

Background:

Sunset is the regular assessment of the continuing need for a state agency to exist. While legislative oversight is concerned with agency compliance with legislative policies, Sunset asks a more basic question: "Do the agency's functions continue to be needed?" The Sunset process works by setting a date in law on which an agency will be abolished unless legislation is passed to continue the agency's functions. This creates a unique opportunity for the Legislature to look closely at each agency and make fundamental changes to an agency's mission or operations if needed.

The Sunset process is guided by a 12-member body appointed by the Lieutenant Governor and the Speaker of the House of Representatives. Assisting the Commission is a staff whose reports provide an assessment of an agency's programs, giving the Legislature the information needed to draw conclusions about program necessity and workability. The result of the sunset review process is to continue the agency's functions (with or without modifications), transfer or consolidate functions with another agency, or allow the agency's functions to end and the agency to be abolished.

Each agency under Sunset review is required to complete a Self-Evaluation Report (SER) on its operations. The SER is designed to provide the Sunset Commission members and staff with a general background description of each agency being reviewed. The SER also gives each agency an opportunity to provide the Commission with a preview of issues and suggested improvements regarding the agency and its functions. The SER contains 12 sections including:

- Key Functions and Performance
- History and Major Events
- Policymaking Structure
- Funding
- Organization
- Guide to Agency Programs
- Statutory Authority
- Policy Issues
- Contacts
- Other Information and Agency Comments

TCDD staff are preparing the TCDD SER that is due by September 1, 2013. The final SER will likely be approximately 100 pages plus numerous attachments. We have included for the Committee's review draft Policy Issues. This section is intended to describe potential issues that could be addressed to improve TCDD's operations. Agencies are asked to include issues whether or not the agency supports or opposes possible solutions. A few copies of the draft SER will be available at the meeting should members care to review. Additional summary information about the Sunset Review process is also enclosed.

Executive Committee

Agenda Item 7.

Expected Action: The committee will review proposed Policy Issues to include in the TCDD Sunset Self Evaluation and recommend final approval by the Council.

Council

Agenda Item 7.

Expected Action: The Council will consider Policy Issues to include in the TCDD Self Evaluation and make final decisions as appropriate.

Sunset in Texas

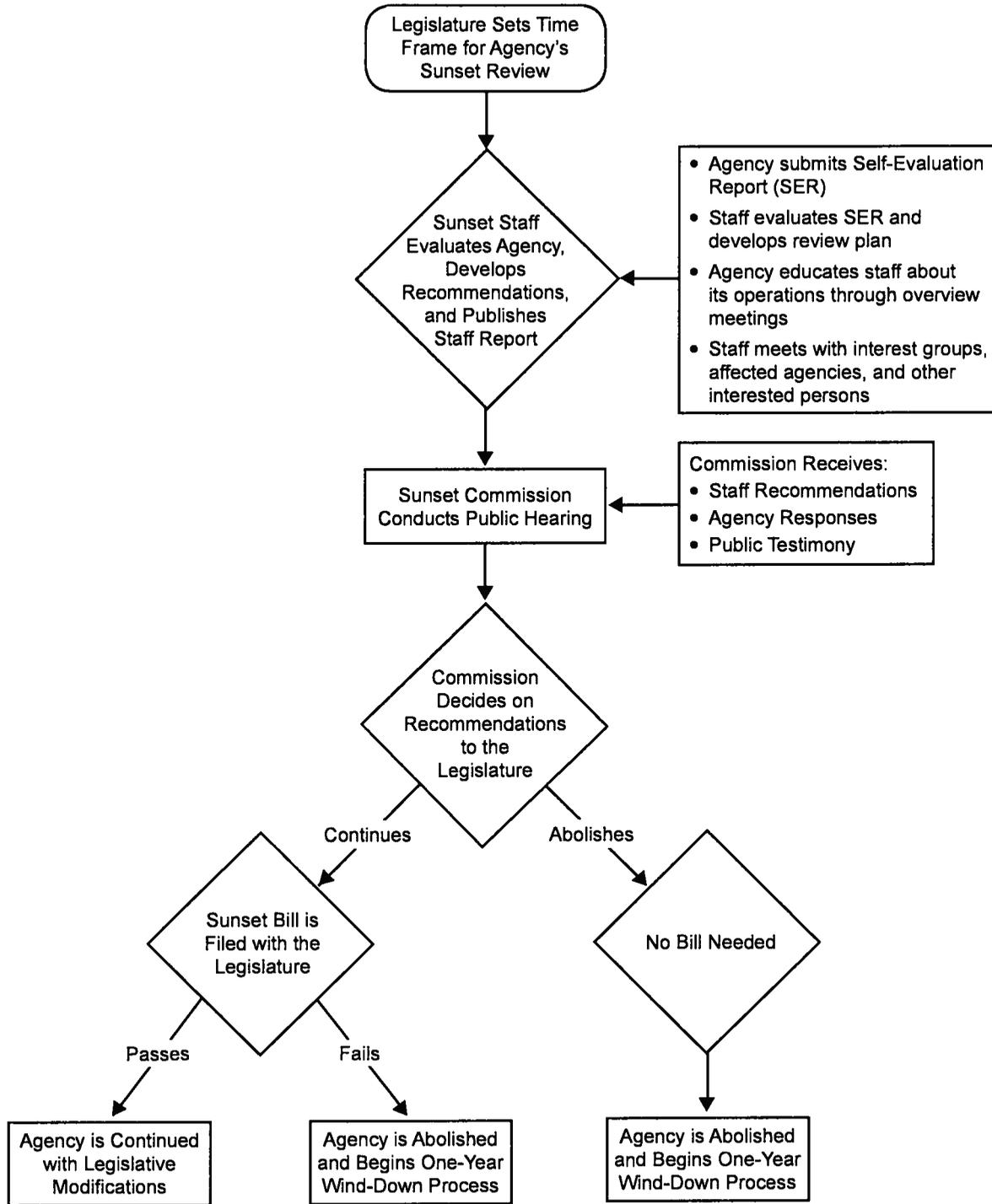
Sunset Review Questions

1. How efficiently and effectively does the agency and its advisory committees operate?
2. How successful has the agency been in achieving its mission, goals, and objectives?
3. Does the agency perform any duties that are not statutorily authorized? If so, what is the authority for those activities and are they necessary?
4. What authority does the agency have related to fees, inspections, enforcement, and penalties?
5. In what ways could the agency's functions/operations be less burdensome or restrictive and still adequately protect and serve the public?
6. How much do the agency's programs and jurisdiction duplicate those of other agencies and how well does the agency coordinate with those agencies?
7. Does the agency promptly and effectively address complaints?
8. To what extent does the agency encourage and use public participation when making rules and decisions?
9. How has the agency complied with state and federal requirements regarding equal employment opportunity, the rights and privacy of individuals, and purchasing guidelines for historically underutilized businesses?
10. How effectively does the agency enforce rules on potential conflicts of interest of its employees?
11. How effectively and efficiently does the agency comply with the Public Information Act and the Open Meetings Act?
12. Would abolishing the agency cause federal government intervention or loss of federal funds?
13. Do the agency's statutory reporting requirements effectively fulfill a useful purpose?

Sunset Review Timeframes

September 2013	Agencies submit Self-Evaluation Reports.
October 2013 to January 2015	<p>Sunset Commission staff:</p> <ul style="list-style-type: none"> • Conducts evaluations of each agency • Prepares staff reports and recommendations • Holds public hearings on each agency • Finalizes recommendations <p>Sunset Board</p> <ul style="list-style-type: none"> • Reviews and makes decisions about each agency under review
February 2015	Sunset Commission submits Report to 84 th Texas Legislature with recommendations on each of the agencies under review.
January 2015 to May 2015	84 th Texas Legislature considers Sunset bills on each agency under review.

Sunset Review Process



TCDD Sunset Self Evaluation Report

Section IX. Major Issues

Policy Issue No. 1: Support for Self Advocacy

A. Brief Description of Issue

TCDD is required by federal law to engage in activities that support self advocate groups in the state, leadership and advocacy training for self advocates, and to promote self advocacy (“Self advocate,” used in this context, refers to an individual who has an intellectual or other developmental disability). TCDD’s mission incorporates these aspects of self advocacy: to create change so that all individuals with disabilities can participate fully in their communities and have control over their own lives. However, creating such change can be difficult for various reasons including:

- disagreement exists regarding the definition of “self advocate” and “self advocate organization”,
- relatively few self advocate organizations are established as entities that can legally receive and manage funding,
- little ongoing funding is available to support operational costs for self advocate groups,
- guardianship laws, inaccurate assumptions about people who have developmental disabilities, and a lack of resources sometimes prevent people from serving in leadership roles for which they are otherwise qualified.

B. Discussion

TCDD has awarded grant funds to numerous organizations for leadership development and advocacy skills training projects. However, some self advocates feel that only organizations lead and run by self advocates are legitimate self advocacy organizations. As such, they feel that funds awarded for activities to increase self advocacy should be granted only to entities that are run and lead solely by self advocates. Compounding this issue, disagreement exists among self advocates and others about the definition of a “developmental disability.” Some suggest that people only with certain diagnoses can be considered as being a person with a developmental disability. For example, some believe that individuals whose primary disability is mental illness are not considered to have a developmental disability and should not be served by TCDD grants. However, Congress has provided specific guidance that individuals with mental illness can be considered to have a developmental disability if they otherwise meet the definition in the DD Act (SER Attachment 1). Others believe that any person who has an intellectual disability – regardless of their abilities and capabilities – is a person with a “developmental disability” even though the DD Act is clear that individuals with developmental disabilities have significant deficits in at least three areas of major life activities. And some people consider family members or parents of a person with developmental disabilities to be a “self advocate.”

Most self advocate groups, however they are defined, have difficulty finding consistent and flexible funding to maintain their organizations. Nationally, the total operating budgets of self-advocacy organizations are extremely low, often dependent on short-term funding streams, and vulnerable to cuts. Very few states have secured enough funding for a paid executive director for a state self-advocacy organization. Self advocates also have concerns about top-down approaches and about depending on funding sources that may require certain activities and not allow others.

TCDD has funded numerous self-advocacy skill development projects, using the federal definition of DD and guidance from Congress. However, because the funds must be provided to an established entity that can meet certain requirements, organizations receiving funding typically are not entities that are run and lead solely by self advocates. Also, TCDD funding is tied to certain activities that might not be the activities for which self advocacy organizations desire funding, and TCDD does not provide funding for ongoing operations or activities of an unspecified nature.

C. Possible Solutions and Impact

The Rehabilitation Act, Individuals with Disabilities Education Act (IDEA), Americans with Disabilities Act, and U.S. Supreme Court Olmstead decision have provided a generation of self-advocates and their families with greater opportunities, rights, and expectations for full inclusion in all aspects of community life. The movement continues to evolve and change as younger self-advocates enter and share their experiences.

TCDD works to ensure that self-advocates are included in the design of their services. Self-advocates are increasingly able to represent themselves and their peers on statewide advisory bodies to offer valuable stakeholder input, and TCDD provides funding for travel expenses of self-advocates and family members appointed to some state advisory entities to support their active participation. Self-advocates, including self-advocates with intellectual disabilities, are included in the membership of TCDD. However, programs in some areas that strongly encourage guardianship for individuals who have disabilities means that some people who would be strong candidates for membership on an advisory or policymaking board might be unable to serve since their guardianship status means that they are not legally able to represent themselves. Additionally, many individuals who have developmental disabilities could not afford to serve on statewide advisory board if their expenses were not reimbursed by the sponsoring state agency.

TCDD has awarded many grants to self-advocacy organizations to promote leadership and advocacy by self-advocates, and TCDD always expects that individuals with developmental disabilities and family members of individuals with developmental disabilities will serve in leadership roles in grant projects. TCDD also funds, or intends to fund, projects to:

- Recruit, advertise and provide administrative support to promote self-advocates as speakers and facilitators at Texas conferences;
- Host and provide technical support for the Advocacy U, a self-advocate website;
- Develop and conduct activities to increase the widespread use of the Advocacy U website;
- Provide support to grassroots community organizing activities conducted by self-advocates;
- Demonstrate a volunteer self-advocate support project as an alternative to guardianship for individuals with intellectual disabilities; and
- Provide leadership and advocacy training to individuals with developmental disabilities and their families.

It would be extremely beneficial if additional opportunities to serve in leadership roles were made available to people who have received training through TCDD projects. TCDD has no doubt that programs and agencies would benefit from the input and work of this part of their constituency.

TCDD recommends that Texas state entities promote and support self-advocacy in any way possible. For example, TCDD hopes that:

- The Governor's Appointments Office continues to place a high priority on appointing well-qualified individuals who are self-advocates serve on the Council and in other governor-appointed positions.
- The Texas Legislature consider studying ways in which current guardianship laws may inappropriately exclude qualified people from participating on advisory or policymaking boards.
- The Texas Legislature direct state entities whose constituents include individuals who have developmental disabilities to fully include self-advocates on advisory boards. This would include non-health and human service agencies such as the Texas Department of Housing and Community Affairs and the Texas Department of Transportation.
- State entities offer additional training or support to self-advocates who are on their advisory boards to encourage full participation.
- State-funded programs that offer leadership and/or management training (including training provided to youth) be directed to recruit and support the full participation of people with developmental disabilities in their programs.

Additionally, any efforts on behalf of state entities and/or the Texas Legislature to support the development of additional self-advocacy groups that are run and led by self-advocates (of all ages) would be beneficial.

Policy Issue No. 2: Competing Stakeholder Priorities

A. Brief Description of the Issue

Although advocates for people with disabilities agree on the vast majority of issues that affect all persons with disabilities, there are occasions where disability advocates and developmental disabilities advocates disagree, as well as occasions when various advocates for people with developmental disabilities do not agree with each other. This results in confusion when one group's position is applied to all people with disabilities and conflict when the Council's position is contrary to the wishes of overlapping stakeholders. In addition, the Council has received feedback previously that TCDD should address the needs of all people with disabilities, rather than just those with "developmental disabilities" as well as feedback that the Council should support the positions of advocates who support institutional placement of people with disabilities.

B. Discussion

The DD Act provides a definition of "developmental disability" that is not based on specific diagnoses or labels. TCDD focuses its advocacy and grant funds toward improving systems used by persons with developmental disabilities. Frequently, this work overlaps with work being done by and for the community made up of seniors and persons with physical disabilities, persons with disabilities that occurred after the person's 21st birthday, or persons with disabilities that do not cause significant impairment in three areas of functioning (as is required by the federal definition of developmental disabilities). Research indicates that a significant disability that occurs to the developmental period of life generally has a more significant impact on learning than a traumatic onset disability that occurs later in life. However, the federal definition of developmental disability in the DD Act was conceptualized in the mid-1970's. Since that time, advances in medical technology allow lives to be saved at accident scenes resulting in significant increases in the number of individuals living in communities across the state and country with substantial, long-term impairments that are a result of a traumatic brain injury or spinal cord injury. That their accident occurred before or after the age of 21 has little impact on the type and nature of services and supports they need to remain active in community life. The age of onset for a developmental disability in the DD Act may seem to some like an arbitrary line in the sand, but to others it is still a key factor particularly as it impacts the typical developmental process for children that enhance their ability to represent themselves as capable self advocates.

Federal funds available to TCDD are subject to the requirements of the DD Act. Councils are expected to gather public input about the unmet needs of individuals who are considered as having a developmental disability as described by the definition in the Act. Those issues and concerns are the basis for developing the required State Plan. The DD Act allows Councils to initiate activities that benefit a larger group of constituents so long as those activities clearly benefit individuals that meet the definition of developmental disabilities in the Act. The DD Act also clearly states that Councils are to support individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in community life.

Additionally, many fail to understand the unique positions of various disability advocacy organizations because the groups frequently work together and because it is expected that all people with disabilities agree on issues that affect them. Some stakeholders inappropriately speak on behalf of everyone with disabilities, despite the awareness that there are those that do not wish to be included.

C. Possible Solutions and Impact

TCDD's mission in part is to ensure that people with developmental disabilities are given opportunities to speak for themselves. Sometimes advocates and advocacy groups will express different viewpoints.

Again, although some conflict is inherent, advocates work together collegially on a number of workgroups and committees. TCDD continues to support education and advocacy efforts relating to the unique needs of persons with developmental disabilities and their families, as well as those of the broader disability community. For example, a TCDD grant supported the creation of the Disability Policy Consortium and funded it for a number of years; and although some organizations expressed concerns about whether it could be sustained when grant support for DPC was concluded, DPC activities have continued as a "consortium" effort of member

organizations.

The purpose and responsibilities of TCDD could be revised to focus on a broader role related to individuals with disabilities, not only those with developmental disabilities. However, those activities would require additional funds for TCDD beyond federal funds currently available pursuant to the DD Act. However, a solution that would not require additional funding would be for agencies setting policy to seek input from a diverse group of stakeholders who have different types of disabilities and/or a cross-disability group such as the DPC.

Policy Issue No. 3: Long Term Funding of Successful Projects

A. Brief Description of Issues

Some TCDD grantees have expressed frustration that their grants are time limited. They are concerned that their grants end just when the project is fully implemented and that this isn't enough time to realize the benefits of the program and plan for sustainability.

B. Discussion

The DD Act expects TCDD grants to be time-limited. Projects are funded to incubate and test new ideas; establish new programs, services, and supports; or create permanent change in existing systems. The DD Act precludes Council's from funding long-term services or ongoing activities. Grantees are required to develop a plan for sustainability from the project's initiation through the life of the grant. However, this knowledge does not limit the frustration of grantees when grant funding concludes. TCDD has funded a number of successful projects that were unable to achieve sustainability. Despite substantial satisfaction with project outcomes, the Council's role is not to provide long term funding since doing so would be contrary to the systems change intent of the Act.

C. Possible Solutions and Impact

TCDD is currently funding an organization to assist grantees to plan for and achieve sustainability. The outcomes of this effort are currently unclear. We are not aware of changes to statute that would address this issue without requiring additional state appropriations.

Policy Issue No. 4: Travel Reimbursement

A. Brief Description of Issue

Numerous advisory bodies are established in state law to provide input to agencies on issues impacting people with disabilities. However, many of these advisory bodies lack authority to reimburse public members for travel expenses necessary to participate.

B. Discussion

TCDD has provided funds since FY 2000 to support travel of approximately 20 public members to participate on about 24 state level advisory committees, councils, and workgroups that focus on issues of importance to individuals with developmental disabilities. This support recognizes the importance for individuals with disabilities and their families to participate in policy discussions about the services and programs that impact their lives. And it recognizes the impact of a disability on the financial resources of the individual and their family, thereby limiting their ability to provide meaningful input as a totally volunteer effort. TCDD funding approval is intended to support self-advocates with disabilities or their family members who do not have support of a sponsoring organization or association for their travel so that they can participate as members of advisory bodies that are established by statute, approval of agency's governing board, or authorization of the agency head. TCDD expects these public members to be appointed by the agency chief of the sponsor state agency.

TCDD initiated this effort following a difficult state fiscal period, expecting this financial support for travel expenses to be temporary. However, legislative approval to reimburse travel expenses for public members for

most of these important advisory committees has not occurred. And in some instances, the sponsoring agency has been reluctant to request additional authorization for travel expenses at least in part due to concerns that the legislature might dissolve the stakeholder input opportunities.

Additionally, the federal government expects meaningful public input into most federally funded programs including Medicaid.

C. Possible Solutions and Impact

The Texas Legislature and the agencies need to reaffirm the importance of including public members with disabilities and their families as active participants on agency advisory committees and workgroups and authorize funds necessary for travel support for those members. If such cannot be accomplished in a single measure, a phase-in plan should be initiated.

Texas funds only limited travel for advisory committees. The Legislature should re-evaluate which public members should receive travel reimbursement. Representatives of many state associations could be supported by those organizations, allowing state resources to assist public members without such support, including low-income persons with disabilities.

Policy Issue No. 5: Public Input About TCDD Activities and Priorities

A. Brief Description of Issues

TCDD at times receives concerns about how public input is solicited and used in setting priorities.

B. Discussion

TCDD has adopted Rules in Texas Administrative Code indicating that opportunities for public comments will be provided at each Council and Committee meeting (§876.11 (b)). Agendas for each Council and Committee meeting include an item for public comments. Comments are generally limited to three minutes per commenter but more time may be allowed at the discretion of the Chair. Individuals may also request, in advance, consideration of a presentation or discussion item by the Council or Committee. The public may also provide input to TCDD through the TCDD website at www.tcdd.texas.gov, via focus and stakeholder groups, by U.S. Mail or email, or through Facebook or Twitter.

TCDD solicits input on certain topics or at certain times to inform Council or Committee discussions. As a part of the process to develop the FY 2012-2016 State Plan, TCDD solicited input through one-on-one conversations with individuals; attending public events (such as a community center picnic and resource fairs); conducting focus groups; meeting with self-advocacy groups; distributing online and paper surveys; and reviewing input gathered by other DD Network partners. The Council also views unsolicited ideas submitted by the public; information, resource, and referral calls; reports from grantees; information provided by Council members; and available data as “public input” that is used in developing an understanding of critical issues and unmet needs in the State while developing State Plan Goals and Objectives.

All Council and Committee discussions about future State Plan activities take place in open meetings that are announced in advance on the Council’s website and by other means. And, proposed amendments to the State Plan are posted for public comments for at least 45 days prior to final action. TCDD maintains an electronic subscription service through which individuals or organizations may sign up to receive announcements of meetings and other important events.

Even so, TCDD receives concerns at times from public members who do not feel they had adequate information about how to provide input concerning Council activities, or from individuals who do not feel some decisions fairly represent critical issues and preferences of individuals with developmental disabilities.

In other instances, organizations that do not share TCDD’s values oppose positions taken by the Council. For example, a parent organization that supports State Supported Living Centers is opposed to some of the positions

taken by the Council. Specifically, they disagree with the Council's support for a moratorium on admissions to SSLCs until they reach substantial compliance with the Department of Justice Settlement Agreement, sustainability measures that would rebalance the system of long term services and supports and efforts to educate SSLC residents about opportunities for community living. The Council supports the position that all people with disabilities should have access to the services and supports they need to live in the community. The Council also supports the position that the state of Texas must allocate the requisite resources to support community living for people with disabilities and that the state must rapidly expand the availability of individualized community options, and transition individuals in state institutions to community living. These positions are firmly girded in the tenets of the DD Act. Although some organizations disagree with the Council on some issues, the Council maintains respect for individual experiences and TCDD staff work collegially with PART stakeholders in a number of venues.

C. Possible Solutions and Impact

TCDD has approved funding for various projects that are intended to enhance the ability of persons with DD to provide public input to the Council and to other entities, including:

- Providing support to promote self-advocates as speakers and facilitators at Texas conferences;
- Hosting Advocacy U, a self advocate website;
- Initiating activities to increase the use of the Advocacy U website;
- Providing support to community organizing activities conducted by self-advocates; and
- Providing leadership and advocacy training to individuals with developmental disabilities and their families.

TCDD will continue to use social media, email and website strategies to inform the public about TCDD activities and opportunities to provide input about TCDD priorities and activities. Additionally, TCDD recognizes that other organizations may at time have different perspectives. TCDD welcomes input but considers positions within the context of the values and principles inherent in the DD Act regarding community options.