



**Sunset Advisory Commission  
Spotlight on TxDOT, PUC, RRC and TCEQ**

Commission Decisions

*Texas Department of Transportation (TxDOT)*

- Commission passed all Sunset recommendations except for the following:
  - 1.1—Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation
    - Sen. Nichols offered a modification that would recommend replacing the Commission with a 3-member appointed commission
      - Sen. Hinojosa expressed support for 5-member to ensure adequate representation of different perspectives across entire state
      - Rep. Bonnen expressed support for single appointed commissioner due to lack in direct point of responsibility
      - Sen. Hegar expressed support for 5 or moving to 1
      - Nichols’s motion was not seconded
    - Bonnen offered a modification that would recommend replacing the Commission with a single appointed Commissioner and require Senate confirmation at the end of the Commissioner’s term
      - Modification was adopted 7 – 5
  - 3.5—Require TxDOT to help establish and provide support for transportation planning in rural areas of the state
    - Recommendation remained severed
  - 5.1—Authorize TxDOT to use the design-build model of project delivery for traditional highway projects
    - Nichols offered a modification that would recommend limiting design-build authority to projects only of \$200 million or greater
      - Nichols argued for testing the set limitation because the authority dramatically changes the process of designing and advertising for bids
      - Rep. Harper-Brown expressed concern with an “arbitrary” figure; Commission could need the authority for smaller projects
      - Nichols’ modification was defeated
    - 5.1 was adopted as recommended by Sunset staff 11 – 1
  - 7.1—Require TxDOT to review and report on improving the regulation of oversize and overweight vehicles
    - Mr. Charles McMahan offered a modification that would recommend quarterly reporting for TxDOT
      - Modification was adopted



- 9.3—Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account
  - Nichols offered a modification that would recommend depositing the fees into the State Highway Fund rather than the Beautification Account
    - Nichols argued the money could then be used for ongoing beautification if needed and not be restricted to beautification only
    - Modification was adopted
- 9.6—Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue Dedicated Texas Highway Beautification account
  - Nichols offered a modification that would recommend depositing the fines into the State Highway Fund with the same argument above
    - Modification was adopted
- 9.7—Require cities to pay the costs of condemnation if they do not allow relocation of billboards affected by state roadway projects within their jurisdictions
  - McMahan offered a modification that would allow billboard companies to choose which method to be taxed; the same method would be used for condemnation purposes
    - McMahan argued there is significant inequity between the value of the billboard’s ad valorem tax and condemnation purposes
    - Bonnen disagreed with the modification because it would create a significant change in statute
    - The Commission reaffirmed their desire to avoid getting into policy issues that do not concern the efficiency or effectiveness of agencies
    - Hegar emphasize the disagreement was not with McMahan’s issue, but with changing statute
    - McMahan’s motion was not seconded
- 12.1—Require 0.5 percent of highway or toll road projects be spent on landscaping projects in non-attainment and near non-attainment areas
  - Recommendation remained severed
- New Items
  - Nichols
    - Introduced item that would recommend requiring appointed officials serving as a member of the Transportation Commission to resign from office before accepting campaign contributions if running for office
      - Running for office and collecting contributions creates negative public perception
      - Item was adopted
  - McMahan



- Introduced a management action that would recommend creating an oversight committee to develop and monitor an implementation plan for the Restructure Council recommendations with deadline for implementation of recs June 30, 2014
  - Commission was opposed to creating a separate oversight committee
    - The two standing transportation committees will have oversight responsibilities
    - Recommended instead sending a letter to the two committees requesting continued oversight of the implementation of the Restructure Council's recommendations
    - Management action with letter was adopted
- Introduced item that would recommend TxDOT transition to a monoline agency focused on the planning, construction and design of roadways only; other responsibilities would be transferred out
  - McMahan argued for studying the agency and determining what needed to be moved
    - Pointed out Restructure Council had similar idea
  - Item would restructure and rename the entire agency
    - Bonnen expressed high opposition to large statutory change
  - McMahan's motion was not seconded

#### *Public Utility Commission of Texas (PUC)*

- Commission passed all Sunset recommendations except for the following:
  - 1.2—Transfer gas utility regulation from the Railroad Commission to the PUC
    - Recommendation remained severed
  - 1.4—Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC
    - Sen. Hinojosa offered a modification that would recommend moving rates to PUC but leaving Certificates of Convenience and Necessity (CCNs) with TCEQ
      - Rep. Cook strongly disagreed with modification arguing it is an economic issue PUC is more equipped to handle
      - Nichols also agreed with the Sunset rec
      - Hinojosa's modification was defeated
    - 1.4 was adopted as recommended by Sunset staff
- New Items
  - Rep. Anchia
    - Introduced item that would recommend establishing an energy efficiency coordinating council at PUC to monitor all efficiency programs



- Anchia argued there are energy efficiency programs diffused across agencies and entities throughout the state and a coordinating council would encourage sharing of ideas/experiences among them
- Commission expressed concern with changing statute to create council
- Anchia's item was defeated 6 – 6

### *Railroad Commission of Texas (RRC)*

- Commission passed all Sunset recommendations except for the following:
  - 1.1—Establish the Texas Oil and Gas Commission, governed by a part-time, appointed board, to assume the regulatory role currently served by the Railroad Commission, and continue the agency for 12 years
    - Hegar offered a modification that would recommend changing the configuration of the RRC to one elected oil and gas commissioner and include the “across-the-board recommendations” listed in Issue 1
      - Mr. Lamont Jefferson opposed modification and felt as an adjudicating body it is better to have 3 people than 1
      - Under Hegar's modification the Railroad Commission would be abolished Sept. 1, 2011 and the Governor would appoint a single interim commissioner
        - Interim commissioner would serve until 2012 general election
        - The commissioner elected in 2012 would serve a two-year term, ending with the 2014 general election
        - 4-year terms begin with the 2014 general election
      - Modification was adopted 8 – 4
    - Nichols offered a modification that would recommend prohibiting elected officials of the RRC from receiving campaign contributions, except in the final 12 months leading up to the general election on the final year of the term
      - Would be able to continue accepting contributions after election until the 30-day cutoff before session
      - Harper-Brown modified Nichols' modification, adding the provision would also apply to individuals not currently elected but seeking the office as a means of fair competition
      - Rep. Taylor expressed concern with putting limitations on elected officials and the ramifications it would have
      - Bonnen raised the question of whether or not campaign funds can transfer with an already elected official to a campaign for another office
        - Unclear if candidate has to declare new account with new treasurer



- Nichols added to his modification that Sunset would study issue and report to the Commission
    - Modification as modified was adopted
  - 2.3—Reconstitute the Oil Field Cleanup Fund as the Oil and Gas Fund, continued as a dedicated fund in General Revenue established to pay for the entire Oil and Gas program
    - Hegar offered a modification that would recommend changing the name of the fund to the Oil and Gas Regulation and Cleanup Fund
      - Hegar emphasized the fund has two separate functions and it is important to show understanding of the purpose of the fund
      - Modification was adopted
  - 2.5—Abolish the Oil Field Cleanup Fund Advisory Committee
    - Hegar offered a modification that would recommend, in addition to abolishing the Advisory Committee, including plugged orphan wells and abandoned wells in statute rather than appropriation rider subject to renewal every 2 years
      - Modification was adopted
  - 3.5—The Commission should publish additional complaint and enforcement data on its website
    - Hegar offered a modification that would recommend requiring the Commission to only publish data on violations that are confirmed and investigated through the enforcement process
      - Modification was adopted
- New Items
  - Nichols
    - Introduced a management action that would recommend directing the agency to revise notice of hearings provided to parties affected in forced pooling, authorize by statute a party affected by forced pooling to request a hearing on the matter in the county where the proposed well will be drilled, and authorize the commission by statute to develop a fee schedule, by rule, for increased charges associated with re-filing permits previously withdrawn
      - Management action was adopted

*Texas Commission on Environmental Quality (TCEQ)*

- Commission passed all Sunset recommendations except for the following:
  - 1.1—Continue the Texas Commission on Environmental Quality for 12 years
    - Anchia offered a modification that would recommend continuing TCEQ for 6 years
      - Modification was defeated
    - 1.1 was adopted as recommended by Sunset



- 4.3—Authorize TCEQ to assess administrative penalties for dam safety violations
  - By severing 4.3 TCEQ cannot assess administrative penalties
  - McMahan offered a management action that would recommend directing TCEQ to exempt dams classified as low-hazard
    - Record of the dams will still be kept in TCEQ database in case of reclassification in the future
    - Management action was adopted
- 5.2—Require water rights holders to maintain monthly water-use information and allow the Commission to access that information upon request
  - Hegar offered a modification that would clarify water rights holders would not be required to submit monthly water use reports to TCEQ, but be required to maintain the monthly water use information for the months the water rights holder actually used permitted water under the water rights permit
    - TCEQ can request the information as needed, but permittee will not be required to submit more frequently than annually
    - Modification was adopted
- 5.3—Authorize TCEQ to require implementation of drought contingency plans during times of a potential water shortage
  - Recommendation remained severed
- 6.1—Require previous tank owners or operators to share responsibility, as appropriate, for contamination from leaking PSTs
  - Hegar offered modification that would recommend clarifying in statute the language creating expressed liability for current landowners as to ensure they are treated in a consistent manner as previous tank owners and operators
    - Liability already exists in statute and modification makes it equally as clear to landowners
  - Nichols was to offer his modification only if Hegar's passed
    - Would limit time frame for which liability is shared to 7 years after property is sold and would put liability of proof within that time frame on TCEQ; persons would not have to prove themselves innocent
  - Recommendation remained severed
- 6.3—Reauthorize the PST remediation fee, change the current fee levels to caps, and authorize the Commission to set fees in rule
  - Harper-Brown offered a modification that would recommend TCEQ reduce the PST remediation fee levels if the cost of program declines
    - Modification was adopted
- 8.1—Authorize TCEQ to administratively adjust the annual emissions tonnage cap for the Air Emissions Fee when necessary to adequately fund the Title V Operating Permit program



- Recommendation remained severed
- New Items
  - Nichols
    - Introduced an item that notwithstanding whether water or wastewater utility rate making is transferred to PUC, would recommend authorizing the Executive Director of TCEQ to set the interim rates
      - Item was withdrawn and Nichols expressed intent to address in a standalone bill
    - Introduced an item that would recommend requiring the agency overseeing water rates to provide electronic copies, when available, of water rate cases obtained from the utility and make them available to the public at a reasonable cost
      - Item was adopted
    - Introduced an item that would recommend requiring appointed officials serving as members of TCEQ to resign from office before accepting any campaign contributions if running for elected office
      - Bonnen expressed interest in working with Nichols to address running for local offices
      - Item was adopted
  - Hinojosa
    - Discussed an issue with the Low-Level Radioactive Waste Disposal Compact Commission
      - Has concern with January 4, 2011 rule passed; 34 other states are not being required to pay the original \$25 million to be part of the Compact and Texas is left holding the liability because they are not paying the money
      - There are ways to bypass the state's safeguards and have waste from around the world deposited at the site
      - Compact had the authority to do what was done, but more oversight is needed
      - Hinojosa has discussed issue with Sens. Duncan and Seliger and will be working with them on creating better oversight and regulation of safeguards
  - Anchia
    - Introduced an item that would recommend replacing the 3-member TCEQ with one elected commissioner
      - Item was defeated
    - Introduced an item that would recommend requiring TCEQ to have one commissioner to have expertise in public health or medicine



- Item was defeated
- Introduced a management directive that would recommend adding “public health” to the TCEQ’s mission statement
  - Management directive was adopted
- Introduced an item that would recommend giving TCEQ a third option when dealing with ratification of permits
  - Would let TCEQ revoke them
  - Anchia’s motion was not seconded

*On-site Wastewater Treatment Research Council*

- All Sunset recommendations were adopted in a blanked motion