



Sunset in Texas

By Bob Owen, CPA | TSCPA Managing Director, Governmental Affairs

The Texas Sunset Advisory Commission (SAC) was established by the state Legislature in an attempt to be sure that state agencies did not outlive their usefulness and stayed efficient and economical. The law requires SAC to review most state agencies every 12 years, recommend whether or not the agency should continue to exist and suggest operational improvements.

The supposed teeth in it is that legislation authorizing the state agency must be repassed every 12 years or the agency goes out of existence; something that rarely happens.

According to the SAC website <https://www.sunset.texas.gov>, this is how it works.

The Process

Sunset works by setting a date on which an agency is abolished unless the Legislature passes a bill to continue it. Sunset staff evaluates the agency and issues recommendations for positive change. The Commission considers the recommendations, hears public testimony and decides on a package of changes to bring to the full Legislature.

The People

The Commission has five senators, five representatives and two members of the public, appointed by the lieutenant governor and the speaker of the House. The Sunset staff is composed of evaluation and administrative professionals who support the Commission by performing agency reviews and assisting in the legislative process.

The Impact

Since 1977, changes enacted through Sunset reviews have abolished 37 agencies, consolidated another 46 and saved nearly \$980 million,

returning \$23 for every \$1 spent on Sunset. The Legislature typically passes about 80 percent of the Sunset Commission's recommendations, which have positively affected every area of state government through nearly 500 reviews.

It all sounds good and for the most part, it is. When SAC recommends continuation of an agency, it helps the Legislature draft the agency renewal bill, commonly referred to as the Sunset bill. The Sunset bill includes SAC's recommendations for additional requirements to ensure the agency is holding true to its mission and operating in an efficient manner. SAC staff has developed certain legislative and agency standards that it believes should apply to almost all state departments and those standards are included in almost all Sunset legislation. Sometimes, SAC will recommend agency consolidations rather than renewal or elimination.

The SAC process has bogged down in a number of major agency reviews over the last several sessions. The upcoming session will be the third session in a row that SAC has reviewed the Railroad Commission of Texas (which regulates the Texas oil and gas industry and has absolutely nothing to do with railroads). In the previous two sessions, the Railroad Commission Sunset bill was opposed by the publicly elected railroad commissioners and many amendments were offered by legislators, some at the behest of oil and gas industry participants, and the legislation failed to pass, but that didn't mean the Railroad Commission went out of business. Instead, legislation was passed renewing the commission for two years and making it subject to SAC review for the following session. See Figure 1 for the *Texas Tribune's* summary of some of the SAC staff findings about the RRC.

Some of the controversy seems silly. SAC has repeatedly suggested that the Railroad Commission name be changed to the Texas Energy

Resource Commission to better reflect the responsibilities of the department. This change has been successfully opposed by the commissioners and some legislators, evidently in favor of nostalgic tradition or a preference for continued public confusion.

The Railroad Commission is not the only agency to fail the Sunset review process. Legislators and public watchdogs are complaining about the process. Rep. Larry Phillips (R-Sherman) offered legislation in 2015 to force a review of SAC to see if it should go out of business. The legislation found little support, but Phillips says he will offer it again in 2017.

Speaker of the House, Rep. Joe Straus (R-San Antonio) has also been critical of the Sunset process. As reported in the *Texas Tribune*, Straus believes part of the problem is that there are numerous amendments offered to the Sunset bills by legislators, often at the behest of lobbyists working for industries regulated by an agency. "It makes a mockery of the whole Sunset process, and it makes me question whether or not it still serves a useful purpose," Straus said.

In past sessions, Sunset bills were passed more or less amendment proof, with the legislation's sponsor and the legislative leadership discouraging amendments. Indeed, when TSCPA has wanted to make changes to the Accountancy Act, SAC staff members have encouraged us to seek those changes in the session preceding the Texas State Board of Public Accountancy Sunset review session. According to the *Texas Tribune*, Straus "would like to restrict the lobby runs on Sunset bills." Straus said: "From my observation, when a Railroad Commission Sunset bill doesn't pass, it's certainly a lobby victory. I don't think it's a member problem – I think it's a lobby thing. A lot of people get hired in the lobby to work these things, especially when it involves an agency like the Railroad Commission or TDI [the Texas Department of Insurance] or TxDOT or some of those others."

Lobbyists and legislators try to attach bills that have otherwise failed to Sunset legislation in hopes that the Sunset momentum will help their legislation. "The end result is that the Sunset bills, they fall apart, they crumble," said Straus.

Straus wants to see changes within SAC and to the Sunset legislative process. He recently appointed Rep. Larry Gonzales (R-Round Rock) as the new SAC chairman, undoubtedly with a set of marching orders.

There are major agencies undergoing SAC review for the 2017 session, including the Railroad Commission (for the third session in a row), Texas Department of Transportation, Texas Employee Retirement System Board of Trustees, Texas Medical Board and the Texas Board of Nursing.

Only after the 2017 session will we be able to tell if the process has improved; or maybe Rep. Phillips' bill will pass and the SAC will be subject to the Sunset process in the future. Regardless of all the claims or concerns, it's really up to the legislators – they get to decide what passes and what fails.

The Texas Public Accountancy Act and Board are scheduled for Sunset review in 2019. ■

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**Figure 1. SAC Staff Findings
on the Railroad Commission of Texas**

The *Texas Tribune* reports Sunset Advisory Commission staff findings about the Railroad Commission of Texas include:

- The agency's "outdated name misleads the public and continues to impede the agency's efforts to be more transparent," and renaming it the "Texas Energy Resources Commission" would more aptly describe what the agency does.
- The agency struggles to provide reliable data showing that it's properly policing oil and gas drillers and "what information is available suggests that the commission's actions have little deterrent effect." The panel called for several changes to improve enforcement and monitoring.
- The agency fails to track its performance in natural gas utility ratemaking and that process is "clouded" by concerns that its in-house judges lack independence. Lawmakers should transfer oversight to the state Public Utility Commission, which has more resources and expertise in ratemaking matters.
- "Insufficient" bonding requirements have left the agency with less funding to plug abandoned wells, the cost of which has doubled since 1990. The panel recommended overhauling bonding requirements, making them more closely correspond to risks.
- "Neither the federal government nor the Railroad Commission enforces damage prevention rules for interstate pipelines," and the Legislature should give the agency authority to do so.