

**SUBJECT:** Extending TxDOT, TDI, OPIC, TSAHC, TRC; moving other Sunset dates

**COMMITTEE:** State Affairs — favorable, without amendment

**VOTE:** 12 ayes — Solomons, Menendez, Cook, Craddick, Gallego, Geren, Harless, Jones, Lucio, Maldonado, Oliveira, Swinford

0 nays

3 absent — Farabee, Hilderbran, S. Turner

**WITNESSES:** For — None

Against — None

On — Joey Longley, Sunset Commission

**BACKGROUND:** Under the Sunset process, the operations and functions of certain state agencies are reviewed extensively every two years. The statutory authorization for these agencies will expire unless the Legislature enacts legislation to extend the expiration date and continue those agencies.

During the regular session of the 81st Legislature, the Sunset bills to continue six state agencies were not enacted. Legislation extending the Texas Residential Construction Commission (TRCC) was approved by the House, but died in the Senate, with no further effort made to continue that agency. Legislation to continue the Texas Department of Transportation (TxDOT), the Texas Department of Insurance (TDI), the Office of Public Insurance Counsel (OPIC), the Texas State Affordable Housing Corporation (TSAHC), and the Texas Racing Commission (TRC) also failed to be enacted. If no action is taken, those agencies will be abolished as of September 1, 2009, and must be phased out and terminated by September 1, 2010.

Under Government Code, sec. 325.017, a state agency abolished in an odd-numbered year may continue in existence until September 1 of the following year to conclude its business. The agency is terminated and required to cease all activities at the end of the one-year period. The statute details how the appropriations and finances of an agency being shut

down are to be handled. Bonds and other obligations, such as leases and contracts, remain valid and enforceable through another state agency designated by the governor. For more information on extending state agencies under Sunset Review, see the July 1, 2009, *Daily Floor Report*.

**DIGEST:**

HB 2 would extend until 2011 the following five agencies set to be abolished in 2009: the Texas Department of Transportation, the Texas Department of Insurance, the Office of Public Insurance Counsel, the Texas State Affordable Housing Corporation, and the Texas Racing Commission. The bill also would extend from 2009 to 2011 the Equine Research Account Advisory Committee, which was reviewed as part of the Racing Commission.

HB 2 would limit the Sunset review of these agencies to the appropriateness of recommendations made by the Sunset Advisory Commission to the 81st Legislature. In its report to the 82nd Legislature, the commission could make any recommendations it considered appropriate.

HB 2 also would revise the Sunset review schedule by changing the abolition date for several agencies. The Sunset date for the Texas Commission on Environmental Quality and several other natural resource-related agencies would be moved from 2013 to 2011. The bill would extend the Sunset dates of several agencies from 2011 to 2013, including the Texas Department of Criminal Justice, the Health and Human Services Commission, and other health-related agencies. The Sunset date for the Texas Education Agency would be moved from 2012 to 2013.

**Agencies and reviews moved to 2011**

HB 2 would move forward from 2013 to 2011 the Sunset dates for following agencies:

- Texas Commission on Environmental Quality;
- Texas Water Development Board;
- State Soil and Water Conservation Board;
- Railroad Commission;
- Coastal Coordination Council;
- On-site Wastewater Treatment Research Council;
- State Board of Examiners for Speech-Language Pathology and Audiology; and

- State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

The Texas Forest Service would be placed under the Sunset Act and given a Sunset date of September 1, 2011.

HB 2 would require the Sunset Advisory Commission to conduct a special purpose review of the Electric Reliability Council of Texas (ERCOT) as part of its review of the Public Utility Commission (PUC) for the 82nd Legislature. The review would have to include an assessment of the governance, management, and operating structure of ERCOT and its compliance with duties and requirements given to it by the Legislature and the PUC.

### **Agencies and reviews moved to 2013**

HB 2 would extend the Sunset date for the Texas Education Agency from 2012 to 2013.

The bill would move the Sunset dates for the following agencies from 2011 to 2013:

- Health and Human Services Commission;
- Texas Health Services Authority;
- Department of State Health Services;
- Department of Family and Protective Services;
- Texas Council for Developmental Disabilities;
- Governor's Committee on People with Disabilities;
- Department of Assistive and Rehabilitative Services;
- Department of Aging and Disability Services;
- Texas Board of Criminal Justice and Texas Department of Criminal Justice;
- Texas Lottery Commission;
- Office of Firefighters' Pension Commissioner; and
- Texas Emancipation Juneteenth Cultural and Historical Commission.

The bill would move the review date for the Texas Council on Purchasing from People with Disabilities from 2015 to 2013.

The Sunset Advisory Commission's scheduled evaluation of the tax division of the State Office of Administrative Hearings and of the transfer of state purchasing powers and duties to the comptroller would be changed so that the commission reported on the two entities to the 83rd Legislature instead of the 82nd Legislature. A scheduled transfer of the purchasing powers and duties from the comptroller to the Texas Facilities Commission would be moved from 2011 to 2013.

### **Effective date**

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

### **SUPPORTERS SAY:**

HB 2 is necessary to continue the five state agencies and one advisory committee that will have to begin winding down their operations on September 1, 2009, unless HB 2 or similar legislation is enacted. During the regular session, the individual bills reauthorizing these agencies were not enacted, and other attempts to extend the life of these agencies in two other pieces of legislation also were unsuccessful, even though there was no intention to kill the agencies.

HB 2 would address this problem by continuing these vital agencies, but only for two years. This would allow the 82nd Legislature to revisit the agencies' authorizing statutes in 2011 and to debate and reauthorize them. While the Sunset Advisory Commission's reviews for 82nd Legislature will be substantial, HB 2 would ensure, by requiring only a limited-scope review of these agencies, that resources will not be wasted nor efforts duplicated. It would be best for the Legislature to wait until 2011 to vet fully these agencies rather than to try to consider full-fledged Sunset bills in a special session, in which the call is limited to extending their existence and does not include consideration of Sunset bills themselves.

A two-year extension for the Texas State Affordable Housing Corporation would be in line with the Sunset Advisory Commission's recommendation that it be continued for a two-year probationary period and then re-evaluated in conjunction with the Sunset review of the Texas Department of Housing and Community Affairs in 2011.

Each session, the Legislature traditionally alters the Sunset review schedule to bring similar agencies under review at the same time, to

address special problems or concerns, or to adjust the Sunset Advisory Commission's workload. HB 2 would make these kinds of adjustments. The bill would result in 27 reviews being scheduled for 2011 and 37 for 2013, a workload that the Sunset commission and staff could handle. The schedule in HB 2 would allow many of the 2011 reviews to focus on energy and natural resources entities and many of the 2013 reviews to focus on health and human service agencies and boards.

Two of the boards that would be moved to 2011, the State Board of Examiners for Speech-language Pathology and Audiology and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, would have gone 20 years without a review if their review dates were left at 2013. There is no need to schedule these entities for review in 2013 because they primarily are licensing entities and were not originally scheduled to be reviewed with the other human services-related agencies. Moving them to 2011 would help balance the Sunset Commission's workload.

The health and human services agencies and boards would have adequate oversight, through standing Legislative committees and the appropriations process, until their reviews in 2013. Moving their official Sunset dates to 2013 would not preclude changes to the agencies by the 82nd Legislature. Many of the agencies were examined thoroughly when they underwent major reforms in 2003, and at that time many structural changes were made. Putting off their reviews until 2013 also would allow a new health and human services commissioner, who has not yet been named, time to take the agencies' helm before undergoing Sunset review.

**OPPONENTS  
SAY:**

The Legislature should consider the individual Sunset bills for TxDOT, TDI, OPIC, TSAHC, and TRC, instead of just extending the agencies' current statutes for two years. Putting off revisions to the agencies means they will operate for another two years without the meaningful reform that some of the agencies need.

For example, during the regular session, at least one agency that would be extended, the Texas State Affordable Housing Corporation, was being considered seriously for elimination. The House committee substitute for SB 1002 by Deuell would have abolished the TSAHC on January 1, 2010, and transferred its duties to the Texas Department of Housing and Community Affairs. SB 1002 was placed on the May 26 Major State Calendar in the House, but no further action was taken. HB 2 would give

TSAHC another two years to operate when it might be best to reform or abolish it now.

The Sunset dates for the Health and Human Service Commission and other health-related agencies and boards should not be moved to 2013. These agencies — especially the Department of Family and Protective Services, which includes Child Protective Services — should be reviewed as soon as possible, given their important role in protecting vulnerable Texans, their role in providing social services to those most in need, and the possibility of major health care reform in the near future.

**NOTES:**

The companion bill, SB 2 by Hegar, passed the Senate by 30-0 on July 1.

During the regular session, the 81st Legislature considered, but did not adopt, a bill similar to HB 2. The conference committee report on HB 1959 by Isett would have extended the 2009 Sunset date for TxDOT to 2013, and the 2009 Sunset dates for TDI, OPIC, TSAHC, and TRC to 2011. HB 1959 died when the House did not vote on the conference committee report, which had been approved by the Senate. The HB 1959 Conference Committee report also would have revised the Sunset review schedule by changing the abolition date for several agencies.

HB 2 differs from HB 1959 by:

- changing the TxDOT sunset date to 2011 instead of 2013;
- adding two health-care related boards to the schedule in 2011; and
- moving the Sunset date for the Texas Emancipation Juneteenth Cultural and Historical Commission and the evaluation of the tax division of the State Office of Administrative Hearings to the 2013 schedule.

Provisions in HB 1959 but not in HB 2 include those which would have:

- extended the Sunset date for the Workers' Compensation Division and Office Of Injured Employee Counsel at the Texas Department of Insurance from 2011 to 2013; and
- specified a five-month schedule for the Texas Residential Construction Commission, which was not continued by the 81st Legislature, to close by February 1, 2010.

HCR 291 by Pitts, a concurrent resolution making corrections to HB 4583 by Pitts, which eliminated certain dedicated funds, would have extended from 2009 to 2011 the Sunset dates for TxDOT, TDI, OPIC, TSAHC, and TRC. HCR 291 was adopted by the House on June 1, the final day of the regular session, but died when the Senate did not act on the concurrent resolution.