Sunset Advisory Commission

Report to the 85th Legislature

2016–2017
85th Legislature

Sunset Advisory Commission

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Cover Photo: The iron perimeter fence was installed in the 1890s, a few years after the completion of the Texas State Capitol. The fence surrounds approximately 22 acres of the Capitol Grounds but only on the east, west, and south sides due to the addition of the Capitol Extension to the north in the early 1990s. Photo Credit: Janet Wood

SUNSET ADVISORY COMMISSION

P.O. Box 13066 ❖ Austin, Texas 78711-3066

February 10, 2017

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The Honorable Greg Abbott
Governor of Texas

The Honorable Dan Patrick
Lieutenant Governor of Texas

The Honorable Joe Straus
Speaker, Texas House of Representatives

Honorable Members of the 85th Legislature
Assembled in Regular Session

Ladies and Gentlemen:

As we begin the 85th Legislative Session, the members of the Sunset Advisory Commission present to you the enclosed results of the thousands of hours of staff work, hearings, debate, and decisions of the commission. As you know, statute directs the Sunset Commission members and staff to review and evaluate the performance of agencies subject to the Sunset Act each biennium, recommend the abolition or continuation of these agencies, propose statutory or management changes needed to better serve Texans, and develop legislation to implement proposed statutory changes.

Between September 2015 and January 2017, the Sunset Commission worked to develop recommendations regarding the 24 entities under Sunset review. These recommendations to the 85th Legislature intend to streamline government, while enhancing services to our citizens. Notable improvements include abolishing or consolidating five individual boards or agencies, eliminating many unnecessary regulations, and strengthening agencies' ability to effectively oversee health professions. Overall, the Sunset Commission's recommendations will position these agencies to best meet the challenge of cost effectively delivering outstanding services to the citizens of Texas. If implemented, these recommendations would result in a positive fiscal impact to the state of about $2.9 million over the next five fiscal years.

The Sunset Advisory Commission is pleased to forward to you its findings and recommendations with this report.

Respectfully Submitted,

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INTRODUCTION

Introduction

Sunset is the Legislature's regular assessment of the continuing need for a state agency to exist. For agencies that are needed, the process also provides a unique opportunity to take a close look and make fundamental changes to their mission or operations to make them more efficient, effective, and more open and responsive to citizens. The Sunset process works by setting a date on which an agency is automatically abolished unless the Legislature passes a bill to continue its operations. Agencies typically undergo review once every 12 years.

Sunset for the 85th Legislative Session

The Sunset Commission conducted a total of 24 reviews this biennium. Health profession licensing and regulation was a key focus, with the boards that regulate doctors, dentists, nurses, pharmacists, veterinarians, chiropractors, behavioral health professionals, and other health professions under review. The Sunset Commission also reviewed the State Bar of Texas and other agencies integral to Texas' economy in diverse ways, including the Texas Department of Transportation and the Railroad Commission of Texas, the state's agency for regulating the oil and gas industry.

Sunset adopted 371 recommendations to improve the agencies under review.

The Legislature also directed Sunset to review five entities not subject to abolishment — the Employees Retirement System of Texas and four river authorities, including the Central Colorado River Authority, Palo Duro River Authority of Texas, Sulphur River Basin Authority, and Upper Colorado River Authority.

Results

Following extensive analysis, testimony, and deliberations, the Sunset Commission recommends that the 85th Legislature pass legislation making significant improvements to the operations and oversight of 24 entities. Sunset recommends continuing 14 agencies and abolishing and transferring the functions of the Texas State Board of Podiatric Medical Examiners. Sunset also recommends consolidating four behavioral health boards into one agency to minimize duplication and address serious gaps in quality of regulation and public protection. While five entities do not have a Sunset expiration clause, the commission recommended numerous enhancements to their operations and oversight.

Altogether, the Sunset Commission adopted 371 recommendations to improve agency operations, use available funds more efficiently, and position these agencies to better serve the people of Texas. The chart on page 3, *85th Session Sunset Summary Information*, summarizes the Sunset Commission's decisions regarding the continuation of the agencies under review and provides an estimated fiscal impact of recommended changes.

A hallmark of the Sunset process is elimination of unnecessary or burdensome regulation. Through its reviews of health licensing agencies, the Sunset Commission recommends eliminating several unnecessary registrations of businesses. Because fee revenue for these registrations exceeds the cost of the minimal regulation involved, deregulation means a loss in state revenue, since the state will no longer receive these fees. Other recommendations to consolidate the state's behavioral health licensing boards, while expected to save money over time, will also require upfront investments in the upcoming biennium to transfer data, establish the consolidated agency, and most importantly, reinstate public protection in three of the behavioral health boards that had almost come to a complete stop over the last few years. Overall, the Sunset Commission's recommendations would result in a positive fiscal impact to the state of about $2.9 million over the next five fiscal years.

Guide to Recommendations

Individual chapters in this report summarize Sunset recommendations for each agency under review this biennium, including three types of recommendations as described below, followed by the fiscal impact of these changes.

- **Statutory Change**. These changes in law require consideration and action by the full Legislature and are drafted into Sunset legislation on each agency.
- **Management Action**. These changes call for management action by an agency and do not require legislative action. As adopted by the Sunset Commission, these recommendations should be implemented by each agency over the next two years or as specified by the Sunset Commission.
- **Appropriations Change**. These changes articulate to the appropriative committees the Sunset Commission's interest in changes to agencies' appropriations. These changes are not contained in the Sunset bills for those agencies.

For this report, the discussion of recommendations has been shortened. However, more detailed information on Sunset's recommended changes on each of the agencies can be found in the individual Sunset staff report on each agency, available on the commission's website, or by contacting Sunset staff directly.

Implementation of Previous Sunset Recommendations

Following the current recommendations, the report includes an update on the status of state agencies' implementation of changes adopted through the Sunset process last session. Sunset staff and the State Auditor's Office reviewed implementation of 274 changes and, to date, agencies have implemented 63 percent of these changes. While this percentage is lower than most legislative cycles, the sheer volume of recommendations related to the state's vast health and human service system resulted in timing and resource issues for the system and was not unexpected.

Other Report Material

Also included in this report is a brief history of the Sunset Commission and development of the Sunset Act, a list of agencies scheduled for Sunset review in 2019, and a summary of that act.

85th Session Sunset Summary Information

Agency	Action	Two-Year Net Fiscal Impact	Five-Year Net Fiscal Impact
Bar of Texas, State	Continue	No Impact[1]	No Impact[1]
Central Colorado River Authority	N/A	No Impact	No Impact
Chiropractic Examiners, Texas Board of	Continue	($438,350)	($1,095,875)
Counselors, Texas State Board of Examiners of Professional	Consolidate[2]	($693,215)[3]	($955,337)[3]
Dental Examiners, State Board of	Continue	$95,800	$239,500
Employees Retirement System of Texas, Board of Trustees of	N/A	No Impact	No Impact
Law Examiners, Board of	Continue	No Impact	No Impact
Marriage and Family Therapists, Texas State Board of Examiners of	Consolidate[2]	No Impact[3]	No Impact[3]
Medical Board, Texas	Continue	($366,560)	($916,400)
Nursing, Texas Board of	Continue	No Impact	No Impact
Optometry Board, Texas	Continue	No Impact	No Impact
Palo Duro River Authority of Texas	N/A	No Impact	No Impact
Pharmacy, Texas State Board of	Continue	($72,000)	($180,000)
Physical Therapy and Occupational Therapy Examiners, Executive Council of	Continue	($1,932,000)	($4,830,000)
Occupational Therapy Examiners, Texas Board of	Continue		
Physical Therapy Examiners, Texas Board of	Continue		
Podiatric Medical Examiners, Texas State Board of	Abolish and Transfer	($33,798)	$6,405
Psychologists, Texas State Board of Examiners of	Consolidate[2]	($62,000)[3]	($155,000)[3]
Railroad Commission of Texas	Continue	$1,889,229	$7,556,916
Social Worker Examiners, Texas State Board of	Consolidate[2]	No Impact[3]	No Impact[3]
Sulphur River Basin Authority	N/A	No Impact	No Impact
Transportation, Texas Department of	Continue	$80,940	$3,273,450
Upper Colorado River Authority	N/A	No Impact	No Impact
Veterinary Medical Examiners, State Board of	Continue	No Impact	No Impact
Net Fiscal Impact		**($1,531,954)**	**$2,943,659**

1 Total does not include the State Bar of Texas' estimated cost of $204,500 for 2 years or $511,250 for 5 years for a new independent ombudsman's office and an improved dispute referral process because the State Bar receives no state funds and operates outside of the appropriations process.

2 The Sunset recommendation would consolidate the behavioral health boards licensing and regulating counselors, marriage and family therapists, psychologists, chemical dependency counselors, sex offender treatment providers, and social workers to create the Texas Behavioral Health Executive Council.

3 The cost to consolidate the behavioral health boards is reflected in the chart once to limit duplication.

Sunset Commission Recommendations

State Bar of Texas

Katharine Teleki, Project Manager

Summary

The State Bar is an outlier among Texas occupational licensing agencies. Under the authority of the Texas Supreme Court, the agency combines oversight of the legal profession with activities typical of a professional association. The Sunset Commission concluded this approach is commonplace to how attorneys are regulated nationwide and made no dramatic recommendations to reorganize the State Bar. Instead, the commission focused on strengthening the State Bar's public protection mission primarily carried out by the Office of the Chief Disciplinary Counsel, the agency's enforcement arm.

The State Bar's slow and ineffective rulemaking process needs restructuring to ensure updated standards for attorney conduct and discipline.

The commission identified concerns with the slow and recently ineffective process for updating rules and procedures governing attorney conduct and the disciplinary process. The commission recommends restructuring the rulemaking process under a newly created Committee on Disciplinary Rules and Referenda, while maintaining the authority of State Bar members to approve rule changes through a referendum. The commission also recommends a series of best practices to help improve efficiency and responsiveness for attorneys and the public, and help the Office of the Chief Disciplinary Counsel better do its job to monitor and take action against unethical attorneys. These changes include creating an independent ombudsman's office at the Supreme Court, better using informal dispute resolution, and ensuring the State Bar can access criminal records for licensed attorneys, among other recommendations.

Recommendations

Governance

- Improve the State Bar's rulemaking process by requiring a new rules committee, clear timeframes, and opportunities for public input, while preserving the right for attorneys to vote to approve rules governing their conduct and discipline.
- Require State Bar membership fee changes to be approved through the State Bar's existing budget process, which includes posting the changes at a public hearing, instead of through the lengthy rulemaking process.
- Update a standard Sunset good government provision to ensure State Bar board members are adequately trained on their responsibilities and the limits of their authority.

Attorney Discipline Process

- Require the State Bar to obtain fingerprint-based criminal background checks on all licensed attorneys to ensure effective monitoring of attorney conduct, while limiting administrative burden through a two-year phase-in period and transfer of existing information from the Board of Law Examiners.
- Require licensed attorneys to self-report criminal activity and discipline imposed by other states, and the State Bar to regularly query a national disciplinary database to ensure access to complete information needed to protect Texans.
- Reinstate the chief disciplinary counsel's subpoena power during the investigative phase of the attorney discipline process, with approval and appeal safeguards, to ensure timely access to information needed to investigate allegations.
- Require a standard process and criteria for conducting investigatory hearings to attempt earlier resolution for certain cases and avoid costly litigation when possible.
- Require a re-evaluation and adjustment of time frames governing the grievance process to provide flexibility while also preserving timely resolution of cases.
- Clearly establish the Grievance Referral Program in rule, and expand its use to any point in the attorney discipline process to formalize the use of this non-disciplinary approach for case resolution.
- Require comprehensive sanction guidelines in the Texas Rules of Disciplinary Procedure to promote consistent statewide application of sanctions for similar types of misconduct and transparency into decision making.

Public Information and Consumer Assistance

- Establish an independent ombudsman's office under the direct authority of the Supreme Court, but funded by the State Bar, to help people access the attorney discipline system and evaluate the effectiveness of the system overall.
- Require an earlier referral process to divert minor issues from the formal grievance system to the Client-Attorney Assistance Program to help resolve common client-attorney issues more quickly and improve overall public satisfaction.
- Require the chief disciplinary counsel to track and report detailed disciplinary case outcomes, including posting summary information to the website, to provide evaluative information about how the discipline system functions overall.
- Require the State Bar to post public information about individual disciplinary actions taken against attorneys on its website to make it easier for people to make informed decisions about attorneys they may hire.
- Direct the Office of the Chief Disciplinary Counsel to more proactively provide assistance to complainants in understanding reasons for complaint dismissal. (Management action – nonstatutory)

Continue

- Continue the State Bar for 12 years.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations on the State Bar would not have a fiscal impact to the state, as the agency receives no state funds and operates outside of the appropriations process. Many recommendations are designed to improve internal operations and efficiency at the agency, but their exact impact would depend on implementation. However, several issues would have a direct fiscal impact to the State Bar or licensed attorneys, as summarized below.

The recommendation to require fingerprint-based criminal background checks would require many currently licensed attorneys to pay a one-time fee of $40.

The recommendation to require the State Bar to support an independent ombudsman's office at the Supreme Court would cost the State Bar about $65,250 per year to fund salary and benefits for one full-time position.

The recommendation to create a referral process for certain low-level grievances for informal dispute resolution would have a negative fiscal impact to the State Bar's Client-Attorney Assistance Program of about $37,000 per year to process the additional cases. Referring more low-level grievances for informal dispute resolution would allow the chief disciplinary counsel to focus resources on more high-priority cases, but would not produce a fiscal savings since the reduced caseload would be spread across the state.

Behavioral Health Boards

Texas State Board of Examiners of Marriage and Family Therapists

Texas State Board of Examiners of Professional Counselors

Texas State Board of Social Worker Examiners

Robert Romig, Project Manager

Summary

The Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners are charged with protecting persons receiving behavioral health services. The boards, however, are not independent agencies and have no staff. Instead, each board receives administrative services from the Department of State Health Services (DSHS). Collectively, the boards regulate about 50,000 licensees, many of whom treat vulnerable clients who suffer from mental health disorders or impairments.

Overall, the Sunset Commission confirmed previous concerns that the administrative attachment of the boards to DSHS is not working, and that the boards have failed to effectively regulate their professions, putting vulnerable Texans at risk. In particular, the boards' enforcement processes are broken. Each board takes an average of two to three years to resolve a complaint, and collectively the boards had amassed an alarming backlog of more than 850 complaint cases.

These boards have failed to effectively regulate their professions, putting Texans at risk.

Given the serious, ongoing, and systemic problems identified, the Sunset Commission concluded these programs cannot continue to function under the existing regulatory structure. When considering the recommendations in the separate *Health Licensing Consolidation Project Sunset Staff Report*, the commission chose to recommend consolidating these boards with the Texas State Board of Examiners of Psychologists and two other occupational regulatory programs at DSHS (the Council on Sex Offender Treatment and licensed chemical dependency counselors) to form the Texas Behavioral Health Executive Council. As a consolidated behavioral health umbrella licensing agency, all licensing, investigative, and enforcement matters would be handled in an efficient functional approach to improve licensing and enforcement outcomes.

The Sunset Commission also identified opportunities for significant improvements to the licensing and enforcement functions associated with these three boards. Recommendations associated with these improvements are needed regardless of the eventual structural location of the boards.

Recommendations

Consolidate

- Continue the regulation of marriage and family therapists, professional counselors, and social workers, but merge these boards with the Texas State Board of Examiners of Psychologists as well as the regulation of sex offender treatment providers and licensed chemical dependency counselors to create the Texas Behavioral Health Executive Council (BHEC), a functionally aligned umbrella licensing agency. This recommendation was made as part of the *Health Licensing Consolidation Project Sunset Staff Report*.

Enforcement

- Abolish the boards' complaints and ethics committees that jeopardize confidentiality and ensure board members are not involved in complaint investigations to safeguard objectivity and neutrality of later decisions on the cases.
- Ensure each board develops policies for prioritizing complaints and that staff prioritizes complaint investigations based on these policies. (Management action – nonstatutory)
- Direct each board to develop policies to settle cases informally. (Management action – nonstatutory)
- Ensure each board updates its enforcement plan, including appropriate penalty matrices. (Management action – nonstatutory)

Licensing

- Require BHEC to conduct fingerprint-based criminal background checks of all licensure applicants and licensees of these boards.
- Authorize BHEC to check for disciplinary actions in other states or from other licensing boards as part of the boards' license application and renewal process, and to pursue any necessary enforcement actions based on the results.
- Remove the statutory limitation currently restricting the boards' authority to lower fees.
- Remove unnecessary qualifications required of marriage and family therapist applicants that could unreasonably restrict entry into practice.
- Remove the statutory requirement that marriage and family therapist applicants have 750 hours of direct clinical services and authorize the board to establish the required hours by rule to increase flexibility and reduce barriers to entry.
- Direct the professional counselor board to remove unnecessary and restrictive education requirements for applicants for licensure. (Management action – nonstatutory)
- Direct each board to enhance the continuing education provider registry and comply with statute by approving continuing education courses. (Management action – nonstatutory)

- Direct each board to reduce the burden of supervision requirements on licensees, supervisors, and staff by setting clearer expectations for supervision and replacing the onerous verification process. (Management action – nonstatutory)
- Direct each board to fully implement expedited processing for military applications and renewals. (Management action – nonstatutory)
- Direct each board to standardize conditions for inactive licensees to reflect best practices. (Management action – nonstatutory)

Fiscal Implication Summary

Texas Behavioral Health Executive Council

Consolidating the five programs from DSHS and the Board of Examiners of Psychologists into the Texas Behavioral Health Executive Council would have an initial negative fiscal impact to the state, with an initial cost of about $470,000 to the General Revenue Fund in fiscal year 2018 that would decrease to about $28,000 in fiscal year 2022. The majority of these costs are necessary to transfer and maintain electronic data at the level needed for effective regulation, as well as eliminate the large backlog of enforcement cases and complaints that have languished at DSHS. Collectively, the three behavioral health boards' 23 staff positions and combined budget of $1.4 million would transfer to BHEC.

Behavioral Health Boards

Given the extensive waste of resources by the Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners, the fiscal impact of the recommendations to improve enforcement processes is difficult to estimate. Streamlining the enforcement processes and providing staff adequate authority to handle baseless and non-jurisdictional complaints will save significant, but inestimable staff resources.

Requiring fingerprint-based criminal background checks would not have a fiscal impact to the state, but would require applicants and licensees to pay a one-time fee of about $40 for a fingerprint background check through the Department of Public Safety. Any increased workload related to background checks could be handled with current resources.

Texas Board of Chiropractic Examiners

Carissa Nash, Project Manager

Summary

Overall, the commission's recommendations aim to focus the chiropactic board on high-risk enforcement activities instead of administrative functions that do not add to public safety. The commission identified poor performance in core licensing and enforcement functions, such as failing to resolve complaints in a timely manner and not conducting criminal background checks on more than half of all chiropractors. Recommendations direct the agency to implement fingerprint background checks for all licensees, identify and resolve bottlenecks in the complaint resolution process, and link penalties for violations more closely to risk. The commission also found that registration of chiropractic facilities is an unnecessary administrative burden that does not add to public safety, and recommended deregulating these facilities. Additional recommendations by the Sunset Commission would ensure the board contracts for chiropractic expertise in the investigation process when needed, update licensing and enforcement processes that have not kept up with best practices, and continue the board for 12 years.

Recommendations aim to focus the board on high-risk enforcement activities.

Recommendations

Facility Registration

- Discontinue the unnecessary registration of chiropractic facilities.

Enforcement

- Require the board to develop an expert review process to ensure chiropractic expertise in its enforcement process and repeal unused peer review requirements.
- Direct the board to develop a plan to improve its investigative process and reduce complaint resolution timeframes. (Management action – nonstatutory)
- Direct the board to prioritize investigations based on risk to the public. (Management action – nonstatutory)
- Direct the board to revise its penalty matrix to more closely align the severity of penalties with the risk a violation poses to the public. (Management action – nonstatutory)
- Direct the board to clearly define grossly unprofessional conduct. (Management action – nonstatutory)
- Prohibit the board from accepting anonymous complaints and require the board to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Direct the board to develop a more user-friendly online complaint form. (Management action – nonstatutory)

Licensing

- Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Remove unnecessary qualifications required of applicants for licensure.
- Authorize the board to check for disciplinary actions in other states or from other licensing boards for license applications and renewals, and to pursue any necessary enforcement action.
- Remove the limitation on the number of times an applicant can take the board's jurisprudence exam.
- Authorize the board to provide biennial license renewal.
- Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Direct the board to stop requiring letters of recommendation as part the initial application process. (Management action – nonstatutory)
- Direct the board to limit and better focus its continuing education audit process. (Management action – nonstatutory)

Practice of Chiropractic

- Add the word "diagnose" to the definition of the practice of chiropractic.

Governance

- Continue the state's regulation of chiropractors and the Texas Board of Chiropractic Examiners as an independent agency for 12 years.
- Update the standard across-the-board requirement related to board member training.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would result in a small negative fiscal impact to the state over the next five years from ending the unnecessary registration requirement for chiropractic facilities.

Based on the number of registered facilities at the end of fiscal year 2015, the recommendation to deregulate chiropractic facilities would result in the loss of approximately $242,055 per year to the General Revenue Fund. However, due to the reduction in workload from not investigating facility-related violations, this loss of general revenue would be offset by salary savings of $22,880 per year from a reduction of one-half of a full-time position.

Texas Board of Chiropractic Examiners

Fiscal Year	Loss to the General Revenue Fund	Change in the Number of FTEs From FY 2017
2018	$219,175	-0.5
2019	$219,175	-0.5
2020	$219,175	-0.5
2021	$219,175	-0.5
2022	$219,175	-0.5

State Board of Dental Examiners

Sarah Kirkle, Project Manager

Summary

For a relatively small agency, the dental board has been buffeted by more than its share of problems due to high turnover among its leadership ranks. At 15 members, the dental board itself is oversized compared to its shrinking duties, leading to board involvement in operational matters well beyond its proper role and the agency's needs. Dentist board members have pursued high-profile rule packages that appear more motivated by business interests than demonstrated concern for public safety; all the while other emerging problems like regulating the administration of anesthesia went largely unaddressed.

The board's pursuit of high-profile rule packages appears more motivated by business interest than public safety.

In light of high-profile media cases exposing gaps in the board's regulation of dental anesthesia, the commission's recommendations aim to strengthen anesthesia regulation through clear enforcement tools, improved training and education requirements for permit holders, and broader avenues for stakeholder input. These recommendations are consistent with the findings of a blue ribbon panel commissioned by Sunset to assess the dental anesthesia problems. Other changes would address deficiencies in the agency's regulation of dental assistants and update licensing and enforcement processes that have not kept up with best practices. The Sunset Commission recommends continuing the agency for 12 years.

Recommendations

Governance

- Sweep the board and reduce the size of the board from 15 to 11 members to include six dentists, three hygienists, and two public members.
- Allow the board's statutory advisory groups to expire and direct the board to establish clearer processes for stakeholder input in rule.
- Update the standard Sunset across-the-board provisions regarding conflicts of interest and board member training.

Dental Anesthesia

- Authorize the board to conduct risk-based inspections of dentists administering parenteral anesthesia in office settings, including pre-permit, random, and compliance inspections.
- Provide four levels of anesthesia permits and require the board to establish minimum standards, education, and training for dentists administering anesthesia.

- Define pediatric and high-risk patients and require additional training on anesthesia administration for those patients.
- Require the board to ensure dentists with an anesthesia permit maintain written emergency management plans, including additional training requirements for certain permit holders.
- Require the board to develop rules establishing minimum emergency preparedness standards necessary before administering anesthesia.
- Define portability and require the board to adopt rules requiring additional training and detailing methods to obtain a portability permit.
- Create a standing advisory committee on dental anesthesia to advise the board on the development and revision of rules related to dental anesthesia.
- Require the board to track and quarterly report anesthesia-related data and to make publicly available on its website aggregate enforcement data by fiscal year and type of license. (Management action – nonstatutory)
- The Sunset Commission requested the agency appoint an independent 5- to 10-member blue ribbon panel to review de-identified data, including confidential investigative information, related to dental anesthesia deaths and mishaps over the last five years, and to evaluate emergency protocols. The panel made recommendations to the Legislature and the Sunset Commission at its January 11, 2017 meeting and the recommendations are available on Sunset's website. (Management action – nonstatutory)

Dental Assistants

- Combine the board's four dental assistant certificate programs into one registration for dental assistants.

Prescription Monitoring Program

- Beginning September 1, 2018, require dentists to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, and subject a dentist to disciplinary action for noncompliance.
- Require the dental board to query the Prescription Monitoring Program on a periodic basis to identify potentially harmful prescribing patterns among its licensees, and authorize the board to open complaints for possible non-therapeutic prescribing.

Licensing and Enforcement

- Clarify the use and role of board members at informal settlement conferences and provide more detailed language on structure and conduct of informal proceedings.
- Create a state dental review committee consisting of nine governor-appointed members, including six dentists and three dental hygienists, to serve at informal settlement conferences on a rotating basis.
- Require the board to monitor licensees for adverse licensure actions in other states.
- Authorize the board to deny applications to renew a license if an applicant is not compliant with a board order.

- Authorize the board to require evaluations of licensees suspected of being impaired and require confidentiality for information relating to the evaluation and participation in treatment programs.
- Remove unnecessary qualifications required of applicants for licensure or registration.
- Direct the board to make data on the board's enforcement activity information publicly available on its website. (Management action – nonstatutory)
- Direct the board to stagger registration and certificate renewals. (Management action – nonstatutory)

Continue

- Continue the State Board of Dental Examiners for 12 years.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would result in a positive fiscal impact to the General Revenue Fund of approximately $47,900 annually from reducing the size of the board and enhancing licensing and enforcement efforts.

The recommendation to decrease the number of board members by four would result in a small annual savings of about $8,300 to the General Revenue Fund resulting from decreased travel costs. Requiring nine members to attend informal settlement conferences on a rotating basis would cost approximately $5,400 per year in travel costs, assuming each member attended informal settlement conferences two times per year.

The recommendation to authorize the board to inspect dental offices administering anesthesia would not have a significant fiscal impact to the state, though actual implementation would have costs associated with extra staff, travel, and equipment. These costs could be mitigated by an adjustment to existing anesthesia permitting fees.

The recommendation to query the National Practitioner Data Bank would require a $3 increase in licensing fees to cover the board's cost and would result in a small revenue gain of approximately $45,000 annually. This gain would result from applicants paying the fee who ultimately do not meet the standards for licensure and thus do not require queries of the data bank.

Employees Retirement System of Texas

Emily Johnson, Project Manager

Summary

The 84th Legislature placed the Employees Retirement System of Texas (ERS) under Sunset review after concerns about its procurement process came to light in 2012. While ERS has made changes to its procurement and contracting practices, the commission determined further improvements are still needed to ensure the agency's contracts adhere to standard best practices and provide best value to the state. These procurement and contracting functions support ERS' two main responsibilities — managing the retirement fund and administering the Group Benefits Program (GBP) for state employees, retirees, and dependents.

On the retirement side of the house, in light of the agency's increased investment in alternative assets over the last decade, the commission's recommendations seek to increase board oversight of these investments, improve transparency, and ensure ERS conforms to best practices for investment governance. In terms of group benefits, the commission concluded ERS does not strategically manage the GBP to ensure the specific benefits are meeting members' and employers' needs. As a key recruitment and retention tool, ERS should have an inclusive, forward-thinking approach for administering group benefits that is not focused solely on controlling costs. Other recommended changes would ensure ERS provides adequate information to help members make informed decisions about aspects of their insurance and other benefits.

ERS needs to increase board oversight and transparency of its alternative investments.

As a constitutionally created agency, ERS is not subject to abolishment under the Sunset Act, so the commission did not make a recommendation to continue its functions and duties.

Recommendations

Investments

- Require ERS to track and report profit-sharing in its alternative investments.
- Require the ERS Board of Trustees to approve any individual alternative investment over $100 million.
- Change the statutory requirement for the ERS Board of Trustees to adopt its experience study and resulting actuarial assumptions from once every five years to once every four years.
- Direct ERS, as part of its 2017 internal audit review of investment governance, to consider best practices in investment decision-making processes and report its findings to the Legislature. (Management action – nonstatutory)

Contracting

- Direct ERS to provide its new Office of Procurement and Contract Oversight clear authority over all of the agency's procurement and contracting functions, including contract oversight and enforcement. (Management action – nonstatutory)
- Direct ERS to further centralize and consolidate its procurement and contracting staff into the new division. (Management action – nonstatutory)
- Direct ERS to implement contract term dates in agency contracts, except in limited circumstances. (Management action – nonstatutory)

Group Benefits Program

- Expand ERS' existing annual report on the GBP to include more comprehensive information to help the Legislature evaluate the program's overall effectiveness and plan for its sustainability.
- ERS should establish an advisory committee to obtain regular stakeholder and expert input on benefits. (Management action – nonstatutory)
- Direct ERS to develop a process and clear criteria for evaluating changes to the GBP. (Management action – nonstatutory)

Insurance Benefits and Appeals

- Require ERS to allow members to participate directly in the insurance appeal process.
- Require ERS to establish a precedent or similar manual for the insurance appeal process.
- Direct ERS staff to comprehensively track and analyze benefit application decision and appeals data. (Management action – nonstatutory)
- Direct ERS to more effectively educate members about choices and decisions that can lead to unexpected health insurance charges. (Management action – nonstatutory)
- Direct ERS to ensure balanced representation on the Grievance Review Committee of customer service and other staff. (Management action – nonstatutory)
- Direct ERS to develop policies and procedures to govern reviews of benefit applications for survivors of certain law enforcement officers, fire fighters, and others killed in the line of duty. (Management action – nonstatutory)

Standard Review Elements

- Apply standard across-the-board requirements to ERS related to board member training and alternative dispute resolution.
- Change the due date for the *Cost Management and Fraud Report* and continue the agency's other reports.

Fiscal Implication Summary

The Sunset Commission's recommendations would not have a fiscal impact to the state since ERS' operating expenses are not appropriated. Establishing an advisory committee for the GBP would result in a small cost to ERS for travel reimbursement. Requiring the ERS Board of Trustees to approve individual alternative investments over $100 million may result in additional board meetings, with resultant travel costs. The other recommendations that direct ERS to develop policies and procedures, as well as track information and data, could be accomplished within ERS' current resources.

Health Licensing Consolidation Project

Ken Levine, Project Supervisor

Summary

The commission considered the problems created by Texas' reliance on multiple independent and separate state agencies to license various health professions. No true system of licensing exists, creating certain inefficiencies and duplications. Where possible, governments and businesses often consolidate operations to take advantage of economies of scale.

Texans expect a lean, high-quality state government and the Sunset Commission concluded there were opportunities to improve current structures through consolidation. The commission recommends merging the programs regulating psychologists, marriage and family therapists, professional counselors, social workers, sex offender treatment providers, and chemical dependency counselors into a single, umbrella licensing agency. The newly created Texas Behavioral Health Executive Council would take advantage of economies of scale and eliminate duplicate administrative functions for these programs, while preserving each professional board to oversee the standards of its profession. Most importantly, the change will reinstate investigations and action on complaints that have been absent with several of these boards.

Opportunities exist to improve health licensing agency structures through consolidation.

In addition, the commission recommends transferring the Texas State Board of Podiatric Medical Examiners and its four staff to the Texas Department of Licensing and Regulation, where it will benefit from greater resources, attention, and sophistication of services. Finally, the commission concluded that the Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, and the Texas Board of Occupational Therapy Examiners, who already are housed together, as well as the Texas Board of Chiropractic Examiners currently perform their missions effectively and therefore recommends continuing each for 12 years as currently structured.

Recommendations

Psychology, Marriage and Family Therapy, Professional Counseling, Social Work

- Continue the regulation of marriage and family therapists, professional counselors, and social workers and merge their programs and boards with the Texas State Board of Examiners of Psychologists to create the Texas Behavioral Health Executive Council (BHEC).
- Transfer the Council on Sex Offender Treatment and the licensing of chemical dependency counselors to BHEC.

- Complete all transfers no later than September 1, 2018.
- Each professional board should appoint one of its professional members and one of its public members to serve on the nine-member executive council.
- Require the governor to appoint a public member to serve as chair.
- Provide for rules relating to scope of practice, standards of care, and ethics to be written by the independent boards and for the executive council to review and have final approval authority over the rules.
- Authorize the executive council to adopt rules relating to BHEC operations and standardized regulatory procedures.

Podiatry

- Transfer the Texas State Board of Podiatric Medical Examiners to the Texas Department of Licensing and Regulation (TDLR) on September 1, 2017.
- Reconstitute the board as a governor-appointed advisory board at TDLR with the same composition currently prescribed in statute.

Physical Therapy, Occupational Therapy, Chiropractic

- Continue the Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Physical Therapy Examiners, Texas Board of Occupational Therapy Examiners, and Texas Board of Chiropractic Examiners for 12 years as currently structured.

Fiscal Implication Summary

Consolidating the five programs from Department of State Health Services (DSHS) and the Board of Examiners of Psychologists into the Texas Behavioral Health Executive Council would have an initial negative fiscal impact to the state over the next five fiscal years. The majority of these costs are necessary to transfer and maintain electronic data at the level needed for effective regulation, as well as eliminate the large backlogs of enforcement cases and complaints that have languished at DSHS. The new agency would have 45.5 full-time staff positions. This figure includes the existing staff positions from each consolidated agency and program and three new staff positions to address the backlog of enforcement cases. Once the backlog is resolved, these positions would no longer be necessary. Once the merger is complete and fully operational, additional full-time equivalent employees (FTE) reductions would be expected from efficiencies gained from removing duplication of effort.

Health Licensing Consolidation Project

Fiscal Year	Cost to the General Revenue Fund	Current Agency FTEs	BHEC FTEs	FTE Change From FY17
2018	$469,692	42.5	1	+1
2019	$223,523	0	45.5	+3
2020	$206,618	0	45.5	+3
2021	$27,752	0	42.5	0
2022	$27,752	0	42.5	0

Podiatry

The podiatry board's current funding of approximately $282,680 a year and four staff would transfer to TDLR to regulate the board's approximately 1,500 licensees. Providing computer equipment for the podiatry board staff at TDLR would result in a one-time cost of about $7,400, and transferring and maintaining the podiatry board's database servers would cost approximately $26,600 a year for two years, until TDLR can convert the podiatry board's data into its own system. An additional annual savings of $13,401 would result from the podiatry board no longer being a member of the Health Professions Council and having to pay for its services.

Texas State Board of Podiatric Medical Examiners

Fiscal Year	Cost to the General Revenue Fund	Savings to the General Revenue Fund
2018	$34,000	$13,401
2019	$26,600	$13,401
2020	$0	$13,401
2021	$0	$13,401
2022	$0	$13,401

Board of Law Examiners

Kay Hricik, Project Manager

Summary

The Board of Law Examiners is a small agency that performs the front-end investigation of candidates for a law license, administers the Texas Bar Examination, and generally flies under the radar compared to its more controversial sister agency the State Bar. Though the Sunset Commission questioned the agency's structure separating licensing and examination of attorneys from the enforcement activities at the State Bar, it ultimately concluded this split approach to attorney regulation is generally standard across the country. More importantly, the agency is performing its duties well, leaving little opportunity for savings or public improvements through organizational change. However, the commission identified several statutory barriers and inconsistencies preventing the board from accomplishing its duties in the most efficient and effective way.

Several statutory barriers prevent the board from most efficiently accomplishing its duties.

Recommendations

Licensing

- Require the board to develop guidelines to assist decision making for character and fitness determinations, probationary licenses, and waiver requests to promote fairness in decisions impacting a person's ability to practice law.
- Remove specific licensing and examination deadlines from statute and require the Supreme Court to adopt deadlines and a schedule of late fees in rule to allow flexibility to make needed adjustments to benefit both applicants and the board.
- Remove an outdated requirement for applicants to attest they do not have a mental health diagnosis to ensure licensing decisions are based on present conditions and conduct and are in line with the Americans with Disabilities Act.
- Remove the unnecessary requirement that applicants submit a notarized, verified affidavit form, allowing for online application submittal while still giving the board access to information needed to properly investigate applicants.
- Clearly authorize the board to delegate routine matters to the executive director to allow the board to focus on higher-priority issues and reduce application processing time.

Governance

- To align with board members' bar exam duties, amend statute to change the end date of board member terms from August 31 to May 31.

- Update a standard Sunset good government provision to ensure board members are adequately trained on their responsibilities.

Continue

- Continue the Board of Law Examiners for 12 years.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations on the Board of Law Examiners would not have a fiscal impact to the state, as the agency receives no state funds and operates outside of the appropriations process. Many recommendations are designed to improve internal operations and efficiency at the board, but their exact impact would depend on implementation.

Texas Medical Board

Erick Fajardo, Project Manager

Summary

Given the enormous potential risk posed by physicians, who have more autonomy and authority over patient care than any other healthcare practitioner, the Texas Medical Board is not an ordinary occupational licensing agency. One especially high-risk activity that physicians perform is prescribing extremely addictive and dangerous drugs, particularly drugs designed for patients with chronic pain, as some of these drugs contribute to an epidemic of addiction and overdose throughout the country. Accordingly, to better curb prescription drug abuse and misuse, the Sunset Commission recommends that the board target its inspections of pain management clinics toward the top prescribers, that the board more effectively monitor prescribing patterns through the newly enhanced Prescription Monitoring Program, and that physicians and physician assistants be required to search the program and review a patient's prescription history before prescribing dangerous pain medications.

Physicians and the Texas Medical Board should make better use of the state's Prescription Monitoring Program.

The commission also recommends several updates to board statutes and practices to reflect current standards, thereby increasing efficiency and better protecting the public. In addition, the commission concluded that Texas joining the Interstate Medical Licensure Compact would ease and improve the licensure of physicians wishing to practice in multiple states while not superseding any Texas laws or the authority of the Texas Legislature. Finally, the commission recommends continuing the board for 12 years.

Recommendations

Prescription Monitoring Program

- Beginning September 1, 2018, require physicians and physician assistants to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol.
- If the Legislature adopts the recommendation above, exempt prescribers who prescribe such drugs to a cancer patient or a patient in a hospice setting, but only if the prescriber includes on the prescription the patient's diagnosis or the basis for the exemption.
- Clarify statute and provide direction for the board to monitor physician and physician assistant prescribing patterns of controlled substances.

Pain Management Clinic Regulation

- Authorize the board to seek court enforcement of its administrative subpoenas for pain management clinic records.
- Amend the pain management clinic statute to clarify the definition of "inappropriate prescribing" to include nontherapeutic prescribing.
- Clarify statute to authorize the board to inspect an unregistered pain management clinic.
- Direct the board to use Prescription Monitoring Program data, along with other factors, to establish a risk-based approach to scheduling pain management clinic inspections. (Management action – nonstatutory)

Enforcement

- Authorize the board to establish a risk-based approach to its office-based anesthesia inspection, focusing on the length of time since equipment and procedures were last inspected.
- As part of an informal settlement conference for a case involving an allegation of a standard of care violation, require the board to share with the subject license holder a copy of each preliminary written report produced by each expert physician reviewer for the license holder's case, not just the final report currently required by law.
- Require at least one of the Texas Physician Assistant Board members participating in an informal settlement conference as a panelist to be a board member who is a licensed physician assistant.
- As part of their evaluation of whether a physician has committed a violation of the standard of care, require members of the informal settlement conference disciplinary panel to consider whether the physician was practicing complementary and alternative medicine.
- Authorize the board to offer a remedial plan — which is a nondisciplinary action for less serious violations — for a physician at most once every five years, instead of once per lifetime.
- Remove the duplicative requirement that the board's formal complaints filed with the State Office of Administrative Hearings be sworn to.

Licensing

- Clarify statute to authorize the board to conduct fingerprint-based criminal background checks of all applicants.
- Remove needless qualifications for licensure applicants that restrict entry to practice.
- Remove the limitation on the number of times an applicant can take the board's jurisprudence exam.
- Remove unnecessary affidavit requirement for individuals applying for licensure.
- Authorize the board to provide biennial license renewal for all license types.
- Authorize the board to deny renewal applications from noncompliant applicants.
- Direct the board to process and issue physician assistant licenses within the same amount of time that it takes to issue a physician license. (Management action – nonstatutory)

- Direct the board to develop rules that provide a concise application for a temporary license to a sports physician traveling to Texas with athletic competitors or a team of athletic competitors. (Management action – nonstatutory)

Medical Radiologic Technology

- Eliminate duplication by removing requirements for non-certified technicians to register with two agencies.
- Establish in statute an advanced-level medical radiologic technologist (MRT) certificate and define the term "radiologist assistant" as an individual who holds an advanced-level MRT certificate.
- For providers of MRT services located in urban areas, remove the exemption that allows providers to employ non-licensed individuals to perform radiologic procedures if unable to attract and retain licensed individuals for employment.

Interstate Medical Licensure Compact

- Adopt the Interstate Medical Licensure Compact to help streamline licensure of physicians and enhance their mobility.

Texas Physician Health Program

- Require the board and Texas Physician Health Program to develop a memorandum of understanding covering services and operations, including performance measures and auditing requirements.
- Authorize the Texas Physician Health Program to accept gifts, grants, and donations.

Administration

- Authorize the Texas Physician Assistant Board, after hearing all evidence and arguments in an open meeting, to conduct deliberations relating to license applications and disciplinary actions in executive sessions.
- Direct the board to dedicate one page of its quarterly newsletter bulletin to three topics in continuing medical education that the board considers relevant; at least one of the annual 12 continuing medical education topics must be related to tick-borne diseases, including Lyme disease. (Management action – nonstatutory)
- Direct the board to make consumer information about the various professions within the agency available to the public on its website. (Management action – nonstatutory)

Continue

- Continue the Texas Medical Board for 12 years.
- Apply the standard Sunset across-the-board recommendations regarding board member training and negotiated rulemaking to the medical, physician assistant, acupuncture, respiratory care, and medical radiologic technology boards.

Fiscal Implication Summary

Several recommendations, such as authorizing risk-based inspections of pain management clinics and office-based anesthesia, as well as reducing license processing efforts through adoption of the Medical Licensure Compact, will combine to create significant efficiencies for the agency. However, estimated savings could not be calculated for this report. Eliminating the duplicative requirement that the medical, chiropractic, and podiatric boards register non-certified technicians who also register with the MRT board would result in an annual loss of fee receipts to general revenue totaling $183,280 from three agencies. In fiscal year 2015, the Texas Medical Board received $179,177 in revenue from non-certified technician permit fees, the Texas Board of Chiropractic Examiners received $3,963, and the Texas Board of Podiatric Medical Examiners received just $140.

Texas Medical Board

Fiscal Year	Loss to the General Revenue Fund
2018	$183,280
2019	$183,280
2020	$183,280
2021	$183,280
2022	$183,280

Texas Board of Nursing

Skylar Wilk, Project Manager

Summary

In most respects, the Texas Board of Nursing is a shining example of a health licensing agency with experienced, capable staff that perform well. However, the board's use of subjective standards to link most any mistake, even off-the-clock conduct, to nursing can result in harsher sanctions for nurses. The Sunset Commission recommends limiting these subjective standards and requiring the board to demonstrate a connection between a nurse's conduct and the practice of nursing.

The board links most mistakes, even off-the-clock conduct, to the practice of nursing.

The Legislature charged the Sunset Commission with evaluating whether to continue an exception to licensure requirements for graduates of Excelsior College's nursing program. At issue is the program's lack of supervised, hands-on experience through clinicals. The commission recommends continuing Excelsior's exception and creating a process similar to in-state programs to improve the program or expire the exception if certain standards are not met. Other recommended changes would strengthen oversight of the board's peer assistance program, ensure continued nurse mobility, tackle challenging issues related to overprescribing of dangerous drugs, and continue the agency for 12 years.

Recommendations

Excelsior College Exception

- Remove the December 31, 2017 expiration date for Excelsior College's exception to initial licensure requirements and create a process, similar to steps for an in-state nursing program, for program improvement or expiration of the exception if Excelsior's national exam passage rate falls below the board's standard.
- Require the board to develop a path to initial licensure for graduates of out-of-state nursing programs that are determined not to be substantially equivalent to Texas programs.

Enforcement

- Clarify the definitions of unprofessional conduct and good professional character to limit their application to the practice of nursing during license eligibility and disciplinary decisions.
- Direct the board to review its criminal conduct guidelines to limit disciplinary action to crimes directly related to the practice of nursing. (Management action – nonstatutory)

Peer Assistance Program

- Require the board's peer assistance program to develop and use flexible program requirements in line with impaired nurses' needs and diagnoses.
- Require the board to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.
- Require the board to adequately measure the effectiveness of its peer assistance program.
- Direct the board to designate a contract manager assigned to the peer assistance program. (Management action – nonstatutory)
- Direct the board to require its peer assistance program to publicly post information about the various program tracks and requirements. (Management action – nonstatutory)

Prescription Monitoring Program

- Beginning September 1, 2018, require advanced practice registered nurses to search the Prescription Monitoring Program database and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, and subject an advanced practice registered nurse to disciplinary action for noncompliance.
- Clarify statute and provide direction for the board to monitor advanced practice registered nurses' improper prescribing of controlled substances.

Nurse Licensure Compact

- Adopt the new Nurse Licensure Compact to ensure continued nurse mobility.

Continue

- Continue the Texas Board of Nursing for 12 years.

Standard Review Elements

- Update the standard Sunset across-the-board requirement related to board member training.
- Discontinue the board's two reporting requirements and eliminate associated, but duplicative, authority for nurse competency pilot programs.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a significant fiscal impact since most either clarify current practice or change procedures in ways that do not save or require additional resources.

Texas Optometry Board

Kay Hricik, Project Manager

Summary

The Sunset review found the optometry board to be generally well-run. Due in part to its small size and limited resources, the agency's approach to change is restrained and cautious. As with other small agencies under review, certain licensing and enforcement practices need updating to be more consistent with standard best practices; the commission's recommendations make such process improvements. For example, the commission recommends all optometrists have a fingerprint-based criminal background check. Further, the commission recommends the agency make better use of technology for license applications and put all formal disciplinary orders on the agency's website for greater transparency.

Licensing and enforcement practices need to be more consistent with standard best practices.

Consistent with the commission's recommendations on other health licensing agencies whose licensees have prescriptive authority, the commission recommends requiring optometrists to search the Prescription Monitoring Program database and review a patient's prescription history before prescribing certain controlled substances. The Sunset Commission recommends continuing the agency for 12 years.

Recommendations

Prescription Monitoring Program

- Beginning September 1, 2018, require optometrists to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, and subject an optometrist to disciplinary action for noncompliance.
- Require the optometry board to query the Prescription Monitoring Program on a periodic basis to identify potentially harmful prescribing patterns among its licensees, and authorize the board to open complaints for possible non-therapeutic prescribing.

Licensing

- Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and licensees to ensure the agency can effectively monitor licensees for criminal conduct and take disciplinary action when warranted.
- Require the agency to check for disciplinary or other legal actions in other states for license applications and renewals, and authorize the agency to pursue any necessary enforcement action.
- Authorize the agency to provide biennial license renewal.

- Remove subjective licensure qualifications that could unreasonably restrict entry into practice.
- Remove the unnecessary notarization requirement for individuals applying for licensure, an obstacle to putting applications online.
- Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Direct the agency to update its website to make it more user-friendly for the public and licensees. (Management action – nonstatutory)

Enforcement

- Eliminate the provision requiring five affirmative votes of the nine-member board to take an enforcement action, removing a regulatory bias favoring the licensee.
- Prohibit the board from accepting anonymous complaints and require the board to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Replace archaic and subjective disciplinary provisions such as "habitual drunkard" with more specific disciplinary criteria, and authorize the agency to order physical and mental examinations if probable cause exists to do so.
- Direct the agency to accept all license applications and fee payments online. (Management action – nonstatutory)
- Direct the agency to make all formal disciplinary orders easily accessible and readily available on its website to improve the transparency of the board's operations and give the public more access to information on health providers. (Management action – nonstatutory)
- Direct the agency to report all letters of formal agreement to the National Practitioner Data Bank unless discussions with agency counsel and the federal administrator indicate otherwise. (Management action – nonstatutory)

Governance

- Update the standard across-the-board requirement related to board member training.

Continue

- Continue the state's regulation of optometrists and the Texas Optometry Board as an independent agency for 12 years.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a significant fiscal impact since most update procedures to best practices and make other improvements that do not save or require additional resources.

Texas State Board of Pharmacy

Steven Ogle, Project Manager

Summary

Overall, the Sunset Commission concluded that the Texas State Board of Pharmacy is an effective, well-run agency that should be continued for 12 years. Keenly aware of the prescription drug abuse epidemic facing the country, the commission focused on improving the Prescription Monitoring Program (PMP), the state's key tool for keeping track of all controlled substance prescriptions. The commission recommends adopting several national best practices to maximize the system's effectiveness, such as requiring pharmacists to timely enter data, and check the information before dispensing highly addictive prescription drugs.

Texas' Prescription Monitoring Program lacks best practices to effectively track highly addictive prescriptions.

The commission also recommends other changes to ensure the continued fair and effective regulation of pharmaceutical services, including a succession plan to guide the board through upcoming leadership changes, and several standard improvements to licensing and enforcement processes.

Recommendations

Prescription Monitoring Program

- Beginning September 1, 2018, require pharmacists to search the PMP database before dispensing certain controlled substances to increase usage and effectiveness of the system.
- Require pharmacists or their delegates to enter dispensing information in the PMP database within one business day of dispensing controlled substances to ensure timely, complete data.
- Direct the board to create delegate accounts for pharmacy technicians to minimize the impact of new PMP requirements on pharmacists. (Management action – nonstatutory)
- Authorize the board to send push notifications and to set related thresholds to proactively notify prescribers of suspicious activity.
- Require wholesale pharmaceutical distributors to report their sales of controlled substances to the board and the PMP database to provide a complete picture of controlled substance inventory within the state.
- Direct the board to work with vendors and stakeholders to integrate the Prescription Monitoring Program with pharmacy dispensing software to make checking the system easier in the future. (Management action – nonstatutory)

- Direct the board to make trend data about controlled substance prescriptions in Texas publicly available to assist future evaluations of prescribing and dispensing. (Management action – nonstatutory)

Licensing and Enforcement

- Remove unnecessary qualifications required of applicants for licensure or registration that could unreasonably restrict entry into practice.
- Require the board to create a system of graduated penalties for late renewal of pharmacy technician registration to incentivize timely renewals.
- Clarify statute to authorize the board to delegate tasks to the executive director to increase the board's efficiency and ensure consistency between statutory authority and agency practices.
- Clarify statute to require the board to develop continuing education standards for pharmacy technicians to ensure technicians remain educated on changing developments in their field.
- Authorize the board to deny renewal applications from noncompliant applicants, a standard tool to better protect the public.
- Direct the board to remove requirements that renewal forms be notarized, an unnecessary and burdensome requirement for applicants. (Management action – nonstatutory)
- Direct the board to query a national disciplinary database before license renewal to ensure licensees meet requirements for continued licensure. (Management action – nonstatutory)
- Direct the board to study the potential benefits of recognizing all nationally accredited pharmacy technician certifications. (Management action – nonstatutory)

Governance

- Update standard Sunset good government provisions for negotiated rulemaking and alternative dispute resolution, and board member training.
- Direct the board to develop and implement a succession plan to prepare for impending retirements. (Management action – nonstatutory)

Continue

- Continue the Texas State Board of Pharmacy for 12 years.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would not have a significant fiscal impact to the state since most either clarify current practice or change procedures in ways that do not require additional resources.

The recommendation to make the late renewal penalty structure for pharmacy technicians consistent with that of pharmacists would result in an annual loss to general revenue of about $36,000 because pharmacy technicians renewing within 90 days of expired registrations would pay reduced penalties.

Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Erick Fajardo, Project Manager

Summary

Under the administrative umbrella of the executive council, the Texas Board of Physical Therapy Examiners (PT board) and the Texas Board of Occupational Therapy Examiners (OT board) have not only escaped Sunset review for 23 years, but significantly, the regulations they oversee have escaped the fate of many other allied health professions in Texas — consolidation into a larger agency. While Sunset staff and commission members considered such a measure, the commission ultimately concluded that the best approach for physical and occupational therapy regulation in the state is to continue the current independent structure for 12 years.

An independent structure is the best approach for physical and occupational therapy regulation.

The Sunset Act provides that regulation be limited to only what is needed to protect the public. The Sunset Commission found that the requirement to register physical and occupational therapy facilities serves no public safety purpose and should be eliminated. In addition, taking advantage of regulatory flexibility through an interstate licensing compact would help promote mobility of physical therapy professionals across state lines and improve client access to care. Finally, updating agency statutes and practices to reflect current standards and circumstances would better focus the agency's regulatory effort.

Recommendations

Facility Registration

- Discontinue the unnecessary registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.

License Mobility

- Adopt the Physical Therapy Licensure Compact to streamline the licensing of physical therapy professionals and enhance their mobility.

- Provide clear statutory authority for licensure by endorsement.
- Clarify that occupational therapy assistants licensed in other states may practice in this state temporarily under the same conditions as occupational therapists.
- Remove outdated provisions prescribing educational requirements to ensure such requirements remain relevant and reflect maturing standards of education and practice.

Licensing and Enforcement

- Clarify statutes to reflect current standards and conditions.
- Continue the authority of the OT board and PT board to delegate to other entities the responsibility of approving continuing education, and require the boards to adopt rules relating to continuing education course approval, including a request for proposal and bid process.
- Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.
- Require the boards to develop a disciplinary matrix to ensure consistency.
- Remove unnecessary qualifications for foreign-trained licensure applicants that restrict entry to practice.
- Direct the OT board to adopt rules to specify the types of criminal activities that may result in denial, suspension, or revocation of a license. (Management action – nonstatutory)
- Direct the OT board to delegate administrative dismissal to staff for low-level misdemeanor offenses. (Management action – nonstatutory)
- Direct the agency to develop a formal process to refer non-jurisdictional complaints to the appropriate agency. (Management action – nonstatutory)

Continue

- Continue the executive council, PT board, and OT board for 12 years.
- Apply the standard Sunset across-the-board requirement for board member training to the executive council, PT board, and OT board.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would result in a negative fiscal impact to the state over the next five years from ending the unnecessary registration requirement for physical and occupational therapy facilities.

Based on revenue generated from facility registration fees in fiscal year 2015, the recommendation to discontinue the registration of physical and occupational therapy facilities would result in the loss of approximately $966,000 per year to the General Revenue Fund, beginning in fiscal year 2018. Facility

owners currently pay these fees despite receiving no services from the agency. The estimated savings of $42,500 from the cost to collect facility registration information and fees could be put to the agency's regulatory activities.

Executive Council of Physical Therapy and Occupational Therapy Examiners

Fiscal Year	Loss to the General Revenue Fund
2018	$966,000
2019	$966,000
2020	$966,000
2021	$966,000
2022	$966,000

Texas State Board of Podiatric Medical Examiners

Kay Hricik, Project Manager

Summary

Consistent with previous Sunset reviews, the Sunset Commission found this small agency still struggles to carry out its mission effectively while operating as an independent state agency, especially on the heels of a costly eight-year scope of practice lawsuit and several statewide budget cuts. Having only four staff and a budget of about $280,000 a year, every cut and crisis disproportionately affects the podiatric board, particularly since it must perform the same regulatory and administrative functions as other larger health licensing agencies. The cumulative impact of the agency's limited resources is most evident in the area of enforcement. Despite efforts to improve performance outcomes, the agency has taken an average of almost 500 days to resolve complaints over the last five years.

This small, independent agency struggles to carry out its mission effectively.

As required by the Sunset Act, the commission considered whether the agency's organizational structure provides the most effective and efficient regulation, and identified significant concerns with the agency's ability to adequately function independently. As a result, the commission recommends transferring the agency's functions to the Texas Department of Licensing and Regulation (TDLR) on September 1, 2017, to provide institutional stability and administrative savings, improve licensing and enforcement outcomes, and better protect the people of Texas.

The commission's other recommendations aim to gain efficiencies and better ensure fair and effective regulation of podiatry services in Texas by updating licensing and enforcement processes that have not kept up with best practices, including requiring fingerprint-based criminal background checks on all applicants and licensees, and greater use of technology. Consistent with the commission's recommendations on other health licensing agencies whose licensees have prescriptive authority, the commission recommends requiring podiatrists to search the Prescription Monitoring Program database and review a patient's prescription history before prescribing certain controlled substances.

Recommendations

Abolish and Transfer

- Transfer the Texas State Board of Podiatric Medical Examiners to TDLR on September 1, 2017, and reconstitute the current board as a governor-appointed advisory board responsible for the development of all practice-related rules for approval by the TDLR commission. This recommendation was made as part of the *Health Licensing Consolidation Project Sunset Staff Report*.
- Update the standard across-the-board requirement related to board member training.

Prescription Monitoring Program

- Beginning September 1, 2018, require podiatrists to search the Prescription Monitoring Program database and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, and subject a podiatrist to disciplinary action for noncompliance.
- Require the podiatry board to query the Prescription Monitoring Program on a periodic basis to identify potentially harmful prescribing patterns among its licensees, and authorize the board to open complaints for possible non-therapeutic prescribing.

Licensing

- Require the agency to conduct fingerprint-based criminal background checks of licensure applicants and licensees to ensure effective monitoring of licensees for criminal conduct and take disciplinary action when warranted.
- Remove the unnecessary notarization requirement for individuals applying for licensure, an obstacle to putting applications online.
- Remove subjective licensure qualifications that could unreasonably restrict entry into practice.
- Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Authorize the agency to provide biennial license renewal.
- Direct the agency to accept all license and registration applications, renewals, and fee payments online. (Management action – nonstatutory)
- Direct the agency to administer the Texas podiatric jurisprudence exam online. (Management action – nonstatutory)

Enforcement

- Require the agency to establish written policies to guide the prioritization of complaints to ensure the agency uses its resources to address complaints in order of importance.
- Require the agency to adopt penalty amounts in rule for the categories in its penalty schedule to guide consistent application of penalties.
- Prohibit the board from accepting anonymous complaints.
- Require the board to notify a licensee who is the subject of a complaint only about the nature of the complaint to protect the identity of the complainant.

- Direct the agency to maintain complainants' confidentiality when possible. (Management action – nonstatutory)
- Direct the board to eliminate the rule allowing the use of notarized complaints to remove a barrier to filing a complaint. (Management action – nonstatutory)
- Direct the agency to establish a schedule for conducting each phase of the complaint resolution process to resolve complaints more quickly and help reduce complaint backlogs. (Management action – nonstatutory)
- Eliminate the use of the Texas Podiatric Medical Association's peer review process for resolving minor jurisdictional complaints to bring the agency in line with standard licensing practices. (Management action – nonstatutory)
- Direct the agency to prohibit a board member who investigates a complaint from participating in any resulting disciplinary proceeding, including an informal settlement conference, to promote impartiality and a fair enforcement process. (Management action – nonstatutory)
- Direct the agency to incorporate the State Office of Administrative Hearings into its complaint resolution process when needed to enhance due process in the agency's disciplinary proceedings. (Management action – nonstatutory)

Fiscal Implication Summary

The podiatry board's current funding of approximately $282,680 a year and four staff would transfer to TDLR to regulate the board's approximately 1,500 licensees. Providing computer equipment for the podiatry board staff at TDLR would result in a one-time cost of about $7,400, and transferring and maintaining the podiatry board's database servers would cost approximately $26,600 a year for two years, until TDLR can convert the podiatry board's data into its own system. An additional annual savings of $13,401 would result from the podiatry board no longer being a member of the Health Professions Council and having to pay for its services.

Texas State Board of Podiatric Medical Examiners

Fiscal Year	Cost to the General Revenue Fund	Savings to the General Revenue Fund
2018	$34,000	$13,401
2019	$26,600	$13,401
2020	$0	$13,401
2021	$0	$13,401
2022	$0	$13,401

Texas State Board of Examiners of Psychologists

Robert Romig, Project Manager

Summary

As a small, independent occupational licensing agency, the Texas State Board of Examiners of Psychologists faces a number of administrative hurdles that detract from its ability to efficiently serve the people of Texas. After reviewing several similarly situated professional licensing boards, the Sunset Commission recommends consolidating the psychology board with the boards or program governing the regulation of marriage and family therapists, professional counselors, social workers, sex offender treatment providers, and licensed chemical dependency counselors. The proposed umbrella licensing agency, the Texas Behavioral Health Executive Council (BHEC), will allow for improved services to license holders, while ensuring each profession continues to set standards of practice.

The board unnecessarily limits entry into the profession and faces administrative burdens consolidation would solve.

The commission also recommends eliminating a number of unnecessary barriers to entry into the psychology profession to help address the shortage of mental health care providers in Texas. These recommendations include eliminating the subjective oral examination that places a significant strain on agency resources and creates a bottleneck to licensing, as well as the requirement for psychologists to complete a year of supervised work experience after receiving a Ph.D. Other recommendations aim to better ensure fair and effective regulation of psychology in Texas by updating licensing and enforcement processes that have not kept up with best practices. The commission also directed the psychology board to appoint a working group of stakeholders to develop proposed definitions of psychology for consideration by the 85th Legislature to replace the current definition that was ruled unconstitutional in a recent court case.

Recommendations

Consolidate

- Continue the regulation of psychologists and merge the Texas State Board of Examiners of Psychologists with the five behavioral health boards and programs currently housed at the Department of State Health Services (DSHS) to create the BHEC, a functionally aligned umbrella licensing agency. This recommendation was made as part of the *Health Licensing Consolidation Project Sunset Staff Report*.

- Update the standard across-the-board requirement related to board member training.

Licensing

- Eliminate statutory authority for the psychology board to administer an oral exam to remove a subjective and expensive barrier to entry into the profession.
- Remove the statutory requirement for psychologists to earn half of their two-year (3,500 hours) supervised work experience after receiving their Ph.D., which delays licensing of needed mental healthcare providers.
- Adopt the Psychology Interjurisdictional Compact (PSYPACT) in statute to expand reciprocity and the availability of psychologists in Texas.
- Remove subjective licensure qualifications that could unreasonably restrict entry into practice.
- Remove the bureaucratic requirement for a separate provisional psychologist license and authorize the board to grant provisional status to applicants for full licensure.
- Authorize the board to provide biennial license renewal.
- Remove the statutory limitation currently restricting the board's authority to lower fees.
- Direct the psychology board to amend its rules to allow Licensed Specialists in School Psychology to practice in both public and private schools to increase access to psychological services. (Management action – nonstatutory)
- Direct the board to remove the burdensome and useless requirement for licensure applicants to submit letters of reference. (Management action – nonstatutory)

Enforcement

- Authorize the board to issue remedial plans to resolve minor complaints.
- Extend confidentiality of complaint and investigative information to applicants and non-licensees to reflect best practices.
- Clarify the agency's authority to require physical or mental evaluations based on suspected impairment and to hold related hearings for noncompliance.
- Direct the board to prohibit a board member from participating in both the investigation and resolution of a complaint to promote impartiality and a fair enforcement process. (Management action – nonstatutory)

Practice of Psychology

- Direct the board to appoint a working group of stakeholders to develop at least three proposed definitions of the practice of psychology and provide them to the Legislature for consideration to address a recent court decision. (Management action – nonstatutory)
- Direct the Texas State Board of Examiners of Psychologists to evaluate all rules for potential anti-competitive effects and repeal rules susceptible to legal challenge. (Management action – nonstatutory)

Fiscal Implication Summary

Texas Behavioral Health Executive Council

Consolidating the Texas Board of Examiners of Psychologists with the five behavioral health programs from DSHS into the Texas Behavioral Health Executive Council would result in a negative fiscal impact to the state, with an initial cost of about $470,000 to the General Revenue Fund in fiscal year 2018 that would decrease to about $28,000 in fiscal year 2022. The majority of these costs are necessary to transfer and maintain electronic data at the level needed for effective regulation, as well as eliminate the large backlog of enforcement cases and complaints that have languished at DSHS. The psychology board's 14 current staff positions and budget of $896,744 would transfer to BHEC.

Texas State Board of Examiners of Psychologists

The recommendation to eliminate the psychology board's oral exam would result in a small annual loss of approximately $31,000 to the General Revenue Fund. The board collects about $77,000 in oral examination fees each year and estimates administering the exam costs about $46,000 annually, which would offset some of the lost revenue.

Texas State Board of Examiners of Psychologists

Fiscal Year	Loss to the General Revenue Fund
2018	$31,000
2019	$31,000
2020	$31,000
2021	$31,000
2022	$31,000

Railroad Commission of Texas

Amy Trost, Project Manager

Summary

In its third review of the Railroad Commission since 2010, the Sunset Commission determined that no major structural changes to the agency or a change to the agency's name were needed. The commission instead focused on improvements to the agency's oil and gas enforcement program, finding that the agency struggles to report reliable data about the program and does not use existing enforcement tools or staff strategically. Recommendations direct the Railroad Commission to develop a strategic plan that tracks and measures the program's success and also to conduct audits to better prevent operators with severed leases from producing oil and gas illegally.

The Sunset Commission focused on improvements to the agency's oil and gas enforcement program.

Additional recommendations by the Sunset Commission would provide needed resources for pipeline safety, address damage prevention related to pipelines, and ensure agency contracting improvements stay on track. The Sunset Commission also recommends continuing the agency for 12 years.

Recommendations

Continue

- Continue the Railroad Commission of Texas for 12 years, retaining the agency's name.

Oil and Gas Monitoring and Enforcement

- Require the commission to develop and implement a strategic plan for the Oil and Gas Division that tracks and measures the effectiveness of monitoring and enforcement.
- Direct the commission to accurately track the number of unique oil and gas violations to address repeated inaccuracies in their annual reports. (Management action – nonstatutory)
- Direct the commission to systematically track major violations cited by field inspectors. (Management action – nonstatutory)
- Direct the commission to develop a definition of repeat violations in rule and report the number of all repeat violations on its website. (Management action – nonstatutory)
- Direct the commission to audit a sample of oil and natural gas production reports and transportation reports and ensure compliance with lease severance orders. (Management action – nonstatutory)

- Direct the commission to develop a policy to require production reports to be filed electronically, and also direct the agency to provide oil and gas production information on its website in a format that is easier for royalty owners to use and understand. (Management action – nonstatutory)
- Direct the commission to expand its risk matrix for oil and gas inspections to include a more appropriate array of factors. (Management action – nonstatutory)

Pipeline Safety and Damage Prevention

- Authorize the commission to enforce damage prevention requirements for interstate pipelines.
- Authorize the commission to create a pipeline permit fee to offset the costs of administering the permit.
- Modify language in the General Appropriations Act to further ensure that the commission collects, and is appropriated back, fee amounts to offset the costs of administering its Pipeline Safety program, including administration costs. (Change in appropriation)

Seismicity Data in Railroad Commission Rules

- Direct the commission to incorporate findings from the TexNet Seismic Monitoring Program at UT's Bureau of Economic Geology as they become available into its oil and gas disposal well rules or guidance, as applicable. The rules should seek to prevent any induced seismicity caused by disposal wells. (Management action – nonstatutory)

Contracting

- Direct the commission to complete centralization of all contract administration functions by September 1, 2016. (Management action – nonstatutory)
- Direct the commission to implement and keep updated contracting best practices as outlined by recent legislation and the comptroller. (Management action – nonstatutory)
- Direct the commission's executive director to report quarterly to the commissioners at their open meetings regarding the status of contracting improvements. (Management action – nonstatutory)

Standard Review Elements

- Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the commission.
- Allow the inactive Oil and Gas Regulation and Cleanup Fund Advisory Committee to expire.
- Continue requiring the commission to submit its report on the Oil and Gas Regulation and Cleanup Fund to the Legislature.

Fiscal Implication Summary

The recommendation to begin requiring production reports to be submitted to the commission electronically by September 1, 2018, would save the Oil and Gas Regulation and Cleanup Fund $46,835 annually because a contractor would no longer be needed to scan reports submitted on paper. Authorizing the

commission to establish a pipeline permit fee to cover administrative costs of the program is expected to result in a $1.8 million annual savings to general revenue beginning in fiscal year 2019.

Railroad Commission of Texas

Fiscal Year	Savings to the Oil and Gas Regulation and Cleanup Fund	Savings to the General Revenue Fund
2018	$0	$0
2019	$46,835	$1,842,394
2020	$46,835	$1,842,394
2021	$46,835	$1,842,394
2022	$46,835	$1,842,394

Sulphur River Basin Authority
Central Colorado River Authority
Upper Colorado River Authority
Palo Duro River Authority of Texas

Sarah Kirkle, Project Manager

Summary

Overall, the small size and limited resources of the four river authorities under Sunset review this cycle directly affects their capacity to carry out their missions and raises questions about their ability to solve local water needs or make a real impact on their watersheds. The authorities' lack of a stable revenue source also creates problems in organizational sustainability and continuity and little public interest translates into a lack of transparency and openness.

Small size affects these river authorities' ability to make a real impact on their watersheds.

Sulphur River Basin Authority (SRBA). Controversy over potential water development projects has thrown an organizationally immature SRBA into the big leagues of water development. The Sunset Commission's recommendations aim to hit the reset button on SRBA and its operations to allow SRBA and its stakeholders to reestablish the working relationships and trust needed to best meet the needs of the Sulphur River basin. The Sunset Commission recommends sweeping the SRBA board and hiring an executive director, among other recommendations to address funding, contracting, and improved transparency.

Central Colorado River Authority (CCRA). CCRA has outlived its relevance as a river authority. CCRA's only function, providing bulldozing services to private landowners, is identical to land management services provided by the private sector and does not serve a direct public purpose. However, because Sunset is not statutorily authorized to abolish a river authority under the Sunset Act, the Sunset Commission recommends the Legislature transfer through separate, non-Sunset legislation CCRA's only ongoing responsibility, maintaining three small dams, to its neighboring river authority, the Upper Colorado River Authority.[1]

Upper Colorado River Authority (UCRA). UCRA performs its functions in a well-run, successful fashion, but stakeholders are unsure if UCRA is a relevant part of the future solution to local watershed needs. Increasing the

UCRA board's role in identifying priorities and strengthening relationships with local partners could help UCRA add value to the region and avoid future risks of irrelevancy. The commission also recommends clarifying UCRA's boundaries to accurately reflect its jurisdiction and actual service area.

Palo Duro River Authority of Texas (PDRA). While generally well-managed, this river authority lacks a river and essentially runs a park. Lake Palo Duro is a meager 3 percent full, making it impractical to build a pipeline and ever fulfill PDRA's mission to pump water to local cities. The Sunset Commission recommends PDRA be restructured as a local water district and be allowed to locally decide its future through an optional process for member withdrawal or dissolution.

Recommendations

Sulphur River Basin Authority (SRBA)

- Institute new leadership at SRBA by requiring the terms of all SRBA board members to expire on September 1, 2017.
- Direct the SRBA board to hire an executive director. (Management action – nonstatutory)
- Require SRBA to seek advice from affected county judges on potential water development projects.
- Direct SRBA to seek local financial investment in its water development projects. (Management action – nonstatutory)
- Direct SRBA to seek bids for the next phase of its feasibility study. (Management action – nonstatutory)
- Direct SRBA to implement best practices to improve transparency and openness in its operations. (Management action – nonstatutory)
- Repeal SRBA's unused authority to provide hydroelectric power, parks and recreation facilities, solid waste service, and forestation services.

Central Colorado River Authority (CCRA)

- The Legislature, by separate legislation, should transfer CCRA's functions and jurisdiction to UCRA and abolish CCRA. (Management action – nonstatutory)
- Direct the Texas Commission on Environmental Quality (TCEQ) to inspect each of CCRA's three lakes and determine the condition and any repair needs of the dams. TCEQ reported the results of these inspections in December 2016. (Management action – nonstatutory)

Upper Colorado River Authority (UCRA)

- Clarify UCRA's territory, boundaries, and board makeup to accurately reflect its jurisdiction.
- Direct UCRA to work with local partners to identify priorities and develop strategies to meet changing watershed needs. (Management action – nonstatutory)

Palo Duro River Authority (PDRA)

- Reclassify PDRA as a local water district and remove it from Sunset review.

- Authorize one or more members to withdraw from or dissolve PDRA, but only if its members agree and ongoing obligations are met.
- Repeal Palo Duro River Authority's unused authority to imprison people for violating its regulations.

Cross Issues — Apply to All River Authorities Under Review

- Require opportunities for public testimony at board meetings and direct river authorities to implement additional best practices to improve openness and transparency.
- Apply good government standards to river authorities' governing laws to promote accountability, transparency, and best practices.
- Direct SRBA and UCRA to comply with TCEQ rules by adopting required administrative policies. (Management action – nonstatutory)

Summary of Recommendations

Recommendation	SRBA	UCRA	PDRA
Recommendation 5.1 — Transparency			
a. Formal public testimony	*	Apply	Apply
b. Establish a website	*	*	Apply
c. File and comply with records retention plan	Apply	Apply	Apply
d. Track Public Information Act requests	Apply	Apply	Apply
e. Written reports at board meetings	Apply	*	Apply
f. Update governing laws	Apply	*	Apply
Recommendation 5.2 — Good Government Standards			
a. Conflict of interest	*	*	Apply
b. Designation of presiding officer	Apply	Apply	N/A
c. Grounds for removal	*	*	Apply
d. Board member training	Apply	Apply	Apply
e. Separation of duties	Apply	Apply	Apply
f. Complaint information	Apply	Apply	Apply
g. Alternative dispute resolution	Apply	Apply	Apply
Recommendation 5.3 — Compliance with TCEQ Rules	Apply	Apply	N/A

* Currently in place or required by river authority's governing law.

Fiscal Implication Summary

The Sunset Commission's recommendations would not have a fiscal impact to the state. Impacts to each of the four river authorities are discussed on the following page.

Sulphur River Basin Authority — The recommendations would not have a significant fiscal impact to SRBA. Hiring an executive director would cost about $130,000 per year plus benefits, but these costs would be offset by savings from incorporating the duties of SRBA's consultant into the executive director position. Other recommendations, such as implementing best practices for transparency, could be absorbed within existing resources.

Central Colorado River Authority — If the Legislature chooses to transfer CCRA's functions and jurisdiction to UCRA in separate legislation, approximately $73,000 in cash and investments, $150,000 in real property, and $400,000 in equipment would transfer from CCRA to UCRA based on April 2016 estimates.

Upper Colorado River Authority — The recommendations would not have a significant fiscal impact to UCRA beyond the transfer of CCRA's assets, contingent on separate legislation, discussed above.

Palo Duro River Authority of Texas — The recommendations would not have a significant fiscal impact to PDRA. If a member of PDRA pursued withdrawal or dissolution, any resulting financial implications would have to be agreed to by the PDRA board and each of its member counties and city. Other recommendations, such as establishing a website, could result in a small cost that could be absorbed using existing resources.

[1] All citations to Texas statutes are as they appear on http://www.statutes.legis.state.tx.us/. Section 325.025, Texas Government Code.

Texas Department of Transportation

Amy Tripp, Project Manager

Summary

After a decade of intense legislative scrutiny including multiple Sunset reviews, frequent leadership changes, and continuing organizational flux, the Texas Department of Transportation (TxDOT) is now embarking on another high-stakes transition as it prepares to spend billions of dollars in new funding provided by voters and the Legislature. While this new funding represents a historic opportunity for the state, it also poses a significant challenge for the department to plan, select, and deliver projects effectively and transparently.

Generally, the Sunset Commission found the department has made good-faith efforts to address previous concerns, but improvements most critical to its ability to meet high expectations are far from complete. Chief among these improvements is a continued push toward a more transparent and performance-based planning and project selection process — a longstanding legislative goal, but still a work in progress. TxDOT also needs to quickly rectify well-documented inefficiencies in its project development pipeline, which have led to persistent over-time and over-budget highway projects. The commission also recommends giving TxDOT additional contract management tools to improve timeliness of the department's frequently delayed construction projects. Lastly, because the department is tentatively on the right track, the Sunset Commission recommends continuing TxDOT for the standard 12-year period to allow time to stabilize the department and complete tasks critical to meeting the challenges at hand.

TxDOT needs to stabilize and complete many half-finished tasks so it can meet the tremendous challenges at hand.

Recommendations

Transportation Planning

- Require TxDOT to adopt one clear set of overall transportation system goals and measures to consistently carry through all planning documents to clearly articulate its vision for the future, measure progress, and be held accountable.
- Require TxDOT to publish an analysis illustrating the link between funding decisions in the Unified Transportation Program and progress toward overall transportation goals to fill an important information gap needed to understand the impact of the commission's funding decisions.
- Require TxDOT to create a prominently displayed online dashboard report clearly communicating the adopted goals for Texas' transportation system and regularly updating progress toward meeting them.

- Require TxDOT to evaluate a project's strategic need before and separately from other factors when selecting and prioritizing projects to ensure focus on projects with the greatest potential impact on transportation goals.
- Require TxDOT to clarify roles and responsibilities of the department and planning organizations through a rulemaking process to ensure effective collaboration in using significant new funding.
- Require TxDOT to adopt rules streamlining and clarifying public information requirements relating to changes to the Unified Transportation Program to promote more meaningful public engagement.
- Require TxDOT to regularly evaluate and make improvements to the online project tracker system and adopt related rules to improve the quality of the system and ensure full transparency.
- Direct TxDOT to develop materials to increase awareness and use of the online project tracker tool for local elected officials. (Management action – nonstatutory)
- Request the House Committee on Transportation and the Senate Committee on Transportation to provide necessary oversight of the state's significant transportation investment and TxDOT's progress toward performance-based planning, with detailed status reports and information provided by TxDOT as needed. (Request to Legislative Committees – nonstatutory)

Project Development

- Require TxDOT to finalize implementation of its new project portfolio review process and publicly share resulting performance information to ensure TxDOT completes new efforts to monitor project development and improves communication with diverse stakeholders.
- Direct TxDOT to provide regular analysis and monitoring reports to the Transportation Commission about the department's efforts to correct past issues with underperformance in key budget measures, letting controls, and right-of-way backlogs to resolve past issues and prepare for the future. (Management action – nonstatutory)
- Direct TxDOT to develop a more risk-based, cross-functional focus to its internal project development activities to mitigate potential problems with the department's most complex projects. (Management action – nonstatutory)
- Direct TxDOT to regularly report on its progress implementing the Modernize Portfolio and Project Management system to ensure visibility and oversight of this important but high-risk project. (Management action – nonstatutory)
- TxDOT should make efforts to improve proactive external stakeholder outreach to avoid conflicts with future planned transportation projects. (Management action – nonstatutory)

Contracting

Traditional Low–Bid Highway Contracts

- Require TxDOT to include a range of contract remedies in its traditional low-bid highway contracts to address contractor performance problems more quickly instead of allowing delays to escalate.
- Require TxDOT to adopt rules implementing the existing statutory requirement to reflect accurate costs of project delays in liquidated damages to ensure TxDOT and taxpayers are fully compensated.

- Require TxDOT to conduct contractor evaluations and consider past performance in determining bid capacity to allow TxDOT to encourage project awards to contractors with proven ability to complete quality, timely work.
- Direct TxDOT to develop clear criteria for applying sanctions to improve its currently subjective process. (Management action – nonstatutory)
- Direct TxDOT to develop and implement a process for regular, centralized monitoring of construction contract delays to allow department management to identify trends and more effectively address contractor performance. (Management action – nonstatutory)
- Direct TxDOT to develop criteria for applying project incentives such as milestone incentives and A+B bidding to ensure optimal use of these tools to deliver projects faster. (Management action – nonstatutory)
- Direct TxDOT to update production rate information for estimating project timelines and establish a schedule for regular revisions to allow for accurate estimates of project time and help determine appropriate use of incentive tools. (Management action – nonstatutory)

Professional Engineering Contracts

- Direct TxDOT to provide guidance for district management of construction engineering inspectors to efficiently use resources and ensure effective oversight of these expanding contracts. (Management action – nonstatutory)
- Direct TxDOT to better monitor and enforce the existing requirement to complete engineering contractor evaluations so that past performance can inform future procurements. (Management action – nonstatutory)
- Direct TxDOT to improve the availability of comparative information needed for districts to effectively negotiate the scope of work for professional engineering contracts. (Management action – nonstatutory)

Oversight and Support of Newly Decentralized Functions

- Direct TxDOT to develop additional training and monitoring processes to ensure districts effectively oversee large, complex contracts, such as design-build. (Management action – nonstatutory)
- Direct TxDOT to provide comprehensive guidance and monitoring for decentralized procurement of professional engineering services contracts to ensure effective oversight. (Management action – nonstatutory)

Contract Review and Monitoring

- Direct TxDOT to develop a risk-based approach to centrally reviewing contracts, freeing staff time to focus on the most high-risk contracts and address process bottlenecks. (Management action – nonstatutory)
- Direct TxDOT to update its signature authority based on risk, eliminating unnecessary delays while preserving the appropriate level of review. (Management action – nonstatutory)
- Direct TxDOT to develop and monitor performance measures for contract procurement to identify problem areas and inform process improvements. (Management action – nonstatutory)

Business Opportunity Programs

- Direct TxDOT to align its business opportunity goal setting with state and federal guidelines to more actively promote higher participation. (Management action – nonstatutory)
- Direct TxDOT to develop a standard process for addressing failure to meet business opportunity program goals and more actively improve future performance. (Management action – nonstatutory)
- Direct TxDOT to actively recruit new businesses for certification and provide training on contracting with TxDOT to improve overall participation. (Management action – nonstatutory)
- Direct TxDOT to improve central monitoring and support for its business opportunity programs to ensure more effective program oversight across the department. (Management action – nonstatutory)
- Direct TxDOT to evaluate the small business enterprise program and develop policies and rules to provide meaningful opportunities for small businesses. (Management action – nonstatutory)
- TxDOT should streamline certification to actively certify Small Business Enterprise-eligible businesses and increase participation of businesses eligible for multiple programs. (Management action – nonstatutory)

Business Process Improvement

- Direct TxDOT to centrally coordinate and track results of business process improvement efforts, including the use of private management consultant contracts, to ensure these often expensive efforts result in performance improvements. (Management action – nonstatutory)
- Direct TxDOT to consider implementing a rapid process improvement program similar to the Texas Workforce Commission model to improve the department's ability to make meaningful, lasting operational improvements at a lower cost. (Management action – nonstatutory)

District Oversight and Support

- Direct TxDOT to actively and consistently monitor, evaluate, and report district performance to ensure visibility into district operations and effective performance evaluation. (Management action – nonstatutory)
- Direct TxDOT to improve communication and support functions to ensure districts' needs are met. (Management action – nonstatutory)

State Aircraft Fleet

- Require TxDOT to provide a thorough range of analyses and options within its long-range fleet plan to help the Legislature make informed decisions about the future of the state aircraft fleet.
- Clarify TxDOT's authority to include capital costs in flight services rates charged to customers if practicable, and create a subaccount within the State Highway Fund to set aside funds for future aircraft replacement.
- Tighten statutory criteria for use of state aircraft to prioritize cost effectiveness and need over convenience.
- Clarify statute to specify state agency heads are responsible for ensuring their employees' use of state aircraft meets statutory criteria to provide clear accountability.

- Direct TxDOT to track specific statutory justifications for state aircraft use to allow better monitoring of overall compliance with the law. (Management action – nonstatutory)
- Direct TxDOT to adopt a clear internal policy governing the appropriate use of the state aircraft fleet by department staff and regularly monitor usage to ensure cost effectiveness. (Management action – nonstatutory)

Crash Reports

- Require law enforcement agencies to submit crash reports electronically to TxDOT by September 1, 2019 to save data entry resources TxDOT could use for other traffic safety efforts.
- Eliminate the wasteful administrative requirement to submit drivers' crash report forms to TxDOT, which serve no government purpose.

Standard Review Elements

- Update a standard Sunset good government provision to ensure Transportation Commission members are adequately trained on their responsibilities and the limits of their authority.
- Discontinue two of TxDOT's reporting requirements and modify four others to improve efficiency.
- Require TxDOT to include analysis about the impacts of proposed passenger rail lines to the existing Long-Term Plan for Statewide Passenger Rail to provide additional information to decision makers.
- Direct TxDOT to more proactively implement and monitor its efforts to increase workforce diversity, including in management and executive levels where TxDOT particularly struggles. (Management action – nonstatutory)

Continue

- Continue TxDOT for 12 years to allow the department to stabilize and focus on successfully implementing major ongoing improvement efforts.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations to improve the efficiency of crash reporting would result in a net positive fiscal impact to the state of approximately $3.3 million over the next five fiscal years, as described in the chart below. Many other recommendations are designed to improve internal operations and efficiency at the department, but their impact would ultimately depend on implementation, two of which are also highlighted below.

The recommendation to adjust liquidated damages to reflect road user costs could have a positive fiscal impact to the state, but the amount cannot be estimated without knowing the increased amount of liquidated damages, number of projects for which these liquidated damages would be applied, and length of time delayed.

The recommendation for TxDOT to provide additional options to the Legislature regarding the state aircraft fleet could have a fiscal impact if the analysis results in changes in use or composition of the fleet, such as considering the use of contracted flight services. In addition, clarifying TxDOT's authority to include capital costs in its rates could result in price increases to state agencies using the planes if TxDOT ultimately decides to use this authority. However, this approach, if feasible, could allow TxDOT to

save for aircraft replacement needs over time, instead of requiring lump-sum legislative appropriations. Finally, requiring agencies to prioritize cost effectiveness over convenience could result in more efficient use of the state aircraft and ultimately, savings to the state.

The recommendations to require electronic submission of law enforcement crash reports and eliminate an unnecessary driver crash report would have a net positive fiscal impact of $40,470 in fiscal years 2018 and 2019, and about $1.06 million positive impact beginning in fiscal year 2020 due to a reduction of two full-time equivalent (FTE) positions and the elimination of the data entry costs associated with paper crash reports.

Texas Department of Transportation

Fiscal Year	Cost to the General Revenue Fund	Savings* to the State Highway Fund	Change in the Number of FTEs From 2017
2018	$5,130	$45,600	-1
2019	$5,130	$45,600	-1
2020	$5,130	$1,069,300	-2
2021	$5,130	$1,069,300	-2
2022	$5,130	$1,069,300	-2

* TxDOT initially funds data entry costs from the State Highway Fund and then recoups the cost by billing the Federal Highway Administration.

State Board of Veterinary Medical Examiners

Danielle Nasr, Project Manager

Summary

The State Board of Veterinary Medical Examiners is a small agency, with a staff of 20 and a budget of about $1.1 million, but it has a large mission — licensing and regulating veterinary medical care in Texas. The Sunset Commission found an agency struggling after a difficult biennium that stretched its resources and abilities, almost to the breaking point. Some of these difficulties came from outside forces, but many were the agency's own making. Most concerning were the agency's significant administrative and operational failures — specifically, poor financial management and data reliability problems. While internal agency management played a key role in creating these problems, the commission concluded they ultimately resulted from a lack of leadership and oversight from the board. The commission's recommendations aim to engage and improve board involvement by sweeping the current board, changing the board's composition, and enhancing board member training.

Poor management and a lack of oversight from the board led to significant administrative and operational failures.

The agency and the profession have also experienced growing pains as the tools and practices of veterinary medicine have changed over time. Notable among these changes are the growing risks associated with controlled substances. Texas veterinarians have a high risk of controlled substances diversion, reporting the highest theft and loss of controlled substances among all practitioners over the last five years. However, Texas only collects controlled substances data on what veterinarians prescribe through pharmacies, not the significant quantities they directly dispense. To address this lack of information and oversight, the commission recommends requiring veterinarians to report their controlled substance dispensing to the state's Prescription Monitoring Program and requiring the agency to monitor veterinarians' use of controlled substances to help combat diversion in the veterinary profession.

Other recommendations aim to improve the agency's enforcement processes to ensure fair treatment of licensees and complainants, increasing transparency and access to information, and protecting complaint confidentiality.

Because of the serious nature of the concerns identified, the commission recommends continuing the State Board of Veterinary Medical Examiners for only four years and requiring the agency to submit quarterly reports regarding implementation of the commission's recommendations.

Recommendations

Governance

- Require all current board member terms to expire on September 1, 2017.
- Restructure the nine-member board composition from six veterinarians and three public members to five veterinarians, one veterinary technician, and three public members. One veterinarian must be associated with an animal shelter and one must have at least three years of large animal practice experience.
- Update the standard Sunset across-the-board requirement related to board member training.
- Direct the agency to improve its board member training to include the agency's statute and rules, programs, functions, budget, oversight of the executive director, and involvement in large agency contracts, reports, and strategic plans. (Management action – nonstatutory)
- Direct the veterinary board to develop, adopt, and publish conflict of interest policies regarding board member involvement in the agency's complaint investigation and enforcement processes. (Management action – nonstatutory)
- Direct the agency to solicit and consider input from licensed veterinary technicians and equine dental providers on all rule changes and policy decisions affecting these license types. (Management action – nonstatutory)

Prescription Monitoring Program and Controlled Substances

- Beginning September 1, 2018, require Texas veterinarians with a DEA registration to report controlled substances dispensing data to the Texas Prescription Monitoring Program (PMP).
- Beginning September 1, 2018, require veterinarians to search the PMP database and review a human client's animal-related prescription and dispensing history before prescribing or dispensing certain drugs and subject a veterinarian to disciplinary action for noncompliance.
- Clarify statute to provide direction for the agency to monitor veterinarian dispensing and prescribing patterns of controlled substances.
- Direct the State Board of Veterinary Medical Examiners and the Texas State Board of Pharmacy to enter into a memorandum of understanding (MOU) to develop standard data elements for veterinarians and pharmacists entering dispensing information for animals into the PMP database and to develop standard querying practices for requesting animal-specific reports from the PMP database. (Management action – nonstatutory)
- Provide statutory clarification on the requirements for reporting animal-related controlled substance dispensing information. Include in statute the data elements developed by the veterinary board and pharmacy boards to ensure consistent reporting.
- Direct the agency to develop a robust educational process to regularly educate licensees about controlled substances laws, rules, and inspection standards. (Management action – nonstatutory)

- Ensure that if the Legislature requires wholesale pharmaceutical distributors to report their sales of controlled substances to the pharmacy board, then the veterinary board and the pharmacy board must enter into a MOU to ensure the veterinary board has access to this information. (Management action – nonstatutory)
- Create and implement inspection guidelines with aggravating and mitigating factors to evaluate controlled substances deficiencies recorded during onsite inspections. (Management action – nonstatutory)

Enforcement

- Require the board to develop and adopt a schedule of sanctions in rule, and to use it in determining disciplinary actions.
- Direct the agency to clearly define and consistently implement its enforcement procedures and to develop and publish policies governing a complainant's access to information regarding his or her complaint. (Management action – nonstatutory)
- Direct the agency to improve enforcement data tracking systems and processes. (Management action – nonstatutory)
- Direct the agency to ensure its website accurately reflects the disciplinary status of its licensees and make all approved disciplinary orders easily accessible and readily available on its website. (Management action – nonstatutory)
- Direct the agency to follow the State Office of Administrative Hearing's current guidance on the scope of the owner and designated caretaker exemptions in its enforcement processes. (Management action – nonstatutory)

Complaints

- Prohibit the board from accepting anonymous complaints and require the board to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Prohibit a board member who reviews a standard of care investigation from participating in any resulting disciplinary proceeding, and allow the board to delegate medical reviews to licensed veterinarians who are not board members.
- Require the agency to provide a clear and easily understood summary of the outcome of a complaint investigation to the complainant.
- Direct the board to modify existing rules to allow a complainant to receive all of the licensee's responses to the complaint during an investigation. (Management action – nonstatutory)
- Direct the agency to provide sufficient information on the reasons for a complaint dismissal. (Management action – nonstatutory)
- Direct the agency to improve tracking of non-jurisdictional complaints. (Management action – nonstatutory)

Inspections

- Require the agency to collect and track relevant data to establish a risk-based approach to onsite inspections.
- Direct the board to develop and implement a strategic inspection plan to improve and prioritize licensee inspections; the plan should aim to inspect all licensees at least once every eight years. (Management action – nonstatutory)

Licensing

- Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and existing licensees.
- Authorize the agency to provide staggered biennial license renewals for all license types.
- Remove the statutory limitation currently restricting the agency's authority to lower fees.
- Direct the agency to conduct continuing education audits as part of the license renewal process. (Management action – nonstatutory)
- Direct the agency to evaluate jurisprudence exam questions for each license type and create question banks for its jurisprudence exams. (Management action – nonstatutory)
- Direct the agency to remove the notarization requirement for temporary license applications and evaluate other application requirements to streamline temporary license processing. (Management action – nonstatutory)

Agency Management

- Review and update the current job description for the Chief Fiscal Officer position, and direct the executive director to ensure the agency hires a qualified and properly trained applicant. (Management action – nonstatutory)
- Develop and implement a career ladder program as required by statute, and make it available to staff. (Management action – nonstatutory)

Continue

- Due to serious concerns with the oversight and agency operations, continue the State Board of Veterinary Medical Examiners for only four years, subject to Sunset review in 2021.
- Direct the agency to provide written quarterly reports to the Sunset Commission regarding the implementation of the recommendations adopted by the commission, beginning January 31, 2017. (Management action – nonstatutory)

Fiscal Implication Summary

The Sunset Commission's recommendations could have a cost to the agency. However, the costs could not be estimated, as discussed below.

Updating the state's Prescription Monitoring Program to allow for uniform reporting of animal prescriptions and dispensing will likely have some costs associated with information technology

adjustments. However, this cost cannot be estimated until the pharmacy board and veterinary board develop and submit the standard data elements required by the recommendation.

The recommendation requiring each licensee be inspected every eight years is consistent with the agency's current intention to increase the frequency of inspections. The agency has already requested an additional $109,620 in its 2018–19 Legislative Appropriations Request for an investigator to perform these additional inspections. Additionally, the recommendations to remove continuing education audits from the inspection process and to prioritize inspections by risk would reduce workload and allow for more inspections with the same resources.

If the agency chooses to contract with licensed veterinarians or hire an on-staff veterinarian to conduct medical reviews rather than having board members perform them, a cost to the agency would result. The costs of medical reviews at other licensing agencies that contract for these services vary widely, ranging from $100–$300 per case, and the annual salary of a veterinarian can range from about $53,000 to $158,000. These costs will depend on the agency's implementation of the recommendation

The agency has already begun implementing recommendations to update and improve its enforcement data tracking systems within existing resources, and has requested $11,443 in its current Legislative Appropriations Request for additional document management capabilities. Any additional technology improvements may have a cost associated.

Implementation of 2015 Sunset Recommendations

Implementation of 2015 Sunset Recommendations

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

Overall, Sunset staff and the State Auditor's Office (SAO) reviewed a total of 274 provisions requiring action by the agencies reviewed for the 84th Legislature. Agencies fully implemented approximately 63 percent of these changes, with most of the remainder in progress. While this percentage is lower than most legislative cycles, the sheer volume of recommendations related to the state's vast health and human service system resulted in timing and resource issues for the system. This effect was not unexpected.

The chart on page 73, *2015 Sunset Legislation and Management Recommendations Implementation by Agency*, shows the progress of each agency in implementing its changes. Key changes implemented as a part of the Sunset process include the following.

- Consolidating all client services from across the health and human services system and further reorganizing the system along functional lines, to be completed September 1, 2017, to better address ongoing problems of fragmentation, misaligned or poorly focused programs, and blurred accountability. This reorganization abolished the Department of Assistive and Rehabilitative Services (DARS) in 2016 and will abolish the Department of Aging and Disability Services (DADS) in 2017, consolidating their functions into the Health and Human Services Commission. The reorganization will allow clients to more easily navigate this complex system to get the services they need.

- Instituting basic best practices, such as establishing clear investigative criteria and timelines, at the Health and Human Services Commission Office of Inspector General to ensure fair, defensible processes and results at this once broken organization.

- Restructuring the Department of State Health Services to focus on its primary public health responsibilities by deregulating eight regulatory programs and transferring 17 others to the Texas Department of Licensing and Regulation and Texas Medical Board, to be completed November 2017.

- Removing unnecessary burdens on Department of Family and Protective Services caseworkers to improve retention and increase the time they spend with children and families.

- Transferring to the Texas Workforce Commission services to help people with disabilities find jobs, a function previously housed at DARS.

In 2015, the 84th Legislature passed 13 of the 17 bills containing the Sunset Commission's statutory recommendations. Sunset staff assessed each agency's efforts to implement the required statutory changes, a total of 142 provisions. In addition to statutory provisions, Sunset staff assessed agency efforts to implement 94 management recommendations for improvement of agency operations, primarily those related to health and human services agencies. SAO evaluated the self-reported implementation of 43 management recommendations related to agencies outside the health and human services arena.

Detailed information on the status of each statutory or management provision reviewed by Sunset staff that is in progress, partially implemented, or not implemented, is provided for each agency in the following exception charts. The textbox, *Implementation Key*, explains the terms used to describe the status of statutory and management provisions.

Implementation Key

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

2015 Sunset Legislation and Management Recommendations Implementation by Agency

Agency		Changes Required	Changes Implemented	In Progress	Partially Implemented	Not Implemented
Administrative Hearings, State Office of	Statutory	13	11	2	0	0
	Management*	9	7	2	0	0
Aging and Disability Services, Department of	Statutory[1]	1	0	1	0	0
	Management	13	9	4	0	0
Assistive and Rehabilitative Services, Department of	Statutory	8	4	2	2	0
	Management	8	8	0	0	0
Developmental Disabilities, Texas Council for	Statutory[2]	0	0	0	0	0
	Management	1	0	1	0	0
Education Agency, Texas	Statutory[3]	8	7	1	0	0
	Management*	5	5	0	0	0
Family and Protective Services, Department of	Statutory	22	15	7	0	0
	Management	31	16	11	3	1
Health and Human Services Commission	Statutory	26	12	11	1	2
	Management	17	11	6	0	0
Health and Human Services Commission — Office of Inspector General	Statutory	27	20	4	3	0
	Management	5	1	2	2	0
Health Services, Department of State	Statutory	17	11	6	0	0
	Management	14	9	5	0	0
Health Services Authority, Texas	Statutory	1	0	1	0	0
	Management	0	0	0	0	0
People with Disabilities, Governor's Committee on	Statutory	1	0	1	0	0
	Management*	2	0	2	0	0
Purchasing from People with Disabilities, Texas Council on	Statutory	2	1	1	0	0
	Management*	2	0	2	0	0
University Interscholastic League	Statutory[4]	0	0	0	0	0
	Management*	6	6	0	0	0
Workforce Commission, Texas	Statutory	14	10	3	1	0
	Management*[5]	19	6	13	0	0
Workforce Investment Council, Texas	Statutory	2	2	0	0	0
	Management	0	0	0	0	0
	Totals	**274**	**171**	**88**	**12**	**3**
	Percentage		**63%**	**32%**	**4%**	**1%**

* Implementation of management actions was self-reported to the State Auditor's Office and not reviewed by Sunset staff.

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[1] The Sunset bill for DADS (S.B. 204) was not adopted by the 84th Legislature. However, Sunset staff checked compliance on Sunset recommendations related to nursing home violations that passed in S.B. 304.

[2] The Sunset bill for Texas Council for Developmental Disabilities (H.B. 1679) was adopted by the 84th Legislature but did not contain any provisions requiring action by the agency.

[3] The Sunset bill for Texas Education Agency (S.B. 214) was not adopted by the 84th Legislature. However, the chart includes provisions for the Sunset bill transferring driver training to Texas Department of Licensing and Regulation (H.B. 1786).

[4] The Sunset bill for University Interscholastic League (S.B. 213) was not adopted by the 84th Legislature.

[5] In addition to the auditor's report, Sunset staff reviewed five management recommendations for the Texas Workforce Commission related to program transfers from DARS. Four of these are still in progress as described on page 104 of this report.

State Office of Administrative Hearings

House Bill 2154, as adopted by the 84th Legislature, further strengthened the independence of the State Office of Administrative Hearings (SOAH), helped stabilize the agency's funding, and improved management of its staff and diverse caseload. The legislation contained 13 changes requiring action including action related to the SOAH Tax Division. The following chart summarizes two statutory provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Authorizes SOAH to adjust its hourly rate to recover the full cost of services.	*In Progress*	The bill authorizes SOAH to adjust its hourly rate to recover its full cost of services, but the agency's hourly rate was capped at $128 in the General Appropriations Act, 84th Legislature, SOAH Bill Pattern, Rider 8.a. However, with the conclusion of fiscal year 2016, SOAH now estimates its hourly cost to be $133. Based on its current estimates the $128 hourly rate will not cover the full cost of SOAH's services.
2. Requires SOAH and the Department of Public Safety (DPS) to develop and adopt a memorandum of understanding (MOU) no later than September 1, 2016, establishing SOAH has primary scheduling responsibility for administrative license revocation (ALR) hearings and requires the agencies to update the MOU at least biennially.	*In Progress*	SOAH and DPS completed and executed the MOU on August 30, 2016. SOAH now sets the dates and times of its ALR courts and the number of hearing slots available. DPS will continue to schedule individual cases into the hearing slots until SOAH procures a new integrated case management system. The MOU anticipates the complete transfer of the docketing functions in September 2018.

Department of Aging and Disability Services

Senate Bill 204, which would have made changes to programs at the Department of Aging and Disability Services (DADS), was not adopted by the 84th Legislature. However, a Sunset Commission recommendation requiring license revocation for certain nursing homes passed separately in Senate Bill 304. Per Senate Bill 200, DADS will be abolished and its functions transferred to the Health and Human Services Commission on September 1, 2017. The following chart summarizes the statutory provision still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
Senate Bill 304 1. Requires DADS, through the HHSC executive commissioner, to revoke the license of a nursing home found to have three or more serious violations related to abuse or neglect in a two-year period.	***In Progress***	Rules to implement this provision are scheduled to be published for adoption in the Texas Register in March 2017.

In addition to statutory changes, the Sunset Commission also issued 13 management recommendations requiring action. Four of these directives are still in progress as explained in the chart below.

Management Action	Implementation	
	Status	Comments
2. Directs DADS to focus on improving the quality of life for residents and staff at all State Supported Living Centers (SSLCs).	***In Progress***	By August 2017, DADS plans to implement a care management program and a physical and behavioral health quality and outcomes of care program. The agency has already implemented an electronic health record system at SSLCs and revised its individual support plan process to improve person-centered planning.
3. DADS should leverage expertise at SSLCs to support providers in the community.	***In Progress***	DADS has applied to the Centers for Medicare and Medicaid Services for approval of a pilot program to provide dental services at the Austin SSLC and Richmond SSLC to people receiving community-based services. DADS expects to pilot the program September 2017.
4. DADS should strengthen partnerships with local authorities statewide to improve the number and speed of transitions to the community.	***In Progress***	By March 2017, DADS expects to have implemented a process to monitor individuals who have transitioned from SSLCs to determine the success of the transition. The agency has already established crisis stabilizations team at each SSLC to assist community providers that serve SSLC residents who have transitioned to the community.

Department of Aging and Disability Services (continued)

Management Action	Implementation	
	Status	Comments
5. Require DADS to identify inconsistencies across the state in the interpretation and application of statutes and regulations against long-term care facilities.	*In Progress*	DADS has launched an online feedback tool for long-term care providers to report inconsistent application of rules and regulations and has reviewed its enforcement processes to identify areas of improvement for consistency when citing violations and deficiencies. DADS expects to have a quality assurance exercise in place by February 2017 that will evaluate survey findings to better identify and address inconsistent understanding of rules and regulations. By November 2017, DADS will have completed participation in a federal pilot for the revised nursing facility survey process and also staff training on the revised process.

Department of Assistive and Rehabilitative Services

House Bill 2463, as adopted by the 84th Legislature, integrated services for people with visual disabilities with other disability services and improved oversight and management of direct service programs administered by the Department of Assistive and Rehabilitative Services (DARS). However, Senate Bill 208 transferred vocational rehabilitation services and other related programs to the Texas Workforce Commission (TWC) and Senate Bill 200 abolished DARS and transferred all remaining functions to the Health and Human Services Commission (HHSC) on September 1, 2016. The legislation included a total of eight changes requiring action. The following chart summarizes two statutory provisions that are still in progress and two that are partially implemented, and provides the status of each.

Additional information on provisions that are still in progress or not implemented for the programs that moved to TWC is provided on page 104.

Bill Provision	Implementation	
	Status	Comments
1. Requires DARS to establish guidelines that provide direction for caseworkers' decisions in all of the agency's direct services programs. Requires DARS to provide the guidelines to caseworkers in a format that allows them to easily access the information.	***Partially Implemented***	While HHSC and TWC have created memos to educate staff about recent policy changes and use the case review system to help caseworkers, the agencies are still in the process of incorporating changes required by the bill into accessible program guidelines for caseworkers. However, some requirements have not been included in policy updates or changes at either agency. For example, the Blind Children's Vocational Discovery and Development and the Comprehensive Rehabilitation Services programs at HHSC and TWC's Vocational Rehabilitation program do not have caseworker guidelines about the total length of time a consumer may receive services and the recommended total expenditures per case, both key problems identified in the Sunset review.
2. Requires DARS to establish and maintain a single, uniform case review system for all direct services programs.	***In Progress***	While all programs now use a uniform case review system, HHSC is still implementing quality assurance improvement methods for direct service programs, which will guide the case review process.

Department of Assistive and Rehabilitative Services (continued)

Bill Provision	Implementation	
	Status	Comments
3. Requires DARS to integrate its independent living programs for people who are blind or visually impaired and for people with significant disabilities into a single independent living program by September 1, 2016. Requires DARS to ensure that all services provided under the independent living services program are directly provided by centers for independent living (CILs) and are not directly provided by the agency. Requires DARS to monitor the performance of each CIL in providing services.	***Partially Implemented***	DARS combined and outsourced the Rehabilitation Services and Blind Services Independent Living programs to CILs, including the Independent Living Services Program for Older Individuals Who are Blind, which was transferred to TWC before consolidation on September 1, 2016. However, a decision from the federal Rehabilitation Services Administration prevented TWC from contracting with HHSC to administer the outsourced program. As a result, TWC established the Independent Living Services for Older Individuals Who are Blind program at regional TWC offices, which will work closely with the CILs.
4. Requires DARS to designate staff, outside of the direct services programs, to monitor those programs from a statewide perspective. Requires these staff to collect, monitor, and analyze data relating to the programs and report outcomes and trends to program managers. Authorizes DARS to conduct internal peer reviews of its field offices at regular intervals to assess their compliance with federal regulations and agency policies.	***In Progress***	While HHSC executive management is now tracking and evaluating performance of programs and staff through monthly financial briefings and a dashboard system, the agency is still in the process of implementing an agency-wide peer monitoring program and a plan to ensure the integrated blind and general programs have a uniform quality assurance process.

Texas Council for Developmental Disabilities

House Bill 1679, as adopted by the 84th Legislature, continued the Texas Council for Developmental Disabilities (TCDD), but did not contain any provisions requiring action by the agency. The Sunset Commission adopted one management recommendation for TCDD requiring action. The following chart summarizes this provision and provides its status.

Management Action	Implementation	
	Status	Comments
1. TCDD should track the five-year outcomes of grant projects designed to continue beyond the grant funding period and compare actual outcomes to intended outcomes.	*In Progress*	Because five years have not elapsed, this management action has not yet taken effect.

Texas Education Agency — Driver Training Program

House Bill 1786, as adopted by the 84th Legislature, transferred the Texas Education Agency's driver training program to the Texas Department of Licensing and Regulation (TDLR). The legislation included a total of eight changes requiring action. The following chart summarizes one statutory provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Removes fixed driver training fee amounts and fee caps from statute and instead allows the Commission of Licensing and Regulation to establish fees in rule. Specifies that changes to fee amounts only apply to fees charged on or after September 1, 2015.	*In Progress*	TDLR is in the process of adopting rules, which include fee amounts and caps. The rulemaking process will be complete by spring 2017.

Department of Family and Protective Services

Senate Bill 206, as adopted by the 84th Legislature, removed unnecessary burdens on caseworkers, improved safety and well-being of children in foster care, and strengthened child-care licensing enforcement efforts in the Department of Family and Protective Services (DFPS). The legislation included a total of 22 changes requiring action. The following chart summarizes seven statutory provisions that are still in progress and provides the status of each.

Of note, DFPS and Child Protective Services (CPS) in particular, is in the midst of a high level of legislative and gubernatorial attention as a result of continuing problems with both investigations and foster care placements. The Legislative Budget Board has provided additional funds for salary increases aimed at retaining CPS staff. These additional ongoing efforts likely have had an impact on DFPS' efforts to implement the Sunset legislation and management recommendations.

Bill Provision	Implementation	
	Status	Comments
1. Requires DFPS to conduct a criminal history check and complete a preliminary evaluation of a designated caregiver's home before placing a child there. Also requires DFPS to begin a full home study within 48 hours of placement and complete it as soon as possible.	*In Progress*	DFPS leadership is in the final approval process for new policies including these requirements.
2. Requires DFPS to include data on foster placement stability and proximity of placements to a child's home county in its annual report.	*In Progress*	DFPS will add proximity to a child's home county to the interactive 2016 data book, to be published in February 2017. Foster placement stability is already a measure included in the data book.
3. Requires DFPS to include in its annual report data on pregnant or parenting children, children missing from substitute care, and human trafficking.	*In Progress*	DFPS manually tracks information about children missing from substitute care and human trafficking related to children in conservatorship, and will report these data on its website annually. DFPS will report data on pregnant or parenting children in the 2016 data book.
4. Requires DFPS to include in its annual report data on the amount of funding spent on child abuse prevention services and the rate of child abuse and neglect in each county.	*In Progress*	DFPS plans to include this in the 2016 data book.

Department of Family and Protective Services (continued)

Bill Provision	Implementation	
	Status	Comments
5. Requires DFPS to develop and maintain a long-range foster care redesign implementation plan. As a related management action, Child Protective Services (CPS) should expand its connection to the faith-based community beyond its existing efforts aimed at adoption and permanency to address gaps in service availability in all areas of CPS, such as investigations and family-based safety services.	*In Progress*	DFPS is awaiting the Health and Human Service Commission's final approval for the Foster Care Redesign Implementation Plan. DFPS has established a Faith Based Specialist Work Plan that outlines several initiatives to ensure engagement with the faith-based community in all stages of service, including training existing and new caseworkers on the resources faith-based specialists provide. DFPS has not designed statewide goals and outcome measures for faith-based engagement, formally solicited feedback from faith communities they partner with, or begun including faith specialists in regional management meetings to keep regional management apprised of and involved in outreach efforts.
6. Requires DFPS to implement a license renewal process for child care licenses and registrations.	*In Progress*	DFPS is working with Technology Consortium on the development, testing, and implementation of automated licensing permit renewals. DFPS will develop a manual process for permit renewals in advance of automation since rules requiring license renewal become effective ahead of the automation roll out.
7. Requires DFPS to conduct a study to determine whether authorization agreements should be expanded to include agreements between a parent of a child and a nonrelative. DFPS must complete the study by December 31, 2016.	*In Progress*	DFPS is working with stakeholders and reviewing available information to complete the study and develop recommendations.

Department of Family and Protective Services (continued)

In addition to statutory changes, the Sunset Commission also issued 31 management actions to DFPS. Eleven of these directives are still in progress, three are partially implemented, and one is not implemented, as explained in the chart below.

Management Action	Implementation	
	Status	Comments
8. Directs DFPS to consolidate its existing workforce management functions under one operational unit and add additional critical functions to better support employees and systematically identify root causes of turnover.	***Partially Implemented***	The Sunset Commission directed DFPS to use its new Workforce Development Division to systematically monitor and report key retention-related data to DFPS leadership to timely and proactively identify problems, such as turnover and caseload hot spots. However, the agency has kept primary responsibility for these monitoring and reporting duties with CPS. The division's role is mostly limited to recruiting, hiring, and training caseworkers. This approach does not take full take advantage of the new division's dedicated resources for monitoring and overseeing improvements in these data. Also, it does not fully accomplish the Sunset Commission's purpose of ensuring systematic monitoring and reporting of retention issues outside the structure of CPS, whose primary job is to ensure child safety. DFPS only partially consolidated its hiring functions into the Workforce Development Division, and still relies on CPS regional staff to post, screen, interview, and hire supervisors and staff near the direct service positions. The division manages the hiring process for caseworker positions, reducing the CPS vacancy rate for investigators from 10 percent in fiscal year 2013 to the current 1 percent. As part of this management action, the Sunset Commission directed the new Workforce Development Division to evaluate the effectiveness of DFPS' retention efforts, such as merit pay. DFPS is working with the University of Houston to conduct a compensation effectiveness study that will look at all financial incentives including merit pay. DFPS expects findings in December of 2016.

Department of Family and Protective Services (continued)

Management Action	Implementation	
	Status	Comments
9. Directs DFPS to dedicate certain existing caseworker positions to create a mentoring program to better support new CPS caseworkers.	***Not Implemented***	While DFPS made changes to its existing caseworker mentor program in conjunction with its overall training program, the agency did not implement a dedicated mentor program as directed by the Sunset Commission. DFPS assigns new caseworkers to mentors for the first 90 days of their employment and pays the mentors a stipend. However, mentors working with the new caseworkers are still caseworkers themselves with full caseloads, in addition to providing training and support. DFPS contracted with the University of Texas to evaluate CPS' training and mentoring program. The University of Texas provided findings to DFPS in December 2016.
10. DFPS should establish a system for collecting confidential internal complaints and direct these complaints to the Workforce Development Division.	***Partially Implemented***	The Workforce Development Division established a system for gathering confidential internal complaints, but the agency has not made every effort possible to allow complaints to remain anonymous, as directed by the Sunset Commission. DFPS initially set up a system that allowed truly anonymous complaints from staff through the agency's external website, but later changed the process to require staff to log in to the internal intranet system to file these complaints. The Sunset Commission identified fear of retaliation by management as a persistent issue within the CPS work culture, but the agency's implementation of the complaints process does not provide enough assurance complaints cannot be linked to individual employees. Since this change in approach, the average number of monthly complaints received has fallen from 18 to four.

Department of Family and Protective Services (continued)

Management Action	Implementation	
	Status	Comments
11. Directs DFPS to regularly do casework time studies to more accurately develop caseload goals and policies that are fair and attainable for caseworkers.	*In Progress*	DFPS has completed time measurement studies on the Adult Protective Services Facility Investigations program, CPS Family-Based Safety Services program, and the CPS Conservatorship program. DFPS plans to complete time studies for the following programs: CPS Investigations, Residential Child Care Licensing, CPS Foster Care Redesign, Day Care Child Care Licensing, Statewide Intake, and Adult Protective Services In-Home Investigations. In addition, DFPS has not developed an ongoing schedule to ensure regular, updated time studies once this first set is complete.
12. Directs DFPS to develop a standardized and objective method for fairly and efficiently distributing cases.	*In Progress*	The Dallas area has begun using a case assignment similar to Houston, assigning cases based on zip code. Additionally, CPS created a case complexity report for each type of caseworker based on input from field staff and case data. CPS is currently using that input to develop regular unit-level reports supervisors can use to better see the number and complexity of cases each caseworker is working and assign cases accordingly.
13. Directs DFPS to comprehensively review and update the CPS policy and procedures handbook.	*In Progress*	CPS has established a centralized process for policy review, development, and dissemination. CPS has reviewed, updated, and streamlined policy and procedure handbooks related to investigations, Family-Based Safety Services, placements, education, and safety. The agency is still reviewing and streamlining handbooks related to conservatorship and other services. On average, CPS still makes two to four policy changes per month.
14. Directs DFPS to require CPS regions to fully document their protocols and practices, report these, and update them on a regular basis.	*Partially Implemented*	Instead of documenting regional protocols and practices, CPS state office directed regional leadership to follow statewide policies. Regional leadership continues to develop and approve regional protocols and practices on top of the statewide policies, but CPS state office directed regional leadership to only develop regional protocols when flexibility is necessary due to differences in the community's needs and resources or in response to standing orders from local judges. CPS state office does not track or document these.

Department of Family and Protective Services (continued)

Management Action	Implementation	
	Status	Comments
15. CPS should develop a process to report results of staff surveys and other feedback mechanisms back to employees, including suggestions made and management actions taken. The new Workforce Development Division should oversee this process.	*In Progress*	CPS reports the results of management actions taken in response to most employee surveys and feedback mechanisms, but the Workforce Development Division only oversees a portion of this process. Also, CPS gathers feedback for internal improvements from frontline staff in a number of ways, including, for example, the "Stay Interview" conducted with employees during the first six, 12, and 18 months of employment. CPS does not currently gather information or report trends observed through these interviews, but may develop a process to do so. Additionally, CPS and the Workforce Development Division gather feedback and ensure pertinent information and action plans are provided to leadership, but does not ensure frontline staff receives this information.
16. Directs DFPS to ensure its planning efforts for Information Management Protecting Adults and Children in Texas (IMPACT) modernization support improvement and align with possible CPS operational changes.	*In Progress*	The IMPACT modernization project has fallen behind schedule and has faced several contracting challenges, and implementation of this management action is dependent on progress of this project. DFPS established a steering committee to gather input from field staff and meet monthly to ensure CPS Transformation needs are part of IMPACT modernization updates. DFPS has not yet chosen a vendor for these IMPACT modernization changes.
17. Directs DFPS to develop a succession planning strategy, to prepare for impending retirements and provide opportunities for advancement to lower-level staff..	*In Progress*	DFPS is in the process of developing a succession plan for anticipated and unanticipated departures of key management staff, beginning with State Office positions.
18. DFPS should develop a consistent approach to measuring and monitoring provider quality and identifying risk indicators in both the legacy and redesigned systems.	*In Progress*	DFPS developed new performance measures to evaluate the wellbeing of children in foster care and implemented a predictive model to identify and prevent maltreatment through targeted monitoring. Going forward, DFPS will use information gathered to give providers effective technical assistance and guidance to improve outcomes for children. DFPS is still working to implement scorecards with these performance measures statewide.

Department of Family and Protective Services (continued)

Management Action	Implementation	
	Status	Comments
19. Directs DFPS to develop more specific outcome measures for Family-Based Safety Services.	*In Progress*	DFPS has contracted for a study of Family-Based Safety Services program outcome measures and has developed measures related to recidivism and child safety. These performance measures, however, do not clearly link the risk identified by the caseworker with the service that best addresses this risk. Recently, DFPS started planning a pilot program to contract for family-based safety services through a single external entity. This contractor would provide case supervision and provide or purchase the needed services for families in the program, while meeting specific CPS outcome measures for families set forth in the contract.
20. DFPS should monitor the use and evaluate the effectiveness of investigation resources.	*In Progress*	DFPS updated its training to help staff identify which cases would benefit from special investigators, Child Advocacy Centers, and the Forensic Assessment Center Network. DFPS is still working to add an indicator to the IMPACT case management system that will assist in identifying the number of cases that use any of the above resources and assessing effectiveness.
21. Directs DFPS to develop a strategy to use existing data to better focus its prevention efforts and report the outcomes of its programs.	*In Progress*	DFPS reviewed an analysis of 10 years of Prevention and Early Intervention program data to inform the agency's development of research initiatives and performance outcomes. DFPS has contracted with several different groups to evaluate the effectiveness of a number of individual prevention programs, but the agency is still working to produce a clear, cross-program strategy to identify the most effective programs and report performance outcomes. Because DFPS does not yet have established outcome measures, the agency has not reported data in its annual data book to show the impacts of its prevention efforts.
22. Directs DFPS to transition to online child care licensing fee collections.	*In Progress*	DFPS has awarded a contract to a vendor to automate the child care licensing fee collection system.

Health and Human Services Commission

As adopted by the 84th Legislature, Senate Bill 200 reorganized, consolidated, and made changes to the provision of health and human services in Texas. Senate Bill 200 continued the Health and Human Services Commission (HHSC), the Department of Family and Protective Services (DFPS), and the Department of State Health Services (DSHS) as independent agencies within the health and human services system. The legislation included a total of 26 changes requiring action and included action related to the Interagency Task Force for Children with Special Needs. The following chart summarizes and provides the status for 11 statutory provisions that are still in progress, one that is partially implemented, and two that are not implemented.

Bill Provision	Implementation	
	Status	Comments
1. Reorganizes and consolidates health and human services in Texas, moving from five agencies to three. • Consolidates client services across the system at HHSC on September 1, 2016. • Consolidates prevention programs at DFPS on September 1, 2016. • Consolidates institutions and regulatory functions across the system on September 1, 2017. The result of the above transfers is to abolish and transfer functions of the Department of Assistive and Rehabilitative Services (DARS) by September 1, 2016 and the Department of Aging and Disability Services (DADS) by September 1, 2017. Requires evaluation and consolidation of all administrative functions that are feasible and desirable to consolidate by September 1, 2017.	***In Progress***	On September 1, 2016, client services from across the system were consolidated at HHSC and all but two prevention programs were consolidated at DFPS. On this date, DARS was abolished as an independent agency, and its functions transferred to HHSC and the Texas Workforce Commission. Since consolidating client services at the organizational level, HHSC has begun to identify opportunities to integrate services for clients at the program level. By September 1, 2017, HHSC plans to consolidate regulatory functions and administration of state facilities from across the system. On this date, DADS will be abolished. HHSC is currently preparing for the transition of more than 25,000 staff. For each administrative function, workgroups made up of representatives from across the system are evaluating the extent to which consolidation is desired and establishing timelines for functions to be consolidated. HHSC is developing written agreements outlining the services to be provided to each HHS agency or division receiving administrative support. Consolidation of each administrative function is occurring in stages to be largely completed by September 1, 2017. Administrative services from DARS and DADS were moved to HHSC on September 1, 2016. Proportional numbers of administrative staff from DSHS and DFPS are planned to move to HHSC at the same time as regulatory and facility program staff on September 1, 2017. Various components of each administrative function will also further consolidate by September 1, 2017.

Health and Human Services Commission (continued)

Bill Provision	Implementation	
	Status	Comments
		HHSC is still making final decisions on the degree of consolidation for a few remaining administrative functions. Because of the large role administrative services play in accomplishing the system reorganization, administrative consolidations mostly occur before or after the larger system reorganizations, instead of on the same timelines. Such an approach allows the administrative areas to balance their workload and ensure services to clients and HHS staff are not interrupted.
2. Requires HHSC to operate a consolidated internal audit program for all HHS agencies.	*In Progress*	The internal audit functions of DARS and DADS have been consolidated into HHSC, but audit functions for DSHS and DFPS are not planned to consolidate until September 1, 2017.
3. Requires HHSC to create an approval process and standard criteria for all system websites.	*In Progress*	HHSC established a steering committee to oversee and review website changes and has also developed both branding and technical standard criteria for all websites. However, HHSC still needs to apply standard website criteria to all system websites.
4. Clarifies the role and authority of the HHSC ombudsman's office as a point of escalation for complaints throughout the system and to collect standard complaint information.	*In Progress*	HHSC has enhanced the role of its ombudsman's office by establishing a system-wide standard process for tracking and reporting complaints and inquiries. DARS' ombudsman functions transferred to the HHSC Ombudsman's office September 1, 2016. Further consolidation of the ombudsman's function for DADS, DFPS, and DSHS is planned for September 1, 2017.
5. Requires HHSC to develop performance measures and create policies governing hotlines and call centers throughout the system.	*In Progress*	HHSC took inventory of all system hotlines and call centers to assist with hotline consolidation. The agency also drafted a policy to govern need assessments and performance of agency hotlines and call centers. HHSC expects to finalize this policy by February 2017.
6. Requires HHSC to streamline the Medicaid provider enrollment and credentialing processes by creating an enrollment portal and better linking data within the process.	*In Progress*	HHSC intends to issue a request for proposal for a consolidated provider enrollment system by February 2017. The Texas Association of Health Plans is currently developing a consolidated credentialing verification system that should be able to share information with the provider enrollment system to streamline the process for providers to join Medicaid. HHSC anticipates that its enrollment system should be operational by December 2019.

Health and Human Services Commission (continued)

Bill Provision	Implementation	
	Status	Comments
7. Requires the Office of Inspector General (OIG) and HHSC to define, in rule, the respective roles and purpose of managed care audits and to coordinate all audit activities.	*Partially Implemented*	While HHSC and OIG have defined their respective audit roles, jurisdiction, and frequency in policy, this detail is not defined in rule as required by the bill. HHSC expects to revise the rules by January 2018.
8. Keeps the functions of the System of Care Consortium at HHSC but eliminates its advisory committee.	*In Progress*	A drafting error eliminated the consortium's functions from statute instead of just removing the advisory committee. However, HHSC continues to carry out the consortium's functions and is pursuing memoranda of understanding with partner agencies identified in the Consortium's strategic plan, in line with the bill's intent.
9. Requires HHSC to develop a comprehensive, coordinated operational plan designed to ensure consistent approaches in its major initiatives for improving the quality of health care. Requires HHSC to develop incentives for coordination of its major quality initiatives and seek to reduce the menu of Delivery System Reform Incentive Payment (DSRIP) project categories in line with the plan's goals.	*Not Implemented*	HHSC has consolidated its efforts to improve health care quality and anticipates completion of its operational plan in April 2017. However, because the plan is not complete, HHSC has not revised its initiatives in line with goals in the plan. HHSC has also not taken steps to ensure performance measures in state contracts will be consistent and aligned, such as among managed care organizations, local mental health authorities, or DSRIP projects. HHSC has narrowed the menu of new DSRIP projects, but because the 1115 waiver was extended under its current requirements and not renewed or changed, HHSC has not had an opportunity to narrow or refocus the full menu of existing projects in line with the statewide goals to be identified in the operational plan. HHSC also has not created incentives for initiatives that promote coordination among various quality initiatives.

Health and Human Services Commission (continued)

Bill Provision	Implementation	
	Status	Comments
10. Requires HHSC to ensure behavioral health services are integrated into managed care organizations statewide.	*In Progress*	To better integrate behavioral health services into managed care organizations, HHSC changed its managed care contracts to incorporate a waiver of the spell of illness requirement, related to the length of inpatient hospital care, for individuals with severe and persistent mental illness. HHSC has also continued efforts to update Medicaid policies and better integrate targeted case management services, as per Senate Bill 58, 83rd Legislature. HHSC is also working with the Behavioral Health Integration Advisory Committee on final recommendations to better integrate behavioral health and physical health within managed care organizations. By the middle of 2017, HHSC anticipates its workgroup will evaluate and prioritize the committee's final recommendations and establish timelines for implementation. HHSC has already implemented many of the committee's previous recommendations to improve integration.
11. Requires the state to assist with maintenance of Medicaid eligibility statewide.	*In Progress*	HHSC updated its managed care contracts to require managed care organizations to provide renewal assistance for Medicaid clients. HHSC anticipates updating its eligibility system in March 2017 with additional information to help managed care organizations assist in maintaining client eligibility.
12. Requires HHSC to develop a pilot project to promote increased use of incentive-based payments by managed care organizations.	*Not Implemented*	HHSC believes it can achieve this provision's goal of increasing use of incentive- or value-based payments by managed care organizations without completion of a pilot project. HHSC is developing ways to measure use of value-based payments by managed care organizations and plans to include a new metric in future contracts beginning September 2017.
13. Requires HHSC to collaborate with DSHS to develop a one-time strategic plan to reduce morbidity and mortality from chronic respiratory disease, including asthma and chronic obstructive pulmonary disease.	*In Progress*	HHSC and DSHS are drafting the chronic respiratory disease strategic plan. The plan is due to the governor and Legislature by December 31, 2016.

Health and Human Services Commission (continued)

Bill Provision	Implementation	
	Status	Comments
14. Removes advisory committees from statute and allows the executive commissioner to re-establish needed advisory committees in rule.	*In Progress*	HHSC has evaluated its advisory committees and combined or eliminated committees to reduce the total number of committees from 133 to 64. Additional advisory committees are set to expire on September 1, 2017. After this point and as HHSC completes its consolidation, HHSC will need to re-evaluate its committees again with an eye toward further reduction. HHSC is in the process of finalizing its system-wide policy for regular evaluation of its advisory groups.

In addition to statutory changes, the Sunset Commission also issued 17 management actions to HHSC. Six of these directives are still in progress, as explained in the chart below.

Management Action	Implementation	
	Status	Comments
15. Directs HHSC to improve the accountability, planning, and integration of information technology in the system and consolidate all IT personnel under HHSC control.	*In Progress*	All information technology staff in the system now report to HHSC, but many are still employees of system agencies. All DARS and DADS IT staff have consolidated at HHSC, and several IT functions have consolidated system-wide. HHSC plans to complete system-wide consolidation of customer services and business services by September 1, 2017 and applications and project management staff by September 1, 2018.
16. Directs HHSC's procurement and contract office to improve assistance to and communications with system agencies.	*In Progress*	HHSC has strengthened technical assistance to HHS staff by establishing a cross-agency workgroup and designating points of contact within agencies to promote clear and responsive communication. HHSC plans to continue efforts to improve assistance and communication to staff managing procurements or contracts by strengthening its customer support unit and establishing a training unit within its Contract Oversight and Support division.

Health and Human Services Commission (continued)

Management Action	Implementation	
	Status	Comments
17. Directs HHSC to develop ways to apply focused, high-level attention to system contracting.	*In Progress*	HHSC has completed specific tasks detailed in the Sunset recommendations, but is still working to implement processes to further improve contract oversight within the system. Efforts underway include transitioning to a new contracting database September 1, 2017, reinstating the system-wide contract council, and developing a major procurements team for complex procurements. Most notably, HHSC established a Contract Oversight and Support division on September 1, 2016 that is charged with strengthening contract monitoring efforts within the system and establishing processes to escalate attention for high-risk contracts when problems arise.
18. Consolidates rate setting for the system at HHSC.	*In Progress*	All rate-setting functions within the system are consolidated at HHSC except for those at DSHS. HHSC and DSHS expect to identify all rates and determine which functions and staff should be split from their programs and consolidated by September 1, 2017.
19. Directs HHSC to include a requirement for use of incentive-based payments in managed care requests for proposals.	*In Progress*	HHSC drafted language requiring use of incentive-based payments to be included in future managed care requests for proposals. This provision will be implemented in phases as managed care programs are re-procured.
20. Directs HHSC to elevate oversight and management of data initiatives, including creation of a centralized office with clear authority to oversee strategic use of data.	*In Progress*	HHSC created a high-level office to coordinate system-wide data oversight. Through this office, HHSC developed a cross-agency data workgroup, developed guidelines for consistent data modeling, and created an inventory of all the system's data. HHSC has not yet developed a strategic plan or policies to guide internal and external data sharing. HHSC also plans to evaluate consolidation of institutional review board processes and legal requirements for research on human subjects. HHSC expects to complete these efforts by September 1, 2017.

Health and Human Services Commission — Office of Inspector General

Senate Bill 207, as adopted by the 84th Legislature, strengthened investigative processes at the Health and Human Services Commission Office of Inspector General (OIG), required better coordination with system agencies, and required another Sunset review of OIG in 2021. The legislation included a total of 27 changes requiring action. The following chart summarizes four statutory provisions that are still in progress and three that are partially implemented and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires OIG to establish guidelines for the imposition of payment holds.	*In Progress*	OIG has adopted rules relating to payment holds but is still in the process of revising its memorandum of understanding with the Medicaid Fraud Control Unit relating to payment hold guidelines. OIG expects to complete the MOU by September 2017.
2. Require OIG, by rule, to establish prioritization and other criteria to guide its investigation processes.	*Partially Implemented*	While OIG has adopted policies and procedures relating to prioritizing recipient cases and guiding field investigators in closing a case, these criteria are not defined in rule as required by the bill. OIG expects to revise the rules by January 2018.
3. Require OIG, by rule, to establish criteria for scaling its enforcement actions for Medicaid provider investigations to the nature of the violation, including penalties.	*Partially Implemented*	OIG has established additional tools for scaling violations such as aggravating and mitigating factors. However, OIG's newly adopted rules and policies do not include direction for categorizing provider violations according to the nature of the violation. The lack of clearly defined processes for determining which sanction to apply to a violation risks inconsistent treatment of providers for similar violations. OIG expects to revise the rules by January 2018.
4. Require OIG to coordinate managed care organization audits with the Medicaid division of HHSC.	*Partially Implemented*	While HHSC and OIG have defined their respective audit roles, jurisdiction, and frequency in policy, this detail is not defined in rule as required by the bill. OIG expects to revise the rules by January 2018.
5. Establish procedures for criminal history checks for purposes of enrollment.	*In Progress*	HHSC and OIG expect rules relating to criminal history check procedures to be finally adopted in February 2017.
6. Require OIG to establish guidelines for use of criminal history in enrollment.	*In Progress*	HHSC and OIG expect rules relating to criminal history check guidelines to be finally adopted in February 2017.

Health and Human Services Commission — OIG (continued)

Bill Provision	Implementation	
	Status	Comments
7. Requires OIG to provide detailed extrapolation information with overpayment notices.	*In Progress*	OIG intends to provide detailed extrapolation information with future overpayment notices. However, the agency has not completed any cases involving extrapolation or sent any overpayment notices since implementing its new extrapolation method in Summer 2016.

In addition to statutory changes, the Sunset Commission also issued four management actions to OIG. Two of these directives are still in progress and two are partially implemented, as explained in the chart below.

Management Action	Implementation	
	Status	Comments
8. Directs OIG to narrow its employee investigations to focus on high priority allegations, such as those at state institutions and those related to program integrity, and to develop guidelines for investigations of child fatalities.	*Partially Implemented*	OIG has discontinued regular review of all child fatality cases from the Department of Family and Protective Services (DFPS). OIG now investigates special and serious allegations and has established guidelines and policies to work with DFPS on these investigations. OIG has not restricted its internal affairs employee misconduct investigations to those involving residents of state facilities and those that threaten public benefits or HHSC program integrity. OIG's Internal Affairs division has coordinated with HHSC staff to narrow the scope of employee misconduct cases. However, the newly proposed criteria do not align with the criteria adopted by the Sunset Commission. OIG continues to investigate employee misconduct cases including general human resources issues with no direct connection to public benefits or public safety, such as forging doctor's notes for medical leave and theft of state property over a certain value, regardless of its connection to program integrity.

Health and Human Services Commission — OIG (continued)

Management Action	Implementation	
	Status	Comments
9. Directs HHSC and OIG to work together to transfer certain OIG functions to other areas of the health and human services system where they would fit more appropriately.	*In Progress*	The Health Insurance Premium Payment program, cost report reviews, and trust funds in intermediate care facilities have transferred to HHSC. The single audit report function briefly transferred to HHSC, but technological difficulties that prevented HHSC staff from accessing necessary files and a significant backlog of reports required the function to move back to OIG. OIG expects to successfully transfer this function to HHSC September 1, 2017.
10. OIG should track basic performance measures needed to monitor the efficiency and effectiveness of its investigative processes.	*In Progress*	Due to the continued absence of a case management system, OIG still cannot connect case-level data between its investigative and sanctions divisions, preventing OIG from identifying measures such as total case timelines or trends in outcomes by type of violations. However, OIG has implemented some new performance measures and tools, such as dashboards, to gauge basic performance within the office. Management staff use these tools to assess performance and improve efficiency and effectiveness of investigative processes. However, each of OIG's investigative divisions lack several of the metrics required by the recommendation, including data to measure timeframes, caseload statistics, dispositions, outcomes, or trends.
11. OIG should establish a formal plan for reducing its backlog of Medicaid provider investigations and for improving inefficiencies in its investigative process.	*Partially Implemented*	OIG has cleared its backlog; its oldest case dates back to 2013. However, the agency did not develop a formal plan to clear the backlog or submit a plan to the HHSC executive commissioner for review as required by the recommendation.

Department of State Health Services

House Bill 2510 was the original vehicle for the Sunset Commission's statutory recommendations on the Department of State Health Services (DSHS), but the bill died after unrelated, controversial amendments relating to abortion regulation were added on the House floor and the threat of a point of order sent the bill back to committee. However, all of the Sunset Commission's statutory recommendations on DSHS passed in other bills as noted below. In total, the legislation included 17 changes requiring action by the department. The following chart summarizes 6 statutory provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
House Bill 1, DSHS, Rider 80 1. Requires DSHS to conduct a comprehensive review of contract funding requirements and standards governing community-based crisis and treatment facilities for persons with mental health and substance abuse disorders. Requires DSHS to submit a related report by December 1, 2016.	***In Progress***	DSHS has completed the required reviews and provided draft recommendations to department leadership, but has not yet finalized the required report, due December 1, 2016, or formally proposed resulting rule changes. The department expects to publish the report in February 2017. Many of the department's draft recommendations would ultimately require legislative action to fully implement.
House Bill 1, DSHS, Rider 82 2. Requires DSHS, in consultation with the Health and Human Services Commission (HHSC), to conduct a strategic review to evaluate and improve performance measurement and contracting processes across all DSHS contractors of behavioral health services. Requires DSHS to submit a report containing specific elements by December 1, 2016.	***In Progress***	The department, in partnership with HHSC, contracted for assistance with the required analysis and evaluation and received an interim report in September 2016. However, DSHS has not yet submitted the required final report, due December 1, 2016, or finalized any specific proposed changes to behavioral health performance measurement and contracting processes. The department expects to publish the report in February 2017. Ultimately, any changes would need to be implemented through new contracts, which DSHS plans to phase in slowly over several contract cycles beginning in fiscal year 2018, assuming proposed changes are approved.
Senate Bill 200 3. Expands DSHS' authority to require fingerprint-based criminal history background checks for anyone with access to the state's vital records electronic registration system. Requires DSHS to prescribe policies to implement this recommendation to take effect March 1, 2016.	***In Progress***	DSHS has developed and implemented a policy requiring fingerprint-based background checks for DSHS vital statistics staff and contractors. DSHS has obtained FBI approval for background checks on non-DSHS vital statistics staff, but is still finalizing the policy to implement this requirement. The department expects to finalize the policy in February 2017 and begin implementation in March 2017.

Department of State Health Services (continued)

Bill Provision	Implementation	
	Status	Comments
Senate Bill 202 4. Transfers six regulatory programs from DSHS to the Texas Department of Licensing and Regulation (TDLR) by August 31, 2019, including code enforcement officers, laser hair removal, massage therapists, mold assessors and remediators, offender education providers, and sanitarians.	***In Progress***	This provision is the second and final phase of the overall requirement to transfer 13 regulatory programs from DSHS to TDLR. DSHS and TDLR completed phase one of the transfers in October 2016, well ahead of the required August 31, 2017 deadline. Phase one transferred athletic trainers; dietitians; fitters and dispensers of hearing instruments; midwives; orthotists and prosthetists; speech-language pathologists and audiologists; and dyslexia therapists and practitioners from DSHS to TDLR. The department is currently working with TDLR on the second phase of the transfer, which the bill requires to be completed by August 31, 2019. DSHS and TDLR expect to complete the transfer of the six remaining programs in November 2017 — almost two years ahead of schedule.
Senate Bill 1507 5. Requires a new, locally driven process for allocating and reviewing utilization of state mental health hospital beds among regions. Requires the forensic director created by Senate Bill 1507 to provide input into the regional allocation. Requires an advisory panel to submit an initial proposal for a bed day allocation methodology by March 1, 2016, and requires DSHS to prepare and submit a more detailed report by December 1 of even-numbered years summarizing and evaluating the status of the bed day allocation methodology and bed day utilization protocol.	***In Progress***	The department hired the forensic director and established a Joint Committee on Access and Forensic Services. In May 2016, the HHSC Executive Commissioner adopted the committee's recommendations to use existing local mental health authority regions to satisfy the requirement for state hospital bed allocation regions. The executive commissioner also approved the initially required allocation methodology and utilization review protocol. However, DSHS has not yet finalized the first, more in-depth legislative report evaluating the outcomes from these new processes, due December 1, 2016. The department expects to publish the report in February 2017.
Senate Bill 1507 6. Requires DSHS to work with the Court of Criminal Appeals to develop training to inform the judiciary about alternatives to inpatient mental health treatment. Requires the forensic director created by Senate Bill 1507 to provide input into the training curriculum.	***In Progress***	DSHS, working with stakeholders, developed a draft of the training curriculum, which is currently under review by the Court of Criminal Appeals. Once approved by the Court of Criminal Appeals, HHSC, and DSHS, the curriculum will be distributed.

Department of State Health Services (continued)

In addition to statutory changes, the Sunset Commission also issued 14 management actions to DSHS. Five of these directives are still in progress, as explained in the chart below.

Management Action	Implementation	
	Status	Comments
7. Directs DSHS to review current methods for allocating regional mental health funding including all related costs and other factors associated with providing mental health services in a given region, and determine whether the allocations match the prevalence of mental illness in associated regional populations.	*In Progress*	DSHS plans to finalize this analysis in March 2017 to help inform options for allocating mental health funding in the future.
8. DSHS should develop a system to categorize different types of local health departments based on the services they provide. DSHS should present the system to the State Health Services Council and the House Public Health and Senate Health and Human Services committees by November 30, 2016.	*In Progress*	DSHS has conducted a survey of public health entities and developed a plan for categorizing public health services but estimates it will not finalize or present the information as required until March 2017.
9. Directs DSHS to replace the current data certification process with an optional data validation process.	*In Progress*	The department is currently drafting rules to implement the recommendation, including collecting cost estimate information from facilities. DSHS estimates final rules will be adopted by July 2017.
10. Directs DSHS to continue its efforts to improve the display and interpretation of healthcare data for consumers.	*In Progress*	DSHS developed several projects to implement this recommendation, including creating a web-based data query tool with improved data, replacement of the consumer data portal, and development of better data visualization displays. While some updated tools are available online, the department estimates its efforts to migrate all data and reports to the new systems will be ongoing through May 2017.
11. Directs DSHS to review and revise its internal advisory committee policies and to regularly evaluate all of its advisory groups.	*In Progress*	While DSHS completed an initial evaluation in November 2014 as directed and developed a policy governing advisory committee appointments, subsequent recommendations and legislative changes relating to the consolidation of the health and human services system later affected the department's advisory committee policies. Currently, DSHS is awaiting final policies from HHSC before it continues regular evaluation of its advisory groups.

Texas Health Services Authority

Senate Bill 203, as adopted by the 84th Legislature, removes the Texas Health Services Authority (THSA) from statute. The legislation included one change requiring action. The following chart summarizes this provision and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Removes the THSA from statute on September 1, 2021, allowing its functions to continue only in the private sector. After this date, the bill requires HHSC or a designated private nonprofit organization with experience in statewide health information exchanges to certify entities' compliance with information sharing standards. HHSC would also consult with such an organization when amending the information sharing standards.	*In Progress*	Because THSA will not be removed from statute until September 1, 2021, this bill provision has not yet taken effect.

Governor's Committee on People with Disabilities

House Bill 1678, as adopted by the 84th Legislature, continued the Governor's Committee on People with Disabilities for 12 years. The legislation included one change requiring action. The following chart summarizes this provision and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires the committee to maintain and analyze information provided in the state's various long-range plans for people with disabilities. Adds "a nonprofit organization required by federal law to produce such a plan" to the list of entities who produce long range plans relating to persons with disabilities that the committee is required to collect and analyze.	*In Progress*	The committee has hired a research specialist to collect and analyze the long range plans of state agencies and nonprofit organizations serving Texans with disabilities. The information will be published on the committee's website in the second quarter of fiscal year 2017.

Texas Council on Purchasing from People with Disabilities

Senate Bill 212, as adopted by the 84th Legislature, abolished the Texas Council on Purchasing from People with Disabilities and transferred administration and oversight of the State Use Program to the Texas Workforce Commission (TWC). The legislation included two changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Requires TWC to establish a new advisory committee to set goals for the State Use Program and standards for participating community rehabilitation program certification.	*In Progress*	TWC established the Purchasing from People with Disabilities Advisory Committee in December 2015, and the committee has met five times since then. On August 3, 2016, the advisory committee approved performance measures for consideration and adoption by the workforce commission in November 2016. At its December 2016 meeting, the advisory committee will discuss and approve criteria for certifying community rehabilitation programs. The advisory committee will forward the recommended criteria to the workforce commission for consideration and adoption in the first quarter of 2017.

Texas Workforce Commission

Senate Bill 208, as adopted by the 84th Legislature, continued the Texas Workforce Commission for 12 years. The legislation included 14 changes requiring action. The following chart summarizes three statutory provisions that are still in progress and one that is partially implemented and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Transfers vocational rehabilitation (VR) and related programs and services from the Department of Assistive and Rehabilitative Services (DARS) to the Texas Workforce Commission (TWC).	***In Progress***	All powers, duties, functions, and activities for the VR and related programs transferred to TWC on September 1, 2016. Roughly 200 staff at TWC, DARS, and the Health and Human Services Commission (HHSC) worked together to accomplish more than 700 individual tasks as part of 10 transition teams. As part of the transfer, the bill requires TWC to integrate VR staff from DARS offices into its local workforce development boards by August 31, 2018. As part of its *Plan for the Transfer of Vocational Rehabilitation Services and Other Services and Programs*, TWC and HHSC developed a plan for leased office and building space affected by the transfer. Since many of the leases on VR field offices do not expire until after the 2018 deadline for integration, TWC plans to continue occupying those offices until the leases expire.
2. Requires TWC to partner with the Texas Education Agency to develop a mechanism to target areas of the state with the greatest needs for vocational rehabilitation services for students with disabilities who are transitioning from school to work.	***In Progress***	The bill requires TWC to adopt the memorandum of understanding (MOU) by September 1, 2017. TWC has developed a draft MOU and expects to adopt it in advance of the deadline.
3. Requires TWC to integrate administration, management, and oversight of VR blind and general programs into a single vocational rehabilitation program, no later than October 1, 2017, to eliminate duplication and better serve consumers.	***In Progress***	TWC outlined its strategy for integrating the blind and general VR programs in its *Plan for the Transfer of Vocational Rehabilitation Services and Other Services and Programs*. TWC has developed a detailed timeline to guide the process of integrating the VR programs and will hold public hearings in early 2017 to gather input from stakeholders. The agency is taking a staged approach to integrating the programs and is on track to consolidate the two separate VR programs into a single division by October 1, 2017. TWC will submit a modification to its Combined State Plan to the Rehabilitation Services Administration in early August 2017 to officially combine the two designated state units into one.

Texas Workforce Commission (continued)

Bill Provision	Implementation	
	Status	Comments
4. Requires TWC to develop a policy on gathering and using stakeholder input regarding the child care program.	***Partially Implemented***	Although TWC adopted a policy on gathering stakeholder input, the policy does not clearly identify how the agency will use that input to improve the child care program. For example, the policy does not identify specifically what TWC will use the input for, how the agency will communicate comments received to stakeholders and the public, or how the agency will communicate action taken based on feedback or justification for why action was not taken. As part of its recent development of the Child Care State Plan, TWC engaged stakeholders and shared all comments received, but the intent of the recommendation is to formalize this policy to ensure a consistent approach to using input and provide assurance to stakeholders that their feedback is being considered.

As a part of the transfer of VR programs from DARS to TWC, the Sunset Commission modified several of the management recommendations developed to address DARS' administration of VR services with the intent that DARS would make immediate improvements and TWC would continue those efforts once the programs transferred. Sunset staff evaluated these five directives, four of which are still in progress, as explained in the chart below.

Management Action	Implementation	
	Status	Comments
5. TWC should create clear, validated guidelines for vocational rehabilitation counselors to ensure better decision making for successful, cost-effective outcomes.	***In Progress***	The VR programs at TWC continue to follow the procedures DARS put in place to implement the recommendations. However, as TWC integrates the VR blind and general programs and implements recent federal regulations related to the 2014 federal Workforce Innovation and Opportunity Act, the agency will need to improve VR counselor guidelines to ensure its combined VR program manual meets the full intent of the recommendation.

Texas Workforce Commission (continued)

Management Action	Implementation	
	Status	Comments
6. TWC should create a robust and consistent case review system for the Vocational Rehabilitation Program, no matter the nature of a person's disability.	*In Progress*	The VR programs at TWC continue to follow the procedures DARS put in place to implement the recommendations. However, as TWC integrates the VR blind and general programs and implements recent federal regulations related to the 2014 federal Workforce Innovation and Opportunity Act, the agency may need to make additional changes to the case review system, as well as other processes and procedures.
7. Directs TWC and DARS to ensure employer relations staff from DARS' blind and general Vocational Rehabilitation programs are consolidated and work in tandem with their TWC counterparts to build and expand business relationships to increase employment opportunities for people with disabilities.	*In Progress*	As TWC works to integrate VR staff into its local workforce development boards and solutions centers, the agency will need to continue to expand its business relationships to increase employment opportunities for people with disabilities.
8. Directs DARS to develop a strategy for assisting federal contractors to hire individuals with disabilities, and to task its employer relations staff with researching and anticipating similar federal or state initiatives in the future.	*In Progress*	As TWC works to integrate VR staff into its local workforce development boards and solutions centers, the agency will need to continue to improve the work DARS began by creating a unified approach to serving employers.

The History of Sunset in Texas

The History of Sunset in Texas

Background

History has a way of not only repeating itself, but also deleting itself. Approaching the 40th anniversary of the Texas Sunset Act, Sunset staff feared that without a permanent record of its genesis and development, the Sunset process could fall victim to the passage of time, causing lessons learned to be lost and history needlessly repeated. The following material provides such a record.

The creation and expansion of Sunset in the United States happened in a time of widespread concern during the 1970s about the growth of federal and state agencies and a need for tools to give legislatures more control over state agencies and programs. Colorado was the first state to adopt a Sunset Act in 1976. Texas soon followed with the enactment of the Texas Sunset Act in 1977 and the concept rapidly expanded to 35 states by 1982.[1, 2]

Texas recognized the need to better control government expansion in 1973 preceding enactment of Sunset. In that year the state initiated a system of program budgeting and evaluation requiring state agencies to identify their programs, the need for those programs, and a way to quantify the results of those programs.[3] Then, in 1974, the Texas Legislature met as a constitutional convention to consider a comprehensive overhaul to the state's primary law to further streamline and improve Texas government. This 1974 effort to amend the constitution failed, along with a second effort in 1975.[4]

Although failing, these constitutional revision attempts are significant in Sunset's history in Texas because they included consideration of a Sunset provision, fully two years before the first enactment of Sunset in the United States. The provision would have limited the life cycle of most state agencies to 10 years.[5]

The Texas Legislature continued concentrated work to make state government more efficient, effective, and accountable through its 1975 Joint Advisory Committee on Government Operations composed of 18 legislative and public members including the chair, Lieutenant Governor William Hobby; and vice chair, Speaker of the House Bill Clayton.[6] The Hobby-Clayton Committee, as it was called, performed an extensive review of government operations and submitted its recommendations, including a proposal to create a Sunset process, to Governor Dolph Briscoe and members of the 65th Legislature in 1977.[7]

The Legislature took that advice and spent considerable time and effort writing the provisions of the Texas Sunset Act. The table on the following page, *Selected Differences in House and Senate Versions of the Original Texas Sunset Act*, displays a few of the significant differences in the first Sunset bill. The Legislature ultimately enacted the Texas Sunset Act through Senate Bill 54, authored by Senator Lloyd Doggett and sponsored by Representative John Wilson, adding Sunset to oversight tools available to the Texas Legislature.

Selected Differences in House and Senate Versions of the Original Texas Sunset Act [8]

Provisions	Senate Version	House Version
Agencies subject to Sunset review	79 licensing and regulatory agencies and their advisory committees	179 agencies and their advisory committees
Agency life cycle / Sunset date	8 years	12 years
Sunset governing body:		
Name	Joint Legislative Committee for Review of Regulatory Agencies	Sunset Advisory Commission
Membership	8 (4 members of the Senate, 4 members of the House)	11 (3 members of the Senate, 3 members of the House, 3 public members, and the lieutenant governor and speaker by virtue of election to their offices)
Term of members	4 years, with maximum service of 6 years	6 years, with maximum service of 6 years (term limitation not applicable to the lieutenant governor and speaker)
Chair	Elected by committee membership every two years, alternating between House and Senate	Elected by committee membership every two years no alternating provision
Criteria used to evaluate agencies under review	15 criteria aimed at licensing and regulatory agencies	24 criteria applicable to a broad range of agencies
Reports submitted by agencies under review	Agency required to submit report on its advisory committees to Secretary of State. No requirement for a "self evaluation report."	Agency required to submit a "self evaluation report" to the Sunset Advisory Commission, but no separate report on advisory committees.

Evolution of the Texas Sunset Act

The final version of the Sunset bill featured compromises that still form the foundation of the Texas Sunset Act. The text that follows outlines those foundational elements and the most significant changes made to the process over Sunset's 40-year history. The timeline on the following page, *Selected Significant Events in the History of Sunset in Texas*, capsulizes major events in Sunset's history.

Agencies Subject to Sunset

The Texas Sunset Act defines the entities subject to review through the definition of "state agency" found in the Act. Initially, the Act's definition limited state agencies to those "expressly made subject" to the Sunset law; or an entity created after 1977 that is part of any branch of state government that has statewide jurisdiction, with the exception of institutions of higher education.

While broad, the definition excluded regional entities such as river authorities from Sunset. Legislative interest in reviewing river authorities resulted in their addition to the definition of "state agency" in 1985, making these entities clearly within Sunset's scope.[9, 10]

Selected Significant Events in the History of Sunset in Texas

1974

Texas Legislature meets as a constitutional convention and considers, but fails to adopt for submission to voters, a proposed constitution containing a Sunset provision.

1975

Proposed amendments to the Texas Constitution, including a Sunset provision, fail at the polls.

1977

Joint Advisory Committee on Government Operations (Hobby-Clayton Committee) recommends enactment of Sunset.

Texas Sunset Act signed by the governor. The act places 177 agencies under Sunset review, creates an eight-member Sunset Advisory Commission with four House and four Senate members, and designates the Legislative Budget Board as staff of the commission.

1980

1981

Two public members added to the Sunset Commission, bringing its membership to 10.

Sunset Commission provided its own staff separate from the Legislative Budget Board.

Sunset Commission directed to make recommendations on the consolidation, transfer, or reorganization of programs in agencies not under review that duplicate functions in agencies being reviewed.

Sunset required to review implementation of Sunset recommendations from the prior biennium (compliance review).

1985

Sunset required to review and comment on legislation creating a new regulatory agency. Later amended in 2007 to expand the review to state agencies generally.

River authorities added to the Sunset schedule for review but not abolishment in 1991.

1987

Sunset Commission required to forward management recommendations to the state auditor for implementation review. Amendments in 2003 make the State Auditor's review permissive.

Harris County and Corpus Christi transit authorities placed under Sunset for review in 1989, and the Austin transit authority placed under Sunset for review in 1991.

1989

Dallas transit authority placed under Sunset for review in 1991.

Restrictions on the definition of "state agency," a term clarifying entities under Sunset, amended a final time to simply include those agencies "expressly made subject" to the act.

River authorities removed from Sunset before their scheduled 1991 reviews.

1990

1999

Sunset required to consider agency compliance with purchasing guidelines and programs for historically underutilized businesses.

2000

2001

Requirement to review Harris County, Corpus Christi, Austin, and Dallas transit authorities repealed.

2003

Sunset working papers excepted from public disclosure.

A fifth House and Senate member added to the Sunset Commission, bringing its membership to its current complement of 12.

2007

Sunset required to consider an agency's effectiveness; authority relating to fees, inspections, enforcement and penalties; and hearing process in its reviews.

2010

2011

Sunset required to recommend continuing or abolishing each statutory reporting requirement imposed on an agency under review.

2013

Additional criteria for Sunset to use in evaluating occupational licensing agencies added to the Sunset Act.

Self-directed semi-independent agencies, currently numbering eight, required to pay the cost of their Sunset reviews.

Authority of the Sunset Commission and its staff to attend any public or private meeting of an agency or its governing board in connection with a Sunset review; and to inspect any privileged or confidential documents of these agencies subject to appropriate safeguards, statutorily affirmed.

2015

River authorities placed under Sunset a second time for staggered review in biennia ending in fiscal years 2017, 2019, 2021, and 2023.

Actions of the 1987 and 1989 Legislatures stripped away the river authority language and other parts of the definition except the simple provision that a state agency means "an agency expressly made subject" to Sunset.[11] The simplified definition remains in the act today and gives the Legislature flexible authority to add or remove entities from Sunset oversight through amendment to agency statutes. Entities included for review have ranged from port authorities to individual programs of agencies such as the Office of Child Support Enforcement at the attorney general's office.

Structure of the Sunset Advisory Commission

Membership. The Legislature has changed the composition and operation of the commission as experience suggested the need. Initially, the commission comprised four senators and four representatives appointed by the lieutenant governor and speaker to four-year terms. These two officers could appoint themselves to the commission to replace one of their appointed positions, a provision that remains in place today but has never been used. Members of the commission elected the chair each biennium, with the chair alternating between House and Senate.

In 1981, the Legislature made a number of significant additions to the commission's composition by adding two public members, one each appointed by the speaker and lieutenant governor to two-year terms, bringing the commission membership to 10. The Legislature also changed the method of selecting the chair from election by commission members to appointment by the speaker and lieutenant governor, as is done today.[12] Then, in 2003, the Legislature once again increased the size of the commission by adding another House and Senate member to arrive at the current 12-member commission.[13] These changes to the act emphasized the importance of input from persons outside government or elected office, and recognized the need for a larger number of legislative leaders to serve as Sunset bill authors and sponsors familiar with Sunset recommendations.

Voting. Initially, the Sunset Act specified no final action or recommendation of the commission could be made without affirmative votes from at least three speaker appointments and three lieutenant governor appointments. That voting requirement changed in 1981 when the Legislature added two public members to bring membership to 10 and changed the vote for final action to simply a majority of the full membership of the commission.[14] The act was silent, however, on voting requirements for actions that were not final until 2007 when the Legislature clarified that all other actions be decided by the less onerous requirement of a majority of the members present and voting.[15] This change codified the commission's actual practice in considering agency-related recommendations in commission meetings throughout the biennium while taking one final vote by majority of all commission members to submit all recommendations to the Legislature.

Staff. Sunset's enabling legislation first named personnel of the Legislative Budget Board as the Sunset Commission's staff. In 1981, the Legislature made Sunset a separate agency with its own executive director and staff in the arrangement used currently.[16] This change allowed the commission to receive focused attention from a separate staff without responsibilities for performing budget-related work, the primary focus of the Legislative Budget Board.

Reporting and Hearing Requirements

Most substantive Sunset reporting and hearing requirements in the 1977 Sunset Act still continue. These requirements include, in the order of occurrence, an agency's self evaluation report to the Sunset Commission, a Sunset staff report containing staff findings and recommendations on a reviewed agency, Sunset Commission hearings to consider recommendations, and finally the commission's report to the Legislature compiling the commission's final recommendations. Changes to reporting often dealt with

timing for submission or completion of reporting and hearing elements. One notable exception was the Legislature's addition of a reviewed agency's "report on reports" in 2011, in which an agency must identify the list of reports statute requires it to prepare and the need for those reports.[17]

The table, *Changes in Timing of Sunset Reporting and Hearing Requirements*, displays modifications in reporting and hearing dates over Sunset's 40 years. Overall, changes result in giving more time to develop staff reports and hold Sunset Commission hearings.

Changes in Timing of Sunset Reporting and Hearing Requirements

Item	Initial Provisions (S.B. 54–1977)	1981 Changes (H.B. 542)	2007 Changes (H.B. 3249)	2011 Changes (H.B. 326)
Self Evaluation Report due:	Before October 30 of odd-numbered year before agency abolishment		Before September 1 of odd-numbered year before agency abolishment	
Agency report on reports due:				Before September 1 of odd-numbered year before agency abolishment
Performance evaluation / agency review due:	Before June 1 of year before agency abolishment	Before September 1 of year before agency abolishment	Before January 1 of year of agency abolishment	
Hearings finished:	Between June 1 and November 1 of year before agency abolishment	Between September 1 and December 1 of year before agency abolishment	Before February 1 of year of agency abolishment	
Commission reports due:	Before December 15 of year before agency abolishment	At each regular legislative session		

Criteria for Reviewing Agencies Under Sunset

The Legislature has both clarified and expanded on the 13 evaluative criteria set out in the first Sunset Act to guide evaluation of agencies being reviewed. The following count among the major substantive revisions.

- In 1999, the Legislature required Sunset to evaluate how well an agency complies with purchasing requirements for historically underutilized businesses and keeps records in a way that allows fast response to requests for public information.[18]
- In 2007, the Legislature made many clarifying changes in existing criteria, among them requiring Sunset to consider not only an agency's efficiency but also its effectiveness; to assess an agency's authority relating to fees, inspections, enforcement, and penalties; and to evaluate an agency's hearings process.[19]
- In 2011, the Legislature required Sunset to evaluate whether the various reporting requirements imposed on an agency justify their continuance.[20]
- In 2013, the Legislature added a new list of criteria to apply to agencies that license occupations or professions.[21]

These and other changes speak to the Legislature's continuing interest in using Sunset not only to determine the need for an agency but also to evaluate agencies' performance and success in serving the public and the appropriate scope and value of an agency's authority.

Sunset Commission Duties

Since its inception, the Sunset Act has laid out duties of the commission beyond evaluation of agencies based on the statutory criteria. The Legislature has increased Sunset's duties over time to address oversight gaps and help watch over creation of new agencies.

In 1981, the Legislature charged Sunset with reviewing the implementation of commission recommendations and legislation from the prior biennium. The commission reports its findings to the Legislature each biennium in a "compliance" report.[22]

In 1985 and as refined in 2007, the Legislature directed Sunset to review and, if asked to do so, comment on legislation creating a new state agency.[23] In a related provision from 2013, a member of the Legislature may submit proposed legislation creating a new occupational licensing program or substantially affecting an existing one to the Sunset Commission for review and analysis. If the commission's chair agrees to the review, the commission must report to the Legislature on the need for the legislation.[24]

Sunset Commission Recommendations

The Sunset Act specifies the types of recommendations the commission must include in its final report to the Legislature each biennium. The act initially addressed the topics of abolition, continuation, or reorganization of agencies and their advisory committees; recommended appropriation levels for these entities; and drafts of legislation to implement recommendations. While the act still addresses these topics in the same or modified form, the Legislature added substantially to recommendation-related provisions.

Amendments in 1981 clarified the commission could make recommendations on consolidation, transfer, or reorganization of programs in agencies not under review if they duplicated functions of an agency being reviewed.[25] Then, in 1987 and later enactments, the Legislature charged the commission with forwarding management recommendations to the state auditor, who could, if desired, examine and report on the implementation of these recommendations in future audits.[26] The Legislature later amended the act to codify actual commission practice by stating the Sunset Commission could recommend improvements in the operations of agencies under review, including non-statutory management recommendations.[27] Non-statutory recommendations have proven to be an effective tool for Sunset, as agencies often have sufficient authority, but may fail to successfully manage operations. Finally, in keeping with other amendments to simplify agency reporting requirements, in 2011 the Legislature directed the commission to recommend continuing or abolishing each statutory reporting requirement imposed on an agency under review.[28]

Procedure After an Agency Terminates Under Sunset

The basic termination provisions giving an agency one year to wind down its business have remained intact since enactment of the Sunset Act. The act's provision requiring the abolished agency and the state's workforce agency to help relocate displaced employees has been part of the act from the outset, although never used.

Most amendments to the termination procedure that have occurred over time have clarified the disposition of remaining funds and assets and agencies charged with those responsibilities. As one of the more

important amendments, immediately after the 1977 passage of the act, the Legislature added language in the first called session of 1977 to clearly recognize the state's continuing obligation to pay bonded indebtedness and other obligations of an agency abolished under Sunset.[29]

Major Oversight Powers and Process Protections

The Sunset Act includes various process powers and protections to ensure the commission's access to information necessary to do its oversight job. Since its inception, the commission has had the authority to subpoena witnesses and information, a power that has never been amended substantively or used.

In 2003, to ensure open discussion with agency employees and stakeholders, the Legislature excepted from public disclosure Sunset working papers used to evaluate an agency and prepare a report. The Legislature also affirmed that confidential records Sunset receives from other agencies remain confidential in the commission's hands.[30]

Issues related to confidentiality reappeared in 2013. Reacting to questions about the authority of the commission and its staff, the Legislature defined within Sunset's scope the right to attend any proceeding of a state agency or its governing board, whether open or closed to the public. The Legislature clarified Sunset's authority to inspect the records of any state agency, including, among others, records made privileged or confidential by law. The Legislature also took steps to ensure Sunset stayed within appropriate bounds, affirming access to such sensitive information did not waive confidentiality requirements protected by law or procedure and allowing a state agency to require the commission or its staff to sign a confidentiality agreement. Finally, the Legislature cautioned that a person's misuse of confidential information, as defined in the Sunset Act, creates an offense.[31]

Changes in Agencies Subject to Sunset Review

Over time, the Legislature has added and removed agencies from Sunset's original list of 177. The net effect of these actions, including 37 agencies abolished through Sunset, results in 139 agencies subject to the Texas Sunset Act today.[32] The Legislature also has adjusted Sunset to fit changes in state agency structures. Some of the more notable examples follow.

River Authorities

River authorities as a group were first added to the Sunset Act in 1985 for review, but not abolishment, in 1991.[33] However, the Legislature repealed these provisions in 1989 before they came under review.[34,35] River authorities once again made their appearance in the Sunset Act in 2015 for review, but not abolishment. Statute staggers the review of 18 authorities in the biennia ending in fiscal years 2017, 2019, 2021, and 2023.[36]

Metropolitan Transit Authorities

The Legislature added Metropolitan Transit Authority of Harris County, Corpus Christi Regional Transit Authority, Dallas Area Rapid Transit Authority, and Capital Metropolitan Transportation Authority under Sunset in 1987 and 1989. Review but not abolishment of these authorities occurred over two biennia ending in fiscal years 1989 and 1991.[37] These authorities were removed from the Sunset schedule in 2001.[38,39]

Self-Directed Semi-Independent (SDSI) Agencies

Although not put into operation until 2001, in 1999 the Legislature enacted the Self-Directed Semi-Independent Project Act. This act granted the accountancy, architecture, and engineer boards authority to operate outside the appropriations process and made them responsible for their own operations and expenses.[40] The Legislature has granted SDSI status to an additional five agencies since that time.[41]

All of these agencies undergo Sunset review, but their status as SDSI agencies changed how Sunset funds their reviews. For most state agencies, Sunset pays for a review out of its budget. In 2013, the Legislature amended the Sunset Act to require SDSI agencies to compensate Sunset for reviewing their agencies, a change in line with SDSI agencies' control over their own budget and freedom of operations.[42] The Legislature also has required other entities to pay for the cost of their Sunset reviews in certain situations, such as a review of entities not typically included in the Sunset schedule or not included in the state's appropriation process.

Final Thoughts

Sunset is now marking its 40th year in the Legislature's oversight toolbox and is cited as a national model for the process.[43] States enacting Sunset laws could have reached about 40 at one point, but remaining states with an active Sunset process now number about 15.[44]

Several reasons can be cited for this reduction. Sunset processes nationally have not met early expectations of eliminating large numbers of agencies and saving significant sums of money. Also, most agencies, even small and possibly unnecessary ones, have vocal constituencies who oppose agency termination. Finally, change is difficult. For example, businesses dependent on a regulatory structure for their success generally oppose deregulation. An effective Sunset process requires legislative decisions that take into account these many pressures from the business community or other constituencies.

Sunset in Texas has experienced these same expectations and difficulties. History in Texas also shows that Sunset's central feature of requiring a bill to pass to continue an agency adds complexity to steering Sunset bills to enactment. These bills can attract potentially controversial provisions from related legislation that may otherwise fail, endangering passage of Sunset legislation.

Sunset has continued in Texas because, despite difficulties, the Legislature has found and capitalized on opportunities for more efficient and effective government through Sunset. The results achieved have outweighed Sunset's downsides, as witnessed by the continuation of Sunset today.

Results

Eliminating agencies and saving money are not the only benefits of Sunset as originally envisioned, but Sunset does have strong positive results in these areas. Since 1977, Sunset has helped streamline state government through the outright abolishment of 37 agencies and the consolidation of another 46 agencies and programs. Benefits to taxpayers amount to $980 million in savings and increased revenues.[45]

Beyond reduction in agencies and savings, the lasting benefits of Sunset stem from an ongoing oversight process making state government more efficient and accountable in various ways.

- Sunset recommendations reorganizing aspects of state government may not always produce immediate savings but often result in more efficient operations. Examples include the reorganization of health and human services agencies voted into law in the 2015 legislative session, creation and promotion of the Texas Department of Licensing and Regulation as an umbrella licensing agency for many

occupations, and the 2011 consolidation of the Texas Youth Commission and the Texas Juvenile Probation Commission into the Texas Juvenile Justice Department.

- Many implemented Sunset recommendations simply make state government work better, more openly, and more fairly for the public and the regulated community. For example, a large number of occupational licensing agencies have implemented many best practices stemming from Sunset's Licensing Model, and agencies such as the Health and Human Services Commission are reforming large contracting operations affecting hundreds of millions of dollars as a result of recommendations coming from their Sunset reviews.[46]

- Sunset public hearings enable all groups affected by the actions of a state agency to have a forum to identify problems, suggest solutions to those problems, and offer other ideas for better government operations. Many such suggestions have worked their way into Sunset legislation over the years.

- The Legislature has used Sunset to increase accountability of agencies experiencing problems. These agencies are sometimes moved forward in the Sunset review schedule, thus keeping attention focused on their issues. In a related effect, the desire to avoid an unfavorable Sunset report leads many agencies to assess and improve their operations before Sunset arrives for a review. Sunset staff often find an agency has implemented positive changes the year before its Sunset review begins.

Much more detail on the results of the Sunset process in Texas is contained in the publication *Sunset in Texas*, available on the Sunset Commission website.[47]

Structure of Sunset

These results flow in part from a solid foundation underlying Sunset. The Sunset Act contains important provisions for success, including criteria directing the focus of reviews; appropriate oversight powers, including authority to attend closed meetings and inspect confidential materials subject to appropriate limitations; reporting, hearing, and other provisions promoting transparency and openness; and a professional staff to assist in development of recommendations. Also, as shown above, the act has been amended over time to iron out procedural or structural problems.

Legislative leadership has played a critical role in the results of Sunset. They have paid close attention to managing and shaping the Sunset tool. As part of this attention, leadership have appointed influential, active, and knowledgeable legislative and public members to the commission to shape recommendations and help guide Sunset bills through the Legislature.

Sunset is not an easy process, but it has achieved meaningful results. Its future, as its past, depends on the value legislators place on its effectiveness to help them do their important, constitutionally-driven job of creating and overseeing state government operations.

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[1] Common Cause, *The Status of Sunset in the States*: *A Common Cause Report* (Washington, D.C.: Common Cause, March 1982), i.

[2] Chapter 735 (S.B. 54), Acts of the 65th Texas Legislature, Regular Session, 1977.

[3] Joint Advisory Committee on Government Operations, *Final Report to the Governor of Texas and Members of the Sixty-fifth Texas Legislature* (Austin, TX: Joint Advisory Committee on Government Operations, January 1977), 2.

[4] "Constitutional Convention of 1974," Texas State Historical Association, accessed January 16, 2017, https://tshaonline.org/handbook/online/articles/mjc07.

[5] S.J.R. 11, Acts of the 64th Texas Legislature, Regular Session, 1975 (Article IV), 25–26.

[6] Chapter 357 (S.B. 319), Acts of the 64th Texas Legislature, Regular Session, 1975.

[7] Joint Advisory Committee on Government Operations, *Final Report to the Governor of Texas and Members of the Sixty-fifth Texas Legislature* (Austin, TX: Joint Advisory Committee on Government Operations, January 1977), 29–38.

[8] Chapter 735 (S.B. 54), Acts of the 65th Texas Legislature, Regular Session, 1977.

[9] Chapter 238 (H.B. 1583), Acts of the 69th Texas Legislature, Regular Session, 1985.

[10] Certain river authorities were put under Sunset in that same year, as described later in this document.

[11] Chapter 1008 (H.B. 2243), Acts of the 70th Texas Legislature, Regular Session, 1987; and Chapter 196 (S.B. 631), Acts of the 71st Texas Legislature, Regular Session, 1989.

[12] Chapter 702 (H.B. 542), Acts of the 67th Texas Legislature, Regular Session, 1981.

[13] Chapter 3 (H.B. 7), Acts of the 78th Texas Legislature, 3rd Called Session, 2003.

[14] Chapter 702 (H.B. 542), Acts of the 67th Texas Legislature, Regular Session, 1981.

[15] Chapter 928 (H.B. 3249), Acts of the 80th Texas Legislature, Regular Session, 2007.

[16] Chapter 702 (H.B. 542), Acts of the 67th Texas Legislature, Regular Session, 1981.

[17] Chapter 1128 (H.B. 326), Acts of the 82nd Texas Legislature, Regular Session, 2011.

[18] Chapter 1499 (S.B. 178), Acts of the 76th Texas Legislature, Regular Session, 1999; Chapter 1319 (S.B. 1851), Acts of the 76th Texas Legislature, Regular Session, 1999.

[19] Chapter 928 (H.B. 3249), Acts of the 80th Texas Legislature, Regular Session, 2007.

[20] Chapter 668 (S.B. 1618), Acts of the 82nd Texas Legislature, Regular Session, 2011; Chapter 990 (H.B. 1781), Acts of the 82nd Texas Legislature, Regular Session, 2011.

[21] Chapter 222 (H.B. 86), Acts of the 83rd Texas Legislature, Regular Session, 2013.

[22] Chapter 702 (H.B. 542), Acts of the 67th Texas Legislature, Regular Session, 1981.

[23] Chapter 238 (H.B. 1583), Acts of the 69th Texas Legislature, Regular Session, 1985; Chapter 928 (H.B. 3249), Acts of the 80th Texas Legislature, Regular Session, 2007.

[24] Chapter 222 (H.B. 86), Acts of the 83rd Texas Legislature, Regular Session, 2013.

[25] Chapter 702 (H.B. 542), Acts of the 67th Texas Legislature, Regular Session, 1981.

[26] Chapter 1008 (H.B. 2243), Acts of the 70th Texas Legislature, Regular Session, 1987; Chapter 785 (S.B. 19), Acts of the 78th Texas Legislature, Regular Session, 2003.

[27] Chapter 928 (H.B. 3249), Acts of the 80th Texas Legislature, Regular Session, 2007.

[28] Chapter 668 (S.B. 1618), Acts of the 82nd Texas Legislature, Regular Session, 2011.

[29] Chapter 3 (S.B. 11), Acts of the 65th Texas Legislature, 1st Called Session, 1977.

[30] Chapter 1112 (H.B. 2455), Acts of the 78th Texas Legislature, Regular Session, 2003.

[31] Chapter 1279 (H.B. 1675), Acts of the 83rd Texas Legislature, Regular Session, 2013.

[32] Texas Sunset Advisory Commission, *Sunset in Texas*: *2015–2017* (Austin: Texas Sunset Advisory Commission, 2015–2017), 13–20.

[33] Chapter 238 (H.B. 1583), Acts of the 69th Texas Legislature, Regular Session, 1985.

[34] Chapter 196 (S.B. 631), Acts of the 71st Texas Legislature, Regular Session, 1989.

[35] Although the Legislature removed the provision scheduling all river authorities for Sunset review in 1991, Sunset reviewed the board of directors of the Guadalupe-Blanco River Authority in 1995.

[36] Chapter 1148 (S. B. 523), Acts of the 84th Texas Legislature, Regular Session, 2015.

[37] Chapter 790 (H.B. 943), Acts of the 70th Texas Legislature, Regular Session, 1987; Chapter 56 (S.B. 79), Acts of the 70th Texas Legislature, 2nd Called Session, 1987; Chapter 1057 (H.B. 3164), Acts of the 71st Texas Legislature, Regular Session, 1989.

[38] Chapter 1481 (S.B. 309), Acts of the 77th Texas Legislature, Regular Session, 2001.

[39] The Legislature subsequently placed, and Sunset reviewed, the Capital Metropolitan Transportation Authority in 2011.

[40] Chapter 1552 (S.B. 1438), Acts of the 76th Texas Legislature, Regular Session, 1999.

[41] Texas Sunset Advisory Commission, *Self-Directed Semi-Independent Status of State Agencies* (Austin: Texas Sunset Advisory Commission, July 2015), 1.

[42] Chapter 1279 (H.B. 1675), Acts of the 83rd Texas Legislature, Regular Session, 2013; Chapter 150 (H.B. 1685), Acts of the 83rd Texas Legislature, Regular Session, 2013.

[43] The LBJ School of Public Affairs at The University of Texas at Austin in partnership with Deloitte Research, *Executing Government Transformation: Case Studies of Implementation Challenges* (Austin, TX: The LBJ School of Public Affairs at The University of Texas at Austin in partnership with Deloitte Research, May 2008), 88; Cynthia Opheim, Landon Curry, and Patricia M. Shields, "Sunset as Oversight: Establishing Realistic Objectives," *American Review of Public Administration* 24, no. 3 (September 1994), 254.

[44] The LBJ School of Public Affairs at The University of Texas at Austin in partnership with Deloitte Research, *Executing Government Transformation: Case Studies of Implementation Challenges* (Austin, TX: The LBJ School of Public Affairs at The University of Texas at Austin in partnership with Deloitte Research, May 2008), 90; "Book of the States 2016," Chapter 3: State Legislative Branch, Table 3.27 (Summary of Sunset Legislation), The Council of State Governments, last modified June 6, 2016, accessed February 1, 2017, http://knowledgecenter.csg.org/kc/content/book-states-2016-chapter-3-state-legislative-branch; "Sunrise, Sunset and State Agency Audits," Council on Licensure, Enforcement & Regulation, accessed February 1, 2017, http://www.clearhq.org/page-486181.

[45] Texas Sunset Advisory Commission, *Sunset in Texas*: *2015–2017* (Austin: Texas Sunset Advisory Commission, 2015–2017), 7.

[46] Texas Sunset Advisory Commission, "Sunset Occupational Licensing Model," accessed January 31, 2017, https://www.sunset.texas.gov/public/uploads/files/Ch_9_Sunset%20Licensing%20Model_for%20the%20web.pdf.

[47] Texas Sunset Advisory Commission, *Sunset in Texas*: *2015–2017*, accessed January 31, 2017, https://www.sunset.texas.gov/public/uploads/files/reports/Sunset%20in%20Texas_0.pdf.

APPENDICES

Appendix A

Sunset Review Schedule — 2019

32 Reviews

Accountancy, Texas State Board of Public

Alcoholic Beverage Commission, Texas

Appraiser Licensing and Certification Board, Texas

Banking Commissioner, Office of

Consumer Credit Commissioner, Office of

Finance Commission of Texas

Funeral Service Commission, Texas

Geoscientists, Texas Board of Professional

Guadalupe-Blanco River Authority

Historical Commission, Texas

Land Surveying, Texas Board of Professional

Library and Archives Commission, Texas State

Licensing and Regulation, Texas Commission and Department of

Lower Colorado River Authority

Maternal Mortality and Morbidity Task Force

Military Department, Texas

Motor Vehicles, Texas Department of

Nueces River Authority

Palliative Care Interdisciplinary Advisory Council

Plumbing Examiners, Texas State Board of

Public Safety, Texas Department of

Real Estate Commission, Texas

Red River Authority of Texas

Appendix A

Regional Education Service Centers (20 centers)

Risk Management Board and State Office of Risk Management

Savings and Mortgage Lending, Office of Commissioner and Department of

School Land Board

Securities Board, State

Teacher Retirement System of Texas, Board of Trustees of the

Veterans Commission, Texas

Veterans' Land Board

Windstorm Insurance Association, Texas

Appendix B

Summary of the Texas Sunset Act

Sunset Act

The Texas Sunset Act (Chapter 325, Government Code) went into effect in August 1977. It provides for automatic termination of most agencies under Sunset review, although a few agencies under review are exempt from automatic termination.

Sunset Advisory Commission

The 12-member Sunset Advisory Commission has five members of the Senate, five members of the House, and two public members, appointed by the lieutenant governor, and the speaker of the House, respectively. The chairmanship rotates between the Senate and the House every two years.

Reviewing an Agency

When reviewing an agency, the commission's staff must consider statutory criteria as shown in the textbox, *Sunset Review Questions* on the following page. The commission's report on an agency must include a recommendation to abolish or continue the agency, and may contain recommendations to correct problems identified during the review. These problems may include other agencies not under review that overlap or duplicate, or otherwise relate to the agency under review.

Continuing an Agency

If the commission recommends that an agency be continued, it has legislation drafted for that purpose, and to correct the problems found during the Sunset review. Sunset legislation usually continues an agency for 12 years.

Abolishing an Agency

If the commission recommends abolishment of an agency, the agency generally has a one-year period to wind down its operations. The agency retains full authority and responsibility until the end of that year, at which time its property and records are transferred to the appropriate state agency.

Compliance Reviews

The commission is required to examine an agency's actions after a Sunset bill is passed to determine if the agency has implemented the new statutory requirements. In addition, the state auditor may evaluate the agency's compliance with non-statutory management changes recommended by the commission.

Appendix B

Sunset Review Questions

All Agencies

1. How efficiently and effectively does the agency and its advisory committees operate?
2. How successful has the agency been in achieving its mission, goals, and objectives?
3. Does the agency perform any duties that are not statutorily authorized? If so, what is the authority for those activities and are they necessary?
4. What authority does the agency have related to fees, inspections, enforcement, and penalties?
5. In what ways could the agency's functions/operations be less burdensome or restrictive and still adequately protect and serve the public?
6. How much do the agency's programs and jurisdiction duplicate those of other agencies and how well does the agency coordinate with those agencies?
7. Does the agency promptly and effectively address complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions?
9. How has the agency complied with state and federal requirements regarding equal employment opportunity, the rights and privacy of individuals, and purchasing guidelines for historically underutilized businesses?
10. How effectively does the agency enforce rules on potential conflicts of interest of its employees?
11. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
12. Would abolishing the agency cause federal government intervention or loss of federal funds?
13. Do the agency's statutory reporting requirements effectively fulfill a useful purpose?

Occupational Licensing Agencies

1. Does the agency's occupational licensing program serve a meaningful public interest and provide the least restrictive form of regulation needed to protect the public interest?
2. Could the program's regulatory objective be achieved through market forces, private certification and accreditation programs, or enforcement of other law?
3. Are the skill and training requirements for a license consistent with a public interest, or do they impede applicants, particularly those with moderate or low incomes, from entering the occupation?
4. What is the impact of the regulation on competition, consumer choice, and the cost of services?