



**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Office of Interstate Oil Compact Commissioner for Texas
Office of Interstate Mining Compact Commissioner for Texas
Office of Southern Interstate Nuclear Compact Board Member for Texas
Texas Commission on Interstate Cooperation
Texas Commission on Uniform State Laws
Texas Committee on Purchases and Services of Blind and Severely Disabled Persons
Council for Social Work Certification

A Staff Report
to the
Sunset Advisory Commission



1982

SUNSET ADVISORY COMMISSION

STAFF REPORT

on the

**OFFICE OF SOUTHERN INTERSTATE NUCLEAR COMPACT
BOARD MEMBER FOR TEXAS**

1982

FOREWORD

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that the normal pressures of the legislative process tend to prevent a systematic review of the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which a review and redefinition of state policy can be accomplished on a regular systematic basis.

The Texas Sunset Act (Article 5429K, V.A.C.S., as amended) was enacted by the 65 th Legislature in 1977. Under the provisions of the Act, agencies are automatically terminated according to a specified timetable, unless specifically continued by the legislature.

To assist the legislature in making the determination of whether an agency should be continued and, if continued, whether modifications should be made to its operations and organizational structure, the Act establishes a ten-member Sunset Advisory Commission composed of eight legislative members and two public members. The commission is required to evaluate the performance of the agency in accordance with specific criteria set out in the Act and to recommend necessary changes resulting from the findings of the evaluation.

The process by which the commission arrives at its recommendations moves through three distinct phases beginning with a self-evaluation report made by the agency to the commission. The second phase involves the preparation of a report to the commission by its staff, evaluating the activities of the agency, and proposing suggested changes for commission consideration. The final phase involves public hearings on the need to continue or modify an agency and the development of commission recommendations and legislation, based on the agency self-evaluation, staff report, and public testimony.

The Sunset Commission's findings, recommendations, and proposed legislation are then required to be transmitted to the legislature when it convenes in regular session.

INTRODUCTION AND ORGANIZATION OF AGENCY REVIEWS

The Texas Sunset Act abolishes several agencies on September 1, 1983 unless each is re-established by the 68th Legislature.

The staff reviewed the activities of these agencies according to the criteria set out in the Sunset Act and has based its conclusions on the findings developed under these criteria.

Taken as a whole, these criteria direct the review of an agency to answer four primary questions:

1. Does the state need to perform the function or functions under review?
2. Could the public still be adequately served or protected if the functions were modified?
3. Is the current organizational structure the only practical way for the state to perform the function?
4. If the agency is continued and continues to perform the same functions, can changes be made which will improve the operations of the agency?

The report is structured to present the performance evaluation of each agency separately. The application of the across-the-board recommendations, developed by the commission to deal with common problems, is presented in a chart at the end of each report and is not dealt with in the text except in one instance. When the review develops a position which opposes the application of a particular recommendation, the rationale for the position is set forth in the text.

SUMMARY OF STAFF FINDINGS AND CONCLUSIONS

SUMMARY

Organization and Objectives

The Southern Interstate Nuclear Board, the forerunner of the Southern States Energy Board, was established in 1961 for the general purpose of encouraging and developing nuclear energy in the south. Texas, along with Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia were the original states to enter into this interstate effort. Since its creation, Puerto Rico has also joined the agreement. The board maintains close ties to the Southern Governors Association and the Southern Legislative Conference, serving as a technical resource for both organizations. In order to reflect an increased interest in a broader range of energy and environmental issues affecting southern states, the board was renamed the Southern States Energy Board in 1978. At that time, the board proposed new compact language which would increase each state's representation from one to three members. The governor of each member state would continue to appoint one representative, and presiding officers of each house of the legislature would appoint a member.

The board is composed of one representative from each member state. Texas legislation provides the governor with the authority to appoint a representative to the board. Edward O. Vetter currently serves as Governor Clements' appointee to the board and Texas is an active participant in the board's activities.

The board's areas of responsibility include the following: 1) mobilizing and using the collective influence of southern state governments in shaping federal policies, programs, and administrative practices; 2) developing and administering programs of technical assistance and policy analysis which assist member jurisdictions to better utilize their resources in energy and environmental matters; 3) developing and recommending regional policy positions for consideration by the southern governors and legislatures; 4) facilitating communication and interaction among the member jurisdictions; and 5) providing technical assistance and policy analysis in energy and environmental matters to other regional organizations, associations, and agencies.

For fiscal year 1981-82, Texas' contribution is \$34,000 from the General Revenue Fund. The total board budget is \$1,188,040 with \$297,429 coming from state support payments. The board is headquartered in Atlanta, Georgia and has a staff of 14.

The review of the activities of the energy compact board member indicated that Texas has been well represented on the board and has benefited from membership in the compact. However, certain modifications are needed in order for Texas to continue participation in the same manner as other members and to provide information on the activities of Texas in the compact.

The first change relates to the adoption of new compact language proposed by the board. Although the board has moved away from its primary focus on nuclear power, Texas has not yet adopted these changes as well as changes in the

composition of the state's representation on the board. These changes have been approved by a majority of the compact members.

The second modification relates to information concerning Texas' participation on the board. Currently, there is no annual report detailing the activities of Texas' member and associated financial information. This information would be useful to other state energy agencies and policy bodies as well as the general public and the legislature.

Need to Continue Functions

The review indicated that there is a continuing need for Texas' participation in interstate organizations representing the interests of southern states on energy and other matters.

Approaches for Sunset Commission Consideration

I. MAINTAIN BOARD MEMBERSHIP WITH MODIFICATIONS

A. Policy-making structure

1. Statutory changes

- a. The statute should be modified to adopt the new compact language proposed by the board which changes the focus of the board to include all energy matters affecting the south and increases Texas' membership on the board from one to three members.**

B. Agency operations

1. Statutory changes

- a. The statute should be modified to require a report detailing the activities and expenditures of the Texas members of the Southern States Energy Board, to be included in the annual financial report of the Office of the Governor.**

II. ALTERNATIVES (statutory)

- A. Amend the statute to require that appointments to the board be from the membership of Texas Energy and Natural Resources Advisory Council (TENRAC).**

Currently, there are no statutory restrictions placed on the appointment of a representative to the SSEB. This change would require that appointments be made from TENRAC's membership. If the statute is changed in this fashion, TENRAC should be designated as the agency to perform necessary administrative functions related to Texas' activities on the board. The benefits of this approach would be to provide a means to ensure that state officials serving on the agency responsible for developing overall energy policy in Texas would be represented on the board. It would also provide a central point for payment of dues, incidental expenses, and the development of the report of board activities which would be included in the annual report of TENRAC.

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
2. Does the agency operate efficiently?
3. Has the agency been effective in meeting its statutory requirements?
4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
5. Is the agency carrying out only those programs authorized by the legislature?
6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?

BACKGROUND

Historical Development

The Office of the Southern States Energy Board Member for Texas was established by the legislature in 1961 when Texas joined what was then known as the Southern Interstate Nuclear Compact. The enabling legislation provided for Texas' membership and representation on the Southern Interstate Nuclear Board.

To understand Texas' involvement in the compact, it is helpful to briefly trace the compact's history. In 1961, the Southern Interstate Nuclear board was formed with an initial membership of 16 states, including Texas, to encourage and develop the use of nuclear energy in the south. Nuclear energy was seen as a significant aid to the industrialization of a balanced and diversified southern economy. Through the 1960's and 1970's, the use of nuclear power in the south and in Texas increased significantly as did levels of economic and industrial activity. During this time, the focus of the board began to shift to all aspects related to the development of energy.

In order to clarify its change in focus, in 1978, the board voted to change the name to the Southern States Energy Board and redefine its goals and functions to include current energy and environmental issues. Additionally, at the suggestion of the Southern Legislative Conference, the board proposed to increase state representation from one to three members. One member would continue to be appointed to represent the governor with the other members representing each house of the state's legislature. Each state would continue to receive one vote on the board, but the vote can only be cast by a decision of a majority of the state's members. These changes require approval by the member states' legislatures with 13 of the 17 members having given such approval.

Current Programs and Objectives

The activities of the board are supported by dues paid by member states and by grants or contracts for specific projects. In 1981, board expenditures totaled \$1,188,040, with \$297,429 coming from state support payments. Texas' share for fiscal year 1981, paid out of the General Revenue Fund, totaled \$34,000. State contributions are determined by dividing one-half of the budget supported by state payments equally among the states. One-quarter of the budget is assigned based on the ratio of a state's population to total population of the member states, and one-

quarter is assigned based on the relative average per capita income of the residents of each state.

Overall board activities are coordinated by an executive director and a 13-member staff headquartered in Atlanta, Georgia. In addition, the board has a Washington coordinator working out of the Southern Growth Policy Board's offices in the Hall of the States in Washington, D.C. The Washington coordinator monitors energy and environmental legislation in Congress, assists the Atlanta staff in analyzing this information, and disseminates the results to member states' Washington offices.

The board and its staff maintain close ties to the Southern Governors Association (SGA), the Southern Legislative Conference (SLC), and the Southern Regional Energy Advisory Board (SREAB). These organizations are the chief policy making groups for the south. SREAB recommends policy positions and works to implement positions taken by these groups, but does not adopt policy positions of its own. It serves as staff to SREAB and the Southern Growth Policy Board's Task Force on Energy, and serves as a technical resource to the SGA and the SLC energy committees.

REVIEW OF OPERATIONS

The evaluation of the operations of the agency is divided into general areas which deal with: 1) a review and analysis of the policy-making body to determine if it is structured so that it is fairly reflective of the interests served by the agency; and 2) a review and analysis of the activities of the agency to determine if there are areas where the efficiency and effectiveness can be improved, both in terms of the overall administration of the agency and in the operation of specific agency programs.

Policy-Making Structure

In general, the structure of a policy-making body should have as basic statutory components specifications regarding the composition of the body and the qualifications, methods of selection, and grounds for removal of the members. These should provide executive and legislative control over the organization of the body and should ensure that the members are competent to perform required duties, that the composition represents a proper balance of interests impacted by the agency's activities, and the viability of the body is maintained through an effective selection and removal process.

The enabling statute for Texas' membership on the Southern States Energy Board provides that the governor appoint one member to represent Texas on the board. This representative serves at the pleasure of the governor. Edward O. Vetter, a current member of TENRAC, serves as as the governor's appointee.

The new compact language, proposed in 1978 and presently adopted by 13 of the 17-member jurisdictions, provides for increasing each state's representation on the board from one to three members. One member would continue to be appointed by the governor, with the remaining two members representing the respective houses of the state legislature and appointed by the presiding officer of each house. Each state continues to receive one vote on the board. The new compact language also reflects the board's expanded focus to include all energy related issues affecting the south, and provides for a change in name to the Southern States Energy Board. Texas has not yet adopted the revised compact language.

The review of the policy-making structure indicated that, while Texas has been well represented on the energy board, one improvement could be made in this area. Although the board has moved away from its primary focus on nuclear

power, Texas has not yet adopted the compact language reflecting these changes as well as changes in the composition of the state's representation on the board. These changes have already been approved by a majority of the member jurisdictions. To be consistent with the general agreement among the states, Texas should adopt this new compact language.

Summary and Recommendations - Policy-making Structure

The structure of the policy-making body can be improved through the adoption of the new compact language. Texas has not yet adopted this language, which changes the focus of the board from nuclear power to all energy issues and changes the members' representation on the board from one to three members.

The following recommended change to the agency's statute or practices was developed to address the above concerns.

- 1. In order to reflect current activities of the board and changes in representation of member jurisdictions, Texas should adopt the compact language as proposed by the Southern States Energy Board.*

Overall Administration

The evaluation of the overall agency administration focused on determining whether the operating policies and procedures of the agency provide a framework which is adequate for the internal management of personnel and cash resources and which satisfies reporting and management requirements placed on the agency and enforced through other state agencies.

The administration of the board's central office was not reviewed in detail. The review of administrative activities was limited to those areas related to Texas' participation on the board. These functions include payment of compact dues, processing of travel vouchers, and clerical duties. In general, TENRAC staff provide any needed clerical support, while compact dues are paid from the Office of the Governor.

While no problems were identified concerning these administrative functions, the review indicated one improvement which could be made related to administrative activities. The review of the statute showed that there is no provision for an annual report, a requirement generally placed on other agencies as a part of their overall administrative responsibilities. Reports of this nature are required because this is one of the few ways by which the public, the legislature, and state agencies can be informed of the activities of an agency.

Although Texas has participated in the compact since its inception and has been an active participant, the review was able to document few pieces of information specifically on the activities of the office of the board member for Texas.

Requiring an annual report could increase the general awareness of the activities of the board members, and it would require relatively little effort or cost to include this information in the annual financial report required of the Office of the Governor.

Summary and Recommendations - Overall Administration

The review indicated that administrative activities are limited to processing travel vouchers and payment of compact dues. No problems were identified with these procedures; however, one improvement could be made related to administrative activities. In order to improve awareness of the activities of the board members and increase the availability of information, a report to the legislature should be required to be included as part of the annual financial report of the Office of the Governor.

The following recommended change to the agency's statute or practices was developed to address these concerns.

- 1. The statute should be modified to require a report detailing the activities and expenditures related to Texas' participation on the board to be included in the annual financial report of the Office of the Governor.*

**NEED TO CONTINUE AGENCY FUNCTIONS
AND
ALTERNATIVES**

The analysis of the need to continue the functions of the agency and whether there are practical alternatives to either the functions or the organizational structure are based on criteria contained in the Sunset Act.

The analysis of need is directed toward the answers to the following questions:

1. Do the conditions which required state action still exist and are they serious enough to call for continued action on the part of the state?
2. Is the current organizational structure the only way to perform the functions?

The analysis of alternatives is directed toward the answers to the following questions:

1. Are there other suitable ways to perform the functions which are less restrictive or which can deliver the same type of service?
2. Are there other practical organizational approaches available through consolidation or reorganization?

NEED

The analysis of need and alternatives is divided into: 1) a general discussion of whether there is a continuing need for the functions performed and the organizational setting used to perform the function; and 2) a specific discussion of practical alternatives to the present method of performing the function or the present organizational structure.

Functions

A review and analysis of materials relating to the creation of the compact and Texas' membership on the board shows that the original function of the compact was to provide an active forum through which member states could impact the development of nuclear power in the south. The board expanded its focus in the mid 1970's to include all energy issues. With the establishment of the Southern Regional Energy Advisory Board, the SSEB shifted its activities away from policy formation and began to serve as a technical resource for SREAB and other southern interstate organizations. These organizations, particularly the Southern Governor's Association, now provide the policy forum for the development of the position of southern states on energy issues. The Southern States Energy Board, by serving as a technical resource and as staff in the energy area for these organizations, is an integral component in the operations of this forum.

The need for such a forum exists as long as energy-related problems continue to affect the south. Interviews with personnel of TENRAC, the Southern Governor's Association, and SSEB indicated that current efforts of the energy board relate to 1) opposing federal initiatives to restrict state resource severance taxes; 2) monitoring federal efforts in the establishment of high level radioactive waste facilities and assisting the states in dealing with these efforts; and 3) assisting the states with regional approaches to low-level radioactive waste management. These areas contain significant issues which have not been resolved and which are important to Texas.

In light of the fact that significant policy issues concerning energy and the environment continue to be of importance to the south and to Texas, there is a continuing need for the involvement of Texas in the activities of the Southern States Energy Board.

Agency

Texas' participation on the compact is provided through membership on a board. There is no agency in the usual sense. A review and analysis of whether the current organizational structure is the only practical means of performing the function is not appropriate. However, one element of the structure of the office of the energy board member was reviewed as to its appropriateness.

Currently, Texas is represented by an appointee of the governor, who is also a member of TENRAC, the state's primary energy policy body. While there are no statutory requirements that Texas members of the board be knowledgeable of the state's energy policies, certain benefits have resulted from having the member be on TENRAC in the past. This has allowed for coordination of the state's energy policies with Texas' position on the activities of the energy board. With the expansion of membership from one to three members, it would continue to be beneficial for this coordination to exist. While this situation has worked well, there is no assurance that future appointments will be from TENRAC, thus leaving the possibility that Texas' representative would not have direct contact with the agency responsible for formulating the state's energy policies.

ALTERNATIVE APPROACHES FOR COMMISSION CONSIDERATION

The review indicated that there is a need for Texas' continued participation on the board. However, one area was identified where the commission should consider an alternative approach. This approach relates to Texas appointments to the board.

While the approach of having the board members be from the agency primarily responsible for the state's energy policy would limit the appointment powers of those responsible for appointments, the requirement that the board members have a certain background and knowledge or have policy-making responsibilities in the energy area would be beneficial. In order to provide for coordination in the future, an alternative approach would be to require that all appointments to the energy board be made from the membership of TENRAC. If the Texas members are appointed from TENRAC, all administrative functions related to the board should be performed by TENRAC staff, including payment of compact dues and preparation of the report of board activities which could be included in the annual report of TENRAC. This would centralize all staff activities in one location, and allow for direct control by Texas' representatives to the board.

Summary of Need and Alternatives

Participation in the compact provides a forum for interstate discussion of energy issues affecting the south. The board itself provides staff and technical assistance to other interstate organizations which formulate energy policy positions for the south. The need for such a forum exists as long as issues such as restrictions on state resource severance taxes, placement of high-level radioactive waste facilities, development of regional low-level radioactive waste sites, and other energy matters continue to affect Texas and other southern states. Considering the current relevance of these issues, there is a continuing need for Texas' involvement in the activities of the energy board.

An analysis of Texas' participation on the board revealed that the state has been well represented. Texas' current representative to the board is Edward O. Vetter, a member of TENRAC. This relationship provides for coordination of the state's energy policies with the activities of the board. However, there is no statutory requirement

that Texas' future representation to the SSEB continue to be from TENRAC's membership.

Based on the above findings, the review identified one alternative to the current method of appointment. The following suggested approach was developed to implement this alternative.

- 1. Amend the statute to require that appointments to the board be from the membership of TENRAC.*

Currently, there are no statutory restrictions placed on the appointment of a representative to the SSEB. This change would require that appointments be selected from TENRAC's membership. If the statute is changed in this fashion, TENRAC should be designated as the agency to perform necessary administrative functions related to Texas' activities on the board. The benefits of this approach would be to provide a means to ensure that state officials serving on the agency responsible for developing overall energy policy in Texas would be represented on the board. It would also provide a central point for payment of dues, incidental expenses, and the development of the report of board activities which would be included in the annual report of TENRAC.

ACROSS-THE-BOARD RECOMMENDATIONS

**OFFICE OF SOUTHERN INTERSTATE NUCLEAR
COMPACT BOARD MEMBER FOR TEXAS**

| Applied | Modified | Not Applied | Across-the-Board Recommendations |
|---------|----------|-------------|---|
| | | | A. ADMINISTRATION |
| | | X | 1. Require public membership on boards and commissions. |
| | | X | 2. Require specific provisions relating to conflicts of interest. |
| | | X | 3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board. |
| | | X | 4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee. |
| | | X | 5. Per diem to be set by legislative appropriation. |
| | | X | 6. Specification of grounds for removal of a board member. |
| | | X | 7. Board members shall attend at least one-half of the agency board meetings or it may be grounds for removal from the board. |
| | | X | 8. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act. |
| | | X | 9. Review of rules by appropriate standing committees. |
| | X | | 10. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute. |
| | | X | 11. Require the board to establish skill oriented career ladders. |
| | | X | 12. Require a system of merit pay based on documented employee performance. |
| | | X | 13. The state auditor shall audit the financial transactions of the board during each fiscal period. |
| | | X | 14. Provide for notification and information to the public concerning board activities. |
| | | X | 15. Require the legislative review of agency expenditures through the appropriation process. |

Office of Southern Interstate Nuclear
Compact Board Member for Texas
(continued)

| Applied | Modified | Not Applied | Across-the-Board Recommendations |
|---------|----------|-------------|---|
| | | | B. LICENSING |
| | | X | 1. Require standard time frames for licensees who are delinquent in renewal of licenses. |
| | | X | 2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date. |
| | | X | 3. Provide an analysis, on request, to individuals failing the examination. |
| | | X | 4. (a) Authorize agencies to set fees. |
| | | X | (b) Authorize agencies to set fees up to a certain limit. |
| | | X | 5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions. |
| | | X | 6. (a) Provide for licensing by endorsement rather than reciprocity. |
| | | X | (b) Provide for licensing by reciprocity rather than endorsement. |
| | | X | 7. Authorize the staggered renewal of licenses. |
| | | | C. ENFORCEMENT |
| | | X | 1. Authorize agencies to use a full range of penalties. |
| | | X | 2. Require files to be maintained on complaints. |
| | | X | 3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. |
| | | X | 4. Specification of board hearing requirements. |
| | | | D. PRACTICE |
| | | X | 1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading. |
| | | X | 2. The board shall adopt a system of voluntary continuing education. |