

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

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Texas Historical Resources Development Council

Antiquities Committee

Texas Historical Commission

A Staff Report
to the
Sunset Advisory Commission



1982

SUNSET ADVISORY COMMISSION

STAFF REPORT

on the

TEXAS HISTORICAL COMMISSION

1982

FOREWORD

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

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

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

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

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

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

INTRODUCTION AND ORGANIZATION OF AGENCY REVIEWS

The Texas Sunset Act abolishes these agencies on September 1, 1983 unless each is re-established by the 68th Legislature.

The staff reviewed the activities of these agencies according to the criteria set out in the Sunset Act and has based its conclusions on the findings developed under these criteria.

Taken as a whole, these criteria direct the review of an agency to answer four primary questions:

1. Does the state need to perform the function or functions under review?
2. Could the public still be adequately served or protected if the functions were modified?
3. Is the current organizational structure the only practical way for the state to perform the function?
4. If the agency is continued and continues to perform the same functions, can changes be made which will improve the operations of the agency?

The report is structured to present the performance evaluation of each agency separately. The application of the across-the-board recommendations developed by the commission to deal with common problems are presented in a chart at the end of each report and are not dealt with in the text except in one instance. When the review develops a position which opposes the application of a particular recommendation, the rationale for the position is set forth in the text.

SUMMARY OF STAFF FINDINGS AND CONCLUSIONS

SUMMARY

The Texas Historical Commission was created in 1953. The primary functions of the commission are identifying and marking sites and structures of historical interest to the state; reviewing and recommending properties eligible for the National Register of Historic Places; and providing consultation services to individuals, groups or museums engaged in historical preservation in the state. Other activities include the operation of the Sam Rayburn House at Bonham, Texas and the operation of the Main Street Program.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. The need for the state to be involved in historical preservation efforts is well established and has been pursued, in one form or another, since the creation of the State of Texas.

The review included an analysis of the need to have a separate agency for this purpose and the results of the analysis indicated there were no substantial benefits to be gained from consolidation or transfer of functions. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the operations of the agency.

Approaches for Sunset Commission Consideration

I. MAINTAIN THE COMMISSION WITH MODIFICATIONS

A. Policy-making structure

1. The statute should be modified to reduce the number of commission members from 18 to 12. (statutory change)

B. Agency operations

1. Overall administration

The agency should develop clear procedures for each stage of its publications activities. These procedures should ensure that the publications effort is planned and coordinated on an agency-wide basis, that prices of publications are set through a uniform procedure appropriately designed to recover cost, and that the number of copies printed does not exceed demand. (management improvement - non-statutory)

Evaluation of programs

a. Consultation services

1. Museum and field services

A. The agency should develop a system for quarterly allocation of travel funds to ensure the availability of these funds throughout the fiscal year. (management improvement - non-statutory)

2. Main street program

A. The agency should improve the accountability of the main street program by adopting rules for the program, establishing written guidelines for the selection of cities, and preparing minutes of meetings. (management improvement - non-statutory)

B. The current means of selecting cities to participate in the main street program should be changed so that the Texas Historical Commission formally recommends a list of selected cities to the Governor for his final approval. (management improvement - non-statutory)

b. Protection of historical and archeological resources

1. National register program

A. The statute should be amended to authorize the agency to charge a fee to recover costs for certifications of rehabilitation work performed on income-producing national register properties. (statutory change)

2. Historical marker program

A. The statute should be amended to authorize the agency to charge a fee to recover costs associated with obtaining an historical marker. (statutory change)

C. Recommendations for other sunset criteria

1. Open Meetings/Open Records

- a. In accordance with the Open Meetings Act, the agency should post notice of subcommittee meetings and workshops held by commission members prior to a full commission meeting (management improvement - non-statutory)

2. Public participation

- a. The statute should be amended to require that the commission meet quarterly rather than in the currently specified months of January, April, July, and October. (statutory change)
- b. The statute should be amended to require that the commission have at least one meeting a year devoted to hearing suggestions from the general public on the needs of historical preservation in Texas. (statutory change)

3. 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

No feasible alternative to the current structure was identified.

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
2. Does the agency operate efficiently?
3. Has the agency been effective in meeting its statutory requirements?
4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
5. Is the agency carrying out only those programs authorized by the legislature?
6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?

BACKGROUND

Organization and Objectives

The Texas Historical Commission was created in 1953 and is currently active. The commission is composed of 18 members appointed by the Governor with the consent of the Senate for overlapping six-year terms. Members must be citizens of Texas who have demonstrated an interest in the preservation of the state's historical heritage. Operations of the commission are carried out by a staff of 38.5 and are supported in fiscal year 1982 by an appropriation of approximately \$1.1 million in general revenue and an estimated \$517,000 in federal grants for a total of \$1.6 million.

The Texas Historical Commission is the state agency responsible for providing leadership and coordination in the field of historical preservation. The activities of the commission are similar to those performed in most other states. The agency provides consultation services, primarily to small museums, county historical commissions, and non-profit heritage organizations. In addition, the agency consults with selected small cities to help them revitalize their downtown business districts through its Main Street Program.

The agency also carries out programs to protect the state's historical and archeological heritage. Under both federal and state laws, the Historical Commission identifies and marks historic properties and sites of national or state importance. Various methods are then used to protect the properties from inappropriate changes and to assist in their preservation. These methods include limited restrictions on structural changes and the use of tax incentives and grant funds for appropriate restoration projects. The Historical Commission also protects the state's archeological resources through a continuing inventory of sites, evaluation and excavation of known sites, and publication of results. As a small part of its overall mission, the commission has the additional responsibility of operating and maintaining the Sam Rayburn House as a museum and historic site.

The review of the Historical Commission indicated that the agency has generally been effective in carrying out its consultation and protection responsibilities. However, various areas were identified where modifications would increase the efficiency and effectiveness of agency activities. Results of the evaluation follow.

REVIEW OF OPERATIONS

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

Policy-Making Structure

In general, the structure of a policy-making body should have as basic statutory components, specifications regarding the composition of the body and the qualifications, method of selection, and grounds for removal of the members. These should provide executive and legislative control over the organization of the body and should ensure that the members are competent to perform required duties, that the composition represents a proper balance of interests impacted by the agency's activities, and that the viability of the body is maintained through an effective selection and removal process.

The review of the policy-making structure focused on whether the commission was of the proper representational makeup and size to carry out its roles effectively. The primary roles of the commission are to provide leadership and assistance in historic preservation, to approve applications for historical markers, to select recipients of state and federal grants, and to provide general policy direction for the agency.

The analysis of the structure of the commission indicated that it fits the general pattern used for other agencies except that the size of the commission at 18 members is larger than most other boards and commissions. While there is no perfect number, the actual size can be compared to the general number of members who attend to give an indication of whether in reality, a smaller number has actually carried out the policy-making functions. The workload of the commission should also be considered in determining the impact of reducing the size of the board. Finally, consideration can be given to expenditures of funds for travel and the costs associated with keeping the commission informed of agency operations.

An analysis of meetings for fiscal years 1978 to 1981 indicated that 68 percent of the commission members, or 12 individuals have been in attendance on a regular basis. The workload of the subcommittees established to assist the agency departments in planning and decision making was also reviewed to see whether a smaller number of subcommittees could handle the workload. Commission members are assigned to seven standing subcommittees, usually three members to each committee. These subcommittees generally meet during the times of the commission's quarterly meetings and assist the various departments in setting goals and developing biennial budget requests. Analysis of the workload of the subcommittees indicated that three of the seven subcommittees are responsible for most of the agency's subcommittee work. These committees are involved in approving applications for historical markers and grants and the determination of annual awards presented by the commission. In addition, the executive subcommittee is sometimes delegated decision-making responsibility. It was concluded that since most subcommittee work is carried on through three subcommittees of three members each, a full commission of less than 18 members could adequately carry out the commission's workload.

Finally, if the commission were reduced to 12 members, approximately \$3,000 per year in additional funds would be available for expenditure in program areas for additional travel for site visits, a critical area of the commission's operations.

Based on the analysis of these factors, the size of the commission could be reduced from 18 to 12 members which would reflect the actual number of members generally involved in commission activities and would not reduce the effectiveness of the subcommittee structure. The reduction would also make additional funds available for use in commission programs.

Overall Administration

The evaluation of overall agency administration focused on the internal management of agency personnel, funds, and support programs. In general, the agency's administrative framework functions satisfactorily. However, several areas related to the agency's publications activities could be improved.

The commission distributes a variety of publications in support of its preservation activities. These include newsletters, bulletins, handbooks, and

reports of investigations. In fiscal year 1981, the agency printed 15 separate publications at a printing and editorial cost exceeding \$23,000.

The publications effort for any agency should result in the distribution of materials that are relevant to its responsibilities. A review of commission publications shows that they are appropriate to the agency's overall preservation 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.

The publications effort of the agency is divided between the commission's five program departments and its separate publications division. The decision to develop a publication originates at the program level and usually is written and developed there. Decisions on price and number of copies to be printed are also, for the most part, handled by each separate program department. The publications division supports these efforts by providing editorial work as well as art, photographic, and printing services. An exception to this pattern is found in the archeological department, which performs most of its own production functions.

The review of this structure indicated that there is generally no overall planning or coordination of agency publications. Basically, each department works independently to decide on desirable publications for its area. In addition, there is no formally required approval procedure before production of a publication is begun. As an example of this, some publications have been printed without the prior knowledge of the executive director. To ensure that publications funds are expended on the most appropriate combination and type of documents, better procedures for agency-wide coordination and approval of publications are necessary.

A publications procedure should also have an effective means for controlling the number of copies printed for each publication. Each agency department is generally responsible for this decision. Analysis shows that, overall, the number of copies printed has often exceeded demand. In 1978, 4,500 copies of various documents were printed. Currently, 75 percent of these copies have not been distributed. The value of these copies is estimated at \$1,700. Thirty-six percent of the copies made in 1979 are still available and have an approximate value of \$1,000. The corresponding figures for 1980 are 58 percent left in inventory with a

value of about \$2,500. Consequently, agency funds are tied up in publications which may never be used.

The agency's pricing policies for its publications were reviewed to determine their reasonableness. Under Article V, Sec. 64, of the General Appropriations Act, an agency is required to charge for various types of publications, excluding those that are essential to the achievement of its primary objective. Under these guidelines, the agency has decided to distribute most of its publications free of charge, though several documents are sold to the public. In the review, no determination was made as to whether the agency has properly interpreted state guidelines in deciding which publications should be sold. However, an examination was made of the methods used to set prices on publications that are distributed at a charge.

State law requires that publication prices are not to exceed an amount that will reasonably reimburse the state for the actual expense of printing the publication (Article 4413(33), V.A.C.S.). Typically, state agencies with large printing requirements have included as actual expenses materials and machine costs as well as some charge for labor. As a rule, the Texas Historical Commission has included only direct printing costs in setting prices, absorbing labor expenses itself. An estimated \$700 could have been saved in fiscal year 1981 if all copies of the agency's "for sale" publications had been sold at a price including a labor charge.

The lack of coordinated direction and adequate cost controls indicates a publications effort which should be more tightly structured. Careful consideration should be given to procedures at all stages of the publications activity to ensure that policies are clear, uniform, and consistent. These procedures should provide for a well planned and coordinated publications effort, appropriate numbers of copies being printed, and better pricing policies. To assist in making these changes, consideration should be given by the agency to centralizing more of the decision-making and planning for publications in the commission's publications division. This division already has certain centralized printing responsibilities for the agency's program departments and could serve as a common focal point for overall planning and control of publications. The agency agrees that its procedures should be reviewed and is taking steps to do so.

Evaluation of Programs

The programs of the Texas Historical Commission can be divided into two main functional areas for purposes of evaluation: consultation services; and activities for the protection of the state's historical and archeological resources.

Consultation Services

One of the agency's statutory responsibilities is to provide leadership and assistance in historic preservation. This is accomplished through the operation of two programs designed to consult with and advise the public in areas of historic preservation. Through the Museum and Field Services program, the agency provides professional museum expertise to small non-profit museums, and coordinates and advises county historical commissions and local heritage societies. In its activities under the Main Street Program, the agency provides advice and technical assistance to small Texas cities in helping revitalize their central business districts.

These consultation services were broken into two basic parts for the purposes of the review. The agency must first have a means for deciding on who will receive the service. Once this decision is made, there must then be a framework for actually providing the service. To determine how well the agency has carried out the decision-making process, the review focused on whether the agency fully informed its clientele of the service, whether the agency has sufficient information on which to base a decision, and whether the selection of organizations to receive the service is fair and unbiased. The framework for providing the consultation service itself was evaluated on whether the agency scheduled its consultations and travel in an efficient manner, and whether the services provided meet the needs of the recipients.

Museum and Field Services Program. The museum and field services program provides consulting services designed to help county historical groups and small volunteer-staffed museums in need of organizational and technical assistance. Through this program, the agency receives requests for advice and consultation visits, selects which groups most need services, and then schedules staff for field visits.

Requests for assistance are acted on as they are received based on availability of travel funds, severity of the problem, when the museum or organization last received services, whether these services have been used effectively, and the

locations of the organization. The process of judging the merits of the request appears reasonable, but because the requests are answered as they are received, the agency has generally run out of travel funds during the last three months of a fiscal year and has not been able to respond to requests, regardless of their merits, during this time period. To avoid this situation, the agency should divide yearly travel funds for the division into four allotments, with each allotment only available for use in one quarter of the fiscal year. This would ensure that travel funds are available throughout the year, and that qualified applicants are treated equally throughout the fiscal year.

Main Street. The main street program was started in October 1980 as part of a pilot project sponsored by the National Trust for Historic Preservation. The purpose of the program is to provide consulting services to small cities of Texas in the revitalization and economic development of the central business district and the preservation of their architecturally important buildings. The agency receives applications from cities interested in participating, and through an informal selection procedure five cities per year are selected for the three-year program. These selections are sent to the governor for approval. Once the five cities are selected each year, these cities then receive training for their project manager, assistance in organizing the business community, coordination with other Main Street cities, and architectural assistance in renovating facades of historic buildings. In 1981, the first year of the program, a total of \$2,884,276 was reinvested in building purchases and rehabilitation of historic buildings in the 5 participating cities. In addition, the program architect has done 21 designs for facade renovation of historic buildings in Main Street cities this year, and has assisted on 10 others. Without this service many building owners would not be able to fully participate in the program.

In 1981, the Main Street Program received \$48,566 in state appropriations, \$38,000 in federal funding, and \$11,690 from corporate and foundation funds for total funding of \$98,256. In 1982, the main source of funding for the program was from the Governor's Office which provided \$154,000 to the agency for this effort.

In the selection process, the agency first sends applications and information to cities meeting population eligibility criteria (50,000 or less population) and also receives assistance from the Texas Municipal League in promoting the program. Cities which apply are selected by a committee composed of two members from the THC staff, and two members from each of the three agencies assisting in the

program: Texas Department of Community Affairs; Texas Industrial Commission; and the Governor's Budget and Planning Office. The names of the five cities that are selected are sent to the Governor for approval. There are no minutes or other written documentation of the actions of the committee, and there are no rules or guidelines set out for the selection process. As a result, there are no clear lines of responsibility for the decisions made, and little access to the decision process by the public or those cities not selected to participate. Although the program has only been in operation for two years and began as a pilot program, there is no reason that it should continue to operate without rules and guidelines.

In order to correct this situation the agency should set out in rules the basic procedures for selection of cities. This should include eligibility criteria, the membership of the selection committee and requirements for written documentation and minutes. In addition a method to clearly establish the responsibility for decisions is needed. This process should include an initial selection decision by the committee, approval of these decisions by the commission with a recommendation to the governor for final approval. The agency should also establish selection guidelines for use by the committee in the selection process in order to ensure that all eligible cities are compared on an equal basis. Formalizing the selection process should result in greater accountability for the Main Street Program.

Protection of Historical and Archeological Resources

The Texas Historical Commission has four programs which are designed to protect the state's historical and archeological resources. The state marker program is designed to protect historic sites and structures of state significance. The national register program protects structures and properties of national significance. The archeology program is aimed at preserving the state's archeological history. Finally, the agency operates the Sam Rayburn house as an historic site and museum.

In general, programs such as these must have a procedure for identifying what is to be protected, and a framework for preventing inappropriate damage or destruction. The review of the identification aspect of these programs focused on whether an appropriate framework existed for identifying properties to be protected, and whether selection of properties to be protected was fair and supported with adequate documentation. The various methods used to protect the properties, once identified, were evaluated to determine whether they were adequate.

State Marker Program. The state marker program was started in the 1950's as an effort to help preserve the state's many historic houses, buildings, and sites and to commemorate persons and events of historical importance. Through this program, property owners or other individuals apply to the commission to have an historic marker placed on the site or property. If the commission decides that the site or property has historical significance, the marker is granted. For those markers placed on structures, the owner is supposed to submit any proposed changes to the outside of the structure to the commission for its review. The owner may make any changes desired 60 days after notifying the commission, but if the change is not appropriate, the historical marker designation can be removed.

To start this marker process, there is an overall framework for identifying historic state properties. At the local level, state statutes create county historical commissions. These commissions as well as interested individuals seek out historic properties for marker designation. At the state level, applications are reviewed by a subcommittee of the commission, and recommendations are then made to the full commission for its approval. The grass roots approach to identifying marker candidates is good in that it provides organized coverage of the entire state. The use of the subcommittee to review applications is also reasonable, given the large number of applications received by the agency (444 processed in fiscal year 1981). This approach allows the agency to give necessary consideration to each application before a final decision is reached.

The final selection of properties to be marked is also satisfactory in that it is fair and supported with necessary information. Each application is accompanied with an historical description of the property. The county historical commission often lends its expertise to the owner in preparing this and other required information. The selection process itself is based on established criteria which are applied by the commission. These criteria help ensure that appropriate properties are selected on a consistent and fair basis.

The procedures for protecting the property, once selected, begins with placement of the marker. During the review, it was noted that the commission charges the property owner for the cost of this marker. However, technically the agency does not have proper authority for this fee and the statute should be amended to provide for this authority.

The agency has set up appropriate procedures to review changes that owners wish to make to their property. Notification to the commission is required before

structural changes are made. Plans of proposed changes are reviewed by one of the agency's architects, who consults with the owner as needed. A weak point in these procedures exists in that commission awareness of possible changes is dependent on the owner's willingness to comply with the notice requirement before making changes. However, no practical solution to this problem exists since structures are privately owned and renovation plans are first known only to the owner.

Analysis of the powers of the agency to discourage inappropriate modifications to a property having a state marker shows that the agency has little power under the current statute. By law, the owner can make any modification 60 days after giving the commission notification. The commission's one recourse under its statute is to remove the marker. While the agency has little authority to discourage such changes, this approach is consistent with the overall nature of the program. Most properties receiving a marker are privately owned. The statute must necessarily balance the interests of the private owner with the preservation interests of the state. In this context, a voluntary program designed mainly to identify and mark properties and placing few restrictions on the owner is appropriate.

National Register Program. The National Register program was established to carry out the state's responsibilities under the federal National Historic Preservation Act. The N.H.P.A. established a National Register of Historic Places on which historic sites and structures meeting federal requirements may be listed. Through this program, property owners apply to the commission for nomination to the National Register. Once on the Register, properties are afforded limited protection and are offered certain incentives, in the form of tax benefits and grants, to encourage proper restoration and maintenance.

The process for identifying properties eligible for nomination to the Register is similar to that used in the state marker program. Local historical groups such as the county historical commissions and heritage societies are involved in identifying properties for nomination. In addition, the agency conducts surveys to inventory potential sites and provides grants to local groups to assist in their survey efforts. This approach provided for identification of 6,000 properties in fiscal year 1981 which are potentially eligible for nomination to the Register.

The process for nomination is governed by federal guidelines. The owner of the property submits the application and the staff of THC reviews it for completeness and compliance with federal eligibility criteria. The applications are

then presented by the staff to a state review board, established by federal requirements, which approves those nominations meeting the requirements and sends them to the National Register Office for final approval.

The results of the review of the nomination procedure indicated that it was impartial and was supported with adequate information. The application contains the information needed to make proper decisions and the staff assists the applicant in making sure the information is complete. The review board is required to be composed of professionals in preservation related disciplines who can use their expertise in making decisions. The approval process is based on federally established criteria which are applied by the review board. These criteria help ensure that appropriate properties are nominated on a consistent and fair basis.

The review of the procedures set up to protect properties listed on the National Register indicated that the agency must mainly depend on the owners or others not to destroy or make inappropriate changes in the properties. The agency has set up appropriate procedures to review changes that owners wish to make to their property. Federal tax laws require that the agency certify that rehabilitation work meets federal guidelines in order for the owner to qualify for tax benefits available to income producing properties. Proposed changes are reviewed by the staff of THC to determine their appropriateness. Once approved by the agency the project must also be approved by the National Park Service. Once the project has been completed, the agency reviews the work to see that it has followed the plan. This process helps assure that the changes made, are in fact, appropriate.

While the review indicated that the agency's procedures under the tax laws are adequate, one area was identified where an improvement could be made. Recent changes in federal tax laws provide tax credits of up to 25 percent of the cost of rehabilitation to income-producing historic structures. This has caused a significant increase in requests for agency reviews of properties. These reviews have taken an increasing amount of staff time and are done without charge for owners who realize significant tax benefits. These rehabilitation projects involve average costs of \$500,000 to \$1 million with tax credits to owners ranging from \$125,000 to \$250,000. The state is performing a function which results in substantial benefits for the owners of the properties and it would be reasonable for the agency to be authorized to charge a fee to recover some of the costs of performing these reviews.

While several fee structures could be established, two are discussed below to illustrate the revenue to be realized from such a fee. The agency could charge a flat fee of \$100 based on the costs associated with a standard review, thus generating \$15,000 in revenue for the 150 reviews projected for fiscal year 1983. The other approach would be to charge a fee based on the size of the project. With \$100 charged for smaller projects and \$400 for the largest projects an estimated \$33,000 in revenues could be generated. The fee amounts considered under either approach would not be burdensome and the statute should be amended to authorize the agency to charge a fee to recover costs associated with the certifications of rehabilitation work.

The agency has several other functions that it performs under the N.H.P.A. One of these functions requires the state agency to review federal projects in Texas to identify historic resources that could be affected. THC staff recommends ways to minimize damaging the historic resources and if destruction is necessary to propose archeological or architectural investigation prior to destruction of the site. The review of the processes set up to handle this responsibility indicate that they are adequate.

Another function performed by the agency under the N.H.P.A. is the review and monitoring of properties being modified with federal preservation grant funds. This function is combined and coordinated with the state grant program which has become the predominant program as federal funds for this purpose has decreased. The review of the functions performed under the federal and state grant programs indicated that the agency has developed and implemented procedures which ensure that the grant funds are properly awarded and are adequately monitored to determine if they have been used for the intended purposes. During fiscal year 1981, the agency was involved in combined grants totalling \$330,000 for 35 projects. Of this amount, \$250,000 represented state grant funds. In fiscal year 1982, it is projected that 20 projects will be funded for a total amount of \$250,000, all of which represent state funds. It has not yet been determined whether any federal funds will be available for grants in 1982.

Archeological Services Program. The agency's statute establishes the Office of the State Archeologist and requires the agency to carry out an archeology program. The statute sets up a program which is primarily informational in character, requiring the agency to locate and keep an inventory of archeological sites. The protective aspects of the program are mainly to provide information

concerning archeological sites to state agencies and others intending to use the land and to preserve archeological finds through reports and curation of objects. The agency does not have the authority to protect archeological sites from direct damage. The responsibility for this lies with the Antiquities Committee on public lands. No means of protecting archeological sites on private lands currently exists.

The agency has set up procedures so that state agencies and archeological organizations can inform the agency of the location of sites and to provide other information. This data, along with additional information gathered by agency staff during field investigations, is maintained on map systems and in files which contain information on over 30,000 known archeological sites. Much of this data also forms the information base for the Texas Heritage Conservation Plan, an ongoing effort to manage the state's cultural resources, including computerizing data on the state's resources. This plan allows the agency to have most resource information easily accessible and available to agency staff. The agency can then provide information on sites being excavated. These processes are satisfactory in that they actively seek information and then provide system of storing and making the information easily available for use.

Sam Rayburn House Museum. The commission was deeded the house and grounds in 1972 by the Sam Rayburn Foundation. The property was given to the state with the stipulation that it remain under the control of the Texas Historical Commission and that the commission be responsible for the restoration, maintenance and operation of the property as a public museum and historic site. In the event the state were to transfer the property to another state agency, the property would revert to the Sam Rayburn Foundation.

Over the past seven years that the commission has operated the museum, \$466,778 has been made available to the commission for its restoration, maintenance, and operation. No major renovation costs are projected for the future.

The review of the operations of the museum included an analysis of whether its operation through the Texas Historical Commission was appropriate; whether the museum personnel are adequately trained; whether there was a reasonable accession policy; and whether the museum was utilized by and accessible to the public. The results of the review indicated that operation through the agency was appropriate. There is currently no state policy that places the operation of historic houses under a single state agency and other houses of this type are currently operated by the Texas Parks and Wildlife Department and several universities. The

Texas Historical Commission follows the pattern of other agencies in that it has made use of the house for purposes which relate to the overall functions of the agency. It is used as a model museum to assist in services the agency performs for other museums and is used as a regional office for other technical services.

The review also indicated that the personnel operating the museum have adequate professional experience in operations of this type and that the accessions policy properly limits the kind and type of gifts and donations accepted for the museum. The review also indicated that the museum is utilized by the public. The museum is open at convenient times and attendance records indicate that during the period under review, the number of tours given the public has remained fairly constant with 6,722 conducted in 1979, and an estimated 7,000 in 1982.

EVALUATION OF OTHER SUNSET CRITERIA

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

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

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

EVALUATION OF OTHER SUNSET CRITERIA

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

Open Meetings/Open Records

The review of this area indicated that the commission has generally complied with the provisions of the Open Records Act. The agency has also complied with the Open Meetings Act in holding its formal full commission meetings. However, there are two areas where its operations under the Open Meetings could be improved.

First, the commission holds workshops for commission members prior to full commission meetings. These workshops are held for the commission to receive written and verbal reports on commission business from the commission chairman, the executive director, the finance director and staff directors of commission programs. The workshops have been open, but notice has not been posted. Notice should be given for the workshops in accordance with the Open Meetings Act because a quorum of commission members is present and public business and policy are discussed.

Second, committees of the commission, consisting entirely of commission members, meet frequently in open meetings, but the committee meetings have not been posted. According to Attorney General Opinion H-3, committees composed of members of governmental bodies, meeting to consider recommendations for disposition of matters pending before the parent body, must comply with the notice and open meeting provisions of the Open Meetings Act. Since the meetings of the committees of the commission meet these criteria, they should be posted in accordance with the requirements of the Open Meetings Act.

EEOC/Privacy.

A review was made to determine the extent of compliance with applicable provisions of both state and federal statutes concerning affirmative action and the rights and privacy of individual employees. The commission is operating under a

current affirmative action plan and a personnel policy which includes formal grievance procedures. During the period of the review, the agency developed modifications to its grievance procedures and in April of 1982, adopted amendments to its personnel policy that included a statement reaffirming the agency's policy of equal employment opportunity. The results of the review indicated that the commission is in compliance with state and federal statutes.

Public Participation

The commission encourages public participation and informs the public of its activities through various publications including newsletters and bulletins; media announcements; and workshops and lectures on a broad range of historical preservation subjects. The agency also hosts an annual historic preservation conference. As the statute is currently written, the public also has the opportunity to hear commission deliberations at four regularly scheduled meetings a year. However, the statute could be amended to improve the operations of the commission with respect to its meetings in two ways.

The statute specifies that the commission hold regular meetings in January, April, July and October of each year. Designating these months has the advantage of making the public aware of approximate meeting times. However, the commission has at times needed more flexibility in setting regular meetings in order to conduct its business most efficiently. The commission is invited to attend major meetings in months other than those specified in the statute. By being able to combine a regular meeting with these events, travel funds and the time of commissioners could be used more effectively. To give the commission this flexibility, statutory language naming the meeting months should be deleted and replaced with the requirement that the commission meet quarterly. So that the public does not lose the advantage of knowing when meetings are to be held, the commission should give appropriate notice well in advance of the quarterly meetings.

The statute should also be amended to increase public participation by requiring that at least one commission meeting a year be devoted entirely to hearing suggestions from the general public on the needs of historical preservation in Texas. This change would provide a direct method for the public to participate in commission meetings and to present suggestions on the needs of historical preservation in the state.

Conflicts 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 each new employee receive 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 notarized affidavit on the day of employment, stating that the employee has received a copy of this statute.

While the agency's procedures are adequate, it would be more appropriate if this were a part of the statutory framework of an 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.

**NEED TO CONTINUE AGENCY FUNCTIONS
AND
ALTERNATIVES**

The analysis of the need to continue the functions of the agency and whether there are practical alternatives to either the functions or the organizational structure are based on criteria contained in the Sunset Act.

The analysis of need is directed toward the answers to the following questions:

1. Do the conditions which required state action still exist and are they serious enough to call for continued action on the part of the state?
2. Is the current organizational structure the only way to perform the functions?

The analysis of alternatives is directed toward the answers to the following questions:

1. Are the functions which are less restrictive or which can deliver the same type of service?
2. Are there other practical organizational approaches available through consolidation or reorganization?

NEED AND ALTERNATIVES

Need to Continue Agency Functions and Alternatives

The primary functions of the Texas Historical Commission are to provide leadership and coordination in the field of historic preservation and to protect the historical and archeological resources of the state. To determine whether there is a continuing need for these functions, the review focused on the conditions underlying the original need to see if these conditions still exist.

The review indicated that the primary factor underlying the establishment of the agency was the need for a statewide effort to locate and protect the historical resources in the state. The need for protection is evidenced by the fact that many historically significant sites and structures had been damaged or destroyed during development associated with post World War II population growth. As a result, the commission was created to encourage and coordinate preservation activities. Since that time, the commission's responsibilities have been expanded to include protection of archeological resources, administration of federal protection laws and provision of assistance to museums and preservation groups.

The review showed that the need for location and protection of resources continued to exist. While the agency has been successful in identifying and protecting cultural resources, development activities continue to threaten historic structures and archeological sites necessitating continued operation of the agency to deal with these problems. Additionally, county historical commissions, museums, and preservation groups continue to need information and assistance in order to carry on their preservation efforts. These factors suggest a continuing need for the functions of the agency.

It was concluded that the leadership and protection efforts could most reasonably be carried out through the current organizational structure. These activities should be performed by a separate organization responsible for historic preservation in the state. Consolidation with another agency would not result in greater administrative efficiency or increased effectiveness but would probably have the effect of reducing the current commitment to historic preservation.

ACROSS-THE-BOARD RECOMMENDATIONS

TEXAS HISTORICAL COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
X		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. Board members shall attend at least one-half of the agency board meetings or it may be grounds for removal from the board.
X			8. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			9. Review of rules by appropriate standing committees.
X			10. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			11. Require the board to establish skill oriented career ladders.
X			12. Require a system of merit pay based on documented employee performance.
X			13. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			14. Provide for notification and information to the public concerning board activities.
		*	15. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Historical Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.