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Subject Special Purpose Districts to Sunset Review

Key Points

- Nearly 130 Texas state government agencies are subject to a revolving sunset review process, which has resulted in the elimination, consolidation, or modifications of state agencies and programs.
- Special purpose districts should be subject to the same sunset review process as other state agencies to ensure their necessity, effectiveness, and efficiency, and to provide greater public input and transparency.
- While special purpose districts are required to file certain financial information to the Comptroller, state officials lack enforcement authority to ensure compliance.

Introduction

There are more than 150 agencies of state government in Texas ([Texas.gov, n.d.](#)). The overwhelming majority of these agencies, nearly 130, are located in the executive branch of state government and are required to undergo a periodic sunset review every 12 years. A sunset review is a law that automatically terminates a governmental agency, law, or program on a pre-determined date if it does not receive legislative approval to continue operations before that date. In that case, the sun will have set on that agency, law, or program.

But some government entities, such as special purpose districts (SPDs), are not subject to the same sunset process. Thousands of such districts have been created in Texas over the years ([Senate Research Center \[SRC\], 2014](#)). The Texas Constitution Article III, Sec. 52, authorizes the state to create special purpose districts as independent governmental bodies like counties and municipalities, but for limited purposes such as the provision of utilities, hospitals, water conservation services, libraries, fire control, and school districts.

Most of these districts have the power to impose property taxes, sales taxes, user fees, debt obligations and/or eminent domain. Some, but not all, report their financial information such as budgets, annual reports, and detailed spending information to the Comptroller and make the information available online. Greater transparency should be required of all of these districts. Like all local governments, these districts are not subject to sunset review, as is required of state executive branch agencies. Some form of sunset review should be required for these districts, as it would provide greater oversight over them and give the taxpaying public and the state an opportunity to evaluate whether they should continue to exist.

In the state of Texas, most agencies of state government are subject to sunset review. They are also overseen by commissioners or board members appointed by the governor and confirmed by the Senate. Their budgets are appropriated by the Legislature and their performance and activities are reviewed on an ongoing basis by legislative oversight committees. Every 12 years (or as otherwise determined by the Legislature), the entire agency and all of its authority and functions are subject to the sunset review process.

The sunset review process begins with the sunset commission thoroughly reviewing each agency with an approaching sunset date. The commission first seeks to answer the question: is the agency needed? If the answer is no, then the commission makes the recommendation to eliminate that agency or allow it to expire on its sunset date. If the answer is yes, then the commission will recommend ways in which the agency could be more effective and efficient ([Sunset Advisory Commission, 2021](#),

[p. 1](#)). Ultimately, the Legislature decides whether to adopt or amend the recommendations and pass legislation to reauthorize the agency and its programs. If it chooses not to pass such legislation or fails to do so by the end of that regular legislative session, the agency and its programs are eliminated.

While not all agencies that are initially recommended for elimination are actually eliminated, the review process nonetheless provides an important check on the size and cost of state agencies and their programs, and it helps to foster and preserve their transparency. The process also provides an opportunity for the Legislature to amend the statutory authority, rules, processes, and procedures governing these agencies.

Unfortunately, this important sunset review process—with its opportunities for transparency, greater public input, and efficiencies—is not required or available for special purpose districts. In light of the previously mentioned benefits to the public, it is clear that special purpose districts should be made subject to the same sunset process as other state agencies.

Special Purpose Districts

The Texas Government Code, [Section 403.0241 \(a\)\(1\)](#), defines a special purpose district as:

a political subdivision of this state with geographic boundaries that define the subdivision's territorial jurisdiction. The term does not include a municipality, county, junior college district, independent school district, or political subdivision with statewide jurisdiction.

As of July 2014, there were 3,350 SPDs in the state of Texas ([SRC, 2014, p. 47](#)). Of this number, 1,026 were independent school districts ([Texas Association of School Boards, n.d.](#)).

While school districts make up the largest group by type, there are many other districts that perform functions such as soil and water conservation, provision of water and wastewater, ground control, tourism, wildlife management, and crime control. They are created by statute and by voter approval but are not subject to the same level of regular oversight and approval as other state agencies.

The structure, functions, and governance of each entity vary substantially but often include the authority to:

- impose a property tax;
- impose a sales and use tax;
- assess fees and other charges;
- issue bonds and borrow money;
- contract with other entities;
- sue and be sued;

- acquire, sell, or lease real or personal property; and/or
- exercise eminent domain.

Because of the sheer number of these special purpose districts, a number of potential problems may emerge, including:

- **Public Awareness.** SPDs exist at the local level, yet the public may not be fully aware of their existence and authority, and there is no ongoing process for review to allow members of the public to provide input on their continued existence.
- **Unnecessary, Ineffective, or Redundant Programs.** Without required review, the programs and activities can become unnecessary or overlap with other programs or SPDs, resulting in ineffectiveness, redundancies, and inefficiencies.
- **Increased Taxes.** Many SPDs have the authority to impose and increase sales and use taxes, property taxes, or fees.
- **Lack of Oversight and Accountability.** There is no required review process for the public or elected officials to review and determine the ongoing need, effectiveness, or efficiency of SPDs.
- **Reporting.** Texas law requires certain SPDs to annually file financial reports to the state Comptroller, but the Comptroller does not have enforcement authority to compel reporting or to even know which SPDs meet the threshold for required reporting.

Reporting

In order to address the policy questions above, reporting must be improved. The Texas Government Code requires the Comptroller to create and make available on the internet a “Special Purpose District Public Information Database” that includes information to be filed by each special purpose district with authority to impose an ad valorem tax, a sales and use tax, or fees, or which has gross receipts in excess of \$250,000 ([Tx. Govt. Code 403.0241](#)). The information includes:

- The name of the special purpose district and its board members;
- Contact information for the district and that of any contractors;
- Financial information required under the Local Government Code;
- Debt obligations;
- Total bonds authorized and issued;

- Rate of any sales and use tax imposed; and
- Any ad valorem tax rate imposed.

While SPDs subject to reporting are required to do so by law, the Comptroller lacks enforcement authority to ensure compliance. In fact, only 1,965 of the 3,350 were reporting to the Comptroller as of 2014 ([SRC, 2014, p. 47](#)). Section 403.0242 of the Government Code only requires the Comptroller's office to publish a list of entities that have failed to comply, but it does not provide any penalty if they fail to do so. As such, the Comptroller is not even able to verify "the accuracy or veracity of reports received under this chapter." The Comptroller makes it clear that it is even "incumbent upon the reporting entity to determine whether it is required to submit a report in accordance with [the law]" ([Texas Comptroller, n.d.-a](#)).

In order to incentivize reporting, the Texas Comptroller created the "Public Accounts' Transparency Stars" program. The purpose of the program is to publicly recognize and thereby honor government entities that provide information beyond what is required by law—including financial information on all areas of contracts and procurement, economic development, public pensions, and debt obligations—and that provide financial "summaries, visualizations, downloadable data and other relevant information" ([Texas Comptroller, n.d.-b](#)).

While the Comptroller has taken steps to obtain additional data and make it more readily available to the public, the Legislature should provide the Comptroller additional authority to issue fines or other penalties for violations of the law.

Sunset Reports History and Success

The Sunset Advisory Commission (SAC) was established by state law in 1977. Since that time, the sunset process has abolished 42 agencies and programs, and consolidated or transferred an additional 52, saving over \$1 billion in taxpayer funds ([SAC, 2021, p. 9](#)).

In the 87th regular legislative session, the sunset commission recommended 115 statutory changes after initial recommendations and public hearings. The Legislature adopted 78% of these recommendations and added further changes on its own. The sunset commission also provided 114 management directives to state agencies to improve efficiencies and operations ([SAC, 2021, p. 9](#)).

Even in cases when initial sunset recommendations are not adopted by the Legislature, the process provides improvement and savings across the board, leading to a more efficient and effective state government.

If the sunset process provides benefits for the 129 agencies subject to review, why not provide such review for the more than 3,000 special purpose districts that are not currently subject to such review?

To facilitate the vast numbers of additional reviews, the reviews for these SPDs could be significantly limited in scope relative to other state agencies. Additionally, the reviews could be legislatively selected with priority given to first reviewing those SPDs that have not fully reported based upon the Comptroller's Transparency Stars Program.

Recommendations

1. Subject special purpose districts to a limited form of sunset review.
2. Provide greater transparency by authorizing the Comptroller to impose penalties on SPDs that do not voluntarily comply with reporting requirements.

Conclusion

There are thousands of special purpose districts operating in Texas with little or no oversight and very little public input. These SPDs should be subject to the state's sunset review process, which already covers other existing state government agencies. That process has returned the benefits of eliminating unnecessary agencies and programs, and revising other agencies and programs to be more effective and efficient. This process also results in greater public awareness and input as well as legislative action.

Current reporting requirements for SPDs lack any enforcement mechanism. Not all SPDs report required financial data and the Comptroller's office lacks the ability to determine which SPDs are required to report such data and which are fully in compliance. The Legislature should statutorily impose penalties on SPDs for failing to report required financial information.

Increased transparency and oversight of special purpose districts is needed, particularly for SPDs with authority to impose taxes, debt obligations, and eminent domain. Only by requiring and enforcing greater transparency and oversight over SPDs can Texans and their elected leaders determine whether special purpose districts continue to meet their needs. ★

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