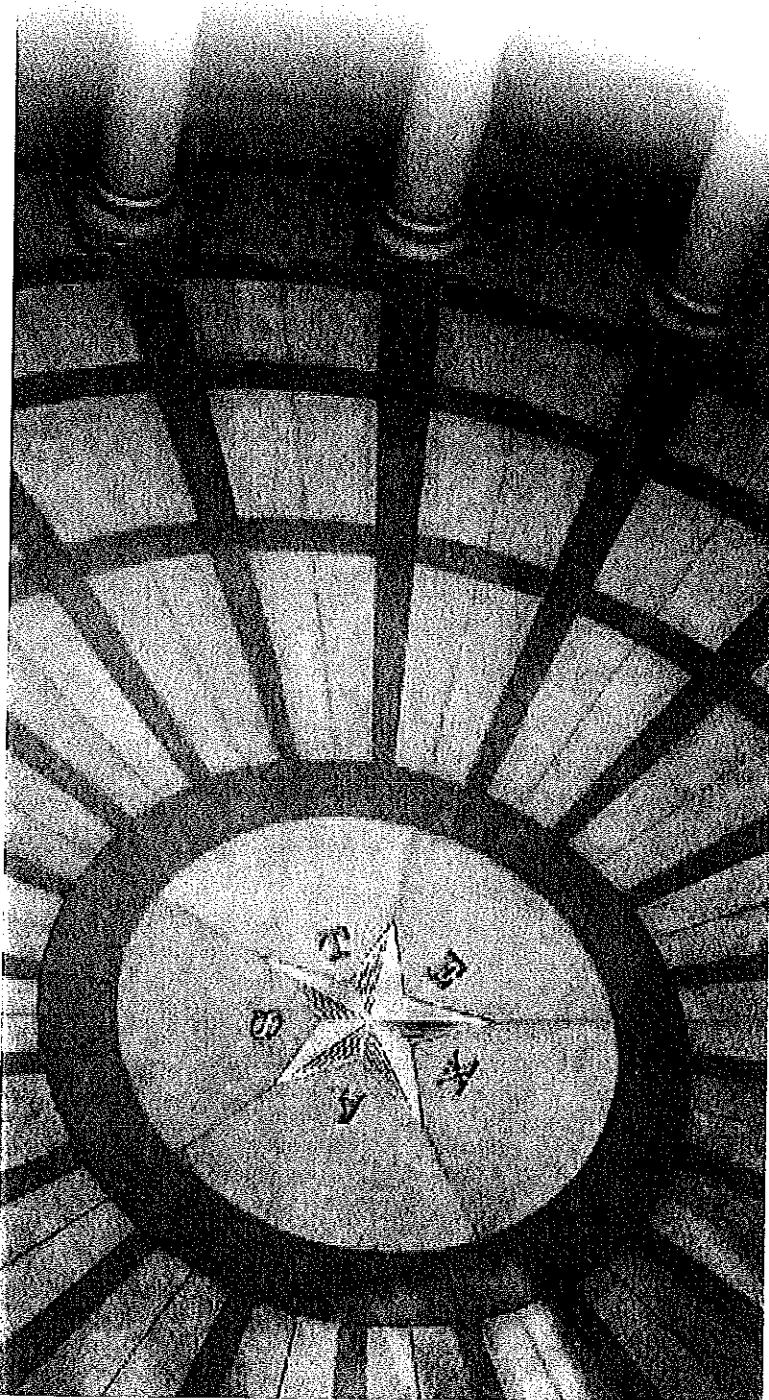


SUNSET ADVISORY COMMISSION

*Guide to the
Sunset Process*

December 2009



GUIDE TO THE SUNSET PROCESS

**SUNSET ADVISORY COMMISSION
DECEMBER 2009**

Sunset in Texas

What Is Sunset?

Sunset is the regular assessment of the continuing need for a state agency to exist. While standard legislative oversight is concerned with agency compliance with legislative policies, Sunset asks a more basic question: Do the agency's functions continue to be needed? The Sunset process works by setting a date on which an agency will be abolished unless legislation is passed to continue its functions. This creates a unique opportunity for the Legislature to look closely at each agency and make fundamental changes to an agency's mission or operations if needed.

The Sunset process is guided by a 12-member body appointed by the Lieutenant Governor and the Speaker of the House of Representatives. Assisting the Commission is a staff whose reports provide an assessment of an agency's programs, giving the Legislature the information needed to draw conclusions about program necessity and workability.

How Is an Agency Scheduled for Review Under Sunset?

About 130 state agencies are subject to the Texas Sunset Act. The Sunset Act, which became effective in August 1977, specifies each agency's review date. Agencies under Sunset typically undergo review once every 12 years. Certain entities, such as universities and courts, are not subject to the Sunset Act. Some constitutionally created agencies, such as the Board of Pardons and Paroles and the Board of Trustees of the Teacher Retirement System of Texas, are subject to Sunset review but not abolishment.

Generally, the Legislature groups and schedules agencies for review by function to allow the examination of all major state policies related to a particular function at once, such as health and human services, natural resources, and financial regulation. About 20 to 30 agencies go through the Sunset process each legislative session. The Legislature may change the review schedule to enable a close look at certain agencies of special legislative interest. By using the Sunset process to examine problem areas, the Legislature further strengthens the accountability of state agencies.

How Are Agencies Reviewed?

Staff of the Sunset Commission works extensively with each agency under review to evaluate the need for the agency, propose needed statutory or management changes, and develop legislation necessary to enact any proposed changes. A summary of the steps in a Sunset review can be found in the flowchart on the following page, *Sunset Review Process*.

Sunset asks the basic question: Should a state agency be continued?

Sunset evaluates most state agencies every 12 years to determine if they are still needed.

Sunset staff uses specific criteria set by the Legislature to evaluate each of the programs and functions of a state agency placed under Sunset review. These criteria, located in §325.011 of the Government Code (page 49 of this report), are summarized in the textbox, *Sunset Review Questions*.

The staff review of an agency typically takes from three to eight months depending on the size and complexity of the agency. Sunset staff gathers information from a broad range of sources. As a part of the review process, each agency submits a Self-Evaluation Report (SER) to the Sunset Commission. The SER identifies problems, opportunities, and issues that the agency feels should be considered in the Sunset review. Sunset staff also solicits input from interest groups and professional organizations, and encourages public input and discussion of agency functions. Staff collects and evaluates information from extensive interviews of agency personnel, performance reports, operational data, and other sources. Once the evaluation phase of the review is completed, Sunset staff publishes a report containing recommendations for statutory change by the Legislature and recommendations for agency management to implement to improve internal operations.

The Sunset Commission conducts a public hearing on each agency under review after publication of the staff report. The public hearing provides an opportunity for Sunset staff to present its recommendations, for the agency to formally respond to the staff recommendations, and for the public to comment on the report and to raise additional policy issues relating to the agency. This allows for broad public input into the Sunset process and begins the Commission's consideration of potential changes to recommend to the Legislature in the form of Sunset legislation.

All information presented to the Commission at the public hearing, whether submitted orally or in writing, is reviewed and compiled. The Commission meets in public session to review the input received and to make decisions on Sunset staff recommendations and new issues

Sunset Review Questions

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?

How Can the Public Participate in Sunset?

Members of the public who participate in the review process can provide valuable information to the Sunset Commission about how well or poorly an agency performs its functions. Individuals and organizations usually participate by identifying potential issues for study and by commenting on proposed changes to the agency. The easiest way to follow the Sunset process and begin participating in the process is through the Sunset Commission website, www.sunset.state.tx.us. The following points illustrate the significant ways the public can participate in the Sunset review of an agency.

- ◆ **Input with Staff.** The staff seeks input during the review, at which time interested persons and organizations may voice their concerns or ideas about the agency.
- ◆ **Reviewing Sunset Reports.** Sunset reports, including agency Self-Evaluation Reports and staff reports, are available to the public through the Sunset website or in hard copy upon request.
- ◆ **Testifying at Public Hearings.** The Commission holds public hearings on each agency under review. These hearings offer the public an opportunity to testify about an agency and comment on the Sunset staff's recommendations.
- ◆ **Taking Part in the Legislative Session.** Generally, if an agency is to be continued, a bill must be passed by the Legislature. Members of the public can participate in the legislative process as they would with any other legislation.

For Sunset to reach its full potential, each Texan must be able to fully and equally participate in every phase of the Sunset review. Persons with special needs or who wish to request an Americans with Disabilities Act (ADA) accommodation, should contact the Sunset ADA Coordinator. In addition, information on accommodations for people with disabilities can be found on the back cover of this report.

Persons interested in being placed on Sunset's mailing list and receiving the review schedule, meeting schedule, meeting agendas, staff reports, or decision materials should contact the Sunset Commission staff.

How Does Sunset Coordinate With Other Oversight Agencies?

The Sunset Commission is one of several agencies charged with monitoring state agency performance. These other oversight agencies include the State Auditor, Legislative Budget Board, Governor's Office of Budget and Planning, and Legislative Committees. Sunset regularly coordinates with these entities to reduce the possibility of duplication of effort and to assist in identifying issues that may be best addressed by Sunset or another agency. The role of each oversight agency is further explored in the textbox on the following page, *Coordination With Other Oversight Agencies*.

Public comment on an agency's performance, and suggestions for improvement, are critical to the Sunset review process.

**Membership of the Sunset Advisory Commission
82nd Legislature**

Glenn Hegar, Jr., Chair
Senator, *Katy*

Dennis Bonnen, Vice Chair
Representative, *Angleton*

Juan "Chuy" Hinojosa
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Linda Harper-Brown
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John Whitmire
Senator, *Houston*

Carl Isett
Representative, *Lubbock*

Charles McMahan
Senate Public Member, *Schulenburg*

Lamont Jefferson
House Public Member, *San Antonio*

What Are Sunset Across-the-Board Recommendations?

Across-the-Board recommendations (ATBs) are statutory administrative policies adopted by the Sunset Commission as standards for state agencies, reflecting criteria in the Sunset Act designed to ensure open, responsive, and effective government.

1. Public Membership on State Agency Boards

While state agencies are designed to protect the health, welfare, and safety of the public, some agencies have governing boards with membership only from the regulated industry or groups affected by the activities of the agency. These boards may be more responsive to public interests with a direct public voice on the board. To ensure appropriate representation, this ATB requires that as close as possible to one-third of the board members represent the general public.

2. Prohibitions on Agency Conflicts of Interest

State agencies may have ties with professional trade organizations and other groups that may not be in the public interest. Conflicts of interest can also result when an agency's board members or general counsel are involved in lobbying. This ATB reduces the possibility of such conflicts.

*Sunset "ATBs" are
good government
standards
applied to all
agencies under
Sunset review.*

What Is the Sunset Occupational Licensing Model?

The Sunset Occupational Licensing Model is a collection of standard practices gleaned from more than 30 years of Sunset Commission reviews. The compilation of these standard practices provides a model for evaluating occupational licensing agencies, promoting efficiency, effectiveness, fairness, and accountability to protect the public. The Sunset Commission uses these standards to guide reviews of agency structure, oversight, and operations.

The model examines every aspect of an occupational licensing agency or program from the need for the agency to how licensing and enforcement should work. For example, the model contains a standard relating to agency licensing that supports minimum experience requirements to ensure competency, but not limit entry to a profession. As another example, in the area of enforcement, the model indicates that an agency should have clear procedures, rules, and statutory authority for conducting inspections to ensure consistent treatment of licensees and timely compliance. The licensing model can be found on the Sunset website, located at www.sunset.state.tx.us.

Before recommending changes to an agency's statute based on these standards, the Sunset Commission considers the specific circumstances of the agency and the historical context of the issues. Common benefits of applying licensing model standards include agency efficiency, administrative flexibility, fairer processes for the licensee, and additional protections for consumers.

*The Occupational
Licensing Model
helps ensure
regulated
professions
remain
accountable to
the public.*
