

**SUNSET ADVISORY COMMISSION**

**STAFF REPORT**

**on the**

**TEXAS ENERGY AND NATURAL RESOURCES ADVISORY COUNCIL**

**1982**

## FOREWORD

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that the normal pressures of the legislative process tend to prevent a systematic review of the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which a review and redefinition of state policy can be accomplished on a regular systematic basis.

The Texas Sunset Act (Article 5429K, V.A.C.S., as amended) was enacted by the 65th Legislature in 1977. Under the provisions of the Act, agencies are automatically terminated according to a specified timetable, unless specifically continued by the legislature.

To assist the legislature in making the determination of whether an agency should be continued and, if continued, whether modifications should be made to its operations and organizational structure, the Act establishes a ten-member Sunset Advisory Commission composed of eight legislative members and two public members. The commission is required to evaluate the performance of the agency in accordance with specific criteria set out in the Act and to recommend necessary changes resulting from the findings of the evaluation.

The process by which the commission arrives at its recommendations moves through three distinct phases beginning with a self-evaluation report made by the agency to the commission. The second phase involves the preparation of a report to the commission by its staff, evaluating the activities of the agency, and proposing suggested changes for commission consideration. The final phase involves public hearings on the need to continue or modify an agency and the development of commission recommendations and legislation, based on the agency self-evaluation, staff report, and public testimony.

The Sunset Commission's findings, recommendations, and proposed legislation are then required to be transmitted to the legislature when it convenes in regular session.



## INTRODUCTION AND ORGANIZATION OF AGENCY 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 Energy and Natural Resources Advisory Council was created in 1979. The primary functions of the council can be grouped into three basic areas: 1) policy development; 2) contract management; and 3) dissemination of information.

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

The review included an analysis of the need to continue these functions in their current organizational setting and the analysis indicated that there was no substantial benefits to be gained from consolidation or transfer of functions. One alternative method was identified which would transfer the functions of another state agency, with similar functions, to TENRAC. The review also indicated that if the agency is continued, one modification should be made to improve the effectiveness of the agency's operations.

### Approaches for Sunset Commission Consideration

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

- A. Recommendations for other sunset criteria
  - 1. Public Participation
    - a. The council should modify their rules to provide a combination of public officials and private citizens on the Natural Resources Advisory Committee.
    - b. The statute should be amended to require that the council allow public testimony at any meeting. (statutory change)
  - 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)

#### **II. ALTERNATIVES**

- A. Transfer the functions of the Texas Coastal and Marine Council to TENRAC.



## 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

In the early 70's, energy had become a critical issue throughout the nation. Texas recognized the need to develop an organization to research and analyze energy issues and provide recommendations that reflected the interests of the state. However, the final form of the organization, its responsibilities, and what constituted a proper balance between legislative and executive control was not easily achieved. The initial organization created in 1973, through executive order of the Governor, was directed toward developing energy policy and was responsible to the chief executive. In 1975, this organization evolved into a permanent statutory agency still under direct control of the Governor. In 1977, this was replaced by the Texas Energy Advisory Council which provided legislative direction by making the Lieutenant Governor the chairman. In 1979, all energy and natural resources policy development, except for that carried out by the Texas Coastal and Marine Council, was consolidated through the creation of the Texas Energy and Natural Resources Advisory Council (TENRAC). The council is currently composed of 22 members who are either named specifically in the statute or appointed as set out by law. The statute designates the Governor and Lieutenant Governor as co-chairpersons of the council, and the Speaker of the House of Representatives as vice-chairperson. Other members who are specifically designated are the Attorney General, a member of the Railroad Commission, a member of the Public Utility Commission, chairperson of the Texas Air Control Board, chairperson of the Texas Water Development Board, chairperson of the Parks and Wildlife Commission, commissioner of the General Land Office, commissioner of agriculture, Comptroller of Public Accounts, commissioner of health, and director of the Bureau of Economic Geology of the University of Texas in Austin. The appointed members are two senators appointed by the Lieutenant Governor, two representatives appointed by the Speaker, and four citizens appointed by the Governor. Operations of the commission are carried out by a staff of 61 and are supported in the current fiscal year 1983 by an appropriation of approximately \$2.7 million in general revenue and an estimated \$437,159 in federal grants for a total of \$3.2 million.

The Texas Energy and Natural Resources Advisory Council is responsible for carrying out a wide variety of functions. These functions can be grouped into three

basic areas: 1) policy development; 2) contract management; and 3) dissemination of information. Activities within these areas are briefly summarized below.

Policy Development. In its role as the energy and natural resources policy planning body for the state, the agency provides coordination for the activities related to energy and natural resources development within the state as well as providing a structured forum through which statewide elected officials can resolve energy and natural resources issues and develop positions regarding basic state energy and natural resources policy. In the area of state energy policy, TENRAC investigates issues regarding natural gas decontrol, high-level radioactive waste disposal, state severance taxes, issues relating to electric utilities and has developed a variety of models to be used to forecast energy production and evaluate energy policy proposals. In the area of state natural resources policy, the agency is involved in the revision of the Texas Water Plan, examines issues regarding coastal natural resources management, shoreline erosion, the federal initiatives concerning the Clean Air Act and the Clean Water Act, and will study the reallocation of fiscal responsibility for natural resources programs. Through the management of the State Energy Conservation Plan (SECP) and the Energy Extension Service (EES), the agency provides technical workshops and on-site technical assistance to school districts, local governments institutions of higher education, and state agencies. The Institutional Conservation Program (ICP) allows the agency to recommend projects for funding that will provide energy audits, technical analysis, and energy conservation retrofits in hospitals, public care institutions, schools and local governments. During fiscal year 1982, the agency developed the Petroleum Shortage Contingency Plan for the State of Texas. The plan lists and analyzes 19 potential response measures that could be employed by the state in the event of a petroleum shortage. The agency is also responsible for continually monitoring state, national, and world oil supply. In addition, the Council authorized the preparation of the Texas Five-Year Energy Research Plan in an effort to increase the extent of overall reporting of research results in Texas and to present a five-year research agenda for the major state universities and TENRAC.

Contract Management. The 65th Legislature created the Energy Development Fund for the purpose of encouraging alternative energy technology and development of lignite, biomass, geothermal, solar, wind, and conservation energy resources. The state-funded development fund provides grants for research, development and demonstration projects. TENRAC is required by statute to

maintain an administrative plan, to issue proposal solicitations, to evaluate proposals, to fund and monitor projects, and to encourage matching fund arrangements from federal or private sources. The Energy Development Fund was appropriated approximately \$3.2 million during fiscal year 1982 and fiscal year 1983 (including \$400,000 in unexpended funds from the 1980-81 biennium). During fiscal year 1982, 22 research, development and demonstration (RD&D) contracts were initiated, 16 of which will end in 1983 and approximately 10 projects will be added for fiscal year 1983. The projects planned for fiscal year 1983 include: deep basin lignite development, use of wind power in stripper (oil) well pumping, geological characterization of Texas oil, and electrical peak demands. A significant portion (72%) of the Energy Development Fund is being used to contract for basic research and demonstration type projects among state universities.

Dissemination of Information. The Information Services Department within the Administration Division maintains a library of materials for the agency staff as well as responding to requests for information from other state agencies, local governments and the general public. During 1981, the department responded to 3,859 information requests and distributed 38,977 TENRAC publications. In addition to publications being distributed by this department, each division maintains some responsibility in the distribution of publications and materials originating from that division.



## REVIEW OF OPERATIONS

The evaluation of the operations of the agency is divided into general areas which deal with: 1) a review and analysis of the policy-making body to determine if it is structured so that it is fairly reflective of the interests served by the agency; and 2) a review and analysis of the activities of the agency to determine if there are areas where the efficiency and effectiveness can be improved both in terms of the overall administration of the agency and in the operation of specific agency programs.

### Policy-Making Structure

In general, the structure of a policy-making body should have as basic statutory components, specifications regarding the composition of the body and the qualification, method of selection, and grounds for removal of 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 Energy and Natural Resources Advisory Council is composed of 22 members: the Governor and Lieutenant Governor, serving as co-chairpersons; the Speaker of the House of Representatives; the Attorney General; a member of the Railroad Commission; a member of the Public Utility Commission; the chairperson of the Texas Air Control Board; the chairperson of the Texas Water Development Board; the chairperson of the Parks and Wildlife Commission; the commissioner of the General Land Office; the commissioner of agriculture; the Comptroller of Public Accounts; the commissioner of health; the director of the Bureau of Economic Geology of the University of Texas at Austin; two senators appointed by the Lieutenant Governor; two representatives appointed by the Speaker; and four citizens appointed by the Governor.

The council structure was designed to include a relatively large number of state government officials in order to provide: 1) a broad range of knowledge and expertise which would help the agency's policy development efforts; and 2) adequate representation of the interests and points of view of those agencies that would be affected by energy and natural resources policy development in Texas. A contributing factor to the council's effectiveness is the creation of nine advisory committees used to organize input from the private sector, universities, and other

state agencies. These advisory committees are composed of public officials or private citizens and are chaired by a council member. Advisory committees have been created to provide advice in the following policy areas: agriculturally derived fuels, coal and lignite, energy efficiency, industrial and electrical fuel use policy, nuclear energy, petroleum and natural gas, solar energy, natural resources, and gasoline rationing and energy emergency planning.

The review indicated that the structure of the council was generally appropriate for the interests served by the agency and that no changes were needed to improve this area. A specific concern regarding the composition of the advisory committees is discussed in the review of the other sunset criteria on public participation.

### **Overall Administration**

The evaluation of the overall agency administration focused on determining whether the management policies and procedures of the agency, its monitoring of management practices, and its reporting requirements were adequate and appropriate for the internal management of time, personnel, and funds.

In general, the agency has employed acceptable management practices to ensure its operations are conducted in an efficient and effective manner. The agency has structured its hiring and promotion procedures to obtain suitably qualified individuals for job openings and also to fill vacancies by promotion of current employees whenever possible. The agency has recently completed a personnel policies and procedures manual that includes specific details regarding employment provisions, filling employment vacancies, grievance procedures, travel procedures and guidelines for performance appraisal. In addition, agency accounting procedures are adequate to ensure proper management of fiscal resources.

With respect to monitoring of management practices, the agency has developed adequate procedures to monitor its operations. Each division manager makes weekly reports on division operations, and the division managers also meet in regularly scheduled meetings with the agency director to discuss problems and possible solutions regarding their operations. At the beginning of each fiscal year, each division manager is required to submit to the director a workplan of issues to be studied during that fiscal year. The compilation of these individual plans is later submitted to the council for its approval.

## **Evaluation of Programs**

The programs of the Texas Energy and Natural Resources Advisory Council were divided into three main functional areas for purposes of evaluation: policy development, contract management, and dissemination of information.

## **Policy Development**

The Texas Energy and Natural Resources Advisory Council (TENRAC) has the major statutory responsibility for energy and natural resource policy planning and for promoting the development of alternate energy technologies for Texas. The council utilizes the expertise and resources of its membership, the members of its advisory committees, staff, and consultants to aid in the planning activity. The policy development activity takes the form of major policy reports, resolutions, and legislative proposals. The review of this function centered on two elements: the selection of issues, and the resolution of issues. Each of these areas is examined below.

Selection of Issues. TENRAC is directed by statute to focus its energy research and development activities on "technologies which offer the realistic promise of significant energy contributions within 25 years and which are of particular importance to Texas." Therefore, the studies and issues it undertakes should address matters of current importance so that results are available when decisions are being made. A review of both the method used to select issues and the actual issues indicate that in both of these areas the performance of the agency has been appropriate.

The process of selecting policy issues works in the following manner. Policy issues are introduced to the council through staff, individual council members, and members of advisory committees. In some instances the agency may receive a legislative directive as in the case of the emergency energy preparedness area. Before an issue is developed into a major project proposal it is debated and discussed among the council membership and preliminary research regarding background on the issue is prepared by the staff and presented for review. Further background research is done to identify other resources in the state and possibly within other states that may have already done work in the area. At that point a topic is omitted if there is possibility of duplication of effort. Once an issue has been selected, it is assigned to the appropriate division staff and the determination is made as to whether it will be an in-house project or a project that should be given to contracting consultants. The types of issues selected by the agency for policy research indicate that they are geared to developing practical, timely

solutions to current major problems and to the collection of factual information on which to base decisions.

Resolution of Issues. Whether projects were handled in-house or by contractors, TENRAC seems to generally provide a resolution to the issue being researched. The council has adopted resolutions of action and has prepared legislative proposals that were presented to the legislature. Legislation that was developed from TENRAC recommendations and approved by the legislature include the licensing of solar installers, low-level waste disposal, state alcohol fuels regulation, vanpooling, and a residential conservation service. In addition, the agency has followed its statutory mandate to review existing and proposed policies of federal agencies by submitting briefs to the Texas Congressional delegation regarding the state's position on specific issues and has taken an active role in monitoring those issues. These areas include: natural gas decontrol, high-level nuclear waste disposal, and the constitutionality of the windfall profit tax.

#### Contract Management

To perform its responsibility for promoting the development of alternate energy technologies, much of the research and information provided by TENRAC is done through contracts made with other state agencies, universities, private consulting firms, and individuals. The Technology Division administers the contracts funded by the Energy Development Fund. However, three other divisions are also involved in managing contracts.

The workplan for the energy policy analysis division for fiscal year 1983 includes contractor studies to be commissioned in the following areas: 1) surveying the issues surrounding the coal slurry pipeline; 2) a comparison of the incentives for enhanced recovery of crude oil; 3) an assessment of the benefits and costs of lessening the regulation of oil and natural gas pipelines; and 4) the impact of state severance taxes on natural resources.

The division also administers current contracts. The current allocation of funds is shown in Exhibit 1 on the following page. The University of Texas Bureau of Economic Geology is under contract with the natural resources division to complete a pilot study of Corpus Christi Bay regarding shoreline erosion. In the area of beach safety the division contracted with Texas A & M at Galveston's Coastal Zone Laboratory to conduct a study of beach users and accidents on Texas beaches. The energy efficiency division has contracted with the Texas Industrial Commission for workshops and seminars on energy utilization topics (in cooperation with a trade association or city government); with nonprofit community organiza-

Exhibit 1

ENERGY DEVELOPMENT FUND PROJECTS FOR FISCAL YEAR 1982

<u>Contractor</u>	<u>Tenrac Funding</u>	<u>Project/Scheduled Completion</u>	
Applied Solar Engineering, Inc.	\$ 35,030	Site-specific conceptual study of a salt gradient solar pond facility	12-01-82
Bureau of Economic Geology (BEG)-- University of Texas at Austin	\$ 608,322	Deep basin lignite evaluation	08-31-83
	EPRI*	Coal uncertainties assessment	08-31-82
	\$ 4,609	Coal geostatistics symposium	08-31-82
	\$ 199,680	Geological characterization of Texas oil reservoirs	08-31-82
Ronald Holmes	\$ 10,000	Air conditioning with a solar powered jet compressor	05-31-83
North Texas State University	\$ 19,963	Potential environmental impact of salt gradient solar ponds	02-28-83
Radian Corporation	\$ 52,206	Testing and evaluation of fluidized bed combustion of Texas lignite	06-30-82
Sum X Corporation	\$ 139,274	Demonstration of biomass-derived fuels for integrated energy farm	08-31-83
Texas A&M University	\$ 105,544	On-site energy production from agricultural residues	08-31-83
	\$ 116,666	Unconventional plants for biomass feedstocks in semi-arid West Texas	08-31-83
	\$ 124,689	Economic and engineering of plant oils as diesel fuel	08-31-83
	\$ 162,500	Ethanol production in small to medium-size facilities	08-31-83
	\$ 35,000	Addition of agricultural chemicals through drop tube irrigation	08-31-83
Texas Tech University	\$ 181,228	Fuel grade alcohol from grain and cotton gin trash	08-31-83
	\$ 35,765	Energy availability and economic assessment of salt gradient solar ponds in Texas	08-31-83

**Energy Development Fund Projects For Fiscal Year 1982**  
(Cont.)

<u>Contractor</u>	<u>Tenrac Funding</u>	<u>Project/Scheduled Completion</u>	
University of Texas at Austin	\$ 46,625	Atmospheric fluidized bed combustion	08-31-83
	\$ 18,335	Acid rain monitoring techniques	08-31-82
	\$ 70,639	Hydrologic site selection for mining of deep basin lignite	08-31-82
UT-El Paso with Stottler Stagg Co. & BEG	\$ 40,774	Geothermal assessment of the Trans-Pecos region	12-31-82
West Texas State University	<u>\$ 20,128</u>	Wind power to assist in stripper oil well pumping	08-31-82
<b>TOTAL</b>	<b>\$2,012,512</b>		

\*Funded by Electric Power Research Institute

tions for "grass roots" energy efficiency projects; and with the Texas A&M Energy Extension Service for technical assistance on any aspect of energy management including city manager problem clinics.

In the process of distributing funds for these projects, each division follows a similar procedure for managing their contracts: 1) selecting contractors or grantees; 2) formulating contracts; 3) training contractors to comply with program guidelines; 4) monitoring and auditing contractors to detect noncompliance; and 5) enforcement of contract terms. The manner in which each division performs these steps was evaluated and is discussed below. In general, the agency's policies and procedures in this function were found to be efficient and effective as well as appropriate.

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

New projects are usually approved and contractors selected at the beginning of each fiscal year when state funds are being allocated. The division director prepares the "notice of intent to contract" and submits the form to the fiscal officer to validate the availability of funds for the project. All contracts that are for an amount less than \$10,000 and are not primarily for research and development may be reviewed by the executive director for final action. However, those contracts in greater amounts are reviewed by the Contract Review Advisory Board composed of the executive director, deputy director, general counsel, and the appropriate division director. The board determines if the project will be consistent with the existing division workplan and that the services being requested are clearly identified and are not a duplication. Once the project has been approved, the division director begins to solicit proposals through both personal contacts and by official notice in the Texas Register (using the Register requirements for format). All proposals are reviewed by the division director and assigned staff, and advisory committee members or a special review team of experts when needed. A list of all proposals received with a recommendation is prepared and submitted to the deputy director, the director and in some instances, the Contract

Review Advisory Board. After final approval by the executive director, the formulation of the contract takes place.

Contract Formulation. The type of contract used is important because it is the basis of the parties' understanding of their responsibilities and the recourse allowed in case of default. The agency's contracts were examined to determine whether they are clear and concise, whether they contain an accurate statement of services to be provided, and whether they contain enforcement provisions which afford TENRAC adequate control over funds.

Most of the agency's contracts have a basic provision that contains information and requirements pertaining to any contractor or grantee performing a service for the agency. A second provision pertains to the particular contractor and the services to be provided and the amount of funding designated for the contract by TENRAC. The general provisions also include an enforcement procedure which allows TENRAC to terminate the contract for non-compliance after giving the contractor a reasonable opportunity to correct deficiencies. In general, the contract forms are appropriate and accurately state the services to be rendered by both parties and provide for adequate control over the funds.

Contractor Training. Although there is no formal training for TENRAC contractors, each contractor is assigned a TENRAC program coordinator once the contract is executed. The coordinator serves as the liaison between the contractor and the agency to manage the contract and resolve any problems that occur after the project has begun. Once the contractor is selected, the coordinator meets with the contractor and reviews the terms of the contract and discusses the timetable for the project. If any special problems have occurred since the initial negotiation period, they are introduced at that time and resolved.

Contract Monitoring. Any procedures designed to monitor contracts should supply information which allows the contract manager (coordinator) to help the contractor to reach the objectives of the contract and to complete the project within the specified time. TENRAC has established a program monitoring and a financial auditing activity to achieve that purpose. The program monitoring process includes an in-house review of reports filed by contractors, as well as on-site visits for special projects during the progress of the contract. The monthly progress reports generally include information regarding progress for that period, an analysis of that progress, significant problem areas, and plans for the next period. Since the primary funding for the energy efficiency division is from federal sources, financial status reports are required as a part of federal reporting

requirements for contractors. All other divisions operate on a voucher reimbursement procedure with their contractors. The financial status reports show the estimated budget and actual expenditures for the project. The review indicated that the procedures established by the agency are appropriate and provide adequate information to allow timely project completion.

Enforcement of Contract Terms. If properly implemented, monitoring procedures should identify incidents of non-compliance. Once non-compliance has been identified, the agency should have an adequate range of options with which to enforce the terms of the contract. The review indicated that TENRAC's enforcement capability is adequate. When deficiencies are discovered, the program coordinator interviews the contractor, explaining the problems identified and develops solutions to the problems. In cases where there is no immediate deadline, the timetable may be renegotiated and the contractor may be given more supervision and guidance by the coordinator. In other instances when the timetable cannot be changed, the coordinator may withdraw the contract and obtain another contractor. In special circumstances the contractor may be permitted to sub-contract to complete the project. In an extreme situation, TENRAC may choose to terminate the contract and/or refuse to renew a contract that might have had potential for continuance.

Dissemination of Information. The agency distributes a variety of publications in its efforts to promote the development of alternate energy technologies. These include newsletters, bulletins, handbooks, policy statements, and investigative reports. During 1981, the agency distributed 38,977 publications at a printing cost exceeding \$57,000.

The publications effort for any agency should result in the distribution of materials that are relevant to its responsibilities. A review of council publications shows that they are appropriate to the agency's overall purpose. Publications are also of generally high quality.

An agency's publications procedures should also be efficient to keep costs down. To meet this requirement, the overall framework for publications should allow for proper coordination and direction, and appropriate cost controls should exist. Currently, the decision to produce a publication originates in a division and is written and developed there. Any decisions regarding the number of copies to be printed and distributed is also primarily a division decision. The distribution of publications is done in the information services department of the administration division. Unless publications have been developed for specific workshops or

seminars most publications are distributed on a request basis. However, each division director and program coordinator (assigned to a specific project publication) usually provides a mailing list designating persons to receive certain publications. The review indicated that in some cases the number of copies printed has often exceeded demand. Most of those reports were energy development fund reports and publications of the energy efficiency division that were designed for workshop distribution. The agency has recognized this concern and has completed a publications policy manual to provide guidelines for publications distribution as well as for publication format. In addition, the agency is in the process of developing methods to increase distribution of publications.

In order to facilitate information dissemination, TENRAC sponsors or co-sponsors a number of conferences and workshops throughout the state. These workshops and conferences provide information from the energy efficiency division, policy topics from the policy analysis divisions, and technology development from the technology division. During July 1981, TENRAC contracted with ARC Energy Concepts to provide a series of 40 workshops addressing energy efficiency in commercial businesses. These workshops were held free of charge to participants in 28 cities throughout the state. Also in 1981, TENRAC sponsored a one-day session on coal and lignite that brought together 65 specialists representing 13 major energy companies, three national laboratories, four Texas state agencies, three major universities, a national research institute, and the United States Department of Energy.

The review indicated that the subject matter of the seminars, workshops, and conferences generally covers a wide range of topics related to energy and natural resources as well as alternate energy technologies. The agency solicits statewide participation in most events and generally plans the events so that they are easily accessible in terms of location, time, and day. These events are usually announced in various newspapers, trade association newsletters, TENRAC brochures, and by radio. Once the session ends, program participants are requested to complete evaluation forms. This procedure helps the agency determine the need for such events and to plan for future events. Although attendance for some sessions has been low, the agency is currently seeking new methods to attract more participants.

**EVALUATION OF OTHER SUNSET CRITERIA**

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

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

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

## EVALUATION OF OTHER SUNSET CRITERIA

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

### Open Meetings/Open Records

An examination of the agency's compliance with the open meetings statutes determined that the agency files timely notices with the Secretary of State's Office. The agency's minutes reveal no improper use of executive sessions and show general adherence to procedures set out in the Open Meetings Act. Review of the agency's compliance with the Open Records Act indicated that the board has never denied a formal request for information and considers all of its records public.

### EEOC/Privacy

A review was made to determine the extent to which the agency has complied with applicable provisions of both the state and federal statutes concerning equal employment and the rights and privacy of individual employees. In general, the agency has complied with these requirements. The personnel and policies procedures manual adopted by the agency includes its policy regarding equal employment opportunity. However, the review indicated that out of a staff of 61 persons there is one black employee and three full-time Hispanic employees (an additional Hispanic employee is half-time). Of those minority employees, only one is hired in a professional category. The agency has recognized this as a concern and plans to correct the problem through their recruitment initiatives. In July 1980, a complaint was filed by a former employee charging race and sex discrimination in job termination. The EEOC determination held that conciliation efforts were unsuccessful and the case is currently under litigation.

### Public Participation

The council encourages public participation and informs the public of its activities and services through various means including newsletters, workshops, and seminars on various energy and natural resources topics. The council is also required by state to meet quarterly, which ensures the public a degree of access to

the council on a regular basis. The council has also created nine advisory committees that are composed of council members and private citizens. The size of these committees range from seven to twenty-one members and the membership on most committees includes persons from energy and energy-related industries and universities with energy research components. While the advisory committee concept serves to bring to the council expertise from the persons across the state who are interested in energy and natural resources policy development, there is one committee (Natural Resources) whose current membership consists of council members only. Although the agency indicated that private citizen "experts" are solicited as needed, the review indicated there was no reason to exclude outside membership on this advisory committee. In an effort to be consistent with the overall agency policy-making structure and guidelines for seeking public participation, it would be appropriate for private citizens to be included on this advisory committee. Currently, the statute allows advisory committees to be composed of either public officials or private citizens or a combination. Generally, the practice of the council has been to provide a combination of public officials and private citizens on the advisory committee membership and this practice should be extended, by council rule, to the Natural Resources Advisory Committee. In addition, there is no corresponding statutory language which explicitly sets out the public's right to appear and testify before the council at any of its meetings. Given the importance of public participation in an agency's decision-making process, it would be appropriate for such a policy to be set out as part of the statutory framework of the agency.

### **Conflict of Interest**

A review of the documents filed with the Secretary of State indicates that appropriate financial statements have been filed by members of the agency.

The review also showed that the agency has established adequate procedures for making council members and employees aware of their responsibilities under the conflict-of-interest statutes. Each new council member and each new employee receives a copy of the statute on standards of conduct of state officers and employees with a request that the law be read. Each new employee is required to sign a written statement indicating that the employee has received a copy of the statute. 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 council members and employees. The agency's

statute should be amended to require that the type of procedure currently used by the council is continued.



**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 method of performing the function or the present organizational structure.

### Functions and Agency

The primary functions of the Texas Energy and Natural Resources Advisory Council (TENRAC) are to plan energy and natural resource policy, to promote the development of new energy and conservation technologies, to promote energy efficiency among the state's citizens, to develop and maintain emergency energy conservation contingency plans for the state, and to allocate a portion of the state's fuel supplies in times of emergency. The review examined each of these areas separately to see if a need still exists for these functions.

Planning. With respect to planning energy and natural resource policy, the energy industry is one of the main pillars of the economy in Texas. The levels of employment and income in the state are severely affected by the slightest growth or decline in energy-related and energy-consuming industries. Reversals in any of the long-standing trends in Texas production, processing, and consumption not only affect Texas citizens but affect the rest of the nation as well. Texas has historically played a major role in the nation in the area of energy resources. The state's current contribution to the nation's energy output has declined somewhat but still stands at approximately 21 percent. While the major responsibility for the planning for energy and natural resource research, development and demonstration activities lies with the federal government, federal programs, in some instances, will overlook projects of regional or state significance to concentrate on national priorities. The review indicated that Texas still plays a major role in the development of energy and natural resources and that there is a need for a policy-making body to coordinate that function.

Research Funding. As the population in Texas grows, energy demand will increase at a time when overall oil and gas production will be on the decline. This energy imbalance must be made up by the use of alternative fuels, conservation of energy, and protection of natural resources. Although the concern in Texas is more related to the form which the supply of energy will take, as opposed to the availability, transformation of those energy sources will require major financial

investments by both the private and public sector. The maintenance of the Energy Development Fund by TENRAC provides a viable mechanism to promote the development of new energy and conservation technologies. The policy development function provides another mechanism by creating a forum for statewide elected officials, members of the university communities, representatives of the affected private businesses, trade associations, state agencies, and private citizens to plan and develop through debate, positions on energy and natural resource issues that enable Texas, in its capacity as a leader in the energy industry, to continue to speak with a definite plan for the future.

Promotion of Energy Efficiency. With respect to promoting energy efficiency among the state's citizens, the agency has estimated the potential energy savings to be derived from more efficient utilization to range between 30 and 50 percent of the projected use in the state by the year 2000. The establishment of appropriate educational programs can accelerate the transition to more efficient energy consumption behaviors and technologies and help cushion the shock/impact of an energy crisis similar to those experienced in 1973 and 1979. Often, the claims by vendors of energy efficiency in their products and actual energy savings result in discrepancies. State government is in a better position to provide unbiased information on performance to citizens who lack sufficient information. Private sector firms are not equipped to handle the type of public education effort that is needed. Education and technical assistance, targeted at specified groups, is part of the long-standing tradition of public education in Texas and TENRAC, as the state energy office, is designed to serve as a clearinghouse in receiving and distributing information for that purpose. Most of the cities and counties in Texas do not have individual energy offices and must rely on this guidance from the state.

While the agency's functions are necessary, a review was also made to determine whether it is reasonable to continue these functions in their current organizational setting. The analysis indicated that 15 states combine these functions within other agencies such as the Department of Economic Development, Office of the Governor, and the Department of State Planning. In addition, 14 states specified these functions as a part of an office or division within a state agency. The remaining 21 states had independent agencies or an independent commission composed of gubernatorial appointees. It was determined that these different organizational arrangements offered no significant advantage for Texas.

Given the variation of organizational frameworks among the states, it appears reasonable to carry out these operations within a separate agency.



## ALTERNATIVES

Within the scope of the Sunset Act the Sunset Advisory Commission may "make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when such programs duplicate functions performed in agencies under review." The review of TENRAC indicated that another agency, the Texas Coastal and Marine Council had similar statutory responsibilities that duplicated several functions performed by the Natural Resources Division of TENRAC.

The Texas Coastal and Marine Council was created in 1971 to cooperate and assist the legislature, state and federal agencies, and political subdivisions in the comprehensive assessment and planning for coastal resources management and other marine-related affairs affecting the state. The agency identifies its five main objectives for fiscal year 1984-85 as: 1) acting as a focal point between government and business, industry, marine commerce, higher education, and coastal residents regarding coastal problems and issues involving marine fisheries, resource management, and marine navigation safety by: monitoring; providing technical assistance; investigating; holding hearings; and assisting on legislative matters; 2) coordinating the development and implementation of a plan for siting artificial fishing reefs; 3) providing a forum for the exchange and dissemination of information on erosion problems; 4) monitoring the implementation of recommendations relating to the Texas bay shrimp industry and completing the Texas Coastal Fisheries Comprehensive Assessment; and 5) sponsoring and coordinating the development of a state/industry-financed maritime risk management program. The legislation that created TENRAC in 1979 encompassed various other statutes including the Coastal Coordination Act. This Act authorized the former Natural Resources Council "to perform such studies of problems and issues affecting the coastal natural resource areas of the state". The functions of the Natural Resources Council were transferred to TENRAC when it was established. Therefore, TENRAC is authorized to perform those responsibilities associated with coastal resources management.

Historically, the Texas Coastal and Marine Council (TCMC) has been involved in a broad range of coastal and marine-related issues and projects. Many of the solutions proposed by the council have had direct statewide implications. However, the council's activities have usually been the result of resolutions adopted by the legislature to direct the council operations. The interim study of factors affecting

the status of the Texas bay shrimp industry, the coordinating activity regarding the maritime risk management program, and the evaluation of state agency policies affecting mariculture/aquaculture were all done in response to legislative directive. The council serves as an advisory body to the legislature and often awaits legislative directive before implementing studies/projects, making it difficult for the council to project its planned performance.

The Natural Resources Division of TENRAC was initially created in December 1979 for the purpose of developing the Texas Coastal Program. Although work on that program was terminated in May 1981, the division continued its work on coastal issues and began preparation of the Coastal Natural Resources Report (as mandated by the Coastal Coordination Act) which was completed this summer. The division allocated approximately 48 percent of its schedule to developing and studying issues regarding coastal resources during 1981. The report includes analysis and recommendations on wetlands, dunes, freshwater inflows, beach access/erosion, waste disposal, energy development, ports, aquaculture, and fisheries.

The review of TENRAC indicated that their policy development process regarding coastal and marine resources is adequate. The policy-making structure is designed in a manner that is more appropriate for the needed planning and development in the area of coastal and marine resources management. Since it was created, the agency has initiated its own activities as well as taken direction from the legislature. TENRAC provides another advantage because the top policy-making officials and representatives of all agencies affected by issues related to coastal resources management are either members of the council or may become closely related to the planning process through participation on advisory committees, peer project review teams, or as consultants for special projects.

From the review of the statutory directives and activities of both TENRAC and the Coastal and Marine Council there seems to be little purpose in having two bodies performing the same general functions. Incorporation of the functions of the Coastal and Marine Council into those performed by TENRAC would allow the state to develop policies regarding natural resources through the one policy-making body that was designed to cover all aspects of this area of state policy development.

**ACROSS-THE-BOARD RECOMMENDATIONS**



**TEXAS ENERGY AND NATURAL RESOURCES ADVISORY COUNCIL**

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.
X			10. Require the board to establish skill oriented career ladders.
X			11. Require a system of merit pay based on documented employee performance.
X			12. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			13. Provide for notification and information to the public concerning board activities.
X			14. Require the legislative review of agency expenditures through the appropriation process.

\*Already in the statute.

**Texas Energy and Natural Resources Advisory Council**  
(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.