


Sunset Review of TWDB and TCEQ 2011

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What is Sunset Review?

- Sunset review is a process that was established by the Texas Legislature in 1977 to provide for greater openness in government decision-making and to improve government accountability
- Sunset is the regular assessment of the continuing need for a state agency to exist and/or how to improve the agency's operation
- The process works by setting a date on which an agency will be abolished unless legislation is passed to continue its functions

Sunset Advisory Commission

- Process is guided by a 12-member body appointed by the Lieutenant Governor and the Speaker of the House of Representatives
- Composed of two non-legislative members and ten members of the Legislature



Sunset Advisory Members



- Senator Hegar (Chair)
- Senator Hinojosa
- Senator Huffman
- Senator Nichols
- Senator Whitmire
- Charles McMahan, Public Member
- Representative Bonnen (Vice-Chair)
- Representative Anchia
- Representative Cook
- Representative Harper-Brown
- Representative Taylor
- Lamont Jefferson, Public Member

TCEQ and TWDB Sunset Review

- The staff review process includes extensive interviews, site visits and surveys distributed to a variety of stakeholder groups
- Staff prepares report
- Sunset Advisory Commission accepted written comments and oral testimony at hearings
- WEAT submitted comments on both TCEQ and TWDB
- Recommendations formally adopted and report published

Sunset Review process

- Recommendations are included in TCEQ's and TWDB's "Sunset bills"
- TCEQ
 - HB 2694/SB 657
- TWDB
 - HB 3530/SB 660

TCEQ Sunset Bills

- Continue TCEQ for 12 Years and add “Public Health” to Mission Statement

“The Texas Commission on Environmental Quality strives to protect our state’s public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste.”

TCEQ Sunset Bills

- Transfer TCEQ’s existing authority for regulating water and wastewater utilities regarding retail, wholesale, and sub-metering rates; Certificates of Convenience and Necessity (CCN); reporting requirements; and consumer assistance and complaints to the Public Utility Commission
- TCEQ would continue to have responsibility for ensuring that utilities meet drinking water standards, sewage treatment requirements, and review of Investor Owned Utility Drought Contingency Plans

TCEQ Sunset Bills

- Establish factors the Public Interest Counsel must consider before deciding to represent the public interest as a party to a commission proceeding
 - Transfer Office of Public Interest Council (OPIC)’s current statutory charge regarding responsiveness to environmental and citizen concerns, including environmental quality and consumer protection, to TCEQ’s Executive Director.
 - Require TCEQ to generally define, by rule, factors OPIC will consider in representing the public interest and establish OPIC’s priorities in case involvement

TCEQ Sunset Bills

- Revise compliance history process and rules. Remove the uniform standard from statute and require TCEQ to develop a compliance history method to be applied consistently in its decisions on permitting, enforcement, and voluntary incentive programs
- Redefine the poor, average, and high classifications in such a way as to be responsive to changes in entities’ actual performance
- Remove the requirement to assess the compliance history of entities for which TCEQ does not have adequate compliance information

TCEQ Sunset Bills

- Require TCEQ to structure its general enforcement policy in rule and publicly adopt its resulting enforcement policies
- Penalty calculation methodologies should not be adopted by rule but should be clearly explained on TCEQ’s website, including:
 - Speciation
 - Economic benefit
 - Shut down authority

TCEQ Sunset Bills

- Increase TCEQ’s administrative penalty caps from \$10,000 to \$25,000 per wastewater violation
- Leave penalty cap for drinking water violations at \$5,000
- WEAT commented that a special category should be established for utilities so that penalty scales are equitable



TCEQ Sunset Bills

- Authorize TCEQ to consider Supplemental Environmental Projects (SEPs) for local governments that would improve the environment
- WEAT commented that the ability to defer penalties for local governments already exists in statute but TCEQ has not been able to implement
- New language should ensure that existing problems with implementation are not repeated

TCEQ Sunset Bills

- TCEQ should be required to adopt rules outlining how it will curtail water usage during a water shortage or other emergency, including criteria that would trigger curtailment
- TCEQ should require water rights holders to maintain monthly water use information for the months that the water rights holder actually uses permitted water under the water rights permit
- TCEQ should be required to evaluate the need for additional water master programs at least once every five years

TCEQ Sunset Bills

- Other recommendations related to underground storage tanks, surface casing recommendations for oil wells, Low Level Radioactive Waste, and the On-site Wastewater Treatment Research Council
- Related bills: HB 2431, HB 2668, HB 3543, SB 673

TWDB Sunset Bills

- Authorize the Board to issue Development Fund general obligation bonds on a continuing basis, in amounts such that the aggregate principal amount outstanding at any time does not exceed \$6 billion



TWDB Sunset Bills

- Improve coordination among separate water planning processes – regional water planning and groundwater management, development of desired future conditions (DFCs)
- Add a representative of each groundwater management area that overlaps with a regional water planning group as a voting member of that regional water planning group
- Require regional water planning groups to use the desired future conditions in place at the time of adoption of the TWDB's State Water Plan in the next water planning cycle

TWDB Sunset Bills

- Require groundwater management areas to document consideration of factors or criteria that comprise a reasonable DFC and to submit that documentation to the TWDB
- Upon issuance of the DFC report, each district within the groundwater management area would be required to adopt the relevant DFCs identified in the report by rule under procedures described under Texas Water Code sec. 36.101
- Transfer the process to petition the reasonableness of a desired future condition from the Board to TCEQ

TWDB Sunset Bills

- Require the TWDB to evaluate the state's progress in meeting its water needs
- Require the Board and TCEQ, in consultation with the Water Conservation Advisory Council, to develop uniform, detailed gallons per capita daily reporting requirements
- Related bills: HB 1319, SB 181, HB 1824/SB 737, SJR 3, SJR 25

Next Steps

- Reauthorization legislation must be passed in 2011 in order for TCEQ to continue to exist as a state agency
- TWDB does not need reauthorization legislation since it was created through an amendment to the Texas Constitution
- Changes can be introduced as part of the process
- WEAT will be monitoring Sunset legislation closely
- TCEQ sunset bill, HB 2694, being heard April 6

More Information

State of Texas and WEAT websites:

www.sunset.state.tx.us

www.capitol.state.tx.us

<http://www.weat.org/governmentalaffairs.htm>

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