

## Chapter 4. Case Study: Shining Light on Sunset

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### Executive Summary

Accountability and reducing waste in government is a simple idea with potentially difficult implementation. One method of implementing government accountability and waste-cutting measures is sunset legislation. Through regularly scheduled reviews, sunset legislation automatically abolishes government agencies, programs, and regulatory boards, unless a bill passes to extend the life of the entity.

Since sunset was first implemented in Colorado in 1976, 44 states have initiated sunset legislation in some form; yet only 25 states have retained this legislation. Of the states with active sunset legislation, Texas stands out due to its long-standing broad scope review process that has served as a model for sunset legislation in other states. Digging deeper into the Texas sunset process reveals interesting elements of successful program review and evaluation within state government.

During its history, the Texas Sunset Advisory Commission developed a review process that focuses on statutory review criteria. In general terms, Texas Sunset reviews focus on *what* an agency is doing; *how* an agency has functioned in the past, *how* it is fulfilling its purpose, and *how* it is using available tools; and overall agency *transparency*. Using this review process as a tool, the Texas Sunset Advisory Commission has sunsetted 52 agencies during its 30-plus year history.

The true longevity of sunset legislation in Texas lies not with the number of agencies abolished, but rather in the key factors of success for government accountability and waste-cutting legislation via sunset:

- Committed leadership;
- Strong staff capabilities;
- Political champions;
- Strong legislative support;
- Time and space for substantive work;
- Flexibility; and
- Bipartisan support for government reform.

These elements have contributed to the success of sunset legislation in Texas and serve as guidelines for similar government accountability legislation elsewhere. The combination of the elements of success leads to an effective mechanism—sunset legislation—for government reform.

## **Why is Sunset Important?**

History has provided policymakers with an arsenal of evaluation and improvement mechanisms including zero- and performance-based budgeting, the federal Government and Performance Results Act, Vice President Gore's National Partnership for Reinventing Government, and the Grace Commission. Government reform initiatives have varying life expectancies and mixed results in terms of long-term success. The problem such entities seek to remedy is that governmental programs and agencies seem to mushroom out of control. Although state and federal legislators have the power to abolish or modify such agencies, inertia and lobbyist pressure means this exercise is rarely used. If opposing government growth remains popular in political circles, why do evaluation models so often go extinct? Are they simply doomed to fail in American systems of governance? Can we find outliers that have succeeded in effectively providing long-term utility?

The sunset concept addresses a perennial complaint about government programs. Agencies often assume a life of their own and become divorced from the reasons they were created and the citizens who approve them. Like an antibiotic fighting off an infection, the sunset process breaks the grip of familiar committee chairs and interest groups and infuses the legislative process with public participation and transparency. Sunset legislation generally provides for periodic termination of government agencies, programs, regulations, and spending authority unless affirmative legislative action continues them. As a result, sunset turns the legislative process upside down because killing a proposed law is easier than passing one. On paper, state legislative bodies and the Congress have all the power they need to make radical changes to the agencies they oversee, but slashing budgets and programs makes for quick enemies and harsh headlines. Sunset is not only action-forcing, it affords constituent-minded representatives an escape hatch: "Sorry buddy, the fact that your program is worthless is proven and in the public view, what can I do about it now?"

The states with the longest record of continuous and vigorous Sunset Commissions in operation are Texas and Colorado. Texas has a broad-scope review process, while Colorado only evaluates regulatory and licensing agencies. Additionally, Texas is a large and politically charged state with many agencies and commissions. These, and many other factors, make the Texas Sunset Advisory Commission the perfect Petri dish in which to analyze the sunset concept. Other states have used the Texas model as a guide in implementing their own sunset laws and if the Texas Sunset Advisory Commission is truly successful at its mission, this experiment in the Lone Star State may prove to be a model for federal and other state lawmakers.

## **Origin of the Sunset Process**

During the late 1970s, the political mood across much of the United States was one of eliminating government waste and making government more responsive to the people. The zero-based budgeting movement of the Carter Administration pointed to problems

with government waste. These sentiments were further cemented by the holding-government-accountable attitude of the Reagan Administration in the early 1980s.

The Colorado Chapter of Common Cause, a public advocacy group, conceived the idea of sunset. Craig Barnes, a young Denver lawyer, developed the idea from some notepad scribbles during a Common Cause meeting.<sup>1</sup> In an interview with the Wall Street Journal, Barnes took credit for naming the automatic termination model: "It's like the end of the day for these agencies, and it's inexorable."<sup>2</sup> In the late 1970s, National Common Cause made sunset one of its national legislative priorities, which means there was a formidable lobbying force in Washington and state capitols.<sup>3</sup> Barnes made an appearance before the U.S. Senate to explain the concept of sunset legislation in 1978.<sup>4</sup>

Colorado was the first state to enact sunset legislation in 1976, the same year that the first federal sunset legislation was proposed. Since then, 43 additional states have enacted some form of sunset legislation.<sup>5</sup> The development of various sunset laws across the country occurred in a climate where much attention focused on tightening legislative control over agencies. Most obvious, was the zero-based budgeting system initiated under former Governor Jimmy Carter in Georgia and since adopted by several other states.<sup>6</sup> Zero-based budgeting reverses the traditional incremental budgeting process by making departments and agencies justify every expenditure starting from zero. Sunset is simply a different mechanism targeting the same result by doing a top-to-bottom assessment on a regular basis. The idea quickly caught on and support for zero-based budgeting and sunset laws found its way into the 1976 National Democratic Platform.

With its pro-consumer and anti-big government agenda, sunset quickly positioned itself as an idea that was easily sold to both conservatives and liberals. For liberals, the promise of public involvement and the chance to tackle issues long protected by corporate-sponsored lobbying groups proved to be an opportunity too good to miss. Topped with a sprinkle of election year pizzazz, this magical concoction was appealing to politicians in all levels of government and from both sides of the aisle. To capture the attention of advocacy groups, sunset was structured to break down the walls of consolidated political power and Gucci-wearing special interest groups. For political leaders, an added benefit was that sunset law had great promise to provide legislators help with campaign fundraising. After all, the agencies that come before the sunset scalpel regulate and often protect special interest groups. Whatever the reason, by 1976 the sunset self-destruct concept had what political scientists call "respectability in the policy making field."<sup>7</sup>

### **Beginnings of Texas Sunset**

In the early 1970s, Texas State Representative Gus Mutchler championed the importance of public involvement in response to a scandal involving the speaker of the house. A desire to know what was going on blossomed quickly, and the Open Records Act was added to the Texas Government Code in 1973. An embryonic version of what would be known as sunset is evident in the self-destruct clause born during the 1974 Texas Constitutional Convention. The self-destruct clause, a constitutional provision that all state agencies automatically cease to exist after no more than ten years at a time unless

the Texas Legislature acted to continue their existence, was defeated with the rest of the proposed constitution.<sup>8</sup> Almost two years later, the Joint Advisory Committee on Government Operations in Texas, led by Lieutenant Governor Bill Hobby and Speaker Billy Clayton, recommended that the next Texas Legislature pass a "sunset" law.<sup>9</sup> According to House Speaker Clayton, "The whole reason for the sunset process is to see if the agencies are serving the people. Who is better able to do that than a person whose job it is to make sure people are being served properly? I don't see how you could go wrong with that kind of input."<sup>10</sup> The Hobby-Clayton Commission only planned to apply the sunset law to less than half the number of state agencies. But as the saying goes, everything is bigger in Texas.

In 1976, Common Cause constructed an issues agenda poll, which reported that 76 percent of the candidates for the Texas Legislature said they supported sunset legislation.<sup>11</sup> In 1977, the legislature passed SB 54, the Texas Sunset Act, establishing a 12-year life span for 175 agencies, boards, and commissions; each must secure new legislation for their continued existence, or ride off into the proverbial sunset. What came out of that session was a self-enforcing mechanism, placing on each agency the burden of demonstrating its usefulness and efficiency. If the agency fails in this effort, the "sun sets" on its existence. If the agency succeeds, it is once again placed on the 12-year cycle for reexamination along with any new agencies that may be created.

### Figure 4.1 Example of Sunset: Apple Storage in Colorado

The Colorado Department of Agriculture was required to license and regulate any facility that stored apples using special controlled atmosphere storage (storing in Freon or ammonia instead of chilled air). During the 1994 review, sunset staff discovered only one such facility existed in the entire state and was never inspected or charged a licensing fee. "The apple industry has been successful without [a licensure and inspection program], which is excellent evidence that no such regulation is necessary."

Source: Based on Colorado Department of Regulatory Agencies, Office of Policy and Research, *Sunset Review of Controlled Atmosphere Storage of Apples* (Denver, Colo., June 1994).

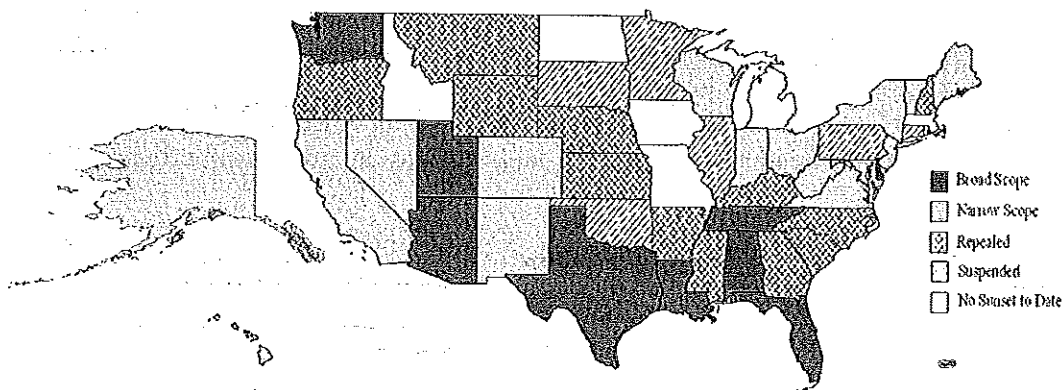
### Sunset Across the United States

Sunset legislation has been enacted in 44 states since Colorado's pioneering legislation. Of those 44 states, 12 have repealed sunset legislation and seven have been suspended or become inactive.<sup>12</sup> So, what has become of the remaining 25 states with a sunset review process?

## Scope of Sunset Legislation: Broad versus Narrow

Not all sunsets are created equal. Varying scope amongst different states' sunset legislation leads to different advantages and disadvantages. Among states with sunset legislation, the scope of sunset reviews falls into two categories: broad scope where the review process covers state agencies and regulatory and licensing boards; and narrow scope where review is confined to regulatory and licensing boards only. The distribution of states with broad versus narrow scope sunset review processes, along with those repealing or suspending legislation, is illustrated in Figure 4.2.

**Figure 4.2**  
**Current Sunset Legislation in the United States, 2008**



Source: Created by authors based on references in Appendix F.

As in Texas, broad scope sunset review processes have statutory authority to review all state agencies, as well as regulatory and licensing boards. This broad scope leads to comprehensive reviews that evaluate programs holistically, often resulting in more efficient and effective reviews. For example, the recent review of the Department of Citrus by the Florida Joint Sunset Committee was not confined only to the Department of Citrus, but included analysis of potential overlap with the Citrus Commission and the Department of Agriculture and Consumer Services.<sup>13</sup>

But it is not always sunny with broad scope sunset reviews. Review of large state agencies can bring on heavy lobbying from special interest groups. Many recommendations are altered, even deleted, due to lobbyist sway. Additionally, the idea of automatic abolition of large state agencies can become unpopular—many would agree that agencies like a state Department of Transportation or Department of Education are necessary, though possibly in need of radical reorganization. When reviewing large agencies in Florida, sunset recommendations focus on duplication, efficiency, and

performance of activities, the same criteria for regulatory and licensing board reviews; however large agency recommendations focus more on programs within agencies than on agency abolition.<sup>14</sup>

Narrow scope sunset reviews have pros and cons as well. By limiting narrow scope reviews to regulatory and licensing boards (or other select state entities, per statutory authority), staff can focus attention on useful recommendations with less influence from intense lobbying. Special interest group lobbying can still be present during reviews, but small licensing boards are less likely to draw significant lobbyist attention. Additionally, narrow scope reviews often include more flexibility to adapt and reallocate personnel time and resources than broad scope reviews.<sup>15</sup> The narrower review scope allows for ease in reprioritizing reviews based on various factors, including availability of staff and demand for recommendations.

On the other hand, narrow scope sunset reviews are limited, by definition. Narrow scope reviews exclude the large aspects of government where recommendations most influential to the average citizen can be made. For instance, the average Coloradan may see more tangible impacts from recommendations to improve the Department of Transportation (though this agency is not reviewed), than sunset recommendations for the Colorado State Boxing Commission or the Licensing of River Outfitters. These narrow scope recommendations rarely trigger large changes in government efficiency and effectiveness.

### **Florida: Sunset in the Sunshine State**

The original sunset legislation in the state of Florida was the Regulatory Reform Act of 1976 (later renamed the Regulatory Sunset Act in 1981), enacted to review programs prior to automatic abolition. Additionally, the statute required the committee to “recommend continuation, modification, or termination” and, in 1982, established criteria for review.<sup>16</sup> In 1992, the act was repealed due to the high cost of useful reviews, less substantial recommendations following the first review, and the time intensity of reviews.<sup>17</sup>

After being repealed in 1992, sunset made a comeback with the 2006 Florida Government Accountability Act, in response to citizen desire for more government accountability and less waste. The act, championed by Florida State Representative Ray Sansom (R-Destin), was modeled after Texas Sunset and private sector management ideals of reevaluating program existence. According to Rep. Sansom, the new Florida sunset review process “isn’t a book that’s going to sit on the shelf... this is an action plan for Florida.”<sup>18</sup>

The 2006 Florida Government Accountability Act details the sunset review process, evaluation criteria, and a review schedule. During evaluation, reviews by the Florida Joint Sunset Committee staff focus on three main criteria:

1. Duplication of tasks between agencies and programs.
2. Overall efficiency.

### 3. Performance of activities.<sup>19</sup>

This Joint Sunset Committee was created under the new sunset legislation and is scheduled to complete the first set of reviews by July 1, 2008. This Florida Joint Sunset Committee completes broad scope reviews of state departments, agencies, water management districts, and higher education advisory committees.<sup>20</sup>

Among the sunset reviews scheduled to finish July 1, 2008, is the Department of Citrus, the agency that focuses on "marketing, research, and regulation of the Florida citrus industry."<sup>21</sup> Though it has national visibility through commercials and marketing campaigns, the Department of Citrus is actually one of the smaller state departments, functioning as a single entity; other large Florida agencies have as many as 20 to 50 programs within each agency.<sup>22</sup> Review of the Department of Citrus included analysis of overlap with the Department of Agriculture and Consumer Services, effectiveness of activities, and challenges for the department due to issues with hurricanes, crop disease, and land use. Based on these goals, advantages and disadvantages of continuation, combination, and elimination options for the Department of Citrus activities were detailed to aid with Sunset recommendations.<sup>23</sup>

This type of clear sunset review process has been successful in Texas and has created a solid foundation for future sunset reviews in Florida. Though the first try ended in repeal, sunset in the Sunshine State seems to have developed a review process, based largely on that in Texas, which may help facilitate more effective and useful sunset recommendations in the future.

### Sunset of Sunset Legislation

What has caused 19 states to either suspend or repeal sunset legislation over the years? Studies suggest that several factors contribute to the eventual sunset of sunset legislation, including:

1. Failing to reduce the size of government and/or not saving money.
2. "Wearing down" of legislators due to heavy lobbying.
3. Small payoff for the large workload of commission members and staff.
4. Review process is time intensive and detracts from other legislative work.<sup>24</sup>

These factors were present in the original Florida sunset review process, leading to repeal of the act in 1992. To minimize the effect of these factors, some suggest changes to the sunset process itself: focus on a flexible and goal-oriented review process; ensure strong support of the legislature; and carefully select criteria for review.<sup>25</sup> In fact, some states subject the sunset commission itself to sunset review.

A clear sunset review process is essential to the success of recommendations, and therefore, sunset legislation. The key components of a successful sunset review process are review criteria, like those of Texas and Florida. Analysis of various sunset review processes reveals that a lack of specific review criteria can create negative results:

1. Fewer tangible recommendations that are useable by agencies.
2. Apathy and lack of passion in those involved with the review process.
3. A general sense of unimportance and vagueness.

An unorganized sunset review usually does not yield recommendations that make sense or serve a tactical purpose, from the agency perspective. A hazy process can lead to less efficient reviews and time wasted by sunset staff, as well as an atmosphere of apathy. Development of a clear sunset review process aids with implementation of legislative oversight goals and helps to mitigate these negative results.

### **How the Sunset Process Works in Texas**

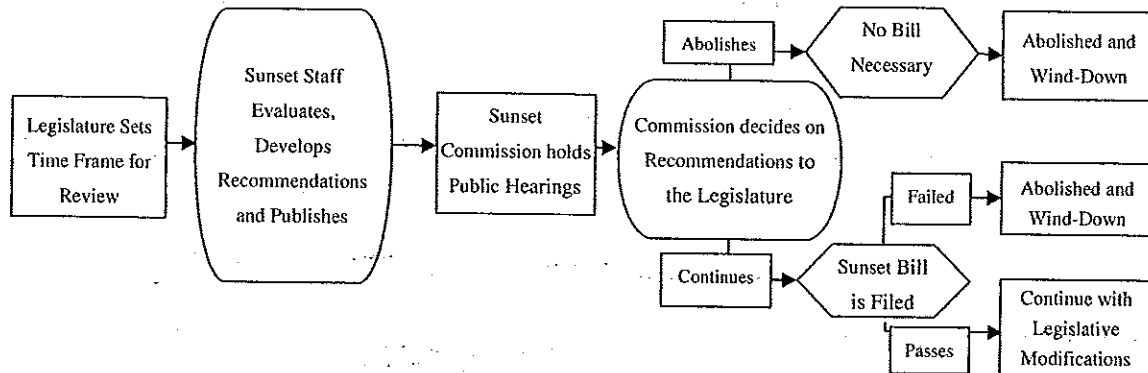
The Texas Sunset Advisory Commission is a 12-member board comprised of legislators and public members appointed by the Lieutenant Governor and the Speaker of the House of Representatives. A skilled staff of researchers and analysts supports the Commission by conducting assessments and providing recommendations for agencies under review.<sup>26</sup>

The Texas Sunset Act provides that agencies go through a review process every 12 years. Agencies created after 1977 have sunset provisions written into their enabling legislation.<sup>27</sup> Through the years, the sunset process has eliminated or consolidated many agencies and programs. There are currently roughly 130 agencies subject to the sunset process and each session between 20 and 30 agencies undergo a review. Legislation is filed to continue or modify an agency, which is automatically terminated unless continued by the Legislature. The 12-year review cycle is not a rigid criterion. Some feel that allowing legislators to move agency termination dates is an indicator of a flawed system; others contend that this affords the Texas Sunset process greater flexibility.

Figure 4.3 illustrates the Sunset Commission Review Process.



**Figure 4.3**  
**Texas Sunset Commission Review Process**



Source: Adapted from Sunset Advisory Commission, *Guide to the Texas Sunset Process* (Austin, Tex., January 2008).

### Sunset Texas Style

Sunset legislation language varies among states, but the underlying purpose is always oversight. In Texas, the Sunset Act has several unique components developed over the years to enhance the efficiency and comprehensiveness of the review process. The Texas Sunset Act sets out specific statutory criteria that must be considered when reviewing an agency. Analyzing how these criteria have been altered over time helps us understand the evolving nature of sunset in Texas.

The first Texas Sunset Act included the following criteria:<sup>28</sup>

- **Efficiency:** The Agency provides only those services necessary by agency mandates and at lowest cost.
- **Effectiveness:** They must properly interpret and translate objectives stipulated in statute.
- **Less restrictive or alternative methods:** The current methods of operation are necessary and adequately protect or serve the public
- **Overlap and duplication:** They demonstrate awareness of other organizations and they deliver services without duplication.
- **Statutory changes:** Ensure that the regulatory statutes are enforced and that they protect the public.

- **Complaints:** Developed administrative processes, which make it possible to handle complaints in an effective and timely manner.
- **Public participation:** Keep general public well informed and are responsive to changing demands.
- **Equal employment/privacy:** Complied with requirements of both the state and federal government.
- **Conflict of interest:** All board members and employees are informed of conflict-of-interest requirements.
- **Open records/open meetings:** Complied with Open Meetings and Open Records Act.
- **Federal impact:** Assess whether or not the abolition of the agency would result in federal intervention or loss of federal funds.

The 2008 statutory sunset criteria, in Chapter 325.011 of the Texas Government Code now include:<sup>29</sup>

- **Efficiency and Effectiveness:** Combination of the original efficiency and effectiveness criteria.
- **Mission, Goals and Objectives:** This criteria requires agencies to identify and address their own mission, goals, and objectives.
- **Additional Agency Activities:** Activities that are granted, in addition to those already in statute.
- **Agency Fees:** Assessment of the agency relating to fees, inspection, enforcement, and penalties.

The Texas Sunset Act requires agencies scheduled for review to draft a Self-Evaluation Report based on the 12 criteria. This report becomes a primary source document for agency evaluation by the sunset staff and other interested parties. The self-evaluation process is important because even if no major reform is made, at the very minimum, the agency is forced to look at its own policies and procedures. The self-evaluation process serves as an internal "scrubbing" process, by which the agency evaluates itself and looks for ways to clean up any problems or issues. It also allows the agency to identify areas they feel should be considered in the review process.

Once the agency submits their Self-Evaluation Report, they are reviewed by the sunset staff and a plan for looking at the agency is developed. The staff works closely with the agency to gain a better perspective of the agency's daily operations. Once investigations are complete, the staff will meet with other interested parties and develop recommendations based on review findings. These recommendations are presented, in addition to the agency responses and public testimony, in a public hearing. The Commission is then charged with deciding which recommendations are given to the legislature. According to Burt Solomons, a former chair of the Commission, the Commission staff members "do a fabulous job making their management

recommendations and getting them to the public and to interest groups... the rest is up to the Commission. It's hard to take the politics out of it."<sup>30</sup>

A unique aspect of Texas Sunset is the application of across the board (ATB) recommendations—standards set forth by the Sunset Commission to ensure that government agencies and programs remain "open, responsive, and effective."<sup>31</sup> These recommendations are applied to every state agency under review unless a clear rationale exists to exempt the agency. ATB recommendations may apply to the policymaking body as a whole or make improvements to the overall consistency of the policies. During the 79th Texas Legislative Session (2005), an ATB recommendation required public membership on state agency policymaking bodies. This recommendation provided a voice for the general public on agency boards and programs which previously had no public input.

Though Texas performs broad scope sunset reviews, not all government entities are subject to review under the Texas Sunset Act. School boards are not subject to review by the Commission, because they are managed by individual school districts, which are not state agencies; a similar situation excludes universities from review. Oversight of individual school districts falls under the Texas Education Agency. Additionally, courts are not subject to Sunset review because they fall under the judicial branch, rather than legislative activities. Along the same vein, some state agencies and programs are subject to the review process of sunset but not eligible for abolition because they are constitutionally created entities. These include the Texas Board of Pardons and Paroles and the Board of Trustees of the Teacher Retirement System of Texas.<sup>32</sup> During debate over sunset at the national level, there have been some suggestions that Congress should allow exemptions for civil rights and energy-research programs. A spokesman for the Veterans of Foreign Wars declared that it would be "both unnecessary and discriminatory" to expose veteran's benefits to a sunset threat."<sup>33</sup>

If an agency is deemed no longer necessary it is given a one-year wind-down period. During this time, the agency or program must bring all business to an end but this does not limit nor decrease the amount of power they previously held. According to statute, the money that an abolished agency has dedicated to specific funds will be transferred to the General Revenue fund. Agencies that have been abolished may still have obligations to pay money for certain reasons, such as "lease, contract, and other written obligations, incurred by a state agency."<sup>34</sup> It is then left up to the governor to "designate an appropriate state agency that shall continue to carry out all covenants contained in the bonds and in all other obligations."<sup>35</sup> The statute for procedures after an agency is abolished is clear in its purpose to ensure that an agency cease to exist at the end of their year wind-down period.

In 2003, the Texas Sunset Commission made a decision to abolish the Texas Department of Economic Development. This was a recommendation made to improve policy by asking the question, "Should this agency exist?" The primary goal of the Texas Department of Economic Development was to promote the State of Texas "as a premier business location and tourist destination."<sup>36</sup> Because the department was independent,

the economic development of Texas was hindered and was costing the state more money than it was generating. The agency did not have the means "to effectively coordinate state economic development programs and services across agencies to meet the demands of prospective companies."<sup>37</sup> The Sunset Commission deemed the agency unnecessary and recommended it be incorporated into a division of the Office of the Governor. The recommendations were considered and adopted by the legislature.

Through the years, sunset has broadened the scope and breadth of areas in which staff make recommendations. The organization no longer merely determines whether or not an agency should exist; the Commission has expanded its reach to policy and efficiency issues, making the agency more accountable to the public. In the late 1980s the Texas Department of Agriculture had a total of 575 employees and was in charge of implementing 49 different laws. Under one of these laws, it was left up to the Commissioner of Agriculture to regulate the registration of pesticides. In 1989, the department underwent its first review process. It was recommended that the agency be reinstated but with several important changes to the department structure. The review required the department to create a nine-member board, headed by a commissioner elected by the people, to regulate the pesticide registration. This recommendation was accepted by the legislature and had a broad impact, reforming pesticide registration in Texas.<sup>38</sup> The registration of pesticides must occur not only within the state but with the United States Environmental Protection Agency as well. By creating a board of members to handle the regulating process, the recommendation promoted accountability to the general public on how the states registered pesticides. This process affects people even outside the state of Texas and it important that this is handled by more than a single authority.

The sunset staff is charged with ensuring that agencies remain transparent and accountable. In 2000, the Sunset Commission evaluated the Texas Natural Resources Conservation Commission (TNRCC), now known as the Texas Commission on Environmental Quality (TCEQ). The Sunset staff made recommendations to bring consistency and uniformity to their processes and procedures by creating a standard definition for "compliance history" – all companies that reported to TCEQ would be tracked under the same performance assessment tool to eliminate inconsistencies in reporting. This process would allow easier interpretation by employees or public citizens who evaluate or inquire into these companies. Sunset also required TCEQ to be more accountable to the public by overhauling the complaint and grievance system.<sup>39</sup>

The Sunset Commission coordinates with other oversight agencies, including the State Auditor's Office and Legislative Committees, to ensure that there is no overlap or duplication of work by any agency. Sunset's broad scope allows it to catch problems that other oversight agencies cannot.<sup>40</sup> Working together with other offices allows Sunset staff to render comprehensive recommendations to the Legislature. According to the current Legislative Director for the Office of the Governor Ken Armbrister, Sunset is the cheaper option for looking into an agency. He notes that the Sunset budget is only approximately \$2-4 million a biennium, whereas the budget for the State Auditor's Office is approximately \$32 million a biennium.<sup>41</sup>

The timing of the review cycle and Texas Legislative sessions are key to the Sunset Process. Because Texas holds a legislative session every two years for approximately 140 days, "typically the legislature does not chase problems; problems chase the legislature".<sup>42</sup> It would be unheard of for the Legislature to tackle all legislative problems and thoroughly review 20 to 30 agencies with such a large break. Timing of the legislative sessions and 12-year review cycles provide adequate time for staff and agencies to work together and devote time to the review of each agency. The continuity and regularity of the process is less abrasive than doing a large review of all agencies at once, like a state-wide performance review.

## **The Texas Two-Step: Sunset I and II**

### **Sunset I (1977-1994): Too Big For Your Boots**

Bill Wells, the first director of the Sunset Advisory Commission, had an air of independence and was known to step on legislators' toes. Wells headed a program for the Legislative Budget Board before the sunset staff broke off on its own. His talent and enthusiasm about the sunset process garnered the respect and admiration of his colleagues, but standing up to people in the legislature who were not accustomed to being challenged cut his career short.<sup>43</sup>

Wells compared his agency to the federal General Accounting Office (now the General Accountability Office) and admitted to the *San Antonio Express-News*, "[Sunset is] the Godzilla in state government."<sup>44</sup> Given such bold public statements, it is not surprising that the relationship between sunset and the Legislature ran hot and cold. According to Tim Graves, a former sunset staff member from the early years who would later be considered in the race to replace Bill Wells, "They had a job to do, we had a job to do," and the Commission was designed to be "organized controversy."<sup>45</sup>

Bill Wells said the idea of a sunset review was originally sold to Texas legislators on the basis that such a program could cut expenditures and eliminate some agencies.<sup>46</sup> That elimination goal proved to be limited and by 1982, most of the elimination process had been completed and the Commission began concentrating on increasing the efficiency and effectiveness of the remaining state agencies.<sup>47</sup>

Since sunset's inception some of the criteria listed in the enabling statutes have been addressed by other legislative mandates. Many "good government" issues, such as open records rules and open meeting acts, have been tackled, and performance-based budgeting seeks to identify effectiveness and efficiency shortfalls.

## Figure 4.4 Barbers and Cosmetologists

After reviewing the Texas State Board of Barber Examiners and the Texas Cosmetology Commission, Tim Graves said, "I cannot forget the smell of beauty products." When he recommended the two licensing boards merge, he stated, "you would have thought we proposed selling the panhandle to China." It was not until 25 years later that the state placed both agencies under the same organization, the Texas Department of Licensing and Regulation. They are, to this day, separate entities.

Source: Interview by Ashlynn Holman and Lisa Wilson with Tim Graves, Sunset Staff Member, Texas Sunset Advisory Commission (former), President, Texas Health Care Association (current), Austin, Texas, January 25, 2008.

Additionally, early sunset bills mandated specific levels of public participation within the agency being reviewed. This begs the question: had Sunset outlived its purpose? Fast-forward to 1993, and it is no surprise that some questioned, "why do we need this?"

During the first few years of the commission's existence, the focus was on targeting smaller agencies. The success of sunset at this stage can be viewed quantitatively and qualitatively. During the first round of reviews (1978 and 1979) 25 agencies were examined, 12 were modified and continued, nine were abolished, four were combined, and one new agency was created.<sup>48</sup> Arguably, one of the greatest benefits of sunset was that state agencies woke up to realize someone was watching them. Even in cases where sunset recommendations were not fully implemented, the public exposure led to improvements.

Reviewing smaller, insignificant agencies with few employees allowed sunset to refine its overall process. Public input was emphasized from the beginning, but the comprehensiveness of the process evolved over the first four years.<sup>49</sup> This strategy of gaining quick wins by going after "low-hanging fruit" benefited sunset by drumming up positive press and reviews from legislators, which equipped sunset with tools to review larger agencies at a later date.

In 1983, sunset reviewed larger agencies and passed more substantive reforms, but not without consequence. As the commission disposed of the easy marks and took aim at larger targets, the fight got tougher because in the end, sunset arguments are about turf.<sup>50</sup> Taking on hot topics quickly turned sunset into an unpleasant process for private interests. As Graves explained, some issues were "like the third rail, you touch it and you get electrocuted."<sup>51</sup>

Sunset's first big test reviewing major state agencies came in 1983. Regulatory stalwarts under review included the Texas Rail Road Commission, Public Utility Commission, State Board of Insurance, State Securities Board, and State Banking Board. The annual

budgets of the 33 agencies under review totaled \$580 million, almost nine times the amount spent by the previous group of 28 agencies.<sup>52</sup> Wells knew that this review could lead to controversy in the 1983 legislative session, but befitting to his character, he planned to have staff spend less time on looking at administrative problems and more of their efforts in examining the policies of agencies. "Saving taxpayers money by 'abolishing useless agencies' was initially a sunset priority that 'is in fact probably not going to be the case' during reviews of the commission's next two-year cycle," Wells said.<sup>53</sup>

### Figure 4.5 Texas State Bar

The State Bar of Texas, a powerful agency caught in the first round of reviews, had resisted sunset advice on grievance procedures. In fact, conflict between sunset and the bar became so heated that the governor threatened to veto the bill that renewed the bar if it did not contain some of the commission's recommended changes. After passing the gauntlet of agency renewal without mandated changes on grievance procedures, the bar began to make changes in the procedures on its own

Source: Based on "Who Runs Government?" *Fort Worth Star Telegram* (May 19, 1981).

The approach of tackling policy issues worked, and many changes that various legislators had sought piecemeal for years without success, became agency operational laws through sunset bills.<sup>54</sup> The prospect that agencies would cease to exist if bills got bogged down too much, made the defenders of their status quo more willing to compromise. Representative Ernestine Glossbrenner, a member of the Sunset Commission, reported to the *Dallas Times-Herald*, "the utilities want us to leave the PUC alone, the truckers want us to leave the Railroad Commission alone, the oil companies want us to leave the Railroad Commission alone, the bankers want us to leave the banking board alone. But the purpose of sunset is to look at the agency and everything the agency does. We have to look at the whole picture. Otherwise, all we need is a management study and there are a lot of top-notch firms we could hire to do that."<sup>55</sup>

Democrat Mark White won the governor's race on a platform that called for utility rate reform and more consumer representation on the Public Utility Commission (PUC), but it was the Sunset Commission that made headlines when it recommended that the high-profile commission be abolished. The five-year old PUC considered \$1.25 billion in controversial rate increases sought in 1980 by telephone, electric, and water utilities. The legislature did not terminate the PUC, but a total reworking of the Texas utility regulation process was accomplished due to sunset "after critics complained it was biased in favor of utility companies."<sup>56</sup> The *Houston Post* reported, "With prodding from the governor

and sunset threat, compromises between consumer-utility groups produced new utility regulation provisions hailed as moderate gains for telephone and electricity ratepayers.<sup>57</sup>

### Figure 4.6 Tuberculosis Nurse Examiners

Created in 1950, the Texas Board of Tuberculosis Nurse Examiners was established as tuberculosis hospitals were set up around the state. When the agency was up for review in 1981, only four nurses remained that held this certification and all agency reports and documentation were stored in a box under the bed of the Secretary Treasurer. A sunset bill eliminated this agency in 1981.

Source: Based on Interview by Ashlynn Holman and Lisa Wilson with Tim Graves, Sunset Staff Member, Texas Sunset Advisory Commission (former), President, Texas Health Care Association (current), Austin, Texas, January 25, 2008.

At 90 years of age, The Railroad Commission of Texas (RRC) was the granddad of Texas regulatory agencies and it had "tentacles of power stretching into oil and gas production, gas utility rates, trucking, railroads and other far-ranging fields."<sup>58</sup> As a result of the Sunset Advisory Commission, successful reforms of the Railroad Commission made it easier for newcomers to get permits to enter the business and deregulated the hauling of agricultural products between points of production and first sale. A little-noticed change passed in the Railroad Commission law increased state revenues by \$3 million a year. The added provision required a paper trail on oil (from well to market) to prevent theft. According to Wells, the mandated tracking "was designed to stop the lucrative 'hot oil racket' in which stolen oil is sold without payment of state taxes."<sup>59</sup>

Wells was proud of the job Sunset did during the 1983 Legislative Session. Wells told the Houston Post, "I think this year we have recouped 40-fold everything the process and implementing its recommendations has cost so far."<sup>60</sup> But the honeymoon did not last for long. Wells and his staff began to receive negative criticism from lawmakers. Meanwhile, agencies found innovative ways of maneuvering through future reviews and campaign donors with Sunset related issues increased contributions during the 1984 election cycle.



## Figure 4.7 Consumer Credit Commission

Because of the 1983 sunset review, changes were made to the Consumer Credit Commission to lower the permissible charges on bank credit cards and alter them so they will float downward as well as upward as other interest rates change. As a result, Texas had the lowest interest rates on bank credit cards in the nation.

Source: Felton West and Fred Bonavita, "Sunset Review Process Made Important Changes Possible," *Houston Post* (June 26, 1983).

### *The Time to Kill a Snake is When he Raises his Head*

Not impressed with sunset's attempt to meddle in legislative issues and the outcome of the 1983 session, Sunset Commissioner Rep. Bruce Gibson told Wells, "I'm concerned about the policy issues and political questions that this commission ought to take up without being intimidated by your recommendations."<sup>61</sup> Lyndon Olsen, a co-sponsor of the Texas Sunset Act in 1977 who left the legislature to become a member of the State Board of Insurance, felt the process became unwieldy and out of control as sunset bills transformed into Christmas tree bills. "Was the Sunset Act intended to be used by special interest to come in every 12 years and amend a major body of law? I don't believe it was," said Olsen.

However, new Commission blood felt differently. Representative Elton Bomer, the Commissioner responsible for the 1985 round of reviews, said the Commission could not be intimidated, "In fact, sometimes [influence] works the other way around, to the detriment of the commission."<sup>62</sup> Senator John Sharp, serving his first term on Sunset following the 1983 review, urged the staff to look at any issue, "no matter how controversial," so long as it gives a complete report.<sup>63</sup>

With such conflicting messages from the legislature Sunset aimed to serve, Wells walked a thin line between focusing strictly on agency operational issues and getting enmeshed in political decisions. Legislators were concerned with the burgeoning power of the Sunset Commission and put their words into action the following session. In 1985 (the 69th Texas Legislative Session), Senator Grant Hones offered a proposal that would have crippled the Sunset Advisory Commission. Hones' proposal would divide the process into two bills, one that continues the agency and another that considers changes to the agency. Hones said his proposal would have "taken political squabbling out of Sunset," but others understood the automatic termination clause was a key to sunset's success. The bill was defeated in committee, but it sparked a public debate on the proper role for sunset.<sup>64</sup> Senator Don Henderson, voted against the bill because "the sacred cow is not the agency, but how they do their business. If we do not open up the process, than all the sacred cows can protect their interests."<sup>65</sup>

In a move not likely anticipated by original sunset advocates, four state agencies (Land Commission, Texas Parks and Wildlife, Commission for the Deaf, and Commission for the Blind) hired an outside consultant to help them look more favorable in preparation for the 1984 review process. Land Commissioner Larry Mauro said he needed a consultant because the workload in preparing for review is cumbersome. "There's not a single job description that says spend 40 hours a week working on sunset stuff," said Mauro.<sup>66</sup>

The consultant, former legislative aide Darryl Grubbs, stood to make \$40,000 helping the agencies prepare self-evaluation reports required by the review process. Grubbs asserted that hiring a consultant is part of the self-investigation process that can make an agency better, but others criticized the move as undermining the process.<sup>67</sup>

The Sunset Advisory Commission is composed of ten legislators (five state representatives and five state senators) and two public members. Having this type of legislative "buy-in" is crucial in converting recommendations into law, but it also provides an avenue for special interest groups to influence the sunset process. Sunset presented tactical problems to the lobbyists charged with killing legislation unfavorable to their clients and lobbyists were forced to take special notice during the 1983 cycle. Industries regulated by the Public Utilities Commission, the Railroad Commission, the State Insurance Board, and the State Banking Board increased campaign donations to legislative candidates.<sup>68</sup>

### Figure 4.8 Political Contributions

Contributions from the five biggest political action committees concerned with Sunset increased 66 percent over 1980, from a total of \$322,440 in 1979-1980, to a total of \$537,130 in 1981-1982. "Utility companies contributed \$349,555 to legislative campaigns [in 1983] and gave \$11,845 just to the eight legislative members of the Sunset Commission."

Source: Saralee Tiede and Kathy Shwiff, "Industries Facing Sunset Review Step Up Lobbying and Donations," *Dallas Times-Herald* (December 2, 1982).

Sunset members repeatedly heard, "If it ain't broke, don't fix it." According to Senator Kent Caperton, a member of the Commission, "The industry wants things just the way they are. They keep telling us 'Don't touch it, leave it alone.'"<sup>69</sup> Some Commission members declined to accept contributions from the PACs of regulated industries, but Senator Ike Harris alone accepted \$6,500 from the truckers, \$5,500 from the bankers and \$2,250 from the electric companies.<sup>70</sup>

What is this money for? Industry lobbyist encouraged the Sunset Commission to not delve into possible sweeping changes in the way agencies operate, but rather to

concentrate on fine tuning agency or organization staff. John Hildreth, director of Texas Common Cause, was quoted in several Texas newspapers as saying, "They do expect their contributions to have influence or they wouldn't make them. They aren't dumb. They don't throw their money away."<sup>71</sup>

The degree to which lobby money influences the sunset process proves to be a theme woven throughout the Commission's history. It did not take long for the interest groups to figure out ways of influencing the sunset process and while the effects of lobbying have been a source of contention, many see it as part of the legislative process. Before the 1978 general election, special-interest groups with sunset-related issues coming up for review gave more than \$500,000 to legislative candidates. By 1982, they gave more than \$1.5 million. According to Greg Hooser, a lobbyist for the Texas Medical Association in the early sunset years, "Sunset has been a real boon to lobbyists and legislators and legislative candidates. It's a real good political thing, and it has created a whole new aspect of the political industry."<sup>72</sup>

According to the findings of a 1982 Common Cause survey by Ralph Nader, since 1976, states reviewed a total of 1,500 agencies with a sunset provision. Almost one in five agencies was terminated, one in three was modified and fewer than half were allowed to proceed with no change. Research on Texas showed that "the two lowest rates of sunset implementation (commission recommendations adopted) corresponded to the largest amounts of campaign contributions."<sup>73</sup>

#### *New Cowboy in Town, the Texas Performance Review*

In 1990, Texas was experiencing a budget crunch and was considering a state income tax. The first Texas Performance Review (TPR) occurred in 1991 and was a joint effort between the Sunset Commission, the Legislative Budget Board, and the State Auditor's Office. State Comptroller John Sharp was charged with heading up the group while the pressure of a budget crisis loomed.

Staff were pulled from various agencies to find ways to save money, generate revenue, claim bad debts, and reorganize agencies. All new staff brought their own ways of doing reviews. It was clear to those working on TPR that unlike Sunset, TPR was focused on money and had authority to make statewide recommendations.<sup>74</sup> Although team leaders from the various agencies worked largely in silos, the sunset staff's role in the first performance review was vital to the group's success. They were known for being well-trained innovative thinkers.

TPR provided an avenue for dead sunset recommendations to be revived and the TPR teams were known to look at past sunset reviews to pull old ideas that had not been passed. These ideas were turned into TPR recommendations and eventually codified into law after passing through the legislature. TPR's success illustrates how much easier it is to implement innovative reform when the suggestion only needs the approval of one individual, the Comptroller, rather than a ten-member commission.

Another advantage that TPR had over sunset was the element of surprise. The TPR process was brand-new and staff members worked hard to keep their work and their progress private. Working on so many agencies and issues at one time, as opposed to the Sunset Commission's average of 25, allowed TPR to "keep outsiders off balance." As explained by Alan Pollock, they were protected like an army in battle—if the flanks were attacked or discovered, the front lines could continue to move forward.<sup>75</sup> Comparatively, the sunset process is known for being completely transparent.

Following the release of the first TPR report, some started questioning and doubting the need for sunset. According to critics, State Comptroller John Sharp's exhaustive review of state government, which resulted in recommendations for \$5.2 billion in cost-savings and revenue measures, proved that sunset was failing. "The sunset process has been on the whole, unsuccessful," said Bennie Bock, a former house member who sponsored the sunset law. "I would think people might wonder why, if it has been successful, all these things that Sharp is talking about hadn't been done before."<sup>76</sup> Defenders of the sunset process pointed to the fact that many of Sharp's proposals had been recommendations by the Sunset Advisory Commission, but lawmakers failed to pass them because of lobbying efforts by special interest groups. When reporters asked Lloyd Doggett, then serving as a Texas Supreme Court Justice, for a response, he said that lawmakers "have the added impetus of the fiscal crisis" as they considered Mr. Sharp's proposals, and "I would consider sunset as a success, but an imperfect one in an imperfect world."<sup>77</sup>

### **Power Plays**

These critical sentiments carried through 1993, when the power play to end sunset became a public debate. In 1993, a number of high-profile agencies were up for review and the Texas leadership supported an attempt to pull the rug out from under the Texas Sunset Commission. Tim Graves noticed a build-up of negative feelings towards sunset over the previous years. The years surrounding these events proved to be a significant time of change.

Bill Wells stepped on many toes and it can be inferred that the leadership was no longer content with their lack of control and influence over the sunset process. According to Senator Ken Armbrister, who would be appointed as a Sunset Commissioner the following review session, Wells was a liberal democrat, but most of all, "he thought he was above the system, had his own agenda, and started imparting his own beliefs....Wells was too long on task and got entrenched.... He was a galvanizing force, but in the wrong way."<sup>78</sup>

Lieutenant Governor Bob Bullock was notorious for his need for control and resisted the Sunset Commissions's attempts to suggest how he ought to run his comptroller's office.<sup>79</sup> Bullock and Speaker Pete Laney both voiced concerns that sunset bills were little more than vehicles for special interests and the two critics backed legislation that would put the Commission out of business. Laney told the *Houston Chronicle*, "All of them you look at, you find footprints of various and sundry special interests that have been able to put legislation into the sunset process over the years."<sup>80</sup> At the same time, Governor Ann

Richards fielded complaints from her appointees to the State Board of Insurance and other staffers about the amount of time spent responding to sunset inquiries.<sup>81</sup>

Other members of the legislature felt the sunset staff had too much power. Representative Mark Stiles, author of the bill to end sunset said, "there are many times that I think members of the legislature want to do something and there are certain people who are on the staff at the Sunset Commission that make sure they don't happen. That is a real travesty."<sup>82</sup> Richards echoed concern that Commission members had begun to direct policy and publicly listed two other reasons why legislators should support her recommendation that sunset be abolished: (1) the Commission duplicated work already done by legislative oversight committees, and (2) it had become a "full employment act for lobbyists."<sup>83</sup> Representative Libby Linebarger, a co-sponsor of the bill to abolish the Commission, told the *Austin-American Statesman* that she "never saw so many alligator shoes and \$600 suits as when some agency is up for Sunset review."<sup>84</sup>

The Sunset Commission's backers suspected ulterior motives for the abolishment effort. Some felt that it was an effort to get rid of Wells or keep some agencies from having to endure the sunset process. Others felt it was a ploy to give legislators more direct control over agencies.<sup>85</sup> Advocates for sunset were very frustrated and pointed to the fact that most of the actual work is done by agency staff that is not influenced by lobbyists. Moreover, final recommendations are up to the Commission members and what happens to the bill in the capitol is completely up to politicians. Sentiment regarding sunset's duplicative nature with standing committees was rebuffed with observations that a committee's interim studies are unsystematic and seldom approach the Commission staff's professionalism. Others argued that with a budget of \$900,000 a year and the same number of employees it started with (23) in 1977, the Commission is a bargain.<sup>86</sup>

Comptroller John Sharp, who headed the Texas Performance Review, took a middle line. "I'm a big supporter of the sunset process," Sharp said. "And I think their staff is really good. But their staff angers people. And if they didn't, they wouldn't be very good. The staff members that we have borrowed from the Sunset Commission for the Texas Performance Review were some of the best that we had." Comptroller Sharp felt the main asset of the sunset provision "was that you force the issue on so many things that never see the light of day without it." In the battle to end the Sunset Advisory Commission, Sharp believed that process could work even if the key components of the process were simply transferred to the standing committee's role.<sup>87</sup>

Representative Stiles authored the bill to abolish the Sunset Advisory Commission. The bill faltered in the Senate, but Stiles managed to rush the bill out of committee and onto the House floor within hours of the deadline. Legislators who had supported voting down sunset from the beginning (namely Senator Ike Harris) championed the cause of eliminating sunset but relented only when a deal was made to get rid of Wells.<sup>88</sup> After voting in support of the bill, the House tacked on a last minute amendment softening the measure to a two-year review by a special 10-member committee. The legislature would kill the Commission if results warranted such action.

## Sunset II (1994 - Present): A New Sheriff in Town

Following the legislative session, appointments by Speaker Laney and Lt. Governor Bullock indicated that the Commission would focus more on procedural matters and less on policy.<sup>89</sup> Among these appointments was Senator Ken Armbrister (today the legislative director to Texas Governor Rick Perry), as Chair of Sunset. Armbrister was first elected in 1983, and was known to be a politically savvy member who played good ole' boy politics. A former police officer, his confidence and charismatic personality allowed him to charm almost anyone into getting what he wanted. According to Armbrister, the Speaker and Lt. Governor looked at sunset and said, "This is the biggest waste of time," but he also admits that it was really about Bill Wells. Armbrister went to Laney and Bullock and asked, "Tell me what the game is. Am I the death knell, or do you want me to fix it?" He was told, "Fix it or it's dead."<sup>90</sup>

Tasked with fixing sunset, Armbrister wanted to get back to the basics. "We needed to look at every rule: Did it go beyond what the agency was setup to do? Was it a response to statute?" said Armbrister. Agencies have a lot of power that most citizens would not recognize because it is carried out in the rule-making process beyond the limelight of the legislative session. "If you ask [legislators] what they think of their statutes, most will respond 'I don't even recognize them.'" It was Armbrister's goal was to guarantee sunset would serve the Legislature's needs by examining agency rules and how those rules would gratify legislative intent.<sup>91</sup>

With no other choice, Bill Wells agreed to leave sunset after 17 years of service—but he did not go quietly. In parting, Wells said that special interests and hired-gun lobbyists for state agencies had dominated the process. He said he was tired of seeing the Commission's recommendations compromised by special interest groups "that manipulate the politicians like marionettes."<sup>92</sup> Wells told the *Austin-American Statesman*, "You can't just stand there anymore and say nothing. You have to ask the legislators 'Why did you do that? Why did you let so-and-so talk you into doing that?'"<sup>93</sup> Wells also pointed to the fact that "there's not the same quality of people around now to protect it as there were in the beginning."<sup>94</sup> In reasoning why he was being asked to leave he stated, "You don't work in the business for 30 years and not know why they're doing these things, and (it's not) for any other reason than they're satisfying some political itch."<sup>95</sup> In regards to the next director, Wells said, "I think it needs somebody that has a fresh set of illusions. Mine are threadbare. Maybe I'm just two quarts low of optimism."<sup>96</sup>

Following Wells' departure, John Moore, the former chief of staff of Lt. Governor Bullock, took over the agency for 16 months as interim director. During Moore's tenure, he is credited with mending the Commission's relationship with the legislature and establishing a more open, trusting line of communication. Moore told the *Austin-American Statesman* that his first order of business was "to try to determine what the leadership wants."<sup>97</sup> This statement proves to be pivotal change in the way that sunset would be run for the next 14 years.

Joey Longley, a career Sunset staff employee, became director of the Sunset Commission in 1994. When the Commission settled on Joey Longley as Moore's successor, Armbrister told Longley, "You saw what happened to your predecessor, first time you go awry, you're gone."<sup>98</sup> According to Armbrister, Longley had been voicing his issues with Wells for sometime. Appointed by the Sunset Commission, Longley took a more cautious and calculated approach to agency reviews than Wells.

In Longley's view, sunset is a tool of the legislature and he continues to work closely with the leadership throughout the review process. Longley emphasizes open lines of communication and the elimination of surprise when it comes to dealing with the Sunset Commission. According to Longley, sunset is the legislature's process: "They created it, not us."<sup>99</sup> With a current staff of 29 and a \$3.6 million two-year budget, Longley has learned when to pick his battles, a key ingredient to Sunset's longevity.<sup>100</sup>

## Success in Texas

How can we define success? Does the implementation of an organization's documented goals, practical goals or simply the sustainability of the institution determine success? The Texas Sunset Commission Act sets forth the criteria for evaluating an agency, but to some, Sunset's role is to eliminate government waste in the form of overspending through state agencies. In its infancy, the Commission managed to eliminate agencies that had outlived their usefulness, and over the years, Sunset has continued to review and make recommendations for state agencies of all sizes and functions.

## Sunset Objectives

The Sunset Advisory Commission has three objectives when conducting agency reviews. First, the Commission wants to determine *what* the agency has been doing. Is it fulfilling the objective of its mission? Second, staff members look at *how* the agency has functioned in the past; *how* is it fulfilling its purpose and *how* are they using the tools at their disposal? (For this objective, it is necessary to examine the effectiveness and efficiency of the agency and possibly consider restructuring as a possible recommendation.) Third, Sunset evaluates the overall *transparency* of an agency, before, during and after a sunset review. The agency under review must be visible during the process and is often required to have public members on boards.

Like all things in government, perception is everything. While people involved directly with the sunset process are familiar with the agency's stated objectives, outside parties, namely the general public, may not be as familiar with the institutional goals. Rather, the public may perceive the goals of sunset differently than inside players. A matching of perspectives on objectives can determine if an implemented policy succeeds.

While it is not a stated objective, cost savings can be a real result of these in-depth investigations. In 1983, Wells commented, "Sunset has probably been oversold as being able to abolish agencies and reduce government costs. Costs savings have been more slight and sunset has cost more by opening government up to consumers in such ways as requiring public hearings...but some revenue has been gained because of changes the

process has brought about and I think this year we have recouped 40-fold everything the process and implementing its recommendations has cost us so far.”<sup>101</sup>

### **Longevity of Sunset**

The 30-year lifespan of the Texas Sunset Commission can in itself be a testament to its success as other states have not managed to survive for nearly as long. There are several characteristics present in Texas that contribute to this longevity:

- Roles of elected officials and staff members.
- Power from Sunset appointments.
- Make-up and size of the different legislative houses in Texas.

### *Champions*

Throughout the existence of the Sunset Advisory Commission there have been leaders willing to take the Commission under their wing, resulting in the agency's continuing operation. These champions have included Lloyd Doggett, a former Texas State Senator and current member of the U.S. Congress. Doggett worked tirelessly for the implementation of sunset and has advocated for the process during the course of the following three decades. Sunset has also seen tireless support from directors, namely Bill Wells and Joey Longley, who believe fiercely in the process. Staff members, current and former, who are highly educated and skilled and yet choose to pursue the goals of sunset rather than a more glamorous life in the private sector, are also champions of the process.

There have been skeptics of the sunset process from its inception on the Texas Senate floor. Former state Senator Ike Harris continues to believe that sunset in Texas is a benign agency. Attempting to disband the Sunset Commission would be time-consuming and would garner bad press. This would be a hard sell for elected officials who rely on their reputation of looking out for the public interest.<sup>102</sup>

Senator Harris was one of only seven senate members to vote against the sunset bill in 1977. During his remaining years in the Texas Legislature, Harris had two terms on the Sunset Commission, all the while campaigning against the idea of a sunset process. Harris thought a finance committee with a subcommittee that handles sunset should oversee the process. The finance subcommittee would review agencies and make recommendations, but others felt “the hammer,” (or threat of extinction—a critical component) should be included. Harris argues instead, a bill would need to pass to abolish an agency. Harris believed this process would create a more proactive approach to the elimination of an agency.<sup>103</sup>

### *The Power of Appointments*

In Texas government, the power to make important appointments contributes to the considerable status of the positions of Lieutenant Governor and Speaker of the House. Every two years, each of these positions gets to appoint five members from their house of the legislature to the Sunset Commission. Every other appointment cycle, they appoint



the chair of the Commission (every other year a member of the house or senate is chair of the Commission).

Most legislators consider an appointment to the Sunset Commission an honor. This contributes to the success of sunset through building more respect for the agency and those who hold positions on the Commission. A position on the Commission serves legislators well, not only in looking out for the needs of their constituents, but during an election year, Commission members can use the rhetoric of sunset in their favor. As a member of sunset, legislators are able to run their campaign on a platform of actively working to eliminate government waste and making the bureaucracy more accountable to the public. Newly appointed Sunset chair Representative Carl Isett stated, "My entire legislative career has been about reforming government." In preparation for the upcoming session, Isett reflected on his new position: "My reelection will allow me to continue my important work as Chair of the Sunset Commission as we examine a number of key state agencies and make recommendations to my legislative colleagues that will exchange their effectiveness and efficiency while at the same time protecting the interests of the taxpayers of our great state."<sup>104</sup>

### *Chamber Differences*

Due to the makeup and size of the Texas Legislature there are differences in the views held by senate and house members toward the Sunset Commission and the bills it introduces. Overall, the senate has a greater respect for the Commission and sunset bills. Senate Rule 7.16 prohibits senators from tacking amendments onto a sunset bill before it is discussed in committee. Evidence of this view of the sanctity of a sunset bill is not seen in the house rules.

One can find a deep affinity for the sunset process in the senate. Because there are so few members (31 compared to 150 in the House), a much larger percentage of senate members have served on the Sunset Commission. Since they have been directly involved, one could say they have a greater understanding and respect for the process overall. During the 80th Legislative Session, 35.5 percent of senate members had at one time served on the Sunset Commission while only 6.7 percent of house members could say the same. In the last year, almost 20 percent of senate members carried a piece of sunset legislation while only approximately 5 percent of house members carried a sunset bill.<sup>105</sup>

The size of the senate also results in members sometimes carrying multiple sunset bills through the legislative process. While this occurs in both houses, during the 80th Legislative Session, the Chair of Sunset, Kim Brimer, carried a total of six sunset bills, while the most a house member carried was four (Representative Vicki Truitt).<sup>106</sup> This number is understandable when one takes into account that Senator Brimer was not only the Chair of the Sunset Commission but was also Chair of Senate Administration (the committee responsible for fast-tracking bills for the senate floor). This could allow sunset bills to easily find their way to the House Chamber. Bills on the calendar resulting from Brimer's committee can be kicked off with two signatures, however, while holding both of these powerful chairmanships, one would be hard-pressed to find a senate

member willing to frequently speak out against one of Brimer's bills on the local and uncontested calendar. The repercussions could be damaging to a senator's legislative agenda.

### *Critics*

Not everyone considers the Texas Sunset Advisory Commission a success. Critics site changes in directors,<sup>107</sup> staff limitations,<sup>108</sup> a lack of public input,<sup>109</sup> and influence by elected officials<sup>110</sup> as evidence that the sunset system in Texas is highly flawed.

### *Directors*

Throughout its lifespan, the culture at the Sunset Commission has relied heavily on the personality and leadership style of the director. Public citizen advocacy groups have charged that negative changes occurred with the changing of directors, particularly from Bill Wells to current director Joey Longley, and even in recent years under Longley. They have claimed that staff members no longer seek the guidance of public advocates. Just six years ago, citizen advocates noted that they were often utilized as information resources during agency reviews. They claim staff members no longer consult them.<sup>111</sup>

Critics accuse Sunset of watering down recommendations presented to the Commission because unpopular or radical ideas do not make it through the process. Longley notes that changing a recommendation based on how well it will be received by the committee is a part of the open communication between the Commission and the agency (this prevents the sunset staff from throwing the Commission any "curve-balls") and is used as a time-saving measure. Critics note that, "the constant political pressure has caused him (Longley) to moderate recommendations that he says have little chance of finding support."<sup>112</sup> This lack of more radical policy recommendations they claim result in fewer large and necessary overhauls of some organizations.

### *Staff Limitations*

Critics are also concerned with the Commission staff's ability to penetrate agency stonewalling that occurs when reviewing large, powerful state agencies. Large agencies have a level of institutional knowledge that is simply unobtainable during several months of research by an outside party. It is hard to convince the major players of these agencies to trust in outsiders to make the best decisions for their organizations.

Agencies often feel they are underfunded and understaffed. There is no incentive to provide a large amount of aid and assistance to Sunset staff members who could potentially make recommendations to the legislature that will have an adverse affect on their livelihood. Agency employees also do not have a large amount of time to devote to a sunset review. When his agency was up for review, Land Commissioner Larry Mauro said, "There's not a single job description that says spend 40 hours a week working on sunset stuff."<sup>113</sup>

### *Public Input*

Adversaries criticize the Sunset Commission for not having enough of an open door policy for consumer groups and tax payers to be involved in the sunset process.

### *Legislative Influence*

The current sunset director touts an extremely open communication environment between the staff, directors, and legislators throughout the review process. Critics find the openness of the relationship disheartening as it allows for too much influence from legislators on the nature of the recommendations and on which recommendations make it into a report.

## **Lessons on Redesigning Government from the Texas Sunset Commission**

### **Rise in the East and Set in the West**

What makes the Texas Sunset Advisory Commission what it is today are the key factors to success in government accountability and redesign:

#### *1. Committed Leadership: The Directors*

The Sunset Commission has had directors who believed deeply in the cause and purpose of the sunset process: Bill Wells and Joey Longley have dedicated long careers to the Sunset Commission. Longley made this his only career to date, working his way up from staff member to director. He possesses a rare internal knowledge of how the entire process works and is invested in its success. Wells' and Longley's commitment to the details of their work sets the tone for the strong relationships they developed and maintain with the legislature and staff.

#### *2. Strong Staff Capabilities*

The sunset staff is comprised of highly educated and motivated individuals, recognized for producing quality reviews and recommendations. Oftentimes, these graduate-degree holders have the option of pursuing more glamorous private sector employment, but rather elect to devote their skills to the Sunset Commission. They are key players in the recommendation process and many legislators rely on their expert analysis when considering sunset legislation and recommendations.

#### *3. Political Champions*

Champions—public advocacy groups like Common Cause—work with the state to draw public and legislative support for important issues. These advocacy groups are a vital link between the public and the legislature. They often times serve as the public voice in an all-too-political environment, pushing their mission and objectives on the legislature. Congressman Lloyd Doggett has been a longtime champion for sunset legislation, having

authored sunset legislation in Texas in 1977. He was an integral player in pushing sunset through the legislative and implementation processes, rallying the support needed to establish such an act. He later proposed a similar sunset process on the national level, though the bill was unsuccessful.

#### *4. Strong Legislative Support*

As detailed previously, sunset is tied very closely with the legislature through its Commission Chair and many legislative members. The Commission is essentially a tool of the legislature.

#### *5. Time and Space to do Substantive Work*

In Texas, the legislature is in session every other year (odd years) and for only 140 days, typically from January through the end of May. Sunset reviews fit well with a part-time legislature because staff are full-time and have plenty of time to research and evaluate agencies under review, and for the Commission to prepare recommendations for consideration during the next legislative session.

#### *6. Flexibility*

The Sunset Commission states that it reviews agencies on a 12-year cycle, but the schedule is not set in stone. Sunset has the ability to move agencies around for review and set shorter timelines. Recently the Texas Legislature passed a sunset bill for the Texas Commission on the Arts that stated the agency would be up for review again in two years. Another example occurs when an agency faces serious allegations. During the 80th Legislative Session the Texas Youth Commission was under fire for questionable practices. If it had not already been on the sunset calendar, the legislature would have been able to move up its review date.

#### *7. Bipartisan Support for Government Reform*

Texas has an overall good government political landscape which is conducive to aggressively pursuing the elimination of government waste. Sunset fulfills the needs of this mindset to reform government and to act as a watchdog for government agencies.

### **Sustaining Sunset**

The Texas Sunset Commission would not be where it is today without proper support. The sunset process holds government and the legislature accountable to the public. It is important that the public knows sunset exists and legislators take the review process seriously.<sup>114</sup> The public support of this process holds the legislators who represent them responsible for upholding the integrity of the sunset review process. Legislative support is imperative as well. Despite minor rough patches in Texas sunset history, the Lieutenant Governor and Speaker of the House have taken the posts of appointing members to the Commission very seriously. The sincerity with which they approach

appointments proves their support of the process and makes serving on the Texas Sunset Commission an honor.

The processes and procedures from inception to end are important in creating a lasting agency. Former Texas Sunset Commission public member Dr. Timothy Roth recalled, "I learned that inertia is a very powerful force and that once you institutionalize a government function, it is impossible to undo it."<sup>115</sup> This is precisely why we have sunset legislation and oversight agencies today; the mere presence of an agency like sunset incites accountability. The most effective triggering mechanism is the threat of extinction.

Some of the areas that are unique to Texas sunset are important to sustaining the process. Having agencies do self-evaluations pushes them to look internally and work to fix problem areas. Across the board recommendations encourage continuity in recommendations and bring uniformity to agencies. The sunset process is, in many ways, a creature of the legislature and works simultaneously with the legislature to keep government accountable and efficient in the eyes of the public. The process maintains a transparency that allows open access, public input, and hearings for public participation. Transparency in communication between sunset staff and Commission members is important as well. Open lines of communication result in little surprises and more cooperation.

### **Sunset on the Horizon**

Some argue that sunset should exist on a larger scale at the federal level while others feel it is not possible for such legislation to function at such an expansive degree. Dr. Timothy Roth feels that the fundamental difference between Austin and Washington is the political climate. Austin is more bi-partisan than Washington, thus, it is easier to implement and sustain an agency like the Sunset Commission.<sup>116</sup> Sunset reviews require both sides to come together and work on a program concurrently. Some would argue that various forms of sunset legislation already exist on the federal level in different forms. As early as 1966, the government was struggling with the idea of making government more efficient and accountable.<sup>117</sup> The most notable step in the direction of efficiency and accountability came with the enactment of the Government Performance and Results Act of 1993. The Act of 1993 was aimed directly at "the establishment of strategic planning and performance measurement in the Federal Government."<sup>118</sup> It stipulated that, "each federal program was required to explicitly identify measures and goals for judging its performance and to collect information on an annual basis in order to determine if it was meeting those goals."<sup>119</sup>

The next big step in government responsibility was the creation of the Program Assessment Rating Tool (PART), under the Office of Management and Budget, which was developed to "assess and improve program performance so that the federal government can achieve results."<sup>120</sup> PART examines agency design, performance, measurement, and results using a questionnaire composed of approximately 25 "common sense" questions.<sup>121</sup> The results are tabulated and kept on a database, which allows everyone to look up the performance level of the 1000+ agencies. A program is rated on

“how well a program is performing, so the public can see how effectively tax dollars are being spent.”<sup>122</sup> Legislation proposed that is similar to PART is the Government Reorganization and Program Performance Improvement Act of 2005. This legislation essentially has two main purposes, creation of a Results Commission and a Sunset Commission. The Results Commission “would consider and revise Administration proposals to restructure or consolidate programs or agencies to improve their performance.”<sup>123</sup> The Sunset Commission “would consider Presidential proposals to retain, restructure, or terminate programs.”<sup>124</sup>

Some would argue that the current reauthorization process is a primitive sunset tool that already exists on the federal level. It leaves the majority of the power of determining efficiency and accountability of an agency almost solely up to the legislative branch and Congress. There is almost no involvement by any presidential power in the reauthorization process, unlike that proposed by the 1995 Act.

The drive for sunset on a federal level has encountered heavy resistance that has impeded the idea from passing as a national government accountability program. Congressman Lloyd Doggett, the original champion for sunset legislation in Texas, has sponsored and co-sponsored numerous bills to initiate sunset review within the federal government, yet none of these bills were passed by Congress. Recently, Congressman Kevin Brady (R-Texas) took the lead for sunset and proposed H.R. 3282, the Abolishment of Obsolete Agencies and Federal Sunset Act of 2005. This 2005 Sunset bill died in committee.

So, if sunset is such a useful tool in Texas, why do federal sunset bills—bills sponsored by Texas congressmen—not survive? In general, many members of Congress are reluctant to break the iron triangle—the strong relationships between legislators, agencies, and lobbyists. Additionally, skepticism and lack of trust across political parties removes the bipartisan support necessary for a successful sunset review process.

Citizen opposition to federal sunset legislation arises from many different sources, most with the same fear: implementing sunset reviews of the federal government will eliminate important agencies for the sake of saving money.<sup>125</sup> Since sunset legislation mandates that agencies are automatically abolished unless renewed by passing bills to extend them, both congress and the president must agree on an agency’s existence. If a powerful president with a personal agenda vetoes a sunset bill, the agency is abolished without an overriding vote by congress. On the state level, with political power divided between the state legislature and the governor, this concern is less prevalent, resulting in more citizen confidence in the sunset review process.

### **Where is Sunset Going?**

This deeper look into the Texas Sunset Advisory Commission begs the question: Where is sunset going? Based on the past, the Texas sunset process is adaptable to changes in leadership and desires of the legislature. This adaptability, along with a process that appeals to both parties of government, contributes to the longevity of sunset in Texas. Through its people, support, and flexibility, the Texas Sunset Advisory Commission has

created a successful process to cut waste in government; a process that is likely to remain in Texas as a government reform mechanism.

But, is Texas an anomaly? Some of the elements of success are unique to Texas, yet success is not confined only to the defined elements—committed leadership, strong staff capabilities, political champions, strong legislative support, time and space to do substantive work, flexibility, and bipartisan support for government reform. Can other states, like Florida, revisit sunset legislation and implement the government reform measures successfully? Incorporating some of the elements of success may contribute to successful and long-standing sunset review processes in other states.

Implementing sunset on a national level presents different challenges than those faced in Texas. The sheer size of the federal government leads to difficulty in performing reviews and breaking of the iron triangle between legislators, agencies, and lobbyists. Overcoming these obstacles is necessary before a successful government reform mechanism like sunset could be implemented effectively.

So, where *is* sunset going? Ultimately, only time will tell; however, evidence of the past and analysis of the present hints to the continued success of Texas sunset for the future.

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