

Sunset Advisory Commission



Summary of Sunset Legislation 77th Legislature



2001

SUNSET ADVISORY COMMISSION

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them. This report is the Commission staff's recommendations, which serves as the starting point for the Commission's deliberations.

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Table of Contents

	Page
Summary	1
General Government	
Aircraft Pooling Board, State	5
Fire Fighters' Pension Commissioner, Office of	7
General Services Commission	9
Pension Review Board, State	19
Health and Human Services	
Prevention of Developmental Disabilities, Office for the	21
Judiciary	
Judicial Conduct, State Commission on	23
Natural Resources	
Coastal Coordination Council	29
Natural Resources Conservation Commission, Texas	33
Parks and Wildlife Department, Texas	51
Railroad Commission of Texas	61
Soil and Water Conservation Board, State	69
Water Development Board, Texas	73
Business and Economic Development	
Economic Development, Texas Department of	79
Homeless, Texas Interagency Council for the	81
Housing and Community Affairs, Texas Department of	83
State Affordable Housing Corporation, Texas	93
Regulatory	
Finance Commission of Texas	95
Banking, Department of	99
Savings and Loan Department	103
Consumer Credit Commissioner, Office of	107
Funeral Service Commission, Texas	111
Securities Board, State	117
Across-the-Board Recommendations	121
Appendix	
Sunset Review Schedule 2003	127

Summary

Summary

The Sunset Advisory Commission made recommendations on 25 agencies to the 77th Texas Legislature. As in the past, the work of the Commission continued to be well received by the Legislature. With very few exceptions, the Commission's recommendations were included in the various Sunset bills passed by the Legislature. These bills resulted in the continuation of 21 agencies. The Texas Energy Coordination Council was abolished, which did not require legislation. A bill on the Texas Interagency Council for the Homeless made it an advisory committee to the Texas Department of Housing and Community Affairs. Because the Sunset Commission took no action regarding the Children's Trust Fund of Texas, no legislation resulted. Based on the Attorney General's Child Support Division's progress and implementation of its 1999 Sunset legislation, the Commission took no further action, and no legislation resulted.

This report details the results of the Sunset Commission's work and discusses the additional changes made by the Legislature during its deliberations of the Sunset bills. As finally passed, the bills contained the following major provisions.

- Continue the Texas Department of Housing and Community Affairs for a two-year "probationary" period to ensure that the agency implements needed changes. Restructure the Department's governing Board from nine to seven public members who do not have professional ties to the housing industry. Create a separate governing Board to oversee licensing and regulation of the manufactured housing industry.
- Rename the Texas Natural Resources Conservation Commission as the Texas Commission on Environmental Quality. Establish a performance regulatory structure based on compliance history. Strengthen agency actions to reduce emissions from emissions events. Expand the Commission's ability to investigate and respond to complaints, and provide the agency with funding flexibility to better support its activities. Establish specific timeframes for grandfathered facilities to become permitted and to reduce emissions.
- Require the Texas Parks and Wildlife Department (TPWD) to assess the state's natural, cultural, and recreational resources, and to base all acquisition, divestiture, and major operation decisions on this assessment. Prohibit promotion of tobacco in TPWD publications and ensure that advertising is appropriate for youth. Establish guidelines and policies regarding the agency's relationship with an official foundation partner.
- Require the Railroad Commission of Texas to increase revenues to the Oil Field Cleanup Fund to meet the State's current and anticipated liability. Establish a voluntary program to provide incentive to landowners and developers to clean up contaminated oil field sites. Improve financial assurance requirements and enforcement to address the problem of abandoned wells and polluted sites. Establish risk-assessment standards for site remediation efforts and enhance regulation of pipelines to protect public safety. Transfer gas utility rate cases to the State Office of Administrative Hearings.
- Rename the General Services Commission as the Texas Building and Procurement Commission (TBPC), with a seven-member Board. Transfer responsibility for technology functions, including the State's telecommunications operations, from GSC to the Department of Information Resources. Allow TBPC to use reverse auctions as a purchasing method within the electronic procurement network, and, except for major construction projects, require agencies to use the e-procurement network for purchasing. Require TBPC to use a best-value process and enlist private sector experience when procuring leased space.

- Continue the Texas Funeral Service Commission for a two-year “probationary” period to ensure that the agency implements needed changes, which include improving the agency’s complaint process and adopting guidelines for imposing sanctions and fines. Authorize the Commission to register and sanction owners and operators of cemeteries and crematories, expanding the agency’s regulation to include burial and final disposition of bodies. Expand the Commission from six to seven members by adding a cemetery owner or operator.
- Strengthen the Department of Banking’s authority to effectively enforce prepaid funeral contract and perpetual care cemetery statutes, and improve consumer protections for purchasers of prepaid funeral contracts.
- Define a sale-leaseback transaction as a loan, to be regulated by the Office of Consumer Credit Commissioner (OCCC), and clarify OCCC’s current regulatory authority over pay day loans. Increase OCCC’s authority over car financing activities from registration to licensure, and provide for periodic on-site inspections.
- Require the Texas Water Development Board (TWDB) to create a capital spending plan and to explore ways to better address small community water needs and emerging water issues. Require the governing boards of TWDB and the Office of Rural Community Affairs to meet annually and be advised by a colonia advisory committee.

Once implemented, the Sunset legislation will have a positive net fiscal impact for the State during the next budget cycle and beyond. Savings and gains to State and federal funds will amount to approximately \$56.7 million for the next two years, with a five-year savings of about \$372.5 million. The following table summarizes the fiscal impact by agency and fund source.

The Sunset Commission will monitor these agencies to assess how well they implement the legislative directives in these Sunset bills. A Sunset Commission report during the next interim will detail the results of this implementation study. The State Auditor will also evaluate each agency’s response to any management recommendations made to the agencies by the Commission.

The 77th Legislature also passed S.B. 309 and other legislation that shape the Sunset review schedule for the next interim, the 2003 review cycle. The Sunset Commission has responsibility to review and make recommendations on 29 agencies or programs during the next 15 months. This includes the Texas Department of Economic Development, which was continued in its current form by S.B. 309. In addition, the Commission must conduct special reviews of the Texas Department of Housing and Community Affairs, the Texas State Affordable Housing Corporation, the Texas Funeral Service Commission, the Department of Human Services, and the Department of Health. Several agencies, most notably the Texas Real Estate Commission and the Texas Veterans Commission, were moved to later review cycles. However, the State Board of Dental Examiners was added to the upcoming schedule. In addition, several agencies were removed from Sunset review by S.B. 309, including four of the state’s metropolitan transit authorities. The appendix to this report provides a complete listing of the upcoming review schedule.

77th Session Sunset Legislation

Agency	Action	Two-Year Net Fiscal Impact	Bill Author		Sunset Bill
			Senate	House	
Aircraft Pooling Board, State	Continue	No Impact	Lucio	Bosse	S.B. 304
Banking, Department of	Continue	No Impact	Sibley	McCall	S.B. 314
Children's Trust Fund of Texas Council	No Action	No Impact	No Legislation		
Child Support Division, Office of the Attorney General	No Action	No Impact	No Legislation		
Coastal Coordination Council	Continue	No Impact	Lucio	Bosse	H.B. 906
Consumer Credit Commissioner, Office of	Continue	No Impact	Sibley	McCall	S.B. 317
Economic Development, Texas Department of	Continue	No Impact	Sibley	Gallego	H.B. 3452
Energy Coordination Council, Texas	Abolish	No Impact	No Legislation		
Finance Commission of Texas	Continue	No Impact	Sibley	McCall	H.B. 1763
Fire Fighters' Pension Commissioner, Office of	Continue	No Impact	Zaffirini	McCall	H.B. 1747
Funeral Service Commission, Texas	Continue	No Impact	Zaffirini	Chisum	H.B. 3067
General Services Commission	Continue	\$43,655,500	Zaffirini	Gallego	S.B. 311
Homeless, Texas Interagency Council for the	Merge	No Impact	Lucio	Gallego	H.B. 3450
Housing Corporation, Texas State Affordable	Continue	No Impact	Lucio	Gallego	H.B. 3451
Housing and Community Affairs, Texas Department of	Continue	(\$691,000)	Lucio	Gallego	S.B. 322
Judicial Conduct, State Commission on	Continue	No Impact	Lucio	Gallego	S.B. 303
Natural Resource Conservation Commission, Texas	Continue	\$20,158,000	Harris	Bosse	H.B. 2912
Parks and Wildlife Department, Texas	Continue	\$14,000	Harris	Bosse	S.B. 305
Pension Review Board, State	Continue	No Impact	Zaffirini	McCall	S.B. 302
Prevention of Developmental Disabilities, Texas Office for the	Continue	No Impact	Zaffirini	Bosse	S.B. 301
Railroad Commission of Texas	Continue	(\$922,000)	Harris	Chisum	S.B. 310
Savings and Loan Department	Continue	No Impact	Sibley	McCall	H.B. 1636
Securities Board, State	Continue	(\$158,600)	Harris	McCall	H.B. 2255
Soil and Water Conservation Board, State	Continue	No Impact	Zaffirini	Chisum	H.B. 2310
Water Development Board, Texas	Continue	(\$5,361,580)	Zaffirini	Chisum	S.B. 312
Fiscal Impact Total		\$56,694,320			

General Government

State Aircraft Pooling Board

Staff Contact: Amy Trost

S.B. 304 Lucio (Bosse)

Summary

The State Aircraft Pooling Board (SAPB) was created in 1979 to operate a pool for aircraft owned or leased by the State. SAPB has two primary missions: provide air transportation services to state officials and employees traveling on official state business, and provide ground services (such as maintenance, repairs, fuel, oil, and hangar space) for aircraft owned by the State. SAPB operates with an annual budget of about \$2.7 million and has 42 employees.

The Legislature adopted all of the Sunset Commission recommendations, which focused on improving SAPB's planning for its fleet of aircraft and increasing state agencies' access to air travel information. The list below summarizes the major provisions of S.B. 304, and a more detailed discussion follows.

Sunset Provisions

1. Establish a Better Approach to Planning for the Future of SAPB's Aircraft Fleet.
2. Provide State Agencies With Current and Easily Accessible Air Travel Information.
3. Continue the State Aircraft Pooling Board for 12 Years.

Sunset Provisions

1. Establish a Better Approach to Planning for the Future of SAPB's Aircraft Fleet.

The Legislature adopted the Sunset Commission recommendation that requires SAPB to develop long-range planning for its fleet of aircraft. The plan will be presented biennially to the Legislature and the Legislative Budget Board, as a part of the agency's strategic plan, and in the agency's Legislative Appropriations Request when appropriate. The plan will project needs for future aircraft replacement and size of the fleet, including reduction or expansion if warranted. In developing this plan, SAPB will consider, at a minimum, the usage for each aircraft in its fleet, the cost of operations compared to revenue of each aircraft, and the demand for each aircraft or type of aircraft.

2. Provide State Agencies With Current and Easily Accessible Air Travel Information.

This provision of the bill requires the State Aircraft Pooling Board to maintain an electronic Web site that provides current travel-related information. This will ensure that SAPB maximizes accessibility for state agencies to obtain information, including information to compare costs of transportation alternatives.

3. Continue the State Aircraft Pooling Board for 12 Years.

This provision continues SAPB for the standard 12-year period until 2013.

Fiscal Implication Summary

This legislation will not have a significant fiscal impact to the State.

Office of Fire Fighters' Pension Commissioner

Staff Contact: Joe Walraven

H.B. 1747 McCall (Zaffirini)

Summary

The Office of Fire Fighters' Pension Commissioner (the Office) helps secure the retirement plans of volunteer and paid firefighters, as well as voluntary emergency services personnel. The Office does so by educating paid and volunteer fire departments on how to effectively administer local pension plans and by offering a statewide pension plan for volunteer fire departments and emergency medical services (EMS) departments. The Office operates with an annual budget of about \$825,000 and a staff of eight.

H.B. 1747 continues the Office of Fire Fighters' Pension Commissioner for 10 years and contains the recommendations of the Sunset Commission to expand the Commissioner's term and to improve representation on the Board of Directors for the statewide pension plan. Changing the Commissioner's term will require adoption of a constitutional amendment in the November 2001 election. The list below summarizes the major provisions of H.B. 1747, and a more detailed discussion follows.

Sunset Provisions

1. Continue the Office of Fire Fighters' Pension Commissioner for 10 Years.
2. Provide for One Member of the Board of Trustees of the Texas Statewide Emergency Services Personnel Retirement Fund to Represent Emergency Medical Services.
3. Change the Fire Fighters' Pension Commissioner's Term From Two to Four Years.

Sunset Provisions

1. Continue the Office of Fire Fighters' Pension Commissioner for 10 Years.

This provision continues the Office as an independent agency until 2011.

2. Provide for One Member of the Board of Trustees of the Texas Statewide Emergency Services Personnel Retirement Fund to Represent Emergency Medical Services.

The Legislature adopted the Sunset Commission recommendation to change the composition of the Board of Trustees by designating one member to represent volunteer emergency medical services personnel. This change will not affect the size of the Board of Trustees, but will require that one of the six active fund members on the Board of Trustees be designated to represent emergency medical services personnel. The EMS representative will not be precluded from being a firefighter in instances where the person serves as both a volunteer EMS worker and a volunteer firefighter.

3. Change the Fire Fighters' Pension Commissioner's Term From Two to Four Years.

This legislation contains the Sunset recommendation to change the term of the Fire Fighters' Pension Commissioner from two to four years. Because the Texas Constitution provides for Governor appointments to be for two years, this provision will require adoption of a constitutional amendment by the state's voters to change the term of the Commissioner. House Joint Resolution 1 proposes a constitutional amendment to be submitted to the voters at the November 6, 2001, election providing for a four-year term of office for the Fire Fighters' Pension Commissioner.

Fiscal Implication Summary

These provisions will not have a fiscal impact to the State, other than the publication cost for the resolution proposing the constitutional amendment to change the Commissioner's term from two to four years.

General Services Commission

Staff Contact: Ken Levine

S.B. 311 Zaffirini (Gallego)

Summary

The primary function of the General Service Commission (GSC) is to provide central services for state agencies and, in some cases, local governments. GSC's activities can be organized into three major categories: procuring goods and services for customers, providing facilities management and construction services for state agencies, and providing telecommunication services for the Capitol Complex and state agencies. GSC operates with an annual budget of \$151 million and employs 811 staff.

The Legislature adopted all of the Sunset Commission recommendations, including transferring responsibility for State telecommunication operations from GSC to the Department of Information Resources. This change allows GSC to focus on its primary building and procurement functions. In addition, the Legislature added several other statutory modifications to the agency's Sunset bill, including renaming GSC as the Texas Building and Procurement Commission, and changing the composition of the agency's Board. The list below summarizes the major provisions of S.B. 311, and a more detailed discussion follows.

Sunset Provisions

1. Focus the New Texas Building and Procurement Commission on Procurement and Building Construction/Maintenance Operations, and Shift Technology Functions to the Department of Information Resources.
2. Establish a New Telecommunications Planning and Oversight Council to Oversee State Telecommunications Operations.
3. Effectively Implement the State's Electronic Procurement Network.
4. Authorize TBPC to Use a Broader Range of Contracting Methods to Design and Construct State Facilities.
5. Require TBPC to Procure Leased Space Using a Best-Value Process and Private Sector Experience.
6. Streamline the State's Surplus Property Program.
7. Require TBPC to Establish a Mandatory Recycling Program for State Agencies in TBPC-Maintained Facilities.
8. Pursue Online Technology to Streamline the State's Travel Program.
9. Require TBPC to Develop a Systematic Approach to Reviewing Its Commercially Available Activities for Outsourcing.
10. Strengthen the State's Approach to Contract Management.

Provisions Added by the Legislature

11. Direct TBPC to Develop Multiple-Award Contract Schedules.
12. Allow Non-profit Organizations to Certify Historically Underutilized Businesses.
13. Encourage Contractors' Participation in the Historically Underutilized Business Mentor-Protégée Program.
14. Require TBPC and State Agencies to Give Preference to Goods and Services Produced in the State's Depressed or Blighted Areas.
15. Authorize Additional Assistance Organizations to Receive Surplus Property Transfers.
16. Require TBPC to Help Agencies Develop a Plan to Reduce Warehouse Space.
17. Require Public Entities in the Texas-Mexico Border Area to Determine and Use the Highest Prevailing Wage Rate in a Contract.
18. Prohibit a Contractor on State Projects from Forcing a Subcontractor to Assume Its Liability.
19. Clarify that the Legislature Has the Authority to Grant or Deny Permission to Sue a Unit of State Government for Disputes Arising on Contract Claims Against the State.
20. Allow Private Institutions of Higher Education to Use the TEX-AN Network for Distance Learning Initiatives.
21. Raise the Maximum Annual Salary of the Executive Director of the State Preservation Board.
22. Authorize State Agencies to Accept Additional Forms of Guaranty on Construction Contracts.
23. Allow TBPC to Consider Economic Impact When Determining Best Value in Contracts.
24. Amend the Conflict of Interest Provisions Within DIR's Statute.
25. Transfer Responsibility for Reports Regarding Requests for Information Under the Open Records Law From the Legislative Budget Board to TBPC.

Sunset Provisions

1. Focus the New Texas Building and Procurement Commission on Procurement and Building Construction/Maintenance Operations, and Shift Technology Functions to the Department of Information Resources.

1.1 Transfer responsibility for the State's telecommunications operations from GSC to DIR.

This provision should improve the operation and oversight of the TEX-AN network, reduce the potential risks to the State in future telecommunications contracts, and maximize the value of the services provided to network customers.

1.2 Rename GSC as the Texas Building and Procurement Commission (TBPC) to oversee the State's procurement and facility construction, leasing and maintenance activities, and continue TBPC for 12 years.

The Legislature modified the Sunset recommendation to continue GSC with a five-member Governor-appointed Commission. S.B. 311 abolishes the General Services Commission, and creates the Texas Building and Procurement Commission to assume the State's procurement and facilities management functions. TBPC's Board consists of seven members – two nominated by the Speaker and appointed by the Governor, two appointed by the Lieutenant Governor, and three members directly appointed by the Governor.

1.3 Require DIR to develop and operate the electronic infrastructure for e-procurement and e-travel, with content to be provided by TBPC.

In consultation with TBPC, DIR will establish and manage the electronic infrastructure of an electronic procurement system and the State's online travel reservation and ticketing capability. TBPC will provide and manage the content for the e-procurement and e-travel systems.

1.4 Create an information technology program office within DIR for oversight of major state information technology projects.

The information technology program office within DIR will coordinate and implement major information technology projects specifically designated by the Legislature.

1.5 Transfer authority to set the State Cemetery Division's budget and salary schedule from GSC to the State Cemetery Committee.

This provision requires the Legislature, beginning September 1, 2003, to separately appropriate money for operation of the cemetery to the State Cemetery Committee within TBPC's appropriation pattern. As of September 1, 2001, the Committee will have sole budgetary and personnel authority for the cemetery.

2. Establish a New Telecommunications Planning and Oversight Council to Oversee State Telecommunications Operations.

The new 12-member Council replaces, but retains the duties of, the Telecommunications Planning Group, and expands its role to encompass regular oversight and monitoring duties.

3. Effectively Implement the State's Electronic Procurement Network.

3.1 Clarify that all state agencies must use the electronic procurement network for purchasing.

This provision clarifies existing requirements for all agencies to perform relevant purchases through the electronic procurement network once the network is fully operational. However, the bill does not affect existing exempt or delegated purchasing authority and does not apply to purchases for major construction projects.

3.2 Require TBPC and DIR to integrate the Centralized Master Bidders List into the electronic procurement network, but maintain the vendor notification service.

DIR will transfer the functions and services provided by the CMBL to the electronic procurement system, effectively integrating the list. In operating the electronic procurement network, TBPC will continue to offer vendors notification of relevant requisitions on a cost-recovery basis. The Legislature added a provision to clarify that none of the changes in law are intended to weaken statutes relating to HUBs and small businesses.

3.3 Transfer the Electronic State Business Daily to TBPC, terminating it once the electronic procurement network is fully capable of posting procurement information.

TBPC will continue to perform the functions of the Daily until the electronic procurement network, as developed by DIR, is fully capable of posting statewide procurement information. At such time, the Daily will be discontinued.

3.4 Authorize TBPC and DIR to establish reverse auctions as an alternate purchasing method within the electronic procurement network.

The Legislature adopted this Sunset Commission recommendation to allow reverse auctions to be used as an exception to the State's sealed-bid requirements. Reverse auction procurement is expected to create significant savings in the purchase of certain commodities.

3.5 Authorize the electronic procurement marketplace to contain information about recycled, remanufactured, or environmentally sensitive commodities and services.

The Legislature added this provision to expand the type of information available in the marketplace and potentially expand the use of these products.

4. Authorize TBPC to Use a Broader Range of Contracting Methods to Design and Construct State Facilities.

This provision allows TBPC to use design-build, construction-manager-at-risk, and competitive sealed proposal, in addition to low bid, as project contracting methods in designing and constructing state buildings and facilities.

5. Require TBPC to Procure Leased Space Using a Best-Value Process and Private Sector Experience.

The bill requires TBPC to consider factors other than price alone when selecting leased space for state agencies. Authorizing TBPC to negotiate with bidders when leasing space and to contract with local real estate professionals to locate space will help reduce the number of emergency leases, improve agency decisionmaking, increase competition, and reduce agency workload. The legislation also allows TBPC to authorize state agencies and institutions of higher education to procure low-cost, short-term leases without TBPC's direct involvement. Agencies will still be held accountable, however, for complying with TBPC leasing regulations. For agencies that do not comply with leasing policies, TBPC must notify the Governor, Legislative Leadership, and Chair of the noncompliant agency's board of the estimated fiscal impact resulting from the failure to comply.

6. Streamline the State's Surplus Property Program.

Based on a Sunset recommendation, S.B. 311 assigns TBPC responsibility for the State's surplus property program in selected counties, which TBPC will operate on a cost-recovery basis. Any additional income earned from sale of property will continue to return to the originating agency, after TBPC is reimbursed for administrative costs. TBPC may delegate authority to a state agency to dispose of its surplus or salvage property if the agency can do so at a savings to the State. The legislation also authorizes TBPC and state agencies to sell surplus property directly to the public if an auction or sealed bid would not maximize the return value of the property to the State.

Based on recommendations from the e-Texas Commission, the Legislature authorized TBPC and state agencies to sell surplus or salvage property using an Internet auction site, and to set a minimum sales price for the property, as an option for direct sale to the public. The period for agencies, local governments, or assistance organizations to obtain surplus through a transfer before the property is made available to the general public is reduced from 30 business days to 10 days.

7. Require TBPC to Establish a Mandatory Recycling Program for State Agencies in TBPC-Maintained Facilities.

To improve state agency recycling efforts, TBPC must adopt rules detailing elements of its recycling program, such as recycling goals, education, and performance measures. The bill requires TBPC to report noncompliance with the recycling program to the respective agency's board.

8. Pursue Online Technology to Streamline the State's Travel Program.

DIR, in consultation with TBPC, must establish and manage the electronic infrastructure of the State's online travel reservation and ticketing capability for agencies. The bill requires DIR to establish an online capability that connects to the online reservation or ticketing systems of travel services providers. To ensure use only by state employees traveling on official business, reservations must be made with a state-issued credit card or other form of payment authorized by the Commission. TBPC will manage and administer the system's content, but must maintain at least one contract with a provider of travel services that offers reservation and ticketing services in person or by telephone.

9. Require TBPC to Develop a Systematic Approach to Reviewing Its Commercially Available Activities for Outsourcing.

When an activity is available in the private sector, TBPC must compare the cost of contracting to the cost of performing the activity in-house to determine the best value to the State. If TBPC determines another state agency or private source can perform the service with an equal or better level of quality, and decrease the cost of providing the service by at least 10 percent, the Commission may contract for the service. TBPC still maintains responsibility for any contracted service and must set measurable performance measures for a contractor. Also, TBPC may not begin providing a new service if it can be procured more economically from a commercial source.

10. Strengthen the State's Approach to Contract Management.

- 10.1 Require the Attorney General's Office, with the assistance of the State Auditor's Office, DIR, the Comptroller, and TBPC to develop a contract management guide for use by state agencies.**
- 10.2 Create a Contract Advisory Team to assist state agencies in improving contract management.**
- 10.3 Require the State Auditor's Office to develop a training program for contract managers.**

The Legislature expanded a Sunset Commission recommendation to improve contract management in state agencies. The bill requires the Attorney General, in consultation with the State Auditor, DIR, the Comptroller, and TBPC, to develop and periodically update a contract management guide for use by state agencies. The bill also specifies what the guide must include, and requires state agencies to comply with the guide beginning January 1, 2003. Institutions of higher education and highway-related contracts of the Texas Department of Transportation are exempt from the provisions. The legislation also creates a five-member contract advisory team, composed of one member each from the Attorney General's Office, the Comptroller's Office, DIR, TBPC, and the Governor's Office, to review major contract solicitations and assist state agencies in improving contract management practices.

Provisions Added by the Legislature

11. Direct TBPC to Develop Multiple-Award Contract Schedules.

The Legislature added this provision requiring TBPC to develop multiple-award contract schedules based on schedules already developed by the federal government or another governmental entity. The contracts must comply with all state requirements and rules. TBPC can exclude vendors that do not make a good-faith effort to work with small businesses and HUBs. Also, TBPC must place the multiple award contract schedules online or within the electronic procurement system.

12. Allow Non-profit Organizations to Certify Historically Underutilized Businesses.

This provision allows TBPC to approve the certification program of non-profit organizations that certify historically underutilized businesses, if the non-profit meets or exceeds standards established by the commission.

13. Encourage Contractors' Participation in the Historically Underutilized Business Mentor-Protégée Program.

The Legislature added this provision to allow a contractor's participation in a mentor-protégée program to constitute the required good faith effort to use HUB subcontractors.

14. Require TBPC and State Agencies to Give Preference to Goods and Services Produced in the State's Depressed or Blighted Areas.

This provision requires all state agencies procuring goods or services to give preference to those produced in an economically depressed or blighted area if the goods or services meet state specifications and do not increase costs.

15. Authorize Additional Assistance Organizations to Receive Surplus Property Transfers.

The Legislature amended the list of assistance organizations that may receive surplus property from the State. The list now includes a non-profit organization, that has been approved by the Texas Supreme Court and that provides free legal services for low-income households in civil matters, and the Texas Boll Weevil Eradication Foundation, Inc.

16. Require TBPC to Help Agencies Develop a Plan to Reduce Warehouse Space.

The Legislature added a requirement that TBPC must evaluate the operation of the first four state-leased warehouses in Austin for which the leases expire after October 1, 2001. The Commission must work with the agency that operates the warehouse to develop a plan to reduce the need for warehouse space by reducing inventory, selling surplus property, and efficiently managing warehouse operations.

17. Require Public Entities in the Texas-Mexico Border Area to Determine and Use the Highest Prevailing Wage Rate in a Contract.

For a public work contract awarded by a public entity in a county bordering Mexico, or in a county adjacent to a county bordering Mexico, the public entity must determine and use the highest of three prevailing per diem wage rates:

- the rate determined by a survey of wages received by workers on similar local projects;
- the average of the rate determined from the local survey and the rate determined from a statewide survey; and
- if applicable, the average of the rate from the local survey and the rate determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act.

18. Prohibit a Contractor on State Projects from Forcing a Subcontractor to Assume Its Liability.

This provision provides that on State public work projects, a party cannot indemnify another person for the other person's negligence. The provision also prohibits the transfer of liability by contract or other means.

19. Clarify that the Legislature Has the Authority to Grant or Deny Permission to Sue a Unit of State Government for Disputes Arising on Contract Claims Against the State.

This provision applies to contracts executed after August 30, 1999.

20. Allow Private Institutions of Higher Education to Use the TEX-AN Network for Distance Learning Initiatives.

This provision allows universities to use TEX-AN if they receive federal funds for distance learning initiatives.

21. Raise the Maximum Annual Salary of the Executive Director of the State Preservation Board.

This provision sets the maximum annual salary of the Executive Director of the State Preservation Board equal to that of TBPC's Executive Director as set out in the General Appropriations Act for the 2002-2003 biennium.

22. Authorize State Agencies to Accept Additional Forms of Guaranty on Construction Contracts.

To assist historically underutilized businesses and small businesses in participating construction projects, the Legislature added a provision allowing TBPC, or other state agency that requires a proposal guaranty as a condition for bidding on a contract, to accept the guaranty in the form of a cashier's check or money order, a bid bond issued by a surety authorized to do business in Texas, or any other method approved by the agency.

23. Allow TBPC to Consider Economic Impact When Determining Best Value in Contracts.

TBPC may factor in a vendor's anticipated economic impact to the State or subdivision of the State when determining best value in contract determinations. Anticipated economic impact may include potential tax revenue and employment.

24. Amend the Conflict of Interest Provisions Within DIR's Statute.

This provision allows limited flexibility for DIR employees to continue to work at DIR if they receive income from information technology companies, but prohibits them from participating in contracts with these companies.

25. Transfer Responsibility for Reports Regarding Requests for Information Under the Open Records Law From the Legislative Budget Board to TBPC.

The Legislature added this provision to streamline the State's process of reporting open-record requests.

Fiscal Implication Summary

This legislation will result in a positive fiscal impact to the State of \$43,655,500 through the biennium ending August 31, 2003. The five-year fiscal impact is estimated to be \$379,328,000. These recommendations are discussed below, followed by a five-year summary chart.

Authorizing reverse auctions as an alternate purchasing method will save an estimated \$3.4 million per year in General Revenue. Beginning in fiscal year 2005, General Revenue savings from electronic procurement is estimated at \$28.6 million annually.

Improvements to TBPC’s leasing practices and the delegation of leasing authority to state agencies and institutions of higher education will result in a savings to General Revenue of about \$445,000 each year by reducing the number of emergency leases.

Sales of surplus and salvage property, including Internet auction sales, will have an estimated revenue gain in fiscal year 2002 of \$580,000 in General Revenue. In following years, the gain is estimated to be \$697,000. TBPC will require an additional FTE for its responsibility for the State’s surplus property disposal process. Estimated cost for the FTE is about \$48,000 per year, including benefits, plus a computer at a cost of \$2,500 in the first year and \$2,500 in FY 2005.

Strengthening TBPC’s recycling program should realize savings of at least \$49,000 each year to the General Revenue Fund.

Improving the State’s contract management will lead to significant fiscal savings. Beginning in fiscal year 2003, the State should realize a savings of \$35 million to all State funds with \$19.6 million of the savings accruing to General Revenue.

Fiscal Year	Savings to the General Revenue Fund	Cost to General Revenue Fund	Savings to the General Revenue Dedicated Accounts	Savings to Federal Funds	Savings to Other Funds	Net Impact	Change in FTEs From FY 2001
2002	\$3,894,000	(\$50,500)			\$127,000	\$3,970,500	+1
2003	\$24,261,000	(\$48,000)	\$2,240,000	\$9,870,000	\$3,362,000	\$39,685,000	+1
2004	\$24,261,000	(\$48,000)	\$2,240,000	\$9,870,000	\$3,362,000	\$39,685,000	+1
2005	\$52,841,000	(\$50,500)	\$44,840,000	\$47,000,000	\$3,362,000	\$147,992,500	+1
2006	\$52,841,000	(\$48,000)	\$44,840,000	\$47,000,000	\$3,362,000	\$147,995,000	+1

State Pension Review Board

Staff Contact: Joe Walraven

S.B. 302 Zaffirini (McCall)

Summary

The State Pension Review Board (the Board) monitors all state and local public retirement systems for actuarial soundness and compliance with state law. The agency provides the State with information and recommendations to help ensure that public retirement systems are financially sound and properly managed. A major Board responsibility is to develop information for actuarial impact statements on legislation affecting public retirement systems. The Board also provides information to help educate system administrators, trustees, and members. The Board has an annual budget of about \$262,000 and a full-time staff of five.

S.B. 302 continues the State Pension Review Board for 12 years and contains the Sunset Commission's recommendation to improve the reporting of information regarding the financial and actuarial condition of public retirement systems. The Legislature did not adopt the Sunset recommendation to eliminate funding Board activities through voluntary monetary contributions from public retirement systems. The list below summarizes the major provisions of S.B. 302, and a more detailed discussion follows.

Sunset Provisions

1. Specifically Authorize the Board to Require Public Retirement Systems to Submit Summary Information in a Standardized Manner and Form.
2. Continue the State Pension Review Board for 12 Years.

Sunset Provisions

1. Specifically Authorize the Board to Require Public Retirement Systems to Submit Summary Information in a Standardized Manner and Form.

The Board must develop a brief standard form to be included with the annual reports currently required of public retirement systems. The standard form will include the information and measures that the Board determines most necessary to efficiently judge the actuarial and financial conditions of these systems. The form is intended to be brief, requiring the minimum amount of information the Board needs to efficiently assess a system's health so as not to overly burden any particular system. The Board may need to assist smaller systems with the form until they become familiar with it. The Board could place this form on the Internet to make standardized reporting easier for these systems. Finally, the Board should occasionally verify the information that systems provide on the summary document.

2. Continue the State Pension Review Board for 12 Years.

This provision continues the State Pension Review Board for the standard 12-year period until 2013.

Removed Provision

1. Eliminate Voluntary Monetary Contributions to the Board From Public Retirement Systems and Fully Fund the Board From General Revenue.

This provision was intended to remove the perception of a conflict of interest for the Board in seeking funding from the public pension systems it is charged with overseeing. The Legislature removed this provision because of its estimated \$42,000 annual cost to General Revenue to maintain existing levels of funding for the Board.

Fiscal Implication Summary

This legislation will not result in a fiscal impact to the State.

Health and Human Services

Office for the Prevention of Developmental Disabilities

Staff Contact: Ilan Levin

S.B. 301 Zaffirini (Bosse)

Summary

In 1989, the Legislature created the Texas Office for the Prevention of Developmental Disabilities (the Office), and directed the Office to focus prevention efforts on high-risk behavior among teenagers. The Office's mission is to help minimize the human and economic losses in Texas caused by preventable disabilities. The Office's duties include coordinating the activities of public and private organizations involved in prevention activities, raising awareness on the preventability of many disabilities, monitoring and assessing prevention programs, and promoting innovative programs. The Office operates with an annual budget of about \$200,000 and employs two full-time staff.

In 1999, the Legislature administratively attached the Office to the Texas Department of Mental Health and Mental Retardation (TDMHMR). Under this arrangement, TDMHMR supports the Office by providing computers, office space, travel reimbursement, salaries, and benefits. However, the Office maintains its independence as a separate agency with a governing board and its own employees. The Legislature directed the Sunset Commission to review the effectiveness of this administrative arrangement. As a result of the Sunset Commission's recommendation, the Legislature continued the Texas Office for the Prevention of Developmental Disabilities, administratively attached to TDMHMR, and repealed the Office's separate Sunset date. The major provision of S.B. 301 is summarized below, and a more detailed discussion follows.

Sunset Provision

1. Continue the Texas Office for the Prevention of Developmental Disabilities as a Separate State Agency Administratively Attached to the Texas Department of Mental Health and Mental Retardation.

Sunset Provision

- 1. Continue the Texas Office for the Prevention of Developmental Disabilities as a Separate State Agency Administratively Attached to the Texas Department of Mental Health and Mental Retardation.**
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This provision will maintain the Office's link to TDMHMR for administrative support. The bill also repeals the separate Sunset provision for the Office, which will allow the Sunset Commission to include the Office as part of the next Sunset review of TDMHMR in 2011. This will eliminate the need for a separate evaluation of the Office.

Fiscal Implication Summary

This legislation will not result in a fiscal impact to the State.

Judiciary

State Commission on Judicial Conduct

Staff Contact: Lisa Mogil

S.B. 303 Lucio (Gallego)

Summary

The State Commission on Judicial Conduct (the Commission) exercises jurisdiction over about 3,450 judges and judicial officers. Created by constitutional amendment in 1965, the Commission is a judicial agency whose major function is investigating and taking appropriate action in cases of judicial misconduct or incapacity of judges and judicial officers. Sanctions may include discipline, education, censure, or filing formal proceedings that could result in removal from office. The Commission operates with an annual budget of about \$700,000 and employs 15 people.

The agency is subject to review, not abolishment, under the Sunset Act. The Sunset Commission concluded that the agency has recently made significant improvements, but additional changes would help the agency better serve the public and judges. The Legislature adopted all of the Sunset Commission recommendations, which require the agency to better inform the public and judges about its activities, and enable complainants to more meaningfully participate in the complaint process. The Legislature also added several statutory modifications to the agency's Sunset bill. The list below summarizes the major provisions of S.B. 303, and a more detailed discussion follows.

Sunset Provisions

1. Require the Commission to Better Inform the Public About Its Activities and the Process for Filing a Complaint.
2. Enable Complainants to More Meaningfully Participate in the Complaint Process, Without Fear of Retaliation.
3. Remove Confidentiality Restrictions That Impede the Commission's Ability to Effectively Oversee Judicial Conduct.
4. Provide Feedback to Judicial Training Schools to Better Prevent and Deter Judicial Misconduct.

Provisions Added by the Legislature

5. Expand the Definition of Judicial Misconduct.
6. Enhance Penalties for Judicial Misconduct.
7. Broaden the Commission's Subpoena Powers.
8. Expand the Commission's Authority to Order Physical and Mental Examinations of Judges.
9. Provide Immunity From Liability for Special Counsel or Others Who Assist the Commission.
10. Make Special Master Compensation Consistent With Pay for Visiting Judges.

Sunset Provisions

1. Require the Commission to Better Inform the Public About Its Activities and the Process for Filing a Complaint.

1.1 Require the Commission to provide easily available, plain-language information to the public and judges on what constitutes judicial misconduct, and how to file a complaint.

The Commission must develop plain-language materials describing the complaint process and the types of sanctions issued by the Commission. The Commission must also adopt a policy to better disseminate this information in the courts and to the Judiciary, and make this information easily available to the general public.

1.2 Require the Commission to better inform complainants of complaint outcomes.

The Legislature adopted the Sunset recommendation to give specific reasons explaining why a case has been dismissed, rather than simply notifying a complainant of the dismissal. A fuller explanation will help to alleviate any potential mistrust that may develop when complaints are dismissed outright. In addition, the Legislature added provisions requiring the Commission to inform a complainant when the Commission issues a private sanction or order of additional education, and when a judge has resigned from office in lieu of disciplinary action.

1.3 Require a periodic publishing of judicial misconduct sanctions in the *Texas Bar Journal*.

More frequent publication of sanctions will provide more timely notice of Commission actions and give judges more opportunities to see sanctions. The *Bar Journal* will no longer publish the Commission's entire annual report.

2. Enable Complainants to More Meaningfully Participate in the Complaint Process, Without Fear of Retaliation.

2.1 Ensure that people who bring complaints against judges have the opportunity to request confidentiality.

This provision of the bill protects complainants who fear reprisal from the judge whom they complained against, and encourages the public to bring cases without fear of retaliation.

2.2 Allow the Commission to invite complainants to appear at informal proceedings.

The legislation grants the Commission discretion to invite complainants to its informal hearings, providing complainants with the same access to the Commission that judges have.

2.3 Codify a complainant's right to request reconsideration of a dismissed complaint.

The bill places in law the Commission's internal policy that gives complainants one chance for reconsideration if the complainant provides additional evidence of misconduct within 30 days of the date of the dismissal letter.

3. Remove Confidentiality Restrictions That Impede the Commission's Ability to Effectively Oversee Judicial Conduct.

3.1 Require that formal hearings to discipline or remove a judge become public when the Commission files formal charges to institute the proceedings.

This provision ensures the public's notice of these formal hearings ahead of time, instead of when the hearing begins. It makes formal hearings and all related documents public when the Commission files charges, as is the practice in 33 other states. In addition to adopting the Sunset Commission recommendations, the Legislature clarified which documents become public under certain circumstances, including agreements to resign in lieu of discipline.

3.2 Clarify that orders to suspend a judge under criminal indictment shall be public at the time they are issued.

Suspension orders, withdrawals of suspension orders, and documents that are part of the suspension file will become public when they are issued. This will allow the Commission to assure the public that a judge under indictment is suspended from duty, pending the resolution of the charges.

3.3 Allow the Commission to share information with certain law enforcement, public officials who appoint judges to the bench, courts, schools that provide Commission-ordered education, and the State Bar, as necessary to protect the public interest.

The Commission may report to the appropriate authority information reasonably suggesting that a criminal act has been, is being, or is about to be committed. In addition, the bill allows the Commission to release information verifying a judge's eligibility to serve on the bench. The Commission will also be able to share appropriate information with the Supreme Court and judicial schools, to match the judge with appropriate special masters and mentors. Finally, the Legislature added a provision allowing the Commission to share information with the State Bar that an attorney, including a judge acting as an attorney, has violated the Texas Disciplinary Rules of Professional Conduct.

3.4 Allow the Commission to obtain the criminal history of a judge under investigation, and of a complainant or witness in any Commission investigation.

The General Counsel of the State Bar may receive similar information. Like the State Bar, information from the Department of Public Safety will remain confidential, and the Commission must destroy criminal history information after a final determination is made in the case. This will aid the Commission in its investigations and its formal proceedings by allowing it to better assess the credibility of witnesses and determine the appropriate outcome for the judge.

4. Provide Feedback to Judicial Training Schools to Better Prevent and Deter Judicial Misconduct.

The Commission must routinely provide judicial schools with information to help ensure that training addresses common problems resulting in sanctions and orders of additional education. This change should make required training more meaningful to the judges, while helping the Commission to reduce complaints by averting them on the front end.

Provisions Added by the Legislature

5. Expand the Definition of Judicial Misconduct.

The Legislature added two new types of judicial misconduct that the Commission may act upon: failure to cooperate with the Commission, and violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the Commission. In addition, the Commission currently may suspend a judge for a misdemeanor involving official misconduct. The Legislature added a provision stating that a misdemeanor involving official misconduct includes misdemeanors involving acts related to a judicial office, or acts involving moral turpitude.

6. Enhance Penalties for Judicial Misconduct.

The Legislature added a provision providing for automatic removal of a judge if the judge is convicted of or is granted deferred adjudication for a felony or for a misdemeanor involving official misconduct. In addition, the Commission must suspend a judge from office without pay if the judge appeals a conviction of a felony or a misdemeanor involving official misconduct, pending final disposition of the appeal.

7. Broaden the Commission's Subpoena Powers.

Previously, the Commission could issue a subpoena for attendance of a witness or information relevant to an investigation or Commission hearing. This provision allows the Commission to also order a judge's written response, informal appearance, or deposition. This should help the Commission to dispose of cases at the informal level, and spare all parties the time and expense of formal proceedings.

8. Expand the Commission's Authority to Order Physical and Mental Examinations of Judges.

The Commission may order a physical or mental examination in any investigation or proceeding involving physical or mental incapacity of a judge. Previously, this had been limited to cases involving

the involuntary retirement of a judge because of physical or mental incapacity. The Legislature also removed the requirement that a physical or mental examination only take place in the judge's place of residence or location to which the judge consents.

9. Provide Immunity From Liability for Special Counsel or Others Who Assist the Commission.

This immunity provision applies to special counsel or others employed to assist the Commission in performing its duties, such as mentor judges.

10. Make Special Master Compensation Consistent With Pay for Visiting Judges.

Compensation for special masters who hear Commission cases will be calculated in the same manner as pay for visiting judges.

Fiscal Implication Summary _____

This legislation will not result in a fiscal impact to the State.

Natural Resources

Coastal Coordination Council

Staff Contact: Ilan Levin

H.B. 906 Bosse (Lucio)

Summary

The Legislature created the Coastal Coordination Council (the Council) in 1991 to develop and administer the Texas Coastal Management Program under the federal Coastal Zone Management Act. The Council manages coastal natural resource areas by continually reviewing the issues affecting the Texas coast, and coordinates the State's response to identified problems. The Council's major responsibilities include reviewing government actions that affect the Texas coast and certifying that they are consistent with the Texas Coastal Management Program; and passing federal funds through to coastal communities for projects that help control erosion, promote responsible development and coastal access, and enhance critical areas. The Council operates with an annual budget of about \$2 million and is supported by three General Land Office employees.

H.B. 906 continues the Council for 12 years and reflects the recommendations of the Sunset Commission to improve the Council as a forum for receiving public input regarding the State's Coastal Management Plan, and to clarify the authority to issue grants and reports to further the Council's goals and policies. The Legislature did not adopt the Sunset recommendation to simplify the consistency review process, or adopt the recommendation to add two new Governor appointees to the Council, choosing instead to add the Director of the Texas A&M University Sea Grant Program. The list below summarizes the major provisions of H.B. 906, and a more detailed discussion follows.

Sunset Provisions

1. Enhance Public and Local Government Input in Coastal Management Efforts.
2. Add the Council's Grant-Making Responsibility to Its Enabling Law.
3. Expand the Council's Reporting Requirements on the State of the Coast.
4. Continue the Coastal Coordination Council for 12 Years.

Sunset Provisions

1. Enhance Public and Local Government Input in Coastal Management Efforts.

1.1 Add the Director of the Texas A&M Sea Grant Program to the Council.

Instead of adopting the Sunset recommendation to add two members to the Council to increase public and local government representation, the Legislature adopted a provision to add the Director of the Sea Grant Program as a nonvoting member. This brings the total number of Council members to 12. The new member will provide a unique perspective and expertise, and more closely align the Council with higher education.

1.2 Remove the requirement that advisory committee members reside in the coastal region.

The Council maintains its current statutory authority to create advisory committees as needed, but the potential pool of advisory committee members will be open to any person with expertise in coastal matters.

1.3 Require the Council to set aside time during all meetings for public comment on any coastal issue.

This provision codifies a practice of the Council and the Executive Committee.

2. Add the Council's Grant-Making Responsibility to Its Enabling Law.

The legislation codifies the Council's authority to award grants and requires the Council to adopt rules establishing the procedures for making any determination related to awarding a grant. The legislation will not affect the General Land Office's designation under federal rules as the single state agency responsible for receiving and administering Coastal Management Program grants. To the extent that additional funds beyond the scope of the current Coastal Management Program become available, this legislation authorizes the Council to receive and spend those funds for any project that furthers the goal of protecting and preserving the state's coastal natural resources.

3. Expand the Council's Reporting Requirements on the State of the Coast.

The Council's report to the Legislature must highlight population growth, infrastructure needs, and use of resources on the coast. These reporting requirements are in addition to existing requirements for the Council to report on needed statutory changes for better use or management of coastal natural resources or on governmental actions that are inconsistent with the coastal management plan.

4. Continue the Coastal Coordination Council for 12 Years.

This legislation continues the Council for the standard 12-year period until 2013.

Removed Provision

1. Allow Any Member of the Council to Refer a Consistency Issue to the Full Council.

The Legislature did not adopt the Sunset recommendation that would remove the requirement for three Council members to agree before an agency's actions may be referred to the Council for its review of consistency with the Coastal Management Plan.

Fiscal Implication Summary

This legislation will not result in a significant fiscal impact to the State.

Texas Natural Resource Conservation Commission

Staff Contact: Joe Walraven

H.B. 2912 Bosse (Harris)

Summary

The Texas Natural Resource Conservation Commission (TNRCC) protects the state's natural resources and human health by ensuring clean air and water and the safe management of waste. The Legislature created the agency in 1993 by consolidating the Texas Water Commission, Texas Air Control Board, and environmental programs from the Texas Department of Health. The agency implements state and federal environmental regulatory laws by issuing permits and authorizations for the control of air pollution; the safe operation of water and wastewater facilities; and the treatment, storage, and disposal of hazardous, industrial, and municipal waste and low-level radioactive waste. TNRCC ensures compliance with environmental laws by conducting inspections of regulated facilities, monitoring air and water quality, providing technical assistance and encouraging voluntary compliance, and taking formal enforcement action against suspected violators. The agency also develops programs for the cleanup and eventual reclamation of contaminated industrial and abandoned hazardous waste sites. TNRCC operates with an annual budget of about \$410 million and employs more than 3,000 people.

H.B. 2912 continues TNRCC for 12 years and contains the recommendations of the Sunset Commission to better position the agency to address the state's environmental regulatory needs. Specifically, the legislation contains Sunset recommendations establishing a performance-based regulatory structure, tied to regulated entities' compliance history, to give them a larger stake in protecting the environment. It also reflects Sunset recommendations providing the agency tools to better support its environmental protection mission and affording greater public access to the agency's decisionmaking process.

The bill also contains several provisions added by the Legislature to address issues such as the permitting of "grandfathered" facilities, the continuation of the program for remediating leaking underground petroleum storage tanks, and the disposal of hazardous and other wastes. The list below summarizes the major provisions of H.B. 2912, and a more detailed discussion follows.

Sunset Provisions

1. Establish a Performance Regulatory Structure Based on Compliance History.
2. Strengthen Agency Actions to Reduce Emissions From Emissions Events.
3. Establish a Laboratory Accreditation Program at TNRCC.
4. Establish a Mechanism for Providing Environmental Research to Support TNRCC's Environmental Regulatory Policies.
5. Ensure Greater Public Interest Representation Before the Commission.
6. Clarify the Executive Director's Role in Contested Cases.
7. Expand TNRCC's Ability to Investigate and Respond to Complaints.
8. Provide TNRCC With Funding Flexibility to Better Support Its Activities.

Sunset Provisions (cont.)

9. Strengthen TNRCC's Revenue Management Practices.
10. Require the Commission to Review Solid Waste Disposal Permits to Assess Compliance Performance.
11. Clarify the Authority of the Commission to Certify Water Treatment Specialists.
12. Continue the Texas Natural Resource Conservation Commission for 12 years.

Provisions Added by the Legislature

13. Change the Name of the Agency.
14. Clarify the Commission's Role Regarding Economic Development.
15. Establish Specific Timeframes for Grandfathered Facilities to Become Permitted and to Reduce Emissions.
16. Establish the Texas Environmental Health Institute.
17. Protect the Public From Cumulative Risks.
18. Change Agency Requirements Regarding Notice for Public Hearings.
19. Require Contracting Under Provisions of Professional Services Procurement.
20. Prohibit the Storage and Disposal of Hazardous Waste in Certain Geological Formations.
21. Allow an Order for Remediating Hazardous Waste at a Solid Waste Facility.
22. Exclude Certain Persons as Responsible Parties for Purposes of Remediation.
23. Tighten the Regulation of Concrete and Rock Crushing Facilities.
24. Authorize Remedial Action at a Scrap Tire Site That Threatens to Release a Hazardous Substance.
25. Clarify Regulatory and Operational Requirements for Solid Waste Facilities.
26. Require a Permit, Instead of Registration, to Land Apply Class B Sewage Sludge.
27. Require Secondary Containment for Certain Underground Storage Tank Systems.
28. Expand Availability of Information About the Edwards Aquifer and the Commission's Edwards Aquifer Programs.
29. Establish a Regulatory Approach for Dealing With Runoff and Managing Waste From Dairy Operations in the Lake Waco Watershed.
30. Establish Timeframes for Commission Standards for Low-Emission Diesel.
31. Authorize the Disposal of Animal Remains Under Certain Circumstances.

Sunset Provisions

1. Establish a Performance Regulatory Structure Based on Compliance History.

The Legislature adopted the series of Sunset recommendations that, when taken together, require the Commission to establish a performance regulatory structure using a uniform standard for evaluating compliance history to guide permit and enforcement decisions, and to determine eligibility for participation in innovative programs.

1.1 Require the Commission to develop a uniform standard for evaluating compliance history.

Through rulemaking, the Commission will develop a common definition of compliance history for all media – air, water, and waste – consistent with requirements to maintain federal program authorization. The Legislature provided a check list of components for the Commission to include in making this definition, rather than simply listing items for the Commission to consider as the Sunset Commission recommended. The specific components must include:

- notices of violation, excluding those administratively determined to be without merit, which must also be removed from the entity's compliance history if the Commission subsequently determines them to be without merit;
- enforcement actions, no-findings orders, enforcement orders, court judgements, and criminal convictions issued by Texas or the U.S. Environmental Protection Agency;
- enforcement orders, court judgments, and criminal convictions of other states, to the extent that they are readily available to the Commission; and
- changes in ownership.

The Commission must also establish the time period to be considered for compliance history. Rules for establishing the components of compliance history must be completed by February 1, 2002.

1.2 Require TNRCC to track, analyze, and report on the compliance history of regulated entities.

TNRCC will track and report compliance history data on all regulated entities to differentiate compliance performance levels. Specifically, the Commission will collect data on the results of inspections and the seriousness of the violation. The Legislature added a requirement for the agency to make much of this data available to the public on the Internet. In addition, the agency must conduct a comparative analysis of the data showing how well the agency and regulated entities perform from one year to the next, and report the compliance data and comparative analysis by region and media in its annual enforcement report.

1.3 Require TNRCC to develop standards for classifying compliance history and to use this information in permitting and enforcement decisions and in determining eligibility for innovative programs.

TNRCC must set standards for classifying a person's compliance history in one of at least three groups to adequately distinguish among poor, average, and high performers. Poor performers are

those that in the Commission's judgment, perform below average. Average performers generally comply with environmental regulations, while high performers are those with an above-average compliance history.

In classifying a person's compliance history, the Commission must determine whether a violation is of major, moderate, or minor significance. It must also establish criteria for classifying a repeat violator, giving consideration to the number and complexity of facilities owned or operated by the person. The Legislature changed the Sunset recommendation to separate the classification of repeat violators from the determination of compliance history, so that the Commission will consider each under different time periods. The Commission must develop methods to assess entities for which the agency does not have adequate compliance history.

The legislation contains the Sunset recommendations regarding the use of these compliance history classifications in decisions regarding participation in innovative programs and in decisions regarding permits, permit amendments, modifications, suspensions, revocations, and inspections. The Legislature strengthened the language directing the Commission's use of these classifications in decisions to revoke permits of repeat violators and enhance penalties for repeat violators. The Legislature also required the Commission to provide additional oversight and review of applications of facilities in the lowest classification of compliance performance. The Legislature also added language to require the Commission to deny an application for a permit if the applicant's compliance history is unacceptable based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process.

Finally, the Legislature reversed the application of the Sunset recommendation regarding announced inspections and participation in the flexible permit and regulatory flexibility programs. Rather than providing these actions as benefits only available to high performers, the legislation instead prohibits persons in the lowest classification from receiving an announced inspection and obtaining or renewing a flexible permit or participating in the regulatory flexibility program.

TNRCC must establish standards for the classification and use of compliance history information by September 1, 2002. The Legislature added language to clarify that the changes in the Commission's consideration of compliance history in permitting and enforcement actions apply only to permits, permit changes, and enforcement actions after September 1, 2002.

1.4 Require the Commission to develop a strategically directed regulatory structure.

The Legislature modified the terminology, but adopted the Sunset recommendation to require the Commission to develop a regulatory structure that provides incentives based on compliance history and voluntary efforts to improve environmental quality. This structure will allow entities with better environmental performance, as determined by their compliance with regulations, more opportunity to take advantage of innovative and flexible programs offered by the agency. Any innovative programs offered under the strategically directed regulatory structure must be consistent with requirements to maintain federal program authorization. The Commission must complete rules necessary for this strategically directed regulatory structure by September 2, 2005.

1.5 Provide for advisory assistance and coordination in implementing the new regulatory structure.

The legislation expands the responsibilities of the Waste Reduction Advisory Committee to include advising the Commission on the creation and implementation of the strategically directed regulatory

structure, and reporting quarterly to the Commission on its activities and on proposals for future activities. The name of the advisory committee is changed to the Pollution Prevention Advisory Committee to reflect its advisory role for all media, not just waste.

The Commission must designate a single point of contact within the agency to coordinate all innovative programs. The coordinator must also market and evaluate innovative programs, provide technical assistance, and work with the Pollution Prevention Advisory Committee to integrate these programs into the Commission's operations.

1.6 Clarify when entities may participate in the agency's regulatory flexibility program and in supplemental environmental projects.

The bill provides that a pollution control method proposed to be used under the regulatory flexibility program must be more protective than laws or agency rules would otherwise require, and must provide clear environmental benefits. The bill also prohibits the Commission from approving a supplemental environmental project if the entity has already agreed to perform the project under a pre-existing agreement with a governmental agency.

2. Strengthen Agency Actions to Reduce Emissions From Emissions Events.

The Legislature modified the Sunset Commission's recommendation requiring reporting of upset emissions and strengthening enforcement against entities with chronic numbers of upsets. While the Sunset Commission included these changes in its recommendation to improve the agency's use of compliance performance information, the Legislature considered emissions events separately. Though modified from the original Sunset provision, the legislation continues to reflect the basic goal of strengthening reporting and regulations to better control upset emissions.

2.1 Require TNRCC to track and report the occurrences of emissions events.

The legislation requires facilities to maintain a record of emissions events as prescribed by Commission rule and defines these events as an upset or unscheduled maintenance, startup, or shutdown activity. All emissions events above a reportable quantity must be reported within 24 hours, followed by a more detailed report within two weeks.

The Commission must centrally track information regarding the number of emissions events occurring, the quantity of emissions from each event, and actions it has taken in response to these events, and report this information to the Legislature. The Commission must also develop the capacity for electronic reporting by January 1, 2003 and require electronic reporting thereafter. This information is to be incorporated into a central database that is accessible to the public and may be used by the Commission to identify persons who repeatedly fail to report emissions events. Owners or operators of a facility required to submit an annual emissions inventory report must include emissions from emissions events as specified in Commission rule.

2.2 Require action to reduce emissions from excessive emissions events.

The Commission must establish criteria for determining when emissions events are excessive, based on specified factors. The Commission must require a facility to take action to reduce emissions from these events by either filing a corrective action plan or a letter of intent to obtain a permit. The bill details the contents of the corrective action plan and the process for obtaining approval and implementing the plan.

The bill allows the Commission to establish an affirmative defense to a Commission enforcement action if the emissions event meets certain criteria defined by Commission rule, and specifies that the burden of proof is on the person claiming the defense. A person may not claim an affirmative defense if the person failed to take corrective action under an approved plan. Finally, the Commission must consider emissions events in its review of an entity's compliance history.

3. Establish a Laboratory Accreditation Program at TNRCC.

3.1 Require TNRCC to adopt rules to implement a voluntary environmental laboratory accreditation program consistent with national standards.

The agency must establish by rule a program to accredit environmental laboratories, including TNRCC labs, consistent with the national accreditation standards approved by the National Environmental Laboratory Accreditation Program (NELAP). The accreditation program ensures that environmental laboratories provide sufficiently accurate and consistent measurements and analyses.

Consistent with NELAP requirements for reciprocity, TNRCC will also provide for the accreditation of environmental laboratories accredited by NELAP-approved authorities in other states; and establish conditions for denying, revoking, suspending, or modifying accreditation.

3.2 Transfer the Safe Drinking Water Lab Assessment Program from the Texas Department of Health to consolidate it with the new accreditation program at TNRCC.

The legislation transfers authority from the Texas Department of Health (TDH) for the Safe Drinking Water Act laboratory certification program, along with all related employees and resources, to TNRCC. Consistent with federal requirements, labs performing analyses under the Safe Drinking Water Act will continue to be subject to mandatory accreditation.

3.3 Require TNRCC to only accept data and analyses from accredited labs.

The environmental laboratory accreditation program is voluntary for all labs. Only those labs providing data to TNRCC will be required to first obtain accreditation. Environmental labs that do not provide information to TNRCC will not be required to be accredited, but could seek accreditation on a voluntary basis. To give interested labs time to obtain accreditation, the accreditation requirement for labs providing data and analysis to TNRCC will become effective three years from the date that the State's program is approved by NELAP. The Legislature added language requiring the Commission to use data only from accredited labs for use in all Commission decisions in addition to those for permits, compliance matters, and enforcement and corrective actions.

3.4 Allow the Commission to accept data from on-site or in-house labs.

The Legislature modified the Sunset recommendation to clarify the Commission's authority to accept data from on-site laboratories instead of exempting them from accreditation if they are inspected by the Commission, and it added a requirement for the Commission to inspect these on-site labs. The Legislature also added language to allow the Commission to accept data from a laboratory that is accredited under federal law and from an unaccredited lab in emergency situations.

3.5 Authorize the agency to assess laboratory accreditation fees sufficient to recover program administration costs.

All laboratory accreditation fees must be sufficient to recover the costs of the accreditation program, and be deposited to the environmental testing laboratory accreditation account to be appropriated to the Commission to pay only the costs of the accreditation program. The Legislature deleted the Sunset recommendation to lapse any balance in excess of \$1,000 at the end of the fiscal year to the General Revenue Fund.

4. Establish a Mechanism for Providing Environmental Research to Support TNRCC's Environmental Regulatory Policies.

The Legislature modified the Sunset Commission's recommendations regarding environmental research to emphasize the development of a research model and to use the model to coordinate research activities among universities and state and federal agencies. The intended result is an eventual research partnership between TNRCC and colleges similar to the arrangement between the Texas Department of Transportation and the state's colleges.

4.1 Require TNRCC to develop a research model to address the Commission's practical regulatory needs.

The Commission must develop a research model that is prioritized by need, identifies research goals, and addresses preferred methods of conducting research to serve the Commission's need for scientific and technical information. The Commission may appoint an advisory board to ensure that appropriate incentives are in place for entities to participate and to provide input regarding research topics that are specific to Texas. The advisory board would include representatives of the regulated community, at-large public representatives, and academics.

4.2 Require TNRCC to coordinate and facilitate agency research needs and efforts.

TNRCC must coordinate environmental research according to the research model, taking advantage of existing state initiatives, including research by state universities, the Texas Higher Education Coordination Board, the U.S. Department of Agriculture, the Texas Department of Agriculture, and other state and federal agencies. The Commission may facilitate research by administering grants or by contracting for research with money appropriated for those purposes. Finally, the Commission must report to the Legislature on its ongoing research efforts and outcomes.

5. Ensure Greater Public Interest Representation Before the Commission.

5.1 Strengthen the Office of Public Interest Counsel.

This provision strengthens the Office by authorizing the Public Interest Counsel to use technical support outside of the agency where the potential for conflict exists between it and the Executive Director. Allowing the Public Interest Counsel to obtain outside technical support will give it the ability to get information needed to make independent decisions, without creating a full-time technical staff devoted solely to this Office. In addition, the Public Interest Counsel may recommend needed legislative and regulatory changes.

The Legislature added a provision establishing a joint interim committee to study and report to the 78th Legislature on issues associated with the Office of Public Interest Counsel, including the Counsel's authority to appeal Commission decisions, the resources needed to carry out the Counsel's functions, and its relationship with other public assistance efforts in the agency.

5.2 Require the agency to track and report the composition and use of Commission-appointed and staff-level advisory committees, workgroups, and task forces.

This provision requires the Executive Director to monitor the composition and use of formal and informal stakeholder groups. The agency is not required to prepare an additional legislative report, but instead to post the composition of all advisory committees, workgroups, and task forces in a manner that is easily accessible to members of the general public, such as on the agency's Web site. In a separate provision, the Legislature also required the Commission to post on its Web site information such as the minutes of these advisory committee and workgroup meetings.

5.3 Require advisory committees, workgroups, and task forces to be composed of balanced representation of affected stakeholders.

In addition to requiring balanced representation, this provision specifies that a rule or other Commission action may not be challenged based on the composition of a stakeholder group, nor does the Commission have to ensure that all invited participants attend scheduled meetings.

6. Clarify the Executive Director's Role in Contested Cases.

6.1 Require the Commission to adopt rules and policies for determining the Executive Director's role in contested permit hearings.

The Legislature modified the Sunset recommendation to clarify the Executive Director's role in contested cases in which the Executive Director bears the burden of proof. The bill specifies that this role is to complete the record and requires the Commission to specify the factors the Executive Director must consider in determining whether to be a party in a contested case, including the capacity and experience of the parties, the complexity of the issues, and staff resources. The Executive Director is prohibited from rehabilitating non-agency witnesses and helping an applicant meet its burden of proof unless it falls within a category specified by Commission rule.

6.2 Require the Commission to summarize changes required by the Executive Director in a permit application.

The Legislature added this provision to reflect the Executive Director's role in the preparation of permit applications.

7. Expand TNRCC's Ability to Investigate and Respond to Complaints.

7.1 Require the agency to enhance coordination of complaint investigations with local officials.

TNRCC must share complaint information with local officials, and, on request, provide training to local enforcement officials. At a minimum, this training must include procedures for addressing citizen complaints if TNRCC is unavailable or unable to respond and an explanation of local government enforcement authority under state laws and rules. TNRCC may require participating local governments to share the costs of training.

7.2 Require the agency to implement policies to respond to complaints after normal business hours.

TNRCC must implement a policy allowing field inspectors to work flexible schedules, but does not require around-the-clock coverage in all areas of the state, or authorize the additional use of overtime. This provision reflects an existing after-hours response policy the agency already has for certain high-incident areas.

7.3 Require the Commission to implement policies allowing a complainant to collect credible evidence for use by the Commission in enforcement actions.

TNRCC must establish a process for educating the public about the complaint process to enable the public to gather credible evidence of environmental problems. As part of this process, the Commission must make available a pamphlet explaining complaint policies and procedures, including information regarding standards for collecting and preserving credible evidence.

The Commission may initiate enforcement action based on information it receives from a private individual. However, the Legislature changed references to “evidence” to “information,” and changed the standard for using this information to initiate an enforcement action, from meeting the requirements of the Texas Rules of Evidence, to satisfying the Commission that the value and credibility of the information warrants initiating enforcement action. A citizen who submits evidence on which the Commission relies for an enforcement case is subject to all available sanctions for falsifying evidence. The Legislature also added language to specify that physical and sampling data must be collected and gathered in accordance with the Commission’s protocols if the Commission relies on it to prove an enforcement case.

8. Provide TNRCC With Funding Flexibility to Better Support Its Activities.

The Legislature modified the Sunset recommendation to allow the Commission to transfer funds by specifying an amount and percentage of transferability in statute. In addition, the Legislature adopted other provisions to give the agency greater flexibility in its use of certain water fees and to continue the petroleum storage tank program beyond its scheduled 2002 expiration date. The Sunset Commission had no recommendation regarding greater flexibility in the use of water fees. It did, however, suggest that the Legislature consider reauthorizing the collection of the petroleum storage tank fee at a lower level to maintain petroleum storage regulations. These provisions are included here because of their relation to the Sunset Commission’s suggestion for legislative consideration of various funding alternatives.

8.1 Authorize the Commission to transfer a percentage of appropriations between appropriations items.

The Legislature modified this provision to authorize the Commission to transfer the lesser of \$20 million or 7 percent of appropriations between appropriations items in any biennium and to require that any transfer of \$500,000 or more be approved by the Commission in an open meeting.

8.2 Provide a greater degree of flexibility in TNRCC's use of certain water fees.

The Legislature added language to provide a greater degree of flexibility in the agency's use of certain water fees to protect state water resources, including the assessment of water quality. The bill also requires the Commission to consider equity among fee-payers for public drinking water systems as a factor in determining the amount of the fees, and expands uses of these fees for other costs incurred to protect water resources in the state. The bill also consolidates water quality fees, adjusts fees for wastewater discharge or waste treatment facilities, and expands uses for these fees for other water resource management programs.

Instead of expanding the use of the charge-back fee – a fee the Commission may charge local governments for administrative costs of on-site disposal system permits – the bill limits the size of this fee and provides conditions for the assessing this fee.

8.3 Reinstate the collection of fees and the administration of the petroleum storage tank program, currently set to expire in 2002.

The Legislature added a provision to continue the petroleum storage tank program at TNRCC until 2006, making several changes in the administration of the program. The provision clarifies ownership of underground storage tank systems and aboveground storage tanks. It also requires a person performing corrective action to comply with an established schedule, prohibiting a person missing any deadline due to their own or a contractor's fault from receiving reimbursement, but maintaining the person's responsibility for corrective action. The Executive Director may initiate enforcement against a person missing any deadline. The bill also prohibits the use of petroleum storage tank funds to pay for corrective action expenses performed after September 1, 2005 or for claims filed after September 1, 2006.

The bill also sets the maximum percentage for agency administrative expenses of the program and creates a declining rate for the petroleum storage tank delivery fee until fiscal year 2007. Finally, the provision invalidates any local government ordinance in effect after September 1, 2001 that imposes standards on the design, construction, installation or operation of underground storage tanks.

9. Strengthen TNRCC's Revenue Management Practices.

9.1 Require payers to submit all fees by the date payment is due.

This provision requires payment of all fees by the due date, whether they are billed or self pay. Under this change, a fee may not be adjusted or disputed until the fee in question is paid in full to the agency.

9.2 Allow the agency to accept revisions to self-reported fee data for only up to one year after the fee is paid in full.

Agency staff may consider adjustments only after verifying that the fee in question is paid in full, and staff cannot accept revised fee data from payers after one year has elapsed from the time the fee is paid. Payers may still request refunds of fees for up to four years as allowed under current law, such as because of agency error or duplicate payment. This provision limits the time a payer has to request a credit or refund due to submitting incomplete or erroneous self-reported fee calculation data, and it requires the agency to notify payers of changes in fee payment procedures.

9.3 Require fee credits or refunds exceeding \$5,000 to be approved by fee audit staff.

TNRCC's fee staff must forward refund requests to audit staff explaining the basis for a proposed credit or refund for audit approval. Auditors do not have to investigate the refund, but could confirm that the payer does not have any delinquent debts and track adjustment patterns that may show reporting problems. Approval of refunds does not prevent fee auditors from conducting subsequent audits of those same payers. The \$5,000 threshold allows the majority of fee adjustments to be processed under the current system, while ensuring additional oversight for larger refunds.

9.4 Authorize fee audit staff to issue a notice of violation to fee payers for knowingly violating reporting and fee calculation requirements, and authorize the agency to charge interest and penalties on unpaid fees that are delinquent.

This provision gives authority to audit staff that agency inspectors already have to ensure compliance from repeat offenders that continue to violate reporting standards and underpay fees. TNRCC may also apply standard late penalties and interest to all delinquent fee amounts owed to the agency. Penalty and interest revenues would be deposited into the account that the fees are paid.

9.5 Authorize the TNRCC Executive Director to modify penalty and interest amounts only upon good cause and with written explanation.

This provision gives the Executive Director discretion in negotiating payment terms for audit findings and associated penalties, but only after providing to audit staff written justification for any modifications to penalty and interest amounts. The Executive Director may modify actual audit findings reported by fee auditors only with a written explanation showing good cause for the modification.

10. Require the Commission to Review Solid Waste Disposal Permits to Assess Compliance Performance.

The Legislature slightly modified this provision to specify that this review must occur every five years. This review does not create a new opportunity for a contested case hearing, but does provide for a periodic assessment of how well these facilities are performing under their permits.

11. Clarify the Authority of the Commission to Certify Water Treatment Specialists.

This provision clarifies the legal authority for certifying individuals who install and maintain water treatment equipment and appliances by TNRCC instead of by the Texas Department of Health. It expands the certification from residential installers to include commercial and industrial installers. It also increases the certification fee from \$10 per year to an amount not to exceed \$150 per year. The Legislature added language to exempt from certification persons licensed under the Plumbing Licensing Law and employees of an industrial facility installing or servicing water treatment equipment.

12. Continue the Texas Natural Resource Conservation Commission for 12 years.

The legislation continues the agency for the standard 12-year period until 2013.

Provisions Added by the Legislature

13. Change the Name of the Agency.

The name of the agency will be changed to the Texas Commission on Environmental Quality, to be phased in and completed by January 1, 2004.

14. Clarify the Commission's Role Regarding Economic Development.

The legislation specifies that the Commission in carrying out its duties is to consider, instead of encourage, economic development. This change is intended to clarify that the primary mission of the agency is the protection of public health and environment.

15. Establish Specific Timeframes for Grandfathered Facilities to Become Permitted and to Reduce Emissions.

Under this provision, facilities planned or existing as of 1971 that have been exempt from permitting requirements must obtain a permit and reduce emissions according to separate timeframes for East and West Texas. Facilities in the East Texas region must submit applications by 2003 and reduce emissions by 2007. Facilities in the West Texas region must submit applications by 2004 and reduce emissions by 2008. Pipeline facilities in East Texas must achieve a 50 percent reduction in emissions, while pipeline facilities in West Texas must achieve a 20 percent reduction. The bill also specifies control technology required for existing facility permits and permitting requirements for a small business stationary source and for an electric generating facility. It also deletes references to voluntary emissions reduction permits.

16. Establish the Texas Environmental Health Institute.

This provision requires the Commission to enter into an agreement with the Texas Department of Health to jointly establish the Texas Environmental Health Institute to examine ways to identify, treat, manage, prevent, and reduce health problems associated with environmental contamination. The bill also sets forth the purposes of the Institute and requires the Institute to conduct a pilot project for two years and report progress and results to the 78th Legislature.

17. Protect the Public From Cumulative Risks.

The Commission must develop and implement policies by specific environmental media to protect the public from cumulative risks and give priority to monitoring and enforcement in areas of concentrated operations.

18. Change Agency Requirements Regarding Notice for Public Hearings.

The Legislature adopted separate provisions changing notice requirements, as follows:

- require the Commission to provide that all public notices include a succinct statement of the subject of the notice;
- require rules to ensure that permit applicants comply with notice requirements for preconstruction permits;
- exempt from notice requirements a portable facility relocated to a site where a facility is already permitted if no portable facility has been located at the proposed site in the previous two years; and
- increase the notice required of a water utility before a rate change from 30 days to 60 days.

19. Require Contracting Under Provisions of Professional Services Procurement.

The bill requires the Commission to contract for scientific and technical environmental services, other than engineering services, under the professional services procurement statute. By contracting under the professional services procurement statute, the agency will be unable to contract for these environmental services through competitive bidding.

20. Prohibit the Storage and Disposal of Hazardous Waste in Certain Geological Formations.

The Legislature adopted two provisions relating to the storage and disposal of hazardous waste. The bill specifically prohibits the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. It also deletes language relating to the showing of regional need in permitting hazardous waste facilities. The effect of this deletion is to raise the standard to require a showing of statewide need in deciding to permit a hazardous waste facility.

21. Allow an Order for Remediating Hazardous Waste at a Solid Waste Facility.

This provision authorizes the Commission to issue an order, instead of a permit, for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents at a solid waste processing, storage, or disposal facility.

22. Exclude Certain Persons as Responsible Parties for Purposes of Remediation.

This provision prohibits the Commission from naming a person as a responsible party for an enforcement action or for reimbursing remediation costs if it investigates the site and finds that contaminants appear to originate from an off-site source, that additional corrective action is not required at the site, and that it will not undertake formal enforcement.

23. Tighten the Regulation of Concrete and Rock Crushing Facilities.

The Legislature adopted a provision to prohibit the location or operation of a concrete crushing facility within 440 yards of a residence, school, or place of worship, while specifically exempting existing facilities. A separate provision requires the Commission to issue an emergency order to suspend operations of a rock crusher or a concrete plant that is illegally operating without a permit. The amount of the penalty for such a facility is set at \$10,000 for each day a continuing violation occurs.

24. Authorize Remedial Action at a Scrap Tire Site That Threatens to Release a Hazardous Substance.

The Commission may use appropriated funds to undertake a remedial or removal action at a scrap tire site if the Executive Director finds a release or a threat of a release of a hazardous substance. The Commission may seek recovery of reasonable expenses from responsible parties.

25. Clarify Regulatory and Operational Requirements for Solid Waste Facilities.

25.1 Ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities.

The Legislature added a provision requiring the Commission to close a loophole to ensure that a solid waste processing facility may not operate unregulated as a recycling facility. The bill limits storage of recyclable material to ensure that recyclable material is reused and does not create a nuisance or threaten the environment. It also requires recordkeeping and reporting, but exempts a facility owned, operated, or affiliated with a person with a permit to dispose of municipal solid waste. It also exempts from regulation a facility that reuses or smelts recyclable materials or metals and a solid waste processing facility owned or operated by a local government.

25.2 Specify conditions under which a municipal solid waste landfill that has stopped accepting waste may again accept waste.

The Commission may allow a municipal solid waste landfill that has stopped accepting waste for five years or more to accept waste again only if the permittee demonstrates compliance with all requirements. Reopening a facility must be subject to the same requirements as a major amendment. The bill specifies, however, that for a facility with a contract of sale as of January 1, 2001, the scope of the public hearing is to be limited to land use.

25.3 Prohibit the Commission from issuing a Type IV landfill permit if the applicant or location meets specified criteria.

The Commission may not issue a Type IV landfill permit if:

- the proposed site is located within 100 feet of a canal used for public drinking water or irrigation;
- the proposed site is located in a county with a population of more than 225,000 adjacent to the Gulf of Mexico; and
- the commissioners of the county in which the facility is located have recommended denying the application.

26. Require a Permit, Instead of a Registration, to Land Apply Class B Sewage Sludge.

The legislation prohibits a person from applying Class B sludge on a land application unit without a permit. TNRCC must prescribe the conditions under which the permit may be issued and charge a permit fee between \$1,000 and \$5,000. Responsible persons must obtain a permit on or after September 1, 2003 before they may land apply sludge. Finally, the bill allows the agency to develop categories of persons required to obtain a permit, and may require certain categories to obtain a permit earlier than the date prescribed.

27. Require Secondary Containment for Certain Underground Storage Tank Systems.

The bill requires an underground storage tank system over the Edwards or Trinity Aquifer in Bexar and Comal counties to incorporate a method for secondary containment to prevent the release of a regulated substance. Despite other provisions in law limiting the authority of local governments to impose standards on underground storage tanks, a political subdivision under this section may adopt standards for the containment of underground storage tank systems.

28. Expand Availability of Information About the Edwards Aquifer and the Commission's Edwards Aquifer Programs.

The Legislature added separate provisions regarding the Edwards Aquifer to:

- require the Commission to make digital copies of the recharge, transition, and contributing zone boundary lines of the Edwards Aquifer available to the public;
- require the Commission to report annually on Edwards Aquifer program expenses and allocation of fees; and
- require the Commission to allow a 30-day comment period for protection plans in the contributing zone of the Edwards Aquifer.

29. Establish a Regulatory Approach for Dealing With Runoff and Managing Waste From Dairy Operations in the Lake Waco Watershed.

The Legislature added a provision to control irrigation or rainwater runoff from dairy animal feeding operations within the watershed of Lake Waco on the North Bosque River. The provision requires a permit or permit amendment for any new concentrated animal feeding operations (CAFOs) or increases in animals at existing CAFOs in this specified area. The bill also specifies requirements for the management and disposal of animal waste, including:

- disposal outside the watershed;
- land application to a field owned or controlled by the CAFO owner that has not received waste since January 1, 1995; and
- land application to a field owned or controlled by the CAFO that has received waste since January 1, 1995, if the field meets certain criteria or if the manure is applied in accordance with an approved nutrient utilization plan.

The bill also prohibits the Commission from issuing a general permit for CAFOs in the Lake Waco watershed, and specifies the Commission's authority to enter property and its overriding authority to include in a water permit the provisions necessary to protect the waters of the state.

30. Establish Timeframes for Commission Standards for Low-Emission Diesel.

The Legislature added a provision to prohibit the Commission from establishing fuel content standards for any area of the state that are more stringent or restrictive than federal standards before January 1, 2004. Further, the Commission may not require distribution of low-emission diesel, as described in the State Implementation Plan to control ozone air pollution, before February 1, 2005. The provision is intended to prevent TNRCC from implementing standards different from those of the federal Environmental Protection Agency that do not apply statewide, creating gaps that impose a burden on fuel-related businesses in Texas that serve different areas of the state.

31. Authorize the Disposal of Animal Remains Under Certain Circumstances.

The Legislature added language to authorize a veterinarian to bury or dispose of animal remains on the veterinarian's property if the veterinarian does not charge for the burning or burial, and if the burning or burial occurs in a county with a population under 10,000. The Commission may not adopt rules to prohibit such burial or burning.

Removed Provisions

1. Consolidate Permit Notice Requirements in One Statute.

The Legislature did not adopt the Sunset recommendation to consolidate notice requirements in Chapter 5 of the Texas Water Code. While the intent of the recommendation was to locate all notice requirements in one place in the statutes and not to change existing notice requirements, concerns were raised that this provision might confuse or inadvertently modify notice requirements that they were intended to clarify.

2. Require Each Commissioner and Agency Staff to Maintain a Written Record of Communications With Persons Outside the Agency Regarding Regulatory Matters.

This provision would have required TNRCC Commissioners and agency staff with discretionary authority over any aspect of a permit, enforcement, rulemaking, or other regulatory matter pending before or within the jurisdiction of the agency to maintain a written record of each communication and contact with any person, other than TNRCC employees, regarding the matter. The written record would be subject to disclosure under the Open Records Act. The Legislature deleted this provision after concerns were raised about placing this kind of management requirement in statute.

3. Require the Commission to Create Indexes and Cross References to Its Decisions.

Because the requirement for TNRCC to create indexes and cross references to its orders, statements of policy, or interpretations, was already in the Administrative Procedure Act and in the agency's own statute, this provision was not included in the Sunset bill, despite its adoption by the Sunset Commission.

Fiscal Implication Summary

This legislation will have a positive fiscal impact of \$14,588,000 over fiscal years 2002 to 2006. The provisions of the bill with a fiscal impact are discussed below, followed by a five-year summary chart.

The series of provisions establishing a performance-based regulatory structure based on entities' compliance histories will require eight additional employees at a cost of \$940,000 in fiscal year 2002 and \$927,000 in fiscal year 2003. These costs decrease to \$618,000 in fiscal year 2004 and thereafter. These costs are to be distributed among the four largest General Revenue-Dedicated accounts based on the percentage of TNRCC's budget that each account represents.

To implement the strengthened requirements to track and control emissions events, or upsets, will require an additional engineer and related operating and capital costs totaling \$56,000 per year.

Although the cost of the laboratory accreditation program is expected to be paid from fees, the program is not expected to be fully operational for 18 months, during which time it would require General Revenue appropriations. In this transitional period, the agency will need two employees in fiscal year 2002 at a cost to General Revenue of \$130,000 and an additional two employees in

fiscal year 2003 at a cost to General Revenue of \$211,000. Thereafter, environmental testing lab accreditation fees are expected to cover the costs of administering the program. Two additional employees will be needed in fiscal year 2004, at which time annual program costs will reach approximately \$515,000.

Transferring the drinking water certification program will require a transfer of staff, equipment, and funding from the Texas Department of Health to TNRCC on September 1, 2001. TNRCC will also administer fees for the program. This transfer requires moving two employees and funding authority of approximately \$150,000 each year.

Providing for general transferability of appropriations up to the lesser of 7 percent or \$20 million is revenue neutral, but is expected to help pay for some of the provisions in the bill, such as performance regulation and environmental research, to help with the agency's overall workload.

Continuing the petroleum storage tank remediation program will have a cost of approximately \$94.5 million for fiscal year 2002 and \$82.9 for fiscal year 2003, funded by a fee on the delivery of certain petroleum products. According to the provisions of the bill, these fee collections will decline each year after 2002 until fiscal year 2007. The 2 percent service charge to reimburse the Comptroller for administrative costs related to the petroleum storage tank program is expected to generate an average annual gain to the General Revenue Fund of \$1,750,000 between fiscal years 2002 and 2006.

The bill provision strengthening TNRCC's revenue management practices is expected to cause a one-time revenue gain of \$713,000 in fiscal year 2002 due to increased late fees and penalties from stricter revenue management practices.

The provision prohibiting rock crushing facilities from being located within a quarter mile of residences, schools, or churches will have a cost of \$2.75 million per year to the State Highway Fund due to travel costs between project sites and rock crushing equipment, based on information provided by the Texas Department of Transportation.

Requiring a permit instead of a registration to land apply sewage sludge will require two new employees and cost approximately \$121,000 per fiscal year. These costs are expected to be recovered by fees to administer the program.

The provisions in the bill will also have an impact on units of local government. Local governments that own or operate petroleum storage tanks located in Bexar and Comal Counties may incur costs to comply with provisions of the bill relating to containment systems for their storage tanks. Additional costs are estimated to range between \$4,900 to \$7,700 per tank, depending on the type of containment system used. Local governments applying for permits to dispose of Class B sludge will experience increased costs ranging from \$1,000 to \$5,000 depending on the amount of sludge to be land applied.

Fiscal Year	Gain to the General Revenue Fund	Cost to GR Dedicated Fee Accounts	Gain to PST Remediation Account	Cost to PST Remediation Account	Cost to State Highway Fund	Net Impact	Change in FTEs From FY 2001
2002	\$1,620,000	(\$283,000)	\$94,544,000	(\$94,544,000)	(\$2,750,000)	(\$1,413,000)	+11
2003	\$1,539,000	(\$983,000)	\$106,659,000	(\$82,894,000)	(\$2,750,000)	\$21,571,000	+13
2004	\$1,750,000	(\$674,000)	\$83,387,000	(\$88,387,000)	(\$2,750,000)	(\$6,674,000)	+15
2005	\$1,750,000	(\$674,000)	\$91,592,000	(\$77,263,000)	(\$2,750,000)	\$12,655,000	+15
2006	\$1,750,000	(\$674,000)	\$47,525,000	(\$57,402,000)	(\$2,750,000)	(\$11,551,000)	+15

Texas Parks and Wildlife Department

Staff Contact: Steve Hopson

S.B. 305 Harris (Bosse)

Summary

The Texas Parks and Wildlife Department (TPWD) was created in 1963 by merging the Game and Fish Commission with the State Parks Board. The Department has two primary missions: to manage and protect the state's natural and cultural resources and to provide outdoor recreation opportunities for Texans. TPWD has an annual budget of about \$256 million and employs 2,954 people.

The Sunset review found TPWD to be an agency that is genuinely trying to meet public needs in imaginative and innovative ways. The Sunset Commission's recommendations seek to improve the agency's decisionmaking, planning, and internal oversight processes so that TPWD can fully achieve its goals. The Legislature adopted all of the Sunset Commission recommendations, and added several other statutory provisions to the agency's Sunset bill. The list below summarizes the major provisions of S.B. 305, and a more detailed discussion follows.

Sunset Provisions

1. Require TPWD to Assess the State's Natural and Cultural Conservation and Recreational Resource Needs, and Base Acquisition, Divestiture and Major Operational Decisions on This Assessment.
2. Require the Parks and Wildlife Commission to Establish Guidelines and Policies Regarding the Department's Relationship With an Official Foundation Partner.
3. Direct the Parks and Wildlife Commission to Structure Its Committees so That Public Input Is Received Before Decisions Are Made.
4. Establish Standard Business Oversight Mechanisms for Commercial Ventures and Other Department Operations.
5. Require TPWD to Evaluate Current and Proposed Outreach and Education Efforts for Effectiveness and Duplication.
6. Require the Department to Examine Capital Projects for Appropriate Funding and Staffing Methods, and Outsourcing Potential.
7. Direct TPWD to Promote Stronger Partnerships With Private Landowners to Maximize Conservation Efforts.
8. Strengthen the Department's Historical Sites Program.
9. Prohibit Promotion of Tobacco in TPWD Publications and Ensure That Advertising Is Appropriate for Viewing by Youth.
10. Require the Department to Conduct a Study of the Texas Gulf Coast Shrimp Resources and Industry.
11. Continue the Texas Parks and Wildlife Department for 12 Years.

Provisions Added by the Legislature

12. Implement the Results of the Joint Study by the State Auditor's Office and Comptroller of Public Accounts on TPWD's Oyster Lease Program by Raising Lease Fees and Creating Terms for the Leases.
13. Authorize the Parks and Wildlife Commission to Create a Program to Identify and Classify Boat Dealers and Manufacturers in Texas.
14. Encourage TPWD to Seek Matching Funds for Bond Projects.
15. Exempt TPWD From State Laws Requiring Law Enforcement Agencies to Collect and Report Information About Persons Detained During Traffic and Pedestrian Stops.
16. Require Hunting and Fishing License Revenue to Be Spent Only for Functions Required to Manage Fish and Wildlife Resources.
17. Require the Parks and Wildlife Commission to Adopt Rules Regarding the Legibility of Hunting and Fishing Licenses.
18. Authorize TPWD to Receive Obsolete Bridges, Tunnels, and Causeways From the Texas Department of Transportation to Create Artificial Reefs.
19. Require TPWD to Assist Local Governments Regarding Aquatic Vegetation Management and Control.
20. Authorize City Mayors to Have the Same Powers as County Commissioners Related to Damage or Threats to Public Safety by Wildlife.

Sunset Provisions

1. Require TPWD to Assess the State’s Natural and Cultural Conservation and Recreational Resource Needs, and Base Acquisition, Divestiture and Major Operational Decisions on This Assessment.

TPWD must create a comprehensive inventory of all conservation and recreation resources owned by public agencies and non-governmental organizations. When creating this inventory, TPWD will survey all public resources set aside for natural or historical conservation or recreation in Texas, including resources held by cities, counties, river authorities, and the federal government, as well as resources held by non-profit and non-governmental organizations that offer access to the public.

TPWD must also establish criteria for evaluation of future decisions affecting conservation and recreation resources. TPWD will use the newly created statewide inventory as a basis for analyzing current and future needs, for identifying threatened resources, and for identifying the level of importance of TPWD holdings when considering divestiture. This legislation ensures that the agency bases its actions regarding system development on criteria established for divestiture, acquisition, operations, and local parks assistance grants and partnership agreements.

2. Require the Parks and Wildlife Commission to Establish Guidelines and Policies Regarding the Department’s Relationship With an Official Foundation Partner.

2.1 Authorize the Parks and Wildlife Commission to select a single foundation as the official non-profit partner of the Texas Parks and Wildlife Department.

The Legislature adopted the Sunset recommendation to authorize the Commission to designate an official foundation partner to accept donations that further the work of the Department. This official foundation will be authorized to solicit and accept corporate sponsorships within guidelines established by the Commission.

The selected foundation must be guided by the following provisions.

- Mission is the same as the Texas Parks and Wildlife Department.
- Full authority to accept gifts, grants, and donations to further the mission of the Department.
- An annual independent financial audit filed with the Parks and Wildlife Commission.
- For public funds held by the foundation, an audit by the State Auditor’s Office at least once a biennium to examine and audit financial records.
- Prohibition against state employees directly spending or obligating foundation funds.
- Acquisition and construction priorities consistent with TPWD conservation and recreation priorities.
- Prohibition on direct payments to employees of the Texas Parks and Wildlife Department other than reimbursement for documented expenses.

2.2 Require the Parks and Wildlife Commission to adopt policies governing the fund-raising activities of TPWD employees.

At a minimum, the policies must: designate which employees may solicit or accept donations, prohibit donations by commercial interests regulated by the Department, create limitations on where and how fund-raising may occur, establish reporting requirements, and designate the Executive Director as the person responsible for managing all fund-raising activities.

In addition, at least once each biennium, the State Auditor will audit TPWD employees' fundraising activities, including who has engaged in such activities, and the value of gifts each person has received or solicited.

2.3 Require TPWD to ensure that partner foundations that hold public assets properly safeguard and account for assets, and make decisions to complement Department strategies.

The Parks and Wildlife Commission must adopt rules requiring all of its non-profit partners to adhere to state standards for safeguarding and accounting for State assets. The Department's non-profit partners also will be expected to make decisions in accordance with the priorities in TPWD's strategic statewide plan for conservation and recreation development.

3. Direct the Parks and Wildlife Commission to Structure Its Committees so That Public Input Is Received Before Decisions Are Made.

3.1 Require the Parks and Wildlife Commission to accept public input before voting on major decisions whether in committee or as a full Commission.

3.2 Require the Parks and Wildlife Commission's committees that constitute a quorum of the full Commission to abide by all requirements for public input that apply to the full Commission.

For the purposes of the public input requirement, major decisions are defined as voting on rules and proclamations, contracts, budgets, grants, development plans, memoranda of understanding, and other decisions as determined by the Commission. These provisions assure the public that its voice will be heard before important decisions are made.

4. Establish Standard Business Oversight Mechanisms for Commercial Ventures and Other Department Operations.

4.1 All significant statewide commercial ventures undertaken by TPWD must be supported by a business plan and approved by Executive Management.

TPWD must review the business plan of a commercial statewide venture at least annually to assess overall performance and value of the project. Projects that fail to meet financial objectives must be immediately adjusted or terminated. TPWD also must develop and use an activity-based costing methodology to record all project costs and accurately calculate the net income from a commercial venture.

4.2 TPWD must develop an agencywide business plan to guide the Department's operational strategies.

TPWD must focus its business-planning efforts on the efficiency of current operations, as well as the potential for changes necessary to avoid duplication and best meet the Department's overall goals.

4.3 Require TPWD to assess the potential for outsourcing agency activities as part of the business planning effort, and use the services of the Council on Competitive Government where appropriate.

Requiring TPWD to compare its services and products to those from the private sector will require the agency to examine how best to use its resources, resulting in increased savings and improved customer service.

5. Require TPWD to Evaluate Current and Proposed Outreach and Education Efforts for Effectiveness and Duplication.

TPWD must manage its outreach efforts to ensure that the programs fit with the agency's mission, do not duplicate efforts within or outside of the Department, and can be measured for effectiveness. TPWD must complete a review of all existing outreach and education programs by September 1, 2002, and report its findings to the Parks and Wildlife Commission and legislative oversight and appropriate committees. During the review, TPWD must limit expenditures on such programs unless the program is statutorily required or proven successful.

6. Require the Department to Examine Capital Projects for Appropriate Funding and Staffing Methods, and Outsourcing Potential.

TPWD must examine the costs and benefits of increasing the outsourcing of its construction-related services. To compare the cost of in-house services with services available in the private sector, the Department will calculate project costs using the direct and indirect costs of TPWD employees that perform necessary project tasks.

7. Direct TPWD to Promote Stronger Partnerships With Private Landowners to Maximize Conservation Efforts.

TPWD must assess the state's critical conservation and recreation needs, considering the statewide inventory. The agency must use this information to prioritize projects when providing grants to private landowners.

8. Strengthen the Department's Historical Sites Program.

Adopt the recommendations of the Texas Historical Commission's 1999 joint evaluation with TPWD on State Historical Parks – These recommendations include: renaming "historical parks" as "historical sites" for clarity and distinction; requiring TPWD to assemble, with the Texas Historical Commission,

a professional panel to establish criteria for defining sites of statewide significance, and to ensure a Texas Historic Sites program for the future; requiring future appointments to the Texas Parks and Wildlife Commission be made with an attempt to include a diverse representation of specific disciplines such as historic preservation, conservation and outdoor recreation; and preparation of a master plan and resource management document for each historical site by conducting thorough archeological surveys.

9. Prohibit Promotion of Tobacco in TPWD Publications and Ensure That Advertising Is Appropriate for Viewing by Youth.

9.1 Prohibit promotion of tobacco in TPWD publications, including the fishing and hunting regulations guide.

This legislation bans promotion of tobacco in TPWD publications sponsored or published by the Department.

9.2 Require TPWD to retain final approval over content of publications to ensure that advertising is appropriate for viewing by youth.

TPWD may not contract with a person regarding a publication unless the contract provides the Department the authority to terminate the contract; to retain final approval over the content of the publication, including advertising; and to request and receive an appropriate number of copies of the publication that contain advertising appropriate for viewing by youth. The Parks and Wildlife Commission must adopt rules regarding types of advertising that are appropriate for viewing by youth. No later than March 1, 2002, TPWD must modify or negotiate a modification to existing contracts that do not meet these requirements.

10. Require the Department to Conduct a Study of the Texas Gulf Coast Shrimp Resources and Industry.

The Department must undertake a comprehensive study of the Texas Gulf Coast's shrimp resources, including the shrimp population, and the shrimp industry. By September 1, 2002, the Department must report the status of the study to the Legislature, including the standing committees of each house having jurisdiction over the Department, and the Parks and Wildlife Commission.

The study must examine the status of the shrimp population in and along the Gulf coast, including the size and projected growth of shrimping beds; the economic health of the shrimping industry; the status of conservation measures, including TPWD regulations and license buybacks; and the status of marine resources and habitats affected by shrimping. During the course of the study, the Department must solicit and consider input from the public, the Gulf Coast shrimp fishing industry, including businesses which are impacted by the shrimping industry, other marine resource stakeholders, and the Comptroller regarding economic data.

Future policies affecting the regulation of shrimping must be based on the results of the study or any subsequent study performed under the guidelines of this provision. Finally, TPWD must conduct the study using existing resources appropriated to the Department by the Legislature.

11. Continue the Texas Parks and Wildlife Department for 12 Years.

The legislation continues the Texas Parks and Wildlife Department for the standard 12-year period until 2013.

Provisions Added by the Legislature

12. Implement the Results of the Joint Study by the State Auditor's Office and Comptroller of Public Accounts on TPWD's Oyster Lease Program by Raising Lease Fees and Creating Terms for the Leases.

12.1 Limit the acreage of oyster-bed leases one individual may own, lease, or control to 300 acres.

The Legislature modified existing statute to limit to 300 acres, rather than 100, the amount of underwater acreage one person can own, lease, or control through oyster-bed leases. This legislation also prohibits TPWD from issuing an oyster-bed lease for more than 100 acres.

12.2 Require TPWD to collect rental fees and enforce late penalties on oyster leases.

The Legislature increased rental fees that holders of certificates of location are required to pay TPWD from \$3 to \$6 per acre per year. Certificate holders must also pay the Department a late fee equal to 10 percent of the amount due. Failure to pay fees within 90 days of the due date terminates the lease.

12.3 Require the TPW Commission to determine procedures for renewal, sale, or transfer of oyster leases.

The Legislature added provisions relating to location rental term, renewal, auction, sale, and transfer of an oyster bed, including a \$200 renewal or transfer fee and setting a 15-year term for a lease.

13. Authorize the Parks and Wildlife Commission to Create a Program to Identify and Classify Boat Dealers and Manufacturers in Texas.

The Parks and Wildlife Commission may create a program to identify and classify boat dealers and manufacturers doing business in Texas, as well as set fees to administer the program. TPWD may use information from the program to authorize a dealer to issue licenses and collect fees and taxes for boats sold by that dealer.

14. Encourage TPWD to Seek Matching Funds for Bond Projects.

If practicable, the Department must use at least 15 percent of any bond money it receives on specific park maintenance or improvement projects for which matching private or local money for that specific park or wildlife project is available.

15. Exempt TPWD From State Laws Requiring Law Enforcement Agencies to Collect and Report Information About Persons Detained During Traffic and Pedestrian Stops.

This provision exempts the Department from adopting a policy concerning racial profiling for traffic stops.

16. Require Hunting and Fishing License Revenue to Be Spent Only for Functions Required to Manage Fish and Wildlife Resources.

To the extent allowed by federal law, money in the Game, Fish and Water Safety Account (Fund 009) that TPWD receives from license fees paid by hunters and fishermen may be used only to manage the fish and wildlife resources in Texas.

17. Require the Parks and Wildlife Commission to Adopt Rules Regarding the Legibility of Hunting and Fishing Licenses.

The Parks and Wildlife Commission must adopt rules for hunting and fishing licenses provided by the Department, including legibility standards.

18. Authorize TPWD to Receive Obsolete Bridges, Tunnels, and Causeways From the Texas Department of Transportation to Create Artificial Reefs.

TPWD also may provide assistance, including money, to a local government to create such artificial reefs.

19. Require TPWD to Assist Local Governments Regarding Aquatic Vegetation Management and Control.

The Department must consult with, advise, provide resources to, and assist local governments, including any political subdivision with jurisdiction over a public body of water, regarding aquatic vegetation management and control.

20. Authorize City Mayors to Have the Same Powers as County Commissioners Related to Damage or Threats to Public Safety by Wildlife.

This provision gives city mayors the same authority as county commissioners to receive notices of threats to public safety or damage by wildlife for purposes of authorizing hunting of the damaging animals.

Fiscal Implication Summary

The changes made by the bill will result in a fiscal impact to the State. The provision in the bill increasing the oyster bed lease rate should generate an additional \$7,000 per year to the Game, Fish, and Water Safety Account. The prohibition on tobacco advertising will result in an initial cost to the State, however, any revenue loss is likely to be offset by advertising promoting other products or services.

Fiscal Year	Gain to Game, Fish, and Water Safety Account
2002	\$7,000
2003	\$7,000
2004	\$7,000
2005	\$7,000
2006	\$7,000

Railroad Commission of Texas

Staff Contact: John Hawkins

S.B. 310 Harris (Chisum)

Summary

The Railroad Commission of Texas (the Commission), created under constitutional authority by the Legislature in 1891, protects the state's natural resources, the environment, and public safety through the regulation of the oil and natural gas industry, pipeline transporters, natural gas utilities, rail safety initiatives, and surface mining operations. The Commission works to assure the State's fossil fuel energy production, storage, and delivery are conducted to reduce harmful effects on the environment and to preserve natural resources. In performing these duties, the Commission tries to provide equal and fair energy access, ensure fair gas utility rates, and promote research and education on alternative fuels. The Commission operates with an annual budget of \$52.3 million and employs 786 people.

S.B. 310 contains the Sunset recommendation to continue the Commission for 12 years, with modifications to the agency's operations and policies. The legislation reflects the Sunset recommendations to ensure the financial assurance of oil and gas operators, reducing the State's liability for pollution and abandoned wells. Sunset recommendations adopted by the Legislature will increase funding for oil field cleanup activities by raising the cap for the Oil Field Cleanup Fund. The Legislature agreed with the Sunset recommendation to increase fees to fund environmental well-plugging and remediation efforts, but modified the approach by increasing fee levels in statute instead of giving the Commission discretion to set these fees. In addition, the Legislature created an Oil Field Cleanup Fund advisory committee to advise on and monitor fund expenditures.

Other Sunset provisions in the bill include creating a voluntary cleanup program that releases non-responsible parties from future liability, and the adoption of risk-based assessment cleanup rules to guide remediation efforts. The bill also includes the Sunset recommendation to enhance pipeline safety regulation by focusing oversight on the integrity of pipeline systems. The Legislature did not retain Sunset recommendations relating to low-income assistance for gas utility bills and mandatory unitization for oil and gas production. The list below summarizes the major provisions of S.B. 310, and a more detailed discussion follows.

Sunset Provisions

1. Increase Revenues to the Oil Field Cleanup Fund to Meet the State's Current and Anticipated Liability.
2. Improve Financial Assurance Requirements and Enforcement to Address the Problem of Abandoned Wells and Polluted Sites.
3. Establish a Voluntary Program to Provide Incentive to Landowners and Developers to Clean Up Contaminated Oil Field Sites.
4. Establish Risk Assessment Standards for Site Remediation Efforts.
5. Enhance State Regulation of Pipelines.
6. Transfer Gas Utility Rate Cases to the State Office of Administrative Hearings.
7. Continue the Railroad Commission for 12 Years.

Provisions Added by the Legislature

8. Authorize the Use of Electronic Financial Transactions.
9. Streamline the Process for the Commission to Dispose of Equipment From Delinquent, Inactive Wells.
10. Clarify Requirements for Testing of Gas Piping Systems in Schools.
11. Allow Municipalities to Surrender Jurisdiction Over Gas Utilities to the Commission.
12. Clarify Gas Utilities' Obligation to Serve Certain Commercial Customers.

Sunset Provisions

1. Increase Revenues to the Oil Field Cleanup Fund to Meet the State's Current and Anticipated Liability.

1.1 Require the Commission to re-establish specific performance goals for the Oil Field Cleanup Fund through the Legislative Appropriations Request process.

The Commission will work with the Legislative Budget Board each biennium to determine performance goals for well plugging and site remediation.

1.2 Increase funding for the Oil Field Cleanup Fund to enhance cleanup activities.

The bill raises the cap on the Oil Field Cleanup Fund to \$20 million with a \$10 million lower threshold to restart collection of oil field regulatory fees. To increase funds for oil field cleanup, the Legislature chose to more tightly prescribe fee increases in statute, instead of giving broader discretion to the Railroad Commission to set fee levels, as in the Sunset recommendation. The bill changes fees in the following ways:

- creates a series of annual fees for filing an organization report (known as a P-5 Report) with the Commission, with fee amounts tied to the characteristics of operators, including a \$300 fee for organization reports filed by entities not currently performing operations;
- increases the fee for new drilling permits by \$100 in each category and requires an additional fee of \$200 when a spacing or density exception review is required;
- increases the oil field cleanup regulatory fees up to 5/8 of a cent from 5/16 of a cent on each barrel of crude petroleum and up to 1/15 of a cent from 1/30 of a cent on each thousand cubic feet of gas produced and saved in the state;
- increases the well plugging extension fee (known as the W-1X fee) from \$100 to \$300;
- removes the \$50 cap on the Natural Gas Policy Act application fee and requires the Commission to set the fee to cover costs of its well category determination program;
- adds costs recovered under voluntary cleanup agreements and amounts recovered for the State's cost associated with voluntary cleanup;
- increases the fees for applications for an exception to Commission rules from \$50 to \$150, with two-thirds of the fee, including any penalties, going to the Oil Field Cleanup Fund; and
- increases the fee application for a fluid injection well permit from \$100 to \$200 and for a permit to discharge surface water from \$200 to \$300.

The additional revenues generated for the Fund will enable the Commission to plug more abandoned wells and clean up more polluted sites.

1.3 Require the Commission to maintain expenditure reports for the Oil Field Cleanup Fund.

In the Fund's annual report, the Commission must include an explanation of Fund expenditures including cleanup activities, staff salaries, contract amounts, and wells and sites cleaned up, broken out by region. The Legislature also created an Oil Field Cleanup Fund Advisory Committee to monitor fund expenditures and cleanup activities.

2. Improve Financial Assurance Requirements and Enforcement to Address the Problem of Abandoned Wells and Polluted Sites.

Phase in universal bonding of oil and gas operators by September 1, 2004 – Every operator filing an organization report must execute and file a bond with the Commission by September 1, 2004. The Legislature added language to clarify that a letter of credit or cash deposit may be filed with the Commission as an alternate form of financial security instead of a bond. The legislation does not change current law allowing an operator to choose an individual performance bond or a blanket performance bond covering all operations.

Instead of eliminating the \$100 annual fee, known as the “good guy option” for operators with an acceptable compliance record, the Legislature increased the fee to \$1,000, if the Commission finds that individual or blanket bonds are too expensive. In addition, the Legislature increased the fee in lieu of a bond from 3 percent to 12.5 percent. The Legislature also increased the fee for filing an application to extend the time to plug a well from \$100 to \$300. Each of these provisions is to be phased out by September 1, 2004.

As recommended by the Sunset Commission, the bill repeals the option of giving a first lien on property associated with oil and gas production in lieu of a bond. It also requires immediate bonding before transfer of an inactive well and increased bond amounts for bay and offshore wells. Finally, the bill requires the Commission to evaluate the impact of changes to financial assurance requirements on the Oil Field Cleanup Fund.

3. Establish a Voluntary Program to Provide Incentive to Landowners and Developers to Clean Up Contaminated Oil Field Sites.

The Commission may establish a voluntary cleanup program allowing landowners and developers to be statutorily released from liability for future cleanup costs. The application fee is earmarked for the Oil Field Cleanup Fund, but the Legislature set the fee at \$1,000 instead of allowing the Commission to set it. The Legislature also added language to clarify the purpose of the voluntary cleanup program and to provide for cleanup agreements, certificates of completion, and other operational requirements.

4. Establish Risk Assessment Standards for Site Remediation Efforts.

4.1 Authorize the Commission to establish rules for risk-based assessment of remediation efforts.

The Legislature changed the Sunset recommendation to allow, instead of require, the Commission to establish risk assessment as guidelines remediating contaminated oil and gas sites. The rules must include the following:

- determining if an actual or potential risk exists at a site;
- screening contaminants at the site to identify those that pose a risk;
- developing cleanup standards that are protective of human health and the environment; and
- establishing a reporting mechanism to inform the Commission of remediation activities.

4.2 Require the Commission to prioritize testing of high-risk abandoned wells under its jurisdiction.

The Commission must identify abandoned wells in the State's inventory that have a higher risk of contaminating surface water or groundwater and determine the need to test those wells. The Commission must periodically test high-risk wells by either a fluid level or pressure test and must give priority to plugging high-risk wells with compromised casings.

5. Enhance State Regulation of Pipelines.

5.1 Require the Commission to consider standard criteria in its penalty structure for pipeline safety violations.

The bill establishes a structure for determining penalty levels for pipeline safety violations and a more standardized process for administering those penalties. In setting penalties, the Commission must consider guidelines that include a penalty calculation worksheet specifying the typical penalty for certain violations, circumstances justifying enhancement or reduction of a penalty, and the amount of the enhancement or reduction.

5.2 Authorize the Commission to require a pipeline operator to submit an assessment or testing plan for approval.

The legislation sets forth conditions under which a pipeline assessment or testing plan may be required. It also details contents of these plans, including identification of risk factors associated with pipeline systems and information about pressure tests and leaks. The Commission may approve plans addressing these elements and take enforcement action against persons who do not submit a plan or participate in a pipeline safety inspection.

5.3 Improve safety standards for pipeline operators.

The Legislature added a provision requiring the Commission to require operators of hazardous liquid, carbon dioxide, or gas pipeline facilities to communicate and conduct liaison activities with public emergency response officials. The Commission also must require the owner or operator of any pipeline facilities within 1,000 feet of a public school to develop an emergency response plan and to present the plan periodically to the school district's board of trustees.

5.4 Expand notice requirements for new or expanded pipeline systems.

The Legislature added language requiring public notification before construction of a new pipeline or pipeline extension that crosses more than three counties. The Commission must certify that a copy of the application has been provided to a variety of local officials, and it must review and consider the public comments before approving the permit.

5.5 Study the application of financial responsibility provisions to pipeline systems.

The bill included a new provision providing for a legislative study of the desirability of requiring an owner, operator, or manager of a pipeline system to obtain liability insurance, a bond, or other evidence of financial responsibility to protect the public from costs resulting from a discharge of the pipeline system. If the Legislature finds such financial responsibility requirements desirable, the Commission may adopt rules specifying the form and amount of financial responsibility according to the compliance history and risk characteristics of the pipeline system.

6. Transfer Gas Utility Rate Cases to the State Office of Administrative Hearings.

The bill reflects the Sunset recommendation to transfer gas utility rate cases conducted by the Commission to the State Office of Administrative Hearings. The Legislature added a requirement for the hearing to be conducted in accordance with the Commission's rules and procedures. The Commission will continue to handle contested cases related to permitting and enforcement through its internal hearing processes.

7. Continue the Railroad Commission for 12 Years.

The bill continues the Railroad Commission for the standard 12-year period until 2013.

Provisions Added by the Legislature

8. Authorize the Use of Electronic Financial Transactions.

The Commission may conduct financial transactions such as fee and penalty payments electronically, and may charge a service fee to cover its processing costs. The legislation also allows gas utilities to bill customers over the Internet or by other electronic means at the customer's request.

9. Streamline the Process for the Commission to Dispose of Equipment From Delinquent, Inactive Wells.

The Legislature added a provision to simplify the Commission's process for foreclosing its statutory lien on well-site equipment. The statutory lien may be foreclosed by judicial action or Commission order at any time after notice and opportunity for hearing. The lien is foreclosed by operation of law if the Commission does not receive a valid and timely request for hearing within 15 days of mailing the notice. This provision should accelerate the Commission's process for disposing of well-site equipment, such as through sales as salvage property.

10. Clarify Requirements for Testing of Gas Piping Systems in Schools.

The Legislature added separate provisions to enhance testing of piping systems at schools. School districts, including state or regional schools for the blind and visually impaired and the deaf, must perform pressure tests on liquefied petroleum gas systems for leakage at least every two years in each district facility. The bill also extends the existing responsibility to test natural gas piping systems to include charter and private schools, but not home schools.

11. Allow Municipalities to Surrender Jurisdiction Over Gas Utilities to the Commission.

Municipalities may give the Railroad Commission exclusive original jurisdiction over gas utility rates, operations, and services in the municipality. A municipality may surrender its jurisdiction by ordinance or by submitting the question to the voters in a municipal election.

12. Clarify Gas Utilities' Obligation to Serve Certain Commercial Customers.

The bill adds commercial customers to the list of customers that a gas utility is not obligated to serve under certain circumstances. The bill specifies, however, that a gas utility that has provided gas to such a customer is obligated to serve the customer if the utility has a sufficient gas supply and physical capacity to do so without reducing service to its other customers.

Removed Provisions

1. Adopt a Program to Assist Lower Income Households With Gas Utility Bills.

The Legislature did not adopt this provision requiring the Railroad Commission to create and administer a program for helping low-income families with gas utility bills in much the same way as the Public Utility Commission helps electric utility customers.

2. Implement Mandatory Unitization for Oil and Gas Production.

The Legislature did not adopt the Sunset recommendation requiring the Commission to develop and implement regulations by January 1, 2002, for the mandatory unitization of oil and gas fields as a way to ensure proper payment of royalties, maximize the recovery of oil, and prevent waste.

Fiscal Implication Summary

This legislation will result in a fiscal impact to the State, as discussed below, followed by a five-year summary chart.

Increasing fees and raising the cap on the Oil Field Cleanup Fund will result in revenue gains of approximately \$9.1 million annually, and require eight new employees in fiscal year 2002 and 16 in fiscal year 2003. These revenue gains will be offset by increased expenditures for Fund activities. The increased revenues will allow the Commission to plug an additional 750 wells in fiscal year 2002 and 1,000 wells in fiscal year 2003, and additional wells each year thereafter. The Commission will be able to clean up approximately 85 additional sites in fiscal year 2002, and 109 more in fiscal year 2003, with additional sites each year thereafter.

Requiring universal bonding of oil and gas operators will cause a revenue loss to the Oil Field Cleanup Fund of approximately \$4 million in fiscal year 2005, and approximately \$3.8 million in fiscal year 2006. These losses will be offset the \$9 million annual revenue increases to the Fund.

Creating a voluntary cleanup program will cost \$84,000 in fiscal year 2002, and \$55,000 each year thereafter for one additional employee.

Testing abandoned wells based on risk will cost approximately \$2 million per year and requires four new employees. Of the approximately 17,000 abandoned wells in Texas, the Commission can perform 2,833 fluid tests per year, of which half may require more expensive pressure tests. Of the \$2 million per year, \$1.7 million per year will fund the costs of contracts to conduct these pressure tests.

Establishing an enforcement coordinator to assist in pipeline regulations will require one new employee at a cost of approximately \$84,000 in fiscal year 2002, and \$55,000 each year thereafter.

Transferring gas utility rate cases to the State Office of Administrative Hearings (SOAH) will cost approximately \$247,000 per year in General Revenue paid by the Commission to SOAH for the responsibility of handling these hearings. This provision does not decrease Commission staff because the Commission will still retain general counsel, who are a party in rate cases. In addition, the Commission is expected to refer additional rate cases to SOAH as a result of the provision in the bill allowing municipalities to cede original jurisdiction over rate cases to the Commission. This provision will require two new employees in each fiscal year, at a cost of \$482,000 for the biennium.

Fiscal Year	Gain to the Oil Field Cleanup Fund	Cost to the Oil Field Cleanup Fund	Cost to the General Revenue Fund	Net Impact	Change in FTEs From FY 2001
2002	\$9,100,000	(\$8,000,000)	(\$484,000)	\$616,000	+ 17
2003	\$9,100,000	(\$10,000,000)	(\$638,000)	(\$1,538,000)	+ 27
2004	\$9,100,000	(\$9,400,000)	(\$890,000)	(\$1,190,000)	+ 31
2005	\$5,100,000	(\$5,100,000)	(\$879,000)	(\$879,000)	+ 31
2006	\$5,300,000	(\$5,300,000)	(\$1,000,000)	(\$1,000,000)	+ 33

State Soil and Water Conservation Board

Staff Contact: Susan Solterman

H.B. 2310 Chisum (Zaffirini)

Summary

The Texas State Soil and Water Conservation Board (the Board) works with agricultural landowners to protect the state's soil and water resources through voluntary, non-regulatory programs. The Board does so by defining the State's management plan for abating nonpoint source pollution from agricultural and forestry operations; and by providing technical assistance and financial incentives to farmers who establish water quality management plans and to ranchers who participate in a pilot brush control project. The Board has an annual budget of \$18.6 million and employs 65 staff.

H.B. 2310 continues the State Soil and Water Conservation Board for 12 years and contains additional statutory changes. The Legislature adopted all of the Sunset Commission's recommendations to improve the Board's ability to control nonpoint source pollution and to open up the process for electing local soil and water district board members. The Legislature added a provision to clarify a landowner's authority to land apply manure without a permit. The list below summarizes the major provisions of H.B. 2310, and a more detailed discussion follows.

Sunset Provisions

1. Strengthen the Board's Water Quality Management Efforts to Control Agricultural Runoff.
2. Revise Local District Election Procedures to Encourage Greater Participation.
3. Delineate the Board's Responsibilities in Relation to Other State Agencies.
4. Continue the State Soil and Water Board for 12 Years.

Provision Added by the Legislature

5. Clarify the Authority to Land Apply Manure Without a Permit.

Sunset Provisions

1. Strengthen the Board's Water Quality Management Efforts to Control Agricultural Runoff.

1.1 Require the Board to periodically update its priority areas for addressing agricultural and forestry nonpoint source pollution.

1.2 Require the Board to re-examine its financial incentives for establishing water quality management plans to reflect its updated priority areas.

The Legislature adopted the recommendation of the Sunset Commission requiring the Board to update, every four years, the areas it has prioritized for controlling nonpoint source pollution. In addition, the Board's goals must include prioritizing voluntary efforts to reduce nonpoint source pollution and helping landowners to prevent regulatory enforcement actions. In updating its priority areas, the Board will consider existing impaired water bodies identified by the Texas Natural Resource Conservation Commission's (TNRCC) total maximum daily load process, threatened areas in which action is necessary to prevent nonpoint source pollution, or other areas of concern such as groundwater concerns.

The Board will re-examine its process for providing financial incentives to landowners to establish water quality management plans for controlling nonpoint source pollution. In its funding decisions, the Board must give heavier weight to landowners in the updated priority areas. The Board must also record the disbursement of financial incentives and report this information as part of its annual report.

1.3 Require the Board to keep detailed records on referrals of farming operations to TNRCC, with information on TNRCC's enforcement measures for each operation.

1.4 Require the Board to report to TNRCC whenever it decertifies a water quality management plan for an animal feeding operation.

These provisions of the bill improve the flow of information between the Board and TNRCC. The Board will maintain information on all referrals to TNRCC for enforcement, including final disposition by TNRCC, and will provide this information in its annual report.

The bill expands and clarifies the Board's current requirement to report to TNRCC regarding decertified animal feeding operations. Under this change, TNRCC would still have to confirm that a violation of the state's water quality laws occurred and that any pollution that resulted is attributable to the operation in question, before it could take enforcement action.

2. Revise Local District Election Procedures to Encourage Greater Participation.

2.1 Revise local district elections to allow for early voting.

The Legislature agreed with the Sunset recommendation to establish a process for the election of directors for local soil and water districts. The bill maintains existing convention-style elections, while permitting eligible landowners more flexibility in nominating and voting for local district directors.

2.2 Expand the requirement for notice of local soil and water district elections to include both posting in a public place and publishing in a local newspaper.

Previous statutory notice requirements allowed districts to provide notice through either means, but this provision requires both.

3. Delineate the Board's Responsibilities in Relation to Other State Agencies.

3.1 Improve outreach on the jurisdiction of the Board and the Texas Natural Resource Conservation Commission.

The Legislature adopted the recommendation of the Sunset Commission to require the Board to improve outreach to the agricultural community regarding the Board's and TNRCC's jurisdiction for agricultural and forestry nonpoint source pollution.

3.2 Designate the authority of the Texas Department of Agriculture on pesticide regulations.

The Legislature added a provision to clarify that the Board's responsibility to represent the State before federal agencies on matters related to the nonpoint source pollution does not impair the ability of the Texas Department of Agriculture to represent the State on matters relating to the Federal Insecticide, Fungicide and Rodenticide Act.

4. Continue the State Soil and Water Conservation Board for 12 years.

The legislation continues the State Soil and Water Conservation Board for the standard 12-year period until 2013.

Provision Added by the Legislature

5. Clarify the Authority to Land Apply Manure Without a Permit.

The Legislature added language to the bill specifying that a third-party buyer of manure does not have to obtain a permit to land-apply manure to property not already under TNRCC's regulatory scope. The Board may work with a manure-buying landowner in creating and certifying a water quality management plan for the land on which the manure is applied.

Fiscal Implication Summary

This legislation will not result in a fiscal impact to the State.

Texas Water Development Board

Staff Contact: Karen Latta

S.B. 312 Zaffirini (Chisum)

Summary

The Texas Water Development Board (TWDB) was created in 1957 to be the state's water planning and financing agency. TWDB has three missions: planning for the development of the state's water resources, administering low-cost financing programs, and collecting and disseminating water-related data. The agency operates with an annual budget of almost \$45 million and employs 294 people.

TWDB is subject to review, but not abolishment, under the Sunset Act. The Legislature adopted all of the Sunset Commission recommendations, and added several other statutory modifications to the agency's Sunset legislation. The list below summarizes the major provisions of S.B. 312, and a more detailed discussion follows.

Sunset Provisions

1. Require TWDB to Create a Capital Spending Plan and Explore Ways to Better Address Small Community Water Needs and Emerging Water Issues.
2. Require the Governing Boards of TWDB and the Office of Rural Community Affairs to Meet Annually and Be Advised by a Colonia Advisory Committee.
3. Require the Texas Geographic Information Council to Prepare a Biennial State Geographic Information Systems Plan.

Provisions Added by the Legislature

4. Create the Colonia Self-Help Program.
5. Authorize TWDB to Give Grants for Specific Purposes.
6. Provide Tax Exemptions for Water Conservation Projects and Equipment.

Sunset Provisions

1. Require TWDB to Create a Capital Spending Plan and Explore Ways to Better Address Small Community Water Needs and Emerging Water Issues.

1.1 Require TWDB to create a capital spending plan for the use of state-supported funding programs.

The Legislature adopted the Sunset Commission recommendation to require the agency to specify, through a spending plan, water project priorities to be supported by state-funded programs. The establishment of a plan will provide greater structure and oversight for the use of state-issued debt and provide additional justification for TWDB seeking authority to issue more state debt. The agency will submit the plan to the Legislature and the Legislative Budget Board by January 1 of each odd-numbered year.

1.2 Authorize TWDB to develop a pilot program directed toward assisting rural communities.

This direct loan agreement pilot program will be targeted to small communities with a population of less than 5,000. Funding for the pilot program will come from the Texas Water Resources Finance Authority. Projects funded by the pilot will be capped at \$250,000 and must serve a public purpose to satisfy federal tax law requirements. The outcome of the pilot will allow the Legislature to determine how best to address and fund water-related priorities.

1.3 Authorize TWDB to use the Clean Water State Revolving Fund to finance nonpoint source pollution abatement projects.

The bill expands TWDB's authority to use existing funding sources to meet the costs associated with nonpoint source pollution abatement projects. Specifically, the Board could use available funds from the Clean Water State Revolving Fund for both public and private entities. However, assistance provided to a private entity must come from funds that are not supported by state general obligation debt. The Board will establish necessary criteria for eligible projects and the terms for assistance.

1.4 Require the Board and the State Soil and Water Conservation Board to jointly report to the Legislature on improving water conservation efforts.

The report will include an assessment of both agricultural and municipal water conservation issues, summarize existing conservation efforts by TWDB and the State Board, specify future conservation needs, and identify funding or programmatic approaches for supporting additional conservation efforts.

2. Require the Governing Boards of TWDB and the Office of Rural Community Affairs to Meet Annually and Be Advised by a Colonia Advisory Committee.

2.1 Require an annual joint meeting of the governing boards of TWDB and the Office of Rural Community Affairs.

2.2 Create the Colonia Initiatives Advisory Committee to advise both boards on the needs of colonia residents and the effectiveness of agency policies.

The Legislature adopted the Sunset Commission recommendations to require the governing boards of TWDB and the Office of Rural Community Affairs to meet once a year to address their progress in meeting the needs of colonia residents and to hear from the newly created Colonia Initiatives Advisory Committee.* The Committee consists of seven members and a representative from the Secretary of State's Office, serving as an ex officio member. All members will be appointed by the Governor and, with the exception of the public member, must reside within 150 miles of the Texas-Mexico border. The Committee will review the progress of water and wastewater infrastructure projects affecting colonias and make recommendations to the boards. The Committee will also report to the Texas Department of Housing and Community Affairs regarding the State's low income housing plan, as created by 77th Legislature in S.B. 322, the Sunset bill for the housing agency.

* The Sunset recommendation was for a joint meeting of the governing boards of TWDB and the Texas Department of Housing and Community Affairs. This provision was modified in the TWDB Sunset bill to reflect changes in H.B. 7 in which the 77th Legislature transferred responsibility for administering the federal Community Development Block Grant Program, which includes funds for colonia projects, from the Texas Department of Housing and Community Affairs to the newly created Office of Rural Community Affairs.

3. Require the Texas Geographic Information Council to Prepare a Biennial State Geographic Information Systems Plan.

3.1 Require the Texas Geographic Information Council (TGIC) to collect information on past investments, current expenditures, and future plans for geographic information systems (GIS) of state agencies.

3.2 Require TGIC to prepare a biennial State GIS plan based on information collected from state agencies; and to submit the plan to the Texas Water Development Board, Department of Information Resources, the Legislature, and the Governor.

The Legislature adopted the Sunset Commission recommendations to give TGIC authority to collect information about the State's investments in geographic information and plans for its use from TGIC members representing state agencies. TGIC will also request voluntary reporting of information from non-state agency members. TGIC will then be able to write a high-level plan for use by the State's policymakers. This plan will allow TGIC to highlight its achievements and discuss its visions for GIS over the next biennium, including what initiatives should be taken to improve the State's GIS programs. The first new State GIS plan should be submitted by September 1, 2002.

3.3 Authorize TWDB to establish private partnerships on behalf of the Texas Natural Resources Information System (TNRIS).

This legislation authorizes TWDB to partner with private firms to provide additional funding for improved access to TNRIS information. The Board must adopt rules governing the partnering process, defining the types of partnerships allowed, establishing an appropriate fee collection process, and establishing the nondiscriminatory methods used to determine which companies may contract with TWDB.

Provisions Added by the Legislature

4. Create the Colonia Self-Help Program.

This program will provide grants to nonprofit organizations to help colonia residents build their own water and wastewater infrastructure. However, TWDB is not required to implement this program unless it receives funding through the appropriations process to do so.

5. Authorize TWDB to Give Grants for Specific Purposes.

Before this change, the agency was only authorized to give grants through its Economically Distressed Areas Program. Now, the Board may provide grants for projects for which it has received federal grant funds or specific legislative appropriation. The Board may give grants for desalination, brush control, weather modification, and regional water and wastewater projects. This provision also allows TWDB to give grants to political subdivisions and state agencies to fund agricultural water conservation projects, based on legislative appropriation.

6. Provide Tax Exemptions for Water Conservation Projects and Equipment.

The Legislature added language to provide property tax exemptions for desalination projects and brush control initiatives. The legislation also provides sales tax exemptions for equipment, supplies and services related to rainwater harvesting, desalination, brush control, precipitation enhancement, regional water and wastewater systems; and public-private partnerships to construct water and wastewater systems.

Fiscal Implication Summary

S.B. 312 will result in a fiscal impact to the State. The pilot program to direct funding to rural communities will rely on existing resources of the Texas Water Resources Finance Authority, estimated at \$1.37 million. This legislation directs TWDB to use the Authority's existing funds for the specific purpose of the pilot program. During the course of the pilot program, TWDB could give five or six loans to rural communities. The administrative cost to the agency for the program is estimated to be \$94,000 per year, including one additional employee.

Authorizing TWDB to partner with private companies will enable the agency to raise additional funds to pay for increased Internet access to TNRIS information. Depending on the type of partnership TWDB enters into, the agency could generate \$25,000 in additional revenue per year.

While the bill creates the Colonia Self-Help Program, it also contains a provision that makes implementation of the program contingent upon funding through the legislative appropriations process. Because the Legislature did not appropriate money for this program, the agency is not required to implement it.

Authorizing TWDB to give grants for specific purposes will result in a cost to General Revenue, which is accounted for in the 2002-2003 Appropriations Act. One rider in the Act requires the agency to allocate \$1.9 million in grants to six cities in the North Bosque River watershed for capital improvements

to wastewater treatment facilities. Another rider requires TWDB to issue \$16 million in bonds to fund brush control projects by the State Soil and Water Conservation Board and the Department of Agriculture. These bonds will be repaid over seven years at a cost to General Revenue of approximately \$3 million per year beginning in 2003.

This legislation provides sales and property tax exemptions for certain water conservation projects and equipment. According to estimates by the Comptroller of Public Accounts, these tax exemptions will result in a loss to General Revenue of \$4.3 million in fiscal year 2002 and \$4.7 million in subsequent years. In addition, the Comptroller estimates these tax exemptions will cause local governments to lose approximately \$1.1 million in fiscal year 2002 and \$1.3 million in subsequent years due to reduced tax revenue. These provisions were copied from S.B. 2, the omnibus water development and management bill that was also passed by the 77th Legislature. For that reason, the fiscal implications of these changes are not contained in this analysis.

The following chart reflects the net fiscal implications of the bill for the first five years following the effective date of the bill.

Fiscal Year	Cost to the General Revenue Fund	Cost to Texas Water Resource Finance Authority Funds	Net Impact	Change in Number of State Employees From FY 2001
2002	(\$1,868,274)	(\$274,000)	(\$2,142,274)	+1
2003	(\$2,945,306)	(\$274,000)	(\$3,219,306)	+1
2004	(\$3,133,172)	(\$274,000)	(\$3,407,172)	+1
2005	(\$3,132,672)	(\$274,000)	(\$3,406,672)	+1
2006	(\$3,136,672)	(\$274,000)	(\$3,410,672)	+1

Business and Economic Development

Texas Department of Economic Development

Staff Contact: Jennifer Jones

H.B. 3452 Gallego (Sibley)

Summary

The Texas Department of Economic Development (TDED) is primarily responsible for helping develop and promote the Texas economy by marketing Texas as a business and tourist destination; providing financial, location, and export assistance to Texas businesses and communities; and serving as a central source of economic development information. TDED operates with an annual budget of over \$43 million and employs 178 people.

The Sunset Commission recommendations related to the Texas Department of Economic Development included continuing the Department for a two-year “probationary” period and transferring the Smart Jobs Program to the Texas Workforce Commission. These recommendations were incorporated into H.B. 3452 by Representative Pete Gallego.

The bill adopted by the House of Representatives maintained the two-year probation, but essentially ended the Smart Jobs Program. The bill also transferred many of the Department’s functions to the Secretary of State and the Comptroller of Public Accounts. When the bill reached the Senate floor, a complete substitute was offered. This substitute abolished TDED, transferred the Smart Jobs Program to the Texas Council on Workforce and Economic Competitiveness, and transferred the Department’s other functions to various agencies. The substitute also created a new agency, the Office of Strategic Business Development, to perform key statewide economic development activities. The Senate could not reach agreement on this substitute and instead, adopted a separate substitute that simply continued TDED and the Smart Jobs Program until 2003. The House refused to concur with the Senate’s simplified substitute and the conference committee was unable to reach an agreement before the legislative session ended. Therefore, H.B. 3452 did not pass.

The Department was continued, however, in separate legislation. S.B. 309 by Senator Chris Harris continued TDED until 2003, but did not continue the Smart Jobs Program which expires on December 31, 2001. Given the lack of consensus on the need or appropriate role for TDED, continuing the Department for two years will allow the Sunset Commission to re-examine these issues and make recommendations to the 78th Legislature to address ongoing concerns regarding Texas’ troubled economic development agency.

Texas Interagency Council for the Homeless

Staff Contact: Lisa Mogil

H.B. 3450 Gallego (Lucio)

Summary

Created in 1989 to coordinate the State's homeless resources and services, the Texas Interagency Council for the Homeless (the Council) consists of representatives from all state agencies that serve the homeless. The Council receives no funding and has no full-time staff, but receives clerical and advisory support from the Texas Department of Housing and Community Affairs (TDHCA). The Legislature adopted the Sunset Commission recommendations to make the Council an advisory committee to TDHCA and strengthen its membership. The Legislature also added two other statutory changes to H.B. 3450. The major provision of H.B. 3450 is summarized below, and a more detailed discussion follows.

Sunset Provision

1. Make the Council an Advisory Committee to the Texas Department of Housing and Community Affairs.

Sunset Provision

1. Make the Council an Advisory Committee to the Texas Department of Housing and Community Affairs.

1.1 Charge the Texas Department of Housing and Community Affairs with primary responsibility for addressing homelessness and coordinating interagency efforts at the state level.

1.2 Make the Texas Interagency Council for the Homeless an advisory committee to the Department.

As recommended by the Sunset Commission, the bill makes addressing homelessness one of TDHCA's statutory purposes. The Legislature also added a provision requiring TDHCA to address and coordinate interagency efforts for any problem associated with homelessness, including hunger. The Department will hold the Council accountable for performing the Council's current statutory duties. As an advisory committee, members will also have the authority to recommend policy to the Department's Board. Finally, the Council will undergo Sunset review as part of any future reviews of TDHCA.

1.3 Require Council members to have responsibility in their agencies for homeless programs or related services, and the authority to make decisions and commit resources, subject to the approval of their agency head, on their agencies' behalf.

This provision will improve the participation of Council members, allowing the Council to collaborate more effectively, and possibly increase its ability to access funds from member agencies to implement programs.

1.4 Require the Council to coordinate with other entities to provide employment assistance information to homeless individuals.

The Legislature added this provision requiring the Council to coordinate with the Texas Workforce Commission, local workforce development boards, homeless shelters, and public and private entities to provide homeless individuals with information on services that provide employment and job training assistance.

Fiscal Implication Summary

This legislation will not result in a fiscal impact to the State.

Texas Department of Housing and Community Affairs

Staff Contact: John Hawkins

S.B. 322 Lucio (Gallego)

Summary

The Texas Department of Housing and Community Affairs (TDHCA) seeks to ensure affordable housing for low-income families, promotes community development and assistance, and regulates the State's manufactured housing industry. The Department was created in 1991 by merging the Texas Department of Community Affairs, the Texas Housing Agency, and the Community Development Block Grant Program from the Texas Department of Commerce. The Department's programs assist low income individuals and families in obtaining affordable housing by allocating or awarding funds to for-profit and non-profit organizations, local governments, lenders, and developers. The Department also provides funding for infrastructure (e.g., water, sewers, streets); makes grants to homeless shelters and for various services designed to address poverty issues; and provides funding to repair or weatherize the homes of very low income people and to pay their utility bills when necessary. The Department operates with an annual budget of \$201 million and has 343 employees.

S.B. 322 primarily contains recommendations of the Sunset Commission designed to increase the public accountability of the agency and its Governing Board and to ensure the agency allocates resources to best meet the state's most pressing housing needs. The Legislature continued TDHCA for a two-year probationary period, rather than the usual 12-year extension, to provide for an evaluation of whether TDHCA has successfully carried out the Sunset recommendations before the next legislative session. In addition, the Legislature added considerable implementation detail to many of the initial Sunset Commission recommendations, most notably concerning housing preservation and the administration of the Department's low income housing tax credit program. Sunset Commission recommendations transferring the Community Development Block Grant program from TDHCA and constituting it as a new Office of Rural Community Affairs were enacted in separate legislation. The list below summarizes the major provisions of S.B. 322, and a more detailed discussion follows.

Sunset Provisions

1. Restructure the Department's Governing Board.
2. Provide the Public With Meaningful Opportunities to Participate in Board Meetings and Agency Public Hearings.
3. Require Strategic Planning and a Simpler Funding Cycle to Serve Texans With the Greatest Need.
4. Require the Department to Use Multi-Family Housing Finance Programs to Maximize Resources and Outcomes.
5. Ensure That the Department's Programs Provide Fair Access to Housing.
6. Preserve Expiring Affordable Housing Stock.
7. Ensure Consideration of Applicants' Compliance History Before Approval of Newly Proposed Projects.

Sunset Provisions (cont.)

8. Create a Colonia Advisory Committee and Require Plans to Meet Colonia Resident Needs.
9. Make Information About Community Resources and Affordable Housing Easily Accessible to the Public.
10. Create a Separate Governing Board for the Regulation of Manufactured Housing.
11. Continue TDHCA for a Two-Year “Probationary” Period to Ensure That Needed Changes Are Implemented.

Sunset Provisions

1. Restructure the Department's Governing Board.

1.1 Restructure the Department's governing body as a seven-member Board composed of public members with demonstrated interests in housing and community support services issues.

The Legislature adopted the Sunset Commission recommendation to reduce the size of the Board from nine to seven members, and appointments will no longer have to meet specified representation requirements. The Governor will appoint a new Board by September 1, 2001, composed of public citizens with broader interests in housing and community support services.

The new Board will be required to employ an Executive Director and develop a strategic action plan to implement changes mandated through the Sunset process and adopted by the Legislature. The Executive Director will be required to evaluate the organizational structure of the agency and key management positions, and to make any necessary organizational changes to facilitate implementation of the strategic action plan.

1.2 Remove references in law that constrain the Board's ability to set policy agencywide or to reorganize divisions to best implement changes in policy.

This removes specific references related to the Board's authority over individual programs or divisions of the agency, clarifying the Board's broad policy role over all of the agency's programs and allowing the staff to more fully integrate policies and programs across the agency.

2. Provide the Public With Meaningful Opportunities to Participate in Board Meetings and Agency Public Hearings.

2.1 Require Department staff to publish and make available all relevant meeting materials at least seven days before a Board meeting.

2.2 Require Board meeting agendas to contain each individual item of discussion.

2.3 Require the Board to provide for public comment after the staff presentation on each agenda item.

2.4 Require the Board to develop and implement rules that give the public a reasonable time frame in which to testify at Board meetings.

2.5 Require the Board to develop and implement rules outlining a formal process to appeal Board decisions.

Under these provisions, the Department is required to make information available to Board members as well as the public. Board meeting agendas must state each individual project the staff has recommended that the Department fund.

2.6 Require the Department to consolidate its numerous public hearings into a single public hearing process.

2.7 Require Department staff to publish all relevant meeting materials at least one week before each consolidated public hearing.

The legislation requires the agency to consolidate hearings to the extent possible, holding a single consolidated public hearing in each uniform service region of the state. All material to be discussed at each public hearing must be sent to interested parties, posted on the Department's Web site, made available in hard copy at the agency, listed in the Texas Register, and disseminated through any other means required by the Department's enabling statute or by the Open Meetings Act.

2.8 Require the Department to provide for public input before developing rules for programs with Requests for Proposal and Notices of Funding Availability.

This provision ensures that rules affecting Requests for Proposal and Notices of Funding Availability address important public concerns, and will also eliminate the Department's need to republish materials based on ad hoc comments.

2.9 Require the Department to develop and implement rules outlining formal rulemaking procedures for the Low Income Housing Tax Credit Program and the Multi-Family Housing Mortgage Revenue Bond Program.

This provision requires a more formal process to ensure adequate public input for the Department's largest programs in terms of funding and people affected. Rules must include procedures for allowing any interested person to petition the Department requesting adoption of a new rule or amendment of an existing rule, notice requirements and time frames in accordance with the Administrative Procedure Act, and provision for public hearings.

3. Require Strategic Planning and a Simpler Funding Cycle to Serve Texans With the Greatest Need.

3.1 Require the Department to develop a strategic plan, customized by region, to provide affordable housing and community support services.

The Department must conduct a more thorough assessment of not only the need for housing and community support services in the state, but also the supply. The Councils of Government will be used in developing the strategic plan. In addition to regional priorities, this provision requires the Department to establish objectives for each income category.

3.2 Allocate funds to meet regional housing and community service priorities.

This provision requires the Department to establish priorities to ensure that awards go to the applicants who are best able to meet the needs as established by the Department, and that the most flexible funds are used to serve the lowest income residents when possible.

3.3 Create a uniform application and funding cycle for housing programs that supports projects that meet established need.

The legislation requires the Department to consider project proposals together and assess their ability to meet regional objectives. All allocation decisions and applicant scoring will give the greatest

weight to those projects that go the furthest to meeting the State's established housing and community service objectives.

3.4 Require the Department to establish an Executive Award Review Committee to make funding allocation decisions.

The Department must establish a special committee to set priorities in each region of the state and make funding decisions to meet the need, subject to Board approval. This committee will provide the agency, or the Board where appropriate, with a multi-disciplinary, unified approach to awarding funds to projects.

4. Require the Department to Use Multi-Family Housing Finance Programs to Maximize Resources and Outcomes.

4.1. Improve the administration of the low income housing tax credit program.

The Legislature added considerable implementation detail to the original Sunset Commission recommendations designed to require TDHCA to take better advantage of the competition for tax credits to encourage and reward developers who bid higher-quality developments, as opposed to the current system that encourages bidding to the minimum standards. Added provisions include details regarding eligibility requirements, the application process, maintenance of an application log, the evaluation of applications, the allocation of tax credits, and the appeal of decisions.

The legislation also requires the Department to make available public information about applications, awards, and required public hearings. The Board must adopt a policy providing for debarment from participation in the program if developers violate program rules. Finally, the legislation includes conflict of interest provisions that prohibit participation in low income housing tax credit applications by former Board members, Executive Directors, and certain key employees until two years after service or employment.

4.2 Require the Department's tax credit allocation process to reward applications that propose to defer developer's fees.

The legislation requires the Department to adopt a system to reward both for-profit and non-profit developers willing to defer developer's fees and invest more tax credit equity into the project.

4.3 Require the staff to document its recommendations for project selection and prohibit the Board from changing staff recommendations except for good cause, which must be documented as a part of the public record of the Board's proceedings.

This provision increases the accountability of the Department by ensuring the public is apprized of the Board's reasoning for making changes to the initial project selection recommendations.

4.4 Require Board approval for projects that undergo substantial change, including change of ownership, between initial approval and final commitment.

This provision ensures that the projects ultimately approved by the Department are materially the same projects that were judged favorably during the project selection process.

4.5 Provide the Department with direct allocation authority over a portion of the multi-family bond funds currently distributed through the Bond Review Board lottery.

This provision allows the Department to strategically allocate 25 percent of the existing multi-family bond set-aside to meet state need. The Department's allocation of private activity bond funds will now be coordinated with complimentary programs such as tax credits and HOME.

4.6 Modify the statutory requirements for 501(c)(3) bonds by removing the overall dollar cap and the requirement that 50 percent of the funds be allocated for new construction.

In addition to removing the Bond Review Board's cap for the 501(c)(3) bond program, this provision removes the statutory barriers to the 501(c)(3) bond program's ability to fully function and allows non-profits greater access to this significant source of funds for affordable housing development.

4.7 Increase the allocation of private activity bonds available for housing.

The Legislature increased the portion of the state allocation available for multi-family housing projects from 16.5 percent to 23 percent and the portion for single-family mortgage assistance from 25 percent to 29.6 percent. The bill also requires the Bond Review Board to apportion the bond set-aside for housing finance corporations among the uniform state service regions according to population.

4.8 Make home mortgage credit available to historically underserved areas.

The Legislature added a provision to the bill that requires TDHCA, if feasible, to issue single-family mortgage revenue bonds to make home mortgage credit available for the purchase of single-family homes to submarkets that have been substantially underserved.

5. Ensure That the Department's Programs Provide Fair Access to Housing.

5.1 Require the Department to obtain certifications of compliance with anti-discrimination laws by applicants for all housing-related programs.

5.2 Require the Board to establish procedures, in rule, to monitor and enforce compliance with fair housing laws.

The legislation requires all housing-related program applicants to certify compliance with state and federal fair housing laws, including laws protecting people with disabilities from discrimination in obtaining housing. The Legislature also added provisions requiring the owner of each housing development that receives financial assistance from TDHCA to submit an annual fair housing sponsor report and requires TDHCA to establish a system that requires owners of state or federally assisted housing developments to publicly report information regarding housing units designed for persons with disabilities.

5.3 Require the Department to adopt a policy, in rule, that identifies reasonable Section 8 admittance policies for all tax credit properties.

These rules must include a reasonable minimum income policy for Section 8 tenants and address other factors that can preclude Section 8 tenants access to tax credit housing.

5.4 Require the Department to establish procedures, in rule, to monitor and take action against tax credit properties that, as policy, refuse to accept tenants with Section 8 vouchers.

This provision increases the Department's role in ensuring that tax credit properties are in compliance with federal rules regarding the acceptance of Section 8 vouchers. This provision requires the Department to develop a range of sanctions to use against tax credit properties that refuse to accept tenants with Section 8 vouchers.

6. Preserve Expiring Affordable Housing Stock.

6.1 Require the Department to create a staff function with the responsibility to develop and implement policies designed to preserve affordable housing.

The legislation specifies that the Department's duties will include, but not be limited to, maintaining data on housing at risk of being lost, advising other housing program areas on policies that can enhance preservation strategies, and developing policies that ensure that the Department's existing housing portfolios remain intact.

6.2 Require the Department to establish incentives for longer or permanent affordability periods for multi-family housing.

The legislation requires the Department to encourage applicants, through a competitive process, to extend the affordability period of proposed projects as long as possible rather than simply meeting minimum requirements. The Legislature also added provisions requiring TDHCA to set priorities for developments to preserve multi-family housing and to establish and administer a housing preservation incentives program to provide incentives through loan guarantees, loans, and grants for the acquisition and rehabilitation of priority multi-family housing developments.

7. Ensure Consideration of Applicants' Compliance History Before Approval of Newly Proposed Projects.

The legislation requires all projects to be reviewed for past compliance before being sent to the Board for approval. The Board must fully document and disclose any situations where funding is approved despite compliance problems.

8. Create a Colonia Advisory Committee and Require Plans to Meet Colonia Resident Needs.

8.1 Create a Colonia Advisory Committee to advise the Board on the needs of colonia residents and the effectiveness of Department policies.

The legislation specifies that the advisory committee consist of one colonia resident, one representative of a non-profit organization that serves colonia residents, one local government representative, one person to represent private interests in banking or land development, and one public member.

8.2 Require the Department to develop an annual assessment of colonia resident needs and a biennial action plan to address the needs.

The legislation requires the Department to collect information on the demand for contract for deed conversion, self-help housing, consumer education, and other colonia resident services in counties within 100 miles of the Texas-Mexico border. The Department's Office of Colonia Initiatives will prepare a biennial action plan to list policy goals for its colonia programs, the strategies to meet the goals, and the expected outcomes.

8.3 Establish a colonia model subdivision program.

The Legislature added provisions requiring TDHCA to establish the colonia model subdivision program to promote the development of new, high-quality residential subdivisions that provide alternatives to substandard colonias. The bill also requires TDHCA to establish a colonia model subdivision revolving-loan fund to support the program.

9. Make Information About Community Resources and Affordable Housing Easily Accessible to the Public.

9.1 Require the Department to establish a central housing and community services clearinghouse, and clarify the Department's statutory role as an information provider.

The Department must create a central information office to act as a clearinghouse to provide plain-language information to the public, local communities, housing providers, and other interested parties. The office will also maintain a resource listing all existing affordable housing resources in communities, readily available in hard copy and in a user-friendly format on the Department's Web site.

9.2 Require the Health and Human Services Commission to include the Department's programs in Texas Information and Referral Network resources.

The bill directs the Health and Human Services Commission to include information about the Department's housing and community affairs programs in its I&R Network resources, including *Health and Human Services in Texas: A Reference Guide*.

9.3 Require the Board to adopt, by rule, policies and procedures to ensure agency compliance with the Public Information Act.

This provision will help ensure that the Department upholds its duties under the Public Information Act. As part of this provision, the agency must train its employees on Public Information Act requirements, and the Executive Director must ensure that the staff implements these policies and procedures.

10. Create a Separate Governing Board for the Regulation of Manufactured Housing.

10.1 Retain the manufactured housing regulatory program's administrative attachment to TDHCA, but with a separate governing Board to manage the program.

This provision provides for a separate Board composed of five members of the public, appointed by the Governor for staggered six-year terms. Funds for manufactured housing regulation initially will be appropriated to TDHCA and then transferred to the manufactured housing function. The newly-created Board will have the authority to set the budget and allocate expenditures to the various manufactured housing regulatory activities. The Board will enter into appropriate interagency agreements with TDHCA to share administrative costs for rent, data processing, human resources, legal, and other services.

11. Continue TDHCA for a Two-Year "Probationary" Period to Ensure That Needed Changes Are Implemented.

11.1 Continue the Department for a two-year "probationary" period, and require the Sunset Commission to re-evaluate the agency and its efforts to ensure that needed changes have been implemented before the legislative session in 2003.

The legislation specifies the following criteria be used to decide whether TDHCA has successfully implemented the requirements enacted in S.B. 322.

- Establishment of a functional governing body that values public input and allows Board members to develop the expertise necessary to make informed decisions about and ensure accountability of the Department and its programs.
- Effective development and implementation of a needs assessment and associated fund allocation process that:
 - ensures the state's most pressing needs are identified and met,
 - incorporates input from local entities,
 - maximizes the objective of preserving the state's existing affordable housing stock,
 - ensures the State receives the best value for its resources, and
 - maximizes the State's objectives for its housing and community support services.
- Development of policies and procedures that clearly define the appropriate roles of the Board members and agency staff.
- Establishment of compliance procedures that actively ensure the Department's programs provide fair access to housing.

The Department will be required to report to the Sunset Commission by September 1, 2002, on the status of these recommendations as part of the re-evaluation of the agency during the next interim.

Removed Provision

1. Transfer the Community Development Block Grant Program From TDHCA and Constitute It as the New Office of Rural Community Affairs.

The Legislature enacted this provision through the passage of H.B. 7 and it was subsequently removed from the Sunset bill.

Fiscal Implication Summary

The changes made as part of S.B. 322 will have a net cost to the State of about \$345,500 per year. Each issue with a fiscal impact is discussed below, followed by a five-year summary chart.

The provision reducing the size of the Board will save \$20,000 per year from reduced per diem and travel expenses. Board member expenses are funded through appropriated receipts and earned federal funds.

The provisions requiring consolidation of public hearings will save \$20,000 per year in General Revenue from reduced travel expenses.

The provisions related to increased responsibilities for underwriting and compliance functions will require eight additional staff. Costs for additional staff will be offset by an appropriate increase in the project application and/or compliance fee paid by developers who apply and receive funding from the Department. These costs will total \$385,000 per year for salaries and associated costs.

Fiscal Year	Savings to the General Revenue Fund	Savings to Earned Federal Funds	Savings to Appropriated Receipts	Cost to Appropriated Receipts	Net Impact	Change in FTEs From FY 2001
2002	\$20,000	\$6,000	\$14,000	(\$385,500)	(\$345,500)	+8
2003	\$20,000	\$6,000	\$14,000	(\$385,500)	(\$345,500)	+8
2004	\$20,000	\$6,000	\$14,000	(\$385,500)	(\$345,500)	+8
2005	\$20,000	\$6,000	\$14,000	(\$385,500)	(\$345,500)	+8
2006	\$20,000	\$6,000	\$14,000	(\$385,500)	(\$345,500)	+8

Texas State Affordable Housing Corporation

Staff Contact: John Hawkins

H.B. 3451 Gallego (Lucio)

Summary

The Texas State Affordable Housing Corporation (the Corporation) is a non-profit corporation created by the Legislature in 1995 to help serve the housing needs of low-income residents of Texas. The Corporation operates to provide single and multi-family loans to low-income Texans. The Corporation uses no State-appropriated General Revenue and generates income primarily through bond proceeds, grants, fees, and investment revenue to make loans for affordable housing. In February 2000, the Corporation redirected its efforts away from its historical activities acting as a mortgage bank and grant administrator to issuing taxable single-family and multi-family tax exempt mortgage revenue bonds with the proceeds set aside for low-income households. The Corporation employs seven people.

The Legislature adopted the Sunset Commission recommendation to continue the Corporation for two years, allowing the Sunset Commission to evaluate the effectiveness of the Corporation's new business activities. In addition, the Legislature added a provision to the agency's Sunset bill requiring the Corporation to establish a Teacher Home Loan Program. The list below summarizes the major provisions of H.B. 3451, and a more detailed discussion follows.

Sunset Provision

1. Continue the Texas State Affordable Housing Corporation for Two Years.

Provision Added by the Legislature

2. Require the Corporation to Establish a Teacher Home Loan Program.

Sunset Provision

1. Continue the Texas State Affordable Housing Corporation for Two Years.

The Legislature adopted the Sunset Commission recommendation to allow the Corporation to operate for two years, to be reviewed by the Sunset Commission before the next legislative session in 2003. This extension of the Sunset date for the Corporation will allow the Sunset Commission to evaluate the effectiveness of the new business activities of the Corporation.

Provision Added by the Legislature

2. Require the Corporation to Establish a Teacher Home Loan Program.

The Legislature added a provision requiring the Corporation to establish a Teacher Home Loan Program and dedicated \$25 million of the State's allocation of tax exempt single-family mortgage bonds to the Corporation to issue low-interest home mortgage loans to teachers who are eligible for the program. The Corporation must give priority to a teacher who resides or teaches in an area of the state with a teacher shortage.

Fiscal Implication Summary

These recommendations will not have a fiscal impact to the State. Costs related to the operation of the Teacher Home Loan Program will be covered through bond proceeds and application fees.

Regulatory

Finance Commission of Texas

Staff Contact: Steve Hopson

H.B. 1763 McCall (Sibley)

Summary

The Legislature created the Finance Commission of Texas in 1943 to oversee the Banking Department. Today, the Finance Commission oversees the Department of Banking, the Savings and Loan Department, and the Office of Consumer Credit Commissioner. The mission of the Finance Commission is to ensure that banks, savings institutions, consumer creditors, and other businesses or persons chartered or licensed by the State operate as sound and responsible institutions that enhance the financial well-being of Texas. To achieve its purpose, the Finance Commission selects a Commissioner to run each of the three financial regulatory agencies it oversees, adopts rules relating to the industries overseen by the three agencies, and employs an administrative law judge to hear cases brought before each of the three agencies. The Commission operates with an annual budget of \$198,000 and 1.5 full-time employees.

The Legislature adopted all of the Sunset Commission recommendations and added one statutory modification to the Commission's Sunset bill. The list below summarizes the major provisions of H.B. 1763, and a more detailed discussion follows.

Sunset Provisions

1. Continue the Finance Commission With Changes to Its Composition, Authority, and Status as an Independent Agency.
2. Ensure Clear Means for Consumers to File Complaints, Particularly With Regards to Privacy, With the Departments of Banking and Savings and Loan.
3. Create a Formal Process for Monitoring the Overall Health of the Texas Banking System.

Provision Added by the Legislature

4. Devise Standards for Electronically Reporting Pawnshop Information.

Sunset Provisions

1. Continue the Finance Commission With Changes to Its Composition, Authority, and Status as an Independent Agency.

1.1 Continue the Finance Commission for 12 years.

The Legislature adopted the Sunset Commission recommendation to continue the Finance Commission for the standard 12-year period until 2013.

1.2 Change the composition of the Finance Commission to add representatives of the consumer credit and mortgage broker industries.

Under this provision the Commission is composed of:

- one member who represents the banking industry;
- one member who represents the thrift industry;
- one member who represents the consumer credit industry;
- one member who represents the mortgage broker industry; and
- five public members.

This provision adds one representative each from the consumer credit and the mortgage broker industries, expanding representation to other key industries overseen by the Commission. The Commission's size remains at nine members with a majority of public members.

1.3 Clarify that the mission and role of the Finance Commission, in coordinating financial regulatory policies, is to protect consumers and ensure a strong depository and lending system in Texas.

This legislation establishes the Finance Commission's statutory role as both the umbrella policy body overseeing the three financial regulatory agencies, and directs it to take a broad view of Texas' financial services industry. The Finance Commission will serve as the single point of accountability for ensuring that Texas' depository and lending institutions function as a system. This coordination focuses on protecting consumers' interests, as well as maintaining a safe and sound banking system, as a means of increasing the economic prosperity of the state.

1.4 Vest all rulemaking authority of the three Commissioners in the Finance Commission.

This provision ensures that the Finance Commission has the full ability to control the policy decisions of the three financial regulatory agencies. The mix of responsibilities for rulemaking between the Commissioners and the Finance Commission is eliminated in favor of a clear vesting of all rulemaking authority within the policy body.

1.5 Eliminate all statutory references to the Finance Commission as a separate state agency.

This legislation maintains the Commission as a policy body over the three financial regulatory agencies, but eliminates its current status as an independent state agency. It also eliminates the need for a separate executive director position. The Finance Commission continues to be responsible for hiring

the Commissioners of the three financial regulatory agencies and approving budgets and legislative appropriations submissions, but the Commission's responsibility for filing its own Legislative Appropriations Request is rescinded. Responsibility for overseeing future studies of the availability of financial services will continue to be assigned by the Commission to one of the three agencies.

2. Ensure Clear Means for Consumers to File Complaints, Particularly With Regards to Privacy, With the Departments of Banking and Savings and Loan.

2.1 Require the Finance Commission to develop formal rules to ensure that all entities regulated by the Department of Banking and Savings and Loan Department post information on how consumers may file a complaint.

H.B. 1763 directs the Finance Commission to determine, through rules, the most appropriate way to provide consumers with information on how to file complaints. Each agency would continue to respond to complaints regarding agencies under its regulation.

2.2 Require all privacy notices provided by financial institutions regulated by the Finance Commission agencies to include information on how consumers can file a complaint.

All financial institutions regulated by the Department of Banking, Savings and Loan Department, and Office of Consumer Credit Commissioner must provide complaint contact information on the opt-out privacy notices that these institutions are required to post under federal law for the sharing of information. The industries affected by this recommendation include banks, thrifts, consumer lenders, check sellers, and currency exchange places.

3. Create a Formal Process for Monitoring the Overall Health of the Texas Banking System.

3.1 Require the Department of Banking and Savings and Loan Department to monitor and report to the Finance Commission on the overall condition of Texas' banking system.

This requirement places joint responsibility with both Departments for the formal ongoing review of all available economic forecasts, both national and state, including an analysis of new legislation and changing banking practices. After considering all available information, the Departments will periodically report to the Finance Commission on the current and projected condition of the banking system.

Provision Added by the Legislature

4. Devise Standards for Electronically Reporting Pawnshop Information.

4.1 Create a committee to study standards for electronic reporting of pawnshop information to law enforcement agencies.

The Legislature added this provision that directs the Finance Commission and the Department of Information Resources to create a committee of pawnshop industry, law enforcement, and software representatives to devise standards for electronic reporting of pawnshop information. The committee is directed to consider privacy issues and to report its findings to the Legislature by June 30, 2002.

Fiscal Implication Summary

This legislation will have no fiscal impact to the State.

Department of Banking

Staff Contact: Jeremy Mazur

S.B. 314 Sibley (McCall)

Summary

The Department of Banking (the Department) was created in 1923 when the Legislature split the Department of Banking and Insurance. The Department's primary role is to charter, supervise, and examine State-chartered banks. The Department also oversees numerous non-bank activities, including perpetual care cemetery trust funds and prepaid funeral contract sellers. The Department has an annual budget of \$10.1 million and employs 136 staff.

S.B. 314 continues the Department of Banking and contains several statutory changes to strengthen the Department's oversight of prepaid funeral contracts and perpetual care cemeteries, based on the Sunset Commission's recommendations. The Legislature also added several new provisions and modifications to the agency's Sunset bill, and deleted two Sunset Commission recommendations. The list below summarizes the major provisions of S.B. 314, and a more detailed discussion follows.

Sunset Provisions

1. Improve Consumer Protections for Purchasers of Prepaid Funeral Contracts.
2. Strengthen the Department of Banking's Authority to Effectively Enforce Prepaid Funeral Contract and Perpetual Care Cemetery Statutes.
3. Continue the Department of Banking for 12 Years.

Provisions Added by the Legislature

4. Prohibit Perpetual Care Cemeteries From Interring the Remains of a Murderer in the Same Cemetery as the Murderer's Victim.
5. Exempt Certain Prepaid Funeral Contract Insurance Sellers From Complying With Continuing Education Requirements.
6. Require All Depository Institutions Operating in Texas to Cash a Check Drawn on That Bank Without Any Associated Fee.

Sunset Provisions

1. Improve Consumer Protections for Purchasers of Prepaid Funeral Contracts.

1.1 Allow consumers to receive 50 percent of the interest earned from their investment upon cancellation of a prepaid funeral contract.

Based on a recommendation by the Sunset Commission, this legislation allows consumers to cancel their prepaid funeral contract and receive their original principal and 50 percent of the accrued interest. The other 50 percent of the accrued interest will remain with the contract seller.

1.2 Require that prepaid funeral contracts be written in plain, clear language with full disclosure of services that are and are not provided.

Prepaid funeral contract sellers must use contracts written in language that can be easily understood by the average consumer. All contracts must have standardized disclosures listing those funeral goods and services provided by the contract, and those that are not. The disclosures must also include a discussion of the circumstances under which the contract may be altered after death.

1.3 Allow modifications of services and merchandise provided through a prepaid funeral contract in an amount not to exceed 10 percent of the original purchase price of the contract.

The Legislature added this provision of the bill allowing for reasonable modifications to the funeral merchandise and services provided through a prepaid funeral contract at the time the funeral is performed. The modifications to the contract must not exceed 10 percent of the original purchase price of the contract.

1.4 Provide a 15-day waiting period before a purchaser can sign a waiver of rights to cancel a prepaid funeral contract.

The Legislature also added this provision requiring that waivers of the purchaser's right to cancellation be signed no earlier than 15 days after the date of contract purchase.

2. Strengthen the Department of Banking's Authority to Effectively Enforce Prepaid Funeral Contract and Perpetual Care Cemetery Statutes.

2.1 Enhance the Department of Banking's use of penalties against perpetual care cemeteries and prepaid funeral contract sellers.

The Department may use administrative penalties against perpetual care cemeteries found in violation of the Health and Safety Code. The Department also is authorized to impose increased administrative penalties upon prepaid funeral contract sellers and perpetual care cemeteries that engage in a pattern of willful disregard for the law.

2.2 Grant the Finance Commission rulemaking authority over perpetual care cemeteries regulated by the Department of Banking.

Previously, the Finance Commission, which oversees the Department of Banking, did not have rulemaking authority over perpetual care cemetery regulation.

2.3 Allow the Department of Banking to review all necessary records relating to perpetual care cemeteries.

The Legislature authorized the Department to examine certain books and records of a perpetual care cemetery other than those relating to its trust fund. These records include, among other items, a cemetery's operating expenses, financial statements, consumer complaint files, and the cemetery's maps and plats.

3. Continue the Department of Banking for 12 Years.

This provision continues the Department for the standard 12-year period until 2013.

Provisions Added by the Legislature

4. Prohibit Perpetual Care Cemeteries From Interring the Remains of a Murderer in the Same Cemetery as the Murderer's Victim.

The Legislature added this requirement to prevent murderers and their victims from being interred in the same cemetery.

5. Exempt Certain Prepaid Funeral Contract Insurance Sellers From Complying With Continuing Education Requirements.

This exemption covers prepaid funeral insurance agents who work for insurance companies that have an education program on prepaid funeral insurance products.

6. Require all Depository Institutions Operating in Texas to Cash a Check Drawn on That Bank Without Any Associated Fee.

This provision requires depository institutions to cash their account holders' checks free of charge, even if the person presenting the check does not have an account with the bank.

Removed Provisions

1. Prohibit the Use of Finance Charges on All Prepaid Funeral Contracts.

The Legislature did not adopt the Sunset Commission's recommendation to prohibit prepaid funeral contract sellers from attaching finance charges to installment payments.

2. Require That Consumers or Their Estates Receive 50 Percent of the Remaining Interest After the Costs of the Funeral Are Covered.

The Legislature did not adopt the Commission's recommendation requiring that interest earned in excess of the actual costs of the funeral be shared evenly between the contract seller and the consumer's estate.

Fiscal Implication Summary

This legislation will not result in a fiscal impact to the State.

Savings and Loan Department

Staff Contact: Jeremy Mazur

H.B. 1636 McCall (Sibley)

Summary

The Savings and Loan Department (the Department) was created in 1961 to regulate State-chartered thrifts. The Department has two missions: regulation of the State-chartered thrift industry and the licensing of mortgage brokers. The Department has an annual budget of \$1.2 million and employs 22 staff.

H.B. 1636 continues the Department for 12 years, as recommended by the Sunset Commission. The Legislature adopted and modified the Sunset Commission's recommendations relating to mortgage broker background checks and inspections. The Legislature also added provisions requiring each licensed mortgage broker to file an annual report with the Savings and Loan Department. The list below summarizes the major provisions of H.B. 1636, and a more detailed discussion follows.

Sunset Provisions

1. Improve Mortgage Broker Regulation by Requiring FBI Background Checks and Authorizing Inspections.
2. Continue the Savings and Loan Department for 12 Years.

Provision Added by the Legislature

3. Require Licensed Mortgage Brokers to File an Annual Report With the Savings and Loan Department.

Sunset Provisions

1. Improve Mortgage Broker Regulation by Requiring FBI Background Checks and Authorizing Inspections.

1.1 Change the agency's authority to obtain criminal background information from the Federal Bureau of Investigation from optional to mandatory.

This provision will ensure the Department's ability to obtain background checks from the FBI to prevent people with a criminal history in another state from moving to Texas and becoming mortgage brokers.

1.2 Authorize the Department to conduct inspections of mortgage brokers and to initiate investigations when reasonable cause exists.

The Department may conduct inspections of mortgage brokers and to actively pursue known violations, even when a formal complaint has not been filed. The Finance Commission will develop rules and guidelines to govern both inspections and agency-initiated investigations, including what constitutes reasonable cause for an investigation.

2. Continue the Savings and Loan Department for 12 Years.

This provision continues the Savings and Loan Department for the standard 12-year period until 2013.

Provision Added by the Legislature

3. Require Licensed Mortgage Brokers to File an Annual Report With the Savings and Loan Department.

The Legislature added a provision requiring mortgage brokers to file a report including data on loan originations, information on loan officers, and any other information required by Finance Commission rule to the Savings and Loan Department.

Fiscal Implication Summary

One provision regarding the Savings and Loan Department will have a fiscal impact. This provision is discussed below, followed by a five-year summary chart.

Obtaining criminal history records from the FBI will cost \$39,000 per year. Mortgage broker inspections will cost the State \$339,169 during the first year, and \$327,169 for each year thereafter. Six examiners will be required to conduct the examinations. These costs will be fully offset by licensing fees paid by mortgage brokers, resulting in no net fiscal impact to the State.

Fiscal Year	Gain to the General Revenue Fund	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$378,169	(\$378,169)	+6
2003	\$366,169	(\$366,169)	+6
2004	\$366,169	(\$366,169)	+6
2005	\$366,169	(\$366,169)	+6
2006	\$366,169	(\$366,169)	+6

Office of Consumer Credit Commissioner

Staff Contact: Andrea Varnell

S.B. 317 Sibley (McCall)

Summary

The Office of Consumer Credit Commissioner (OCCC) was created in 1967 to regulate the credit industry and educate consumers and creditors to produce a fair, lawful, and healthy credit environment for Texas. OCCC regulates businesses that loan money, sell merchandise on credit, or advance cash, including pawnshops and their employees. OCCC's annual budget is about \$2.4 million and it has 47 employees.

S.B. 317 continues OCCC for 12 years, contains all of the Sunset Commission recommendations, and makes several other statutory modifications added by the Legislature. Major provisions of the bill include the regulation of sale-leaseback transactions and pay day loans, and the licensing and examination of car financing activities. The list below summarizes the major provisions of S.B. 317, and a more detailed discussion follows.

Sunset Provisions

1. Define a Sale-Leaseback Transaction as a Loan Regulated by OCCC, and Clarify OCCC's Current Regulatory Authority Over Pay Day Loans.
2. Increase OCCC's Authority Over Car Financing Activities and Provide for Periodic On-Site Inspections.
3. Require Consumer Loan Contracts to be Written in Plain Language and Style.
4. Repeal the Set License Fees for Regulated Lenders and Pawnshops and Authorize the Finance Commission to Base Fees on the Licensee's Loan Volume.
5. Continue the Office of Consumer Credit Commissioner for 12 Years.

Provisions Added by the Legislature

6. Require the Finance Commission and the Consumer Credit Commissioner to Conduct a Study of Mortgage Lending Practices.
7. Increase the Interest Rates on Certain Pawn Loans, and Decrease the Hold Time on Unredeemed Pawned Goods.

Sunset Provisions

1. Define a Sale-Leaseback Transaction as a Loan Regulated by OCCC, and Clarify OCCC's Current Regulatory Authority Over Pay Day Loans.

1.1 Define a sale-leaseback transaction as a loan to be regulated by OCCC.

This provision requires regulation of sale-leaseback operations under the Texas Finance Code Subchapter F usury limits. Regulation will involve licensure and examination of these businesses, and requirements will be similar to those of other consumer lenders that OCCC oversees. This provision will help ensure that these transactions are clearly considered a loan and, as such, subject to regulation by OCCC.

The Legislature modified the sale-leaseback provisions by adding the following consumer protection provisions. The bill specifies that the seller in a sale-leaseback transaction may terminate the agreement at any time by returning the property to the buyer. It also provides that a buyer cannot threaten criminal prosecution if a consumer's check is returned for insufficient funds, and that an offense under this section is a misdemeanor punishable by a fine of up to \$1,000.

1.2 Clarify in law OCCC's current regulatory authority over deferred presentment transactions, commonly known as pay day loans.

This change specifically places in law OCCC's authority to regulate pay day loans, already addressed in agency rules. OCCC will continue to regulate pay day lenders under Subchapter F of the Texas Finance Code, with its current rules as guidelines to the industry on what is required.

1.3 Prohibit all forms of subterfuge to avoid the application of state usury laws.

This provision clarifies that parties to deferred presentment transactions or pay day loans may not use any type of subterfuge to avoid usury laws.

2. Increase OCCC's Authority Over Car Financing Activities and Provide for Periodic On-Site Inspections.

2.1 Increase OCCC's authority over car financing from registration to licensure, and add periodic on-site inspections.

The new regulation includes inspections, restitution to consumers for violations of the Finance Code, and administrative penalties. Inspections of financing operations will be conducted on a four-year cycle or as needed to ensure compliance.

2.2 Authorize licensure fees in place of the current registration fees for car dealers and third-party holders.

The Finance Commission may set fees in rule that are reasonable and necessary to recover the overall costs of the licensure and inspection of car dealers and third party contract holders.

2.3 Authorize OCCC to share information on car dealer licensing and enforcement with the Texas Department of Transportation.

OCCC may share any information necessary to ensure consistent enforcement, and to decrease the regulatory burden on the industry. Information shared between the agencies must remain confidential.

3. Require Consumer Loan Contracts to be Written in Plain Language and Style.

3.1 Consumer loan contracts must be written in a style that can be understood easily by the typical consumer.

S.B. 317 requires that contracts be printed in a type style that is large enough to be easily read. These requirements apply to contracts in English and in Spanish.

3.2 Require the Finance Commission to adopt rules governing consumer loan contracts, including model contracts written in plain language.

For the convenience of lenders, the Finance Commission is required to establish model contracts in rule and post the contracts on its Web site.

3.3 Require the Consumer Credit Commissioner to review the readability of non-standard contracts.

The Office of Consumer Credit Commissioner must review the contracts of lenders who choose not to use the model contracts. Lenders under review may use unreviewed contracts without penalty. In addition, the bill provides that failure of the Commissioner to disapprove a contract does not constitute an approval of the contract.

4. Repeal the Set License Fees for Regulated Lenders and Pawnshops and Authorize the Finance Commission to Base Fees on the Licensee's Loan Volume.

4.1 Repeal the set license fees for regulated lenders and pawnshops and the process for recovering examination costs, and authorize the Finance Commission to set license fees by rule.

The bill authorizes the Finance Commission to set the fees at rates necessary to recover costs and meet the agency's budget requirements as set by the Legislature.

4.2 Authorize the Finance Commission to base fees on the licensee's loan volume, in amounts reasonable and necessary to recover the overall costs of both licensing and examinations.

The legislation authorizes OCCC to develop an assessment methodology that combines license and examination fees and allows regulated lenders and pawnshops to pay one up-front fee per year. The legislation specifies that all fees continue to go directly into the General Revenue Fund.

5. Continue the Office of Consumer Credit Commissioner for 12 Years.

This provision continues OCCC for the standard 12-year period until 2013.

Provisions Added by the Legislature

6. Allow Higher Interest Rates and Shorter Hold Times on Certain Pawn Transactions.

The Legislature added two provisions affecting the pawn industry. The first increases the allowable annual percentage rate on pawn loans of \$480 to \$960, or from 30 percent to 180 percent. The second provision allows pawnbrokers to sell unredeemed pawned goods after 30 days, instead of 60 days.

7. Require the Finance Commission and the Consumer Credit Commissioner to Conduct a Study of Mortgage Lending Practices.

This provision specifies that the study emphasize predatory lending and that the findings be reported to the Legislature by December 1, 2002.

Fiscal Implication Summary

One provision of this legislation would require additional FTEs, but should have no net fiscal impact to the State. This fiscal impact is discussed below, followed by a five-year summary chart.

Increased regulation of car dealer financing will have no net fiscal impact to the State because the costs of regulation will be covered by fees charged to car dealers. These costs are estimated at about \$1 million for the first year and \$500,000 for each year thereafter.

Fiscal Year	Gains to the General Revenue Fund	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$1,029,835	(\$1,029,835)	+1.5
2003	\$536,840	(\$536,840)	+6
2004	\$536,840	(\$536,840)	+6
2005	\$536,840	(\$536,840)	+6
2006	\$536,840	(\$536,840)	+6

Texas Funeral Service Commission

Staff Contact: Erica Wissolik

H.B. 3067 Chisum (Zaffirini)

Summary

Texas has regulated the funeral industry since 1903, when the Legislature created the State Board of Embalming to oversee embalmers. In 1987, the Legislature changed the Board's name to the Texas Funeral Service Commission (the Commission) and expanded its authority. Today, the Commission licenses both funeral directors and embalmers, and enforces violations of the Commission's statute. The Commission operates with an annual budget of approximately \$500,000 and 10 employees.

H.B. 3067 contains all of the Sunset Commission's recommendations, with some modification, to improve the regulation of the funeral industry and the operations of the agency overall. To ensure that needed changes are effectively implemented, the legislation provides for only a two-year continuation. Recommendations on prepaid funerals and perpetual care cemeteries are located in the Department of Banking section of this report. The list below summarizes the major provisions of H.B. 3067, and a more detailed discussion follows.

Sunset Provisions

1. Require the Commission to More Effectively License, Inspect, and Investigate Complaints Against Funeral Directors and Embalmers.
2. Improve the Commission's Complaint Process.
3. Require the Commission to Adopt Guidelines for Imposing Sanctions and Fines.
4. Authorize the Commission to Register Owners and Operators of Cemeteries and Crematories.
5. Expand the Commission from Six to Seven Members by Adding an Owner or Operator of a Cemetery as a Member.
6. Continue the Commission for a Two-Year "Probationary" Period to Ensure That Needed Changes Have Been Implemented.

Provision Added by the Legislature

7. Authorize the Commission to Automatically Revoke a Funeral Industry License if the Licensee Is Convicted of a Felony Related to the Funeral Industry.

Sunset Provisions

1. Require the Commission to More Effectively License, Inspect, and Investigate Complaints Against Funeral Directors and Embalmers.

1.1 Require the Commission to base inspections of funeral establishments on a risk assessment tool, but ensure that each establishment receives an inspection at least once every two years.

This provision ensures that the Commission spends its limited time and resources inspecting facilities that require the most attention.

1.2 Expand the Commission's authority to stagger the renewal of individual licenses to include establishment licenses.

The Commission must adopt a system under which both individual and establishment licenses expire during various dates of the year, such as on licensees' birth dates. A staggered system will prevent the agency from being overwhelmed with license renewals at certain times of the year.

2. Improve the Commission's Complaint Process.

2.1 Require the Commission to adopt rules that comprehensively outline a complaint process.

2.2 Remove the provision authorizing Commission member participation in informal hearings.

Under these provisions, the Commission must adopt procedures defining the receipt, investigation, and disposition of complaints; informal hearings; and formal hearings. The process adopted must allow staff to administratively dismiss cases, enable complainants and licensees to fully participate, and ensure that Commission members do not make initial decisions. To avoid the appearance of bias, Commission members will no longer be allowed to participate in informal complaint hearings. These changes will provide people with meaningful opportunities to participate in the complaint resolution process, and allow the Commission to better focus its efforts on investigating and resolving cases.

3. Require the Commission to Adopt Guidelines for Imposing Sanctions and Fines.

3.1 Require the consideration of standard factors in setting the amount of a fine.

This provision clearly specifies standard factors, such as the seriousness of the violation and the threat to the public's health or safety. These factors help ensure that fines are used in a constructive, judicious manner to effect compliance, not simply as a punitive measure.

3.2 Require the Commission to adopt, by rule, guidelines for more consistently linking violations with the appropriate sanction or fine.

To ensure the appropriate application of sanctions to violations, the Commission must clearly define and summarize the most common violations, and establish a matrix to grade violations before applying sanctions. Before developing proposed rules, the Commission must use focus groups to obtain industry and consumer input. The matrix must be posted on the Commission's Web site.

4. Authorize the Commission to Register Owners and Operators of Cemeteries and Crematories.

4.1 Require the registration of owners or operators of cemeteries and crematories to ensure responsibility for the complete disposition of a body.

This legislation requires cemetery and crematory owners or operators to register for a permit to operate in Texas, and gives the Commission the authority to rectify consumer complaints directed at these providers. This legislation does not subject cemetery owners to regulation of their operations by the Commission beyond the final disposition of a body. Cemetery owners who are currently registered with the Department of Banking as "perpetual care cemeteries" will still be subject to the professional accountability required by this bill; however, they will be exempt from having to register with, and pay a second fee to, the Commission.

4.2 Require cemeteries and crematories to disclose information to consumers.

This provision requires that the same disclosure requirements that currently apply to funeral homes be extended to cemeteries and crematories.

4.3 Authorize the Commission to enforce violations of unprofessional conduct by owners or operators of cemeteries and crematories, as defined by Commission rules.

This provision authorizes the Commission to impose a range of penalties for violations of the statute.

4.4 Authorize the Commission to set, in rule, reasonable fees to cover the costs of registration of cemeteries and crematories.

This provision will allow the Commission to establish a single cost-recovery fee for administering the registration of owners of cemeteries and crematories, and to incorporate into fees the estimated costs for the investigation of complaints.

4.5 Ensure that funeral directors are responsible for services and goods they subcontract or arrange for as part of a package funeral, including cemetery and crematory services.

This provision will ensure that funeral directors who subcontract for cemetery and crematory services are held accountable for the entire disposition of the body. The statute clearly defines that a funeral director's responsibility ends when the body is interred, rather than ending when the services are complete.

5. Expand the Commission from Six to Seven Members by Adding an Owner or Operator of a Cemetery as a Member.

The Legislature adopted the Sunset Commission recommendation to expand the Commission to seven members to comply with new constitutional requirements. However, the legislation specifies that the new member be a representative of cemetery owners or operators rather than a funeral director or embalmer. Current requirements for a majority of public members and for the Chair and Vice Chair to be public members remain in place.

6. Continue the Commission for a Two-Year “Probationary” Period to Ensure That Needed Changes Have Been Implemented.

6.1 Continue the Commission for a two-year probationary period and require the Sunset Commission to re-evaluate the agency to ensure that needed changes have been implemented before the legislative session in 2003.

The Legislature, based on the recommendations of the Sunset Commission, opted to maintain the Commission as a stand-alone agency for two years, rather than for the standard 12-year period. The Sunset Commission will perform a limited review in 2002 to evaluate whether the agency has shown significant progress in addressing the problems raised in its Sunset review using the following criteria.

- Development and implementation of a contract with the Department of Information Resources to improve information technology.
- Development and implementation of a contract for legal services with the Office of the Attorney General.
- Effective implementation of the Sunset recommendations.

6.2 Create a task force to guide the Commission in the implementation of these recommended changes.

The legislation provides for a six-member task force chaired by a representative of the Comptroller of Public Accounts, and consisting of representatives from the Department of Information Resources, Office of the Attorney General, and Office of the State Auditor. The Comptroller’s Office will also select one representative of the funeral industry and one consumer representative. The task force will be charged with helping the Commission with automation, legal, and enforcement structures for effective regulation. The task force will expire in January 2003, when the 78th Legislature convenes.

6.3 For additional technical support, add the Commission as a member of the Health Professions Council.

This provision will allow the Executive Director of the Commission to interact with and benefit from the experience of other licensing agency directors.

Provision Added by the Legislature

7. Authorize the Commission to Automatically Revoke a License if the Licensee is Convicted of a Felony Related to the Funeral Industry.

The Legislature added this provision to allow the Commission to automatically revoke a license, without a hearing, in cases of proven criminal activity related to the licensee's work in the funeral industry.

Fiscal Implication Summary

Three of the recommendations regarding the Commission involve a cost to the State, however these costs will be fully covered by licensing fee revenue. They are discussed below, followed by a five-year chart that summarizes the fiscal impact.

Expanding the Commission's authority over certain cemetery and crematory services will require additional expenditures and two new FTEs, but new permitting fees will cover additional costs.

Expanding the Commission's size to seven members will require additional travel expenses and per diem for the new member.

Continuing the Commission for a probationary period with outside computer and legal assistance will require several one-time expenditures followed by lesser annual maintenance costs.

Fiscal Year	Gains to the General Revenue Fund	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$350,860	(\$350,860)	+2
2003	\$75,648	(\$75,648)	+2
2004	\$75,648	(\$75,648)	+2
2005	\$75,648	(\$75,648)	+2
2006	\$75,648	(\$75,648)	+2

State Securities Board

Staff Contact: Steve Hopson

H.B. 2255 McCall (Harris)

Summary

The State Securities Board (SSB) was created in 1957 to protect investors from securities fraud and assure access to capital for businesses in Texas. To achieve its mission, the State Securities Board registers securities offerings, licenses and inspects securities professionals, investigates fraudulent securities offerings, and enforces violations of the Securities Act. The State Securities Board operates with an annual budget of about \$3.5 million and employs 81 people. The Legislature adopted all of the Sunset Commission's recommendations and added several other modifications to the agency's Sunset bill. The list below summarizes the major provisions of H.B. 2255, and a more detailed discussion follows.

Sunset Provisions

1. Expand the State Securities Board From Three to Five Public Members.
2. Strengthen SSB's Enforcement Authority by Establishing Corporate Criminal Penalties, Civil Liability Against Investment Advisers, and Emergency Cease and Desist Orders.
3. Specify That SSB Has the Authority to Inspect Securities Dealers and Investment Advisers.
4. Specify That Investor Education Is a Function of the State Securities Board.
5. Create Separate Definitions in the Securities Act for Securities Dealers, Investment Advisers, and Their Agents.
6. Continue the State Securities Board for 12 Years.

Provisions Added by the Legislature

7. Clarify That the Commissioner May Delegate Powers and Duties.
8. Establish a Uniform Consent to Service Procedure With Other States.
9. Improve Cooperation Between SSB and Other Governmental and Regulatory Entities.
10. Authorize SSB to Access Criminal History Information From the Department of Public Safety.
11. Modify the Damages That a Securities Buyer May Recover for Fraud.

Sunset Provisions

1. Expand the State Securities Board From Three to Five Public Members.

The legislation expands the State Securities Board to avoid problems with the Open Meetings Act, increase the Board's ability to communicate, allow the use of subcommittees, and increase its expertise.

2. Strengthen SSB's Enforcement Authority by Establishing Corporate Criminal Penalties, Civil Liability Against Investment Advisers, and Emergency Cease and Desist Orders.

2.1 Establish criminal liability against corporations for violations of the State Securities Act.

The bill extends the Securities Act's criminal penalties to include business entities that engage in fraud or violate registration provisions. Convicted businesses will be subject to sanctions set forth in the Texas Penal Code and the Business Corporations Act.

2.2 Establish civil liability against investment advisers for fraud and registration violations.

This provision extends civil liability provisions for securities dealers in the Securities Act to include investment advisers engaging in fraud or violating registration provisions.

2.3 Extend the Commissioner's cease and desist authority and authorize emergency cease and desist orders.

This legislation extends the Commissioner's cease and desist authority to include unregistered agents of securities dealers and investment advisers, and the fraudulent sale practices in which a firm or individual has engaged or is about to engage. This bill also authorizes the Commissioner to issue emergency cease and desist orders to immediately stop any fraud, fraudulent activity, or violation of the Securities Act.

2.4 Clarify that the Commissioner may assess administrative fines for fraud.

The Commissioner may assess administrative fines for any type of securities fraud, not just fraud related to a violation of the Securities Act.

2.5 Specify that the State may issue injunctions against fraud related to investment advisory services, materially misleading statements, and violations of Board rules or orders.

In addition to clarifying the application of injunctions, this bill extends jurisdiction to a district court in Travis County over injunctions.

3. Specify That SSB Has the Authority to Inspect Securities Dealers and Investment Advisers.

This provision authorizes the Commissioner to conduct, without notice, an inspection of the records of a securities dealer or an investment adviser for the purpose of ensuring compliance with the Securities Act and Board rules. In addition, the bill provides for the confidentiality of information obtained in the inspection of the records of a dealer or investment adviser. This legislation also clarifies that information obtained during investigations is confidential, but may be disclosed to other securities regulatory agencies.

4. Specify That Investor Education Is a Function of the State Securities Board.

This legislation requires SSB to educate the public as part of the agency's statutory mission to protect investors. The investor education initiatives will inform the public about the basics of investing and how to detect and avoid securities fraud. The bill also clarifies SSB's authority to accept grants and donations for use in the agency's education initiatives.

5. Create Separate Definitions in the Securities Act for Securities Dealers, Investment Advisers, and Their Agents.

H.B. 2255 distinguishes between securities dealers and investment advisers, and between the agents of securities dealers and investment advisers. In addition, the bill limits the Board's authority to grant reduced fees for persons registered in several capacities to accommodate small businesses only. However, the statute will ensure that a person who is dually registered with SSB as a dealer and an investment adviser only pays one fee.

6. Continue the State Securities Board for 12 Years.

This legislation continues the State Securities Board for the standard 12-year period until 2013.

Provisions Added by the Legislature

7. Clarify That the Commissioner May Delegate Powers and Duties.

The Legislature added a provision to specify that the duties and powers assigned by the Securities Act and other laws to the agency or the Commissioner may be assigned to other personnel of the State Securities Board.

8. Establish a Uniform Consent to Service Procedure With Other States.

To establish a uniform procedure with other states, the Legislature eliminated the requirement that a securities dealer or investment adviser submit a written resolution appointing the Commissioner the issuer’s attorney. Instead, securities dealers and advisers will be required to sign a standard form of consent to service.

9. Improve Cooperation Between SSB and Non-governmental and Regulatory Entities.

The Legislature added a provision to authorize the Commissioner to accept examinations administered by securities self-regulatory organizations to fulfill the Act’s examination requirements.

10. Authorize SSB to Access Criminal History Information From the Department of Public Safety.

SSB may obtain criminal backgrounds from DPS on persons currently registered under the Securities Act, applicants for registration, current employees of the agency, and applicants for employment with the agency.

11. Modify the Damages That a Securities Buyer May Recover for Fraud.

The Legislature added a provision to H.B. 2255 that permits a second method of calculating the damages that buyers of securities may recover from fraudulent sellers.

Fiscal Implication Summary

Two of the bill’s provisions have a fiscal impact to the State. These provisions are discussed below, followed by a five-year summary chart.

Expanding the State Securities Board to five members will result in additional travel expenses and per diem of two new members, costing the State about \$1,800 a year.

Investor education initiatives will cost the State about \$77,500 per year to pay for the program’s operating expenses and one full-time employee to manage the program.

Fiscal Year	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	(\$79,300)	+1
2003	(\$79,300)	+1
2004	(\$79,300)	+1
2005	(\$79,300)	+1
2006	(\$79,300)	+1

Across-the-Board Recommendations

Across-the-Board Recommendations

This section of the report briefly describes each of the Sunset across-the-board recommendations (ATBs), with a chart detailing the application the ATBs to each of the agencies under review for the 77th Legislature.

Across-the-board recommendations are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards for state agencies. These policies are an outgrowth of the Sunset review criteria as set out in the Sunset Act and have resulted from recurring problem areas identified through almost 300 Sunset reviews. The ATBs are designed to ensure open, responsive, and effective government.

The across-the-board recommendations are applied to every state agency reviewed by the Sunset Commission, unless a clear reason to exempt the agency is identified. Some Sunset ATBs address policy issues related to an agency’s policymaking body, such as requiring public membership on boards or allowing the Governor to designate the chair of a board. Other Sunset ATBs require agencies to set consistent policies in areas such as handling complaints and ensuring public input. Another set of ATBs deals exclusively with licensing standards and apply only to agencies with regulatory functions.

General Across-the-Board Recommendations

- 1. Public Membership** – Require at least one-third public membership on state agency policymaking bodies.

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. The requirement that at least one-third of the members be representatives of the general public ensures appropriate representation.

- 2. Conflicts of Interest** – Require specific provisions relating to conflicts of interest.

An agency may develop close ties with professional trade organizations and other groups that may not be in the public interest. Conflicts of interest can also result when board or commission members or an agency’s general counsel are involved in lobbying. This guideline reduces the possibility of such a conflict. These provisions are necessary to prevent these kinds of relationships from developing.

- 3. Nondiscriminatory Appointments** – Require that appointment to the policymaking body be made without regard to the appointee’s race, color, disability, sex, religion, age, or national origin.

State agencies must be fair and impartial in their operations. The achievement of this goal is aided by the existence of policymaking bodies whose appointees have been chosen on an impartial and unbiased basis.

- 4. Governor Designates Presiding Officer** – Provide for the governor to designate the presiding officer of a state agency’s policymaking body.

Presiding officers of state commissions and boards in Texas have traditionally been elected by their fellow members. In an effort to increase state agencies’ accountability, the Legislature routinely has authorized the Governor to appoint the presiding officer of state policymaking bodies.

- 5. Grounds for Removal** – Specify grounds for removal of a member of the policymaking body.

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

- 6. Standards of Conduct** – Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.

This recommendation ensures that an agency’s policymaking body and employees are informed of provisions in state law concerning standards of conduct for state officers and employees.

- 7. Board Member Training** – Require training for members of policymaking bodies.

Members of state boards and commissions should be provided with adequate information and training to allow them to properly and effectively discharge their duties. This provision ensures that appropriate training is provided before an appointee actively begins serving on a board or commission.

- 8. Separation of Functions** – Require the agency’s policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.

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 policymaking body administering the agency in addition to setting agency policy.

- 9. Public Input** – Provide for public testimony at meetings of the policymaking body.

This requirement ensures the opportunity for public input to the policymaking body on issues under its jurisdiction.

- 10. Complaint Information** – Require information to be maintained on complaints.

The Sunset review process has shown that complete and adequate information about complaints is maintained by some agencies. This recommendation ensures that, at a minimum, files are developed and maintained on all complaints. This provision also provides that all parties to a complaint are made aware of the status of the complaint and agency policies and procedures pertaining to complaint investigation and resolution.

- 11. Equal Employment** – Require development of an equal employment opportunity policy.

This recommendation ensures that each agency develops a written, comprehensive equal employment opportunity plan that is filed with the Governor’s Office and updated annually. Agency efforts in this area are further enhanced by requiring the agency to file annual progress reports with the Governor’s Office.

12. State Employee Incentive Program – Require training on participation in the State Employee Incentive Program.

This recommendation ensures that an agency’s employees are educated on the State’s program to reward innovative and cost-saving measures, which can improve the agency’s operations and reward the employee(s) involved.

Licensing Across-the-Board Recommendations _____

1. Renewal Time Frames – Require standard time frames for licensees who are delinquent in renewal of licenses.

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 ensuring comparable treatment for all licensees, regardless of their regulated profession. This provision also clarifies that a person whose license has expired may not engage in activities that require a license until the license has been renewed.

2. Notification of Exam Results – Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.

This provision ensures the timely reporting of examination results, which is important to those persons whose future plans are contingent on their examination scores. This provision also ensures that examinees are informed of the reasons for failing the examination. Such knowledge serves to protect the examinee from arbitrary restrictions, as well as assisting the examinee to acquire the skills and knowledge to pass the exam and provide the public with quality services.

3. Endorsement and Reciprocity – Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.

Agencies should be allowed to establish a procedure to license out-of-state applicants without examination if the applicant is currently licensed by another state. This 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.

Two approaches to licensing out-of-state applicants are endorsement and reciprocity. Licensure by endorsement requires the licensing agency to review each applicant’s credentials before issuing a license to determine if the applicant was required to meet substantially equivalent requirements in another state. Licensure by reciprocity allows the licensing agency to enter into a reciprocal agreement with another state under which each state will accept the other state’s licensees. These licensing approaches are not mutually exclusive and, if appropriate, agencies could be authorized to use both approaches.

4. Provisional Licenses – Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.

Provisional licenses allow license applicants who hold a license in another state to practice in Texas while their credentials are being evaluated. Provisional licenses can be issued only if the individuals meet certain requirements such as passing a recognized examination and being sponsored by a Texas licensee.

5. Staggered Renewal of Licenses – 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.

6. Full Range of Penalties – Authorize agencies to use a full range of penalties.

As a general principle, an agency’s range of penalties should conform to the seriousness of the offenses presented to the agency. However, in many cases licensing agencies are not given a sufficient range of penalties. This provision is intended to ensure that the appropriate sanctions for offenses are available to the agency. The general range of sanctions include: revocation of a license, suspension of a license, refusal to renew a license, probation of a person whose license has been suspended, or reprimand of a licensee.

7. Advertising and Competition – Revise restrictive rules or statutes to allow advertising and competitive bidding practices that 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.

8. Continuing Education – Require the policymaking body to adopt a system of continuing education.

Proper protection of the public is 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.

Application of ATBs to Agencies Under Review _____

For the agencies under Sunset review for the 77th legislative session, each of the ATBs was evaluated and applied where appropriate. If the standard approach did not fit, the language was modified to fit the precise circumstances of an individual agency’s operations. In addition, some of the agencies under review this session had been previously reviewed and the ATB language was already in law or simply had to be updated. The following chart details the application of ATBs to agencies that underwent review in the 77th Legislative Session.

Sunset Across-the-Board Recommendations — 2001											
	Aircraft, Pooling Board, State	Banking, Department of	Coastal Coordination Council	Consumer Credit Commissioner	Economic Development, Office of	Department of	Finance Commission of Texas	Fire Fighters' Pension Commissioner, Office of	Funeral Service Commission, Texas	General Services Commission, Texas	Texas State Cemetery
General											
1. Public Membership	s	①	n/a	①	s	u	u	s	s	s	
2. Conflicts of Interest	s	m	a	u	s	u	m	u	u	s	
3. Nondiscriminatory Appointments	s	①	a	①	s	s	u	s	s	s	
4. Governor Designates Presiding Officer	n	①	n/a	①	s	s	n/a	s	s	s	
5. Grounds for Removal	s	①	a	①	u	u	n/a	s	u	a	
6. Standards of Conduct	s	a	a/m	u	s	a	s	s	s	a	
7. Board Member Training	s	①	a/m	①	a	a	n/a	a	a	a	
8. Separation of Functions	s	a	n/a	①	a	a	n/a	u	s	a	
9. Public Input	s	①	a	①	s	a	n/a	s	s	a	
10. Complaint Information	a	m	a	u	u	a	a	u	u	②	
11. Equal Employment	s	a	n/a	u	s	u	u	u	s	②	
12. Employee Incentive Program	a	a	a	a	a	a	a	a	a	②	
Licensing											
1. Time Frames	n/a	n/a	n/a	n/a	n/a	n/a	n/a	u	n/a	n/a	
2. Notification of Exam Results	n/a	n/a	n/a	n/a	n/a	n/a	n/a	u	n/a	n/a	
3. Endorsement and Reciprocity	n/a	n/a	n/a	n/a	n/a	n/a	n/a	u	n/a	n/a	
4. Provisional Licenses	n/a	n/a	n/a	n/a	n/a	n/a	n/a	a	n/a	n/a	
5. Staggered Renewal of Licenses	n/a	n/a	n/a	a	n/a	n/a	n/a	u	n/a	n/a	
6. Full Range of Penalties	n/a	③	n/a	s	n/a	n/a	n/a	s	n/a	n/a	
7. Advertising and Competition	n/a	n/a	n/a	m	n/a	n/a	n/a	s	n/a	n/a	
8. Continuing Education	n/a	n/a	n/a	n/a	n/a	n/a	n/a	s	n/a	n/a	

a=apply; u=update; m=modify; s=already in statute; n=do not apply; n/a=not applicable
 ① Located in the Finance Commission of Texas Statute.
 ② Located in the General Services Commission Statute.
 ③ Licensing ATB 6 was applied to the Department of Banking's Prepaid Funeral Contract Program.

Sunset Across-the-Board Recommendations — 2001											
	Housing and Community Affairs, Texas Department of	Judicial Conduct, State Commission on	Natural Resource Conservation Commission, Texas	Parks and Wildlife Department, Texas	Pension Review Board, State	Railroad Commission of Texas	Savings and Loan Department	Securities Board, State	Soil and Water Conservation Board, State	Water Development Board, Texas	
General											
1. Public Membership	u	m	u	m	n/a	n/a	①	u	n/a	s	
2. Conflicts of Interest	u	a	u	m	s	u	u	a	u	u	
3. Nondiscriminatory Appointments	u	a	u	u	u	n/a	①	u	a	u	
4. Governor Designates Presiding Officer	u	n	u	u	a	n/a	①	a	n/a	s	
5. Grounds for Removal	u	m	u	u	u	n/a	①	u	u	u	
6. Standards of Conduct	u	a	s	u	u	u	a	a	u	u	
7. Board Member Training	a	m	m	a	a	n/a	①	a	u	a	
8. Separation of Functions	u	a	s	u	u	a	①	a	s	a	
9. Public Input	s	n	s	s	s	a	①	a	s	s	
10. Complaint Information	u	m	m	a	a	u	a	m	u	u	
11. Equal Employment	s	a	u	u	u	u	a	a	u	u	
12. Employee Incentive Program	a	a	a	a	a	a	a	a	a	a	
Licensing											
1. Time Frames	u	n/a	s	n/a	n/a	a	a	s	n/a	n/a	
2. Notification of Exam Results	u	n/a	s	n/a	n/a	a	n/a	u	n/a	n/a	
3. Endorsement and Reciprocity	a	n/a	a	n/a	n/a	a	a	n	n/a	n/a	
4. Provisional Licenses	a	n/a	n/a	n/a	n/a	a	a	n	n/a	n/a	
5. Staggered Renewal of Licenses	u	n/a	u	n/a	n/a	s	s	s	n/a	n/a	
6. Full Range of Penalties	u	n/a	s	n/a	n/a	a	s	s	n/a	n/a	
7. Advertising and Competition	s	n/a	n	n/a	n/a	a	s	s	n/a	n/a	
8. Continuing Education	a	n/a	s	n/a	n/a	a	s	m	n/a	n/a	
a=apply; u=update; m=modify; s=already in statute; n=do not apply; n/a=not applicable											
① Located in the Finance Commission of Texas Statute.											

Appendix

Sunset Review Schedule - 2003

General Government	Ethics Commission, Texas Lottery Commission, Texas People with Disabilities, Texas Council on Purchasing from
Health and Human Services	Health, Texas Department of Human Services, Department of
Education	Educator Certification, State Board for Higher Education Coordinating Board, Texas
Judiciary	Bar of Texas, State Court Reporters Certification Board Law Examiners, Board of
Public Safety and Criminal Justice	Correctional or Rehabilitation Facility Subchapter
Business and Economic Development	Aerospace Commission, Texas Economic Development, Texas Department of Housing and Community Affairs, Texas Department of Housing Corporation, Texas State Affordable Workforce Commission, Texas Workforce and Economic Competitiveness, Council on
Regulatory	Accountancy, Texas State Board of Public Administrative Hearings, State Office of Architectural Examiners, Texas Board of Dental Examiners, State Board of Engineers, Texas Board of Professional Funeral Service Commission, Texas Land Surveying, Texas Board of Professional Licensing Agency Pilot Project Licensing and Regulation, Texas Department of Plumbing Examiners, Texas State Board of Regulation of Riding Stables Chapter Tax Professional Examiners, Board of

