

The logo for the Texas Sunset Advisory Commission is a semi-circular arch with a thick black border. Inside the arch, the words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a bold, white, serif font.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Texas Historical Resources Development Council

Antiquities Committee

Texas Historical Commission

A Staff Report
to the
Sunset Advisory Commission



1982

SUNSET ADVISORY COMMISSION

STAFF REPORT

on the

ANTIQUITIES COMMITTEE

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 65th 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 these 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 are presented in a chart at the end of each report and are 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

The Texas Antiquities Committee was created in 1969. The agency is independent in an organizational sense. The staff necessary to carry out the responsibilities of the agency are hired by the executive secretary of the committee who is also the director of the Texas Historical Commission. The primary functions of the agency are to identify state archeological landmarks and once identified to protect the landmarks from destruction or damage, unless these actions are authorized through a permit issued by the committee.

The results of the review indicated that the agency was useful in identifying and protecting significant archeological landmarks, and that this was a function that the state should continue. The possibility of consolidating the committee with the Historical Commission was considered, but the review concluded that consolidation would not offer any significant improvements. If the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the operations of the agency.

Approaches for Sunset Commission Consideration

I. MAINTAIN THE COMMITTEE WITH MODIFICATIONS

A. Policy-making structure

1. The statute should be modified to provide for the addition of the director of the Department of Highways and Public Transportation and the executive director of the Department of Water Resources to the Antiquities Committee. (statutory change)
2. The statute should be modified to remove the executive director of the Texas Historical Commission from membership on the Antiquities Committee and to include the chairman of the Texas Historical Commission, or a member of that commission designated by the chairman, on the committee. (statutory change)

II. ALTERNATIVES

No practical alternatives to the present method of performing the function or the current organizational arrangement were identified.

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

Organization and Objectives

The Texas Antiquities Committee (TAC) was established in 1969 and is currently active. The committee is composed of seven members including the director of the Texas Historical Commission, the director of the Parks and Wildlife Department, the commissioner of the General Land Office, the state archeologist, and the following citizen members: one professional archeologist from a recognized museum or institution of higher learning in Texas, one professional historian with expertise in Texas history and culture, and the director of the Texas Memorial Museum of the University of Texas System. Each citizen member is appointed by the governor with the advice and consent of the senate for a term coexistent with the appointing governor. For fiscal year 1982, the agency has a staff of 4.5 employees and a total appropriation of \$166,007 from general revenue.

The TAC was established in response to concerns that archeological and historical resources on public lands and tidelands in Texas were not being adequately protected from destruction. The committee is responsible for carrying out the provisions of the Texas Antiquities Code which was enacted in 1969 to provide for the protection of archeological sites, historic sites, and historic shipwrecks on lands belonging to the state or any political subdivision of the state. The primary authority of the committee lies in the fact that no action can be taken on public lands which would disturb an archeological landmark unless a permit for this purpose is issued by the committee.

Information developed during the review showed that six other states have also enacted laws for the protection of antiquities though not as extensive in coverage as the Texas code.

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, method 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 that the viability of the body is maintained through an effective selection and removal process.

The review of the policy-making structure of the committee focused on whether the membership was of the proper representational makeup and size to carry out its role as effectively as possible. The primary role of the committee is to provide general policy direction for the staff, and to make decisions regarding significant permits for work on state archeological landmarks.

The results of the review indicated that the committee has been able to provide adequate policy direction to the staff and that these policies have been implemented in a consistent fashion. However, the review also indicated that the membership of the committee is not structured in a manner that allows it to make the best decisions regarding the issuance of permits. Membership of the committee was designed to provide representation from major state agencies whose ongoing activities have an impact on state lands and who would be in a position to assist in the protection of archeological landmarks.

Currently, only two of the four major state agencies that either control the activities of others on state lands or have ongoing activities of their own on state lands, are represented on the committee. The General Land Office and the Texas Parks and Wildlife Department are included as members, but the Texas Department

of Highways and Public Transportation and the Texas Department of Water Resources are not. The highway department has an active construction program on state lands and has an archeological staff which investigates state archeological landmarks on these lands. The inclusion of the executive director of this agency on the Antiquities Committee would provide additional expertise and be consistent with the approach used for including the other land holding agencies on the committee. The Department of Water Resources issues permits for the construction of reservoirs, water control levees, and other water facilities in the state. These activities often affect the archeological resources of Texas. The inclusion of the executive director of this agency on the Antiquities Committee would also be consistent with the approach for committee membership and would improve the protection efforts related to archeological landmarks.

The structure of the composition of the committee was also designed to provide a means for protecting and storing archeological artifacts within the framework of state funded museums and to coordinate protection efforts of the committee with those of the Texas Historical Commission. The results of the review indicated that the statute is not designed properly to achieve these purposes. The statute currently limits the appointment of a museum director to the director of the Texas Memorial Museum. The review indicated that there are other professional museum directors from major state funded museums that are also qualified to serve on the committee. No particular reason was discovered for the current limitation on this appointment. So that other qualified persons from among this group will not be excluded from possible appointment, the definition of museum director should be expanded to allow for the appointment of any professional museum director of a major state funded museum.

The statute also limits full coordination of the policies of the Texas Historical Commission and the Antiquities Committee. The Texas Historical Commission is currently required to be represented on the Antiquities Committee through the executive director of the Texas Historical Commission. This requirement inappropriately places the executive director in the position of speaking for the Historical Commission in a policy role, participating in policy development of the Antiquities Committee as a member, and then implementing these policies through his dual role as director of both agencies. This approach is not one that is used by most other state agencies and should be modified by changing the statute to replace the executive director with the chairman of the Texas Historical

Commission, or a member of the commission appointed by the chairman of the commission who can more appropriately speak for the policy of the commission. The change would also increase the awareness of the Historical Commission of staff requirements and activities relative to the Antiquities Committee.

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 agency does not have an administration function in the usual sense. Administrative activities for the agency are handled by the staff of the Texas Historical Commission. This situation has developed for two reasons. First, the statute states that employees of TAC are considered to be employees of the Historical Commission. Second, by vote of the Antiquities Committee, the executive director of the Historical Commission serves as the administrative officer of TAC. The actual result is that the TAC staff operate within the Historical Commission administrative structure in a manner similar to the other divisions of the commission. Administrative functions with regard to the Antiquities Committee were found to be adequate.

Evaluation of Programs

The agency's primary responsibility is to protect archeological and historical sites and structures found on all public lands in the state. The components of protecting resources of this type were broken down into two basic parts. First there should be a means for finding and identifying the resources. Once this has been accomplished, there should be an adequate framework for protecting those resources from damage or destruction. The review of the activities of the agency in locating and identifying resources, focused on whether the agency has developed appropriate procedures to identify resources and how well these procedures work.

The agency locates and obtains information on resources in three ways. First, the agency requires that surveys for archeological resources be conducted prior to construction activities on public lands, including submerged lands within the jurisdiction of the state. These activities include pipeline, reservoir, and highway construction.

The agency also attempts to locate sites through its own resources. Surveys are conducted in areas where high concentrations of archeological resources may exist or where there is a potential for damage or destruction. One area where the agency has concentrated its survey efforts is along portions of the Texas Gulf Coast where there are an estimated 4,000 historical shipwrecks. From 1979-1981, 554 linear miles of submerged lands were surveyed. In addition, the agency works with the archeological services division of the Texas Historical Commission to identify resource sites on public lands which have come to their attention. All sites, objects and structures of historical or archeological interest that are identified on public lands are considered to be state archeological landmarks and are eligible for protection under the Antiquities Code.

The evaluation of these procedures indicated that, under its statute, the agency is given broad responsibility to protect all sites on public lands. To protect archeological resources, these sites must first be identified. There are no time limits set in the statute which direct the agency to accomplish full identification of all sites and determine the necessity for their protection. The legislature, in taking this approach, makes the total determination of the level of effort through the amount of funds made available to the agency. If the resources currently available to the agency for the 1982-1983 biennium were to be used as a base for future projections, it is estimated that the agency can identify 250 sites per year at an average cost of \$500 per identification. At the current level appropriation, the agency will be able to identify all sites within 1,080 years.

Since the agency has limited funding available, their activities were reviewed to determine if priorities had been set by the agency. Agency procedures have, in general, been successful in identifying resources on public lands where there is known activity or high concentrations of sites. The agency has sought out sites both through its own survey efforts and through survey requirements placed on persons known to be altering public lands. These requirements provide information on sites that are in danger and that could otherwise be destroyed without any awareness of the knowledge that they may bring to society. For example, the agency's underwater surveys have resulted in the identification of at least 176 significant sites that can now be investigated and protected.

As a part of the protection offered by the Antiquities Code, sites on private lands may also be identified and protected. However, in contrast to the protection offered sites on public lands, sites on private lands remain under the complete

control of the landowner unless the landowner requests a designation of the site as a State Archeological Landmark. Once it is so designated, neither the landowner nor other persons may disturb or destroy the site without a permit from the committee. No state Archeological Landmarks have been designated to date, primarily because of the reluctance of a landowner to voluntarily give up the control over the use of the land.

The framework developed by the agency for protecting resources from damage or destruction was evaluated to determine whether the agency has effective methods to review changes or impacts on resources, and whether available penalties are sufficient and are effectively used by the agency.

The agency's primary means of protecting and preserving resources is through a statutory permitting process. Once an archeological landmark has been identified, a permit from the Antiquities Committee must be obtained prior to conducting any operation which affects the landmark. The permit requires that archeological investigations be conducted by an approved archaeologist and that a report be prepared of the findings. The agency may also issue permits for the excavation or destruction of sites when necessary.

The evaluation indicated that these protection procedures rely heavily on persons voluntarily seeking the required permit from the agency before disturbing public lands. Given the limited resources available to the committee, this approach is reasonable since funds are not available for extensive enforcement activities around the state. Procedures worked out between state agencies having major land-related responsibilities and the TAC have generally worked well to ensure that the committee is informed of relevant activities and that permits are obtained. On public lands held by local political subdivisions, there is less assurance of state protection of antiquities since the agency generally finds out about these land activities only if a permit is requested. Overall, there has been a total of 292 permits issued to date. Of the total, approximately 110 permits have been issued for work on state-owned lands and 180 for work on land owned by local political subdivisions. Approximately 2,650 archeological sites have received preliminary investigation and 373 sites have been tested or excavated.

The agency also has various legal means at its disposal to enforce protection of archeological landmarks. The Antiquities Code provides for fines of not less than \$50 and not more than \$1,000 for each day a person is in violation of the Code as well as for restraining orders and injunctive relief obtained by the attorney

general. The review indicated that these penalties are sufficient to protect resources when necessary. The possibility of civil or criminal actions has usually been sufficient to obtain compliance with the statute and the committee has used these penalties when it was necessary to prevent destruction of an archeological landmark.

OTHER SUNSET CRITERIA

The review of the agency's efforts to comply with overall state policies concerning the manner in which the public is able to participate in the decisions of the agency and whether the agency is fair and impartial in dealing with its employees and the general public is based on criteria contained in the Sunset Act.

The analysis made under these criteria is intended to give answers to the following questions:

1. Does the agency have and use reasonable procedures to inform the public of its activities?
2. Has the agency complied with applicable requirements of both state and federal law concerning equal employment and the rights and privacy of individuals?
3. Has the agency and its officers complied with the regulations regarding conflict of interest?
4. Has the agency complied with the provisions of the Open Meetings and Open Records Act?

EVALUATION OF OTHER SUNSET CRITERIA

Other Sunset Criteria

The operations of the Antiquities Committee were reviewed to determine compliance in the areas of Open Meetings/Open Records, public participation, EEOC/Privacy, and conflicts of interest.

During the review it was noted that staff for the Antiquities Committee are considered to be employees of the Historical Commission for administrative purposes. Employee policies and procedures in the areas reviewed are those of the Historical Commission and are discussed in the report on that agency.

With regard to committee operations in general, the review showed that the agency has complied with the Open Meetings Act and the Open Records Act. The committee also makes efforts to inform the public of its operations through films, exhibits and publications. The review of committee member compliance with the state's conflict-of-interest statutes indicated compliance.

**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 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 AND ALTERNATIVES

Need to Continue Agency and Alternatives

The primary function of the Texas Antiquities Committee is to protect archeological and historical resources of the state from damage or destruction. To determine whether there is a continuing need for this function, the review focused on the conditions underlying the original need to see if these conditions still exist.

The review indicated that the primary factor underlying establishment of the agency was that cultural resources on public lands should be protected for the benefit of future generations of Texans, and that there was no means currently in place for the state to ensure protection of these resources. This was shown in the late 1960's when a salvage company, Platoro Inc. of Indiana, removed items of treasure from the site of a 1554 spanish shipwreck on submerged lands belonging to the state. This incident provided added impetus for enactment of the Antiquities Code and creation of the committee. Since enactment of the code, development activities which have an impact on archeological and historical resources have continued at a fast pace. These activities include construction of underwater pipelines, highways, and reservoirs. These ongoing activities suggest a continuing need to provide protection for the state's cultural resources on public lands.

It was concluded that the protection effort could be most reasonably carried out through the current independent committee structure. The committee's membership provides expertise for decisions on antiquities which is not available on any other decision-making body. In addition, administrative activities are already consolidated within the staff of the Historical Commission. This combined approach has worked adequately. Goals of the Historical Commission and the Antiquities Committee are compatible and, as a result, staffing conflicts do not arise. Through staffing consolidation, the agencies are also better able to share resources.

ACROSS-THE-BOARD RECOMMENDATIONS

TEXAS ANTIQUITIES COMMITTEE

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.
		*	15. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Antiquities Committee
(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.