



TEXAS SUNSET ADVISORY COMMISSION

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I have been briefed on the challenges facing the Texas Sunset Advisory Commission as it undertakes its important business, and I will draw on that briefing information in making recommendations to the commission. The most difficult challenge for a commission like this is to get well-founded advice that challenges the status quo and gives the commissioners a variety of choices that will allow them to complete the duties assigned to the commission. My experience with similar bodies in other states, and outside of the United States, leads me to believe that commissions function best when the advice received comes from the broadest spectrum possible, is frank about public sector “sacred cows,” and reflects skills and experience that are not generally held in the public sector.

RECOMMENDATION:

Based on observations from my time serving on streamlining commissions in Louisiana and Virginia, I would advise that this challenge would be best met by appointing an advisory board. This advisory board would be heavily dominated by private sector experts whose skills relate to the subjects under consideration. This advisory board should also have representation from both chambers of the legislature, but that representation should be a minority of the whole advisory board.

In implementing the above recommendation, the commission could take either a formal or an informal approach to securing the advice that would come from such a body.

Successful government streamlining commissions must have the will and creativity to challenge existing ways of doing the government’s business. That should include the opportunity to consider controversial recommendations, even if it is a foregone conclusion that the recommendation will be declined. The current makeup of the Texas Sunset Advisory commission, with ten of its twelve members also sitting in the legislature, represents a structure that would work best if it saw itself more as a court where evidence would be presented, debate would occur, and decisions would be made. The problem with the commission doing the research and developing the recommendations itself is that the recommendations then tend to be owned by those who prepared them, often to the exclusion of other options that are of similar or greater merit. This ownership issue could become an impediment to the pursuit of bold reforms and more efficient government.

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If instead the Texas Sunset Advisory Commission chose to appoint an advisory body tasked with initiating recommendations, then this body should be primarily composed of citizens from outside of government. Its members should have expertise in areas relevant to the government activities under review. It would craft proposals and send those to the Sunset Commission for the commission's consideration. In my experience serving on streamlining commissions where there is a heavy weighting of sitting legislators, these legislators are often placed in a difficult situation where they do not want to disclose their position on an issue that will later become a matter for debate in the legislature. As a consequence, the legislators often abstained or recused themselves from debate on the issue within the commission. Oftentimes some of the best ideas never saw the light of day because commission members from the legislature wanted to avoid having to take a public position.

The advisory committee model addresses this problem by creating a forum to test and debate ideas before the elected officials on the Sunset Commission must take a public position. In the case of an advisory body where the majority of members are not elected officials, they will be free to propose and debate ideas without fear of the political consequences.

On the Virginia Commission on Government Reform and Restructuring, for example, we had hoped to eliminate 300 boards, agencies, or commissions. However, due mainly to the large number of elected officials on the commission, we ultimately were only able to eliminate 32. Had we had a more disinterested advisory board that was able to debate more far-reaching reforms, we very well may have been more successful in achieving our goals.

This concept is adaptable to the prevailing circumstances. For example, the Sunset Commission may decide to appoint a number of separate research groups given very specific targets so as to develop recommendations quickly and concentrate expertise, or it might decide to give much broader instruction to its advisors, or perhaps even a mix of both.

I had the opportunity to work with Louisiana's Commission on Streamlining Government and Virginia's Commission on Government Reform and Restructuring and spent 2009 and 2010, respectively, poring over their states' operations, looking for efficiencies and opportunities to refocus state agencies on their core missions. The broad principles below have been useful in guiding and focusing our recommendations while serving in Baton Rouge and Richmond. I believe many of these will also be helpful as the Texas Sunset Advisory Commission continues its mission of greater government efficiency and accountability, and I would be happy to answer any further questions in the Question and Answer period.

- The commission should give consideration to undertaking its work on the basis of examining outcomes. This process looks at all programs addressing a particular outcome regardless of the provider and recommends funding only those activities that produce the best results at the best price. The process can also identify to some extent the public benefits forgone by funding underperforming activities.
- The commission should seek to have restructured organizations move to their new form and size rapidly. If staff downsizing needs to occur, then that should be achieved in a timely and businesslike manner. Consideration might also be given to recommending processes that might ease the transfer of staff to the private sector.
- The commission should give consideration during its investigations to the effectiveness of current law, such as financial accounting and reporting laws and the requirements of government organizations to publish performance reports, in providing clarity and transparency to the public.
- The commission could give some thought to how the government goes about funding its activities. Normally, appropriations allocate money to spend on defined activities, and accountability is determining whether the money was spent as directed. A more modern approach is to think of the

government as a purchaser of goods and services with a clear understanding of what will be achieved at the time the purchase is made. In this case, accountability is a matter of determining if the expected result was achieved. (For example, what proportion of children in school can read at their biological age-level?)

- Commissioners should view the work of the Sunset Commission through the lens of state competitiveness. As the commission reappraises whether particular programs are necessary and effective, it should take the opportunity to measure how Texas's regulatory and compliance processes compare with those of other states. The commission should conduct research to discern which states have better regulatory regimes in particular areas and make recommendations that will help Texas become the national leader.

The following are some suggested guidelines for the Sunset Commission as it conducts the process of agency review:

- The objective of an agency review should be to identify core business and noncore business. The process should examine the original establishing legislation of the organization, any subsequent amendments, and the current business activity of the agency.
- The review should look at whether the current core business of the agency duplicates the core business of any other government agency and make appropriate recommendations.
- The review should look at noncore business and make recommendations about the continuation, termination, or transfer of those functions.
- The review should look at the regulation-making powers of the agency, if any, and offer advice on the exercise of those powers.
- The review should look at all aspects of management, including organization structure, size, and capability, and make reform recommendations.
- The commission in its investigations should adopt the reversal of the burden of proof as a general principle. This means the agency is required to produce the evidence of achievement that justifies the continuation of each program, rather than the commission trying to prove the program does not work.
- The commission should examine each outcome area addressed by the agency and require the agency to produce evidence of the progress made in the past year, the past five years, and the past ten years.
- Inability to produce evidence of results achieved by programs should be grounds for their termination.
- In examining the goods and services provided by the government, the commission should give consideration to which of these activities is a fair and reasonable charge against the taxpayer and which should be paid for by the user or consumer of those services.
- The commission in its investigations will encounter a number of activities that produce revenue. The commission then needs to consider whether these activities should be returned in total to the private sector or whether they should still be owned by the government but operated in a businesslike manner. This last option may require the creation of a special hybrid organization that operates as a state-owned enterprise.

Finally, the logistical aspects of commission operations may not seem like a priority, but I found that sound logistics are critical to a commission being able to achieve its goal. For example, the commission should ensure that all foundational materials are completed before the commission begins its work. In Louisiana, our "Terms of Refer-

ence” document, which outlined the purpose and objectives of the exercise, was not finalized until well after we began the recommendation process. Also, the commission should ensure that it has designated authors to pull together its findings in a concise and accessible way, which legislators and their staffs will actually read. Finally, the commission should make sure that members have adequate time to consult and report. In Louisiana we met for only three months, from August to December 2009, which required much of the process to be rushed.

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A farmer by trade, McTigue served in New Zealand’s parliament from 1985 to 1993 before becoming his country’s ambassador to Canada. During his nine years in parliament, he was one of the architects of the “New Zealand miracle,” which dramatically reformed the country’s government and economy by implementing market-driven, pro-growth policies. In a ceremony at Buckingham Palace in 1999, Queen Elizabeth II bestowed upon McTigue the prestigious Queen’s Service Order in recognition of his public service, one of the highest honors attainable for civil service in New Zealand.