Board of Barber Examiners into a single agency. Although cost savings may have been gained through transfer or merger, the Sunset Commission recommended to continue the current overall agency structure.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to designate the chair. Currently, the commission's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair would promote accountability of the commission to the governor.

- Require regulation of cosmetology schools to parallel key elements of other Texas proprietary school regulations. Changes include additional student protection provisions to ensure that students receive adequate tuition refunds and information about the school and instructional programs. The agency will also be required to maintain information on student completion rates, job placement, and employment rates as well as verifying the school's financial soundness and capability to complete student training.
- Establish a tuition protection fund for students affected by closings of private beauty culture schools. The agency will collect fees from all licensed beauty culture schools and manage the fund, which is set to reach a maximum of \$100,000 in a three-year period. The fund will safeguard the investment a student makes by allowing direct refunds for student tuition and fees and assure that students have the opportunity to complete their programs. A limit of \$25,000 in claims has been set for each school closure.
- Reduce the regulation of manicurists and other specialty licensees to a one-time certification upon graduation from an approved school. In addition, discontinue the licensure and inspection of specialty shops. The practices of manicurists, shampoo-conditioner specialists, facialists, hair weavers, and wig specialists are not sufficiently threatening to the public to warrant state involvement through licensure, examination and inspection of specialty shops. The public will continue to be assured that persons manicuring or performing other specialty services have achieved a basic level of competence through the certification process that requires completion of an approved training program.
- Establish a booth rental license for individuals who lease space in a cosmetology salon. The licensing of booth rental space will provide information that can be used by taxing authorities to improve the collection of any applicable state, federal, or social security taxes. Specific license requirements including the license fee

are to be determined by the Texas Cosmetology Commission.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$54,000 in fiscal year 1992 and in fiscal year 1993.

Complete List of Recommendations

1. Require regulation of cosmetology schools to parallel key elements of Texas proprietary school regulation.
2. Establish student tuition protection fund.
3. Reduce the regulation of manicurists and other specialty licensees and discontinue licensure and inspection of specialty shops.
4. Establish a license for leasing of salon space to beauty operators.
5. Require use of written national exam for operator and instructor licenses.
6. Require the governor to appoint the commission chair.
7. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB)
8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading. (ATB)
9. Provide for notification and information to the public concerning commission activities. (ATB)
10. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
11. Require the commission to make annual written reports to the governor and the legislature accounting

- for all receipts and disbursements made under its statute. (ATB)
12. Provide definition of public member. (ATB)
 13. Require that appointment to the commission be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
 14. Require the agency to provide information on standards of conduct to commission members and employees. (ATB)
 15. Require development of accessibility plan. (ATB)
 16. Require that the commission develop and implement policies which clearly separate commission and staff functions. (ATB)
 17. Provide for public testimony at commission meetings. (ATB)
 18. Authorize the commission to adopt a system of voluntary continuing education. (ATB)
 19. Require specific provisions relating to conflicts of interest. (ATB)
 20. Specify grounds for removal of a commission member. (ATB)
 21. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the commission or serve as a member of the commission. (ATB)
 22. Require development of an E.E.O. policy. (ATB)
 23. Require the commission to establish skill-oriented career ladders. (ATB)

24. Require a system of merit pay based on documented employee performance. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Dallas Area Rapid Transit Authority

Board Members

Marvin M. Lane, Jr., Dallas, Chair
W.W. "Bill" Aston, Dallas
Michael Campbell, Dallas
Henry Cohn, Dallas
Jerry Fitzgerald, Dallas
Jerome Garza, Dallas
Kenn George, Dallas
Henry Graeser, Dallas
Donna Halstead, Dallas
Kathy Ingle, Farmers Branch
J.B. Jackson, Dallas
Jim Jenne, Carrollton
June E. Lykes, Irving
Anne McKinney, Plano
Dan Monaghan, Garland
Cipriano Munoz, Dallas
Raymond Noah, Richardson
Robert Price, Dallas
Don Raines, Garland
DeMetris Sampson, Dallas
Norma Stanton, Irving
Charles Terrell, Jr., Dallas
Bruce C. Toal, Plano
Liz Flores Velasquez, Dallas
Linda F. Wise, Dallas

Agency Functions

The Dallas Area Rapid Transit Authority (DART) was approved by voters in 1983 and began operations in 1984. DART is responsible for developing and operating public transportation services in the authority's service region, which includes 14 cities in the Dallas area. DART is primarily funded by a local one-percent sales tax, although other sources of revenues include passenger fares and federal funding. The major programs operated by DART include regular and suburban bus service, express commuter

service, demand-responsive service to the mobility impaired, van service in low ridership areas, and public and private charter services. DART is also planning and constructing a light rail transit system that is scheduled to begin carrying passengers in 1996.

Agency Funding		'90 Expended	'91 Budgeted
		\$ 212,222,000	\$ 247,472,000
	Percent of General Revenue	-0-	-0-
Number of Positions (1991)	1,965 FTE		

Commission Findings and Recommendations

DART is one of four Texas transit authorities that have been placed under the Sunset Act. However, none of the transit authorities are subject to termination if legislation to continue the authority is not enacted. As a result, the review of DART did not assess the need to continue the authority and did not consider organizational alternatives for carrying out the authority's functions. Rather, the review focused on an assessment of DART's operations, external oversight and overall accountability to the public and local and state officials.

Major Recommendations

The Sunset Commission developed a number of recommendations to improve the operation of DART, including the following major changes:

- Require DART to conduct an annual comparison of its top administrative salaries with similar-size transit authorities and report the findings to specific state and local officials. This would require DART to evaluate its salary levels annually and would ensure that the agency is accountable to the public for its administrative salary levels.

- Require DART to have a full-time internal audit program that is similar to the type of program required for large state agencies. This would ensure that DART's internal functions and controls are sufficiently audited.
- Require DART to develop a plan by January 1, 1992 for compliance with statutory alternative fuel requirements. The Texas Clean Air Act prohibits DART from purchasing conventionally fueled vehicles after 1991 and requires DART to follow a schedule for converting its bus fleet to alternative fuel vehicles, with 30 percent of the fleet converted by 1994 and 90 percent converted by 1998. This would ensure that DART has a plan to meet the statutory conversion schedule.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any fiscal impact.

Complete List of Recommendations

1. Require DART to conduct an annual comparison of its top administrative salaries.
2. Require DART to establish a full-time internal audit program.
3. Require DART to develop a plan by January 1, 1992 for compliance with statutory alternative fuel requirements.
4. Require DART to publish more detailed financial statements.
5. Require DART to include an evaluation of the costs and benefits of converting to a government fund accounting system.
6. Require DART to publish an annual report.
7. Provide specific grounds and procedures for the removal of DART board members.

8. Require the DART board to develop a policy separating board and staff functions.
9. Authorize DART to establish retirement plans and require state oversight of DART's retirement plans.

Council on Disabilities

Council Members

Linda J. Parker, Harper, Chair
Senator Teel Bivins, Amarillo
Allan Bubeck, Richardson
Jim Grey, Fort Worth
Mary Hazlewood, Amarillo
David Herndon, Austin
Harrell Hicks, San Antonio
J.T. Hinkle, Fort Worth
James J. Kaster, Austin
Mary Knott, El Paso
Rick Marek, San Antonio
Marty Wynne Murphy, Dallas
Mary Lou Parsons, Odessa
Mary Knotts Perkins, Lufkin
Robert K. Peters, III, Ph.D., Tyler
Ann Phillips, Dallas
Diane Rath, San Antonio
Rosemary L. Stapp, Austin
Edward B. Weyman, Midland
Helen Wirth, Austin
Edward Zunker, O.D., Seguin
(two vacancies)

Agency Functions

The Council on Disabilities was created in 1983 to promote the development and coordination of statewide policies, programs and services for persons with disabilities. The duties of the council include overseeing the state's long-range plan for persons with disabilities; making recommendations to the legislature for modifications of the laws related to the disabled; promoting a demographic survey of the disability population; and promoting the compilation and publication of laws related to the disabled.

	'90 Expended	'91 Budgeted
Agency Funding		
	\$ 48,451	\$ 53,451
Percent of General Revenue	100%	100%

Number of Positions (1991)	1 FTE
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Commission Findings and Recommendations

The review of the Council on Disabilities included an assessment of the need for the functions of the council and benefits that could be gained through transfer of the council's functions to another agency.

Assessment of Need for Agency Functions

The Sunset Commission determined that there is a need for the functions of the council. These functions include promoting the development and coordination of statewide public and private policies, programs, and services to person with disabilities; overseeing and updating the long-range plan for Texans with disabilities; promoting a demographic survey of disabled persons; and promoting the compilation of laws related to the disabled. The Commission recommended that the council's functions be continued.

Assessment of Organizational Alternatives

The Sunset Commission assessed the potential benefits of transferring the functions of the council to another agency. It was determined that many of the council's duties are very similar and in some cases overlap with those of the Governor's Committee for Disabled Persons. In addition, the Council on Disabilities had been inactive or unable to obtain a quorum of its members since 1987. The Commission concluded that, due to the overlap of duties between the two committees and the lack of participation on the Council on Disabilities, the council's functions could be performed more effectively if transferred to the Governor's Committee for Disabled Persons. Therefore, the Commission recommended that the functions of the Council

on Disabilities be transferred to the Governor's Committee for Disabled Persons.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$16,000 in fiscal year 1992 and \$18,000 in fiscal year 1993.

Complete List of Recommendations

1. Abolish the Council on Disabilities and transfer its functions to the Governor's Committee for Disabled Persons.
2. Establish the Governor's Committee for Disabled Persons in statute.



Commission on Fire Protection Personnel Standards and Education

Board Members

Bill Strickland, Arlington, Chair
Mike B. Perez, Jr., Laredo
James Roberts, Midland
Butch (Otto) Schattel, Hallsville
Chester A. (Pete) Shelton, Beaumont
Chair Lester Tyra, Houston
Wayne Sibley, Midlothian
Thomas Foster, College Station
Patrick K. Hughes, Keller
Dr. William Kirby, Austin - Ex Officio
Dr. Kenneth Ashworth, Austin - Ex Officio

Agency Functions

The Commission on Fire Protection Personnel Standards and Education was created in 1969 to develop statewide minimum entry level training standards for fire protection personnel in fully paid fire departments and to encourage or conduct studies concerning fire protection or fire administration. Approximately 17,000 fire protection personnel are certified in the state. In addition to certifying full-time paid fire personnel, the commission certifies training facilities and instructors; is developing a statewide certification examination; collects certification fees; develops and enforces minimum standards for fire fighter protective clothing and breathing apparatus; and investigates complaints of non-compliance with state certification and protective clothing requirements.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 244,750	\$ 220,487
Percent of General Revenue	93%	100%

**Number of Positions
(1991)** 7 FTE

Commission Findings and Recommendations

The review of the commission included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the state to continue the regulation of full-time paid fire protection personnel. The Commission concluded that the state should continue to regulate paid fire protection personnel through setting and enforcing standards for certification and protective clothing. The current level of state oversight would be continued and the minimum standards for training and protective clothing would remain in place to maintain the current level of public safety in the state.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of administratively attaching the commission to the State Fire Marshal's Office. The commission would have maintained its own policy-making body, budget oversight functions and current staff. The State Fire Marshal's Office would have provided administrative support for the commission. Because such a change would not provide any significant benefits, the Sunset Commission decided to recommend the continuation of the commission's current overall structure as a separate agency.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to designate the chair. Currently, the commission's chair is selected by its members.

This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the commission to the governor.

- Improve the inspection process by requiring biennial inspections of training facilities and fire departments. Require 50 percent of the certification fees collected to be placed in the dedicated fund and specify that the fund is to be split equally between training assistance and inspections. Authorize the commission to set certification fees with an upper limit of \$50. The commission has not had adequate funding to inspect training facilities and fire departments frequently enough to ensure compliance with state law and commission rules. The dedicated fund would provide a consistent, identifiable source of revenue to cover the cost of inspections and the commission would have the ability to change the certification fee when necessary to ensure that sufficient revenue is generated to support their activities. The requirement for each facility and department to be inspected at least biennially would allow the commission to visit facilities and departments frequently enough to ensure compliance.
- Modify the composition of the commission from a nine-member commission who are qualified by education or experience in the field of fire protection to include representation of chief officers, fire protection personnel, trainers and instructors, city managers, the Texas A&M University Firemen's Training School and the State Fire Marshal as a non-voting ex-officio member. The new composition would allow the commission to better reflect the variety of fire protection personnel certified by the commission.
- Allow certain non-governmental departments to apply to the commission to be regulated under the commission's statute. Require the commission to develop application procedures and approve

applications when a department meets the criteria. The oversight of fire protection personnel in Texas is decentralized. Some non-governmental departments currently fall outside of the oversight of the commission. This recommendation would allow these departments, upon request, to be regulated by the commission.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any fiscal impact.

Complete List of Recommendations

1. Require biennial inspections of training facilities and fire departments and authorize the commission to set fees with an upper limit of \$50. Require 50% of the fees collected to be placed in a dedicated fund and specify that the fund is to be split equally between training assistance and inspections.
2. Modify the composition of the commission to include representation of chief officers, fire protection personnel, trainers and instructors, city managers, the Texas A&M University Firemen's Training School and the State Fire Marshal as a non-voting ex-officio member.
3. Allow certain non-governmental departments to apply to the commission to be regulated under the commission's statute. Requires the commission to develop application procedures and approve applications when a department meets the criteria.
4. Modify certification requirements to allow individuals who retire from or leave the fire service to receive a one-time certification that states the level of certification held while in the fire service.
5. Require the governor to appoint the commission chair.
6. Remove moral standards as a criteria for certification.

7. Provide an analysis, on request, to individuals failing the examination. (ATB)
8. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB)
9. Authorize the commission to use a full range of penalties in enforcing certification requirements. (ATB)
10. Provide for notification and information to the public concerning commission activities. (ATB)
11. Authorize the staggered renewal of licenses. (ATB)
12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
13. Require development of accessibility plan. (ATB)
14. Require files to be maintained on complaints. (ATB)
15. Provide for licensing by endorsement. (ATB)
16. Require standard time frames for licensees who are delinquent in renewal of licenses. (ATB)
17. Require specific provisions relating to conflicts of interest. (ATB)
18. Require the commission to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
19. Require development of an E.E.O. policy. (ATB)
20. Require the commission to establish skill-oriented career ladders. (ATB)

21. Require that the policy body of an agency develop and implement policies which clearly separate commission and staff functions. (ATB)
22. Require the agency to provide information on standards of conduct to commission members and employees. (ATB)
23. Require a system of merit pay based on documented employee performance. (ATB)
24. Provide for public testimony at agency meetings. (ATB)
25. Specify commission hearing requirements. (ATB)
26. Specify grounds for removal of a commission member. (ATB)
27. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the commission or serve as a member of the commission. (ATB)
28. Require that appointment to the commission shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Office of the Fire Fighters' Pension Commissioner

Fire Fighters' Pension Commissioner

Helen L. Campbell

State Board of Trustees

Joe Rice, Canyon, Chair
Don Eernisse, Alvin, Vice-Chair
Glen Neutzler, Brenham
Ben Kennedy, Andrews
Wayne Popp, Louise
Charles Romans, Uvalde

Agency Functions

The Office of the Fire Fighters' Pension Commissioner was created in 1937 and administers two separate retirement programs. The commissioner is responsible for overseeing approximately 170 local fire fighter retirement systems operating under the Texas Local Fire Fighters' Retirement Act (TLFFRA), which was passed by the 71st Legislature in 1989. Under TLFFRA, the commissioner monitors the status of the local retirement funds and the distribution of their benefits. In addition, the commissioner hears appeals from individuals aggrieved by local pension board action. In 1977, the legislature expanded the office's authority to include administration of the Texas Statewide Volunteer Fire Fighters' Retirement Fund. The fund was created to provide benefits to those fire fighters in the state who serve without pay. A state board of trustees was established for oversight and the commissioner assists the trustees in managing and investing the fund. Currently, 125 volunteer fire departments participate in the statewide volunteer fund.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 177,590	\$ 174,719
Percent of General Revenue	100%	100%

**Number of Positions
(1991)** 5 FTE

Commission Findings and Recommendations

The review of the Office of the Fire Fighters' Pension Commissioner included an assessment of the continued need for the functions performed by the office; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the legislature to remain involved in the oversight of local fire fighter retirement funds and the administration of a statewide retirement fund for volunteer fire fighters. The Commission concluded that the legislature should continue its oversight of local fire fighter pension funds and administer the statewide volunteer fund through the Fire Fighters' Pension Commissioner. This would ensure sufficient oversight and administration of fire fighter retirement systems operating under TLFFRA and increase the transfer of unsound volunteer pensions to the statewide fund.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of transferring the functions of the office to another state agency. The Commission did not identify any significant benefits with a different organizational structure and thus recommended continuation of the office as an independent agency.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Broaden the nominations process for the Fire Fighters' Pension Commissioner to include the Texas State Association of Fire Fighters as one of the groups allowed to submit nominations to the governor. The current process for submitting nominations is not sufficiently open to groups affected by the agency. This recommendation ensures that

the two main fire fighter associations affected by the agency are represented in the process of selecting the commissioner. The Texas State Association of Fire Fighters would submit nominations according to the same statutory requirements set for the State Firemen's and Fire Marshals' Association allowing submission of not fewer than three and not more than 10 nominees.

- Change the composition of the six member state board of trustees for the statewide volunteer fund to include three additional members that have experience in the fields of investment, finance, or pension administration. Technical expertise on board of trustees is needed to handle the growing statewide fund. With this recommendation, the nine member board of trustees will be better equipped to invest surplus revenues and evaluate the financial status of the fund.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net negative fiscal impact of approximately \$1,900 in fiscal year 1992 and fiscal year 1993.

Complete List of Recommendations

1. Broaden the nominations process for the office of commissioner.
2. Change the composition of the state board of trustees to include members with technical expertise.
3. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
4. Require development of an E.E.O. policy. (ATB)
5. Require public membership on boards and commissions. (ATB)
6. Require a system of merit pay based on documented employee performance. (ATB)

7. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
8. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
9. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
10. Require development of accessibility plan. (ATB)
11. Specify grounds for removal of a board member. (ATB)
12. Provide that 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. (ATB)
13. Require public membership on boards and commissions. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Funeral Service Commission

Board Members

Paul G. Pond, Port Arthur, Chair
Percy Parsons, Dimmitt, Vice-Chair
Russell W. Allen, Secretary, Beaumont
C.L. Jackson, Houston
Lois Villasenor, Austin
James P. Hunter, III, Lufkin
C. Ray Burchette, Austin
Donald H. Taft, Beaumont
Scott E. Kurth, Desoto

Agency Functions

The Texas Funeral Service Commission was established in 1903 as the State Board of Embalmers to license and regulate embalmers. The law was amended in 1938 to include the regulation of funeral directors. The agency's main responsibilities are to prescribe and maintain standards for persons practicing as funeral directors or embalmers and to issue licenses to qualified persons and funeral establishments. Over 4,000 persons and 1,100 establishments are licensed by the agency. The commission also supervises the course of instruction taken by each apprentice embalmer or funeral director. Complaints related to the profession are investigated by the staff. The commission prepares and disseminates information to the public which explains funeral-related matters and describes the commission's procedures for handling complaints. Finally, the commission examines and supervises the activities of schools of mortuary science to ensure that requirements of the commission are met.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 347,990	\$ 335,110
Percent of General Revenue	-0-	-0-

Number of Positions (1991)	8 FTE
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Commission Findings and Recommendations

The review of the Texas Funeral Service Commission (TFSC) included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another existing agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the legislature to remain involved in the regulation of the funeral industry. The Commission concluded that the consumer protection function of the agency is still needed and, therefore, state regulation is still warranted.

Assessment of Organizational Alternatives

The Sunset Commission considered transfer of the functions of the agency to the Texas Department of Health (TDH) but concluded that transfer of the agency's functions would not significantly impact or improve the quality of regulation and the effectiveness of enforcement. Therefore, the Commission decided to recommend continuation of the Texas Funeral Service Commission as a separate agency.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to appoint the chair. Currently, the commission's chair is selected by its members.

This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability between the commission and the governor.

- Require approval of mortuary schools in the state to be transferred from the Texas Funeral Service Commission to the Central Education Agency or the Higher Education Coordinating Board. Three schools of mortuary science exist in the state to train funeral directors and embalmers. The course of instruction currently has to be approved by the commission. However, the commission does not offer the same standard of oversight, such as examination of refund policies and financial stability, as do the Central Education Agency and the Higher Education Coordinating Board in approving other technical and trade schools.
- Require the use of a national licensing examination, instead of the commission-developed exam, to offer a professionally-developed and validated test.
- Repeal the requirement for a practical examination as a condition of an embalmer license. The Sunset Commission concluded that the practical exam given embalmer applicants is time-consuming, costly to both commission members and students, employs subjective grading criteria, and provides little assurance of the competence of an applicant since 99% of all applicants pass the test.
- Reduce the apprenticeship requirement from 60 to 40 cases and require the commission to clearly define a case in rules. Texas' requirement for the number of cases a funeral director or embalmer apprentice must complete before licensure is above the national average and is difficult for apprentices in smaller funeral homes to fulfill. Also, apprenticeship standards vary since no definition exists in rules for what activities constitute a case.

- Specify that the commission has the authority to sanction violators of the commission's statute and rules for pre-need, as well as at-need, funeral contracts. Require the Texas Banking Department to adopt rules regulating sellers of prepaid funeral contracts. Require the commission, the Banking Department and the State Board of Insurance to adopt a memorandum of understanding to coordinate the inspection and enforcement of prepaid funeral sales. A growing trend in the funeral industry is the sale of prepaid funeral contracts whereby a customer can plan and pay for a funeral years in advance of its need. It is not clear in the current statute that the commission may sanction licensees who violate the commission's rules on prepaid sales. In addition, some sellers of prepaid contracts are not licensed funeral directors but are salespersons registered with the Department of Banking. The Sunset Commission concluded that all funeral sales should offer equivalent consumer protection.
- Authorize the Texas Department of Banking to assess an administrative penalty against sellers of prepaid funeral contracts regulated by the department. Currently, the Banking Department has almost no statutory authority to take action against those sellers of prepaid funeral contracts who are not funeral directors licensed by the TFSC. The Sunset Commission concluded that the Banking Department should have equivalent administrative penalty authority as the TFSC for similar violations.

Fiscal Impact

The recommendations adopted by the Sunset Commission would have a net positive fiscal impact of approximately \$79,000 in fiscal year 1992 and \$80,000 in fiscal year 1993.

Complete List of Recommendations

1. Clarify that the commission may impose injunctive relief and/or administrative penalties on licensees for violations relating to prepaid funeral services as well as those services sold at the time of need.

2. Authorize the Texas Department of Banking to assess an administrative penalty against sellers of prepaid funeral contracts regulated by the department.
3. Require the commission, the Banking Department and the State Board of Insurance to adopt a memorandum of understanding to coordinate their inspection and enforcement of prepaid funeral sales; authorize the agency to investigate complaints related to prepaid funeral contracts only if the investigation does not duplicate activities of the Texas Department of Banking.
4. Require approval of mortuary schools in the state to be transferred from the commission to the Central Education Agency or the Higher Education Coordinating Board.
5. Require use of a national licensing examination for funeral director and embalmer applicants.
6. Eliminate the practical examination requirement for embalmer applicants.
7. Reduce the apprenticeship requirement from 60 to 40 cases and require the commission to clearly define a case in rules.
8. Require a majority of public members on the commission.
9. Require the agency to document and track violations in the law found during routine inspections.
10. Require the governor to designate the chairman of the commission.
11. Require the agency to adopt an inspection policy and procedures in rules.

12. Change the requirement from annual to biennial inspections.
13. Coordinate enforcement of relevant vital statistics and solid waste laws between the commission and the Texas Department of Health and require adoption of joint rules.
14. Require the agency to provide licensees with a warning notice upon discovery of a potential violation and require the licensee to document their corrective actions.
15. Require that the consumer brochure developed by the agency be provided to consumers by the funeral director at the time services are initially discussed.
16. Require the commission to issue probationary orders to licensees whose licenses have been sanctioned with probation and require the agency to monitor the actions of the licensee in complying with the orders.
17. Eliminate the requirement for a licensee to be a resident of the state of Texas.
18. Eliminate the probationary period for reciprocal licensees.
19. Prohibit commissioner participation in informal hearings.
20. Specify that all commission rules be adopted according to the Administrative Procedure and Texas Register Act.
21. Remove vague ground for license revocation.
22. Update the language that specifies the grounds for removal of a commission member. (ATB)
23. Update the provision that prohibits a person registered as a lobbyist under Article 6252-9c,

- V.A.C.S., from acting as general counsel to the commission or from serving as a member of the commission. (ATB)
24. Update the provision requiring files to be maintained on complaints. (ATB)
 25. Update the requirement that the commission make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
 26. Update the provision requiring notification to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB)
 27. Update the provision requiring all parties to written complaints be periodically informed as to the status of the complaint. (ATB)
 28. Update the provision requiring that appointment to the commission be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
 29. Update the provision requiring the commission to provide an analysis, on request, to individuals failing the examination. (ATB)
 30. Update the standard language requiring time-frames for licensees who are delinquent in renewal of licenses. (ATB)
 31. Require a system of merit pay based on documented employee performance. (ATB)
 32. Update specific provisions relating to conflicts of interest. (ATB)

33. Provide for public testimony at agency meetings. (ATB)
34. Require development of an E.E.O. policy. (ATB)
35. Require development of accessibility plan. (ATB)
36. Require the commission to establish skill-oriented career ladders. (ATB)
37. Require the agency to provide information on standards of conduct to commission members and employees. (ATB)
38. Provide for the licensing of out-of-state applicants by endorsement rather than reciprocity. (ATB)
39. Require the commission to develop and implement policies which clearly separate commission and staff functions. (ATB)
40. Provide for notification and information to the public concerning agency activities. (ATB)
41. Specify commission hearing requirements. (ATB)
42. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading. (ATB)
43. Provide a definition of public member. (ATB)
44. Authorize the staggered renewal of licenses. (ATB)
45. Specify agency funds are placed in the treasury to ensure legislative review of agency expenditures through the appropriation process. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Good Neighbor Commission

Board Members None

Agency Functions

The Good Neighbor Commission was created in 1945 to promote inter-American understanding and goodwill. In fulfilling this mission, the commission provided information and assistance to governmental entities, organizations and individuals regarding the nations of the western hemisphere and Texans of hispanic heritage. In addition, the commission provided language translation services to state agencies and assisted them in the dissemination of information to the public about bilingual publications. The commission also served as the primary sponsor and provided administrative guidance to the Pan American Student Forum, a statewide organization of high school students interested in Latin-American and Spanish-Language studies.

The commission is not currently active due to the elimination of its funding. The legislature stopped funding the commission in 1986. However, the commission continued to operate an additional year with funding appropriated out of the Governor's Deficiency Fund. The various activities of the commission have been transferred to a private, non-profit organization, the governor's office and the Texas Department of Commerce.

Agency Funding	'90 Expended	'91 Budgeted
	-0-	-0-
Percent of General Revenue	N/A	N/A

**Number of Positions
(1991)** 0

**Commission
Findings and
Recommendations**

The review of the Good Neighbor Commission assessed whether there was a purpose in retaining the authority for this effort in statute since all commission functions have been discontinued.

***Assessment of Need for
Agency Functions***

The Sunset Commission reviewed the need for the functions of this agency. The Commission found that many times an agency or commission is authorized by the legislature but is not implemented or is left unfunded after its period of usefulness has ended. Leaving the dormant statutes in place at best serves no purpose and at worst may result in confusion as to their application. Since the purposes of the agency are now carried out through other mechanisms, the Sunset Commission concluded no need existed to continue the commission and recommended that the statute authorizing the Good Neighbor Commission be repealed.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any fiscal impact.

Texas Health and Human Services Coordinating Council

Council Members

Governor Ann Richards, Chair
Lt. Governor Bob Bullock, Vice-Chair
Gibson Lewis, Speaker of the House, Vice-Chair
Chet Brooks, State Senator
Eddie Bernice Johnson, State Senator
Nancy McDonald, State Representative
Jack Vowell, State Representative

Anne Ashy Shepard, Harlingen
Richard Durbin, Austin
Sharon Flippen, Austin
Gary Michael Polland, Houston
Floyd Rhoades, Houston
Gloria Rodriguez, San Antonio

Ron Anderson, Chair of the Texas Board of Health
Jerry Cunningham, Chair of the Texas Commission
on Alcohol and Drug Abuse
Pattilou Dawkins, Chair of the Texas Board of Mental
Health and Mental Retardation
David Herndon, Chair of the Texas Department of Human
Services
Jerry Kane, Chair of the Texas Rehabilitation Commission
Melinda McKee-Moore, Chair of the Texas Commission for
the Deaf
James Roberts, Chair of the Texas Department on Aging
Lewis Timberlake, Chair of the Texas Commission for the
Blind

Agency Functions

The Texas Health and Human Services Coordinating Council was created in 1983 to coordinate the planning and implementation of health and human services and to foster the development of a more effective service delivery system. The council was intended to serve as a forum in

which policy-makers and the leaders of the various health and human service agencies could study and develop solutions to the problems brought about by Texas' complex health and human service delivery system. The council has addressed these goals through activities such as collecting data and studying various health and human services issues. The council has also been given responsibility for developing the Client Omnibus Registry and Exchange (CORE) project to link the computers of the health and human service agencies so that client information can be readily shared among the agencies' staff. Another responsibility of the council has been to administer federal State Legalization Impact Assistance Grants (SLIAG) funds the state receives to reimburse the cost of providing health, education, and social services to eligible legalized aliens who are in the process of becoming legal permanent residents under the federal government's amnesty program.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 622,029	\$ 2,554,317*
Percent of General Revenue	N/A**	N/A**
<p>* The '91 budget includes \$1.4 million for the development of the CORE project.</p> <p>** The council is funded primarily through interagency contracts.</p>		

Number of Positions (1991)	16 FTE
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Commission Findings and Recommendations

The review of the council included an assessment of the need for the functions of the agency and benefits that could be gained through transfer of the council's functions to other agencies.

Assessment of Need for Agency Functions

The Sunset Commission concluded that there is a need for the continued coordination of health and human services due to the complex nature of Texas' health and human service delivery system. The Commission recommended that the function of coordinating health and human services be continued.

Assessment of Organizational Alternatives

The Sunset Commission considered a number of alternative organizational structures to carry out the Texas Health and Human Services Coordinating Council's (THHSCC) functions. The Commission found that the current structure of the THHSCC, the broad reach of its mandates, and the diverse number of projects it has been assigned have not allowed it to serve as a definitive and practical forum for the coordination of health and human services. The Commission determined that a more focused council should be established within the governor's office.

The Commission recommended that the THHSCC be abolished and its general coordination and planning functions transferred to a newly created council within the governor's office. The Commission recommended that the new council be composed of the executive directors of the health and human service agencies, with a high-level member of the governor's staff as chair. The Commission also recommended that the new council have a much narrower focus, with its primary function being to ensure the coordination of planning and budgeting efforts by agencies providing health and human services. These changes will eliminate the need for a separate state agency to coordinate health and human services, while establishing a more workable forum within the governor's office for the resolution of inter-agency coordination issues.

In addition, the Commission recommended that a number of the THHSCC's ongoing projects be transferred to other appropriate state agencies, including the SLIAG and CORE projects described above. Transferring these projects would ensure that these activities are continued, but allow the new council to stay focused on its primary function. Also, the new council, through participation of the executive

directors, can serve as a forum for the resolution of any inter-agency problems that might arise from the transfer of these projects.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$1.2 million in fiscal year 1992 and \$1.3 million in fiscal year 1993.

Complete List of Recommendations

1. Repeal the authorizing statute of the Texas Health and Human Services Coordinating Council (THHSCC).
2. Establish the Governor's Interagency Council on Health and Human Services (GICHHS), composed of a representative of the governor's office as chair and representatives of 15 health and human service state agencies; specify the duties and responsibilities of the GICHHS; set a sunset date of September 1, 2003; provide for the GICHHS to be staffed and funded through the governor's office.
3. Transfer authority to develop the Client Omnibus Registry and Exchange (CORE) project from the THHSCC to the Department of Information Resources.
4. Transfer the responsibility to apply for federal State Legalization Impact Assistance Grants (SLIAG) funds from the THHSCC to the Office of the Governor.
5. Transfer the Advisory Committee on Immigration from the Texas Health and Human Services Coordinating Council to the Office of the Governor.
6. Transfer the Commission on Children, Youth, and Family Services from the THHSCC to the GICHHS; provide for the commission to be staffed and funded through the governor's office; require all commission recommendations to go through the GICHHS; and provide that public members on the commission be appointed by the governor rather than the THHSCC.

7. Transfer responsibility for publishing a reference guide for health and human services from the THHSCC to the Texas Department of Health.
8. Transfer authority to implement the Statewide Needs Appraisal Project from the THHSCC to the Texas Department of Human Services.

State Department of Highways and Public Transportation

Board Members

Robert H. Dedman, Chairman, Dallas
Ray Stoker, Odessa
Wayne B. Duddleston, Houston

Agency Functions

The State Highway Department was originally created in 1917 to oversee the highway construction process in the state. Since its creation, the department has been given the responsibility for constructing and maintaining the roadways in the state system. The department was merged in 1975 with the Texas Mass Transportation Commission to create the State Department of Highways and Public Transportation. At that time, the department assumed the responsibility for providing technical assistance and funding for public transportation to local agencies. Additional activities of the department include providing public travel and tourist information services; registering and titling motor vehicles; making beautification, safety, and mobility improvements to the state's highways; and sponsoring the Gulf Intracoastal Waterway. The department's operations are provided through the agency's central offices located in Austin and 24 district offices throughout the state. In addition, the department operates three equipment and supply warehouses, six regional computer centers, 12 travel information centers at major entrances to the state, 17 motor vehicle registration offices, and 20 semi-permanent materials and tests laboratories statewide.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 2.6 billion	\$ 2.3 billion
Percent of General Revenue	-0-	-0-

**Number of Positions
(1991)**

16,648 FTE

**Commission
Findings and
Recommendations**

The review of the State Department of Highways and Public Transportation included an assessment of the continued need for the functions performed by the agency; the benefits of transferring any of the agency's functions to another agency; the benefits of transferring functions performed by another agency to the agency under review; and changes needed in the agency's statute.

***Assessment of Need for
Agency Functions***

The Sunset Commission concluded that there is a continuing need for the department to plan, build and maintain a system of roadways throughout the state. The Texas highway program has been generally cost effective in comparison to other states. In addition, abolishing the department without transferring the functions to another agency would result in the loss of almost one billion dollars a year in federal funds.

***Assessment of
Organizational
Alternatives***

The Sunset Commission considered alternatives to continuing the department as a separate agency. The department already serves as an umbrella transportation agency through its activities in the areas of public transportation, traffic safety, registration of motor vehicles, and the permitting of overweight trucks. The Commission recommended continuation of the department with its existing structure. As other transportation agencies, such as the Department of Aviation, undergo sunset review, an evaluation will be made whether to transfer their functions to the State Department of Highways and Public Transportation.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Establish an administrative penalty structure for violators of the state's overweight vehicle laws. Under this recommendation, illegally overweight vehicles would be subject civil fines instead of misdemeanor penalties for violations on state roads. Misdemeanor penalties would still be applied for violations on highways that are not on the state system. The Department of Public (DPS) would be responsible for issuing citations to overweight violators and the attorney general's office would determine the amount of the penalty and collect the fine. Fine amounts would be based on how much the load exceeds the authorized weight and how far the load has traveled in Texas. The DPS and the attorney general's office would each receive ten percent of the fine revenue, and the remaining 80 percent would go to the state highway fund. This change would help the state recover the costs associated with the accelerated deterioration of the highway system caused by vehicles that violate the state's vehicle weight laws and it would encourage greater compliance with those laws.
- Delete the requirement that operators of overweight and oversized vehicles have a surety bond to cover damages that they may cause to the highway. In addition to the bonding requirements of the state, the state and federal governments require liability insurance, which duplicate the purpose and coverage of the bond. Damages to the roadway are much more likely to be recovered through liability insurance than through bonds. Removing the bonding requirement removes a duplicative statutory requirement that burdens both the state and the trucking industry.
- Require the department to adopt a process in rules for evaluating environmental impacts on state-funded highway projects. The department would be required to specify in these rules the types of impacts it will analyze as part of its environmental reviews and to update and re-adopt these rules at least every five years. Neither the statute nor agency rules currently set out

guidelines or criteria for conducting environmental studies for state-funded roadway projects. This change would assure that the department would consider the environmental effects of all roadway projects and not just federally-funded projects.

- Require the department to increase its efforts to recruit and hire qualified women and minority applicants in professional and upper management positions. Specifically, the recommendation requires the department to open upper level management positions to applicants outside the department and to seek applicants from out of state when sufficient applicants are not available in state. The department must develop or intensify college recruitment and cooperative programs to cultivate suitable minority and women job candidates. The department must also promote continuing educational opportunities for employees to tap the resources already within the department. The department's central office would be required to set minority hiring goals for the districts and to monitor their progress toward these goals. Finally, the department's director must report to the commission, the legislature, and the Sunset Commission on progress in recruiting and hiring women and minorities. Although the department has attempted to increase the representation of women and minorities in its workforce, it has not met several federal and state hiring goals and has not used all programs and policies available to correct problems of underrepresentation. The changes suggested would enable the department to take specific actions to intensify its efforts to recruit, hire, and retain qualified women and minority candidates.
- Require the agency to establish a program for contracting with disadvantaged business enterprises (DBEs) on state-funded construction, maintenance, and purchasing projects. The current appropriations act establishes a policy for state agencies to follow in contracting with DBEs, but adherence to the policy is

not required. This recommendation requires the department to adopt a DBE policy for state-funded projects consistent with the appropriations act or any state law that might be enacted in the future. While the agency follows federal DBE guidelines for federally-assisted construction, the department does not currently have a program for state-funded projects. The program would require the agency to estimate the number of disadvantaged businesses willing and able to supply the goods and services needed by the agency. Based on that research, the agency would then set percentage goals for the relative amount of work the agency should strive to award to disadvantaged businesses. All percentage goals would be targets only and would not be mandatory quotas. In addition, the agency is required to establish a program to provide outreach and technical assistance to disadvantaged businesses concerning agency bidding and contracting procedures.

- Authorize the department to take possession of condemned land for right of way after depositing the amount of the appraised property value with the court. Currently, the department obtains right of way for roadway projects by offering to pay the landowner the appraised value of the condemned land plus an amount for damages to the remaining land that is not taken. If the landowner does not accept the department's offer, the landowner may appeal to a special commissioners court appointed by a judge to decide on the matter. The department cannot take possession of the condemned land until the commissioners court has made an award, which may cause long delays in obtaining the land. This change would allow the department to deposit the appraised value with the court, serve notice, and take possession of the land before the commissioners court ruling.
- Remove the statutory requirement for the director of the department to be an engineer and broaden the experience requirement to include experience in highway construction maintenance. The requirement

for the head of the department to be an engineer places an unnecessary restriction on the commission if it should determine that other qualifications would be more useful for selecting the top administrator. Removing this limitation on the selection of the director would provide the commission with the additional flexibility to choose the individual with the background and experience best suited to manage a diverse organizational structure such as the department's. This change would not limit the flexibility of the commission to select an engineer to fill the position if this were its preference.

- Require the department to establish a program to increase revenue from existing real estate and assets and from promoting alternate sources of revenues. Under this recommendation, the department would be required to increase the role of the private sector and public-private projects in the leasing of real estate and other assets and in the development of highway projects. The recommendation also requires an independent audit of the department's management and business operations in 2001 and every 12 years thereafter. These changes would provide the department the mechanism for more aggressively pursuing revenue enhancement projects.
- Remove the statutory limitation on salaries for members of the commission, allowing the members to receive a salary which would be set in the appropriations act. The existing salary limit in statute is \$2,500. This change would not actually require the legislature to establish salaries for highway commission members. It could, however, provide the basis for the legislature to make an appropriation for commission salaries.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$ 4.2 million in fiscal year 1992 and \$ 3.8 million in fiscal year 1993.

***Complete List of
Recommendations***

1. Establish an administrative penalty system for violations of overweight vehicle laws on state highways and delete provisions for misdemeanor penalties. Maintain the misdemeanor penalty system for non-state roadways.
2. Remove requirements for surety bonds for overweight vehicles.
3. Require the commission to adopt rules relating to the process for performing environmental impact reviews on state-funded projects.
4. Require the department to increase efforts to recruit and hire minority employees and to report progress in this area to the legislature and the sunset commission.
5. Require the department to establish a disadvantaged business program for state-funded contracts consistent with general state policy.
6. Authorize the department to take possession of condemned property, upon deposit of the appraised value of the property, when the case is filed in commissioners court.
7. Remove the requirement for the agency director to be a registered engineer and delete references to the engineer-director.
8. Establish a program to increase revenues through enhanced leasing activities and require a management audit every 12 years.
9. Remove statutory limitations on salaries for members of the highway commission to allow any salaries to be set through the appropriations process.
10. Create a public transportation advisory committee.
11. Require transfer of highway safety funds for EMS to the Health Department by interagency contract if permitted by the federal government.

12. Require the agency's participation in the competitive cost review program operated through the State Purchasing and General Services Commission and limit participation to one activity for the first two years.
13. Establish a five-member advisory committee to assist in developing rules for environmental impact reviews. Provide for the committee to be abolished upon passage of the rules.
14. Require the department to adopt memoranda of understanding with the state's historical, archaeological, and natural resource agencies to provide interagency coordination in the environmental review process.
15. Require the department to designate statewide and district bicycle coordinators, require the commission to adopt rules on enhancing the use of highways by bicyclists, and establish a temporary advisory committee to assist in developing the rules.
16. Require that appointments to the commission shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
17. Require the agency to provide information on standards of conduct to commission members and employees. (ATB)
18. Specify grounds for removal of a commission member. (ATB)
19. Provide that a person registered as a lobbyist may not act as general counsel to the commission or serve as a member of the board. (ATB)
20. Require files to be maintained on written complaints. (ATB)
21. Require the commission to develop and implement

policies which clearly separate commission and staff functions. (ATB)

22. Provide for public testimony at commission meetings. (ATB)
23. Provide for notification and information to the public concerning commission activities. (ATB)
24. Require development of an E.E.O. policy. (ATB)
25. Require the commission to establish skill-oriented career ladders. (ATB)
26. Require a system of merit pay based on documented employee performance. (ATB)
27. Require development of accessibility plan. (ATB)
28. Provide specific provisions relating to conflicts of interest. (ATB)
29. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
30. Require the commission to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
31. Provide definitions of a public member. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Housing Agency

Board Members

Arthur Navarro, Austin, Chair
Edmund Carrera, El Paso
Rogers Pope, Longview
Richard Jordan, Austin
Kenneth DeJarnett, Dallas
Gary Hammond, Plano
Stephen McAllister, San Antonio
George Farish, Houston
Marjorie Bingham, Houston

Agency Functions

The Texas Housing Agency was created in 1979 to encourage private capital investment in low income residential housing and to provide for the acquisition, construction and rehabilitation of low income housing through public financing and construction and mortgage loans. The agency operates four programs that provide an opportunity for low and moderate income families to own their own homes or that stimulate the construction and rehabilitation of low income rental properties. Two programs, the Single Family Mortgage Revenue Bond Program and the Multi-Family Bond Program, are financed through the issuance of bonds and provide low interest loans to individuals and families to purchase homes and to developers to construct, rehabilitate, or acquire low income rental properties. The remaining two programs, the Single Family Mortgage Credit Certificate Program and the Multi-Family Low Income Tax Credit Program provide tax credits to homebuyers and to the developers of low income rental properties.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 140,220,149	\$ 149,533,556
Percent of General Revenue	N/A*	N/A*

* The agency generates revenues through the issuance of mortgage revenue bonds and fees, and receives no funding from the state.

Number of Positions (1991) 55 FTE

Commission Findings and Recommendations

The review of the Texas Housing Agency included an assessment of the need for the functions of the agency; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for a state agency that issues bonds and provides low interest loans for home acquisition and concluded that the functions of the Texas Housing Agency should be continued for a twelve-year period. The primary functions of the agency, which are to encourage private capital investment in low income residential housing and to provide for the acquisition, construction and rehabilitation of low income housing through public financing and construction and mortgage loans, continue to be needed. There continues to be a need for the provision of affordable housing in the state and having a state agency available to issue mortgage revenue bonds and provide housing programs to low and moderate income families helps to ensure that housing needs are met across the state.

Assessment of Organizational Alternatives

Although, the Sunset Commission continued the functions of the Texas Housing Agency, the present organizational structure of the agency was not continued. The Sunset

Commission recommended merging the Texas Housing Agency and the Texas Department of Community Affairs to form a new agency known as the Texas Department of Housing and Community Affairs.

- The department's policy body would consist of a fifteen member advisory council appointed by the Governor with the advice and consent of the Senate for staggered six-year terms. This advisory council would have the same duties and powers as the current Texas Department of Community Affairs advisory board. Six members of the advisory council would be designated by the Governor to serve on an executive committee. The executive committee would perform the fiduciary and rule-making duties of the current Texas Housing Agency board. The Governor would appoint one member to serve as the chair of both the advisory council and the executive committee.
- The administrator and head of the department would be known as the executive director and would be required to be qualified by training and experience to perform the duties of the office. The director would be appointed by the Governor with the advice and consent of the Senate and would serve at the pleasure of the Governor during the Governor's term or terms of office. Duties of the director would include a combination of the current duties of the TDCA and the THA directors. Basically, the director would administer the work of the department; appoint and remove officers and other personnel employed within the department; submit proposals for appropriations and administer all monies entrusted to the department; and ensure that the department is meeting all state and federal requirements and is in compliance with all applicable laws. The executive director would be responsible for the functional organization and staffing of the new agency.
- The director would be required to establish two divisions within the department: the housing finance division and the community affairs division. The housing finance division would continue to perform the duties and

functions and have the same responsibilities as the Texas Housing Agency. The community affairs division would provide the same services and have the same powers and responsibilities as the Texas Department of Community Affairs. The Texas Department of Housing and Community Affairs would be subject to all provisions concerning standard agency requirements in law and the appropriations act. However, the housing finance division would be exempt from provisions of the appropriations act except those relating to position classification, travel requirements, and guidelines for the use of legal counsel.

- Funds used to support the programs and administration of the community affairs division would continue to be subject to the requirements of the appropriations act and any relevant riders or amendments. Funds used to support housing finance division programs and administration would be kept separate and would not be subject to provisions of the appropriations act. Funds used to support community affairs division programs and administration would be deposited in the state treasury, while funds used to support the housing finance division would be placed with the Texas Treasury Safekeeping Trust Company. Bonds used to support the housing finance division would not be the obligation of the state of Texas.

Major Recommendations

In addition to the conclusion that a merger with the Texas Department of Community Affairs was needed, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations included the following major changes:

- Require the agency to establish a housing assistance fund placed with the Texas Treasury Safekeeping Trust Company to be administered by the housing finance division of the Texas Department of Housing and Community Affairs for providing assistance to persons at or below 80 percent of the median family income for the area. Monies in the fund would be used for the provision of down payments, closing cost assistance,

matching funds for local governments and non-profit developers, and the acquisition of property for low income Texas residents. The fund would consist of unencumbered fund balances, appropriations authorized by the legislature and other public or private contributions.

Establishing a housing assistance fund would result in an increased number of low income persons being served by the agency. This recommendation enables the agency to work towards a top tier bond rating without unnecessarily limiting programs that could serve low income persons. The housing assistance fund would not have an adverse effect on the agency's bond rating or reserve fund status as funds would only revert to the assistance fund after all rating agency and reserve fund requirements had been satisfactorily met. The agency would be authorized to cease the transfer of funds into the assistance fund until reserve funds reach agency rating requirements. In addition, the agency would be authorized to transfer funds from the assistance fund to reserve funds if this becomes necessary to meet rating agency requirements.

- Authorize the agency to have limited statutory authority to acquire and own property for resale or rental with the following restrictions: property acquired must be able to meet FHA standards and qualify for home mortgage insurance after rehabilitation; properties acquired would be available to low income individuals and organizations serving low income individuals; all funds will come from the housing assistance fund or unencumbered fund balances; and an annual audit will be conducted to analyze the success of the program. Because of the risks associated with property ownership, the restrictions above were included to ensure that the program is viable and that risks are reduced. The intent of the restrictions is to ensure that properties acquired are saleable, that properties are targeted to low income individuals and households, that the number of properties is limited to a manageable amount, that the agency does not issue additional bonds to finance property acquisition, and that

an independent auditor analyze the property ownership program on an annual basis.

- Require that, except for the housing finance division's operating funds, the division's funds should be placed in the Texas Treasury Safekeeping Trust Company for investment and management at the direction of the division. The Safekeeping Trust Company, which is operated by the Texas Treasury, manages public monies held outside the treasury and provides safety, liquidity, and an interest yield comparable to other private depositories. The Safekeeping Trust Company is equipped to manage funds and operate in accordance with the trust indentures at the direction of the division or its bond trustees in the same manner as regular depositories.
- Require the agency to follow the policies and procedures of the attorney general's office in requesting authority to hire outside legal counsel and establish a process by which the attorney general approves or disapproves agency requests to hire outside counsel. This provision will not prohibit the agency from continuing to hire outside counsel or from hiring in-house counsel in the future. However, by this recommendation, the attorney general's office might deny authorization and require the agency to utilize the services of the attorney general's staff or its own legal staff for a part or all of its legal responsibilities.
- Require the agency to set eligibility requirements and develop policies and programs that result in increasing the number of low income participants. Strategies to serve low income individuals and families would include, but not be limited to, creating set-aside periods for mortgage revenue bond proceeds; setting a maximum income and/or maximum selling price; and establishing a tiered interest rate structure making lower interest rates available to a targeted group of low income persons. Requiring the agency to adopt a targeting strategy for each of its bond issues should increase the number of low income persons served by agency programs, without

reducing the flexibility the agency needs to respond to changing market conditions.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$313,000 in fiscal year 1992 and \$341,000 in fiscal year 1993.

Complete List of Recommendations

1. Abolish the Texas Housing Agency and the Texas Department of Community Affairs and merge the agencies into the Texas Department of Housing and Community Affairs. Require that the director create a community affairs division and a housing finance division within the agency and require that the duties and funds of the two divisions be kept separate. Establish a 15-member advisory council and a six-member executive committee composed of the advisory council members and require that members of both be appointed by the Governor. Require the Governor to designate a member of the advisory council to serve as chair of both the advisory council and the executive committee.
2. Require that the housing finance division of the department be subject to the Position Classification Act, the position classification plan, and provisions of the General Appropriations Act that relate to classified and exempt employees. Require the department to include in its budget a statement of expected operating expenses of the housing finance division and the proposed use of surplus bond revenues. Require the department to hold public hearings concerning the budget in different locations around the state. Require the department to deposit all revenue and funds of the housing finance division with the Texas Treasury Safekeeping Trust Company except for those funds used for the operation of the housing finance division or appropriated funds.
3. Require the housing finance division of the department to obtain AG approval for outside legal services.

4. Establish a housing assistance fund to provide funding for downpayment assistance, closing costs, the acquisition of property, and matching funds.
5. Authorize the housing finance division to acquire and own real property for sale or rental to persons and families of low income or to organizations serving low income individuals or families.
6. Require the department to develop a written plan to monitor the performance of departmental contractors.
7. Establish statutory guidelines for agency internal audit functions.
8. Require the department to adopt a strategy for the percentage of mortgage revenue bond proceeds to be made available to low income persons and families and to develop policies and programs to increase the number of low income persons and families which participate in the bond programs.
9. Require the department to consider the lender's past performance in agency programs and Community Reinvestment Act rating when selecting lenders to participate in bond programs.
10. Adjust the Private Allocation Act to secure the department's bond allocation reservation.
11. Establish a low income housing resource center.
12. Require the department to improve the access of homeless persons to the agency's educational programs.
13. Require the department to provide information and technical assistance to municipalities and non-profit corporations and to encourage private and non-profit corporations and state organizations to match funds of the housing finance division.

14. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
15. Provide for public testimony at agency meetings. (ATB)
16. Require development of accessibility plan. (ATB)
17. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. (ATB)
18. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
19. Require the board to make annual written reports to the Governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
20. Specify grounds for removal of a board member. (ATB)
21. Provide that 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. (ATB)
22. Require development of an E.E.O. policy. (ATB)
23. Require a system of merit pay based on documented employee performance. (ATB)
24. Require that appointments to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
25. Require files to be maintained on complaints. (ATB)

26. Require specific provisions related to conflicts of interest. (ATB)
27. Provide for notification and information to the public concerning board activities. (ATB)
28. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
29. Require the board to establish skill-oriented career ladders. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Board of Irrigators

Board Members

James K. Rourke, Austin, Chair
 J. Carl Causey, Weatherford, Vice-chair
 John A. Heidman, Dallas
 William E. Petty, Sr., Tyler
 Dan J. Romo, Laredo
 Joe H. Key, Austin

Agency Functions

The Texas Board of Irrigators was created in 1979 to protect the quality of public and private water supplies by licensing and regulating landscape irrigators and installers. The board's duties include administering exams, issuing and renewing licenses, and investigating complaints. Unlicensed irrigators may be referred to the Office of the Attorney General for civil action. The Texas Water Commission is charged with enforcing the Licensed Irrigators Act and revoking licenses. There are about 3,000 licensed irrigators and nearly 100 licensed installers in Texas.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 157,811	\$ 164,502
Percent of General Revenue	-0-	-0-

Number of Positions (1991)

3 FTE

Commission Findings and Recommendations

Assessment of Need for Agency Functions

The review of the Texas Board of Irrigators included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another existing agency; and changes needed if the agency were continued under its current organizational structure.

The Sunset Commission reviewed the need for regulating the occupation of landscape irrigation and concluded that regulation is necessary to protect the state's potable water supplies. The Commission recommended continuing regulation of landscape irrigators.

Assessment of Organizational Alternatives

The Sunset Commission assessed the benefits of moving the regulation of landscape irrigators to several other existing agencies and found that a transfer would not result in fiscal or programmatic benefits. The Sunset Commission recommended continuing the current overall agency structure.

Major Recommendations

After concluding that the functions performed by the agency were needed and the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to appoint the chair. Currently, the board's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the board to the governor.
- Place enforcement authority under the same board that issues the licenses and expand the current range of disciplinary sanctions. Under the present system, the Texas Board of Irrigators must refer complaints relating to the Licensed Irrigators Act to the Texas Water Commission for formal hearing. The statute limits the commission to either dismissing the case or revoking the

license and does not provide alternative sanctions for lesser violations of the Act. This recommendation would consolidate licensing and enforcement powers within the Texas Board of Irrigators and would provide the board with a range of disciplinary sanctions commonly found in other state licensing agencies.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net negative fiscal impact of approximately \$3,000 in fiscal year 1992 and fiscal year 1993.

Complete List of Recommendations

1. Transfer enforcement authority over licensees from the Texas Water Commission to the Texas Board of Irrigators and expand the existing range of disciplinary sanctions.
2. Require the governor to designate the chair.
3. Provide a definition of a public member. (ATB)
4. Require appointments to the board to be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
5. Specify grounds for removal of a board member. (ATB)
6. Establish specific provisions relating to conflicts of interest. (ATB)
7. Provide that 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. (ATB)
8. Require the board to develop and implement policies that clearly separate board and staff functions. (ATB)

9. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
10. Require a system of merit pay based on documented employee performance. (ATB)
11. Require development of an E.E.O. policy. (ATB)
12. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
13. Require the board to revise restrictive rules or statutes relating to advertising and competitive bidding practices that are not deceptive or misleading. (ATB)
14. Provide for public testimony at agency meetings. (ATB)
15. Require the development of an accessibility plan. (ATB)
16. Provide for notification and information to the public concerning board activities. (ATB)
17. Authorize the board to adopt a system of voluntary continuing education. (ATB)
18. Remove a licensing disqualification that is not easily determined. (ATB)
19. Provide for licensing by endorsement rather than reciprocity. (ATB)
20. Require standard time frames for licensees who are delinquent in renewal of licenses. (ATB)
21. Authorize the board to use a full range of penalties. (ATB)

22. Specify board hearing requirements. (ATB)
23. Require files to be maintained on complaints. (ATB)
24. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Commission on Jail Standards

Board Members

John L. Klevenhagen, Houston, Chair
 Rolando V. del Carmen, Huntsville, Vice-Chair
 Charles R. Hurst, Tyler
 Kenneth W. Anderson, Dallas
 J. David Nelson, Lubbock
 Joe A. Corley, Conroe
 Roy L. Orr, DeSoto
 Ivy T. Corley, Amarillo
 One vacancy

Agency Functions

The Texas Commission on Jail Standards was created in 1975 to set and enforce standards for the state's county jails. The commission has established minimum standards for the construction, equipment, maintenance and operation of facilities; the care, custody, and treatment of prisoners; the number of jail supervisory personnel; and programs for prisoner rehabilitation, education, and recreation. The commission also inspects each county jail at least annually to ensure compliance with all standards, provides assistance to local officials on matters concerning jails, and provides review and comment on plans for the construction or major modification of county jails.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 456,357	\$ 452,185
Percent of General Revenue	68.2%	68.4%

Number of Positions (1991)

10 FTE

Commission Findings and Recommendations

Assessment of Need for Agency Functions

The review of the Texas Commission on Jail Standards (TCJS) included an assessment of the need for the functions of the agency, benefits that could be gained by performing the functions through another agency, and changes needed if the agency was continued in its current structure.

The Sunset Commission concluded that the functions of the TCJS should be continued. The primary function of the agency, the development and enforcement of standards for the state's county jails, continues to be needed. Jail conditions and populations require periodic inspection, new standards must be developed as conditions and designs change, and existing standards must be updated. The agency's function of reviewing and commenting on jail construction and renovation plans assures both the counties and their prisoners that those facilities are safe and secure.

Assessment of Organizational Alternatives

The Sunset Commission concluded that providing these functions through the current structure is the most logical alternative because it provides counties direct access to the agency's policy body and staff. In addition, the review was unable to identify any benefits that would be gained from merging or transferring the functions to another entity. Therefore, the Commission recommended continuation of the current organizational structure.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations included the following major changes:

- Require the governor to designate the chair. Currently, the commission's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the commission to the governor.

- Require that one member of the commission must be a county commissioner. The commission would continue to have nine members, with five members designated on the basis of professional qualifications and four public members.
- Require the commission to charge fees for construction document review and inspection of jails with capacities of 100 or more prisoners of which 30 percent or more are from out-of-state jurisdictions. This would allow the commission to offset the additional costs and workload associated with large jail facilities built specifically for contract prisoners as economic development activities for local communities. Establish an inspection account in the general revenue fund for the deposit of money generated by the fees and authorize the commission to use the money to pay for these activities.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$36,000 in fiscal year 1992 and fiscal year 1993.

Complete List of Recommendations

1. Require that the governor designate the presiding officer of the commission.
2. Require one member of the commission be a county commissioner; replace a public member.
3. Require the commission to charge fees for construction documents review and inspections of jails with capacities of 100 or more that have 30 percent or more prisoners from out-of-state jurisdictions. Create an inspection account in the general revenue fund.
4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
5. Specify grounds for removal of a board member. (ATB)

6. Provide specific provisions relating to conflicts of interest. (ATB)
7. Provide that 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. (ATB)
8. Provide for public testimony at agency meetings. (ATB)
9. Provide for notification and information to the public concerning board activities. (ATB)
10. Require development of accessibility plan. (ATB)
11. Require files to be maintained on complaints; clarify that the provision does not apply to complaints from prisoners in county and municipal jails. (ATB - Modified)
12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
13. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
14. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. (ATB)
15. Require the board to establish skill-oriented career ladders. (ATB)
16. Require a system of merit pay based on documented employee performance. (ATB)
17. Require development of an E.E.O. policy. (ATB)

18. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.



Board of Law Examiners

Board Members

Beverly Tarpley, Abilene, Chair
 Warlick Carr, Lubbock
 Ralph Brite, San Antonio
 Raymon Jordan, Houston
 Artie Giotes, Waco
 Warren Shipman III, Fort Worth
 Robert Roller, Austin
 Charles Story, Dallas
 Richard Arroyo, Brownsville

Agency Functions

The Board of Law Examiners was created in 1919 to determine the eligibility of candidates for examination for a license to practice law in the state. To accomplish this the board ensures that all candidates for a law license have a good moral character and adequate legal education. The board also prepares and administers the bar examination to eligible candidates and determines whether applicants licensed to practice in other states meet this state's requirements. Licenses to practice law are issued by the supreme court which also adopts rules on the eligibility for and administering of the examination. The board is supported from fees collected which are maintained outside the state treasury and are not subject to the legislative appropriations process.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 1,336,800	\$ 1,395,002
Percent of General Revenue	-0-	-0-

**Number of Positions
(1991)** 17 FTE

Commission Findings and Recommendations

The review of the board included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the legislature to remain involved in regulating the licensure of attorneys. While the supreme court has the inherent power to regulate the practice of law, including examination and licensure, the Commission concluded that the legislature should continue to aid the court in the regulation of attorneys through continuation of the Board of Law Examiner's statute.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of merging the board with the State Bar of Texas. Merging the two agencies would not result in increased efficiencies or substantial cost savings because the two agencies are distinctly different and their respective functions would need to be continued in a merged agency. Therefore, the Commission recommended continuation of the current agency structure.

Major Recommendations

After concluding that the legislature should remain involved in the regulation of attorneys and the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operations of the agency. The recommendations include the following major changes:

- Require the board to provide persons with disabilities equal access to the bar examination by requiring the board to provide facilities for persons with disabilities in each city where a bar exam is administered. Currently, persons with disabilities must come to Austin

to take the exam while other applicants may choose their exam site. While special attention may be needed which would require that exams be administered at a separate location, this recommendation would ensure that persons with disabilities are able to take the exam in the same city where regular exam sites are located.

- Eliminate the use of district committees in determining the character and fitness of bar exam applicants. The use of committees adds little benefit to the character and fitness process as few problems are ever actually found by the committees during their investigative process.
- Prohibit denial of an applicant to the bar exam based on the applicant's lack of U.S. citizenship or permanent residency status. Removal would allow persons attending law school on a student visa to take the bar exam.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a negative fiscal impact of approximately \$7,000 in fiscal year 1992 and fiscal year 1993.

Complete List of Recommendations

1. Prohibit denial of an applicant to the bar examination based on the applicant's lack of U.S. citizenship or permanent residency status.
2. Eliminate the use of the district committees in the character and fitness process.
3. Require the board to provide facilities for persons with disabilities in each city where a bar examination is administered.
4. Specify grounds for removal of a board member. (ATB modified)
5. Require the executive director or a designee to develop a system of merit pay based on documented employee performance. (ATB)

6. Require the board to establish skill-oriented career ladders. (ATB)
7. Require the board to provide information on standards of conduct to board members and employees. (ATB)
8. Provide for notification and information to the public concerning board activities. (ATB modified)
9. Require the executive director or a designee to develop an E.E.O. policy. (ATB modified)
10. Require that the board develop and implement policies which clearly separate board and staff functions. (ATB)
11. Require development of accessibility plan. (ATB modified)
12. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. (ATB modified)
13. Provide for public testimony at agency meetings. (ATB modified)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Long-Term Care Coordinating Council for the Elderly

Council Members

Fred R. Norton, Texarkana, Chair
Ernestine H. Bridges, Mesquite
Senator Chet Brooks, Pasadena
Charles M. Cooper, Dallas
Nan Dupont, Houston
Harriet Griffin, Fort Worth
Elenor Holmes, Greosbeck
Louise Maberry, Orange
Evelyn Porter, San Antonio
Robert E. Price, Dallas
Rep. Nolan (Buzz) Robnett
Cy Rone, Azle
Charlcie W. Thompson, Buffalo
Velda Wasson, Angleton
Edward H. Zunker, O.D., Seguin
One vacancy

Agency Functions

The Long-Term Care Coordinating Council for the Elderly was created by the legislature in 1983 to encourage coordinated planning among the public, private and volunteer sectors providing long-term care services to the elderly. The council is responsible for overseeing the state's long-term care plan for the elderly, for reviewing issues concerning long-term care for the elderly, and for developing appropriate policy recommendations for the state in the area of long-term care.

Agency Funding

The council does not receive an appropriation. Staff support and the minimal travel expenses of the council are provided by the Texas Department on Aging, the Texas Department of Health, the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation.

**Number of Positions
(1991)** 0

Commission Findings and Recommendations

The review of the Long-Term Care Coordinating Council for the Elderly included an assessment of the need for the functions of the council and benefits that could be gained through the transfer of the council's functions to another agency.

Assessment of Need for Agency Functions

The Sunset Commission determined that there is a need for the functions of the council. These functions include encouraging coordinated planning of long-term care services for the elderly, overseeing the state's long-term care plan for the elderly, and reviewing issues and developing recommendations for changes to improve services in this area. The Commission recommended that the council's functions be continued.

Assessment of Organizational Alternatives

The Sunset Commission assessed the potential benefits of transferring the functions of the council to another agency. It was determined that many of the council's duties overlap with the broader responsibilities of the Texas Department on Aging. In addition, the council has basically been inactive since 1989. The Commission concluded that, due to the overlap of duties and the lack of participation on the council, the functions of the council could be performed more effectively if directly assigned to the Texas Department on Aging. The Commission recommended that the functions of the Long-Term Care Coordinating Council be transferred to the Texas Department on Aging.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any fiscal impact.

Complete List of Recommendations

1. Abolish the Long-Term Care Coordinating Council for the Elderly and transfer its functions to the Texas Department on Aging.

2. Require the adoption of a memorandum of understanding between the Texas Department on Aging, the Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation regarding the responsibilities of each agency in revising and updating Texas' Long-Term Care State Plan for the Elderly.

Texas Motor Vehicle Commission

Board Members

Leonard Burton, Irving, Chair
 William W. Collins, Fort Worth, Vice-Chair
 N. Scott Jones, Houston
 John C. Horton III, Austin
 Two vacancies

Agency Functions

The Texas Motor Vehicle Commission was created in 1971 to provide a system of distributing and selling new motor vehicles through the licensing and regulation of manufacturers, distributors, convertors, and franchised dealers of new motor vehicles. In 1983, the commission was given the responsibility of enforcing the "lemon law" statute which provides a remedy for purchasers of defective motor vehicles.

In addition to the licensing requirements, the commission regulates the industry by adjudicating cases involving controversies between licensees; by conducting investigations and taking action to enforce provisions of the Motor Vehicle Commission Code, such as those prohibiting deceptive advertising; and by providing a venue for consumers to resolve complaints relating to warranty repair problems.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 730,608	\$ 725,883
Percent of General Revenue	99.5	100

**Number of Positions
(1991)** 21 FTE

Commission Findings and Recommendations

The review of the Motor Vehicle Commission included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the functions of the Texas Motor Vehicle Commission. The licensure of manufacturers, distributors, convertors, and franchised dealers of new motor vehicles, and the administration of the lemon law will ensure that consumers are protected and activities between licensees are properly regulated. The Commission recommended to continue the functions of the agency.

Assessment of Organizational Alternatives

The Sunset Commission considered the transfer of all or part of the agency's functions to other state agencies. Two agencies, the Texas Department of Highways and Public Transportation (TDHPT) and the Texas Department of Licensing and Regulation (TDLR), were considered as logical organizational structures that could assume all of the responsibilities of the agency. The TDHPT is the primary state agency for transportation matters, issues title transfer authority to all motor vehicle dealers, and registers all motor vehicles in the state. The TDLR is structured as an umbrella regulatory agency to license businesses and occupations in the state. The Commission concluded that no significant benefits could be achieved by transferring any functions or responsibilities to another agency. The Commission recommended continuation of the current agency structure.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations included the following major changes:

- Require the governor to designate the chair. Currently, the commission's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the commission to the governor.
- Ease the burden of proof for consumers seeking recovery under the lemon law by requiring that the consumer prove substantial impairment of the use or market value of the vehicle. Current law requires that the consumer must prove substantial impairment of both the use and market value to be eligible for recovery under the lemon law. A consumer can usually prove that impaired use also impairs the market value. However, conditions that impair the market value, such as deteriorating paint or excessive wind noise, do not necessarily impair the use of the vehicle. The change in statute would ensure that consumers are not denied access to lemon law remedies because they cannot demonstrate impairment to both conditions.
- Provide for recovery of up to \$200 for consumers who incur incidental expenses related to a defective motor vehicle. Often a consumer will incur expenses such as alternate transportation, telephone calls, towing, and lodging as a result of a defective vehicle. Current law does not provide for any reimbursement for such expenses. The change would ensure that consumers are duly compensated for incidental costs associated with owning a defective vehicle.
- Require the agency's hearing examiners to recommend a resolution on lemon law complaints within 150 days

from the date the complaint is filed with the agency. Failure to meet the required time line will allow the consumer to file a private lawsuit under the provisions of the lemon law. Current law prohibits a consumer from seeking any recovery for a defective vehicle through a private lawsuit under the provisions of the lemon law until all administrative remedies are exhausted. In the past many complaints have gone unresolved for more than a year causing the consumer to contend with a defective vehicle with no alternative course of action. The change would encourage the agency to reduce the time it takes to resolve a lemon law case. In addition, by allowing the consumer to file a private lawsuit if the agency fails to recommend a resolution, the consumer is provided another avenue for resolution.

- Require a manufacturer, distributor, or convertor that accepts the return of a vehicle under the lemon law to affix to the windshield of the vehicle a label that states that the vehicle was repurchased under the lemon law and that states the nature of each defect or condition. The decal shall not be removed from the vehicle before a subsequent retail sale to a consumer. Currently there are no requirements that a subsequent purchaser of a vehicle repurchased under the lemon law be informed that the vehicle was determined to be defective. The change would require that this information be disclosed and the subsequent purchaser be made aware of the defect or condition that caused the determination under the lemon law.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net negative fiscal impact of approximately \$76,000 in fiscal year 1992 and fiscal year 1993.

Complete List of Recommendations

1. Add serious safety hazards to grounds for lemon law recovery and decreases the number of required repair attempts from four to two.

2. Ease the burden of proof for lemon law recovery eligibility.
3. Authorize payment of up to \$200 for incidental expenses in lemon law cases.
4. Establish a 150 day time line for resolving lemon law complaints.
5. Require manufacturers to affix decals to repurchased vehicles stating nature of defect.
6. Set standard criteria for administrative penalties.
7. Require the governor to designate the chair.
8. Require specific provisions relating to conflicts of interest. (ATB)
9. Specify grounds for removal of a commission member. (ATB)
10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process. (ATB)
11. Provide for public testimony at agency meetings. (ATB)
12. Require the commission to develop and implement policies which clearly separate board and staff functions. (ATB)
13. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
14. Authorize the commission to use a full range of penalties. (ATB)
15. Require the commission to make annual written reports to the governor and the legislature accounting

for all receipts and disbursements made under its statute. (ATB)

16. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
17. Require development of an E.E.O. policy. (ATB)
18. Require the agency to establish skill-oriented career ladders. (ATB)
19. Require development of accessibility plan. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

State Pension Review Board

Board Members

Lee Hinton, Houston, Chair
 Senator John Leedom, Dallas
 Joe M. Nuessle, Midland
 Bill Blythe, Houston
 Gary Hughes, Lubbock
 Craig Stanfill, El Paso
 Bob Hughey, Richardson
 Norman Parrish, Houston
 Paul Weyrauch, Marble Falls

Agency Functions

The State Pension Review Board was created in 1979 to study state and municipal retirement systems and make recommendations for their improvement. The agency has two major activities. During the legislative sessions, the board reviews and comments on the actuarial impact of all legislation that would affect a public retirement system. In the interim between sessions, the board conducts studies of problems that threaten the financial soundness of the public retirement systems or inhibit the equitable distribution of benefits. The board also conducts an ongoing review of these systems. Based on these studies and the ongoing review, the board recommends policies, practices, and legislation to address problems identified.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 268,864	\$ 265,297
Percent of General Revenue	98%	97%

Number of Positions (1991)

5 FTE

Commission Findings and Recommendations

The review of the State Pension Review Board included an assessment of the need for the functions of the agency; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for state oversight of public retirement systems in Texas. The Commission concluded that such a role is necessary because of the size, importance and complexity of these systems. In addition, state oversight of these public systems could save tax dollars by assuring that governments contribute to these pension funds only the amount needed to cover the cost of benefits and that benefit levels are satisfactory.

Assessment of Organizational Alternatives

The Sunset Commission considered whether the functions of the State Pension Review Board should be transferred to another state agency. The Commission decided that the board should be continued as a separate agency. The effective analysis of pension issues requires a high degree of expertise in retirement and pension matters. The current organization of the board provides the expertise and independence to provide an objective evaluation of the public retirement systems in Texas.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the board to be primarily responsible for providing the legislature with actuarial information of proposed legislation affecting public retirement systems. Under this recommendation, the board would request that public retirement systems conduct the initial actuarial analyses of pension legislation and submit this information to the board for its review. Based on this information, the board would prepare an impact

statement for the legislature, summarizing the actuarial effects of the legislation. If a retirement system fails to provide actuarial information, the board would conduct its own analysis with the system paying for the board's costs. The board's impact statement would be the only actuarial information actually attached to the bill. The systems' actuarial analyses would no longer be attached to the bill. (Nothing in this recommendation would preclude the systems, however, from providing actuarial information to the legislature through other means.) This process would be similar to the Legislative Budget Board's process for attaching fiscal notes to legislation, providing for greater independence of the board's work. In addition, the board would comment on the reasonableness of actuarial assumptions used by the systems as part of its impact statement.

- Require the board to provide the legislature with an analysis of the overall impact of pension legislation that affects the Teacher Retirement System, the Employees Retirement System, and the Law Enforcement and Custodial Officer Supplemental Retirement Fund. Under this recommendation, the board would request that the systems determine the overall impact of legislation and provide this information to the board for its review. The board would then develop an impact statement based on this information, summarizing the cumulative impact of these bills. If a system fails to provide information on overall impacts of legislation, the board would conduct its own analysis with the system paying for the board's costs. Currently, the legislature does not receive information that shows how the interaction of provisions in different bills would affect the public retirement systems. This change would enable the legislature to anticipate the overall effects of its decisions on the TRS, the ERS, and LECOSRF.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any significant fiscal impact.

Complete List of Recommendations

1. Make the board primarily responsible for providing actuarial information on legislation.
2. Make the board responsible for providing information on overall impact of pension legislation.
3. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. (ATB)
4. Specify grounds for removal of a board member. (ATB)
5. Provide that 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. (ATB)
6. Require public membership on boards and commissions. (ATB)
7. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
8. Require development of an E.E.O. policy. (ATB)
9. Require development of accessibility plan. (ATB)
10. Require a system of merit pay based on documented employee performance. (ATB)
11. Provide for public testimony at agency meetings. (ATB)
12. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)

13. Requires the agency to provide information on standards of conduct to board members and employees. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

State Purchasing and General Services Commission

Board Members

Phillip A. Aronoff, Houston, Chair
Kenneth R. Epley, San Angelo
Bob Davis, Irving

Agency Functions

The State Purchasing and General Services Commission (SPGSC) was created in 1979. It assumed the functions of the State Board of Control, which was abolished that same year. The major function of the commission is its centralized purchasing service for all state agencies. In fiscal year 1988, the commission purchased goods and services valued at approximately \$961 million. This amount represented 17 percent of the goods and services purchased by state agencies and public higher education institutions.

Other major functions of the commission include: administration of the state building construction, leasing, and space management programs; security and building maintenance services for state-owned buildings; long distance telecommunications services and travel and transportation services for state agencies; maintenance of a property accounting system for property of state agencies; and operation of a mail service, vehicle maintenance service, and central supply store for state agencies in Travis County.

Agency Funding

'90 Expended **'91 Budgeted**

\$ 102,304,436 \$ 93,610,495

Percent

General Revenue

46%

57%

**Number of Positions
(1991)** 892.4 FTE

Commission Findings and Recommendations

The review of the SPGSC included an assessment of the need for continuation of the agency's functions; benefits that could be gained through transfer of all or part of the agency's functions to another existing agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the functions of the SPGSC. The functions of the agency touch many aspects of government including purchasing, facilities construction, telecommunications, and security of the capitol building itself. The Sunset Commission decided that these and the other functions of the agency were needed to more than 200 state agencies served by the SPGSC. The Commission recommended to continue the functions of the agency.

Assessment of Organizational Alternatives

The Sunset Commission considered the transfer of the program for elimination of architectural barriers to the Texas Department of Licensing and Regulation (TDLR). The SPGSC is a service agency compared with the TDLR which is primarily a regulatory agency. This program, a regulatory effort, could benefit from the TDLR's regional office structure; expertise in managing plan review; inspection and enforcement processes; and a structure for the assessment of disciplinary penalties. The Commission recommended that the program for elimination of architectural barriers be transferred to the Texas Department of Licensing and Regulation.

Major Recommendations

In addition to the conclusion that the transfer of the program for elimination of architectural barriers was needed, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations included the following major changes:

- Increase the size of commission from three to six members. A three-member commission makes it more difficult to attain representation of the diverse geographical and ethnic make-up of the state; can result in problems ensuring that there are no violations of the Open Meeting Act; and does not allow the commission to divide its workload by using committees. Increasing the size of the commission to six would help lessen these difficulties.
- Require the commission to establish a program for contracting with disadvantaged business enterprises (DBEs). The current appropriations bill sets out a policy for state agencies to follow in contracting with DBEs, but adherence to the policy is not required. This recommendation requires the commission to adopt a DBE policy that is consistent with the appropriations act or any state law that might be enacted in the future. The program would require the commission to estimate the number of disadvantaged businesses willing and able to supply the goods and services to be purchased by the commission. Based on that research, the commission would then set percentage goals for the relative amount of work the commission should strive to award to disadvantaged businesses. All percentage goals would be targets only and would not establish mandatory quotas or exempt the commission from competitive procurement requirements. In addition, the agency is required to establish a program to provide outreach and technical assistance to disadvantaged businesses concerning agency bidding and contracting procedures. The commission would also be required to appoint an advisory committee composed of owners of disadvantaged businesses. The committee would be responsible for reviewing commission procedures relating to state agency purchases and contracting, and for making recommendations to the commission and the legislature concerning changes needed to facilitate the participation of DBEs in state contracting.

- Require state agencies that make purchases over \$5,000 to solicit bids from all eligible vendors that have applied to be on the agency's bid lists and require state agencies to develop procedures for maintaining bid lists. The current state policy requires state agencies to obtain at least three bids on large purchases. While this requirement ensures some level of competitive bidding, the policy may also serve as a barrier for expanding the number of bids. This change would establish a state policy that every business asking for an opportunity to bid on purchases of more than \$5,000 gets an opportunity to bid. The SPGSC would also be allowed to exempt certain agencies or purchases from the notification requirement when the requirement is impractical. To cover the cost of administering this requirement, state agencies would be authorized to charge cost recovery fees to businesses that want to be placed on the bid list.
- Delegate more small purchases to agencies and reduce bid requirements. This change would raise the minimum dollar value of small purchases delegated to state agencies from \$500 to \$5,000 and raise the minimum dollar value for competitive bidding requirements from \$100 to \$1,000. The current focus of the state's purchasing effort allocates a substantial amount of workload to small, low risk purchases. This change would refocus the purchasing function to allocate less attention to small, low-risk, low cost purchases and allow the SPGSC to focus more attention on the acquisition and quality control of larger purchases.
- Require that the chief of capitol security be appointed by, and serve at the pleasure of, the agency's commission. The chief would report directly to the commission. The chief would be required to develop, and submit for commission approval, personnel policies, overall policy direction and operating plans for the capitol security function. Currently the capitol security function is one of ten major organizational

divisions within the agency and the chief of capitol security reports to one of two associate deputy directors.

- Require all state agencies in the executive branch, except institutions of higher education, to use contract rates developed between the state and vendors for travel services such as airfares, vehicle rentals, and hotel accommodations. The State Travel Management Program was created as a voluntary program to help state agencies better manage their travel and stretch state travel dollars. By requiring state agencies to participate in the program, the commission should be able to negotiate better contracts for travel services because an attractive minimum volume can be guaranteed to the vendor.
- Require the State Travel Management Program to develop multiple contracts with travel agencies rather than the one single contract that is currently in place. Currently, the program contracts with one travel agency to provide all travel agency services in the state. However, the industry has many smaller and often disadvantaged businesses. Contracting with more than one travel agency for the provision of travel agency services would reduce the cost savings to the state but further the state policy of supporting small and disadvantaged businesses. Agencies who wish to participate in the travel services program will have more choices.
- Authorize the commission to return to the federal government rebates collected on federally funded state travel in compliance with federal requirements. The statute currently requires that all rebates collected by the agency be returned to the general revenue fund. Since federally funded agencies are prohibited by federal law from doing this, they have opted out of the program. This change would allow such agencies to comply with federal law and participate in the travel program.

- Remove the exemption in the elimination of architectural barriers statute for privately funded buildings in counties under 45,000 population. This change will make buildings constructed after January 1, 1992 in all counties subject to the statute. Buildings built with private funds in the state's most populous counties, those over 45,000, have been subject to the architectural barriers statute since 1978; however persons with disabilities live in all counties in Texas. The removal of the exemption would allow persons with disabilities to have the same access to the same buildings in less populous counties that they currently have in the more populous counties.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$2.4 million in fiscal year 1992 and fiscal year 1993.

Complete List of Recommendations

1. Increase the size of commission from three to six members.
2. Require the commission to establish a disadvantaged business program consistent with general state policy. Require the commission to appoint an advisory committee to study the commission's bidding and procurement procedures and rules and advise the commission. Authorize the commission's current program to provide technical assistance to DBEs in working with state procurement procedures.
3. Require state agencies that make purchases over \$5,000 to solicit bids from all eligible vendors that have applied to be on agency bid lists.
4. Raise the minimum dollar value of small purchases delegated to state agencies from \$500 to \$5,000.
5. Raise the minimum dollar value for competitive bidding requirements from \$100 to \$1,000.

6. Require that the chief of capitol security be appointed by the agency's commission, serve at the pleasure of the commission, and report directly to the commission; and requires the chief of capitol security to develop, and submit for commission approval, personnel policies and an overall policy direction plan for the capitol security function. Exclude those matters managed by the chief of capitol security from the activities to be managed by the executive director.
7. Prohibit the State Travel Management Program from entering into a single, statewide contract for travel agency services. Require state agencies in the executive branch, except institutions of higher education, to participate in state contracted rates for travel services, but exclude agencies from mandatory participation state contract travel agency services. Authorize the commission to return to the federal government rebates collected on federally funded state travel in compliance with federal requirements. Require the commission to adopt rules for the structure of travel agency services and related contract requirements, and for the use of negotiated contract rates for all state agencies.
8. Transfer the program for the elimination of architectural barriers to the Department of Licensing and Regulation (TDLR). Authorize the department to contract with other state agencies, political subdivisions, nonprofit organizations, and private entities to perform inspections of privately funded buildings subject to the architectural barriers statute.
9. Remove the exemption for privately financed public accommodations in counties under 45,000 population from the requirements of the architectural barriers statute. New construction or renovation to such facilities in these counties would become subject to the statute after January 1, 1992.

10. Authorize the department to assess fees to recover the costs of administering the program for the elimination of architectural barriers.
11. Establish an advisory committee of building professionals and disabled persons to review and recommend changes to rules and procedures of the architectural barriers program.
12. Remove the exemption of the University of Texas System from state agency oversight for compliance with the program for elimination of architectural barriers.
13. Require licensed architects and engineers to submit plans and specifications to the department in compliance with the architectural barriers statute and define submission requirements for plans and specifications. Require the Texas Department of Licensing and Regulation to report violations of the architectural barriers statute by licensed engineers and architects to the State Board of Registration of Professional Engineers and the Texas Board of Architectural Examiners.
14. Authorize administrative penalties to be assessed for violations of the architectural barriers statute.
15. Require information on the elimination of architectural barriers to be distributed to disabled persons and building professionals and authorize the department to enter into cooperative agreements to integrate information into publications of other entities.
16. Change the name of the agency from the State Purchasing and General Services Commission to the General Services Commission.
17. Require the commission to inspect and test costly purchases that it determines to be problematic.

18. Require the commission to annually review routine purchases of state agencies and specify that the consolidation of services into a statewide or regional contract is not required if the commission can obtain bids from more than five bidders.
19. Require the commission to allow at least 30 days for firms to prepare bids for construction projects and authorize the commission to shorten this period for emergency projects. Require the commission to allow at least 30 days for firms to prepare for interviews.
20. Require the commission, in consultation with the boards of architectural examiners and professional engineers, to develop criteria to evaluate firms to be retained for state building projects.
21. Authorize public institutions of higher education to provide TEX-AN services to public college and university students in university housing and require the commission to develop rules on conditions of access and recovery of costs from student users.
22. Modify elements of competitive cost review program to require certain information be provided about commercial activities. Require the commission to review and comment on the review schedule prior to its adoption by an agency's board. Require the commission to publish instructions for performing the management study and approve it upon completion. Require that an agency's in-house costs estimates be reviewed by the agency's internal auditor. Establish a 1995 sunset date for the competitive cost review program.
23. Require the commission to implement the competitive cost review program to review the commercially available services it operates and require the commission to develop internal controls

to separate the commission's review and oversight roles with the program.

24. Require that school buses under lease or lease-purchase contracts are subject to the minimum safety specifications used by the commission to purchase buses; require leases to be obtained through competitive bid; and prescribe minimum lease terms and reporting requirements for school districts that lease buses.
25. Remove the requirement that school districts process payments to school bus vendors through the state treasury.
26. Require the Public Finance Authority to issue, in a timely manner, bond proceeds for projects approved by the legislature.
27. Remove routine work provided to an agency under an independent contract from the definition of consulting services.
28. Require the commission to review prospective consultant contract advertisements and determine whether the service meets the definition of a consulting service, and require the commission to adopt rules describing the criteria that will be used to determine whether a service is within the legal definition of consulting services.
29. Require the executive director or his designee to establish skill-oriented career ladders. (ATB)
30. Prohibit a member of the commission and any employee compensated at or above Group 17 in the appropriations act from being an officer of a related trade association. (ATB)

31. Require the executive director or his designee to develop and maintain an E.E.O. policy and to report findings to the governor's office. (ATB)
32. Require that appointment to the board be made without regard to race, color, handicap, sex, religion, age, or national origin. (ATB)
33. Require that the commission develop and implement policies which clearly define the respective responsibilities of the commission and staff. (ATB)
34. Require the commission to allow the public reasonable opportunity to appear before it regarding issues under its jurisdiction. (ATB)
35. Prohibit a registered lobbyist from serving as a member of the commission or from being employed as the agency's general counsel. (ATB)
36. Require the agency to provide information on standards of conduct to commission members and employees. (ATB)
37. Define grounds for removal of a commission member as violation of the conflict of interest or lobbyist provisions. (ATB)
38. Specify the eligibility requirements for public members of the commission. (ATB)
39. Require an annual report to be filed with the governor and the legislature detailing the financial transactions of the agency. (ATB)
40. Require the executive director or his designee to develop a system of merit pay based on documented employee performance. (ATB)

41. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
42. Require the agency to prepare and distribute information to the public concerning the functions of the agency and its complaint procedures. (ATB)
43. Require files to be maintained on complaints. (ATB)
44. Require the agency to develop a plan which describes how non-English speaking or disabled persons can be provided reasonable access to the agency's programs. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Real Estate Commission

Board Members

Florence (Posie) Willess, Dallas, Chair
 Marsha J. Shanklin, Victoria, Vice-chair
 Lynn Elliott, College Station
 Billie Heffner, Burleson
 Robert T. Martin, Fort Worth
 John L. Minor, Jr., Houston
 Henry Santamaria, El Paso
 Marsha Spencer, Houston
 Michael N. Wieland, El Paso

Agency Functions

Regulation of the Texas real estate industry began in 1939 and was administered by the Office of the Texas Secretary of State. In 1949, the regulatory program was moved to a new agency, the Texas Real Estate Commission, which currently regulates real estate brokers, salesmen, appraisers, inspectors, timeshare properties, and residential service companies. More than 160,000 licenses were issued by the commission in 1990. The agency also maintains two recovery funds to pay claims for dishonest or negligent actions of licensed brokers, salesmen and inspectors. The commission is composed of six members who are licensed brokers and three members who represent the public.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 3,897,726	\$ 3,764,055
Percent of General Revenue	-0-	-0-

Number of Positions (1991)

104.6 FTE

Commission Findings and Recommendations

Assessment of Need for Agency Functions

The review of the Texas Real Estate Commission (TREC) included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued under its current organizational structure.

The Sunset Commission reviewed the need for continued regulation of the real estate industry in Texas and concluded that the current regulation is necessary to protect the general public. Such regulation ensures the competence of real estate professionals, including real estate brokers, salesmen, appraisers and inspectors. Continued regulation of residential service companies and timeshare properties also ensures the public that these ventures operate soundly.

Assessment of Organizational Alternatives

After considering several organizational alternatives to the current agency structure, the Sunset Commission recommended the following two changes:

- Move appraiser regulation to the Texas Department of Licensing and Regulation (TDLR) and establish an appraiser advisory committee to advise the TDLR. This change will ensure that Texas' regulation of real estate appraisers meets federal requirements that emphasize the need to separate the regulation of brokers and appraisers. Unless the regulation of the two groups are adequately separated, the ability of financial institutions in Texas to make federally related transactions will be in jeopardy.
- Move inspector regulation to the Texas Department of Licensing and Regulation and establish an inspector advisory committee to advise the TDLR. This will separate the responsibility for the regulation of inspectors, who generally represent the buyer in real estate transactions, from the TREC's regulation of real estate brokers and salesmen, who generally represent the seller. Regulation of inspectors through the TDLR will provide a more appropriate forum for the development of a strong program to regulate the inspectors' important "buyer protection" function.

Major Recommendations

In addition to the conclusion that two programs should be transferred, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations included the following major changes:

- Require that the governor designate the chair. Currently, the commission's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the commission to the governor.
- Modify the composition of the Texas Real Estate Commission to include the perspective of licensed salesmen. The commission's current composition, 6 brokers and 3 public members, does not provide direct representation of salesmen, who make up nearly two-thirds of the agency's total licensees. This change would require that the first broker term that expires be replaced by a position for a licensed salesman.
- Modify the requirements for licensing appraisers to comply with federal requirements. Unless state law is brought into compliance, the ability of financial institutions in Texas to make federally related transactions will be in jeopardy. Specific changes to the program include: eliminating the requirement that an appraiser also hold a broker license; modifying license titles; repealing a provision that allows a college degree to substitute for appraisal education; providing for temporary registration of out-of-state appraisers; and authorizing procedures to collect and forward federal registry fees.
- Remove the requirement that complaints be verified before agency staff can begin an investigation. This requirement is unusual for a regulatory agency and has resulted in the agency requiring that all complaints be either notarized or approved by the commission before

an investigation can begin. Such a policy may discourage the public from filing valid complaints and inhibit the ability of the staff to conduct timely investigations. The change proposed would not eliminate the requirements that complaints be submitted in writing, that parties to a complaint be notified, and that the board can clearly require the staff to have "reasonable cause" before an investigation begins.

- Establish a four-year statute of limitation on the agency's authority to investigate complaints. There is currently no limit on the time that can pass before a complaint is filed. This change will allow a reasonable amount of time for the public to file a complaint while ensuring that the staff and all parties to the complaint have access to evidence that is needed to conduct a reasonable investigation.
- Authorize the commission to assess administrative penalties against licensees of up to \$1,000 for each violation. Providing the commission with the authority to use this important regulatory tool will add to the current sanctions used by the agency and will allow the commission to discipline a broker without affecting the licenses of salesmen who are sponsored by the broker. Administrative penalties have been an effective means of discipline in other state licensing agencies.
- Require notice to consumers of the availability of the Real Estate Recovery Fund and the Real Estate Inspector Recovery Fund. These funds were established to reimburse the public for damages caused by licensees. However, there is no consistent method for letting consumers know the funds exist. This change will require the agency to distribute written information about the funds to complainants and requires licensees to inform their clients about the funds through either a sign in their office, a brochure or a contract form.
- Increase the claim limits for the Real Estate Recovery Fund and the Real Estate Inspector Recovery Fund and

increase the minimum fund balances that trigger additional fee assessment to replenish the funds. The claim limits for the Real Estate Recovery Fund (covering broker and salesman actions) would be raised from \$20,000 per incident and \$50,000 per licensee to \$50,000 per incident and \$100,000 per licensee. The claim limits for the Real Estate Inspector Recovery Fund (covering inspector actions) would be raised from \$7,500 per incident and \$15,000 per licensee to \$20,000 per incident and \$50,000 per licensee. These changes will ensure that a higher proportion of court-ordered claims can be reimbursed by the funds. The recommended limits will not present a substantial risk to either fund since each fund's current balance is well above the proposed minimum.

- Allow excessive balances in the Real Estate Inspector Recovery Fund to be appropriated for the operation of the inspector licensing program. This fund has only been used once in five years of existence and the balance continues to accumulate. This change will allow the program to reduce inspector renewal fees that currently fund program operation and instead use the excess balances. The change will allow only balances over \$600,000 to be appropriated so that the stability of the recovery fund will not be adversely affected.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive impact of approximately \$29,000 in fiscal year 1992 and \$54,000 in fiscal year 1993.

Complete List of Recommendations

1. Transfer the authority for appraiser regulation to the Texas Department of Licensing and Regulation and establish an advisory committee to advise the department.
2. Modify the licensing requirements for appraiser regulation as follows: eliminate the requirement that an appraiser also hold a broker license; authorize the registration of appraiser trainees; modify license titles; authorize procedures to collect and forward federal registry fees; authorize temporary registration of out-

- of-state appraisers; repeal the provision allowing a college degree to substitute for appraiser courses; and require that experience requirements be based on calendar years of experience.
3. Transfer the authority for inspector regulation to the Texas Department on Licensing and Regulation and establish an inspector advisory committee to advise the department.
 4. Authorize the appropriation of excess balances over \$600,000 in the Real Estate Inspector Recovery Fund to fund the operation of the inspector regulation program.
 5. Provide that the governor designates the chairman of the commission.
 6. Modify the composition of the commission to replace one of the broker positions with a position for a licensed real estate salesman.
 7. Eliminate the requirement that complaints be verified before the staff can begin an investigation.
 8. Establish a four-year statute of limitation on agency investigation of complaints.
 9. Authorize the commission to assess administrative penalties against licensees of up to \$1,000 for each violation.
 10. Authorize an inactive license status for brokers.
 11. Increase claim limits for the Real Estate Recovery Fund and the Real Estate Inspector Recovery Fund and increase the minimum fund balances that trigger additional fee assessment to replenish the fund.

12. Require notice to consumers of the availability of the Real Estate Recovery Fund and the Real Estate Inspector Recovery Fund.
13. Update the requirement that appointment to the commission shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
14. Update standard language and include a state-elected "vice president" in the list of trade association officers covered by the standard conflict of interest provision. (ATB)
15. Update the requirement that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the commission or serve as a member of the commission. (ATB)
16. Update the requirement for public membership on the commission and the qualifications for a public member. (ATB)
17. Update the language establishing the grounds for removal of a commission member. (ATB)
18. Update the requirement for a system of merit pay based on documented employee performance. (ATB)
19. Require the commission to establish skill-oriented career ladders. (ATB)
20. Update the language requiring the commission to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
21. Update the requirement to provide for public testimony at commission meetings. (ATB)

22. Update the requirement for notification and information to the public concerning commission activities. (ATB)
23. Update the requirement that the commission develop and implement policies that clearly separate commission and staff functions. (ATB)
24. Require development of an E.E.O. policy. (ATB)
25. Require the agency to provide information on standards of conduct to commission members and employees. (ATB)
26. Require development of accessibility plan. (ATB)
27. Require the commission to review and revise rules to allow advertising and competitive bidding practices that are not deceptive or misleading. (ATB - Brokers and Salesmen)
28. Update the language providing for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB - Brokers and Salesmen)
29. Provide for an analysis, on request, to individuals failing the examination. (ATB - Brokers and Salesmen)
30. Update the language authorizing the commission to use a full range of penalties. (ATB - Brokers and Salesmen)
31. Specify commission hearing requirements. (ATB - Brokers and Salesmen)
32. Update requirement that files be maintained on complaints. (ATB)

33. Update the requirement that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
34. Authorize the department to adopt a system of voluntary continuing education. (ATB - Appraisers)
35. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB - Appraisers)
36. Provide for an analysis, on request, to individuals failing the examination. (ATB - Appraisers)
37. Provide for waiver of licensing requirements for those with a current license from another state that has similar license requirements. (ATB - Appraisers)
38. Require standard time frames for licensees who are delinquent in renewal of licenses. (ATB - Appraisers)
39. Require standard time frames for licensees who are delinquent in renewal of licenses. (ATB - Inspectors)
40. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB - Inspectors)
41. Provide an analysis, on request, to individuals failing the examination. (ATB - Inspectors)
42. Provide for waiver of licensing requirements for those with a current license from another state with similar license requirements. (ATB - Inspectors)
43. Authorize the department to adopt a system of voluntary continuing education. (ATB - Inspectors)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas National Research Laboratory Commission

Board Members

Fred Bucy, Dallas, Chair
 Charles W. Duncan, Houston
 Kenneth A. McCrady, Ennis
 Martin Goland, San Antonio
 Gerald D. Griffin, Houston
 Jerome Johnson, Amarillo
 Peter O'Donnell, Jr., Dallas
 Charles R. Perry, Midland
 Warren G. Woodward, Fort Worth

Agency Functions

The Texas National Research Laboratory Commission was created by the 69th Legislature to prepare proposals for the siting of the Superconducting Super Collider (SSC) in Texas, to be built by the U.S. Department of Energy. The 70th Legislature expanded the commission's duties to include oversight responsibilities in the construction and operation of the SSC and also authorized the commission to issue bonds. The 71st Legislature further expanded the eligible uses of bond proceeds.

Agency Funding

'90 Expended **'91 Budgeted**

\$ 2,663,765 \$ 16,888,721

Percent of
General Revenue

100%

100%

Number of Positions (1991)

30 FTE

Commission Findings and Recommendations

Assessment of Need for Agency Functions

The review of the commission included an assessment of the need for the functions of the commission; benefits that could be gained through transfer of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

The Sunset Commission reviewed the need for the functions of the commission. The agency's primary function is to oversee the state's financial contribution to the federal Superconducting Super Collider project. The Commission recommended continuing the functions of the agency since the state has made a commitment to the project and withdrawal of the state's financial support would jeopardize the project's success and the economic and social benefits that could be gained.

Assessment of Organizational Alternatives

The Sunset Commission recommended continuing the functions of the agency under its current structure. The current structure provides ongoing oversight by the legislature and allows the state to fulfill its coordinating and oversight role effectively. No benefits could be identified from merging or transferring the functions to another entity.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the commission to establish a program for contracting with disadvantaged business enterprises (DBEs) on the SSC project. The current appropriations bill sets out a policy for state agencies to follow in contracting with DBEs, but adherence to the policy is not required. This recommendation requires the commission to adopt a DBE policy for SSC projects consistent with the appropriations act or any state law that might be enacted in the future. The program would require the commission to estimate the number of disadvantaged businesses willing and able to supply the

goods and services needed by the commission. Based on that research, the commission would then set percentage goals for the relative amount of work the commission should strive to award to disadvantaged businesses. All percentage goals would be targets only and would not be mandatory quotas. In addition, the agency is required to establish a program to provide outreach and technical assistance to disadvantaged businesses concerning agency bidding and contracting procedures.

- Modify the commission's exemption from state purchasing requirements. The commission would continue to be exempt from state purchasing requirements only on mission related purchases, which are purchases central to the SSC project. Other purchases would not be exempt. In addition, the commission would be required to adopt rules that would define mission vs. non-mission items. This approach keeps the agency within the standard purchasing process of the state to the extent possible.
- Exempt the commission from the full range of property inventory reporting requirements as required by the Real Property Accounting and Management Act. The commission will be involved in many land transactions in purchasing land for the SSC. These properties will be subsequently turned over to the federal government. Exempting the commission from the full range of reporting requirements would eliminate the requirement that the commission submit records of transactions each time a parcel of land is acquired and subsequently when the parcel is transferred to the Department of Energy. The commission would be allowed to maintain its own property inventory records and submit these to the General Land Office upon request. This approach would continue to provide oversight of the commission's property inventory system. In addition, the commission would continue to be subject to the oversight of the state auditor's office and to the property review conducted by the General Land Office every four years.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any fiscal impact.

Complete List of Recommendations

1. Require the commission to establish a disadvantaged business program consistent with current state policy.
2. Modify the commission's exemption from state purchasing requirement.
3. Exempt the commission from the full range of property inventory reporting requirements as required by the Real Property Accounting and Management Act.
4. Require the commission to establish policy and adopt rules according to APTRA.
5. Specify grounds for removal of a board member. (ATB)
6. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. (ATB)
7. Provide for conflict of interest provisions for commission members. (ATB - modified)
8. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
9. Provide that 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. (ATB)
10. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)

11. Require the board to establish skill-oriented career ladders. (ATB)
12. Require development of an E.E.O. policy. (ATB)
13. Require files to be maintained on complaints. (ATB)
14. Require development of accessibility plan. (ATB)
15. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
16. Provide for public testimony at agency meetings. (ATB)
17. Require a system of merit pay based on documented employee performance. (ATB)
18. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
19. Provide for notification and information to the public concerning board activities. (ATB - modified)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Structural Pest Control Board

Board Members

Rayford Kay, Houston, Chair
Charles Glasse, Friendswood, Vice-Chair
Dr. Philip Hamman, representing the Head of the
Department of Entomology, Texas A&M University,
College Station
Alvin Ashorn, representing the Commissioner,
Department of Agriculture, Austin
David Melass, Lake Jackson
Lisa S. Echols, Breckenridge
Merle M. Carlson, Houston
Roberts S. Jenkins, Sr., Marble Falls
Bobby Davis, representing the Commissioner,
Department of Health, Austin

Agency Functions

The Texas Structural Pest Control Board was created by the 62nd Legislature to regulate the activities of commercial pest control operators who apply pesticides in and around residences, businesses and other structures. The board establishes standards of competency for applicators, rules of practice for pest control businesses, and enforcement policies. To achieve these goals, the agency requires training and examination of applicants, requires liability insurance coverage by businesses, performs unannounced inspections of pesticide applications, verifies applicators' training records, and investigates consumer complaints of pesticide misuse. In fiscal year 1990, 3,276 structural pest control businesses, 6,531 certified applicators and 5,772 technicians were licensed by the board. Minimum requirements for licensing and enforcement of pest control applicators are set out in federal statute administered by the U.S. Environmental Protection Agency. Board operations are financed primarily through fees collected for examinations and licenses. Fees are deposited into the Structural Pest Control Fund No. 424.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 778,898	\$ 790,396
Percent of General Revenue	-0-	-0-

Number of Positions (1991)	24 FTE
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Commission Findings and Recommendations

The review of the Structural Pest Control Board included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the legislature to remain involved in the regulation of pest control operators and businesses. In part because federal law requires continuation of most of the board's functions and in part because improper use of pesticides pose a danger to the public, the Commission concluded that state regulation of the pest control industry is still warranted.

Assessment of Organizational Alternatives

The Sunset Commission considered two organizational alternatives for the regulation of the structural pest control industry: centralization under the Texas Department of Licensing and Regulation and consolidation under the Texas Department of Agriculture (TDA). Of the two alternatives, the option of consolidation with TDA was considered the more logical because consolidation would place almost all pesticide applicator regulation under one state agency. The Commission concluded, however, that transfer of the board's functions to TDA would not significantly impact or improve the quality of regulation and the effectiveness of enforcement. Therefore, the Commission decided to recommend continuation of the board as a separate agency.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to appoint the chair. Currently, the board's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the board to the governor.
- Require the development of a training program for technicians and require all currently licensed technicians and technician applicants to complete the program. In addition, all new technician applicants would be required to pass a board-developed and administered test based on the training program. The program would be developed with the advice of an advisory committee composed of representatives of the industry, consumers and the related academic sciences and would be published in conjunction with the Texas Agricultural Extension Service. A minimum list of study topics would be included in statute.
- Require the licensing of certain exempt pesticide applicators. Currently, only applicators who apply pesticides for-hire are required to be licensed under the law and any property owner, or their employee or agent, may apply pesticides on their own property without a license. The commission concluded, however, that the importance of correct and safe pesticide use warranted the licensing of all persons, for-hire or not for-hire, who apply pesticides in certain locations: hospitals, nursing homes, day care centers, schools, apartment complexes and state-owned buildings. A noncommercial applicator license would be added to the regulation for those not-for-hire applicators.

- Require the development of a consumer information sheet for distribution to the public and all consumers of pest control services. The information sheet would be developed with the advice of a six-member advisory committee composed of representatives of the industry, consumers and the related academic sciences and would include certain information specified in statute. Applicators would be responsible for leaving the information sheet at private residences at the time of treatment.
- Require the development of a sign to notify the public when pesticides will be sprayed in apartments, schools, day-care centers, hospitals, nursing homes, state-owned buildings and other places of work. Require parents of children in schools and licensed day-care centers to be advised at the beginning of the school year of the school or center's pest control practices. Applicators would be responsible for giving the information sheets and notification sign to apartment and building managers for the managers to post 48 hours prior to any indoor treatments.
- Require the development of a sign to be posted in the yards of private residences and certain residential rental properties at the time of outdoor herbicide and pesticide treatments. Applicators would be responsible for posting the sign at the time of the outdoor treatment.
- Require several changes in the board's inspection policy. First, require a routine inspection of every licensed pest control business at least once every two years. Second, require the board to adopt standard investigation procedures in rules, including procedures to follow in documenting a misapplication of pesticides. Third, require the board to notify consumers of a misapplication discovered during a board investigation. Fourth, establish a data base of pesticide poisonings and significant property damage resulting from misapplications and incorporate it into the existing occupational disease reporting program database administered by the Texas Department of Health. Fifth,

authorize the board to establish a pre-treatment inspection service, funded entirely by fees charged for the service, to help consumers determine whether a pest infestation exists and the pesticide treatment an applicator is attempting to sell, therefore, is warranted.

Fiscal Impact

The recommendations adopted by the Sunset Commission are not anticipated to result in any fiscal impact.

Complete List of Recommendations

1. Require the board to develop information on pesticides and pest control and provide for mandatory distribution to consumers.
2. Require a notification sign to be posted 48 hours prior to indoor pesticide applications in apartment complexes and places of work; sign would be supplied by the applicator and posted by the apartment or building manager; require a notification sign to be posted at the time of outdoor pesticide applications for private homes and some residential rental properties.
3. Establish a noncommercial applicator license for certain currently exempt persons who apply pesticides in state-owned facilities, day care centers, hospitals, nursing homes, apartment buildings and schools.
4. Require development of a technician training program, with required study topics, under the guidance of an advisory committee and developed in conjunction with the Texas Agricultural Extension Service; require technician applicants to complete a board-approved study course and pass a test before licensure; require currently licensed technicians to complete the study course only.
5. Increase the board's authority over an applicator with a revoked license by requiring a one-year waiting period before reapplication and allowing the board to put a licensee's other license categories on probation for the duration of the revocation.

6. Require biennial inspections of pest control businesses and require the board to develop complaint investigation procedures in rules.
7. Require mandatory sanctions for the misapplication of pesticides.
8. Require the board to notify consumers of a misapplication discovered during a board investigation.
9. Require board approval of informal disciplinary agreements negotiated by agency employees between licensees and consumers.
10. Establish a database of pesticide poisonings and property damage from misapplications to be included within the occupational disease reporting program database administered by the Texas Department of Health.
11. Authorize the board to do pre-treatment inspections for consumers to verify that a pesticide treatment is warranted and require the board to recover through fees any costs involved in the program.
12. Remove the exemption for nurserymen certified by the Texas Department of Agriculture, thereby requiring that nurserymen who apply pesticides for-hire hold a pesticide applicator's license from the board or TDA.
13. Raise the minimum per occurrence liability insurance.
14. Require the agency to contract with the Texas Department of Agriculture for the services of an integrated pest management specialist.
15. Require the governor to appoint the chairman of the board.
16. Require development of accessibility plan. (ATB)

17. Provide for public testimony at agency meetings. (ATB)
18. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
19. Require the board to establish skill-oriented career ladders. (ATB)
20. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
21. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. (ATB)
22. Require a system of merit pay based on documented employee performance. (ATB)
23. Update language that specifies grounds for removal of a board member. (ATB)
24. Update language that provides that a person registered as a lobbyist under Article 6252-9c, V.T.C.S., may not act as general counsel to the board or serve as a member of the board. (ATB)
25. Update language that requires specific provisions relating to conflicts of interest. (ATB)
26. Require public membership on the board. (ATB)
27. Require files to be maintained on complaints. (ATB)
28. Require development of an E.E.O. policy. (ATB)
29. Update language requiring the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. (ATB)

30. Update language authorizing the board to apply a full range of penalties. (ATB)
31. Specify board hearing requirements. (ATB)
32. Update language authorizing the staggered renewal of licenses. (ATB)
33. Update language providing for notification and information to the public concerning board activities. (ATB)
34. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date. (ATB)
35. Provide an analysis, on request, to individuals failing the examination. (ATB)
36. Update language that requires that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)
37. Update language that provides for licensing by endorsement rather than reciprocity. (ATB)
38. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Board of Professional Land Surveying

Board Members

Robert J. Prejean, New Ulm, Chair
 Walter Fortney, Fort Worth, Vice-Chair
 Art Osborn, Tyler
 Herman H. Forbes, Round Rock
 David Vilbig, Dallas
 William C. Wilson, San Angelo
 Mary Fern Maddera, Levelland
 George Henry Clements, III, Richardson
 Andrew Sikes, Houston
 Gary Mauro, Austin, Commissioner of the General Land Office, ex officio

Agency Functions

The Texas Board of Land Surveying was created in 1979 as the result of the consolidation of the State Board of Registration for Public Surveyors (created in 1955) and the Board of Examiners of Licensed State Land Surveyors (created in 1919). In 1989, the name was changed to the Texas Board of Professional Land Surveying. The agency's main responsibility is to ensure that only qualified surveyors provide services to the residents of Texas. The board achieves this by evaluating the qualifications of persons seeking certification, registration and licensure, and administering examinations to those that qualify. The board also investigates complaints and conducts enforcement actions when necessary. The board also prints and distributes a current roster of registered professional land surveyors and an agency newsletter.

Agency Funding

	'90 Expended	'91 Budgeted
	\$ 269,717	\$ 274,315
Percent of General Revenue	-0-	-0-

**Number of Positions
(1991)** 4 FTE

Commission Findings and Recommendations

The review of the surveying board included an assessment of the need to continue the regulating functions performed by the agency; benefits that could be gained through transfer of all of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the state to continue to regulate surveyors. The Commission concluded that the state should continue to regulate surveyors to ensure that surveyors have a certain degree of competency so that their actions do not threaten the economic well being or the property rights of the public.

Assessment of Organizational Alternatives

The Sunset Commission considered the alternative of transferring the functions of the Board of Professional Land Surveying to the Department of Licensing and Regulation. The board would continue to develop and recommend rules to the commissioner of the Department of Licensing and Regulation and would maintain final disciplinary authority over licensees. The review concluded that some cost savings could result from a transfer. However, the Commission determined that a separate agency should regulate surveyors and therefore recommended continuation of the current agency structure.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to designate the chair. Currently, the board's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair

by the governor would promote accountability by the board to the governor.

- Repeal increased educational requirement for licensure scheduled to be implemented on January 1, 1996 and retain current education and experience requirements. Currently, an applicant has five combinations of education and experience that he can pursue to become eligible to be certified as a surveyor. On January 1, 1996, as a result of changes made by the 71st legislature, only one of these educational and experience tracks will remain. After January 1, 1996 a person must have a bachelor degree with a least 32 hours in surveying or surveying related courses to be eligible to be certified a surveyor. The increased experience requirements would have made Texas' experience requirements, which are already higher than most other states, even more burdensome.
- Authorize the board impose administrative and civil penalties of up to \$1,000 per violation for violations of the surveying act or related rules. The board's current enforcement structure does not have all the powers needed to ensure compliance with its statute and rules. These changes would provide the board with enforcement power similar to those used by other regulatory agencies in Texas and surveying boards in other states.
- Require the surveying board to establish standards defining the procedure and content of boundary surveys in rules. The board currently lack standards of practice for surveying which makes it difficult for the board to objectively determine when a surveyor has acted negligently and for the surveyor to determine the minimum acceptable performance allowed by the board. Minimum standards would enhance the board's ability to determine, in a more objective manner, when a surveyor has performed incompetently or negligently. Minimum standards also would provide surveyors with the board's perception of how to conduct a proper survey.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net negative fiscal impact of approximately \$6,000 in fiscal year 1992 and fiscal year 1993.

Complete List of Recommendations

1. Repeal educational requirement for licensure scheduled to be implemented on January 1, 1996 and retain current education and experience requirements;
2. Authorize the board to impose administrative and civil penalties of up to \$1,000 per violation for violations of the surveying act or related rules;
3. Require the board to establish standards defining the procedure and content of boundary surveys in rules;
4. Authorize the governor to designate the chairman of the board;
5. Reduce the vote required to take disciplinary action;
6. Provide that 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 (ATB);
7. Require specific provisions relating to conflicts of interest (ATB);
8. Specific grounds for removal of a board member (ATB);
9. Require public membership on boards and commissions (ATB);
10. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading (ATB);
11. Provide for notification and information to the public concerning board activities (ATB);

12. Require the agency to provide information on standards of conduct to board members and employees (ATB);
13. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions (ATB);
14. Provide for public testimony at agency meetings (ATB);
15. Require the director or the director's designee to establish skill-oriented career ladders (ATB);
16. Require a system of merit pay based on documented employee performance (ATB);
17. Require development of an E.E.O. policy (ATB);
18. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date (ATB);
19. Provide an analysis, on request, to individuals failing the examination (ATB);
20. Require standard time frames for licensees who are delinquent in renewal of licenses (ATB);
21. Provide for licensing by endorsement rather than reciprocity (ATB);
22. Authorize agencies to use a full range of penalties (ATB);
23. Specify board hearing requirements (ATB);
24. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint (ATB); and

25. Require files to be maintained on complaints. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Texas Turnpike Authority

Board Members

Clive Runnells, Houston, Chair
Charles R. Matthews, Dallas, Vice-Chair
William Mahomes, Jr., Dallas
Robert H. Dedman, Dallas, ex-officio,
Chairman, State Highway and Public
Transportation Commission
Wayne B. Duddlesten, Houston, ex-officio, State Highway
and Public Transportation Commission
Philip Montgomery, Dallas
James N. Muns, Plano
R.E. "Ed" Palm, Fort Worth
Jere W. Thompson, Jr., Dallas
Richard L. Bischoff, Houston
Robert L. Collins, Houston
Ray C. Stoker, Jr., Odessa, ex-officio, State Highway
Public Transportation Commission

Agency Functions

The Texas Turnpike Authority was established in 1953 to design, finance through the sale of revenue bonds, construct, operate and maintain toll turnpikes throughout the state. The Authority has built and continues to operate three toll facilities. Agency staff study the feasibility of proposed toll roads. Consultants are hired to perform more detailed feasibility studies and to design the roadway. Construction contracts are let on a bid basis.

The Texas Turnpike Authority is a self-supporting agency of the state and has never received appropriated funds. According to the state constitution, no state tax money may be used to finance, in whole or in part, state toll roads. All projects undertaken by the agency are financed through the sale of revenue bonds, the principal and interest on which is repaid through the collection of tolls on the turnpikes. The agency employs a staff of 240 employees. Of this total, 71 are in the agency's headquarters in Dallas; 32 employees work in a field office in Houston; and 137

employees collect and process tolls on the two projects located in the Dallas area.

Agency Funding	'90 Expended	'91 Budgeted
	\$ 9,520,353	\$ 10,946,520
Percent of General Revenue	-0-	-0-

Number of Positions (1991)	240 FTE
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Commission Findings and Recommendations

The review of the Texas Turnpike Authority (TTA) included an assessment of the need for continued state participation in the building of toll roads; benefits that could be gained through transfer of all or part of the agency's functions to another agency; and changes needed if the agency were continued using its current organizational structure.

Assessment of Need for Agency Functions

The Sunset Commission reviewed the need for the state to remain involved in the building of toll roads. The Commission concluded that uncertainty exists in the federal funding scheme for tax-supported roads and that toll roads provide an option for new road construction if federal funds significantly decrease in the future. The Commission also concluded that the three existing toll projects must continue to be managed until all of the debt is repaid. If the agency is abolished, another agency would have to be designated to manage and collect tolls until the year 2020, when the debt on the three turnpikes will be retired. Therefore, the Commission decided to recommend continuation of state participation in toll roads.

Assessment of Organizational Alternatives

The Sunset Commission considered transfer of the functions of the agency to the State Department of Highways and Public Transportation. A constitutional prohibition exists, however, against state money being used to fund toll roads.

Transfer of the agency's functions to a state agency that is funded with state appropriations could be unconstitutional. Therefore, the Commission decided to recommend continuation of the Texas Turnpike Authority as a separate agency.

Major Recommendations

After concluding that the functions performed by the agency were needed and that the current organizational structure was appropriate, the Sunset Commission developed a number of recommendations to improve the operation of the agency. These recommendations include the following major changes:

- Require the governor to appoint the chair. Currently, the board's chair is selected by its members. This approach does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer. Designation of the chair by the governor would promote accountability of the board to the governor.
- Reduce the size of the board from 12 to nine members. The commission concluded that the size of the board was larger than the majority of other state agency governing boards and that no particular circumstances were identified requiring the larger board size.
- Require the State Department of Highways and Public Transportation (SDHPT) to consider toll roads in its statewide planning and to approve all toll roads that will become part of the state highway system, except for county toll roads in counties with a population of more than 2.4 million. Several new public and quasi-public toll road authorities have been created in the past two legislative sessions with little coordination provided at the state level. Coordination with SDHPT must be adequate to ensure that the roadways built by the other entities will fit effectively into the overall state highway system. Also, coordinated planning is important because SDHPT's timing for constructing access and connecting roads with the toll roads can have a significant impact on the financial success of a toll road.

- Repeal an outdated statute authorizing private corporations to build toll roads in the state. A statute exists dating back to 1913, before the creation of either SDHPT or TTA, that authorizes private corporations to build toll roads across the state. Although the commission concluded that privately-financed toll roads may offer a useful funding alternative, the commission also concluded that the old law would be an inappropriate mechanism for such private funding, since it gives private companies the power to condemn property and construct toll roads completely outside legislative or state agency oversight. The commission concluded, therefore, that the old statute should be repealed.
- Authorize the agency to accept funds from private investors to help finance a toll road project and require the agency to adopt rules governing how profits will be distributed and toll rates established. Because the agency is required by the constitution to be self-supporting, an otherwise infeasible project can be made viable with the addition of private capital. The commission concluded that private equity may be raised by the agency provided the board adopts rules governing such public protection issues as toll rates, profit sharing and safety standards.
- Authorize the agency to take possession of condemned land for right of way after depositing the amount of the appraised property value with the court. Currently, the agency obtains right of way for roadway projects by offering to pay the landowner the appraised value of the condemned land plus an amount for damages to the remaining land that is not taken. If the landowner does not accept the agency's offer, the landowner may appeal to a special commissioners court appointed by a judge to decide on the matter. The agency cannot take possession of the condemned land until the commissioners court has made an award, which may cause long delays in obtaining the land. This change would allow the agency to deposit the appraised value

with the court, serve notice, and take possession of the land before the commissioners court ruling.

- Require the agency to adopt a relocation assistance policy in rules to provide assistance to property owners who are displaced when the agency acquires their property. Residents and businesses sometimes incur costs that are not included in the price of the land purchased by the agency, such as moving expenses and closing costs. The commission concluded that the agency should have a policy for helping property owners defray those costs.
- Require the agency to develop procedures in rules for conducting an environmental study before constructing a toll road. Although the agency conducts environmental reviews on its projects, it has not ensured that the reviews will be conducted in a consistent manner by developing rules governing those reviews. The commission concluded that the agency should develop rules and submit the findings from environmental studies to the State Department of Highways and Public Transportation for review and approval.
- Authorize the transfer of surplus funds between projects. Toll rates are set at a level sufficient to retire the debt and employ necessary personnel and supplies to maintain the roadway and collect and process the tolls. If revenues generated in tolls exceed these costs, the excess revenues are deposited in a surplus fund account. The commission concluded that the board should be authorized in statute to transfer excess revenues from one project to another project that may not be generating the revenues sufficient to meet expenses.
- Require the board to establish a policy for awarding professional service contracts that should include procedures for encouraging the submission and review of proposals from multiple firms. The agency does not attempt to invite proposals from more than one firm for the majority of its professional service contracts.

Without an opportunity to review a variety of proposals, the agency consistently awards contracts to a small number of firms.

- Require the agency to request the permission of the attorney general to use outside legal services and to evaluate the minority hiring practices of prospective law firms before a request is submitted. The commission concluded that since TTA is a state agency with statewide jurisdiction, it should follow the policies and procedures of other state agencies in gaining the approval of the attorney general before hiring outside legal counsel.
- Require the agency to establish a program for contracting with disadvantaged business enterprises (DBEs). The current appropriations bill set out a policy for state agencies to follow in contracting with DBEs, but adherence to the policy is not required. This recommendation requires the agency to adopt a DBE policy consistent with the appropriations act or any state law that might be enacted in the future. The program would require the agency to estimate the number of disadvantaged businesses willing and able to supply the goods and services needed by the agency. Based on that research, the agency would then set percentage goals for the relative amount of work the agency should strive to award to disadvantaged businesses. All percentage goals would be targets only and would not be mandatory quotas.

Fiscal Impact

The recommendations adopted by the Sunset Commission would result in a net positive fiscal impact of approximately \$3,000 in fiscal year 1992 and in fiscal year 1993.

Complete List of Recommendations

1. Require the State Department of Highways and Public Transportation to consider toll roads in its statewide planning and to approve all toll roads that will become part of the state highway system, except for county toll roads in counties with a population of more than 2.4 million.

2. Repeal an outdated statute authorizing private corporations to build toll roads in the state.
3. Reduce the size of the board from twelve to nine members.
4. Authorize the agency to accept funds from private investors to help finance a toll road project and require the agency to adopt rules governing how profits will be distributed and toll rates established.
5. Require the board to establish a policy and procedures for awarding professional service contracts which includes encouraging the submission and review of proposals from various firms.
6. Require the agency to request the permission of the attorney general to use outside legal services and to evaluate the minority hiring practices of prospective law firms before a request is submitted; require the attorney general to act on the request within 30 days.
7. Authorize the agency to take possession of condemned property, upon deposit of the appraised value of the property, when the case is filed in commissioners court.
8. Authorize the transfer of surplus funds between projects.
9. Require the agency to adopt in rules a disadvantaged business program consistent with general state policy.
10. Require the agency to adopt a relocation assistance policy in rules to provide assistance to property owners who are displaced when the agency acquires their property.
11. Require the agency to develop procedures in rules for conducting an environmental study before constructing a toll road.

12. Allow the agency to replenish the feasibility study fund with surplus revenues from current toll road projects.
13. Require the governor to designate the chairman of the board.
14. Require specific provisions relating to conflicts of interest. (ATB)
15. Require public membership on the board and specify that money received from the sale of condemned land is not a conflict of interest. (ATB)
16. Update language specifying the grounds for removal of a board member. (ATB)
17. Update language providing that 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. (ATB)
18. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. (ATB)
19. Provide for public testimony at agency meetings. (ATB)
20. Require the agency to provide information on standards of conduct to board members and employees. (ATB)
21. Provide for notification and information to the public concerning board activities. (ATB)
22. Require files to be maintained on complaints. (ATB)
23. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. (ATB)

24. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. (ATB)
25. Require the board to establish skill-oriented career ladders. (ATB)
26. Require development of accessibility plan. (ATB)
27. Require the board to develop and implement policies which clearly separate board and staff functions. (ATB)
28. Require a system of merit pay based on documented employee performance. (ATB)
29. Require development of an E.E.O. policy. (ATB)

ATB: Standard across-the-board language placed in statutes of all agencies undergoing sunset review.

Chapter 3

Staff Review Assignments

Chapter 3

Staff Assignments

Texas Board of Public Accountancy	Ginny McKay Merrell Foote
State Aircraft Pooling Board	Bruce Crawford Joey Longley
Texas Board of Architectural Examiners	Joe Walraven Carrie Luttbeg
State Bar of Texas	Joey Longley Chris Cook Charla Ann Baker
Board of Law Examiners	Kelley Jones Joey Longley
State Board of Barber Examiners	Chris Cook Charla Ann Baker David Holland
Capital Metropolitan Transportation Authority (Austin)	Ginny McKay Carrie Luttbeg
Dallas Area Rapid Transit	Ginny McKay Merrell Foote
Texas Cosmetology Commission	Charla Ann Baker David Holland
Texas Health and Human Services Coordinating Council	Carrie Luttbeg Ginny McKay
Council on Disabilities	Ginny McKay Carrie Luttbeg
Long-Term Care Coordinating Council for the Elderly	Ginny McKay Carrie Luttbeg

Commission on Fire Protection Personnel Standards and Education	Ann Blevins
Texas Funeral Service Commission	Chris Cook Elizabeth Pyke
State Department of Highways and Public Transportation	Ken Levine Joe Walraven Bruce Crawford Elizabeth Pyke David Holland
Texas Housing Agency	Chris Cook David Holland
Texas Board of Irrigators	Ken Levine Merrell Foote
Commission on Jail Standards	Ron Allen
Texas Motor Vehicle Commission	Ron Allen Kelley Jones Carlos Gonzalez-Pena
State Pension Review Board	Joe Walraven Charla Ann Baker
Office of Fire Fighters' Pension Commissioner	Charla Ann Baker Joe Walraven
State Purchasing and General Services Commission	Ron Allen Cyndie Schmitt Ann Blevins Carlos Gonzalez-Pena
Texas Real Estate Commission	Cyndie Schmitt Merrell Foote
Texas National Research Laboratory Commission	Kelley Jones Ann Blevins
Texas Structural Pest Control Board	Elizabeth Pyke

Texas Board of Professional Land Surveying	Bruce Crawford
Texas Turnpike Authority	Elizabeth Pyke Ken Levine
Office of Civil Defense and Disaster Compact Administrator for Texas	Charla Ann Baker
Texas Conservation Foundation	Cyndie Schmitt
Good Neighbor Commission of Texas	Karl Spock Carlos Gonzalez-Pena
Contracts and Correctional Facilities and Services	Ann Blevins Joey Longley

Chapter 4

Information Report on Contracts for Correction Facilities and Services

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BACKGROUND



BACKGROUND

The 70th Legislature, in 1987, enacted legislation authorizing the Texas Department of Corrections to contract with private vendors and county commissioners courts to finance, construct, operate, maintain or manage correctional facilities. Along with this authorization came a directive for the Sunset Advisory Commission to report to the legislature in 1991 on how contracts under this authority have worked. This report is submitted in compliance with that directive. Since the time the legislation was enacted, the Texas Department of Corrections has been merged into the new Texas Department of Criminal Justice (TDCJ). That new name will be used for convenience in the remainder of the report. The information that follows outlines the events leading up to the enactment of the legislation, the development of the actual contracts, and a more detailed explanation of the purpose of this report.

Historical Perspective

In the last ten years the Texas prison system has experienced rapid growth. Ten years ago, the population of the system was approximately 28,000. Today, the population is in excess of 45,000. Along with this growth in population has come an increase in the cost of incarceration. In 1980, the cost was roughly \$13 per prisoner per day. In 1990, the comparative cost is well over \$40 per day. The rising trends in the number of inmates and cost of incarceration focused attention in Texas and nationally on alternative means of incarceration. One of these alternatives was delivery of services by private providers. "Privatization" of prisons was seen as a possible means of increasing the capacity to house inmates at a level of quality equal to the state but at a lower cost.

Texas began development of its policy on privatization of state prisons in 1987 with the enactment of Senate Bill No. 251 by the 70th Legislature. This legislation established the framework for delivery of prison services by the private sector. The legislation also provided the option to contract with county commissioners courts but the actual contracting effort has ultimately concentrated only on private vendors so only private vendors will be used in the discussion that follows. The legislation outlined a number of guidelines that had to be met before the state could enter into a contract with a private vendor. These guidelines were aimed at ensuring that contracted services would meet all legal requirements and that contractors would provide quality services at cheaper prices than the state could deliver. Among the more important of these requirements were the following:

- a limit on daily population in the private prisons of 500 inmates per facility;
- a restriction which allows only minimum or medium security inmates to be confined in the contract facilities;

- a requirement that the private prisons comply with federal constitutional standards and applicable court orders;
- a requirement that the private units receive and retain accreditation from the American Correctional Association; and
- a requirement for on-site monitoring of the facilities by the TDCJ.

The legislation also included a means of ensuring that the state would save money on the private prison contracts. The statute specified that the state could not contract with a private vendor without assurance of services at a cost savings of at least ten percent under the state's cost. The Legislative Budget Board was charged with determining the cost figures to be used.

Development of Contracts

After enactment of the legislation authorizing private contracting, the legislature appropriated \$30 million for the 1988-89 biennium to the Texas Department of Criminal Justice for the development of private prisons. The funding was accompanied by a requirement that contracts were to be limited to 2,000 beds. The Texas Department of Criminal Justice engaged in a lengthy selection process to determine the location, construction, and operation of the private facilities. As part of the process to select a contractor, the TDCJ developed additional criteria to guide the contracting process beyond those set out in Senate Bill No. 251. The private prisons were to be structured as pre-release centers with programming for reintegrating the inmates back into society. Programming would include educational and vocational programs, as well as pre-release counseling for drug and alcohol abuse, family problems, and other concerns.

The TDCJ initiated the contracting process by soliciting bids through a "request for proposal" distributed in June 1987. The initial request for proposal resulted in proposals from 19 firms. Six of these firms were selected for final review by the TDCJ. The department finally decided to select two firms to operate two facilities each. These firms were the Corrections Corporation of America (CCA) and Wackenhut Corrections Corporation (Wackenhut). The board negotiated contracts with the two firms once they were selected. One significant change occurred between the request for proposal and the final contracts that were negotiated. This change involved responsibility for the actual construction and ownership of the facilities. The request for proposal called for construction of the facilities by the contracted firms. The board decided, however, that costs to the state would be less if the state built and owned the facilities rather than the private firms. Responsibility of the private firms was limited to operation of the facilities. Ultimately, both CCA and Wackenhut signed virtually identical contracts to operate and manage two 500 inmate facilities each. Exhibit A indicates the location of the four private facilities.

Exhibit A
Location of Private Prisons



CCA
Cleveland Facility (Liberty County)
Venus Facility (Johnson County)

Wackenhut
Bridgeport (Wise County)
Kyle Facility (Hays County)

As required by the statute, the current contracts meet the statutory cost requirements. The statute required the Legislative Budget Board to determine the cost per day for the state. The private contracts had to be at least ten percent less than the state's cost. The state costs were set by the LBB at \$42.53 for fiscal year 1989 and \$42.95 for fiscal year 1990. The TDCJ was then limited to contracting at ten percent less than these amounts or \$38.28 for 1989 and \$38.66 for 1990. The private prison contracts authorized a payment of \$34.79 per inmate per day for fiscal year 1989 and \$35.25 for 1990. Approximately \$25.7 million is budgeted by the TDCJ for payment of the contracts in fiscal year 1990. The contract amount of \$35.25 includes an amount for debt service associated with prison construction. This amount is deducted from the actual payment going to the private contractors since the debt for the construction and the facilities is the responsibility of the state.

The four private units have been in operation now for over a year, initially receiving prisoners for confinement between June and August 1989. They operate in much the same way as do the state's own prison units. The private units must comply with all department policies, staffing patterns, and programming requirements. The TDCJ has an on-site monitor at each of the units to ensure compliance with the contracts, policies, procedures, court orders and all other requirements placed on the private facilities. These monitors act as a liaison between the private units and the TDCJ. Monitoring efforts are discussed in more detail later in the report.

Inmates entering prison units operated by the TDCJ typically undergo a "classification" process to determine their custody level, job and educational requirements, housing arrangements within the prison, etc. Inmates are assigned to the private units using the same classification process as for all other units. Inmates assigned to the facilities are minimum custody inmates within two years of release who both mentally and physically can reasonably be expected to participate in the pre-release programming offered. Once at the private facility, the inmate undergoes a unit level classification to determine housing, programs and job assignments. Routine discipline is the responsibility of the private prison staff. Custody level, granting and removal of good time awards, and release decisions remain the responsibility of the TDCJ.

Purpose of the Report

The legislation authorizing private prison contracting requires the Sunset Commission to review any contracts entered into by the TDCJ and deliver a report to the 72nd Legislature in January 1991. The statute specifies that the report should analyze the cost and quality of the private prison services as compared to the cost and quality of any similar state services. In addition, if the state provides similar services, the report must also indicate whether the privately-provided services are superior, essentially equal, or inferior to services provided by the state. The commission is also given the authority to

recommend statutory changes to the legislature if it determines that changes are necessary to improve the contracting process. No sunset date is attached to legislative provisions authorizing the prison contracts. The statutory authorization, therefore, does not terminate as would be the case in a typical sunset review of a state agency.

The sunset review of the private prison contracts focused on meeting the statutory requirements set out above. These requirements can be divided into an analysis of the cost of service, quality of service, and administration of the contracts by the TDCJ. The results of the review are divided into these areas in the material that follows.

COST OF SERVICES

COST OF SERVICES

Finding 1: As of August 31, 1990, the private prisons were operating at close to 10 percent below the cost of a hypothetical equivalent unit run by the state. Taking into consideration the tax revenues paid to local governments organized by the state, the private prisons were operating at 14 percent below the state.

BACKGROUND

Senate Bill No. 251, enacted in 1987 by the 70th Legislature, set out requirements for the TDCJ to follow in contracting with private vendors for prison services. One of the requirements was that the state could not enter into a contract unless the contract provided a savings of not less than 10 percent over an equivalent state-run program. The bill also set up a mechanism to determine if the state was achieving a 10 percent savings. Before the contracting process began, the legislation directed the Legislative Budget Board (LBB) to establish an estimate of the costs for a state-run facility equivalent to those being proposed by contract. An acceptable contract needed to demonstrate a savings of at least 10 percent from this estimated amount. As a checkpoint in the process, the Sunset Advisory Commission was charged to review the cost of the private prisons after they began operations. The legislation directed the commission to include in the review a comparison of the costs of the services provided under the contract with the costs of any similar services provided by the state. The commission is to report its findings to the 72nd Legislature in January 1991.

In October 1987, the LBB submitted its report entitled "The Determination of the Cost to the State to Construct and Operate a 500-Man Pre-Release Center." The development of a cost estimate was complicated by the fact that the TDCJ did not, and still does not, operate a comparable facility. The LBB developed costs based on a hypothetical prison facility which complied with the conditions set forth in Senate Bill No. 251, the request for proposal prepared by the TDCJ, existing policies on prison operations and relevant court requirements. The cost estimate was prepared based on this hypothetical facility. Contracts for private facilities were to be limited to 10 percent less than the cost figures developed by the LBB for the hypothetical state-run unit. The table below provides the estimates by the LBB of the cost to incarcerate one inmate for one day in the hypothetical state-run unit as well as the dollar amount representing a 10 percent savings over those estimates.

Fiscal Year	Cost Estimate for Hypothetical State Unit	Contract Limit (10% less than state cost)
1988	\$41.67	\$37.50
1989	\$42.53	\$38.28
1990	\$42.95	\$38.66

After the LBB report was released, the TDCJ negotiated contracts with two private vendors, Corrections Corporation of America (CCA) and Wackenhut Corrections Corporation (Wackenhut). Each vendor was obligated to operate two pre-release facilities with 500 minimum security inmates that were within two years of release. Actual contract amounts were established at the per diem rate of \$34.79 per inmate for the biennium ending August 31, 1989, and \$35.25 for the biennium ending August 31, 1991. These amounts satisfied the statutory requirement of 10 percent savings.

When the LBB developed its cost figures none of the private units were in operation and calculations were based on a hypothetical situation. At the time of the sunset review, the four private units had been in operation for over a year and actual cost data was available. The approach used in the analysis was to calculate the total cost to the state of operating the private prisons (contract cost plus certain other indirect costs), and to compare this figure to the cost that the TDCJ would incur if it took over operation of the four private units. This type of comparison was necessary because, as previously mentioned, the TDCJ does not operate a similar unit which could be used for comparison. Because the state auditor's office has been heavily involved in developing cost methodology for various aspects of state government, staff support was requested for this project. Cost estimates were prepared by the TDCJ and reviewed by the state auditor's staff. The state auditor's review was made in accordance with attestation standards of the American Institute of Certified Public Accountants.

Detail on the development of the cost information and results of the analysis are included in the following material:

- ▶ **The TDCJ was requested to prepare two primary cost estimates: the total cost incurred by the state resulting from the private prison contracts and an estimate of the total cost for the state to operate an equivalent facility.**
 - The estimate of the total cost incurred by the state resulting from the private prison contracts was to include actual contract costs, additional costs incurred by the TDCJ as a result of the contract and a reasonable allocation of the TDCJ overhead costs

including services directly benefiting the private prisons.

- The estimate of the cost of an equivalent hypothetical state-run facility was to include all direct and indirect costs that the TDCJ would incur to operate such a facility. Because of construction and staffing differences between CCA and Wackenhut facilities, estimates were developed for state operation of both a CCA-type facility and a Wackenhut-type facility.
- ▶ **As part of the development of the cost information, several cost categories were developed. Exhibit B provides an explanation of the cost categories and assumptions used.**
- ▶ **Using the cost information developed, the cost of operation of the private prisons was compared to the cost of identical hypothetical units operated by the state. These cost figures represent actual or forecast costs as of the end of fiscal year 1990. Exhibit C shows the results of the comparison.**

CONCLUSION

Analysis of the information in Exhibit C indicates that, as of the end of fiscal year 1990, the cost of operating the private prisons was more than 10 percent less than the cost if the state were to operate equivalent facilities. The private prisons have contributed to state and local economies by paying an estimated \$400,000 per prison in state and local sales taxes, franchise taxes and payments in lieu of property taxes. Because the state owns the units, property taxes are not assessed. Instead, the private units, by contract, pay local taxing authorities annually an amount which generally approximates the taxes that would be owed if the property were privately owned.

**Exhibit B
Explanation of Cost Categories**

Cost Category	Private Facilities	Equivalent State-Run Unit
Prison Unit Operating Costs	Includes two components: Contract Operating Payment to the vendors and Debt Service related to construction which, together, equal the total contract payment.	Includes four components: -- Salaries and Fringe Benefits of unit staff with fringe benefits calculated at a rate of 27.1 percent of salaries (rate for fiscal year 1990 used by the LBB). -- Other Divisional Salaries and Fringe Benefits of the TDCJ personnel who directly support unit operations. -- Other Operating Expenses such as non-salary expenses for food, utilities, and supplies. -- Debt Service related to construction.
Contract Monitoring Costs	Includes salaries and fringe benefits of TDCJ's on-site monitors and monitor coordinator.	Not applicable since the TDCJ would not have an on-site monitor.
Cost of Services Provided by TDCJ	Includes primarily two services provided by the TDCJ and performed for all units: -- Classification and unit assignment of inmates. -- Major medical services, which includes that portion of medical services that would not be provided at the unit. These would be costs associated with the services of UTMB and emergency care in the community paid by the TDCJ.	Same as for the private facilities.
TDCJ Administrative Costs	Includes the allocation of costs associated with TDCJ's "Central Administration" budget program. Central Administration includes primarily salaries and expenses for top agency personnel, expenses for the annual audit of the pre-release facilities, and other administration items attributable to the private prison units. Depreciation expenses and capital outlay have not been included in these cost figures.	Includes the allocation of costs associated with TDCJ's "Central Administration" budget program. Central Administration includes primarily salaries and expenses for top agency personnel, expenses for the annual audit of the pre-release facilities, and other administration items attributable to the state-run units. Depreciation expenses and capital outlay have not been included in these cost figures.
Net Effect of Taxes	Reduces the cost by the estimated amount paid by the private providers in taxes and payments in lieu of local taxes.	Not applicable since the TDCJ would not pay state or local taxes.

Exhibit C
**Cost Per Day Comparison of
 Private vs. State-Run Facilities***
 (As of August 31, 1990)

	<u>Cost of Private Facilities</u>		<u>Estimated Cost of Equivalent State-Run Facilities</u>	
	<u>CCA</u>	<u>Wackenhut</u>	<u>CCA</u>	<u>Wackenhut</u>
Prison Unit Operating Costs				
Salaries and Fringe Benefits	0.00	0.00	24.64	24.90
Other Divisional Salaries	0.00	0.00	.38	.38
Other Operating Costs	0.00	0.00	6.22	6.22
Contract Operating Payment	29.44	29.27	0.00	0.00
Debt Service	5.81	5.98	5.81	5.98
Total	<u>35.25</u>	<u>35.25</u>	<u>37.05</u>	<u>37.48</u>
Contract Monitoring Costs				
On-site Monitors	.24	.24	0.00	0.00
Monitor Coordinator	.03	.03	0.00	0.00
Total	<u>.27</u>	<u>.27</u>	<u>0.00</u>	<u>0.00</u>
Cost of Services Provided by TDCJ				
Classification	.39	.39	.39	.39
Major Medical	1.39	1.39	1.39	1.39
Total	<u>1.78</u>	<u>1.78</u>	<u>1.78</u>	<u>1.78</u>
TDCJ Administrative Costs	1.51	1.51	3.87	3.87
Net Effect of Taxes	(2.19)*	(2.19)*	0.00	0.00
TOTAL STATE COST	<u>36.76</u>	<u>36.76</u>	<u>42.70</u>	<u>43.13</u>

* These numbers were developed with assistance from the staff of the state auditor's office and reviewed in accordance with attestation standards of the American Institute of Certified Public Accountants.

** These numbers are based on figures reported by CCA and have not been verified and audited by the state auditor's office.



QUALITY OF SERVICE



QUALITY OF SERVICE

Finding 2: The TDCJ does not have a state-run equivalent of a private prison unit, therefore, no conclusions could be drawn on whether the private prisons currently provide services that are equal to or higher in quality than the state.

BACKGROUND

The legislation authorizing the development of prison contracts directed the Sunset Advisory Commission to analyze the quality of service of the private prison units. The legislation mandated that the analysis state whether the services of the contractors were equal, superior, or inferior to state services, provided the state had a unit which could be used for comparison. The review of the quality of service of the state's private facilities began with an attempt to identify an equivalent program conducted by the TDCJ. The private facilities function as pre-release type programs for inmates within six months to two years of release. Inmates in the facilities are at the minimum custody level, meaning that discipline problems among this group should be less when compared with the general state prison population. Programs offered to these inmates are aimed at assisting the inmate's transition back into society. These pre-release facilities have no equivalent in the traditional prison units run by the TDCJ. The TDCJ does not operate a separate pre-release type unit. In addition, inmates are not separated out to participate in this type of intensive pre-release effort within the TDCJ facilities.

Because the TDCJ does not have an equivalent unit, the kind of quality comparison required in the legislation was not possible. Since a direct comparison of quality could not be made, other approaches were taken to make a more general assessment of the quality of vendor services. The sunset staff did not attempt to measure quality through an on-site investigation of the units as time and available staff resources did not allow such an approach. The approach finally used was to identify efforts of others that were monitoring the performance of the private prisons and attempt to use them as indicators of the quality of service. Various efforts have been undertaken to monitor the private units to determine compliance with statutory requirements, terms of the contracts with the private vendors and court-ordered standards for all TDCJ prison units.

The review identified two specific monitoring efforts that have been completed that could be used to roughly assess the quality of service provided by the private facilities. The TDCJ is currently conducting its annual audit of the four private facilities. This audit will provide current and comprehensive information on how the private vendors are performing under their contracts. Unfortunately, this audit was not available at the time of publication of this report.

The first method used to assess quality involved an examination of a report from the office of the special master overseeing TDCJ compliance with the mandates of the Ruiz court case. The special master's office initiated an effort to determine compliance of the private units with the mandates of the court case. This report, entitled the "Eighty-Fourth Monitor's Report -- Report On The Private Pre-Release Centers", covered the first months of the private prisons' operations, September to December 1989. The fact gathering for the report, done by TDCJ personnel, was completed in December 1989 and then verified by the special master's office in its report issued in May 1990. Due to the comprehensive nature of the Ruiz litigation and final decrees, the report covers the broad spectrum of prison operations. Because of verification by the independent office of the special master, this report serves as a good indicator of compliance with court-ordered standards at the time of its publication. Compliance is defined as essentially conforming with stated requirements in the area assessed and represents the level of activity at that particular point in time. For the purposes of this report, compliance with court-ordered standards was interpreted to mean that an acceptable level of quality existed in the compliance category. This interpretation was based on the understanding that Ruiz standards are aimed at protecting prisoners' rights and ensuring a minimum quality of services. The monitor's report did not cover all the areas that would be assessed in determining the quality of the private prisons' program but was seen as a indicator for many areas of operation.

A second indicator of quality was found in the accreditation standards of the American Correctional Association (ACA). The private facilities are required by statute and the provisions of their contracts to meet appropriate ACA standards for their facilities. ACA standards are generally viewed, in the field of corrections, as being acceptable and demanding measures of quality. Receiving accreditation means these standards of quality have been met. Once an accreditation is received, a facility is reviewed every three years for continued accreditation. The accreditation process involves determination of the ACA standards to be applied to the facility, an on-site visit by ACA representatives, determination of compliance, correction of deficiencies and subsequent accreditation. The current status of the units' accreditations is provided later in this material.

The results of the review of the quality of service of the private units and the various sources of information available on this topic yielded the following principle observations:

- ▶ **While the information is not current, the special master's monitoring report, at the time of its completion, indicated general compliance in many categories of operation but problems in the area of education and training programs.**

-- Of the 16 areas assessed for compliance, the report indicated compliance by all the private units in 11 of the categories.

- Of the areas where general non-compliance was found, the most critical area involved "out of cell" programming related to work, education and training. The report raised questions about the quality of education and training being provided by the private prisons. Questions in this area were again raised in a subsequent review by the TDCJ completed in May 1990. The TDCJ is currently completing its annual audit of the private prisons, but the results of this current assessment are not yet available.

- ▶ **Two of the private facilities have met the appropriate accreditation standards of the American Correctional Association (ACA) as required in their contracts.**
 - The Wackenhut facility at Kyle and the CCA facility at Cleveland received ACA accreditation in August 1990.

 - The CCA facility at Venus has undergone its evaluation by ACA staff and is waiting for the results of the visit. The Wackenhut facility at Bridgeport is scheduled for its on-site evaluation in the near future. Both units, by statute, must complete the process by September 1991.

- ▶ **Given the sources of information available at this time, a firm conclusion cannot be made regarding the quality of services provided at the private facilities.**
 - The lack of an equivalent state-run facility makes a comparison of a state unit and the private facilities impossible. Therefore, comparative quality cannot be determined.

 - The special master's monitoring report, while a valuable source of information, was published close to a year ago. This information cannot be used to make firm conclusions on quality today, particularly since the private prisons had been in operation only a few months when the monitor's report was written.

 - The accreditation process of the ACA has not yet been completed for two of the private facilities. The CCA facility at Venus and the Wackenhut facility at Bridgeport are still seeking accreditation. Therefore, accreditation can only be used as a partial indicator of an adequate level of services being provided by the private prisons as a group.

 - The annual audit of the TDCJ is not yet completed and published. This source of information would give the most timely indicator of quality. The problems with the private prisons' education and training programs identified in earlier reviews will be addressed in this audit. Judgments of quality should not be made without

this report being considered.

CONCLUSION

A firm conclusion as to the quality of services provided by the private facilities could not be made at this time. No direct comparison could be drawn between the private pre-release facilities and an equivalent state facility because no state-run equivalent exists. Other indicators of quality do exist, but the information from these reports is dated or is still being developed. Although these reports indicated that, at the time, the private vendors were in general compliance with court-ordered standards in many areas, problems were also identified which are still being evaluated as part of current audit efforts. Therefore, an assessment of quality cannot be made without the benefit of the results of the audit due to be released shortly.

CONTRACT ADMINISTRATION

CONTRACT ADMINISTRATION

The 70th Legislature authorized the Texas Department of Criminal Justice to contract with private vendors and county commissioners courts to finance, construct, operate, maintain or manage correctional facilities. Funding was provided by the 70th Legislature to accommodate a maximum of 2,000 inmates through contracts with private vendors and county commissioners courts. The enabling statute specifies that each contracted facility cannot exceed an average daily population of 500 inmates. The statute also specifies the standards which the facilities and private vendors or county commissioners courts must meet.

The TDCJ currently contracts with two private vendors, Corrections Corporation of America (CCA) and Wackenhut Corrections Corporation (Wackenhut), to operate four facilities located in Cleveland, Venus, Bridgeport and Kyle. Under almost identical contracts, the CCA operates the Cleveland and Venus facilities and Wackenhut operates the Bridgeport and Kyle facilities. These facilities are pre-release centers for inmates who have between six months and two years of time remaining to serve. The mission of the private pre-release centers is to provide programs to assist the inmates' reintegration into society upon release. The contracts were entered into in September 1988 for a three year period ending in August 1991. The facilities were completed and received their first inmates between June and August 1989.

The Texas Department of Criminal Justice has ongoing responsibility for administering the private prison contracts. The department's contract administration activities have been broken down into three parts for analysis. These are: contract development, contract monitoring and evaluation, and contract enforcement. The contract development process produces the binding agreement of the parties. The monitoring, evaluation and enforcement activities are based on the provisions included in the contract.

Although contract administration is similar for many services, the National Institute of Justice (NIJ) and the Criminal Justice Institute (CJI) have developed standards for contract administration tailored to the criminal justice system. The NIJ is a research branch of the U.S. Department of Justice and CJI is a recognized small independent research organization. The review of the department's contract administration activities focused on the comparison of the department's activities to the standards developed by the NIJ and CJI. The results of the review indicated that, overall, the department complies with these standards. However, the review identified some areas where the department's activities could be strengthened. The findings that resulted from the review are discussed below.

Development of the Contract

Finding 3: The TDCJ meets most of the nationally recognized guidelines for developing its prison contracts, but has not fully incorporated two guidelines in its process. The TDCJ should work toward incorporation of all the elements.

BACKGROUND

The Texas Department of Criminal Justice is authorized to contract for correctional facilities and services with private vendors and county commissioners courts. The statute prohibits the TDCJ from entering into a contract unless the department requests and receives proposals that meet or exceed approximately fifteen statutory criteria. These criteria include standards the facilities and vendors must meet; conditions of payment; insurance the vendors must carry; duration of the contract; and cost and quality thresholds the vendors must meet in order to be awarded a contract. Although the statute is specific as to the criteria that must be included in the vendors' proposals, the statute does not specify the elements that should be included in the actual contracts.

The Criminal Justice Institute (CJI) and the National Institute of Justice (NIJ) have developed guidelines to assist state and local governmental agencies when contracting for correctional facilities. These guidelines indicate, among other things, the components that should be present in the contracts. The review compared the department's contracting process to the standards developed by the NIJ and CJI. The review of the department's contracting process indicated the following:

- ▶ **The guidelines of the Criminal Justice Institute and the National Institute of Justice recommend that contracts for correctional facilities include several components.**
 - The CJI recommends that contracts contain four basic components. The first component, the method of payment, includes the frequency and amount of the payments. The second component is the duration of the contract which would include the initial length of the contract and any extension or renewal provisions. The third component, termination conditions, includes the conditions under which the contract can be terminated and provisions for what will happen to the inmates and facilities if the contract is terminated. The final component, the "statement of work", is further subdivided into additional elements. The statement of work should contain a description of the specific services to be provided, the results to be achieved by the vendor in measurable terms, the standards and procedures that will be used to evaluate the vendor's performance, and any required on-going

- qualifications the vendor must maintain. The CJI further recommends that the four components be negotiated with the vendors before being included in the contract.
- The NIJ recommends, in addition to the CJI guidelines, that the contract include the sanctions that could be imposed on the vendor for non-compliance with the contract and the conditions under which the sanctions would be applied.
- ▶ **A majority of the components recommended by the CJI and NIJ are fully implemented in the department's current contracts with the CCA and Wackenhut.**
- The contracts include the method of payment; the duration of the contract; the conditions for extension of the contract; and a contingency plan in case the contract must be terminated. Further, the contracts include one sanction, termination of the contract for non-performance.
- ▶ **While a majority of the recommended components are included in the current contracts, a few of the components are not fully implemented in the contracts.**
- The current contracts lack the results the pre-release centers are to achieve in measurable terms. In addition, the standards to be used to judge the vendors and the evaluation procedures to be used by the department are described only in general terms.
 - A greater degree of specificity in the contracts can help avoid any misunderstanding between the department and the vendors as to what the department has actually contracted with the vendors to provide.

CONCLUSION

Although the majority of the guidelines for contracting recommended by the CJI and NIJ are fully implemented in the current contracts, the one area where the standards are not fully met is in the statement of work. The statement of work is not as specific as recommended in the guidelines in that the contracts do not indicate the results the vendors are to achieve in measurable terms. Further, while the contracts refer to the standards and evaluation procedures to be used by the department, these descriptions are not specific. Greater specificity in the contracts could help avoid any misunderstandings as to the types and levels of services the department intends for the vendors to provide. The contracting process involves negotiations and compromises and greater specificity in these areas is not always practical. However, the management of the TDCJ should consider starting contract negotiations using all the CJI and NIJ-recommended components and including them where possible in its future contracts.

Monitoring and Evaluation of the Contract

Finding 4: The TDCJ meets a majority of the nationally recognized guidelines for monitoring its prison contracts, but has not fully incorporated two of these guidelines in its monitoring process. The TDCJ should work toward incorporation of all the elements.

BACKGROUND

The statute requires the contracts for correctional facilities to include provisions for regular on-site monitoring of the contracts by the Texas Department of Criminal Justice. The department establishes the frequency of the monitoring visits and type of monitoring process to be used. The current contracts between the TDCJ and private vendors contain a number of provisions dealing with monitoring. The contracts provide for a TDCJ-appointed and paid on-site monitor for each contracted facility; office space for the monitor to be provided by the vendor; and unlimited access to the facilities by the department. The contracts also provide that the TDCJ develop checklists and other monitoring tools and require vendor cooperation in providing any necessary information. Finally, the contracts specify that the private vendors will establish and operate a self-monitoring program.

The department has an employee who serves as an on-site monitor in place in each facility. The on-site monitor maintains an office in the facility and monitors all aspects of the contract. The on-site monitor submits a quarterly report to the TDCJ that identifies areas where the private vendor is deficient in meeting the contract terms. The department also conducts annual audits of the contracted facilities with teams of TDCJ auditors. These auditors also conduct similar audits of TDCJ-operated facilities. Both of the vendors have submitted plans for their self-monitoring programs. Wackenhut's plans have been approved by the TDCJ and have been implemented at both the Bridgeport and Kyle facilities. The CCA plans have been partially approved, but have not been implemented.

The overall purpose of monitoring is to ensure that the contractor is performing satisfactorily; that the program has successfully accomplished the desired results; and that the inmates have been securely incarcerated, adequately treated and provided with opportunities for rehabilitation. The monitoring process should be designed to allow the department to determine that the terms and conditions of the contract are being followed, that the appropriate levels of service are provided, and that the program has achieved the desired results. The TDCJ's monitoring process was examined to determine if it met these purposes. It was also compared to guidelines for monitoring established by the National Institute of Justice and the Criminal Justice Institute. The results of the review indicated the following:

- ▶ **Both the National Institute of Justice and the Criminal Justice Institute emphasize the importance of thorough and valid monitoring and evaluation of contracted correctional facilities.**
 - The NIJ has developed a model for monitoring correctional facilities. The model consists of eight elements that should be included in a monitoring process. These elements include regular tabulation and analysis of extraordinary occurrences; systematic sampling of current and recently released inmates; on-site monitors for facilities with 150 or more inmates; appropriate training for monitors; use of checklists in the monitoring process; inspection at least annually for conformance with state laws, regulations and policies as well as contract requirements; government examination of monitoring reports; and a thorough review by the contracting agency prior to the renewal or rebidding of the contract.
 - The CJI recommends that the contracting entity and the vendor should develop and implement agreed-upon evaluation criteria along with appropriate methodology.
- ▶ **The usefulness of these guidelines is affirmed to some extent by recommendations of the Florida Auditor General's Office. After a review of Florida's contract for a correctional facility, the Auditor General's Office recommended that the Florida Department of Corrections incorporate the NIJ monitoring process into the monitoring of all future contracts.**
- ▶ **The department's current monitoring process includes a majority of the NIJ and CJI-recommended monitoring elements. Two monitoring elements have not been incorporated fully into the department's monitoring efforts.**
 - During the routine inspections of the facilities, inmates often provide the monitor with information about the conditions at the facility. However, the department does not systematically sample the inmates for specific information and does not sample recently released inmates. Information gained from current or released inmates could not be the sole indicator of how well programs are working or potential problem areas in the privately-operated prisons. However, inmate perceptions could be useful, for example, as one indicator of conditions within the prisons, how the privately-run facilities might compare to the state-operated units, or whether educational and vocational programming is well taught and relevant. This type of information is gathered by at least one other agency with extensive contracting programs. The Texas Department of Human Services contracts with nursing homes and providers of residential and community care services for the elderly and disabled. Caseworkers who monitor these facilities and services routinely speak with the patients to determine if the required services are provided and standards

are met.

- A specific process for developing and coming to basic agreement on evaluation criteria and methodology has not yet evolved in this first experience with contracting for correctional facilities. Although the department has shared its monitoring checklists with the private vendors, the private vendors did not assist directly in the development process. While absolute agreement on all areas is impractical, a structured process for discussing monitoring issues could prevent unnecessary and time consuming disagreements later in the process.

CONCLUSION

The department has developed a monitoring process that includes a majority of the NIJ and CJI-recommended monitoring elements. Two of the elements have not been fully incorporated into this new contracting process of the state. These elements are: sampling current and released inmates to gain additional information on private prison operation; and development of evaluation methodology and criteria with more input from the vendors. The contracting process involves negotiations and compromises and full inclusion of all elements is not always practical. However, the TDCJ should work toward including all NIJ and CJI-recommended monitoring elements as goals in its future contracts.

Finding 5: The TDCJ should consider the use of third-party validation of all or parts of its monitoring process.

BACKGROUND

Monitoring is an important aspect of any contracting effort. A well-structured monitoring process helps ensure that the contracting body is getting the service it expects and pays for. It also ensures that the vendor is kept informed on a periodic basis as to how well it is providing the service and what adjustments are needed to keep its client satisfied.

The importance of monitoring is recognized in the policies for contracted correctional facilities developed by the state. The statute requires contracts for correctional facilities to include provisions for monitoring the contracts by the Texas Department of Criminal Justice. The statute allows the department to establish the frequency of the monitoring visits, as well as the monitoring process to be used. The current contracts between the TDCJ and the two private vendors contain several monitoring provisions.

The monitoring process set up by the TDCJ is a comprehensive one and includes the basic components generally recommended by the National Institute of Justice. The department has placed an on-site monitor in each facility to monitor all aspects of the contract and submit a quarterly report to the TDCJ. The quarterly report identifies areas where the private vendor is deficient in meeting the contract terms. The department also conducts annual audits of the facilities using teams of TDCJ auditors, who conduct similar audits of TDCJ-operated facilities.

Monitoring service contracts is an inherently difficult process. Evaluation of performance is always a sensitive subject. Unless services can be easily quantified and subjective judgment eliminated, room for differences of opinion also exist. The monitoring process used by the TDCJ was examined to determine if additional methods exist to mitigate the difficult nature of the current monitoring efforts. The results of this review indicated the following:

- ▶ **The difficulties inherent in a monitoring process are heightened by the competitive relationship set up in the statute between the TDCJ and the private vendors.**
 - This relationship results from the statutory provision that requires vendors to operate at a savings of at least ten percent when compared to an equivalent state-run program. The comparative efficiency and quality of the privately-operated programs in contrast to the state-run facilities establishes a "fertile ground" for disagreements.

- ▶ **Differing philosophies involved in providing some services produce genuine disagreements from time to time between TDCJ management and the vendors as to TDCJ's monitoring assessments.**
 - As one example, the proper approach for assessing the adequacy of programming offered to inmates in the private facilities continues to be a topic of discussion between the TDCJ and the private providers.

- ▶ **Neutral third parties can be useful in settling or avoiding disputes.**
 - The state's \$800 million Medicaid-funded nursing home program operated by the Texas Department of Human Services is monitored by a third party, the Texas Department of Health. One of the key purposes of the monitoring effort is to assess whether or not nursing home clients are receiving the care the state expects to be provided by the privately operated nursing homes.
 - In the delivery of correctional services by vendors on contract, the Criminal Justice Institute (CJI) recommends that in addition to having an effective monitoring process in place, periodic verification of monitoring results is desirable. The CJI publication, "Correctional Contracting: A Guide to Successful Experiences", states: "It is a good practice, and especially when the contractor does not agree with the assessments of the Contract Manager, to call in an expert from the outside to conduct a formal evaluation."

- ▶ **A third-party evaluation effort can be tailored to meet the needs of the contractor. Basically, the scope of the third party's oversight can be selectively focused depending on the needs of the situation.**
 - A third-party evaluation can be broad in scope and result in a complete review of all aspects of the contracted service and how it is being delivered.
 - Alternatively, a third-party evaluation can simply evaluate an existing monitoring system process and identify weaknesses that the contractor and the vendor can address cooperatively.

- ▶ **The TDCJ currently uses third-party evaluations in other areas of its operations. For example, the department has third-party evaluators from the National Commission on Correctional Health Care assess health services in both its facilities and in the private facilities.**

CONCLUSION

The TDCJ has instituted a thorough monitoring process. As in any monitoring process of a program of this size and importance, disputes may arise. This is particularly true in this case where the statute sets up a competitive relationship between the TDCJ and the vendors. The TDCJ has identified some areas where third-party evaluations are useful and have tailored those evaluations to meet their needs. The TDCJ should consider the use of an outside party in other areas to assist in the monitoring process as it deems appropriate to help alleviate misunderstandings that may arise. Various combinations of approaches to the use of a third party monitor could be considered to accomplish the desired goal - that services contracted for by the state are delivered properly and in a manner that provides both parties of the contract a reasonable way to identify and resolve disagreements.

Contract Enforcement

Finding 6: The TDCJ should consider modifying its contracts for correctional facilities to include a range of sanctions for non-compliance.

BACKGROUND

The Texas Department of Criminal Justice is responsible for the oversight and enforcement of the contracts for correctional facilities. The statute requires the contracts to specify that the state may terminate the contract for cause, which includes the failure of the private vendor or county commissioners court to meet statutory or contractual requirements. The TDCJ currently monitors its contracts with the CCA and Wackenhut through on-site monitors and annual audit teams. When the on-site monitors or auditors identify deficiencies, the private vendors are notified of the deficiencies.

An effective enforcement program should provide a method to correct deficiencies in a timely fashion, discourage non-compliance with the statute and contract requirements, as well as penalize vendors for failure to implement corrective action and for chronic violations. Enforcement activities frequently incorporate a range of penalties that can be adjusted to conform to the seriousness of the deficiencies discovered. The review examined the approaches for enforcement of contract provisions set out in the statute and contracts. The results of the review indicated the following:

- ▶ **The National Institute of Justice recommends that sanctions for non-compliance be incorporated into contracts for prison services. The contracts negotiated by the TDCJ meet this guideline. The contracts specify that contracts may be terminated for non-performance.**
- ▶ **Termination of the contract for non-performance is the only sanction written into the contracts. No alternatives to this single sanction are specified. Having a range of penalties would give additional enforcement flexibility to an agency contracting for services.**
 - Termination of contract is one of the most serious penalties that can be invoked by a contracting agency. The availability of only this enforcement action limits the ability of the enforcing agency to respond to differing situations. The department did consider including additional sanctions in its contracts; however, the contract negotiations resulted in inclusion of only one sanction.
 - A range of penalties is often incorporated into statutes and contracts as an

enforcement approach. It provides an enforcement body with a series of penalty options to meet varying levels of non-compliance.

► **In addition to termination of contract for non-compliance, other enforcement sanctions have been written into state contracts for services. One agency with large contracting programs, the Texas Department of Human Services (DHS) uses this approach. Another agency, the State Purchasing and General Services Commission also uses intermediate sanctions.**

-- The DHS contracts for the provision of services to the elderly and disabled. Many of its contracts contain provisions authorizing "vendor-hold" on contracted payments as well as "liquidated damages." These provisions are written into the contract without any associated statutory language authorizing their use. Vendor-hold provisions authorize the contracting agency to withhold payments to vendors until compliance with contract terms is satisfactory. The "liquidated damages" approach specifies in the contract the conditions under which money will be retained and the amount of money to be retained if services are not provided in full. In contrast to the vendor-hold approach, money withheld for liquidated damages is not returned to the vendor.

-- The State Purchasing and General Services Commission also employs sanctions of a similar nature in some of its contracts such as construction contracts.

► **The inclusion of a range of penalties in the contracts could enhance the department's enforcement of the contract. A range of penalties could be used to encourage the vendors to resolve less serious areas of non-compliance.**

-- For example, contracts call for the vendor to make payments of money in lieu of taxes to local governments. Termination of contract would be too harsh a penalty for one-time non-compliance with this type of provision. An intermediate penalty would allow the TDCJ to reduce payments to a vendor by the amount owed.

-- As a second example, the TDCJ might determine that vendors were not complying with programming requirements for inmates. It would not be appropriate to terminate a contract for non-performance the first time this type of problem was uncovered unless it was of a very serious nature. Reduction in payment or withholding of payment until compliance occurred could be used more appropriately to match the actual level of non-performance.

CONCLUSION

The contracts with private vendors currently include one penalty for non-performance--termination of contract. This approach may have been necessary given the negotiations with vendors occurring during this first contracting experience. The department should consider negotiating a range of penalties in any future contracting effort. Other state agencies use this approach in their contracting process which provides them with greater flexibility to match penalties with differing levels of non-compliance.

