NCSL MEMO

NATIONAL CONFERENCE *of* STATE LEGISLATURES

To: Ken Levine, Director
Texas Sunset Advisory Commission

From: John Turcotte, Director
North Carolina Program Evaluation Division

Kathy McGuire, Deputy Director
Florida Office of Program Policy Analysis and Government Accountability

Brenda Erickson
NCSL Liaison to NLPES

Date: Jan. 21, 2016

Subject: 2015 Texas Sunset Advisory Commission Peer Review

The vitality of government flourishes when public officials continually seek to improve the institutions they serve. The Texas Sunset Advisory Commission recognizes the importance of ensuring the quality of the office's work. It requested an NLPES/NCSL peer review to identify whether the office meets statutory and internal criteria and professional best practices. Sunset also asked for recommendations to improve its process.

The peer review team found many positive aspects of Sunset's work, including:

- The Sunset office has built a good reputation. Sunset staff are well respected within the Texas Legislature. The office is respected by its counterpart agencies across the country.
- The office is a mature organization with well-established processes and protocols. In fact, Texas is one of the few states that has been able to maintain a strong sunset process over the years.
- Sunset's Advisory Commission is viable, active and efficient. The public record reflects an exceptional level of intensity and member ability to cope with a wide variety of technical and complicated issues.
- Agencies are appropriately involved in the sunset process, while Sunset staff maintains its independence.
- The sunset process involves stakeholders and encourages public comment at all stages of the process. It is worth noting that staff and Commission have developed a high level of expertise in stakeholder and public involvement, which is exemplary when compared to other state legislative evaluation and audit agencies.

- When asked, Sunset staff work closely with Commission members on implementing recommendations.
- Sunset's model processes on licensing/regulation, contracting and grants are national models. The contracting model is most timely given that many state governments have experienced costly and embarrassing failures stemming from poor contract administration and oversight. To the peer review team's knowledge, the model is unique and a best practice within the NLPES community.
- Sunset staff do not develop superfluous documents, because its issue list leads to the issue plan, which becomes the basis for report write-up.
- The Sunset website has many good features, including the ability to find agencies currently under review and various ways to search for results of reviews (such as by agency or cycle/year).
- The office conducts regular internal reviews of its process—such as it is doing with its current work groups.

During its review, the peer review team provided process improvement suggestions for Sunset management to consider. The recommendations were not criticisms of the office; rather, they were provided as opportunities for further refinement and do not affect the peer review team's overall judgment of the office.

- **Communication**. Communication needs a constant dynamic process to distribute information about the sunset review process and its work. This could include early and active notice to the Legislature's general membership about sunset subjects and future actions.

  The executive management team needs to ensure legislative leadership and membership at-large are kept informed of Commission actions and staff work. Management needs to quickly respond to concerns. The difference between Commission actions and staff work needs to be more clearly delineated and more clearly communicated. While formal communications are important, whenever possible, management should make direct contact with members and engage in informal discussions about previous and pending reports and to seek out issues related to Texas government that may be troubling members in their districts.

  Sunset could consider using focus groups consisting of legislators and legislative staff to gather feedback on reports or processes.

  Sunset could use website analytics to track the use of its website and downloads by legislative and other users.

- **Issue Development.** Issue development should be clarified. The executive director should join a team for its initial project brainstorming about issue development whenever possible.

  The brainstorming meeting should be separate from the decision-making meeting. During the decision-making meeting, issues on which consensus exists could be included in a "consensus

list" and should not be discussed. Discussion should center on those issues on which a final decision needs to be made.

Instead of each team member researching issues separately and then pulling issues together at the end of the project for a draft report, the team should develop a working report outline as early in the research phase as possible. As the project progresses, the team should refine the outline and turn it into a draft report. At end stages of report production of drafts, this should reduce the number of revisions to resolve conflicts or unnecessary repetition of issues.

- **Report Production and Editing**. Sunset should stop using InDesign and switch to Microsoft Word. This change will make word processing, publishing and annotation easier because either the team or administrative staff will be able to make changes at any stage of editing. Administrative staff should be allowed sufficient time to format final reports.

- **Documentation of Evidence in Working Papers.** Sunset professionals are preparing working papers supporting their findings, and there were no evidence gaps noted by reviewers. Working papers are generally complete and thorough, using protocols that are commonly understood within the office. Documentation, however, is not always prepared, indexed and worded so that a competent, independent, third party reviewing a report can find supporting documentation and understand it without assistance from someone inside Sunset staff. Improving working papers will assure that management, too, can retrieve documentation, interpret it, and be able to explain it to a skeptic or critic such as a legislative leader or influential investigative reporter inquiring after hours when the report author is unavailable or may no longer be on staff. The following suggestions would strengthen Sunset working papers.

  ✓ The team should prepare an "indexed" or "referenced" copy of the report that clearly indicates the page of the specific working paper serving as the supporting source. Questions about documentation always refer to words or numbers in reports—for example, "Where did you get the numbers at the top of page 12?" "On page 15, there is a strong assertion about the lack of sanitation in five of nine common eating areas of the campus. What were those five? How did the other four measure up?" The indexed report allows the responding Sunset staff to identify what was being questioned in the report and then to more easily find the source documentation. If Sunset converts to Microsoft Word software as we recommend, Microsoft Word has numerous features that facilitate indexing, including inserting comments, hyperlinks to web or even office electronic files and color highlighting. A Microsoft Word comment reference provides the report author considerable flexibility for explaining analysis or making specific references to more than one working paper.
  ✓ Work papers should use uniform and consistent pagination to enable indexing.
  ✓ The individual preparing a working paper should initial each document.
  ✓ Interview notes should be typed, paginated and provide the names of the interviewer, interviewees and others present, and the date and location of the interview.
  ✓ "Bridging documents" should be used. A bridging document is a working paper that explains reasoning based upon multiple documents and where those separate documents are filed within the working papers. Bridging is necessary and helpful, too, when totals or solutions are produced by complicated calculations that would be too obtuse or confusing if shown in

full in a report.

Address the Abolishment Issue Inherent in the Name of the Sunset Advisory Commission.
Abolishment of unnecessary agencies will be inextricably associated with Sunset. Sunset resolves or recommends the continuation or abolishment of every agency reviewed unless constitutionally or statutorily prohibited from doing so. The power to recommend abolishment when warranted following a Sunset review performed by an independent professional staff is what makes the Commission different when compared to the Legislative Budget Board and Office of the State Auditor, both of which produce reports recommending management improvement and efficiency. Sunset's history in Texas has made possible the many improvements in management and operations stemming from Sunset work. Some of the Sunset staff asserted that the management improvement focus of Sunset was more important than abolishment because abolishment is not a serious, practical or politically feasible option for nearly every agency. The peer reviewers disagree with the assertion that abolishment is of lesser import and encourage the Sunset Commission and staff to continue addressing abolishment prominently in reports. This is because there is a high risk that the term "sunset" in the Commission's title will be noted by hostile media and other potential critics who may be advocating abolishment of an agency and attack Sunset as a waste of money. If staff or the Commission is not recommending abolishment of an agency or program, reports should include a prominent statement or section of the report addressing why abolishment was not recommended.

- **Boost Outcome Measurement and Evidence of Effectiveness.** Similarly, there should be prominent discussion in each report reviewing how well the agency under examination measures program results. Policymakers at all levels of government are demanding evidence that programs are not just efficient or well-managed, but also cost effective. Because of its mission and the frequency with which the Commission engages individual state agencies, the Commission is well positioned to exercise leadership in advocacy of measuring results.

- **Separate Staff and Commission Identities.** The staff should make a clear distinction between staff activities and Commission actions in all communications. Readers of Sunset's many reports should be able to readily determine what the independent staff found and recommended. Readers also should be able to determine actions or inactions on staff recommendations by the Commission, in case opponents or proponents need to contact those responsible at some stage later in the policy process

- **Strengthen Analytics.** The peer review team suggests that Sunset staff strengthen its capability and willingness to use quantitative methods or data analytics whenever appropriate. Proficiency in and application of analytics is becoming standard practice within the NLPES community, particularly by non-traditional staffs not housed within a state auditor's office. Sunset should obtain the necessary software licenses and develop staff skills in advanced data mining and analytics. This is important in light of great leaps forward in capacity of data storage and speed of access to big data. In addition, increasing legislator, agency and interest group sophistication and expertise in research methods could be applied to contradict Sunset staff findings if those findings were based only upon staff observation, interviewing, surveys and more limited descriptive statistics.

As discussed in our final peer review report, members of the peer review team have a favorable opinion of the Texas Sunset Advisory Commission and its staff. We were impressed with numerous aspects of your operation. We appreciate the many courtesies shown us during our visit and the opportunity to work with and learn from you and your staff.

PEER REVIEW

STATE OF TEXAS
SUNSET ADVISORY COMMISSION

NCSL

PEER REVIEW

STATE OF TEXAS
SUNSET ADVISORY COMMISSION

NATIONAL CONFERENCE *of* **STATE LEGISLATURES**

The Forum for America's Ideas

William T. Pound
Executive Director

7700 East First Place
Denver, Colorado 80230
(303) 364-7700

444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
(202) 624-5400

www.ncsl.org

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The National Conference of State Legislatures is the bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths and territories.

NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues and is an effective and respected advocate for the interests of the states in the American federal system.

NCSL has three objectives:

- To improve the quality and effectiveness of state legislatures.
- To promote policy innovation and communication among state legislatures.
- To ensure state legislatures a strong, cohesive voice in the federal system.

The Conference operates from offices in Denver, Colorado, and Washington, D.C.

INTRODUCTION

NCSL Peer Review and Peer Review Purpose

The Texas Sunset Advisory Commission (Sunset) contracted with the National Conference of State Legislatures (NCSL) to conduct a peer review. The National Legislative Program Evaluation Society (NLPES) Peer Review Committee and the NCSL liaison to NLPES organized a peer review team consisting of two highly experienced and respected program evaluators from Florida and North Carolina (see Appendix A).

The Texas Sunset Advisory Commission recognizes the importance of ensuring the quality of the office's work. The purpose of this peer review was to identify whether the Texas Sunset Advisory Commission processes meet statutory and internal criteria and professional best practices as determined by its NCSL/NLPES peer reviewers. Sunset also asked the team to provide recommendations for process improvements.

Conclusion

The Texas Sunset Advisory Commission conducts its sunset reviews in compliance with the Texas Sunset Act, internal operating guidelines and professional best practices. In the peer review team's opinion, Sunset's quality control system is suitably designed and followed, providing reasonable assurance that its products meet core professional characteristics for the period reviewed.

History of the Texas Sunset Advisory Commission

Sunset is the regular assessment of the continuing need for a state agency to exist. The sunset process is meant to answer two basic questions.

- Are an agency's functions needed?
- If so, how can the agency work better and save money?

The Texas Sunset Advisory Commission was created by the Texas Legislature in 1977. Early sunset reviews focused on whether the state should regulate certain occupations. The Legislature has expanded the Sunset Commission's mission to serve its need for analyzing significant state policies and for addressing special concerns regarding state agencies and other governmental entities.

The Texas Sunset Advisory Commission has 12 members.

- Five members of the Senate.
- One public member appointed by the lieutenant governor.
- Five members of the House of Representatives.
- One public member appointed by the speaker of the House.

The Commission's chairmanship rotates between the Senate and the House every two years.

The Sunset Commission is authorized to appoint a director. The director employs sufficient staff to carry out the Commission's responsibilities. Sunset staff uses specific criteria contained within the Sunset Act to evaluate programs and functions of a state agency or other entity placed under sunset review.

Section 325.001, Texas Code Annotated, also known as the Texas Sunset Act, contains the key laws governing the sunset process. In 2013, the Legislature added additional criteria specific to occupational licensing agencies.

About 130 state agencies are subject to the Texas Sunset Act. Agencies under sunset typically undergo review once every 12 years. Generally, the Legislature groups and schedules agencies for review by topic to allow the examination of all major state policies related to a particular function at once, such as health and human services and financial regulation. About 20 to 30 agencies go through the sunset process each legislative session.

Methodology

The Texas Sunset Advisory Commission contracted with NCSL to perform its 2015 peer review.

The Texas Sunset Advisory Commission conducts its reviews in accordance with the Texas Sunset Act and internal operating guidelines. This peer review compared the office's policies and performance to the knowledge base of peers from similar offices and to professional best practices.

Specifically, the peer review team sought to determine whether the sample of reports reviewed, as well as the processes that underlie the reports, met statutory and internal criteria and professional best practices. The team also was asked to provide a collective assessment of Commission processes, focusing on five areas.

1) Scoping.
2) Internal issue development meetings.
3) Internal editing process.
4) Use of data analysis and methodologies.
5) Approaches for measuring and reporting success and outcomes.

The peer review team reviewed documentation relating to the function of Sunset and its policies and procedures. The reports were selected by members of the peer review team from a list of reports released between 2011 (83rd Legislature) and 2015 (84th Legislature) (see Appendix B). Each peer review team member took lead responsibility for review of two sunset reports. This included reviewing the reports, reviewing the supporting working papers, and interviewing current staff who worked on the sunset review. Five sunset reports received in-depth reviews.

The peer review team met with the full Sunset staff. During the meeting, introductions were made and everyone provided short descriptions of their backgrounds, including education and relevant work experience.

To determine the extent to which stakeholders and users of Sunset reports are satisfied, the peer review team interviewed five members of the Texas Sunset Advisory Commission and nine legislative staff from outside Sunset.

The team discussed its preliminary conclusions with Sunset's management team and peer review coordinator. The peer review team also presented its overall conclusion to the entire Sunset staff and answered questions from them.

In addition, the peer review team provided process improvement suggestions for Sunset management to consider. The recommendations were not criticisms of the office; rather, they were provided as opportunities for further refinement and do not affect the peer review team's overall judgment of the office.

Appendix A describes the qualifications of the peer review team members. Appendix B lists the sunset reports reviewed by the peer review team. Appendix C provides a general profile of program evaluation offices.

SUNSET COMPLIANCE WITH BEST PRACTICES

The Texas Sunset Advisory Commission conducts its sunset reviews in compliance with the Texas Sunset Act, internal operating guidelines and professional best practices. In the peer review team's opinion, Sunset's quality control system is suitably designed and followed, providing reasonable assurance that its products meet core characteristics for the period reviewed. The peer review team found many positive aspects of Sunset's work.

Credibility/Effectiveness

The Sunset office has built a good reputation. It is respected by its counterpart agencies across the country. Sunset's model processes on licensing/regulation, contracting and grants are national models.

The Sunset staff is well respected within the Texas Legislature. The office is a mature organization with well-established processes and protocols. In fact, Texas is one of the few states that has been able to maintain a strong sunset process over the years.

Sunset's Advisory Commission also is viable, active and efficient. When asked, Sunset staff work closely with Commission members on implementing recommendations.

The sunset process involves stakeholders and encourages public comment at all stages of the process.

The Sunset website has many good features, including the ability to find agencies currently under review and various ways to search for results of reviews (such as by agency or cycle/year).

Independence

Sunset's authority is established in s. 325.001, Texas Code Annotated. This statutory authority provides Sunset with considerable assurance that the office can function independently. Agencies are appropriately involved in the sunset process, while Sunset staff maintains its independence.

Competence

Sunset analysts are well qualified. They hold a variety of advanced degrees and bring outside work experiences from state, local or private levels.

Reliability

Sunset's system of quality control and assurance is established through its statutory authority, the Sunset staff handbook and other means. These documents provide detailed, useful guidance to analysts when performing sunset work.

The office also conducts regular internal reviews of its processes.

APPENDIX A: PEER REVIEW TEAM

Brenda Erickson

Brenda Erickson is a program principal in the Legislative Management Program at NCSL. She specializes in legislative processes and serves as the NCSL liaison to NLPES. Ms. Erickson has coordinated peer reviews for the Hawaii Office of the Auditor, the Nebraska Legislative Audit Office, the South Carolina Legislative Audit Council, and the Washington Joint Legislative Audit and Review Committee. She also has participated in numerous assessments of legislative process and staffing, including studies in Arizona, Arkansas, Maine, Oregon, Tennessee and Virginia. She has worked at NCSL for 31 years. Before joining NCSL, she worked for the Minnesota House of Representatives for five years. Ms. Erickson received her bachelor's degree in math from Bemidji State University.

> Brenda Erickson
> Program Principal
> National Conference of State Legislatures
> 7700 East First Place
> Denver, Colo. 80230
> Phone: (303) 856-1391
> brenda.erickson@ncsl.org

Kathy McGuire

Kathy McGuire is deputy director of the Office of Program Policy Analysis and Government Accountability (OPPAGA), where she has worked since 1982. OPPAGA is the Florida Legislature's program and policy evaluation research office. She assists the director in managing OPPAGA operations to ensure that office products meet the Legislature's information needs, including working with House and Senate leadership; monitoring project progress; editing reports and related products; and identifying and helping to resolve organizational issues. Ms. McGuire has been active in NLPES for 15 years, including serving on the Executive Committee and as the NLPES Chair. She helped develop the NLPES Peer Review

program and has served on three prior peer reviews. She is a graduate of the NCSL Legislative Staff Management Institute, has taught evaluation at Florida State University, and is a member and past chair of the Southeast Evaluation Association. Ms. McGuire received a master's degree in urban and regional planning Florida State University.

Kathy McGuire
Deputy Director
Florida Office of Program Policy Analysis and Government Accountability
111 West Madison Street, Room 312
Tallahassee, Fla. 32399-1475
(850) 717-0516
mcguire.kathy@oppaga.fl.gov

John Turcotte

John Turcotte is the director of the North Carolina Program Evaluation Division, a position he has held since 2007. Mr. Turcotte was CEO of Turcotte Public Administration Consulting and Training, LLC (TPACT) from 2003-2007; TPACT provided training and consulting at all levels of government. From 1996-2003, he was director of Florida's Office of Program Policy Analysis and Government Accountability. From 1977-1995, Mr. Turcotte served as director of Mississippi's Joint Legislative Committee on Performance Evaluation and Expenditure Review. He was one of the founders of the Legislative Program Evaluation Society in 1975, was the NLPES Chair in 1978 and served as the NCSL Staff Chair in 1994. Mr. Turcotte also has been an adjunct professor of political science at Mississippi College and Millsaps College and an instructor of American Government at Hinds Community College in Jackson, Mississippi. He received a bachelor's degree in political science and a master's degree in political science and American government from the University of Southern Mississippi. He completed additional study at Millsaps College, the University of Michigan, Federal Executive Institute, Mississippi Executive Development Institute and the NCSL Legislative Staff Management Institute. In 1986, the Council of State Governments selected Mr. Turcotte for its first class of Henry Toll Fellows.

John W. Turcotte
Director
Program Evaluation Division
North Carolina General Assembly
Legislative Office Building, Suite 100
300 North Salisbury Street
Raleigh, N.C. 27603-5925
(919) 301-1399
john.turcotte@ncleg.net

APPENDIX B. SUNSET REPORTS REVIEWED

Department of Family and Protective Services, July 2015
(84th Legislative Cycle: September 2013 – September 2015)

Health and Human Services Commission and System Issues, July 2015
(84th Legislative Cycle: September 2013 – September 2015)

State Office of Administrative Hearings, July 2015
(84th Legislative Cycle: September 2013 – September 2015)

Texas Ethics Commission, July 2013
(83rd Legislative Cycle: September 2011 – September 2013)

Texas Lottery Commission, July 2013
(83rd Legislative Cycle: September 2011 – September 2013)

APPENDIX C. PROFILES OF PROGRAM EVALUATION OR SUNSET OFFICES

Among the many roles state legislatures play—debating public policy, enacting laws and appropriating funds—is the fundamental responsibility to oversee government operations and ensure that public services are effectively and efficiently delivered to citizens.

To help meet this oversight responsibility, most state legislatures have created specialized offices that conduct research studies and evaluate state government policies and programs. These studies—variously called policy analyses, program evaluations, performance audits or sunset reviews—address whether agencies are properly managing public programs and identify ways to improve them. Similar offices in legislatures around the country serve a vital function. They significantly bolster legislatures' ability to conduct independent oversight of the other branches of government and determine if legislative program priorities are adequately fulfilled.

A sunset or legislative program evaluation office provides a legislature with an independent, objective source of information. Most, if not all, parties presenting information to a legislature have a vested interest in the information. These include executive branch agencies, citizens' groups and lobbyists. A sunset or legislative program evaluation office can provide objective information without taking a position on results of its use. It also allows a legislature to ensure that it can obtain the information it needs without depending upon the executive branch to provide it.

Most legislative program evaluation offices have been in operation for many years. Ninety-two percent have served their legislatures more than 10 years, with most offices having served for more than 25 years. The Texas Legislature has had a sunset function in place since 1977.

To help ensure that they produce high-quality work, offices use professional standards to guide their activities. Approximately half of offices follow Government

Auditing Standards, issued by the U.S. Government Accountability Office. A quarter of offices use internally developed standards and some offices use more than one set of standards. Most remaining offices have not adopted formal standards. The Texas Sunset Advisory Commission conducts its sunset reviews in compliance with the Texas Sunset Act, internal operating guidelines and professional best practices.

Legislative program evaluation offices vary substantially in size, reflecting the diversity among states and legislatures. According to the 2015 *Ensuring the Public Trust* survey, a quarter of legislative audit offices have 25 to 50 evaluation staff. The Texas Sunset Advisory Commission staff of 28 is consistent with many offices across the nation.