

TEXAS DEPARTMENT OF COMMUNITY AFFAIRS

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 REVIEW

The Texas Sunset Act abolishes this agency on September 1, 1983 unless it is re-established by the 68th Legislature.

The staff reviewed the activities of this agency 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 the agency. 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 the 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 Department of Community Affairs was created in 1971. The primary functions of the agency are: 1) delivery of technical assistance services to local governments and other community organizations; and 2) administration of federal and state funds for service delivery at the local level.

The results of the review indicated that the agency generally is operated in an efficient and effective manner. The review also examined the need for each of the agency's functions and determined that there is a continuing need for state involvement in these areas.

The review included an analysis of the need to continue the performance of the agency's functions in the current organizational setting. While the current organizational structure is reasonable, some of the agency's programs could be placed in other state agencies which serve similar populations or deliver related services. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of agency operations.

Approaches for Sunset Commission Consideration

I. MAINTAIN THE DEPARTMENT WITH MODIFICATIONS

- A. Policy-making structure
 - 1. The statute should be amended to eliminate the requirement for an Advisory Council on Community Affairs. (statutory change)
- B. Agency operations
(No change recommended)
- C. Recommendations for other sunset criteria
 - 1. Public participation

The agency should take steps to ensure that the Prime Sponsor Planning Council of the CETA program contains the federally required members and chairman, and that the council meets at least five times per year as required by CETA regulations. (management improvement - non-statutory)

- 2. The agency should request that the Governor appoint a representative of the CETA-eligible population as a member of the Private Industry Council of the CETA program. (management improvement - non-statutory)

II. ALTERNATIVES

A. Agency reorganization

1. Transfer some of the agency's programs to other state agencies which serve similar populations or deliver related services.

Under this alternative, any or all of the following programs currently administered by TDCA could be placed in other agencies: 1) children and youth services to the Department of Human Resources, 2) economic opportunity to the Department of Human Resources, 3) drug abuse prevention and treatment to the Texas Commission on Alcoholism, and 4) CETA to the Texas Employment Commission. Transfer of any or all of these programs would reduce TDCA's involvement in activities which do not serve local governments directly, and would focus the agency's efforts on assisting political subdivisions to solve their problems.

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 Department of Community Affairs (TDCA) was created by the 62nd Legislature in 1971, following findings by a senate interim committee and a governor's task force that rapid urban growth was making it difficult for some cities to deliver essential services. While there was a proliferation of federal grants to assist with these services, many communities did not have the necessary expertise to obtain funding from federal sources. The agency was designed to assist local governments with management problems, provide information about the availability of federal grants, and administer some federal programs which were passed through the state for use by local governments. The 62nd Legislature stated its intent in the agency's statutory purpose, which is: "to assist local governments in providing essential services..., to assist the Governor and the Legislature in coordinating federal and state programs affecting local government, and to continually inform state officials and the public about the needs of local government."

TDCA's original enabling legislation directed it to administer state responsibilities under the federal Economic Opportunity Act of 1964; and during the years after its inception, governors and the legislature assigned responsibility for other state and federal programs to TDCA. For example, in 1973 the legislature designated TDCA as the state agency to administer funds under the federal Drug Abuse Office and Treatment Act of 1972. In 1974 the Governor chose TDCA to assume responsibility for the state's part of the new Comprehensive Employment and Training Act. The 65th Legislature passed the Housing Rehabilitation Act in 1977, providing for a statewide housing rehabilitation program to be operated by TDCA; however, this program has never been implemented due to lack of funds. The agency's drug abuse prevention and treatment responsibilities were expanded in 1979 by the 66th Legislature, which passed the R. B. McAllister Drug Treatment Program Act. And most recently, the 67th Legislature passed an act providing that TDCA may coordinate programs for the development of children and youth.

The agency is administered by an executive director who is appointed by the Governor with the advice and consent of the Senate and serves at the pleasure of the Governor. An Advisory Council on Community Affairs is charged with advising the director "with respect to the affairs and problems of local government and the

work of the department." The council consists of 13 members: the executive director of the agency serving as chairman, three mayors of municipalities of different sizes, five public members, one member of the Texas Association of School Boards, one member of the Texas Association of Counties, one member of the Texas Municipal League, and one member of a regional planning commission.

Funding for the agency's activities is appropriated by the legislature from general revenue and from various federal sources. Estimated expenditures for fiscal year 1982 were \$44,068,788, and appropriations for fiscal year 1983 are \$89,104,436. As of July 31, 1982, the agency employed 148 staff members.

TDCA's current organizational structure includes seven program divisions and six administrative divisions which are involved in performing two major functions:

Technical Assistance. Three divisions -- local government services, housing and community development, and migrant workers advocacy -- provide technical assistance to local governments, community organizations and the public through a variety of training and informational projects. For example, local government services offers management consultation services for city and county officials, housing and community development conducts training seminars for building officials and housing code enforcement personnel, and migrant workers advocacy gathers and distributes information to help local governments and community-based agencies serve migrant workers.

Pass-through of Funds to Local Level. Five divisions administer federal and/or state programs by contracting with local governments or other entities for delivery of services at the local level. For example, the housing and community development division operates a portion of a federal program which provides rental assistance to lower income individuals and families. The drug abuse prevention division administers general revenue and federal block grant funds for drug abuse prevention and treatment programs. The children and youth services division uses general revenue funds to contract with various organizations for development or implementation of programs benefiting children in adverse circumstances. The economic opportunity division will begin administering the Community Services Block Grant on October 1, 1982; and the manpower services division handles two parts of the CETA program, acting as a prime sponsor for 119 "balance of state" counties which are not served by another prime sponsor, and distributing the Governor's Coordination and Special Services Grant for employment and training projects designated by the Governor.

The review of the agency indicated that TDCA generally has been effective in carrying out its responsibilities. However, there are areas in which modifications would increase the efficiency and effectiveness of agency operations, and these improvements are discussed in the report.

REVIEW OF OPERATIONS

The evaluation of the agency's operations is divided into general areas which deal with: 1) a review and analysis of the policy-making structure to determine if it allows for sound and fair decisions concerning the overall direction of the agency; and 2) a review and analysis of agency activities 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 programs.

Policy-making Structure

The current enabling statute of TDCA does not provide for a policy-making body. Agency operations are supervised by an executive director who is appointed by the Governor with the advice and consent of the Senate and serves at the pleasure of the Governor.

The usual role of a policy body is to make decisions on matters which affect the general operations of the agency and which determine the impact of the agency's programs on the public. A board or commission's functions often include administrative hearings, rule-making, and other overall policy determinations.

It appears that TDCA's policy-making structure is appropriate because the traditional activities of a board or commission are performed in other ways. The agency does not conduct any activities which require administrative hearings. Neither does it make rules, since there are federal guidelines governing the administration of most funds it distributes at the local level. Policies regarding the use of block grant funds are formulated during a process of public hearings and cooperation with other legislative and executive agencies. The resulting state plan for use of the funds must be approved by the Governor and by the federal agency involved.

While the absence of a policy-making body at TDCA is appropriate, an improvement can be made in the statute's provisions concerning the agency's access to information about the needs of local government. The statute provides that an Advisory Council on Community Affairs shall "consult with and advise the director with respect to the affairs and problems of local government and work of the department." The council consists of the executive director as chairman and twelve other members who must include: one mayor of a municipality with a population under 20,000; one mayor of a municipality with a population between 20,000 and 249,999; one mayor of a municipality with a population of 250,000 or

more; five public members; and one representative of the Texas Association of School Boards, the Texas Association of Counties, the Texas Municipal League, and a regional planning commission. Advisory Council members are appointed by the Governor with the advice and consent of the Senate for two-year terms.

The review indicated that the Advisory Council is not necessary because the agency's contacts with the local governments it serves, and the public hearing process on the use of block grants, provides the executive director with the information which the council was intended to give. Further, it appears that the council has not been active in providing advice about the needs of local government or the work of the department. The agency's annual report on advisory committees states that the council's procedure is to provide recommendations to the executive director by majority vote on motions and resolutions. An examination of council minutes for the period under review showed that the council has passed no motions or resolutions advising the executive director, nor has it issued any reports. The minutes indicate that the Advisory Council's meetings consist primarily of presentations by agency staff concerning current program activities. In addition, there was less than a quorum present at 31 percent of the council's meetings for fiscal years 1978-1982 . Because the Advisory Council is not active in advising the executive director, and because the needed information is available through other channels, the statute should be amended to eliminate the requirement for an Advisory Council on Community Affairs.

Overall Administration

The evaluation of TDCA's administrative procedures focused on determining whether the agency's management policies and practices facilitate adequate internal control of personnel and cash resources, and whether state and federal reporting and management requirements are satisfied. The review indicated that the agency has established a reasonable administrative structure to support its program activities.

In addition to conducting the usual activities involved in administering a state agency, TDCA devotes a substantial amount of effort to activities which support the pass-through function related to state and federal funds. In an effort to administer its contracts as efficiently as possible, TDCA has centralized several of the administrative activities which are common to each division's contracting processes. For example, the fiscal division oversees the distribution of funds to all the agency's contractors by reviewing their monthly reports on expenditures and

authorizing payment of agreed amounts. Standard provisions of the contracts used by each program division are drafted by the legal division, which also approves each contract before it is executed. Since most of TDCA's contractors must be audited regularly, a management audit division was established in 1979 to handle the activities associated with financial examinations of contractors. Most audits are conducted by independent CPA firms. The management audit division reviews the CPA audits and attempts to resolve questioned expenditures by requesting additional documentation or obtaining a refund from the contractor to TDCA. The division also conducts some audits of TDCA contractors. Another centralized support function is performed by the data services division, which provides computing and word processing services to all agency divisions through the use of a minicomputer.

In general, TDCA's policy of centralizing the functions which are common among program divisions facilitates an efficient administrative system. The agency appears to have complied with applicable state and federal requirements, and the review did not reveal any significant problems in the administrative framework of the agency.

Evaluation of Programs

The evaluation of programs focused on the ways in which TDCA conducts its two major functions--technical assistance and pass-through of funds to the local level. In general the procedures followed by TDCA in these areas are reasonable. The operation of the programs and the problems encountered during the review are discussed below.

Technical Assistance

Three divisions in TDCA deliver technical assistance in the form of advice and information to units of local government and to a range of organizations and individuals connected with migrant workers in Texas. First, the local government services division conducts training seminars, offers consultation and advice, and provides informational publications for local government officials. The subject matter of the seminars, consultations, and publications covers a wide range of topics on local government management, including physical planning, rural fire prevention and control, obtaining and administering grants, and management of personnel, finances, and public works. Second, the housing and community development division conducts and contracts for training seminars and distributes informational publications to local governments. The seminars and publications

deal with various aspects of housing development, quality and management. Finally, the migrant workers advocacy division attempts to locate and coordinate the distribution of resources which are available at the local level to help migrant workers and their families. Examples of the work of this division include: 1) encouraging and assisting in the establishment of a series of "migrant outreach resource centers" across the state which are funded mostly from local funds to help migrant workers who encounter emergencies as they travel; and 2) working with employers and community or junior colleges in establishing vocational training courses for migrant workers in subjects such as irrigation, farm machinery maintenance, and pesticide management.

Two major aspects of the technical assistance function--the method of selecting recipients and the process of service delivery--were evaluated during the review and were found to be appropriate.

Selection of Recipients. The methods used by the three divisions to select recipients of technical assistance services were reviewed to determine whether information about the service was readily available, whether the decision was fair and unbiased, and whether the decision was based on a valid determination of the recipient's need for the service.

The local government services and housing divisions publicize their services through contacts with councils of government, local governments, and associations of local governments. Brochures describing their services are distributed through correspondence and at training seminars. The migrant workers advocacy division uses similar methods to distribute information about its services, except that it communicates with community action agencies, state agencies, growers, and community colleges, as well as with local governments in areas where migrant workers are employed. All three divisions provide their services upon request, on a first-come, first-served basis, with the local government services and housing divisions primarily assisting smaller cities or rural areas which cannot afford professional managers or consultants.

Service Delivery. The divisions' procedures for providing technical assistance services were examined to determine whether the scheduling of service delivery was efficient, whether the service was performed by competent personnel, and whether the service met the needs of the recipients. All three divisions attempt to schedule technical assistance activities to minimize travel. To ensure that the services are performed by competent personnel, all three divisions employ persons

who are experienced in their fields, and the housing division occasionally contracts with private firms to conduct training seminars on subjects outside the staff's expertise. To determine whether the services meet the needs of recipients, the local government services and housing divisions use questionnaires in which seminars are rated and criticized by those attending, and the migrant workers advocacy division consults with growers, community action agencies, and local governments to determine areas in which services are needed.

Pass-through of Federal and State Funds to Local Level

Five divisions in TDCA are involved in administering federal or state funds for the delivery of services at the local level. The programs operated by the five divisions are described below.

The housing and community development division currently operates a portion of the federal Housing Assistance Payments Program--Existing Housing, which is sponsored by the Department of Housing and Urban Development. The program provides rental assistance to lower income individuals and families. TDCA is one of several public housing agencies in Texas which have been designated by HUD to administer the program. Other participants are COGs, counties and cities. TDCA's portion of the program involves handling the overall administration for over 40 rural counties and small communities which cannot afford to apply for and carry out the program on their own. Each participating locality enters into a contract with TDCA which provides that the community will designate a local operator who will process applications for assistance and certify that rental units leased by eligible families meet HUD quality standards. TDCA then pays the monthly rental supplements directly to the landlords.

The drug abuse prevention division administers general revenue funds, as well as a share of the Alcohol, Drug Abuse and Mental Health (ADM) block grant which was established by the Omnibus Reconciliation Act of 1981. Other portions of the ADM block grant are administered by the Texas Commission on Alcoholism and the Texas Department of Mental Health and Mental Retardation (MHMR). To distribute these funds, TDCA contracts with approximately 42 entities (for fiscal year 1983), which treat drug abusers and provide prevention services, usually involving educational or informational programs.

About \$1 million in general revenue funds is used by the children and youth services division to contract with approximately 57 organizations, most of which are non-profit community-based organizations. These organizations develop and/or

implement a variety of programs intended to benefit children who are under-privileged in any of several ways--child abuse victims, children of teenage parents, children with emotional problems, and others.

The economic opportunity division has administered several anti-poverty programs under the direction of the federal Community Services Administration (CSA) and the U. S. Department of Energy (DOE). The division most recently operated the DOE Weatherization Assistance for Low-Income Persons program. Under this program, TDCA received over \$8 million in fiscal years 1980, 1981, and the first one-third of fiscal year 1982. The funds were used to contract with about 54 organizations, mostly Community Action Agencies (CAA's), which repaired and insulated houses belonging to low-income persons in order to reduce energy costs. As of December 31, 1981, the program was transferred to the Texas Department of Human Resources because DHR is the recipient of the Home Energy Assistance Block Grant and is in a position to combine the DOE funds with money available under the block grant.

On October 1, 1982, the economic opportunity division will begin administering the Community Services Block Grant (CSBG) which was established under the Omnibus Reconciliation Act of 1981. Under this block grant, the agency will receive approximately \$15.5 million. It intends to contract with 55-60 organizations, mostly CAA's, which will deliver the types of anti-poverty services previously administered by the CSA under the Economic Opportunity Act of 1964.

The manpower services division is responsible for two parts of the Comprehensive Employment and Training Act (CETA) program in Texas. First, TDCA is one of 26 prime sponsors which administer CETA funds in various parts of the state. TDCA's area is the "balance of state," which consists of 119 counties not served by another prime sponsor. Second, the division distributes the Governor's Coordination and Special Services Grant, which is a discretionary grant for the operation of special projects designated by the Governor. In 1982, the Manpower Services Division contracted with about 30 organizations--including COGs, non-profit community organizations, and others--to distribute about \$27.6 million for employment and training programs.

In distributing funds for service delivery, each of the divisions discussed above follows a similar procedure which involves five steps: 1) selecting contractors; 2) formulating contracts; 3) training contractors to comply with program guidelines; 4) monitoring and auditing contractors to detect non-compli-

ance; and 5) enforcement of contract terms. The manner in which each division performs these steps was evaluated during the review and is discussed below. In general the divisions' activities were found to be appropriate.

Selection of Contractors. The process of selecting contractors should ensure that the most capable organizations have access to funds with which to deliver the needed service. Therefore, the five divisions' procedures were evaluated to determine whether information about the availability of the funds is accessible to potential service providers; whether a competitive application or bid process is used to discover potential contractors; and whether a fair and unbiased choice is made among the applicants. The agency has developed and follows a procedure to ensure that these three tests are met.

New contracts are usually negotiated at the beginning of each grant period, which is normally one year in length when federal funds are involved, and at the start of the state fiscal year when state funds are being allocated. In advance of each new contract period, a request for proposals (RFP) for the use of funds is published in the Texas Register. Entities wishing to receive funding submit their applications to the division involved, where the merits of each proposal are evaluated and ranked according to specific criteria. The organizations deemed most capable of delivering the service are asked to negotiate a contract.

One of the programs examined is operated without the above procedure for selecting contractors. The housing and community development division's rental assistance program does not require re-negotiation of contracts on a periodic basis. The choice of communities to participate, and the allocation of rental units to be subsidized, are made jointly by HUD and TDCA; and once a city or county has joined the program, the contract is continuous unless the community fails to comply with program guidelines. Since the process used by TDCA is in accordance with federal rules, it appears appropriate.

Contract Formulation. The type of contract used by TDCA is important because it is the basis of: 1) the parties' understanding of their responsibilities; and 2) the recourse allowed in case of default. Therefore, the agency's contracts were examined to determine whether they are clearly and concisely written, whether they contain an accurate statement of services to be delivered, and whether they contain enforcement provisions which afford TDCA adequate control over funds.

Most of the agency's contracts have two parts: a "boilerplate" which contains basic provisions applying to any contractor in the program, and a "statement of work" which pertains to the particular contractor's services and specifies the amount of funding to be provided by TDCA. The general provisions contain an enforcement procedure which allows TDCA to terminate the contract for non-compliance after giving the contractor a reasonable opportunity to correct deficiencies. In general, the contract forms used by the agency accurately state the services to be rendered by both parties and provide for adequate control over funds.

Contractor Training. Once the contract is executed, TDCA attempts to avoid compliance problems by providing the contractors with training on program guidelines. These training procedures were evaluated to determine whether travel was efficiently scheduled, whether competent personnel were employed to do the training, and whether the training provided met the needs of the contractors. The review indicated that the agency's methods of providing contractor training are adequate to satisfy these three criteria.

There are two aspects of the training activity in each of the five divisions performing the pass-through function. First, workshops and seminars are held, often at the beginning of a program, for attendance by all the participating contractors. Second, on-site assistance is provided for individual contractors who need help with tasks such as preparing reports or training new employees to carry out requirements under a program administered by TDCA. On-site assistance is provided by a program specialist assigned to the contract. Most program specialists are responsible for a group of contractors which are located in a particular geographic area, allowing visits to more than one contractor on a single trip. A survey of contractors indicated that TDCA personnel are generally regarded as competent and that the assistance provided usually meets the contractors' needs.

Compliance Activities. TDCA's compliance activities should serve several purposes. They should ensure that federal or state funds distributed at the local level are spent for the intended services and that contractors dispensing federal funds comply with federal statutes and regulations. They should also supply data and information which can be used by TDCA management to improve its administration of the programs and to set and reach program objectives. TDCA has established two activities--program monitoring and financial auditing--which are

intended to form an integrated system for achieving the above purposes. Program monitoring is performed within each division and includes in-house review of reports filed by contractors, as well as on-site visits to their offices, to identify and correct problems in service delivery during the progress of the contract. Financial audits of contractors' records are performed either by independent CPA's or by the management audit division of TDCA to determine, usually at the end of a contract period, whether the subrecipient has expended funds in accordance with program rules.

The agency's monitoring/auditing activities were examined to determine three things: 1) whether there was a scheduling mechanism which allowed for reporting or on-site visits of a frequency and duration to allow problem identification at an appropriate stage, and which made efficient use of travel funds; 2) whether the procedure for performing the activity included a broad and detailed enough scope to give an accurate assessment of the program and involved a standardized procedure in order to minimize subjectivity on the part of the reviewer; and 3) whether the results of the review were used systematically to efficiently communicate the findings to the contractor, to allow use of the information as a management tool by the proper TDCA personnel, and to ensure effective follow-up and correction of deficiencies identified during the review. In general, TDCA's compliance activities are in accordance with these criteria. Some concerns were identified during the review and are discussed in the following paragraphs, but in each case the agency is taking steps to correct the problems.

The schedule for monitoring activities includes, for each of the five divisions, reporting requirements and on-site visits. Travel is scheduled so that more than one visit per trip is made when possible. Most of the programs require monthly reports, but the CETA and housing rental assistance procedures involve continuous reporting of participants enrolled. On-site visits are made to contractors in each of the programs at least annually and as often as quarterly. These visits appeared to be sufficiently frequent to allow adequate assessment of the programs.

The frequency of financial audits on the use of federal funds is governed by federal requirements. According to the State Auditor's Office and the Inspector General's Office of the Department of Labor, the usual practice for auditing subrecipients is the same as the national Office of Management and Budget requirements for audits of federal grantees. The contractor should be audited at

least every two years either by a private CPA firm or by an independent audit unit within the agency, such as TDCA's management audit division.

TDCA's current procedures for auditing its contractors are in accordance with this requirement. On most programs an audit is done by an independent CPA firm at the end of the contract period, which is usually one year in length. All programs administered by the economic opportunity division and the children and youth services division have been audited in this way. A CPA firm also audits the CETA contracts, but they are audited on a schedule of one-half the contractors one year and one-half the next, so that all contractors are audited at least every two years. In all the cases in which audits are done by independent CPA firms, TDCA's management audit division reviews the audits and attempts to resolve any audit exceptions reported. In other programs, such as drug abuse treatment and prevention, management audit division personnel perform the subrecipient audits themselves.

One concern identified during the review was that there were three programs operated by TDCA since 1978 in which audits of subcontractors were performed less often than every two years. Two of these programs, which were sponsored by the Department of Housing and Urban Development and the Intergovernmental Personnel Administration (IPA), are no longer operated by the national government. The other instance in which audits sometimes were performed infrequently was in the drug abuse program. Since 1979 the agency has been attempting to eliminate the backlog of unperformed audits. The management audit division has conducted audits on a sample of the HUD and IPA contractors, and these audits have been approved by the administering agencies. Management audit has also completed its work on drug abuse contractors through fiscal year 1981 and is beginning 1982 audits, so it appears that the agency's efforts to comply with federal audit guidelines are now in order.

In all five divisions administering funds for service delivery at the local level, monitoring procedures have been developed which use an appropriate scope and a standardized evaluation format to minimize subjectivity. During on-site visits, monitors investigate a range of activities related to contract requirements, including recordkeeping, eligibility of participants, method of service delivery, etc., and report their findings on a standardized question-and-answer form with an attached narrative statement. One concern identified during the review related to the type of monitoring visit performed by the drug abuse prevention division. For

the past few years, monitoring of drug abuse treatment contracts has been limited to an examination of patient charts to determine whether they were complete and whether patients were receiving certain types of treatment. Areas such as competence of personnel and administration were given cursory attention. However, for the treatment contracts which began July 1, 1982, the division has expanded the scope of its review by developing a four-part monitoring instrument intended to address all aspects of contract performance.

Procedures used for auditing the contractors also appear to be appropriate. A state auditor's management letter issued on June 1, 1982, suggested that the management audit division maintain additional documentation to support its conclusions, and the division has begun complying with the request. Also, federal agencies have indicated, either by accepting audits performed by the management audit division or by approving TDCA's overall methods of administering federal grants, that its auditing policies are satisfactory.

The review indicated that the agency makes proper use of the results of its monitoring/auditing activities. Usually, monitoring and auditing teams review the other's latest findings before making an on-site visit. By being aware of previous evaluation conclusions, the teams can effectively follow-up and correct deficiencies discovered earlier.

Enforcement of Contract Terms. After incidents of non-compliance are identified through monitoring and auditing activities, the agency must have an adequate range of options with which to enforce the terms of the contract. The review indicated that TDCA's enforcement capability is adequate, since several alternatives are available for use in obtaining compliance. Some of these options are applicable to any of the programs being administered, and others are possible because of the particular characteristics of the program to which they are applied.

Usually, when deficiencies are discovered during a monitoring visit, the program specialist conducts an exit interview with contractor personnel, informing them of the problems identified. After the TDCA representative returns to Austin, the contractor is notified by letter of the exceptions and of the time period in which it must either take corrective action or tell TDCA how it intends to rectify the situation. In some cases, such as the weatherization program, a follow-up visit to inspect the actions taken is done shortly after the contractor's reply is received by TDCA. In other instances, the verification that the contractor has satisfactorily corrected the deficiencies is performed on the next regularly scheduled

monitoring visit. If notification of deficiencies and follow-up visits for verification do not obtain compliance, the agency may terminate the contract or fail to renew it at the beginning of the next contract period.

In addition to the follow-up/verification procedure, which corrects most compliance problems, and the termination/refusal-to-renew option, which is the most extreme measure and is used least often, in at least two instances intermediate enforcement steps are available. Since the housing and community development division makes the rental assistance payments directly to the landlords, TDCA can withhold checks on any units which do not pass HUD housing standards until the required repairs are made. In the same program, if the participating community does not keep a required percentage of units occupied, TDCA, with HUD's approval, can reduce the number of subsidized units available in that locality. The drug abuse prevention division also has an option short of terminating a contract. Because contracts for treatment of drug abusers require that the contractor treat a certain number of patients, the level of funding supplied by TDCA can be reduced if the service is provided to fewer patients than the contract requires.

EVALUATION OF 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

The material presented in this section evaluates the agency's efforts to comply with the general state policies developed to ensure: 1) the awareness and understanding necessary to have effective participation by all persons affected by the activities of the agency; and 2) that agency personnel are fair and impartial in their dealings with persons affected by the agency and that the agency deals with its employees in a fair and impartial manner.

Open Meetings/Open Records

The review of the agency's compliance with the Open Meetings Act indicated that it has made timely filings with the Secretary of State's Texas Register Division, providing appropriate notice of its advisory committee meetings. The agency's actions also appear to comply with the Open Records Act. All records are considered open except two sets of records which are held to be confidential in accordance with federal statutes or guidelines concerning programs administered by TDCA. First, records of the identity, diagnosis, prognosis, or treatment of any patient involved in the federally funded drug abuse program are kept confidential by authority of the Drug Abuse Office and Treatment Act of 1972. Second, the CETA regulations require that the identity of persons who furnish information about possible violations of the CETA statute be held in confidence.

EEOC/Privacy

A review was made to determine the extent to which the agency has complied with applicable provisions of both state and federal statutes concerning equal employment and the rights and privacy of individual employees. TDCA currently operates under an affirmative action plan which was last updated in 1980. The department's status with regard to equal employment opportunity/affirmative action is reviewed periodically by the federal agencies for which TDCA administers funds, and new or continuous funding is contingent upon federal approval of the department's equal employment policies and actions. Interviews with agency personnel indicate that appropriate procedures are in place to protect the rights and privacy of TDCA's employees.

Public Participation

The agency's policies and practices were examined to determine whether the public and the persons or entities served by TDCA have been kept informed of its

activities, and whether the public has been allowed appropriate opportunities to make suggestions during policy formulation by the agency. The review indicated that the public, as well as the local governments and organizations which TDCA serves, have had adequate access to information about the programs operated by the agency. Newsletters and brochures are distributed, and seminars and workshops are conducted, concerning TDCA's activities. Improvement can be made, however, in the public's role regarding the agency's decision-making process.

There are at least two ways in which the public can have an effect on the TDCA's methods of administering its state and federal funds. First, individuals can testify at public hearings which must be held prior to TDCA's submission of a state plan for the expenditure of block grant funds. The department has participated in public hearings, in accordance with federal regulations, on use of the block grant funds which it administers--the drug abuse portion of the Alcohol, Drug Abuse and Mental Health Block Grant, and the Community Services Block Grant.

Another way in which the public can affect TDCA's policies is through membership on various advisory committees which are formed in connection with specific programs administered by the department. The agency's enabling statute authorizes the Governor to establish advisory groups to assist the executive director of TDCA on matters which the Governor may designate. Also, statutes and guidelines for federal programs have required the existence of advisory committees with specific membership categories. The Governor appoints the members of both types of advisory groups. Several of the agency's advisory committees, both those established by the Governor and by federal requirements, have contained public membership.

There are currently three advisory committees functioning in connection with the programs administered by TDCA. They are the Drug Abuse Advisory Council, which exists in accordance with Executive Order WPC-10; the Prime Sponsor Planning Council (PSPC), which is required by Title I of the Comprehensive Employment and Training Act; and the Private Industry Council (PIC), which is mandated by Title VII of the CETA statute. The membership of the Drug Abuse Advisory Council is determined by the Governor, and there are currently three public members out of a total of 16 members.

One problem identified during the review concerns the membership and operations of the two CETA-related committees. Under the federal statute, the Prime Sponsor Planning Council is assigned the task of advising the prime sponsor,

TDCA, regarding the complete CETA program conducted by the prime sponsor. This duty includes helping to develop the basic goals, policies and procedures of the program; monitoring and evaluating the activities conducted in the prime sponsor's area; and analyzing areas of need for employment and training activities. The PSPC has 11 mandated membership categories. The size of the council is not specified, but it must have at least one member representing each of the following groups: 1) the CETA-eligible population; 2) community-based organizations; 3) the state employment service; 4) veterans' organizations; 5) the handicapped; 6) vocational education agencies; 7) public assistance agencies, 8) other education and training institutions; 9) business; 10) organized labor; and 11) employees not represented by organized labor. No member can represent more than one of the required groups. The federal guidelines also require that the council meet at least five times a year, and that the prime sponsor designate as chairman a person "who is not an elected official of or an employee of the prime sponsor."

The review indicated that some of the PSPC requirements have not been met. Currently, five of the membership categories--the places for representatives of the CETA eligible population, of veterans' organizations, of handicapped individuals, of organized labor, and of employees not represented by organized labor--are not filled. In addition, there are five members who do not appear to represent any of the required groups. Agency notices in the Texas Register indicate that the Council has not had at least five meetings per year. It met one time in 1980, two times in 1981, and three times in 1982. Finally, an employee of TDCA currently serves as chairman of the PSPC.

Discussions with agency staff revealed that DOL representatives monitor the activities of advisory committees as part of their evaluation of the CETA program, and that DOL has not objected to the current membership or operation of the PSPC. Nevertheless, because the intended functions and membership categories of the PSPC afford a substantial opportunity for members of the public and people served by CETA to have an impact on the program, it appears that an active Prime Sponsor Planning Council would be an asset to the manpower services division of TDCA. Therefore, to give TDCA the full benefit of the PSPC's advice, and to allow a larger measure of public participation in the direction of the CETA programs, the agency should: 1) inform the Governor of the five membership categories which are currently vacant, and of the five members who do not fit a category, so he can appoint an appropriate membership for the council; 2) request

that the Governor designate a council member as chairman; and 3) encourage the council to meet the required five times per year.

The function of the Private Industry Council, established under Title VII of CETA, is to consult with the prime sponsor regarding programs designed to involve the private sector in CETA programs. The PIC has four required and two permissive membership categories. It must contain representatives of 1) business and industry, including small and minority business; 2) organized labor; 3) community-based organizations; and 4) educational institutions. The committee may contain representatives of 1) the CETA-eligible population, and 2) organizations with a unique relationship to the CETA program, such as the state employment service. A majority of the members must be representatives of business and industry. As of September 15, 1982, there was not a representative of organized labor on the PIC. Agency staff has indicated, however, that they have requested the Governor to appoint a person to fill this required position. There is also no representative of the CETA eligible population on the PIC. Although it is a permissive category, a representative of persons who are served by CETA could add a valuable measure of public participation to the council's activities. To enhance public participation on the Private Industry Council, the agency should request that the Governor appoint a person from the CETA eligible population as a member of the PIC.

Conflicts of Interest

A review of the agency's compliance with statutory standards of conduct and conflict of interest provisions showed overall compliance with the requirements. The executive director has filed annual financial statements, and the advisory council members have filed affidavits with the Office of Secretary of State as required by law. New employees are informed, in writing, of applicable provisions of the State Appropriations Act, and are required to sign a statement that they have received the information.

**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 there other suitable ways to perform 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

Functions

In reports recommending the creation of a state department of community affairs, a senate interim committee and a governor's task force proposed in 1971 that the agency's function should be to provide assistance to local governments. Their conclusion was subsequently adopted in the purpose statement of TDCA's enabling legislation. In connection with its assignment to aid local governments, TDCA has performed a range of activities, including consulting with local officials on subjects such as city planning, building code administration, and financial and personnel management; publishing informational materials; and conducting training sessions and seminars. In addition to these technical assistance activities, the agency has administered several federal programs which provided funds to help cities and counties develop and implement planning, management, or improvement projects. Although not stated in the agency's purpose clause, since its inception TDCA has been directed to perform activities which did not directly serve local governments. One of the functions which was listed in the original enabling legislation required that the agency "administer...State responsibilities for programs created under the Federal Economic Opportunity Act of 1964 and other federal acts creating economic opportunity programs." Accordingly, TDCA has acted as Texas' State Economic Opportunity Office (SEOO), handling the anti-poverty programs administered by the federal Community Services Administration. According to federal requirements, funds in most of these programs were distributed through community action agencies that were designated by CSA. While some CAA's were local governments or combinations of governments, such as councils of government, others were non-profit community-based organizations. Later legislative and gubernatorial actions gave TDCA responsibility for drug abuse programs in Texas, for portions of the state's CETA program, and for certain services to children and youth. These programs, like the role of SEOO, required service delivery through organizations other than local governments.

The assignment of various responsibilities to TDCA since 1971 has resulted in the agency's current dual functions of: 1) serving local governments through technical assistance and administration of federal grants to local governments, and 2) performing pass-through activities for programs which serve entities other than local governments. Both functions currently are needed in state government.

Today the state plays as important a role in the affairs of local government as it did in 1971 when TDCA was created. Because state government determines which actions cities and counties may or may not take, a state agency such as TDCA can act as an effective liaison between the state and local levels. Local governments also still need assistance in determining how to deliver essential public services, and expertise at the state level can help them adjust to changing situations such as the current shift in federal spending. At the same time, efficient arrangements for service delivery at the local level are still necessary, whether or not the recipient of funds is a local government. As block grant funds are distributed to the states for administration, the state will continue to need effective methods of performing the pass-through function.

Agency

The review examined the desirability of the state agency which assists local governments also administering pass-through programs to recipients that are not local governments. While the programs administered by TDCA have concerned diverse subject areas, i.e. drug abuse and weatherization of homes, the contracting process involved in delivering the service has been similar. Because of the similarity in the method of service delivery for the various programs, the current organizational structure is reasonable. Assigning both local government assistance and pass-through responsibilities to TDCA is not, however, the only viable way for the state to perform the functions.

ALTERNATIVES

Agency Reorganization

Instead of the current grouping at TDCA of programs with similar administrative procedures, the programs could be assigned to state agencies according to the populations served or the type of service involved. In fact, several proposals in the past few years have suggested transferring the responsibility for activities conducted by TDCA to other state agencies which serve similar populations or deliver related services. To determine if it would be feasible to transfer any of TDCA's programs, the review examined possible instances in which TDCA's target populations or services resemble those of other agencies; and four such cases were discovered. These programs and their similarities with other agencies are described below.

Children and Youth Services. In the past, governors have designated TDCA as the state agency to operate several federal programs for the benefit of children and youth, including training and assistance to Head Start centers and administration of Young Adult Conservation Corps and Youth Conservation Corps. In addition to gubernatorial assignments, the 67th Legislature enacted legislation which authorizes the agency to assist communities in planning, developing, implementing and coordinating programs to provide services to enhance the development of children and youth. However, because federal funding of programs operated by the children and youth services division have ceased, the agency's current role in this area is limited. The division's 1983 budget of about \$1 million in general revenue funds is being used for two major purposes: 1) administration of about 57 contracts with local organizations which develop and/or implement a variety of programs for the benefit of children who are underprivileged in any of several ways, such as child abuse victims and children with emotional problems; and 2) distribution of various publications dealing with children and youth.

The other state agency which provides services to children and youth is the Texas Department of Human Resources. Like TDCA, most of DHR's activities are directed toward children who are disadvantaged. Both agencies contract with local organizations for counseling of children and parents, for day care services, and for parenting education intended to prevent child abuse. The agencies also produce publications which deal with similar subjects. For example, DHR's Child Care Quarterly deals with child development subjects of interest to day care workers

and parents, and TDCA distributes a series of materials intended for use by day care workers in improving their competence to care for children.

Economic Opportunity. TDCA's responsibility to act as Texas' State Economic Opportunity Office ends on October 1, 1982, when the state assumes responsibility for the Community Services Block Grant (CSBG). This grant, which was created by the Omnibus Reconciliation Act of 1981, consolidated the anti-poverty programs which previously were operated by the Community Services Administration. The governor has designated TDCA as the state agency to administer the CSBG. For 1983, TDCA is contracting with community action agencies, the local organizations which previously received funding directly from the CSA, to deliver services allowed under the grant. While the CAA's have some flexibility in determining how the funds will be used, the general purpose of the grant is to alleviate the causes of poverty by assisting low-income persons to change the conditions in which they live.

The activities which are allowed under the CSBG serve the same population as the "community care" program operated by DHR. In addition to the fact that both programs address the problems of low-income individuals and families, the types of services delivered have similar purposes and funding mechanisms. Both TDCA and DHR contract with local governments or organizations, and the purposes of the programs are related in ways that allow similar services to be supported by both agencies. For example, community action agencies could use CSBG money to provide the transportation needed to support a meals program funded by DHR. Or programs funded by TDCA under the CSBG's provision for assisting low income persons to "attain an adequate education" could also receive support from DHR for programs which provide vocational training to handicapped adults. While these types of overlap do not necessarily happen, the examples illustrate the ways in which the Community Services Block Grant and DHR's community care program are related.

Drug Abuse Treatment and Prevention. The Texas Controlled Substances Act designated TDCA as the state agency to receive and disperse funds under the Drug Abuse Office and Treatment Act of 1972 and directed the agency to carry out educational programs designed to prevent abuse of controlled substances. In addition, the R.B. McAllister Drug Treatment Program Act gives TDCA wide discretion and authority over the operation of drug abuse treatment programs in Texas. In accordance with these statutes, TDCA has used federal and state funds

to contract with local organizations which conduct treatment and prevention programs. Federal funds for drug abuse programs are supplied through the Alcohol, Drug Abuse, and Mental Health (ADM) block grant, which was created by the Omnibus Reconciliation Act of 1981. This grant is received by MHMR, then divided among TDCA, the Commission on Alcoholism, and MHMR.

TDCA's drug abuse programs are similar in several ways to the programs operated by the Commission on Alcoholism. First, the agencies have a common funding source in that they both receive a portion of the ADM block grant. Second, both agencies contract with organizations for service delivery at the local level; in fact, several TDCA contractors also receive funds from the Commission on Alcoholism. Third, they each fund educational prevention programs as well as treatment facilities. Finally, some methods of treatment, such as counseling, are common to both alcoholism and drug abuse programs.

CETA. TDCA's current responsibilities with respect to the Comprehensive Employment and Training Act include acting as prime sponsor for 119 "balance of state" counties which are not served by another prime sponsor, and distributing the Governor's Coordination and Special Services Grant for employment and training projects designated by the Governor. To perform these duties, the agency contracts with about 30 entities -- COGs, non-profit community organizations, and others -- which carry out various CETA activities.

Another state agency which is involved integrally in the CETA program is the Texas Employment Commission. TEC has two major functions related to CETA. First, it has contracts with 20 of the 26 prime sponsors in Texas, under which it processes the checks for allowances which are paid to CETA participants. The prime sponsors transfer their allowance funds to TEC, which calculates the amounts, issues and mails the checks, and does the recordkeeping on this aspect of the CETA program. TDCA is one of the prime sponsors which participates in this statewide payment service. Secondly, under contracts with seven of the prime sponsors, TEC performs some CETA-related activities through its regional offices. Several types of services are performed by TEC according to these contracts. For example, in some cases TEC staff works either at a TEC regional office or at the prime sponsor's office, performing applicant intake, employability or eligibility assessments, and counseling tasks. In other instances, TEC staff works with employers in the prime sponsor's geographic area to develop on-the-job training slots which are filled by CETA participants.

A decision on the desirability of the division of duties between TDCA and TEC necessarily will be influenced by changes which currently are being made in the federal CETA legislation. Under a new act passed by Congress on October 1, 1982, the state's role in administering manpower training programs will change substantially. After a transition period that probably will last through fiscal year 1983, manpower training funds will be administered through the state in an arrangement similar to a block grant. It is too early to assess the new legislation's eventual "character", but the impending changes in the state's responsibility for CETA programs may warrant adjustments in the assignment of duties between TEC and TDCA. It is possible that TEC's network of regional offices would enable it more effectively to administer a statewide manpower training program than would be possible under the current division of duties between TDCA and TEC. The possibility of assigning all CETA responsibilities to TEC should be monitored as the effects of the new legislation become more clearly understood.

Transferring any or all of these four programs from TDCA to other agencies would reduce TDCA's involvement in activities which do not serve local governments directly, and would focus the agency's efforts on assisting political subdivisions to solve their problems. If all four programs were assigned to other agencies, the three remaining programs would be local government services, housing and community development, and migrant workers advocacy. The local government services division and the housing and community development division are engaged in serving local governments through technical assistance and administration of the HUD rental assistance program. In addition, housing division staff is currently cooperating with the Governor's Office of Budget and Planning and the Texas Advisory Commission on Intergovernmental Relations in developing a proposal for use of the Small Cities portion of the Community Development Block Grant. This grant, which was created by the federal Omnibus Reconciliation Act of 1981, is currently administered by HUD. The Governor has accepted the Small Cities portion, which is about \$58 million for fiscal year 1983, to assist cities and counties with populations under 50,000 in developing and implementing various capital projects. The Governor has not, however, designated a state agency to administer it. If the grant were assigned to TDCA, the agency's local government assistance activities would include technical assistance and administration of two federal programs, the rental assistance program and the Small Cities grants. The migrant workers advocacy program, which is a small project involving two

employees and about \$75,000 per year, would be the agency's only activity not serving local governments exclusively.

ACROSS-THE-BOARD RECOMMENDATIONS

TEXAS DEPARTMENT OF COMMUNITY AFFAIRS

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. The board shall make annual written reports to the Governor and the legislature accounting for all receipts and disbursements made under its statute.
X			10. Require the board to establish skill oriented career ladders.
X			11. Require a system of merit pay based on documented employee performance.
X			12. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			13. Provide for notification and information to the public concerning board activities.
		X*	14. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Department of Community Affairs
(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.