

SUNSET ADVISORY COMMISSION

COMPLIANCE REPORT

Implementation of 2021 Sunset Recommendations

2022-23
88TH LEGISLATURE



SUNSET ADVISORY COMMISSION



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

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SUMMARY

An important element of the Sunset process is a check on agencies' progress in implementing Sunset recommendations from the previous legislative session. The Legislature expects agencies to effectively implement both the Sunset Commission's management recommendations and the statutory provisions of an agency's Sunset bill. The Sunset Act requires the commission to review agencies' implementation of the commission's recommendations.

In 2021, the 87th Legislature passed 12 of the 16 bills containing the Sunset Commission's statutory recommendations for the 19 agencies reviewed that biennium. In addition, the Legislature continued the Texas Racing Commission for six years and adopted statutory changes to the agency in other legislation. Sunset staff assessed each entity's efforts to implement the required statutory changes, a total of 98 provisions. Agencies fully implemented over two-thirds of these changes, with most of the remainder in progress. The chart on Page 3, *2021 Sunset Legislation Implementation by Agency*, shows each agency's progress in implementing its changes. Key changes implemented as a part of the Sunset process include the following:

- Making significant changes to the Texas Department of Licensing and Regulation (TDLR), including eliminating 29 unnecessary licenses; streamlining the regulation of barbers, cosmetologists, and driver training providers; and requiring TDLR to be more data-driven to focus its resources toward the highest risks to the public.
- Requiring the Texas Commission on Jail Standards to establish a risk-based approach to inspections, adopt rules and policies for escalating actions against jails that remain out of compliance, and assess compliance with all standards during certain jail re-inspections.
- Requiring the Teacher Retirement System of Texas to be more transparent about its investment decisions and improve its outreach to members, including establishing an ombudsman to investigate complaints and identify ways to increase member input.
- Transferring the Texas Holocaust and Genocide Commission to the Texas Historical Commission as the Texas Holocaust, Genocide, and Antisemitism Advisory Commission.
- Requiring the Texas Animal Health Commission to close its disease testing laboratory and consolidate testing at Texas A&M's testing facility to improve cost-effectiveness.
- Requiring the Texas Parks and Wildlife Department to establish a risk-based approach to inspecting licensees for the agency's 56 types of nonrecreational licenses, adopt policies for using its full range of existing enforcement authority in appropriate cases, and clearly communicate the enforcement process and potential outcomes to licensees.

Detailed information on the statutory provisions in progress, partially implemented, or not implemented is provided for each agency in the following exception charts. The *Implementation Key* textbox on the following page explains the terms used to describe the status of the provisions.

Sunset bills containing statutory changes for the Texas Commission on Law Enforcement, State Anatomical Board, and San Jacinto River Authority failed to pass during the 87th Legislature. Instead, the Legislature continued these agencies for two years and placed them under Sunset review again this

biennium. In addition, the State Board of Veterinary Medical Examiners was continued until 2029, but the Legislature directed Sunset to perform a special-purpose review of agency's database implementation this biennium.

In addition to statutory changes, the Sunset Commission adopted 114 management actions for improvements to agencies under review in 2021. As authorized by statute, the State Auditor's Office (SAO) will evaluate the agencies' implementation of management actions.¹

Implementation Key

- **Implemented:** The agency has fully implemented the provision.
- **In Progress:** The agency has begun efforts to implement the provision but has not completed or fully realized implementation of the provision.
- **Partially Implemented:** The agency has fully implemented some parts of the provision but has not taken any action to implement other parts.
- **Not Implemented:** The agency has not implemented or begun the process of implementing the provision.

2021 Sunset Legislation Implementation by Agency

Agency	Statutory Changes Required	Changes Implemented	In Progress	Partially Implemented	Not Implemented
Agriculture, Texas Department of	9	7	2	0	0
Animal Health Commission, Texas	7	7	0	0	0
Boll Weevil Eradication Foundation, Texas	2	1	1	0	0
Brazos River Authority	4	4	0	0	0
Credit Union Department	5	5	0	0	0
Fire Protection, Texas Commission on	5	3	2	0	0
Holocaust and Genocide Commission, Texas	10	5	5	0	0
Jail Standards, Texas Commission on	10	4	5	1	0
Licensing and Regulation, Texas Department of	29	19	10	0	0
Parks and Wildlife Department, Texas	5	3	2	0	0
Prepaid Higher Education Tuition Board	2	2	0	0	0
Prescribed Burning Board	1	1	0	0	0
Racing Commission, Texas	1	1	0	0	0
Teacher Retirement System of Texas	8	8	0	0	0
Totals	98	70	27	1	0
Percentage		71%	28%	1%	0%

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.012(d), Texas Government Code.

BILL PROVISIONS

Texas Department of Agriculture

Senate Bill 703, as adopted by the 87th Legislature, continues the Texas Department of Agriculture (TDA) for 12 years. The legislation included a total of nine changes requiring action. The following chart summarizes two provisions that are still in progress and provides their status.

Bill Provision	Implementation	
	Status	Comments
1. Reestablishes the GO TEXAN program in statute. Requires TDA to adopt rules, including: <ul style="list-style-type: none"> • Providing membership eligibility requirements and grounds for denial of membership. • Establishing membership categories or tiers. • Specifying membership benefits. 	In Progress	The department initiated a review of its GO TEXAN program rules in July 2022. Outside legal counsel is currently reviewing the impact of proposed changes on the program's existing intellectual property registrations with the United States Patent and Trademark Office. The department proposed new rules in the <i>Texas Register</i> in December 2022, for adoption in Spring 2023.
2. Requires TDA to develop a annual plan with public input to use the inspection and enforcement resources of the department strategically to ensure public safety and protect agriculture and consumers in this state. The plan shall include a report of the department's inspections and enforcement activities over time.	In Progress	The department has developed draft strategic plans for its inspection and enforcement efforts in each of its regulatory programs and solicited public comment on those strategic plans in December 2022. After a 30-day comment period, the department will update the individual program strategic plans for final approval by the commissioner and publication on the department's website.

Texas Boll Weevil Eradication Foundation

Senate Bill 703, as adopted by the 87th Legislature, continues the Texas Boll Weevil Eradication Foundation for 12 years. The legislation included a total of two changes requiring action. The following chart summarizes one provision that is still in progress and provides its status.

Bill Provision	Implementation	
	Status	Comments
1. Adds standard Sunset language requiring the policymaking body to separate its policymaking duties from the agency's management functions.	In Progress	The foundation has reviewed sample policies from other agencies and is drafting a policy that reflects its current practice of the board setting program direction while leaving day-to-day management to staff. The foundation anticipates the board adopting the new policy at its February 2023 meeting.

Texas Commission on Fire Protection

Senate Bill 709, as adopted by the 87th Legislature, continues the Texas Commission on Fire Protection (TCFP) for 12 years. The legislation included a total of five changes requiring action. The following chart summarizes two provisions that are still in progress and provides their status.

Bill Provision	Implementation	
	Status	Comments
1. Authorize TCFP to provide biennial renewal for certifications.	In Progress	Commissioners have directed agency staff to begin the process of determining how this recommendation could be accomplished. This includes seeking input from the regulated fire service entities on potential certification periods and budgetary impacts to each entity. TCFP reports it will take time to identify all of the challenges associated with biennial renewals, and to develop a plan for a proposed change in rule.
2. Authorize TCFP to enter into reciprocity agreements with other state fire personnel certification agencies.	In Progress	Commissioners have directed agency staff to begin discussions with the states that do not currently have reciprocity with Texas. TCFP reports staff has established and initiated conversations with these states and is continuing work on this issue.

Texas Holocaust and Genocide Commission

House Bill 3257, as adopted by the 87th Legislature, reconstitutes the Texas Holocaust and Genocide Commission as the Texas Holocaust, Genocide and Antisemitism Advisory Commission (THGAAC), an advisory commission to the Texas Historical Commission (THC), and continues THGAAC for 10 years. The legislation included a total of 10 changes requiring action. The following chart summarizes five provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Specifies the new advisory commission's composition, appointment process, qualifications, terms, chair designation, subcommittee authority, travel expenses, quarterly meetings, and quorum. Requires THC to develop and implement policies for public input.	In Progress	THC approved the posting of new administrative rules in October 2022, providing for the administration of the advisory commission and public input at every meeting for THGAAC. These rules were published in the November 18, 2022 issue of the <i>Texas Register</i> , and THC will consider their adoption at its January 2023 meeting.
2. Specifies the new advisory commission's duties including: <ul style="list-style-type: none"> • A biennial study and report to the governor and Legislature on antisemitism in Texas. • Support of others in recognizing International Holocaust Remembrance Day and recommendations on whether this day should be a state holiday. 	In Progress	THGAAC provided a study on antisemitism to the required parties by the deadline. Staff continue to work to assist others in their recognition of International Holocaust Remembrance Day, and the commission is currently considering whether or not to recommend this day be a state holiday.
3. Authorizes THC to provide matching grants and requires THC, in coordination with THGAAC, to establish and adopt rules, policies, and procedures for a grant program, including an annual budget and funding cycle, program goals, grant eligibility criteria, grant application and selection processes, requirements for in-kind services and matching fund waivers, maximum grant awards, conflicts of interest policies, data collection and evaluation, and audits of grant recipients.	In Progress	THGAAC considered administrative rules for the grant program at its quarterly meeting in December 2022. THC will consider the advisory commission's recommendations at its meeting in January 2023. If approved, the rules will be posted for public comment and taken up by THC in April 2023 for possible adoption.

Texas Holocaust and Genocide Commission (continued)

Bill Provision	Implementation	
	Status	Comments
4. Requires THC to adopt rules governing the new advisory commission's operations and authorizes THC to delegate certain final authorities to the new advisory commission.	In Progress	THC approved the posting of new administrative rules in October 2022 that detail the selection and duties of advisory commission officers, provision of staff by THC, and specifying THGAAC's role as an advisory body to THC. These rules were published in the November 18, 2022, issue of the <i>Texas Register</i> , and THC will consider their adoption at its January 2023 meeting.
5. Authorizes THC to contract with nonprofit organizations to fulfill the new advisory commission's duties in promoting Holocaust and genocide education and requires THC to adopt rules establishing contract requirements.	In Progress	THC approved the posting of new administrative rules in October 2022, providing contract requirements for working with non-profits for meeting THGAAC's duties. These rules were published in the November 18, 2022, issue of the <i>Texas Register</i> , and THC will consider their adoption at its January 2023 meeting.

Texas Commission on Jail Standards

House Bill 1545, as adopted by the 87th Legislature, continues the Texas Commission on Jail Standards for 12 years. The legislation included a total of 10 changes requiring action. The following chart summarizes five provisions that are still in progress and one that was partially implemented and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Update statute to enhance existing requirements for tracking, analyzing, and reporting on complaints.	Partially Implemented	The agency has updated its procedures for categorizing and documenting complaints to better capture and evaluate trends. While the agency publishes a monthly report on its website tracking key complaint data, the report does not include information on which jails have experienced a higher-than-average number of complaints, as statute requires. Staff noted the agency can provide aggregated complaint data broken down by jail in response to a public information request but does not proactively publish such information online.
2. Authorize the commission to establish advisory committees by rule.	In Progress	In November 2022, the commission took action to convert an informal working group into a formal advisory committee tasked with reviewing administrative rules. Agency employees are drafting statutorily required rules for the advisory committee — such as those establishing the body's purpose, role, and composition — and expect to propose those rules for publication in the Texas Register at the commission's February 2023 meeting.
3. Require the commission to establish a risk-based approach to inspections.	In Progress	The agency has developed a risk matrix that is currently guiding its inspection schedule, rather than conducting annual inspections. To ensure the matrix's validity, the agency is working with university partners to test the matrix using available historical data. The agency is also working to revamp and re-document inspection procedures to increase consistency across inspectors.
4. Require the commission to ensure minimum standards account for varying needs and levels of risk among different jails.	In Progress	In November 2022, the commission tasked the advisory committee discussed in Item 2 with reviewing minimum standards to identify those that do not account for the needs and risks of different types and sizes of jails. The committee began its first review in December 2022 and will ultimately provide its analysis to the commission, which may update minimum standards accordingly.

Texas Commission on Jail Standards (continued)

Bill Provision	Implementation	
	Status	Comments
5. Require the agency to conduct trend analysis with the data it collects.	In Progress	The agency assigned trend analysis duties to an existing employee whose workload remains split across various tasks. In its 2024-25 legislative appropriation request, the agency included an exceptional item for about \$71,000 to hire a data analyst who would review trends in jail populations, historical jail performance, and jailer turnover, as well as make data-driven recommendations to the agency's executive director and commission members.
6. Require the commission to adopt rules and policies for taking escalating actions against jails that remain out of compliance for extended periods of time.	In Progress	In November 2022, the commission adopted rules developing a graduated system of enforcement actions for noncompliant jails. Agency employees are in the process of using those rules to develop an easy-to-understand and publicly accessible schedule of actions that will ultimately be posted online.

Texas Department of Licensing and Regulation

House Bill 1560, as adopted by the 87th Legislature, continues the Texas Department of Licensing and Regulation (TDLR) for 12 years. The legislation included a total of 29 changes requiring action. The following chart summarizes 10 provisions that are still in progress and provides the status of each.

Bill Provision	Implementation	
	Status	Comments
1. Requires TDLR to prioritize complaints based on the risk they pose to the public.	In Progress	TDLR has developed risk-based prioritization strategies for its complaint resolution process, piloted the new process in two licensing programs, and trained relevant staff on updated procedures. The agency expects to create similar processes for its other programs throughout fiscal year 2023, analyzing program risk, complaint volume, and staffing capacity to guide the order of implementation. By fiscal year 2024, TDLR estimates staff will handle at least 75 percent of consumer complaints using risk-based prioritization schedules.
2. Consolidates Texas' regulation of barbers and cosmetologists, so the two programs are administered as one.	In Progress	TDLR is on track to complete the consolidation of the Barbering and Cosmetology programs by September 1, 2023, as required by HB 1560. Administrative rules to standardize requirements between barbering and cosmetology license types became effective on January 1, 2023. Throughout October and November 2022, TDLR hosted in-person industry summits to explain changes and provide outreach to the industry. The agency anticipates new curriculum standards will take effect in August 2023, and staff will begin issuing updated licenses under the consolidated program in September 2023.

Texas Department of Licensing and Regulation (continued)

Bill Provision	Implementation	
	Status	Comments
3. Modernizes the licensing of driver education businesses by establishing three different license types, including a separate license with distinct regulatory requirements for parent-taught driver education providers.	In Progress	TDLR has created a new licensing structure that will take effect June 1, 2023, as required by HB 1560. Each driver education provider will obtain a single license, under which the provider may obtain endorsements to provide the following types of courses:
4. Requires TDLR to establish requirements for the issuance of one type of driver education provider license to a person who holds one or both of the other two types of driver education provider licenses.	In Progress	<ul style="list-style-type: none"> • Online (course modifiers: teen, teen in Spanish, adult six-hour, adult six-hour in Spanish, American Sign Language (ASL)) • In-person (course modifiers: teen, teen in Spanish, adult six-hour, adult six-hour in Spanish, ASL) • Parent-taught (course modifiers: Spanish, ASL) <p>Providers who want to offer multiple course modifiers of the same type will need to obtain a separate provider license for each. For example, under an online license type, a provider can provide one teen course and one ASL course but cannot provide two ASL courses. Branch locations will require a separate driver education provider license.</p> <p>TDLR is drafting rules to reflect these changes, which it anticipates proposing in early 2023.</p>
5. Eliminates the redundant driving safety school license.	In Progress	<p>The driving safety school license will be removed from TDLR's website on June 1, 2023, and schools can then apply for provider licenses if they choose. As part of this effort, TDLR has:</p> <ul style="list-style-type: none"> • Created a workgroup to consider all licensing changes to the Driver Education and Safety Program. • Sent notices to the industry, with subsequent notices scheduled, and posted about the change on its website. • Updated the driving safety school application to reflect the upcoming change.

Texas Department of Licensing and Regulation (continued)

Bill Provision	Implementation	
	Status	Comments
6. Eliminates the separate drug and alcohol driving awareness course and associated licenses.	In Progress	<p>These three specialized courses and associated licenses will be discontinued on June 1, 2023, except as needed to accommodate existing court orders. As part of this effort, TDLR has:</p> <ul style="list-style-type: none"> • Sent notices to licensees, with subsequent notices scheduled. • Sent notices to the Texas Municipal Courts Education Center and the Texas Court Clerks Association, with a mockup of the new Driving Safety certificates. These groups will disperse the notice among all court systems in Texas.
7. Eliminates the separate driving safety course for drivers under 25 years old.	In Progress	
8. Eliminates the separate specialized driving safety course and associated licenses.	In Progress	
9. Eliminates costly course approval fees and streamlines TDLR's process for approving driver training curricula.	In Progress	<p>As of September 2, 2021, all forms for approving new driver training curricula include a certification statement instead of requiring submission of the curriculum for review.</p> <p>TDLR is conducting a fee study and anticipates implementing lower fees by June 1, 2023.</p>
10. Eliminates pre-license and continuing education requirements for driver education instructors.	In Progress	<p>With input from a workgroup, TDLR is drafting rules to implement these changes, including:</p> <ul style="list-style-type: none"> • Eliminating the three driver education instructor endorsements. Existing licensees can continue to renew their licenses, which will automatically be converted to driver education instructor licenses on June 1, 2023. • Adopting continuing education requirements for instructors that are not as overly prescriptive as those previously in statute. <p>TDLR provided notice of the changes to the industry and impacted licensees and posted information on its Driver Education and Safety Program webpage. TDLR anticipates proposing new rules in early 2023 with an expected effective date of June 1, 2023.</p>

Texas Parks and Wildlife Department

Senate Bill 700, as adopted by the 87th Legislature, continues the Texas Parks and Wildlife Department (TPWD) for 12 years. The legislation included a total of five changes requiring action. The following chart summarizes two provisions that are still in progress and provides their status.

Bill Provision	Implementation	
	Status	Comments
1. Requires TPWD to include effectiveness measures for goals and objectives in the Land and Water Plan and evaluate whether the agency is making progress toward achieving the goals and objectives every five years.	In Progress	<p>The Texas Parks and Wildlife Commission has appointed a Conservation and Recreation Planning Subcommittee tasked with providing guidance and oversight on revisions to the Land and Water Plan (the Plan).</p> <p>TPWD has established an internal, cross-divisional committee to facilitate revisions to the Plan. TPWD has contracted with Texas A&M AgriLife Research to:</p> <ul style="list-style-type: none"> • Develop appropriate goals, objectives, and strategies • Identify gaps in the Plan regarding the state's conservation and outdoor recreation needs • Develop metrics to help measure the success of the Plan • Develop a reporting system <p>The Texas A&M team will provide their recommendations over the next year. TPWD anticipates completing a draft of the Plan by December 2023 and incorporating revisions into the next iteration of the Plan, slated for August 31, 2024.</p>
2. Defines “nonrecreational authorization holders” and requires the agency to adopt policies to formally guide the prioritization of inspections of nonrecreational authorization holders. Requires TPWD prioritize inspections based on risk to the state’s natural resources or risk to water safety for marine dealer, manufacturer, or distributor licenses.	In Progress	<p>TPWD has developed a risk assessment tool to assign and categorize risk levels to each non-recreational license/permit. TPWD staff is working to determine how to best address and resolve the issue of inspection tracking across the 56 types of nonrecreational licenses/permits covering topics as diverse as finfish dealers to raptor propagators. TPWD expects to implement the tracking system in 2026.</p>

Implementation of 2021 Sunset Recommendations

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