

**TEXAS EMPLOYMENT COMMISSION**



## 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 Employment Commission was established in 1936. The primary functions of the agency are to provide unemployment compensation benefits to eligible recipients and to provide assistance in finding jobs to unemployment insurance recipients and others out of work.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. Because of the continuing potential in our economy for periods of temporary unemployment and the need for providing assistance to the temporarily unemployed, the review identified a continuing need to supply unemployment compensation and job finding services.

The review included an analysis of the need to have a separate agency for this purpose and the results of the analysis indicated that there were no substantial benefits to be gained through a transfer of functions. However, alternatives developed during the review identified benefits to be gained from establishing a higher level appeals board and making the commission part-time. Benefits were also identified in the assumption by TEC of CETA duties now performed by the Texas Department of Community Affairs. The review also indicates that benefits could be gained by increasing the Benefit Trust Fund "floor" and by improving the methods currently used to index the calculation of the benefit amount paid to unemployment insurance claimants. If the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the agency's operations.

### Approaches for Sunset Commission Consideration

#### **I. MAINTAIN THE COMMISSION WITH MODIFICATIONS**

##### **A. Policy-making structure**

1. The statute should be amended to remove the title of executive director from the designated duties of the chairman of the commission. (statutory change)
2. The commission should prioritize its time to provide for the accomplishment of higher level appeals decision-making in a more timely fashion. (management improvement - non-statutory)

- B. Agency operations
  - 1. Overall administration
    - a. The statute should be modified to set out the duties and functions of the agency's executive administrator. (statutory change)
- C. Recommendations for other sunset criteria
  - 1. Open Meetings/Open Records
    - a. The agency's legal department should review, revise, and distribute memoranda which set out the types of records held by the agency which are open and those which are closed as indicated in relevant court decisions, Attorney General Opinions and Open Records Decisions. (management improvement - non-statutory)
  - 2. Conflicts of interest
    - a. The statute should be amended to ensure that the type of process currently used by the agency to inform commission members and agency personnel of their responsibilities under conflict-of-interest statutes will be continued in the future. (statutory change)
  - 3. Public participation
    - a. The statute regarding the agency's advisory council should be modified to:
      - 1) provide for only one advisory council;
      - 2) require the advisory council to develop a report of its work and its recommendations to be included in the TEC's annual report to the Governor;
      - 3) reduce the size of the council from 27 to 15 members with each commissioner appointing five members to represent their constituency. (statutory change)

## II. ALTERNATIVES

- A. Agency reorganization
  - 1. Make the commission a part-time policy body and create a higher level appeals board.

This approach would allow a higher level appeals decision board to devote its full time to deciding the appeals of benefit

claims. Their appointment without regard to constituencies would ensure impartiality in the decision-making process and allow division of workload during peak periods of activity.

2. **Transfer the Texas Department of Community Affairs' CETA duties to TEC.**

Recent legislation passed by Congress may develop a closer coordination between job search and development agencies and job training agencies. Should this intent be carried out, it appears the Texas Employment Commission has the field structure and familiarity with portions of the CETA programs to carry out this combined effort.

B. Change in method of trust fund operation

1. **Increase trust fund floor.**

Although changes made in the recent special session provide an indexing method to gradually increase the trust fund "floor" and "ceiling", the starting floor level (\$225 million) may be too low. It is possible to minimize the chances of the reoccurrence of the recent crisis by raising the floor to \$325 million thereby more closely resembling the total wage base in Texas. Should this alternative be adopted, it is suggested that the "cap" be extended for the supplemental tax rate in 1985 at the same level as 1984 in order to prevent a large rate increase for 1985.

2. **Change method of indexing benefit levels.**

The current method of calculating the minimum and maximum benefit levels depends on the voluntary reporting of selected manufacturing employers. Although it would have the effect of slowing the pace of increases in benefit levels, it appears the use of wage information from all Texas employers would provide a more accurate method to determine the amount of unemployment insurance benefits.

### III. OTHER ISSUES

The review identified one issue for which effective arguments can be made both pro and con. The issue identified follows:

#### Funding of former state employee benefits.

Currently, benefit payments for former state employees are financed from a combination of general revenue and the agency Penalty and Interest Fund (P&I). State agencies are not actually billed for their share of unemployment insurance claims. Proposals have been developed where each agency budgets and receives a line item appropriation for benefit payments to former state employees. Arguments for this approach indicate that using the P&I fund provides subsidization by private employers of what should be costs of state government. Secondly, since the state agencies aren't actually "charged" for their former employees' benefit payments, they have no incentive to challenge questionable unemployment compensation claims.

Arguments against the system indicate that billing the agencies would only shift funds without altering the total amount needed. Additionally, the drain on general revenue would be increased if the P&I fund were not utilized.

## 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 Employment Commission (TEC) was established in 1936 and is currently active. The commission is composed of three full-time, paid members appointed by the Governor, with the consent of the Senate, for staggered six-year terms. One of the commissioners represents labor, one represents employees and one, who serves as chairman, represents the general public. By statute, the three member commission is charged with administration of the Texas Unemployment Compensation Act and with organizing the agency. The chairman is designated as "executive director" by the Act but the commission has chosen to appoint and act, for most purposes, through an agency administrator who oversees day-to-day operations of the agency. Duties of the members of the commission, separate from the general administration of the agency, include the acting as an appeals body for higher level benefit appeals, oversight of the agency's fiscal condition and continuous review of the Benefit Trust Fund. The Act specifically directs the commission to inform the Governor and legislature when the funds' solvency is threatened and to make recommendations regarding efforts needed to maintain the adequacy of the fund.

Funding for the agency is provided by federal sources. Agency operations are carried out by a staff of approximately 3,200 and funds for the agency are budgeted at \$97,114,297 for fiscal year 1983.

The agency is responsible for administering the unemployment compensation system for the state and providing basic employment services to workers and employers in Texas. These functions are accomplished through a unique federal-state relationship established after the depression of the early 1930s. To avoid the personal and economic hardships resulting from long term unemployment and to lessen the impact of unemployment on society, a series of federal laws were enacted. The federal laws governing the agency establish two basic mandates: 1) the operation of an unemployment insurance program; and 2) the provision of employment services. If these pieces are in place and operating at an acceptable level of performance, the employers of the state receive a significant tax break on their Federal Unemployment Tax. If the full tax were collected, Texas employers' federal tax would increase nearly \$1 billion (\$238 million was paid in 1981). With this incentive, each state has established an employment security agency. In

Texas, the Texas Employment Commission carries out the two mandated functions through provision of state law governing the agency's operations.

The Unemployment Insurance or the UI program is operated to comply with requirements of the Social Security Act and Federal Unemployment Tax Act, both enacted in 1935. The program provides dollar benefits to tide workers over temporary periods of unemployment. Benefits are paid to workers who have enough qualifying wages and time employed to meet the state's minimum conditions, who are free from disqualification on the basis of their separation from their last job, and who are ready, willing, and able to work. The solvency of the Benefit Trust Fund, required by federal law but structured and administered through state law, was the topic of the Third Called Session of the 67th Legislature. Monthly benefits paid out of this fund have averaged \$40.5 million for the first eight months of calendar year 1982 and totaled \$62 million for the month of August. The average monthly payout for calendar 1981 was \$24 million. This year's high payout, coupled with seasonal low revenue generation, created a cash flow problem which immediately threatened the short and long term solvency of the fund. Actions by the legislature were intended to protect the fund's operation and continue to provide an adequate source of funding for benefits as required by federal law.

The agency's employment services programs were originally mandated by the Wagner-Peyser Act of 1933. Services are offered to applicants seeking employment and potential employers. Services that are offered to applicants include: referrals to job openings; aptitude and skills testing; referrals to job testing programs; and certification that certain food stamp recipients are seeking employment. Services offered to employers include: on-site recruitment and placement services; certification of applicants in Federal WIN, CETA, Food Stamps and Targeted Jobs Tax Credit Programs; and specific aptitude and skills testing. All services provided by TEC to applicants, claimants for benefits and employers are free of charge. During fiscal year 1981, the Employment Commission filled 487,019 job openings.

The agency's final major function is to develop market information to be used in assessing employment and training problems and in promoting overall economic development. The Economic Research and Analysis (ERA) department is responsible for the collection, organization, analysis, and dissemination of statistical information relative to the activities of the agency and Texas' labor force. Information generated by the ERA department includes monthly estimates of wage



and salary employment in each industry in each Standard Metropolitan Statistical Area (SMSA) in Texas as well as for the state as a whole. This information, referred to as the Current Employment Statistic Program, provides the basis for setting weekly maximum and minimum unemployment benefit amounts.

The review of TEC indicated that the agency has generally been effective in carrying out its responsibilities. However, various areas were identified and are discussed in the report where modifications would increase the efficiency and effectiveness of the agency activities.



## REVIEW OF OPERATIONS

### 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 Texas Employment Commission is composed of three members who serve six-year staggered terms and are appointed by the Governor. One member is required to be a representative of labor, one is required to be a representative of employers and one member is required to be "impartial" and to "represent the public generally". The apparent intent of this structure is to provide representation of the segments of society that have an interest in the general area of employment and unemployment insurance. The commissioners serve in a full-time capacity and are each paid an annual salary of \$54,800 (1983).

The public member is designated to be the chairman of the commission and the statute requires that the chairman also serve as the "executive director of all divisions of the Texas Employment Commission". This distinction is not followed by the agency in its day-to-day operations as the commission has appointed an administrator, but it does reflect the general posture of the statute which requires the commission to administer the Texas Unemployment Compensation Act. Specific powers and duties of the commission allow it the authority to adopt rules, expend funds, employ personnel needed to administer the Act, determine its organization and make reports concerning the operation of the Act and the benefit trust fund. The statute specifically requires the commission to promptly inform the Governor and the legislature should the solvency of the trust fund be threatened. The Act also requires the commission to cooperate with the federal government and to serve as the body which rules on unemployment insurance benefit claims appealed from the "lower level" Appeals Tribunal.

The review of the commission composition indicates that it is appropriate in number and composition. The categories of membership represent the major facets

of the constituency interested in the area of employment and unemployment as well as the general public. The structure of the statute which establishes the public member as chairman appropriately attempts to balance the traditional tension between labor and management. The "executive director" status of the chairman, however, appears inappropriate. As discussed in the Overall Administration section of the report, the title of "executive director" has little meaning in the way the agency operates. The executive director title also confers no greater power in the chairman than that held by the other commissioners. For example, Attorney General Opinion No. H-979 states, "The powers conferred upon the Texas Employment Commission, such as the power to employ administrators, are to be exercised as a body, by decision of the majority." It is suggested that the title of executive director be removed from the statute as it creates confusion regarding who shall "administer" the agency (the chairman or the administrator) and establishes a distinction without a difference.

The functions of the commissioners are numerous and quite broad. Individual interviews with the commissioners, however, helped narrow the key functions into four categories: 1) policy and rule-making; 2) state and federal liaison; 3) top level personnel hiring and administration; and 4) higher level appeals determinations. Although these four functions are permissible under the agency's statute, close review of their implications, however, indicate they are not all appropriate. Policy and rule-making as well as state and federal liaison are those duties generally reserved for the commissions and boards attached to most state agencies. The hiring of top level personnel can certainly be exercised by a policy-making body but usually is restricted to the hiring of one top level executive who then hires the remaining staff necessary to accomplish the duties of the agency. As discussed in the Overall Administration section of the report, this practice is recommended for the Texas Employment Commission. The general intent of such a practice is to establish a day-to-day agency operation headed up by one person who acts as the funnel to receive and then implement policy directives as well as remain responsible for the output or product of the agency. This practice allows the policy-makers to develop general directives for agency action and oversee their accomplishment without having to actually implement them or having to become personally involved in their outcome. This funneling process is particularly important in avoiding conflicting directions from each of the members of the policy-making body.

A review was conducted to determine how other governmental bodies (53 organizations were reviewed, 50 states and three territories) have structured their "State Employment Security Agencies" (SESAs). Overall, states appear to have developed three approaches. First, 28 of the SESAs are sub-units of a larger state department with the department head reporting to the Governor and the SESA administrator reporting to the department head. Second, in 18 states the agency is headed by an administrator who is appointed by the Governor and reports directly to the Governor. Third, in seven states, including Texas, the agency is headed by a commission, with an administrator reporting to the commission. Only two states, however, operate under a full time commission, Texas and South Carolina. In these two states, the full-time commissions have duties relating to policy-making as well as higher level appeals determinations. Since only two states combine these functions, a review was made to determine how other states have accomplished the higher level appeals determinations.

Review of federal law indicates that each state must provide the "opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied" (Sec. 503(a)(3), 42, U.S.C.A.). As discussed in the "Benefits" section of the report, Texas has met this requirement through the establishment and operation of the Appeals Department within TEC. Although not required by federal law, most states, including Texas, have established a "higher level" appeals process. In Texas, this process is carried out by its three TEC commissioners. Review of the other SESA activity in this area indicates that three SESAs have no higher level appeals, four accomplish it through an agency administrator, one uses its full-time commission, six use independent labor boards or other bodies and 38 use a "Board of Review" or "Appeals Board" related to but separate from the SESA. Since Texas is almost unique in its approach to handling higher level appeals, a review was made of the appropriateness of the structure and its overall performance.

The review of the higher level appeals process attempted to determine whether or not the staff has adequate training materials and whether or not the process meets federal "promptness" desired levels of achievement. The review indicated that no training manual has been developed for the staff of the Commission Appeals Department. This lack of training material is somewhat mitigated by the employment of attorneys to develop the briefings of the claim cases from which the commissioners make their determinations. Further, the staff

is relatively small which provides for the opportunity to exchange training information with relative ease as a person comes on board and begins to learn the job. The staff of the department have realized that the lack of a training manual is a liability and indicate that such a manual is planned as soon as time and workload permit.

The review of the performance of the commission appeal process against available federal measures (Desired Levels of Achievement or DLA) has raised several concerns. The Department of Labor did not measure the performance or promptness of higher level appeals until fiscal year 1981, so historical data comparing all states is not available. However, as can be seen in Exhibit 1, performance in this region for 1981 indicates Texas is below the two DLAs relating to timeliness.

Exhibit 1

**APPEALS PROMPTNESS-HIGHER AUTHORITY**

Fiscal Year 1981

DLAs: Minimum of 40 percent of decisions in 45 days  
 Minimum of 80 percent of decisions in 75 days

<u>State</u>	<u>Percent within 45 days</u>	<u>Percent within 75 days</u>
Arkansas	39.1	82.4
Louisiana	4.0	85.6
New Mexico	62.5	90.2
Oklahoma	44.5	82.2
Texas	31.1	72.5

Further review of Texas' individual performance, for the first eight months of 1982, indicates that additional slippage is occurring resulting in only 2.2 percent of the commission appeals decisions being made within 45 days for the first eight months of calendar year 1982 (See Exhibit 2). As with lower level appeals, timeliness is important to avoid improper payment of benefits or the improper withholding of benefit payments. As the time increases, so does the severity of the consequences of a wrong lower level determination.

Review of the causes of this performance with agency staff reveal that the commission appeals workload has increased while staffing levels have remained

fairly constant. For example, decisions made in fiscal year 1982 increased 39.1 percent over fiscal year 1981, while staffing for the division was reduced from 14 to 13 (one less attorney).

Exhibit 2

**APPEALS PROMPTNESS-HIGHER AUTHORITY**

January-August 1982

	<u>Number of Decisions</u>	<u>Percent Within 45 Days</u>	<u>Percent Within 75 Days</u>
January	470	6.2	40.9
February	519	1.7	40.7
March	463	1.1	22.5
April	618	4.5	36.1
May	444	2.5	15.0
June	374	0	7.5
July	944	1.3	14.5
August	<u>1,160</u>	<u>1.2</u>	<u>42.2</u>
Total	4,992	2.2	29.1

The review also shows that the commission level appeal is a laborious process which entails considerable review and write-up time once the claimant's file is prepared and sent up from the lower level appeals section. Although it appears effective in that only five of 68 commission decisions have been overturned by the courts, its slowness should be rectified.

As seen in Exhibit 2, commission output increased appreciably only in the last two months of the summer. This increase can apparently be attributed to the addition of some 23 temporary law clerks and support staff. Given this level of staffing, it appears the commission might reach the promptness measures given a certain amount of time to catch up, although one commissioner is currently recovering from a heart ailment. To accomplish this improvement, the agency has requested in its 1983 budget request to the Department of Labor some 34.9 positions (currently it has 13) at a personnel cost of \$973,745. This is a costly alternative and represents a 169 percent increase over current, permanent personnel costs to react to what is an unusual and probably unique increase in workload due to an unstable economy.

This sudden increase in cost has caught the attention of the Regional Administrator (RA) for the Department of Labor's Employment and Training Admin-

istration. The RA oversees the operations of SESAs in this five state region which includes Arkansas, Louisiana, New Mexico, Oklahoma and Texas. Discussions with the Regional Administrator indicate no other state in this region is requesting such a large increase in funding even though all are experiencing increases in higher level appeals workload. This has led the RA to question whether or not TEC is able to use federal dollars in a "wise" manner. Social Security Act provisions through which most of TEC's operational funding is allocated, require the Secretary of Labor to allocate dollar amounts to states for "proper and efficient administration" of the state's unemployment insurance law. The Regional Administrator is the key decision-maker in the allocation process and has indicated considerable reluctance in continuing to fund TEC's approach to overall administration and particularly the higher level appeals process.

Further, discussions with the commissioners indicate that the portion of time each donates to the higher level appeals process ranges from "one and one-half days a week" to "one-third" to "a majority". Due to the commissioners' broad range of duties, available time must be apportioned to accomplish their most critical duties. However, the commission's poor performance in the higher level appeals process and its critical importance to the persons served by the agency indicates that the commissioners' time should be prioritized to accomplish this function in a more timely manner. This priority can be reassessed as performance improves, as workload declines temporary staffing can be reduced.

Overall, it is questionable whether or not the higher level appeals process is appropriately accomplished in Texas. The structure requires a body charged with policy and administrative duties to also act as a quasi-judicial administrative review board. As shown previously, it is very difficult to accomplish this latter duty with appropriate speed. Although an alternative to this structure is developed in the "Need and Alternatives" section of the report, it is felt that this duty can be accomplished in a timely manner using the current structure through increased attention to the process by the commissioners and utilization of the temporary staff on hand until the workload declines. However, the addition of permanent staff to handle the workload appears inadvisable.

Overall, the structure of the policy-making body of the Texas Employment Commission appropriately accomplishes traditional duties such as rule-making and state-federal liaison. Duties relating to the hiring of top level administrative personnel appear over-extended and should be reduced to the duty of appointing an



executive director or administrator who then hires the staff needed to accomplish the agency's duties. In making this change, the title of "Executive Director" for the chairman of the commission should be removed from the statute. The commission's attention to its various duties should be prioritized to provide for more timely decision-making in its higher level appeals function.

### **Overall Administration**

The evaluation of the overall agency administration focused on determining whether the management policies and procedures of the agency, the overall administrative structure, the agency's monitoring of management practices, and its reporting requirements were adequate and appropriate for the internal management of time, personnel, and funds. The report first describes the various components of the administrative function and then evaluates three major components in greater detail. The results of the evaluation indicated that, in general, the agency's administrative operations function adequately. However, problems were encountered in the overall structure and organization of the executive level of the administration, which are discussed in the portion of the report entitled "executive framework".

The administrative functions of TEC are directed by the agency administrator, with assistance from the associate administrator, the employment services director, the unemployment insurance director, one assistant administrator, and two deputy assistant administrators. The primary activities of the administration are to generally oversee the functional programs of the agency; to maintain a liaison with the Department of Labor's regional office in Dallas; to prepare agency budgets; to plan and oversee construction activities; and to provide other usual administrative services within the agency. The agency has set up nine divisions to provide these services.

The cashier department maintains agency funds and accounts for receipts and disbursements other than payroll and cost accounting. This department receives and deposits tax collections, and processes payments to unemployment insurance recipients. The fiscal department aids in budget preparation, performs payroll and cost accounting services, handles procurement of supplies and equipment, pays operating expenses, and maintains inventory controls.

The training, information, and media services department prepares audio-visual and other informational material concerning agency activities and oversees staff development and orientation. The department produced 66 informational

pamphlets, reports, posters, etc. in fiscal years 1980 and 1981, 13 of which were bilingual.

The office of the General Counsel assists the agency in legal proceedings regarding the unemployment tax, the payment of unemployment insurance, employment service activities, or other commission activities. It also provides legal advice to commissioners and administrators, assists in drafting proposed legislation, reviews EEO complaints and represents the commission in conformity proceedings held by the U. S. Department of Labor. Higher level (commission) appeals were processed by this office until January 1981 when the office of Commission Appeals, under the direct supervision of the commission, was created to handle this process.

All computer services are provided through the automated data processing department. These services include: preparing operating, statistical, and financial reports; preparing monetary determinations and benefit warrants; computing employers' annual tax rates; and implementing computerized employment and training administration programs. The department oversees TEC's teleprocessing network, which is comprised of approximately 1,400 terminals and printers located in more than 100 offices throughout the state.

The administrative analysis, audit, and evaluation department assists agency administrators in report preparation and in developing special projects to increase agency efficiency. The department serves as a central point for in-house evaluation efforts by coordinating information from other agency departments and developing recommendations for agency administrators.

The personnel activities of TEC are administered through a centralized personnel department which develops procedures and coordinates personnel efforts through a network of local offices and the Texas Merit System Council for the recruitment of staff. The personnel department works in conjunction with the equal employment opportunity department which develops EEO objectives and guidelines in conformity with agency policy and in compliance with a consent agreement entered into with the Department of Justice on December 21, 1978. The EEO department is also responsible for developing and monitoring the agency's affirmative action plan, conducting investigations of discrimination complaints, and preparing statistical reports on staffing and personnel actions.

The staff services department is primarily responsible for printing and duplicating services, receiving and distributing consumable supplies, and providing mail and maintenance services in the state office headquarters.

The Economic Research and Analysis Department (ERA) collects, analyzes, interprets and publishes data related to agency activities and the Texas labor force. A primary component of their work is conducting the Labor Market Information program which includes estimating industrial and occupational employment levels within the state and its labor market areas. The department develops monthly labor force employment, unemployment, and jobless rate information for all Texas counties, 70 cities, and 25 standard metropolitan statistical areas. Much of this information is published monthly in the Texas Labor Market Review and is distributed throughout Texas and the U.S. Other labor market data is developed by ERA and published outside the agency in publications such as Employment and Earnings (national) and Texas Facts and Figures. The department also collects data reflecting agency activities and distributes this information internally in order to provide upper level administration with a consistent source of information on which to base decisions.

A final function of the agency administration is the development and supervision of construction projects. The agency purchases land and constructs buildings in areas where demographic projections indicate a continuing need for an office in a certain area. An agency-owned office has been determined to be considerably less expensive to operate. Recommendations for areas where agency-owned buildings are needed are received from district managers. Building decisions are then made based on available funds, demographic factors, projections of office usage, cost of local rental rates compared to building costs, and other factors. Decisions to build and justification of need for an agency-owned building must be approved by the regional office of the U. S. Department of Labor. Once this approval has been given, the agency purchases a site and contracts for preliminary engineering and building design studies. All contracts are approved by the commission. After further approval from the Department of Labor, construction of the building is contracted. Architectural review, supervision of construction, and inspection of all work is performed by the State Purchasing and General Services Commission through a contract agreement between the two agencies.

The purchase of land and construction of many of the buildings owned by the Texas Employment Commission has been accomplished through the use of federal funds known as "Reed Act" funds. These funds, first available in 1958, are a portion of the Federal Unemployment Tax Act collections paid to the federal government. A state may use these funds for many purposes including improve-

ments in administrative aspects of State Employment Security Agency operations as well as acquiring land, constructing buildings, and making improvements on the land or buildings constructed. Texas has utilized these funds extensively and has essentially paid for a portion of 37 of the 55 buildings owned by TEC out of these funds.

### Elements Reviewed

Within the overall administration, three major components of its operation were selected for detailed examination. These areas include the agency's executive framework, its cashier department, and its automated data processing section. The results of the review are discussed separately as follows.

Executive Framework. In reviewing the administrative structure of the agency, it was noted that the structure differed from that normally found in other agencies. This, in part, stems from the enabling statute which charges the three commissioners with the duty of administering the Act, as well as stating that the chairman serves as executive director of the agency. In most state agencies, the policy-making body does not have this type of administrative charge and are instead authorized to employ an agency administrator or executive director to perform these duties. The commission has taken this approach and chosen an administrator to handle the day-to-day operations of the agency. Although the chairman is statutorily designated as executive director, the present and past chairmen have not attempted to act in this position. In 1977 an attorney general's opinion was requested and received which further clarified this situation. The opinion limits the power of the chairman to act as executive director in certain areas, such as in appointments of administrators, where the statute designates the authority to the commission as a whole. The commission is charged with administering the Act, and the statute does not designate any particular powers to the executive director.

The agency administrator, however, has no statutorily designated powers and duties. This permits the commission to determine the administrative structure and to alter it at any time. Other enabling statutes of major state agencies, such as the Department of Human Resources and the State Department of Highways and Public Transportation, provide for an administrative officer with specific responsibilities and duties. Another agency, the Industrial Accident Board, does not have the duties of an administrative officer set out in its statute, but the policy-making body has chosen to delegate full administrative authority to a person in this position.

The Texas Employment Commission operates in a different manner. The commission selects and appoints persons to at least the top five administrative positions in the agency. This tends to inhibit effective control by the administrator of his upper level support staff. In addition, this situation has resulted in confusion in lines of authority within the agency because the top level administrative staff can have as many as five bosses -- three commissioners, the administrator and the associate administrator. These conditions could be changed by statutorily designating an executive administrator who is hired by the commission and is given specific responsibilities for the day-to-day operation of the agency including the hiring of all support staff necessary for effective operation of the agency. All administrative requests by commissioners would be handled through the administrator. Agency-wide policy decisions, rule-making authority, and other statutory duties would remain with the commission. The duties and responsibilities of the commissioner of the Department of Human Resources, as set out in its statute, would be an appropriate framework for the administrator of TEC.

Cashier. The cashier department was reviewed to determine whether adequate controls exist in the handling of cash and checks, whether payments received are properly documented and recorded, whether receipts are deposited in a timely manner, whether staffing is adequate for the work load of the department, whether proper controls over access to payments and benefit checks exist, and whether a system is in place to verify the accuracy of benefit payments.

The Cashier Department is basically responsible for receiving and depositing tax payments and for processing unemployment compensation payments to recipients. All mail is initially received and opened by the mail room. Envelopes containing monetary remittances, most of which contain tax payments, are then sent to the Cashier Department. Tax payments are sorted, entered on the computer system, microfilmed, and prepared for deposit. All receipts must be deposited within three days according to federal regulations, and are actually deposited in less than this time.

The department has a base staff of 32, but also hires 12 to 18 temporary clerks during peak periods when most tax payments are received. Most payments are received in the second month of the quarter in which they are due. In addition, almost 42 percent of yearly payments are received in the April-June quarter. This figure is the result of many employers reaching or approaching the \$6,000 limit on employees' taxable wages in the first quarter of the year, and these taxes are paid

in the April-June (second) quarter. The following exhibit illustrates the imbalance in workload for tax payment processing.

Exhibit 3

**TEC - TAX COLLECTION WORKLOAD**

**Collections Received by Quarter**

<u>Calendar Quarter</u>	<u>Three-Year Average</u>	<u>Ten-Year Average</u>
1. January - March	16.2%	16.2%
2. April - June	41.0%	41.9%
3. July - September	24.9%	24.9%
4. October - December	17.9%	17.0%

**Collections by Month of Quarter**

(Average)

First Month in Quarter	16.5%
Second Month in Quarter	81.0%
Third Month in Quarter	2.5%

The temporary clerks are generally needed to process payments in the second month of the quarter, particularly in the second and third quarters of the year. The tax collection process was reviewed to see whether staggering of tax payments would provide benefits without creating additional problems. It was determined that although the staggering of payments would level out peak periods of workload in the department, it would generate additional costs and workload problems in the tax and automated data processing (ADP) departments.

The cashier department is also responsible for the processing of unemployment compensation warrants. These warrants are printed by the ADP department from a listing on the TEC computer system of all recipients eligible to receive a payment on a certain day. The warrants are then sent to the cashier department where the totals are verified, damaged warrants are duplicated, warrants are spot checked for accuracy, stop and hold warrants are removed, and the comptroller is

notified of the total voucher needed to cover a day's payments. The federal reserve is notified of the amount needed which is wired to the bank. Once the amount is verified as available in the bank, the checks are then released for mailing. It appears this process works well by providing adequate controls over the verification and proper release of unemployment compensation payments.

Automated Data Processing. The agency maintains an automated data processing department with a current staff of 125 to provide computer-related services to all departments. These services are provided primarily in three areas: 1) unemployment insurance which generally includes wage records and other applicant or employer data, benefit payments, tax collection and accounting, fraud surveys, and services for special programs; 2) employment services which generally includes the job bank and the job services matching system; and 3) administrative services which includes cost accounting, employment and other labor statistics, agency personnel services, property accounting and supply inventory, payroll, and other research and statistical reporting. The department has approximately 1,400 on-line display terminals in offices across the state which are tied into the main computer in Austin. Average response time on these terminals is less than ten seconds with over 300,000 information transactions made per day.

The focus of the review of this department was to determine if needed services are provided to applicants, whether an ongoing effort is made to improve benefit controls and other aspects of the system, and whether the department is complying with recommendations of the Systems Division of the Office of the State Auditor regarding technical aspects of the system and operations.

The state auditor issued an electronic data processing facility review report in July 1980. The report included a wide range of findings and recommendations, but made no comment concerning areas where there were no problems. For this reason, it was not possible to use the findings as a basis for determining the overall effectiveness of the operation of the ADP department. The agency agreed with a majority of the findings and has taken steps to rectify many of these problems. Certain recommendations, however, could not be acted on due to lack of personnel and funds. Overall, it appears the agency is making a good faith effort to comply with relevant aspects of the report, as time and funds allow.

Prior to computerization, the agency experienced difficulty in fulfilling the needs of applicants in both unemployment insurance and employment services in a timely manner. Requests for wage record information sometimes took a week to

fill, whereas this information is now available at all local offices in seconds. Benefit determinations can now be made at the time of a person's initial application. People with particular skills applying through the employment services program can now be matched with available positions. Previously, lists were kept of positions by categories and interviewers would manually search for appropriate positions for applicants. The Job Service Matching System, currently available in the major metropolitan areas, can match an applicant's particular job qualifications and specifications with available positions. For example, an applicant may express an interest in welding, truck driving, and carpentry work. He then can indicate a minimum acceptable wage and a preferred work location such as Austin. The computer matches those requirements with available positions, and lists those that meet the requirements. If no available positions are listed, the applicant may be willing to lower wage expectations or increase the number of preferred work locations to see if this increases the number of job openings. The ADP department works with user departments on a continuing basis to develop programs such as the Job Matching System which meet the needs of both users and the service population.

The department has also made an ongoing effort to improve controls over benefit payments through the development of programs and systems designed to identify overpayments made through fraud, applicant error, or agency error. An example of this type of activity is the tie-in to the Louisiana computer system with the Texas system. Through this tie-in, TEC offices in East Texas can determine a person's wage records in both states in order to make an accurate compensation determination. Previously it was difficult for an interviewer to know if wages were being earned in Louisiana while applying for unemployment benefits in Texas. In addition, Louisiana employment offices can make a corresponding determination using Texas wage records. Plans are being considered to tie into other states as this relationship with Louisiana has proven beneficial.

The ADP department also develops a five-year plan for system development in conjunction with the administration's goals for the agency. It was determined that the department is approximately two years behind schedule in the implementation of the plan. This is primarily due to two factors: the reductions in force which took place late in 1981; and an increase in requests for special projects which took precedence over long-term plans. The agency indicated that it still intends to follow the five-year plan as resources allow.



Through the implementation of programs such as the Job Service Matching System, the development of other cost saving programs, and the intention to continue to upgrade ADP facilities and systems, the agency has shown an effort to provide needed and cost efficient services to the public.

### **Evaluation of Programs**

The Texas Employment Commission has program responsibilities in three major areas: 1) unemployment insurance tax determination and collection; 2) employment services; and 3) unemployment insurance benefit payments. Although the first and third functions are related, they have been reviewed separately and the findings regarding all three functions are described below.

### **Tax Determination and Collection**

The source of funding for the operation of the nationwide unemployment insurance system is derived from taxes paid by employers. In general, two taxes are required of employers: 1) a tax required under the Federal Unemployment Tax Act (or FUTA tax); and 2) a tax required under the Texas Unemployment Compensation Act (or TUCA tax). As described below, these two taxes form the funding base for administration of the unemployment insurance programs throughout the nation and provide the funding for benefits paid to unemployed persons meeting certain eligibility standards.

Federal Unemployment Tax. The Federal Unemployment Tax Act is a separate federal law cited as 26 U.S.C.A., Sec. 3301-3311. The Act requires the collection of taxes from employers based on the number of persons employed. The tax is collected by the Internal Revenue Service and its major use is to pay the costs associated with administration of the various employment security agencies around the nation (the Texas Employment Commission in Texas). The tax was first required under portions of the Social Security Act effective August 14, 1935.

Although specific provisions of the Act have changed over the years, the basic framework has remained in place. Currently, a payroll tax of 3.4 percent on the first \$6,000 (the recent federal tax increase package raised this "wage base" to \$7,000) is paid by an employer who, in the current or last year, had at least one employee for 20 weeks or a quarterly payroll of at least \$1,500. Other agricultural and household worker employers are subject to the tax under certain conditions. The National Commission on Unemployment Compensation estimates that 97 percent of all jobs are covered by the tax and therefore "protected" through unemployment insurance.

As mentioned above, the FUTA tax dollars collected are primarily used to fund the administration of Employment Security Agencies in the 50 states as well as Puerto Rico, the Virgin Islands and the District of Columbia. However, funds collected under the tax also pay for 50 percent of the cost of extended benefits paid under the Federal-State Extended Compensation Act of 1970 and provide the basis of a loan fund from which individual states may borrow. In addition, a portion of the tax dollars collected is used to fund the administration of the federal level unemployment insurance program.

During 1981, the tax rate established in the FUTA rested at 3.4 percent of the first \$6,000 paid to employees covered under the Act. However, the Act provides a tax break or "credit" for employers in states whose employment security agency meets the requirements spelled out in provisions of the FUTA and the Social Security Act. If a state meets these requirements, its employers receive a tax credit of 2.7 percent against the 3.4 percent tax, thereby establishing an effective .7 percent tax rate (the recent federal tax increase raised this to .8 percent). The Texas Employment Commission does meet federal requirements and in 1982 Texas' employers pay \$42 (.7 percent X \$6,000) per employee covered by the FUTA tax. Texas employers would pay nearly one billion dollars in additional taxes should TEC not comply with federal requirements.

The amount of dollars collected through the federal tax system represent considerable sums. During 1975 - 1979, Texas employers paid some \$728 million in FUTA taxes. For fiscal year 1980, it is estimated that Texas employers paid \$219 million and payments from almost 270,000 employers for fiscal year 1981 totalled \$238 million.

State Unemployment Tax. Federal law allows the state considerable latitude in establishing its tax scheme generate revenues used to pay unemployment benefits. Under federal law, three types of employers are provided for: 1) "taxed employers"; 2) "reimbursing employers"; and 3) "pooled or grouped employers". The latter two groups are made up of nonprofit organizations and public entities including local and state governmental agencies. These employers can elect to pay no tax but then are liable for benefits paid to their former employees and must "reimburse" the Benefit Trust Fund for all benefits paid to such qualified claimants. These employers make up a small portion of the total employer group in Texas and at the end of August 1981, 4,618 (1.7 percent) were reimbursing or pooled employers and 264,463 were regular payroll taxed employers.

For this latter group, a taxing system similar to the FUTA tax exists within state law in Texas. The tax is collected from liable employers at a specified rate using an identical wage base. However, the use of the tax dollars collected by this system can only be used to pay benefits to the "justifiably unemployed during times of economic difficulty". This state tax, imposed in 1936, continues to be collected by the Texas Employment Commission as required in Art. 5221b, V.A.C.S.

The tax is levied annually and collected quarterly through a variable tax rate on the first \$7,000 paid to covered employees. The tax rate an employer pays is governed by several factors which attempt to take into account: 1) the general condition of the benefit fund, and 2) the employer's history or "experience" in using the fund. Until the recent special session, the tax paid by employees in Texas ranged from .1 percent to 4 percent of the \$6,000 taxable wage base. In July of 1982, TEC estimated that 77.1 percent of employers were paying the minimum tax rate of .1 percent, 20.4 percent were paying taxes ranging from .2 percent to 3.9 percent and 2.5 percent were paying the maximum tax rate of 4.0 percent. The average tax rate when considering all taxed employers was .59 percent for fiscal year 1981. The range of tax rates for various employers depends on several factors. First, new employers pay a standard 2.7 percent tax until they have established an "experience" rating based on their first 18 month to two-year history in using the Trust Fund to pay benefits to employees they layoff. Once the "experience" has been established their tax rate can drop as low as .1 percent. Second, long-term employers can have their tax rates adjusted due to increases in their use of the Trust Fund. Should they experience sudden layoff periods, and their former employees collect benefits, their overall tax rate is raised through a calculation which assesses their contribution to the fund vs. their drain or "chargebacks" on the fund. Third, Texas has had a "ceiling and floor" system built into its Trust Fund construction which has attempted to maintain its overall funding between \$225 and \$325 million. Basically, if the Trust Fund balance on October 1 of any year falls below \$225 million, a tax increase is triggered; if the fund balance is above \$325 million, a tax decrease is triggered.

During the 3rd Called Session of the 67th Legislature, several aspects of this taxing system were modified to "modernize" the unemployment insurance scheme in Texas. The basis for the session, an expected zero balance in the fund by mid-November 1982, and an extremely high tax increase effective January 1, 1983, was brought about by many factors. First, rapidly rising unemployment in the state

placed an unexpected drain on the dollars available in the benefit trust fund. Second, the weekly benefit amount paid to the qualifying unemployed has continued to increase as the balance of funds available to pay benefits has remained generally constant. The average weekly benefit amount has increased from \$66.99 in 1978 to \$123.54 in July 1982. The fund balance however, has been compressed between \$225 million and \$325 million due to the "floor and ceiling" provisions of the Texas statutes. At the time of the special session, the fund balance was well below the floor and expected to be at \$80-\$90 million at October 1, 1982. This fund balance was insufficient to continue the benefit payments (\$56 million in July and \$62 million in August) through next April when the next large influx of tax collections would accrue to the fund. Also at October 1, the agency was required to take a reading on the fund and increase employer's taxes at a specified rate (see Exhibit 4) for each \$5 million the balance was below the \$225 million floor.

Exhibit 4

**EMPLOYER'S TAX INCREASE DUE TO "FLOOR TRIGGER"**

<u>Trust Fund Balance</u>	<u>Rate of Tax Increase</u>	<u>\$ Cost per Employee</u>
225 million	.0%	\$ 0.00
220 million	.1%	6.00
215 million	.2%	12.00
210 million	.3%	18.00
205 million	.4%	24.00
200 million	.5%	30.00
195 million	.6%	36.00
190 million	.7%	42.00
185 million	.8%	48.00
180 million	.9%	54.00
175 million	1.0%	60.00
125 million	2.0%	120.00
75 million	3.0%	180.00
25 million	4.0%	240.00
0 million	4.5%	270.00

The tax increase, effective January 1 and collected at the end of April, would have been in addition to the employer's normal tax so an employer with .1 percent tax rate would pay 3.1 percent; that is, instead of \$6, the employer would pay \$186 (a 3,000 percent increase) per employee if the fund balance stood at \$75 million on October 1. Although this mechanism would raise the dollars needed for benefit payments, there were at least three problems with this method: 1) it would not

raise the funds in time to pay benefits when the fund balance was expected to hit zero (mid-November); 2) it would raise an additional \$1.4 billion for calendar year 1983 -- far more than needed to pay expected benefits (approximately \$500 million) for that year; and 3) it would place an extremely high tax increase on employers at a time when the economy is already suffering.

To avoid these problems, the Governor called a special session and the resulting legislation (H.B. 1, 3rd Called Session, 67th Legislature) changed Texas' employer unemployment tax scheme in the following ways:

- 1) raises the taxable wage base from \$6,000 to \$7,000 (a federal requirement);
- 2) authorizes the Governor to apply for a federal loan to pay benefits when the Texas Trust Fund is depleted;
- 3) establishes an Advanced Interest Trust Fund through an employer surtax to pay the interest on the federal loan;
- 4) increases the ceiling of the Trust Fund to \$500 million and provides for a \$45 million rather than a \$5 million adjustment increment (trigger). Beginning with the calculation of the general tax rate on October 1, 1984, the ceiling and floor adjustment will increase in direct proportion with growth in the taxable wage base;
- 5) adjusts the tax rates by increasing the maximum rate from four percent to six percent and provides for a further adjustment for those employers with a rate of .4 percent or greater;
- 6) increases the penalty on delinquent taxes from one to one and one-half percent assessed monthly.

#### **Elements Reviewed**

The new legislation, along with existing provisions in the agency's statute, were analyzed to determine: 1) whether current provisions would provide sufficient short-term revenue to enable Texas to pay back federal loans within two years while maintaining an adequate balance in the Unemployment Trust Fund; 2) whether the estimated revenues for the Advance Interest Trust Fund would be sufficient to pay interest on all federal loans; and 3) whether adequate guarantees exist which reasonably ensure that the Unemployment Trust Fund would not be forced into a deficit balance in the future. Additional data gathered during the review indicates that adjustments may need to be made to existing statutes during the 68th Regular Session if the economy worsens.

Should adjustments need to be made, consideration should be given to modifying two areas of the trust fund's statutory structure. First, the current statute caps the percentage increase which can be generated by this structure at .5 percent for 1983 and 1984. Should additional revenues be needed for this period, the "cap" could be modified to let it "float" to a higher figure, thus providing for additional revenue.

The second portion of the trust fund statutory structure which should be examined if additional revenue is needed, is the advance interest fund which was created to pay the interest on federal loans to the benefit trust fund. Should additional federal loan dollars be needed then, corresponding funds to make interest payments will be needed. The current structure of the loan fund is estimated to generate approximately \$44.3 million. One method of generating additional revenue is to let the .1 percent surtax which forms the basis of the interest fund, run throughout calendar year 1983, rather than stopping in March. This would generate an additional \$26.3 million which could meet additional interest demands. Any surplus in the fund could be placed in the benefit trust fund or be allowed to stay in the fund should economic changes create a need for federal loans in the future.

Changes both in numbers of claimants and the revenues accruing to the unemployment trust fund are being closely monitored by both TEC and the Legislative Budget Board for the purposes of developing more precise data on which to base any necessary recommendations for change.

The review also focused on whether the unemployment compensation structure currently in place is adequate to meet the long-term needs of the state. Most elements of the tax generating and trust fund mechanisms appear to work reasonably well, and with the changes made during the special legislative session, as described earlier in this section, the structure should work reasonably well in the future. However, the \$225 million trust fund floor, below which a supplemental tax is triggered, was only increased based on an index related to increases in the overall wage base in Texas. The \$325 million trust fund ceiling was increased to \$500 million and thereafter is indexed on the same basis as the floor. The indexing procedure is expected to only increase the floor by about five percent or \$11 million per year. Although this procedure is adequate as an index, the starting point of the floor at \$225 million may be too low to prevent a future recession in the economy from draining the trust fund and forcing future advances from the

federal government. An alternative to the current trust fund floor was developed and is presented in the "Need and Alternatives" section of this report.

### Employment Services

The employment services division of the Texas Employment Commission is part of the federal-state employment security program authorized under the Wagner-Peyser Act, the Social Security Act, and the Texas Unemployment Compensation Act. The employment services division serves as a labor exchange for applicants seeking employment and for employers seeking to fill job openings. Services available to applicants include counseling, testing, job development and referrals to job openings. Services available to employers include recruiting services for workers with particular skills, screening and testing of applicants, compiling and disseminating labor market information and assisting with affirmative action compliance requirements. Employment services activities are financed principally from federal employment taxes collected from employers under the Federal Unemployment Tax Act (FUTA). In addition to counseling and testing services, specialized services are provided for veterans, handicapped people, youth(s), older workers, and migrant and seasonal farm workers. The following information describes the major categories of assistance provided through TEC's regular employment services program.

Employment Counseling. Counseling services are offered to help applicants choose occupational goals or to overcome adjustment problems that prevent them from holding a job. Individuals who take advantage of this service include applicants that have dropped out of high school and have no work skills or training, older workers who are reentering the labor market or changing occupations, displaced homemakers, and youth in general.

Testing Services. Testing services are used in conjunction with employment counseling to help applicants determine their skills and abilities and to assist employers in selecting applicants for employment. Tests that are administered in this program include the General Aptitude Test Battery (GATB-English and Spanish version), the Basic Occupational Literary Test (BOLT) which is used to measure basic arithmetic and reading skills, the Specific Aptitude Test Battery used to assess an applicant's chance for succeeding in a specific occupation and clerical skills testing used to measure proficiency in typing dictation and spelling.

Services to Veterans. Various job and training opportunities are offered to veterans on a priority basis over non-veterans. Each TEC local office has a

veteran employment representative who offers assistance to veterans and assures that the priorities for veterans in training and job programs are maintained. The veteran employment representative maintains ties with veteran organizations and contacts recently discharged veterans to offer TEC services.

Youth Services. TEC offers various programs to assist young people between the ages of 14-21 in finding employment. Program activities include career counseling, aptitude and other kinds of testing, referrals, and arrangements geared towards placing applicants in training programs. Work is provided, when needed and available, to applicants still in school or training towards a particular occupation. The summer youth program also offers summer work to high school and college students.

Services to Older Workers. TEC maintains an ongoing education and informational program designed to promote the ability and experience of workers 45 years of age and older who desire to secure meaningful employment. All services available to this group are on a non-discriminatory basis.

Services to the Handicapped. Counseling, testing, and placement services are available to handicapped applicants in local offices throughout the state. Specialized services available to handicapped applicants include referrals to other agencies to enhance employability, selective placement techniques and special job development activities.

Services to Migrant and Seasonal Farm Workers (MSFW). TEC is actively involved in ensuring that MSFWs are counseled, tested, and referred to jobs and training on a basis which is commensurate to services provided to non-MSFWs as mandated by federal statute. Under this program, outreach specialists visit areas frequented by MSFWs to explain the services offered by the agency. In addition, staff involved in the program make frequent employer and workshop visits in order to identify violations of regulations pertaining to MSFWs and their working conditions. In addition to these programs the agency is involved in administering the Farm Labor Contractor Act and the alien labor certification program. The agency is also working to update testing methods and employer and industry services.

### Special Programs

TEC is also involved in the administration of special programs directed toward particular segments of the general population. These programs include CETA, job corps, the targeted jobs tax credit program, work incentive programs,



and the food stamp program. The following describe these special programs in more detail.

CETA. The Comprehensive Employment and Training Act (CETA) was created in 1974 to supply grants to local governments (prime sponsors) to assist them in developing employment and training programs for their areas. TEC provides technical assistance to individual prime sponsors in preparing their CETA comprehensive manpower plans. TEC also gathers labor market information on the prime sponsor area and furnishes statistical data required to complete prime sponsor planning efforts. TEC also contracts with the Texas Department of Community Affairs (TDCA) to print the checks or allowances that go to participants in certain CETA programs and provides employment services for some CETA prime sponsors.

Job Corps Program. The job corps program provides a voluntary national training program for economically disadvantaged youth. Trainees are enrolled in the program for a period not to exceed two years. Education, skill training, counseling and other resources are provided to help trainees prepare for jobs. Trainees are encouraged to enroll in the general education development (GED) program to further their academic training. TEC serves as the recruitment, screening, and referral agency for job corps. The agency also provides counseling, testing, job development, placement, and related services to job corps students upon completion of their training program.

Targeted Jobs Tax Credit Program. The Revenue Act of 1978 established the target jobs tax credit under which employers are offered a tax credit of 50 percent of the first year wages up to \$6,000 for each eligible person hired. The second year credit amounts to 25 percent. Tax credits applied against corporate income taxes can amount to \$4,500 in savings per employee for the two-year period.

TEC is responsible for referring eligible persons to employers on request, for issuing "Targeted Jobs Tax Credit" certificates under contract with TDCA and for the operational management of this program in Texas. Target groups for this program include supplemental security income recipients, economically disadvantaged ex-convicts, youth, Vietnam-era veterans, certain handicapped individuals, and participants in an approved high school vocational education program.

Work Incentive Program (WIN). The WIN program, a joint function of TEC and the Texas Department of Human Resources (DHR), helps employable persons receiving AFDC funds move from welfare assistance to employment and further

economic independence. Under the program, individuals who are eligible receive vocational counseling, institutional training, job information and other job placement services.

Food Stamp Program. TEC administers the work registration program for DHR on those recipients required to register for and make an active search for work. TEC monitors the work search effort and reports the findings to DHR.

As discussed above, the Texas Employment Commission serves many types of people in many different ways. The primary service delivery structure involves face-to-face discussions with those requesting service, utilization of computer matching systems to match the applicant's skills with available jobs and then referral to those jobs. TEC's services are delivered around the state through 102 full service offices (those providing both employment service and unemployment insurance claims processing), 31 sub-offices (smaller offices utilizing one to three personnel), 42 "itinerant points" (offices open only on certain days of the week usually providing unemployment insurance services) and 36 tax offices. During fiscal year 1982, TEC served 1,278,941 persons in all of its employment service programs. Approximately 1,496 personnel were utilized by the agency to provide these services at an approximate cost of \$29,836,500.

### Elements Reviewed

The employment services division was reviewed in three major areas to assess the agency performance in employment placement services: 1) the agency's overall performance as compared with other states' employment services divisions; 2) the agency's compliance with federal standards relating to employment services provided for veterans and migrant seasonal farm workers; and 3) the agency's placement records for unemployment insurance claimants.

Other State Comparisons. The review indicated that as of June 1982 the agency placed high in most national employment service indicators when compared to other states. The agency ranked in the top quarter of states in the area of 1) individuals placed per staff year worked; 2) transactions (placements) per staff year worked; 3) job openings recorded per staff year worked; 4) the percentage of individuals placed in jobs with a wage of over four dollars per hour; 5) the percentage of placements in jobs with a duration of over 150 days; 6) the percentage of applicants provided an employment service (ie. placement, counseling, testing, etc.); and 7) individuals placed in unsubsidized jobs per staff year worked. In addition, the agency also ranks in the top half when compared to other

states in the categories of agency job fill rate (the percentage of job orders filled from the number of job orders received), individuals placed as a percentage of new and renewal applicants and the percentage of individuals placed after counseling (See Exhibit 5). Although it is difficult to compare the performance of the agency with that of other states because of the different factors affecting the delivery of services, it appears that the agency is among the leading state employment agencies providing employment services.

Exhibit 5

**E.S. RANKING AMONG STATES  
FOR FISCAL YEAR 1982 THROUGH 6/82**

<u>Measure</u>	<u>Rank Among Selected States</u>		
	<u>Texas</u>	<u>California</u>	<u>New York</u>
Individuals placed per staff year worked	5th	33rd	36th
Transactions per staff year worked	6th	21st	1st
Openings Recorded per staff year worked	5th	14th	3rd
Percent of applicants provided service	10th	28th	8th
Individuals placed in unsubsidized jobs per staff year worked	3rd	32nd	35th
Percent of Individuals placed in jobs paying above \$4	8th	5th	11th
Percent of placements in jobs with duration over 150 days	12th	43rd	24th
Agency fill rate	14th	21st	4th
Individuals placed as a percentage of new and renewal applicants	5th	11th	10th
Percentage of individuals placed after counseling	19th	37th	35th

Compliance with Federal Standards. The agency is required by the Department of Labor to meet standards relating to services provided to veterans and migrant seasonal farm workers (MSFWs). Failure to meet the requirements could lead to funding discontinuation and increases in employer's FUTA tax. The agency's compliance with these standards were reviewed to determine the agency's effectiveness in providing employment services to these populations. The review showed that the agency was in compliance with federal standards establishing minimum floor levels for the placement of veterans. These levels are a measure of the number of veterans provided services as compared to the number of non-veterans served. In addition, the agency was found to be in compliance with the standards establishing preference levels for veterans. (Preference levels relate to priorities in the provision of placement services given to veterans over non-veterans.)

In the area of services to migrant seasonal farm workers, the review indicated that the agency has generally been in compliance with federal regulations. Under these regulations, the agency must meet the standards that ensure that services provided to non-MSFWs are also provided to MSFWs and that minimum service levels are maintained. However, the agency was not in compliance with a minimum service level standard pertaining to the number of MFSWs placed in non-agricultural jobs with a duration of 150 days (see Exhibit 6). The agency has acknowledged this problem and is striving to rectify it by targeting job development activities in this area. However placing MFSWs in these types of jobs has been difficult given the nature of the work performed by MSFWs which requires them to move as the various agricultural harvest seasons occur. In addition, the agency is concerned with its ability to comply with minimum service level standards in the future, specifically the standard relating to placements of MSFWs in jobs with wages 50 cents above the minimum wage. Current economic conditions, reduced staff levels, and the conditions of high unemployment and low wages that exist in the Rio Grande Valley where most MSFWs in Texas reside, make it increasingly difficult for the agency to meet their standards. Consequently, the agency may seek a waiver for these standards from the Department of Labor.

Exhibit 6

**AGENCY COMPLIANCE WITH DEPARTMENT OF LABOR  
MSFW STANDARDS FOR FISCAL YEAR 1982  
(As of 8/82)**

**Equity Indicators\***

<u>Measure</u>	<u>Required Percent</u>	<u>Actual Percent</u>
MSFWs Referred to Jobs	52.88	60.64
MSFWs Provided Service	65.95	91.92
MSFWs Referred to Supportive Services	12.81	45.58
MSFWs Counseled	4.41	11.78
MSFWs Provided Job Development	9.83	27.37

**Minimum Service Level**

<u>Measure</u>		
MSFWs Placed	42.50	48.02
MSFWs Placed in Jobs Paying a Wage 50 Cents Above Minimum	3.30	5.80
MSFWs Placed in Non-Agricultural Jobs Over 150 Days	10.00	7.21

- \* Equity Measures-These measures are designed to ensure that MSFWs are provided the same kind of service and quality of attention that non MSFWs receive from the employment services division.

UI Placement. Finally, the placement rate for unemployment insurance (UI) claimants was analyzed to determine how well the agency was attempting to place these individuals. Generally, it is felt placement efforts should provide some focus on these individuals since they are receiving UI benefits and the sooner they are re-employed the sooner the drain on the fund is reduced. The review indicated that the placement rate for UI claimants has slipped from 12 percent of all applicants placed in 1981 to nine percent at the end of the third quarter of 1982. This drop has been attributed, in part, to a problem in the Employment Service Automated Reporting System (ESARS) for determining the disposition of UI claimants. The

agency is taking steps to correct this problem. The current economic situation is also a major cause of the drop in the UI claimant placement rate. There are simply more applicants than there are job orders to place them in. Job orders in July 1982 were down 50 percent from the same time in 1981. However, the agency has recognized a need to concentrate its efforts on placing more UI claimants. The agency plans to increase placements in this area by increasing the exposure of UI claimants to job openings through the use of new automated job search capabilities. Basically, this involves the agency's ability to tap information in the benefit claimant master file and match that with the job openings information also on computer. This relatively new capacity should increase the general knowledge TEC staff has of the claimant population as it relates to available jobs. As claimants continue to file their bi-weekly claims, this matching system can better alert them to possible job opportunities.

Lastly, closer coordination between the employment services and unemployment insurance divisions will be required to ensure proper application of the worktest associated with the new Federal Supplementary Compensation (FSC) program. This program provides an additional six weeks of benefits to eligible claimants. However, the receipt of benefits is dependent on a strict worktest that attempts to ensure that the claimant does not refuse suitable work if offered. Any product of the new program will therefore be closer program coordination which will increase regular program effectiveness. With this effort and those identified above, the agency expects to raise the UI claimant placement rate to 13 percent for fiscal year 1983.

The review indicated that the agency is providing services designed to meet the needs of the citizens of the state. The review did identify the need for the agency to increase the number of placements of UI claimants. However, the agency has recognized this and is taking steps to rectify the problem. Finally, the review showed that the agency ranks high in placement activities as compared to other states and has complied with the majority of federal regulations regarding employment services for veterans and MSFWs. Given the reduction in agency staff last December, and the current economic conditions, the agency appears to have been effective in helping individuals find productive employment.

### **Benefit Payments**

One of the primary functions of the agency is to pay unemployment compensation benefits to eligible unemployed persons in the state of Texas. This

function is one part of a national insurance operation designed to provide enough money for basic needs to persons out of work due primarily to economic circumstances. Texas provides this service through TEC's Unemployment Insurance division, and has provided benefits since 1938. Benefits are paid from the Texas Unemployment Trust Fund which is composed of employer taxes required under the Texas Unemployment Compensation Act (TUCA).

Unemployed persons who meet statutory eligibility requirements may receive up to 26 weeks of unemployment compensation benefits. These eligibility requirements include: 1) that a person is able and available for work; 2) that a person has earned enough wage credits to receive benefits; and 3) that a person has not left the last place of employment voluntarily without good cause or has not been discharged for misconduct. The amount a claimant may receive depends on wages earned during the first four of the last five calendar quarters prior to filing the claim. The maximum and minimum benefit amounts are determined by the commission each year based on the annual average of the manufacturing production workers average weekly wage. As of October 1, 1982 the minimum weekly benefit payment is \$27.00 with a maximum weekly payment of \$168.00. The average weekly benefit payment in calendar year 1981 was \$98.29. In August of 1982 this average had risen to \$124.88 a week. As of September 12, 1982, Texas claimants are also eligible for an additional six weeks of benefits under the Federal Supplemental Compensation (FSC) program. This program, which is funded by federal funds, recognizes that 26 weeks of benefits may not be sufficient to protect temporarily unemployed beneficiaries during times of recession.

In 1981, a total of 497,503 initial claims were filed under the unemployment insurance program. This number was exceeded during the first eight months of 1982 with 553,896 claims having been filed during this period.

Benefit Appeals. If the former employer or the claimant are dissatisfied with an initial eligibility decision, either party may request a formal hearing to appeal the decision. The first level of appeal is the "appeals tribunal" of the commission consisting in each case of a salaried examiner. Decisions of the examiner are final unless appealed within ten days to the three members of the commission. Appeals of final commission decisions may be filed in a court of competent jurisdiction. In fiscal year 1981, 53,541 initial determinations were heard at the appeal tribunal level with 68 percent of these determinations upheld. Also 5,574 tribunal decisions were appealed to the commission with 76 percent of these determinations upheld.

Only 45 cases were appealed to court. Four of these were overturned, and 36 were pending at the end of the year.

Benefit Fraud and Error. The Unemployment Insurance division is also responsible for prevention and detection of fraud and error in connection with payment of unemployment benefits. Claims are crossmatched with employer wage records by computer. Any irregularities are investigated, overpayments are recorded, and collection efforts initiated. Benefits are not paid to any claimant who has received and not repaid an overpayment. In fiscal year 1981, 29,263 overpayment accounts were established and 584 complaints for prosecution were filed against claimants who obtained benefits through willful misrepresentation, an 81 percent increase from those filed in 1980.

#### Elements Reviewed.

The evaluation of the agency's benefit payment function focused on the appeals process. As mentioned earlier, either party to a claim may appeal a decision to pay or not pay a benefit claim. Claimants generally appeal when their claim is denied and employers generally appeal when benefits are allowed and the employer feels they should not be paid. Both parties have a voluntary incentive to appeal if the decision is not in their favor--the claimant feels entitled to and is in need of the weekly benefit dollar amount and the employer appeals a "wrong" claim decision to avoid a charge against his or her account and subsequent tax increase.

In Texas, a two level appeals process is available to the parties of the benefit claim. The lower level or "Appeal Tribunal" is the first appeal level. If either party is dissatisfied with this decision, it may be appealed to the three member commission. Although only the lower level process is required by federal law, 47 states (including Texas) have seen fit to establish both tiers of the appeals process. The performance of the lower level Appeals Tribunal is reviewed in this section and the higher level appeals function is reviewed in the "Policy Making Structure" section of the staff report.

In reviewing the lower level appeal process the activity was examined to determine whether or not the process meets federal promptness and performance criteria, whether or not appeal staff have adequate training materials and whether or not the process is accessible to those who desire to appeal an initial claim.

In general, the appeals process tracks the following sequence. The initial determination of claim allowance or disallowance is mailed both to the claimant and the claimant's employer or employers. Each party then has twelve days to



appeal the decision. If an appeal is filed, the necessary paperwork is processed by the Appeal section of the agency and a hearing date is established with notice of the hearing mailed to the parties of the appeal. The appeals hearing is then held by an appeals referee (referees are stationed in 17 locations around the state) who provides opportunity for each party to offer testimony regarding the claimant's "separation" from work. Generally, issues discussed during the hearings are those which establish whether or not the claimant voluntarily quit, was fired for misconduct, or was fired for refusing suitable work. If it is established that any of these circumstances applies to the case, then the claim for benefits is denied. Upon this determination, either party has ten days to appeal to the commission or the determination becomes final.

In terms of workload, the lower level appeals function has experienced a steady growth in calendar year 1982. Exhibit 7 shows an increase in decisions made by the Tribunal from 3,282 in January 1982 to 4,780 in August 1982, an increase of some 46 percent. Generally, the increase is attributable to the overall increase in initial claims activity which has increased from 57,126 to 83,407 per month for the same period, also an increase of approximately 46 percent.

Exhibit 7

**INITIAL CLAIMS AND APPEAL DECISION ACTIVITY**

**January through August 1982**

<u>Month</u>	<u>Initial Claims</u>	<u>Appeal Decisions</u>
January	57,126	3,282
February	49,875	3,535
March	61,747	4,062
April	65,097	4,340
May	67,739	4,272
June	82,389	4,853
July	86,516	4,816
August	<u>83,407</u>	<u>4,780</u>
<b>TOTAL</b>	<b><u>553,896</u></b>	<b><u>33,940</u></b>

In reviewing the agency's performance against federal standards it was found that, overall, its performance appears satisfactory. The Department of Labor

evaluates the appeal function in at least two ways: 1) how long it takes the Appeals Tribunal to make a decision; and 2) how well the decisions are made based on the information available to the appeals referee.

The first measure of performance regarding the time it takes for an appealed decision to be made is important for many reasons. A claimant is allowed benefits upon a favorable initial claims decision even if the claimant's employer then appeals the decision. Thus, persons may receive benefits for a period of time even though they may not be entitled to them. On the other hand, a claimant may be denied benefits when in actuality, the claim should be allowed. In either of these cases, promptness is important to avoid improper payment of benefits to those who should not receive them or the lack of payment of benefits to those who should receive them. The agency's ability to process appeal cases promptly is measured against federal promptness "standards" as opposed to "desired levels of achievement" (DLAs). The distinction between these evaluation benchmarks relates to the Department of Labor's reluctance to continue funding state agency administrative functions that cannot meet "standards". The DLA on the other hand is used as a method to uncover areas of concern relating to the agency's operations but not necessarily to raise the cessation of funding possibility.

In 1981, the Texas lower level appeals process did not completely meet the standards established by the Department of Labor in this area. Exhibit 8 shows Texas' performance as well as the performance of other states in this region.

Exhibit 8

**APPEALS PROMPTNESS - LOWER AUTHORITY**

Fiscal Year 1981

Standard: Minimum of 60 percent of decisions within 30 days.

Minimum of 80 percent of decisions within 45 days.

<u>State</u>	<u>Percent within 30 days</u>	<u>Percent within 45 days</u>
Arkansas	79.8	93.5
Louisiana	90.0	96.5
New Mexico	70.8	86.0
Oklahoma	73.3	90.5
Texas	55.7	81.6

Texas' performance on the 30 day measure placed it in 40th place of the 53 reporting states and territories and as one of 16 states or territories not meeting the standard. Although the performance was not far below standard, the importance of the agency's performance in this area prompted further review. The review indicates the agency has taken several steps to improve its performance in this area. Among these steps are: 1) continued implementation and expansion of telephone hearing conferences for hearings where one of the parties is out of state or distant from each other or available appeals referees; 2) tighter restrictions on the postponement and rescheduling of pending hearings; 3) increased utilization of word processing capabilities; and 4) an increase in workload per referee.

Due to these efforts the agency's performance has improved considerably. Review of the agency's efforts since May 1982 is shown in Exhibit 9 and it does indicate an improving trend. The agency estimates that it will meet or exceed the standards for fiscal year 1982.

Exhibit 9

**TEXAS - LOWER AUTHORITY APPEALS PROMPTNESS**

May through August 1982

<u>Month</u>	<u>Number of Decisions</u>	<u>Percent within 30 days</u>	<u>Percent within 60 days</u>
May	4,272	64.7	75.8
June	4,853	69.2	79.9
July	4,816	71.4	83.7
August	4,780	76.0	86.4
Average	4,680	70.3	81.5
Standard	-----	60.0	80.0

The quality of the decisions made by the lower level appeals process is more difficult to judge but attempts are made on an annual basis by the Department of Labor. In general, the outcome of the appeals process should be a timely and correct decision on whether or not a person should receive benefits. The quality appraisal of the process is based on thirty separate indicators which cover the conduct of the appeals hearing regarding the referee's explanation of the hearing process, the referee's ability to provide the parties involved opportunity to question witnesses, the referee's ability to develop testimony germane to the issue, and

whether the written decision on the case contained the appropriate conclusions of law supported by the findings of fact. The review of the agency's performance in this area revealed that, overall, the decision making process is appropriately accomplished.

In reviewing the training materials available for the appeals referees, two basic documents were identified. The appeals division has developed an "Appeals Referee Handbook" which includes sections relating to: 1) prehearing preparation; 2) the conduct of the hearing; 3) evidence which may be introduced during the hearing; 4) the development of the decision; 5) the handling of interstate appeals; and 6) personnel and equipment. Although portions of the handbook have not been updated since 1967, it does appear to offer a comprehensive review of the complex details of the unemployment insurance laws of Texas as well as other states. Although certain sections of the handbook are no longer directly applicable due to changes in the law, overall, it does provide continuing assistance in how to conduct hearings and how to write up decisions. The agency is aware of the deficiencies of the handbook and plans a revision as needed within the next year.

Another training document used by the referees is the Appeals Policy and Precedent Manual. The manual, completely revised in March of 1979, is an indexed compilation of precedent setting decisions made by the commission and the courts. The manual is indexed by major categories which address issues relating to availability for work, employer charge backs, labor disputes, determinations of misconduct on the job and voluntary leaving of a job. Within each category, the specifics of an issue are broken down. For example, within the misconduct section, the various aspects of misconduct on the job examined include: absence, attitude toward employer, dishonesty, insubordination or neglect of duty, etc. Within each of these categories the manner in which the commission or courts have reviewed such issues are further explored. For example, under "Insubordination" facets of insubordination are identified (e.g., disobedience) and then cases related to the facets are reviewed. Under "Disobedience" the following example is given:

Appeal No. 4622-CA-76. The claimant was discharged for having requested clarification of several conflicting instructions which she had been given by her supervisor within a short period of time. HELD: The claimant's action did not constitute a refusal to obey her supervisor's instructions. No misconduct connected with the work.

Through the study of this manual, experienced as well as new appeal referees can improve their understanding of the law and its operation in determining whether or

not a claim should be allowed or denied. One problem identified with the manual relates to its lack of updated material. For example, with the passage of S.B. 2, 67th Regular Legislative Session, the ability of claims examiners and referees to partially disqualify a claimant for benefits (for example, to allow 20 rather than 26 weeks of benefits) was removed. Throughout the manual, references are made to decisions leading to "partial disqualification". Although this is technically correct in that the decisions used for examples were made under the old law, the manual does not provide examples of decisions made under the new law, now some one and one-half years old. The agency is aware of this deficiency and does intend to revise the manual as needed within the next year. Aside from this issue, the manual does appear to provide a workable training as well as reference tool.

The third aspect of the review of the appeals process attempted to determine whether or not the appeals process is available to those who desire to appeal an initial claims decision. Basically, the review focused on the deployment of appeals staff and the utilization of innovative methods of holding the hearings to minimize the agency's and applicant's travel efforts.

The appeals staff is based around the state in the following seventeen cities: Abilene, Austin, Amarillo, Beaumont, Corpus Christi, El Paso, Garland, Grand Prairie, Houston, Lubbock, McAllen, Midland, Pasadena, San Antonio, Sherman, Tyler and Waco. Staff are stationed at each location in conjunction with local or district TEC offices. In less populated areas, one appeals referee is provided with clerical support. In the more populated areas, for example Houston, ten appeals referees are provided with two clerical support staff. This spread of staff around the state appears to cover all regional areas of the state, as well as placing staff in particular towns and cities whose population comprise approximately one-third of the state's current population.

The availability of the hearings is further enhanced by the development of telephone conferences which can be used in place of an actual person-to-person hearing. If parties are distant from each other, the notice regarding the appeal hearing informs the parties of the availability of the telephone conference hearing. If both parties agree, then the hearing is held via telephone thereby reducing travel time and its concomitant costs and greatly increasing accessibility to the hearing process. The agency estimates that approximately 20 percent of all Appeal Tribunal hearings have been held through the telephone conference system in the past eight months.

Overall, the lower level or Appeal Tribunal process appears to work adequately even with a relatively high increase in workload. Federal performance standards are met, training materials have been developed for old and new staff alike, and the deployment of staff and development of telephone conferences appears to offer access to the appeals process for those who desire to use it.

## 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 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 dealing 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 indicates that the agency does not completely comply with the provisions of the Act. In the past, the agency has considered itself exempt from the Act due to Sec. 2(n), Art. 6252-17, V.A.C.S. This provision exempts agencies from the Act that are "wholly financed by Federal Funds". Two court cases handed down in 1978 and 1979 indicated that the agency was not wholly financed by federal funds and the agency began exploring the need to comply with the Open Meetings Act. After discussions with the Attorney General's office the commission decided to comply with the Act and began filing notices of their administrative meetings with the Secretary of State in May 1981. The commission, however, does hold another type of regular meeting when it sits as the higher level appeals body to pass judgment on the validity of unemployment insurance claims. These meetings are currently not open to the public even though a quorum of the commission is present and public business is conducted. The commission has evidenced a desire to comply with the Open Meetings Act but is concerned with the general "privacy" or confidentiality of information that is discussed during the course of the higher level appeals meetings. Further, the commission is concerned with the notice posting requirements in the Open Meetings Act which it feels would delay an already lengthy process. To settle these and other matters regarding the proper procedures to be followed in conducting the higher level appeals hearings, the commission has requested a clarifying opinion from the Attorney General. In its opinion request letter dated May 10, 1982, the commission posed the following questions:

- 1) Does the Open Meetings Act require the agency to publish notice of a meeting involving unemployment insurance benefits cases and to meet in public when such cases are discussed?
- 2) If the Open Meetings Act does apply, is the agency required to publish notice of the meeting in the Texas Register and is the

agency required to entertain and/or respond to questions and arguments presented by members of the general public appearing at the hearing?

- 3) Is it permissible for the commission to meet in executive session to discuss cases with their attorney before rendering the decisions?
- 4) Finally, would it be permissible for the commissioners to decide cases individually without meeting, to avoid the possibility of subjecting sensitive cases to public scrutiny?

At the time the Sunset staff report was being compiled, the opinion from the attorney general's office was still pending.

In reviewing the agency's compliance with the Open Records Act, it was found the agency considers many types of records to be confidential. Certain equal employment opportunity records appear appropriately closed under Title VII of the Civil Rights Act. Others related to information developed in operating the employment service function of the agency are specifically closed by federal regulations. Other records held by the agency regarding employer tax information and benefit claims are only partially closed. A portion of the agency's statute (Sec. 11(e), Art. 5221b, V.A.C.S.) provides that information obtained from any employing unit (employer), with respect to persons employed by it (the employer), "shall not be published or be open to public inspection except as the commission may deem necessary for the proper administration of this Act". The agency has interpreted this to include information relating to taxes paid or owed by employers, workers wages, social security numbers, employer tax rates and pending court action. The agency indicates that the release of such identifiable information might give advantages to competitors or bidders and therefore be in contravention of the Open Records Act as well as the agency's broad provision (cited above) relating to the confidentiality of tax records obtained to administer the agency.

Although there is little guidance in the agency's statute regarding which tax records should or should not be closed, two Open Records Decisions (ORDs) do provide some assistance. ORD No. 182 found that periodic listings of new Texas businesses is public information and ORD No. 235 found that documents held by the agency reflecting the name of an "employing unit" and the names of the partners in such employing unit are not confidential. The agency's legal department reviewed these decisions and developed a summary of its findings in April 1980 for the use of the commission and the agency as a whole.

The confidentiality of records held by the agency regarding benefit claims records has been addressed by two Attorney General Opinions. Attorney General Opinion No. H-404 held that information regarding the amount of unemployment compensation benefits paid particular individuals or groups is not confidential and cannot be held as such by the agency. Further, Attorney General Opinion No. H - 626 specified that unemployment compensation records are in general available to the employer and the claimant but, except for written decisions and determinations of the commission regarding appeals, are not available to the public. Again, the agency legal department in its memorandum dated April 16, 1980 reviewed these opinions and summarized their findings for commission and agency use.

Interviews with agency personnel, however, revealed considerable confusion regarding the types of tax and claim information which is open and which is not open. It is understandable that an agency the size of TEC might have difficulty in advising all personnel of the legal technicalities regarding the "openness" of the large amount of information held by the agency. To centralize the request for information process, the agency's Administrative Analysis, Audit and Evaluation section has been given the duty of answering requests for information where its availability to the general public is questionable. However, confusion among staff of other departments could lead to insufficient utilization of the information request system and result in the refusal of the provision of information which is actually available under the Open Records Act. It is suggested that the agency's legal department review the guidelines developed in its April 16, 1980 memorandum to the commission, update it as necessary and route the information to all program and department heads to ensure that information requests are treated as required by the Open Records Act and pertinent, Attorney General Opinions and Open Records Decisions.

### EEOC/Privacy

An evaluation was conducted to determine the extent to which the agency has complied with applicable provisions of both state and federal statutes relating to equal employment and the right of privacy of individual employees. The review indicated that TEC, along with the Merit System Council, The Department of Health, and the Department of Human Resources, has been under a Consent Decree Agreement with the Justice Department since December 21, 1978. At that time, the Justice Department charged that the commission's hiring procedures discriminated against minorities and women. While not actually admitting to the charge,

the state agreed to take steps to end discriminatory practices and to report on hiring trends regarding minorities and women. As a result, the agency has implemented a Minority/Female Recruitment program which places emphasis on the recruitment of minorities and women within the agency.

The agency has also entered into a joint project with the Merit System Council in an effort to recruit and assist applicants, particularly from predominantly minority universities, in qualifying for Merit System examinations. In addition, the Affirmative Action Plan, which is part of the annual State Agency Program and Budget Plan required by the Department of Labor, also identifies and targets EEOC-related areas pertaining to the hiring and promoting of minorities and women within the agency. These efforts have resulted in increases in the percentages of minorities and women making up agency staff from 29.1 percent and 51.8 percent, respectively, in June of 1978 to 36.2 percent for minorities and 54.6 percent for women in August of 1981. It should be noted that the percentage of minorities and women making up total agency staffing were higher than the statewide Labor Force Ratios (LFR) for minorities and women for both June of 1978 and August of 1981.

The gains experienced in the hiring of minorities and women, however, were seriously jeopardized by federal budget cuts, initiated in October of 1981, that resulted in the actual layoff of 200 employees in December 1981. The plan developed by the agency for reducing staff was one based on seniority. Although such a system might jeopardize the agency's progress under the consent decree, it was not directly criticized by the Justice Department until the end of January 1982 when the agency faced another lay off involving approximately 500 more persons. At this time, the Justice Department threatened to file an injunction to stop the layoff proceedings. The need for the layoff was averted however, when the Congress passed a supplemental appropriation for employment security agencies throughout the nation. This funding allowed the agency to retain the staff it was going to layoff and avoided further difficulties in the area of EEOC compliance.

In reaction to the situation however, the agency, with input from the Justice Department, has developed and is implementing a plan for laying off employees based on productivity rather than seniority. Although this plan has only recently been implemented, it does appear to provide improved guidance in assessing employee performance and making decisions regarding future layoffs should they occur.

### **Conflict of Interest**

The review showed that the agency has established adequate procedures for making commission members and employees aware of their responsibilities under conflict-of-interest statutes. Each new commission member and employee receives a copy of policies adopted by the agency that are based on the statute on standards of conduct for state officers and employers, with a request that the law be read. Each new employee is required to sign an affidavit on the day of employment stating that the employee has received a copy of this material.

While the agency's procedures are adequate, it would be more appropriate if this were a part of the statutory framework of the agency. Because of the importance of proper notification to commission members and employees, the agency's statute should be amended to require that the type of procedure currently used by the commission is continued.

A review was also conducted to determine the agency's compliance with financial filing provisions of the conflict-of-interest statutes. The records of the Secretary of State's office indicate that financial disclosure forms have been filed by the commissioners and the administrator as required by Article 6252-9b, V.A.C.S.

### **Public Participation**

The agency has taken significant steps to encourage public participation in agency activities. Agency efforts concerning public participation include the publication of pamphlets, in English and Spanish, explaining the unemployment tax and benefit programs, the job placement program and other special programs throughout the state. Newspaper, radio and television advertisement encouraging the use of free public job service programs have also been utilized. Further, the activities of the agency are well covered by the press as review of agency minutes reveals that members of the news media have attended approximately one-half of the regular meetings held to date during calendar year 1982.

Another aspect of the agency's efforts to develop public participation relates to its "State Advisory Council". Required by federal law and authorized by state statute (Sec. 10(c), Art. 5221b, V.A.C.S.), the council is to be composed of persons representing employers, employees and the public: the agency's general constituency. The duties, size and work product of the council is determined by the commission itself. The council can receive per diem and expenses.

In reviewing the operations of the council, it was learned that the council is actually made up of three separate councils--each appointed and used by one of the three commissioners. Currently, each council is made up of nine members and its duties are generally outlined by the commissioner to whom it reports. Advisory council minutes indicate the full council has not met since February 1981. The "employee" council met four times and the "employer" council met twice during fiscal year 1982. The "public" council did not meet during this period.

Until recently, the council divided itself into subcommittees which dealt with legislative issues, unemployment insurance (UI) and employment services. These committees would explore issues relating to the agency and then report their findings to the full council for discussion and voting if needed. Their work appears to have been useful and farsighted. For example, the UI and legislative subcommittees developed recommendations to improve the solvency of the benefit trust fund in August of 1978. As mentioned above, the separate council system (one for each commissioner) has only come into being in the last fiscal year and resembles the system in place prior to 1978.

This separate council system is not contemplated by the agency's statute which speaks only of one council. Further, the system appears to detract from the council's general purpose to provide broad based yet consensual advice to the policy makers of the agency. The separate operation of the councils does not provide a forum for the exchange of ideas and positions needed to reach decisions that can be of use to the commission itself. Although the subcommittee process appears useful and similar to the workings of any advisory body, the separate "councils" do not appear to provide the necessary decision-making forum. It is suggested the council resume its collective meeting process using subcommittees as necessary.

Other concerns encountered during the review of the council relate to its work products and size. First, the only record of the council's work is the minutes of its various meetings. It is difficult to gain an understanding of the council's viewpoints and recommendations from this collection of material. It is suggested the council's work culminate in a written report, including a description of its areas of study and any recommendations it has, to be included in the agency's annual report to the Governor.

The final concern relating to the council relates to its size. A balance should be achieved in the size of any deliberative body that provides for the representation of the appropriate interests and allows it to divide into subcommittees or

groups for detailed examination of issues while providing the opportunity for consensus and action. The size of the body has a definite impact on the accomplishment of these goals. It appears that reducing the size of the council from 27 (nine appointed by each commissioner) to 15 (five appointed by each commissioner) would allow for the accomplishment of these goals. A side benefit of the reduction in size would be a reduction in cost. Although the expenditures of the council are relatively small (\$10,661-1980; \$5,275-1981; \$7,385-1982), the costs associated with the council size reduction would be some 45 percent less than the current per diem and travel costs.

To implement the above recommendations, the agency's statute should be amended to:

- 1) provide for one advisory council which meets on a regular basis;
- 2) provide for the publication of a summary of its work and recommendations in the agency's annual report to the Governor; and
- 3) provide for the appointment of 15 persons to the council; five by each commissioner to represent employers, employees and the public.





**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

The analysis of need and alternatives is divided into: 1) a general discussion of whether there is a continuing need for the functions performed and the organizational setting used to perform the function; and 2) specific discussion of practical alternatives to the present organizational structure or method of performing the function.

### Functions

The functions accomplished by the Texas Employment Commission are numerous and multi-faceted. However, they can be summarized into two major categories: 1) the provision of assistance in finding jobs for persons out of work; and 2) the provision of monetary assistance to eligible persons while they are searching for work. Although the recognition of the need for such functions grew out of conditions of the "Great Depression" which were worse than those of today, the functions do appear to warrant continuation.

The Wagner-Peyser Act and portions of the Social Security Act, both passed by Congress in the mid-1930s, provided statutory frameworks for the operation of a federal-state partnership in developing jobs and providing "unemployment insurance" payments to assist people who, through no fault of their own, are out of work. These efforts recognized that national economic changes and shifts can seriously affect the stability of businesses and employers and their ability to provide continuous job and financial security to all those who desire to work. The basic concept, then, of the program is to provide a system of federal and state taxes to enable delivery of job placement activities and financial assistance or benefits while unemployed persons search for work. The federal tax is collected to administer the program and the state tax is collected to provide the source of financial benefits. The two functions accomplished through this scheme are still needed. As current economic conditions indicate, high unemployment can still occur and both systems of job finding and benefit payments are being utilized.

### Agency

In determining whether it is necessary for the state to have a separate organizational structure to perform employment service and insurance activities, the review focused on whether or not another existing agency could assume the functions in a more effective manner and whether or not other state structures offer alternatives available or desirable for Texas.

It does not appear that placing TEC in another existing agency could offer any tangible benefits. The services delivered by the agency and the structure through which they are delivered are relatively unique. Comparisons with other states indicate that all states operate an agency similar to the Texas Employment Commission. Most operate through an umbrella structure headed by a cabinet-type officer or secretary. Other states operate through an administrator appointed directly by the Governor. Seven states, including Texas, operate through a commission structure. Aside from operational improvements identified in the "Evaluation" and "Alternatives" sections of this staff report regarding the agency's policy making structure, no other method of operation appeared to offer sufficient benefits to warrant modification of the Texas agency.

## ALTERNATIVES

### Agency Reorganization

Alternative Structure for Full-time Commission and its Duties. Although the Texas Employment Commission delivers employment and unemployment insurance services in an effective manner, several concerns were identified by the review in the upper level or policy-making structure of the agency. These concerns related to statutory requirements that the three member commission not only accomplish traditional board or commission duties such as policy and rule making, but also must "administer the Act" and determine higher level appeals. The commission's performance regarding the higher level appeals has been below that expected and has raised concerns over the appropriateness of a statutory framework which requires the accomplishment of many administrative duties by the policy-making body.

In general, the higher level or appeals process is a quasi-judicial administrative function designed to offer a final review of unemployment insurance claim determinations prior to their being appealed to the court system. The review is detailed and, as determined in the Policy-making Structure section of this report, very time consuming. Decision-making timeliness in this process, as in any monetary determination process, is crucial to ensure that persons deserving unemployment insurance assistance receive such benefits when needed. Federal "desired levels of achievement" indicate that 40 percent of the decisions should be made within 45 days. The commission's performance for the first eight months of 1982 shows that 2.2 percent of these decisions are made within 45 days.

There are many reasons for this performance and most could be rectified through increased attention to the process by the commissioners and use of temporary staff until the current increase in workload declines. However, further review of the structure of the process revealed fundamental concerns which could be rectified through the development of an alternative commission and appeals review body structure.

Review of other state approaches to this process reveals that only one other state utilizes a policy-making body to accomplish its higher level appeals review. Most (38) utilize an "Appeals Board" or "Board of Review" made up of individuals whose full-time attention is devoted to the appeals review. Two important benefits can be derived from this approach. First, full-time attention can be

devoted to the higher level appeals function whereas the current commissioners estimate "one-third" to "a majority" of their time is available for this appeals function. Second, the inherent tension between the members of the review body can be eliminated. The appointment of persons to accomplish a quasi-judicial administrative determination can be made without regard to constituencies. That is, there is no need for the members of the Appeals Board to represent certain facets of the "employment service community" - employers or employees. In fact, such representation should probably be avoided in an administrative review board, whereas it is appropriate for a policy-making body. This approach would not only help ensure impartiality in the decision-making process but allow for division of workload in time of peak activity. The three commissioners indicate that they must each read all cases to be sure the interests of their constituency are considered. If this were not the case, the workload could be divided evenly among the members with discussion occurring on those cases where problems are identified. If this process were followed, the current output of the commission could be tripled (that is, 900 rather than 300 cases per week).

Finally, the review of the process indicated that it is a relatively complex activity which must be accomplished with continuing regard to legal details. The commission's overturn record in the courts is good (only 5 of 68 cases since 1978) but this may be partially attributed to the fact that the chairman of the commission during this period has been an attorney. It would be useful if the members of an alternative, full-time appeals board were attorneys and served essentially as administrative law judges.

If the full-time appeal board structure were developed, the need for a full-time policy-making commission would be greatly diminished. Although it appears appropriate for a policy making commission to continue to oversee the agency, its duties could be accomplished in a "part-time" manner as is the case with most boards and commissions involved in other state agency operations. The other states which have part-time commissions attached to their SESAs report their commissions meet once or twice monthly.

To accomplish the changes outlined above, the following approach can be considered: 1) establish a three-member full-time appeals board, appointed by the agency administrator, to function as administrative law judges on the higher level appeals decision-making process; 2) maintain the three-member commission, representing their current constituencies, but require their services on a part-time

rather than full-time basis. Duties of the commission would include traditional rule and policy-making duties as well as the appointment of the agency's executive administrator. Compensation for the commission's work could include per diem and travel expenses.

Assumption of State Duties Regarding the Comprehensive Employment and Training Act. The review indicated that the Texas Employment Commission and the Texas Department of Community Affairs are both currently involved in the accomplishment of duties under the federal Comprehensive Employment and Training Act (CETA). TDCA's current responsibilities with respect to CETA include 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. To perform these duties, the agency contracts with about 30 entities - COGs, non-profit community organizations, and others which carry out various CETA activities.

The Texas Employment Commission 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 record keeping 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 work 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 work 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 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 alternative of assigning all CETA responsibilities to TEC should be monitored as the effects of the new legislation become more clearly understood.

### **Change in Method of Trust Fund Operation**

Increasing the Trust Fund Floor. Under the current process, a supplemental tax of .1 percent is triggered for each \$45 million dollars the Unemployment Trust Fund is below a \$225 million dollar floor on October 1 of a given year. A corresponding tax decrease is triggered when the fund exceeds a \$500 million dollar ceiling. The fund ceiling was increased during the third called special session of the 67th Legislature from \$325 million to \$500 million dollars in order to make the fund balance relate more closely to the total wage base in Texas, and therefore to the possible drain on the fund. During this session, legislation was also passed to "index" the fund floor and ceiling to further increases in Texas' total wage base. The only element of this triggering system which was not changed was the starting point of the floor at \$225 million dollars before indexing begins in 1984. As a result, it is possible that a situation could occur where the fund is near, but above the floor at the beginning of a recessionary economic period. This would not trigger a tax increase to supplement the fund at a time when benefit payments would be increasing, causing a greater outflow than inflow of dollars to the fund. This could then result in the necessity of once again borrowing federal funds. It is possible to minimize the chances of this situation occurring by increasing the floor of the fund to at least \$325 million dollars. This would provide a greater fund balance to counteract a recessionary drain on the fund, and to trigger a supplemental tax before the fund balance gets too low. Because the fund balance is presently low due to the current economic situation, raising the fund floor would have the effect of triggering larger supplemental tax increases in the next few years. This effect, however, is negated by the presence of a "cap" on supplemental tax increases in 1983 and 1984. If the floor were to be increased by the legislature, it is recommended that the "cap" be extended for the supplemental tax rate for 1985 at the same level as 1984 in order to prevent a large rate increase for 1985.



Changing the Method of Indexing Benefit Levels. Under the current process, unemployment benefit level increases are determined by a statutory index where for every ten dollar increase in average weekly wage for manufacturing production workers in Texas, as published in the TEC report "The Average Weekly Wage", the maximum benefit is increased seven dollars and the minimum is increased one dollar. This determination is made on October 1 of each year. This year the maximum benefit rose from \$147 to \$168 as a result of a greater than \$30 dollar increase in the average weekly wage. There are several problems with this system of indexing. First, the report "The Average Weekly Wage" has never existed. The agency currently determines the average weekly wage from voluntary responses to a wage survey sent out to a random stratified sample of 2,000 - 2,500 manufacturing employers. Since responses to the survey are voluntary, the number participating will vary each year. In 1978, the TEC advisory council discussed making benefit level determinations based on mandatory, rather than voluntary reports. The agency currently receives wage reports from all covered employers and could use this information to calculate an average weekly wage based on all, not just manufacturing, wages in Texas and provide a more accurate assessment of wage levels. However, including non-manufacturing employment in this assessment, would lower the average weekly wage thus increasing benefit levels at a slower pace. If average total covered employment had been used since 1977 to determine maximum benefit rates, the current maximum would have been \$161 per week compared to the rate of \$168 per week now in use. Using the sample of only manufacturing employers has therefore inflated benefit levels over what would have been determined by including all types of employment. Although benefits would increase more slowly using average total wages in Texas, this approach would provide a more accurate figure upon which to base benefit levels.



**ACROSS-THE-BOARD RECOMMENDATIONS**



**TEXAS EMPLOYMENT COMMISSION**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>A. ADMINISTRATION</b>
	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.
		*	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.
		*	15. Require the legislative review of agency expenditures through the appropriation process.

\*Already in statute.

**Texas Employment Commission**  
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>B. LICENSING</b>
		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. (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. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			<b>C. ENFORCEMENT</b>
		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.
			<b>D. PRACTICE</b>
		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.

## OTHER ISSUES

During the review of an agency under Sunset various issues were identified that related to significant changes in the current methods of regulation or service delivery. Most of these issues have been the subject of continuing debate with no clear resolution on either side.

Arguments for and against these issues, as presented by various parties contacted during the review, are briefly summarized. For the purposes of the Sunset report, these issues are set out for information only and do not reflect a position taken by the Sunset review.



## OTHER ISSUES

During the review, other issues concerning various aspects of the agency were identified. Most of these issues have been the subject of continued debates without clear resolution on one side or the other. This section sets out these issues and summarizes the arguments for and against presented by various groups contacted during the review. The major issue identified is as follows:

### 1. Funding of Former State Employee Benefits

Currently, benefits paid to former state employees are funded through appropriations from general revenue and from the TEC Special Administration Fund, often called the penalty and interest fund (P&I). The P&I fund is so named because revenues for the fund come from penalties and interest charged to employers that are delinquent in tax payments. For fiscal year 1982, \$4,000,000 was appropriated from general revenue and \$2,500,000 from the P&I fund. This situation creates two possible problems. First, since money in the P&I fund is derived from private employers, they are now subsidizing the costs of paying benefits to former state employees. Second, the TEC statute indicates that the P&I fund was intended for the proper and efficient administration of the Act. It is questionable whether the funding of former state employee benefits fits the intended use of the fund.

The agency currently sends the comptroller a statement "billing" each state agency for the cost of reimbursing the trust fund. However, money is transferred to the trust fund from accounts set up from the appropriations pattern described above, rather than transferred from each agency's account. Proposals have been developed in the past where each state agency budget contains a line item to pay unemployment benefits on an "estimated to be" basis.

Arguments for these proposals indicate that they would solve the problems set out previously and would have the additional effect of prompting state agencies to appeal benefit determinations with which they did not agree. Currently, there is little incentive for agencies to do this since they are not "charged" for reimbursing benefit awards.

However, arguments against this proposal imply that the primary effect of charging individual agencies is to only move appropriations from one agency, TEC, to all agencies without altering the total amount of funds needed. Some agencies may also have difficulty in estimating budgeted amounts for two years in advance

in this area. In addition, since this proposal would no longer utilize P&I funds, the amount of general revenue needed to pay former state employee benefits would be increased, leaving less funds for other purposes. The legislature has determined in the past that paying these benefits is a valid use of the P&I which has been effective in preventing tax increases to support this program.